



KWAZULU-NATAL PROVINCE  
KWAZULU-NATAL PROVINSIE  
ISIFUNDAZWE SAKWAZULU-NATALI

**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

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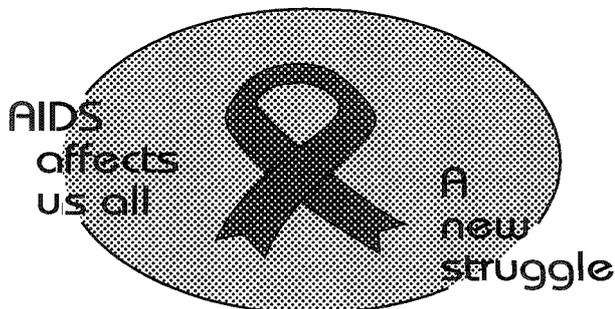
**Vol. 4**

**PIETERMARITZBURG,**

12 JANUARY 2010  
12 JANUARIE 2010  
12 kuMASINGANA 2010

**No. 367**

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**PROCLAMATION — PROKLAMASIE — ISIMEMEZELO**

**No. 1, 2010**

By the powers vested in me in terms of section 6(3)(a) of the Remuneration of Public Office Bearers Act, Act No. 20 of 1998, I Zwelini Lawrence Mkhize, Premier of KwaZulu-Natal, hereby determine salaries and allowances of Members of the Executive Council and the different Members of the Provincial Legislature of KwaZulu-Natal as set out below:

<b>SCHEDULE 1</b>			
<b>UPPER LIMIT OF THE SALARIES AND ALLOWANCES OF MEMBERS OF EXECUTIVE COUNCILS AND MEMBERS OF PROVINCIAL LEGISLATURES AS ADJUSTED BY 7% WITH EFFECT FROM 01 APRIL 2009</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>GRADE</b>	<b>PAY LEVEL</b>	<b>POSITION</b>	<b>TOTAL REMUNERATION AS FROM 1 APRIL 2009</b>
LB	1	Member of Executive Council Speaker	1, 420, 489
LC	1	Deputy Speaker	1, 116, 082
	2	Chief Whip: Majority Party	1, 014, 652
		Chairperson of Committees	913,223
		Leader of Opposition	913,223
		Chairperson of a Committee	913,223
	3	Deputy Chairperson of Committees	859, 182
		Deputy Chief Whip: Majority Party	859, 182
		Chief Whip: Largest Minority Party	859, 182
		Leader of a Minority Party	859, 182
LD	1	Parliamentary Counsellor to a King	764, 641
		Whip	764, 641
	2	Member of Provincial Legislature	740, 056

The remuneration and allowances of Members of the Executive Council and the different Members of the Provincial Legislature of KwaZulu-Natal shall be as set out in the Schedule with effect from 01 April 2009

Given under my Hand at Pietermaritzburg, this 1<sup>st</sup> day of December Two Thousand and Nine.

ZL Mkhize  
Premier of KwaZulu-Natal

Kragtens die bevoegdheid aan my verleen ingevolge artikel 6(3)(a) van die Wet op die Besoldiging van Openbare Ampsbekleërs, No. 20 van 1998, bepaal ek, Zwelini Lawrence Mkhize, Premier van KwaZulu-Natal, hiermee die salarisse en toelae van Lede van die Uitvoerende Raad en die verskillende Lede van die Provinsiale Wetgewer van KwaZulu-Natal, soos hieronder uiteengesit.

BYLAE 1			
<b>BOONSTE PERK VAN DIE SALARISSE EN TOELAE VAN LEDE VAN UITVOERENDE RADE EN LEDE VAN PROVINSIALE WETGEWERS, MET 'N AANPASSING VAN 7% WAT VANAF 01 APRIL 2009 IN WERKING TREE</b>			
<b>Kolom 1</b>	<b>Kolom 2</b>	<b>Kolom 3</b>	<b>Kolom 4</b>
<b>GRAAD</b>	<b>BESOLDIGINGSVLAK</b>	<b>AMP</b>	<b>TOTALE BESOLDIGING VANAF 1 APRIL 2009</b>
LB	1	Lid van die Uitvoerende Raad	1, 420, 489
LC	1	Speaker	1, 420, 489
		Adjunkspeaker	1, 116, 082
	2	Hoofswep: Meerderheidsparty	1, 014, 652
		Voorsitter van Komitees	913,223
		Leier van die Opposisie	913,223
		Voorsitter van 'n Komitee	913,223
	3	Adjunkvoorsitter van Komitees	859, 182
		Adjunk-hoofswep: Meerderheidsparty	859, 182
		Hoofswep: Grootste Minderheidsparty	859, 182
LD	1	Leier van 'n Minderheidsparty	859, 182
		Parlementêre Koninklike Raadgewer	764, 641
		Sweep	764, 641
	2	Lid van 'n Provinsiale Wetgewer	740, 056

Die besoldiging en toelae van Lede van die Uitvoerende Raad en die verskillende Lede van die Provinsiale Wetgewer van KwaZulu-Natal, soos in die Bylae uiteengesit, tree op 01 April 2009 in werking.

Geteken op die 1 eerste dag van Desember Tweeduisend en Nege.

ZL Mkhize  
Premier van KwaZulu-Natal

No. 1, 2010

NGOKWAMANDLA engiwanikezwe yisigaba 6(3) soMtheitho wokuKhokhelwa kweziPhathirmandla zoMphakathi, umthetho No. 20 ka 1998, mina Zwelini Lawrence Mkhize, uNdunankulu wesiFundazwe saKwaZulu-Natali, ngalokhu ngingquma inkokhelo kanye nezibonelelo ezimile zoNgqongqoshe kanye namatungu ehlukene esiShayamthetho sesiFundazwe saKwaZulu-Natali.

UHLELO 1			
UMKHAWULO OPHEZULU WAMAHOLO KANYE NEZINKOKHELO EZIMILE ZONGQONGQOSHE KANYE NAMALUNGU ESISHAYAMTHETHO SESIFUNDAZWE			
Uhlu 1	Uhlu 2	Uhlu 3	Uhlu 4
<b>ISIGABA</b>	<b>PAY LEVEL</b>	<b>SIKHUNDLA</b>	<b>TOTAL REMUNERATION AS FROM 1 APRIL 2009</b>
LB	1	ILungu loMkhandlu OPethe uSomlomo	1, 420, 489
LC	1	IPhini likaSomlomo	1, 420, 489
		USotshwebhu oMkhulu: weQembu elikhulu	1, 116, 082
	2	uSihlalo wamaKomidi	1, 014, 652
		UMholi weQembu eliPhikisayo ngokwesigaba	913, 223
		116(2)(d)soMthethosisekelo	913, 223
	3	uSihlalo weKomiti lesiShayamthetho iPhini likaSihlalo wamaKomidi	913, 223
		iPhini likaSotshwebhu oMkhulu	859, 182
		uSotshwebhu weQembu eliNcane	859, 182
		uMholi weQembu eliNcane	859, 182
LD	1	UMxhumanisi wePhalamende neSilo	859, 182
		uSotshwebhu	764, 641
	2	Ilungu lesiShayamthetho	764, 641
		Nezibonelelo kanye nenkokhelo yoNgqongqoshe kanye namatungu ehlukene esiShayamthetho sesiFundazwe saKwaZulu-Natali kuyohlelwa oHlelweni kusuka mhlaka 1 Ephreli 2009.	740, 056

Nezibonelelo kanye nenkokhelo yoNgqongqoshe kanye namatungu ehlukene esiShayamthetho sesiFundazwe saKwaZulu-Natali kuyohlelwa oHlelweni kusuka mhlaka 1 Ephreli 2009.

Kunikezwe ngaphansi kweSandla sami eMgungundlovu, ngalolu suku lomhlaka 1 ku Disemba oNyakeni weziNkulungwane eziMbili neSishagalolunye.

ZL Mkhize  
uNdunankulu wesiFundazwe saKwaZulu-Natali

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**GENERAL NOTICES—ALGEMENE KENNISGEWINGS—ISAZISO SIKAWONKE-WONKE**

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No. 1

12 January 2010

**KWAZULU-NATAL DUBE TRADEPORT CORPORATION  
BILL, 2009****Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature**

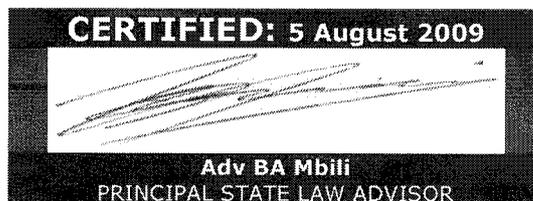
Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Dube TradePort Corporation Bill, 2009 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

**Attention:** Mrs NP Sikhakhane  
The Secretary  
KwaZulu-Natal Legislature  
Private Bag X 9112  
PIETERMARITZBURG  
3200

so as to reach her not later than 15 days from the date of publication.

N NAIDOO  
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL  
DUBE TRADEPORT CORPORATION BILL, 2009**



**CERTIFIED:** 5 August 2009  
Principal State Law Advisor

## **BILL**

**To provide for the establishment of the Dube TradePort Corporation; to determine the objects, powers, duties and functions of the Dube TradePort Corporation; to determine the manner in which the Dube TradePort Corporation is to be managed, governed, staffed and financed; to provide for the winding up of the Dube TradePort Company; to provide for the Dube TradePort Corporation to be the successor in law of the Dube TradePort Company; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

### **ARRANGEMENT OF SECTIONS**

#### *Section*

#### **CHAPTER 1 DEFINITIONS**

##### **1. Definitions**

#### **CHAPTER 2 DUBE TRADEPORT CORPORATION**

- 2. Establishment of Dube TradePort Corporation**
- 3. Objects of Dube TradePort Corporation**
- 4. Powers, duties and functions of Dube TradePort Corporation**

#### **CHAPTER 3 BOARD OF DUBE TRADEPORT CORPORATION**

- 5. Composition of Board**
- 6. Disqualification from being appointed to Board**
- 7. Declaration of financial or other interests of members of Board**
- 8. Term of office and reappointment of member of Board**
- 9. Vacancies, removal and resignation from office of members of Board**
- 10. Temporary suspension of member of Board**
- 11. Meetings and procedures at meetings of Board**
- 12. Recusal of member from meetings and proceedings of Board**
- 13. Remuneration of members of Board**

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14. Establishment of committees to assist Board
15. Co-opting of persons to Board or committees of Board

#### CHAPTER 4

##### CHIEF EXECUTIVE OFFICER AND STAFF OF DUBE TRADEPORT CORPORATION

16. Chief Executive Officer of Dube TradePort Corporation
17. Functions of Chief Executive Officer
18. Resignation and removal from office of Chief Executive Officer
19. Staff of Dube TradePort Corporation
20. Secondment or transfer of staff to Dube TradePort Corporation

#### CHAPTER 5

##### MASTER PLAN, POLICY DIRECTIVES AND STRATEGIC GUIDELINES

21. Master Plan
22. Policy directives and strategic guidelines

#### CHAPTER 6

##### FUNDING AND FINANCIAL MANAGEMENT OF DUBE TRADEPORT CORPORATION

23. Funds of Dube TradePort Corporation
24. Financial management
25. Audit and annual report
26. Financial year of Dube TradePort Corporation
27. Immovable property
28. Legal proceedings against Dube TradePort Corporation

#### CHAPTER 7

##### GENERAL PROVISIONS

29. Security of confidential information held by Dube TradePort Corporation
30. Dissolution of Dube TradePort Corporation
31. Use of name of Dube TradePort Corporation
32. Delegations
33. Regulations
34. Winding-up of Dube TradePort Company and transitional provisions
35. General offences
36. Penalties
37. Short title

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## CHAPTER 1 DEFINITIONS

### Definitions

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

**"Board"** means the board of the Dube TradePort Corporation contemplated in section 5;

**"Chief Executive Officer"** means the Chief Executive Officer of the Dube TradePort Corporation, contemplated in section 16;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Department"** means the Department of Economic Development or any successor provincial department whose functions include that of economic development in KwaZulu-Natal;

**"Dube TradePort"** means the multi-modal development comprising of an international airport, trade zone, agri-zone, associated support services and associated activities, situated 30 kilometers north of the Durban city centre;

**"Dube TradePort Region"** means the region falling within a 30 kilometer radius of the centre of the international airport situated within the Dube TradePort;

**"Dube TradePort Company"** means Dube TradePort Company, Registration Number 2002/002810/07, established in terms of the Companies Act, 1973 (Act No. 61 of 1973);

**"Dube TradePort Corporation"** means the provincial public entity established in terms of section 2;

**"Executive Council"** means the Executive Council of the Province contemplated in section 132 of the Constitution;

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**"Gazette"** means the official *Provincial Gazette* of KwaZulu-Natal;

**"Head of Department"** means the person appointed as Head of the Department in terms of section 12 of the Public Service Act, (Proclamation 103 of 1994);

**"Master Plan"** means the Master Plan for the development, design and construction of a multi-modal transportation hub in the Dube TradePort Region as contemplated in section 21;

**"Member of the Executive Council responsible for finance"** means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

**"Portfolio Committee"** means the Portfolio Committee of the Provincial Legislature responsible for economic development;

**"Province"** means the Province of KwaZulu-Natal contemplated in section 103 of the Constitution and **"provincial"** has a corresponding meaning;

**"provincial public entity"** means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"regulations"** means regulations made in terms of section 33;

**"responsible Member of the Executive Council"** means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for economic development or that member of the Executive Council of the Province of KwaZulu-Natal to whom the Premier has assigned the administration of this Act;

**"this Act"** includes the regulations.

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## CHAPTER 2 DUBE TRADEPORT CORPORATION

### **Establishment of Dube TradePort Corporation**

2.(1) There is hereby established a provincial public entity to be known as the Dube TradePort Corporation.

(2) The Dube TradePort Corporation is a juristic person which acts through the Board.

(3) The Dube TradePort Corporation is subject to the Public Finance Management Act.

(4) The Board is the accounting authority of the Dube TradePort Corporation as contemplated in section 49(2)(a) of the Public Finance Management Act.

### **Objects of Dube TradePort Corporation**

3. The objects of the Dube TradePort Corporation are –

- (a) to develop the Dube TradePort;
- (b) to undertake or invest in projects associated with the Dube TradePort;
- (c) to facilitate economic growth in the Province through the Dube TradePort;
- (d) to attract long term investment to the Province;
- (e) to facilitate export and import through the Dube Tradeport; and
- (f) to perform the powers, duties and functions specified in section 4.

### **Powers, duties and functions of Dube TradePort Corporation and Board**

4.(1) The Dube TradePort Corporation must, through the Board –

- (a) ensure the strategic planning, establishment, design, construction, operation, management and control of the Dube TradePort;
- (b) implement and give effect to the Master Plan for the economic growth of the Dube TradePort Region and the Province;
- (c) manage and utilize its resources in accordance with its objects and the requirements of the Master Plan;
- (d) identify, develop, market and promote investment opportunities in the Dube TradePort; and

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(e) develop an investment plan for the Dube TradePort.

(2) The Dube TradePort Corporation may –

(a) for the purposes of developing, promoting, marketing or investing in the Province, and subject to the prior written approval of the responsible Member of the Executive Council –

(i) establish and operate one or more companies, close corporations or other similar bodies;

(ii) enter into joint ventures with other institutions, organisations, municipalities, bodies or persons; and

(iii) raise funds through donations and sponsorships;

(b) with the prior written approval of the responsible Member of the Executive Council, acquire and dispose of shares and interests in companies, close corporations or other similar bodies;

(c) liaise with any other entity, organ of state, organisation or institution whose activities or aims have an impact on, and relate to, the development, promotion, marketing or investment in the Province;

(d) investigate and make recommendations to the Executive Council, through the responsible Member of the Executive Council on any matter relating directly or indirectly to the promotion, development, marketing or investment in the Province;

(e) enter into agreements for the attainment of its objects, the exercise of its powers, duties and functions or the management and administration of its affairs, whether or not expressly provided for in this section;

(f) participate in the management, supervision and control of the business or operations of an institution having the same or similar objects as the Corporation;

(g) undertake or invest in projects associated with its objects;

(h) establish a fund to enhance air transport connectivity to the Province;

(i) do any other thing or attend to any other matter necessary for the purposes of achieving its objects and the requirements of the Master Plan; and

(j) do any other thing or attend to any other matter that the responsible Member of the Executive Council considers necessary for the proper implementation of this Act.

(3) In addition to the powers referred to in subsections (1) and (2), the Dube TradePort

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Corporation has the powers referred to in section 54(2) of the Public Finance Management Act.

### CHAPTER 3 BOARD OF DUBE TRADEPORT CORPORATION

#### **Composition of Board**

5.(1) The Board consists of –

- (a) at least three, but not more than eight, members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 16(5).

(2) Members of the Board must be fit and proper persons to serve the best interests of the Province, collectively possessing the following skills and expertise –

- (a) knowledge and expertise in financial management;
- (b) knowledge and expertise in the tourism industry;
- (c) knowledge and expertise in the transport sector;
- (d) knowledge and expertise in the economic development sector;
- (e) knowledge and expertise in the property development industry; and
- (f) any other skill, experience or qualification that, in the opinion of the responsible Member of the Executive Council, might be of benefit to the Dube TradePort Corporation.

(3) In appointing members to the Board, the responsible Member of the Executive Council must ensure that –

- (a) historic imbalances are addressed;
- (b) the Board, collectively, possesses the necessary and appropriate skills and expertise; and
- (c) the Board is representative of persons employed or involved in economic and development enterprises in the Province.

(4) The responsible Member of the Executive Council must designate –

- (a) one of the members of the Board as the Chairperson of the Board; and
- (b) one of the members of the Board as the Deputy Chairperson of the Board.

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(5) The responsible Member of the Executive Council may appoint a person as his or her representative who –

(a) must facilitate liaison between the responsible Member of the Executive Council and the Board;

(b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and

(c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken.

(6) The responsible Member of the Executive Council must, by notice in the *Gazette* invite any interested parties within the Province to nominate candidates for appointment to the Board.

(7) The invitation for nomination must specify –

(a) the nomination procedure;

(b) the requirements for nomination; and

(c) the closing date for the nomination.

(8) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel to review all the nominations and make recommendations to the responsible Member of the Executive Council on the nominees.

(9) The responsible Member of the Executive Council must cause the names of the persons appointed to the Board to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Board.

(10) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board in terms of subsection (1), inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

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(11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

### **Disqualification from being appointed to Board**

6. A person is disqualified from being appointed to the Board or from remaining on the Board, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Board and fails to declare his or her interest and the nature thereof in the manner required by this Act;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon receipt of an affidavit disclosing full details of an offence by a person who is nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; and
- (g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section;

### **Declaration of financial or other interests of members of Board**

7.(1) A person who has been nominated to serve on the Board in terms of subsection 5(8) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company or other business interests.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 6 to be considered for the

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position of the member of the Board.

(3) Every member of the Board must, upon assuming office and at the beginning of every financial year of the Board, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 234(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973).

(4) Where a member of the Board acquires an interest in any company or other business interests, at anytime during his or her tenure as a member of the Board, he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interest as contemplated in subsections (3) and (4), constitutes justifiable and cogent reason for the termination of appointment of such member in terms of section 9(2).

(6) The responsible Member of the Executive Council must keep an updated register of the interests of members of the Board disclosed in terms of this section.

#### **Term of office and reappointment of member of Board**

8. The persons appointed to the Board hold office for a period of five years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 5, eligible for re-appointment at the expiry of such period: Provided that no person may be re-appointed after having served on the Board for a continuous period of 10 years.

#### **Vacancies, removal and resignation from office of members of Board**

9.(1) A member of the Board must vacate office if he or she becomes subject to a disqualification contemplated in section 6.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office

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Principal State Law Advisor

of such member if, in his or her discretion, there are justifiable and cogent reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from two consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.

(5) Whenever a vacancy occurs on the Board, the responsible Member of the Executive Council must, subject to section 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (2), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 5, subject to subsections 5(2) and 5(3), appoint persons to serve as members of the Board on an interim basis: Provided that-

(a) the persons appointed in terms of this subsection may not remain on the Board for a period of more than 60 days from the date of their appointment; and

(b) the responsible Member of the Executive Council must, subject to section 5, appoint the members of the Board within 60 days of the appointment contemplated in this subsection.

#### **Temporary suspension of member of Board**

**10.** The responsible Member of the Executive Council may suspend a member of the Board whilst the responsible Member of the Executive Council is investigating allegations which, if found to be correct, could result in the member's appointment being terminated in terms of section 9(2).

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### **Meetings and procedures at meetings of Board**

**11.(1)** The first meeting of the Board must be held on a date and at a time and venue determined by the responsible Member of the Executive Council whereafter all future meetings must be as determined by the Chairperson.

(2) The *quorum* for a meeting of the Board is the majority of the members of the Board.

(3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the Chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.

(4) The Chairperson must preside at all meetings of the Board: Provided that in his or her absence the Deputy Chairperson must preside and in the event that neither the chairperson nor the Deputy Chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as Chairperson for the duration of that particular meeting.

(5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the Chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Board must arrange for minutes of its meetings to be kept.

(7) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.

(8) The Chairperson, or a majority of the Board, may call an extraordinary meeting of the Board in which event the provisions of this section apply with the necessary changes.

(9) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

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### **Recusal of member from meetings and proceedings of Board**

12.(1) A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if one or more of the following prevail –

- (a) if he or she has a direct or indirect interest; or
- (b) if there is a possibility that a direct or indirect interest might arise.

(2) If at any stage during the course of any proceedings before the Board it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such a member must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid.

(5) For the purposes of this section “**indirect interest**” includes, but is not limited to, an interest held by any member’s –

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they were married; or
- (c) child, parent or sibling.

### **Remuneration of members of Board**

13.(1)(a) Subject to subsection 2(a), a member of the Board may be paid from the funds of the Commission such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the Board who receives remuneration, allowances or other benefits by

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virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(2)(a) A member of the Board and a person who has been co-opted to the Board may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Commission for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.

(b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

#### **Establishment of committees to assist Board**

**14.(1)** The Board may establish committees consisting of one or more of its members to –

- (a) assist the Board in the performance of any of the powers, duties or functions of the Board contemplated in section 4; or
- (b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Board must –

- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board;
  - (b) appoint a chairperson of such committee who must be a member of the Board;
- and

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(c) determine whether or not such committee may co-opt persons who are not members of the Board, and if so, on what terms and conditions.

(3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Board.

(4)(a) The Chief Executive Officer may attend and take part in, but may not vote at, a meeting of a committee.

(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

#### **Co-opting of persons to Board or committees of Board**

15.(1) The Board may, if it is of the opinion that a particular person is able to assist it in regard to any of its functions and powers, co-opt such person for that purpose.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board or a committee.

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Board as may be determined by the Board in consultation with the Member of the Executive Council responsible for finance.

#### **CHAPTER 4**

#### **CHIEF EXECUTIVE OFFICER AND STAFF OF DUBE TRADEPORT CORPORATION**

##### **Chief Executive Officer of Dube TradePort Corporation**

16.(1) The Board must, in consultation with the responsible Member of the Executive Council, appoint the Chief Executive Officer of the Dube TradePort Corporation.

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years on terms and conditions of employment determined by the Board, in consultation with the

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responsible Member of the Executive Council.

(b) The Chief Executive Officer, may, with the approval of the responsible Member of the Executive Council be re-appointed, for such period as the responsible Member of the Executive Council, may determine.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into with the Dube TradePort Corporation.

(b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(4) For purposes of the declaration of financial or other interests, the provisions of section 7 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the Board.

(5) The Chief Executive Officer is an *ex officio* member of the Board but does not have the right to vote at its meetings.

#### **Functions of Chief Executive Officer**

17.(1) The Chief Executive Officer is responsible for –

(a) the administrative and financial management of the Dube TradePort Corporation in accordance with the Public Finance Management Act, subject to the direction of the Board;

(b) the appointment of members of staff of the Dube TradePort Corporation contemplated in section 19(1), in consultation with the Board;

(c) the determination, in consultation with the Board, of a code of conduct, applicable to the Chief Executive Officer, all staff of the Dube TradePort Corporation and justiciable for purposes of disciplinary proceedings, to ensure –

(i) compliance with applicable law, including this Act;

(ii) the effective, efficient and economical use of the Dube TradePort Corporation's funds and resources;

(iii) the promotion and maintenance of a high standard of professional ethics;

(iv) the prevention of conflicts of interest;

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- (v) the protection of confidential information held by the Board; and
  - (vi) professional, honest, impartial, fair, ethical and equitable service;
- (d) the maintenance of discipline over the staff appointed in terms of paragraph (b) and must, for those purposes, be accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by member of staff of the Dube TradePort Corporation; and
- (f) ensuring compliance by the Dube TradePort Corporation with the provisions of the Public Finance Management Act, and any other applicable legislation.

(2) The Chief Executive Officer is accountable to the Board and must report to the Board on the activities of the Dube TradePort Corporation.

(3) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Board must, in consultation with the responsible Member of the Executive Council, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

#### **Resignation and removal from office of Chief Executive Officer**

18.(1) The Chief Executive Officer vacates office –

- (a) in the case of resignation, when the resignation takes effect;
- (b) when, in terms of the Companies Act, 1973 (Act No. 61 of 1973), the person holding that office has become disqualified to serve as director of a company; and
- (c) upon having been removed from office in terms of subsection (2).

(2) The Board may, in consultation with the responsible Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

#### **Staff of Dube TradePort Corporation**

19.(1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Dube TradePort Corporation as may be reasonably necessary –

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and

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(b) to assist the Board with the work incidental to the performance by the Board of its functions.

(2) The Board must determine a human resources policy for staff members of the Dube TradePort Corporation, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 17(1)(e), the provisions of section 7(3), (4) and (5) apply with the necessary changes to staff members of the Dube TradePort Corporation.

(4) The Chief Executive Officer must keep an updated register of the interests of staff members of the Dube TradePort Corporation disclosed in terms of subsection (3).

(5) The Board, in consultation with the responsible Member of the Executive Council, must determine –

- (a) the remuneration and conditions of service; and
- (b) the pension and retirement benefits,

of the Chief Executive Officer and the other members of staff of the Dube TradePort Corporation.

### **Secondment or transfer of staff to Dube TradePort Corporation**

20. The Dube TradePort Corporation may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

## **CHAPTER 5 MASTER PLAN, POLICY DIRECTIVES AND STRATEGIC GUIDELINES**

### **Master Plan**

21.(1) The Board must, within 6 months of the coming into operation of this Act, after consultation with the Chief Executive Officer, establish a Master Plan.

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- (2) The Master plan contemplated in subsection (1), must comprise of, amongst other things, the cargo terminal, property zone, trade-zone, agri-zone, public transport nodes, road networks, rail, freight and passenger transport networks within the Dube TradePort Region.
- (3) The Master Plan must be updated when the need arises to meet the objectives of the Dube TradePort Corporation.
- (4) The Master Plan must be approved by the responsible Member of the Executive Council.
- (5) The Master Plan must, for the years 2010, 2035 and 2060, provide –
- (a) an overview of the development structure of the Dube TradePort;
  - (b) development objectives and master planning for the Dube TradePort; and
  - (c) for the development, zoning, transport and bulk infrastructural needs of the Dube TradePort Corporation.
- (6) When performing its functions in terms of this Act, the Board must give effect to the Master Plan.

#### **Policy directives and strategic guidelines**

- 22.**(a) The responsible Member of the Executive Council may set strategic guidelines for the pursuit of the Dube TradePort Corporation's objectives and may issue policy directives to the Board.
- (b) The responsible Member of the Executive Council may withdraw or amend any policy directive issued in terms of paragraph (a).

### **CHAPTER 6 FUNDING AND FINANCIAL MANAGEMENT OF DUBE TRADEPORT CORPORATION**

#### **Funds of Dube TradePort Corporation**

- 23.**(1) The funds of the Dube TradePort Corporation consist of –
- (a) money appropriated by the Provincial Legislature;

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- (b) interest on investments of the Dube TradePort Corporation; and
- (c) income lawfully derived from any other source.

(2) The Dube TradePort Corporation must utilise its funds –

- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of –

- (i) the members of the Board;
- (ii) the Chief Executive Officer; and
- (iii) the members of staff of the Dube TradePort Corporation; and

- (b) to cover costs in connection with –

- (i) the day to day operation and administration of the Dube TradePort Corporation and the Board;
- (ii) the operation and management of the Dube TradePort Corporation; and
- (iii) the performance of the duties and functions of the Board and the exercise of its powers in terms of this Act.

(3) The Chief Executive Officer must, with the concurrence of the Board –

- (a) open an account in the name of the Dube TradePort Corporation with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1).

(4) The Board may invest monies deposited into the account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

(5) Neither the Dube TradePort Corporation nor the Board may borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act.

### **Financial management**

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24.(1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Dube TradePort Corporation's annual budgets, strategic plans, annual performance plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act.

(3) The Chief Executive Officer must, within three months before the end of each financial year, submit to the Board for approval –

(a) a business plan for the Board, containing measurable objectives and the other information contemplated in section 25(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Board,  
in respect of the following three financial years.

(4) In any financial year the Chief Executive Officer may submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure of the the Dube TradePort Corporation for that financial year.

(5) The Dube TradePort Corporation may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) The Chief Executive Officer may –

(a) with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits or any other institution categorised or listed from time to time by the National Treasury as a Category "A1" financial institution;  
or

(b) with the approval of the Board, dispose of that portion in any other manner.

(7) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit therein such amounts as the Board approves.

#### **Audit and annual report**

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**25.(1)** The Auditor-General must audit the financial statements of the Dube TradePort Corporation.

(2)(a) The Board must table a report on the activities of the Dube TradePort Corporation during a financial year in the Provincial Legislature within five months after the end of that financial year.

(b) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Board and at least two other members of the Board must brief the relevant Portfolio Committee on the annual report.

(3) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the Dube TradePort Corporation has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 24(3)(a) during the financial year concerned; and

(c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that annual performance plan.

#### **Financial year of Dube TradePort Corporation**

**26.** The financial year of the Dube TradePort Corporation commences on 1 April of a particular year and ends on 31 March of the following year.

#### **Immovable property**

**27.** The Dube TradePort Corporation may, in terms of a policy and procedures determined by the Board and with the approval of the responsible Member of the Executive Council, acquire, hold or dispose of immovable property in the course of its business.

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### **Legal proceedings against Dube TradePort Corporation**

**28.(1)** Any legal proceedings against the Dube TradePort Corporation must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).

(2) The Dube TradePort Corporation is, for purposes of subsection (1), regarded as an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the said Act.

## **CHAPTER 7 GENERAL PROVISIONS**

### **Security of confidential information held by Dube TradePort Corporation**

**29.(1)** Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Dube TradePort Corporation in connection with any legal brief or instruction, unless –

- (a) he or she is ordered to do so by a court of law;
- (b) or unless the person who gave such brief or instruction consents thereto in writing.

(2) No person may disclose any information kept in the register contemplated in sections 7(6), 16(4) and 19(4) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Dube TradePort Corporation; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Dube TradePort Corporation, or any member of staff of the Dube TradePort Corporation.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

### **Dissolution of Dube TradePort Corporation**

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**30.** The Dube TradePort Corporation may only be dissolved in terms of an Act of the Provincial Legislature.

**Use of name of Dube TradePort or Dube TradePort Corporation**

**31.(1)** No person may, without the prior written authorisation of the Dube TradePort Corporation, in any way represent or make use of the name Dube TradePort, or the name, acronym, logos, designs or material used or owned by Dube TradePort Corporation.

(2) No person may falsely claim to be acting on behalf of the Dube TradePort Corporation.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

**Delegations**

**32.(1)** The responsible Member of the Executive Council may delegate to the Head of Department –

(a) any power conferred on the responsible Member of the Executive Council by this Act, except the power to make regulations referred to in section 33; or

(b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(1)(a) and 9(2).

(2) The Board may, by a special resolution, delegate to the Chief Executive Officer or staff member of the Dube TradePort Corporation, any power or duty conferred or imposed on the Dube TradePort Corporation by this Act.

(3) The Chief Executive Officer may delegate to any member of staff of the Dube TradePort Corporation any power or duty conferred or imposed on the Chief Executive Officer by this Act, except any duty as accounting officer of the Dube TradePort Corporation.

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(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) Any delegation referred to in subsection (1), (2) or (3) –

- (a) must be in writing;
- (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

### **Regulations**

**33.** The responsible Member of the Executive Council may, in consultation with the Board and by notice in the *Gazette*, make regulations regarding –

- (a) any matter that may or must be prescribed in terms of this Act; or
- (b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

### **Winding-up of Dube TradePort Company and transitional provisions**

**34.(1)(a)** The Company, Dube TradePort, bearing Company Registration Number 2002/002810/08, established in terms of the Companies Act, 1973 (Act No. 61 of 1973), must be voluntarily wound up and deregistered.

(b) The members of the Company must, in winding-up the Company referred to in paragraph (a), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973).

(2) On the date of the winding-up of the Dube TradePort Company, all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Dube TradePort Company are transferred to, and vest in, the Dube TradePort Corporation established in terms of section 2.

(3) The Dube TradePort Corporation is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in

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law of, and the successor in title to, the Dube TradePort Company.

(4) The members of the Board of the Dube TradePort Company must act as duly authorized and empowered members of the Board until such time as the responsible Member of the Executive Council has in terms of section 5(1)(a) appointed the Board in terms of this Act.

(5) All members of staff of the Dube TradePort Company must, within six months of the commencement of this Act, be made an employment offer by the responsible Member of the Executive Council for transfer to the Dube TradePort Corporation on a date determined by the responsible Member of the Executive Council.

(6) The remuneration, benefits and privileges offered by the responsible Member of the Executive Council, in accordance with subsection (5), may not be substantially different to or less than those payable to the staff member by the Dube TradePort Company, immediately prior to his or her transfer.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer is deemed to have taken place in respect of a staff member who accepts an employment offer contemplated in subsection (5).

(8) When a person becomes a staff member of the Dube TradePort Corporation in terms of subsection (5) –

(a) he or she retains all vacation leave which accrued to his or her credit up to the date immediately before the date of transfer, adjusted in accordance with the conditions of employment of the Dube TradePort Corporation; and

(b) any inquiry instituted or intended to be instituted in respect of alleged misconduct committed by such person before the date of transfer must be disposed of or instituted by the Dube TradePort Corporation, and the Board must take appropriate steps against the person concerned in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

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### **General offences**

**35.(1)** A member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Dube TradePort Corporation is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorized fee or reward from any person in connection with anything done or offered by the Dube TradePort Corporation.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Dube TradePort Corporation, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Dube TradePort Corporation.

(3) Any person who falsely claims that he or she is authorized to charge or collect fees, donations or contributions on behalf of, or by direction of the Dube TradePort Corporation is guilty of an offence.

(4) Any person who contravenes or fails to comply with the provisions of this Act or any regulation thereunder, is guilty of an offence.

### **Penalties**

**36.** Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

### **Short title**

**37.** This Act is called the KwaZulu-Natal Dube TradePort Corporation Act, 2009.

**MEMORANDUM ON THE OBJECTS OF THE KWAZULU-NATAL DUBE TRADEPORT BILL, 2009****1. GENERAL BACKGROUND AND OBJECTS OF THE BILL**

1.1 The Department seeks to establish and register the Dube TradePort Corporation as a Provincial Public Entity in order to –

- (a) address the concerns of the Provincial Legislature over the legal status of the Dube TradePort Corporation; and
- (b) comply with the National Treasury's directives of converting all government entities from section 21 companies to statutory bodies formed and registered as such in terms of the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended.

1.2 In light of the above, this Bill purports to –

- (a) provide for the establishment of the Dube TradePort Corporation;
- (b) determine the manner in which the Dube TradePort Corporation is to be managed, governed, staffed and financed;
- (c) to provide for the winding up of the Dube Tradeport Company;
- (d) To provide for the Dube Tradeport Corporation to be a successor in law of the Dube TradePort Company; and
- (e) provide for the matters connected therewith.

**2. SECTION-BY-SECTION EXPLANATION****CHAPTER 1  
DEFINITIONS****Section 1**

Provides for the definition of words used in this Bill.

**CHAPTER 2  
ESTABLISHMENT OF DUBE TRADEPORT CORPORATION****Section 2**

Provides for the establishment of the Dube TradePort Corporation as a Provincial Public Entity in terms of the Public Finance Management Act.

**Section 3**

Sets the objects of the Dube TradePort Corporation, namely –

- (a) to develop the Dube Tradeport;
- (b) to undertake or invest in projects associated with the Dube Tradeport;
- (c) to facilitate economic growth through the Province through the Dube Tradeport;
- (d) to attract long term investment to the Province;
- (e) to facilitate export and import through the Dube Tradeport; and
- (f) to perform the powers, duties and functions specified in section 4.

#### **Section 4**

Provides for powers, duties and functions of the Dube TradePort Corporation which include section 4(1) which provides that the corporation must through the Board –

- (a) ensure the strategic planning, establishment, design, construction, operation, management and control of the Dube TradePort;
- (b) implement and give effect to the Master Plan for economic growth in the Province;
- (c) maintain and utilise the resources according to the Corporation Master Plan as well as its objects;
- (d) identify, develop, market and promote investment opportunities in the Dube Tradeport;
- (e) develop investment plan for the Dube TradePort; and
- (f) developing a provincial investment and export plan.

Section 4(2) further provides that Dube TradePort Corporation may –

- (a) for purpose of developing, promoting, marketing or investing in the Province, and subject to the prior written approval of the responsible Member of the executive council –
  - (i) establish and operate one or more companies, close corporations or other similar bodies;
  - (ii) enter into other joint ventures with other institutions, municipalities, organisations, bodies or persons; and
  - (iii) raise funds through donations and sponsorships;
- (b) with prior written approval of the responsible Member of the Executive Council, acquire and dispose of shares and interests in the companies, close corporations or other similar bodies;
- (c) liaise with any other entity, organ of state, organisation or institution whose activities or aims have an impact or relate to the development, promotion, marketing and investment in the Province;
- (d) investigate and make recommendations to the Executive Council, through the responsible Member of the Executive Council on any matter relating directly or indirectly to the promotion, development, marketing or investment in the Province;
- (e) enter into agreements for the attainment of its objects, the exercise of its powers, duties and functions or the management and administration of its affairs;

- (f) participate in the management, supervision and control of the business or operations of an institution having the same or similar objects as the Corporation;
- (g) invest in the projects associated with its objects;
- (h) establish a fund to enhance air transport in the Province;
- (i) do any other thing or attend to any other matter necessary for the purpose of achieving the objects and the requirements of the Master plan; and
- (j) do any other thing or attend to any other matter that the responsible Member of the Executive Council considers necessary for the proper implementation of this Act.

Section 4(3) provides for the additional powers of the Corporation, referred to under section 54(2) of the PFMA.

### CHAPTER 3

#### DUBE TRADEPORT CORPORATION'S BOARD OF DIRECTORS

##### **Section 5**

Provides that the Corporation is governed by a Board of Directors and consists of at least three, but not more than eight members appointed by the MEC. It further provides for a procedure to be followed by the MEC when –

- (a) inviting nominations for the persons to be appointed to the Board; and
- (b) making appointments of persons to serve on the board.

Provision is also made in this clause for the oversight role to be played by the Executive Council in the nomination and appointment of persons to serve on the Board of the Corporation in that it imposes a duty on the MEC amongst other things –

- (a) to advise the Executive Council, after the appointment of the members of the Board, of the names of the appointed members, date of effect and the period of appointment.

##### **Section 6**

Sets grounds for the disqualification of members to be appointed to serve on the Board.

##### **Section 7**

Provides for the duty on –

- (a) persons nominated to serve on the Board to disclose their financial interests in any company or other business interests to the responsible Member of the Executive Member

within 10 (ten) days of being nominated. Failure to disclose interests would disqualify such a member to be nominated as a member of the Board;

(b) persons appointed to serve on the board to disclose their interests in any company or other business interests in terms of Section 234 (3) of the Companies Act, upon assuming office and at the beginning of the financial year; and

(c) member of the Board who acquires an interest or any other business to disclose such an interest within 10 days of the date of acquisition of such an interest.

Failure to disclose interests as required in paragraph (b) and (c) above could be grounds for the termination of such a member's membership of the Board.

### **Section 8**

Sets out the term of office and re-appointment of member of the Board.

### **Section 9**

Sets out the grounds upon which the appointment of board members may be terminated.

### **Section 10**

Empowers the MEC to temporarily suspend a member of the Board to allow the MEC to investigate allegations which, if found to be true could lead to the member's appointment being terminated in terms of section 9(2).

### **Section 11**

Provides for matters related to the meetings and procedures of the Board, such as –

- (a) frequency of the meetings of the Board;
- (b) the *quorum* of the meeting; and
- (c) manner in which decision of the Board are taken.

### **Section 12**

Provides for the duty on the members of the Board to recuse themselves in cases where a conflict of interest might arise in any matter being discussed by the Board. The failure on the part of the member to recuse himself or herself in a meeting knowing that a conflict of interest might arise would invalidate the proceedings.

**Section 13**

Empowers the MEC to determine remuneration and conditions of appointment of the members of the Board.

**Section 14**

Provides for the establishment of committees to assist the Board and the termination of their existence or mandate.

**Section 15**

Deals with co-opting of persons to the Board or committees of the Board.

**CHAPTER 4****CHIEF EXECUTIVE OFFICER AND STAFF OF DUBE TRADEPORT CORPORATION****Section 16**

Provides for the –

- (a) appointment of the CEO of the Corporation by the Board in consultation with the MEC;
- (b) period of appointment of the CEO;
- (c) performance agreement of the CEO;
- (d) declaration of financial and other interest by the CEO; and
- (e) right not to vote at the meetings.

**Section 17**

Deals with the functions of the CEO including the power to appoint staff; the power to set the code of conduct in consultation with the Board as well as conducting disciplinary hearings of the Corporation.

**Section 18**

Deals with the grounds and procedure for the removal of the CEO.

**Sections 19 and 20**

Deal with the staff of Dube TradePort Corporation and secondment or transfer of staff to the Dube TradePort Corporation.

**CHAPTER 5**  
**MASTER PLAN, POLICY DIRECTIVES AND STRATEGIC GUIDELINES**

**Section 21**

Provides for the Board to establish a Master Plan after 6 months of coming into operation, after consulting with the responsible MEC.

**Section 22**

Provides for the Policy directives and strategic guidelines which must be set by the MEC in pursuit of Dube TradePort Corporation's objectives.

**CHAPTER 6**  
**FUNDING AND FINANCIAL MANAGEMENT OF DUBE TRADEPORT CORPORATION**

**Section 23(1)**

Provides for the funding sources of the Corporation which include –

- (a) money appropriated to the Corporation by the Provincial Legislature;
- (b) interest on investments of the Corporation; and
- (c) income lawfully derived from any other source.

**Section 23(2)**

Provides for the manner in which the Corporation must utilise its Funds.

**Section 23(3)**

Provides that the CEO must, with the concurrency of the Board open an account for the Corporation and deposit therein all money received in terms of subsection (1).

**Section 23(4)**

Provides that the Board must invest the monies deposited in the account which are not required for immediate use.

**Section 23(5)**

Prohibits the Corporation from borrowing money, issuing guarantees, indemnities or securities or entering into any other transactions that bind it unless such activities are authorised in terms of this act and not in conflict with the PFMA.

**Section 24**

Provides for the financial management of the funds of the Corporation and reporting to the Board.

**Section 25**

Provides for the audit of the financial statements of the Corporation and tabling of annual report to the Provincial Legislature.

**Section 26**

Aligns the financial year of the Corporation to that of the Department.

**Section 27**

Provides for the Corporation to acquire, hold or dispose of the immovable property in the course of its business.

**Section 28**

Provides for the procedure in which legal proceedings may be instituted against the Corporation.

**CHAPTER 7  
GENERAL PROVISIONS**

**Section 29**

Provides for security of confidential information held by the Corporation.

**Section 30**

Provides for the dissolution of the Corporation.

**Section 31**

Provides for the use of the name of the Corporation.

### **Section 32**

Provides for the delegation of any power conferred by the MEC to the Head of Department, with certain exceptions.

### **Section 33**

Empowers the MEC to make regulations. This clause also provides guidelines in terms of which the MEC may make such regulations.

### **Section 34**

Provides for the winding up of the company and transitional provisions including that –

- (a) the company shall be wound up voluntarily and deregistered;
- (b) the members of the Company must, in winding up the company referred to in paragraph (a), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973);
- (c) on the date of winding up, all assets, liabilities, rights, duties of the Dube Tradeport Company shall be transferred to the Dube Tradeport Corporation established in terms of section 2;
- (d) on the date of the winding-up of the Dube TradePort Company, all assets, liabilities, rights, duties and obligations, including unspent portion of any funds accrued or received by the Dube TradePort Company are transferred to, and vest in, the Dube TradePort Corporation established in terms of section 2.

### **Section 35**

Provides for offences in terms of the Bill.

### **Section 36**

Provides for the penalties in respect of the offences which are set out in section 35 of this Bill.

### **Section 37**

Provides for the short title of this Bill.

**3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

It is envisaged that the current staff of the Dube Tradeport Company would be transferred to the Corporation; hence there would be no new organisation and personnel implications for the Provincial Government.

**4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

The Corporation would take over the operations of the Dube TradePort Company and since such operations are and have been financed through the money appropriated to the Department by the Provincial legislature, there would be no new financial implications for the Provincial Government.

**5. DEPARTMENTS / BODIES CONSULTED**

- (a) KwaZulu-Natal Public Sector Lawyers Forum and the KwaZulu-Natal Public Sector Lawyers Association
- (b) KZNDTP Board (Section 21 Company)

**6. CONSTITUTIONAL IMPLICATIONS**

None

No. 1

12 Januarie 2010

## KWAZULU-NATAL WETSONTWERP OP DUBE HANDELSHAWE KORPORASIE, 2009

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennsigewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die KwaZulu-Natal Wetsontwerp op Dube Handelshawe Korporasie, 2009 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portefeuljkomitee oor Ekonomiese Ontwikkeling en Toerisme oorweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om vertoë oor die vermelde wetsontwerp in te dien, welke vertoë gerig moet word aan:

**Aandag:** Me NP Sikhakhane  
Die Sekretaris  
KwaZulu-Natal Legislature  
Privaatsak X 9112  
PIETERMARITZBURG  
3200

Vertoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO  
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL**  
**WETSONTWERP OP DUBE HANDELSHAWE KORPORASIE, 2009**

## WETSONTWERP

**Om voorsiening te maak vir die instelling van die Dube Handelshawe korporasie; om die oogmerke, bevoegdhede, pligte en funksies van die Dube Handelshawe korporasie te bepaal; om die wyse waarop die Dube Handelshawe korporasie bestuur, beheer, van personeel voorsien en gefinansier moet word; om voorsiening te maak vir likwidasië van die Dube Handelshawe maatskappy; om voorsiening te maak daarvoor dat die Dube Handelshawe korporasie die regsopvolger van die Dube Handelshawe maatskappy sal wees; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.**

DAAR WORD soos volg deur die Wetgewer van die provinsie KwaZulu-Natal bepaal:–

### INDELING VAN ARTIKELS

*Artikel*

#### HOOFSTUK 1 OMSKRYWINGS

1. Omskrywings

#### HOOFSTUK 2 DUBE HANDELSHAWE KORPORASIE

2. Instelling van Dube Handelshawe korporasie
3. Oogmerke van Dube Handelshawe korporasie
4. Bevoegdhede, pligte en funksies van Dube Handelshawe korporasie

#### HOOFSTUK 3 RAAD VAN DUBE HANDELSHAWE KORPORASIE

5. Samestelling van Raad
6. Onbevoegdheid vir aanstelling op Raad
7. Verklaring van finansiële of ander belange van lede van Raad
8. Ampstermyn en heraanstelling van lid van Raad
9. Vakatures, ontslag en bedanking uit amp van lede van Raad
10. Tydelike skorsing van lid van Raad

11. Vergaderings en prosedures by vergaderings van Raad
12. Onttrekking van lid van vergaderings en verrigtinge van Raad
13. Vergoeding van lede van Raad
14. Instelling van komitees om Raad by te staan
15. Koöptering van persone op Raad of komitees van Raad

#### HOOFSUK 4

##### HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DUBE HANDELSHAWE KORPORASIE

16. Hoof- uitvoerende beampte van Dube Handelshawe korporasie
17. Funksies van hoof- uitvoerende beampte
18. Bedanking en ontslag uit amp van hoof- uitvoerende beampte
19. Personeel van Dube Handelshawe korporasie
20. Sekondering of verplasing van personeel na Dube Handelshawe korporasie

#### HOOFSUK 5

##### SLEUTELPLAN, BELEIDSVOORSKRIFTE EN STRATEGIESE RIGLYNE

21. Sleutelplan
22. Beleidsvoorskrifte en strategiese riglyne

#### HOOFSUK 6

##### BEFONDSING EN FINANSIËLE BESTUUR VAN DUBE HANDELSHAWE KORPORASIE

23. Fondse van Dube Handelshawe korporasie
24. Finansiële bestuur
25. Ouditering en jaarverslag
26. Finansiële jaar van Dube Handelshawe korporasie
27. Vaste eiendom
28. Regstappe teen Dube Handelshawe korporasie

#### HOOFSUK 7

##### ALGEMENE BEPALINGS

29. Sekuriteit van vertroulike inligting wat deur Dube Handelshawe korporasie gehou word

30. Ontbinding van Dube Handelshawe korporasie
31. Gebruik van naam van Dube Handelshawe korporasie
32. Delegerings
33. Regulasies
34. Likwidasie van Dube Handelshawe maatskappy en oorgangsbepalings
35. Algemene oortredings
36. Strawwe
37. Kort titel

## HOOFSTUK 1 OMSKRYWINGS

### Omskrywings

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

"**departement**" die Departement van Ekonomiese Ontwikkeling of enige opvolger provinsiale departement waarvan die funksies dié van ekonomiese ontwikkeling in KwaZulu-Natal insluit;

"**Dube Handelshawe**" die multi-modale ontwikkeling wat uit 'n internasionale lughawe, bedryfsone, landbousone, verwante ondersteuningsdienste en verwante aktiwiteite bestaan en 30 kilometer noord van die Durbanse middestad geleë is;

"**Dube Handelshawe korporasie**" die provinsiale openbare entiteit ingestel ingevolge artikel 2;

"**Dube Handelshawe maatskappy**" Dube Handelshawe maatskappy, registrasienommer 2002/002810/07, ingestel ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973);

"**Dube Handelshawe streek**" die streek wat binne 'n 30 kilometer radius van die middel van die internasionale lughawe wat binne die Dube Handelshawe geleë is, val;

"**Grondwet**" die Grondwet van die Republiek van Suid-Afrika, 1996;

**"hierdie Wet"** insluitend die regulasies;

**"hoof- uitvoerende beampte"** die hoof- uitvoerende beampte van die Dube Handelshawe korporasie, bedoel in artikel 16;

**"hoof van departement"** die persoon wat aangestel is as hoof van die departement ingevolge artikel 12 van die Staatsdienswet, (Proklamasie 103 van 1994);

**"Koerant"** die amptelike *Provinsiale Koerant* van KwaZulu-Natal;

**"lid van die Uitvoerende Raad verantwoordelik vir finansies"** die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

**"portefeuljekomitee"** die portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling;

**"provinsiale openbare entiteit"** 'n provinsiale openbare entiteit soos omskryf in artikel 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

**"provinsie"** die provinsie KwaZulu-Natal bedoel in artikel 103 van die Grondwet en **"provinsiale"** het 'n ooreenstemmende betekenis;

**"Raad"** die Raad van die Dube Handelshawe korporasie bedoel in artikel 5;

**"regulasies"** regulasies uitgevaardig ingevolge artikel 33;

**"sleutelplan"** die sleutelplan vir die ontwikkeling, ontwerp en konstruksie van 'n multi-modale vervoermiddelpunt in die Dube Handelshawe streek soos bedoel in artikel 21;

**"Uitvoerende Raad"** die Uitvoerende Raad van die provinsie bedoel in artikel 132 van die Grondwet;

**"verantwoordelike lid van die Uitvoerende Raad"** die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling of enige lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal aan wie die Premier die administrasie van hierdie Wet toegewys het;

**"Wet op Openbare Finansiële Bestuur"** die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

## HOOFSTUK 2

### DUBE HANDELSHAWE KORPORASIE

#### **Instelling van Dube Handelshawe korporasie**

2.(1) Hiermee word 'n provinsiale openbare entiteit ingestel wat as die Dube Handelshawe korporasie bekend sal staan.

(2) Die Dube Handelshawe korporasie is 'n regspersoon wat deur die Raad werk.

(3) Die Dube Handelshawe korporasie is onderworpe aan die Wet op Openbare Finansiële Bestuur.

(4) Die Raad is die rekenpligtige gesag van die Dube Handelshawe korporasie soos bedoel in artikel 49(2)(a) van die Wet op Openbare Finansiële Bestuur.

#### **Oogmerke van Dube Handelshawe korporasie**

3. Die oogmerke van die Dube Handelshawe korporasie is –

- (a) om die Dube Handelshawe te ontwikkel;
- (b) om projekte wat met die Dube Handelshawe verband hou, te onderneem of daarin te belê;
- (c) om ekonomiese groei in die provinsie te fasiliteer deur die Dube Handelshawe;
- (d) om langtermyn belegging na die provinsie te lok;
- (e) om in- en uitvoer deur die Dube Handelshawe te fasiliteer; en

(f) om die bevoegdheids, pligte en funksies soos in artikel 4 gespesifiseer, uit te voer.

### **Bevoegdheids, pligte en funksies van Dube Handelshawe korporasie en die Raad**

4.(1) Die Dube Handelshawe korporasie moet, deur die Raad –

- (a) die strategiese beplanning, instelling, ontwerp, konstruksie, bedryf, bestuur en beheer van die Dube Handelshawe verseker;
- (b) die sleutelplan implementeer en uitvoering daaraan gee vir die ekonomiese groei van die Dube Handelshawe streek en die provinsie;
- (c) sy hulpbronne bestuur en benut ooreenkomstig sy oogmerke en die vereistes van die sleutelplan;
- (d) beleggingsgeleenthede in die Dube Handelshawe identifiseer, ontwikkel, bemark en bevorder; en
- (e) 'n beleggingsplan vir die Dube Handelshawe ontwikkel.

(2) Die Dube Handelshawe korporasie kan –

- (a) vir die doel om die provinsie te ontwikkel, bevorder, bemark of daarin te belê, en onderhewig aan die vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad –
  - (i) een of meer maatskappye, beslote korporasies of ander soortgelyke liggame instel en bedryf;
  - (ii) gesamentlike ondernemings met ander instellings, organisasies, munisipaliteite, liggame of persone aangaan; en
  - (iii) fondse insamel deur donasies en borgskappe;
- (b) met die vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad, aandele en belange in maatskappye, beslote korporasies of ander soortgelyke liggame verkry of oor beskik;
- (c) met enige ender entiteit, staatsorgaan, organisasie of instelling skakel wie se werksaamhede of mikpunte 'n impak het op en verband hou met die ontwikkeling, bevordering, bemarking of belegging in die provinsie;
- (d) deur die verantwoordelike lid van die Uitvoerende Raad enige aangeleentheid wat direk of indirek verband hou met die bevordering, ontwikkeling, bemarking of belegging in die provinsie, ondersoek en aanbevelings aan die Uitvoerende Raad

maak;

(e) ooreenkomste aangaan vir die bereiking van sy oogmerke, die uitvoering van sy bevoegdhede, pligte en funksies of die bestuur en administrasie van sy sake, hetsy spesifiek daarvoor voorsiening gemaak is in hierdie artikel of nie;

(f) deelneem aan die bestuur, toesighouding en beheer van die besigheid of werksaamhede van 'n instelling wat dieselfde of soortgelyke oogmerke as die korporasie het;

(g) projekte wat met sy oogmerke verband hou, onderneem of daarin belê;

(h) 'n fonds stig om lugvervoerverbintenis met die provinsie te versterk;

(i) enige ander ding doen of aandag skenk aan enige ander saak wat nodig is ten einde sy oogmerke te bereik en aan die vereistes van die sleutelplan te voldoen; en

(j) enige ander ding doen of aandag skenk aan enige ander saak wat die verantwoordelike lid van die Uitvoerende Raad nodig ag vir die behoorlike implementering van hierdie Wet.

(3) Buiten die bevoegdhede waarna in subartikel (1) en (2) verwys word, het die Dube Handelshawe korporasie die bevoegdhede vermeld in artikel 54(2) van die Wet op Openbare Finansiële Bestuur.

### HOOFSTUK 3

#### RAAD VAN DUBE HANDELSHAWE KORPORASIE

##### **Samestelling van Raad**

5.(1) Die Raad bestaan uit –

(a) ten minste drie, maar nie meer as agt lede wat deur die verantwoordelike lid van die Uitvoerende Raad aangestel is; en

(b) die hoof- uitvoerende beampte, *ex officio*, soos bedoel in artikel 16(5).

(2) Lede van die Raad moet bekwame en geskikte persone wees om in die belang van die provinsie op te tree, en gesamentlik oor die volgende vaardighede en kundigheid beskik –

(a) kennis en kundigheid in finansiële bestuur;

- (b) kennis en kundigheid in die toerismebedryf;
- (c) kennis en kundigheid in die vervoersektor;
- (d) kennis en kundigheid in die ekonomiese ontwikkelingsektor;
- (e) kennis en kundigheid in die eiendomontwikkelingsbedryf; en
- (f) enige ander vaardigheid, ondervinding of kwalifikasie wat, na die mening van die verantwoordelike lid van die Uitvoerende Raad, tot voordeel van die Dube Handelshawe korporasie kan wees.

(3) By aanstelling van lede op die Raad, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat –

- (a) historiese ongelykhede aangespreek word;
- (b) die Raad, gesamentlik, oor die nodige en toepaslike vaardighede en kundigheid beskik; en
- (c) die Raad verteenwoordigend is van persone wat in diens of betrokke is by ekonomiese en ontwikkelingsondernemings in die provinsie.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet –

- (a) een van die lede van die Raad as die voorsitter van die Raad; en
- (b) een van die lede van die Raad as die adjunkvoorsitter van die Raad,

aanwys.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan 'n persoon as sy of haar verteenwoordiger aanstel wat –

- (a) skakeling tussen die verantwoordelike lid van die Uitvoerende Raad en die Raad moet fasiliteer;
- (b) van tyd tot tyd aan die verantwoordelike lid van die Uitvoerende Raad moet rapporteer aangaande sake wat tersaaklik geag word; en
- (c) vergaderings van die Raad kan bywoon en deelneem aan besprekings, maar nie die reg het om te stem wanneer 'n besluit van die Raad geneem word nie.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet, deur middel van kennisgewing in die *Koerant*, enige belanghebbende partye binne die provinsie uitnooi om kandidate vir aanstelling op die Raad te benoem.

(7) Die uitnodiging vir benoeming moet –

- (a) die benoemingsprosedure;
- (b) die vereistes vir benoeming; en
- (c) die sluitingsdatum vir die benoeming,

spesifiseer.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat voorgelê is in reaksie op die kennisgewing oorweeg, en kan 'n keuringspaneel aanstel om al die benoemings te hersien en aanbevelings te maak aan die verantwoordelike lid van die Uitvoerende Raad aangaande die benoemdes.

(9) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone wat op die Raad aangestel word in die *Koerant* laat publiseer en in ten minste twee koerante wat in die provinsie sirkuleer, onmiddellik nadat sodanige persone skriftelik van hul aanstelling op die Raad in kennis gestel is.

(10) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede van die Raad ingevolge subartikel (1), die Uitvoerende Raad en die Portefeuljekomitee inlig aangaande die name van die aangestelde lede insluitend die termyn van hul aanstelling.

(11) Hierdie artikel is met die nodige veranderinge van toepassing op die vul van 'n vakature op die Raad.

### **Onbevoegdheid vir aanstelling op die Raad**

6. 'n Persoon is onbevoeg vir aanstelling op die Raad, of om op die Raad aan te bly, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is;
- (c) direk of indirek belang het by enige kontrak met die Raad en versuim om sy of haar belang en die aard daarvan te verklaar op die wyse soos deur hierdie Wet vereis;
- (d) 'n persoon onder kuratorskap is;

(e) ter enige tyd uit 'n vertrouensamp ontslaan is as gevolg van wangedrag wat diefstal of bedrog behels;

(f) skuldig bevind is en gevonniss word tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad by ontvangs van 'n beëdigde verklaring wat volle besonderhede bevat van 'n misdryf deur 'n persoon wat benoem is vir aanstelling, 'n misdryf kan verskoon op 'n wyse wat konsekwent is met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid kragtens hierdie subartikel eindig vyf jaar nadat die vonnis uitgedien is; en

(f) versuim om 'n belang ooreenkomstig artikel 7 te verklaar of die verrigtinge van die Raad bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos in die vermelde artikel vermeld.

#### **Verklaring van finansiële of ander belange van lede van Raad**

7.(1) 'n Persoon wat benoem is om op die Raad te dien ingevolge subartikel 5(8) moet, binne 10 dae na benoeming, 'n skriftelike verklaring aan die verantwoordelike lid van die Uitvoerende Raad voorlê van alle direkte of indirekte belange in enige maatskappy of ander sakebelange.

(2) Versuim deur die benoemde om finansiële en ander belange openbaar te maak ingevolge subartikel (1) maak sodanige benoemde ingevolge artikel 6 onbevoeg om oorweeg te word as lid van die Raad.

(3) Elke lid van die Raad moet, wanneer hy of sy die amp aanvaar en aan die begin van elke finansiële jaar van die Raad, 'n skriftelike verklaring voorlê van sy of haar direkte of indirekte belang in enige maatskappy of ander sakebelang op die wyse soos in artikel 234(3)(a) van die Maatskappywet, 1973 (Wet No. 61 van 1973) bepaal.

(4) Waar 'n lid van die Raad 'n belang in enige maatskappy of ander sakebelang verkry op enige tydstip gedurende sy of haar ampstermyn as 'n lid van die Raad, moet hy of sy binne 10 dae na die datum van die verkryging van sodanige belang, 'n skriftelike verklaring aan die verantwoordelike lid van die Uitvoerende Raad van sodanige belang voorlê.

(5) Enige versuim deur die lid om sy of haar belang te verklaar soos bedoel in subartikels (3) en (4) moet lei tot beëindiging van aanstelling van sodanige lid ingevolge artikel 9(2).

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n opgedateerde register hou van die belange van lede van die Raad wat ingevolge hierdie artikel verklaar is.

#### **Ampstermyn en heraanstelling van lid van Raad**

8. Die ampstermyn van persone wat op die Raad aangestel is, duur 'n tydperk van vyf jaar of sodanige korter tydperk soos die verantwoordelike lid van die Uitvoerende Raad mag bepaal en is, onderhewig aan artikel 5, verkiesbaar vir heraanstelling by die verstryking van sodanige tydperk: Met dien verstande dat geen persoon heraangestel mag word nadat hy of sy op die Raad gedien het vir 'n aaneenlopende tydperk van tien jaar nie.

#### **Vakatures, ontslag en bedanking uit amp van lede van Raad**

9.(1) 'n Lid van die Raad moet die amp verlaat indien hy of sy onbevoeg raak soos bedoel in artikel 6.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat die lid 'n geleentheid gebied is om sy of haar saak te stel, te eniger tyd die ampstermyn van sodanige lid beëindig, indien volgens sy of haar diskresie, daar goeie redes daarvoor is.

(3) 'n Lid moet sy of haar amp verlaat indien hy of sy afwesig is, sonder dat verlof vir sodanige afwesigheid deur die Raad toegestaan is, van twee opeenvolgende vergaderings van die Raad waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is.

(4) 'n Lid kan skriftelik uit die amp bedank deur nie minder nie as 30 dae kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad die kennisgewing van bedanking kan laat vaar.

(5) Wanneer 'n vakature op die Raad ontstaan, moet die verantwoordelike lid van die

Uitvoerende Raad, onderhewig aan artikel 5, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke deel van die ampstydperk van die lid in wie se plek sodanige persoon aangestel is.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (2) uitoefen, kan hy of sy, nieëenstaande die prosedure vir die aanstelling van die lede van die Raad soos in artikel 5 uiteengesit, onderhewig aan subartikels 5(2) en 5(3) persone aanstel om op 'n voorlopige grondslag te dien as lede van die Raad: Met dien verstande dat –

- (a) die persone aangestel ingevolge hierdie subartikel nie op die Raad mag aanbly vir 'n tydperk van meer as 60 dae na die datum van hul aanstelling nie; en
- (b) die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, die lede van die Raad aanstel binne 60 dae na die aanstelling bedoel in hierdie subartikel.

#### **Tydelik skorsing van lid van Raad**

10. Die verantwoordelike lid van die Uitvoerende Raad kan 'n lid van die Raad skors terwyl die verantwoordelike lid van die Uitvoerende Raad bewerings ondersoek wat, indien daar gevind word dat dit korrek is, kan lei tot beëindiging van die lid se aanstelling ingevolge artikel 9(2).

#### **Vergaderings en vergaderingsprosedures van Raad**

11.(1) Die eerste vergadering van die Raad moet gehou word op 'n datum, tyd en plek soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal waarna alle toekomstige vergaderings moet plaasvind soos deur die voorsitter bepaal.

(2) Die kworum vir 'n vergadering van die Raad is die meerderheid van die lede van die Raad.

(3) Die verrigtinge by 'n vergadering van die Raad moet, onderhewig aan die bepalings van hierdie artikel, deur die voorsitter bepaal word insluitend die reg om te besluit dat enige aangeleentheid onder bespreking onttrek kan word voordat daarvoor gestem word.

(4) Die voorsitter moet by alle vergaderings van die Raad voorsit: Met dien verstande dat die adjunkvoorsitter in sy of haar afwesigheid as voorsitter moet optree en indien beide die voorsitter en die adjunkvoorsitter by 'n vergadering van die Raad afwesig is, kan die lede teenwoordig, uit hul eie geledere, 'n persoon verkies om as voorsitter op te tree vir die duur van daardie spesifieke vergadering.

(5) 'n Besluit van die Raad moet geneem word deur 'n meerderheid van die stemme van die lede wat by 'n vergadering teenwoordig is en, in die geval van 'n staking van stemme oor enige aangeleentheid, het die voorsitter 'n beslissende stem buiten sy of haar gewone stem.

(6) Die Raad moet notules van sy vergaderings hou.

(7) Geen besluit van die Raad is ongeldig slegs op grond van 'n vakature in die Raad nie: Met dien verstande dat die besluit geneem word deur die vereiste meerderheid van die lede van die Raad daar teenwoordig en geregtig daarop om as lede van die Raad te sit.

(8) Die voorsitter, of 'n meerderheid van die Raad, kan 'n buitengewone vergadering van die Raad roep in welke geval die bepalings van hierdie artikel, met die nodige veranderings, van toepassing is.

(9) Die Raad kan, volgens sy diskresie, lede van die publiek toelaat om enige vergadering van die Raad by te woon.

#### **Onttrekking van lid van vergaderings en verrigtinge van Raad**

12.(1) 'n Lid van die Raad moet hom- of haarself van 'n saak onttrek wat deur die Raad ondersoek, oorweeg of oor gestem word indien een of meer van die volgende geld –

- (a) indien hy of sy 'n direkte of indirekte belang het; of
- (b) indien daar 'n moontlikheid bestaan dat 'n direkte of indirekte belang mag ontstaan.

(2) Indien dit in enige stadium gedurende die loop van enige verrigtinge voor die Raad blyk dat 'n lid wat by daardie vergadering teenwoordig is, of 'n belang kan hê bedoel in subartikel (1), moet sodanige lid onverwyld die aard van sy of haar belang verklaar en die vergadering verlaat.

(3) Enige verklaring van belang wat ingevolge subartikel (1) gemaak is, moet opgeteken word in die notule van die betrokke vergadering.

(4) Indien dit daarna blyk dat die Raad 'n besluit geneem het oor 'n saak ten opsigte waarvan 'n lid versuim het om 'n belang bedoel in subartikel (1) te verklaar, is sodanige besluit deur die Raad ongeldig.

(5) Vir die doeleindes van hierdie artikel sluit "**indirekte belang**" in, maar is nie beperk nie tot, 'n belang wat gehou word deur enige lid se –

- (a) besigheidsvriend, kollega of werkgewer, buiten die Staat;
- (b) eggenoot, deelgenoot in 'n gewoontehuwelik, of persoon saam met wie sodanige lid bly of leef asof hul getroud is; of
- (c) kind, ouer, of broer of suster.

### **Vergoeding van lede van Raad**

13.(1)(a) Onderhewig aan subartikel 2(a) kan 'n lid van die Raad uit die fondse van die Kommissie sodanige vergoeding en toelae betaal word soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

(b) 'n Lid van die Raad wat vergoeding, toelae of ander voordele ontvang uit hoofde van sy of haar pos of diens in –

- (i) die nasionale regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die nasionale of 'n provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige vergoeding, toelae of ander voordele te ontvang terwyl hy of sy as 'n lid van die Raad dien, mag slegs vergoeding en toelae ontvang soos

vermeld in paragraaf (a) tot die omvang wat vereis word om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou gewees het indien dit nie vir sodanige pos of diens was nie.

(2)(a) 'n Lid van die Raad en 'n persoon wat aan die Raad gekoöpteer is, kan met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, vergoeding ontvang uit die fondse van die Kommissie vir redelike werklike reis- en verblyfkoste genoodsaak deur die werklike bywoning van 'n vergadering van die Raad.

(b) Die lid van die Uitvoerende Raad verantwoordelik vir finansies moet prosedures, insluitende beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis- en verblyfkoste bedoel in paragraaf (a).

### **Instelling van komitees om Raad by te staan**

14.(1) Die Raad kan komitees instel wat uit een of meer van sy lede bestaan om –

- (a) die Raad by te staan in die uitvoering van enige van die bevoegdhede, pligte of funksies van die Raad bedoel in artikel 4; of
- (b) ondersoek in te stel of navorsing te doen oor enige saak wat binne die mandaat van die Raad ingevolge hierdie Wet val.

(2) Wanneer 'n komitee bedoel in subartikel (1) ingestel word, moet die Raad –

- (a) die opdrag van sodanige komitee bepaal, insluitend maar nie beperk nie tot, of sodanige komitee ophou voortbestaan of nie wanneer dit die taak of take voltooi het wat deur die Raad daaraan toegewys is;
- (b) 'n voorsitter van sodanige komitee aanstel wat 'n lid van die Raad moet wees; en
- (c) bepaal of sodanige komitee persone mag koöpteer wat nie lede van die Raad is nie, en indien wel, op watter terme en voorwaardes.

(3) Die Raad kan, te eniger tyd, die bestaan van 'n komitee of enige mandaat wat aan 'n komitee gegee is, beëindig, ongeag of sodanige komitee die taak of take voltooi het wat daaraan deur die Raad toegewys is.

(4)(a) Die hoof- uitvoerende beampte mag vergaderings van 'n komitee bywoon en

daaraan deelneem, maar het nie die reg om te stem nie.

(b) 'n Personeellid van die Raad mag, op uitnodiging deur die tersaaklike komitee, 'n vergadering van daardie komitee bywoon.

#### **Koöptering van persone aan Raad of komitees van Raad**

15.(1) Die Raad mag, indien hy van mening is dat 'n spesifieke persoon in staat is om hom by te staan met betrekking tot enige van sy funksies en bevoegdhede, sodanige persoon vir daardie doel koöpteer.

(2) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) is nie geregtig daarop om te stem by enige vergadering van die Raad of 'n komitee nie.

(3) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) moet sodanige vergoeding en toelae uit die fondse van die Raad ontvang soos deur die Raad, in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies, bepaal.

### **HOOFSTUK 4**

#### **HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DUBE HANDELSHAWE KORPORASIE**

##### **Hoof- uitvoerende beampte van Dube Handelshawe korporasie**

16.(1) Die Raad moet, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, die hoof- uitvoerende beampte van die Dube Handelshawe korporasie aanstel.

(2)(a) Die hoof- uitvoerende beampte word aangestel vir 'n tydperk wat nie vyf jaar oorskry nie op terme en diensvoorwaardes soos deur die Raad bepaal, in oorleg met die verantwoordelike lid van die Uitvoerende Raad.

(b) Die hoof- uitvoerende beampte, mag, met die goedkeuring van die verantwoordelike lid van die Uitvoerende Raad, heraanstelling word vir sodanige tydperk as deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(3)(a) Die aanstelling van die hoof- uitvoerende beampte is onderhewig aan die sluiting

van 'n skriftelike prestasie-ooreenkoms wat aangegaan word met die Dube Handelshawe korporasie.

(b) Die Raad en die hoof- uitvoerende beampte mag, skriftelik en volgens ooreenkoms, die prestasie-ooreenkoms wysig.

(4) Vir doeleindes van die verklaring van finansiële of ander belange, is die bepaling van artikel 7 met die nodige veranderings van toepassing op die hoof- uitvoerende beampte behalwe dat die hoof- uitvoerende beampte sy of haar belange aan die Raad moet verklaar.

(5) Die hoof- uitvoerende beampte is 'n *ex officio*-lid van die Raad maar het nie die reg om by sy vergaderings te stem nie.

#### **Funksies van hoof- uitvoerende beampte**

17.(1) Die hoof- uitvoerende beampte is verantwoordelik vir –

(a) die administratiewe en finansiële bestuur van die Dube Handelshawe korporasie in ooreenstemming met die Wet op Openbare Finansiële Bestuur, onderhewig aan die opdrag van die Raad;

(b) die aanstelling van personele van die Dube Handelshawe korporasie bedoel in artikel 19(1) in oorleg met die Raad;

(c) die bepaling van 'n gedragskode, in oorleg met die Raad, van toepassing op die hoof- uitvoerende beampte, alle personeel van die Dube Handelshawe korporasie en bereikbaar vir doeleindes van dissiplinêre stappe, om –

(i) nakoming van toepaslike reg, insluitend hierdie Wet;

(ii) die doeltreffende, doelmatige en ekonomiese gebruik van die Dube Handelshawe korporasie se fondse en hulpbronne;

(iii) die bevordering en handhawing van 'n hoë standaard van professionele etiek;

(iv) die voorkoming van botsende belange;

(v) die beskerming van vertroulike inligting gehou deur die Raad; en

(vi) professionele, eerlike, onpartydige, regverdige, etiese en billike diens,

te verseker;

(d) die handhawing van dissipline oor die personeel aangestel ingevolge paragraaf (b) en moet, vir daardie doeleindes, aan die Raad verantwoordbaar

wees;

(e) die byhou en instandhouding van die register van belange verklaar deur 'n personeellid van die Dube Handelshawe korporasie; en

(f) versekering van nakoming deur die Dube Handelshawe korporasie van die bepalings van die Wet op Openbare Finansiële Bestuur en enige ander toepaslike wetgewing.

(2) Die hoof- uitvoerende beampte is aan die Raad verantwoordbaar en moet aan die Raad rapporteer oor die aktiwiteite van die Dube Handelshawe korporasie.

(3) Indien die hoof- uitvoerende beampte om enige rede nie in staat is om enige van sy of haar funksies uit te voer nie, moet die Raad, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, 'n ander persoon aanstel as waarnemende hoof- uitvoerende beampte tot die hoof- uitvoerende beampte in staat is om daardie funksies te hervat.

#### **Bedanking en ontslag uit amp van hoof- uitvoerende beampte**

**18.(1)** Die hoof- uitvoerende beampte ontruim sy of haar amp –

(a) in die geval van bedanking, wanneer die bedanking van krag word;

(b) wanneer, ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), die persoon wat daardie amp beklee, onbevoeg raak om as direkteur van 'n maatskappy te dien; en

(c) by ontslag uit amp ingevolge subartikel (2).

(2) Die Raad kan, in oorleg met die lid van die Uitvoerende Raad, die hoof- uitvoerende beampte se diens beëindig in ooreenstemming met toepaslike indiensnemings- en arbeidsreg.

#### **Personeel van Dube Handelshawe korporasie**

**19.(1)** Die hoof- uitvoerende beampte moet, onderhewig aan subartikel (2), personeellede van die Dube Handelshawe korporasie in diens neem soos wat redelikerwys nodig blyk te wees –

(a) om hom of haar by te staan in die verrigting van sy of haar funksies ingevolge

hierdie Wet; en

(b) om die Raad by te staan met die werk eie aan die verrigting van sy funksies deur die Raad.

(2) Die Raad moet 'n menslike hulpbronbeleid vir personeellede van die Dube Handelshawe korporasie bepaal, insluitend die hoof- uitvoerende beampte.

(3) Vir doeleindes van die verklaring van finansiële of ander belange, en onderhewig aan artikel 17(1)(e), is die bepalings van artikels 7(3), 7(4) en 7(5), met die nodige veranderings, van toepassing op personeellede van die Dube Handelshawe korporasie.

(4) Die hoof- uitvoerende beampte moet 'n opgedateerde register byhou van die belange van personeellede van die Dube Handelshawe korporasie wat ingevolge subartikel (3) verklaar is.

(5) Die Raad, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, moet—

(a) die vergoeding en diensvoorwaardes; en

(b) die pensioen- en aftreevoordele,

van die hoof- uitvoerende beampte en die ander personeellede van die Dube Handelshawe korporasie bepaal.

### **Sekondering of verplasing van personeel na Dube Handelshawe korporasie**

**20.** Die Dube Handelshawe korporasie kan die dienste benut van persone wat vanaf die staatsdiens gesekeundeer of oorgeplaas word in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

## **HOOFSTUK 5**

### **SLEUTELPLAN, BELEIDSVOORSKRIFTE EN STRATEGIESE RIGLYNE**

#### **Sleutelplan**

**21.(1)** Die Raad moet, binne 6 maande na die inwerkingtreding van hierdie Wet, na oorlegpleging met die hoof- uitvoerende beampte, 'n sleutelplan instel.

(2) Die sleutelplan bedoel in subartikel (1), moet onder andere insluit die vragterminaal, eiendomsone, handelsone, landbousone, openbare vervoer nodusse, padnetwerke, spoor, vrag- en passasiersvervoernetwerke binne die Dube Handelshawe streek.

(3) Die sleutelplan moet opgedateer word wanneer die behoefte ontstaan om aan die doelwitte van die Dube Handelshawe korporasie te voldoen.

(4) Die sleutelplan moet deur die verantwoordelike lid van die Uitvoerende Raad goedgekeur word.

(5) Die sleutelplan moet, vir die jaar 2010, 2035 en 2060 –

- (a) 'n oorsig van die ontwikkelingstruktuur van die Dube Handelshawe;
- (b) ontwikkelingsdoelwitte en sleutelbeplanning vir die Dube Handelshawe; en
- (c) vir die ontwikkeling, sonering, vervoer en grootmaat-infrastrukturele behoeftes van die Dube Handelshawe korporasie,

bepaal.

(6) Wanneer die Raad sy funksies ingevolge hierdie Wet uitvoer, moet die Raad uitvoering gee aan die sleutelplan.

#### **Beleidsvoorskrifte en strategiese riglyne**

22.(a) Die verantwoordelike lid van die Uitvoerende Raad kan strategiese riglyne stel vir die nastrewing van die Dube Handelshawe korporasie se oogmerke en kan beleidsvoorskrifte aan die Raad uitreik.

(b) Die verantwoordelike lid van die Uitvoerende Raad kan enige beleidsopdragte uitgereik ingevolge paragraaf (a) onttrek of wysig.

### **HOOFSTUK 6**

### **BEFONDSING EN FINANSIËLE BESTUUR VAN DUBE HANDELSHAWE KORPORASIE**

**Fondse van Dube Handelshawe korporasie**

**23.(1)** Die fondse van die Dube Handelshawe korporasie bestaan uit –

- (a) geld bewillig deur die Provinsiale Wetgewer;
- (b) rente op beleggings van die Dube Handelshawe korporasie; en
- (c) inkomste wat wettig van enige ander bron afkomstig is.

**(2)** Die Dube Handelshawe korporasie moet sy fondse benut –

- (a) vir die betaling van vergoeding, toelaes en reis- en verblyf koste van –
  - (i) die lede van die Raad;
  - (ii) die hoof- uitvoerende beampte; en
  - (iii) die personeellede van die Dube Handelshawe korporasie; en
- (b) om kostes te dek met betrekking tot –
  - (i) die dag-tot-dag bedryf en administrasie van die Dube Handelshawe korporasie en die Raad;
  - (ii) die bedryf en bestuur van die Dube Handelshawe korporasie; en
  - (iii) die verrigting van die pligte en funksies van die Dube Handelshawe korporasie en die uitoefening van sy bevoegdhede ingevolge hierdie Wet.

**(3)** Die hoof- uitvoerende beampte moet, met die instemming van die Raad –

- (a) 'n rekening in die naam van Dube Handelshawe korporasie oopmaak by 'n instelling geregistreer as 'n bank ingevolge die Bankwet, 1990 (Wet No. 94 van 1990); en
- (b) alle geld wat ingevolge subartikel (1) ontvang is, daarin deponeer.

**(4)** Die Raad kan gelde belê wat in sy rekening gedeponeer is en wat nie vir onmiddellike gebruik vereis word nie: Met dien verstande dat die Raad redelike stappe moet doen om te verseker dat die belegging nie spekulatief van aard is nie.

**(6)** Die Dube Handelshawe korporasie, asook die Raad, mag nie geld leen of waarborge, kwytskeldings of sekuriteite uitreik of enige ander transaksies wat die Agentskap bind, aangaan nie, tensy sodanige lening, waarborg, kwytskelding, sekuriteit of ander transaksie ingevolge hierdie Wet gemagtig word en nie teenstrydig is met die Wet op Openbare Finansiële Bestuur nie.

**Finansiële bestuur**

24.(1) Die hoof- uitvoerende beampte moet volledige en behoorlike rekeningboeke en al die nodige rekords wat daarop betrekking het, byhou.

(2) Die hoof- uitvoerende beampte moet verseker dat die Dube Handelshawe korporasie se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state voorberei en voorgelê word in ooreenstemming met die Wet op Openbare Finansiële Bestuur.

(3) Die hoof- uitvoerende beampte moet binne drie maande voor die einde van elke finansiële jaar –

(a) 'n besigheidsplan vir die Raad, wat meetbare doelwitte bevat en die ander inligting bedoel in artikel 25(3)(b) en (c); en

(b) 'n staat van die beraamde inkomste en uitgawes van die Raad, aan die Raad voorlê vir goedkeuring met betrekking tot die volgende drie finansiële jaar.

(4) In enige finansiële jaar kan die hoof- uitvoerende beampte aangepaste of bykomende state van die beraamde inkomste en uitgawes van die Dube Handelshawe korporasie vir daardie finansiële jaar aan die Raad voorlê vir goedkeuring.

(5) Die Dube Handelshawe korporasie mag geen finansiële verbintenis aangaan buiten sy goedgekeurde begroting en opgegaarde reserwes nie.

(6) Die hoof- uitvoerende beampte kan –

(a) met die goedkeuring van die Raad, enige onbestede gedeelte van sy fondse by die Korporasie vir Openbare Deposito's of enige ander instelling belê soos van tyd tot tyd deur die Nasionale Tesourie gekategoriseer of gelys as 'n Kategorie "A1"-finansiële instelling; of

(b) met die goedkeuring van die Raad, op enige ander manier van daardie gedeelte afstand doen.

(7) Die hoof- uitvoerende beampte kan, met die goedkeuring van die Raad, reserwefondse stig en bedrae soos deur die Raad goedgekeur, daarin deponeer.

**Oudit en jaarverslag**

25.(1) Die Ouditeur-generaal moet die finansiële state van die Dube Handelshawe korporasie audit.

(2)(a) Die Raad moet 'n verslag oor die aktiwiteite van die Dube Handelshawe korporasie gedurende 'n finansiële jaar in die Provinsiale Wetgewer ter tafel lê binne vyf maande na die einde van daardie finansiële jaar.

(b) Binne vyf maande nadat die verslag ter tafel gelê is, moet 'n delegasie bestaande uit die voorsitter van die Raad en ten minste twee ander lede van die Raad die betrokke Portefeuljekomitee oor die jaarverslag inlig.

(3) Die verslag moet –

(a) 'n balansstaat en 'n inkomste-en-uitgawestaat gesertifiseer deur die Ouditeur-generaal insluit;

(b) die omvang verklaar waartoe die Dube Handelshawe korporasie sy oogmerke vermeld in artikel 3 bereik of bevorder het en die meetbare doelwitte soos uiteengesit in sy besigheidsplan soos bedoel in artikel 24(3)(a) gedurende die betrokke finansiële jaar; en

(c) tersaaklike prestasie-inligting bevat aangaande die ekonomiese, doelmatige en doeltreffende toepassing van hulpbronne en in besonder 'n vergelyking tussen beplande en werklike prestasie-aanduiders soos in daardie besigheidsplan uiteengesit.

**Finansiële jaar van Dube Handelshawe korporasie**

26. Die finansiële jaar van die Dube Handelshawe korporasie begin op 1 April van 'n spesifieke jaar en eindig op 31 Maart van die volgende jaar.

**Vaste eiendom**

**27.** Die Dube Handelshawe korporasie kan, ingevolge 'n beleid en prosedures soos deur die Raad bepaal en met die goedkeuring van die verantwoordelike lid van die Uitvoerende Raad, vaste eiendom verkry, hou of oor beskik in sy besigheidsverloop.

#### **Regstappe teen Dube Handelshawe korporasie**

**28.(1)** Enige regstappe teen die Dube Handelshawe korporasie moet ingestel word in ooreenstemming met die Wet op die Instel van Geregtelike Verrigtinge teen Sekere Staatsorgane, 2002 (Wet No. 40 van 2002).

(2) Die Dube Handelshawe korporasie word, vir doeleindes van subartikel (1), beskou as staatsorgaan bedoel in paragraaf (c) van die omskrywing daarvan in artikel 1 van die vermelde Wet.

### **HOOFSTUK 7 ALGEMENE BEPALINGS**

#### **Sekuriteit van vertroulike inligting gehou deur Dube Handelshawe korporasie**

**29.(1)** Onderhewig aan die Grondwet en die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), mag geen persoon enige inligting wat aan die Dube Handelshawe korporasie voorgelê word met betrekking tot enige regsopdrag of -instruksie openbaar maak nie, tensy –

- (a) hy of sy deur 'n geregshof daartoe gelas word; of
- (b) die persoon wat sodanige opdrag of instruksie gegee het, skriftelik daartoe instem.

(2) Geen persoon mag enige inligting wat in die register bedoel in artikels 7(6), 16(4) en 19(4) gehou word, openbaar maak nie tensy sodanige openbaarmaking –

- (a) ingevolge enige wet is wat sodanige openbaarmaking verplig of magtig;
- (b) wesenlik nodig is vir die behoorlike funksionering van die Dube Handelshawe korporasie; of

(c) gemaak is vir doeleindes van monitering, evaluering, ondersoek of oorweging van enige aktiwiteit wat op die Dube Handelshawe korporasie, of enige personeellid van die Dube Handelshawe korporasie, betrekking het.

(3) Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

### **Ontbinding van Dube Handelshawe korporasie**

**30.** Die Dube Handelshawe korporasie mag slegs ontbind word ingevolge 'n wet van die Provinsiale Wetgewer.

### **Gebruik van naam Dube Handelshawe of Dube Handelshawe korporasie**

**31.(1)** Geen persoon mag, sonder vooraf skriftelike magtiging van die Dube Handelshawe korporasie, op enige wyse die Dube Handelshawe korporasie verteenwoordig of gebruik maak van die naam, akroniem, logo, ontwerp of materiaal gebruik of besit deur die Dube Handelshawe korporasie nie.

(2) Geen persoon mag valslik beweer dat hy of sy namens die Dube Handelshawe korporasie optree nie.

(3) Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

### **Delegering**

**32.(1)** Die verantwoordelike lid van die Uitvoerende Raad mag aan die hoof van die departement –

(a) enige bevoegdheid deleger wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet verleen is, buiten die bevoegdheid om regulasies vermeld in artikel 33 uit te vaardig; of

(b) enige plig deleger wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet opgelê is, buiten enige plig aangaande die aanstelling en beëindiging van die amp van die lede van die Raad bedoel in artikels 5(1)(a) en

9(2).

(2) Die Raad kan, deur 'n spesiale beslissing, enige bevoegdheid of plig wat deur hierdie Wet aan die Dube Handelshawe korporasie verleen of opgelê is, aan die hoofuitvoerende beampte of personeellid van die Dube Handelshawe korporasie delegeer.

(3) Die hoofuitvoerende beampte kan aan enige personeellid van die Dube Handelshawe korporasie enige bevoegdheid of plig wat deur hierdie Wet aan die hoofuitvoerende beampte verleen of opgelê is, delegeer behalwe enige plig as rekenpligtige beampte van die Dube Handelshawe korporasie.

(4) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1), (2) of (3) moet uitgeoefen of verrig word onderhewig aan sodanige voorwaardes soos wat die persoon of liggaam wat die delegering gedoen het, nodig ag.

(5) Enige delegasie vermeld in subartikel (1), (2) of (3) –

(a) moet skriftelik wees;

(b) verbied nie die persoon of liggaam wat die delegering gedoen het om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en

(c) mag ter enige tyd skriftelik deur daardie persoon of liggaam onttrek of gewysig word.

### **Regulasies**

33. Die verantwoordelike lid van die Uitvoerende Raad kan, in oorleg met die Raad en deur middel van kennis in die *Koerant*, regulasies uitvaardig met betrekking tot –

(a) enige aangeleentheid wat voorgeskryf mag of moet word ingevolge hierdie Wet; of

(b) enige administratiewe of prosedurele aangeleentheid wat nodig is om uitvoering te gee aan die bepalings van hierdie Wet.

### **Likwidasie van Dube Handelshawe maatskappy en oorgangsbepalings**

34.(1)(a) Die Maatskappy, Dube Handelshawe, met maatskappyregistrasienuommer

2002/002801/08, ingestel ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), moet vrywillig gelikwideer en geskrap word.

(b) Die lede van die maatskappy moet, by likwidasië van die maatskappy vermeld in paragraaf (a), met behoorlike spoed en ywer optree en moet, onder andere voldoen aan artikel 349 en 350 van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(2) Op die datum van likwidasië van die Dube Handelshawe maatskappy word alle bates, laste, regte, pligte en verpligtinge, insluitend enige onbestede gedeelte van enige opgelope fondse of fondse ontvang deur die Dube Handelshawe maatskappy, oorgeplaas na, en berus by, Dube Handelshawe korporasie, ingestel ingevolge artikel 2.

(3) Dube Handelshawe korporasie is, met betrekking tot die bates, laste, regte, pligte en verpligtinge en fondse vermeld in subartikel (2), vir alle doeleindes regtens die opvolger van, en die regsopvolger tot, die Dube Handelshawe maatskappy.

(4) Die lede van die Raad van die Dube Handelshawe maatskappy moet as behoorlik gemagtigde en bemaagtigde lede van die Raad optree tot sodanige tyd as wanneer die verantwoordelike lid van die Uitvoerende Raad, ingevolge artikel 5(1)(a), die Raad ingevolge hierdie Wet aangestel het.

(5) 'n Werksaanbod moet binne ses maande na die inwerkingtreding van hierdie Wet deur die verantwoordelike lid van die Uitvoerende Raad aan alle personeellede van die Dube Handelshawe maatskappy gemaak word vir oorplasing na die Dube Handelshawe korporasie op 'n datum soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad.

(6) Die vergoeding, voordele en voorregte wat deur die verantwoordelike lid van die Uitvoerende Raad in ooreenstemming met subartikel (5) gebied word, mag nie wesenlik verskillend of minder wees nie as dit betaalbaar aan die personeellid deur die Dube Handelshawe maatskappy, onmiddellik voor sy of haar oorplasing.

(7) Vir die doeleindes van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), word geag dat geen verandering van werkgewer plaasgevind het nie met betrekking tot 'n personeellid wat 'n werksaanbod bedoel in subartikel (5) aanvaar.

(8) Wanneer 'n persoon ingevolge subartikel (5) 'n personeellid van die Dube Handelshawe korporasie word –

(a) behou hy of sy alle opgelope vakansieverlof tot sy of haar krediet tot die datum onmiddellik voor die datum van oorplasing, aangepas in ooreenstemming met die diensvoorwaardes van die Dube Handelshawe korporasie; en

(b) moet enige navraag wat ingestel of beoog word ten opsigte van beweerde wangedrag gepleeg deur sodanige persoon voor die datum van oorplasing, beskik word oor of ingestel word deur die Dube Handelshawe korporasie en die Raad moet toepaslike stappe doen teen die betrokke persoon in ooreenstemming met die wette, beleid en diensvoorwaardes wat op hom of haar van toepassing is onmiddellik voor die datum van oorplasing.

### **Algemene oortredings**

35.(1) 'n Lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens van of waarnemend namens die Dube Handelshawe korporasie is skuldig aan 'n misdryf indien hy of sy direk of indirek enige omkoopgeld aanvaar en of enige ongemagtigde fooi of beloning ontvang vanaf enige persoon in verband met enigiets gedoen of gebied deur die Dube Handelshawe korporasie.

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Dube Handelshawe korporasie gedoen of gebied word, 'n lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens van of waarnemend namens die Dube Handelshawe korporasie, omkoop of poog om om te koop of omkoopbaar beïnvloed of poog om omkoopbaar te beïnvloed.

(3) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie, donasies of bydraes te hef of in te vorder, namens of in opdrag van die Dube Handelshawe korporasie is skuldig aan 'n misdryf.

### **Strawwe**

36. Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet is

aanspreeklik vir 'n boete of gevangenisstraf vir 'n tydperk wat nie 5 jaar oorskry nie of beide.

**Kort titel**

**37.** Hierdie Wet word die KwaZulu-Natal Wet op Dube Handelshawe Korporasie, 2009 genoem.

**MEMORANDUM AANGAANDE DIE DOELSTELLINGS VAN DIE KWAZULU-NATAL  
WETSONTWERP OP DIE DUBE HANDELSHAWE, 2009**

**1. ALGEMENE AGTERGROND EN OOGMERKE VAN DIE WETSONTWERP**

1.1 Die Departement poog om die Dube Handelshawe Korporasie in te stel en te registreer as 'n Provinsiale Openbare Entiteit ten einde –

(a) die besorgdheid van die Provinsiale Wetgewer oor die regstatus van die Dube Handelshawe Korporasie aan te spreek; en

(b) die Nasionale Tesourie se voorskrifte na te kom aangaande die omskakeling van alle staatsentiteite van artikel 21-maatskappye na statutêre liggame as sodanig ingestel en geregistreer ingevolge die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), soos gewysig.

1.2 In die lig van die bogenoemde, beoog hierdie Wetsontwerp om –

(a) voorsiening te maak vir die instelling van die Dube Handelshawe Korporasie;

(b) die wyse waarop die Dube Handelshawe Korporasie bestuur, gereël, beman en gefinansier moet word, te bepaal;

(c) voorsiening te maak vir die likwidasië van die Dube Handelshawe Maatskappy;

(d) voorsiening te maak vir die Dube Handelshawe Korporasie as regsopvolger van die Dube Handelshawe Maatskappy; en

(e) voorsiening te maak vir die aangeleenthede wat daarmee verband hou.

**2. ARTIKEL-VIR-ARTIKEL VERDUIDELIKING**

**HOOFSUK 1  
OMSKRYWINGS**

**Artikel 1**

Maak voorsiening vir die omskrywing van woorde wat in hierdie Wetsontwerp gebruik word.

**HOOFSUK 2  
INSTELLING VAN DUBE HANDELSHAWE KORPORASIE**

**Artikel 2**

Maak voorsiening vir die instelling van die Dube Handelshawe Korporasie as 'n Provinsiale Openbare Entiteit ingevolge die Wet op Openbare Finansiële Bestuur.

**Artikel 3**

Meld die oogmerke van die Korporasie, naamlik om –

- (a) die Dube Handelshawe te ontwikkel;
- (b) projekte wat met die Dube Handelshawe verband hou, te onderneem of daarin te belê;
- (c) ekonomiese groei in die provinsie deur die Dube Handelshawe te bevorder;
- (d) langtermyn belegging na die provinsie te lok;
- (e) uitvoer en invoer deur die Dube Handelshawe te vergemaklik; en
- (f) die bevoegdhede, pligte en funksies vermeld in artikel 4 uit te voer.

**Artikel 4**

Maak voorsiening vir bevoegdhede, pligte en funksies van die Korporasie wat artikel 4(1) insluit en voorsiening maak dat die korporasie deur die Raad –

- (a) die strategiese beplanning, instelling, ontwerp, konstruksie, bedryf, bestuur en beheer van die Dube Handelshawe moet verseker;
- (b) die meesterplan vir ekonomiese groei in die provinsie moet implementeer en uitvoering daaraan moet gee;
- (c) die hulpbronne volgens die korporasiemeesterplan asook sy oogmerke moet onderhou en benut;
- (d) beleggingsgeleenthede in die Dube Handelshawe moet identifiseer, ontwikkel, bemark en bevorder;
- (e) 'n beleggingsplan vir die Dube Handelshawe moet ontwikkel; en
- (f) 'n provinsiale beleggings- en uitvoerplan moet ontwikkel.

Artikel 4(2) bepaal verder dat die Dube Handelshawe Korporasie –

- (a) vir die doel van ontwikkeling, bevordering, bemarking of belegging in die provinsie, en onderhewig aan die vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad –
  - (i) een of meer maatskappye, beslote korporasies of ander soortgelyke liggame kan instel en bedryf;
  - (ii) ander gesamentlike ondernemings met ander instellings, munisipaliteite, organisasies, liggame of persone kan aangaan; en
  - (iii) fondse deur donasies en borgskappe kan insamel;
- (b) met vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad, aandele en belange in die maatskappye, beslote korporasies of ander soortgelyke liggame kan verkry en oor beskik;
- (c) met enige ander entiteit, staatsorgaan, organisasie of instelling wie se bedrywighede of mikpunte 'n impak of verband het op die ontwikkeling, bevordering, bemarking en belegging in die provinsie, kan skakel;

- (d) enige saak wat direk of indirek met die bevordering, ontwikkeling, bemerking of belegging in die provinsie verband hou, kan ondersoek en deur die verantwoordelike lid van die Uitvoerende Raad aanbevelings aan die Uitvoerende Raad kan maak;
- (e) ooreenkomste kan aangaan vir die bereiking van sy oogmerke, die uitoefening van sy bevoegdhede, pligte en funksies of die bestuur en administrasie van sy sake;
- (f) kan deelneem aan die bestuur, toesig en beheer van die besigheid of bedrywighede van 'n instelling met dieselfde of soortgelyke oogmerke as die Korporasie;
- (g) kan belê in projekte wat met sy oogmerke verband hou;
- (h) 'n fonds kan stig om lugvervoer in die provinsie te verbeter;
- (i) enigiets anders kan doen of aandag aan enige ander aangeleentheid kan gee wat nodig is om die oogmerke te bereik en aan die vereistes van die meesterplan te voldoen; en
- (j) enigiets anders kan doen of aandag aan enige ander aangeleentheid kan gee wat die verantwoordelike lid van die Uitvoerende Raad nodig ag vir die behoorlike implementering van hierdie Wet

Artikel 4(3) maak voorsiening vir die bykomende bevoegdhede van die Korporasie, vermeld kragtens artikel 54(2) van die Wet op Openbare Finansiële Bestuur.

### HOOFSTUK 3 DIREKSIE VAN DIE KORPORASIE

#### **Artikel 5**

Maak voorsiening dat die Korporasie deur 'n direksie bestuur word, bestaande uit ten minste drie, maar nie meer as agt lede wat deur die LUR aangestel word. Dit maak verder voorsiening vir 'n prosedure wat deur die LUR gevolg moet word wanneer –

- a) benoemings versoek word vir persone vir aanstelling op die Raad; en
- b) persone aangestel word om op die Raad te dien.

Voorsiening word ook in hierdie klousule gemaak vir die toesighoudende rol wat die Uitvoerende Raad vervul by die benoeming en aanstelling van persone om op die Raad van die Korporasie te dien onder andere by die oplê van 'n plig aan die LUR –

- a) om inligting aan die Uitvoerende Raad te verskaf, na die aanstelling van die lede van die Raad, rakende die name van die aangestelde lede, die inwerkingtreedingsdatum en die tydperk van aanstelling.

#### **Artikel 6**

Meld gronde vir onbevoegdheid van lede vir aanstelling op die Raad.

#### **Artikel 7**

Maak voorsiening vir die plig van –

- (a) persone wat benoem is om op die Raad te dien, om binne 10 (tien) dae na sodanige benoeming hul finansiële belange in enige maatskappy of ander sakebelange aan die verantwoordelike lid van die Uitvoerende Raad te verklaar. Versuim om belange te verklaar maak sodanige lid onbevoeg vir benoeming as 'n lid van die Raad;
- (b) persone wat aangestel is om op die Raad te dien om hul belange in enige maatskappy of ander sakebelange ingevolge artikel 234(3) van die Maatskappywet, by ampsaanvaarding en aan die begin van die finansiële jaar te verklaar;
- (c) 'n lid van die Raad wat 'n belang verkry, om sodanige belang binne 10 dae na die datum van verkryging van sodanige belang, te verklaar.

Versuim om belange te verklaar soos in paragraaf (b) en (c) hierbo vereis, kan as gronde dien vir die beëindiging van sodanige lid se lidmaatskap van die Raad.

#### **Artikel 8**

Meld die ampstermyn en heraanstelling van lede van die Raad.

#### **Artikel 9**

Meld die gronde waarop die aanstelling van raadslede beëindig kan word.

#### **Artikel 10**

Magtig die LUR om 'n lid van die Raad tydelik te skors ten einde die LUR toe te laat om bewerings te ondersoek wat, indien gevind word dat dit waar is, kan lei tot beëindiging van die lid se aanstelling ingevolge artikel 9 (2).

#### **Artikel 11**

Maak voorsiening vir aangeleenthede wat verband hou met die vergaderings en prosedures van die Raad, soos –

- (a) gereeldheid van die vergaderings van die Raad;
- (b) die kworum van die vergadering; en
- (c) wyse waarop besluite van die Raad geneem word.

#### **Artikel 12**

Maak voorsiening vir die plig wat op lede van die Raad rus om hulself te onttrek in gevalle waar 'n konflik van belange kan ontstaan rakende enige aangeleentheid wat deur die Raad bespreek word.

Versuim aan die kant van die lid om hom- of haarself van 'n vergadering te onttrek wetende dat 'n konflik van belange kan ontstaan, maak die verrigtinge ongeldig.

**Artikel 13**

Magtig die LUR om besoldiging en aanstellingsvoorwaardes van die lede van die Raad te bepaal.

**Artikel 14**

Maak voorsiening vir die instelling van komitees om die Raad by te staan en die beëindiging van hul bestaan of mandaat.

**Artikel 15**

Handel oor koöptering van persone op die Raad of komitees van die Raad.

**HOOFSTUK 4****HOOF- UITVOERENDE BEAMPTE EN PERSONEEL VAN DIE KORPORASIE****Artikel 16**

Maak voorsiening vir die –

- (a) aanstelling van die hoof- uitvoerende beampte van die Korporasie deur die Raad in oorleg met die LUR;
- (b) tydperk van aanstelling van die hoof- uitvoerende beampte;
- (c) prestasie-ooreenkoms van die hoof- uitvoerende beampte;
- (d) verklaring van finansiële en ander belange deur die hoof- uitvoerende beampte; en
- (e) reg om nie by die vergaderings te stem nie.

**Artikel 17**

Handel oor die funksies van die hoof- uitvoerende beampte insluitend die bevoegdheid om personeel aan te stel; die bevoegdheid om die gedragskode te bepaal in oorleg met die Raad asook die hou van dissiplinêre verhore van die Korporasie.

**Artikel 18**

Handel oor die gronde en prosedure vir die ontslaan van die hoof- uitvoerende beampte.

**Artikels 19 & 20**

Handel oor die personeel van die Korporasie en sekondering of oorplasing van personeel na die Korporasie.

## HOOFSTUK 5 MEESTERPLAN, BELEIDSVOORSKRIFTE EN STRATEGIESE RIGLYNE

### **Artikel 21**

Maak voorsiening vir die Raad om 'n meesterplan op te stel na 6 maande na inwerkingtreding, in ooreenstemming met die verantwoordelike LUR.

### **Artikel 22**

Maak voorsiening vir die beleidsvoorskrifte en strategiese riglyne wat deur die LUR ingestel moet word ter bereiking van die Korporasie se oogmerke.

## HOOFSTUK 6 BEFONDSING EN FINANSIËLE BESTUUR VAN DIE KORPORASIE

### **Artikel 23(1)**

Maak voorsiening vir die befondsingsbronne van die Korporasie insluitende –

- (a) geld deur die Provinsiale Wetgewer aan die Korporasie bewillig;
- (b) rente op beleggings van die Korporasie; en
- (c) inkomste regtens uit enige ander bron verkry.

### **Artikel 23(2)**

Maak voorsiening vir die wyse waarop die Korporasie sy fondse moet benut.

### **Artikel 23(3)**

Maak voorsiening dat die hoof- uitvoerende beampte, met die instemming van die Raad 'n rekening vir die Korporasie moet oopmaak en alle gelde ontvang ingevolge subartikel (1) daarin moet deponeer.

### **Artikel 23(4)**

Maak voorsiening daarvoor dat die Raad die gelde wat in die rekening gedeponeer word en wat nie vir onmiddellike gebruik vereis word nie, belê.

### **Artikel 23(5)**

Verbied die Korporasie om geld te leen, waarborg, kwytskeldings of sekuriteite uit te reik of enige ander transaksies aan te gaan wat dit bind tensy sodanige bedrywighede ingevolge hierdie Wet gemagtig is en nie teenstrydig is met die Wet op Openbare Finansiële Bestuur nie.

### **Artikel 24**

Maak voorsiening vir die finansiële bestuur van die fondse van die Korporasie en verslagdoening aan die Raad.

**Artikel 25**

Maak voorsiening vir die ouditering van die finansiële state van die Korporasie en tertafellegging van die jaarlikse verslag aan die Provinsiale Wetgewer.

**Artikel 26**

Bring die finansiële jaar van die Korporasie in lyn met dié van die Departement.

**Artikel 27**

Maak voorsiening dat die Korporasie gedurende die loop van sy besigheid vaste eiendom mag aankoop, hou of daarvoor beskik.

**Artikel 28**

Maak voorsiening vir die prosedure waarvolgens regstappe teen die Korporasie ingestel mag word.

**HOOFSTUK 7**  
**ALGEMENE BEPALINGS**

**Artikel 29**

Maak voorsiening vir sekuriteit van vertroulike inligting wat deur die Korporasie gehou word.

**Artikel 30**

Maak voorsiening vir die ontbinding van die Korporasie.

**Artikel 31**

Maak voorsiening vir die gebruik van die Korporasie se naam.

**Artikel 32**

Maak voorsiening vir die delegering van enige bevoegdheid wat deur die LUR aan die Hoof van die Departement verleen word, met sekere uitsonderings.

**Artikel 33**

Magtig die LUR om regulasies uit te vaardig. Hierdie klousule bepaal ook riglyne waarvolgens die LUR sodanige regulasies kan uitvaardig.

**Artikel 34**

Maak voorsiening vir die likwidasië van die maatskappy en oorgangsbepalings wat insluit dat –

- (a) die maatskappy vrywillig gelikwideer en geskrap word;
- (b) die lede van die Maatskappy, by likwidasië van die maatskappy vermeld in paragraaf (a), met behoorlike spoed en toewyding moet optree en onder andere artikels 349 en 350 van die Maatskappywet, 1973 (Wet No. 61 van 1973) moet nakom;
- (c) alle bates, laste, regte en pligte van die Dube Handelshawe Maatskappy op die datum van likwidasië oorgedra word aan die Dube Handelshawe Korporasie ingestel ingevolge artikel 2;
- (d) alle bates, laste, regte, pligte en verpligtinge van die Dube Handelshawe Maatskappy, met inbegrip van onbestede gedeelte van enige fondse wat die Dube Handelshawe Maatskappy toegeval het of deur hom ontvang is, op die datum van likwidasië oorgedra word aan en oor beskik word deur die Dube Handelshawe Korporasie ingestel ingevolge artikel 2.

**Artikel 35**

Maak voorsiening vir misdrywe ingevolge die Wetsontwerp.

**Artikel 36**

Maak voorsiening vir strawwe ten opsigte van die misdrywe wat in artikel 35 van hierdie Wetsontwerp vermeld word.

**Artikel 37**

Maak voorsiening vir die kort titel van hierdie Wetsontwerp.

**3. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING**

Daar word voorsien dat die huidige personeel van die Dube Handelshawe Maatskappy na die Korporasie oorgeplaas sal word; dus sal daar geen nuwe organisatoriese en personeelimplikasies vir die Provinsiale Regering wees nie.

**4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING**

Die Korporasie sal die werkinge van die Dube Handelshawe Maatskappy oorneem en aangesien sodanige werkinge gefinansier is en word deur die geld wat deur die Provinsiale Wetgewer aan die Departement bewillig is, sal daar geen nuwe finansiële implikasies vir die Provinsiale Regering wees nie.

**5. DEPARTEMENTE / LIGGAME GERAADPLEEG**

- (a) KwaZulu-Natal Staatsdiensprokureursforum en die KwaZulu-Natal Staatsdiensprokureursvereniging; en die
- (b) KZNDHH-raad (artikel 21-maatskappy)

**6. GRONDWETLIKE IMPLIKASIES**

Geen

No. 1

12 kuMasingana 2010

## UMTHETHOSIVIVINYO WEDUBE TRADEPORT CORPORATION WAKWAZULU-NATALI, 2009

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo WeDube TradePort Corporation WaKwaZulu-Natali, 2009, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi LezokuThuthukiswa koMnotho neZokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Nkk. N.P. Sikhakhane  
UNobhala  
ISishayamthetho saKwaZulu-Natali  
Isikhwama Seposi X 9112  
Pietermaritzburg  
3200

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N. NAIDOO  
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WAKWAZULU-NATALI  
WE-DUBE TRADEPORT CORPORATION, 2009**

**UMTHETHOSIVIVINYO**

Wokuhlinzekela ukusungulwa kwe-Dube TradePort Corporation; wokunquma ngezinjongo, ngamandla, ngezibopho nangemisebenzi ye-Dube TradePort Corporation; wokunquma indlela okuzophathwa ngayo, okuzobuswa, okuzoqashwa ngayo abasebenzi nokuzokwesekwa ngayo ngezimali i-Dube TradePort Corporation; wokuhlinzekela ukuhlakazwa kwe-Dube TradePort Corporation; wokuhlinzekela ukuthi i-Dube TradePort Corporation kube iyona engena ezicathulweni ze-Dube TradePort Company ngokusemthethweni; nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

**UKUHLELEKA KWEZIGABA**

*Isigaba*

**ISAHLUKO 1****IZINCAZELO**

1. Izincazelo

**ISAHLUKO 2****I-DUBE TRADEPORT CORPORATION**

2. Ukusungulwa kwe-Dube TradePort Corporation
3. Izinhloso ze-Dube TradePort Corporation
4. Amandla, izibopho nemisebenzi ye-Dube TradePort Corporation

**ISAHLUKO 3****IBHODI YE-DUBE TRADEPORT CORPORATION**

5. Ukwakheka kweBhodi
6. Ukuhoxiswa ekuqokelweni eBhodini
7. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi
8. Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi
9. Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi
10. Ukumiswa okwesikhashana kwelungu leBhodi
11. Imihlangano kanye nezinqubo zemihlangano yeBhodi

12. Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi
13. Ukuholelwa kwamalungu eBhodi
14. Ukusungulwa kwamakomidi asiza iBhodi
15. Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi

#### ISAHLUKO 4

##### ISIKHULU ESIPHEZULU KANYE NABASEBENZI BE-DUBE TRADEPORT CORPORATION

16. Isikhulu esiPhezulu se-Dube TradePort Corporation
17. Imisebenzi yesiKhulu esiPhezulu
18. Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu
19. Abasebenzi be-Dube TradePort Corporation
20. Ukusiswa noma ukudluliselwa kwabasebenzi kwi-Dube TradePort

#### ISAHLUKO 5

##### ISU LOKUSEBENZA, IMIKHOMBANDLELA YENQUBOMGOMO KANYE NEMIGUDU EFALENE

21. Isu lokuSebenza
22. ImiKhombandlela yeNqubomgomo nemiGudu eFanele

#### ISAHLUKO 6

##### UXHASOMALI NOKUPHATHWA KWEZIMALI ZE-DUBE TRADEPORT CORPORATION

23. Uxhasomali lwe-Dube TradePort Corporation
24. Ukuphathwa kwezimali
25. Ukucwaningwa kwamabhuku nombiko wonyaka
26. Unyaka wezimali we-Dube TradePort Corporation
27. Impahla engenakususwa
28. Ukuthathelwa izinyathelo zomthetho kwe-Dube TradePort Corporation

#### ISAHLUKO 7

##### IZINHLINZEKO EZEJWAYELEKILE

29. Ukuphepha kolwazi oluyimfihlo olugcinwe yi-Dube TradePort Corporation
30. Ukuhlakazwa kwe-Dube TradePort Corporation
31. Ukusetshenziswa kwegama le-Dube TradePort Corporation
32. Ukudluliselwa kwamandla
33. IMithethonqubo
34. Ukuvalwa kweNkampani i-Dube TradePort kanye nezinhlinzeko zesikhashana zalezo zinguquko

35. Amacala ajwayelekile
36. Izinhlawulo
37. Isihloko esifingqiwe

## ISAHLUKO 1 IZINCAZELO

### Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile -

“**iBhodi**” kusho ibhodi ye-Dube TradePort Corporation ehlongozwe kwisigaba 5;

“**isiKhulu esiPhezulu**” kusho isiKhulu esiPhezulu se-Dube TradePort Corporation, esihlongozwe kwisigaba 16;

“**uMthethosisekelo**” kusho uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996”

“**uMnyango**” kusho uMnyango wezokuThuthukiswa koMnotho nanoma yimuphi omunye umnyango wesifundazwe oyothatha izintambo omisebenzi yawo ibandakanya ukuthuthukiswa komnotho KwaZulu-Natali;

“**i-Dube TradePort**” kusho uhlelo lwentuthuko olumikhakha miningi oluhlanganise isikhumulo sezindiza sezinga lomhlaba, isikhungo sezohwebo, isikhungo sezolimo, okunye ukwesekwa okuhambisana nalokho kanye neminye imisebenzi ehambisana nalokho, olusendaweni esebangeni elingamakhilomitha angama-30 enyakatho yenkaba yedolobha laseThekwini;

“**isiFunda se-Dube TradePort**” kusho isifunda esisendaweni esebangeni elingaphansi kwamakhilomitha angama-30 ezungeze isikhumulo samabhanoyi esisenkabeni ye-Dube TradePort;

“**iNkampani ye-Dube TradePort**” kusho iNkampani ye-Dube TradePort, eBhaliswe ngoNombolo 2002/002810/07, esingulwe ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973);

**“i-Dube TradePort Corporation”** kusho ibhizinisi likahulumeni elisungulwe ngokwesigaba 2;

**“uMkhandlu oPhethe”** kusho uMkhandlu oPhethe esiFundazweni ohlongozwe kwisigaba 132 soMthethosisekelo;

**“iGazethi”** kusho iGazethi eseMthethweni yesiFundazwe saKwaZulu-Natali;

**“iNhloko yoMnyango”** kusho umuntu oqokwe njengeNhloko yoMnyango ngokwesigaba 12 soMthetho wemiSebenzi kaHulumeni, (iSimemezelo 103 sika 1994);

**“iSu lokuSebenza”** kusho iSu lokuSebenza ukuze kusungulwe, kuhlelwe futhi kwakhiwe isikhungo esiyinkaba sezokuthutha esimikhakha miningi esiFundeni se-Dube TradePort njengoba kuhlangozwe kwisigaba 21;

**“iLungu loMkhandlu oPhethe elibhekele ezeziMali”** kusho ilungu lomkhandlu ophethe esifundazweni saKwaZulu-Natali elibhekele ezezimali;

**“iKomidi lemiSebenzi yasePhalamende”** kusho iKomidi lemiSebenzi yasePhalamende kwisiShayamthetho saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho;

**“isiFundazwe”** kusho isiFundazwe saKwaZulu-Natali esihlongozwe kwisigaba 103 soMthethosisekelo kanti igama **“okwesifundazwe”** linencazelo efanayo;

**“ibhizinisi likahulumeni wesifundazwe”** kusho ibhizinisi likahulumeni wesifundazwe njengoba kuchazwe kwisigaba 1 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

**“uMthetho wokuPhathwa kweziMali zikaHulumeni”** kusho uMthetho wokuphathwa kwezimali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

**“imithethonqubo”** kusho imithethonqubo eyakhiwe ngokwesigaba 33;

**“iLungu loMkhandlu oPhethe elibhekele”** kusho iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho noma lelo Lungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali uNdunankulu aliqoke ukuthi liphathe ngokwalo Mthetho;

**“Io Mthetho” ibandakanya nemithethonqubo.**

## ISAHLUKO 2

### I-DUBE TRADEPORT CORPORATION

#### **Ukusungulwa kwe-Dube TradePort Corporation**

2.(1) Ngalokhu kusungulwa inkampani kahulumeni wesifundazwe ezokwaziwa nge-Dube TradePort Corporation.

(2) I-Dube TradePort Corporation ingumuntu ngokomthetho eyenza imisebenzi yayo ngokusebenzisa iBhodi.

(3) I-Dube TradePort Corporation iyosebenza ngokoMthetho wokuPhathwa kweziMali zikaHulumeni.

(4) IBhodi iyona enesibopho sokubika mayelana ne-Dube TradePort Corporation njengoba kuhlangozwe kwisigaba 49(2) soMthetho wokuPhathwa kweziMali zikaHulumeni.

#### **Izinhloso ze-Dube TradePort Corporation**

3. Izinhloso ze-Dube TradePort Corporation -

- (a) ukusungula i-Dube TradePort;
- (b) ukuphatha noma ukutshala izimali emiklamweni ehlobene ne-Dube TradePort;
- (c) ukulungiselela ukuthuthukiswa komnotho esiFundazweni ngokusebenzisa i-Dube TradePort;
- (d) ukuheha utshalomali lwesikhathi eside esiFundazweni;
- (e) ukuhlinzekela ukuhanjiswa kwempahla emazweni angaphandle nempahla engenayo kusetshenziswa i-Dube TradePort; kanye
- (f) nokusebenzisa amandla, ukugcina izibopho nokwenza imisebenzi okubalulwe esigabeni 4.

#### **Amandla, izibopho nemisebenzi ye-Dube TradePort Corporation kanye neBhodi**

4.(1) I-Dube TradePort Corporation kumele, ngokusebenzisa iBhodi -

- (a) iqinisekise ukuhlelwa okufanele, ukusungulwa, uhlelo lokwakha, ukwakhiwa, ukuqhutshwa, ukuphathwa kanye nokulawulwa kwe-Dube TradePort;

- (b) yakhe futhi iqalise iSu lokuSebenza lokukhulisa umnotho wesiFunda se-Dube TradePort nowesifundazwe;
- (c) iyophatha futhi isebenzise izinsiza enazo ngokuhambisana nezinhloso kanye nezidingo zeSu lokuSebenza;
- (d) iyohlonda, isungule, iqhakambise futhi igqugquzele amathuba okutshalwa kwezimali e-Dube TradePort; futhi
- (e) iyoqala isu lokutshalwa kwezimali le-Dube TradePort.

(2) I-Dube TradePort Corporation -

- (a) ngenhloso yokusungula, yokugqugquzela, yokuqhakambisa noma yokutshala izimali esiFundazweni, nangemuva kokugunyazwa ngokubhalwe phansi yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho -
  - (i) ingasungula futhi siqhube inkampani eyodwa noma ngaphezulu, ibhizinisi elizimele nom eminye imigwamanda efanayo;
  - (ii) singahlanganyela ebhizinisini nezinye izikhungo, izinhlangano, omasipala, imigwamanda noma abantu; futhi
  - (iii) singaqoqa izimali ngokuthola usizo lweminikelo kanye noxhasomali;
- (b) ngokugunyazwa okubhaliwe phansi yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ingathenga noma idayise amasheya noma okunye esinakho ezinkampanini, emabhizinisini azimele nakweminye imigwamanda efanayo;
- (c) ingaxhumana nanoma yiliphi elinye ibhizinisi, uhlaka lombuso inhlangano noma isikhungo esimisebenzi yaso noma esizinhloso zaso zinomthelela futhi zihambisana, nokuthuthukiswa, ukugqugquzelwa, ukuqhakanjiswa noma ukutshalwa kwezimali esiFundazweni;
- (d) ingaphenya futhi yenze izincomo eMkhandlwini oPhethe, ngeLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, nganoma yiluphi udaba oluphathelene ngqo noma oluphathelene ngandlela thile nokugqugquzelwa, nokuthuthukiswa noma nokuqhakanjiswa kokutshalwa kwezimali esiFundazweni;
- (e) ingangena ezivumelwaneni ukuze iphumelelise izinhloso zayo, isebenzise amandla ayo, igcine izibopho futhi yenze imisebenzi yayo noma iphathe futhi ilawule izindaba zayo, okungaba ezingahlinzekelwe noma ezihlinzekelwe kulesi sigaba;
- (f) ingabamba iqhaza ekuphathweni, ekuhlolweni kanye nasekulawulweni kwebhizinisi noma kokuqhutshwa kwemisebenzi yesikhungo esinezinhloso ezifanayo noma esithi mazifane nezoMfelandawonye;
- (g) ingaqala noma itshale izimali kwimiklamo ehlobene nezinhloso zayo;

- (h) ingasungula isikhwama sezimali ukusimamisa ukuxhunyaniswa kwezokuthutha zasemoyeni esiFundazweni;
- (i) ingenza noma yikuphi okunye noma ingenelele noma yiluphi udaba okunesidingo salo ukuze kufezekiswe izinhloso kanye nezidingo zeSu lokuSebenza; futhi
- (j) ingenza noma iyiphi enye into noma ingenelele kunoma yiluphi udaba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho elibona lunesidingo ukuze kuqaliswe ngendlela efanele lo Mthetho.

(3) Ngaphezu kwamandla okukhulunywe ngawo kwizigatshana (1) no (2), i-Dube TradePort Corporation inamandla okukhulunywe ngawo kwisigaba 54(2) soMthetho wokuPhathwa kweziMali zikaHulumeni.

### ISAHLUKO 3

#### IBHODI YE-DUBE TRADEPORT CORPORATION

##### **Ukwakheka kweBhodi**

##### **5.(1) Ikhodi iqukethe -**

- (a) okungenani amalungu amathathu, kodwa engeqile kwayisishiyagalombili, aqokwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho; kanye
- (b) nesiKhulu esiPhezulu, ngokwesikhundla saso, njengoba kuhlangozwe esigabeni 16(5).

(2) AmaLungu eBhodi kumele abe ngabantu abafanelekile futhi abakulungele ukusebenzela isiFundazwe ngentshisekelo, ewonke abe nalolu lwazi noma ubungoti -

- (a) ulwazi nobungoti ekuphathweni kwezimali;
- (b) ulwazi nobungoti emkhakheni wezokuvakasha;
- (c) ulwazi nobungoti emkhakheni wezokuthutha;
- (d) ulwazi nobungoti emkhakheni wokuthuthukiswa komnotho;
- (e) ulwazi nobungoti emkhakheni wokuthuthukiswa komhlaba; kanye
- (f) nanoma yiliphi elinye ikhono, isipiliyoni noma ukuqeqeshwa, ngokubona kwelungu loMkhandlu oPhethe, okungahlomulisa i-Dube TradePort Corporation.

(3) Ekuqokweni kwamalungu eBhodi, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise ukuthi -

- (a) kubhekelelwa ukungalingani kwaphambilini;
- (b) iBhodi, iyonke, inamakhono nobungoti obufanele nobudingekayo; futhi

(c) iBhodi imele abantu abaqashwe noma ababandakanyeka emabhizinisini ezomnotho nentuthuko esiFundazweni.

(4) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqoke -

(a) oyedwa emalungwini eBhodi njengoSihlalo weBhodi; kanye

(b) noyedwa emalungwini eBhodi njengeSekela likaSihlalo weBhodi.

(5) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingaqoka omunye umuntu njengozolimela –

(a) okumele asize ngokuxhumanisa iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho neBhodi;

(b) okumele abike kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngaso sonke isikhathi mayelana nezindaba ezibonakala zifanele; futhi

(c) ongethamela imihlangano yeBhodi futhi azibandakanye ezingxoxweni, kepha ongenalo ilungelo lokuvota uma iBhodi ithatha isinqumo.

(6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ngesaziso kwiGazethi, limeme noma yiziphi izinhlangothi ezinentshisekelo esiFundazweni ukuba ziphakamise abangaqokelwa eBhodini.

(7) Isimemo seziphakamiso kume sicacise –

(a) inqubo yeziphakamiso;

(b) okudingekayo kwiziphakamiso; kanye

(c) nosuku lokuvalwa kweziphakamiso.

(8) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele licubungule zonke iziphakamiso ezilethiwe eziphendula isaziso, futhi lingaqoka ithimba ukuba lihlaziye zonke iziphakamiso futhi lenze izincomo ngeziphakamiso kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(9) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise ukuthi wonke amagama abantu abaqokelwe eBhodini ashicilelwe *kwiGazethi* kanye nasemaphandabeni okungenani amabili aphuma esiFundazweni, ngokushesha ngemuva kokuba labo bantu sebazisiwe, ngokuthi babhalelwe, ngokuqokelwa kwabo eBhodini.

(10) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ezinyangeni ezimbili ngemuva kokuqokwa kwamalungu eBhodi ngokwesigatshana (1), lazise uMkhandlu oPhethe kanye neKomidi lemisebenzi yasePhalamende ngamagama amalungu aqokiwe kubandakanya isikhathi abasiqokelwe.

(11) Lesi sigaba sisebenza, nezinguquko ezidingekayo, ekuvalweni kwesikhala somsebenzi kwiBhodi.

### **Ukuhoxiswa ekuqokelweni eBhodini**

6. Umuntu uyahoxiswa ekuqokelweni eBhodini noma ekutheni aqhubeke nokusebenza eBhodini, ngesizathu sokuthi –

- (a) ucwile noma ucwila ezikweletini ngendlela engenakuhlengeka;
- (b) akaphilile noma uke wangaphila ekhanda noma umenyazelwe inkantolo njengogula ngengqondo;
- (c) uhlomula ngqo noma ngandlela thile kunoma yisiphi isivumelwano somsebenzi neBhodi futhi uyehluleka ukudalula lokho kuhlomula kanye nendlela ahlomula ngayo ngokwalo Mthetho;
- (d) ungumuntu ozinto zakhe zilawulwa umthetho;
- (e) noma ngasiphi isikhathi uke wamiswa esikhundleni ngenxa yokungaziphathi kahle okuhlanganisa ukweba kanye nokukhwabanisa;
- (f) useke waboshwa futhi wagwetshwa isikhathi eside ngaphandle kokubonelelwa ngokuthi akhokhe inhlawulo, ngaphandle uma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, uma lithola incwadi efungelwe edalula imininingwane ephelile yecala elenziwe yilowo muntu ophakanyisiwe ukuze aqokwe, lingahoxisa lesi sigwebo ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukuhoxiswa ngokwalesi sigatshana kuphela eminyakeni emihlanu ngemuva kokuphela kwalesi sigwebo; futhi
- (g) uyehluleka ukudalula ukuhlomula ngokuhambisana nesigaba 7 noma ubambe iqhaza kwizinqubo zeBhodi ngesikhathi enokuhlomula okuhlongozwe esigabeni esishiwoyo.

### **Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi**

7.(1) Umuntu ophakanyiselwe ukuba asebenze eBhodini ngokwesigatshana 5(8) kumele, ezinsukwini eziyi-10 ephakanyisiwe, adalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho konke ukuhlomula ngqo noma ngandlela thile anakho kunoma iyiphi inkampani noma kwamanye amabhizinisi.

(2) Noma yikuphi ukwehluleka kophakanyisiwe ukudalula ukuhlomula ngokwezezimali kanye nokunye ukuhlomula ngokwesigatshana (1) kuyamhoxisa lowo ophakanyisiwe ngokwesigaba 6 ukuba acatshangelwe esikhundleni sokuba yilungu leBhodi.

(3) Noma yiliphi ilungu leBhodi kumele, ngaphambi kokungena esikhundleni futhi ekuqaleni kwayo yonke iminyaka yezimali yesiKhungo, lidalule ngokubhalwe phansi ukuhlomula ngqo noma ngandlela thile kwalo kunoma iyiphi inkampani noma ibhizinisi ngendlela ehlinzekelwe esigabeni 234(3)(a) soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(4) Uma ilungu leBhodi liqala ukuhlomula kunoma iyiphi inkampani noma ukuhlomula kwelinye ibhizinisi nganoma yisiphi isikhathi lisasebenza njengelungu leBhodi kumele, ngaphambi kwezinsuku eziyi-10 kusukela osukwini eliqale ngalo lokho kuhlomula, lidalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lokho kuhlomula.

(5) Noma yikuphi ukwehluleka ohlangothini lwelungu ukudalula ukuhlomula kwalo njengoba kuhlangozwe ezigatshaneni (3) no (4) kungaholela ekutheni kube nezizathu ezizwakalayo nezicacile zokuhoxiswa kokuqokwa kwalelo lungu ngokwesigaba 9(2).

(6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele ligcine irejista evuselelwe njalo yokuhlomula kwamalungu eBhodi azidalulile ngokwalesi sigaba.

### **Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi**

8. Abantu abaqokelwe eBhodini baba sesikhundleni isikhathi esiyiminyaka eyisihlanu noma esingaphansi njengoba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho linganquma futhi, ngokuncike esigabeni 5, bangakwazi ukuphinde baqokwe ekupheleni kwaleso sikhathi: Kuncike ekutheni akekho umuntu ongaphinde akhethwe ngemuva kokusebenza eBhodini isikhathi esiyiminyaka eyi-10 elandelanayo.

### **Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi**

9.(1) Ilungu leBhodi kumele lishiye isikhundla uma lihoxiswa ngokuhlangozwe esigabeni 6.

(2) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngemuva kokunikeza ilungu ithuba lokubeka udaba lwalo, noma ngasiphi isikhathi lingamisa esikhundleni lelo lungu uma, ngokubona kwalo, kunezizathu ezizwakalayo neziphoqayo zokwenza lokho.

(3) ILungu kumele lishiye isikhundla uma liphutha emsebenzini, ngaphandle kokunikezwa imvume yokuphutha kuqala yiBhodi, emihlanganweni emibili elandelayo yeBhodi lapho kwanikezwa isaziso ngendlela efanele kulelo lungu ngqo noma ngeposi.

(4) ILungu lingesula esikhundleni ngokuthi libhale isaziso sezinsuku ezingekho ngaphansi kwama-30 lisibhekise kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho: Kuncike ekutheni iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingasishaya indiva lesa saziso sokwesula.

(5) Noma nini lapho kuvela isikhala somsebenzi eBhodini, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kuncike esigabeni 5, kumele liqoke umuntu ozovala lesa sikhala somsebenzi kuleso sikhathi esisasele sokuba sesikhundleni kwelungu okuzoqokelwa kuso lowo muntu.

(6) Lapho iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lisebenzisa amandla alo ngokwesigatshana (2), uma lingahambisani nokulandela inqubo yokukhethwa kwamalungu eBhodi ebekwe kwisigaba 5, kodwa kuncike kwisigaba 5(2) no 5(3), lingaqoka abantu ukusebenza njengamalungu eBhodi okwesikhashana: Kuncike ekutheni -

(a) abantu abaqokwe ngokwalesi sigatshana angeke baqhubeke nokuba seBhodini isikhathi esingaphezu kwezinsuku ezingama-60 kusuka osukwini abaqokwe ngalo; futhi

(b) iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kuncike kwisigaba 5, kumele liqoke amalungu eBhodi ezinsukwini ezingama-60 kwenziwe ukuqokwa okuhlongozwe kulesi sigatshana.

#### **Ukumiswa okwesikhashana kwelungu leBhodi**

10. ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingamisa ilungu leBhodi ngesikhathi iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lisaphenya izinsolo, uma kutholakala ukuthi ziyiqiniso, okungaholela ekutheni ukuqokwa kwelungu kumiswe ngokwesigaba 9(2).

#### **Imihlangano kanye nezinqubo zemihlangano yeBhodi**

11.(1) Umhlangano wokuqala weBhodi kumele ubanjwe ngosuku nangesikhathi kanye nasendaweni enqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngemuva kwalokho yonke imihlangano elandelayo kumele ukuba inqunywe nguSihlalo.

(2) Isibalo esivumelekile ukuba sibambe umhlangano weBhodi yiningi lamalungu eBhodi.

(3) Inqubo emhlanganweni weBhodi kumele, kuncike ezinhlinzekweni zalesi sigaba, inqunywe ngusihlalo kubandakanya ilungelo lokunquma ukuthi noma yiluphi udaba okuxoxwa ngalo lungamiswa ngaphambi kokuthi luvotelwe.

(4) Usihlalo kumele engamele yonke imihlangano yeBhodi: Kuncike ekutheni uma engekho usihlalo uSekela kaSihlalo kumele engamele futhi esimweni uma usihlalo noma usekela kasihlalo engekho emhlanganweni weBhodi, amalungu akhona angakhetha, kuwona, umuntu ozobamba njengosihlalo ngesikhathi salowo mhlango.

(5) Isinqumo sebhodi kumele sithathwe yiningi lamavoti amalungu akhona emhlanganweni futhi, esimweni lapho kunokulingana kwamavoti kunoma yiluphi udaba, usihlalo unevoti elingujuqu ngaphezu kwevoti lakhe elejwayelekile.

(6) IBhodi kumele ihlele ukuba kugcinwe amaminithi emihlangano yayo.

(7) Asikho isinqumo seBhodi esingekwe semukelwe ngesizathu sokuba khona kwesikhala somsebenzi eBhodini: Kuncike ekutheni isinqumo sithathwa yiningi elidingekayo lamalungu eBhodi akhona futhi avumelekile ukuhlala njengamalungu eBhodi.

(8) Usihlalo, noma iningi lamalungu eBhodi, lingabiza umhlangano oyisipesheli weBhodi esimweni lapho izinhlinzeko zalesi sigaba zihambisana nezinguquko ezidingekayo.

(9) IBhodi, ngokubona kwayo, ingavumela amalungu omphakathi ukuba ethamele umhlangano weBhodi.

#### **Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi**

12.(1) Ilungu leBhodi kumele lizihoxise odabeni oluphenywayo, olucutshungulwayo noma oluvotelwayo yiBhodi uma kuvela okukodwa noma ngaphezulu kokulandelayo –

(a) uma lona linokuthinteka ngqo noma ngandlela thile; noma

(b) uma kunamathuba okuthi kungenzeka lithinteka ngqo noma ngandlela thile.

(2) Noma yingasiphi isikhathi lapho kuqhubeka umhlangano weBhodi kuvela ukuthi ilungu elikhona kulowo mhlangothini liyathinteka noma ngase kube liyathinteka ngokuhlongozwe esigatshaneni (1), lelo lungu kumele ngokushesha lidalule indlela elithinteka ngayo bese liwushiya umhlangano.

(3) Noma yikuphi ukudalulwa okwenziwe ngokwesigatshana (1) kumele ukuba kuqoshwe emaminithini alowo omhlangano.

(4) Uma kuvela emva kwalokho ukuthi iBhodi yathatha isinqumo odabeni lapho kwaba nokwehluleka ngasohlangothini lelungu ukudalula ukuthinteka okuhlongozwe esigatshaneni (1), lesi sinqumo seBhodi asamukelekile.

(5) Ngokwezinhloso zalesi sigaba “**ukuthinteka ngandlela thile**” kuhlenganisa, phakathi kokunye, ukuthinteka –

- (a) kukazakwabo welungu ebhizinisini, umhlobo noma umqashi, ngaphandle koMbuso;
- (b) komlingani welungu, kowakwalo ngokomshado wesintu, noma kongumasihlalisane noma kwelihlalisana naye sabantu abashadile; noma
- (c) kwengane, komzali noma kozalana nalo.

#### **Ukuholelwa kwamalungu eBhodi**

13.(1)(a) Kuncike kwisigatshana 2(a) ilungu leBhodi lingakhokhelwa ezimalini zeKhomishana iholo kanye nezibonelelo njengalokhu kunganquma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) ILungu leBhodi eliholelwayo, elithola izibonelelo noma elithola eminye imihlomulo ngokwesikhundla salo noma ngokomsebenzi walo –

- (i) kuhulumeni kazwelonke;
- (ii) kuhulumeni wesifundazwe;
- (iii) kumasipala; noma
- (iv) ebhizinisini, kumgwamanda noma esikhungweni lapho uhulumeni kazwelonke noma wesifundazwe ebandakanyeka ekulawuleni,

futhi eliqhubeka nokuthola lelo holo, lezo zibonelelo noma eminye imihlomulo ngesikhathi lisasebenza njengalungu leBhodi, lingathola iholo kanye nezibonelelo kuphela okukhulunywe ngakho endimeni (a)

ngendlela edingekayo ukulibeka esimweni sezimali ebelivele lizoba kusona ukube belingaqashiwe kuleso sikhundla noma kulowo msebenzi.

(2)(a) Ilungu leBhodi kanye nomuntu owengeziwe eBhodini, maqondana nemisebenzi yakhe njengelungu noma njengelungu elengeziwe eBhodini, angathola isibonelelo ezimalini zesiKhungo njengezindleko zokuhamba ngokomsebenzi ezidalwe ukwethamela kwakhe umhlangano weBhodi.

(b) ILungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume ngezinqubo, kubandakanya izindlela zokulawula, ukuze kuphathwe, kuhanjise futhi kuqhutshwe izimangalo zezindleko zokuhamba ngokomsebenzi ezihlongozwe endimeni (a).

### **Ukusungulwa kwamakomidi azosiza iBhodi**

**14.(1)** IBhodi ingasungula amakomidi aqukethe ilungu elilodwa noma ngaphezulu kumalungu ayo ukuze –

(a) asize iBhodi ekusetshenzisweni kwanoma yimaphi amandla, ekwenziweni kwemisebenzi noma ekugcinweni kwezibopho zesiKhungo okuhlongozwe esigabeni 4; noma

(b) aphenye noma aqhube ucwaningo kunoma yiluphi udaba olungena ngaphansi kwezinjongo zeBhodi ngokwalo Mthetho.

(2) Uma kusungulwa ikomidi elihlongozwe esigatshaneni (1), iBhodi kumele –

(a) inqume indlela yokusebenza kwalelo komidi kubandakanya, phakathi kokunye, ukuthi kumele yini noma cha ukuthi lelo komidi liqedwe uma seliphothule umsebenzi noma imisebenzi eliyinqunyelwe yiBhodi;

(b) iqoke uSihlalo walelo komidi okumele abe yilungu leBhodi; futhi

(c) inqume ukuthi ingabe kufanele noma cha ukuthi lelo komidi lifake abantu abangesiwo amalungu eBhodi, futhi uma kunjalo, ngaphansi kwayiphi imibandela nemigomo.

(3) IBhodi, noma ngasiphi isikhathi, ingamisa ikomidi nanoma yikuphi ukujutshwa kwekomidi, kungakhathaleki ukuthi lelo komidi seliwuqedile noma cha umsebenzi noma imisebenzi eliyinikezwe yiBhodi.

(4)(a) IsiKhulu esiPhezulu singethamela futhi sibambe iqhaza, kodwa singavoti, emihlanganweni yalelo komidi.

(b) Ilungu labasebenzi beBhodi, uma limenywe yilelo komidi, lingawuhambela umhlangano walelo komidi.

**Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi**

15.(1) IBhodi, uma inombono wokuthi umuntu othize angalisiza maqondana nanoma yimiphi imisebenzi yalo nasekusebenziseni amandla alo, lingamengeza lowo muntu ngaleyo nhloso.

(2) Umuntu owengezwe ngokwesigatshana (1) akavumelekile ukuvota emhlanganweni webhodi noma wamakomidi.

(3) Umuntu owengezwe ngokwesigatshana (1) angaholelwa iholo lalokho noma isibonelelo ezimalini zesiKhungo ngendlela enganqunywa yiBhodi ngemuva kokubonisana neLungu loMkhandlu elibhekele ezezimali.

**ISAHLUKO 4****ISIKHULU ESIPHEZULU KANYE NABASEBENZI BE-DUBE TRADEPORT CORPORATION****IsiKhulu esiPhezulu se-Dube TradePort Corporation**

16.(1) IBhodi, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kumele iqoke isiKhulu esiPhezulu se-Dube TradePort Corporation.

(2)(a) IsiKhulu esiPhezulu siqokelwa esikhundleni isikhathi esingeqile eminyakeni emihlanu ngemigomo nemibandela enqunywe yiBhodi, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(b) IsiKhulu esiPhezulu, ngokugunyaza kwelungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho singaphinde siqokwe, isikhathi esinganqunywa yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(3)(a) Ukuqokwa kwesiKhulu esiPhezulu kuncike ekuphothulweni kwesivumelwano sokusebenza esibhaliwe esingena kuso ne-Dube TradePort Corporation.

(b) IBhodi kanye nesiKhulu esiPhezulu, ngokubhaliwe nangesivumelwano, bangachibiyela isivumelwano sokusebenza.

(4) Ngezinhliso zokudalula ukuhlomula ngokwezezimali nokunye ukuhlomula, izinhlinzeko zesigaba 7 zisebenza nezinguquko ezidingekile esiKhulwini esiPhezulu ngaphandle kokuthi isiKhulu esiPhezulu kumele sidalule ukuhlomula kwaso eBhodini.

(5) Isikhulu esiPhezulu siyilungu elihola iBhodi kodwa asinalo ilungelo lokuvota emhlanganweni yayo.

### **Imisebenzi yesikhulu esiPhezulu**

**17.(1) Isikhulu esiPhezulu sibhekele –**

(a) ukulawulwa kanye nokuphathwa kwezimali ze-Dube TradePort Corporation ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kuncike ekulawuleni kweBhodi;

(b) ukuqokwa kwamalungu abasebenzi be-Dube TradePort Corporation okuhlongozwe esigabeni 19(1) ngokubonisana neBhodi;

(c) ukunquma, ngokubonisana neBhodi, ngenqubo yokuziphatha, esetshenziswa yisiKhulu esiPhezulu, kubo bonke abasebenzi be-Dube TradePort Corporation kanye nengokomthetho ngezinhloso zokuqondiswa kwezigwegwe, ukuqinisekisa –

(i) ukuhambisana nomthetho osebenzayo, kubandakanya lo Mthetho;

(ii) ukusetshenziswa ngokufanele, ngokunesidingo nangokunenzuzo kwezimali nezinsiza ze-Dube TradePort Corporation;

(iii) ukugqugquzelwa kanye nokugcinwa kwezinga eliphezulu lenqubomgomo mayelana nemigomo yokusebenza ngendlela;

(iv) ukunqanda ukushayisana kwemibono;

(v) ukuvikelwa kolwazi oluyimfihlo olugcinwe yisiKhungo; kanye

(vi) nezinga, nokwethembeka, nokuzimela, nobuqotho, nenqubomgomo kanye nokusebenza ngokulingene;

(d) ukulawulwa kokuziphatha kwabasebenzi abaqokwe ngokwendima (b) futhi kumele, ngalezo zinhloso, kwenziwe yiBhodi;

(e) ukulondolozwa kanye nokugcinwa kwerejista yokuhlomula okumenyezwe yilungu labasebenzi be-Dube TradePort; kanye

(f) nokuqinisekiswa kokuhlangabezana kwe-Dube TradePort Corporation nezihlinzeko zoMthetho wezokuPhathwa kweziMali zikaHulumeni, kanye nanoma yimiphi eminye imithetho esebenzayo.

(2) Isikhulu esiPhezulu sinesibopho sokubika kwiBhodi futhi kumele sibukele iBhodi ngemisebenzi ye-Dube TradePort Corporation.

(3) Uma isikhulu esiPhezulu nganoma yisiphi isizathu singakwazi ukwenza imisebenzi yaso, iBhodi kumele, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, liqoke

omunye umuntu ozoba yiBamba lesiKhulu esiPhezulu kuze kube isiKhulu esiPhezulu siyakwazi ukuba siqale ukwenza leyo misebenzi.

#### **Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu**

**18.(1)** Isikhulu esiPhezulu sishiya isikhundla –

- (a) lapho sesula, noma kuba nokwesula;
- (b) ngenkathi, ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), umuntu ophethe leso sikhundla eba ngohoxiswayo ukuba asebenze njengomqondisi wenkampani; noma
- (c) lapho sixoshwa esikhundleni ngokwesigatshana (2).

(2) IBhodi ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ingamisa umsebenzi wesikhulu esiPhezulu ngokuhambisana nomthetho wokuqasha nowabasebenzi osebenzayo.

#### **Abasebenzi be-Dube TradePort Corporation**

**19.(1)** Isikhulu esiPhezulu kumele, kuncike esigatshaneni (2), siqashe amalungu abasebenzi be-Dube TradePort Corporation uma kuba nesidingo esifanele –

- (a) sokusiza ekufezeni imisebenzi yayo ngokwalo Mthetho; kanye
- (b) nokusiza iBhodi ngomsebenzi othintana nokwenziwa yiBhodi emisebenzini yayo.

(2) IBhodi kumele inqume inqubomgomo yezindaba eziphathelele nabasebenzi kumalungu abasebenzi be-Dube TradePort Corporation, kubandakanya isikhulu esiPhezulu.

(3) Ngokwezinhloso zokudalulwa kokuhlomula ngakwezezimali noma okunye ukuhlomula, nangokuncike esigabeni 17(1)(e), izihlinzeko zesigaba 7(3), (4) kanye no (5) zisebenza noshintsho oludingekile kumalungu abasebenzi be-Dube TradePort Corporation.

(4) Isikhulu esiPhezulu kumele sigcine irejista evuselelwe yokuhlomula kwamalungu abasebenzi be-Dube TradePort Corporation okudalulwe ngokwesigatshana (3).

(5) IBhodi, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kumele linqume -

- (a) amaholo nezimo zokusebenza; kanye
- (b) nempesheni nemihlomulo yomhlalaphansi,

kwesikhulu esiPhezulu namanye amalungu abasebenzi be-Dube TradePort Corporation.

**Ukusiswa noma ukudluliselwa kwabasebenzi be-Dube TradePort Corporation**

20. I-Dube TradePort Corporation ingasebenzisa usizo lwabantu abasisiwe noma abadluliselwe besuka kuhulumeni ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelo No. 103 sika 1994).

**ISAHLUKO 5**

**ISU LOKUSEBENZA, IMIKHOMBANDLELA YENQUBOMGOMO KANYE NEMIGUDU EFALENE**

**ISu lokuSebenza**

21.(1) IBhodi kumele ezinyangeni eziyisithupha iqalile ukusebenza ngokwalo Mthetho, ngemuva kokubonisana nesikhulu esiPhethe, isungule iSu lokuSebenza.

(2) ISu lokuSebenza elihlongozwe kwisigatshana (1), kumele lubandakanye, phakathi kokunye, indawo yokugcina impahla enkulu, indawo yezakhiwo, indawo yokuhweba, indawo yezolimo, indawo yezithuthi zomphakathi, inxanxathela yemigwaqo, ujangtshi wesitimela, imizila yezithuthi zempahla nezabantu ngaphakathi esiFundeni se-Dube TradePort.

(3) ISu lokuSebenza kumele livuselelwe uma kuba nesidingo ukuze kulangantshezwane nezinhloso ze-Dube TradePort Corporation.

(4) ISu lokuSebenza kumele ligunyazwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(5) ISu lokuSebenza kumele, okungenani ngonyaka ka 2010, 2035 noka 2060, lihlinzeke -

(a) ngesithombe esicacile sohlaka lokuthuthukiswa kwe-Dube TradePort;

(b) izinhloso zentuthuko kanye nokuhlelwa kwamasu okusebenza kwe-Dube TradePort; kanye

(c) nokuthuthukiswa, ukuklanywa, ezokuthutha kanye nezidingo zengqalasizinda eziningi ze-Dube TradePort Corporation.

(6) Lapho yenza imisebenzi yayo ngokwalo Mthetho, iBhodi kumele isebenzise iSu lokuSebenza.

**ImiKhombandlela yeNqubomgomo nemiGudu eFanele**

22.(a) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingabeka imigudu efanele ukuze kufezekiswe izinhloso ze-Dube TradePort Corporation futhi ingakhipha imikhombandlela yenqubomgomo eBhodini.

(b) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingahoxisa noma lichibiyele imikhombandlela yenqubomgomo ebekwe ngokwesigaba (a).

**ISAHLUKO 6****UXHASOMALI NOKUPHATHWA KWEZIMALI ZE-DUBE TRADEPORT CORPORATION****Uxhasomali lwe-Dube TradePort Corporation**

23.(1) Izimali zesiKhungo ziqukethe –

- (a) imali esiyabelwe yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshalwe yi-Dube TradePort Corporation; kanye
- (c) nengeniso etholakale ngokusemthethweni kunoma yimuphi umthombo.

(2) I-Dube TradePort Corporation kumele sizisebenzise izimali zaso –

- (a) ngokukhokhela amaholo, izibonelelo zokuphila kanye nezindleko zokuhamba –
  - (i) zamalungu eBhodi;
  - (ii) zesiKhulu esiPhezulu; kanye
  - (iii) nezamalungu abasebenzi be-Dube TradePort Corporation; kanye
- (b) nokukhokhela izindleko eziphathelele –
  - (i) nokuqhutshwa kwansuku zonke kanye nokuphathwa kwe-Dube TradePort Corporation kanye neBhodi;
  - (ii) ukusebenza kanye nokuphathwa kwe-Dube TradePort Corporation; kanye
  - (iii) nokwenziwa kwemisebenzi namajoka eBhodi nokuthi isiKhungo sisebenzise amandla aso ngokwalo Mthetho.

(3) Isikhulu esiPhezulu, ngokuvumelana neBhodi kumele –

- (a) sivule i-akhawunti egameni le-Dube TradePort Corporation esikhungweni esibhaliswe njengebhangwe ngokoMthetho wamaBhange, 1990 (uMthetho No. 94 ka 1990); futhi
- (b) sifake lapho yonke imali etholwe ngokwesigatshana (1).

(4) IBhodi ingatshalwa izimali ezifakwe kwi-akhawunti yayo ezingadingi ukusetshenziswa ngokushesha: Kuncike ekutheni iBhodi kumle ithathe izinyathelo ezifanele ukuqinisekisa ukuthi utshalomali akulona oloholo olungaqindakali.

(5) I-Dube TradePort noma iBhodi benqatshelwe ukuboleka imali noma ukukhipha iziqinisekiso, izinxephezelo noma izibambiso noma ukungena kunoma yinhloboni yokusetshenziswa kwemali okwenqatshelwe ngaphandle uma lokho kuboleka, isiqinisekiso, isinxephezelo, isibambiso noma okunye ukusetshenziswa kwemali kugunyazwe ngokwalo Mthetho futhi kungashayisani noMthetho wokuPhathwa kweziMali zikaHulumeni.

### **Ukuphathwa kwezimali**

**24.(1)** IsiKhulu esiPhezulu kumele senze ukuba kugcinwe amabhuku agcwele futhi afanele e-akhawunti kanye nayo yonke imininingwane edingekile ephathelene nayo.

(2) IsiKhulu esiPhezulu kumele siqinisekise ukuthi isabelomali sonyaka se-Dube TradePort Corporation, izinhlelo zenhlangano, imibiko yonyaka kanye nezitatimende zezimali ezicwaningiwe ziyalungiswa futhi zilethwa ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni.

(3) IsiKhulu esiPhezulu kumele, ezinyangeni ezintathu ngaphambi kokuba kuphele unyaka wezimali, silethe ukuze kuvunywe yiBhodi –

(a) uhlelo lwebhizinisi lweBhodi, oluqukethe izinjongo ezilinganisiwe kanye neminye imininingwane ehlongozwe esigabeni 25(3)(b) kanye no (c); kanye

(b) nesitatimende sesilinganiso senzuzo kanye nezindleko zeBhodi, maqondana neminyaka emithathu elandelayo yezimali.

(4) Kunoma yimuphi unyaka wezimali isiKhulu esiPhezulu singaletha eBhodini ukuze kugunyazwe izitatimende zemali eyengeziwe noma esetshenzisiwe engenisweni noma ezindlekweni ze-Dube TradePort Corporation zangalowo nyaka wezimali.

(5) I-Dube TradePort Corporation angeke sizibandakanye kunoma yisiphi isivumelwano sezimali esingaphezu kwesabelomali esisinikeziwe kanye nesikuzuzile eceleni.

(6) IsiKhulu esiPhezulu –

(a) ngokuvuma kweBhodi, singatshala noma iyiphi ingxenye engasetshenziswa yezimali zayo eNhlanganweni yokuTshalwa kweziMali zikaHulumeni noma kwesinye isikhungo esihlukanisiwe noma esibhalisiwe izikhathi ngezikhathi nguMnyango kaMgcinimafa wesiFundazwe njengesisoSohlwini olungu "A1" lwezikhungo zezimali; noma

(b) ngokugunyaza kweBhodi, singahlela leyo ngxenye ngenye indlela.

(7) IsiKhulu esiPhezulu ngokugunyaza kweBhodi, singasungula izikhwama eziseceleni futhi sifake kuzo lezo zimali njengalokhu iBhodi ingavuma.

### **Ukucwaningwa kwamabhuku kanye nombiko wonyaka**

**25.(1)** UMcwaningimabhuku-Jikelele kumele acwaninge izitatimende zemali ze-Dube TradePort Corporation.

(2)(a) IBhodi kumele yethule umbiko ngezinto ezenziwa yi-Dube TradePort Corporation ngesikhathi sonyaka wezimali kwiSishayamthetho sesiFundazwe ezinyangeni ezinhlanu ngemuva kokuphela konyaka wezimali.

(b) Ezinyangeni ezinhlanu ngemuva kokwethulwa kombiko, izithunywa ezibandakanya osihlalo bobabili beBhodi namalungu okungenani amabili eBhodi kumele zichazele iKomidi lesiShayamthetho elibhekele ezezimali ngombiko wonyaka.

(3) Umbiko kumele –

(a) ubandakanye isitatimende esikhombisa imali esisele emalini engenile nesetshenzisiwe esigxivizwe nguMcwaningimabhuku-Jikelele;

(b) uveze indima i-Dube TradePort Corporation eyikhathulile noma efinyelele kuyo ngezinhloso zayo ngokususela esigabeni 3 kanye nesilinganiso sezinjongo njengoba kubekiwe kuhlelo lwebhizinisi kanjengoba kuhlangozwe esigabeni 24(3)(a) ngesikhathi salowo nyaka wezimali othintekayo; futhi

(c) uqukathe imininingwane efanele yokusebenza maqondana nezomnotho, ukunikezelwa kwezinsiza okube wusizo nempumelelo kanye nokuqhathanisa phakathi kokuhleliwe kanye nokwenziwe okukhombisayo njengoba kubekiwe kulolo hlelo lwebhizinisi.

### **Unyaka wezimali we-Dube TradePort Corporation**

**26.** Unyaka wezimali we-Dube TradePort Corporation uqala mhla lu-1 kuMbasa ngalowo nyaka futhi uphela mhla zinga-31 kuNdasa ngonyaka olandelayo.

**Impahla engenakususwa**

27. I-Dube TradePort Corporation ngokwenqubomgomo kanye nangezinqubo ezinqunywe yiBhodi futhi nangokuvuma kweLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ingathola, ingacina noma ingalahla impahla engenakususwa ekusebenzeni kwayo.

**Ukuthathelwa izinyathelo zomthetho kwe-Dube TradePort Corporation**

28.(1) Noma yikuphi ukuthathelwa izinyathelo zomthetho okubhekiswe kwi-Dube TradePort Corporation kumele kwenziwe ngokuhambisana noMthetho wesiKhungo sokuThathelwa iziNyathelo zoMthetho kweziNhlaka ezithile zikaHulumeni, 2002 (uMthetho No. 40 ka 2002).

(2) I-Dube TradePort Corporation, ngokwezihloso zesigatshana (1), ithathwa njengohlaka lukahulumeni oluhlongozwe endimeni (c) yencazelo yalokho okusesigabeni 1 salowo Mthetho.

**ISAHLUKO 7****IZINHLENGEKO EZIJWAYELEKILE****Ukuphepha kolwazi oluyimfihlo olugcinwe i-Dube TradePort Corporation**

29.(1) Kuncike kuMthethosisekelo, uMthetho wokuGqugquzelwa kokuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), akekho umuntu ongadalula noma yiluphi ulwazi olulethwe kwi-Dube TradePort Corporation oluphatelene nanoma yikuphi okuthinta umthetho noma umyalelo, ngaphandle –

- (a) uma eyalelwe ukuba enze lokho yinkantolo yezomthetho;
- (b) noma ngaphandle uma umuntu okhipha lowo myalelo enikeze imvume ngokubhalwe phansi.

(2) Akekho umuntu ongadalula noma yiluphi ulwazi olugcinwe kwirejista ehlongozwe esigabeni 7, 16(4) kanye no 19(4) ngaphandle uma lokho kudalulwa –

- (a) kungokwanoma yimuphi umthetho ophoqeelayo noma ogunyaza lokho kudalulwa;
- (b) kunesidingo esibalulekile sokusebenza kwe-Dube TradePort Corporation; noma
- (c) kwenziwe ngezinhloso zokubheka, zokuhlola, zokuphenya noma zokucubungula noma yikuphi okwenziwayo okuphatelene ne-Dube TradePort Corporation, nanoma yiluphi ilungu labasebenzi be-Dube TradePort Corporation.

(3) Noma yimuphi umuntu owephula isigatshana (1) noma (2) unecala.

### **Ukuhlakazwa kwe-Dube TradePort Corporation**

**30.** I-Dube TradePort Corporation liyohlakazwa kuphela ngokoMthetho wesiShayamthetho sesiFundazwe

### **Ukusetshenziswa kwegama le-Dube TradePort Corporation**

**31.**(1) Akekho umuntu, ngaphandle kokugunyazwa okubhalwe phansi yi-Dube TradePort Corporation, noma ngayiphi indlela ongamela noma asebenzise igama le-Dube TradePort, isifinyezo, uphawu, umdwebo noma impahla esetshenziswa noma engeye-Dube TradePort Corporation.

(2) Akekho umuntu ngokuphambene ongathi usebenza egameni le-Dube TradePort Corporation.

(3) Wonke umuntu owephula isigatshana (1) noma (2) unecala.

### **Ukudluliselwa kwamandla**

**32.**(1) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingadlulisela kwiNhloko yoMnyango –

(a) noma yimaphi amandla anikezwe iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwamandla okwenza imithethonqubo okukhulunywa ngawo esigabeni 33; noma

(b) noma yimuphi umsebenzi odingeka kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwanoma yimiphi imisebenzi ephathelene nokuqokwa, kanye nokumiswa kokusebenza, kwamalungu eBhodi okuhlongozwe esigabeni 5(2) kanye no 9(2).

(2) IBhodi, ngesisombululo esikhethekile, lingadlulisela esiKhulwini esiPhezulu noma kwilungu labasebenzi be-Dube TradePort Corporation, noma yimaphi amandla noma imisebenzi edingeka noma ebekelwe i-Dube TradePort Corporation ngokwalo Mthetho.

(3) Isikhulu esiPhezulu singadlulisela kunoma yiliphi ilungu labasebenzi be-Dube TradePort Corporation noma yimaphi amandla noma umsebenzi odingeka noma ophathelene nesiKhulu esiPhezulu ngokwalo Mthetho, ngaphandle kwanoma yimuphi umsebenzi wesikhulu esinesibopho sokubika se-Dube TradePort Corporation.

(4) Noma yimaphi amandla noma umsebenzi odluliselwe ngokwesigatshana (1), (2) noma (3) kumele ukuba usetshenzwe noma wenziwe ngokweyame kuleyo mibandela njengalokhu umuntu noma umgwamanda owenze ukudluliselwa ekubone kunesidingo.

(5) Noma yikuphi ukudluliselwa kwamandla okushiwoyo esigatshaneni (1), (2) noma (3) –

(a) kumele kubhalwe phansi;

(b) kungavimbeli umuntu noma umgwamanda owenze ukudluliselwa kwamandla ekutheni basebenzise amandla noma benze lowo msebenzi; futhi

(c) noma ngasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhaliwe yilowo muntu noma umgwamanda.

### **Imithethonqubo**

**33.** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuthintana neBhodi futhi ngokwenza isaziso kwi*Gazethi*, lingenza imithethonqubo ephathelene –

(a) nanoma yiluphi udaba olungabhalwa noma okumele lubhalwe ngokwalo Mthetho; noma

(b) nanoma yikuphi ukuphathwa noma izindaba eziphathelene nenqubo edingekile ukuba iqalise kwizinhlinzeko zalo Mthetho.

### **Ukuhlakazwa kwe-Dube TradePort Corporation kanye nezinhlinzeko zezikhashana eziphathelene nalokho**

**34.(1)(a)** iNkampani, i-Dube TradePort, eneNombolo yokuBhaliswa kweziNkampani 2002/002810/08, esungulwe ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), kumele ihlakazwe ngokuzikhethela futhi ibhaliswe kabusha.

(b) Amalungu eNkampani kumele, ekuhlakazweni kweNkampani okukhulunywa ngakho kwindima (a), enze ngokushesha nangokucophelela futhi kumele, phakathi kokunye, ahambisane nezigaba 349 kanye no 350 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(2) Ngelanga lokuhlakazwa kweNkampani i-Dube TradePort okuhlongozwe esigatshaneni (1), zonke izimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho, kubandakanya noma iyiphi ingxenye engasetshenzisiwe yezimali eziyinzuzo noma ezitholwe yiNkampani i-Dube TradePort zidluliselwa, futhi zitshalwa, kwi-Dube TradePort Corporation esungulwe ngokwesigaba 2.

(3) I-Dube TradePort Corporation, maqondana nezimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho nezimali okukhulunywe ngakho esigatshaneni (2), ngazo zonke izinhloso ingundlalifa kwezomthetho, kanye nondlalifa egameni, leNkampani i-Dube TradePort.

(4) Amalungu eBhodi yeNkampani i-Dube TradePort kumele asebenze njengamalungu eBhodi yesiKhungo agunyaziwe kuze kube yisikhathi lapho iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwesigaba 5(1)(a) liyoqoka khona iBhodi ngokwalo Mthetho.

(5) Onke amalungu abasebenzi beNkampani i-Dube TradePort kumele, ezinyangeni eziyisithupha kuqale ukusebenza kwalo Mthetho, baqashwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ukuze badluliselwe kwi-Dube TradePort Corporation ngosuku olunqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(6) Amaholo, imihlomulo kanye nezibonelelo ezinikezelwa yiLungu lomkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuhambisana nesigatshana (5), akungabi ngaphansi kwalokhu obekukhokhelwa ilungu labasebenzi beNkampani i-Dube TradePort, ngemuva kokudluliselwa kwalo.

(7) Ngokwenhloso yoMthetho weNtela, 1962 (uMthetho No. 58 ka 1962), akukho ukushintshwa komqashi okuyothathwa njengokwenzekile maqondana namalungu abasebenzi abavuma umsebenzi ohlongozwe esigatshaneni (5).

(8) Ngenkathi umuntu eba yilungu labasebenzi be-Dube TradePort Corporation ngokwesigatshana (5) –

- (a) ugcina izinsuku zakhe zekhefu abevele enazo kuze kube yilesi sikhathi ashintshwe ngaso, okuhlelwe ngokuhambisana nezimo zokuqasha ze-Dube TradePort Corporation; futhi
- (b) noma yiluphi uphenyo obeluvele lukhona noma obeluhlosiwe ukuba lube khona maqondana nokungaziphathi kahle okwenziwe yilowo muntu ngaphambi kosuku lokudluliselwa kwakhe kumele kwazeke noma kuvezwe yi-Dube TradePort Corporation futhi iBhodi kumele imthathele izinyathelo ezifanele lowo muntu othintekayo ngokuhambisana nomthetho, nenqubomgomo kanye nemibandela yomsebenzi noma yokusebenza Abelwe yona ngokushesha ngemuva kokushaya kosuku lokudluliselwa kwakhe.

### **Amacala ajwayelekile**

35.(1) Ilungu leBhodi, ilungu labasebenzi, umeluleki, i-ejenti nanoma yimuphi omunye umuntu oqashiwe noma omele i-Dube TradePort Corporation unecala uma emukela ngqo noma ngandlela thile noma yikuphi ukugwazelwa nanoma emukela noma iyiphi imali noma umklomelo okungagunyaziwe kunoma

yimuphi umuntu onokuxhumana okuthile nanoma yikuphi okwenziwa noma okunikezelwa yi-Dube TradePort Corporation.

(2) Noma yimuphi umuntu unecala uma, maqondana noma ngokuphathelene nanoma yikuphi okwenziwa noma okunikezelwa yi-Dube TradePort Corporation, egwaza noma efuna ukugwaza noma efaka umoya wokukhohlakala noma ehlosa ukufaka umoya wokukhohlakala kwilungu leBhodi, ilungu labasebenzi, umeluleki, i-ejenti nanoma yimuphi umuntu oqashiwe noma oyibamba egameni le-Dube TradePort Corporation.

(3) Noma yimuphi umuntu ngokungemthetho othi ugunyaziwe ukuba abize noma athathe izimali, iminikelo noma okunikelwayo egameni, noma ngokuyalelwa yi-Dube TradePort Corporation unecala.

(4) Noma yimuphi umuntu owephula noma ohlukela ukuhambisana nezinhlinzeko zalo Mthetho nanoma yimuphi umthethonqubo ongaphansi kwawo, unecala.

#### **Izinhlawulo**

36. Noma yimuphi umuntu otholakala enecala ngokwalo Mthetho uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni eyi-5 noma kokubili inhlawulo nesigwebo.

#### **Isihloko esifishane**

37. Lo Mthetho ubizwa ngokuthi uMthetho waKwaZulu-Natali we-Dube TradePort Corporation, 2009.

**I-MEMORANDAMU NGEZINHLOSO ZOMTHETHOSIVIVINYO WE-KWAZULU-NATAL DUBE  
TRADEPORT, 2009**

**1. ISENDLALELO ESEJWAYELEKILE NEZINHLOSO ZOMTHETHOSIVIVINYO**

1.1 UMnyango ufuna ukusungula uphinde ubhalise i-Dube TradePort Corporation, njengeBhizinisi likaHulumeni wesiFundazwe ukuze -

(a) kubhekelelwe imibono yesiShayamthetho sesiFundazwe mayelana nokuba semthethweni kwe-Dube TradePort Corporation; futhi

(b) kuhanjiswa nemikhombandlela yeHhovisi likaMgcinimafa kaZwelonke yokuguqulwa kwawo wonke amabhizinisi kahulumeni ekubeni yizinkampani zesigaba 21 abe yimigwamanda esemthethweni eyakhiwe futhi yabhaliswa kanjalo ngokwezinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999) njengoba uchitshiyelwe.

1.2 Ngenxa yalokhu okungasenhla, lo Mthethosivivinyo uhlose -

(a) ukuhlinzekela ukusungulwa kwe-Dube TradePort Corporation;

(b) ukunquma indlela okumele kuphathwe ngayo, kubuswe ngayo, kuqashwe ngayo futhi kuxhaswe ngayo ngezimali i- Dube TradePort Corporation;

(c) ukuhlinzekela ukuhlakazwa kwe-Dube TradePort Company;

(d) Ukuhlinzekela ukuthi i-Dube TradePort Corporation ibe indlalifa esemthethweni ye-Dube TradePort Company; kanye

(e) nokuhlinzekela okunye okuphathelene nalokho.

**2. UKUCHAZWA KWESIGABA NESIGABA**

**IS AHLUKO 1**

**IZINCAZELO**

**Isigaba 1:**

Sihlinzekela izincazelo zamagama asetshenzisiwe kulo Mthethosivivinyo.

**IS AHLUKO 2**

**UKUSUNGULWA KWE-DUBE TRADEPORT CORPORATION**

**Isigaba 2:**

Sihlinzekela ukusungulwa kwe-Dube TradePort Corporation njengeBhizinisi likaHulumeni wesiFundazwe ngokoMthetho wokuPhathwa kweziMali zikaHulumeni.

**Isigaba 3:**

Sibeka izinhloso ze-Dube TradePort Corporation, okuyilezi:

- (a) ukusungula i-Dube Tradeport;
- (b) ukuphatha noma ukutshala izimali emiklamweni ehambisana ne-Dube Tradeport;
- (c) ukulungiselela ukuthuthukiswa komnotho esiFundazweni ngokusebenzisa i-Dube Tradeport;
- (d) ukuheha utshalomali lwesikhathi eside esiFundazweni;
- (e) ukuhlinzekela ukuhanjiswa kwempahla emazweni angaphandle nempahla engenayo kusetshenziswa i-Dube Tradeport; kanye
- (f) nokusebenzisa amandla, ukugcina izibopho nokwenza imisebenzi okubalulwe esigabeni 4.

**Isigaba 4:**

Sihlinzekela amandla, izibopho nemisebenzi ye-Dube TradePort Corporation okubandakanya isigaba 4(1) esihlinzeka ngokuthi inkampani kumele ngokusebenzisa iBhodi -

- (a) iqinisekise ukuhlelwa okufanele, ukusungulwa, uhlelo lokwakha, ukwakhiwa, ukuqhutshwa, ukuphathwa nokulawulwa kwe-Dube TradePort;
- (b) iqalise ukusebenza kweSu lokuSebenza lokukhulisa umnotho wesifundazwe;
- (c) iyogcina futhi isebenzise izinsiza enazo ngokuhambisana nezinhloso kanye nezidingo zeSu lokuSebenza;
- (d) iyohlona, isungule, iqhakambise futhi igugquzele amathuba okutshalwa kwezimali e-Dube TradePort;
- (e) iyoqala amasu okutshala izimali e-Dube Tradeport; futhi
- (f) isungule isu lesifundazwe lokutshalwa kwezimali nempahla ephumayo.

Isigaba 4(2) siphinde sihlizeke ngokuthi i-Dube TradePort Corporation:

- (a) ngenhloso yokusungula, yokugququzela, yokuqhakambisa noma yokutshala izimali esiFundazweni, nangemuva kokugunyazwa okubhalwe phansi kuqala yiLungu Mkhandlu oPhethe -
  - (i) ingasungula futhi iqhube inkampani eyodwa noma ngaphezulu, imifelandawonye noma eminye imigwamanda efanayo;
  - (ii) ingangena esivumelwaneni sokusebenza ngokuhlanganyela ezinye izikhungo, nomasipala, nezinhlangano, nemigwamanda noma abantu; futhi
  - (iii) ingaqoqa izimali ngosizo lweminikelo nangoxhasomali;
- (b) ngokugunyazwa okubhalwe phansi kuqala yiLungu loMkhandlu oPhethe, ingathenga noma idayise amasheya kanye nokunye enakho ezinkampanini, emabhizinisini noma kweminye imigwamanda efanayo;
- (c) ingaxhumana nanoma yiliphi ibhizinisi, uhlaka lombuso, inhlangano noma isikhungo esimisebenzi yaso noma esizinhloso zaso zinomthelela noma ziyahambisana

nokuthuthukiswa, nokugqugquzelwa, nokudayiswa kanye nokutshalwa kwezimali esiFundazweni;

(d) ingaphenya futhi yenze izincomo eMkhandlwini oPhethe, ngeLungu loMkhandlu oPhethe nganoma iluphi udaba olunokuthinta ngqo noma ngandlela thile ukugqugquzelwa ukuthuthukiswa noma ukuqhakanjiswa kokutshalwa kwezimali esiFundazweni;

(e) ingangena ezivumelwaneni ukuze iphumelelise izinhloso zayo, isebenzise amandla ayo, igcine izibopho futhi yenze izibopho noma iphathe futhi ilawule izindaba zayo;

(f) ingabamba iqhaza ekuphathweni, ekuhlolweni kanye nasekulawulweni kokusebenza noma kokuqhutshwa kwemisebenzi yesikhungo esinezinhloso ezifanayo noma ezicishe zifane neze-Dube TradePort Corporation;

(g) Ingatshala izimali kwimiklamo ehambisana nezinhloso zayo;

(h) ingasungula isikhwama sezimali ukusimamisa ezokuthutha zasemoyeni esiFundazweni;

(i) ingenza noma yikuphi okunye noma ingenelele kunoma yiluphi udaba olunesidingo ukuze kufezekiswe izinhloso kanye nezidingo zeSu lokuSebenza; futhi

(j) ingenza noma yikuphi okunye noma ingenelele kunoma yiluphi udaba iLungu loMkhandlu oPhethe elibona lubalulekile ukuze kuqaliswe kahle lo Mthetho.

Isigaba 4(3) sihlizekela amandla engeziwe e-Dube TradePort, okukhulunywe ngawo ngaphansi kwesigaba 54(2) soMthetho wokuPhathwa kweziMali zikaHulumeni.

### ISAHLUKO 3

#### IBHODI YE-DUBE TRADEPORT CORPORATION

##### **Isigaba 5:**

Sihlinzeka ngokuthi i-Dube TradePort Corporation ibuswa yiBhodi yabaQondisi eyakhiwe okungenani ngamalungu amathathu, kodwa angeqile kwayisishiyagalombili aqokwe yiLungu loMkhandlu oPhethe. Iphinde ihlinzeke ngenqubo okumele ilandelwe yiLungu loMkhandlu oPhethe uma -

(a) limema ukuba kuphakanyiswe abantu abazoqokelwa eBhodini; futhi

(b) liqoka abantu abazosebenza eBhodini.

Kulesi sigatshana somthetho kuphinde kwenziwe izinhlinzeko zeqhaza lokuqapha okumele libanjwe uMkhandlu oPhethe lapho kuphakanyiswa nalapho kuqokwa abantu abazosebenza eBhodini yeNkampani ngokuthi ubeke ijoka kwiLungu loMkhandlu oPhethe phakathi kokunye -

(a) lokwazisa uMkhandlu oPhethe, ngemuva kokuqokwa kwamalungu eBhodi, ngamagama amalungu aqokiwe, usuku okuyoqala ngalo lesi sikhathi sokusebenza.

##### **Isigaba 6:**

Sibeka izizathu zokuhoxiswa kokuqokwa kwamalungu azoqokelwa ekusebenzeleni iBhodi.

**Isigaba 7:**

Sibeka ijoka:

(a) kubantu abaphakanyiselwe ukusebenza eBhodini lokuthi badalule ukuhlomula abanakho ngakwezezimali kunoma yiziphi izinkampani noma kwamanye amabhizinisi eLungwini loMkhandlu oPhethe ezinsukwini eziyishumi (10) bephakanyisiwe. Ukwehluleka ukudalula ukuhlomula kuyolihoxisa ilungu ekutheni liphakanyiselwe ekubeni yilungu leBhodi;

(b) kubantu abaqokelwe ukusebenza ebhodini ukuthi badalule ukuhlomula kwabo kunoma iyiphi inkampani noma ibhizinisi ngokwesigaba 234(3) soMthetho weziNkampani, lapho beqala ukusebenza nasekuqaleni konyaka wezimali; kanye

(c) naseLungwini leBhodi elithola ukuhlomula kunoma yiliphi elinye ibhizinisi ukuthi lidalule lokho kuhlomula ezinsukwini eziyi-10 lithole lokho kuhlomula;

Ukwehluleka kwelungu ukudalula ukuhlomula njengoba kudingeka endimeni (b) no (c) ngasenhla kuyokuba yisizathu sokuthi kuqedwe ubulungu balelo lungu eBhodini.

**Isigaba 8:**

Sibeka isikhathi sokuba sesikhundleni kanye nokuqokwa kabusha kwelungu leBhodi.

**Isigaba 9:**

Sibeka izizathu ezingabangela ukuthi kumiswe ukuqokwa kwamalungu eBhodi.

**Isigaba 10:**

Sinika iLungu loMkhandlu oPhethe amandla okumisa okwesikhashana ilungu leBhodi ukuvumela ukuba iLungu loMkhandlu oPhethe liphenye izinsolo, okungathi uma kutholakala ukuthi ziyiqiniso kuholele ekutheni kumiswe ukuqokwa kwelungu ngokwesigaba 9(2).

**Isigaba 11:**

Sihlinzekela izindaba eziphathelene nemihlangano kanye nezinqubo zeBhodi, ezifana:

(a) nokubanjwa kwemihlangano yeBhodi;

(b) nesibalo sivumeleke ukubamba imihlangano; kanye

(c) nendlela okuthathwa ngayo izinqumo zeBhodi.

**Isigaba 12:**

Sihlinzekela ijoka lamalungu eBhodi ekutheni azihoxise wona lapho kungaba khona ukushayisana kwezintshisekelo odabeni oludingidwa yiBhodi. Uma ilungu lehluleka ukuhoxa ngokwalo emhlanganweni elaziyo ukuthi kuzokuba nokushayisana kwezintshisekelo kuyokwenza umhlangano uthathwe njengongabanga khona.

**Isigaba 13:**

Sinika iLungu loMkhandlu oPhethe amandla okunquma imiholo nemibandela yokuqokwa kwamalungu eBhodi.

**Isigaba 14:**

Sihlinzekela ukusungulwa kwamakomidi azosiza iBhodi kanye nokuqedwa kwawo noma kwemisebenzi ajutshelwe yona.

**Isigaba 15:**

Sikhuluma ngokwengeza abantu eBhodini noma kumaKomidi eBhodi.

**ISAHLUKO 4****ISIKHULU ESIPHEZULU KANYE NABASEBENZI BE-DUBE TRADEPORT CORPORATION****Isigaba 16:**

Sihlinzekela lokhu okulandelayo:

- (a) Ukuqokwa kwesikhulu neziphezulu seNkampani yiBhodi ngokubonisana neLungu loMkhandlu oPhethe;
- (b) Isikhathi sokuqokwa kwesiKhulu esiPhezulu;
- (c) Isivumelwano sokusebenza sesiKhulu esiPhezulu;
- (d) Ukudalulwa kokuhlomula ngasezimalini nokunye ukuhlomula kwesiKhulu esiPhezulu; kanye
- (e) Nelungelo lokungavoti emihlanganweni.

**Isigaba 17:**

Sikhuluma ngemisebenzi yesiKhulu esiPhezulu kubandakanya amandla okuqasha abasebenzi; amandla okunquma inqubo yokuziphatha ngokubonisana neBhodi kanye nokubamba imihlangano yokuqondiswa kwezigwegwe eNkampanini.

**Isigaba 18:**

Sikhuluma ngezizathu kanye nenqubo yokususwa kwesiKhulu esiPhezulu.

**Izigaba 19 no 20:**

Zikhuluma ngabasebenzi be-Dube TradePort Corporation kanye nokwesekwa kokudluliselwa kwabasebenzi be-Dube TradePort Corporation.

**ISAHLUKO 5****ISU LOKUSEBENZA, INQUBOMGOMO NEMIKHOMBANDLELA****Isigaba 21:**

Sihlinzekela iBhodi ukuba isungule iSu lokuSebenza emva kwezinyanga eziyi-6 iqalile ukusebenza, ngemuva kokubonisana neLungu loMkhandlu oPhethe elibhekele ukuThuthukiswa koMnotho.

**Isigaba 22:**

Sihlinzekela imikhombandlela yeNqubomgomo kanye nemigudu yokusebenza okumele inqunywe yiLungu loMkhandlu oPhethe ekuqhubeleni phambili izinhloso ze-Dube TradePort Corporation.

**ISAHLUKO 6****UXHASOMALI NOKUPHATHWA KWEZIMALI ZE-DUBE TRADEPORT CORPORATION****Isigaba 23(1):**

Sihlinzekela imithombo yoxhasomali lweNkampani ebandakanya -

- (a) imali iNkampani eyabelwe yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshalwe yiNkampani; kanye
- (c) nengeniso esemthethweni etholakale kunoma yimuphi umthombo.

**Isigaba 23(2):**

Sihlinzekela indlela okumele iNkampani isebenzise ngayo izimali zayo.

**Isigaba 23(3):**

Sihlinzeka ngokuthi isiKhulu esiPhezulu kumele, ngokuvumelana neBhodi sivule i-akhawunti yeNkampani sifake kuyo zonke izimali ezitholakale kwesigaba (1).

**Isigaba 23(4):**

Sihlinzeka ngokuthi iBhodi kumele itshale izimali ezifakwe kwi-akhawunti ezingadingekile ngokushesha.

**Isigaba 23(5):**

Senqabela iNkampani ukuboleka imali, ukukhipha isiqinisekiso, izinxephezelo noma izibambiso noma ukungena kunoma yisiphi isivumelano sezimali eyenqatshelwe sona ngaphandle uma lokho kugunyazwe ngokwalo mthetho futhi kungashayisani noMthetho wokuPhathwa kweziMali zikaHulumeni.

**Isigaba 24:**

Sihlinzekela ukuphathwa kwezimali ezisesikhwameni seNkampani kanye nokubika eBhodini.

**Isigaba 25:**

Sihlinzekela ukucwangingwa kwezitatimende zezimali zeNkampani kanye nokwethulwa kombiko wonyaka kwisiShayamthetho sesiFundazwe.

**Isigaba 26:**

Senza unyaka wezimali weNkampani uhambisane nowoMnyango.

**Isigaba 27:**

Sihlinzekela iNkampani ukuthi ithole, igcine noma ilahle noma iyiphi impahla engenakususwa ekuqhutshweni kwemisebenzi yayo.

**Isigaba 28:**

Sihlinzekela inqubo engasetshenziswa ukuthathela iNkampani izinyathelo zomthetho.

**ISAHLUKO 7**  
**IZINHLINZEKO EZEJWAYELEKILE**

**Isigaba 29:**

Sihlinzekela ukuvikeleka kolwazi oluyimfihlo olugciniwe yiNkampani.

**Isigaba 30:**

Sihlinzekela ukuhlakazwa kweNkampani.

**Isigaba 31:**

Sihlinzekela ukusetshenziswa kwegama leNkampani.

**Isigaba 32:**

Sihlinzekela ukudluliselwa kwanoma imaphi amandla iLungu loMkhandlu oPhethe elinawo kwiNhloko yoMnyango, nemibandela ethile.

**Isigaba 33:**

Sinika iLungu oMkhandlu oPhethe amandla okwenza imithethonqubo. Lesi sigatshana somthetho sihlinzeka ngemigudu mayelana nendlela iLungu loMkhandlu oPhethe elingakha ngayo imithethonqubo.

**Isigaba 34:**

Sihlinzekela ukuhlakazwa kwe-Dube TradePort Company nezinhlinzeko zesikhashana kubandakanya:

- (a) ukuthi inkampani iyohlakazwa ngokuzithandela futhi yesulwe;
- (b) ukuthi amalungu eNkampani kumele, uma sekuhlakazwa inkampani alandele indima (a), enze ngokushesha nangokucophelela futhi kumele, phakathi kokunye, ahambisane nezigaba 349 no 350 zoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973);
- (c) ukuthi ngosuku lokuhlakazwa, yonke impahla, izikweletu, amalungelo, amajoka e-Dube Tradeport Company ayodluliselwa kwi-Dube Tradeport Corporation esungulwe ngokwesigaba 2;
- (d) ukuthi ngosuku lokuhlakazwa kwe-Dube TradePort Company, yonke impahla, izikweletu, amalungelo, amajoka, izibopho, kubandakanya ingxenye engasetshenziswe yanoma yiziphi izimali eziziqqwe noma ezitholwe yi-Dube TradePort Company zidluliselwa, futhi zitshalwa kwi-Dube TradePort Corporation esungulwe ngokwesigaba 2.

**Isigaba 35:**

Sihlinzekela amacala ngokoMthethosivivinyo.

**Isigaba 36:**

Sihlinzekela izinhlawulo ezimayelana namacala abekwe kwisigaba 35 salo Mthethosivivinyo.

**Isigaba 37:**

Sihlinzekela isihloko esifingqiwe salo Mthethosivivinyo.

**3. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE**

Kunombono wokuthi abasebenzi abakhona be-Dube TradePort Company bayodluliselwa kwiNkampani; njengoba kuzobe kungekho zingqinamba ezintsha kwezokuphatha nakwezabasebenzi kuHulumeni wesiFundazwe.

**4. IZINGQINAMBA KWEZEZIMALI KUHULUMENI WESIFUNDAZWE**

Inkampani iyothatha izintambo kwi-Dube TradePort Company kanti uma leyo imisebenzi isixhaswe ngokuphelele ngezimali okuyoba yizimali ezabelwe uMnyango yisiShayamthetho sesiFundazwe, angeke kube khona zingqinamba ezintsha mayelana nezimali kuHulumeni wesiFundazwe.

**5. IMINYANGO/ IMIGWAMANDA ETHINTIWE**

(a) IsiGungu sabaMeli bakaHulumeni saKwaZulu-Natali kanye neNhlango yabaMeli bakaHulumeni yaKwaZulu-Natali.

(b) IBhodi ye-KZNDTP (Inkampani yesigaba 21).

**6. IZINGQINAMBA EZIMAYELANA NOMTHETHOSISEKELO**

Azikho

No. 2

12 January 2010

## **KWAZULU-NATAL FILM COMMISSION BILL, 2009**

### **Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature**

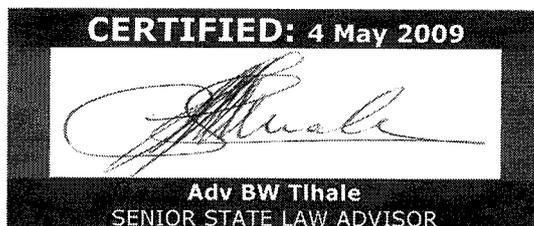
Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Film Commission Bill, 2009 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

**Attention:** Mrs NP Sikhakhane  
The Secretary  
KwaZulu-Natal Legislature  
Private Bag X 9112  
PIETERMARITZBURG  
3200

so as to reach her not later than 15 days from the date of publication.

N NAIDOO  
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL  
FILM COMMISSION BILL, 2009**



**CERTIFIED:** 4 May 2009  
Senior State Law Advisor

## **BILL**

**To provide for the establishment of the KwaZulu-Natal Film Commission; to determine the objects, powers, duties and functions of the KwaZulu-Natal Film Commission; to determine the manner in which the KwaZulu-Natal Film Commission is to be managed, governed, staffed and financed; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

### **ARRANGEMENT OF SECTIONS**

#### *Section*

#### **CHAPTER 1 DEFINITIONS**

##### **1. Definitions**

#### **CHAPTER 2 KWAZULU-NATAL FILM COMMISSION**

##### **2. Establishment of KwaZulu-Natal Film Commission**

##### **3. Objects of the Commission**

##### **4. Powers, duties and functions of Commission**

#### **CHAPTER 3 BOARD OF COMMISSION**

##### **5. Composition of Board**

##### **6. Disqualification from being appointed to Board**

##### **7. Declaration of financial or other interests of members of Board**

##### **8. Term of office and reappointment of member of Board**

##### **9. Vacancies, removal and resignation from office of members of Board**

##### **10. Temporary suspension of member of Board**

##### **11. Meetings and procedures at meetings of Board**

##### **12. Recusal of member from meetings and proceedings of Board**

##### **13. Remuneration of members of Board**

##### **14. Establishment of committees to assist Board**

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15. Co-opting of persons to Board or committees of Board

**CHAPTER 4  
CHIEF EXECUTIVE OFFICER AND STAFF OF COMMISSION**

- 16. Chief Executive Officer of Commission
- 17. Functions of Chief Executive Officer
- 18. Resignation and removal from office of Chief Executive Officer
- 19. Staff of Commission
- 20. Secondment or transfer of staff to Commission

**CHAPTER 5  
DETERMINATION OF PROVINCIAL CODE OF CONDUCT FOR FILM PRODUCERS**

- 21. Provincial Code of Conduct for Film Producers
- 22. Policy directives

**CHAPTER 6  
FUNDING AND FINANCIAL MANAGEMENT OF COMMISSION**

- 23. Funds of Commission
- 24. Financial management
- 25. Audit and annual report
- 26. Financial year of Commission
- 27. Immovable property
- 28. Legal proceedings against Commission

**CHAPTER 7  
GENERAL PROVISIONS**

- 29. Security of confidential information held by Commission
- 30. Dissolution of Commission
- 31. Use of name of Commission
- 32. Delegations
- 33. Regulations
- 34. Winding-up of Company and transitional provisions incidental thereto
- 35. General offences
- 36. Penalties
- 37. Short title

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## CHAPTER 1 DEFINITIONS

### Definitions

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

**"Board"** means the Board of the Commission appointed in terms of section 5;

**"Chief Executive Officer"** means the Chief Executive Officer of the Commission, appointed in terms of section 16;

**"Commission"** means the KwaZulu-Natal Film Commission established in terms of section 2;

**"Company"** means the association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing registration number 2003/028677/08, and known as the KwaZulu-Natal Film Commission;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Department"** means the Department in the Provincial Government of KwaZulu-Natal responsible for economic development;

**"Executive Council"** means the Executive Council of the Province of KwaZulu-Natal contemplated in section 132 of the Constitution;

**"film"** means the –

- (a) capturing;
- (b) fixation;
- (c) storage; or
- (d) reproduction,

by –

- (i) film;
- (ii) magnetic tape;
- (iii) disc;

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- (iv) television;
- (v) video; or
- (vi) any other means or material,

of data, signals or a sequence of images capable, when used in conjunction with any mechanical, electronic or other device, of being seen as a moving picture, and includes the associated sounds embodied in what is commonly known as a soundtrack;

**"film production"** means any film, television, video or multimedia production, and **"film producer"** and **"film products"** have a corresponding meaning;

**"Gazette"** means the official *Provincial Gazette* of KwaZulu-Natal;

**"Head of Department"** means the person appointed as head of the Department in terms of section 12 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**"Industrial Development Corporation"** means the public corporation established under section 2 of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940);

**"member"** means a member of the Board of the Commission appointed in terms of section 5;

**"Member of the Executive Council responsible for finance"** means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

**"organised local government"** means the KwaZulu-Natal Local Government Association being that organization in the Province of KwaZulu-Natal recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as representing the majority of municipalities in the Province;

**"Portfolio Committee"** means the Portfolio Committee of the Provincial Legislature responsible for economic development;

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**"prescribed"** means prescribed by regulation under section 33 and **"prescribe"** has a corresponding meaning;

**"Province"** means the Province of KwaZulu-Natal contemplated in section 103 of the Constitution and **"provincial"** has a corresponding meaning;

**"Provincial Government"** means the government of the Province of KwaZulu-Natal;

**"Provincial Legislature"** means the Legislature of the Province of KwaZulu-Natal as contemplated in section 105 of the Constitution, and having the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

**"regulations"** means regulations made in terms of section 33;

**"responsible Member of the Executive Council"** means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for economic development or that member of the Executive Council of the Province of KwaZulu-Natal to whom the Premier has assigned the administration of this Act;

**"the film industry"** means the film, television, video and related multimedia industry;

**"this Act"** includes the regulations;

**"Trade and Investment KwaZulu-Natal"** means –

(a) the association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing Company Registration Number 98/11946/08; or

(b) the successor in law of, and the successor in title to, such association.

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## KWAZULU-NATAL FILM COMMISSION

### **Establishment of KwaZulu-Natal Film Commission**

2.(1) There is hereby established a commission for the promotion of the film industry in the Province, to be known as KwaZulu-Natal Film Commission.

(2) The Commission is a juristic person.

(3) The Commission is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### **Objects of Commission**

3. The objects of the Commission are –

- (a) to promote and market the Province as a global destination for film production;
- (b) to develop, promote and market, locally, nationally and internationally, the film industry in the Province;
- (c) to facilitate investment in the film industry in the Province;
- (d) to provide and encourage the provision of opportunities for persons, especially from disadvantaged communities, to enter and participate in the film industry in the Province;
- (e) to address historical imbalances in the infrastructure and in the distribution of skills and resources in the film industry in the Province; and
- (f) to contribute to an enabling environment for job creation in the film industry in the Province.

### **Powers, duties and functions of Commission**

4.(1) The Commission must –

- (a) administer funds appropriated by the Provincial Legislature;
- (b) initiate and administer the funding from sources other than appropriations from the Provincial Legislature;
- (c) attract international film productions to the Province;

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- (d) facilitate the establishment, development and growth of infrastructure and facilities for the film industry in the Province;
- (e) attract foreign and local investment and funding for the establishment, development and growth of infrastructure and facilities for the manufacturing of film products in the Province;
- (f) co-ordinate and facilitate human resource and human intellectual development in the film industry in the Province;
- (g) provide advice, support and access to provincial funding for film producers in the Province;
- (h) promote film productions reflecting the cultural diversity of the Province;
- (i) conduct research and development into all areas of film production in the Province;
- (j) promote the Province as a location for film productions, locally, nationally and internationally;
- (k) attract film producers and facilitate their initiatives to carry out film productions in the Province;
- (l) encourage film producers to employ provincial personnel and facilities for film productions;
- (m) establish relationships with local and international persons, organisations and film commissions, to encourage and facilitate the transfer of knowledge and skills to the film industry in the Province;
- (n) compile a database of, and provide information with regard to –
  - (i) provincial film producers, audio-visual technicians, actors, performers and musicians; and
  - (ii) accommodation, catering, transportation and other related facilities in the Province;
- (o) advise film-makers on any aspect of film production including, but not limited to, municipal by-laws, traffic ordinances, environmental legislation and employment legislation and practices; and
- (p) advise the Provincial Government on policy and legislation including regulations required or appropriate for the promotion of the film industry in the Province.

(2) In order to promote uniformity and co-operation by all organs of state in the provincial

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and local spheres of government on matters related to the film industry, the Commission must –

- (a) at least once a year, convene meetings between organs of state in the provincial and local spheres that have an interest in any matter related to the film industry;
- (b) act as a link between organs of state in both the provincial and local spheres and stakeholders in the film industry in the Province; and
- (c) liaise and interact with any organisation, structure or body that has an interest in any matter related to the film industry.

(3) The Commission may –

- (a) enter into agreements with any person with expert knowledge in a particular field, so as to assist or advise the Commission in connection with any matter relating to its objects, powers, duties and functions; and
- (b) generally, do everything that is necessary to achieve its objectives.

(4) In order to contribute to the development of human capacity in the film industry in the Province, the Commission may provide bursaries and scholarships to students studying or intending to study in the field of film production.

### CHAPTER 3 BOARD OF COMMISSION

#### **Composition of Board**

5.(1) The Board consists of –

- (a) at least five, but not more than 20, members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 16(5).

(2) Members of the Board must be fit and proper persons to serve the best interests of the Province, collectively possessing –

- (a) appropriate knowledge, experience and skills in the film industry, and
- (b) the following skills and expertise –

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- (i) legal skills, experience and qualifications;
- (ii) financial skills, experience and qualifications;
- (iii) print or electronic media skills;
- (iv) community development skills and experience; and
- (v) entertainment industry experience.

(3) In appointing members to the Board, the responsible Member of the Executive Council must ensure –

- (a) that historic imbalances are addressed; and
- (b) that a balance of interest between persons representing –
  - (i) the Department;
  - (ii) the Department of Arts, Culture and Tourism;
  - (iii) the KwaZulu-Natal Tourism Authority;
  - (iv) stakeholders in the film industry;
  - (v) Trade and Investment, KwaZulu-Natal;
  - (vi) organised local government;
  - (vii) tertiary Institutions;
  - (viii) local film offices; and
  - (ix) the Industrial Development Corporation,is maintained.

(4) The responsible Member of the Executive Council must designate –

- (a) one of the members of the Board as the Chairperson of the Board; and
- (b) one of the members of the Board as the Deputy Chairperson of the Board.

(5) The member of the Board referred to in subsection 3(b)(i) –

- (a) must facilitate liaison between the responsible Member of the Executive Council and the Board;
- (b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
- (c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken.

(6) The responsible Member of the Executive Council must, by notice in the *Gazette*

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invite any interested parties within the Province to nominate candidates for appointment to the Board.

(7) The invitation for nominations must specify –

- (a) the nomination procedure;
- (b) the requirements for nominations; and
- (c) the closing date for the nominations.

(8) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council on the nominees.

(9) The responsible Member of the Executive Council must cause the names of the persons appointed to the Board to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Board.

(10) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board in terms of subsection (1), inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

#### **Disqualification from being appointed to Board**

6. A person is disqualified from being appointed to the Board or from remaining on the Board, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Commission and fails to declare his or her interest and the nature thereof in the manner required by

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this Act;

(d) is a person under curatorship;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon receipt of an affidavit disclosing full details of an offence by a person nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; or

(g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section.

#### **Declaration of financial or other interests of members of Board**

7.(1) A person who has been nominated to serve on the Board in terms of section 5(6) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company and of any other business interests.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 6 from being appointment to the Board.

(3) Every member of the Board must, upon assuming office and at the beginning of every financial year of the Commission, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 234(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973).

(4) Where a member of the Board acquires an interest in any company, or any other business interest, at any time during his or her tenure as a member of the Board, he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an

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interest.

(5) Any failure on the part of the member to disclose his or her interest as contemplated in subsections (3) and (4), constitutes justifiable reason for the termination of appointment of such member in terms of section 9(2).

(6) The responsible Member of the Executive Council must keep an updated register of the interests of members of the Board disclosed in terms of this section.

#### **Term of office and reappointment of member of Board**

8.(1) The persons appointed to the Board hold office for a period of five years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 5, eligible for re-appointment at the expiry of such period: Provided that no person may be re-appointed after having served on the Board for a continuous period of 10 years.

#### **Vacancies, removal and resignation from office of members of Board**

9.(1) A member of the Board must vacate office if he or she becomes subject to a disqualification contemplated in section 6.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her opinion, there are justifiable and cogent reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from two consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office by giving not less than 30 days written notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.

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(5) Whenever a vacancy occurs on the Board, the responsible Member of the Executive Council must, subject to section 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (2), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 5, subject to sections 5(2) and 5(3), appoint persons to serve as members of the Board on an interim basis: Provided that –

- (a) the persons appointed in terms of this subsection) may not remain on the Board for a period of more than 60 days from the date of their appointment; and
- (b) the responsible Member of the Executive Council must, subject to section 5, appoint the permanent members of the Board within 60 days of the appointment contemplated in this subsection.

#### **Temporary suspension of member of Board**

10. The responsible Member of the Executive Council may suspend a member of the Board whilst the responsible Member of the Executive Council is investigating allegations which, if found to be correct, may result in the member's appointment being terminated in terms of section 9(2).

#### **Meetings and procedures at meetings of Board**

11.(1) The first meeting of the Board must be held on a date and at a time and venue determined by the responsible Member of the Executive Council, whereafter all future meetings must be as determined by the Chairperson.

(2) The *quorum* for a meeting of the Board is a majority of the members of the Board.

(3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the chairperson including the right to decide that any matter

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under discussion may be withdrawn before it is put to the vote.

(4) The Chairperson must preside at all meetings of the Board: Provided that in his or her absence the deputy chairperson must preside and in the event that neither the chairperson nor the deputy chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as chairperson for the duration of that particular meeting.

(5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the Chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Board must keep minutes of its meetings.

(7) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.

(8) The chairperson, or a majority of the Board, may call an extraordinary meeting of the Board in which event the provisions of this section apply with the necessary changes.

(9) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

#### **Recusal of member from meetings and proceedings of Board**

12.(1) A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if one or more of the following occur

—

- (a) if he or she has a direct or indirect interest in the matter; or
- (b) if there is a possibility that a direct or indirect interest in the matter might arise.

(2) If at any stage during the course of any proceedings before the Board it appears that

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a member who is present at that meeting has or may have an interest contemplated in subsection (1), such member must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid.

(5) For the purposes of this section "**indirect interest**" includes, but is not limited to, an interest held by any member's –

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they are married; or
- (c) child, parent or sibling.

#### **Remuneration of members of Board**

**13.(1)(a)** Subject to subsection 2(a), a member of the Board may be paid from the funds of the Commission such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the Board who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial

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position he or she would have been were it not for such post or employment.

(2)(a) A member of the Board and a person who has been co-opted to the Board may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Commission for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.

(b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

#### **Establishment of Committees to assist Board**

14.(1) The Board may establish committees consisting of one or more of its members to

–

- (a) assist the Board in the performance of any of the powers, duties or functions of the Commission contemplated in section 4; or
- (b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Board must –

- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board;
- (b) appoint a Chairperson of such committee who must be a member of the Board; and
- (c) determine whether or not such committee may co-opt persons who are not members of the Board and, if so, on what terms and conditions.

(3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Board.

(4)(a) The Chief Executive Officer may attend and take part in, but may not vote at, a meeting of a committee.

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(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

#### **Co-opting of persons to Board or committees of Board**

**15.(1)** The Board may, if it is of the opinion that a particular person is able to assist it in regard to any of its functions and powers, co-opt such person for that purpose.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board or a committee.

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Agency as may be determined by the Board in consultation with the Member of the Executive Council responsible for finance.

### **CHAPTER 4 CHIEF EXECUTIVE OFFICER AND STAFF OF COMMISSION**

#### **Chief Executive Officer of Commission**

**16.(1)** The Board must, in consultation with the responsible Member of the Executive Council, appoint a suitably qualified, skilled and experienced person as Chief Executive Officer of the Commission.

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years.

(b) The Chief Executive Officer may be re-appointed for one additional term of office not exceeding five years.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board.

(b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(4) For purposes of the declaration of financial or other interests, the provisions of

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section 7 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the Board.

(5) The Chief Executive Officer is an *ex officio* member of the Board but does not have the right to vote at its meetings.

### **Functions of Chief Executive Officer**

17.(1) The Chief Executive Officer is responsible for –

- (a) the administrative and financial management of the Board in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the direction of the Board;
- (b) in consultation with the Board, the appointment of members of staff of the Commission contemplated in section 19(1);
- (c) in consultation with the Board, the determination of a code of conduct, applicable to the Chief Executive Officer, all staff of the Commission and justiciable for purposes of disciplinary proceedings, to ensure –
  - (i) compliance with applicable law, including this Act;
  - (ii) the effective, efficient and economical use of the Commission's funds and resources;
  - (iii) the promotion and maintenance of a high standard of professional ethics;
  - (iv) the prevention of conflicts of interest;
  - (v) the protection of confidential information held by the Commission; and
  - (vi) professional, honest, impartial, fair, ethical and equitable service;
- (d) the maintenance of discipline over the staff appointed in terms of paragraph (b) and must, for those purposes, be accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by members of staff of the Commission; and
- (f) ensuring compliance by the Board with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable legislation.

(2) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Board must, in writing, and in consultation with the responsible Member of

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the Executive Council, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

### **Resignation and removal from office of Chief Executive Officer**

**18.(1)** The Chief Executive Officer vacates office –

- (a) in the case of resignation, when the resignation takes effect;
- (b) when, in terms of the Companies Act, 1973 (Act No. 61 of 1973), the person holding that office has become disqualified to serve as director of a company; and
- (c) upon having been removed from office in terms of subsection (2).

(2) The Board may, in consultation with the Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

### **Staff of Commission**

**19.(1)** The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Commission as may be reasonably necessary –

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and
- (b) to assist the Board with the work incidental to the performance by the Board of its functions.

(2) The Board must, subject to section 23(4), determine a human resources policy for staff members of the Commission, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 17(1)(e), the provisions of section 7(3), (4) and (5) apply with the necessary changes to staff members of the Commission.

(4) The Chief Executive Officer must keep an updated register of the interests of staff members of the Commission disclosed in terms of this subsection (3).

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### **Secondment or transfer of staff to Commission**

**20.** The Commission may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

## **CHAPTER 5 DETERMINATION OF PROVINCIAL CODE OF CONDUCT FOR FILM PRODUCERS**

### **Provincial Code of Conduct for Film Producers**

**21.(1)** The responsible Member of the Executive Council must –

- (a) by notice in the *Gazette*; and
- (b) after consultation with the Board,

determine a Provincial Code of Conduct for Film Producers.

(2) The Provincial Code of Conduct for Film Producers takes effect upon the publication of the notice referred to in subsection (1).

(3) The responsible Member of the Executive Council may, by notice in the *Gazette* and after consultation with the Board –

- (a) amend;
- (b) substitute; or
- (c) withdraw,

the Provincial Code of Conduct for Film Producers.

### **Policy directives**

**22.(a)** The responsible Member of the Executive Council may set strategic guidelines for the pursuit of the Commission's objectives and may issue policy directives to the Board.

(b) The responsible Member of the Executive Council may withdraw or amend any strategic guideline or policy directive issued in terms of paragraph (a).

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## CHAPTER 6 FUNDING AND FINANCIAL MANAGEMENT OF COMMISSION

### **Funds of Commission**

**23.(1)** The funds of the Commission consist of –

- (a) money appropriated by the Provincial Legislature;
- (b) interest on investments of the Commission; and
- (c) income lawfully derived from any other source.

**(2)** The Commission must utilise its funds –

- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of –
  - (i) the members of the Board;
  - (ii) the Chief Executive Officer; and
  - (iii) the members of staff of the Commission; and
- (b) to cover costs in connection with –
  - (i) the day to day operation and administration of the Commission; and
  - (ii) the performance of the duties and functions of the Commission and the exercise of its powers in terms of this Act.

**(3)** The Chief Executive Officer must with the concurrence of the Board –

- (a) open an account in the name of the Commission with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1).

**(4)** The Board, in consultation with the responsible Member of the Executive Council, must determine –

- (a) the remuneration and conditions of service; and
- (b) the pension and retirement benefits,

of the Chief Executive Officer and the other members of staff of the Commission.

**(5)** The Commission may invest monies deposited into its account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

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(6) The Commission may not borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it, unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### **Financial management**

24.(1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Commission's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Chief Executive Officer must, within three months before the end of each financial year, submit to the Board for approval –

(a) a business plan for the Commission, containing measurable objectives and the other information contemplated in section 25(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Commission,

in respect of the following three financial years.

(4) In any financial year the Chief Executive Officer may submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure of the Commission for that financial year.

(5) The Commission may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) The Chief Executive Officer may –

(a) with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits or any other institution categorised or listed from time to time by the National Treasury as a Category "A1" financial

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institution; or

(b) with the approval of the Board, dispose of that portion in any other manner.

(7) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit therein such amounts as the Board approves.

### **Audit and annual report**

**25.(1)** The Auditor-General must audit the financial statements of the Commission.

(2)(a) The Board must table a report on the activities of the Commission during a financial year, in the Provincial Legislature, within five months after the end of that financial year.

(b) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Board and at least two other members of the Board must brief the relevant Portfolio Committee on the annual report.

(3) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the Commission has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 24(3)(a) during the financial year concerned; and

(c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

### **Financial year of Commission**

**26.** The financial year of the Commission commences on 1 April of a particular year and ends on 31 March of the following year.

### **Immovable property**

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27. The Commission may, in terms of a policy and procedures determined by the Board and with the approval of the responsible Member of the Executive Council, acquire, hold or dispose of immovable property in the course of its business.

#### **Legal proceedings against Commission**

28.(1) Any legal proceedings against the Commission must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).

(2) The Commission is, for purposes of subsection (1), regarded as an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the said Act.

### **CHAPTER 7 GENERAL PROVISIONS**

#### **Security of confidential information held by Commission**

29.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Commission in connection with any legal brief or instruction, unless –

- (a) he or she is ordered to do so by a court of law;
- (b) or unless the person who gave such brief or instruction consents thereto in writing.

(2) No person may disclose any information kept in the register contemplated in sections 7, 16(4) and 19(4) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Commission; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Commission, or any member of staff of the Commission.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

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### **Dissolution of Commission**

**30.** The Commission may only be dissolved in terms of an Act of the Provincial Legislature.

### **Use of name of Commission**

**31.(1)** No person may, without the prior written authorisation of the Commission, in any way represent or make use of the name, acronym, logos, designs or material used or owned by the Commission.

(2) No person may falsely claim to be acting on behalf of the Commission.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

### **Delegations**

**32.(1)** The responsible Member of the Executive Council may delegate to the Head of Department –

(a) any power conferred on the responsible Member of the Executive Council by this Act, except the power to make regulations referred to in section 33; or

(b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(1)(a), 6 and 9(2).

(2) The Board may, by a special resolution, delegate to the Chief Executive Officer or staff member of the Commission, any power or duty conferred or imposed on the Board by this Act.

(3) The Chief Executive Officer may delegate to any member of staff of the Commission any power or duty conferred or imposed on the Chief Executive Officer by this Act, except any power or duty as accounting officer of the Commission.

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation

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considers necessary.

(5) A delegation referred to in subsection (1), (2) or (3) –

- (a) must be in writing;
- (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

### **Regulations**

33. The responsible Member of the Executive Council may, in consultation with the Board and by notice in the *Gazette*, make regulations regarding –

- (a) any matter that may or must be prescribed in terms of this Act; or
- (b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

### **Winding-up of Company and transitional provisions incidental thereto**

34.(1)(a) The Company, KwaZulu-Natal Film Commission, bearing Company Registration Number 2003/028677/08, established in terms of the Companies Act, 1973 (Act No. 61 of 1973), must be voluntarily wound up and deregistered.

(b) The members of the Company must, in winding-up the Company referred to in paragraph (a), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973).

(2) On the date of the winding-up of the Company contemplated in subsection (1), all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Company are transferred to, and vest in, the KwaZulu-Natal Film Commission established in terms of section 2.

(3) The Commission is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in law of, and the successor-in-title to, the Company.

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(4) The members of the Board of the Company must act as duly authorised and empowered members of the Board of the Commission until such time as the responsible Member of the Executive Council has in terms of section 5(1)(a) appointed the Board in terms of this Act.

(5) All members of staff of the Company must, within six months of the commencement of this Act, be made an employment offer by the responsible Member of the Executive Council for transfer to the Commission on a date determined by the responsible Member of the Executive Council.

(6) The remuneration, benefits and privileges offered by the responsible Member of the Executive Council, in accordance with subsection (5), may not be less favourable than those payable to the staff member by the Company, immediately prior to his or her transfer.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer is deemed to have taken place in respect of a staff member who accepts an employment offer contemplated in subsection (5).

(8) When a person becomes a staff member of the Commission in terms of subsection (5) –

(a) he or she retains all vacation leave which accrued to his or her credit up to the date immediately before the date of transfer, adjusted in accordance with the conditions of employment of the Commission; and

(b) any inquiry instituted or intended to be instituted in respect of alleged misconduct committed by such person before the date of transfer must be disposed of or instituted by the Commission and the Commission must take appropriate steps against the person concerned in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

### **General offences**

**35.(1)** A member of the Board, a member of staff, an adviser, agent or any other person

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employed or acting on behalf of the Commission is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Commission.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Commission, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, an adviser, agent or any other person employed by, or acting on behalf of, the Commission.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Commission is guilty of an offence.

### **Penalties**

**36.** Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

### **Short title**

**37.** This Act is called the KwaZulu-Natal Film Commission Act, 2009.

**MEMORANDUM ON THE OBJECTS OF THE KWAZULU-NATAL  
FILM COMMISSION BILL**

**1. GENERAL BACKGROUND**

Both the feasibility study and the study into the Industrial Strategy for KwaZulu-Natal have indicated that film has a potential to be a major player in the economic development of the Province of KwaZulu-Natal. Both studies further suggested that there is a need to establish a structure that would be responsible for the co-ordination, marketing and development of films in the Province.

In 2005, the Department of Economic Development ("the Department") sought and obtained an in-principle cabinet approval for the formation of the KwaZulu-Natal Film Commission ("the Commission")

- (a) as a section 21 company, for interim purposes; and
- (b) as a Provincial Public Entity in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA).

In compliance with the above-mentioned approval, a section 21 company was established to ensure that the Province does not lose out on the potential benefits associated with the film industry whilst the legislation to establish a statutory body is being taken through the legislative process.

The constitutional mandate of the Department and the Provincial Legislature to legislate on the promotion of Film and Video industry in the Province emanates from Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996. The said Schedule provides that both the National and Provincial spheres of government have functional and legislative competence on any matter relating to industrial promotion, which includes film as an industry.

In light of the above, this Bill purports to –

- (a) provide for the establishment of the Commission;
- (b) determine the objectives of the Commission;
- (c) provide for the powers, duties and functions of the Commission;
- (d) provide for the governance and management of the Commission;
- (e) provide for the finances of the Commission;
- (f) provide for the support of projects aimed at promoting film development, production and education in KwaZulu-Natal; and,
- (g) provide for incidental matters.

## **2. SECTION-BY-SECTION EXPLANATION**

### **CHAPTER 1 DEFINITIONS**

#### **Section 1**

Provides for the definition of words used in this Bill.

### **CHAPTER 2 ESTABLISHMENT OF THE KWAZULU-NATAL FILM COMMISSION**

#### **Section 2**

Provides for the establishment of the KwaZulu-Natal Film Commission as a Provincial Public Entity in terms of the Public Finance Management Act.

#### **Section 3**

Sets out the objects of the Commission, namely –

- (a) to promote and market the Province as a global destination for film and video production;
- (b) to develop, promote and market, locally, national and internationally the film and video industry in the Province;
- (c) to facilitate investment in the film and video industry in the Province;
- (d) to provide and encourage the provision of opportunities for persons from disadvantaged communities to enter and take part in the film industry in the Province;
- (e) to address historical imbalances in the infrastructure and in the distribution of skills and resources in the film industry in the Province; and
- (f) to contribute to an enabling environment for job creation in the film industry in the Province.

#### **Section 4**

Provides for the powers, duties and functions of the Commission, which include –

- (a) facilitation of development of growth in infrastructure and human capacity for the film and video production in the Province by –
  - (i) encouraging film and video co-productions between international and provincial film makers to ensure skills development and transfer of local filmmakers;
  - (ii) encouraging film, television and video producers to employ local personnel and facilities for productions;
  - (iii) conducting research into all areas of film, television and video productions in the province;

- (iv) providing bursaries and scholarships to students studying or intending to study film, video and other media related production areas; and
- (v) encouraging international and local investments into the provincial film and video industry;
- (b) promotion of the Province as a location for film, video and television production;
- (c) the establishment of relationships with local and international persons, organisations in order to encourage knowledge and skills transfer;
- (d) compilation and provision of useful information with regard to the provincial film makers, audio-visual technicians, actors, performers, musicians, hotel, transportation and other facilities available in the Province;
- (e) provision of guidance and advice to international film makers on issues pertaining to film and video production in the Province; and
- (f) promotion of conformity and co-operation between all the organisations and organs of state that have an interest in the field of film and video industry.

### CHAPTER 3 THE COMMISSION'S BOARD OF DIRECTORS

#### **Section 5**

Provides that the Commission is governed by a Board of Directors and consists of at least five, but not more than 20 members appointed by the MEC. It further provides for a procedure to be followed by the MEC when –

- (a) inviting nominations for the persons to be appointed to the Board; and
- (b) making appointments of persons to serve on the Board.

Provision is also made in this clause for the oversight role to be played by the Executive Council in the nomination and appointment of persons to serve on the Board of the Commission in that it imposes a duty on the MEC amongst others –

- (a) to advise the Executive Council, after the appointment of the members of the Board, of the names of the appointed members, date of effect and period of appointment.

#### **Section 6**

Sets out the grounds for the disqualification of members to be appointed to serve on the Board.

#### **Section 7**

Provides for the duty on the –

- (a) persons nominated to serve on the Board to disclose their financial interest in any company or other interests within 10 (ten) days of being nominated. Failure to disclose financial interest

or any other interest within the stipulated time period, would disqualify such a member to be appointed as a member of the Board;

(b) persons appointed to serve on the Board to disclose their interest on any company or business in terms of section 234(3)(a) of the Companies Act, upon assuming office and at the beginning of the financial year;

(c) member of the Board who acquires any financial interest or any other interest in any company to disclose such an interest within 10 days of acquisition of such an interest,

Failure to disclose interest as required in paragraphs (b) and (c) above could be grounds for the termination of such a member's membership of the Board.

### **Section 8**

Provides for the term of office and re-appointment of the members of the Board of the Commission.

### **Section 9**

Sets out the grounds upon which the appointment of board members may be terminated.

### **Section 10**

Empowers the MEC to temporarily suspend a member of the Board to allow the MEC to investigate allegations which, if found to be true could lead to the member's appointment being terminated in terms of section 9(2).

### **Section 11**

Provides for matters related to the meetings and procedures of the Board, such as –

- (a) frequency of the meetings of the Board;
- (b) the *quorum* of the meeting; and
- (c) manner in which decisions of the Board are taken.

### **Section 12**

Provides for the duty on the members of the Board to recuse themselves in cases where a conflict of interest might arise in any matter being discussed by the Board. The consequences for the failure of the member who has or might have an interest in the matter being discussed to recuse himself or herself is that such proceedings are invalidated.

### **Section 13**

Empowers the MEC to determine remuneration and conditions of appointment of the members of the Board.

**Section 14**

Provides for the establishment of committees to assist the Board and the termination of their existence or mandate.

**Section 15**

Deals with co-opting of persons to the Board or committees of the Board.

**CHAPTER 4****CHIEF EXECUTIVE OFFICER AND STAFF OF THE COMMISSION****Section 16**

Provides for matters related to the appointment of the Chief Executive Officer ("CEO") of the Commission, such as –

- (a) that the CEO is appointed by the Board in Consultation with the MEC; and
- (b) the period of appointment of the CEO.

**Section 17**

Deals with the functions of the CEO.

**Section 18**

Deals with the grounds and procedure for the removal of the CEO.

**Section 19 and 20**

Deals with the staff of the Commission and secondment or transfer of staff to the Commission.

**CHAPTER 5****DETERMINATION OF PROVINCIAL CODE OF CONDUCT FOR FILM PRODUCERS****Section 21**

Empowers the MEC to determine the Provincial Code of Conduct for Film Producers.

**Section 22**

Provides for the issuing of policy directives and strategic guidelines by the MEC to the Commission and for the withdrawal or amendment thereof.

**CHAPTER 6****FUNDING AND FINANCIAL MANAGEMENT OF THE COMMISSION**

**Section 23**

Provides for the funding sources of the Commission which include –

- (a) money appropriated to the Commission by the Provincial Legislature;
- (b) interest on investments of the Commission; and
- (c) income lawfully derived from any other source.

**Section 24**

Provides for financial management of the funds of the Commission and reporting to the Board.

**Section 25**

Provides for the audit of the financial statements of the Commission and the tabling of annual report to the Provincial Legislature.

**Section 26**

Aligns the financial year of the Commission to that of the Department.

**Section 27**

Provides for the Commission to acquire, hold or dispose of the immovable property in the course of its business.

**Section 28**

Provides for the procedure for the institution of legal proceedings against the Commission.

CHAPTER 7  
GENERAL PROVISIONS

**Section 29**

Provides for security of confidential information held by the Commission.

**Section 30**

Provides for the dissolution of the Commission.

**Section 31**

Provides for the use of the name of the Commission.

**Section 32**

Provides for the delegation of any power conferred on the MEC to the Head of Department, with certain exceptions.

### **Section 33**

Empowers the MEC to make regulations. This clause also provides guidelines in terms of which the MEC may make such regulations.

### **Section 34**

Provides for the winding up of the company and transitional provisions including –

- (a) that the company shall be wound up voluntarily and deregistered;
- (b) that members of the Board of the section 21 company shall be the duly authorised and empowered members of the Board of the Commission until such time that the MEC has appointed the Board in terms of this Act;
- (c) that the staff of the section 21 company will be transferred to the Commission.

### **Section 35**

Provides for offences in terms of this Bill.

### **Section 36**

Provides for penalties with regard to the offences provided for in clause 35 of this Bill.

### **Section 37**

Provides for the short title of this Bill.

## **4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

This Bill creates a statutory body governed and managed by the Board of Directors and the Chief Executive Officer. The Bill also provides for the appointment of staff to perform the day- to-day functions of the Board. Since it is envisaged that by the time this Bill is enacted, the Commission would inherit the Board, the CEO and staff from the section 21 company. In view thereof, for the purpose of the Commission formed in terms of this Bill there would be no new organisation and personnel implications for the Provincial Government.

## **5. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

The funding of the section 21 company would be borne from monies expropriated to it by the Provincial Legislature hence there would be no new financial implications for the provincial legislature when the Commission formed in terms of this Bill comes into operation.

**6. DEPARTMENTS / BODIES CONSULTED**

- (a) KZN Public Sector Lawyers Forum;
- (b) FILM OFFICES (Durban and Zululand);
- (c) Tertiary Institutions (University of KwaZulu-Natal);
- (d) Industrial Development Corporation and Trade and Investment KwaZulu-Natal; and
- (e) The Department of Arts, Culture and Tourism.

**7. CONSTITUTIONAL IMPLICATIONS**

None.

No. 2

12 Januarie 2010

## KWAZULU-NATAL WETSONTWERP OP DIE ROLPRENTKOMMISSIE, 2009

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennisgewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die KwaZulu-Natal Wetsontwerp op die Rolprentkommissie, 2009 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portefeuljkomitee oor Ekonomiese Ontwikkeling en Toerisme oorweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om verhoë oor die vermelde wetsontwerp in te dien, welke verhoë gerig moet word aan:

Aandag: Me NP Sikhakhane  
Die Sekretaris  
KwaZulu-Natal Legislature  
Privaatsak X 9112  
PIETERMARITZBURG  
3200

Verhoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO  
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL  
WETSONTWERP OP DIE ROLPRENTKOMMISSIE, 2009**

**WETSONTWERP**

**Om voorsiening te maak vir die instelling van die KwaZulu-Natal Rolprentkommissie; om die oogmerke, bevoegdhede, pligte en funksies van die KwaZulu-Natal Rolprentkommissie te bepaal; om die wyse waarop die KwaZulu-Natal Rolprentkommissie bestuur, gereël, van personeel voorsien en gefinansier moet word, te bepaal en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.**

WO RD DAAR DERHALWE deur die Provinsiale Wetgewer van die provinsie KwaZulu-Natal soos volg bepaal:—

**RANGSKIKKING VAN ARTIKELS**

*Artikel*

**HOOFSTUK 1  
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1. Omskrywings

**HOOFSTUK 2  
KWAZULU-NATAL ROLPRENTKOMMISSIE**

2. Instelling van KwaZulu-Natal Rolprentkommissie
3. Oogmerke van die Kommissie
4. Bevoegdhede, pligte en funksies van die Kommissie

**HOOFSTUK 3  
RAAD VAN KOMMISSIE**

5. Samestelling van Raad
6. Onbevoegdheid vir aanstelling op Raad
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10. Tydelike skorsing van raadslid
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#### HOOFSTUK 5

##### BEPALING VAN PROVINSIALE GEDRAGSKODE VIR ROLPRENTPRODUSENTE

21. Provinsiale gedragskode vir rolprentprodusente
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#### HOOFSTUK 6

##### BEFONDSING EN FINANSIËLE BESTUUR VAN KOMMISSIE

23. Fondse van Kommissie
24. Finansiële bestuur
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#### HOOFSTUK 7

##### ALGEMENE BEPALINGS

29. Sekerheid van vertroulike inligting wat deur Kommissie gehou word
30. Ontbinding van Kommissie
31. Gebruik van naam van Kommissie
32. Delegering
33. Regulasies
34. Likwidering van Maatskappy en oorgangsbepalings wat daarmee verband hou
35. Algemene misdrywe

36. Strawwe

37. Kort titel

## HOOFSTUK 1 OMSKRYWINGS

### Omskrywings

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

**"Departement"** die Departement in die provinsiale regering van KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling;

**"die rolprentbedryf"** die rolprent-, TV-, video- en verwante multimediabedryf;

**"georganiseerde plaaslike regering"** die KwaZulu-Natal Vereniging vir Plaaslike Regerings daardie organisasie in die provinsie van KwaZulu-Natal wat ingevolge artikel 2 van die Wet op Georganiseerde Plaaslike Regering, 1997 (Wet No. 52 van 1997) erken word as verteenwoordigend van die meerderheid munisipaliteite in die provinsie;

**"Grondwet"** die Grondwet van die Republiek van Suid-Afrika, 1996;

**"Handel en Belegging KwaZulu-Natal"** –

(a) die vereniging ingelyf kragtens artikel 21 van die Maatskappywet, 1973 (Wet No. 61 van 1973), met Maatskappyregistrasienuommer 98/11946/08;

of

(b) die regsopvolger en opvolger in titel van sodanige vereniging.

**"hierdie Wet"** insluitend die regulasies;

**"Hoof- Uitvoerende Beampte"** die Hoof- Uitvoerende Beampte van die Kommissie, aangestel ingevolge artikel 16;

**"Hoof van Departement"** die persoon wat aangestel is as Hoof van die

Departement ingevolge artikel 12 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994);

**"Koerant"** die amptelike *Provinsiale Koerant* van KwaZulu-Natal;

**"Kommissie"** die KwaZulu-Natal Rolprentkommissie ingestel ingevolge artikel 2;

**"lid"** 'n lid van die Raad van die Kommissie aangestel ingevolge artikel 5;

**"lid van die Uitvoerende Raad verantwoordelik vir finansies"** die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

**"Maatskappy"** die vereniging ingelyf kragtens artikel 21 van die Maatskappywet, 1973 (Wet No. 61 van 1973), met registrasienommer 2003/028677/08 en bekend as die KwaZulu-Natal Rolprentkommissie;

**"Nywerheid-ontwikkelingskorporasie"** die openbare korporasie ingestel kragtens artikel 2 van die Wet op die Nywerheid-ontwikkelingskorporasie, 1940 (Wet No. 22 van 1940);

**"Portefeuljekomitee"** die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling;

**"Provinsiale regering"** die regering van die provinsie van KwaZulu-Natal;

**"Provinsiale Wetgewer"** die Wetgewer van die provinsie van KwaZulu-Natal soos bedoel in artikel 105 van die Grondwet, met die wetgewende gesag vir die provinsie soos bedoel in artikel 104(1) van die Grondwet;

**"provinsie"** die provinsie van KwaZulu-Natal bedoel in artikel 103 van die Grondwet en **"provinsiale"** het 'n ooreenstemmende betekenis;

**"Raad"** die Raad van die Kommissie aangestel ingevolge artikel 5;

**"regulasies"** regulasies uitgevaardig ingevolge artikel 33;

**"rolprent"** die –

- (a) vaslegging;
- (b) fiksering;
- (c) berging; of
- (d) afdruk,

deur –

- (i) film;
- (ii) magnetiese band;
- (iii) skyf;
- (iv) TV;
- (v) video; of
- (vi) enige ander middel of stof,

van data, seine of 'n reeks beelde wat, as dit saam met enige meganiese, elektroniese of ander toestel gebruik word, as 'n bewegende prent gesien kan word, en sluit die klanke aan 'n rolprent verbonde in wat algemeen as 'n klankbaan bekend staan;

**"rolprentproduksie"** enige rolprent-, TV-, video- of multimedieproduksie, en **"produksieleier"** en **"rolprentprodukte"** het 'n ooreenstemmende betekenis;

**"Uitvoerende Raad"** die Uitvoerende Raad van die provinsie van KwaZulu-Natal bedoel in artikel 132 van die Grondwet;

**"verantwoordelike lid van die Uitvoerende Raad"** die lid van die Uitvoerende Raad van die provinsie van KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling of enige ander lid van die Uitvoerende Raad wat deur die Premier toegewys is;

**"voorgeskryf"** voorgeskryf deur regulasie kragtens artikel 33, en **"voorskryf"** het 'n ooreenstemmende betekenis.

## HOOFSUK 2 KWAZULU-NATAL ROLPRENTKOMMISSIE

### **Instelling van KwaZulu-Natal Rolprentkommissie**

2.(1) 'n Kommissie word hierby ingestel vir die bevordering van die rolprentbedryf in die provisie en sal bekend staan as die KwaZulu-Natal Rolprentkommissie.

(2) Die Kommissie is 'n regs persoon.

(3) Die Kommissie is 'n provinsiale openbare entiteit onderhewig aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

### **Oogmerke van Kommissie**

3. Die oogmerke van die Kommissie is om –

- (a) die provinsie as 'n globale bestemming vir rolprentproduksie te bevorder en te bemark;
- (b) die rolprentbedryf in die provinsie plaaslik, nasionaal en internasionaal te ontwikkel, bevorder en bemark;
- (c) belegging in die rolprentbedryf in die provinsie moontlik te maak;
- (d) geleenthede aan persone, veral uit voorheen benadeelde gemeenskappe, te verskaf en om hulle aan te moedig om by die rolprentbedryf in die provinsie in te skakel en daaraan deel te neem;
- (e) historiese ongelykhede in die infrastruktuur en in die verspreiding van vaardighede en hulpbronne in die rolprentbedryf in die provinsie aan te spreek; en
- (f) by te dra tot 'n magtigingsomgewing vir werkskepping in die rolprentbedryf in die provinsie.

### **Bevoegdhede, pligte en funksies van Kommissie**

4.(1) Die Kommissie moet –

- (a) fondse wat deur die Provinsiale Wetgewer bewillig is, administreer;

- (b) befondsing uit ander bronne as bewilligings van die Provinsiale Wetgewer inisieer en administreer;
- (c) internasionale rolprentproduksies na die provinsie lok;
- (d) die instelling, ontwikkeling en groei van infrastruktuur en fasiliteite vir die rolprentbedryf in die provinsie moontlik maak;
- (e) buitelandse en plaaslike belegging en befondsing lok vir die instelling, ontwikkeling en groei van infrastruktuur en fasiliteite vir die vervaardiging van rolprentprodukte in die provinsie;
- (f) menslike hulpbron- en menslike intellektuele ontwikkeling in die rolprentbedryf in die provinsie koördineer en moontlik maak;
- (g) raad, bystand en toegang tot provinsiale befondsing vir rolprentprodusente in die provinsie verskaf;
- (h) rolprentproduksies wat die kulturele diversiteit van die provinsie weerspieël, bevorder;
- (i) navorsing doen en ontwikkeling op alle terreine van rolprentproduksie in die provinsie bewerkstellig;
- (j) die provinsie bevorder as 'n ligging vir rolprentproduksies, plaaslik, nasionaal en internasionaal;
- (k) produksieleiers lok en hul inisiatiewe moontlik maak om rolprentproduksies in die provinsie uit te voer;
- (l) produksieleiers aanmoedig om provinsiale personeel en fasiliteite vir rolprentproduksies aan te wend;
- (m) verhoudings met plaaslike en internasionale persone, organisasies en rolprentkommissies vestig, om die oordrag van kennis en vaardighede aan die rolprentbedryf in die provinsie aan te moedig en moontlik te maak;
- (n) 'n databasis saamstel van, en inligting verskaf met betrekking tot –
  - (i) provinsiale produksieleiers, oudio-visuele tegnisi, akteurs, uitvoerende kunstenaars en musikante; en
  - (ii) akkommodasie, spyseniering, vervoer en ander verwante fasiliteite in die provinsie;
- (o) rolprentmakers adviseer oor enige aspek van rolprentproduksie insluitend, maar nie beperk nie tot, munisipale verordeninge, verkeersordonnansies, omgewingswetgewing en indiensnemingswetgewing en -praktyke; en
- (p) die provinsiale regering adviseer aangaande beleid en wetgewing insluitend

regulasies wat vereis word of toepaslik is vir die bevordering van die rolprentbedryf in die provinsie.

(2) Ten einde eenvormigheid en samewerking by alle staatsorgane in die provinsiale en plaaslike regeringsfeer te bevorder aangaande aangeleenthede met betrekking tot die rolprentbedryf, moet die Kommissie –

(a) ten minste een maal per jaar, vergaderings tussen staatsorgane in die provinsiale en plaaslike sferes byeenroep wat 'n belang het in enige aangeleentheid met betrekking tot die rolprentbedryf;

(b) optree as 'n skakel tussen staatsorgane in beide provinsiale en plaaslike sferes en belanghebbendes in die rolprentbedryf in die provinsie; en

(c) met enige organisasie of struktuur of liggaam wat 'n belang in enige aangeleentheid met betrekking tot die rolprentbedryf het, skakel en in wisselwerking tree.

(3) Ten einde sy verpligtinge uit te voer, kan die Kommissie –

(a) 'n ooreenkoms met enige persoon met spesialis kennis op 'n spesifieke terrein aangaan, om sodoende die Kommissie by te staan of te adviseer aangaande enige aangeleentheid met betrekking tot sy oogmerke en funksies; en

(b) oor die algemeen alles doen wat nodig is om sy doelwitte te bereik.

(4) Ten einde by te dra tot die ontwikkeling van menslike kapasiteit in die rolprentbedryf in die provinsie, kan die Kommissie beurse en studiebeurse gee aan studente wat in rolprentproduksie studeer of van voorneme is om daarin te studeer.

### HOOFSTUK 3 RAAD VAN KOMMISSIE

#### **Samestelling van Raad**

5.(1) Die Raad bestaan uit –

(a) ten minste nege, maar nie meer as 20, lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en

(b) die Hoof- Uitvoerende Beambte, *ex officio*, soos bedoel in artikel 16(5).

(2) Lede van die Raad moet bekwame en geskikte persone wees en gesamentlik beskik oor –

- (a) toepaslike kennis, ondervinding en vaardighede in die rolprentbedryf, en
- (b) die volgende vaardighede en kundigheid –
  - (i) regsvaardighede, -ondervinding en -kwalifikasies;
  - (ii) finansiële vaardighede, ondervinding en kwalifikasies;
  - (iii) vaardighede in die gedrukte of elektroniese media;
  - (iv) vaardighede en ondervinding in gemeenskapsontwikkeling; en
  - (v) ondervinding in die vermaakbedryf.

(3) By aanstelling van lede op die Raad, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat –

- (a) historiese ongelykhede aangespreek word; en
- (b) daar 'n balans van belange gehandhaaf word tussen persone wat –
  - (i) die Departement;
  - (ii) die Departement van Kuns, Kultuur en Toerisme;
  - (iii) die KwaZulu-Natal Toerisme-owerheid;
  - (iv) belanghebbendes in die rolprentbedryf;
  - (v) Handel en Belegging, KwaZulu-Natal;
  - (vi) georganiseerde plaaslike regering;
  - (vii) tersiêre instellings;
  - (viii) plaaslike rolprentkantore; en
  - (ix) die Nywerheid-ontwikkelingskorporasie,

verteenwoordig.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet –

- (a) een van die lede van die Raad as die voorsitter van die Raad; en
- (b) een van die lede van die Raad as die adjunkvoorsitter van die Raad,

aanwys.

(5) Die lid van die Raad vermeld in subartikel 3(b)(i) –

- (a) moet skakeling tussen die verantwoordelike lid van die Uitvoerende Raad en die Raad moontlik maak;
- (b) moet van tyd tot tyd aan die verantwoordelike lid van die Uitvoerende Raad

verslag doen met betrekking tot aangeleenthede wat tersaaklik geag word; en  
(c) kan vergaderings van die Raad bywoon en deelneem aan besprekings, maar  
het nie die reg om te stem wanneer 'n besluit van die Raad geneem word nie.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet, deur middel van kennisgewing in die *Koerant* enige belanghebbende partye binne die provinsie uitnoui om kandidate vir aanstelling op die Raad te benoem.

(7) Die uitnodiging vir benoemings moet –  
(a) die benoemingsprosedure;  
(b) die vereistes vir benoemings; en  
(c) die sluitingsdatum vir die benoemings,  
spesifiseer.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings voorgelê in reaksie op die kennisgewing oorweeg, en kan 'n keuringspaneel aanstel bestaande uit senior departementele beamptes om al die benoemings te hersien en aanbevelings by die verantwoordelike lid van die Uitvoerende Raad te maak aangaande die kandidate.

(9) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone aangestel op die Raad in die *Koerant* laat publiseer en in ten minste twee koerante met wye sirkulasie in die provinsie, onmiddellik nadat sodanige persone skriftelik in kennis gestel is van hul aanstelling op die Raad.

(10) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede van die Raad ingevolge subartikel (1), die Uitvoerende Raad en die Portefeuljekomitee inlig oor die name van die aangestelde lede asook die termyn van hul aanstelling.

(11) Hierdie artikel is, met die nodige veranderings, van toepassing op die vul van 'n vakature op die Raad.

#### **Onbevoegdheid vir aanstelling op Raad**

6. 'n Persoon is onbevoeg om op die Raad aangestel te word of om op die Raad te bly,

indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is;
- (c) direk of indirek belang het by enige kontrak met die Kommissie en versuim om sy of haar belang en die aard daarvan te verklaar op die wyse wat deur hierdie Wet vereis word;
- (d) onder kuratorskap is;
- (e) te eniger tyd uit sy of haar vertrouensamp ontslaan is op grond van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind en gevonnissen is tot 'n termyn van gevangenisstraf sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad by die volle openbaarmaking van die misdryf in 'n plegtige verklaring deur sodanige benoemde 'n skuldigbevinding kan kondoneer op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis voltooi is, tot 'n einde kom; of
- (g) versuim om 'n belang te verklaar in ooreenstemming met artikel 7 of die verrigtinge van die Raad bygewoon of daaraan deelgeneem het terwyl hy of sy 'n belang het soos bedoel in die vermelde artikel.

#### **Verklaring van finansiële of ander belange van Raadslede**

7.(1) 'n Persoon wat benoem is om op die Raad te dien ingevolge subartikel 5(6) moet, binne 10 dae nadat hy of sy benoem is, 'n skriftelike verklaring voorlê aan die verantwoordelike lid van die Uitvoerende Raad van alle direkte of indirekte belange in enige maatskappy en van enige ander sakebelange.

(2) Enige versuim deur 'n benoemde om finansiële en ander belange te verklaar ingevolge subartikel (1) maak sodanige benoemde ingevolge artikel 6 onbevoeg vir aanstelling op die Raad.

(3) Elke lid van die Raad moet, by aanvaarding van 'n amp en aan die begin van elke finansiële jaar van die Kommissie, 'n skriftelike verklaring voorlê van sy of haar direkte of indirekte belang in enige maatskappy of ander sakebelange op die wyse soos bepaal in

artikel 234(3)(a) van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(4) Waar 'n lid van die Raad, te eniger tyd gedurende sy of haar ampsbekleding as 'n lid van die Raad, 'n belang in enige maatskappy of ander sakebelange verkry, moet hy of sy, binne 10 dae vanaf die datum van die verkryging van sodanige belang, 'n skriftelike verklaring aan die verantwoordelike lid van die Uitvoerende Raad van sodanige belang voorlê.

(5) Enige versuim deur die lid om sy of haar belange te verklaar soos bedoel in subartikel (3) en (4) sal die beëindiging van die aanstelling van sodanige lid tot gevolg hê ingevolge artikel 9(2).

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n opgedateerde register byhou van die belange van lede van die Raad soos verklaar ingevolge hierdie artikel.

#### **Ampstermyn en heraanstelling van raadslid**

8.(1) Die persone wat op die Raad aangestel word, behou die amp vir 'n tydperk van vyf jaar of sodanige korter tydperk soos die verantwoordelike lid van die Uitvoerende Raad mag bepaal en is, onderhewig aan artikel 5, benoembaar vir heraanstelling by die verstryking van sodanige tydperk: Met dien verstande dat geen persoon heraangestel mag word nadat hy of sy vir 'n aaneenlopende tydperk van 10 jaar op die Raad gedien het nie.

#### **Vakatures, ontslag en bedanking uit amp van raadslede**

9.(1) 'n Lid van die Raad moet sy of haar amp ontruim indien hy of sy onbevoeg raak soos bedoel in artikel 6.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat hy of sy aan 'n lid die geleentheid gebied het om sy of haar saak te stel, te eniger tyd die ampstermyn van sodanige lid beëindig indien daar, na sy of haar mening, goeie, afdoende en regverdigbare redes daarvoor is.

(3) 'n Lid moet sy of haar amp ontruim indien hy of sy afwesig is, sonder dat verlof tot afwesigheid deur die Raad vooraf toegestaan is, van twee opeenvolgende vergaderings van die Raad waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is.

(4) 'n Lid mag uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis te gee aan die verantwoordelike lid van die Uitvoerende Raad: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad mag afsien van die bedankingskennisgewing.

(5) Wanneer 'n vakature op die Raad ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, 'n persoon aanstel om sodanige vakature te vul vir die onverstrykte gedeelte van die ampstydperk van die lid in wie se plek sodanige persoon aangestel is.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (6) uitvoer, kan hy of sy, nie teenstaande die prosedure vir die aanstelling van lede van die Raad soos uiteengesit in artikel 5, onderhewig aan subartikel 5(2) en 5(3) persone aanstel om op tussentydse grondslag as lede van die Raad te dien: Met dien verstande dat –

- (a) die persone aangestel ingevolge hierdie subartikel nie op die Raad mag aanbly vir 'n tydperk van meer as 60 dae na die datum van hul aanstelling nie; en
- (b) die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, die permanente lede van die Raad binne 60 dae na die aanstelling bedoel in hierdie subartikel moet aanstel.

#### **Tydlike skorsing van raadslid**

10. Die verantwoordelike lid van die Uitvoerende Raad mag 'n lid van die Raad skors terwyl die verantwoordelike lid van die Uitvoerende Raad bewerings ondersoek wat, indien daar gevind word dat dit korrek is, kan lei tot beëindiging van die lid se aanstelling ingevolge artikel 9(2).

#### **Vergaderings en prosedures by vergaderings van raad**

11.(1) Die eerste vergadering van die Raad moet gehou word op 'n datum, tyd en plek bepaal deur die verantwoordelike lid van die Uitvoerende Raad, waarna alle toekomstige vergaderings moet plaasvind soos deur die voorsitter bepaal.

(2) Die kworum vir 'n vergadering van die Raad is 'n meerderheid van die lede van die Raad.

(3) Die verrigtinge by 'n vergadering van die Raad moet, onderhewig aan die bepalings van hierdie artikel, bepaal word deur die voorsitter insluitend die reg om te besluit dat enige aangeleentheid onder bespreking onttrek mag word voordat daarvoor gestem word.

(4) Die voorsitter moet voorsit op alle vergaderings van die Raad: Met dien verstande dat in sy of haar afwesigheid die adjunkvoorsitter moet voorsit en in die geval dat beide die voorsitter en die adjunkvoorsitter afwesig is van 'n vergadering van die Raad, kan die lede wat dan teenwoordig is, uit hul eie geledere 'n persoon kies om op te tree as voorsitter vir die duur van daardie spesifieke vergadering.

(5) 'n Besluit van die Raad moet geneem word deur 'n meerderheid van die stemme van die lede teenwoordig by 'n vergadering en, in die geval van 'n staking van stemme aangaande enige aangeleentheid, het die voorsitter 'n beslissende stem buiten sy of haar gewone stem.

(6) Die Raad moet notule hou van sy vergaderings.

(7) Geen besluit van die Raad is ongeldig bloot op gronde van 'n vakature in die Raad nie: Met dien verstande dat die besluit geneem word deur die vereiste meerderheid van die lede van die Raad dan teenwoordig en geregtig daarop om as lede van die Raad te sit.

(8) Die voorsitter, of 'n meerderheid van die Raad, kan 'n buitengewone vergadering van die Raad byeenroep in welke geval die bepalings van hierdie artikel van toepassing is met die nodige veranderings.

(9) Die Raad mag, volgens sy diskresie, lede van die publiek toelaat om enige

vergadering van die Raad by te woon.

### **Onttrekking van lid van vergaderings en verrigtinge van raad**

12.(1) 'n Lid van die Raad moet hom- of haarself onttrek van 'n aangeleentheid wat deur die Raad ondersoek of oorweeg of waaroor gestem word indien een of meer van die volgende plaasvind –

- (a) indien hy of sy 'n direkte of indirekte belang in die aangeleentheid het; of
- (b) indien daar 'n moontlikheid is dat 'n direkte of indirekte belang in die aangeleentheid mag opduik.

(2) Indien dit, te eniger tyd gedurende die loop van enige verrigtinge voor die Raad, blyk dat 'n lid wat by daardie vergadering teenwoordig is, 'n belang bedoel in subartikel (1) het of mag hê, moet sodanige lid onverwyld die aard van sy of haar belang verklaar en die vergadering verlaat.

(3) Enige verklaring gemaak ingevolge subartikel (1) moet in die notule van die betrokke vergadering opgeneem word.

(4) Indien dit blyk dat die Raad 'n besluit geneem het aangaande 'n aangeleentheid met betrekking waartoe 'n lid versuim het om 'n belang bedoel in subartikel (1) te verklaar, is sodanige besluit deur die Raad ongeldig.

(5) Vir die doeleindes van hierdie artikel sluit "**indirekte belang**" in, maar is nie beperk nie tot, 'n belang gehou deur enige lid se –

- (a) sakevennoot, medewerker of werkgewer, buiten die staat;
- (b) eggenoot, gade in 'n gewoontehuwelik, of persoon saam met wie sodanige lid woon of leef asof hul getroud is; of
- (c) kind, ouer, broer of suster.

### **Besoldiging van raadslede**

13.(1)(a) Onderhewig aan subartikel 2(a), kan 'n lid van die Raad betaal word uit die fondse van die Kommissie sodanige besoldiging en toelaes soos bepaal deur die

verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir finansies.

(b) 'n Lid van die Raad wat besoldiging, toelaes of ander voordele ontvang uit hoofde van sy of haar pos of aanstelling in –

- (i) die nasionale regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die nasionale of 'n provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige besoldiging, toelaes of ander voordele te ontvang terwyl hy of sy as 'n lid van die Raad dien, mag slegs besoldiging en toelaes vermeld in paragraaf (a) ontvang tot die omvang vereis om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou wees as dit nie vir sodanige pos of aanstelling was nie.

(2)(a) 'n Lid van die Raad en 'n persoon wat tot die Raad gekoöpteer is mag, met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, terugbetaling ontvang uit die fondse van die Kommissie vir redelike werklike reis- en verblyfuitgawes wat noodsaak is deur die werklike bywoning van 'n vergadering van die Raad.

(b) Die lid van die Uitvoerende Raad verantwoordelik vir finansies moet prosedures, insluitend beheermaatreëls, vir die bestuur bepaal, asook hantering en verwerking van eise vir reis- en verblyfuitgawes bedoel in paragraaf (a).

#### **Instelling van komitees om Raad by te staan**

14.(1) Die Raad kan komitees instel wat uit een of meer van sy lede bestaan om –

- (a) die Raad by te staan in die uitoefening van enige van die bevoegdhede, pligte of funksies van die Kommissie bedoel in artikel 4; of
- (b) navraag of navorsing doen aangaande enige aangeleentheid wat binne die mandaat van die Raad ingevolge hierdie Wet val.

(2) Wanneer 'n komitee bedoel in subartikel (1) ingestel moet word, moet die Raad –

- (a) die opdrag van sodanige komitee bepaal of insluitend, maar nie beperk nie tot, sodanige Komitee ophou voortbestaan wanneer hy die taak of take voltooi het wat deur die Raad daaraan toegewys is of nie;

- (b) 'n voorsitter of sodanige komitee aanstel wat 'n lid van die Raad moet wees; en
- (c) bepaal of sodanige komitee persone kan koöpteer wat nie lede van die Raad is nie, en indien wel, op watter terme en voorwaardes.

(3) Die Raad kan, te eniger tyd, die bestaan van 'n komitee of enige mandaat wat aan 'n komitee gegee word, beëindig, ongeag of sodanige komitee die taak of take wat deur die Raad daaraan toegewys is, voltooi het.

4(a) Die Hoof- Uitvoerende Beamppte kan vergaderings van die Raad bywoon en daaraan deelneem, maar het nie die reg om te stem nie.

(b) 'n Personeellid van die Raad kan, op uitnodiging van die tersaaklike komitee, 'n vergadering van daardie komitee bywoon.

#### **Koöptering van persone op Raad of komitees van Raad**

15.(1) Die Raad kan, indien hy van mening is dat 'n spesifieke persoon in staat is om bystand te verleen ten opsigte van enige van die Raad se funksies en bevoegdhede, sodanige persoon vir daardie doel koöpteer.

(2) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) is nie daarop geregtig om by enige vergadering van die Raad of 'n komitee te stem nie.

(3) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) kan sodanige besoldiging en toelaes uit die fondse van die Kommissie ontvang soos bepaal deur die Raad in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

### HOOFSTUK 4 HOOF- UITVOERENDE BEAMPTE EN PERSONEEL VAN KOMMISSIE

#### **Hoof- Uitvoerende Beamppte van Kommissie**

16.(1) Die Raad moet, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, 'n toepaslik gekwalifiseerde, vaardige en ervare persoon aanstel as Hoof- Uitvoerende Beamppte van die Kommissie.

(2)(a) Die Hoof- Uitvoerende Beampte is aangestel vir 'n tydperk wat nie vyf jaar oorskry nie.

(b) Die Hoof- Uitvoerende Beampte kan heraangestel word vir een verdere tydperk wat nie vyf jaar oorskry nie.

(3)(a) Die aanstelling van die Hoof- Uitvoerende Beampte is onderhewig aan die sluiting van 'n skriftelike prestasie-ooreenkoms aangegaan tussen daardie persoon en die Raad.

(b) Die Raad en die Hoof- Uitvoerende Beampte kan, skriftelik en by ooreenkoms, die prestasie-ooreenkoms wysig.

(4) Vir doeleindes van die verklaring van finansiële of ander belange, is die bepalings van artikel 7 met die nodige veranderings van toepassing op die Hoof- Uitvoerende Beampte buiten dat die Hoof- Uitvoerende Beampte sy of haar belange aan die Raad moet verklaar.

(5) Die Hoof- Uitvoerende Beampte is 'n *ex officio*-lid van die Raad maar het nie die reg om te stem by vergaderings van die Raad nie.

### **Funksies van Hoof- Uitvoerende Beampte**

17.(1) Die Hoof- Uitvoerende Beampte is verantwoordelik vir –

(a) die administratiewe en finansiële bestuur van die Raad in ooreenstemming met die Wet op die Bestuur van Openbare Finansies, 1999 (Wet No. 1 van 1999), en die opdrag van die Raad;

(b) in oorleg met die Raad, die aanstelling van personelede van die Kommissie bedoel in artikel 19(1);

(c) in oorleg met die Raad, die bepaling van 'n gedragskode, van toepassing op die Hoof- Uitvoerende Beampte, alle personeel van die Kommissie en beregbaar vir doeleindes van dissiplinêre verrigtinge, om –

(i) voldoening aan toepaslike reg, insluitend hierdie Wet;

(ii) die effektiewe, doeltreffende en ekonomiese gebruik van die Kommissie se fondse en hulpbronne;

(iii) die bevordering en handhawing van 'n hoë standaard van

- professionele etiek;
- (iv) die voorkoming van konflik van belang;
- (v) die beskerming van vertroulike inligting gehou deur die Kommissie; en
- (vi) professionele, eerlike, onpartydige, regverdige, etiese en billike diens, te verseker;
- (d) die handhawing van dissipline oor die personeel aangestel ingevolge paragraaf (b) en moet, vir daardie doeleindes, teenoor die Raad aanspreeklik wees;
- (e) die hou en byhou van die register van belange wat deur personeellede van die Kommissie verklaar is; en
- (f) versekering van nakoming deur die Raad van die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en enige ander toepaslike wetgewing.

(2) Indien die Hoof- Uitvoerende Beampte om enige rede nie in staat is om enige van sy of haar funksies uit te voer nie, moet die Raad, skriftelik, en in oorleg met die verantwoordelike lid van die Uitvoerende Raad, 'n ander persoon aanstel as Waarnemende Hoof- Uitvoerende Beampte totdat die Hoof- Uitvoerende Beampte in staat is om daardie funksies te hervat.

### **Bedanking en ontslag uit amp van Hoof- Uitvoerende Beampte**

**18.(1)** Die Hoof- Uitvoerende Beampte ontruim sy of haar amp –

- (a) in die geval van bedanking, wanneer die bedanking van krag word;
- (b) wanneer, ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), die persoon wat daardie amp beklee, onbevoeg raak om te dien as direkteur van 'n maatskappy; en
- (c) by ontslag uit sy of haar amp ingevolge subartikel (2).

(2) Die Raad kan, in oorleg met die lid van die Uitvoerende Raad, die Hoof- Uitvoerende Beampte se diens beëindig in ooreenstemming met toepaslike diens- en arbeidswetgewing.

**Personeel van Kommissie**

19.(1) Die Hoof- Uitvoerende Beamppte moet, onderhewig aan subartikel (2), personeellede van die Kommissie aanwend soos redelikerwys nodig mag wees om –

- (a) hom of haar by te staan in die verrigting van sy of haar funksies ingevolge hierdie Wet; en
- (b) die Raad by te staan met die werk verbonde aan die Raad se verrigting van sy funksies.

(2) Die Raad moet, onderhewig aan artikel 23(4), 'n menslike hulpbronne-beleid vir personeellede van die Kommissie, insluitend die Hoof- Uitvoerende Beamppte, bepaal.

(3) Vir doeleindes van die verklaring van finansiële of ander belange, en onderhewig aan artikel 17(1)(e), is die bepalings van artikel 7(3), (4) en (5) met die nodige veranderings van toepassing op personeellede van die Kommissie.

(4) Die Hoof- Uitvoerende Beamppte moet 'n opgedateerde register byhou van die belange van personeellede van die Kommissie soos verklaar ingevolge hierdie subartikel (3).

**Sekondering of oorplasing van personeel na Kommissie**

20. Die Kommissie kan die dienste aanwend van persone wat vanaf die staatsdiens gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

**HOOFSTUK 5****BEPALING VAN PROVINSIALE GEDRAGSKODE VIR ROLPRENTPRODUSENTE****Provinsiale gedragskode vir rolprentprodusente**

21.(1) Die verantwoordelike lid van die Uitvoerende Raad moet –

- (a) deur middel van kennisgewing in die *Koerant*; en
- (b) na oorleg met die Raad,

'n provinsiale gedragskode vir rolprentprodusente bepaal.

(2) Die provinsiale gedragkode vir rolprentprodusente tree in werking by die publikasie van die kennisgewing vermeld in subartikel (1).

(3) Die verantwoordelike lid van die Uitvoerende Raad kan, deur middel van kennisgewing in die *Koerant en* na oorleg met die Raad, die provinsiale gedragkode vir rolprentprodusente –

- (a) wysig;
- (b) vervang; of
- (c) onttrek.

### **Beleidsvoorskrifte**

22.(a) Die verantwoordelike lid van die Uitvoerende Raad kan strategiese riglyne vir die strewe na die Kommissie se doelwitte stel en kan beleidsvoorskrifte aan die Raad uitreik.

(b) Die verantwoordelike lid van die Uitvoerende Raad kan enige strategiese riglyn of beleidsopdrag wat ingevolge paragraaf (a) uitgereik is, onttrek of wysig.

## **HOOFSTUK 6 BEFONDSING EN FINANSIËLE BESTUUR VAN KOMMISSIE**

### **Fondse van Kommissie**

23.(1) Die fondse van die Kommissie bestaan uit –

- (a) geld bewillig deur die Provinsiale Wetgewer;
- (b) rente op beleggings van die Kommissie; en
- (c) inkomste wettig bekom uit enige ander bron.

(2) Die Kommissie moet sy fondse benut –

- (a) vir die betaling van besoldiging, toelaes en reis- en verblyfuitgawes van –
  - (i) die lede van die Raad;
  - (ii) die Hoof- Uitvoerende Beampte;
  - (iii) die personeellede van die Kommissie; en
- (b) om kostes te dek met betrekking tot –
  - (i) die dag-tot-dag werking en administrasie van die Kommissie; en

(ii) die verrigting van die pligte en funksies van die Kommissie en die uitoefening van sy bevoegdhede ingevolge hierdie Wet.

(3) Die Hoof- Uitvoerende Beampte moet, met die meewerking van die Raad –

- (a) 'n rekening oopmaak in die naam van die Kommissie by 'n instelling wat as 'n bank geregistreer is ingevolge die Bankwet, 1990 (Wet No. 94 van 1990); en
- (b) alle geld ontvang ingevolge subartikel (1) daarin deponeer.

(4) Die Raad, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, moet –

- (a) die besoldiging en diensvoorwaardes; en
- (b) die pensioen- en aftreevoordele,

van die Hoof- Uitvoerende Beampte en die ander personeellede van die Kommissie bepaal.

(5) Die Kommissie kan gelde wat in sy rekening gedeponeer is, wat nie vir onmiddellike gebruik vereis word nie, belê: Met dien verstande dat die Raad redelike stappe moet doen om te verseker dat die belegging nie spekulatief van aard is nie.

(6) Die Kommissie word beperk van die leen van geld of uitreiking van waarborge, kwytenskeldings of sekuriteite of die aangaan van enige ander transaksies wat die Kommissie bind, tensy sodanige leen, waarborg, kwytskelding, sekuriteit of ander transaksie gemagtig word ingevolge hierdie Wet en nie teenstrydig is nie met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

#### **Finansiële bestuur**

**24.(1)** Die Hoof- Uitvoerende Beampte moet volledige en behoorlike boeke van die rekening en al die nodige verbandhoudende rekords laat hou.

(2) Die Hoof- Uitvoerende Beampte moet verseker dat die Kommissie se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state voorberei en voorgelê word ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

(3) Die Hoof- Uitvoerende Beampte moet, binne drie maande voor die einde van elke

finansiële jaar –

- (a) 'n besigheidsplan vir die Kommissie, wat meetbare doelwitte en die ander inligting bedoel in artikel 25(3)(b) en (c) bevat; en
- (b) 'n staat van die berekende inkomste en uitgawes van die Kommissie, aan die Raad voorlê vir goedkeuring met betrekking tot die volgende drie finansiële jaar.

(4) In enige finansiële jaar kan die Hoof- Uitvoerende Beampte aangepaste of aanvullende state van die beraamde inkomste en uitgawe van die Kommissie vir daardie finansiële jaar aan die Raad voorlê vir goedkeuring.

(5) Die Kommissie mag geen finansiële verbintenis buiten sy goedgekeurde begroting en opgelope reserwes aangaan nie.

(6) Die Hoof- Uitvoerende Beampte kan –

- (a) met die Raad se goedkeuring, enige onbestede gedeelte van sy fondse belê by die Korporasie vir Openbare Deposito's of enige ander instelling van tyd tot tyd deur die Nasionale Tesourie gekategoriseer of gelys as 'n Kategorie "A1"-finansiële instelling; of
- (b) met die Raad se goedkeuring op enige ander wyse oor daardie gedeelte beskik.

(7) Die Hoof- Uitvoerende Beampte kan, met die Raad se goedkeuring, reserwefondse stig en sodanige bedrae as wat die Raad goedkeur, daarin deponeer.

### **Oudit en jaarverslag**

**25.(1)** Die Ouditeur-generaal moet die finansiële state van die Kommissie oudit.

(2)(a) Die Raad moet 'n verslag by die Provinsiale Wetgewer ter tafel lê oor die werksaamhede van die Kommissie gedurende 'n finansiële jaar, binne vyf maande na die einde van daardie finansiële jaar.

(b) Binne vyf maande nadat die verslag ter tafel gelê is, moet 'n afvaardiging bestaande uit die voorsitter van die Raad en ten minste twee ander lede van die Raad die tersaaklike Portefeuljekomitee oor die jaarverslag inlig.

(3) Die verslag moet –

- (a) 'n balansstaat en 'n staat van inkomste en uitgawes gesertifiseer deur die Ouditeur-generaal insluit;
- (b) die omvang meld waartoe die Kommissie sy oogmerke vermeld in artikel 3 en die meetbare doelwitte soos in sy besigheidsplan uiteengesit soos bedoel in artikel 24(3)(a) gedurende die betrokke finansiële jaar bereik of bevorder het; en
- (c) tersaaklike prestasie-inligting bevat aangaande die ekonomiese, effektiewe en doeltreffende toepassing van hulpbronne en in besonder 'n vergelyking tussen beplande en werklike prestasie-aanduiders soos uiteengesit in daardie besigheidsplan.

#### **Finansiële jaar van Kommissie**

26. Die finansiële jaar van die Kommissie begin op 1 April van 'n spesifieke jaar en eindig op 31 Maart van die volgende jaar.

#### **Vaste eiendom**

27. Die Kommissie kan in die loop van sy besigheid, ingevolge 'n beleid en prosedures bepaal deur die Raad en met die goedkeuring van die verantwoordelike Lid van die Uitvoerende Raad, vaste eiendom verkry, hou of daaroor beskik.

#### **Regstappe teen Kommissie**

28.(1) Enige regstappe teen die Kommissie moet ingestel word in ooreenstemming met die Wet op die Instel van Regsgedinge teen sekere Staatsorgane, 2002 (Wet No. 40 van 2002).

(2) Die Kommissie word, vir doeleindes van subartikel (1), beskou as 'n staatsorgaan bedoel in paragraaf (c) van die omskrywing daarvan in artikel 1 van die vermelde Wet.

## **HOOFSTUK 7**

## ALGEMENE BEPALINGS

### **Sekerheid van vertroulike inligting wat deur Kommissie gehou word**

**29.(1)** Onderhewig aan die Grondwet en die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), mag geen persoon enige inligting wat aan die Kommissie voorgelê word in ooreenstemming met enige regsopdrag of -instruksie, verklaar nie tensy –

- (a) hy of sy deur 'n geregshof daartoe gelas word; of
- (b) die persoon wat sodanige regsopdrag of -instruksie gegee het, skriftelik daartoe instem.

**(2)** Geen persoon mag enige inligting gehou in die register bedoel in artikel 7, 16(4) en 19(4) verklaar nie tensy sodanige verklaring –

- (a) gemaak is ingevolge enige wet wat sodanige verklaring afdwing of magtig;
- (b) wesenlik nodig is vir die behoorlike funksionering van die Kommissie; of
- (c) gemaak is vir doeleindes van monitering, evaluering, ondersoek of oorweging van enige werksaamheid wat met die Kommissie of enige personeellid van die Kommissie verband hou.

**(3)** Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

### **Ontbinding van Kommissie**

**30.** Die Kommissie kan slegs ontbind word ingevolge 'n Wet van die Provinsiale Wetgewer.

### **Gebruik van naam van Kommissie**

**31.(1)** Geen persoon mag, sonder vooraf skriftelike magtiging van die Kommissie, op enige wyse die naam, akroniem, logo's, ontwerpe of materiaal wat deur die Kommissie gebruik of besit word, verteenwoordig of gebruik nie.

**(2)** Geen persoon mag valslik beweer dat hy of sy namens die Kommissie optree nie.

**(3)** Enige persoon wat subartikels (1) of (2) oortree, is skuldig aan 'n misdryf.

**Delegering**

**32.(1)** Die verantwoordelike lid van die Uitvoerende Raad kan aan die Hoof van die Departement –

(a) enige bevoegdheid verleen aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet delegeer, buiten die bevoegdheid om regulasies vermeld in artikel 33 uit te vaardig; of

(b) enige plig wat aan die verantwoordelike lid van die Uitvoerende Raad opgelê is deur hierdie Wet delegeer, behalwe enige plig aangaande die aanstelling en beëindiging van amp van die lede van die Raad bedoel in artikel 5(1)(a) en 9(2).

(2) Die Raad kan, deur 'n spesiale beslissing, enige bevoegdheid of plig wat deur die Raad verleen of opgelê word deur hierdie Wet aan die Hoof- Uitvoerende Beampte of personeellid van die Kommissie delegeer.

(3) Die Hoof- Uitvoerende Beampte kan aan enige personeellid van die Kommissie enige bevoegdheid of plig delegeer wat aan die Hoof- Uitvoerende Beampte deur hierdie Wet gedelegeer of opgelê is, buiten enige bevoegdheid of plig as rekenpligtige beampte van die Kommissie.

(4) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1), (2) of (3) moet uitgeoefen of uitgevoer word onderhewig aan sodanige voorwaardes as wat die persoon of liggaam wat die delegasie gemaak het, nodig ag.

(5) 'n Delegasie vermeld in subartikel (1), (2) of (3) –

(a) moet skriftelik wees;

(b) verbied nie die persoon of liggaam wat die delegasie gemaak het om daardie bevoegdheid uit te oefen of daardie plig uit te voer nie; en

(c) kan te eniger tyd skriftelik deur daardie persoon of liggaam onttrek of gewysig word.

**Regulasies**

**33.** Die verantwoordelike lid van die Uitvoerende Raad kan, in oorleg met die Raad en deur middel van kennisgewing in die *Koerant*, regulasies uitvaardig aangaande –

(a) enige aangeleentheid wat voorgeskryf mag of moet word ingevolge hierdie Wet; of

(b) enige administratiewe of prosedurele aangeleentheid nodig om uitvoering te gee aan die bepalings van hierdie Wet.

**Likwidering van Maatskappy en oorgangsbepalings wat daarmee verband hou**

**34.(1)(a)** Die Maatskappy, KwaZulu-Natal Rolprentkommissie, met Maatskappyregistrasienuommer 2003/028677/08, ingestel ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), moet vrywillig gelijkwieder en geskrap word.

(b) Die lede van die Maatskappy moet, by likwidasië van die Maatskappy vermeld in paragraaf (a), onder andere voldoen aan artikel 349 en 350 van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(2) Op die datum van die likwidasië van die Maatskappy bedoel in subartikel (1), word alle bates, aanspreeklikhede, regte, pligte en verpligtinge, insluitend enige onbestede gedeelte van enige opgelope fondse of fondse ontvang deur die Maatskappy, oorgeplaas na, en is onder berusting van, die KwaZulu-Natal Rolprentkommissie ingestel ingevolge artikel 2.

(3) Die Kommissie is, met betrekking tot die bates, aanspreeklikhede, regte, pligte en verpligtinge en fondse vermeld in subartikel (2), vir alle doeleindes die regsopvolger en opvolger in titel van die Maatskappy.

(4) Die lede van die Raad van die Maatskappy moet optree as behoorlik gemagtigde en bemagtigde lede van die Raad van die Kommissie tot sodanige tyd as wanneer die verantwoordelike lid van die Uitvoerende Raad ingevolge artikel 5(1) die Raad ingevolge hierdie Wet aangestel het.

(5) Alle personeellede van die Maatskappy moet, binne ses maande na die inwerkingtreding van hierdie Wet, 'n werksaanbod ontvang van die verantwoordelike lid van die Uitvoerende Raad vir oorplasing na die Kommissie op 'n datum bepaal deur die

verantwoordelike lid van die Uitvoerende Raad.

(6) Die besoldiging, voordele en voorregte wat deur die verantwoordelike lid van die Uitvoerende Raad gebied word, in ooreenstemming met subartikel (5), mag nie minder wees as daardie betaalbaar aan die personeellid deur die Maatskappy, onmiddellik voor sy of haar oorplasing nie.

(7) Vir die doeleindes van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), word dit beskou as geen verandering van werkgewer met betrekking tot 'n personeellid wat 'n werksaanbod bedoel in subartikel (5) aanvaar nie.

(8) Wanneer 'n persoon 'n personeellid van die Kommissie word ingevolge subartikel

(5) –

(a) behou hy of sy alle vakansieverlof wat tot sy of haar krediet opgeloop het tot die datum onmiddellik voor die oorplasingsdatum, aangepas in ooreenstemming met die diensvoorwaardes van die Kommissie; en

(b) moet die Kommissie beskik oor of enige ondersoek instel wat ingestel is of beoog was om ingestel te word met betrekking tot beweerde wangedrag wat deur sodanige persoon gepleeg is voor die datum van oorplasing en die Kommissie moet toepaslike stappe teen die betrokke persoon doen in ooreenstemming met die wette, beleid en diensvoorwaardes of diens van toepassing op hom of haar onmiddellik voor die oorplasingsdatum.

### **Algemene misdrywe**

**35.(1)** 'n Lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens by of wat namens die Kommissie optree, is skuldig aan 'n misdryf indien hy of sy direk of indirek enige omkoperij aanvaar en of enige ongemagtigde geld of beloning ontvang van enige persoon in ooreenstemming met enigiets wat deur die Kommissie gedoen of aangebied word.

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy ten opsigte van of met betrekking tot enigiets wat deur die Kommissie gedoen of aangebied word, enige personeellid of enige adviseur, agent of ander persoon in diens van of wat namens die

Kommissie optree, omkoop of poog om om te koop, of korrup beïnvloed of poog om korrup te beïnvloed.

(3) Enige persoon wat valslik beweer dat hy of sy gemagtig is om geld te eis of in te samel namens of in opdrag van die Kommissie, is skuldig aan 'n misdryf.

### **Strawwe**

**36.** Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie of beide.

### **Kort titel**

**37.** Hierdie Wet heet die KwaZulu-Natal Wet op die Rolprentkommissie, 2009.

**MEMORANDUM AANGAANDE DIE OOGMERKE VAN DIE KWAZULU-NATAL  
WETSONTWERP OP DIE ROLPRENTKOMMISSIE, 2009**

**1. ALGEMENE AGTERGROND**

Beide die doenbaarheidstudie en die studie van die Industriële Strategie vir KwaZulu-Natal het aangedui dat rolprente die potensiaal het om 'n hoofspeler in die ekonomiese ontwikkeling van die provinsie KwaZulu-Natal te wees. Beide studies het verder aangedui dat daar 'n behoefte is aan die vestiging van 'n struktuur wat verantwoordelik sal wees vir die koördinerende, bemaking en ontwikkeling van rolprente in die provinsie.

In 2005 het die Departement van Ekonomiese ontwikkeling ("die Departement") 'n prinsipiële kabinetsgoedkeuring versoek en bekom vir die vorming van die KwaZulu-Natal Rolprentkommissie ("die Kommissie") –

- (a) as 'n artikel 21-maatskappy, vir tussentydse doeleindes; en
- (b) as 'n Provinsiale Openbare Entiteit ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) (Wet op Openbare Finansiële Bestuur).

'n Artikel 21-maatskappy is ingestel, ter nakoming van die bovermelde goedkeuring, om te verseker dat die provinsie nie die potensiele voordele wat met die rolprentbedryf verband hou, verloor terwyl die wetgewing om 'n statutêre liggaam in te stel deur die regsprosesse gaan nie.

Die grondwetlike mandaat van die Departement en die Provinsiale Wetgewer om wette te maak aangaande die bevordering van die rolprent- en videobedryf in die provinsie spruit voort uit deel A van bylae 4 by die Grondwet van die Republiek van Suid-Afrika, 1996. Die vermelde bylae bepaal dat beide die nasionale en provinsiale sferes van die regering funksionele en wetgewende bekwaamheid het aangaande enige aangeleentheid ten opsigte van industriële bevordering, wat rolprente as 'n bedryf insluit.

In die lig van die bogenoemde, beoog hierdie Wetsontwerp om –

- (a) voorsiening te maak vir die instelling van die Kommissie;
- (b) die doelwitte van die Kommissie te bepaal;
- (c) voorsiening te maak vir die bevoegdhede, pligte en funksies van die Kommissie;
- (d) voorsiening te maak vir die reëling en bestuur van die Kommissie;
- (e) voorsiening te maak vir die finansies van die Kommissie;
- (f) voorsiening te maak vir die ondersteuning van projekte wat gemik is op die bevordering van rolprentontwikkeling, -produksie en -onderrig in KwaZulu-Natal; en
- (g) voorsiening te maak vir aangeleenthede wat daarmee verband hou.

## **2. ARTIKEL-BY-ARTIKEL VERDUIDELIKING**

### **HOOFSTUK 1 OMSKRYWINGS**

#### **Artikel 1**

Maak voorsiening vir die omskrywing van woorde wat in hierdie Wetsontwerp gebruik word.

### **HOOFSTUK 2 INSTELLING VAN DIE KWAZULU-NATAL ROLPRENTKOMMISSIE**

#### **Artikel 2**

Maak voorsiening vir die instelling van die KwaZulu-Natal Rolprentkommissie as 'n Provinsiale Openbare Entiteit ingevolge die Wet op Openbare Finansiële Bestuur.

#### **Artikel 3**

Meld die oogmerke van die Kommissie, naamlik om –

- (a) die provinsie te bevorder en te bemark as 'n globale bestemming vir rolprent- en videoproduksie;
- (b) die rolprent- en videobedryf in die provinsie plaaslik, nasionaal en internasionaal te ontwikkel, bevorder en bemark;
- (c) belegging in die rolprent- en videobedryf in die provinsie te fasiliteer;
- (d) die bied van geleenthede aan persone uit benadeelde gemeenskappe om deel te neem aan die rolprentbedryf in die provinsie te verskaf en aan te moedig;
- (e) historiese wanbalanse in die infrastruktuur en in die verspreiding van vaardighede en hulpbronne in die rolprentbedryf in die provinsie aan te spreek; en
- (f) by te dra tot 'n magtigingsomgewing vir werkskepping in die rolprentbedryf in die provinsie.

#### **Artikel 4**

Maak voorsiening vir die bevoegdhede, pligte en funksies van die Kommissie, wat insluit die –

- (a) fasilitering van ontwikkeling van groei in infrastruktuur en mensekapasiteit vir die rolprent- en videoproduksie in die provinsie deur –
  - (i) rolprent- en video-medeproduksies tussen internasionale en provinsiale rolprentmakers aan te moedig om vaardigheidsontwikkeling en oordrag van plaaslike rolprentmakers te verseker;

- (ii) rolprent-, televisie- en videoprodusente aan te moedig om plaaslike personeel en fasiliteite vir produksies te gebruik;
  - (iii) navorsing te doen oor alle aspekte van rolprent-, televisie- en videoproduksies in die provinsie;
  - (iv) beurse te verskaf aan studente wat in die rolprent-, video- en ander mediaverwante produksiegebiede studeer of van voorneme is om daarin te studeer; en
  - (v) internasionale en plaaslike beleggings in die provinsiale rolprent- en videobedryf aan te moedig;
- (b) bevordering van die provinsie as 'n gebied vir buite-opnames vir rolprent-, video- en televisieproduksie;
- (c) smee van verhoudinge met plaaslike en internasionale persone en organisasies ten einde kennis- en vaardigheidsoordrag aan te moedig;
- (d) insameling en verskaffing van nuttige inligting ten opsigte van provinsiale rolprentmakers, oudiovisuele tegnisi, akteurs, uitvoerende kunstenaars, musikante, hotel-, vervoer- en ander fasiliteite wat in die provinsie beskikbaar is;
- (e) verskaffing van riglyne en raad aan internasionale rolprentmakers aangaande kwessies betreffende rolprent- en videoproduksie in die provinsie; en
- (f) bevordering van gelykvormigheid en samewerking tussen al die organisasies en staatsorgane wat 'n belang op die terrein van rolprent- en videobedryf het.

### HOOFSTUK 3

#### DIE KOMMISSIE SE DIREKSIE

##### **Artikel 5**

Bepaal dat die Kommissie bestuur word deur 'n direksie en bestaan uit ten minste vyf, maar nie meer nie as 20 lede wat deur die LUR aangestel is. Dit maak verder voorsiening vir 'n prosedure wat deur die LUR gevolg moet word wanneer –

- (a) benoemings versoek word vir persone om op die Raad aangestel te word; en
- (b) aanstellings gemaak word van persone om op die Raad te dien.

Voorsiening word ook in hierdie klousule gemaak vir die toesighoudende rol wat deur die Uitvoerende Raad gespeel word in die benoeming en aanstelling van persone om op die Raad van die Kommissie te dien in soverre dat dit 'n verpligting op die LUR plaas om onder andere –

- (a) die Uitvoerende Raad, na die aanstelling van die lede van die Raad, in te lig oor die name van die aangestelde lede, datum van inwerkingtreding en tydperk van aanstelling.

##### **Artikel 6**

Meld die gronde vir onbevoegdheid van lede om op die Raad aangestel te word.

**Artikel 7**

Maak voorsiening vir die plig van –

- (a) persone wat benoem is om op die Raad te dien, om binne 10 (tien) dae na sodanige benoeming hul finansiële belang in enige maatskappy of ander belange te verklaar. Versuim om finansiële belang of ander belang binne die voorgeskrewe tydperk te verklaar, maak sodanige lid onbevoeg om as 'n lid van die Raad aangestel te word;
- (b) persone wat aangestel is om op die Raad te dien, om by ampsaanvaarding en aan die begin van die finansiële jaar hul belang in enige maatskappy of besigheid te verklaar ingevolge artikel 234(3)(a) van die Maatskappywet;
- (c) 'n lid van die Raad wat enige finansiële belang of ander belang in enige maatskappy verkry, om sodanige belang binne 10 dae na verkryging daarvan te verklaar.

Versuim om 'n belang te verklaar soos vereis in paragrawe (b) en (c) hierbo, kan as gronde dien vir die beëindiging van sodanige lid se lidmaatskap van die Raad.

**Artikel 8**

Maak voorsiening vir die ampstermyn en heraanstelling van die lede van die Raad van die Kommissie.

**Artikel 9**

Meld die gronde waarop die aanstelling van raadslede beëindig kan word.

**Artikel 10**

Magtig die LUR om 'n lid van die Raad tydelik te skors ten einde die LUR toe te laat om bewerings te ondersoek wat, indien gevind word dat dit waar is, kan lei tot beëindiging van die lid se aanstelling ingevolge artikel 9(2).

**Artikel 11**

Maak voorsiening vir aangeleenthede wat verband hou met die vergaderings en prosedures van die Raad, soos –

- (a) gereeldheid van die vergaderings van die Raad;
- (b) die kworum van die vergadering; en
- (c) wyse waarop besluite van die Raad geneem word.

**Artikel 12**

Maak voorsiening vir die verpligting wat op lede van die Raad rus om hulself te onttrek in gevalle waar 'n konflik van belange kan ontstaan rakende enige aangeleentheid wat deur die Raad bespreek word.

Versuim deur die lid om hom- of haarself van 'n vergadering te onttrek wetende dat hy of sy 'n belang het of mag hê in die aangeleentheid wat bespreek word, maak die verrigtinge ongeldig.

**Artikel 13**

Magtig die LUR om besoldiging en aanstellingsvoorwaardes van die lede van die Raad te bepaal.

**Artikel 14**

Maak voorsiening vir die instelling van komitees om die Raad by te staan en die beëindiging van hul bestaan of mandaat.

**Artikel 15**

Handel oor die kooptering van persone op die Raad of komitees van die Raad.

**HOOFSTUK 4****HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DIE KOMMISSIE****Artikel 16**

Maak voorsiening vir aangeleenthede wat verband hou met die aanstelling van die hoof- uitvoerende beampte van die Kommissie, soos –

- (a) dat die hoof- uitvoerende beampte deur die Raad aangestel is in oorleg met die LUR; en
- (b) die tydperk van aanstelling van die hoof- uitvoerende beampte.

**Artikel 17**

Handel oor die funksies van die hoof- uitvoerende beampte.

**Artikel 18**

Handel oor die gronde en prosedure vir die ontslag van die hoof- uitvoerende beampte.

**Artikel 19 en 20**

Handel oor die personeel van die Kommissie en sekondering of oorpasing van personeel na die Kommissie.

**HOOFSTUK 5****BEPALING VAN PROVINSIALE GEDRAGSKODE VIR ROLPRENTPRODUSENTE****Artikel 21**

Magtig die LUR om die Provinsiale Gedragskode vir Rolprentprodusente te bepaal.

**Artikel 22**

Maak voorsiening vir die uitreiking van beleidsvoorskrifte en strategiese riglyne deur die LUR aan die Kommissie en vir die onttrekking of wysiging daarvan.

**HOOFSTUK 6****BEFONDSING EN FINANSIËLE BESTUUR VAN DIE KOMMISSIE****Artikel 23**

Maak voorsiening vir die befondsingsbronne van die Kommissie insluitende –

- (a) geld deur die Provinsiale Wetgewer aan die Kommissie bewillig;
- (b) rente op beleggings van die Kommissie; en
- (c) inkomste regtens uit enige ander bron verkry.

**Artikel 24**

Maak voorsiening vir finansiële bestuur van die fondse van die Kommissie en verslagdoening aan die Raad.

**Artikel 25**

Maak voorsiening vir die ouditering van die finansiële state van die Kommissie en die tertafellegging van die jaarlikse verslag aan die Provinsiale Wetgewer.

**Artikel 26**

Bring die finansiële jaar van die Kommissie in lyn met dié van die Departement.

**Artikel 27**

Maak voorsiening dat die Kommissie gedurende die loop van sy besigheid vaste eiendom mag aankoop, hou of daarvoor beskik.

**Artikel 28**

Maak voorsiening vir die prosedure vir die instelling van regstappe teen die Kommissie.

**HOOFSTUK 7****ALGEMENE BEPALINGS****Artikel 29**

Maak voorsiening vir sekuriteit van vertroulike inligting wat deur die Kommissie gehou word.

**Artikel 30**

Maak voorsiening vir die ontbinding van die Kommissie.

**Artikel 31**

Maak voorsiening vir die gebruik van die Kommissie se naam.

**Artikel 32**

Maak voorsiening vir die delegering van enige bevoegdheid wat deur die LUR aan die Hoof van die Departement verleen word, met sekere uitsonderings.

**Artikel 33**

Magtig die LUR om regulasies uit te vaardig. Hierdie klousule bepaal ook riglyne waarvolgens die LUR sodanige regulasies kan uitvaardig.

**Artikel 34**

Maak voorsiening vir die likwidasië van die maatskappy en oorgangsbepalings wat insluit dat –

- (a) die maatskappy vrywillig gelikwideer en geskrap word;
- (b) lede van die Raad van die artikel 21-maatskappy die behoorlik gemagtigde en bemaagtigde lede van die Raad van die Kommissie is tot sodanige tyd wanneer die LUR die Raad ingevolge hierdie Wet aangestel het;
- (c) die personeel van die artikel 21-maatskappy na die Kommissie oorgeplaas word.

**Artikel 35**

Maak voorsiening vir misdrywe ingevolge hierdie Wetsontwerp.

**Artikel 36**

Maak voorsiening vir strawwe ten opsigte van die misdrywe waarvoor vir in klousule 35 van hierdie Wetsontwerp voorsiening gemaak word.

**Artikel 37**

Maak voorsiening vir die kort titel van hierdie Wetsontwerp.

**4. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING**

Hierdie Wetsontwerp skep 'n statutêre liggaam gereël en bestuur deur die Direksie en die hoof-uitvoerende beampte. Die Wetsontwerp maak ook voorsiening vir die aanstelling van personeel om die dag-tot-dag funksies van die Raad te verrig. Daar word voorsien dat teen die tyd wanneer hierdie Wetsontwerp uitgevoer word, die Kommissie die Raad, die hoof-uitvoerende beampte en personeel

van die artikel 21-maatskappy sal erf. In die lig daarvan, vir die doel van die Kommissie ingestel ingevolge hierdie Wetsontwerp sal daar geen nuwe organisatoriese en personeelimplikasies vir die Provinsiale Regering wees nie.

#### **5. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING**

Die befondsing van die artikel 21-maatskappy vind plaas uit gelde wat deur die Provinsiale Wetgewer daaraan bewillig is, dus sal daar geen nuwe finansiële implikasies vir die Provinsiale Wetgewer wees wanneer die Kommissie ingestel ingevolge hierdie Wetsontwerp in werking tree nie.

#### **6. DEPARTEMENTE / LIGGAME GERAADPLEEG**

- (a) KZN Staatsdiensprokureursforum;
- (b) Rolprentkantore (Durban en Zoeloeland);
- (c) Tersiêre instellings (Universiteit van KwaZulu-Natal);
- (d) Industriële Ontwikkelingskorporasie en Handel en Belegging KwaZulu-Natal; en
- (e) die Departement van Kuns, Kultuur en Toerisme.

#### **7. GRONDWETLIKE IMPLIKASIES**

Geen.

No. 2

12 kuMasingana 2010

## UMTHETHOSIVIVINYO WEKHOMISHANA YEZAMAFILIMU WAKWAZULU-NATALI, 2009

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo Wekhomishana YezamaFilimu WaKwaZulu-Natali, 2009, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi LezokuThuthukiswa koMnotho neZokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Nkk. N.P. Sikhakhane  
UNobhala  
ISishayamthetho saKwaZulu-Natali  
Isikhwama Seposi X 9112  
Pietermaritzburg  
3200

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N. NAIDOO  
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WEKHOMISHANA YEZAMAFILIMU WAKWAZULU-NATALI,  
2009**

**UMTHETHOSIVIVINYO**

**Wokuhlinzekela ukusungulwa kweKhomishana yezamaFilimu yaKwaZulu-Natali; wokunquma izinhloso, amandla, izibopho kanye nemisebenzi yeKhomishana yezamaFilimu yaKwaZulu-Natali; wokunquma indlela iKhomishana yezamaFilimu yaKwaZulu-Natali ezophathwa ngayo, ezohlinzekwa ngayo ngabasebenzi kanye nangezimali; nokuhlinzekela okunye okuphathelene nalokho.**

**MAWUMISWE** yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

**UKUHLELWA KWEZIGABA**

*Isigaba*

**ISAHLUKO 1****IZINCAZELO**

1. Izincazelo

**ISAHLUKO 2****IKHOMISHANA YEZAMAFILIMU YAKWAZULU-NATALI**

2. Ukusungulwa kweKhomishana yezamaFilimu yaKwaZulu-Natali
3. Izinhloso zeKhomishana
4. Amandla, izibopho kanye nemisebenzi yeKhomishana

**ISAHLUKO 3****IBHODI YEKHOMISHANA**

5. Ukubunjwa kweBhodi
6. Ukungafaneleki ukuqokelwa kwiBhodi
7. Ukudalulwa kokuhlomula ngokwezezimali noma ngokunye kwamalungu eBhodi
8. Isikhathi sokuba sesikhundleni kanye nokuqokwa kabusha kwelungu leBhodi
9. Izikhala, ukususwa kanye nokusula esikhundleni kwamalungu eBhodi
10. Ukumiswa okwesikhashana kwelungu leBhodi

11. Imihlangano kanye nezinqubo emihlanganweni yeBhodi
12. Ukuhoxa kwelungu emihlanganweni kanye nasezinqutsheni zeBhodi
13. Amaholo amalungu eBhodi
14. Ukusungulwa kwamakomidi azosiza iBhodi
15. Ukukhethwa kwabantu kwiBhodi noma emaKomidini eBhodi

#### ISAPHLUKO 4

##### ISIKHULU ESIPHEZULU KANYE NABASEBENZI BEKHOMISHANA

16. Isikhulu esiPhezulu seKhomishana
17. Imisebenzi yesikhulu esiPhezulu
18. Ukwesula nokususwa esikhundleni kwesikhulu esiPhezulu
19. Abasebenzi beKhomishana
20. Ukusiswa noma ukudluliselwa kwabasebenzi kwiKhomishana

#### ISAPHLUKO 5

##### UKUNQUNYWA KOMGOMO WOKUZIPHATHA WABAQAMBI BAMAFILIMU WESIFUNDAZWE

21. Umgomo wokuziphatha wabaQambi bamaFilimu wesiFundazwe
22. Imiyalelo yenqubomgomo

#### ISAPHLUKO 6

##### UKUHLINZEKWA NGEZIMALI KANYE NOKUPHATHWA KWEZIMALI ZEKHOMISHANA

23. Izimali zeKhomishana
24. Ukuphathwa kwezimali
25. Ucwangingo kanye nombiko wonyaka
26. Unyaka wezimali weKhomishana
27. Impahla engenakususwa
28. Ukuthathelwa izinyathelo zomthetho kweKhomishana

#### ISAPHLUKO 7

##### IZINHLINZEKO EZIJWAYELEKILE

29. Ukuvikelwa kolwazi oluyimfihlo olugodlwe yiKhomishana
30. Ukuhlakazwa kweKhomishana

31. Ukusetshenziswa kwegama leKhomishana
32. Ukudluliselwa kwamandla
33. Imithethonqubo
34. Ukuvalwa kweNkampani kanye nezinhlelo zesikhashana eziphathelene nalokho
35. Amacala ajwayelekile
36. Izinhlawulo
37. Isihloko esifingqiwe

## ISAHLUKO 1 IZINCAZELO

### Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile -

“**iBhodi**” kusho iBhodi yeKhomishana eqokwe ngaphansi kwesigaba 5;

“**isiKhulu esiPhezulu**” kusho isiKhulu esiPhezulu seKhomishana, esiqokwe ngokwesigaba 16;

“**iKhomishana**” kusho iKhomishana yezamaFilimu yaKwaZulu-Natali, eqokwe ngokwesigaba 2;

“**iNkampani**” kusho inhlango esungulwe ngokusemthethweni ngaphansi kwesigaba 21 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), enenombolo yokubhalisa engu-2003/028677/08 futhi eyaziwa njengeKhomishana yezamaFilimu yaKwaZulu-Natali;

“**uMthethosisekelo**” kusho uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

“**uMnyango**” kusho uMnyango okuHulumeni wesiFundazwe saKwaZulu-Natali obhekele ukuthuthukiswa komnotho;

**“uMkhandlu oPhethe”** kusho uMkhandlu oPhethe wesiFundazwe saKwaZulu-Natali ohlongozwe esigabeni 132 soMthethosisekelo;

**“ifilimu”** kusho –

- (a) ukuqopha;
- (b) ukwenza ifilimu ngekhamera ingakhiphi izithombe ezigqame kakhulu;
- (c) ukugcina; noma
- (d) ukuqamba kabusha -
  - (i) ngefilimu;
  - (ii) ngetheyiphu kamazibuthe;
  - (iii) ngediski;
  - (iv) ngomabonakude;
  - (v) ngevidiyo;
  - (vi) nganoma iyiphi enye into, enolwazi, izimpawu noma uchungechunge lwemifanekiso ekwaziyo ukuthi, uma isetshenziswa nanoma imuphi umshini osebenza ngogesi noma okunye, ibukwe njengesithombe esinyakazayo, kuhlanganisa nemisindo eyingxenye yalokhu eyaziwa njengomculo ohambisana nesithombe;

**“ukuqanjwa kwefilimu”** kusho noma iyiphi ifilimu, noma imuphi umabonakude, noma iyiphi ividiyo noma okuqanjwe ngayo yonke imithombo yokusakaza ehlukahlukene, kanti **“umqambi wamafilimu”** kanye **“nemikhiqizo yamafilimu”** kunencazelo efanayo;

**“iGazethi”** kusho iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

**“iNhloko yoMnyango”** kusho umuntu oqokwe njengeNhloko yoMnyango ngokwesigaba 12 soMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994);

**“iNhlango yokuThuthukiswa kweziMboni”** kusho inhlango kahulumeni esungulwe ngaphansi kwesigaba 12 soMthetho weziNhlango zokuThuthukiswa kweziMboni, 1940 (uMthetho No. 22 ka 1940);

**“ilungu”** kusho ilungu leBhodi yeKhomishana eliqokwe ngokwesigaba 5;

**“iLungu loMkhandlu oPhethe elibhekele ezezimali”** kusho ilungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

**“ohulumeni basekhaya abahlelekile”** kusho iNhlango yeHulumeni baseKhaya yaKwaZulu-Natali okuyileyo nhlangano esiFundazweni saKwaZulu-Natali ethathwa ngokwesigaba 2 soMthetho woHulumeni baseKhaya abahlelekile, 1997 (uMthetho No. 52 ka 1997), njengemele iningi lomasipala esiFundazweni;

**“iKomidi lemiSebenzi kaHulumeni lesiShayamthetho”** kusho iKomidi lemiSebenzi kaHulumeni lesiShayamthetho sesiFundazwe elibhekele ukuthuthukiswa komnotho;

**“okunqunywe”** kusho okunqunywe ngumthethonqubo ngaphansi kwesigaba 33, kanti **“ukunquma”** kunencazelo efanayo;

**“isiFundazwe”** kusho isiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 103 soMthethosisekelo kanti **“okwesifundazwe”** kunencazelo efanayo;

**“uHulumeni wesiFundazwe”** kusho uhulumeni wesiFundazwe saKwaZulu-Natali;

**“isiShayamthetho sesiFundazwe”** kusho isiShayamthetho sesiFundazwe saKwaZulu-Natali njengoba kubekwe esigabeni 105 soMthethosisekelo, futhi esinegunya lokushaya imithetho esiFundazweni njengoba kubekwe esigabeni 104(1) soMthethosisekelo;

**“imithethonqubo”** kusho imithethonqubo eyenziwe ngokwesigaba 33;

**“iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho”** kusho iLungu loMkhandlu oPhethe wesiFundazwe saKwaZulu-Natali elibhekele

ukuthuthukiswa komnotho noma lelo Lungu loMkhandlu oPhethe eliphathiswe lowo msebenzi nguNdunankulu;

**“imboni yezamafilimu”** kusho imboni yezamafilimu, kamabonakude, yevidiyo kanye neyeminye imithombo yokusakaza;

**“Io Mthetho”** kubandakanya imithethonqubo;

**“Trade and Investment KwaZulu-Natal”** kusho –

(a) inkampani ebunjwe ngaphansi kwesigaba 21 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), eneNombolo yokuBhaliswa kweNkampani engu-98/11946/08; noma

(b) abayilandela ngokomthetho, kanye nabayilandela ngokwesikhundla, leyo nkampani.

## ISAHLUKO 2

### IKHOMISHANA YEZAMAFILIMU YAKWAZULU-NATALI

#### **Ukusungulwa kweKhomishana yezamaFilimu yaKwaZulu-Natali**

2.(1) Ngalokhu kusungulwa iKhomishana ezoqhakambisa imboni yezamafilimu esifundazweni, ezokwaziwa njengeKhomishana yezamaFilimu yaKwaZulu-Natali.

(2) IKhomishana iwumuntu ngokomthetho.

(3) IKhomishana iwuhlaka lukahulumeni wesifundazwe olulawulwa uMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

#### **Izinhloso zeKhomishana**

3. Izinhloso seKhomishana –

(a) ukugquguzela kanye nokuqhakambisa isiFundazwe njengendawo engathakaselwa umhlaba wonke yokuqamba amafilimu;

- (b) ukuthuthukisa, ukugqugquzela kanye nokuqhakambisa, ekhaya nasemazweni apshesheya imboni yezamafilimu esesiFundazweni;
- (c) ukugqugquzela ukutshalwa kwezimali embonini yezamafilimu esesiFundazweni;
- (d) ukuhlinzeka kanye nokukhuthaza ukuhlinzekwa kwabantu ngamathuba, ikakhulu labo ababencishwe amathuba phambilini, ukuthi bangene futhi babambe iqhaza embonini yezamafilimu esesiFundazweni;
- (e) ukulungisa ukungalingani maqondana nengqalasizinda nokusatshalaliswa kwamakhono nezinsiza embonini yezamafilimu esesiFundazweni; kanye
- (f) nokuba negalelo ekuvuleni amathuba emisebenzi embonini yezamafilimu esesiFundazweni.

#### **Amandla kanye nemisebenzi yeKhomishana**

##### **4.(1) IKhomishana kumele –**

- (a) iphathe izimali ezabiwe yisiShayamthetho sesiFundazwe;
- (b) ihlongoze futhi iphathe izimali ezithokale kweminye imithombo ngaphandle kwezimali ezabiwe yisiShayamthetho sesiFundazwe;
- (c) ihehe ukuqanjwa kwamafilimu apshesheya esesiFundazweni;
- (d) igqugquzele ukusungulwa, ukuthuthukiswa kanye nokukhuliswa kwengqalasizinda kanye nezindawo zembali yezamafilimu esesiFundazweni;
- (e) ihehe ukutshalwa kwezimali ngamazwe angaphandle nawasekhaya kanye nezimali zokusungula, zokuthuthukisa kanye nezokukhulisa ingqalasizinda kanye nezindawo ezikhiqiza imikhiqizo yezamafilimu esesiFundazweni;
- (f) isize futhi yenze kube lula ukuthuthukiswa kwabasebenzi kanye nobuchule babo embonini yezamafilimu esesiFundazweni;
- (g) ihlinzeke izeluleko, uxhaso kanye nokuthola izimali zokuqamba amafilimu esesiFundazweni;
- (h) igqugquzele ukuqanjwa kwamafilimu akhombisa amasiko ahlukene esesiFundazweni;
- (i) yenze ucwaningo kanye nezinhlelo zentuthuko kuyo yonke imikhakha yokuqanjwa kwamafilimu esesiFundazweni;
- (j) ikhangise isesiFundazwe njengendawo yokuqamba amafilimu, ekhaya, kuzwelonke nasemhlabeni wonke jikelele;

- (k) ihehe abaqambi bamafilimu futhi iqalise amasu okuqamba amafilimu esiFundazweni;
- (l) ikhuthaze abaqambi bamafilimu ukuthi basebenzise izakhamizi zasesiFundazweni kanye nezindawo zokuqamba amafilimu;
- (m) yakhe amaxhama nabantu, nezinhlangano kanye namakhomishana amafilimu asekhaya nawasemazweni omhlaba, ukugququzela ukucobelelana ngolwazi kanye namakhono embonini yezamafilimu esiFundazweni;
- (n) yenze uhlu lwekhompuyutha, futhi ihlinzeke ulwazi mayelana –
- (i) nabaqambi bamafilimu besifundazwe, nochwepheshe bezithombe, abalingisi kanye nabaculi; kanye
  - (ii) nendawo yokuhlala, nokudla, nezithuthi kanye nokunye okuhambisana nakho esiFundazweni;
- (o) iluleke abaqambi bamafilimu nganoma iluphi udaba lokuqanjwa kwamafilimu kubandakanya, kodwa kungacini nje, ngemithetho kamasipala, ngama-odinensi ezokuthutha, ngomthetho wezemvelo nangomthetho wokuqasha kanye nezinqubo; futhi
- (p) iluleke uHulumeni wesifundazwe ngenqubomgomo nomthetho kubandakanya nemithethonqubo edingekayo ukukhangisa ngemboni yezamafilimu esiFundazweni.

(2) Ukuze kugququzelwe ukusebenza ngendlela efanayo kanye nobambiswano kuzona zonke izinhlaka zikahulumeni ezingeni likahulumeni wesifundazwe nabasekhaya ngezindaba eziphathelene nembali yezamafilimu, iKhomishana kumele –

- (a) okungenani kanye ngonyaka, ibize imihlangano phakathi kwezinhlaka zikahulumeni wesifundazwe nabasekhaya ezinentshisekelo kunoma iluphi udaba oluphathele nembali yezamafilimu;
- (b) ibe ngumxhumanisi phakathi kwezinhlaka zikahulumeni wesifundazwe nabasekhaya kanye nababambiqhaza embonini yezamafilimu esiFundazweni; futhi
- (c) ixhumanise futhi ixoxisane nanoma iyiphi inhlangano noma uhlaka noma umgwamanda onentshisekelo kunoma iluphi udaba oluphathelene nembali yezamafilimu.

(3) Ukuze iqalise izibopho zayo, iKhomishana –

(a) ingangena esivumelwaneni nanoma imuphi umuntu onolwazi lobuchwepheshe emkhakheni othile, ukuze kusizwe noma kululekwe iKhomishana maqondana nanoma iluphi udaba oluphathelene nezinhliso zayo kanye nemisebenzi yayo; futhi

(b) ngokujwayelekile, yenze konke okudingekayo ukufeza izinhloso zayo.

(4) Ukuze ifake isandla ekuthuthukiseni abantu abasembonini yezamafilimu esiFundazweni, iKhomishana ingahlinzeka imifundaze kubafundi noma kwabahlose ukwenza izifundo zokuqamba amafilimu.

### ISAHLUKO 3 IBHODI YEKHOMISHANA

#### **Ukubunjwa kweBhodi**

##### **5.(1) IBhodi iba –**

(a) okungenani namalungu ayisishiyagalolunye, kodwa angeqile kwangamashumi amabili, aqokwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho; kanye

(b) nesiKhulu esiPhezulu, ngokwesikhundla saso, njengoba kubekiwe esigabeni 16(5).

(2) Amalungu eBhodi kumele abe ngabantu abafanelekile abanolwazi, isipiliyoni kanye namakhono okufanele embonini yezamafilimu, bebonke babe –

(a) nolwazi, isipiliyoni kanye namakhono adingekayo embonini yezamafilimu; kanye

(b) nala makhono nobungcweti okulandelayo -

(i) amakhono kwezomthetho, isipiliyoni kanye noqeqesho;

(ii) amakhono okuphathwa kwezimali, isipiliyoni kanye noqeqesho;

(iii) amakhono okusebenza ngemithombo yezindaba, umabonakude kanye namaphephandaba;

(iv) amakhono okuthuthukisa umphakathi kanye nesipiliyoni; kanye

(v) nesipiliyoni sokusebenza embonini yezikaqedizisizungu.

(3) Ekuqokeleni amalungu kwiBhodi, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise –

(a) ukuthi kulungiswa ukungalingani kwaphambilini; kanye

(b) nokuba nentshisekelo efanayo phakathi kwabantu abamele –

(i) uMnyango;

(ii) uMnyango wezobuCiko, amaSiko kanye nezokuVakasha;

(iii) i-KwaZulu-Natal Tourism Authority;

(iv) ababambiqhaza embonini yezamafilimu;

(v) i-Trade and Investment KwaZulu-Natal;

(vi) ohulumeni basekhaya abahlelekile;

(vii) izikhungo zemfundo ephakeme;

(viii) amahhovisi asekhaya amafilimu; kanye

(ix) neNhlango yokuThuthukiswa kweziMboni.

(4) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqoke –

(a) ilungu elilodwa leBhodi njengoSihlalo weBhodi; kanye

(b) nelungu elilodwa leBhodi njengeSekela likaSihlalo weBhodi.

(5) ILungu leBhodi okukhulunywe ngalo kwisigatshana 3(b)(i) –

(a) kumele lixhumanise iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kanye neBhodi;

(b) kumele libike kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngezikhathi ezithile mayelana nezindaba elizibona zifanele; futhi

(c) lingethamela imihlangano yeBhodi futhi libambe iqhaza ezingxoxweni, kodwa lingabi nalo ilungelo lokuvota uma kuthathwa isinqumo seBhodi.

(6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ngesaziso kwiGazethi limeme noma yimaphi amaqembu anentshisekelo asesiFundazweni ukuba aphakamise abantu abangaqokelwa kwiBhodi.

(7) Isimemo seziphakamiso kumele sibalule –

(a) indlela yokwenza isiphakamiso;

(b) okudingekayo uma kwenziwa iziphakamiso; kanye

(c) nosuku lokuvalwa kweziphakamiso.

(8) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele licubungule zonke iziphakamsio ezilethwe njengezimpendulo zesaziso, futhi lingaqoka ithimba elizohlunga elibunjwe yiziphathimandla zomnyango ezisezikhundleni eziphezulu ukuthi zibukeze iziphakamsio bese zenza izincomo kwiLungu loMkhandlu oPhethe mayelana nabantu abaqokwe kwiBhodi.

(9) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele lishicilele amagama abantu abaqokwe kwiBhodi kwiGazethi kanye nasemaphephandebeni amabili afundwa kakhulu esiFundazweni, ngokushesha emva kokuthi labo bantu sebazisiwe, ngokubhalwe phansi, ngokuqokelwa kwabo kwiBhodi.

(10) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele ezinyangeni ezimbili emva kokuqokwa kwamalungu eBhodi ngokwesigatshana (2), lazise uMkhandlu oPhethe kanye neKomidi leziKhundla amagama amalungu aqokiwe kubandakanya nesikhathi aqokelwe sona.

(11) Lesi sigaba sisebenza, ngezinguquko ezidingekayo, ekugcwaliseni isikhala kwiBhodi.

#### **Ukungafaneleki ukuqokelwa kwiBhodi**

**6.** Umuntu akafaneleki ukuqokelwa kwiBhodi noma ukuqhubeka asebenze kwiBhodi, ngenxa yokuthi –

- (a) ucwile ezikweletini ngokunakuhlengeka;
- (b) ngokwenkantolo yomthetho uthathwa njengomuntu ongaphilile ngokomqondo;
- (c) ehlo mola ngandlela thile kunoma iyiphi inkontileka neKhomishana kodwa ehluleke ukukudalula lokho ngandlela edingwa yilo Mthetho;
- (d) ewumuntu ongaphansi kwesandla somnakekeli;
- (e) noma yingasiphi isikhathi eke wasuswa esikhundleni sokuphatha ngenxa yokungaziphathi kahle okubandakanya ukweba noma ukukhwabanisa;
- (f) eke walahlwa yicala futhi wagwetshwa ngaphandle kokunikezwa ithuba lokukhetha phakathi kokuboshwa nokukhokha inhlawulo, ngaphandle uma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, uma lowo

ophakanyisiwe edalula yonke imininingwane yecala esitatimendeni esifungelwe, limvuna ngokuhambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukungafaneleki ngokwalesi sigatshana kuphela eminyakeni emihlanu emva kokuphela kwesigwebo; noma

(g) ehluleka ukudalula ukuhlomula ngokuhambisana nesigaba 7 noma ebe yingxenye noma ebambe iqhaza ezinqutsheni zeBhodi ngesikhathi ehlo muna njengoba kuhlangozwe esigabeni okukhulunywe ngaso.

### **Ukudalulwa kokuhlomula ngokwezezimali noma ngokunye kwamalungu eBhodi**

7.(1) Umuntu ophakanyiselwe ukuba asebenze kwiBhodi ngokwesigatshana 5(6) kumele, ezinsukwini eziyishumi emva kokuphakanyiswa, alethe incwadi adalule kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngakho konke ukuhlomula ngqo noma ngandlela thile kunoma iyiphi inkampani noma kwelinye ibhizinisi.

(2) Noma yikuphi ukwehluleka kophakanyisiwe ukudalula ukuhlomula ngokwezezimali noma ngandlela thile ngokwesigatshana (1) kuvimbela lowo ophakanyisiwe ngokwesigaba 6 ukuba aqokelwe kwiBhodi.

(3) Ilungu leBhodi ngalinye kumele, uma liqala ukusebenza kanye nasekuqaleni konyaka wezimali weKhomishana, lidalule ngokubhalwe phansi ngokuhlomula kwalo ngqo noma ngandlela thile kunoma iyiphi inkampani noma kwelinye ibhizinisi ngandlela ehlinzekelwe esigabeni 234(3)(a) soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(4) Uma ilungu leBhodi liqala ukuhlomula kunoma iyiphi inkampani noma kwelinye ibhizinisi, noma yinini ngesikhathi lisesesikhundleni njengelungu leBhodi kumele, ezinsukwini eziyishumi kusukela ngosuku eliqale ngalo ukuhlomula, lidalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho mayelana nalokho kuhlomula.

(5) Noma yikuphi ukwehluleka ngasohlangothini lelungu ukudalula ukuhlomula kwalo njengoba kuhlangozwe ezigatshaneni (3) no (4) kuyoholela ekutheni lelo lungu lingaqokwa ngokwesigaba 9(2).

(6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele ligcine irejista eneminingwane yakamuva yokuhlomula kwamalungu eBhodi edalulwe ngokwalesi sigaba.

**Isikhathi sokuba sesikhundleni kanye nokuqokwa kabusha kwelungu leBhodi**

**8.(1)** ILungu liqokelwa ukusebenza kwiBhodi isikhathi esiyiminyaka emihlanu noma isikhathi esifishane kunalokho njengoba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho linganquma futhi, kuncike esigabeni 5, lingaphinde liqokwe uma kuphela lesi sikhathi: Kuncike ekutheni akekho umuntu ongaphinde aqokwe emva kokusebenza kwiBhodi iminyaka eyishumi elandelayo.

**Izikhala, ukuxoshwa kanye nokusula esikhundleni kwelungu leBhodi**

**9.(1)** ILungu leBhodi kumele lishiye esikhundleni uma lingasafaneleki njengoba kuhlongozwe esigabeni 6.

(2) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, emva kokunikeza ilungu ithuba lokubeka uhlangothi lwalo, noma yingasiphi isikhathi lingaxosha lelo lungu uma, ngokubona kwalo, kunezizathu ezizwakalayo zokwenze njalo.

(3) ILungu kumele lishiye isikhundla uma liphuthe, ngaphandle kokunikezwa imvume yokuthatha ilivu yiBhodi, emihlanganweni emibili elandelayo yeBhodi libe lalinikezwe esandleni noma lithunyelwe ngeposi isaziso kusenesikhathi.

(4) ILungu lingasula esikhundleni ngokunikeza iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho isaziso esibhaliwe sezinsuku ezingamashumi amathathu: Kuncike ekutheni iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingasishaya indiva lesi saziso sokusula.

(5) Noma yinini uma kuvela isikhala kwiBhodi, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, kuncike esigabeni 5, liqoke umuntu ozogcwalisa lesi sikhala leyo ngxenywe yesikhathi esisele salelo lungu lowo muntu angena esikhundleni salo.

(6) Uma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lisebenzisa amandla alo ngokwesigatshana (2), lingahoxisa inqubo yokuqokwa kwamalungu eBhodi ebekwe esigabeni 5, kuncike ezigabeni 5(2) no 5(3), liqoka abantu ukuthi basebenze njengamalungu eBhodi okwesikhashana: Kuncike ekutheni –

(a) abantu abaqokwe ngokwalesi sigatshana angeke baqhubeke nokusebenza kwiBhodi isikhathi esingaphezu kwezinsuku ezingamashumi ayisithupha kusukela ngosuku abaqashwe ngalo; futhi

(b) iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, kuncike esigabeni 5, liqoke amalungu eBhodi asebenza ngokugcwele ezinsukwini ezingamashumi ayisithupha emva kokuqokwa okuhlongozwe kulesi sigatshana.

#### **Ukumiswa okwesikhashana kwelungu leBhodi**

10. ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingamisa ilungu leBhodi ngesikhathi lisaphenya izinsolo okuyothi, uma kutholakala ukuthi ziyiqiniso ziholele ekuxoshweni kwelungu ngokwesigaba 9(2).

#### **Imihlangano kanye nezinqubo zemihlangano yeBhodi**

11.(1) Umhlangano wokuqala weBhodi kumele ubanjwe ngosuku, ngesikhathi kanye nasendaweni enqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, emva kwalokho yonke imihlangano kumele inqunywe uSihlalo.

(2) Ikhoramun yomhlangano weBhodi yiningi lamalungu eBhodi.

(3) Izinqubo zomhlangano kumele, kuncike ezinhlinzekweni zalesi sigaba, zinqunywe usihlalo kubandakanya nelungelo lokunquma ukuthi noma iluphi udaba oludingidwayo lungahoxiswa ngaphambi kokuba kuvotwe.

(4) USihlalo angahola yonke imihlangano yeBhodi: Kuncike ekutheni uma lingekho iSekela likaSihlalo kumele lihole umhlangano kanti uma uSihlalo neSekela likaSihlalo bengekho bobabili emhlanganweni weBhodi, amalungu akhona angaqoka, phakathi kwawo umuntu ozobamba njengosihlalo kuze kuphele lowo mhlangano.

(5) Isinqumo seBhodi kumele sithathwe yiningi lamavoti akhona emhlanganweni, uma kwenzeka amavoti elingana kunoma iluphi udaba, uSihlalo unevoti eliwujuqu ngaphezu kwevoti lakhe elijwayelekile.

(6) IBhodi kumele iqinisekise ukuthi amaminithi emihlangano yayo ayagcinwa.

(7) Akukho sinqumo seBhodi esingasebenzi ngenxa yokuba khona kwesikhala kwiBhodi: Kuncike ekutheni isinqumo sithathwa yiningi lamalungu eBhodi akhona futhi anegunya lokuhlala njengamalungu eBhodi.

(8) USihlalo, noma iningi lamalungu eBhodi, angabiza umhlangano weBhodi oyisipesheli lapho izinhlinzeko zalesi sigaba zisebenza ngezinguqoko ezidingekayo.

(9) IBhodi, ngokubona kwayo, ingavumela wonke amalungu omphakathi ukuba ethamele umhlangano weBhodi.

#### **Ukuhoxa kwelungu emihlanganweni nasezinqubeni zeBhodi**

**12.(1)** Ilungu leBhodi kumele lihoxe odabeni oluphenywa, olucutshungulwa noma oluvotelwa yiBhodi uma kunesinye sale zimo ezilandelayo –

- (a) uma lihlomula ngandlela thile kulolo daba; noma
- (b) uma kunokwenzeka ukuthi liyabandakanyeka ngandlela thile kulolo daba.

(2) Uma noma yingasiphi isikhathi uma kunodaba olusezithebeni zeBhodi kubonakala ukuthi ilungu elisemhlanganweni liyahlomula ngendlela ehlongozwe kwisigatshana (1), lelo lungu kumele lidalule ukuthi lihlomula ngayiphi indlela bese lishiya umhlangano.

(3) Noma yikuphi ukudalula okwenziwe ngokwesigatshana (1) kumele kuqoshwe emaminithini omhlangano othintekayo.

(4) Uma emva kwesikhathi kuvela ukuthi iBhodi ithathe isinqumo ngodaba oluphathelelene nelungu elihlulekile ukudalula ukuhlomula okukhulunywe ngayo kwisigatshana (1), leso sinqumo seBhodi angeke sisebenze.

(5) Ngokwenhloso yalesi sigaba “**ukhlohlomula ngandlela thile**” kubandakanya kodwa akugcini nje, ngokhlohlomula kwanoma –

- (a) imuphi umlingani welungu kwezamabhizinisi, umuntu elisebenza naye noma umqashi, ngaphandle kukaHulumeni;
- (b) imuphi umuntu oshade nelungu, umlingani ilungu elishade naye ngokomthetho wesintu, noma umasihlalisane welungu; noma
- (c) iyiphi ngane yalo, imuphi umzali noma umfowabo noma udadewabo.

### **Amaholo amalungu eBhodi**

13.(1)(a) Kuncike kwisigatshana 2(a), ilungu leBhodi lingakhokhelwa ezimalini zeKhomishana lelo holo kanye nalezo zibonelelo ezinganqunywa yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) Ilungu leBhodi elithola iholo, izibonelelo noma eminye imivuzo ngokwesikhundla salo noma ngenxa yokuqashwa –

- (i) kuhulumeni kazwelonke;
- (ii) kuhulumeni wesifundazwe;
- (iii) kumasipala; noma
- (iv) enhlanganweni, emgwamandeni noma esikhungweni esilawulwa uhulumeni wesifundazwe noma kazwelonke,

libe liqhubeka nokuthola lelo holo, lezo zibonelelo noma eminye imivuzo ngesikhathi lisebenza njengelungu leBhodi, lingathola kuphela iholo kanye nezibonelelo okukhulunywe ngakho endimeni (a) ngendlela edingekayo ukuze lelo lungu lihole ngendlela ebelizohola ngayo ukuba belingekho kuleso kuleso sikhundla.

(2)(a) Ilungu leBhodi kanye nomuntu oqokelwe kwiBhodi, maqondana nemisebenzi yakhe njengelungu noma njengomuntu oqokiwe, lingakhokhelwa ezimalini zeKhomishana izindleko elingene kuzona ngenxa yokwethamela imihlangano yeBhodi.

(b) ILungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume izindlela, kubandakanya nezindlela zokulawula, zokuphatha kanye nezokulungiselela ukukhokhwa kwezimali zokuhamba ngomsebenzi okukhulunywe ngakho endimeni (a).

**Ukusungulwa kwamakomidi azosiza iBhodi**

**14.(1)** IBhodi ingasungula amakomidi anelungu elilodwa noma ngaphezulu –

- (a) ukuyisiza ekusebenziseni nanoma yimaphi amandla noma ekwenzeni imisebenzi yeKhomishana okukhulunywe ngayo esigabeni 4; noma
- (b) ukwenza ucwaningo mayelana nanoma iluphi udaba oluyingxenye yemisebenzi yeBhodi ngokwalo Mthetho.

**(2)** Uma kusungulwa ikomidi elihlongozwe kwisigatshana (1), iBhodi kumele –

- (a) inqume amaphuzu okuzosetshenzelwa phezu kwawo kulelo komidi kubandakanya, kodwa kungagcini nje, ngokuthi ngabe lelo komidi lizoshatshalaliswa noma cha uma seliqede umsebenzi noma imisebenzi iBhodi ebeliyijubele yona;
- (b) iqoke uSihlalo walelo komidi okumele abe yilungu leBhodi; futhi
- (c) inqume ukuthi ngabe lelo komidi lingaqoka abantu abangewona amalungu eBhodi, uma kunjalo, ngaphansi kwamiphi imigomo nemibandela.

**(3)** IBhodi, noma yingasiphi isikhathi, ingamisa ikomidi nanoma imuphi umyalelo onikezwe ikomidi, noma ngabe lelo komidi seliwuqedile noma lingakawuqedi umsebenzi.

**(4)(a)** IsiKhulu esiPhezulu singethamela noma sibe yingxenye yomhlangano wekomidi, kodwa singavoti.

**(b)** Ilungu labasebenzi beBhodi, uma limenywe yikomidi elithintekayo, lingethamela lowo mhlango wekomidi.

**Ukuqokwa kwabantu kwiBhodi noma emakomidini eBhodi**

**15.(1)** IBhodi, uma ibona ukuthi umuntu othile angakwazi ukusiza maqondana nanoma imuphi umsebenzi nanoma ikuphi ukusetshenziswa kwamandla, ingamqoka lowo muntu.

**(2)** Noma imuphi umuntu oqokwe ngokwesigatshana (1) akanalo ilungelo lokuvota emihlanganweni yeBhodi noma yekomidi.

(3) Umuntu oqokwe ngokwesigatshana (1) angakhokhelwa iholo kanye nezibonelelo ezimalini zeKhomishana njengoba kunganquma iBhodi emva kokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

#### IS AHLUKO 4

#### ISIKHULU ESIPHEZULU KANYE NABASEBENZI BEKHOMISHANA

##### **IsiKhulu esiPhezulu seKhomishana**

16.(1) IBhodi kumele, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, iqoke umuntu oqeqeshwe ngokufanele, onekhono kanye nonesipiliyoni njengesikhulu esiPhezulu seKhomishana.

(2)(a) IsiKhulu esiPhezulu singaqokelwa isikhathi esingeqile eminyakeni emihlanu.

(b) IsiKhulu esiPhezulu singaphinde siqokelwe elinye ihlandla elingeqile eminyakeni emihlanu.

(3)(a) Ukuqokwa kwesiKhulu esiPhezulu kuncike ekusayinweni kwesivumelwano somsebenzi esibhalwe phansi phakathi kwalowo muntu kanye neBhodi.

(b) IBhodi kanye nesikhulu esiPhezulu, ngokubhalwe phansi kanye nangesivumelwano, ingachibiyela isivumelwano somsebenzi.

(4) Ngokwezinhloso zokudalula ukuhlomula ngokwezezimali nokunye, izinhlinzeko sezigaba 7 zisebenza ngezinguquko ezidingekayo kwesiKhulu esiPhezulu ngaphandle kokuthi isiKhulu esiPhezulu kumele sidalule ukuhlomula kwaso kwiBhodi.

(5) IsiKhulu esiPhezulu siyilungu leBhodi ngokwesikhundla salo kodwa asinalo ilungelo lokuvota emihlanganweni yayo.

##### **Imisebenzi yesiKhulu esiPhezulu**

17.(1) IsiKhulu esiPhezulu sinomthwalo –

- (a) wokwengamela konke okuphathelene nokwenziwa komsebenzi kanye nezimali zeBhodi ngokuhambisana noMthetho wokuPhathwa kweziMali, 1999 (uMthetho No. 1 ka 1999), kanye nokulawulwa kweBhodi;
- (b) emva kokubonisana neBhodi, wokuqokwa kwabasebenzi beKhomishana okukhulunywe ngabo esigabeni 19(1);
- (c) emva kokubonisana neBhodi, wokunquma umgomo wokuziphatha, osebenza kwisiKhulu esiPhezulu, kubo bonke abasebenzi beKhomishana kanye nezinhloso zenqubo yokuqondisa izigwegwe enobulungiswa, ukuqinisekisa –
- (i) ukuhambisana nomthetho osebenzayo, kubandakanya lo Mthetho;
  - (ii) ukusetshenziswa ngendlela efanele neyongayo kwezimali kanye nezimpahla zeKhomishana;
  - (iii) ukugqoguzelwa kanye nokugcinwa kwezinga eliphezulu lokuziphatha emsebenzini;
  - (iv) ukuvimbela ukushayisana kwezintshisekelo;
  - (v) ukuvikela ulwazi oluyimfihlo olugodlwe yiKhomishana; kanye
  - (vi) nokusebenza ngendlela, ngokuthembeka, ngokungachemi nangendlela enobulungiswa;
- (d) ukuziphatha kahle kwabasebenzi abaqokwe ngokwendima (b) futhi kumele, ngalezo zinhloso, sibe nesibopho sokubika kwiBhodi;
- (e) ukugcinwa kwerejista lokudalulwa kwemihlomulo ngabasebenzi beKhomishana; kanye
- (f) nokuthi iBhodi iqinisekise ukuhambisana nezinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kanye nanoma imuphi omunye umthetho.

(2) Uma isikhulu esiPhezulu noma yingasiphi isikhathi singakwazi ukwenza imisebenzi yaso, iBhodi kumele, ngokubhalwe phansi, nangokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, liqoke omunye umuntu njengeBamba lesikhulu esiPhezulu kuze kube isikhulu esiPhezulu sibuyela emsebenzini.

#### **Ukusula kanye nokuxoshwa kwesikhulu esiPhezulu**

- 18.(1)** Isikhulu esiPhezulu sishiya esikhundleni –
- (a) uma sisula, noma uma sesisulile;

- (b) uma, ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), umuntu okuleso sikhundla engasafanelekile ukusebenza njengomqondisi wenkampani;
- (c) noma exoshiwe ngokwesigatshana (2).

(2) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingaxosha isikhulu esiPhezulu ngokuhambisana nanoma imuphi umthetho wokuqasha nowezabasebenzi.

#### **Abasebenzi beKhomishana**

19.(1) Isikhulu esiPhezulu kumele, kuncike kwisigatshana (2), siqashe abasebenzi beKhomishana njengoba singabona kufanele –

- (a) ukusiza ekwenzeni imisebenzi yaso ngokwalo Mthetho; kanye
- (b) nokusiza iBhodi ngomsebenzi ohambisana nemisebenzi yeBhodi.

(2) IBhodi kumele, kuncike ezinhlinzekweni zesigaba 23(4), inqume inqubomgomo yezabasebenzi yabasebenzi beKhomishana, kubandakanya nesikhulu esiPhezulu.

(3) Ngokwezinhloso zokudalula ukuhlomula ngokwezezimali noma ngokunye, futhi kuncike esigabeni 17(1)(e), izinhlinzeko zesigaba 7(3), (4) no (5) ziyosebenza ngezinguquko ezidingekayo kubasebenzi beKhomishana.

(4) Isikhulu esiPhezulu kumele sigcine irejista elinolwazi olusha lokuhlomula kwamalungu eKhomishana okudalulwe ngokwesigatshana (3).

#### **Ukusiswa noma ukudluliselwa kwabasebenzi**

20. IKhomishana ingasebenzisa abantu abasiswe noma abadluliselwe kuhulumeni ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezero No. 103 sika 1994).

**ISAHLUKO 5**  
**UKUNQUNYWA KOMGOMO WOKUZIPHATHA WABAQAMBI BAMAFILIMU**  
**WESIFUNDAZWE**

**Umgomo wokuziPhatha wabaQambi bamaFilimu wesiFundazwe**

**21.(1)** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele –

- (a) ngesaziso kwiGazethi;
- (b) nangemva kokubonisana neBhodi,

linqume uMgomo wokuziPhatha wabaQambi bamaFilimu wesiFundazwe.

(2) UMgomo wokuziPhatha wabaQambi bamaFilimu wesiFundazwe uqala ukusebenza ngosuku okushicilelwe ngalo isaziso okukhulunywe ngaso kwisigatshana (1).

(3) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngesaziso kwiGazethi nangemva kokubonisana neBhodi –

- (a) lingachibiyela;
- (b) lingashintsha; noma
- (c) lingahoxisa,

uMgomo wokuziPhatha wabaQambi bamaFilimu wesiFundazwe.

**Inqubomgomo**

**22.(a)** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingabeka imihlahlandlela ethile yokufeza izinhloso zeKhomishana futhi linganikeza iBhodi inqubomgomo.

(b) ILungu loMkandlu oPhethe elibhekele ukuthuthukiswa komnotho lingahoxisa noma lichibiyele noma imuphi umhlahlandlela noma inqubomgomo ngokwendima (a).

**ISAHLUKO 6**  
**UKUXHASWA NGEZIMALI KANYE NOKUPHATHWA KWEZIMALI ZEKHOMISHANA**

**Izimali zeKhomishana**

**23.(1)** Izimali zeKhomishana ziqukethe –

- (a) imali eyabiwe yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshaliwe zeKhomishana; kanye
- (c) nemali engenayo evela kunoma imuphi umthombo owamukelekile.

(2) IKhomishana kumele isebenzise izimali zayo –

- (a) ukukhokha amaholo, izibonelelo kanye nezindleko zokuhamba ngomsebenzi –
  - (i) kwamalungu eBhodi;
  - (ii) kwesiKhulu esiPhezulu;
  - (iii) nabasebenzi beKhomishana; kanye
- (b) nokukhokhela izindleko eziphathelele –
  - (i) nemisebenzi yansukuzonke yeKhomishana; kanye
  - (ii) nokwenziwa kwemisebenzi yeKhomishana kanye nokusebenzisa kwayo amandla ngokwalo Mthetho.

(3) Isikhulu esiPhezulu kumele, ngokuvumelana neBhodi –

- (a) sivule i-akhawunti egameni leKhomishana nesikhungo esibhaliswe njengebhange ngokoMthetho wamaBhange, 1990 (uMthetho No. 94 ka 1990); futhi
- (b) sifake kuyona yonke imali etholakale ngokwesigatshana (1).

(4) IBhodi, emva kokubonisana neLungu loMkhandlu oPhethe libhekele ukuthuthukiswa komnotho, kumele inqume –

- (a) amaholo kanye nemigomo yokusebenza; kanye
- (b) nemali yempesheni kanye nemivuzo yomhlalaphansi, yesikhulu esiPhezulu kanye nabanye abasebenzi beKhomishana.

(5) IKhomishana ingatshala izimali ezifakwe kuma-akhawunti ayo ezingeke zidinge ukusetshenziswa ngokushesha: Kuncike ekutheni iBhodi kumele ithathe izinyathelo ezifanele ukuqinisekisa ukuthi ukutshalwa kwalezo zimali akuqagelwa.

(6) IKhomishana ayivumelekile ukuboleka imali noma ukukhipha iziqinisekiso noma izibambiso noma ukungena ezivumelwaneni ezibophezela iKhomishana ngaphandle uma lokho kuboleka, leso siqinisekiso noma leso sibambiso nanoma yisiphi

isivumelwano kugunyaziwe ngokwalo Mthetho futhi kungaphikisani noMthetho wokuPhathwa kweziMali zikaHulumeni.

### **Ukuphathwa kwezimali**

**24.(1)** IsiKhulu esiPhezulu kumele siqinisekise ukuthi amabhuku ama-akhawunti kanye nawo wonke amanye amarekhodi aphathelene nawo ayagcinwa.

(2) IsiKhulu esiPhezulu kumele siqinisekise ukuthi izabelozimali zonyaka zeKhomishana, izinhlaka zokusebenza, imibiko yonyaka kanye nezitatimende zezimali ezicutshunguliwe kuyalungiswa nokuthi kulethwa ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

(3) IsiKhulu esiPhezulu kumele, ezinyangeni ezintathu ngaphambi kokuphela konyaka wezimali, silethe kwiBhodi –

(a) uhlaka lokusebenza lweKhomishana, oluqukethe izinhloso ezikalekayo; kanye

(b) nesitatimende semali ekanekisiwe ezongena kanye nemali ezizosetshenziswa yiKhomishana,

maqondana neminyaka emithathu yezimali ezayo.

(4) Kunoma imuphi unyaka wezimali isiKhulu esiPhezulu singaletha kwiBhodi izitatimende ezilungisiwe zemali ezongena noma zemali ezochithwa yiKhomishana zalowo nyaka wezimali.

(5) IKhomishana angeke isebenzise imali engaphezu kwaleyo eyabelwe yona naleyo ebekwe eceleni.

(6) IsiKhulu esiPhezulu, ngemvume yeBhodi, ingasungula isikhwama esiseceleni bese ifaka kusona lezo zimali iBhodi engazivuma.

### **Ucwaningo kanye nombiko wonyaka**

**25.(1)** UMcwaningimabhuku-Jikelele kumele acwaninge izitatimende zeKhomishana.

(2)(a) IBhodi kumele ilethe umbiko ngemisebenzi yeKhomishana ngonyaka wezimali, kwisiShayamthetho, ezinyangeni ezinhlanu emva kokuphela kwalowo nyaka wezimali.

(b) Ezinyangeni ezinhlanu emva kokwethulwa kombiko wonyaka, ithimba elinosihlalo weBhodi kanye namanye amalungu amabili eBhodi kumele ethule umbiko wonyaka kwiKomidi leMisebenzi.

(3) Umbiko kumele –

(a) kubandakanya isitatimende semali engenayo kanye nesemali echithwayo esiqinisekisiwe nguMcwaningimabhuku-Jikelele;

(b) uchaze ngendlela iKhomishana efeze ngayo izinhloso zayo okukhulunywe ngazo esigabeni 3 kanye nezinhlalo ezikalekayo njengoba kubekiwe ohlakeni lokusebenza njengoba kuhlongozwe esigabeni 24(3)(a) ngonyaka wezimali othintekayo; futhi

(c) uqukathe imininingwane yokusebenza efanele ephathelene nokusetshenziswa kwezinsiza ngendlela enokonga, esheshayo nenemiphumela ebonakalayo kanye nokuqhathaniswa phakathi kokuhleliwe nokwenziwe njengoba kubekiwe kulolo hlaka lokusebenza.

#### **Unyaka wezimali weKhomishana**

26. Unyaka wezimali weKhomishana uqala mhla lu-1 kuMbaso wonyaka othile uphele mhla zingama-31 kuNdasa wonyaka olandelayo.

#### **Impahla engenakususwa**

27. IKhomishana, ngokwenqubomgomo kanye nezinqubo okunqunywe yiBhodi nangemvume yeLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ingathola, igcine noma ichithe impahla engenakususwa ngesikhathi isasebenza.

#### **Ukuthathelwa izinyathelo zomthetho kweKhomishana**

28.(1) Noma iziphi izinyathelo zomthetho ezithathelwe iKhomishana kumele zithathwe ngokuhambisana noMthetho wokuThathelela iziNyathelo zoMthetho iziNhlaka ezithile zikaHulumeni, 2002 (uMthetho No. 40 ka 2002).

(2) IKhomishana, ngokwezinhloso zesigatshana (1), ithathwa njengohlaka lukahulumeni okukhulunywe ngalo endimeni (c) ngokwenzazelo enikezwe yona esigabeni 1 soMthetho okukhulunywe ngawo.

## ISAPHLUKO 7 IZINHLINZEKO EZIJWAYELEKILE

### **Ukuvikelwa kolwazi oluyimfihlo olugodlwe yiKhomishana**

**29.**(1) Kuncike kuMthethosisekelo kanye noMthetho wokuGqugquzela ukuThola ulwazi, 2000 (uMthetho No. 2 ka 2000), akukho muntu ongadalula noma iluphi ulwazi olulethwe kwiKhomishana maqondana nanoma imuphi umyalelo womthetho, ngaphandle –

- (a) uma eyalelwe ukuthi enze njalo yinkantolo yomthetho;
- (b) noma ngaphandle uma umuntu okhiphe lowo myalelo evuma ngokubhalwe phansi.

(2) Akukho muntu ongadalula ulwazi olugcinwe kwirejista okukhulunywe ngalo ezigabeni 7, 16(4) no 19(4) ngaphandle uma lokho kudalula –

- (a) kuhambisana nanoma imuphi umthetho ophoqa noma ogunyaza lokho kudalula;
- (b) kudingeka ukuze iKhomishana isebenze kahle; noma
- (c) kungenziwa ngenhloso yokuqapha, yokuhlola, yokuphenya noma yokucubungula noma imuphi okuphathelene neKhomishana, nanoma yiliphi ilungu labasebenzi beKhomishana.

(3) Noma imuphi umuntu ophula esigatshana (1) noma (2) uyothweswa icala.

### **Ukuhlakazwa yeKhomishana**

**30.** IKhomishana ingahlakazwa kuphela ngokoMthetho wesiShayamthetho sesiFundazwe.

**Ukusetshenziswa kwegama leKhomishana**

31.(1) Akukho muntu, ngaphandle kwemvume ebhalwe phansi yeKhomishana, nganoma iyiphi indlela oyosebenzisa igama, isifinyezo, ilogo, izimpawu noma impahla esetshenziswa yiKhomishana noma okungeyeKhomishana.

(2) Akukho muntu ongaqamba amanga athi wenza okuthile egameni leKhomishana.

(3) Noma imuphi umuntu ophula izigatshana (1) no (2) uyothweswa icala.

**Ukudluliselwa kwamandla**

32.(1) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingadlulisela kwiNhloko yoMnyango –

(a) noma yimaphi amandla anikezwe iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho yilo Mthetho, ngaphandle kwamandla okwenza imithethonqubo okukhulunywe ngayo esigabeni 33; noma

(b) noma imuphi umsebenzi onikezwe iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho yilo Mthetho, ngaphandle kwanoma imuphi umthetho ophathelene nokuqokwa, kanye nokuxoshwa, kwamalungu eBhodi okukhulunywe ngakho ezigabeni 5 no 9(2).

(2) IBhodi, ngesixazululo esikhethekile, ingadlulisela amandla kwisiKhulu esiPhezulu noma kumsebenzi weKhomishana, noma yimaphi amandla noma umsebenzi onikezwe iBhodi yilo Mthetho.

(3) Isikhulu esiPhezulu singadlulisela kunoma imuphi umsebenzi weKhomishana amandla noma umsebenzi onikezwe isikhulu esiPhezulu yilo Mthetho, ngaphandle kwanoma yimaphi amandla noma umsebenzi wesiphathimandla sezimali seKhomishana.

(4) Noma imaphi amandla noma umsebenzi okudluliselwe ngokwesigatshana (1), (2) noma (3) kumele asetshenziswe noma wenziwe ngaphansi kwaleyo migomo njengoba umuntu noma umgwamanda odluliselile njengoba ungabona kufanele.

- (5) Ukudluliselwa kwamandla okukhulunywe ngakho kwisigatshana (1), (2) noma (3) –
- (a) kumele kubhalwe phansi;
  - (b) akuvimbeli umuntu noma umgwamanda odlulisele amandla noma umsebenzi ukuthi asebenzise lawo mandla noma enze lowo msebenzi; futhi
  - (c) noma yingasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhalwe phansi yilowo muntu noma yilowo mgwamanda.

### **Imithethonqubo**

**33.** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokubonisana neBhodi nangesaziso kwiGazethi, lingenza imithethonqubo ephathelene –

- (a) nanoma iluphi udaba olunganqunywa noma okumele lunqunywe ngokwalo Mthetho; noma
- (b) nanoma iluphi udaba lokuphatha oludingekayo ukuqalisa izinhlinzeko zalo Mthetho.

### **Ukuvalwa kweNkampani kanye nezinhlelo zesikhashana eziphathelene nalokho**

**34.(1)(a)** INkampani, iKhomishana yezamaFilimu yaKwaZulu-Natali, enenombolo yokuBhaliswa kweNkampani engu-2003/028677/08, esungulwe ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), kumele ivalwe ngokuzikhethela futhi icishwe lapho ibhaliswe khona.

(b) Amalungu eNkampani kumele, uma kuvalwa iNkampani okukhulunywe ngayo endimeni (a), phakathi kokunye, ahambisane nezigaba 349 no 350 woMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(2) Ngosuku lokuvalwa kweNkampani okuhlongozwe kwisigatshana (1), zonke izimpahla, izikweletu, wonke amalungelo, yonke imisebenzi kanye nezibopho, kubandakanya noma iyiphi ingxenye yezimali engasetshenziswanga eqongelelwe noma etholwe yiNkampani kudluliselwa, futhi, kuba ngokweKhomishana yezamaFilimu yaKwaZulu-Natali eyasungulwa ngokwesigaba 2.

(3) IKhomishana, maqondana nezimpahla, nezikweletu, namalungelo, nayo yonke imisebenzi kanye nezibopho kubandakanya noma iyiphi ingxenye engasetshenziswanga

yezimali eziqongelelwe okukhulunywe ngakho kwisigatshana (2), ngazo zonke izinhloso zabazoyilandela ngokusemthethweni, kanye nabazoyilandela ngokwesikhundla, iNkampani.

(4) Amalungu eBhodi yeNkampani kumele asebenze njengamalungu eBhodi yeKhomishana agunyaziwe noma anikwe amandla kuze kube iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwesigaba 5(1)(a) seliqoke iBhodi ngokwalo Mthetho.

(5) Bonke abasebenzi beNkampani kumele, ezinyangeni eziyisithupha kuqaliswe lo Mthetho, badluliselwe kwiKhomishana yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngosuku oluyonqunywa yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(6) Amaholo, imivuzo kanye namalungelo okuhlinzekwa yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuhambisana nesigatshana (5), angeke kwaba ngaphansi kwalokho okuholelwa umsebenzi weNkampani ngaphambi kokuthi adluliselwe.

(7) Ngokwezinhloso zoMthetho weNtela, 1962 (uMthetho No. 58 ka 1962), akukho kushintshwa komqashi okuyothathwa ngokuthi kwenzekile maqondana nomsebenzi ovuma ukuqashwa njengoba kuhlangoziwe kwisigatshana (5).

(8) Uma umuntu eba umsebenzi weKhomishana ngokwesigatshana (5) –

(a) ugcina izinsuku zakhe zelivu aziqongelele kuze kube usuku noma ngaphambi kosuku lokudluliselwa, uzihlela ngokuhambisana nemigomo yokuqashwa kwiKhomishana; futhi

(b) noma iluphi uphenyo olwenziwe noma okuhloswe ukuthi lwenziwe maqondana nezinsolo zokungaziphathi kahle okwenziwe yilowo muntu ngaphambi kosuku lokudluliselwa kumele luchithwe noma lwenziwe yiKhomishana futhi iKhomishana kumele imthathele izinyathelo ezifanele lowo muntu othintekayo ngokuhambisana nemithetho, inqubomgomo kanye nemigomo yokuqashwa noma yokusebenza anayo ngokushesha ngaphambi kosuku lokudluliselwa.

**Amacala ajwayelekile**

35.(1) Ilungu leBhodi, umsebenzi, umeluleki, i-ejenti nanoma imuphi omunye umuntu oqashwe noma osebenza egameni leKhomishana unecala uma egwazelwa ngandlela thile noma ethola imali engagunyaziwe noma umvuzo kunoma imuphi umuntu maqondana nanoma yini eyenziwa noma ehlinzekwa yiKhomishana.

(2) Noma imuphi umuntu unecala uma, maqondana nanoma yini eyenziwe noma ehlinzekwa yiKhomishana, egwazisa noma ezama ukugwazisa noma ehuha noma ezama ukuhuha ilungu leBhodi, umsebenzi, umeluleki, i-ejenti nanoma imuphi umuntu oqashwe yiKhomishana noma osebenza egameni leKhomishana.

(3) Noma imuphi umuntu oqamba amanga athi ugunyaziwe ukukhokhisa noma ukuqoqa izimali noma iminikelo egameni leKhomishana, noma ngomyalelo weKhomishana unecala.

**Izinhlawulo**

36. Noma imuphi umuntu olahlwe yicala ngokwalo Mthetho uyokhokha inhlawulo noma aboshwe isikhathi esingeqile eminyakeni emihlanu noma aboshwe phezu kwalokho akhokhe nenhlawulo.

**Isihloko esifingqiwe**

37. Lo Mthetho ubizwa ngoMthetho weKhomishana yezamaFilimu waKwaZulu-Natali, 2009.

## **I-MEMORANDAMU NGEZINHLOSO ZOMTHETHOSIVIVINYO WEKHOMISHANA YEZAMAFILIMU YAKWAZULU-NATALI**

### **1. ISENDLALELO ESEJWAYELEKILE**

Ucwaningo mayelana namathuba akhona kwezamafilimu nocwaningo ngeSu leMboni yezamaFilimu KwaZulu-Natali kukhombisa ukuthi ezamafilimu zingakwazi ukudlala indima ebalulekile ekukhuliseni umnotho esiFundazweni saKwaZulu-Natali. Lolubili lolu cwaningo luphinde lwahlongoza ukuthi kunesidingo sokwakha uhloko oluzobhekelela ukudidiyelwa, ukuqhakanjiswa kanye nokwakhiwa kwamafilimu esiFundazweni.

Ngonyaka ka 2005, uMnyango wezokuThuthukiswa koMnotho (“uMnyango”) wafuna futhi wathola igunya elibhalwe phansi kwikhabhinethi ukuba usungule iKhomishana yezamaFilimu yaKwaZulu-Natali (“iKhomishana”) –

- (a) njengenkampani engaphansi kwesigaba 21, okwesikhashana; futhi
- (b) njengeBhizinisi likaHulumeni wesiFundazwe ngokoMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999) (PFMA).

Ukuze kumanjwane nalokhu kugunyazwa okubalulwe ngasenhla, kwasungulwa inkampani engaphansi kwesigaba 21 ukuze kuqinisekise ukuthi isiFundazwe asilahlekelwe imihlomulo esinamathuba okuyithola ehambisana nembali yezamafilimu ngenkathi umthetho wokungulwa komgwamanda osemthethweni usahlelwa ngokomthetho.

Ukujutshwa ngokusemthethweni koMnyango kanye nesiShayamthetho sesifundazwe ukuba bashaye umthetho mayelana nembali yezamaFilimu namaVidiyo esiFundazweni kususelwe eNgxenyeni A yoHlelo 4 loMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996. Loluhlelo olushiyoyo luhlinzeka ngokuthi womabili amazanga kahulumeni okungelikaZwelonke naweziFundazwe anejoka futhi umthetho uwavumela ukuba enze noma yini emayelana nokugqugquzela izimboni, okubandakanya imboni yezamafilimu.

Ngenxa yalokhu okungasenhla, lo Mthethosivivinyo uhlose –

- (a) ukuhlinzekela ukusungulwa kweKhomishana;
- (b) ukunquma izinhloso zeKhomishana;
- (c) ukuhlinzekela amandla, izibopho nemisebenzi yeKhomishana;
- (d) ukuhlinzekela ukubuswa nokuphathwa kweKhomishana;
- (e) ukuhlinzekela ezezimali zeKhomishana;
- (f) ukuhlinzekela ukwesekwa kwemiklamo okuhloswe ngayo ukugqugquzela ukuthuthukiswa, ukukhiqizwa nokufundisa ngezamafilimu KwaZulu-Natali; kanye
- (g) nokuhlinzekela okunye okuphathelene nalokho.

## 2. UKUCHAZWA KWESIGABA NESIGABA

### ISAHLUKO 1

#### IZINCAZELO

#### Isigaba 1

Sihlinzekela izincazelo zamagama asetshenziwe kulo Mthethosivivinyo.

### ISAHLUKO 2

#### UKUSUNGULWA KWEKHOMISHANA YEZAMAFILIMU YAKWAZULU-NATALI

#### Isigaba 2

Sihlinzekela ukusungulwa kweKhomishana yezamaFilimu yaKwaZulu-Natali njengeBhizinisi likaHulumeni wesiFundazwe ngokoMthetho wokuPhathwa kweziMali zikaHulumeni.

#### Isigaba 3

Sibeka izinhloso zeKhomishana, okuyilezi –

- (a) ukugquguzela nokuqhakambisa isiFundazwe njengendawo engathakaselwa umhlaba wonke yokuqanjwa kwamafilimu namavidiyo;
- (b) ukuthuthukisa, ukugquguzela kanye nokuqhakambisa, kuleli nasemazweni omhlaba imboni yezamafilimu esesiFundazweni;
- (c) ukugquguzela ukutshalwa kwezimali embonini yezamafilimu namavidiyo esesiFundazweni;
- (d) ukuhlinzeka kanye nokukhuthaza ukuhlinzekwa ngamathuba kwabantu abaqhamuka emiphakathini eyayincishwe amathuba ukuthi bangene futhi babambe iqhaza embonini yezamafilimu esesiFundazweni;
- (e) ukulungisa ukungalingani kwaphambilini maqondana nengqalasizinda nokusatshalaliswa kwamakhono nezinsiza embonini yezamafilimu esesiFundazweni; kanye
- (f) nokuba negalelo ekuvuleni amathuba emisebenzi embonini yezamafilimu esesiFundazweni.

#### Isigaba 4

Sihlinzekela amandla, izibopho kanye nemisebenzi yeKhomishana, ebandakanya –

- (a) ukugquguzelwa kokuthuthukiswa nokukhuliswa kwengqalasizinda kanye namakhono okuqanjwa kwamafilimu namavidiyo esesiFundazweni ngokuthi –

- (i) ukugqugquzelwa kobambiswano lokuqanjwa kwamafilimu namavidiyo phakathi kwabasunguli bamafilimu bamazwe omhlaba nabasesifundazweni ukuqinisekisa ukuthuthukiswa kwamakhono kanye nokudluliselwa kwabaqambi bamafilimu bakuleli;
  - (ii) ukugqugquzelwa kwabaqambi bamafilimu namavidiyo ukuthi baqashe abasebenzi bakuleli futhi basebenzise impahla yakuleli ukuqamba amafilimu;
  - (iii) ukwenziwa kocwaningo kuyo yonke imikhakha yokuqanjwa kwamafilimu, yomabonakude neyokuqanjwa kwamavidiyo esifundazweni;
  - (iv) ukuhlinzekwa kwemifundaze kubafundi abafundela noma abahlose ukufundela ezamafilimu, ezamavidiyo kanye nanoma imuphi umkhakha wemikhiqizo yezindaba; futhi
  - (v) ukugqugquzelwa kotshalomali lwamazwe omhlaba nolwalapha ekhaya embonini yezamafilimu namavidiyo;
- (b) ukugqugquzelwa kwesiFundazwe njengendawo yokuqanjwa kwamafilimu, kwamavidiyo nokomabonakude;
- (c) ukwakhiwa kobudlelwane nabantu kanye nezinhlangano zamazwe omhlaba ukuze kugqugquzelwe ukudluliselwa kolwazi namakhono;
- (d) ukuhlanganiswa kanye nokuhlinzekwa kolwazi oluwusizo mayelana nabaqambi bamafilimu besifundazwe, ochwepheshe bamakhamera, abalingisi, abadansi, abaculi, amahhotela, ezokuthutha nezinye izinsiza ezikhona esiFundazweni;
- (e) ukuhlinzekwa kwemigudu kanye nezeluleko kubaqambi bamafilimu bamazwe omhlaba mayelana nezinto ezithinta ukuqanjwa kwamafilimu namavidiyo esifundazweni; kanye
- (f) nokugqugquzela ukuvumelana kanye nokusebenzisana phakathi kwezinhlangano kanye nezinhloka zombuso ezinentshisekelo emkhakheni wokuqanjwa kwamafilimu namavidiyo.

### ISAHLUKO 3

#### IBHODI YABAQONDISI BEKHOMISHANA

##### **Isigaba 5**

Sihlinzeka ngokuthi iKhomishana iphathwa iBhodi yabaQondisi ebunjwe amalungu okungenani ayisihlanu, kodwa angeqile kwangama-20 aqokwe yiLungu loMkhandlu oPhethe. Siphinde sihlinzekele unqubo okumele ilandelwe yiLungu loMkhandlu oPhethe lapho –

- (a) limema iziphakamiso zabantu abazoqokelwa kwiBhodi; nalapho
- (b) liqoka abantu abazosebenza kwiBhodi.

Kulesi sigatshana somthetho kuphinde kube nezinhlinzeko zeqhaza lokuqapha okumele libanjwe uMkhandlu oPhethe lapho kuphakanyiswa futhi kuqokwa abantu abazosebenza kwiBhodi yeKhomishana ngokuthi ubeke ijoka kwiLungu loMkhandlu oPhethe phakathi kokunye –

(a) lokwazisa uMkhandlu oPhethe, ngemuva kokuqokwa kwamalungu eBhodi, amagama amalungu aqokiwe, usuku lokuqala ukusebenza kanye nesikhathi sokuba sesikhundleni.

#### **Isigaba 6**

Sibeka izizathu zokuhoxiswa kwelungu ekutheni liqokelwe ukusebenza kwiBhodi.

#### **Isigaba 7**

Sibeka ijoka –

(a) kubantu abaphakanyiselwe ukusebenza kwiBhodi lokuthi badalule ukuhlomula kwezezimali abanakho kunoma iyiphi inkampani noma okunye ukuhlomula singakedluli izinsuku eziyishumi (10) bephakanyisiwe. Ukwehluleka kwelungu ukudalula ukuhlomula kwezezimali nanoma ikuphi okunye ukuhlomula ngesikhathi esibekiwe, kuyolihoxisa lelo lungu ekutheni liqokwe njengelungu leBhodi;

(b) kubantu abaqokelwe ukusebenza kwiBhodi lokuthi badalule ukuhlomula abanakho kunoma iyiphi inkampani noma ibhizinisi ngokwesigaba 234(3)(a) soMthetho weziNkampani, lapho beqala ukusebenza kanye nasekuqaleni konyaka wezimali;

(c) kwilungu leBhodi eliithola noma yikuphi ukuhlomula kwezezimali noma okunye ukuhlomula kunoma iyiphi enye inkampani lokuthi lidalule lokho kuhlomula zingakedluli izinsuku eziyi-10 lithole lokho kuhlomula.

Ukwehluleka kwelungu ukudalula ukuhlomula njengoba kudingeka endimeni (b) no (c) ngasenhla kuyoba yizizathu zokuxoshwa kwalelo lungu kwiBhodi.

#### **Isigaba 8**

Sibeka isikhathi sokuba sesikhundleni kanye nokuqokwa kabusha kwamalungu eBhodi yeKhomishana.

#### **Isigaba 9**

Sibeka izizathu zokuxoshwa kwamalungu eBhodi.

#### **Isigaba 10**

Sinika iLungu loMkhandlu oPhethe amandla okumisa okwesikhashana ilungu leBhodi ukuze iLungu loMkhandlu oPhethe liphenye ngezinsolo, okungathi uma kutholakala ukuthi ziyiqiniso, kuholele ekutheni ilungu lixoshwe emsebenzini ngokwesigaba 9(2).

**Isigaba 11**

Sihlinzekela izindaba eziphathelene nemihlangano kanye nezinqubo zeBhodi, ezifana –

- (a) nokubanjwa kwemihlangano yeBhodi;
- (b) nesibalo sabantu abangabamba imihlangano; kanye
- (c) nendlela okungathathwa ngayo izinqumo zeBhodi.

**Isigaba 12**

Sibeka ijoka kumalungu eBhodi lokuthi azihoxise wona lapho kungenzeka kube nokushayisana kwezintshisekelo kunoma yiluphi udaba oludingidwayo yiBhodi. Ukwehluleka kwelungu ukuzihoxisa emhlanganweni ekubeni lazi ukuthi kungaba nokushayisana kwezintshisekelo kuyokwenza umhlangano uthathwe njengongabanga khona.

**Isigaba 13**

Sinika iLungu loMkhandlu oPhethe amandla okunquma imiholo kanye nemibandela yokuqokwa kwamalungu eBhodi.

**Isigaba 14**

Sihlinzekela ukusungulwa kwamakomidi azolekelela iBhodi kanye nokuwaqeda noma nokuqeda imisebenzi ajutshelwe yona.

**Isigaba 15**

Sikhuluma ngokuqokelwa kwabantu kwiBhodi noma kumakomidi eBhodi.

**ISAHLUKO 4****ISIKHULU ESIPHEZULU KANYE NABASEBENZI BEBHODI****Isigaba 16**

Sihlinzekela izindaba ezimayelana nokuqokwa kwesiKhulu esiPhezulu (“CEO”) seKhomishana, njengokuthi –

- (a) isikhulu esiPhezulu siqokwa yiBhodi ngokubonisana neLungu loMkhandlu oPhethe; kanye
- (b) nesikhathi sokuqokwa kwesiKhulu esiPhezulu.

#### **Isigaba 17**

Sikhuluma ngemisebenzi yesikhulu esiPhezulu.

#### **Isigaba 18**

Sikhuluma ngezizathu nenqubo yokususwa kwesiKhulu esiPhezulu.

#### **Izigaba 19 no 20**

Zikhuluma ngabasebenzi beKhomishana kanye nokusiswa noma ukudluliselwa kwabasebenzi kwiKhomishana.

### **ISAHLUKO 5**

#### **UKUNQUNYWA KWENQUBO YOKUZIPHATHA YESIFUNDAZWE YABAQAMBI BAMA FILIMU**

#### **Isigaba 21**

Sinika iLungu loMkhandlu oPhethe amandla okunquma iNqubo yokuziphatha yesiFundazwe yabaQambi bamaFilimu.

#### **Isigaba 22**

Sihlinzekela ukukhishwa kwemikhombandlela yenqubomgomo kanye nemigudu yokusebenza yiLungu loMkhandlu oPhethe kwiKhomishana kanye nokuhoxiswa noma ukuchitshiyelwa kwayo.

### **ISAHLUKO 6**

#### **UXHASOMALI KANYE NOKUPHATHWA KWEZIMALI ZEKHOMISHANA**

#### **Isigaba 23**

Sihlinzekela imithombo yezimali zeKhomishana ebandakanya –

- (a) imali eyabelwe iKhomishana yisiShayamthetho sesiFundazwe;

- (b) inzalo yezimali ezitshalwe yiKhomishana; kanye
- (c) nengeniso etholakale ngokusemthethweni kunoma imuphi omunye umthombo.

**Isigaba 24**

Sihlinzekela ukuphathwa kwezimali ezisesikhwameni seKhomishana kanye nokubika kwiBhodi.

**Isigaba 25**

Sihlinzekela ukucwaningwa kwezitatimende zezimali zeKhomishana kanye nokwethulwa kombiko kwisiShayamthetho sesiFundazwe.

**Isigaba 26**

Senza unyaka wezimali wesiKhungo uhambisane nowoMnyango.

**Isigaba 27**

Sihlinzekela iKhomishana ukuthi ithole, igcine noma ichithe impahla engenakususwa ngesikhathi sokusebenza kwayo.

**Isigaba 28**

Sihlinzekela inqubo yokuthathelwa izinyathelo zomthetho kweKhomishana.

**ISAHLUKO 7****IZINHLINZEKO EZEJWAYELEKILE****Isigaba 29**

Sihlinzekela ukuphepha kolwazi oluyimfihlo olugcinwe yiKhomishana.

**Isigaba 30**

Sihlinzekela ukuhlakazwa kweKhomishana.

**Isigaba 31**

Sihlinzekela ukusetshenziswa kwegama leKhomishana.

**Isigaba 32**

Sihlinzekela ukudluliselwa kwanoma yimaphi amandla eLungu loMkhandlu oPhethe kwiNhloko yoMnyango, kuhambisana nemibandela ethile.

**Isigaba 33**

Sinika iLungu loMkhandlu oPhethe amandla okwakha imithethonqubo. Lesi sigatshana somthetho siphinde sihlizweke imigudu iLungu loMkhandlu oPhethe elingakha ngayo leyo mithethonqubo.

**Isigaba 34**

Sihlinzekela ukuhlakazwa kweNkampani kanye nezinhlinzeko zesikhashana kubandakanya –

- (a) ukuthi iNkampani iyohlakazwa ngokuzithandela futhi yesulwe emabhukwini;
- (b) ukuthi amalungu eBhodi yeNkampani engaphansi kwesigaba 21 ayokuba ngamalungu agunyaziwe futhi anikwe amandla eBhodi yeKhomishana kuze kube yisikhathi iLungu loMkhandlu oPhethe eliyokhetha ngaso iBhodi ngokwalo Mthetho;
- (c) ukuthi abasebenzi benkampani engaphansi kwesigaba 21 bayodluliselwa kwiKhomishana.

**Isigaba 35**

Sihlinzekela amacala ngokwalo Mthethosivivinyo.

**Isigaba 36**

Sihlinzekela izinhlawulo mayelana namacala ahlinzekelwe kwisigatshana somthetho 35 salo Mthethosivivinyo.

**Isigaba 37**

Sihlinzekela isihloko esifingqiwe salo Mthethosivivinyo.

**4. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE**

Lo Mthethosivivinyo wakha umgwamanda ongomthetho obuswa futhi ophethwe yiBhodi yabaQondisi kanye nesiKhulu esiPhezulu. UMthethosivivinyo uphinde uhlinzekele ukuqokwa kwabasebenzi abazokwenza imisebenzi yansuku zonke yeBhodi. Njengoba kunombono wokuthi ngesikhathi okuyomiswa ngaso lo Mthethosivivinyo, iKhomishana iyongena ezicathulweni zeBhodi, zesiKhulu esiPhezulu nezabasebenzi benkampani engaphansi kwesigaba 21. Ngalowo mbono, ngenxa yeKhomishana eyakhiwe ngokwalo Mthethosivivinyo angeke kube nezingqinamba kwezokuphatha nezabasebenzi kuHulumeni wesiFundazwe.

**5. IZINGQINAMBA KWEZEZIMALI KUHULUMENI WESIFUNDAZWE**

Uxhasomali lwenkampani engaphansi kwesigaba 21 luyoqhamuka ezimalini ezabelwe yisiShayamthetho sesiFundazwe ngakho-ke angeke kube khona zingqinamba ezintsha kwezezimali kwisiShayamthetho sesifundazwe uma iKhomishana eyakhiwe ngokwalo Mthethosivivinyo iqala ukusebenza.

**6. IMINYANGO/ IMIGWAMANDA ETHINTIWE**

- (a) IsiGungu sabaMeli bakaHulumeni saKwaZulu-Natali;
- (b) AMAHHOVISI EZAMAFILIMU (eThekwini nase-Zululand);
- (c) IziKhungo zeMfundo ePhakeme (iNyuvesi yaKwaZulu-Natali);
- (d) INhlangano yokuThuthukiswa kweziMboni kanye nesiKhungo sezoHwebo nokuTshalwa kweziMali KwaZulu-Natali; kanye
- (e) NoMnyango wezoBuciko, amaSiko nezokuVakasha.

**6. IZINGQINAMBA EZIMAYELANA NOMTHETHOSISEKELO**

Azikho

No. 3

12 January 2010

## **KWAZULU-NATAL TRADE AND INVESTMENT AGENCY BILL, 2009**

### **Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature**

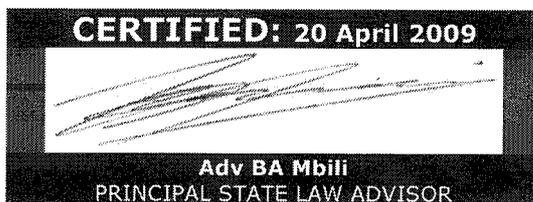
Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Trade and Investment Agency Bill, 2009 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

**Attention:** Mrs NP Sikhakhane  
The Secretary  
KwaZulu-Natal Legislature  
Private Bag X 9112  
PIETERMARITZBURG  
3200

so as to reach her not later than 15 days from the date of publication.

N NAIDOO  
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL  
TRADE AND INVESTMENT AGENCY BILL, 2009**



**CERTIFIED:** 20 April 2009  
Principal State Law Advisor

## **BILL**

**To provide for the establishment of an economic development agency to be known as Trade and Investment KwaZulu-Natal in order to attract foreign and domestic investment and to generate exports and export capacity in the Province; to determine the objects, powers, duties and functions of the Agency; to determine the manner in which the Agency is to be managed, governed, staffed and financed; to provide for the formulation of a Provincial Investment and Export Policy; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

### **ARRANGEMENT OF SECTIONS**

#### *Section*

#### **CHAPTER 1 DEFINITIONS**

##### **1. Definitions**

#### **CHAPTER 2 TRADE AND INVESTMENT KWAZULU-NATAL**

##### **2. Establishment of Trade and Investment KwaZulu-Natal**

##### **3. Objects of Agency**

##### **4. Powers, duties and functions of Agency**

#### **CHAPTER 3 BOARD OF AGENCY**

##### **5. Composition of Board**

##### **6. Disqualification from being appointed to Board**

##### **7. Declaration of financial or other interests of members of Board**

##### **8. Term of office and reappointment of member of Board**

##### **9. Vacancies, removal and resignation from office of members of Board**

##### **10. Temporary suspension of member of Board**

##### **11. Meetings and procedures at meetings of Board**

##### **12. Recusal of member from meetings and proceedings of Board**

##### **13. Remuneration of members of Board**

##### **14. Establishment of committees to assist Board**

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15. Co-opting of persons to Board or committees of Board

**CHAPTER 4**

**CHIEF EXECUTIVE OFFICER AND STAFF OF AGENCY**

16. Chief Executive Officer of Agency

17. Functions of Chief Executive Officer

18. Resignation and removal from office of Chief Executive Officer

19. Staff of Agency

20. Secondment or transfer of staff to Agency

**CHAPTER 5**

**DETERMINATION OF PROVINCIAL INVESTMENT AND EXPORT POLICY**

21. Provincial Investment and Export Policy

22. Provincial Investment and Export Plan

23. Policy directives

**CHAPTER 6**

**FUNDING AND FINANCIAL MANAGEMENT OF AGENCY**

24. Funds of Agency

25. Financial management

26. Audit and annual report

27. Establishment and administration of special funds

28. Financial year of Agency

29. Immovable property

30. Legal proceedings against Agency

**CHAPTER 7**

**GENERAL PROVISIONS**

31. Security of confidential information held by Agency

32. Dissolution of Agency

33. Use of name of Agency

34. Delegations

35. Regulations

36. Winding-up of Company and transitional provisions incidental thereto

37. General offences

38. Penalties

39. Short title

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## CHAPTER 1 DEFINITIONS

### Definitions

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

"**Agency**" means Trade and Investment KwaZulu-Natal established in terms of section 2;

"**Board**" means the Board of the Agency appointed in terms of section 5;

"**Chief Executive Officer**" means the Chief Executive Officer of the Agency, appointed in terms of section 16;

"**close corporation**" means a corporation as defined in section 1(1) of the Close Corporations Act, 1984 (Act No. 69 of 1984);

"**company**" means a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);

"**Company**" means the association incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing Company Registration Number 98/11946/08, and known as Trade and Investment KwaZulu-Natal;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Department**" means the Department of Economic Development in the Province of KwaZulu-Natal;

"**Executive Council**" means the Executive Council of the Province of KwaZulu-Natal contemplated in section 132 of the Constitution;

"**Gazette**" means the official *Provincial Gazette* of KwaZulu-Natal;

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**"Head of Department"** means the person appointed as Head of the Department in terms of section 12 of the Public Service Act, (Proclamation 103 of 1994);

**"member"** means a member of the Board of the Agency appointed in terms of section 5;

**"Member of the Executive Council responsible for finance"** means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

**"National Treasury"** means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"organised local government"** means the provincial organisation representing municipalities in KwaZulu-Natal, recognised in terms of section 163 of the Constitution and section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

**"Portfolio Committee"** means the Portfolio Committee of the Provincial Legislature responsible for economic development;

**"Province"** means the Province of KwaZulu-Natal contemplated in section 103 of the Constitution and **"provincial"** has a corresponding meaning;

**"regulations"** means regulations made in terms of section 35;

**"responsible Member of the Executive Council"** means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for economic development or that member of the Executive Council of the Province of KwaZulu-Natal to whom the Premier has assigned the administration of this Act;

**"this Act"** includes the regulations.

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## CHAPTER 2 TRADE AND INVESTMENT KWAZULU-NATAL

### **Establishment of Trade and Investment KwaZulu-Natal**

2.(1) There is hereby established an agency for the promotion of trade and investment in the Province to be known as Trade and Investment KwaZulu-Natal.

(2) The Agency is a juristic person.

(3) The Agency is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### **Objects of Agency**

3. The objects of the Agency are –

- (a) to attract foreign and domestic investment;
- (b) to generate exports and export capacity; and
- (c) to perform the powers, duties and functions specified in section 4.

### **Powers, duties and functions of Agency**

4.(1) The Agency must –

- (a) identify, develop, market and promote investment opportunities in the Province to international and domestic investors;
- (b) develop the export capacity of the Province;
- (c) develop the export market of the Province;
- (d) foster trade and investment within the Province;
- (e) develop a provincial investment and export plan for the development, promotion and marketing of investment in and exports from the Province; and
- (f) keep and maintain a database of investment opportunities within the Province in such a manner as to benefit all sectors of the economy.

(2) The Agency may –

- (a) for the purposes of developing, promoting, and marketing investment in and

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the export capacity of the Province, and subject to the prior written approval of the responsible Member of the Executive Council and section 54(2) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) –

- (i) establish and operate one or more companies, close corporations or other similar bodies, and may acquire or dispose of any interest or share in any such company, close corporation or other similar body;
  - (ii) enter into joint ventures with other institutions, organisations, municipalities, bodies or persons;
  - (iii) partner with, or acquire or dispose of any interest or share in any company, close corporation or other similar body; and
  - (iv) raise funds through donations and sponsorships;
- (b) liaise with any other entity, organ of state, organisation or institution whose activities or aims impact on, or relate to, the development, promotion or marketing of investment in the Province;
- (c) investigate and make recommendations to the Executive Council, through the responsible Member of the Executive Council, on any matter relating directly or indirectly to the promotion, development or marketing of investment in the Province;
- (d) enter into agreements for the attainment of its objects, the exercise of its powers, duties and functions or the management and administration of its affairs, whether or not expressly provided for in this section; and
- (e) do any other thing or attend to any other matter that the responsible Member of the Executive Council considers necessary for the proper implementation of this Act.

(3) In addition to the powers referred to in subsection (2), the Agency has the powers referred to in section 34 of, and Schedule 2 to, the Companies Act, 1973 (Act No. 61 of 1973).

### CHAPTER 3 BOARD OF AGENCY

#### **Composition of Board**

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**5.(1) The Board consists of –**

- (a) at least five, but not more than 20, members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 16(5).

**(2) Members of the Board must be fit and proper persons to serve the best interests of the Province, collectively possessing –**

- (a) appropriate knowledge or experience in organised constituencies within the business industry; and
- (b) the following skills and expertise –
  - (i) legal skills, experience and qualifications;
  - (ii) financial skills, experience and qualifications;
  - (iii) investment and export experience or qualifications;
  - (iv) labour market experience or qualifications;
  - (v) human resource or educational experience or qualifications;
  - (vi) community development skills and experience; and
  - (vii) planning or development skills and experience.

**(3) In appointing members to the Board, the responsible Member of the Executive Council must ensure that –**

- (a) historic imbalances are addressed;
- (b) the Board, collectively, possess the necessary and appropriate skills and expertise;
- (c) the Board is representative of persons employed or involved in the import, export, trade and investment business enterprises in the Province;
- (d) municipal interests are represented on the Board in such a manner that equitable spatial representation of municipalities is achieved: Provided that no more than four persons may be appointed to the Board to give effect to the provisions of this paragraph; and
- (e) organised local government is represented on the Board.

**(4) The responsible Member of the Executive Council must designate –**

- (a) one of the members of the Board as the Chairperson of the Board; and
- (b) one of the members of the Board as the Deputy Chairperson of the Board.

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- (5) The responsible Member of the Executive Council may appoint an employee of the Department as his or her representative who –
- (a) must facilitate liaison between the responsible Member of the Executive Council and the Board;
  - (b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
  - (c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken.
- (6) The responsible Member of the Executive Council must, by notice in the *Gazette*, invite any interested parties within the Province to nominate candidates for appointment to the Board.
- (7) The invitation for nomination must specify –
- (a) the nomination procedure;
  - (b) the requirements for nomination; and
  - (c) the closing date for the nomination.
- (8) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel comprising of the senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council on the nominees.
- (9) The responsible Member of the Executive Council must cause the names of the persons appointed to the Board to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Board.
- (10) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board in terms of subsection (1), inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

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(11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

### **Disqualification from being appointed to Board**

6. A person is disqualified from being appointed to the Board or from remaining on the Board, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Agency and fails to declare his or her interest and the nature thereof in the manner required by this Act;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon receipt of an affidavit disclosing full details of an offence by a person nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; and
- (g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section.

### **Declaration of financial or other interests of members of Board**

7.(1) A person who has been nominated to serve on the Board in terms of subsection 5(6) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company or other business interests.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 6 to be considered for the

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position of the member of the Board.

(3) Every member of the Board must, upon assuming office and at the beginning of every financial year of the Agency, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 234(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973).

(4) Where a member of the Board acquires an interest in any company or any other business interest, at any time during his or her tenure as a member of the Board, he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interest as contemplated in subsections (3) and (4) constitutes justifiable reason for the termination of appointment of such member in terms of section 9(2).

(6) The responsible Member of the Executive Council must keep an updated register of the interests of members of the Board disclosed in terms of this section.

#### **Term of office and reappointment of member of Board**

8. The persons appointed to the Board hold office for a period of three years or such shorter period as the responsible Member of the Executive Council may determine and are, subject to section 5, eligible for re-appointment at the expiry of such period: Provided that no person may be re-appointed after having served on the Board for a continuous period of nine years.

#### **Vacancies, removal and resignation from office of members of Board**

9.(1) A member of the Board must vacate office on becoming subject to a disqualification contemplated in section 6.

(2) The responsible Member of the Executive Council may, after having afforded a

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member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are justifiable and cogent reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from two consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.

(5) Whenever a vacancy occurs on the Board, the responsible Member of the Executive Council must, subject to section 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (2), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 5, but subject to sections 5(2) and 5(3), appoint persons to serve as members of the Board on an interim basis: Provided that –

- (a) the persons appointed in terms of this subsection may not remain on the Board for a period of more than 60 days from the date of their appointment; and
- (b) the responsible Member of the Executive Council must, subject to section 5, appoint the members of the Board within 60 days of the appointment contemplated in this subsection.

#### **Temporary suspension of member of Board**

10. The responsible Member of the Executive Council may suspend a member of the Board whilst the responsible Member of the Executive Council is investigating allegations which, if found to be correct, could result in the member's appointment being terminated in terms of section 9(2).

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### **Meetings and procedures at meetings of Board**

11.(1) The first meeting of the Board must be held on a date and at a time and venue determined by the responsible Member of the Executive Council whereafter all future meetings must be as determined by the chairperson.

(2) The *quorum* for a meeting of the Board is the majority of the members of the Board.

(3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.

(4) The chairperson must preside at all meetings of the Board: Provided that in his or her absence the deputy chairperson must preside and in the event that neither the chairperson nor the deputy chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as chairperson for the duration of that particular meeting.

(5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Board must keep minutes of its meetings.

(7) No decision of the Board is invalid merely by reason of a vacancy on the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.

(8) The chairperson, or a majority of the Board, may call an extraordinary meeting of the Board in which event the provisions of this section apply with the necessary changes.

(9) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

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### **Recusal of member from meetings and proceedings of Board**

**12.(1)** A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if one or more of the following prevail –

- (a) if he or she has a direct or indirect interest; or
- (b) if there is a possibility that a direct or indirect interest might arise.

(2) If at any stage during the course of any proceedings before the Board it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such a member must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid.

(5) For the purposes of this section “**indirect interest**” includes, but is not limited to, an interest held by any member’s –

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they were married; or
- (c) child, parent or sibling.

### **Remuneration of members of Board**

**13.(1)(a)** A member of the Board may be paid from the funds of the Agency such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the Board who receives remuneration, allowances or other benefits by

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virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment:

(2)(a) A member of the Board and a person who has been co-opted to the Board may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Agency for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.

(b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

#### **Establishment of committees to assist Board**

14.(1) The Board may establish committees consisting of one or more of its members to

–

- (a) assist the Board in the performance of any of the powers, duties or functions of the Agency contemplated in section 4; or
- (b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Board must –

- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board;
- (b) appoint a chairperson of such committee who must be a member of the Board; and

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(c) determine whether or not such committee may co-opt persons who are not members of the Board and, if so, on what terms and conditions.

(3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Board.

(4)(a) The Chief Executive Officer may attend and take part in, but may not vote, at a meeting of a committee.

(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

#### **Co-opting of persons to Board or committees of Board**

15.(1) The Board may, if it is of the opinion that a particular person is able to assist it in regard to any of its functions and powers, co-opt such person for that purpose.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board or a committee.

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Agency as may be determined by the Board in consultation with the Member of the Executive Council responsible for finance.

### **CHAPTER 4 CHIEF EXECUTIVE OFFICER AND STAFF OF AGENCY**

#### **Chief Executive Officer of Agency**

16.(1) The Board must, in consultation with the responsible Member of the Executive Council, appoint the Chief Executive Officer of the Agency.

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years.

(b) The Chief Executive Officer may be re-appointed for one additional term of office not

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exceeding five years.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board.

(b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(4) For purposes of the declaration of financial or other interests, the provisions of section 7 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the Board.

(5) The Chief Executive Officer is an *ex officio* member of the Board but does not have the right to vote at its meetings.

### **Functions of Chief Executive Officer**

17.(1) The Chief Executive Officer is responsible for –

(a) the administrative and financial management of the Board in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the direction of the Board;

(b) in consultation with the Board, the appointment of members of staff of the Agency contemplated in section 19(1);

(c) in consultation with the Board, the determination of a code of conduct, applicable to the Chief Executive Officer, all staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure –

(i) compliance with applicable law, including this Act;

(ii) the effective, efficient and economical use of the Agency's funds and resources;

(iii) the promotion and maintenance of a high standard of professional ethics;

(iv) the prevention of conflicts of interest;

(v) the protection of confidential information held by the Agency; and

(vi) professional, honest, impartial, fair, ethical and equitable service;

(d) the maintenance of discipline over the staff appointed in terms of paragraph

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- (b) and must, for those purposes, be accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by member of staff of the Agency; and
- (f) ensuring compliance by the Board with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable legislation.

(2) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Board must, in consultation with the responsible Member of the Executive Council, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

#### **Resignation and removal from office of Chief Executive Officer**

**18.(1)** The Chief Executive Officer vacates office –

- (a) in the case of resignation, when the resignation takes effect;
- (b) when, in terms of the Companies Act, 1973 (Act No. 61 of 1973), the person holding that office has become disqualified to serve as director of a company; and
- (c) upon having been removed from office in terms of subsection (2).

(2) The Board may, in consultation with the responsible Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

#### **Staff of Agency**

**19.(1)** The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Agency as may be reasonably necessary –

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and
- (b) to assist the Board with the work incidental to the performance by the Board of its functions.

(2) The Board must, subject to section 24(4), determine a human resources policy for members of staff of the Agency, including the Chief Executive Officer.

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(3) For purposes of the declaration of financial or other interests, and subject to section 17(1)(e), the provisions of section 7(3), 7(4) and 7(5) apply with the necessary changes to members of staff of the Agency.

(4) The Chief Executive Officer must keep an updated register of the interests of members of staff of the Agency disclosed in terms of subsection (3).

### **Secondment or transfer of staff to Agency**

20. The Agency may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

## **CHAPTER 5 DETERMINATION OF PROVINCIAL INVESTMENT AND EXPORT POLICY**

### **Provincial Investment and Export Policy**

21. The responsible Member of the Executive Council must, after consultation with the Board, develop a Provincial Investment and Export Policy.

### **Provincial Investment and Export Plan**

22.(1) The Board must, within six months of the development of the Provincial Investment and Export Policy in terms of section 21, develop a Provincial Investment and Export Plan in order to achieve and give effect to the policies and objectives developed by the responsible Member of the Executive Council in terms of this Act.

(2) When performing its functions in terms of this Act, the Agency must give effect to the Provincial Investment and Export Plan.

### **Policy directives**

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- 23.(a)** The responsible Member of the Executive Council may set strategic guidelines for the pursuit of the Agency's objectives and may issue policy directives to the Board.
- (b)** The responsible Member of the Executive Council may withdraw or amend any policy directive issued in terms of paragraph (a).

## CHAPTER 6 FUNDING AND FINANCIAL MANAGEMENT OF AGENCY

### **Funds of Agency**

- 24.(1)** The funds of the Agency consist of –
- (a) money appropriated by the Provincial Legislature;
  - (b) interest on investments of the Agency; and
  - (c) income lawfully derived from any other source.
- (2)** The Agency must utilise its funds –
- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of –
    - (i) the members of the Board;
    - (ii) the Chief Executive Officer; and
    - (iii) the members of staff of the Agency; and
  - (b) to cover costs in connection with –
    - (i) the day to day operation and administration of the Agency; and
    - (ii) the performance of the duties and functions of the Agency and the exercise of its powers in terms of this Act.
- (3)** The Chief Executive Officer must, with the concurrence of the Board –
- (a) open an account in the name of the Agency with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
  - (b) deposit therein all money received in terms of subsection (1).
- (4)** The Board, in consultation with the responsible Member of the Executive Council, must determine –
- (a) the remuneration and conditions of service; and

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(b) the pension and retirement benefits,  
of the Chief Executive Officer and the other members of staff of the Agency.

(5) The Agency may invest monies deposited into its account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

(6) The Agency may not borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act, 1999 (Act No.1 of 1999).

### **Financial management**

25.(1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Agency's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Chief Executive Officer must, within three months before the end of each financial year, submit to the Board for approval –

(a) a business plan for the Agency, containing measurable objectives and the other information contemplated in section 26(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Agency,

in respect of the following three financial years.

(4) In any financial year the Chief Executive Officer may submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure of the Agency for that financial year.

(5) The Agency may not enter into any financial commitment beyond its approved

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budget and its accumulated reserves.

(6) The Chief Executive Officer may –

- (a) with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits or any other institution categorised or listed from time to time by the National Treasury as a Category “A1” financial institution; or
- (b) with the approval of the Board, dispose of that portion in any other manner.

(7) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit therein such amounts as the Board approves.

### **Audit and annual report**

26.(1) The Auditor-General must audit the financial statements of the Agency.

(2)(a) The Board must table a report on the activities of the Agency during a financial year in the Provincial Legislature within five months after the end of that financial year.

(b) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Board and at least two other members of the Board must brief the relevant Portfolio Committee on the annual report.

(3) The report must –

- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;
- (b) state the extent to which the Agency has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 25(3)(a) during the financial year concerned; and
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

### **Establishment and administration of special funds**

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**27.(a)** The Agency may, in consultation with the responsible Member of the Executive Council, establish and maintain special funds, including a fund for the bringing into the mainstream of import and export the previously disadvantaged groups.

**(b)** The Agency must administer such funds in the manner determined by the responsible Member of the Executive Council.

#### **Financial year of Agency**

**28.** The financial year of the Agency commences on 1 April of a particular year and ends on 31 March of the following year.

#### **Immovable property**

**29.** The Agency may, in terms of a policy and procedures determined by the Board and with the approval of the responsible Member of the Executive Council, acquire, hold or dispose of immovable property in the course of its business.

#### **Legal proceedings against Agency**

**30.(1)** Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).

**(2)** The Agency is, for purposes of subsection (1), regarded as an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the said Act.

### **CHAPTER 7 GENERAL PROVISIONS**

#### **Security of confidential information held by Agency**

**31.(1)** Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Agency in connection with any legal brief or instruction, unless –

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- (a) he or she is ordered to do so by a court of law; or
- (b) the person who gave such brief or instruction consents thereto in writing.

(2) No person may disclose any information kept in the registers contemplated in sections 7, 16(4) and 19(4) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Agency; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Agency, or any member of staff of the Agency.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

### **Dissolution of Agency**

**32.** The Agency may only be dissolved in terms of an Act of the Provincial Legislature.

### **Use of name of Agency**

**33.(1)** No person may, without the prior written authorisation of the Agency, in any way represent or make use of the name, acronym, logos, designs or material used or owned by the Agency.

(2) No person may falsely claim to be acting on behalf of the Agency.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

### **Delegations**

**34.(1)** The responsible Member of the Executive Council may delegate to the Head of Department –

- (a) any power conferred on the responsible Member of the Executive Council by this Act, except the power to make regulations referred to in section 35; or
- (b) any duty imposed on the responsible Member of the Executive Council by this

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Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(2) and 9(2).

(2) The Board may, by a special resolution, delegate to the Chief Executive Officer or member of staff of the Agency, any power or duty conferred or imposed on the Board by this Act.

(3) The Chief Executive Officer may delegate to any member of staff of the Agency any power or duty conferred or imposed on the Chief Executive Officer by this Act, except any duty as accounting officer of the Agency.

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) Any delegation referred to in subsection (1), (2) or (3) –

- (a) must be in writing;
- (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

### **Regulations**

**35.** The responsible Member of the Executive Council may, in consultation with the Board and by notice in the *Gazette*, make regulations regarding –

- (a) any matter that may or must be prescribed in terms of this Act; or
- (b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

### **Winding-up of Company and transitional provisions incidental thereto**

**36.(1)(a)** The Company, Trade and Investment KwaZulu-Natal, bearing Company Registration Number 98/11946/08, established in terms of the Companies Act, 1973 (Act No. 61 of 1973), must be voluntarily wound up and deregistered.

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(b) The members of the Company must, in winding-up the Company referred to in subsection (1), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973).

(2) On the date of the winding-up of the Company contemplated in subsection (1), all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Company are transferred to, and vest in, Trade and Investment KwaZulu-Natal established in terms of section 2.

(3) Trade and Investment KwaZulu-Natal is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in law of, and the successor in title to, the Company.

(4) The members of the Board of the Company must act as duly authorised and empowered members of the Board of the Agency until such time as the responsible Member of the Executive Council has in terms of section 5(2) appointed the Board in terms of this Act.

(5) All members of staff of the Company must, within six months of the commencement of this Act, be made an employment offer by the responsible Member of the Executive Council for transfer to the Agency on a date determined by the responsible Member of the Executive Council.

(6) The remuneration, benefits and privileges offered by the responsible Member of the Executive Council, in accordance with subsection (5), may not be less than those payable to the member of staff by the Company, immediately prior to his or her transfer.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer is deemed to have taken place in respect of a member of staff who accepts an employment offer contemplated in subsection (5).

(8) When a person becomes a member of staff of the Agency in terms of subsection (5)

—  
(a) he or she retains all vacation leave which accrued to his or her credit up to

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the date immediately before the date of transfer, adjusted in accordance with the conditions of employment of the Agency; and

(b) any inquiry instituted or intended to be instituted in respect of alleged misconduct committed by such person before the date of transfer must be disposed of or instituted by the Agency and the Agency must take appropriate steps against the person concerned in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

### **General offences**

**37.(1)** A member of the Board, a member of staff, an advisor, agent or any other person employed or acting on behalf of the Agency is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Agency.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Agency, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, an advisor, agent or any other person employed by, or acting on behalf of, the Agency.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Agency is guilty of an offence.

### **Penalties**

**38.** Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

### **Short title**

**39.** This Act is called the KwaZulu-Natal Trade and Investment Agency Act, 2009.

## **MEMORANDUM ON THE OBJECTS OF THE TRADE AND INVESTMENT KWAZULU-NATAL BILL, 2009**

### **1. GENERAL BACKGROUND AND OBJECTS OF THE BILL**

1.1 The Department seeks to establish and register the Trade and Investment Agency, KwaZulu-Natal ("TIKZN") as a provincial public entity in order to –

- (a) address the concerns of the Provincial legislature over the legal status of the TIKZN; and
- (b) comply with the National Treasury's directives of converting all government entities from section 21 companies to statutory bodies formed and registered as such in terms of the provisions of the PFMA.

1.2 In light of the above, this Bill purports to –

- (a) provide for the establishment of an economic development agency known as the Trade and Investment, KwaZulu-Natal in order to attract foreign and domestic investment and to generate exports and export capacity into the Province of KwaZulu-Natal and to further perform certain specified functions;
- (b) determine the Agency's objectives, functions and powers;
- (c) provide for the governance and management of the Agency by a Board of Directors and a Chief Executive Officer;
- (d) determine the Agency's powers, functions and financial and operational accountability and to regulate its functioning; to provide for the formulation of Provincial Investment and Export Policies;
- (e) provide for the formulation of Regulations; and
- (f) provide for incidental matters.

### **2. SECTION-BY-SECTION EXPLANATION**

#### **CHAPTER 1 DEFINITIONS**

##### **Section 1**

Provides for the definition of words used in this Bill.

#### **CHAPTER 2 ESTABLISHMENT OF THE TRADE AND INVESTMENT AGENCY, KWAZULU-NATAL**

**Section 2**

Provides for the establishment of a trade and investment agency for the Province to be called the Trade and Investment, KwaZulu-Natal. The Agency is a juristic person, formed, registered and operated in accordance with the provisions of this Act and the PFMA.

**Section 3**

Sets the objects of the Agency, namely –

- (a) to attract foreign and domestic investment;
- (b) to generate export and export capacity; and
- (c) to perform the powers, duties and functions specified in section 4.

**Section 4**

Provides for powers, duties and functions of the Agency which include –

- (a) identifying, developing, marketing and promoting investment opportunities in the province both nationally and internationally;
- (b) developing the export capacity of the Province;
- (c) developing the export market of the Province;
- (d) fostering of trade and investment within the Province;
- (e) investigating and making any recommendations to the Executive Council, through the responsible Member of the Executive Council with regard to promotion, development or marketing of investment in the Province; and
- (f) developing a provincial investment and export plan.

Section 4 further provides for the powers of the Agency which include –

- (a) to liaise with any other entities, organs of state that have an interest in the development, promotion and marketing of investment in the province;
- (b) to provide for staffing matters of the Agency;
- (c) for the purposes of achieving its objectives and with the approval of the MEC to –
  - (i) establish and operate any entity or Company;
  - (ii) enter into joint ventures and/or enter into partnerships with other entities or companies; and
  - (iii) raise funds through donations and sponsorships.

**CHAPTER 3**  
**GOVERNANCE OF THE AGENCY**

**Section 5**

Provides for the governance of the Agency by a board of directors and that the board is the accounting authority. It further provides that the board shall have not less than 5 members and not more than 20 members.

Section 5 further provides for the procedure for the nomination and appointment of board members. It also provides the Executive Council with an oversight role in the appointment of board members in that –

- (a) it makes it imperative on the MEC, prior to making any appointments to the Board, to inform the Executive Council of his or her intention to call for nominations; and
- (b) as soon as the MEC has appointed the members of the Board, he or she must inform the Executive Council of the names of the appointed members, the date of effect and period of appointment.

**Section 6**

Sets grounds for the disqualification of members to be appointed to serve on the Board.

**Section 7**

Provides for the duty on the persons nominated to be appointed to the Board and those person already appointed to the Board to disclose their interests in companies or other business interests.

**Section 8**

Sets out the term of office and re-appointment of a member of the Board.

**Section 9**

Provides for the filling of vacancies that might occur in the Board.

**Section 10**

Empowers the MEC to temporarily suspend a member of the Board to allow the MEC to investigate allegations which, if found to be true could lead to the member's appointment being terminated.

**Section 11**

Provides for the meetings and procedures at meetings of the Board.

Section 11 further provides for matters related to the meetings of the Board, such as –

- (a) frequency of the meetings of the Board;
- (b) the *quorum* of the meeting; and
- (c) manner in which decision of the Board are taken.

**Section 12**

Provides for the duty on the members of the Board to recuse themselves in cases where a conflict of interest might arise in any matter being discussed by the Board. The failure on the part of the member to recuse himself / herself in a meeting knowing that a conflict of interest might arise would invalidate the proceedings.

**Section 13**

Empowers the MEC to determine remuneration and conditions of appointment of the members of the Board.

**Section 14**

Provides for the establishment of committees to assist the Board and the termination of their existence or mandate.

**Section 15**

Deals with co-opting of persons to the Board or Committees of the Board.

**CHAPTER 4****CHIEF EXECUTIVE OFFICER AND STAFF OF THE AGENCY****Section 16**

Provides for the following –

- (a) Appointment of the CEO of the Agency by the Board in consultation with the MEC; and
- (b) The period of appointment of the CEO;

**Section 17**

Deals with the functions of the CEO including the power to appoint staff of the Agency.

**Section 18**

Deals with the grounds and procedure for the removal of the CEO.

**Sections 19 and 20**

Deal with the staff of the Agency and secondment or transfer of staff to the Agency.

**CHAPTER 5****DETERMINATION OF PROVINCIAL INVESTMENT AND EXPORT POLICY****Section 21**

Provides for the development of a provincial investment and export policy by the MEC in consultation with the Agency.

**Section 22**

Provides for development of a provincial investment and export plan by the Agency in order to give effect to the provincial investment and export policy.

**Section 23**

Provides for the issuing of policy directives and strategic guidelines by the MEC to the Agency and for the withdrawal thereof.

**CHAPTER 6****FUNDING AND FINANCIAL MANAGEMENT OF THE AGENCY****Section 24**

Provides for the funding sources of the Agency which include –

- (a) money appropriated to the Commission by the Provincial Legislature;
- (b) interest on investments of the Commission; and
- (c) income lawfully derived from any other source.

**Section 25**

Provides for financial management of the funds of the agency and reporting to the Board.

**Section 26**

Provides for the audit of the financial statements of the Agency and the tabling of annual report to the Provincial Legislature.

**Section 27**

Provides for the establishment and administration of special funds of the Agency and the determination of the manner of administration of such funds by the MEC.

**Section 28**

Aligns the financial year of the Agency to that of the Department.

**Section 29**

Provides for the Agency to acquire, hold or dispose of the immovable property in the course of its business.

**Section 30**

Provides for the procedure for the institution of legal proceedings against the Agency.

CHAPTER 7  
GENERAL PROVISIONS

**Section 31**

Provides for security of confidential information held by the Agency.

**Section 32**

Provides for the dissolution of the Agency.

**Section 33**

Provides for the use of the name of the Agency.

**Section 34**

Provides for the delegation of any power conferred on the MEC to the Head of Department, with certain exceptions.

**Section 35**

Empowers the MEC to make regulations. This clause also provides guidelines in terms of which the MEC may make such regulations.

**Section 36**

Provides for the winding up of the company and transitional provisions including –

- (a) that the company shall be wound up voluntarily and deregistered;
- (b) that members of the Board of the section 21 Company shall be the duly authorised and empowered members of the Board of the Agency until such time that the MEC has appointed the Board in terms of this Act;
- (c) that the staff of the section 21 Company will be transferred to the Agency; and
- (d) the winding-up and deregistration of the section 21 Company upon the commencement of this Act.

**Section 37**

Provides for offences in terms of this Bill.

**Section 38**

Provides for penalties with regard to the offences provided for in clause 37 of this Bill.

**Section 39**

Provides for the short title of this Bill.

**3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

It is envisaged that the current staff of the section 21 Company would be transferred to the Agency; hence there would be no new organisation and personnel implications for the Provincial Government.

**4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

The Agency would take over the operations of the current section 21 Company and since such operations are and have been financed through the money appropriated to the Department by the Provincial legislature, there would be no new financial implications for the Provincial Government.

**5. DEPARTMENTS / BODIES CONSULTED**

- (a) KwaZulu-Natal Public Sector Lawyers Forum and the KwaZulu-Natal Public Sector Lawyers Association; and the
- (b) TIKZN Board (Section 21 Company)

**6. CONSTITUTIONAL IMPLICATIONS**

None

No. 3

12 Januarie 2010

## KWAZULU-NATAL WETSONTWERP OP HANDELS-EN BELEGGINGSAGENTSAP, 2009

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennisgewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die Kwazulu-Natal Wetsontwerp op Handels-en-Beleggingsagentskap, 2009 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portefeuljkomitee oor Ekonomiese Ontwikkeling en Toerisme Portfoliokomitee oorweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om verhoë oor die vermelde wetsontwerp in te dien, welke verhoë gerig moet word aan:

Aandag: Me NP Sikhakhane  
Die Sekretaris  
KwaZulu-Natal Legislature  
Privaatsak X 9112  
PIETERMARITZBURG  
3200

Verhoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO  
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL  
WETSONTWERP OP HANDELS- EN BELEGGINGSAGENTSAP, 2009**

## WETSONTWERP

Om voorsiening te maak vir die instelling van 'n ekonomiese ontwikkelingsagentskap wat bekend staan as Handel en Belegging KwaZulu-Natal ten einde buitelandse en binnelandse beleggings te lok en om uitvoere en uitvoerkapasiteit in die provinsie te genereer; om die oogmerke, bevoegdhede, pligte en funksies van die Agentskap te bepaal; om die wyse waarop die Agentskap bestuur, beheer, beman en gefinansier word, te bepaal; om voorsiening te maak vir die formulering van 'n Provinsiale Beleggings- en Uitvoerbeleid; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD soos volg deur die Provinsiale Wetgewer van die provinsie KwaZulu-Natal bepaal:-

### INDELING VAN ARTIKELS

#### *Artikel*

#### HOOFSTUK 1 OMSKRYWINGS

1. Omskrywings

#### HOOFSTUK 2 HANDEL EN BELEGGING KWAZULU-NATAL

2. Instelling van Handel en Belegging KwaZulu-Natal
3. Oogmerke van Agentskap
4. Bevoegdhede, pligte en funksies van agentskap

#### HOOFSTUK 3 AGENTSKAPSRAAD

5. Samestelling van Raad
6. Onbevoegdheid vir aanstelling op die Raad
7. Verklaring van finansiële of ander belange deur lede van Raad
8. Ampstermyn en heraanstelling van lid van Raad
9. Vakatures, ontslag en bedanking uit amp van lede van Raad
10. Tydelike skorsing van lid van Raad
11. Vergaderings en vergaderingsprosedures van Raad

12. Onttrekking van lid van vergaderings en verrigtinge van Raad
13. Vergoeding van lede van Raad
14. Instelling van komitees om Raad by te staan
15. Koöptering van persone aan Raad of komitees van Raad

#### HOOFSTUK 4

##### HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN AGENTSKAP

16. Hoof- Uitvoerende Beamppte van Agentskap
17. Funksies van Hoof- Uitvoerende Beamppte
18. Bedanking en ontslag uit amp van Hoof- Uitvoerende Beamppte
19. Personeel van Agentskap
20. Sekondering of oorplasing van personeel na Agentskap

#### HOOFSTUK 5

##### BEPALING VAN PROVINSIALE BELEGGINGS- EN UITVOERBELEID

21. Provinsiale Beleggings- en Uitvoerbeleid
22. Provinsiale Beleggings- en Uitvoerplan
23. Beleidsvoorskrifte

#### HOOFSTUK 6

##### BEFONDSING EN FINANSIËLE BESTUUR VAN AGENTSKAP

24. Fondse van Agentskap
25. Finansiële bestuur
26. Oudit en jaarverslag
27. Stigting en administrasie van spesiale fondse
28. Finansiële jaar van Agentskap
29. Vaste eiendom
30. Regstappe teen Agentskap

#### HOOFSTUK 7

##### ALGEMENE BEPALINGS

31. Sekuriteit van vertroulike inligting gehou deur Agentskap
32. Ontbinding van Agentskap
33. Gebruik van naam van Agentskap
34. Delegering
35. Regulasies
36. Likwidasie van Maatskappy en oorgangsbepalings wat daarmee verband hou
37. Algemene oortredings
38. Strawwe

## 39. Kort titel

HOOFSTUK 1  
OMSKRYWINGS**Omskrywings**

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

**"Agentskap"** Handel en Belegging KwaZulu-Natal ingestel ingevolge artikel 2;

**"beslote korporasie"** 'n korporasie soos omskryf in artikel 1(1) van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984);

**"Departement"** die Departement van Ekonomiese Ontwikkeling in die provinsie KwaZulu-Natal;

**"georganiseerde plaaslike regering"** die provinsiale organisasie wat munisipaliteite in KwaZulu-Natal verteenwoordig, erken ingevolge artikel 163 van die Grondwet en artikel 2 van die Wet op Georganiseerde Plaaslike Regering, 1997 (Wet No. 52 van 1997);

**"Grondwet"** die Grondwet van die Republiek van Suid-Afrika, 1996;

**"hierdie Wet"** insluitende die regulasies;

**"Hoof- Uitvoerende Beampte"** die Hoof- Uitvoerende Beampte van die Agentskap, aangestel ingevolge artikel 16;

**"Hoof van Departement"** die persoon aangestel as hoof van die departement ingevolge artikel 12 van die Staatsdienswet, (Proklamasie No. 103 van 1994);

**"Koerant"** die amptelike *Provinsiale Koerant* van KwaZulu-Natal;

**"lid"** 'n lid van die Agentskapsraad aangestel ingevolge artikel 5;

**"lid van die Uitvoerende Raad verantwoordelik vir finansies"** die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

**"maatskappy"** 'n maatskappy soos omskryf in die Maatskappywet, 1973 (Wet No. 61 van 1973);

**"Maatskappy"** die assosiasie wat ingelyf is ingevolge artikel 21 van die Maatskappywet, 1973 (Wet No. 61 van 1973), met Maatskappyregistrasienuommer 98/11946/08, en bekend as Handel en Belegging KwaZulu-Natal;

**"Nasionale Tesourie"** die Nasionale Tesourie ingestel deur artikel 5 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

**"Portefeuljekomitee"** die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling;

**"provinsie"** die provinsie KwaZulu-Natal bedoel in artikel 103 van die Grondwet en **"provinsiale"** het 'n ooreenstemmende betekenis;

**"Raad"** die Agentskapsraad aangestel ingevolge artikel 5;

**"regulasies"** regulasies wat uitgevaardig is ingevolge artikel 35;

**"Uitvoerende Raad"** die Uitvoerende Raad van die provinsie KwaZulu-Natal bedoel in artikel 132 van die Grondwet; en

**"verantwoordelike lid van die Uitvoerende Raad"** die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling of enige ander lid van die Uitvoerende Raad wat deur die Premier toegewys is.

## HOOFSTUK 2 HANDEL EN BELEGGING KWAZULU-NATAL

**Instelling van Handel en Belegging KwaZulu-Natal**

2.(1) Daar word hiermee 'n agentskap ingestel vir die bevordering van handel en belegging in die provinsie wat bekend staan as Handel en Belegging KwaZulu-Natal.

(2) Die Agentskap is 'n regspersoon.

(3) Die Agentskap is 'n provinsiale openbare entiteit onderhewig aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

**Oogmerke van Agentskap**

3. Die oogmerke van die Agentskap is –

- (a) om buitelandse en binnelandse beleggings te lok;
- (b) om uitvoere en uitvoerkapasiteit te genereer; en
- (c) om die bevoegdhede, pligte en funksies gespesifiseer in artikel 4 te verrig.

**Bevoegdhede, pligte en funksies van Agentskap**

4.(1) Die Agentskap moet –

- (a) beleggingsgeleenthede in die provinsie vir internasionale en binnelandse beleggers identifiseer, ontwikkel, bemark en bevorder;
- (b) die uitvoerkapasiteit van die provinsie ontwikkel;
- (c) die uitvoermark van die provinsie ontwikkel;
- (d) handel en belegging binne die provinsie bevorder;
- (e) 'n provinsiale beleggings- en uitvoerplan vir die ontwikkeling, bevordering en bemarking van belegging in en uitvoere van die provinsie ontwikkel; en
- (f) 'n databasis van beleggingsgeleenthede binne die provinsie op so 'n wyse hou en byhou dat alle sektore van die ekonomie daarby baat vind.

(2) Die Agentskap kan –

- (a) vir die doeleindes van ontwikkeling, bevordering, en bemarking van belegging in en die uitvoerkapasiteit van die provinsie, en onderhewig aan die vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad en

artikel 54(2) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) –

- (i) een of meer maatskappye, beslote korporasies of ander soortgelyke liggame stig en bedryf, en enige belang of aandele in sodanige maatskappy, beslote korporasie of ander sodanige soortgelyke liggaam koop of verkoop;
  - (ii) gesamentlike ondernemings met ander instellings, organisasies, munisipaliteite, liggame of persone aangaan;
  - (iii) vennote of aandeelhouders in maatskappye, beslote korporasies of ander liggame word en om alles of deel van sodanige aandele of belange te verkoop; en
  - (iv) genoeg fondse insamel deur middel van donasies en borgskappe;
- (b) met enige ander entiteit, staatsorgaan, organisasie of instelling skakel wie se aktiwiteite of doelstellings 'n impak het op of verband hou met die ontwikkeling, bevordering of bemaking van belegging in die provinsie;
- (c) deur die verantwoordelike lid van die Uitvoerende Raad ondersoek instel en aanbevelings maak aan die Uitvoerende Raad, aangaande enige saak wat direk of indirek verband hou met die bevordering, ontwikkeling of bemaking van belegging in die provinsie;
- (d) ooreenkomste sluit vir die bereiking van sy oogmerke, die uitoefening van sy bevoegdhede, pligte en funksies of die bestuur en administrasie van sy sake of spesifiek in hierdie artikel daarvoor voorsiening gemaak is of nie; en
- (e) enige ander ding doen of aan enige ander saak aandag skenk wat die verantwoordelike lid van die Uitvoerende Raad nodig ag vir die behoorlike implementering van hierdie Wet.

(3) Buiten die bevoegdhede vermeld in subartikel (2), het die Agentskap die bevoegdhede vermeld in artikel 34 van, en bylae 2 tot, die Maatskappywet, 1973 (Wet No. 61 van 1973).

### HOOFSTUK 3 AGENTSKAPSRAAD

#### **Samestelling van Raad**

5.(1) Die Raad bestaan uit –

- (a) ten minste vyf, maar nie meer as 20, lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
- (b) die Hoof- Uitvoerende Beamppte, *ex officio*, soos bedoel in artikel 16(5).

(2) Lede van die Raad moet gepaste en geskikte persone wees om die beste belange van die provinsie te dien, en gesamentlik oor die volgende beskik –

- (a) toepaslike kennis of ondervinding in georganiseerde kiesafdelings binne die besigheidsbedryf; en
- (b) die volgende vaardighede en kundigheid:
  - (i) regsvaardighede, -ondervinding en -kwalifikasies;
  - (ii) finansiële vaardighede, ondervinding en kwalifikasies;
  - (iii) ondervinding of kwalifikasies in belegging en uitvoere;
  - (iv) ondervinding of kwalifikasies in die arbeidsmark;
  - (v) ondervinding of kwalifikasies in menslike hulpbronne of opvoedkunde;
  - (vi) gemeenskapsontwikkelingsvaardighede en -ondervinding; en
  - (vii) vaardighede en ondervinding in beplanning of ontwikkeling.

(3) By aanstelling van lede op die Raad, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat –

- (a) historiese ongelykhede aangespreek word;
- (b) die Raad gesamentlik oor die nodige en toepaslike vaardighede en kundigheid beskik;
- (c) die Raad verteenwoordigend is van persone wat in diens of betrokke is by die invoer-, uitvoer-, handel- en beleggingsbesigheidsondernemings in die provinsie;
- (d) munisipale belange op die Raad verteenwoordig is op sodanige wyse dat billike ruimtelike verteenwoordiging van munisipaliteite bereik word: Met dien verstande dat nie meer as vier persone op die Raad aangestel mag word om uitvoering te gee aan die bepalings van hierdie paragraaf nie; en
- (e) georganiseerde plaaslike regering op die Raad verteenwoordig word.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet –

- (a) een van die lede van die Raad as die voorsitter van die Raad aanwys; en
- (b) een van die lede van die Raad as die adjunkvoorsitter van die Raad aanwys.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan 'n werknemer van die Departement as sy of haar verteenwoordiger aanstel wat –

- (a) skakeling tussen die verantwoordelike lid van die Uitvoerende Raad en die Raad moet vergemaklik;
- (b) van tyd tot tyd aan die verantwoordelike lid van die Uitvoerende Raad verslag moet doen aangaande aangeleenthede wat as tersaaklik beskou word; en
- (c) vergaderings van die Raad mag bywoon en aan besprekings deelneem, maar nie die reg het om te stem wanneer 'n raadsbesluit geneem word nie.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet, deur kennisgewing in die *Koerant*, enige belanghebbendes binne die provinsie uitnooi om kandidate te benoem vir aanstelling op die Raad.

(7) Die uitnodiging om benoemings moet die –

- (i) benoemingsprosedure;
- (ii) vereistes vir benoeming; en
- (iii) sluitingsdatum vir benoeming,

spesifiseer.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat ingedien word in reaksie op die kennisgewing oorweeg, en 'n keurpaneel aanstel bestaande uit die senior departementele beamptes om al die benoemings te oorweeg en aanbevelings aangaande die benoemdes aan die verantwoordelike lid van die Uitvoerende Raad te maak.

(9) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone wat op die Raad aangestel word, in die *Koerant* laat publiseer en in ten minste twee koerante met wye sirkulasie in die Provinsie, onmiddellik nadat sodanige persone skriftelik in kennis gestel is van hul aanstelling op die Raad.

(10) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede van die Raad ingevolge subartikel (1), die Uitvoerende Raad en die Portefeuljekomitee inlig oor die name van die aangestelde lede insluitend hul

aanstellingstermyn.

(11) Hierdie artikel is, met die nodige veranderings, van toepassing op die vul van 'n vakature op die Raad.

### **Onbevoegdheid vir aanstelling op Raad**

6. 'n Persoon is onbevoeg vir aanstelling op die Raad of om op die Raad te bly dien, op grond van die feit dat hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is of word;
- (c) direk of indirek belang het in enige kontrak met die Agentskap en versuim om sy of haar belang en die aard daarvan te verklaar op die wyse wat deur hierdie Wet vereis word;
- (d) onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp ontslaan is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind is en gevonnissen is tot 'n termyn van gevangenisstraf sonder keuse van 'n boete, behalwe dat die verantwoordelike lid van die Uitvoerende Raad, by die openbaarmaking van volle besonderhede van 'n misdryf in 'n beëdigde verklaring van 'n persoon wat vir aanstelling benoem is, 'n skuldigbevinding kan oorsien op 'n wyse wat konsekwent is met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel eindig vyf jaar nadat die vonnis uitgedien is; en
- (g) versuim om 'n belang in ooreenstemming met artikel 7 te verklaar of die verrigtinge van die Raad bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos bedoel in die vermelde artikel.

### **Verklaring van finansiële of ander belange van lede van Raad**

7.(1) 'n Persoon wat benoem is om op die Raad te dien ingevolge subartikel 5(6) moet, binne 10 dae na benoeming, 'n skriftelike verklaring aan die verantwoordelike lid van die Uitvoerende Raad voorlê van alle direkte of indirekte belange in enige maatskappy of ander besigheidsbelange.

(2) Enige versuim deur die benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, diskwalifiseer sodanige benoemde ingevolge artikel 6 om oorweeg te word vir die posisie as lid van die Raad.

(3) Elke lid van die Raad moet, by aanvaarding van die amp en aan die begin van elke finansiële jaar van die Agentskap, 'n skriftelike verklaring van sy of haar direkte of indirekte belang in enige maatskappy of ander besigheidsbelang voorlê op die wyse waarvoor in artikel 234(3)(a) van die Maatskappywet, 1973 (Wet No. 61 van 1973) voorsiening gemaak word.

(4) Waar 'n lid van die Raad 'n belang in enige maatskappy of ander besigheidsbelange verkry te eniger tyd gedurende sy of haar dienstryd as 'n lid van die Raad moet hy of sy binne 10 dae na die datum van die verkryging van sodanige belang, 'n skriftelike verklaring van sodanige belang aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(5) Enige versuim deur die lid om sy of haar belang te verklaar soos bedoel in subartikels (3) en (4) moet lei tot beëindiging van aanstelling van sodanige lid ingevolge artikel 10(2).

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n opgedateerde register hou van die belange van lede van die Raad wat ingevolge hierdie artikel verklaar is.

#### **Ampstermyn en heraanstelling van lid van Raad**

**8.** Die ampstermyn van persone wat op die Raad aangestel is, duur 'n tydperk van drie jaar of sodanige korter tydperk soos die verantwoordelike lid van die Uitvoerende Raad mag bepaal en is, onderhewig aan artikel 5, verkiesbaar vir heraanstelling by die verstryking van sodanige tydperk: Met dien verstande dat geen persoon heraangestel mag word nadat hy of sy op die Raad gedien het vir 'n aaneenlopende tydperk van nege jaar nie.

**Vakatures, ontslag en bedanking uit amp van lede van Raad**

9.(1) 'n Lid van die Raad moet die amp verlaat indien hy of sy onbevoeg raak soos bedoel in artikel 6.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat die lid 'n geleentheid gebied is om sy of haar saak te stel, te eniger tyd die ampstermyn van sodanige lid beëindig, indien volgens sy of haar diskresie, daar goeie redes daarvoor is.

(3) 'n Lid moet sy of haar amp verlaat indien hy of sy afwesig is, sonder dat verlof vir sodanige afwesigheid deur die Raad toegestaan is, van twee opeenvolgende vergaderings van die Raad waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is.

(4) 'n Lid kan skriftelik uit die amp bedank deur nie minder nie as 30 dae kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad die kennisgewing van bedanking kan laat vaar.

(5) Wanneer 'n vakature op die Raad ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke deel van die ampstydperk van die lid in wie se plek sodanige persoon aangestel is.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (2) uitoefen, kan hy of sy, nieteenstaande die prosedure vir die aanstelling van die lede van die Raad soos in artikel 5 uiteengesit, onderhewig aan subartikels 5(2) en 5(3) persone aanstel om op 'n voorlopige grondslag te dien as lede van die Raad: Met dien verstande dat –

- (a) die persone aangestel ingevolge hierdie subartikel nie op die Raad mag aanbly vir 'n tydperk van meer as 60 dae na die datum van hul aanstelling nie; en
- (b) die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, die lede van die Raad aanstel binne 60 dae na die aanstelling bedoel in hierdie subartikel.

**Tydelik skorsing van lid van Raad**

10. Die verantwoordelike lid van die Uitvoerende Raad kan 'n lid van die Raad skors terwyl die verantwoordelike lid van die Uitvoerende Raad bewerings ondersoek wat, indien daar gevind word dat dit korrek is, kan lei tot beëindiging van die lid se aanstelling ingevolge artikel 9(2).

**Vergaderings en vergaderingsprosedures van Raad**

11.(1) Die eerste vergadering van die Raad moet gehou word op 'n datum, tyd en plek soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal waarna alle toekomstige vergaderings moet plaasvind soos deur die voorsitter bepaal.

(2) Die kworum vir 'n vergadering van die Raad is die meerderheid van die lede van die Raad.

(3) Die verrigtinge by 'n vergadering van die Raad moet, onderhewig aan die bepalings van hierdie artikel, deur die voorsitter bepaal word insluitend die reg om te besluit dat enige aangeleentheid onder bespreking onttrek kan word voordat daarvoor gestem word.

(4) Die voorsitter moet by alle vergaderings van die Raad voorsit: Met dien verstande dat die adjunkvoorsitter in sy of haar afwesigheid as voorsitter moet optree en indien beide die voorsitter en die adjunkvoorsitter by 'n vergadering van die Raad afwesig is, kan die lede teenwoordig, uit hul eie geledere, 'n persoon verkies om as voorsitter op te tree vir die duur van daardie spesifieke vergadering.

(5) 'n Besluit van die Raad moet geneem word deur 'n meerderheid van die stemme van die lede wat by 'n vergadering teenwoordig is en, in die geval van 'n staking van stemme oor enige aangeleentheid, het die voorsitter 'n beslissende stem buiten sy of haar gewone stem.

(6) Die Raad moet notules van sy vergaderings hou.

(7) Geen besluit van die Raad is ongeldig slegs op grond van 'n vakature in die Raad nie: Met dien verstande dat die besluit geneem word deur die vereiste meerderheid van die lede van die Raad daar teenwoordig en geregtig daarop om as lede van die Raad te sit.

(8) Die voorsitter, of 'n meerderheid van die Raad, kan 'n buitengewone vergadering van die Raad roep in welke geval die bepalings van hierdie artikel, met die nodige veranderings, van toepassing is.

(9) Die Raad kan, volgens sy diskresie, lede van die publiek toelaat om enige vergadering van die Raad by te woon.

#### **Onttrekking van lid van vergaderings en verrigtinge van Raad**

12.(1) 'n Lid van die Raad moet hom- of haarself van 'n saak onttrek wat deur die Raad ondersoek, oorweeg of oor gestem word indien een of meer van die volgende geld –

- (a) indien hy of sy 'n direkte of indirekte belang het; of
- (b) indien daar 'n moontlikheid bestaan dat 'n direkte of indirekte belang mag ontstaan.

(2) Indien dit in enige stadium gedurende die loop van enige verrigtinge voor die Raad blyk dat 'n lid wat by daardie vergadering teenwoordig is, of 'n belang kan hê bedoel in subartikel (1), moet sodanige lid onverwyld die aard van sy of haar belang verklaar en die vergadering verlaat.

(3) Enige verklaring van belang wat ingevolge subartikel (1) gemaak is, moet opgeteken word in die notule van die betrokke vergadering.

(4) Indien dit daarna blyk dat die Raad 'n besluit geneem het oor 'n saak ten opsigte waarvan 'n lid versuim het om 'n belang bedoel in subartikel (1) te verklaar, is sodanige besluit deur die Raad ongeldig.

(5) Vir die doeleindes van hierdie artikel sluit "**indirekte belang**" in, maar is nie beperk nie tot, 'n belang wat gehou word deur enige lid se –

- (a) besigheidsvennoot, kollega of werkgewer, buiten die Staat;
- (b) eggenoot, deelgenoot in 'n gewoontehuwelik, of persoon saam met wie sodanige lid bly of leef asof hul getroud is; of
- (c) kind, ouer, of broer of suster.

### **Vergoeding van lede van Raad**

13.(1)(a) 'n Lid van die Raad kan uit die fondse van die Agentskap sodanige vergoeding en toelae betaal word soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

(b) 'n Lid van die Raad wat vergoeding, toelae of ander voordele ontvang uit hoofde van sy of haar pos of diens in –

- (i) die nasionale regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die nasionale of 'n provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige vergoeding, toelaes of ander voordele te ontvang terwyl hy of sy as 'n lid van die Raad dien, mag slegs vergoeding en toelae ontvang soos vermeld in paragraaf (a) tot die omvang wat vereis word om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou gewees het indien dit nie vir sodanige pos of diens was nie.

(2)(a) 'n Lid van die Raad en 'n persoon wat aan die Raad gekoöpteer is, kan met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, vergoeding ontvang uit die fondse van die Agentskap vir redelike werklike reis- en verblyf-koste genoodsaak deur die werklike bywoning van 'n vergadering van die Raad.

(b) Die lid van die Uitvoerende Raad verantwoordelik vir finansies moet prosedures, insluitende beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis- en verblyf-koste bedoel in paragraaf (a).

### **Instelling van komitees om Raad by te staan**

14.(1) Die Raad kan komitees instel wat uit een of meer van sy lede bestaan om –

- (a) die Raad by te staan in die uitvoering van enige van die bevoegdhede, pligte of funksies van die Agentskap bedoel in artikel 4; of
- (b) ondersoek in te stel of navorsing te doen oor enige saak wat binne die mandaat van die Raad ingevolge hierdie Wet val.

(2) Wanneer 'n komitee bedoel in subartikel (1) ingestel word, moet die Raad –

- (a) die opdrag van sodanige komitee bepaal, insluitend maar nie beperk nie tot, of sodanige komitee ophou voortbestaan of nie wanneer dit die taak of take voltooi het wat deur die Raad daaraan toegewys is;
- (b) 'n voorsitter van sodanige komitee aanstel wat 'n lid van die Raad moet wees; en
- (c) bepaal of sodanige komitee persone mag koöpteer wat nie lede van die Raad is nie, en indien wel, op watter terme en voorwaardes.

(3) Die Raad kan, te eniger tyd, die bestaan van 'n komitee of enige mandaat wat aan 'n komitee gegee is, beëindig, ongeag of sodanige komitee die taak of take voltooi het wat daaraan deur die Raad toegewys is.

(4)(a) Die Hoof- Uitvoerende Beampte mag vergaderings van die Raad bywoon en daaraan deelneem, maar het nie die reg om te stem nie.

(b) 'n Personeellid van die Raad mag, op uitnodiging deur die tersaaklike komitee, 'n vergadering van daardie komitee bywoon.

#### **Koöptering van persone aan Raad of komitees van Raad**

15.(1) Die Raad mag, indien hy van mening is dat 'n spesifieke persoon in staat is om hom by te staan met betrekking tot enige van sy funksies en bevoegdhede, sodanige persoon vir daardie doel koöpteer.

(2) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) is nie geregtig daarop om te stem by enige vergadering van die Raad of 'n komitee nie.

(3) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) moet sodanige vergoeding en toelae uit die fondse van die Agentskap ontvang soos deur die Raad, in oorleg met die

lid van die Uitvoerende Raad verantwoordelik vir finansies, bepaal.

#### HOOFSTUK 4 HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN AGENTSAP

##### **Hoof- Uitvoerende Beampte van Agentskap**

16.(1) Die Raad moet, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, die Hoof- Uitvoerende Beampte van die Agentskap aanstel.

(2)(a) Die Hoof- Uitvoerende Beampte word aangestel vir 'n tydperk wat nie vyf jaar oorskry nie.

(b) Die Hoof- Uitvoerende Beampte mag heraangestel word vir een bykomende ampstermyn wat nie vyf jaar oorskry nie.

(3)(a) Die aanstelling van die Hoof- Uitvoerende Beampte is onderhewig aan die sluiting van 'n skriftelike prestasie-ooreenkoms wat aangegaan word tussen daardie persoon en die Raad.

(b) Die Raad en die Hoof- Uitvoerende Beampte mag, skriftelik en volgens ooreenkoms, die prestasie-ooreenkoms wysig.

(4) Vir doeleindes van die verklaring van finansiële of ander belange, is die bepaling van artikel 7 met die nodige veranderinge van toepassing op die Hoof- Uitvoerende Beampte behalwe dat die Hoof- Uitvoerende Beampte sy of haar belange aan die Raad moet verklaar.

(5) Die Hoof- Uitvoerende Beampte is 'n *ex officio*-lid van die Raad maar het nie die reg om by sy vergaderings te stem nie.

##### **Funksies van Hoof- uitvoerende beampte**

17.(1) Die Hoof- Uitvoerende Beampte is verantwoordelik vir –

- (a) die administratiewe en finansiële bestuur van die Raad in ooreenstemming met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en die

opdrag van die Raad;

(b) die aanstelling van personelede van die Agentskap bedoel in artikel 19(1) in oorleg met die Raad;

(c) die bepaling van 'n gedragskode, in oorleg met die Raad, van toepassing op die Hoof- Uitvoerende Beampte, alle personeel van die Agentskap en beregbaar vir doeleindes van dissiplinêre stappe, om –

(i) nakoming van toepaslike reg, insluitend hierdie Wet;

(ii) die doeltreffende, doelmatige en ekonomiese gebruik van die Agentskap se fondse en hulpbronne;

(iii) die bevordering en handhawing van 'n hoë standaard van professionele etiek;

(iv) die voorkoming van botsende belange;

(v) die beskerming van vertroulike inligting gehou deur die Agentskap; en

(vi) professionele, eerlike, onpartydige, regverdige, etiese en billike diens,

te verseker;

(d) die handhawing van dissipline oor die personeel aangestel ingevolge paragraaf (b) en moet, vir daardie doeleindes, aan die Raad verantwoordbaar wees;

(e) die byhou en instandhouding van die register van belange verklaar deur 'n personeellid van die Agentskap; en

(f) versekering van nakoming deur die Raad van die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en enige ander toepaslike wetgewing.

(2) Indien die Hoof- Uitvoerende Beampte om enige rede nie in staat is om enige van sy of haar funksies uit te voer nie, moet die Raad, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, 'n ander persoon aanstel as Waarnemende Hoof- Uitvoerende Beampte tot die Hoof- Uitvoerende Beampte in staat is om daardie funksies te hervat.

### **Bedanking en ontslag uit amp van Hoof- Uitvoerende Beampte**

**18.(1)** Die Hoof- Uitvoerende Beampte ontruim sy of haar amp –

(a) in die geval van bedanking, wanneer die bedanking van krag word;

- (b) wanneer, ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), die persoon wat daardie amp beklee, onbevoeg raak om as direkteur van 'n maatskappy te dien; en
- (c) by ontslag uit amp ingevolge subartikel (2).

(2) Die Raad kan, in oorleg met die lid van die Uitvoerende Raad, die Hoof- Uitvoerende Beampte se diens beëindig in ooreenstemming met toepaslike indiensnemings- en arbeidsreg.

### **Personeel van Agentskap**

19.(1) Die Hoof- Uitvoerende Beampte moet, onderhewig aan subartikel (2), personeellede van die Agentskap in diens neem soos wat redelikerwys nodig blyk te wees –

- (a) om hom of haar by te staan in die verrigting van sy of haar funksies ingevolge hierdie Wet; en
- (b) om die Raad by te staan met die werk eie aan die verrigting van sy funksies deur die Raad.

(2) Die Raad moet, onderhewig aan artikel 24(4), 'n menslike hulpbronbeleid vir personeellede van die Agentskap bepaal, insluitend die Hoof- Uitvoerende Beampte.

(3) Vir doeleindes van die verklaring van finansiële of ander belange, en onderhewig aan artikel 17(1)(e), is die bepalings van artikels 7(3), 7(4) en 7(5), met die nodige veranderings, van toepassing op personeellede van die Agentskap.

(4) Die Hoof- Uitvoerende Beampte moet 'n opgedateerde register byhou van die belange van personeellede van die Agentskap wat ingevolge subartikel (3) verklaar is.

### **Sekondering of oorplasing van personeel na Agentskap**

20. Die Agentskap kan die dienste benut van persone wat vanaf die staatsdiens gesekondeer of oorgeplaas word in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

## HOOFSTUK 5 BEPALING VAN PROVINSIALE BELEGGINGS- EN UITVOERBELEID

### **Provinsiale Beleggings- en Uitvoerbeleid**

21. Die verantwoordelike lid van die Uitvoerende Raad moet, na oorlegpleging met die Raad, 'n Provinsiale Beleggings- en Uitvoerbeleid ontwikkel.

### **Provinsiale Beleggings- en Uitvoerplan**

22.(1) Die Raad moet, binne ses maande na die ontwikkeling van die Provinsiale Beleggings- en Uitvoerbeleid ingevolge artikel 21, 'n Provinsiale Beleggings- en Uitvoerplan ontwikkel om die beleid en oogmerke wat deur die verantwoordelike lid van die Uitvoerende Raad ingevolge hierdie Wet ontwikkel is, te bereik en uitvoering daaraan te gee.

(2) Wanneer die Agentskap sy funksies ingevolge hierdie Wet verrig, moet hy uitvoering gee aan die Provinsiale Beleggings- en Uitvoerplan.

### **Beleidsvoorskrifte**

23.(a) Die verantwoordelike lid van die Uitvoerende Raad kan strategiese riglyne stel vir die nastrewing van die Agentskap se oogmerke en kan beleidsvoorskrifte aan die Raad uitreik.

(b) Die verantwoordelike lid van die Uitvoerende Raad kan enige beleidsopdragte uitgereik ingevolge paragraaf (a) onttrek of wysig.

## HOOFSTUK 6 BEFONDSING EN FINANSIËLE BESTUUR VAN AGENTSAP

### **Fondse van Agentskap**

24.(1) Die fondse van die Agentskap bestaan uit –

(a) geld bewillig deur die Provinsiale Wetgewer;

- (b) rente op beleggings van die Agentskap; en
- (c) inkomste wat wettig van enige ander bron afkomstig is.

(2) Die Agentskap moet sy fondse benut –

- (a) vir die betaling van vergoeding, toelaes en reis- en verblyf koste van –
  - (i) die lede van die Raad;
  - (ii) die Hoof- Uitvoerende Beampte; en
  - (iii) die personeellede van die Agentskap; en
- (b) om kostes te dek met betrekking tot –
  - (i) die dag-tot-dag bedryf en administrasie van die Agentskap; en
  - (ii) die verrigting van die pligte en funksies van die Agentskap en die uitoefening van sy bevoegdhede ingevolge hierdie Wet.

(3) Die Hoof- Uitvoerende Beampte moet, met die instemming van die Raad –

- (a) 'n rekening in die Agentskap se naam oopmaak by 'n instelling geregistreer as 'n bank ingevolge die Bankwet, 1990 (Wet No. 94 van 1990); en
- (b) alle geld wat ingevolge subartikel (1) ontvang is, daarin deponeer.

(4) Die Raad, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, moet –

- (a) die vergoeding en diensvoorwaardes; en
- (b) die pensioen- en aftreevoordele,

van die Hoof- Uitvoerende Beampte en die ander personeellede van die Agentskap bepaal.

(5) Die Agentskap kan gelde belê wat in sy rekening gedeponeer is en wat nie vir onmiddellike gebruik vereis word nie: Met dien verstande dat die Raad redelike stappe moet doen om te verseker dat die belegging nie spekulatief van aard is nie.

(6) Die Agentskap mag nie geld leen of waarborge, kwytenskeldings of sekuriteite uitreik of enige ander transaksies wat die Agentskap bind, aangaan nie, tensy sodanige lening, waarborg, kwytenskelding, sekuriteit of ander transaksie ingevolge hierdie Wet gemagtig word en nie teenstrydig is met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) nie.

**Finansiële bestuur**

25.(1) Die Hoof- Uitvoerende Beampte moet volledige en behoorlike rekeningboeke en al die nodige rekords wat daarop betrekking het, byhou.

(2) Die Hoof- Uitvoerende Beampte moet verseker dat die Agentskap se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state voorberei en voorgelê word in ooreenstemming met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

(3) Die Hoof- Uitvoerende Beampte moet binne drie maande voor die einde van elke finansiële jaar –

(a) 'n besigheidsplan vir die Agentskap, wat meetbare doelwitte bevat en die ander inligting bedoel in artikel 26(3)(b) en (c); en

(b) 'n staat van die beraamde inkomste en uitgawes van die Agentskap, aan die Raad voorlê vir goedkeuring met betrekking tot die volgende drie finansiële jaar.

(4) In enige finansiële jaar kan die Hoof- Uitvoerende Beampte aangepaste of bykomende state van die beraamde inkomste en uitgawes van die Agentskap vir daardie finansiële jaar aan die Raad voorlê vir goedkeuring.

(5) Die Agentskap mag geen finansiële verbintenis aangaan buiten sy goedgekeurde begroting en opgegaarde reserwes nie.

(6) Die Hoof- Uitvoerende Beampte kan –

(a) met die goedkeuring van die Raad, enige onbestede gedeelte van sy fondse by die Korporasie vir Openbare Deposito's of enige ander instelling belê soos van tyd tot tyd deur die Nasionale Tesourie gekategoriseer of gelys as 'n Kategorie "A1"-finansiële instelling; of

(b) met die goedkeuring van die Raad, op enige ander manier van daardie gedeelte afstand doen.

(7) Die Hoof- Uitvoerende Beampte kan, met die goedkeuring van die Raad, reserwefondse stig en bedrae soos deur die Raad goedgekeur, daarin deponeer.

**Oudit en jaarverslag**

**26.(1)** Die Ouditeur-Generaal moet die finansiële state van die Agentskap audit.

(2)(a) Die Raad moet 'n verslag oor die aktiwiteite van die Agentskap gedurende 'n finansiële jaar in die Provinsiale Wetgewer ter tafel lê binne vyf maande na die einde van daardie finansiële jaar.

(b) Binne vyf maande nadat die verslag ter tafel gelê is, moet 'n delegasie bestaande uit die voorsitter van die Raad en ten minste twee ander lede van die Raad die betrokke Portefeuljekomitee oor die jaarverslag inlig.

(3) Die verslag moet –

(a) 'n balansstaat en 'n inkomste-en-uitgawestaat gesertifiseer deur die Ouditeur-generaal insluit;

(b) die omvang verklaar waartoe die Agentskap sy oogmerke vermeld in artikel 3 bereik of bevorder het en die meetbare doelwitte soos uiteengesit in sy besigheidsplan soos bedoel in artikel 25(3)(a) gedurende die betrokke finansiële jaar; en

(c) tersaaklike prestasie-inligting bevat aangaande die ekonomiese, doelmatige en doeltreffende toepassing van hulpbronne en in besonder 'n vergelyking tussen beplande en werklike prestasie-aanduiders soos in daardie besigheidsplan uiteengesit.

**Stigting en administrasie van spesiale fondse**

**27.(a)** Die Agentskap kan, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, spesiale fondse stig en onderhou, insluitend 'n fonds om die voorheen benadeelde groepe in die hoofstroom van invoer en uitvoer te bring.

(b) Die Agentskap moet sodanige fondse administreer op die wyse soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad.

**Finansiële jaar van Agentskap**

**28.** Die finansiële jaar van die Agentskap begin op 1 April van 'n spesifieke jaar en eindig op 31 Maart van die volgende jaar.

**Vaste eiendom**

29. Die Agentskap kan, ingevolge 'n beleid en prosedures soos deur die Raad bepaal en met die goedkeuring van die verantwoordelike lid van die Uitvoerende Raad, vaste eiendom verkry, hou of oor beskik in sy besigheidsverloop.

**Regstappe teen Agentskap**

30.(1) Enige regstappe teen die Agentskap moet ingestel word in ooreenstemming met die Wet op die Instel van Geregtelike Verrigtinge teen Sekere Staatsorgane, 2002 (Wet No. 40 van 2002).

(2) Die Agentskap word, vir doeleindes van subartikel (1), beskou as staatsorgaan bedoel in paragraaf (c) van die omskrywing daarvan in artikel 1 van die vermelde Wet.

**HOOFSTUK 7  
ALGEMENE BEPALINGS****Sekuriteit van vertroulike inligting gehou deur Agentskap**

31.(1) Onderhewig aan die Grondwet en die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), mag geen persoon enige inligting wat aan die Agentskap voorgelê word met betrekking tot enige regsopdrag of -instruksie openbaar maak nie, tensy –

- (a) hy of sy deur 'n geregshof daartoe gelas word; of
- (b) die persoon wat sodanige opdrag of instruksie gegee het, skriftelik daartoe instem.

(2) Geen persoon mag enige inligting wat in die register bedoel in artikels 7, 16(4) en 19(4) gehou word, openbaar maak nie tensy sodanige openbaarmaking –

- (a) ingevolge enige wet is wat sodanige openbaarmaking verplig of magtig;
- (b) wesenlik nodig is vir die behoorlike funksionering van die Agentskap; of

(c) gemaak is vir doeleindes van monitering, evaluering, ondersoek of oorweging van enige aktiwiteit wat op die Agentskap, of enige personeellid van die Agentskap, betrekking het.

(3) Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

### **Ontbinding van Agentskap**

**32.** Die Agentskap mag slegs ontbind word ingevolge 'n wet van die Provinsiale Wetgewer.

### **Gebruik van naam van Agentskap**

**33.(1)** Geen persoon mag, sonder vooraf skriftelike magtiging van die Agentskap, op enige wyse die Agentskap verteenwoordig of gebruik maak van die naam, akroniem, logo, ontwerpe of materiaal gebruik of besit deur die Agentskap nie.

(2) Geen persoon mag valslik beweer dat hy of sy namens die Agentskap optree nie.

(3) Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

### **Delegering**

**34.(1)** Die verantwoordelike lid van die Uitvoerende Raad mag aan die Hoof van die Departement –

(a) enige bevoegdheid delegeer wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet verleen is, buiten die bevoegdheid om regulasies vermeld in artikel 36 uit te vaardig; of

(b) enige plig delegeer wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet opgelê is, buiten enige plig aangaande die aanstelling en beëindiging van die amp van die lede van die Raad bedoel in artikels 5(2) en 9(2).

(2) Die Raad kan, deur 'n spesiale beslissing, enige bevoegdheid of plig wat deur hierdie Wet aan die Raad verleen of opgelê is, aan die Hoof- Uitvoerende Beampte of personeellid van die Agentskap delegeer.

(3) Die Hoof- Uitvoerende Beampte kan aan enige personeellid van die Agentskap enige bevoegdheid of plig wat deur hierdie Wet aan die Hoof- Uitvoerende Beampte verleen of opgelê is, delegeer behalwe enige plig as rekenpligtige beampte van die Agentskap.

(4) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1), (2) of (3) moet uitgeoefen of verrig word onderhewig aan sodanige voorwaardes soos wat die persoon of liggaam wat die delegering gedoen het, nodig ag.

(5) Enige delegasie vermeld in subartikel (1), (2) of (3) –

(a) moet skriftelik wees;

(b) verbied nie die persoon of liggaam wat die delegering gedoen het om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en

(c) mag ter enige tyd skriftelik deur daardie persoon of liggaam onttrek of gewysig word.

### **Regulasies**

**35.** Die verantwoordelike lid van die Uitvoerende Raad kan, in oorleg met die Raad en deur middel van kennis in die *Koerant*, regulasies uitvaardig met betrekking tot –

(a) enige aangeleentheid wat voorgeskryf mag of moet word ingevolge hierdie Wet; of

(b) enige administratiewe of prosedurele aangeleentheid wat nodig is om uitvoering te gee aan die bepalings van hierdie Wet.

### **Likwidasie van maatskappy en oorgangsbepalings wat daarmee verband hou**

**36.(1)(a)** Die Maatskappy, Handel en Belegging KwaZulu-Natal, met Maatskappyregistrasienuommer 98/11946/08, ingestel ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), moet vrywillig gelikwideer en geskrap word.

(b) Die lede van die Maatskappy moet, by likwidasie van die Maatskappy vermeld in subartikel (1), onder andere voldoen aan artikels 349 en 350 van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(2) Op die datum van likwidasië van die Maatskappy bedoel in subartikel (1), word alle bates, laste, regte, pligte en verpligtinge, insluitend enige onbestede gedeelte van enige opgelope fondse of fondse ontvang deur die Maatskappy, oorgeplaas na, en berus by, Handel en Belegging KwaZulu-Natal, ingestel ingevolge artikel 2.

(3) Handel en Belegging KwaZulu-Natal is, met betrekking tot die bates, laste, regte, pligte en verpligtinge en fondse vermeld in subartikel (2), vir alle doeleindes regtens die opvolger van, en die regsopvolger tot, die Maatskappy.

(4) Die lede van die Raad van die Maatskappy moet as behoorlik gemagtigde en bemaagtigde lede van die Agentskapsraad optree tot sodanige tyd as wanneer die verantwoordelike lid van die Uitvoerende Raad, ingevolge artikel 5(2), die Raad ingevolge hierdie Wet aangestel het.

(5) 'n Werksaanbod moet binne ses maande na die inwerkingtreëding van hierdie Wet deur die verantwoordelike lid van die Uitvoerende Raad aan alle personeellede van die Maatskappy gemaak word vir oorplasing na die Agentskap op 'n datum soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad.

(6) Die vergoeding, voordele en voorregte wat deur die verantwoordelike lid van die Uitvoerende Raad in ooreenstemming met subartikel (1) gebied word, mag nie minder wees nie as dit betaalbaar aan die personeellid deur die Maatskappy, onmiddellik voor sy of haar oorplasing.

(7) Vir die doeleindes van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), word geag dat geen verandering van werkgewer plaasgevind het nie met betrekking tot 'n personeellid wat 'n werksaanbod bedoel in subartikel (5) aanvaar.

(8) Wanneer 'n persoon ingevolge subartikel (5) 'n personeellid van die Agentskap word –

(a) behou hy of sy alle opgelope vakansieverlof tot sy of haar krediet tot die datum onmiddellik voor die datum van oorplasing, aangepas in ooreenstemming met die diensvoorwaardes van die Agentskap; en

(b) moet enige navraag wat ingestel of beoog word ten opsigte van beweerde

wangedrag gepleeg deur sodanige persoon voor die datum van oorplasing, beskik word oor of ingestel word deur die Agentskap en die Agentskap moet toepaslike stappe doen teen die betrokke persoon in ooreenstemming met die wette, beleid en diensvoorwaardes wat op hom of haar van toepassing is onmiddellik voor die datum van oorplasing.

### **Algemene oortredings**

**37.(1)** 'n Lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens van of waarnemend namens die Agentskap is skuldig aan 'n misdryf indien hy of sy direk of indirek enige omkoopgeld aanvaar en of enige ongemagtigde fooi of beloning ontvang vanaf enige persoon in verband met enigiets gedoen of gebied deur die Agentskap.

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Agentskap gedoen of gebied word, 'n lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens van of waarnemend namens die Agentskap, omkoop of poog om om te koop of omkoopbaar beïnvloed of poog om omkoopbaar te beïnvloed.

(3) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie, donasies of bydraes te hef of in te vorder, namens of in opdrag van die Agentskap is skuldig aan 'n misdryf.

### **Strawwe**

**38.** Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet is aanspreeklik vir 'n boete of gevangenisstraf vir 'n tydperk wat nie 5 jaar oorskry nie of beide.

### **Kort titel**

**39.** Hierdie Wet word genoem die KwaZulu-Natal Wet op Handels- en Beleggingsagentskap, 2009.

**MEMORANDUM AANGAANDE DIE DOELSTELLINGS VAN DIE KWAZULU-NATAL  
WETSONTWERP OP HANDELS- EN BELEGGINGSAGENTSAP, 2009**

**1. ALGEMENE AGTERGROND EN OOGMERKE VAN DIE WETSONTWERP**

1.1 Die Departement poog om die Handels- en Beleggingsagentskap, KwaZulu-Natal ("HBKZN") in te stel en te registreer as 'n Provinsiale Openbare Entiteit ten einde –

- (a) die besorgdheid van die Provinsiale Wetgewer oor die regstatus van die HBKZN aanspreek; en
- (b) die Nasionale Tesourie se voorskrifte na te kom aangaande die omskakeling van alle staatsentiteite van artikel 21-maatskappye na statutêre liggame as sodanige ingestel en geregistreer ingevolge die bepalings van die Wet op Openbare Finansiële Bestuur.

1.2 In die lig van die bogenoemde, beoog hierdie Wetsontwerp om –

- (a) voorsiening te maak vir die instelling van 'n ekonomiese ontwikkelingsagentskap bekend as Handel en Belegging, KwaZulu-Natal ten einde buitelandse en plaaslike belegging te lok en om uitvoere en uitvoerkapasiteit in die provinsie KwaZulu-Natal te genereer en om verder sekere gespesifiseerde funksies te verrig;
- (b) die Agentskap se doelwitte, funksies en bevoegdhede te bepaal;
- (c) voorsiening te maak vir die regulering en bestuur van die Agentskap deur 'n direksie en 'n hoof- uitvoerende beampte;
- (d) die Agentskap se bevoegdhede, funksies en finansiële en operasionele aanspreeklikheid te bepaal en om sy funksionering te reguleer; om voorsiening te maak vir die formulering van Provinsiale Beleggings- en Uitvoerbeleid;
- (e) voorsiening te maak vir die formulering van Regulasies; en
- (f) voorsiening te maak vir aangeleenthede wat daarmee verband hou.

**2. ARTIKEL-VIR-ARTIKEL VERDUIDELIKING**

HOOFSTUK 1  
OMSKRYWINGS

**Artikel 1**

Maak voorsiening vir die omskrywing van woorde wat in hierdie Wetsontwerp gebruik word.

**HOOFSTUK 2****INSTELLING VAN DIE HANDELS- EN BELEGGINGSAGENTSAP, KWAZULU-NATAL****Artikel 2**

Maak voorsiening vir die instelling van 'n Handels- en Beleggingsagentskap vir die provinsie wat bekend sal staan as Handel en Belegging, KwaZulu-Natal. Die Agentskap is 'n regs persoon, ingestel, geregistreer en bedryf ooreenkomstig die bepalings van hierdie Wet en die Wet op Openbare Finansiële Bestuur.

**Artikel 3**

Meld die oogmerke van die Agentskap, naamlik om –

- (a) buitelandse en plaaslike belegging te lok;
- (b) uitvoere en uitvoerkapasiteit te genereer; en
- (c) die bevoegdhede, pligte en funksies vermeld in artikel 4 uit te oefen.

**Artikel 4**

Maak voorsiening vir bevoegdhede, pligte en funksies van die Agentskap wat insluit die –

- (a) identifisering, ontwikkeling, bemaking en bevordering van nasionale en internasionale beleggingsgeleenthede in die provinsie;
- (b) ontwikkeling van die uitvoerkapasiteit van die provinsie;
- (c) ontwikkeling van die uitvoermark van die provinsie;
- (d) kweek van Handel en Belegging in die provinsie;
- (e) instel van ondersoek en maak van aanbevelings aan die Uitvoerende Raad, deur die verantwoordelike Lid van die Uitvoerende Raad met betrekking tot bevordering, ontwikkeling of bemaking van belegging in die provinsie; en
- (f) ontwikkeling van 'n provinsiale beleggings- en uitvoerplan.

Artikel 4 maak verder voorsiening vir die bevoegdhede van die Agentskap wat insluit –

- (a) om met enige ander entiteite, staatsorgane wat 'n belang het in die ontwikkeling, bevordering en bemaking van belegging in die provinsie te skakel;
- (b) om voorsiening maak vir personeelaangeleenthede van die Agentskap;
- (c) om, ten einde sy doelwitte te bereik en met die goedkeuring van die LUR –
  - (i) enige entiteit of maatskappy in te stel en te bedryf;
  - (ii) gesamentlike ondernemings en/of vennootskappe met ander entiteite of maatskappye aan te gaan; en
  - (iii) fondse deur donasies en borgskappe in te samel.

### HOOFSTUK 3 BESTUUR VAN DIE AGENTSKAP

**Artikel 5**

Maak voorsiening vir die bestuur van die Agentskap deur 'n direksie en dat die raad die rekenpligtige gesag is. Dit bepaal verder dat die raad nie minder nie as vyf lede en nie meer nie as 20 lede moet hê.

Artikel 5 maak verder voorsiening vir die prosedure vir die benoeming en aanstelling van raadslede. Dit voorsien ook die Uitvoerende Raad van 'n toesighoudende rol in die aanstelling van raadslede in soverre dat –

- (a) dit noodsaaklik is dat die LUR, voor die maak van enige aanstellings op die Raad, die Uitvoerende Raad in kennis stel van sy of haar voorneme om benoemings te versoek; en
- (b) die LUR, sodra hy of sy die lede van die Raad aangestel het, die Uitvoerende Raad in kennis moet stel van die name van die aangestelde lede, die datum van inwerkingtreding en tydperk van aanstelling.

**Artikel 6**

Meld gronde vir onbevoegdheid van lede vir aanstelling op die Raad.

**Artikel 7**

Maak voorsiening vir die plig van persone wat benoem is om op die Raad te dien en persone wat alreeds op die Raad aangestel is om hul belange in maatskappye of ander sakebelange te verklaar.

**Artikel 8**

Meld die ampstermyn en heraanstelling van 'n lid van die Raad.

**Artikel 9**

Maak voorsiening vir die vul van vakatures wat op die Raad mag ontstaan.

**Artikel 10**

Magtig die LUR om 'n lid van die Raad tydelik te skors ten einde die LUR toe te laat om bewerings te ondersoek wat, indien gevind word dat dit waar is, kan lei tot beëindiging van die lid se aanstelling.

#### **Artikel 11**

Maak voorsiening vir die vergaderings en prosedures by vergaderings van die Raad.

Artikel 11 maak verder voorsiening vir aangeleenthede wat verband hou met die vergaderings van die Raad, soos die –

- (a) gereeldheid van die vergaderings van die Raad;
- (b) kworum van die vergadering; en
- (c) wyse waarop besluite van die Raad geneem word.

#### **Artikel 12**

Maak voorsiening vir die plig wat op lede van die Raad rus om hulself te onttrek in gevalle waar 'n konflik van belang kan ontstaan rakende enige aangeleentheid wat deur die Raad bespreek word. Versuim aan die kant van die lid om hom- of haarself van 'n vergadering te onttrek wetende dat 'n konflik van belange kan ontstaan, maak die verrigtinge ongeldig.

#### **Artikel 13**

Magtig die LUR om besoldiging en aanstellingsvoorwaardes van die lede van die Raad te bepaal.

#### **Artikel 14**

Maak voorsiening vir die instelling van komitees om die Raad by te staan en die beëindiging van hul bestaan of mandate.

#### **Artikel 15**

Handel oor koöptering van persone op die Raad of komitees van die Raad.

### HOOFSTUK 4

#### HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DIE AGENTSKAP

#### **Artikel 16**

Maak voorsiening vir die volgende –

- (a) Aanstelling van die hoof- uitvoerende beampte van die Agentskap deur die Raad in oorleg met die LUR; en
- (b) Die tydperk van aanstelling van die hoof- uitvoerende beampte;

**Artikel 17**

Handel oor die funksies van die hoof- uitvoerende beampte insluitend die bevoegdheid om personeel van die Agentskap aan te stel.

**Artikel 18**

Handel oor die gronde en prosedure vir die ontslaan van die hoof- uitvoerende beampte.

**Artikels 19 en 20**

Handel oor die personeel van die Agentskap en sekondering of oorpasing van personeel na die Agentskap.

**HOOFSTUK 5****BEPALING VAN PROVINSIALE BELEGGINGS- EN UITVOERBELEID****Artikel 21**

Maak voorsiening vir die ontwikkeling van 'n Provinsiale Beleggings- en Uitvoerbeleid deur die LUR in oorleg met die Agentskap.

**Artikel 22**

Maak voorsiening vir ontwikkeling van 'n provinsiale beleggings- en uitvoerplan deur die Agentskap ten einde die Provinsiale Beleggings- en Uitvoerbeleid in werking te stel.

**Artikel 23**

Maak voorsiening vir die uitreiking van beleidsvoorskrifte en strategiese riglyne deur die LUR aan die Agentskap en vir die onttrekking daarvan.

**HOOFSTUK 6**

**BEFONDSING EN FINANSIËLE BESTUUR VAN DIE AGENTSKAP****Artikel 24**

Maak voorsiening vir die befondsingsbronne van die Agentskap insluitende –

- (a) geld deur die Provinsiale Wetgewer aan die Kommissie bewillig;
- (b) rente op beleggings van die Kommissie; en
- (c) inkomste regtens uit enige ander bron verkry.

**Artikel 25**

Maak voorsiening vir finansiële bestuur van die Agentskap se fondse en verslagdoening aan die Raad.

**Artikel 26**

Maak voorsiening vir die ouditering van die finansiële state van die Agentskap en tertafellegging van die jaarlikse verslag aan die Provinsiale Wetgewer.

**Artikel 27**

Maak voorsiening vir die stigting en administrasie van spesiale fondse van die Agentskap en die bepaling van die wyse van administrasie van sodanige fondse deur die LUR.

**Artikel 28**

Bring die finansiële jaar van die Agentskap in lyn met dié van die Departement.

**Artikel 29**

Maak voorsiening dat die Agentskap gedurende die loop van sy besigheid vaste eiendom mag aankoop, hou of daaroor beskik.

**Artikel 30**

Maak voorsiening vir die prosedure waarvolgens regstappe teen die Agentskap ingestel mag word.

**ALGEMENE BEPALINGS****Artikel 31**

Maak voorsiening vir sekuriteit van vertoulike inligting wat deur die Agentskap gehou word.

**Artikel 32**

Maak voorsiening vir die ontbinding van die Agentskap.

**Artikel 33**

Maak voorsiening vir die gebruik van die Agentskap se naam.

**Artikel 34**

Maak voorsiening vir die delegering van enige bevoegdheid wat deur die LUR aan die Hoof van die Departement verleen word, met sekere uitsonderings.

**Artikel 35**

Magtig die LUR om regulasies uit te vaardig. Hierdie klousule bepaal ook riglyne waarvolgens die LUR sodanige regulasies kan uitvaardig.

**Artikel 36**

Maak voorsiening vir die likwidasië van die maatskappy en oorgangsbepalings wat insluit dat –

- (a) die maatskappy vrywillig gelikwideer en geskrap word;
- (b) die lede van die Raad van die artikel 21-maatskappy die behoorlik gemagtigde en bemaagtigde lede van die Raad van die Agentskap is tot sodanige tyd wanneer die LUR die Raad ingevolge hierdie Wet aangestel het;
- (c) die personeel van die artikel 21-maatskappy sal na die Agentskap oorgeplaas word; en
- (d) die likwidasië en skraping van die artikel 21-maatskappy by die inwerkingtreding van hierdie Wet.

**Artikel 37**

Maak voorsiening vir misdrywe ingevolge hierdie Wetsontwerp.

**Artikel 38**

Maak voorsiening vir strawwe ten opsigte van die misdrywe wat in klousule 37 van hierdie Wetsontwerp vermeld word.

**Artikel 39**

Maak voorsiening vir die kort titel van hierdie Wetsontwerp.

**3. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING**

Daar word voorsien dat die huidige personeel van die artikel 21-maatskappy na die Agentskap oorgeplaas sal word; dus sal daar geen nuwe organisatoriese en personeelimplikasies vir die Provinsiale Regering wees nie.

**4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING**

Die Agentskap sal die werking van die huidige artikel 21-maatskappy oorneem en aangesien sodanige werkinge gefinansier is en word deur die geld wat deur die Provinsiale Wetgewer aan die Departement bewillig is, sal daar geen nuwe finansiële implikasies vir die Provinsiale Regering wees nie.

**5. DEPARTEMENTE / LIGGAME GERAADPLEEG**

- (a) KwaZulu-Natal Staatsdiensprokureursforum en die KwaZulu-Natal  
Staatsdiensprokureursvereniging; en die  
(b) HBKZN Raad (artikel 21-maatskappy)

**6. GRONDWETLIKE IMPLIKASIES**

Geen

No. 3

12 kuMasingana 2010

## UMTHETHOSIVIVINYO WESIKHUNGO SEZOHWEBO NOKUTSHALWA KWEZIMALI WAKWAZULU-NATALI, 2009

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo Wesikhungo sezoHwebo Nokutshalwa Kwezimali WaKwaZulu-Natali, 2009, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi LezokuThuthukiswa koMnotho neZokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Nkk. N.P. Sikhakhane  
UNobhala  
ISishayamthetho saKwaZulu-Natali  
Isikhwama Seposi X 9112  
Pietermaritzburg  
3200

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N. NAIDOO  
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WESIKHUNGO SEZOHWEBO NOKUTSHALWA KWEZIMALI WAKWAZULU-  
NATALI, 2009**

**UMTHETHOSIVIVINYO**

**Wokuhlinzekela ukusungulwa kwesikhungo sokuthuthukiswa komnotho esizokwaziwa nge-Trade and Investment KwaZulu-Natal ukuze kuhehwe utshalomali lwasemazweni angaphandle nolwalapha ekhaya futhi kwandiswe impahla engenayo nephumayo esiFundazweni; wokunquma ngezinhloso, amandla, amaqhaza kanye nemisebenzi yesiKhungo; wokunquma indlela okuzophathwa, kubuswe, kuqashwe futhi kusekwe ngayo isiKhungo ngezimali; wokuhlinzekela ukwakhiwa kweNqubomgomo yokuTshalwa kweziMali neMpahla ePhumayo yesiFundazwe; nokuhlinzekela okunye okuphathelene nalokho.**

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

**UKUHLELEKA KWEZIGABA**

*Isigaba*

**ISAHLUKO 1****IZINCAZELO****1. Izincazelo****ISAHLUKO 2****I-TRADE AND INVESTMENT KWAZULU-NATAL****2. Ukusungulwa kwe-Trade and Investment KwaZulu-Natal****3. Izinhloso zesiKhungo****4. Amandla, izibopho nemisebenzi yesiKhungo****ISAHLUKO 3****IBHODI YESIKHUNGO****5. Ukwakheka kweBhodi****6. Ukuhoxiswa ekuqokelweni eBhodini****7. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi**

8. Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi
9. Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi
10. Ukumiswa okwesikhashana kwelungu leBhodi
11. Imihlangano kanye nezinqubo zemihlangano yeBhodi
12. Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi
13. Ukuholelwa kwamalungu eBhodi
14. Ukusungulwa kwamakomidi asiza iBhodi
15. Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi

#### IS AHLUKO 4

##### ISIKHULU ESIPHEZULU KANYE NABASEBENZI BESIKHUNGO

16. Isikhulu esiPhezulu sesiKhungo
17. Imisebenzi yesiKhulu esiPhezulu
18. Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu
19. Abasebenzi besiKhungo
20. Ukusiswa noma ukudluliselwa esiKhungweni kwabasebenzi

#### IS AHLUKO 5

##### UKUNQUNYWA KWENQUBOMGOMO YOKUTSHALWA KWEZIMALI NEMPAHLA EPHUMAYO YESIFUNDAZWE

21. INqubomgomo yokuTshalwa kweziMali neMpahla ePhumayo yesiFundazwe
22. UHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe
23. Iziqondiso zeNqubomgomo

#### IS AHLUKO 6

##### UXHASOMALI NOKUPHATHWA KWEZIMALI ZESIKHUNGO

24. Uxhasomali lwesiKhungo
25. Ukuphathwa kwezimali
26. Ukucwaningwa kwamabhuku kanye nombiko wonyaka
27. Ukusungulwa kanye nokuphathwa kwezimali ezikhethekile
28. Unyaka wezimali wesikhungo
29. Impahla engenakususwa
30. Ukuthathelwa izinyathelo zomthetho kwesiKhungo

## ISAHLUKO 7

## IZINHLENGEKO EZEJWAYELEKILE

31. Ukuphepha kolwazi oluyimfihlo olugcinwe yisiKhungo
32. Ukuhlakazwa kwesiKhungo
33. Ukusetshenziswa kwegama lesiKhungo
34. Ukudluliselwa kwamandla
35. IMithethonqubo
36. Ukuvalwa kweNkampani kanye nezinhleنگeكو zesikhashana zalezo zingquko
37. Amacala ajwayelekile
38. Izinhlawulo
39. Isihloko esifingqiwe

## ISAHLUKO 1

## IZINCAZELO

**Izincazelo**

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

"isiKhungo" kusho i-Trade and Investment KwaZulu-Natal esungulwe ngokwesigaba 2;

"iBhodi" kusho iBhodi yesiKhungo eqokwe ngokwesigaba 5;

"isiKhulu esiPhezulu" kusho isiKhulu esiPhezulu sesiKhungo, esiqokwe ngokwesigaba 16;

"iBhizinisi elizimele" kusho ibhizinisi elizimele njengoba kuchazwe esigabeni 1(1) soMthetho wamaBhizinisi aziMele, 1984 (uMthetho No. 69 ka 1984);

"inkampani" kusho inkampani njengoba kuchazwe kuMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973);

"iNkampani" kusho inhlango edidiyelwe ngokwesigaba 21 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), eneNombolo yokuBhalisa kweziNkampani engu-98/11946/08, futhi yaziwa ngokuthi i-Trade and Investment KwaZulu-Natal;

"uMthethosisekelo" kusho uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

**"uMnyango"** kusho uMnyango wezokuThuthukiswa koMnotho esiFundazweni saKwaZulu-Natali;

**"uMkhandlu oPhethe"** kusho uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali ohlongozwe esigabeni 132 soMthethosisekelo;

**"iGazethi"** kusho iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

**"iNhloko yoMnyango"** kusho umuntu oqokwe njengeNhloko yoMnyango ngokwesigaba 12 soMthetho wemiSebenzi kaHulumeni, (Isimemezelo 103 sika 1994);

**"ilungu"** kusho ilungu leBhodi sesiKhungo eliqokwe ngokwesigaba 5;

**"iLungu loMkhandlu oPhethe elibhekele ezezimali"** kusho ilungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

**"uMgcinimafa kaZwelonke"** kusho uMgcinimafa kaZwelonke osungulwe yisigaba 5 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

**"ohulumeni basekhaya abahlelekile"** kusho inhlangotho yesifundazwe emele omasipala KwaZulu-Natali, eyamukelwe ngokwesigaba 163 soMthethosisekelo kanye nesigaba 2 soMthetho woHulumeni baseKhaya abahlelekile, 1997 (uMthetho No. 52 ka 1997);

**"iKomidi lemiSebenzi yasePhalamende"** kusho iKomidi lemiSebenzi yasePhalamende lesiShayamthetho sesiFundazwe elibhekele ukuthuthukiswa kwezomnotho;

**"isiFundazwe"** kusho isiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 103 soMthethosisekelo futhi igama **"isifundazwe"** linencazelo efanayo;

**"imithethonqubo"** kusho imithethonqubo eyenziwe ngokwesigaba 35;

**"iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho"** kusho iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho noma lelo lungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali uNdunankulu angalijuba ukuba liphathe ngokwalo Mthetho;

"Io Mthetho" ubandakanya imithethonqubo.

## ISAHLUKO 2

### I-TRADE AND INVESTMENT KWAZULU-NATAL

#### **Ukusungulwa kwe-Trade and Investment KwaZulu-Natal**

2.(1) Ngalokhu kusungulwa isikhungo esizogqugquzela ezohwebo kanye nokutshalwa kwezimali esiFundazweni esizokwaziwa ngokuthi yi-Trade and Investment KwaZulu-Natal.

(2) Isikhungo singumuntu ngokomthetho.

(3) Isikhungo siyisakhiwo sikahulumeni wesifundazwe ngokoMthetho wezokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

#### **Izinhloso zesiKhungo**

3. Izinhloso zesiKhungo –

- (a) ukuheha abatshalizimali basemazweni angaphandle nabalapha ekhaya;
  - (b) ukwandisa amathuba okuhanjiswa kwempahla emazweni angaphandle nezindawo zokuhambisa impahla; kanye
  - (c) nokwenza imisebenzi, ukugcina izibopho kanye nokusebenzisa amandla okubalulwe esigabeni
- 4.

#### **Amandla, izibopho nemisebenzi yesiKhungo**

4.(1) Isikhungo kumele –

- (a) sikhlonze, sithuthukise, siqhakambise futhi sigqugquzele amathuba okutshalwa kwezimali akhona esiFundazweni kubatshalizimali bamazwe angaphandle nabakuleli;
- (b) sisungule izindlela zokuhanjiswa kwempahla emazweni angaphandle esiFundazweni;
- (c) sisungule izindlela zokuqhakanjiswa kwempahla ephumayo yesiFundazwe;
- (d) sikhulise ezohwebo nokutshalwa kwezimali esiFundazweni;

(e) sisungule uhlelo lokutshalwa kwezimali esifundazweni nempahla ephumayo ukuze kuthuthukiswe, kugqugquzelwe kuphinde kuqhakanjiswa ukutshalwa kwezimali nempahla ephumayo yesiFundazwe; futhi

(f) silondoloze siphinde sigcine imininingwane kwikhompyutha yamathuba ezokutshalwa kwezimali esiFundazweni ukuze ngaleyo ndlela kuhlomule yonke imikhakha yezomnotho.

(2) Isikhungo –

(a) ngenhloso yokuthuthukisa, yokugqugquzela, kanye neyokuqhakambisa ukutshalwa kwezimali nempahla ephumayo esiFundazweni, futhi kuncike kwimvume ebhalwe phansi yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho nasesigabeni 54(2) soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999) –

(i) singasungula futhi siqhube inkampani eyodwa noma ngaphezulu, ibhizinisi elizimele noma imigwamanda efanayo futhi singathenga noma sidayisele lezo zinkampani, lelo bhizinisi elizimele noma leyo migwamanda amasheya;

(ii) singahlanganyela ebhizinisini nezinye izikhungo, izinhlango, omasipala, imigwamanda noma abantu;

(iii) singasebenzisana, noma sithenge noma sidayise noma yimaphi amasheya kunoma yiziphi izinkampani, amabhizinisi azimele noma kweminye imigwamanda efanayo; futhi

(iv) singaqoqa izimali ngokuthola usizo lweminikelo kanye noxhasomali;

(b) singaxhumana nanoma yiliphi elinye ibhizinisi, uhlaka lombuso inhlango noma isikhungo esimisebenzi yaso noma esizinhloso zaso zinomthelela futhi zihambisana nokuqhakanjiswa kwezentuthuko, nokugqugquzela ukutshalwa kwezimali esiFundazweni;

(c) singaphenya futhi senze izincomo eMkhandlwini oPhethe, ngeLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, nganoma yiluphi udaba oluphathelele ngqo noma oluphathelele ngandlela thile nokugqugquzelwa, nokuthuthukiswa noma nokuqhakanjiswa kokutshalwa kwezimali esiFundazweni;

(d) singangena ezivumelwaneni ukuze siphumelelise izinhloso zaso, sisebenzise amandla aso, sigcine izibopho futhi senze imisebenzi yaso noma siphathe futhi silawule izindaba zaso, okungaba ezingahlinzekelwe noma ezihlinzekelwe kulesi sigaba; futhi

(e) singenza noma iyiphi enye into noma singenelele kunoma yiluphi udaba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho elibona lunesidingo ukuze kuqaliswe ngendlela efanele lo Mthetho.

(3) Ukwengeza emandleni okukhulunywa ngawo esigatshaneni (2), isikhungo, sinamandla okukhulunywe ngawo esigabeni 34, nakuSheduli 2, eMthethweni weziNkampani, 1973 (uMthetho No. 61 ka 1973).

### ISAHLUKO 3 IBHODI YESIKHUNGO

#### **Ukwakheka kweBhodi**

##### **5.(1) IBhodi iqukethe –**

- (a) okungenani amalungu amahlanu, kepha angekho ngaphezulu kwama-20, aqokwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho; kanye
- (b) nesiKhulu esiPhezulu, ngokwesikhundla saso, njengoba kuhlangozwe esigabeni 16(5).

##### **(2) AmaLungu eBhodi kumele abe ngabantu abafanelekile futhi abakulungele ukusebenzela isiFundazwe ngentshisekelo, ewonke –**

- (a) abe nolwazi noma nesipiliyoni esifanele emikhandlwini ehleliwe emkhakheni wezamazwini;
- futhi
- (b) abe nala makhono nobuhlakani okulandelayo:
  - (i) amakhono, isipiliyoni kanye nokuqeqeshwa kwezomthetho;
  - (ii) amakhono, isipiliyoni kanye nokuqeqeshwa kwezizimali;
  - (iii) isipiliyoni noma ukuqeqeshwa ekutshaliweni kwezizimali kanye nakwezokuhanjiswa kwempahla emazweni angaphandle;
  - (iv) isipiliyoni noma ukuqeqeshwa kwezokuqhakambisa abasebenzi;
  - (v) isipiliyoni noma ukuqeqeshwa emkhakheni wezemfundo noma wokuphathwa kwezindaba zabasebenzi;
  - (vi) isipiliyoni namakhono okuthuthukiswa komphakathi; kanye
  - (vii) nesipiliyoni namakhono okuhlela noma kwezentuthuko.

##### **(3) Ekuqokeleni amalungu eBhodini, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise ukuthi –**

- (a) kubhekelelwa ukungalingani kwaphambilini;
- (b) amalungu, ewonke, anamakhono nobuhlakani obufanele nobudingekayo;
- (c) iBhodi imele abantu abaqashwe noma ababandakanyeka ekungeneni nasekuphumeni kwempahla, kwezohwebo noma ebhizinisini lezokutshalwa kwezizimali esiFundazweni;
- (d) izintshisekelo zomasipala zimelwe eBhodini ngendlela elinganayo neqinisekisa ukuthi omasipala bamelelekile: Kuncike ekutheni angeke babe ngaphezu kwabane abantu abayoqokelwa eBhodini ukuze kusebenze izinhlinzeko zale ndima; futhi

- (e) ohulumeni basekhaya abahlelekile bamelelekile eBhodini.
- (4) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele likhethe –
- (a) ilungu elilodwa leBhodi njengoSihlalo weBhodi; kanye
  - (b) noyedwa emalungwini eBhodi njengeSekela likaSihlalo weBhodi.
- (5) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingaqoka umsebenzi woMyango njengozolimela –
- (a) okumele asize ngokuxhumanisa iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho neBhodi;
  - (b) okumele abike kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngaso sonke isikhathi mayelana nezindaba ezibonakala zifanele; futhi
  - (c) ongethamela imihlangano yeBhodi futhi azibandakanye ezingxoxweni, kepha ongenalo ilungelo lokuvota uma iBhodi ithatha isinqumo.
- (6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ngesaziso kwiGazethi, limeme noma yiziphi izinhlangothi ezinentshisekelo esiFundazweni ukuba ziphakamise abangaqokelwa eBhodini.
- (7) Isimemo seziphakamiso kume sicacise –
- (a) inqubo yeziphakamiso;
  - (b) okudingekayo kwiziphakamiso; kanye
  - (c) nosuku lokuvalwa kweziphakamiso.
- (8) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele licubungule zonke iziphakamiso ezilethiwe eziphendula isaziso, futhi lingaqoka ithimba elihlanganisa izikhulu zomnyango esezimnkantsh'ubomvu ukuba lihlaziye zonke iziphakamiso futhi lenze izincomo ngeziphakamiso kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.
- (9) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise ukuthi wonke amagama abantu abaqokelwe eBhodini ashicilelwe *kwiGazethi* kanye nasemaphephandabeni okungenani amabili aphuma esiFundazweni, ngokushesha ngemuva kokuba labo bantu sebazisiwe, ngokuthi babhalelwe, ngokuqokelwa kwabo eBhodini.
- (10) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ezinyangeni ezimbili

ngemuva kokuqokwa kwamalungu eBhodi ngokwesigatshana (2), lazise uMkhandlu oPhethe kanye neKomidi lemisebenzi yasePhalamende lesiShayamthetho ngamagama amalungu aqokiwe kubandakanya isikhathi abasiqokelwe.

(11) Lesi sigaba sisebenza, nezinguquko ezidingekayo, ekuvalweni kwesikhala somsebenzi kwiBhodi.

### **Ukuhoxiswa ekuqokelweni eBhodini**

6. Umuntu uyahoxiswa ekuqokelweni eBhodini noma ekutheni aqhubeke nokusebenza eBhodini, ngesizathu sokuthi –

- (a) ucwile ezikweletini ngendlela engenakuhlengeka;
- (b) akaphilile ekhanda noma umenyazelwe inkantolo njengogula ngengqondo;
- (c) uhlomula ngqo noma ngandlela thile kunoma yisiphi isivumelwano somsebenzi nesikhungo futhi uyehluleka ukudalula lokho kuhlomula kanye nendlela ahlomula ngayo ngokwalo Mthetho;
- (d) ungumuntu ozinto zakhe zilawulwa umthetho;
- (e) noma ngasiphi isikhathi uke wamiswa esikhundleni ngenxa yokungaziphathi kahle okuhlanganisa ukweba kanye nokukhwabanisa;
- (f) useke waboshwa futhi wagwetshwa isikhathi eside ngaphandle kokunikezwa ilungelo lokukhetha phakathi kokukhokha inhlawulo noma ukuboshwa, ngaphandle kokuthi iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, lapho umuntu ophakanyiselwe ukuqokwa eveza obala yonke imininingwane yokwephula umthetho ngokwenza isitatimende esifungelwe, lingahoxisa lesi sigwebo ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukuhoxiswa ngokwalesi sigatshana kuphela eminyakeni emihlanu ngemuva kokuphela kwalesi sigwebo; futhi
- (g) uyehluleka ukudalula ukuhlomula ngokuhambisana nesigaba 7 noma ubambe iqhaza kwizinqubo zeBhodi ngesikhathi enokuhlomula okuhlongozwe esigabeni esishiwoyo;

### **Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi**

7.(1) Umuntu ophakanyiselwe ukuba asebenze eBhodini ngokwesigatshana 5(6) kumele, ezinsukwini eziyi-10 ephakanyisiwe, adalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho konke ukuhlomula ngqo noma ngandlela thile anakho kunoma iyiphi inkampani noma kwamanye amabhizinisi.

(2) Noma yikuphi ukwehluleka kophakanyisiwe ukudalula ukuhlomula ngokwezezimali kanye nokunye

ukuhlomula ngokwesigatshana (1) kuyamhoxisa lowo ophakanyisiwe ngokwesigaba 6 ukuba acatshangelwe esikhundleni sokuba yilungu leBhodi.

(3) Noma yiliphi ilungu leBhodi kumele, ngaphambi kokungena esikhundleni futhi ekuqaleni kwayo yonke iminyaka yezimali yesiKhungo, lidalule ngokubhalwe phansi ukuhlomula ngqo noma ngandlela thile kwalo kunoma iyiphi inkampani noma ibhizinisi ngendlela ehlinzekelwe esigabeni 234(3)(a) soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(4) Uma ilungu leBhodi liqala ukuhlomula kunoma iyiphi inkampani noma ukuhlomula kwelinye ibhizinisi nganoma yisiphi isikhathi lisasebenza njengelungu leBhodi kumele, ngaphambi kwezinsuku eziyi-10 kusukela osukwini eliqale ngalo lokho kuhlomula, lidalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lokho kuhlomula.

(5) Noma yikuphi ukwehluleka ohlangothini lwelungu ukudalula ukuhlomula kwalo njengoba kuhlongozwe esigatshaneni (3) kanye no (4) kungaholela ekutheni lelo lungu lihoxiswe ekuqokelweni esikhundleni ngokwesigaba 9(2).

(6) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele ligcine irejista evuselelwe njalo yokuhlomula kwamalungu eBhodi azidalulile ngokwalesi sigaba.

#### **Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi**

8. Abantu abaqokelwe eBhodini baba sesikhundleni isikhathi esiyiminyaka emithathu noma esingaphansi njengoba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho linganquma futhi, ngokuncike esigabeni 5, bangakwazi ukuphinde bakhethwe ekupheleni kwaleso sikhathi: Kuncike ekutheni akekho umuntu ongaphinde akhethwe ngemuva kokusebenza eBhodini isikhathi esiyiminyaka eyisishiyagololunye elandelanayo.

#### **Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi**

9.(1) Ilungu leBhodi kumele lishiye isikhundla uma lihoxiswa ngokuhlongozwe esigabeni 6.

(2) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngemuva kokunikeza ilungu ithuba lokubeka udaba lwalo, noma ngasiphi isikhathi lingamisa esikhundleni lelo lungu uma, ngokubona kwalo, kunezizathu ezizwakalayo neziphoyo zokwenza lokho.

(3) Ilungu kumele lishiye isikhundla uma liphutha emsebenzini, ngaphandle kokunikezwa imvume yokuphutha kuqala yiBhodi, emihlanganweni emibili elandelayo yeBhodi lapho kwanikezwa isaziso ngendlela efanele kulelo lungu ngqo noma ngeposi.

(4) Ilungu lingesula esikhundleni ngokuthi libhale isaziso sezinsuku ezingekho ngaphansi kwama-30 lisibhekise kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho: Kuncike ekutheni iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingasishaya indiva lesa saziso sokwesula.

(5) Noma nini lapho kuvela isikhala somsebenzi eBhodini, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuncike esigabeni 5, kumele liqoke umuntu ozovala lesa sikhala somsebenzi kuleso sikhathi esisasele sokuba sesikhundleni kwelungu okuzoqokelwa kuso lowo muntu.

(6) Lapho iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lisebenzisa amandla alo ngokwesigatshana (2), uma lingahambisani nokulandela inqubo yokukhethwa kwamalungu eBhodi ebekwe kwisigaba 5, kodwa kuncike kwizigaba 5(2) no 5(3), lingaqoka abantu ukusebenza njengamalungu eBhodi okwesikhashana: Kuncike ekutheni -

(a) abantu abaqokwe ngokwalesi sigatshana angeke baqhubeke nokuba seBhodini isikhathi esingaphezu kwezinsuku ezingama-60 kusuka osukwini abaqokwe ngalo; futhi

(b) iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kuncike kwisigaba 5, kumele liqoke amalungu eBhodi ezinsukwini ezingama-60 kwenziwe ukuqokwa okuhlongozwe kulesi sigatshana.

#### **Ukumiswa okwesikhashana kwelungu leBhodi**

10. ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingamisa ilungu leBhodi ngesikhathi iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lisaphenya izinsolo, uma kutholakala ukuthi ziyiqiniso, okungaholela ekutheni ukuqokwa kwelungu kumiswe ngokwesigaba 9(2).

#### **Imihlangano kanye nezinqubo zemihlangano yeBhodi**

11.(1) Umhlangano wokuqala weBhodi kumele ubanjwe ngosuku nangesikhathi kanye nasendaweni enqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngemuva kwalokho yonke imihlangano elandelayo kumele ukuba inqunywe ngusihlalo.

- (2) Isibalo esivumelekile ukuba sibambe umhlangano weBhodi yiningi lamalungu eBhodi.
- (3) Inqubo emhlanganweni weBhodi kumele, kuncike ezinhlinzekweni zalesi sigaba, inqunywe ngusihlalo kubandakanya ilungelo lokunquma ukuthi noma yiluphi udaba okuxoxwa ngalo lungamiswa ngaphambi kokuthi luvotelwe.
- (4) Usihlalo kumele engamele yonke imihlangano yeBhodi: Kuncike ekutheni uma engekho usihlalo usekela kasihlalo kumele engamele futhi esimweni uma usihlalo noma usekela kasihlalo engekho emhlanganweni weBhodi, amalungu akhona angakhetha, kuwona, umuntu ozobamba njengosihlalo ngesikhathi salowo mhlangano.
- (5) Isinqumo sebhodi kumele ukuba sithathwe yiningi lamavoti amalungu akhona emhlanganweni futhi, esimweni lapho kunokulingana kwamavoti kunoma yiluphi udaba, usihlalo unevoti elingujuqu ngaphezu kwevoti lakhe elejwayelekile.
- (6) IBhodi kumele igcine amaminithi emihlangano yalo.
- (7) Asikho isinqumo seBhodi esingekwe semukelwe ngesizathu sokuba khona kwesikhala somsebenzi eBhodini: Kuncike ekutheni isinqumo sithathwa yiningi elidingekayo lamalungu eBhodi akhona futhi avumelekile ukuhlala njengamalungu eBhodi.
- (8) Usihlalo, noma iningi lamalungu eBhodi, lingabiza umhlangano oyisipesheli weBhodi esimweni lapho izinhlinzeko zalesi sigaba zihambisana nezinguquko ezidingekayo.
- (9) IBhodi, ngokubona kwalo, lingavumela amalungu omphakathi ukuba ethamele umhlangano weBhodi.

### **Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi**

12.(1) Ilungu leBhodi kumele lizihoxise odabeni oluphenywayo, olucutshungulwayo noma oluvotelwayo yiBhodi uma kuvela okukodwa noma ngaphezulu kokulandelayo –

- (a) uma lona linokuthinteka ngqo noma ngandlela thile; noma
- (b) uma kunamathuba okuthi kungenzeka lithinteka ngqo noma ngandlela thile.

(2) Noma yingasiphi isikhathi uma kunomhlangano weBhodi kuvela ukuthi ilungu elikhona kulowo mhlangano liyathinteka noma ngase kube liyathinteka ngokuhlongozwe esigatshaneni (1), lelo lungu

kumele lidalule indlela elithinteka ngayo bese liwushiya umhlangano.

(3) Noma yikuphi ukudalulwa okwenziwe ngokwesigatshana (1) kumele ukuba kuqoshwe emaminithini alowo omhlangano.

(4) Uma kuvela emva kwalokho ukuthi iBhodi yathatha isinqumo odabeni lapho kwaba nokwehluleka ngasohlangothini lelungu ukudalula ukuthinteka okuhlongozwe esigatshaneni (1), lesi sinqumo seBhodi asamukelekile.

(5) Ngokwezinhloso zalesi sigaba “**ukuthinteka ngandlela thile**” kuhlanganisa, phakathi kokunye, ukuthinteka –

- (a) kukazakwabo welungu ebhizinisini, umhlobo noma umqashi, ngaphandle koMbuso;
- (b) komlingani welungu, kowakwalo ngokomshado wesintu, noma kongumasihlalisane noma kwelihlalisana naye sabantu abashadile; noma
- (c) kwengane, komzali noma kozalana nalo.

#### **Ukuholelwa kwamalungu eBhodi**

13.(1)(a) ILungu leBhodi lingakhokhelwa ezimalini zesiKhungo iholo kanye nezibonelelo njengalokhu kunganquma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) ILungu leBhodi eliholelwayo, elithola izibonelelo noma elithola eminye imihlomulo ngokwesikhundla salo noma ngokomsebenzi walo –

- (i) kuhulumeni kazwelonke;
- (ii) kuhulumeni wesifundazwe;
- (iii) kumasipala; noma
- (iv) ebhizinisini, kumgwamanda noma esikhungweni lapho uhulumeni kazwelonke kanye nowesifundazwe ebandakanyeka ekulawuleni,

futhi eliqhubeka nokuthola lelo holo, lezo zibonelelo noma eminye imihlomulo ngesikhathi lisasebenza njengelungu leBhodi, lingathola iholo kanye nezibonelelo kuphela okukhulunywe ngakho endimeni (a) ngandlela edingekayo ukulibeka esimweni sezimali ebelivele lizoba kusona ukube belingaqashiwe kulowo msebenzi.

(2)(a) Ilungu leBhodi kanye nomuntu owengeziwe eBhodini, maqondana nemisebenzi yakhe njengelungu noma njengelungu elengeziwe eBhodini, angathola isibonelelo ezimalini zesiKhungo njengezindleko zokuhamba ngokomsebenzi ezidalwe ukwethamela kwakhe umhlangano weBhodi.

(b) ILungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume ngezinqubo, kubandakanya izindlela zokulawula, ukuze kuphathwe, kuhanjiswa futhi kuqhutshwe izimangalo zezindleko zokuhamba ngokomsebenzi ezihlongozwe endimeni (a).

### **Ukusungulwa kwamakomidi azosiza iBhodi**

14.(1) IBhodi ingasungula amakomidi aqukethe ilungu elilodwa noma ngaphezulu kumalungu ayo ukuze –

(a) asize iBhodi ekusetshenzisweni kwanoma yimaphi amandla, ekwenziweni kwemisebenzi noma ekugcinweni kwezibopho zesiKhungo okuhlongozwe esigabeni 4; noma

(b) aphenye noma aqhube ucwaningo kunoma yiluphi udaba olungena ngaphansi kwezinjongo zeBhodi ngokwalo Mthetho.

(2) Uma kusungulwa ikomidi elihlongozwe esigatshaneni (1), iBhodi kumele –

(a) inqume indlela yokusebenza kwalelo komidi kubandakanya, phakathi kokunye, ukuthi kumele yini noma cha ukuthi lelo komidi liqedwe uma seliphothule umsebenzi noma imisebenzi eliyinqunyelwe yiBhodi;

(b) iqoke uSihlalo walelo komidi okumele abe yilungu leBhodi; futhi

(c) inqume ukuthi ingabe kufanele noma cha ukuthi lelo komidi lifake abantu abangesiwo amalungu eBhodi, futhi uma kunjalo, ngaphansi kwayiphi imibandela nemigomo.

(3) IBhodi, noma ngasiphi isikhathi, ingamisa ikomidi nanoma yikuphi ukujutshwa kwekomidi, kungakhathaleki ukuthi lelo komidi seliwuqedile noma cha umsebenzi noma imisebenzi eliyinikezwe yiBhodi.

(4)(a) Isikhulu esiPhezulu singethamela futhi sibambe iqhaza, kodwa singavoti, emihlanganweni yalelo komidi.

(b) Ilungu labasebenzi beBhodi, uma limenywe yilelo komidi, lingawuhambela umhlangano walelo komidi.

### **Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi**

15.(1) IBhodi uma inombono wokuthi umuntu othize angalisiza maqondana nanoma yimiphi imisebenzi

yalo nasekusebenziseni amandla alo, lingamengeza lowo muntu ngaleyo nhloso.

(2) Umuntu owengezwe ngokwesigatshana (1) akavumelekile ukuvota emhlanganweni webhodi noma wamakomidi.

(3) Umuntu owengezwe ngokwesigatshana (1) angaholelwa iholo lalokho noma isibonelelo ezimalini zesiKhungo ngendlela enganqunywa yiBhodi ngemuva kokubonisana neLungu loMkhandlu elibhekele ezezimali.

#### ISAHLUKO 4

#### ISIKHULU ESIPHEZULU KANYE NABASEBENZI BESIKHUNGO

##### **IsiKhulu esiPhezulu sesiKhungo**

16.(1) IBhodi, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kumele iqoke isiKhulu esiPhezulu sesiKhungo.

(2)(a) IsiKhulu esiPhezulu siqokelwa esikhundleni isikhathi esingeqile eminyakeni emihlanu.

(b) IsiKhulu esiPhezulu singaphinde siqokwe elinye ihlandla elingeqile eminyakeni emihlanu.

(3)(a) Ukuqokwa kwesiKhulu esiPhezulu kuncike ekuphuthulweni kwesivumelwano sokusebenza esibhaliwe okungena kuso lowo muntu kanye neBhodi.

(b) IBhodi kanye nesiKhulu esiPhezulu, ngokubhaliwe nangesivumelwano, bangachibiyela isivumelwano sokusebenza.

(4) Ngezinhloso zokudalula ukuhlomula ngokwezezimali nokunye ukuhlomula, izinhlinzeko zesigaba 7 zisebenza nezinguquko ezidingekile esiKhulwini esiPhezulu ngaphandle kokuthi isiKhulu esiPhezulu kumele sidalule ukuhlomula kwaso eBhodini.

(5) IsiKhulu esiPhezulu siyilungu elihola iBhodi kodwa asinalo ilungelo lokuvota emhlanganweni yayo.

##### **Imisebenzi yesiKhulu esiPhezulu**

17.(1) IsiKhulu esiPhezulu sibhekele –

(a) ukulawulwa kanye nokuphathwa kwezimali zeBhodi ngokuhambisana noMthetho

wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kanye nokulawulwa kweBhodi;

(b) ngokubonisana neBhodi, ukuqokwa kwamalungu abasebenzi besiKhungo okuhlongozwe esigabeni 19(1);

(c) ngokubonisana neBhodi, ukunqunywa kwenqubo yokuziphatha, esetshenziswa yisiKhulu esiPhezulu, kubo bonke abasebenzi besiKhungo kanye nengokomthetho ngezinhloso zokuqondiswa kwezigwegwe, ukuqinisekisa –

(i) ukuhambisana nomthetho osebenzayo, kubandakanya lo Mthetho;

(ii) ukusetshenziswa ngokufanele, ngokunesidingo nangokunenzuzo kwezimali nezinsiza zesiKhungo;

(iii) ukugqugquzelwa kanye nokugcinwa kwezinga eliphezulu lenqubomgomo mayelana nemigomo yokusebenza ngendlela;

(iv) ukunqanda ukushayisana kwemibono;

(v) ukuvikelwa kolwazi oluyimfihlo olugcinwe yisiKhungo; kanye

(vi) nezinga, nokwethembeka, nokuzimela, nokwenzelana ngobuqotho, nenqubomgomo kanye nokusebenza ngokulingene;

(d) ukulawulwa kokuziphatha kwabasebenzi abaqokwe ngokwendima (b) futhi kumele, ngalezo zinhloso, kwenziwe yiBhodi;

(e) ukulondolozwa kanye nokugcinwa kwerejista yokuhlomula okumenyenzelwe yilungu labasebenzi besiKhungo; kanye

(f) nokuqinisekiswa kokuhlangabezana kweBhodi nezihlinzeko zoMthetho wezokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kanye nanoma yimiphi eminye imithetho esebenzayo.

(2) Uma isikhulu esiPhezulu nganoma yisiphi isizathu singakwazi ukwenza imisebenzi yaso, iBhodi kumele, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, liqoke omunye umuntu ozoba yiBamba lesikhulu esiPhezulu kuze kube isikhulu esiPhezulu siyakwazi ukuba siqale ukwenza leyo misebenzi.

### **Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu**

**18.(1)** Isikhulu esiPhezulu sishiya isikhundla –

(a) lapho sesula, noma kuba nokwesula;

(b) ngenkathi, ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), umuntu ophethe lesi sikhundla eba ngohoxiswayo ukuba asebenze njengomqondisi wenkampani; noma

(c) lapho sixoshwa esikhundleni ngokwesigatshana (2).

(2) IBhodi ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ingamisa umsebenzi wesiKhulu esiPhezulu ngokuhambisana nomthetho wokuqasha nowabasebenzi osebenzayo.

### **Abasebenzi besiKhungo**

**19.(1)** Isikhulu esiPhezulu kumele, kuncike esigatshaneni (2), siqashe amalungu abasebenzi besiKhungo uma kuba nesidingo esifanele –

(a) sokusiza ekufezeni imisebenzi yaso ngokwalo Mthetho; kanye

(b) nokusiza iBhodi ngomsebenzi othintana nokwenziwa yiBhodi emisebenzini yayo.

(2) IBhodi kumele, kuncike esigabeni 24(4), inqume inqubomgomo yezindaba eziphathelene nabasebenzi kumalungu abasebenzi besiKhungo, kubandakanya isikhulu esiPhezulu.

(3) Ngokwezinhloso zokudalulwa kokuhlomula ngakwezezimali okunye ukuhlomula, nangokuncike esigabeni 17(1)(e), izihlinzeko zesigaba 7(3), (4) kanye no 7(5) zisebenza noshintsho oludingekile kumalungu abasebenzi besiKhungo.

(4) Isikhulu esiPhezulu kumele sigcine irejista evuselelwe yokuhlomula kwamalungu abasebenzi besiKhungo okudalulwe ngokwesigatshana (3).

### **Ukusiswa noma ukudluliselwa esiKhungweni kwabasebenzi**

**20.** Isikhungo singasebenzisa usizo lwabantu abasisiwe noma abadluliselwe besuka kuhulumeni ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelo No. 103 sika 1994).

## **ISAHLUKO 5**

### **UKUNQUNYWA KWENQUBOMGOMO YESIFUNDAZWE YOKUTSHALWA KWEZIMALI NEMPAHLA EPHUMAYO**

#### **INqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo**

**21.** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ngemuva kokubonisana

neBhodi, lisungule iNqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo.

#### **UHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe**

22.(1) IBhodi kumele, ezinyangeni eziyisithupha kusungulwe iNqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo ngokwesigatshana (1), isungule uHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe ukuze iphumelelise futhi iqalise ukusebenza kwezinqubomgomo kanye nezinjongo ezisungulwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho.

(2) Uma sesenza imisebenzi yaso ngokwesigaba salo Mthetho, isiKhungo kumele siqalise ukusebenza koHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe.

#### **Iziqondiso zeNqubomgomo**

23.(a) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho linganquma imikhombandlela yamasu okufezekisa izinhloso zesiKhungo futhi linganikezela imiyalelo yenqubomgomo eBhodini.

(b) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingahoxisa noma lichibiyele noma yimuphi umyalelo wenqubomgomo okhishwe ngokwendima (a).

### **ISAHLUKO 6**

#### **UXHASOMALI NOKUPHATHWA KWEZIMALI ZESIKHUNGO**

#### **Izimali zesiKhungo**

24.(1) Izimali zesiKhungo ziqukethe –

- (a) imali esiyabelwe yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshalwe yisiKhungo; kanye
- (c) nengeniso etholakale ngokusemthethweni kunoma yimuphi umthombo.

(2) IsiKhungo kumele sizisebenzise izimali zaso –

- (a) ngokukhokhela amaholo, izibonelelo zokuphila kanye nezindleko zokuhamba –
  - (i) zamalungu eBhodi;
  - (ii) zesiKhulu esiPhezulu; kanye
  - (iii) nezamalungu abasebenzi besiKhungo; kanye

(b) nokukhokhela izindleko eziphathelele –

(i) nokuqhutshwa kwansuku zonke kanye nokuphathwa kwesiKhungo; kanye

(ii) nokuqhutshwa kwemisebenzi kanye nokusebenza kwesiKhungo nokuthi isiKhungo sisebenzise amandla aso ngokwalo Mthetho.

(3) Isikhulu esiPhezulu, ngokuvumelana neBhodi kumele –

(a) sivule i-akhawunti egameni lesiKhungo esikhungweni esibhaliswe njengebhange ngokoMthetho wamaBhange, 1990 (uMthetho No. 94 ka 1990); futhi

(b) sifake lapho yonke imali etholwe ngokwesigatshana (1).

(4) IBhodi, ngokuthintana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kumele inqume –

(a) umholo nezimo zokusebenza; kanye

(b) nempesheni nemihlomulo yomhlalaphansi,

yesikhulu esiPhezulu kanye namanye amalungu abasebenzi besiKhungo.

(5) Isikhungo singatshala izimali ezifakwe kwi-akhawunti yaso ezingadingi ukusetshenziswa ngokushesha: Kuncike ekutheni iBhodi kumele ithathe izinyathelo ezifanele ukuqinisekisa ukuthi ukutshalwa kwezimali akukona okohlobo olungaqondakali lokuzalanisa imali.

(6) Isikhungo senqatshelwe ukuboleka imali noma ukukhipha iziqinisekiso, izinxephezelo noma izibambiso noma ukungena kunoma yinhloboni yokusetshenziswa kwemali okwenqatshelwe isiKhungo ngaphandle uma lokho kuboleka, isiqinisekiso, isinxephezelo, isibambiso noma okunye ukusetshenziswa kwemali kugunyazwe kulo Mthetho futhi kungashayisani noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

### **Ukuphathwa kwezimali**

**25.(1)** Isikhulu esiPhezulu kumele senze ukuba kugcinwe amabhuku agcwele futhi afanele e-akhawunti kanye nayo yonke imininingwane edingekile ephathelene nayo.

(2) Isikhulu esiPhezulu kumele siqinisekise ukuthi isabelomali sonyaka sesiKhungo, izinhlelo zenhlango, imibiko yonyaka kanye nezitatimende zezimali ezicwaningiwe ziyalungiswa futhi zilethwa ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

(3) Isikhulu esiPhezulu kumele, ezinyangeni ezintathu ngaphambi kokuba kuphele unyaka wezimali, silethe ukuze kuvunywe yiBhodi –

(a) uhlelo lwamabhizinisi esiKhungo, oluqukethe izinjongo ezilinganisiwe kanye neminye imininingwane ehlongozwe esigabeni 26(3)(b) kanye no (c); kanye

(b) nesitatimende sesilinganiso senzuzo kanye nezindleko zesikhungo, maqondana neminyaka emithathu elandelayo yezimali.

(4) Kunoma yimuphi unyaka wezimali isikhulu esiPhezulu singaletha eBhodini ukuze kugunyazwe izitatimende zemali eyengeziwe noma esetshenziwe engenisweni noma ezindlekweni zesikhungo zangalowo nyaka wezimali.

(5) Isikhungo angeke sizibandakanye kunoma yisiphi isivumelwano sezimali esingaphezu kwesabelomali esisnikeziwe kanye nesikuzuzile eceleni.

(6) Isikhulu esiPhezulu –

(a) ngokuvuma kweBhodi, singatshala noma iyiphi ingxenye engasetshenziswa yezimali zayo eNhlanganweni yokuTshalwa kweziMali zikaHulumeni noma kwesinye isikhungo esihlukanisiwe noma esibhalisiwe izikhathi ngezikhathi nguMnyango kaMgcinimafa wesiFundazwe njengesisoSohlwini olungu “A1” lwezikhungo zezimali; noma

(b) ngokugunyaza kweBhodi, singahlela leyo ngxenye ngenye indlela.

(7) Isikhulu esiPhezulu ngokugunyaza kweBhodi, singasungula izikhwama eziseceleni futhi sifake kuzo lezo zimali njengalokhu iBhodi ingavuma.

### **Ukucwaningwa kwamabhuku kanye nombiko wonyaka**

**26.(1) UMcwaningimabhuku-Jikelele kumele acwaninge izitatimende zemali yesikhungo.**

(2)(a) IBhodi kumele yethule umbiko ngezinto ezenziwa yisikhungo ngesikhathi sonyaka wezimali kwiSishayamthetho sesiFundazwe ezinyangeni ezinhlanu ngemuva kokuphela konyaka wezimali.

(b) Ezinyangeni ezinhlanu ngemuva kokwethulwa kombiko, izithunywa ezibandakanya amalungu okungenani amabili eBhodi kumele zichazele iKomidi lesiShayamthetho elibhekele ezezimali ngombiko wonyaka.

(3) Umbiko kumele –

- (a) ubandakanye isitatimende esikhombisa imali esisele emalini engenile nesetshenzisiwe esigxivizwe nguMcwaningimabhuku-Jikelele;
- (b) uveze indima isiKhungo esiyikhathulile noma esifinyelele kuyo ngezinhloso zaso ngokususela esigabeni 3 kanye nesilinganiso sezinjongo njengoba kubekiwe kuhlelo lwebhizinisi kanjengoba kuhlongozwe esigabeni 26(3)(a) ngesikhathi salowo nyaka wezimali othintekayo; futhi
- (c) uqukathe imininingwane efanele yokusebenza maqondana nezomnotho, ukunikezelwa kwezinsiza okube wusizo nempumelelo kanye nokuqhathanisa phakathi kokuhleliwe kanye nokwenziwe okukhombisayo njengoba kubekiwe kulolo hlelo lwebhizinisi.

#### **Ukusungulwa kanye nokuphathwa kwezimali ezikhethekile**

- 27.(a) IsiKhungo ngokuthintana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, singasungula futhi sigcine izimali ezikhethekile, kubandakanya izimali ezejwayelekile ezisetshenziselwa ukufaka abantu ababencishwe amathuba emkhakheni wokungeniswa kwempahla kuleli nempahla ethunyelwa kwamanye amazwe.
- (b) IsiKhungo kumele silawule lezo zimali ngendlela enqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

#### **Unyaka wezimali wesiKhungo**

- 28. Unyaka wezimali wesiKhungo uqala mhla lu-1 kuMbasa ngalowo nyaka futhi uphela mhla zinga-31 kuNdasa ngonyaka olandelayo.

#### **Impahla engenakususwa**

- 29. IsiKhungo ngokwenqubomgomo kanye nangezinqubo ezinqunywe yiBhodi futhi nangokuvuma kweLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, singathola, singagcina noma singalahla impahla engenakususwa ekusebenzeni kwaso.

#### **Ukuthathelwa izinyathelo zomthetho kwesiKhungo**

- 30.(1) Noma yikuphi ukuthathelwa izinyathelo zomthetho okubhekiswe esiKhungweni kumele kwenziwe ngokuhambisana noMthetho wesiKhungo sokuThathelwa iziNyathelo zoMthetho kweziNhlaka ezithile zikaHulumeni, 2002 (uMthetho No. 40 ka 2002).

(2) IsiKhungo, ngokwezihloso zesigatshana (1), sithathwa njengohlaka lukahulumeni oluhlongozwe endimeni (c) yencazelo yalokho okusesigabeni 1 salowo Mthetho.

## ISAHLUKO 7 IZINHLENGEKO EZIJWAYELEKILE

### **Ukuphepha kolwazi oluyimfihlo olugcinwe yisiKhungo**

31.(1) Ngokweyame kuMthethosisekelo, uMthetho wokuGqugquzelwa kokuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), akekho umuntu ongadalula noma yiluphi ulwazi olulethwe esiKhungweni oluphathelele nanoma yikuphi okuthinta umthetho noma umyalelo, ngaphandle –

- (a) uma eyalelwe ukuba enze lokho yinkantolo yezomthetho;
- (b) noma ngaphandle uma umuntu okhipha lowo myalelo enikeze imvume ngokubhalwe phansi.

(2) Akekho umuntu ongadalula noma yiluphi ulwazi olugcinwe kwirejista ehlongozwe esigabeni 7, 16(4) kanye no 19(4) ngaphandle uma lokho kudalulwa –

- (a) kungokwanoma yimuphi umthetho ophoqeleyo noma ogunyaza lokho kudalulwa;
- (b) kunesidingo esibalulekile sokusebenza kwesiKhungo; noma
- (c) kwenziwa ngezinhloso zokubheka, zokuhlola, zokuphenya noma zokucubungula noma yikuphi okwenziwayo okuphathelele nesiKhungo, nanoma yiluphi ilungu labasebenzi besiKhungo.

(3) Noma yimuphi umuntu owephula isigatshana (1) noma (2) unecala.

### **Ukuhlakazwa kwesiKhungo**

32. IsiKhungo singahlakazwa kuphela ngokoMthetho weSishayamthetho sesiFundazwe.

### **Ukusetshenziswa kwegama lesiKhungo**

33.(1) Akekho umuntu, ngaphandle kokugunyazwa okubhalwe phansi yisiKhungo, noma ngayiphi indlela ongamela noma asebenzise igama lesiKhungo, isifinyezo, uphawu, umdwebo noma impahla esetshenziswa noma engeyesikhungo.

(2) Akekho umuntu ngokuphambene ongathi usebenza egameni lesiKhungo.

(3) Wonke umuntu owephula isigatshana (1) noma (2) unecala.

### **Ukudluliselwa kwamandla**

**34.**(1) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingadlulisela kwiNhloko yoMnyango –

(a) noma yimaphi amandla anikezwe iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwamandla okwenza imithethonqubo okukhulunywa ngawo esigabeni 37; noma

(b) noma yimuphi umsebenzi odingeka kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwanoma yimiphi imisebenzi ephathelene nokuqokwa, kanye nokumiswa kokusebenza, kwamalungu eBhodi okuhlongozwe esigabeni 5(2) kanye no 10(2).

(2) IBhodi, ngesisombululo esikhethekile, lingadlulisela esiKhulwini esiPhezulu noma kwilungu labasebenzi besiKhungo, noma yimaphi amandla noma imisebenzi edingeka noma ephathelene neBhodi ngokwalo Mthetho.

(3) Isikhulu esiPhezulu singadlulisela kunoma yiliphi ilungu labasebenzi besiKhungo noma yimaphi amandla noma umsebenzi odingeka noma ophathelene nesikhulu esiPhezulu ngokwalo Mthetho, ngaphandle kwanoma yimuphi umsebenzi wesikhulu esinesibopho sokubika sesiKhungo.

(4) Noma yimaphi amandla noma umsebenzi odluliselwe ngokwesigatshana (1), (2) noma (3) kumele ukuba usetshenzwe noma wenziwe ngokweyame kuleyo migomo njengalokhu umuntu noma umgwamanda owenze ukudluliselwa ekubone kunesidingo.

(5) Noma yikuphi ukudluliselwa kwamandla okushiwoyo esigatshaneni (1), (2) noma (3) –

(a) kumele kubhalwe phansi;

(b) kungavimbeli umuntu noma umgwamanda owenze ukudluliselwa kwamandla ekutheni basebenzise amandla noma benze lowo msebenzi; futhi

(c) noma ngasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhaliwe yilowo muntu noma umgwamanda.

### **Imithethonqubo**

**35.** ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuthintana neBhodi futhi

ngokwenza isaziso kwi*Gazethi*, lingenza imithethonqubo ephathelene –

(a) nanoma yiluphi udaba olungabhalwa noma okumele lubhalwe ngokwalo Mthetho; noma

(b) nanoma yikuphi ukuphathwa noma izindaba eziphathelene nenqubo edingekile ukuba iqalise kwizinhlinzeko zalo Mthetho.

**Ukuhlakazwa kweNkampani kanye nezinhlinzeko zezikhashana eziphathelene nalokho**

36.(1)(a) iNkampani, i-Trade and Investment KwaZulu-Natal eneNombolo yokuBhaliswa kweziNkampani 98/11946/08, esungulwe ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), ingahlakazwa ngokuzikhethela futhi ibhaliswe kabusha.

(b) Amalungu eNkampani kumele, ekuhlakazweni kweNkampani okukhulunywa ngakho esigatshaneni (1), phakathi kokunye, ahambisane nezigaba 349 kanye no 350 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(2) Ngelanga lokuhlakazwa kweNkampani okuhlongozwe esigatshaneni (1), zonke izimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho, kubandakanya noma iyiphi ingxenye engasetshenzisiwe yezimali eziyinzuzo noma ezitholwe yiNkampani zidluliselwa, futhi zitshalwa, kwi-Trade and Investment KwaZulu-Natal esungulwe ngokwesigaba 2.

(3) I-Trade and Investment KwaZulu-Natal, maqondana nezimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho nezimali okukhulunywe ngakho esigatshaneni (2), ngazo zonke izinhloso ingundlalifa kwezomthetho, kanye nondlalifa egameni, leNkampani.

(4) Amalungu eBhodi yeNkampani kumele asebenze njengamalungu eBhodi yesiKhungo agunyaziwe kuze kube yisikhathi lapho iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwesigaba 5(2) liyoqoka khona iBhodi ngokwalo Mthetho.

(5) Onke amalungu abasebenzi beNkampani kumele, ezinyangeni eziyisithupha kuqale ukusebenza kwalo Mthetho, baqashwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ukuze badluliselwe esiKhungweni ngosuku olunqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(6) Amaholo, imihlomulo kanye nezibonelelo ezinikezelwa yiLungu lomkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuhambisana nesigatshana (5), akungabi ngaphansi kwalokhu obekukhokhelwa ilungu labasebenzi beNkampani, ngemuva kokudluliselwa kwalo.

(7) Ngokwenhloso yoMthetho weNtela, 1962 (uMthetho No. 58 ka 1962), akukho ukushintshwa komqashi okuyothathwa njengokwenzekile maqondana namalungu abasebenzi abavuma umsebenzi ohlongozwe esigatshaneni (5).

(8) Ngenkathi umuntu eba yilungu labasebenzi besiKhungo ngokwesigatshana (5) –

(a) ugcina izinsuku zakhe zekhefu abevele enazo kuze kube yileso sikhathi ashintshwe ngaso, okuhlelwe ngokuhambisana nezimo zokuqasha zesiKhungo; futhi

(b) noma yiluphi uphenyo obeluvele lukhona noma obeluhlosiwe ukuba lube khona maqondana nokungaziphathi kahle okwenziwe yilowo muntu ngaphambi kosuku lokudluliselwa kwakhe kwenye indawo kumele kwazeke noma kuvezwe yisiKhungo futhi isiKhungo kumele simthathele izinyathelo ezifanele lowo muntu othintekayo ngokuhambisana nomthetho, nenqubomgomo kanye nemibandela yomsebenzi noma yokusebenza abelwe yona ngokushesha ngemuva kokushaya kosuku lokudluliselwa kwakhe.

### **Amacala ajwayelekile**

37.(1) Ilungu leBhodi, ilungu labasebenzi, umeluleki, i-ejenti nanoma yimuphi omunye umuntu oqashiwe noma omele isiKhungo unecala uma emukela ngqo noma ngandlela thile noma yikuphi ukugwazelwa nanoma emukela noma iyiphi imali noma umklomelo okungagunyaziwe kunoma yimuphi umuntu ngokuphathelene nanoma yikuphi okwenziwa noma okunikezelwa yisiKhungo.

(2) Noma yimuphi umuntu unecala uma, maqondana noma ngokuphathelene nanoma yikuphi okwenziwa noma okunikezelwa yisiKhungo, egwaza noma efuna ukugwaza noma efaka umoya wokukhohlakala noma ehlosa ukufaka umoya wokukhohlakala kwilungu leBhodi, ilungu labasebenzi, umeluleki, i-ejenti nanoma yimuphi umuntu oqashiwe noma oyibamba egameni lesiKhungo.

(3) Noma yimuphi umuntu ngokungemthetho othi ugunyaziwe ukuba abize noma athathe izimali, iminikelo noma okunikelwayo egameni, noma ngokuyalelwa yisiKhungo unecala.

### **Izinhlawulo**

38. Noma yimuphi umuntu otholakala enecala ngokwalo Mthetho uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni eyi-5 noma kokubili isigwebo nenhlawulo.

**Isihloko esifishane**

**39.** Lo Mthetho ubizwa ngokuthi uMthetho wesikhungo sezoHwebo nokuTshalwa kweziMali waKwaZulu-Natali, 2009.

**I-MEMORANDAMU NGEZINHLOSO ZOMTHETHOSIVIVINYO WESIKHUNGO SEZOHWEDO  
NOKUTSHALWA KWEZIMALI SAKWAZULU-NATALI, 2009**

**1. ISENDLALELO ESEJWAYELEKILE NEZINHLOSO ZOMTHETHOSIVIVINYO**

1.1 UMnyango ufuna ukusungula uphinde ubhalise isiKhungo sezoHwebo nokuTshalwa kweziMali saKwaZulu-Natali ("TIKZN") njengeBhizinisi likaHulumeni wesiFundazwe ukuze -

- (a) kubhekelelwe imibono yesiShayamthetho sesiFundazwe mayelana nokuba semthethweni kwe-TIKZN; futhi
- (b) kuhanjiswa nemikhombandlela yeHhovisi likaMgcinimafa kaZwelonke yokuguqulwa kwawo wonke amabhizinisi kahulumeni ekubeni yizinkampani ezingaphansi kwesigaba 21 abe yimigwamanda esemthethweni eyakhiwe futhi yabhaliswa kanjalo ngokwezinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni.

1.2 Ngenxa yalokhu okungasenhla, lo Mthethosivivinyo uhlose -

- (a) ukuhlinzekela ukusungulwa kwesikhungo sokuthuthukiswa komnotho esaziwa ngokuthi ezoHwebo nokuTshalwa kweziMali, KwaZulu-Natali ukuze kuhehwe utshalomali lwakuleli nolwasemazweni angaphandle nokwandisa amathuba okuhanjiswa kwempahla emazweni angaphandle nezindlela zokuhambisa impahla esiFundazweni saKwaZulu-Natali kanye nokuqhuba eminye imisebenzi ethile ebaluliwe;
- (b) ukunquma izinhloso, imisebenzi namandla esiKhungo;
- (c) ukuhlinzekela ukubuswa nokuphathwa kwesiKhungo yiBhodi yabaQondisi nesiKhulu esiPhezulu;
- (d) ukunquma mayelana namandla, nemisebenzi nanokusetshenziswa kwezimali kanye nesibopho sokubika kwesiKhungo kanye nokunquma ukusebenza kwaso; ukuhlinzekela ukwakhiwa kweziNqubomgomo ezimayelana nokuTshalwa kweziMali kanye nempahla ePhumayo zesiFundazwe;
- (e) ukuhlinzekela ukwakhiwa kwemiThethonqubo; kanye
- (f) nokuhlinzekela okunye okuphathelele nalokho.

**2. UKUCHAZWA KWESIGABA NESIGABA**

ISAHLUKO 1

IZINCAZELO

**Isigaba 1**

Sihlinzekela izincazelo zamagama asetshenzisiwe kulo Mthethosivivinyo.

**ISAPHLUKO 2****UKUSUNGULWA KWESIKHUNGO SEZOHWEBO NOKUTSHALWA KWEZIMALI SAKWAZULU-NATALI****Isigaba 2**

Sihlinzekela ukusungulwa kwesikhungo sezoHwebo nokutshalwa kwezimali sesiFundazwe esizobizwa ngesiKhungo sezoHwebo nokuTshalwa kweziMali, KwaZulu-Natali. Isikhungo singumuntu ngokomthetho, sakhawe, sisebenza, sibhaliswe futhi siqhutshwa ngokulandelwa kwezinhlinzeko zalo Mthetho kanye noMthetho wokuPhathwa kweziMali zikaHulumeni.

**Isigaba 3**

Sibeka izinhloso zesikhungo, okuyilezi:

- (a) ukuheha utshalomali lwalapha ekhaya nolwasemazweni angaphandle;
- (b) Ukwandisa amathuba okuhanjiswa kwempahla emazweni angaphandle nezindlela zokuhambisa leyo mpahla; kanye
- (c) nokusebenzisa amandla, ukugcina izibopho nokwenza imisebenzi okubalulwe esigabeni 4.

**Isigaba 4**

Sihlinzekela amandla, izibopho nemisebenzi yesiKhungo okubandakanya -

- (a) ukuhlonza, ukusungula, ukuqhakambisa kanye nokugqugquzela amathuba okutshalwa kwezimali esifundazweni okungaba kuleli nasemazweni angaphandle;
- (b) ukwakha amathuba esiFundazwe okuhanjiswa kwempahla emazweni angaphandle;
- (c) ukwakha imboni yesiFundazwe yezokuhanjiswa kwempahla emazweni angaphandle;
- (d) ukugxiliswa kwezohwebo nokutshalwa kwezimali esifundazweni;
- (e) ukuphenya nokwenza izincomo eMkhandlwini oPhethe, ngesandla seLungu loMkhandlu oPhethe mayelana nokugqugquzela, nokuthuthukisa kanye nokuqhakambisa ezohwebo esiFundazweni; kanye
- (f) nokusungula isu lesifundazwe lokutshalwa kwezimali nokuhanjiswa kwempahla emazweni angaphandle.

Isigaba 4 siphinde sihlinzekele amandla esiKhungo abandakanya -

- (a) ukuxoxisana nanoma yiliphi ibhizinisi, uhlaka lombuso olunentshisekelo kwintuthuko, ekugqugquzeleni kanye nasekuqhakanjiseni kutshalomali esifundazweni;
- (b) ukuhlinzekela izindaba zokuqashwa kwabasebenzi zesikhungo;
- (c) ukufezekiswa kwezinhloso futhi ngokugunyaza kwelungu loMkhandlu oPhethe -

- (i) sisungule futhi siqhube ibhizinisi noma iNkampani;
- (ii) singene esivumelwaneni zokusebenzisana kanye noma singene ekuhlanganyeleni namanye amabhizinisi noma izinkampani; futhi
- (iii) siqoqe izimali ngeminikelo kanye noxhasomali.

### ISAHLUKO 3 UKUBUSWA KWESIKHUNGO

#### **Isigaba 5**

Sihlinzekela ukubuswa kwesiKhungo yiBhodi yabaQondisi futhi ibhodi iyokuba nesibopho sokubika. Siphinde sihlinzeke ngokuthi ibhodi angeke ibe namalungu angaphansi kwayisi-5 futhi ngeke eqe kwangama-20.

Isigaba 5 siphinde sihlinzekele inqubo yokuphakanyiswa kanye nokuqokwa kwamalungu ebhodi. Siphinde sihlinzeke uMkhandlu oPhethe ngeqhaza lokuqapha ukuqokwa kwamalungu ebhodi ngokuthi

- (a) senze kube mqoka kwiLungu loMkhandlu oPhethe ukuthi, ngaphambi kokuthi kuqokwe amalungu eBhodi, lazise uMkhandlu oPhethe mayelana nenhloso yalo yokumema iziphakamiso; futhi
- (b) ngemuva kokuba iLungu loMkhandlu oPhethe seliqoke amalungu eBhodi, kumele lazise uMkhandlu oPhethe amagama amalungu aqokiwe, usuku lokuqala ukusebenza kanye nesikhathi sokuba sesikhundleni.

#### **Isigaba 6**

Sinquma izizathu ezihoxisa ilungu ekutheni liqokelwe eBhodini.

#### **Isigaba 7**

Sihlinzekela ijoka labantu abaphakanyisiwe ukuba baqokelwe eBhodini kanye nalabo asebevele baqokelwe bhodini ukuba badalule ukuhlomula abanakho kwezinye izinkampani nakwamanye amabhizinisi.

#### **Isigaba 8**

Sinquma isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi.

**Isigaba 9**

Sihlinzekela ukugcwaliswa kwezikhala zomsebenzi okungenzeka zivele eBhodini.

**Isigaba 10**

Sinika iLungu loMkhandlu oPhethe amandla okumisa okwesikhashana ilungu leBhodi ukwenzela ukuthi iLungu loMkhandlu oPhethe likwazi ukwenza uphenyo, okungathi uma kutholakala ukuthi luyiqiniso kuholele ekutheni ukuqokwa kwelungu kuhoxiswe.

**Isigaba 11**

Sihlinzekela imihlangano nezinqubo zemihlangano yeBhodi.

Isigaba 11 siphinde sihlizekele izindaba eziphathelene nemihlangano yeBhodi, ezifana -

- (a) nezikhathi zokubanjwa kwemihlangano yeBhodi;
- (b) nesibalo sabantu abavumeleke ukubamba umhlangano; kanye
- (c) nendlela okungathathwa ngayo izinqumo zeBhodi.

**Isigaba 12**

Sihlinzekela ukubekwa kwejoka kumalungu eBhodi lokuthi kumele azihoxise wona lapho kungenzeka kube nokushayisana kwezintshisekelo odabeni oludingidwa yiBhodi. Ukwehluleka kwelungu ukuzihoxisa emhlanganweni ekubeni lazi ukuthi kungaba nokushayisana kwezintshisekelo kuyokwenza umhlangano uthathwe njengongabanga khona.

**Isigaba 13**

Sinika iLungu loMkhandlu oPhethe amandla okunquma imiholo nemibandela yokuqashwa kwamalungu eBhodi.

**Isigaba 14**

Sihlinzekela ukusungulwa kwamakomidi azosiza iBhodi kanye nokushatshalaliswa kwawo noma kwemisebenzi yawo.

**Isigaba 15**

Sikhuluma ngokuqokelwa kwabantu eBhodini noma emaKomidini eBhodi.

**ISAHLUKO 4****ISIKHULU ESIPHEZULU KANYE NABASEBENZI BESIKHUNGO****Isigaba 16**

Sihlinzekela lokhu okulandelayo:

- (a) Ukuqokwa kwesiKhulu esiPhezulu sesiKhungo yiBhodi ngokubonisana neLungu loMkhandlu oPhethe; kanye
- (b) Nesikhathi sokuba sesikhundleni sesiKhulu esiPhezulu.

**Isigaba 17**

Sikhuluma ngemisebenzi yesiKhulu esiPhezulu kubandakanya amandla okuqoka abasebenzi besiKhungo.

**Isigaba 18**

Sikhuluma ngezizathu kanye nezinqubo zokususwa kwesiKhulu esiPhezulu.

**Izigaba 19 no 20**

Zikhuluma ngabasebenzi besiKhungo kanye nokusiswa noma ukudluliselwa kwenye indawo kwabasebenzi besiKhungo.

**ISAHLUKO 5****UKUNQUNYWA KWENQUBOMGOMO YESIFUNDAZWE YOKUTSHALWA KWEZIMALI NEMPAHLA  
EPHUMAYO****Isigaba 21**

Sihlinzekela ukusungulwa kwenqubomgomo yesifundazwe yokutshalwa kwezimali nempahla ephumayo yiLungu loMkhandlu oPhethe ngokubonisana nesiKhungo.

**Isigaba 22**

Sihlinzekela ukusungulwa kweSu lesifundazwe lokutshalwa kwezimali nempahla ephumayo ukuze kuqale ukusebenza inqubomgomo yesifundazwe yokutshalwa kwezimali nempahla ephumayo.

**Isigaba 23**

Sihlinzekela ukukhishwa kwemikhombandlela nemigudu yokusebenza yiLungu loMkhandlu oPhethe esiKhungweni kanye nokuhoxiswa kwayo.

**ISAHLUKO 6****UXHASOMALI NOKUPHATHWA KWEZIMALI ZESIKHUNGO****Isigaba 24**

Sihlinzekela imithombo yezimali yesiKhungo ebandakanya:

- (a) izimali ezabelwe iKhomishana yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshalwe yiKhomishana; kanye
- (c) nengeniso etholakale ngokusemthethweni kunoma yimuphi omunye umthombo.

**Isigaba 25**

Sihlinzekela ukuphathwa kwezimali ezisesikhwameni sesiKhungo nokubika eBhodini.

**Isigaba 26**

Sihlinzekela ukucwaningwa kwamabhuku ezimali zesikhungo kanye nokwethulwa kombiko wonyaka kwisiShayamthetho sesiFundazwe.

**Isigaba 27**

Sihlinzekela ukusungulwa kanye nokuphathwa kwezimali ezikhethekile zesikhungo kanye nokunqunywa kwendlela yokuphathwa kwalezo zimali yiLungu loMkhandlu oPhethe.

**Isigaba 28**

Senza unyaka wezimali wesikhungo uhambisane nowoMnyango.

**Isigaba 29**

Sihlinzekela isikhungo ukuthi sithole, sigcine noma sichithe impahla engenakususwa ngesikhathi sokusebenza kwaso.

**Isigaba 30**

Sihlinzekela inqubo yokuthathelwa izinyathelo zomthetho kwesiKhungo.

**ISAHLUKO 7****IZINHLINEKO EZEJWAYELEKILE****Isigaba 31**

Sihlinzekela ukuphepha kolwazi oluyimfihlo olugciniwe yisiKhungo.

**Isigaba 32**

Sihlinzekela ukuhlakazwa kwesiKhungo.

**Isigaba 33**

Sihlinzekela ukusetshenziswa kwegama lesiKhungo.

**Isigaba 34**

Sihlinzekela ukudluliselwa kwanoma yimaphi amandla eLungu loMkhandlu oPhethe kwiNhloko yoMnyango, kuhambisana nemibandela ethile.

**Isigaba 35**

Sinika amandla iLungu loMkhandlu oPhethe okwakha imithethonqubo. Lesi sigatshana somthetho siphinde sihlinzeke ngemigudu iLungu loMkhandlu oPhethe elingakha ngayo imithethonqubo.

**Isigaba 36**

Sihlinzekela ukuhlakazwa kweNkampani kanye nezinhlizwe zesikhashana ezibandakanya ukuthi -

- (a) inkampani iyohlakazwa ngokuzikhethela futhi iyocishwa emabhukwini;
- (b) ukuthi amalungu eBhodi eNkampani engaphansi kwesigaba 21 ayokuba ngamalungu agunyazwe ngokusemthethweni futhi anamandla eBhodi kuze kube yisikhathi lapho iLungu loMkhandlu liqoke khona iBhodi ngokwalo Mthetho;
- (c) ukuthi abasebenzi beNkampani engaphansi kwesigaba 21 bayodluliselwa esiKhungweni; kanye
- (d) nokuhlakazwa nokwesulwa emabhukwini kweNkampani engaphansi kwesigaba 21 lapho kuqala ukusebenza kwalo Mthetho.

**Isigaba 37**

Sihlinzekela amacala ngokwalo Mthethosivivinyo.

**Isigaba 38**

Sihlinzekela izigwebo mayelana namacala okukhulunywe ngawo kwisigatshana somthetho 37 salo Mthethosivivinyo.

**Isigaba 39**

Sihlinzekela isihloko esifingqiwe salo Mthethosivivinyo.

**3. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE**

Kunombono wokuthi abasebenzi abakhona beNkampani engaphansi kwesigaba 21 bayodluliselwa esiKhungweni; njengoba kuzobe kungekho zingqinamba ezintsha kwezokuphatha nakwezabasebenzi kuHulumeni wesiFundazwe.

**4. IZINGQINAMBA KWEZEZIMALI KUHULUMENI WESIFUNDAZWE**

IsiKhungo siyothatha izintambo kwiNkampani engaphansi kwesigaba 21 kanti uma leyo imisebenzi isixhaswe ngokuphelele ngezimali okuyoba yizimali ezabelwe uMnyango yisiShayamthetho wesiFundazwe, angeke kube khona zingqinamba ezintsha mayelana nezimali kuHulumeni wesiFundazwe.

**5. IMINYANGO/ IMIGWAMANDA ETHINTIWE**

- (a) IsiGungu sabaMeli bakaHulumeni saKwaZulu-Natali kanye neNhlango yabaMeli bakaHulumeni yaKwaZulu-Natali.
- (b) IBhodi ye-TIKZN (Inkampani yesigaba 21).

**6. IZINGQINAMBA EZIMAYELANA NOMTHETHOSISEKELO**

Azikho

No. 4

12 January 2010

## **KWAZULU-NATAL BUSINESS REHABILITATION TRUST FUND ACT REPEAL BILL, 2009**

### **Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature**

Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Business Rehabilitation Trust Fund Act Repeal Bill, 2009 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

**Attention:** Mrs NP Sikhakhane  
The Secretary  
KwaZulu-Natal Legislature  
Private Bag X 9112  
PIETERMARITZBURG  
3200

so as to reach her not later than 15 days from the date of publication.

N NAIDOO  
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL  
BUSINESS REHABILITATION TRUST FUND ACT  
REPEAL BILL, 2009**

**CERTIFIED: 16 April 2009**



**Adv BA Mbili**  
PRINCIPAL STATE LAW ADVISOR

**CERTIFIED:** 16 April 2009  
Principal State Law Advisor

## **BILL**

**To provide for the repeal of the KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

### **Repeal of laws**

1. The KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998 (Act No. 13 of 1998), and the KwaZulu-Natal Business Rehabilitation Trust Fund Amendment Act, 2003 (Act No. 2 of 2003), are hereby repealed.

### **Disestablishment of KwaZulu-Natal Business Rehabilitation Trust Fund established in terms of repealed KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998, and transitional provisions incidental thereto**

2.(1) The KwaZulu-Natal Business Rehabilitation Trust Fund established in terms of section 3(1) of the repealed KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998 (Act No. 13 of 1998), is hereby disestablished and dissolved.

(2) All assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued to, or received by, the disestablished KwaZulu-Natal Business Rehabilitation Trust Fund are transferred to, and vest in, the KwaZulu-Natal Department of Economic Development.

(3) The KwaZulu-Natal Department of Economic Development is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor-in-law of the disestablished KwaZulu-Natal Business Rehabilitation Trust Fund.

(4) The Board of the KwaZulu-Natal Business Rehabilitation Trust Fund referred to in sections 5 and 6 of the repealed KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998, is hereby disestablished and dissolved and the KwaZulu-Natal Department of Economic Development is, for all purposes the successor-in-law of the disestablished and dissolved Board of the KwaZulu-Natal Business Rehabilitation Trust Fund.

### **Short title**

3. This Act is called the KwaZulu-Natal Business Rehabilitation Trust Fund Act Repeal Act, 2009.

**MEMORANDUM ON THE OBJECTS OF THE  
KZN BUSINESS REHABILITATION TRUST FUND ACT REPEAL BILL, 2009**

**1. PURPOSE OF THE BILL AND BACKGROUND**

1.1. The KZN Business Rehabilitation Trust Fund had been established by the KZN Business Rehabilitation Trust Fund Act, 1998 (Act No.13 of 1998) the principal Act, and its operations were to commence on 3 February 1999 and terminate on 3 February 2004.

1.2 On 29 September 2003 the KZN Provincial Government resolved to extend the operation of the Fund for a further period of three years, ending on 3 February 2007.

1.3 The purpose of this Act was –

- (a) to provide assistance by way of risk indemnity to institutions or persons who advance funds or trade credit facilities on agreed terms to owners of affected business;
- (b) to enable owners of such affected business to raise finance to rehabilitate their business or to start new business;
- (c) to arrange trade credit facilities in order to obtain operating capital to facilitate trading;
- (d) to provide support and training in respect of financial and general business management matters to owners of affected business; and
- (e) to provide for matters incidental thereto.

1.4 The principal Act was subsequently amended by the KZN Business Rehabilitation Trust Fund Amendment Act, 2003 (Act No. 2 of 2003).

1.5 Both the principal Act and the Amendment Act failed to indicate the transitional measures relating to the dissolution of the Trust Fund.

1.6 In the light of the above, this Bill purports to –

- (a) disestablish and dissolve the Trust Fund and to further make provision for the transfer of Fund's assets and liabilities to the Kwazulu-Natal Department of Economic Development.

**2. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

The Kwazulu-Natal Provincial Government currently administers the Business Rehabilitation Programme. It is anticipated that the Bill will decrease the administrative burden on the Provincial Government. The Bill will therefore not increase organisational or personnel requirements.

Accordingly the funds from the Trust Fund have been transferred to the SMME Component of Ithala Bank, in terms of an agreement dated 26 February 2008.

### **3. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

In view of the fact that the Bill is merely for repeal purposes, it is not anticipated that the Bill will increase the financial resources required for dissolution of a Trust Fund. The Bill will have no impact on the provincial budget.

There are therefore no financial implications.

### **4. DEPARTMENTS / BODIES CONSULTED**

The Bill was published in the *Provincial Gazette* for comments from the institutions and individuals. The Bill was then redrafted to incorporate comments received.

### **5. CONSTITUTIONAL IMPLICATIONS**

None.

No. 4

12 Januarie 2010

## KWAZULU-NATAL HERROEPINGSWETSONTWERPOP DIE WET OP BESIGHEIDSREHABILITASIETRUSTFONDS, 2009

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennisgewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die Kwazulu-Natal Herroepingswetsontwerp op die Wet op Besigheidsrehabilitasietrustfonds, 2009 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portefeuljkomitee oor Ekonomiese Ontwikkeling en Toerisme oorweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om vertoë oor die vermelde wetsontwerp in te dien, welke vertoë gerig moet word aan:

**Aandag:** Me NP Sikhakhane  
Die Sekretaris  
KwaZulu-Natal Legislature  
Privaatsak X 9112  
PIETERMARITZBURG  
3200

Vertoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO  
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL  
HERROEPINGSWETSONTWERP OP DIE WET OP  
BESIGHEIDSREHABILITASIETRUSTFONDS, 2009**

**WETSONTWERP**

**Om voorsiening te maak vir die herroeping van die KwaZulu-Natal Wet op Besigheidsrehabilitasietrustfonds, 1998; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.**

DAAR WORD soos volg deur die Wetgewer van die provinsie KwaZulu-Natal bepaal:–

**Herroeping van wette**

1. Die KwaZulu-Natal Wet op die Besigheidsrehabilitasietrustfonds, 1998 (Wet No. 13 van 1998), en die KwaZulu-Natal Wysigingswet op die Besigheidsrehabilitasietrustfonds, 2003 (Wet No. 2 van 2003), word hiermee herroep.

**Opheffing van KwaZulu-Natal Besigheidsrehabilitasietrustfonds ingestel ingevolge herroepe KwaZulu-Natal Wet op die Besigheidsrehabilitasietrustfonds, 1998, en oorgangsbepalings wat daarmee verband hou**

2.(1) Die KwaZulu-Natal Besigheidsrehabilitasietrustfonds ingestel deur artikel 3(1) van die herroepe KwaZulu-Natal Wet op die Besigheidsrehabilitasietrustfonds, 1998 (Wet No. 13 van 1998), word hiermee opgehef en ontbind.

(2) Alle bates, laste, regte, pligte en verpligtinge, met inbegrip van enige onbestede gedeelte van enige opgelope fondse, of fondse ontvang deur die ontbinde KwaZulu-Natal Besigheidsrehabilitasietrustfonds word oorgedra na en berus by die KwaZulu-Natal Departement van Ekonomiese Ontwikkeling.

(3) Die KwaZulu-Natal Departement van Ekonomiese Ontwikkeling is, met betrekking tot die bates, laste, regte, pligte en verpligtinge en fondse vermeld in subartikel (2) vir alle doeleindes die regsopvolger van die ontbinde KwaZulu-Natal Besigheidsrehabilitasietrustfonds.

(4) Die Raad van die KwaZulu-Natal Besigheidsrehabilitasietrustfonds vermeld in artikel 5 en 6 van die herroepe KwaZulu-Natal Wet op die Besigheidsrehabilitasietrustfonds, 1998, word hiermee opgehef en ontbind en die KwaZulu-Natal Departement van Ekonomiese Ontwikkeling is, vir alle doeleindes die regsopvolger van die opgehefte en ontbinde Raad van die KwaZulu-Natal Besigheidsrehabilitasietrustfonds.

**Kort titel**

3. Hierdie Wet heet die KwaZulu-Natal Herroepingswet op die Wet op Besigheidsrehabilitasietrustfonds, 2009.

**MEMORANDUM AANGAANDE DIE OOGMERKE VAN DIE  
KWAZULU-NATAL HERROEPINGSWETSONTWERP OP DIE WET OP  
BESIGHEIDSREHABILITASIE TRUSTFONDS, 2009**

**1. DOEL EN AGTERGROND VAN DIE WETSONTWERP**

1.1. Die KZN Besigheidsrehabilitasietrustfonds is ingestel deur die KZN Wet op Besigheidsrehabilitasietrustfonds, 1998 (Wet No.13 van 1998). Die Hoofwet en sy werksaamhede sou op 3 Februarie 1999 in werking tree en op 3 Februarie 2004 beëindig word.

1.2 Op 29 September 2003 het die KZN Provinsiale Regering besluit om die werkinge van die Fonds vir 'n verdere tydperk van drie jaar te verleng, sodat dit op 3 Februarie 2007 sou eindig.

1.3 Die doel van hierdie Wet is om –

- (a) bystand deur middel van risikovrywaring aan instellings of persone te verskaf wat fondse voorskiet of kredietfasiliteite op ooreengekome terme aan eienaars van geaffekteerde besighede verskaf;
- (b) eienaars van sodanige geaffekteerde besigheid in staat te stel om finansiering te bekom om hul besigheid te rehabiliteer of 'n nuwe besigheid te begin;
- (c) bedryfskredietfasiliteite te reël ten einde bedryfskapitaal te bekom om handel te fasiliteer;
- (d) bystand en opleiding met betrekking tot finansiële en algemene besigheidsbestuursaangeleenthede aan eienaars van geaffekteerde besighede te verskaf; en
- (e) voorsiening te maak vir aangeleenthede wat hiermee verband hou.

1.4 Die Hoofwet is gevolglik gewysig deur die KZN Wysigingswet op Besigheidsrehabilitasietrustfonds, 2003 (Wet No. 2 van 2003).

1.5 Beide die Hoofwet en die Wysigingswet het versuim om die oorgangsmatreëls wat met die ontbinding van die Trustfonds verband hou, aan te dui.

1.6 In die lig van die bogenoemde, beoog hierdie Wetsontwerp om –

- (a) die Trustfonds af te skaf en te ontbind en om voorts voorsiening te maak vir die oordrag van die Fonds se bates en laste aan die Kwazulu-Natal Departement van Ekonomiese Ontwikkeling.

## **2. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING**

Die Kwazulu-Natal Provinsiale Regering administreer tans die Besigheidsrehabilitasieprogram. Daar word voorsien dat die Wetsontwerp die administratiewe las op die Provinsiale Regering sal verminder. Die Wetsontwerp sal dus nie organisatoriese of personeelvereistes vermeerder nie.

Die fondse uit die Trustfonds is dienooreenkomstig na die KMMO-komponent van Ithala Bank oorgedra, ingevolge 'n ooreenkoms gedateer 26 Februarie 2008.

## **3. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING**

In die lig van die feit dat die Wetsontwerp slegs vir herroepingsdoeleindes is, word daar nie voorsien dat die Wetsontwerp die finansiële hulpbronne wat vereis word vir die ontbinding van 'n Trustfonds sal vermeerder nie. Die Wetsontwerp sal geen impak op die provinsiale begroting hê nie.

Daar is dus geen finansiële implikasies nie.

## **4. DEPARTEMENTE / LIGGAME GERAADPLEEG**

Die Wetsontwerp is in die *Provinsiale Koerant* gepubliseer vir kommentaar vanaf instellings en individue. Die Wetsontwerp is daarna heropgestel om kommentaar wat ontvang is, in te voeg.

## **5. GRONDWETLIKE IMPLIKASIES**

Geen.

No. 4

12 kuMasingana 2010

## UMTHETHOSIVIVINYO WOKUCHITHA UMTHETHO WESIKHWAMA SOKUVUSELELWA KWAMABHIZINISI WAKWAZULU-NATALI, 2009

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo wokuChitha uMthetho WeSikhwama sokuVuselelwa kwamaBhizinisi WaKwaZulu-Natali, 2009, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi Lezokuthuthukiswa koMnotho neZokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Nkk. N.P. Sikhakhane  
UNobhala  
ISishayamthetho saKwaZulu-Natali  
Isikhwama Seposi X 9112  
Pietermaritzburg  
3200

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso .

N. NAIDOO  
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WOKUCHITHA UMTHETHO WESIHWAMA  
SOKUVUSELELWA KWAMABHIZINISI WAKWAZULU-NATALI, 2009**

**UMTHETHOSIVIVINYO**

**Wokuhlinzekela ukuchithwa koMthetho wesikhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 1998; kanye nokuhlinzekela okunye okuphathelene nalokho.**

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

**Ukuchithwa kwemithetho**

1. UMthetho wesikhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 1998 (uMthetho No. 13 ka 1998), kanye noMthethosichibiyelo wesikhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 2003 (uMthetho No. 2 ka 2003), ngalokhu iyachithwa.

**Ukuhlakazwa kwesikhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali esasungulwa ngokoMthetho wesikhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 1998 osuchithiwe, nezinhlinzeko zesikhashana ezihambisana nalokho**

2.(1) Isikhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali esasungulwa ngokwesigaba 3(1) soMthetho wesikhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 1998 (uMthetho No. 13 ka 1998) osuchithiwe, ngalokhu siyahlakazwa futhi siyashatshaliswa.

(2) Yonke impahla, izikweletu, amalungelo, imisebenzi kanye nezibopho, kubandakanya nanoma iyiphi ingxenye engasetshenzisiwe yanoma iziphi izimali eziqoqwe, noma ezamukelwe, yisiKhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali esihlakaziwe kudluliselwa, futhi kunikezelwa, eMnyangweni wezokuThuthukiswa koMnotho waKwaZulu-Natali.

(3) UMnyango wezokuThuthukiswa koMnotho waKwaZulu-Natali, maqondana nayo yonke impahla, izikweletu, amalungelo, imisebenzi nezibopho kanye nezimali okukhulunywe ngazo kwisigatshana (2) ngokomthetho uyindlalifa yesiKhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali esesihlakaziwe.

(4) IBhodi yesiKhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali okukhulunywe ngayo ezigabeni 5 no 6 zoMthetho wesiKhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 1998 osuchithiwe, ngalokhu iyahlakazwa, futhi uMnyango wezokuThuthukiswa koMnotho waKwaZulu-Natali, ngokomthetho uyindlalifa yeBhodi esihlakaziwe yesiKhwama sokuVuselelwa kwamaBhizinisi saKwaZulu-Natali.

#### **Isihloko esifingqiwe**

3. Lo Mthetho ubizwa ngokuthi uMthetho wokuChitha uMthetho wesiKhwama sokuVuselelwa kwamaBhizinisi waKwaZulu-Natali, 2009.

**I-MEMORANDUM NGEZINHLOSO ZOMTHETHOSIVIVINYO WOKUCHITHA  
UMTHETHO WESIkhwama SOKUHLUNYELELISWA KWAMABHIZINISI  
WAKWAZULU-NATALI, 2009**

**1. INHLOSO YOMTHETHOSIVIVINYO KANYE NESENDLALELO**

1.1. IsiKhwama sokuHlunyeleliswa kwamaBhizinisi saKwaZulu-Natali sisungulwe uMthetho wesiKhwama sokuHlunyeleliswa kwamaBhizinisi waKwaZulu-Natali, 1998 (uMthetho No. 13 ka 1998) okungumthetho oyisisekelo, kanti ukusebenza kwawo bekumele kuqale mhla zi-3 kuNhlolanja 1999 kugcine mhla zi-3 kuNhlolanja ka 2004.

1.2 Mhla zingama-29 kuMandlulo 2003 uHulumeni wesiFundazwe saKwaZulu-Natali waphuma nesisombululo sokuthi kwelulwe ukusebenza kwesiKhwama esinye isikhathi esiyiminyaka emithathu, okwakuzophela mhla zi-3 kuNhlolanja 2007.

1.3 Inhloso yalo Mthetho –

- (a) kwakungukuhlinzeka usizo lokunxeshazelwa kwezikhungo noma kwabantu abakhokhele izimali noma ababolekise ngezimali ngokwezivumelwano kumabhizinisi akhahlamezekile;
- (b) kwakungukusiza abanikazi balawo mabhizinisi akhahlamezekile ukuthi bathole izimali zokuhlumelelisa amabhizinisi abo noma baqale amabhizinisi amasha;
- (c) kwakungukuhlela ukubolekisa ngezimali ukuze kutholakale izimali zokuqhuba amabhizinisi ukuze akwazi ukusebenza;
- (d) kwakungukuhlinzekela ukwesekwa kanye nokuqeqeshwa mayelana nokuphathwa kwezimali kanye nokuphathwa okujwayelekile kwebhizinisi kubanikazi bamabhizinisi akhahlamezekile; futhi
- (e) kwakungukuhlinzekela okunye okuphathelene nalokho.

1.4 UMthetho oyisisekelo ngemuva kwalokho wachitshiyelwa uMthetho wokuChitshiyelwa kwesiKhwama sokuHlunyeleliswa kwamaBhizinisi waKwaZulu-Natali, 2003 (uMthetho No. 2 ka 2003).

1.5 Yomibili iMithetho okunguMthetho oyisisekelo kanye noMthetho osuchitshiyelwe yehlulekile ukuveza izinhlinzeko zesikhashana mayelana nokuhlakazwa kwesiKhwama.

1.6 Ngenxa yalokhu okungasenhla, lo Mthethosivivinyo uhlose –

(a) ukuhlakaza nokushabalalisa isiKhwama futhi uhlinzekele ukudluliselwa kwempahla kanye nezikweletu zesiKhwama eMnyangweni wezokuThuthukiswa koMnotho waKwaZulu-Natali.

## **2. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE**

UHulumeni wesiFundazwe saKwaZulu-Natali njengamanje uphethe uHlelo lokuHlunyeleliswa kwamaBhizinisi. Kunombono wokuthi uMthethosivivinyo uzokwehlisa umthwalo kwezokuphatha kuHulumeni wesiFundazwe. Ngakho-ke, uMthethosivivinyo angeke wenyuse izidingo kwezokuphatha nakwezabasebenzi.

Ngokunjalo izimali ezisuka kwisiKhwama sezidluliselwe oPhikweni lwamaBhizinisi amancane (SMME) lweBhange lthala, ngokwesivumelwano sangomhla zingama-26 kuNhlolanja 2008.

## **3. IZINGQINAMBA KWEZEZIMALI KUHULUMENI WESIFUNDAZWE**

Kuyiqiniso elimsulwa ukuthi uMthethosivivinyo kuhloswe ngawo ukuchitha, akunazinkomba zokuthi uMthethosivivinyo uyokwenyusa umthamo wezimali ezidingekayo ukuze kuhlakazwe isiKhwama. UMthethosivivinyo angeke ube nomthelela kwisabelomali sesifundazwe.

Ngakho-ke angeke kube khona zingqinamba zezimali.

**4. IMINYANGO/ IMIGWAMANDA ETHINTIWE**

UMthethosivivinyo washicilelwa kwiGazethi yesiFundazwe ukuze izikhungo nabantu baphawule. UMthethosivivinyo wabe sewubhalwa kabusha emva kwalokho ukuze kwamukelwe izimvo ezatholakala.

**5. IZINGQINAMBA EZIMAYELANA NOMTHETHOSISEKELO**

Azikho.

No. 5

12 January 2010

## KWAZULU-NATAL LEGISLATURE

### PUBLICATION OF ALLOCATIONS FROM POLITICAL PARTIES FUND

In terms of Section 7 of the KwaZulu-Natal Funding of Represented Political Parties Act, Act No. 7 of 2008, I, Nerusha Naidoo, Secretary of the KwaZulu-Natal Legislature hereby publish allocations made from Political Parties' Fund for the period ended 31 March 2009:

#### **Allocations to represented political parties for the period ended 31 March 2009**

- (a) Opening balance at the commencement of the financial year:  
As at 01 April 2008 the fund did not exist and the balance was therefore nil.
- (b) The amount and source of moneys paid into the Political Parties' Fund.  
R20 million was received from the equitable share.
- (c) Names of the Parties to whom allocations were made, and the amounts of those allocations.

<b>Political party</b>	<b>Allocated amount</b>
ACDP	R 771,429
ANC	R 8,771,429
DA	R 1,571,429
IFP	R 5,971,429
MF	R 971,429
NADECO	R 1,171,429
UDM	R 771,429
	<b>R 20,000,000</b>

- (d) The amounts invested by the Political Parties' Fund in terms of section 5(3) above, and the interest earned thereon:  
To date no investment account has been opened as the Act does not allow funds to be invested anywhere else other than the Public Investment Corporation.

- (e) The closing balance of moneys held by the Political Parties' Fund at the end of the financial year:

The balance was nil at the end of the financial period.

**Nerusha Naidoo**

**Secretary: KwaZulu-Natal Legislature**

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