



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

Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

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No. 1093

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Ikhasi

No. 1

13 February 2014

[English text signed by the Premier]

KWAZULU-NATAL
LIQUOR LICENSING AMENDMENT ACT, 2013
(Act No. 03 of 2013)

Assented to on 31-10-2013

ACT

To amend the KwaZulu-Natal Liquor Licensing Act, 2010, so as to substitute the definition of "sports ground"; to provide for the micro-manufacturing and retail sale of methylated spirits; to further regulate the conversion of licences or approvals; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 6 of 2010

1. Section 1 of the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 6 of 2010), hereinafter referred to as the principal Act, is hereby amended by the substitution for the definition of "sports ground" of the following definition:

"sports ground" means a place where sports meetings, games or recreational activities are held: Provided that such place is not situated within the premises of any religious or learning institution;

Amendment of section 2 of Act 6 of 2010

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) to provide for the regulation of the micro-manufacturing and the retail sale of liquor and methylated spirits;

Insertion of section 60A in Act 6 of 2010

3. The following section is hereby inserted after section 60 of the principal Act:

"Methylated spirits"

60A. The provisions of Part 4 of this Chapter apply with the necessary changes to the micro-manufacturing of methylated spirits."

Amendment of section 76 of Act 6 of 2010

4. Section 76 of the principal Act is hereby amended by –

(a) the substitution for the section heading of the following section heading:

"Prohibition on sale [or] and supply of liquor or methylated spirits to certain persons"; and

(b) the addition after subsection (3) of the following subsection:

"(4) The provisions of this section apply with the necessary changes to the sale or supply of methylated spirits to certain persons."

Amendment of section 95 of Act 6 of 2010

5. Section 95 of the principal Act is hereby amended by the addition after subsection (1) of the following subsection:

“(1A) The provisions of subsection (1) do not apply to convenience stores licensed to sell liquor before the coming into operation of this Act.”.

Amendment of section 99 of Act 6 of 2010

6. Section 99 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The responsible Member of the Executive Council **[may]** must make regulations regarding –

- (a) the payment and amount of any fees payable in terms of this Act in respect of –
 - (i) any application made in terms of this Act;
 - (ii) the issue of a licence or permit; and
 - (iii) the annual fee payable by a licensed person in respect of each licence issued;
- (b) the form of licences, permits, consents, approvals, certificates, determinations, notices, including compliance notices and other documents referred to in this Act;
- (c) the manner and form in which, and the days on which, if applicable, any application in terms of this Act may or must be made and lodged;
- (d) the manner and form of service, delivery or despatch of any notice or other document required to be served, delivered or despatched in terms of this Act;
- (e) the manner and form of publication of any notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) the content and form of an inspection report or other report or recommendation to be made or given in terms of this Act;
- (h) the manner and form in which an objection hearing or a hearing in respect of a compliance notice in terms of section 89 must be conducted;
- (i) time periods, or the **[extention]** extension of time periods, to be prescribed in terms of this Act;

- (j) the details of premises in respect of which licensing is sought that must be included in an application for a licence;
- (k) the manner and form in which an application for appeal or review to the responsible Member of the Executive Council must be made;
- (l) the manner in which proceedings and meetings must be conducted by the responsible Member of the Executive Council;
- (m) the tariff of witness fees payable on appeal or review proceedings;
- (n) the form of a certificate issued to an inspector;
- (o) the manner and form in which a complaint must be submitted to the Liquor Authority;
- (p) the procedure to be followed for the cancellation of a licence or permit on conviction of an offence in terms of section 98;
- (q) the manner and form in which an application for temporary amnesty must be made;
- (r) the manner and form in which an application for payment of annual fees as contemplated in section 64 must be made;
- (s) the retail, sale and micro-manufacturing of methylated spirits;
- (t) the quantities of methylated spirits which may be sold on any occasion to any person and the receptacles in which methylated spirits may be sold;
- (u) the prohibition or restriction of the purchase or possession of methylated spirits, including the granting of permits for the purchase or possession thereof;
- (v) the trading hours for outlets engaged in the retail and sale of methylated spirits;
- ~~[(s)]~~(w) any matter which must or may be prescribed in terms of this Act; and
- ~~[(t)]~~(x) in general, any matter in respect of which the responsible Member of the Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs.”.

Amendment of section 101 of Act 6 of 2010

7. Section 101 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

“(6) Notwithstanding the provisions of section 39, the responsible Member of the Executive Council must –

- (a) in accordance with the transitional provisions of the Liquor Act; and

(b) by notice in the *Gazette*,
provide for the conversion of any licence or approval, not set out in the first column of
Schedule 2 to this Act, but in force on the day before the date of commencement of the
KwaZulu-Natal Liquor Licensing Amendment Act, 2013, to any licence or approval in the
category set out in the second column of Schedule 2 to this Act.”.

Short title

8. This Act is called the KwaZulu-Natal Liquor Licensing Amendment Act, 2013.

No. 1

13 Februarie 2014

[Engelse teks deur die Premier geteken]

KWAZULU-NATAL
WET OP DRANKLISENSIËRING, 2013
(No. 03 van 2013)

Goedgekeur op 31-10-2013

WET

Om die KwaZulu-Natal Wet op Dranklisensiëring, 2010, te wysig om sodoende die omskrywing van "sportterrein" te vervang; om voorsiening te maak vir die mikrovervaardiging en kleinhandelverkope van brandspiritus; om die omskakeling van lisensies of goedkeurings verder te reguleer; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD BEPAAL deur die Provinsiale Wetgewer van die Provinsie van KwaZulu-Natal soos volg:-

Wysiging van artikel 1 van Wet 6 van 2010

1. Artikel 1 van die KwaZulu-Natal Wet op Dranklisensiering, 2010 (Wet No. 6 van 2010), hierna verwys na as die Hoofwet, word hiermee gewysig deur die vervanging van die omskrywing van "sportterrein" deur die volgende omskrywing:

"sportterrein" 'n plek waar sportbyeenkomste, wedstryde of ontspanningsfasiliteite gehou word: Met dien verstande dat sodanige plek nie geleë is binne die perseel van enige godsdienstige of opvoedkundige instelling nie;".

Wysiging van artikel 2 van Wet 6 van 2010

2. Artikel 2 van die Hoofwet word hiermee gewysig deur die vervanging van paragraaf (a) van subartikel (1) deur die volgende paragraaf:

"(a) om voorsiening te maak vir die regulering van die mikrovervaardiging en die kleinhandelverkope van drank en brandspiritus;".

Invoeging van artikel 60A in Wet 6 van 2010

3. Die volgende artikel word hiermee ingevoeg na artikel 60 van die Hoofwet:

"Brandspiritus

60A. Die bepalings van Deel 4 van hierdie Hoofstuk is van toepassing met die nodige veranderinge aan die mikrovervaardiging van brandspiritus."

Wysiging van artikel 76 van Wet 6 van 2010

4. Artikel 76 van die Hoofwet word hiermee gewysig deur –

(a) die vervanging van die opskrif van die artikel deur die volgende opskrif van die artikel:

"Verbod op verkoop [of] en verskaffing van drank of brandspiritus aan sekere persone"; en

(b) die invoeging na subartikel (3) van die volgende subartikel:

"(4) Die bepalings van hierdie artikel is van toepassing, met die nodige veranderinge, op die verkoop of verskaffing van brandspiritus aan sekere persone."

Wysiging van artikel 95 van Wet 6 van 2010

5. Artikel 95 van die Hoofwet word hiermee gewysig deur die invoeging na subartikel (1) van die volgende subartikel:

“(1A) Die bepalings van subartikel (1) is nie van toepassing op geriefswinkels wat gelisensieer is om drank te verkoop voor die inwerkingtreding van hierdie Wet nie.”.

Wysiging van artikel 99 van Wet 6 van 2010

6. Artikel 99 van die Hoofwet word hiermee gewysig deur die vervanging van subartikel (1) deur die volgende subartikel:

“(1) Die verantwoordelike Lid van die Uitvoerende Raad [kan] moet regulasies uitvaardig rakende –

(a) die betaling en bedrag van enige fooie betaalbaar ingevolge hierdie Wet met betrekking tot –

(i) enige aansoek gedoen ingevolge hierdie Wet;

(ii) die uitreiking van 'n lisensie of permit; en

(iii) die jaargeld betaalbaar deur 'n lisensiehouer met betrekking tot elke lisensie uitgereik;

(b) die formaat van lisensies, permitte, toestemming, goedkeurings, sertifikate, bepalings, kennisgewings, insluitend nakomingskennisgewings en ander dokumente vermeld in hierdie Wet;

(c) die wyse en formaat, asook die dae waarop, indien van toepassing, enige aansoek ingevolge hierdie Wet gedoen en ingedien kan of moet word;

(d) die wyse en formaat van diens, aflewering of afsending van enige kennisgewing of ander dokument wat ingevolge hierdie Wet beteken, afgelewer of afgesend moet word;

(e) die wyse en formaat van publikasie van enige kennisgewing of ander dokument wat ingevolge hierdie Wet gepubliseer moet word;

(f) die formaat, inhoud en grootte, waar van toepassing, van enige kennisgewing, kommunikasie of ander dokument wat ingevolge hierdie Wet uitgereik, afgelewer, beteken, gegee of gepubliseer moet word;

(g) die inhoud en formaat van 'n inspeksieverslag of ander verslag of aanbeveling wat ingevolge hierdie Wet gemaak of gegee moet word;

- (h) die wyse en formaat waarin 'n beswaarverhoor of 'n verhoor met betrekking tot 'n nakomingskennisgewing ingevolge artikel 89 uitgevoer moet word;
- (i) tydperke, of die verlenging van tydperke, wat ingevolge hierdie Wet voorgeskryf moet word;
- (j) die besonderhede van 'n perseel met betrekking waartoe lisensiëring vereis word wat ingesluit moet wees in 'n aansoek om 'n lisensie;
- (k) die wyse en formaat waarop 'n aansoek om appèl of hersiening aan die verantwoordelike Lid van die Uitvoerende Raad uitgevoer moet word;
- (l) die wyse waarop verrigtinge en vergaderings deur die verantwoordelike Lid van die Uitvoerende Raad uitgevoer moet word;
- (m) die tarief van getuiefooie betaalbaar by appèl- of hersieningsverrigtinge;
- (n) die formaat van 'n sertifikaat uitgereik aan 'n inspekteur;
- (o) die wyse en formaat waarop 'n klagte aan die Drankowerheid voorgelê moet word;
- (p) die prosedure wat gevolg moet word vir die kansellasië van 'n lisensie of permit by skuldigbevinding aan 'n misdryf ingevolge artikel 98;
- (q) die wyse en formaat waarop 'n aansoek om tydelike amnestie gedoen moet word;
- (r) die wyse en formaat waarop 'n aansoek om betaling van jaargelde soos bedoel in artikel 64 gedoen moet word;
- (s) die kleinhandel, verkoop en mikrovervaardiging van brandspiritus;
- (t) die hoeveelhede brandspiritus wat verkoop mag word by enige geleentheid aan enige persoon en die houers waarin brandspiritus verkoop mag word;
- (u) die verbod of beperking op die koop of besit van brandspiritus, ingesluit die toestaan van permitte vir die aankoop of besit daarvan;
- (v) die handelsure vir verkooppunte betrokke by die kleinhandel en verkoop van brandspiritus;
- ~~[(s)]~~(w) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of mag wees; en
- ~~[(t)]~~(x) in die algemeen, enige aangeleentheid met betrekking waartoe die verantwoordelike Lid van die Uitvoerende Raad dit nodig of wenslik ag om regulasies uit te vaardig ten einde die oogmerke van hierdie Wet te bereik, met die algemeenheid van hierdie paragraaf nie beperk deur die voorafgaande paragrawe nie.”.

Wysiging van artikel 101 van Wet 6 van 2010

7. Artikel 101 van die Hoofwet word hiermee gewysig deur die invoeging na subartikel (5) van die volgende subartikel:

“(6) Nieteenstaande die bepalings van artikel 39 kan die verantwoordelike Lid van die Uitvoerende Raad –

(a) in ooreenstemming met die oorgangsbepalings van die Drankwet; en

(b) deur kennisgewing in die Koerant,

voorsiening maak vir die omskakeling van enige lisensie of goedkeuring, nie uiteengesit in die eerste kolom van Bylae 2 tot hierdie Wet nie, maar van krag op die dag voor die datum van inwerkingtreding van die KwaZulu-Natal Wysigingswetsontwerp op Dranklisensiering, 2013, na enige lisensie of goedkeuring in die kategorie soos uiteengesit in die tweede kolom van Bylae 2 tot hierdie Wet.”.

Korttitel

8. Hierdie Wet word die KwaZulu-Natal Wysigingswet op Dranklisensiering, 2013 genoem.

MEMORANDUM

OOOR DIE OOGMERKE VAN DIE

KWAZULU-NATAL WYSIGINGSWETSONTWERP OP DRANKLISENSIERING, 2013

1. ALGEMENE AGTERGROND

Die doel van die Wetsontwerp is om die KwaZulu-Natal Wet op Dranklisensiering, 2010 (Wet No. 6 van 2010), te wysig ten einde –

(a) die potensiële uitdagings vir die KwaZulu-Natal Drankowerheid met die omskakeling van lisensies ingevolge artikel 101 van die KwaZulu-Natal Wet op Dranklisensiering, 2010 (Wet No. 6 van 2010); en

(b) die kommer dat die omskrywing van "sportterrein" wel sportterreine insluit wat geleë is binne die perseel van enige godsdienstige of opvoedkundige inrigtings en sodoende die verkoop van drank binne 'n radius van 500 meter vanaf enige godsdienstige of opvoedkundige inrigting wetlik maak,

aan te spreek.

Vervolgens en ooreenkomstig 'n versoek gerig deur die verantwoordelike Lid van die Uitvoerende Raad in Desember 2011 om oorleg te pleeg met die Minister van Handel en Nywerheid betreffende die implementering van die KwaZulu-Natal Wet op Dranklisensiëring, 2010, en die herroeping van die Drankwet, 1989 (Wet No. 27 van 1989), welke oorlegpleging voorgeskryf word deur item 2(2) van Bylae 1 tot die Drankwet, 1989, in KwaZulu-Natal, is kommer geopper deur die Agbare Minister van Handel en Nywerheid ten opsigte van die uitsluiting van bepalinge betreffende die regulering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus in die KwaZulu-Natal Wet op Dranklisensiëring, 2010. Desnoods het dit die Provinsie genoodsaak om brandspiritus te reguleer ten einde dit moontlik te maak vir die KwaZulu-Natal Wet op Dranklisensiëring, 2010, om in ooreenstemming gebring te word met die Nasionale Drankwet, 2003 (Wet No. 59 van 2003)

'n Verdere kommerwekkende aangeleentheid geopper deur die Nasionale Departement van Handel en Nywerheid was dat artikel 99 van die KwaZulu-Natal Wet op Dranklisensiëring, 2010, regulering slegs 'n diskresionêre bevoegdheid van die verantwoordelike Lid van die Uitvoerende Raad maak en, ideal gesproke, moet sodanige bepaling beslissend wees ten einde die Provinsie te genoodsaak om aangeleenthede waarvoor voorsiening gemaak is in artikel 99 te reguleer.

'n Behoeftes is ook geïdentifiseer om die regte te beskerm van die lisensiehouers van geriefswinkels wat nie genoegsaam beskerm word in die tussentydse, hangende omskakelings ingevolge artikel 101 van die KwaZulu-Natal Wet op Dranklisensiëring, 2010, nie.

Die gevolgtrekking is dus dat die KwaZulu-Natal Wet op Dranklisensiëring, 2010, nie die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus reguleer nie en is dus nie in ooreenstemming met die Nasionale Drankwet, 2003, nie. Die KwaZulu-Natal Wet op Dranklisensiëring, 2010, moet aldus gewysig word om in ooreenstemming gebring te word met die Nasionale Drankwet, 2003.

2. KLOUSULE VIR KLOUSULE VERDUIDELIKING

Ter opsomming, maak die Wysigingswetsontwerp voorsiening soos volg –

KLOUSULE 1:

Klousule 1 herdefinieer die omskrywing van "sportterrein" ten einde sportterreine geleë binne die terreine van or naby enige godsdienstige of opvoedkundige inrigtings uit te sluit.

KLOUSULE 2:

Klousule 2 maak voorsiening vir die insluiting van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus as een van die oogmerke van die Wet.

KLOUSULE 3:

Klousule 3 reguleer die aansoekproses vir die lisenasiering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus.

KLOUSULE 4:

Klousule 4 maak voorsiening vir die verbod op die die verkope en verskaffing van brandspiritus aan sekere persone.

KLOUSULE 5:

Klousule 5 maak voorsiening vir tussentydse beskerming van die regte van drankgelisensieerders van geriefswinkels, hangende die omskakelingsproses bedoel in artikel 101 van die Wet.

KLOUSULE 6:

Klousule 6 maak die verantwoordelikheid om te reguleer verpligtend of beslissend eerder as diskresionêr. Verder beoog dit om voorsiening te maak vir die regulering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus.

KLOUSULE 7:

Klousule 7 bemagtig die verantwoordelike Lid van die Uitvoerende Raad om 'n magtigingsraamwerk of prosedure vir die omskakeling van enige lisensie of goedkeuring, nie uiteengesit in die eerste kolom van Bylae 2 tot die Wet nie, maar van krag op die dag voor die aanvangsdatum van die Wet, na enige lisensie of goedkeuring in die kategorie soos uiteengesit in die tweede kolom van Bylae 2 tot die Wet.

KLOUSULE 8:

Klousule 8 maak voorsiening vir die kottitel van die Wet.

3. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige organisatoriese en personeelimplikasies word voorsien nie.

4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige implikasies word voorsien nie.

5. DEPARTEMENTE / LIGGAME / PERSONE GERAADPLEEG

Hierdie Wetsontwerp is opgestel in oorleg met –

- 5.1 die Nasionale Departement van Justisie – Staatsregsadviesdienste;
- 5.2 die Nasionale Departement van Handel en Nywerheid;
- 5.3 die KwaZulu-Natal Drankowerheid;
- 5.4 die Kantoor van die Premier – Staatsregsadviesdienste; en
- 5.5 die Provinsiale Tesourie / die Provinsiale Departement van Finansies.

6. GRONDWETLIKE IMPLIKASIES

Grondwetlike implikasies word aangespreek deur die beoogde wysiging.

7. KONTAKPERSOON

Naam: Advokaat SS Nkatha
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No. 1

13 kuNhlolanja 2014

[Umbhalo weSingisi unyathelwe nguNdunankulu]

UMTHETHO WOKUCHIBIYELA UMTHETHO WAMALAYISENSI OTSHWALA WAKWAZULU-NATALI, 2013

(Umthetho Na. 03 ka 2013)

Uvunywe mhlaka 31-10-2013

UMTHETHO

Wokuchibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 (uMthetho No. 6 ka 2010), ngokuthi kushintshwe incazelo “yenkundla yezemidlalo”; wokuhlinzekela ukuphiswa nokudayiswa kwezipirithi ezine-ethanol eziwumthamo omncane; wokuhlinzekela ukuguqulwa kwamalayisensi noma kwezimvume; kanye nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

Ukuchitshiyelwa kwesigaba 1 soMthetho 6 ka 2010

1. Isigaba 1 soMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 (uMthetho No. 6 ka 2010), ngemuva kwalokhu ozobizwa ngoMthetho omkhulu, ngalokhu siyachitshiyelwa ngokufakwa kwale ncazelo elandelayo esikhundleni sencazelo “yenkundla yezemidlalo”:

“**“inkundla yezemidlalo”** kushiwo indawo lapho kubanjwa khona imihlangano yezemidlalo, imidlalo noma ezoungcebeleka: Kuncike ekutheni leyo ndawo ayikho esikhungweni sezenkolo noma sezemfundo;”.

Ukuchitshiyelwa kwesigaba 2 soMthetho 6 ka 2010

2. Isigaba 2 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufakwa kwale ndima elandelayo esikhundleni sendima (a) yesigatshana (1):

“(a) ukuhlinzekela ukulawulwa kokuphiswa kotshwala obuwumthamo omncane nokudayiswa kotshwala nezipirithi ezine-ethanol;”.

Ukufakwa kwesigaba 60A soMthetho 6 ka 2010

3. Ngalokhu kufakwa lesi sigaba esilandelayo ngemuva kwesigaba 60 soMthetho omkhulu:

“Izipirithi ezine-ethanol

60A. Izinhlizeko zeNgxenye 4 yalesi Sahluko zisebenza nezinguquko ezifanele uma kuphiswa izipirithi ezine-ethanol eziwumthamo omncane.”.

Ukuchitshiyelwa kwesigaba 76 soMthetho 6 ka 2010

4. Isigaba 76 soMthetho omkhulu ngalokhu siyachitshiyelwa –

(a) ngokufakwa kwalesi sihloko esikhulu esilandelayo esikhundleni sesihloko esikhulu:

“**Ukwenqatshelwa kokudayiswa [noma] kanye nokuhlinzekwa kotshwala noma kwezipirithi ezine-ethanol kubantu abathile;**” kanye

(b) nangokwengezwa kwalesi sigatshana ngemuva kwesigatshana (3):

“(4) Izinhlizeko zalesi sigatshana zisebenza nezinguquko ezidingekayo uma kudayiswa noma kuhlinzekwa izipirithi ezine-ethanol kubantu abathile.”

Ukuchitshiyelwa kwesigaba 95 soMthetho 6 ka 2010

5. Isigaba 95 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokwengezwa kwalesi sigatshana esilandelayo ngaphambi kwesigatshana (1):

“(1A) Izinhlizeko zesigatshana (1) azisebenzi ezitolo ezincane ezathola amalayisensi okudayisa utshwala ngaphambi kokuqala kokusebenza kwalo Mthetho.”

Ukuchitshiyelwa kwesigaba 99 soMthetho 6 ka 2010

6. Isigaba 99 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufakwa kwalesi sigatshana esilandelayo esikhundleni sesigatshana (1):

“(1) ILungu loMkhandlu oPhethe [lingasungula] kumele lisungule imithethonqubo emayelana –

(a) nokukhokhwa kwezimali kanye nesamba semali ekhokhwayo ngokwalo Mthetho ephathelene –

(i) nesicelo esenziwe ngokwalo Mthetho;

(ii) nokukhishwa kwelayisensi noma kwemvume; kanye

(iii) nezimali ezikhokhwa minyaka yonke umnikazi welayisensi maqondana nelayisensi ngayinye ekhishiwe;

(b) nezinhlangotho zamalayisensi, zezimvume, zokugunyazwa, zezitifiketi, zezinqumo, zezaziso, kubandakanya nezaziso zokulandelwa komthetho neminye imibhalo okukhulunywe ngayo kulo Mthetho;

(c) nendlela nohlobo, kanjalo nosuku okumele kwenziwe noma kufakwe ngalo isicelo ngokwalo Mthetho, uma kukhona;

(d) nendlela yokuhanjiswa, yokuthunyelwa noma yokukhishwa kwanoma isiphi isaziso noma omunye umbhalo okudingeka uhanjise, uthunyelwe noma ukhishwe ngokwalo Mthetho;

(e) nendlela yokushicilelwa kwanoma isiphi isaziso noma umbhalo okudingeka ushicilelwe ngokwalo Mthetho;

- (f) nohlobo, nokuqukethwe kanye nobungako banoma isiphi isaziso, incwadi noma omunye umbhalo okudingeka ukhishwe, uhanjiswe, uhlinzekwe noma ushicilelwe ngokwalo Mthetho, uma kunesidingo;
- (g) nohlobo nokuqukethwe umbiko wokuhlola neminye imibiko noma izincomo ezenziwe noma ezikhishwe ngokwalo Mthetho;
- (h) nendlela nohlobo okumele kuhlelwe ngayo izigcawu zokulalela iziphikiso noma ezinye izigcawu ezimayelana nokulandelwa kwesaziso esenziwe ngokwesigaba 89;
- (i) nezikhathi, noma nokwelulwa kwezikhathi, okumele kunqunywe ngokwalo Mthetho;
- (j) neminingwane yezakhiwo okuzobekwa kuzo ilayisensi okumele ifakwe esicelweni selayisensi;
- (k) nendlela okumele kufakwe ngayo isicelo sokukhalaza noma kubuyekezwe ngayo isicelo yiLungu loMkhandlu oPhethe;
- (l) nendlela okumele iLungu loMkhandlu oPhethe libize ngayo imihlangano noma izigcawu;
- (m) nezimali ezikhokhelwa ofakazi uma bebizelwe emacaleni;
- (n) nefomu lesitifiketi elikhishwa umhloli;
- (o) nendlela okumele kufakwe ngayo isicelo kuMaziphathe woTshwala;
- (p) nenqubo elandelwayo uma kwesulwa ilayisensi noma imvume ngenxa yokutholakala necala ngokwesigaba 98;
- (q) nendlela okumele kufakwe ngayo isicelo sokuthola ushwele wesikhashana;
- (r) nendlela okumele kufakwe ngayo isicelo sokukhokhwa kwezimali zaminyaka yonke njengoba kuhlongozwe esigabeni 64;
- (s) nokuhweba, nokudayisa kanye nokukhiqizwa kwezpirithi ezine-ethanol eziwumthamo omncane;
- (t) nomthamo wezipirithi ezine-ethanol ongadayiselwa noma imuphi umuntu noma inini nezindawo lapho kungadayiswa khona izipirithi ezine-ethanol;
- (u) nokwenqatshelwa noma nokulawulwa kokudayiswa noma kokugcinwa kwezpirithi ezine-ethanol, kubandakanya ukukhishwa kwezimvume zokuzidayisa noma zokuzigcina;
- (v) namahora okusebenza kwezitolo ezihweba nezidayisa izipirithi ezine-ethanol;
- [(s)](w) nanoma iluphi udaba okumele lunqunywe noma olunganqunywa ngokwalo Mthetho; kanye

~~[(t)](x)~~ nanoma iluphi olunye udaba iLungu loMkhandlu oPhethe elilubona lunesidingo noma lubalulekile ukwenza imithethonqubo ukuze kufezekiswe izinhloso zalo Mthetho, ukusebenza kwale ndima akugcini nje kuphela ngalezi zindima ezingenhla.”.

Ukuchitshiyelwa kwesigaba 101 soMthetho 6 ka 2010

7. Isigaba 101 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokwengezwa kwalesi sigatshana esilandelayo ngemuva kwesigatshana (5):

“(6) Ngale kokulandela izinhlinzeko zesigaba 39, iLungu loMkhandlu oPhethe kumele –

(a) ngokulandela izinhlinzeko zesikhashana zoMthetho woTshwala;

(b) nangesaziso kwiGazethi,

lihlizzekele ukuguqulwa kwanoma iyiphi ilayisensi noma imvume, engekho ohlwini loHlelo 2 lwalo Mthetho, kodwa ebisebenza ngosuku olungaphambi kosuku lokuqala kokusebenza koMthetho wokuChibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2013, ibe inoma iyiphi ilayisensi noma imvume emikhakheni ebekwe ohlwini lwesibili loHlelo 2 lwalo Mthetho.”.

Isihloko esifingqiwe

8. Lo Mthetho ubizwa ngoMthetho wokuChibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2013.

No. 2

13 February 2014

[English text signed by the Premier]

**KWAZULU-NATAL
CONSUMER PROTECTION ACT, 2013
(Act No. 04 of 2013)**

Assented to on 31-10-2013

ACT

To provide for the realisation and protection of consumer rights in KwaZulu-Natal; to provide for the establishment of the KwaZulu-Natal Office of the Consumer Protector; to determine the objects, powers, duties and functions of the Office of the Consumer Protector; to provide for the investigation of consumer complaints; to provide for redress for consumers; to provide for consumer education and awareness of consumer rights and responsibilities; to provide for the establishment of Consumer Tribunals; to determine the objects, powers, duties and functions of Consumer Tribunals; 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

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CHAPTER 2 OBJECTS OF ACT, EXEMPTIONS AND FUNCTIONS OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

2. Objects of Act
3. Exemptions
4. Functions of responsible Member of Executive Council

CHAPTER 3 AGENCIES FOR CONSUMER PROTECTION IN KWAZULU-NATAL

5. Establishment of KwaZulu-Natal Office of Consumer Protector
6. Objects of Office of Consumer Protector
7. Powers, duties and functions of Office of Consumer Protector
8. Establishment of Consumer Tribunals
9. Objects of Consumer Tribunal
10. Powers, duties and functions of Consumer Tribunal
11. Composition of Consumer Tribunal
12. Disqualification from being appointed to Consumer Tribunal
13. Declaration of financial or other interests of members of Consumer Tribunal
14. Failure to declare financial or other interests by member of Consumer Tribunal
15. Term of office of member of Consumer Tribunal
16. Vacancies, removal from office and resignation of members of Consumer Tribunal
17. Temporary suspension of member of Consumer Tribunal
18. Constitution of Consumer Tribunal
19. Remuneration of members of Consumer Tribunal
20. Expert and other assistance to Consumer Tribunal
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- 45. Regulations
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CHAPTER 1
DEFINITIONS

Definitions

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

“**business**” means –

- (a) offering, supplying or making available any commodity; or
- (b) soliciting or receiving of any investment;

“**Commission**” means the National Consumer Commission established in terms of section 85 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**co-operative**” means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);

“**consumer**” in respect of any particular goods or services, means—

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the

application of this Act by section 5(2) or in terms of section 5(3);

(c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and

(d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e);

“Consumer Protector” means the person appointed as head of the KwaZulu-Natal Office of the Consumer Protector in terms of section 5(3);

“consumer protection group” means any consumer protection group as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“Consumer Tribunal” means a consumer tribunal established for the Province in terms of section 8(1);

“court” means any court contemplated in chapter 8 of the Constitution, other than the Consumer Tribunal;

“Department” means the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“display” when used—

(a) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or

(b) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services

“Executive Council” means the Executive Council of the Province of KwaZulu-Natal as contemplated in section 132 of the Constitution;

“facility” means any premises, space or equipment set up to fulfill a particular function, or at , in, or on which a particular service is available;

“financial interest” means ownership of shares in a company, a member’s interest in a close corporation, an interest in a partnership and, in respect of business or undertaking, any interest which enables the holder thereof to share in the profits and income of such business or undertaking;

“Gazette” means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

“goods” includes—

(a) anything marketed for human consumption;

(b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;

(c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;

(d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ in this section; and

(e) gas, water and electricity;

“Head of Department” means the most senior officer of the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“investigator” means a person appointed in terms of section 31(1)(a);

“Member of the Executive Council for Finance” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

“Office” means the KwaZulu-Natal Office of the Consumer Protector established in terms of section 5(1);

“office bearer” means –

- (a) a member of the National Assembly, the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature or Executive Council of a province;
- (c) a municipal councilor;
- (d) a diplomatic representative of the Republic who is not a member of the public service;
- (e) a member of the house of traditional leaders; or
- (f) a national or provincial office bearer of a political party, organization, body, alliance or movement registered in terms of section 15 or 15A of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“ombud with jurisdiction” in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is—

- (a) subject to the jurisdiction of an ‘ombud’, or a ‘statutory ombud’, in terms of any national legislation, means that ombud, or statutory ombud; or
- (b) a ‘financial institution’, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), means ‘the ombud’, as determined in accordance with section 13 or 14 of that Act;

“person” means a natural or a juristic person, a group of such persons or a corporate body, unless the context indicates a contrary meaning;

“Portfolio Committee” means the Portfolio Committee of the Provincial

Legislature responsible for economic development and tourism;

“**premises**” means land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“**prescribed**” means prescribed by regulation, and “**prescribe**” has a corresponding meaning;

“**price**” when used in relation to—

(a) a representation required to be displayed by section 23, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or

(b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

“**prohibited conduct**” means an act or an omission in contravention of this Act;

“**promote**” means to –

(a) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration;

(b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or

(c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction;

“Province” means the province of KwaZulu-Natal established in terms of section 103 of the Constitution and **“provincial”** has a corresponding meaning;

“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;

“public servant” means a public servant as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes a municipal employee;

“regulations” means regulations made in terms of this Act;

“regulatory authority” means an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of any industry;

“respondent” means a person or firm against whom a complaint or application has been initiated in terms of this Act;

“responsible Member of the Executive Council” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for consumer affairs;

“retailer” with respect to particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer;

“Revenue Fund” means the Provincial Revenue Fund established in terms of section 226 of the Constitution;

“service” includes, but is not limited to—

(a) any work or undertaking performed by one person for the direct or indirect benefit of another;

- (b) the provision of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- (c) any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service—
- (i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or
- (ii) is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- (d) the transportation of an individual or any goods;
- (e) the provision of—
- (i) any accommodation or sustenance;
- (ii) any entertainment or similar intangible product or access to any such entertainment or intangible product;
- (iii) access to any electronic communication infrastructure;
- (iv) access, or of a right of access, to an event or to any premises, activity or facility; or
- (v) access to or use of any premises or other property in terms of a rental;
- (f) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and
- (g) rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e),
- irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service;

“**service provider**” means a person who promotes, supplies or offers to supply any service;

“**supplier**” means a person who market any goods or services;

“**supply**” when used as a verb—

(a) in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or

(b) in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration;

“**this Act**” includes the regulations; and

“**transaction**” means—

(a) in respect of a person acting in the ordinary course of business—

(i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or

(ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or

(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or

(b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a);

CHAPTER 2
OBJECTS OF ACT, EXEMPTIONS AND FUNCTIONS
OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

Objects of Act

2. The objects of this Act are –

- (a) to provide for a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to provide for mechanisms to foster consumer confidence;
- (c) to provide mechanisms for the protection of consumers in all areas of the Province whilst also aiming at promoting performance and competitiveness in the market place;
- (d) to lay a solid foundation for leveling the economic playing field between the historical vulnerability of consumers and the power and influence of business;
- (e) to promote and advance the social economic welfare of consumers in the Province; and
- (f) to provide for an accessible, consistent, harmonised, affective and effective system of redress for consumers in the Province.

Exemptions

3. This Act does not apply to –

- (a) an officer as defined in section 1(1) of the Customs and Exercise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions;
- (b) a sheriff or any officer of a court acting in terms of an order of a court; and
- (c) a judge or magistrate, acting in the performance of his or her functions.

Functions of responsible Member of Executive Council

4. The responsible Member of the Executive Council must –

- (a) within 12 months after the coming into operation of the Act, –
 - (i) develop a provincial policy and norms and standards pertaining to consumer matters and affairs;

- (ii) establish and set guidelines for the conduct of business regarding consumer matters and affairs in the Province;
- (b) where necessary, establish a social responsibility programme in respect of consumer issues; and
- (c) perform such other functions as may be assigned to him or her in terms of this Act.

CHAPTER 3 AGENCIES FOR CONSUMER PROTECTION IN KWAZULU-NATAL

Establishment of KwaZulu-Natal Office of Consumer Protector

5.(1) Subject to section 84 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), an office to be known the KwaZulu-Natal Office of the Consumer Protector, is hereby established.

(2) The Office contemplated in subsection (1) is not a juristic person.

(3) The responsible Member of the Executive Council must, in terms of the relevant provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint a Consumer Protector as head of the Office of the Consumer Protector at the level determined by the responsible Member of the Executive Council.

(4) Where the Consumer Protector is unable to discharge his or her duties for whatever reason, the responsible Member of the Executive Council must appoint a person as Acting Consumer Protector pending the appointment of a full-time Consumer Protector.

(5) The administrative and secretarial work incidental to the performance of the functions of the Office must be performed by officers in the Department designated and assigned for such purpose by the Head of Department.

(6) All staff members designated and assigned to provide administrative and secretarial support to the Office as contemplated in subsection (5), are subject to the control and the direction of the Consumer Protector.

(7) The Office 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).

(8) Where the need arises, the Consumer Protector may, in the performance of his or her duties and functions, be assisted by any person or body whose services may be obtained by him or her, on such terms and conditions and for such period as may be agreed upon, for the purposes of conducting a particular investigation on behalf of the Consumer Protector.

(9) A person referred to in subsection (8) may –

- (a) be dispatched to any part of the Province or Republic to conduct an investigation contemplated in subsection (8); and
- (b) be paid such remuneration, allowances and expenses as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

Objects of Office of Consumer Protector

6. The objects of the Office of Consumer Protector are –

- (a) to ensure the provision of a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to foster consumer confidence in the Province;
- (c) to ensure that the mechanisms provided to protect consumers in terms of this Act are in place;
- (d) to ensure that the foundation for leveling the economic playing field between historically vulnerable consumers and business is in place;
- (e) to ensure the promotion and advancement of the social economic welfare of consumers in the Province; and
- (f) to ensure that an accessible, consistent, harmonised, affective and effective system of redress is provided for consumers in the Province.

Powers, duties and functions of Office of Consumer Protector

7.(1) The Office of the Consumer Protector must –

- (a) receive and investigate consumer complaints in accordance with this Act;
- (b) facilitate the mediation or conciliation of disputes arising in terms of this Act between or among consumers, persons resident, or persons carrying on business, within the Province;
- (c) refer disputes contemplated in paragraph (b) to the relevant provincial Consumer Tribunal;
- (d) make recommendations to the responsible Member of the Executive Council and take remedial action in respect of complaints lodged with the Office;
- (e) advise the responsible Member of the Executive Council on any matter referred to the Office by the responsible Member of the Executive Council;
- (f) investigate and make recommendations to the responsible Member of the Executive Council, regarding any matter relating directly or indirectly to consumer matters, affairs or issues in the Province;
- (g) advise the responsible Member of the Executive Council on the development of a social responsibility programme aimed at promoting and advancing the social economic welfare of consumers in the Province;
- (h) assist the responsible Member of the Executive Council in formulating policy and in establishing norms and standards in the Province, as contemplated in section 4(a)(i) of this Act;
- (i) collaborate with national, provincial and international stakeholders and participate in all educational programmes aimed at promoting awareness to the stakeholders in the consumer industry with regard to handling and dealing with consumers;
- (j) initiate and participate in educational programmes aimed at reducing the abuse and exploitation of consumers in the Province
- (k) assist and advise the responsible Member of the Executive Council on the development of a programme in order to pursue the objects of the Act set out in section 2;
- (l) within the framework of national and provincial consumer policies, assist and advise the responsible Member of the Executive Council with regard to advising and guiding –
 - (i) the stakeholders in the consumer industry, consumers and

organizations or institutions whose activities or aims have an impact on or relate to consumer matters, affairs or issues in the Province; and

(ii) the business unit within the Department responsible for small business development, co-operatives, local economic development and economic empowerment, and similar business units within other departments in the Province; and

(iii) business and further ensuring that business complies with the standing policies and legislation pertaining to consumers; and

(m) perform such other functions as may be assigned to it in terms of this Act.

(2) In addition to the powers, duties and functions contemplated in subsection (1), the Office must, after 31 March of each year, submit to the responsible Member of the Executive Council, an annual report on its functions during the year ending including the activities as contemplated in subsection (1).

(3) The responsible Member of the Executive Council must table a copy of the annual report submitted in terms of subsection (1), to the Provincial Legislature within 14 days after receipt thereof.

Establishment of Consumer Tribunals

8.(1) The responsible Member of the Executive Council must, within 12 months after the coming into operation of the Act, by notice in the *Gazette*, establish one or more Consumer Tribunals for the Province.

(2) A Consumer Tribunal referred to in subsection (1) –

(a) is established for the area described in the notice; and

(b) has its seat at such place mentioned in the notice.

(3) The responsible Member of the Executive Council may by notice in the *Gazette* –

(a) amend the area for a Consumer Tribunal contemplated in subsection (2); or

(b) withdraw the notice contemplated in subsection (1) and abolish a Consumer Tribunal contemplated in subsection (1);

(4) The responsible Member of the Executive Council may, subject to section 10(1)(b), determine that, in relation to particular proceedings, a Consumer Tribunal sits at a place other than the seat of that Consumer Tribunal.

Objects of Consumer Tribunal

9. The objects of a Consumer Tribunal are –

- (a) to receive, hear and decide on any consumer matter; and
- (b) to dispose of any consumer complaint or dispute.

Powers, duties and functions of Consumer Tribunal

10.(1) A Consumer Tribunal must –

- (a) receive, hear, consider and decide on any consumer complaint which is before it by virtue of proceedings contemplated in this Act;
- (b) sit on such days and during such hours and at such place as the presiding officer or Chairperson, in consultation with the Consumer Protector, may determine;
- (c) hold and resume sittings at such time and place throughout the areas of the Province as the presiding officer or the Consumer Protector may determine;
- (d) apply the existing law of South Africa in the assessment of a consumer complaint or dispute;
- (e) lay down the general principles to govern conflict resolution between consumers and business;
- (f) order the Consumer Protector to record, in the list of adverse notations to be maintained and kept by the Office, the name of the business, the name of person conducting such business and the finding of a Consumer Tribunal in respect of subsection (2)(a), (b) and (c); and
- (g) exercise any other powers and perform the functions and duties assigned to it in terms of this Act.

(2) A Consumer Tribunal may –

- (a) award costs, on the scale to be prescribed or in the amount determined by the Consumer Tribunal, against any person found liable to the consumer by

virtue of any unlawful conduct, by conduct or omission in terms of this Act or under any existing law;

(b) with regard to a consumer complaint relating to a hard bargain or conduct which the consumer rightly believes to be inequitable, unfair or grossly unreasonable, make a finding to that effect;

(c) at the hearing of a consumer complaint, if it is satisfied that the complaint is lodged frivolously or vexatiously, award costs against such consumer; and

(d) generally deal with all matters necessary or incidental to the performance of its functions in terms of this Act.

(3) The presiding officer of a Consumer Tribunal must as soon as practicable, after 31 March in each year, submit to the responsible Member of the Executive Council an annual report on the activities of the Consumer Tribunal.

(4) The report submitted to the responsible Member of the Executive Council in terms of subsection (3) must include a list of adverse notations contemplated in section 10(1)(f).

(5) The responsible Member of the Executive Council may require a Consumer Tribunal to submit additional reports to him or her as the responsible Member of the Executive Council may require from time to time.

(6) The responsible Member of the Executive Council must submit to the Provincial Legislature a copy of the annual report contemplated in subsection (3), within 14 days after its receipt.

Composition of Consumer Tribunal

11.(1) A Consumer Tribunal consists of –

(a) six and not more than eight members appointed by the responsible Member of the Executive Council; and

(b) the Chairperson, appointed in terms of section 12 of this Act.

(2) The membership contemplated in subsection (1) must include –

(a) a Chairperson, who must be an admitted Attorney or Advocate or retired

magistrate or law lecturer at a university with at least five years' experience in the legal profession or the administration of justice;

(b) a deputy Chairperson, who must also be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least three years' experience in the legal profession or the administration of justice;

(c) one person having knowledge and experience in the field of consumer advocacy, economics and commerce;

(d) one person who has knowledge and experience in the consumer industry and not actively involved nor having financial interest therein, whether directly or indirectly;

(e) one person as a secretary of the Consumer Tribunal to perform administrative work incidental to the functions of the Consumer Tribunal; and

(f) one such other person to assist the secretary of the Consumer Tribunal as may be necessary.

(3) In appointing the members to a Consumer Tribunal, the responsible Member of the Executive Council must ensure that historic imbalances are addressed.

(4) The responsible Member of the Executive Council must, by notice in two newspapers circulating widely in the Province and using any other method designated to reach the greatest number of residents in the Province, invite persons or any interested parties within the Province to nominate candidates for appointment to a Consumer Tribunal.

(5) The notice contemplated in subsection (4), must specify –

(a) the nomination procedure;

(b) the requirements for nominations; and

(c) the closing date for the nominations.

(6) 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 no more than four senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council regarding the candidates to a Consumer Tribunal.

(7) The responsible Member of the Executive Council must cause the names of the persons appointed to a Consumer Tribunal 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 a Consumer Tribunal.

(8) The responsible Member of the Executive Council must, within two months after the appointment of members, provide the Portfolio Committee with the names of the appointed members including the term of their appointment.

(9) This section applies, with the necessary changes, to the filling of a vacancy on a Consumer Tribunal.

Disqualification from being appointed to Consumer Tribunal

12. A person is disqualified from being appointed to a Consumer Tribunal or from remaining on a Consumer Tribunal, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by the competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Consumer Protector or Consumer Tribunal and fails to declare his or her interest and the nature thereof in a manner required by this Act;
- (d) a person is 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 such nominee disclosing full details of the offence in an affidavit, condone a conviction 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;
- (g) fails to disclose an interest in accordance with section 13 or attended or participated in the proceedings of a Consumer Tribunal while having an interest contemplated in the said section;
- (h) is a public servant;

- (i) is an office bearer;
- (j) is not a citizen of the Republic; or
- (k) is not resident in the Province.

Declaration of financial or other interests of members of Consumer Tribunal

13.(1) A person who has been nominated to serve on a Consumer Tribunal in terms of section 11 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, close corporation and of any other business interests.

(2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 12 from being appointed to a Consumer Tribunal.

(3) Every member of a Consumer Tribunal must, upon assuming office and at the beginning of every financial year of the Consumer Tribunal, submit a written declaration of his or her direct or indirect interest in any company, close corporation or other business interests to the responsible Member of the Executive Council.

(4) Where a member of a Consumer Tribunal acquires interest in any company, close corporation or other business interests, at any time during his or her tenure as a member of the Consumer Tribunal 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 interests as contemplated in subsections (3) and (4) results in the termination of appointment of such member in terms of section 16(2).

Failure to declare financial or other interests by member of Consumer Tribunal

14.(1) A member of a Consumer Tribunal who fails to make a declaration envisaged in section 13 may, subject to subsection (2), be disqualified from remaining on the

Consumer Tribunal.

(2) The responsible Member of the Executive Council, on becoming aware that a member of a Consumer Tribunal has failed to comply with the provisions of section 13, must investigate the matter and consider appropriate disciplinary action.

Term of office of member of Consumer Tribunal

15.(1) A member is appointed to serve on a Consumer Tribunal for a period of five years or such lesser period as the responsible Member of the Executive Council may determine.

(2) A member is eligible for re-appointment upon the expiry of his or her term of office for one additional term.

Vacancies, removal from office and resignation of members of Consumer Tribunal

16.(1) A member of a Consumer Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 12.

(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 sound, cogent and justifiable reasons for doing so.

(3) 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.

(4) Whenever a vacancy occurs on a Consumer Tribunal, the responsible Member of the Executive Council must, subject to section 11, 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.

(5) The responsible Member of the Executive Council may, subject to subsection (2), terminate the appointment of all or some of the members of a Consumer Tribunal.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (5), he or she may, notwithstanding the procedure for the appointment of the members of a Consumer Tribunal set out in section 11, but subject to subsections (2) and (3) of section 11, appoint persons to serve as members of a Consumer Tribunal on an interim basis: Provided that –

- (a) the persons appointed to replace the members whose appointment has been terminated in terms of subsection (5), may not remain on the Consumer Tribunal for a period of more than 90 days from the date of their appointment; and
- (b) the responsible Member of the Executive Council, must, subject to section 11, appoint the permanent members of the Consumer Tribunal within 90 days of the appointment contemplated in paragraph (a) of this subsection.

Temporary suspension of member of Consumer Tribunal

17.(1) The responsible Member of the Executive Council may, after applying the relevant rules of natural justice, suspend a member of a Consumer Tribunal on full remuneration if –

- (a) the member is alleged to have committed a serious offence; and
- (b) the responsible Member of the Executive Council reasonably believes that the presence of such member at the Consumer Tribunal might jeopardise any investigation and the enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property: Provided that a suspension of this nature is a precautionary measure which does not constitute a finding.

(2) If a member is suspended as a precautionary measure contemplated in subsection (1), the responsible Member of the Executive Council must hold the enquiry within 60 days from the effective date of such suspension.

Constitution of Consumer Tribunal

18.(1) Subject to subsection (4), the quorum of a Consumer Tribunal is three members.

(2) Except where otherwise provided, a decision of the majority of members of a Consumer Tribunal present is the decision of the Consumer Tribunal.

(3) A member of a Consumer Tribunal must recuse himself or herself from proceedings on the grounds of any interest or association likely to affect his or her impartial consideration of the matter, or which is likely to be seen to do so.

(4) If at any stage during the proceedings before a Consumer Tribunal –

(a) the chairperson becomes incapable of acting or is absent, the proceedings must begin afresh;

(b) any other member becomes incapable of acting or is absent, the proceedings must continue before the remaining members; and

(c) two or more other members become incapable of acting or are absent, the proceedings must begin afresh unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of remaining members.

(5) In the event that the proceedings continue before an even number of members and there is a split decision, the chairperson's decision is final.

Remuneration of members of Consumer Tribunal

19.(1)(a) A member of a Consumer Tribunal may be paid 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 for Finance.

(b) A member of a Consumer Tribunal 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 a Consumer Tribunal, 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 a Consumer Tribunal and a person who has been co-opted to the Consumer Tribunal may, in respect of his or her functions as a member or co-opted member, receive reimbursement for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting or duties of the Consumer Tribunal;

(b) The responsible Member of the Executive Council, in consultation with the Member of the Executive Council 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).

Expert and other assistance to Consumer Tribunal

20.(1) A Consumer Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assist it in the exercise and performance of its powers, duties and functions.

(2) The terms, conditions, and fees applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered must be determined by the Consumer Tribunal, and be contained in a written agreement entered into for that purpose between the Consumer Tribunal and the expert or person concerned.

(3) The experts or other persons appointed under subsection (1) may not vote on any decision taken by the Consumer Tribunal.

Proceedings of Consumer Tribunal

21.(1) The proceedings before a Consumer Tribunal must –

- (a) be initiated by summons in the prescribed form which must be served on the person concerned in any manner as may be prescribed, which may include service outside the Province;
- (b) be open to the public;
- (c) be prosecuted by any person who must have been appointed by the Office;
- (d) allow any person who may be adversely affected by any proceedings to appear in person or be represented or assisted by an attorney or advocate or any other person; and
- (e) allow a person against who the proceedings are instituted or who may be affected by the proceedings or the decision to appear in person or be represented or assisted by an advocate, attorney or any other person.

(2) A Consumer Tribunal may direct that the public or any member thereof may not attend any proceedings of the Consumer Tribunal or portion thereof, if this is justified in the interest of –

- (a) the conduct of the proceedings or the consideration of the matter in question; or
- (b) the protection of the privacy of any person alleged to be involved in any unfair business practices or has contravened the provisions of the Act or of the confidentiality of any information relating to that person.

(3) A Consumer Tribunal must keep the records of the proceedings.

(4) Any person who has an interest in any proceedings that have taken place, may in the prescribed manner, obtain copies of the record contemplated in subsection (3).

Summoning of witnesses and production of documents before Consumer Tribunal

22.(1) For the purpose of ascertaining any matter relating to proceedings before a Consumer Tribunal, a Consumer Tribunal may –

- (a) by summons addressed to any person, including the person against whom a consumer complaint has been made, in the prescribed form under the hand of

the secretary to the Consumer Tribunal, and served in the prescribed manner –

- (i) subpoena such person to appear before the Consumer Tribunal at a time and place specified in such summons, to give evidence; and
- (ii) order such person to produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with the proceedings before the Consumer Tribunal;

(b) order such person to take an oath or make an affirmation; and

(c) question such person and examine any book, document or object which he or she has been required to produce.

(2) The oath or affirmation contemplated in subsection (1)(b) may be administered by any person qualified to administer an oath or accept an affirmation in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

(3) A person is guilty of an offence if he or she, having been summoned in terms of this section –

(a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused by the Consumer Tribunal from further attendance;

(b) refuses to take the oath or make an affirmation;

(c) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

(d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce; or

(e) makes a false statement before the Consumer Tribunal knowing such statement to be false or not knowing or believing it to be true.

(4) A person who has been summoned to appear in terms of this section may not be entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal charge: Provided that, to the extent that such answer, book, document or article does expose the person concerned to a criminal charge, no evidence thereof may be admissible in any criminal

proceedings against that person, except where that person stands trial on a charge contemplated in subsection (2)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(5) A person who has attended the proceedings of a Consumer Tribunal as a witness is entitled to the prescribed witness fee.

CHAPTER 4 REALISATION AND PROTECTION OF CONSUMER RIGHTS

Part 1 General

Consumer rights

23.(1) Every consumer has a right –

- (a) to have access to basic goods and services such as adequate food, clothing, housing, health care, education, clean water and sanitation;
- (b) to safety from and protection against production processes, products and services that are dangerous to health or life;
- (c) to be informed of, and to be provided with, the facts needed to make informed choices and to be protected against dishonest or misleading advertising and labeling;
- (d) to choose from a range of products and services offered at competitive prices with an assurance of satisfactory quality;
- (e) to have his or her interests represented in the making and execution of government policy and the development of products and services;
- (f) to redress or to receive a fair settlement of just claims, including compensation for misrepresentation, or shoddy goods or services;
- (g) to education as a consumer and to acquire knowledge and skills needed to make informed and confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them; and
- (h) to live and work in a healthy environment that is not threatening to the well-being of present and future generations.

(2) The Office must take reasonable steps in ensuring that the rights contemplated in

subsection (1) are realized by all consumers in the Province.

Realization of consumer rights

24. Any of the following persons, may in the manner provided for in this Act, approach a Consumer Tribunal or the Consumer Protector where his or her rights in terms of this Act have been infringed, impaired or threatened or where any prohibited conduct has occurred or is occurring –

- (a) a person acting on his or her own behalf;
- (b) an authorized person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons;
- (d) a person acting in the public interest, where the leave of the Consumer Protector or the Consumer Tribunal, as the case may be, has been granted for such person to act in the public interest; or
- (e) an association acting in the interest of its members.

Protection of consumer rights

25. If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement or transaction with a supplier, the supplier may not, in response –

- (a) discriminate directly or indirectly against such consumer, compared to the supplier's treatment of any other consumer who has exercised, asserted or sought to uphold such a right;
- (b) penalize the consumer;
- (c) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) take any action to accelerate, enforce, or terminate an agreement with the consumer.

Enforcement of rights by consumer

26.(1) A person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter directly to the Consumer Protector;
- (b) referring the matter to a Consumer Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute; or
- (c) referring the matter to the applicable ombud with jurisdiction.

(2) Where the matter contemplated in subsection (1) does not concern a supplier contemplated in subsection (1)(c), a person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter to the applicable industry ombud, accredited in terms of section 82(6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008), if the supplier is subject to any such ombud;
- (b) referring the matter to another dispute resolution agent contemplated in section 70 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (c) filing a complaint with the Consumer Commission office in accordance with section 7 of the Consumer Protection Act, 2008 (Act No. 68 of 2008); or
- (d) approaching a Tribunal with jurisdiction over the matter, if all other remedies available to that person in terms of Consumer Protection Act, 2008 (Act No. 68 of 2008), has been exhausted.

*Part 2**Lodging and investigation of consumer complaints***Lodging complaint with Office of Consumer Protector**

27.(1) Any consumer may in the prescribed manner lodge a consumer complaint with the Office of the Consumer Protector.

(2) A consumer complaint contemplated in subsection (1) which is not in writing must be reduced to writing by the Office.

(3) The Office may open a file or dossier concerning the consumer complaint and must maintain an index and filing system of consumer complaints.

Investigation procedure

28.(1) Upon receiving a consumer complaint in terms of this Act, the Consumer Protector must direct a person in the service of the Office of the Consumer Protector or an investigating officer, to investigate the complaint as quickly as practicable.

(2) The person or investigating officer referred to in subsection (1) must make a preliminary assessment of the consumer complaint as contemplated in this Act.

(3) The Office may not cause any person to be summoned for investigation until a preliminary assessment has been made of the consumer complaint.

(4) If, upon consideration of the preliminary assessment, the Consumer Protector is of the opinion that the consumer complaint may be more appropriately dealt with by another competent authority, he or she may at any time refer any investigation or aspect thereof to such other authority, including an authority in another province: Provided that the Office may at any time resume the investigation in relation to that matter.

Preliminary assessment of consumer complaint

29.(1) The Office of the Consumer Protector must make a preliminary assessment of the consumer complaint lodged in terms of section 27(1).

(2) The Office may at any time during its investigations, alter its preliminary assessment, *inter alia* in light of new evidence or law, and proceed according to an amended assessment.

(3) The Office must assess whether the consumer complaint lodged in terms of section 27(1), is being lodged by a *bona fide* consumer.

(4) The complainant bears the onus of establishing that he or she is a *bona fide* consumer.

(5) If the complainant contemplated in subsection (3) is not a *bona fide* consumer, the Office may not investigate the complaint.

(6) The Office must assess whether the consumer complaint against a business, or a person purporting to carry on business or a business practice, conveys the potential of criminal liability or civil liability.

Summoning and questioning of persons and production of books and documents

30.(1) For the purposes of an investigation contemplated in section 28(1) the Consumer Protector, or a person in the service of the Office of the Consumer Protector, authorised by the Consumer Protector, may –

(a) summon any person who is believed to –

- (i) be able to furnish any information on the subject of the investigation; or
- (ii) to have in his or her possession or under his or her control any book, document or other object relating to that subject,

to appear before a person in the service of the Office at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and

(b) question that person, under oath or affirmation administered by the Consumer Protector or another person in the service of the Office of the Consumer Protector, authorized by the Consumer Protector, and examine or retain for further information or for safe custody such a book, document or other object.

(2) A summons referred to in subsection (1)(a) must –

- (a) be in the prescribed form citing the person summoned;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear;
- (c) be signed by the Consumer Protector or another person in the service of the Office authorized by the Consumer Protector; and
- (d) be served in the prescribed manner.

- (3) A person appearing by virtue of subsection (1)(a) –
- (a) may be assisted at the examination by any person of his or her choice; and
 - (b) is entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the High Court held at the place mentioned in the summons in question.
- (4) A person is guilty of an offence if he or she, having been summoned in terms of this section –
- (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused from further attendance by the Consumer Protector; or
 - (b) refuses to take the oath or make an affirmation.
- (5) A person questioned in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.
- (6) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in subsection (5), and then only to the extent that the answer or statement is relevant to prove the offence charged.

Appointment of investigators

31.(1) The Consumer Protector –

- (a) may appoint any suitable employee of the Office or any other suitable person employed by the State, as an investigator; and
- (b) must issue each investigator with a certificate in the prescribed form stating

that the person has been appointed as an investigator in terms of this Act.

(2) When an investigator performs any function of an investigator in terms of this Act, the investigator –

(a) must be in possession of a certificate of appointment issued to that investigator in terms of subsection (1);

(b) must show that certificate to any person who –

(i) is affected by the investigator's actions in terms of this Act; and

(ii) requests to see the certificate; and

(c) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(3) The Consumer Protector may appoint or contract with any suitably qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Consumer Protector.

(4) A person appointed in terms of subsection (3) is not an investigator as contemplated in subsection (1).

(5) Subject to the laws governing the public service, the Member of the Executive Council, in consultation with the Member of the Executive Council for Finance, may appoint persons in the service of the Office or any other suitable persons as investigating officers, who must be subject to the control and directions of the Consumer Protector.

(6) The Consumer Protector is deemed to have been appointed as an investigating officer.

(7) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Consumer Protector and in which it is stated that he or she is an investigating officer appointed in terms of this Act.

(8) An investigating officer must, when performing any function in terms of this Act, have

his or her certificate of appointment in his or her possession.

Search and seizure

32.(1) In order to obtain any information required by the Office of the Consumer Protector in relation to an investigation, an investigating officer may, subject to the provisions of this section, during office hours enter any premises on or in which any book, document or other object connected with that investigation is or is suspected to be, and may –

- (a) inspect or search those premises, and there make such inquiries as may be necessary for the purpose of obtaining any such information;
- (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information, an explanation of any entry therein; or
- (d) seize, against the issue of a receipt, anything on or in the premises which has or might reasonably have a bearing on the investigation in question, if the investigating officer needs to retain it for further examination or for safe custody.

(2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer may enter premises and exercise any power contemplated in subsection (1) only under a search warrant, which may only be issued by a magistrate or a judge if it appears from information given to the magistrate or judge on oath or solemn affirmation that there are reasonable grounds to suspect that a book, document or other object which may afford evidence for the investigation is on or in those premises.

(3) A search warrant contemplated in subsection (2) must –

- (a) authorise an investigating officer mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power

contemplated in subsection (1);

(b) be executed by day, unless the magistrate or judge specifically authorises the execution thereof by night; and

(c) be of force until it is executed, cancelled by a competent court, or a period of one week from the day of its issue expires, whichever occurs first.

(4) An investigating officer executing a search warrant under this section must, before such execution, upon demand by any person whose rights may be affected –

(a) show that person his or her certificate of appointment; and

(b) hand to that person a copy of the warrant.

(5) A person from whose possession or charge a book or document has been taken under this section must, as long as it is in the possession or charge of the investigating officer concerned or of the Office be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that investigating officer or a person in the service of the Office.

(6) A person is guilty of an offence if he or she –

(a) obstructs or hinders an investigating officer in the performance of his or her functions in terms of this section; or

(b) after enquiry having been made of him or her under subsection (1)(a), or having been requested for information or an explanation under subsection (1)(b) or (c), gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

Negotiation of arrangement to resolve consumer complaint

33.(1) The Office of the Consumer Protector may negotiate and conclude an arrangement with any person for –

(a) the discontinuance or avoidance of the business practice which gave rise to the consumer complaint;

(b) the reimbursement, with or without interest, to the affected consumer;

(c) the discontinuance or avoidance of any aspect of the business practice which gave rise to the consumer complaint; or

(d) any other matter relating to the business practice which gave rise to the consumer complaint.

(2) An arrangement contemplated in subsection (1) –

(a) may be concluded at any time after the institution of an investigation, but before the making of an order by the High Court in terms of section 37;

(b) must be in writing and signed by the parties thereto; and,

(c) may be subject to confirmation by the High Court in accordance with section 37.

Institution of proceedings after completion of investigation

34.(1) Upon completion of an investigation and subject to subsection (6), the Consumer Protector may institute proceedings in support of the consumer in the Consumer Tribunal if it has jurisdiction over the person alleged to be responsible for the business practice which gave rise to the consumer complaint.

(2) For purposes of such proceedings, the Consumer Protector is deemed to have *locus standi*.

(3) If, in the opinion of the Consumer Protector, a consumer complaint relating to a hard bargain or a question of equity raises a constitutional law issue, the Office may institute proceedings in support of the consumer in the High Court;

(4) For purposes of the proceedings contemplated in subsection (3), the Consumer Protector is deemed to have *locus standi* in such proceedings;

(5) Whenever the Office institutes proceedings in the Consumer Tribunal or in the High Court, the Consumer Protector is cited as First Plaintiff or First Applicant and the consumer is cited as Second Plaintiff or Second Applicant, as the case may be.

(6) The Consumer Protector must choose the appropriate forum in which to prosecute the matter by taking into account the provisions of this Act, with particular regard to the expeditious completion of the litigation and effective redress for the consumer.

(7) When choosing the appropriate forum as contemplated in subsection (6), the Consumer Protector must take into account the costs of the litigation to the parties concerned and accordingly commence proceedings in the forum where costs would be the least onerous to a defendant.

(8) No proceedings may be instituted by the Consumer Protector unless the consumer –

- (a) signs a document in which the consumer confirms the veracity of the complaint and indemnifies the Consumer Protector; and
- (b) signs a document indemnifying the Office from the consequences of any false evidence which may be adduced by him or her.

Part 3
Adjudication and review of consumer complaints

Review panel

35.(1) If the Office of the Consumer Protector decides neither to institute proceedings nor to refer the matter to another authority nor to proceed before a Consumer Tribunal, the Consumer Protector must, in writing, notify the consumer and the person or business against whom the consumer complaint was lodged of such a decision together with the reasons therefor.

(2) The reasons for the decision contemplated in subsection (1) must accompany such notice contemplated in subsection (1).

(3) If the consumer is aggrieved by the decision of the Consumer Protector not to institute proceedings, the consumer may, within fourteen days of receipt of the decision, refer the decision for review to the Review Panel.

(4) The Review Panel referred to in subsection (1) must be situated at the Office.

(5) The Office must note the referral for a review and forthwith inform the responsible Member of the Executive Council of the need to convene a Review Panel.

(6) The responsible Member of the Executive Council must convene a Review Panel

within fourteen days of the consumer seeking a review of the Consumer Protector's decision contemplated in sub-section (1).

(7) The Review Panel convened by the responsible Member of the Executive Council in terms of subsection (6), must be composed of an *ad hoc* committee of three persons with experience and knowledge of consumer matters.

(8) The persons contemplated in subsection (7), may be in the employ of the State but not employed in the Office.

(9) Subject to the laws governing the public service, a person appointed to the Review Panel who is not in the full-time service of the State must be appointed on such conditions and at such remuneration as may be prescribed by the responsible Member of the Executive Council, in consultation with the Member of the Executive Council responsible for Finance.

(10) Subject to the rules of natural justice, the Review Panel may consider the merits of the decision and any oral or written submissions, if any, by the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(11) The Review Panel may substitute its own decision for that of the Consumer Protector and order the Consumer Protector to institute proceedings or to confirm the decision of the Consumer Protector not to institute proceedings.

(12) The decision of the Review Panel taken in terms of subsection (11) is referred to as the review judgment.

(13) The review judgment contemplated in subsection (12) is final and binding on the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(14) The Review Panel must, in writing, inform the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector of the

review judgment and must furnish each with a free copy of the review judgment.

Effect of review judgment

36. If the Review Panel orders the Consumer Protector to institute proceedings on behalf of a consumer, section 29 applies with the necessary changes required by the context.

CHAPTER 5 ARRANGEMENTS NEGOTIATED BY OFFICE OF CONSUMER PROTECTOR

Confirmation of arrangements negotiated by Office of Consumer Protector

37.(1) The Office may apply to the High Court for confirmation of an arrangement negotiated and concluded in terms of this Act.

(2) The High Court may, with due consideration of the interests of affected consumers and businesses and the parties concerned, issue an order –

- (a) confirming the arrangement;
- (b) confirming the arrangement with such amendments as may be agreed to by the parties concerned and subject to such conditions as the court may deem fit;
- (c) setting aside that arrangement if, after the parties involved in the arrangement have been given an opportunity to be heard, the court is satisfied that the arrangement will not ensure the discontinuance or avoidance of the business practice which gave rise to the consumer complaint.

(3) An order in terms of subsection (2) must be published in the *Gazette*.

CHAPTER 6 LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1

Confidentiality, limitation of liability, waiver of benefits and civil remedies

Confidentiality

38. No investigating officer or person in the service of the Office of the Consumer Protector or performing duties for the Office may disclose any information acquired by

him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except –

- (a) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act; or
- (b) on the order of a court of law.

Limitation of liability

39. No person, including the State, is liable in respect of anything done in good faith under this Act, save that the onus to establish good faith must be borne by such person or the State.

Waiver of benefits

40. Any agreement or contractual term purporting to exclude the provisions of this Act or to limit the application thereof is null and void.

Remedies

41. No provision of this Act may be construed as depriving any person of any civil remedy or right to institute any criminal prosecution.

Part 2 *Offences and penalties*

General offences

42.(1) A person is guilty of an offence if –

- (a) he or she as the owner or holder of any business or license to operate, allows an abuse of a consumer within his business premises;
- (b) he or she misrepresents himself or herself or any other person in the employ of such person in relation to goods or services, to the consumer.

(2) A member of a Consumer Tribunal, a member of staff, advisor, agent or other person employed by or acting on behalf of the Consumer Tribunal is guilty of an offence if he or

she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Consumer Tribunal.

(3) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by a Consumer Tribunal, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Consumer Tribunal.

(4) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of a Consumer Tribunal is guilty of an offence.

Offences regarding hearing of Consumer Tribunal

43. A person who –

(a) fails to appear before a Consumer Tribunal on the date and at the time and place when called upon to do so in terms of section 22 without having appointed a person to so appear on his or her behalf;

(b) appears before a Consumer Tribunal in terms of section 22 but without the leave of the Chairperson fails to remain in attendance until the conclusion of the hearing or meeting;

(c) having in terms of section 22 been called upon to appear and give evidence, or to produce any book, plan or other document or article which such person may at the time have in his or her possession, fails or refuses to do so;

(d) having in terms of section 22 been required to give evidence, refuses to take the oath or make an affirmation; or

(e) wilfully disrupts a hearing or meeting of a Consumer Tribunal or wilfully hinders or obstructs a Consumer Tribunal or any member thereof in the performance of his or her functions, is guilty of an offence.

Penalties**44. Any person convicted of an offence –**

- (a) in terms of section 42(2), (3) or (4), is liable to a fine or to imprisonment for a period not exceeding that determined by national legislation for corruption; or
- (b) in terms of sections 30(4), 32(6), 42(1) or 43, is liable to a fine or imprisonment for a period not exceeding 5 years, or both such fine and such imprisonment.

**CHAPTER 7
GENERAL PROVISIONS****Regulations****45.(1) The responsible Member of the Executive Council may make regulations regarding –**

- (a) any matter which in terms of this Act is required or permitted to prescribe;
- (b) any payment and amount of any fees payable in term of this Act;
- (c) the manner in which, and the days on which, if applicable, any application in terms of this Act may or must be made or lodged;
- (d) the manner and forms of service, delivery or dispatch of any summons, notice or other document required to be served, delivered or dispatched in terms of this Act;
- (e) the manner and form of the publication of notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) time periods, or the extension of time periods, to be prescribed in terms of this Act;
- (h) the details of the premises in terms of which the complaint is lodged;
- (i) the tariff of witness fees payable on appeal or review proceedings;
- (j) the form and the manner in which a complaint must be submitted to the Office of the Consumer Protector;
- (j) procedure to be followed in dealing with a business entity that has been found to have contravened the provisions of this Act; and
- (k) in general, any matter in respect of which the responsible Member of the

Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation regarding fees or money to be paid must be made by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

Transitional arrangement

46. Any complaint lodged with the Consumer Business Unit of the Department made before the commencement of this Act in terms of any legislation whether repealed or amended, and the Regulations made in terms of that legislation, must be dispensed of and finalized in terms of this Act.

Short title and commencement

47.(1) This Act is called the KwaZulu-Natal Consumer Protection Act, 2013, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

(2) The responsible Member of the Executive Council may determine different dates for the coming into operation of different sections of this Act.

No. 2

13 Februarie 2014

[Engelse teks deur die Premier geteken]

KWAZULU-NATAL
WET OP VERBRUIKERSBESKERMING, 2013
(No. 04 van 2013)

Goedgekeur op 31-10-2013

WET

Om voorsiening te maak vir die verwesenliking en beskerming van verbruikersregte in KwaZulu-Natal; om voorsiening te maak vir die instelling van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer; om die oogmerke, bevoegdhede, pligte en funksies van die Kantoor van die Verbruikersbeskermer te bepaal; om voorsiening te maak vir die ondersoek van verbruikersklagtes; om voorsiening te maak vir vergoeding vir verbruikers; om voorsiening te maak vir verbruikeropvoeding en bewustheid van verbruikersregte en verantwoordelikhede; om voorsiening te maak vir die instelling van verbruikertribunale; om die oogmerke, bevoegdhede, pligte en funksies van verbruikertribunale te bepaal; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

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

RANGSKIKKING VAN ARTIKELS

Artikel

HOOFSTUK 1 OMSKRYWINGS

1. Omskrywings

HOOFSTUK 2 OOGMERKE VAN WET, VRYSTELLINGS EN FUNKSIES VAN VERANTWOORDELIKE LID VAN UITVOERENDE RAAD

2. Oogmerke van Wet
3. Vrystellings
4. Funksies van verantwoordelike lid van Uitvoerende Raad

- #### HOOFSTUK 3 AGENTSKAPPE VIR VERBRUIKERSBESKERMING IN KWAZULU-NATAL
5. Instelling van KwaZulu-Natal Kantoor van Verbruikersbeskermer
 6. Oogmerke van Kantoor van Verbruikersbeskermer
 7. Bevoegdheede, pligte en funksies van Kantoor van Verbruikersbeskermer
 8. Instelling van Verbruikerstribunaal
 9. Oogmerke van Verbruikerstribunaal
 10. Bevoegdheede, pligte en funksies van Verbruikerstribunaal
 11. Samestelling van Verbruikerstribunaal
 12. Onbevoegdheid vir aanstelling op Verbruikerstribunaal
 13. Verklaring van finansiële of ander belange van lede van Verbruikerstribunaal
 14. Versuim om finansiële of ander belange van lid van Verbruikerstribunaal te verklaar
 15. Ampstermyn van lid van Verbruikerstribunaal
 16. Vakatures, ontslag en bedanking uit amp van lede van Verbruikerstribunaal
 17. Tydelike skorsing van lid van Verbruikerstribunaal
 18. Grondwet van Verbruikerstribunaal
 19. Besoldiging van lede van Verbruikerstribunaal
 20. Kundige en ander bystand aan Verbruikerstribunaal
 21. Verrigtinge van Verbruikerstribunaal

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22. Dagvaarding van getuies en voorlê van dokumente aan Verbruikerstribunaal

HOOFSTUK 4
VERWESENLIKING EN BESKERMING VAN VERBRUIKERSREGTE

*Deel 1
Algemeen*

23. Verbruikersregte
24. Verwesenliking van verbruikersregte
25. Beskerming van verbruikersregte
26. Toepassing van regte deur verbruiker

*Deel 2
Indien en ondersoek van verbruikersklagtes*

27. Indien van klagte by Kantoor van Verbruikersbeskermer
28. Ondersoekprosedure
29. Voorlopige beoordeling van verbruikersklagte
30. Dagvaarding en ondervraging van persone en voorlê van boeke en dokumente
31. Aanstelling van ondersoekers
32. Deursoeking en beslaglegging
33. Bedinging van skikking om verbruikersklagte op te los
34. Instelling van geregtelike stappe na voltooiing van ondersoek

*Deel 3
Beregting en hersiening van verbruikersklagtes*

35. Hersieningspaneel
36. Uitwerking van hersieningsuitspraak

- HOOFSTUK 5
SKIKKINGS BEDING DEUR KANTOOR VAN VERBRUIKERSBESKERMER
37. Bevestiging van skikkings beding deur Kantoor van Verbruikersbeskermer

HOOFSTUK 6
WETSTOEPASSING EN GEREGTELIKE VERRIGTINGE

*Deel 1
Vertroulikheid, beperking van aanspreeklikheid, afstanddoening van voordele en siviele
regsmiddele*

38. Vertroulikheid
39. Beperking van aanspreeklikheid

40. Afstanddoening van voordele

41. Regsmiddele

Deel 2

Misdrywe en strawwe

42. Algemene misdrywe

43. Misdrywe rakende verhoor van Verbruikerstribunaal

44. Strawwe

HOOFSTUK 7
ALGEMENE BEPALINGS

45. Regulasies

46. Oorgangsreëling

47. Kort titel en inwerkingtreding

HOOFSTUK 1
OMSKRYWINGS

Omskrywings

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

“ampsdraer” –

- (a) ‘n lid van die Nasionale Vergadering, die Nasionale Raad van Provinsies of die Kabinet;
- (b) ‘n lid van ‘n provinsiale wetgewer of uitvoerende raad van ‘n provinsie;
- (c) ‘n munisipale raadslid;
- (d) ‘n diplomatieke verteenwoordiger van die Republiek wat nie ‘n lid van die staatsdiens is nie;
- (e) ‘n lid van die huis van tradisionele leiers; of
- (f) ‘n nasionale of provinsiale ampsdraer van ‘n politieke party, organisasie, liggaam, alliansie of beweging geregistreer ingevolge artikel 15 of 15A van die Wet op die Verkiesingskommissie, 1996 (Wet No. 51 van 1996);

“besigheid” –

- (a) die aanbied, verskaffing of beskikbaarmaking van enige kommoditeit;

of

(b) die uitnood of ontvangs van enige belegging;

"Departement" die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

"Departementshoof" die mees senior beampste van die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

"diens" insluitend, maar nie beperk nie tot —

(a) enige werk of onderneming wat deur een persoon verrig word tot die regstreekse of onregstreekse voordeel van iemand anders;

(b) die verskaffing van enige onderrig, inligting, advise of konsultasie, buiten advise wat aan regulasies onderhewig is ingevolge die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002);

(c) enige bankdienste, of verwante of soortgelyke finansiële dienste, of die onderneming, onderskrywing of aanvaarding van enige risiko deur een persoon namens 'n ander, buiten tot die omvang waartoe enige sodanige diens —

(i) advies- of tussengangersdienste uitmaak wat onderhewig is aan regulasies ingevolge die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002); of

(ii) gereguleer word ingevolge die Wet op Langtermynversekering, 1998 (Wet No. 52 van 1998), of die wet op korttermynversekering, 1998 (Wet No. 53 van 1998);

(d) die vervoer van 'n individu of enige goedere;

(e) die verskaffing van —

(i) enige akkommodasie of voedsel;

(ii) enige vermaak of soortgelyke ontasbare produk of toegang tot enige

sodanige vermaak of ontasbare produk;

(iii) toegang tot enige elektroniese kommunikasie-infrastruktuur;

(iv) toegang, of die reg tot toegang, tot 'n geleentheid of tot enige perseel, aktiwiteit of fasiliteit; of

(v) toegang tot of gebruik van enige perseel of ander eiendom ingevolge 'n huureiendom;

(f) die reg tot bewoning van, of mag of voorreg buiten of in verband met, enige grond of ander vaste eiendom, buiten ingevolge 'n huureiendom; en

(g) regte van 'n konsessiehouer ingevolge 'n konsessie-ooreenkoms, tot die mate toepaslik ingevolge artikel 5(6)(b) tot (e), ongeag of die persoon wat die dienste bevorder, aanbied of verskaf, aan die diens deelneem, of daaroor toesig hou of regstreeks of onregstreeks daarby betrokke is;

“diensverskaffer” 'n persoon wat enige diens promoveer, verskaf of aanbied om te verskaf;

“fasiliteit” enige perseel, ruimte of toerusting ingestel om 'n besondere funksie te vervul, of waarby, waarin of waarop 'n besondere diens beskikbaar is;

“finansiële belang” eienaarskap van aandele in 'n maatskappy, 'n lid se belang in 'n beslote korporasie, 'n belang in 'n vennootskap en, ten opsigte van 'n besigheid of onderneming, enige belang wat die houer daarvan in staat stel om in die winste en inkomste van sodanige besigheid of onderneming te deel;

“goedere” insluitend —

(a) enigiets wat vir menslike verbruik bemark word;

(b) enige tasbare voorwerp wat nie anders in paragraaf (a) beoog word nie, met inbegrip van enige medium waarop enigiets geskryf of geënkodeer is of mag wees;

- (c) enige literatuur, musiek, foto, rolprent, speletjie, inligting, data, sagteware, kode of ander tasbare produk wat op enige medium geskryf of geënkodeer is, of 'n lisensie om enige sodanige tasbare produk te gebruik;
- (d) 'n wettige belang in grond of enige ander vaste eiendom, buiten 'n belang wat binne die omskrywing van 'diens' in hierdie afdeling val; en
- (e) gas, water en elektrisiteit;

“Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996;

“hierdie Wet” ook die regulasies;

“hof” enige hof bedoel in hoofstuk 8 van die Grondwet, buiten die Verbruikerstribunaal;

“Inkomstefonds” die Provinsiale Inkomstefonds ingestel ingevolge artikel 226 van die Grondwet;

“Kantoor” die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingestel ingevolge artikel 5(1);

“kleinhandelaar” ten opsigte van sekere goedere, 'n persoon wat, in normale omstandighede, daardie goedere aan 'n verbruiker verskaf;

“Koerant” die amptelike *Provinsiale Koerant* van die provinsie KwaZulu-Natal;

“Kommissie” die Nasionale Verbruikerskommissie ingestel ingevolge artikel 85 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“koöperatief” 'n koöperatief soos omskryf in artikel 1 van die Wet op Koöperatiewe, 1981 (Wet No. 91 van 1981);

“Lid van die Uitvoerende Raad vir finansies” die Lid van die Uitvoerende Raad

van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

“ombud met jurisdiksie” met betrekking tot enige besondere geskil wat voortspruit uit 'n ooreenkoms of transaksie tussen 'n verbruiker en 'n verskaffer wat —

(a) onderhewig is aan die jurisdiksie van 'n 'ombud', of 'n 'statutêre ombud', ingevolge enige nasionale wetgewing, daardie ombud, of statutêre ombud; of

(b) 'n 'finansiële instelling', soos omskryf in die Wet op Finansiële Dienste Ombudskemas, 2004 (Wet No. 37 van 2004), 'die ombud', soos bepaal ooreenkomstig artikel 13 of 14 van daardie Wet;

“ondersoeker” 'n persoon aangestel ingevolge artikel 31(1)(a);

“perseel” grond, of enige gebou, struktuur, voertuig, skip, boot, vaartuig, lugvaartuig of houer;

“persoon” 'n natuurlike of 'n regspersoon, 'n groep van sodanige persone of 'n regspersoon, tensy die konteks 'n teenstrydige betekenis aandui;

“Portefeuljekomitee” die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling en toerisme;

“promoveer” om —

(a) enige goedere of dienste in gewone omstandighede aan die publiek of 'n deel van die publiek vir oorweging te adverteer, te vertoon of aan te bied om te verskaf;

(b) enige voorstelling te maak wat in gewone omstandighede redelikerwys gewilligheid kan aandui om enige goedere of dienste vir oorweging te verskaf; of

(c) gemoeid te wees met enige ander gedrag wat in gewone omstandighede redelikerwys vertolk kan word as 'n aansporing of poging tot aansporing vir 'n persoon om 'n transaksie aan te gaan;

“**Provinsiale Wetgewer**” die Wetgewer van die provinsie KwaZulu-Natal soos bedoel in artikel 105 van die Grondwet en het die wetgewende outoriteit vir die provinsie soos bedoel in artikel 104(1) van die Grondwet;

“**provinsie**” die provinsie KwaZulu-Natal ingestel ingevolge artikel 103 van die Grondwet en “**provinsiale**” het ‘n ooreenstemmende betekenis;

“**prys**” wanneer gebruik word ten opsigte van —

(a) ‘n voorstelling wat deur artikel 23 vertoon moet word, insluitend enige merk, kennisgewing of visuele voorstelling wat redelikerwys afgelei kan word om ‘n verband aan te dui of uit te druk tussen enige goedere of dienste en die waarde van die teenwaarde waarvoor die verskaffer gewillig is om daardie goedere of dienste te verkoop of te verskaf; of

(b) die teenwaarde van enige transaksie, die totale bedrag betaal of betaalbaar deur die verbruiker aan die verskaffer ingevolge daardie transaksie of ooreenkoms, insluitend enige bedrag wat die verskaffer ingevolge enige openbare regulasie moet oplê, hef of invorder;

“**regulasies**” regulasies uitgevaardig ingevolge hierdie Wet;

“**regulatoriese owerheid**” ‘n staatsorgaan of entiteit ingestel ingevolge nasionale of provinsiale wetgewing verantwoordelik vir regulering van ‘n bedryf, of sektor van enige bedryf;

“**respondent**” ‘n persoon of firma teen wie ‘n klagte of aansoek ingevolge hierdie Wet geïnisieer is;

“**staatsamptenaar**” ‘n staatsamptenaar soos omskryf in artikel 1 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), met inbegrip van ‘n munisipale werknemer;

“transaksie” –

(a) met betrekking tot 'n persoon wat in die gewone gang van sake optree —

(i) 'n ooreenkoms tussen daardie persoon en een of meer ander persone vir die verskaffing of potensiële verskaffing van enige goedere of dienste in ruil vir vergoeding; of

(ii) die verskaffing deur daardie persoon van enige goedere aan of onder leiding van 'n verbruiker vir vergoeding; of

(iii) die verrigting deur, of onder leiding van, daardie persoon van enige dienste vir of onder leiding van 'n gebruiker teen vergoeding; of

(b) 'n interaksie beoog in artikel 5(6), ongeag of dit binne paragraaf (a) val;

“Uitvoerende Raad” die Uitvoerende Raad van die provinsie KwaZulu-Natal soos 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 verbruikersake;

“verbode gedrag” 'n handeling of versuim teenstrydig met hierdie Wet;

“verbruiker” 'n verbruiker ten opsigte van enige besondere goedere of dienste —

(a) 'n persoon aan wie daardie besondere goedere of dienste bemark word in die normale gang van die verskaffer se besigheid;

(b) 'n persoon wat 'n transaksie met 'n verskaffer aangegaan het in die normale gang van die verskaffer se besigheid, tensy die transaksie vrygestel is van die toepassing van hierdie Wet deur artikel 5(2) of kragtens artikel 5(3);

(c) indien die konteks sodanig vereis of toelaat, 'n gebruiker van daardie besondere goedere of 'n ontvanger of begunstigde van daardie besondere dienste, ongeag of daardie gebruiker, ontvanger of begunstigde 'n party was by 'n transaksie ten opsigte van die verskaffing van daardie besondere goedere of dienste; en

(d) 'n konsessiehouer kragtens 'n konsessie-ooreenkoms, tot die mate van

toepassing kragtens artikel 5(6)(b) tot (e);

“Verbruikersbeskermer” die persoon aangestel as hoof van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingevolge artikel 5(3);

“verbruikersbeskermingsgroep” enige verbruikersbeskermingsgroep soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“Verbruikerstribunaal” ‘n verbruikerstribunaal ingestel vir die provinsie ingevolge artikel 8(1);

“verskaf” –

(a) met betrekking tot goedere, insluitend verkoop, pag, ruil en verhuur in die gewone gang van sake teen vergoeding; of

(b) met betrekking tot dienste, om die dienste te verkoop, of om dit te verrig of te laat verrig of te laat verskaf, of om teen vergoeding toegang tot enige perseel, geleentheid, aktiwiteit of fasiliteit in die gewone gang van sake te verleen;

“verskaffer” ‘n persoon wat goedere of dienste bemark;

“vertoon” wanneer gebruik word —

(a) met betrekking tot enige goedere, om daardie goedere in die gewone gang van sake voor die publiek te plaas, te vertoon of bloot te stel op ‘n wyse wat in ooreenstemming is met ‘n ope uitnodiging aan lede van die publiek om daardie of soortgelyke goedere te beskou, en uit te kies, vir verskaffing aan ‘n verbruiker; of

(b) met betrekking tot ‘n prys, merk, kennisgewing of ander visuele voorstelling, om enigiets te plaas of te publiseer op ‘n wyse wat redelikerwys ‘n verband skep tussen daardie prys, merk, kennisgewing of ander visuele voorstelling en enige besondere goedere of dienste;

“voorgeskrif” deur regulasie voorgeskryf, en “voorskryf” het ’n ooreenstemmende betekenis.

HOOFSUK 2 OOGMERKE VAN WET, VRYSTELLINGS EN FUNKSIES VAN VERANTWOORDELIKE LID VAN UITVOERENDE RAAD

Oogmerke van Wet

2. Die oogmerke van hierdie Wet is –

- (a) om voorsiening te maak vir ’n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie;
- (b) om voorsiening te maak vir meganismes om verbruikersvertroue te kweek;
- (c) om meganismes te voorsien vir die beskerming van verbruikers op alle terreine van die provinsie terwyl dit ook bevordering van werksverrigting en mededingendheid in die mark ten doel het;
- (d) om ’n soliede fondament te lê vir die gelykmaking van die ekonomiese speelveld tussen die historiese kwesbaarheid van verbruikers en die krag en invloed van besigheid;
- (e) om die sosiale ekonomiese welstand van verbruikers in die provinsie te bevorder; en
- (f) om voorsiening te maak vir ’n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie.

Vrystellings

3. Hierdie Wet is nie van toepassing nie op –

- (a) ’n kantoor soos omskryf in artikel 1(1) van die Wet op Doeane en Aksyns, 1964 (Wet No. 91 van 1964), in die verrigting van sy of haar funksies;
- (b) ’n balju of enige beampte van ’n hof wat ingevolge ’n hofbevel optree; of
- (c) ’n regter of landdros, wat ter verrigting van sy of haar funksies optree.

Funksies van verantwoordelike Lid van Uitvoerende Raad

4. Die verantwoordelike lid van die Uitvoerende Raad moet –

(a) binne 12 maande na die inwerkingtreding van die Wet –

(i) 'n provinsiale beleid en norme en standaarde betreffende verbruikersaangeleenthede en -sake ontwikkel;

(ii) riglyne instel vir die bedryf van besigheid ten opsigte van verbruikersaangeleenthede en -sake in die provinsie;

(b) waar nodig, 'n maatskaplike verantwoordelikhedsprogram met betrekking tot verbruikerskwessies instel; en

(c) sodanige ander funksies verrig as wat hom of haar ingevolge hierdie Wet opgelê is.

HOOFSTUK 3**AGENTSKAPPE VIR VERBRUIKERSBESKERMING IN KWAZULU-NATAL****Instelling van KwaZulu-Natal Kantoor van Verbruikersbeskermer**

5.(1) Onderhewig aan artikel 84 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008), word 'n kantoor wat as die KwaZulu-Natal Kantoor van die Verbruikersbeskermer bekend sal staan, hiermee ingestel.

(2) Die Kantoor bedoel in subartikel (1) is nie 'n regspersoon nie.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet, ingevolge die tersaaklike bepalinge van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), 'n verbruikersbeskermer as hoof van die Kantoor van die Verbruikersbeskermer aanstel op die vlak soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(4) Indien die Verbruikersbeskermer nie in staat is om sy of haar pligte om watter rede ook al na te kom nie, moet die verantwoordelike lid van die Uitvoerende Raad 'n persoon as Waarnemende Verbruikersbeskermer aanstel, hangende die aanstelling van 'n voltydse verbruikersbeskermer.

(5) Die administratiewe en sekretariële werk verbonde aan die verrigting van die Kantoor se funksies moet verrig word deur beamptes in die Departement wat vir sodanige doel deur

die Departementshoof aangewys en aangestel is.

(6) Alle personeellede aangewys en aangestel om administratiewe en sekretariële bystand aan die Kantoor te verskaf soos bedoel in subartikel (5), is onderhewig aan die beheer en bestuur van die Verbruikersbeskermer.

(7) Die Kantoor kan die dienste gebruik van persone wat ooreenkomstig die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) vanaf die staatsdiens gesekondeer of oorgeplaas is.

(8) Waar die behoefte ontstaan, kan die Verbruikersbeskermer bygestaan word in die uitvoering en verrigting van sy of haar pligte en funksies, deur enige persoon of liggaam wie se dienste deur hom of haar bekom word op sodanige terme en voorwaardes en vir sodanige tydperk soos ooreengekom, vir die doel van die uitvoer van 'n bepaalde ondersoek namens die Verbruikersbeskermer.

(9) 'n Persoon vermeld in subartikel (8) kan –

- (a) na enige deel van die provinsie of Republiek gestuur word om 'n ondersoek bedoel in subartikel (8) uit te voer; en
- (b) sodanige besoldiging, toelae en uitgawes soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad vir finansies betaal word.

Oogmerke van Kantoor van Verbruikersbeskermer

6. Die oogmerke van die Kantoor van die Verbruikersbeskermer is –

- (a) om die verskaffing van 'n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie te verseker;
- (b) om verbruikersvertroue in die provinsie te kweek;
- (c) om te verseker dat die meganismes verskaf om verbruikers ingevolge hierdie Wet te beskerm, in plek is;
- (d) om te verseker dat die fondament vir die gelykmaking van die ekonomiese speelveld tussen histories kwesbare verbruikers en besigheid in plek is;
- (e) om die bevordering van die sosiale ekonomiese welstand van

verbruikers in die provinsie te verseker; en

(f) om te verseker dat 'n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie verskaf word.

Bevoegdhede, pligte en funksies van Kantoor van Verbruikersbeskermer

7.(1) Die Kantoor van die Verbruikersbeskermer moet –

- (a) verbruikersklagtes ooreenkomstig hierdie Wet ontvang en ondersoek;
- (b) die mediasie of konsiliasie fasiliteer van geskille wat ingevolge hierdie Wet tussen of onder verbruikers binne die provinsie, inwoners van die provinsie, of persone wat besigheid in die provinsie doen, ontstaan;
- (c) geskille bedoel in paragraaf (b) na die betrokke provinsiale Verbruikerstribunaal verwys;
- (d) aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak en remediërende stappe doen ten opsigte van klagtes wat aan die Kantoor voorgelê word;
- (e) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande enige aangeleentheid wat deur die verantwoordelike lid van die Uitvoerende Raad na die Kantoor verwys word;
- (f) enige aangeleentheid wat direk of indirek met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou, ondersoek en aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak;
- (g) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande die ontwikkeling van 'n maatskaplike verantwoordelikhedsprogram gemik op die bevordering van die maatskaplike ekonomiese welstand van verbruikers in die provinsie;
- (h) die verantwoordelike lid van die Uitvoerende Raad bystaan in die formulering van beleid en in die vasstelling van norme en standaarde in die provinsie, soos bedoel in artikel 4(a)(i) van hierdie Wet;
- (i) met nasionale, provinsiale en internasionale belanghebbendes saamwerk en deelneem aan alle opvoedkundige programme gemik op die bevordering van bewustheid by die belanghebbendes in die verbruikersbedryf met betrekking tot die hantering van verbruikers;
- (j) opvoedkundige programme gemik op die vermindering van misbruik en

- uitbuiting van verbruikers in die provinsie inisier en daaraan deelneem;
- (k) die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer aangaande die ontwikkeling van 'n program ten einde die oogmerke van die Wet soos uiteengesit in artikel 2 na te volg;
- (l) binne die raamwerk van nasionale en provinsiale verbruikersbeleid, die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer met betrekking tot advisering en leiding aan –
- (i) die belanghebbendes in die verbruikersbedryf, verbruikers en organisasies of instellings wie se aktiwiteite of doelwitte 'n impak het op of met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou; en
 - (ii) die besigheidseenheid binne die Departement verantwoordelik vir kleinbesigheidsontwikkeling, koöperatiewe, plaaslike ekonomiese ontwikkeling en ekonomiese bemagtiging, en soortgelyke besigheidseenhede binne ander departemente in die provinsie; en
 - (iii) besighede en verder verseker dat besighede aan die staande beleid en wetgewing betreffende verbruikers voldoen; en
- (m) sodanige ander funksies verrig as wat ingevolge hierdie Wet aan hom toegewys is.

(2) Buiten die bevoegdhede, pligte en funksies bedoel in subartikel (1), moet die Kantoor, na 31 Maart van elke jaar, 'n jaarverslag oor sy funksies gedurende die jaar met inbegrip van die aktiwiteite soos bedoel in subartikel (1) aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag wat ingevolge subartikel (1) voorgelê is, aan die Provinsiale Wetgewer ter tafel lê binne 14 dae na ontvangs daarvan.

Instelling van Verbruikerstribunale

8.(1) Die verantwoordelike lid van die Uitvoerende Raad moet, binne 12 maande na die inwerkingtreding van die Wet, deur middel van kennisgewing in die *Koerant*, een of meer Verbruikerstribunale vir die provinsie instel.

(2) Die Verbruikerstribunaal vermeld in subartikel (1) –

- (a) is ingestel vir die gebied wat in die kennisgewing beskryf word; en
- (b) het sy setel op sodanige plek soos in die kennisgewing vermeld.

(3) Die verantwoordelike lid van die Uitvoerende Raad kan deur middel van kennisgewing in die *Koerant* –

- (a) die gebied vir die Verbruikerstribunaal bedoel in subartikel (2) wysig; of
- (b) die kennisgewing bedoel in subartikel (1) onttrek en die Verbruikerstribunaal bedoel in subartikel (1) afskaf;

(4) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan artikel 10(1)(b), bepaal dat die Verbruikerstribunaal, met betrekking tot bepaalde verrigtinge, by 'n ander plek as die setel van daardie Verbruikerstribunaal, gesetel is.

Oogmerke van Verbruikerstribunaal

9. Die oogmerke van die Verbruikerstribunaal is om –

- (a) enige verbruikersaak te ontvang, dit aan te hoor en daaroor te beslis; en
- (b) enige verbruikersklagte of geskil uit die weg te ruim.

Bevoegdhede, pligte en funksies van Verbruikerstribunaal

10.(1) Die Verbruikerstribunaal moet –

- (a) enige verbruikersklagte wat uit hoofde van verrigtinge bedoel in hierdie Wet voor hom dien, ontvang, aanhoor, oorweeg en daaroor beslis;
- (b) op sodanige dae en gedurende sodanige tye en op sodanige plek sit soos deur die voorsittende beampste of voorsitter, in oorleg met die Verbruikersbeskermer, bepaal;
- (c) sittings op sodanige tyd en plek dwarsdeur die gebiede van die provinsie hou en hervat soos deur die voorsittende beampste van die Verbruikersbeskermer bepaal;
- (d) die bestaande reg van Suid-Afrika toepas in die beoordeling van 'n verbruikersklagte of geskil;

(e) die algemene beginsels om konfliktoplossing tussen verbruikers en besigheid te bestuur, neerlê;

(f) die Verbruikersbeskermer gelas om die naam van die besigheid, die naam van die persoon wat sodanige besigheid bedryf en die bevinding van die Verbruikerstribunaal ten opsigte van subartikel (2)(a), (b) en (c) te noteer in die lys van negatiewe inskrywings wat deur die Kantoor gehandhaaf en bygehou moet word; en

(g) enige ander bevoegdhede uitvoer en die funksies verrig en pligte uitvoer wat ingevolge hierdie Wet aan hom toegewys is.

(2) Die Verbruikerstribunaal kan –

(a) kostes toestaan, teen die voorgeskrewe skaal of tot die bedrag bepaal deur die Verbruikerstribunaal, teen enige persoon wat as aanspreeklik aan die verbruiker bevind is uit hoofde van enige wederregtelike gedrag, deur gedrag of versuim ingevolge hierdie Wet of kragtens enige bestaande wet;

(b) met betrekking tot 'n verbruikersklagte wat betrekking het op 'n taai ooreenkoms of gedrag wat die verbruiker regtens glo dat dit onbillik, onregverdig of uiters onredelik is, 'n bevinding te dien effekte maak;

(c) by die verhoor van 'n verbruikersklagte kostes teen sodanige verbruiker toestaan indien hy tevrede is dat die klagte beuselagtig of kwelsugtig ingedien is; en

(d) oor die algemeen alle aangeleenthede wat nodig of verbonde is aan die verrigting van sy funksies ingevolge hierdie Wet hanteer.

(3) Die voorsittende beampte van die Verbruikerstribunaal moet so gou doenlik, na 31 Maart van elke jaar, 'n jaarverslag oor die aktiwiteite van die Verbruikerstribunaal aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Die verslag voorgelê aan die verantwoordelike lid van die Uitvoerende Raad ingevolge subartikel (3) moet 'n lys van negatiewe inskrywings bedoel in artikel 10(1)(f) insluit.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan van die Verbruikerstribunaal vereis om bykomende verslae aan hom of haar voor te lê soos die verantwoordelike lid

van die Uitvoerende Raad van tyd tot tyd mag vereis.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag bedoel in subartikel (3), binne 14 dae na ontvangs daarvan aan die Provinsiale Wetgewer voorlê.

Samestelling van Verbruikerstribunaal

11.(1) Die Verbruikerstribunaal bestaan uit –

- (a) ses en nie meer nie as agt lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
- (b) die voorsitter, aangestel ingevolge artikel 12 van hierdie Wet.

(2) Die lidmaatskap bedoel in subartikel (1) moet –

- (a) 'n voorsitter, wat 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste vyf jaar ondervinding in die regsprofessie of die regswese;
- (b) 'n adjunkvoorsitter, wat ook 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste drie jaar ondervinding in die regsprofessie of die regswese;
- (c) een persoon met kennis en ondervinding op die terrein van verbruikersadvokatuur, ekonomie en handel;
- (d) een persoon met kennis en ondervinding in die verbruikersbedryf en wat nie aktief betrokke is by of direkte of indirekte finansiële belang daarin het nie;
- (e) een persoon as 'n sekretaris van die Verbruikerstribunaal om administratiewe werk verbonde aan die funksies van die Verbruikerstribunaal te verrig; en
- (f) een sodanige ander persoon om die sekretaris van die Verbruikerstribunaal by te staan soos nodig,

insluit.

(3) By aanstelling van die lede op die Verbruikerstribunaal, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat historiese ongelykhede aangespreek word.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet, deur middel van

kennisgewing in twee koerante met wye sirkulasie in die provinsie en deur enige ander metode te gebruik wat bestem is om die grootste aantal inwoners in die provinsie te bereik, persone of enige belanghebbende partye binne die provinsie uitnoui om kandidate te benoem vir aanstelling op die Verbruikerstribunaal.

(5) Die kennisgewing bedoel in subartikel (4), moet –

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

spesifiseer.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat voorgelê word in reaksie op die kennisgewing oorweeg, en kan 'n keurpaneel aanstel bestaande uit nie meer as vier senior departementele beamptes om al die benoemings te hersien en aanbevelings rakende die kandidate vir die Verbruikerstribunaal aan die verantwoordelike lid van die Uitvoerende Raad te maak.

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

(8) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede, die Portefeuljekomitee voorsien van die name van die aangestelde lede met inbegrip van hul aanstellingstermyn.

(9) Hierdie artikel is, met die nodige veranderinge, van toepassing op die vul van 'n vakature op die Verbruikerstribunaal.

Onbevoegdheid vir aanstelling op Verbruikerstribunaal

12. 'n Persoon is onbevoeg vir aanstelling op die Verbruikerstribunaal of om op die Verbruikerstribunaal te bly, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;

- (b) deur 'n bevoegde hof geestelik siek verklaar is;
- (c) 'n direkte of indirekte belang in enige kontrak met die Verbruikersbeskermer of Verbruikerstribunaal het en versuim om sy of haar belang en die aard daarvan te verklaar soos deur hierdie Wet vereis;
- (d) 'n persoon onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis mag kondoneer, op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet, indien sodanige benoemde volle besonderhede van die misdryf in 'n beëdigde verklaring verklaar: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis voltooi is, eindig;
- (g) versuim om 'n belang te verklaar ooreenkomstig artikel 13 of verrigtinge van die Verbruikerstribunaal bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos in die vermelde artikel bedoel;
- (h) 'n staatsdiensamptenaar is;
- (i) 'n openbare ampsdraer is;
- (j) nie 'n burger van die Republiek is nie; of
- (k) nie in die provinsie woonagtig is nie.

Verklaring van finansiële of ander belange van lede van Verbruikerstribunaal

13.(1) 'n Persoon wat benoem is om op die Verbruikerstribunaal te dien ingevolge artikel 11 moet, binne 10 dae na die benoeming, 'n skriftelike verklaring by die verantwoordelike lid van die Uitvoerende Raad indien van alle direkte of indirekte belange in enige maatskappy, beslote korporasie en of enige ander besigheidsbelange.

(2) Enige versuim deur 'n benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, maak sodanige benoemde ingevolge artikel 12 onbevoeg vir aanstelling op die Verbruikerstribunaal.

(3) Elke lid van die Verbruikerstribunaal moet, by ampsaanvaarding en aan die begin van elke finansiële jaar van die Verbruikerstribunaal, 'n skriftelike verklaring van sy of

haar direkte of indirekte belang in enige maatskappy, beslote korporasie of ander besigheidsbelange aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Indien 'n lid van die Verbruikerstribunaal te eniger tyd gedurende sy of haar ampstermyn as 'n lid van die Verbruikerstribunaal 'n belang in enige maatskappy, beslote korporasie of ander besigheidsbelange bekom, moet hy of sy binne 10 dae na die datum van verkryging van sodanige belang, 'n skriftelike verklaring van sodanige belang by die verantwoordelike lid van die Uitvoerende Raad indien.

(5) Enige versuim deur die lid om sy of haar belange soos bedoel in subartikels (3) en (4) te verklaar, lei tot die beëindiging van die aanstelling van sodanige lid ingevolge artikel 16(2).

Versuim om finansiële of ander belange van lid van Verbruikerstribunaal te verklaar

14.(1) 'n Lid van die Verbruikerstribunaal wat versuim om 'n verklaring beoog in artikel 13 te doen, kan, onderhewig aan subartikel (2), onbevoeg verklaar word om op die Verbruikerstribunaal te bly.

(2) Die verantwoordelike lid van die Uitvoerende Raad moet, wanneer hy of sy daarvan bewus raak dat 'n lid van die Verbruikerstribunaal versuim het om aan die bepalings van artikel 13 te voldoen, die aangeleentheid ondersoek en toepaslike dissiplinêre stappe oorweeg.

Ampstermyn van lid van Verbruikerstribunaal

15.(1) 'n Lid word op die Verbruikerstribunaal aangestel vir 'n tydperk van vyf jaar of vir sodanige korter tydperk soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(2) 'n Lid kan vir een bykomende termyn heraangestel word by die verstryking van sy of haar ampstermyn.

Vakatures, ontslag en bedanking uit amp van lede van Verbruikerstribunaal

16.(1) 'n Lid van die Verbruikerstribunaal moet sy of haar amp ontruim indien hy of sy onbevoeg raak soos in artikel 12 bedoel.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige, afdoende en regverdigbare redes is om dit te doen.

(3) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad van die bedankingskennisgewing kan afsien.

(4) Wanneer 'n vakature op die Verbruikerstribunaal ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 11, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan subartikel (2), die aanstelling van al of sommige van die lede van die Verbruikerstribunaal beëindig.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (5) uitoefen, kan hy of sy, ondanks die prosedure vir die aanstelling van die lede van die Drankowerheid soos in artikel 11 uiteengesit, maar onderhewig aan subartikels (2) en (3) van artikel 11, persone aanstel om as lede van die Verbruikerstribunaal op 'n tussentydse basis te dien: Met dien verstande dat –

(a) die persone aangestel om die lede te vervang wie se aanstelling ingevolge subartikel (5) beëindig is, nie op die Verbruikerstribunaal mag aanbly vir 'n tydperk van meer as 90 dae na die datum van hul aanstelling nie; en

(b) die verantwoordelike lid van die Uitvoerende Raad, moet, onderhewig aan artikel 11, die permanente lede van die Verbruikerstribunaal binne 90 dae na die

aanstelling bedoel in paragraaf (a) van hierdie subartikel aanstel.

Tydlike skorsing van lid van Verbruikerstribunaal

17.(1) Die verantwoordelike lid van die Uitvoerende Raad kan, na toepassing van die tersaaklike reëls van natuurlike geregtigheid, 'n lid van die Verbruikerstribunaal met volle besoldiging skors indien –

- (a) die lid na bewering 'n ernstige misdryf gepleeg het; en
- (b) die verantwoordelike lid van die Uitvoerende Raad redelikerwys glo dat die teenwoordigheid van sodanige lid op die Verbruikerstribunaal enige ondersoek en navraag aangaande die beweerde wangedrag in gevaar mag stel, of die welstand of veiligheid van enige persoon of staatseiendom in gevaar mag plaas: Met dien verstande dat hierdie soort skorsing 'n voorsorgmaatreël is, wat nie 'n bevinding uitmaak nie.

(2) Indien 'n lid as voorsorgmaatreël geskors word soos bedoel in subartikel (1), moet die verantwoordelike lid van die Uitvoerende Raad die ondersoek binne 60 dae na die inwerkingtredingsdatum van sodanige opskorting hou.

Grondwet van Verbruikerstribunaal

18.(1) Onderhewig aan subartikel (4), bestaan die kworum van die Verbruikerstribunaal uit drie lede.

(2) Tensy anders bepaal, is 'n beslissing van die meerderheid van die lede van die Verbruikerstribunaal teenwoordig, die beslissing van die Verbruikerstribunaal.

(3) 'n Lid van die Verbruikerstribunaal moet hom- of haarself onttrek van verrigtinge op grond van enige belang of assosiasie wat sy of haar onpartydige oorweging van die aangeleentheid mag beïnvloed, of wat as sodanig gesien kan word.

(4) Indien, op enige stadium gedurende die verrigtinge voor die Verbruikerstribunaal, –
(a) die voorsitter onbevoeg raak om voor te sit of afwesig is, moet die verrigtinge van voor af begin;

- (b) enige ander lid onbevoeg raak om op te tree of afwesig is, moet die verrigtinge in die teenwoordigheid van die oorblywende lede voortgaan; en
- (c) twee of meer ander lede onbevoeg raak om op te tree of afwesig is, moet die verrigtinge van voor af begin tensy al die partye by die verrigtinge onvoorwaardelik, skriftelik, ooreenkom om die meerderheid van die oorblywende lede se beslissing te aanvaar.

(5) Indien die verrigtinge in die teenwoordigheid van 'n gelyke aantal lede voortgaan en daar 'n nie-eenstemmige beslissing is, is die voorsitter se beslissing finaal.

Besoldiging van lede van Verbruikerstribunaal

19.(1)(a) 'n Lid van die Verbruikerstribunaal kan sodanige besoldiging en toelaes betaal word soos deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad vir finansies bepaal.

(b) 'n Lid van die Verbruikerstribunaal wat besoldiging, toelae of ander voordele ontvang uit hoofde van sy of haar pos of werk by –

- (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, toelae of ander voordele te ontvang terwyl hy of sy as lid van die Verbruikerstribunaal dien, mag slegs besoldiging en toelae vermeld in paragraaf (a) ontvang tot die mate vereis om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou wees indien dit nie vir sodanige pos of werk was nie.

(2)(a) 'n Lid van die Verbruikerstribunaal en 'n persoon wat vir die Verbruikerstribunaal gekoöpteer is, kan met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, vergoeding ontvang vir redelike werklike reis-en-verblyf-uitgawes genoodsaak deur die werklike bywoning van 'n vergadering van die Verbruikerstribunaal;

(b) Die verantwoordelike lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad vir finansies, moet prosedures, met inbegrip van beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis-en-verblyf-uitgawes

soos bedoel in paragraaf (a).

Kundige en ander bystand aan Verbruikerstribunaal

20.(1) Die Verbruikerstribunaal kan sodanige kundiges of ander persone as diensleweraars aanstel soos nodig blyk te wees met die oog daarop om die Verbruikerstribunaal in die uitvoering en uitoefening van sy bevoegdhede, funksies en pligte by te staan.

(2) Die terme, voorwaardes en gelde wat op enige kundige of persoon aangestel kragtens subartikel(1), en die werk wat uitgevoer moet word of dienste wat gelewer moet word van toepassing is, sal deur die Verbruikerstribunaal bepaal word en ingesluit word in 'n geskrewe ooreenkoms wat vir daardie doel tussen die Verbruikerstribunaal en die betrokke kundige of persoon aangegaan is.

(3) Die kundiges of ander persone wat aangestel is kragtens subartikel (1) sal nie geregtig wees om te stem oor enige besluit wat deur die Verbruikerstribunaal geneem is nie.

Verrigtinge van Verbruikerstribunaal

21.(1) Die verrigtinge voor die Verbruikerstribunaal moet –

- (a) deur 'n dagvaarding ingestel word op die voorgeskrewe vorm wat op die betrokke persoon beteken moet word op enige wyse soos voorgeskryf, wat betekening buite die provinsie mag insluit;
- (b) oop wees vir die publiek;
- (c) deur enige persoon wat deur die Kantoor aangestel moet wees, voortgesit word;
- (d) enige persoon wat deur enige geregtelike stappe benadeel mag word, toelaat om persoonlik te verskyn of deur 'n prokureur of advokaat of enige ander persoon verteenwoordig of bygestaan te word; en
- (e) 'n persoon teen wie die geregtelike stappe gedoen word of wat geraak mag word deur die geregtelike stappe of die besluit om persoonlik te verskyn, toelaat om deur 'n advokaat, prokureur of enige ander persoon verteenwoordig of

bygestaan te word.

(2) Die Verbruikerstribunaal kan gelas dat die publiek of enige lid daarvan sekere verrigtinge van die Verbruikerstribunaal of 'n deel daarvan, nie mag bywoon nie, indien dit geregverdig is in die belang van –

(a) die uitvoer van die verrigtinge of die oorweging van die betrokke aangeleentheid; of

(b) die beskerming van die privaatheid van enige persoon wat na bewering betrokke is by enige onregverdig besigheidspraktyke of die bepalings van die Wet oortree het of van die vertroulikheid van enige inligting aangaande daardie persoon.

(3) Die Verbruikerstribunaal moet die rekords van die verrigtinge hou.

(4) Enige persoon wat 'n belang het in enige verrigtinge wat plaasgeneem het, kan op die voorgeskrewe wyse afskrifte van die rekord bedoel in subartikel (3) hou.

Dagvaarding van getuies en voorlê van dokumente aan Verbruikerstribunaal

22.(1) Vir die doel om enige aangeleentheid met betrekking tot verrigtinge voor die Verbruikerstribunaal vas te stel, kan die Verbruikerstribunaal –

(a) deur middel van 'n dagvaarding gerig aan enige persoon, met inbegrip van die persoon teen wie 'n verbruikersklagte ingedien is, in die voorgeskrewe vorm onder die hand van die sekretaris van die Verbruikerstribunaal, en op die voorgeskrewe wyse beteken, –

(i) sodanige persoon dagvaar om voor die Verbruikerstribunaal te verskyn om getuienis te lewer op 'n tyd en plek vermeld in sodanige dagvaarding; en

(ii) sodanige persoon gelas om enige boek, dokument of voorwerp in die besit of bewaring of onder die beheer van sodanige persoon is en wat redelikerwys nodig, wesenlik en tersaaklik mag wees in verband met die verrigtinge voor die Verbruikerstribunaal, te toon;

(b) sodanige persoon gelas om 'n eed of 'n plegtige verklaring af te lê; en

(c) sodanige persoon ondervra en enige boek, dokument of voorwerp ondersoek

wat hy of sy vereis was om te toon.

(2) Die eed of plegtige verklaring bedoel in subartikel (1)(b) kan deur enige persoon afgeneem word wat ingevolge die Wet op Vrederegters en Kommissarisse van Ede, 1963 (Wet No. 16 van 1963) gekwalifiseer is om 'n eed af te neem of 'n plegtige verklaring te aanvaar.

(3) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, nadat hy of sy ingevolge hierdie artikel gedagvaar is, –

(a) sonder voldoende rede versuim om aanwesig te wees op die tyd en plek vermeld in die dagvaarding, of om aanwesig te bly tot die afsluiting van die verrigtinge of totdat hy of sy deur die Verbruikerstribunaal verskoon is van verdere bywoning;

(b) weier om die eed of 'n plegtige verklaring af te lê;

(c) weier om enige vraag wat wettig aan hom of haar gestel word, te antwoord, of om volledig en bevredigend na die beste van sy of haar kennis en geloof te antwoord;

(d) versuim om enige boek, dokument of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer, wat hy of sy vereis was om te toon, te toon; of

(e) 'n vals verklaring voor die Verbruikerstribunaal aflê, wetende dat sodanige verklaring vals is of nie weet of glo dat dit waar is nie.

(4) 'n Persoon wat ingevolge hierdie artikel gedagvaar is om te verskyn, mag nie daarop geregtig wees om te weier om enige vraag te antwoord of om enige boek, dokument of voorwerp te toon nie op die gronde dat hy of sy daardeur aan 'n kriminele aanklag blootgestel sou wees: Met dien verstande dat, tot die mate dat sodanige antwoord, boek, dokument of item die betrokke persoon aan 'n kriminele aanklag blootstel, geen getuienis daarvan toelaatbaar mag wees in enige strafregtelike verrigtinge teen daardie persoon nie, buiten indien daardie persoon teregstaan op 'n aanklag bedoel in subartikel (2)(c) tot (e), of in artikel 319(3) van die Strafproseswet, 1955 (Wet No. 56 van 1955).

(5) 'n Persoon wat die verrigtinge van die Verbruikerstribunaal as 'n getuie bygewoon het, is op die voorgeskrewe getuiefooi geregtig.

HOOFSUK 4 VERWESENLIKING EN BESKERMING VAN VERBRUIKERSREGTE

Deel 1 Algemeen

Verbruikersregte

23.(1) Elke verbruiker het 'n reg –

- (a) om toegang te hê tot basiese goedere en dienste soos voldoende voedsel, klere, behuising, gesondheidsorg, onderrig, skoon water en sanitasie;
- (b) op veiligheid van en beskerming teen produksieprosesse, produkte en dienste wat gesondheids- of lewensgevaar inhou;
- (c) om ingelig en voorsien te word van die feite wat nodig is om ingeligte keuses te maak en om teen oneerlike of misleidende advertensie en etikettering beskerm te word;
- (d) om te kies uit 'n reeks produkte en dienste wat teen mededingende pryse aangebied word met die versekering van bevredigende kwaliteit;
- (e) dat sy of haar belange verteenwoordig word in die opstel en uitvoering van staatsbeleid en die ontwikkeling van produkte en dienste;
- (f) om 'n regverdige betaling van billike eise, insluitend kompensasie vir wanvoorstelling, of nagmaakte goedere of dienste te verhaal of te ontvang;
- (g) op onderrig as 'n verbruiker en om kennis en vaardighede benodig om ingeligte en vrymoedige keuses oor goedere en dienste te maak, te bekom terwyl hy of sy bewus is van basiese verbruikersregte en verantwoordelikhede en hoe om uitvoering daaraan te gee; en
- (h) in 'n gesonde omgewing te leef en te werk wat nie die welstand van huidige en toekomstige generasies bedreig nie.

(2) Die Kantoor moet redelike stappe doen om te verseker dat die regte bedoel in subartikel (1) deur alle verbruikers in die provinsie verwesenlik word.

Verwesenliking van verbruikersregte

24. Enigeen van die volgende persone kan op die wyse soos in hierdie Wet bepaal, die Verbruikerstribunaal of die Verbruikersbeskermer nader indien sy of haar regte

ingevolge hierdie Wet geskend, aangetas of bedreig is of indien enige verbode gedrag plaasvind of plaasgevind het –

- (a) 'n persoon wat namens hom- of haarself optree;
- (b) 'n gemagtigde persoon wat namens 'n ander persoon optree wat nie in sy of haar eie naam kan optree nie;
- (c) 'n persoon wat as 'n lid van, of in die belang van, 'n groep of klas van persone wat geraak word, optree;
- (d) 'n persoon wat in die openbare belang optree, waar toestemming van die Verbruikersbeskermer of die Verbruikerstribunaal, na gelang van die geval, toegestaan is vir sodanige persoon om in openbare belang op te tree; of
- (e) 'n vereniging wat in die belang van sy lede optree.

Beskerming van verbruikersregte

25. Indien 'n verbruiker enige reg vermeld in hierdie Wet of in 'n ooreenkoms of transaksie met 'n verskaffer, uitgeoefen het, laat geld het of gepoog het om te handhaaf, mag die verskaffer nie, in reaksie daarop –

- (a) direk of indirek teen sodanige verbruiker diskrimineer, vergeleke met die verskaffer se behandeling van enige ander verbruiker wat sodanige reg uitgeoefen het, laat geld het of gepoog het om te handhaaf nie;
- (b) die verbruiker penaliseer nie;
- (c) die terme of voorwaardes van 'n transaksie of ooreenkoms met die verbruiker wysig of van voorneme wees om dit te wysig, tot nadeel van die verbruiker nie; of
- (d) enige stappe doen om 'n ooreenkoms met die verbruiker te versnel, af te dwing of te beëindig nie.

Toepassing van regte deur verbruiker

26.(1) 'n Persoon bedoel in artikel 25 kan poog om enige regte ingevolge hierdie Wet of ingevolge 'n transaksie of ooreenkoms toe te pas, of andersins 'n geskil met 'n verskaffer besleg deur –

- (a) die aangeleentheid direk na die Verbruikersbeskermer te verwys;

(b) die aangeleentheid na die Verbruikerstribunaal te verwys, indien sodanige direkte verwysing deur hierdie Wet toegelaat word in geval van die besondere geskil; of

(c) die aangeleentheid na die toepaslike ombud met jurisdiksie te verwys.

(2) Indien die aangeleentheid bedoel in subartikel (1) nie op 'n verskaffer bedoel in subartikel (1)(c) betrekking het nie, kan 'n persoon bedoel in artikel 25 poog om enige regte ingevolge hierdie Wet of ingevolge 'n transaksie of ooreenkoms toe te pas, of andersins 'n geskil met 'n verskaffer besleg deur –

(a) die aangeleentheid na die toepaslike bedryfsombud, geakkrediteer ingevolge artikel 82(6) van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008), te verwys indien die verskaffer aan enige sodanige ombud onderworpe is;

(b) die aangeleentheid na 'n ander geskilbeslegtingsinsagent bedoel in artikel 70 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008) te verwys;

(c) 'n klagte by die Verbruikerskommissie kantoor in te dien ooreenkomstig artikel 7 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008); of

(d) 'n tribunaal met jurisdiksie oor die aangeleentheid te nader, indien alle ander regsmeddele wat ingevolge Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008) tot daardie persoon se beskikking is, uitgeput is.

Deel 2

Indien en ondersoek van verbruikersklagtes

Indien van klagte by Kantoor van Verbruikersbeskermer

27.(1) Enige verbruiker kan op die voorgeskrewe wyse 'n verbruikersklagte by die Kantoor van die Verbruikersbeskermer indien.

(2) 'n Verbruikersklagte bedoel in subartikel (1) wat nie skriftelik is nie, moet deur die Kantoor na skrif herlei word.

(3) Die Kantoor kan 'n lêer of dossier met betrekking tot die verbruikersklagte oopmaak en moet 'n indeks- en liassingstelsel van verbruikersklagtes byhou.

Ondersoekprosedure

28.(1) By die ontvangs van 'n verbruikersklagte ingevolge hierdie Wet, moet die Verbruikersbeskermer 'n persoon in diens van die Kantoor van die Verbruikersbeskermer of 'n ondersoekbeampte gelas om die klagte so gou doenlik te ondersoek.

(2) Die persoon of ondersoekbeampte vermeld in subartikel (1) moet 'n voorlopige beoordeling van die verbruikersklagte soos in hierdie Wet bedoel, maak.

(3) Die Kantoor mag nie enige persoon vir ondersoek laat dagvaar voordat 'n voorlopige beoordeling van die verbruikersklagte gemaak is nie.

(4) Indien, by oorweging van die voorlopige beoordeling, die Verbruikersbeskermer van mening is dat die verbruikersklagte beter deur 'n ander bevoegde owerheid hanteer kan word, kan hy of sy te eniger tyd enige ondersoek of aspek daarvan na sodanige ander owerheid verwys, met inbegrip van 'n owerheid in 'n ander provinsie: Met dien verstande dat die Kantoor te eniger tyd die ondersoek met betrekking tot daardie aangeleentheid kan hervat.

Voorlopige beoordeling van verbruikersklagte

29.(1) Die Kantoor van die Verbruikersbeskermer moet 'n voorlopige beoordeling van die verbruikersklagte ingedien ingevolge artikel 27(1) maak.

(2) Die Kantoor kan te eniger tyd gedurende sy ondersoek sy voorlopige beoordeling wysig, onder andere in die lig van nuwe getuienis of wetsbepalings, en volgens 'n gewysigde beoordeling voortgaan.

(3) Die Kantoor moet beoordeel of die verbruikersklagte, ingedien ingevolge artikel 27(1), deur 'n *bona fide*-verbruiker ingedien word.

(4) Die onus rus op die klaer om vas te stel of hy of sy 'n *bona fide*-verbruiker is.

(5) Indien die klaer bedoel in subartikel (3) nie 'n *bona fide*-verbruiker is nie, mag die

Kantoor nie die klagte ondersoek nie.

(6) Die Kantoor moet beoordeel of die verbruikersklagte teen 'n besigheid, of 'n persoon wat voorgee om 'n besigheid of 'n besigheidspraktyk te bedryf, die potensiaal van strafregtelike aanspreeklikheid of siviele aanspreeklikheid oordra.

Dagvaarding en ondervraging van persone en voorlê van boeke en dokumente

30.(1) Vir die doeleindes van 'n ondersoek bedoel in artikel 28(1) kan die Verbruikersbeskermer, of 'n persoon in diens van die Kantoor van die Verbruikersbeskermer, gemagtig deur die Verbruikersbeskermer, –

(a) enige persoon dagvaar wat vermoedelik –

(i) in staat is om enige inligting oor die onderwerp van die ondersoek te verskaf; of

(ii) enige boek, dokument of ander voorwerp met betrekking tot daardie onderwerp in sy of haar besit of onder sy of haar beheer het,

om voor 'n persoon in diens van die Kantoor te verskyn op 'n tyd en plek in die dagvaarding vermeld, om ondervra te word of om daardie boek, dokument of ander voorwerp te toon; en

(b) daardie persoon, onder eed of plegtige verklaring opgelê deur die Verbruikersbeskermer of 'n ander persoon in diens van die Kantoor van die Verbruikersbeskermer, gemagtig deur die Verbruikersbeskermer, ondervra, en sodanige boek, dokument of ander voorwerp ondersoek of vir verdere inligting of vir veilige bewaring hou.

(2) 'n Dagvaarding vermeld in subartikel (1)(a) moet –

(a) in die voorgeskrewe vorm wees en die persoon wat gedagvaar word, vermeld;

(b) besonderhede bevat van die aangeleentheid ten opsigte waarvan daar van die betrokke persoon vereis word om te verskyn;

(c) deur die Verbruikersbeskermer of 'n ander persoon in diens van die Kantoor gemagtig deur die Verbruikersbeskermer geteken wees; en

(d) op die voorgeskrewe wyse beteken word.

(3) 'n Persoon wat uit hoofde van subartikel (1)(a) verskyn –

(a) kan by die ondersoek deur enige persoon van sy of haar keuse bygestaan word; en,

(b) is daarop geregtig om 'n bedrag gelykstaande aan die bedrag wat hy of sy as getuiefooie sou ontvang het indien hy of sy gedagvaar is om strafregtelike verrigtinge in die Hooggeregshof by te woon, gehou op die plek vermeld in die betrokke dagvaarding, as getuiefooie te ontvang uit gelde wat regtens vir sodanige doel toegeken is.

(4) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, nadat hy of sy ingevolge hierdie artikel gedagvaar is –

(a) sonder voldoende rede versuim om aanwesig te wees op die tyd en plek vermeld in die dagvaarding, of om aanwesig te bly tot die afsluiting van die verrigtinge of totdat hy of sy deur die Verbruikersbeskermer verskoon is van verdere bywoning; of

(b) weier om die eed of 'n plegtige verklaring af te lê.

(5) 'n Persoon wat ingevolge subartikel (1) ondervra word, moet elke vraag eerlik en na die beste van sy of haar vermoë beantwoord, maar die persoon is nie verplig om enige vraag te antwoord indien die antwoord selfbeskuldigend is nie.

(6) Geen selfbeskuldigende antwoord wat gegee is of verklaring afgelê aan 'n persoon wat enige bevoegdheid ingevolge hierdie artikel uitoefen, is toelaatbaar as getuienis teen die persoon wat die antwoord in strafregtelike verrigtinge gegee het of die verklaring afgelê het nie, buiten in strafregtelike verrigtinge vir meened of waarin daardie persoon is verhoor word vir 'n misdryf bedoel in subartikel (5), en dan slegs tot die mate dat die antwoord of verklaring tersaaklik is om die ten laste gelegde misdryf te bewys.

Aanstelling van ondersoekers

31.(1) Die Verbruikersbeskermer –

(a) kan enige geskikte werknemer van die Kantoor of enige ander geskikte persoon in diens van die staat as 'n ondersoeker aanstel; en

(b) moet 'n sertifikaat in die voorgeskrewe vorm aan elke ondersoeker uitreik wat meld dat die persoon ingevolge hierdie Wet as 'n ondersoeker aangestel is.

(2) Wanneer 'n ondersoeker enige funksie van 'n ondersoeker ingevolge hierdie Wet verrig, moet die ondersoeker –

(a) in besit wees van 'n aanstellingssertifikaat wat ingevolge subartikel (1) aan daardie ondersoeker uitgereik is;

(b) daardie sertifikaat toon aan enige persoon wat –

(i) geraak word deur die ondersoeker se handeling ingevolge hierdie Wet; en

(ii) versoek om die sertifikaat te sien; en

(c) die bevoegdhede van 'n vredesbeampte soos omskryf in artikel 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977) hê, en kan hy of sy die bevoegdhede wat regtens aan 'n vredesbeampte verleen is, uitoefen.

(3) Die Verbruikersbeskermer kan enige toepaslik gekwalifiseerde persoon as 'n ondersoeker aanstel of kontrakteer om navorsing, oudits, navrae of ander ondersoeke namens die Verbruikersbeskermer uit te voer.

(4) 'n Persoon aangestel ingevolge subartikel (3) is nie 'n ondersoeker soos bedoel in subartikel (1) nie.

(5) Onderhewig aan die wette wat die staatsdiens bestuur, kan die lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad vir finansies, persone in diens van die Kantoor of enige ander geskikte persone as ondersoekbeamptes aanstel, wat onderworpe moet wees aan die beheer en bestuur van die Verbruikersbeskermer.

(6) Die Verbruikersbeskermer word geag as aangestel as 'n ondersoekbeampte.

(7) 'n Ondersoekbeampte moet voorsien word van 'n aanstellingssertifikaat geteken deur of namens die Verbruikersbeskermer en waarin daar vermeld word dat hy of sy 'n ondersoekbeampte aangestel ingevolge hierdie Wet is.

(8) 'n Onderzoekbeampte moet, wanneer hy of sy enige funksie ingevolge hierdie Wet verrig, sy of haar aanstellingsertifikaat in sy of haar besit hê.

Deursoeking en beslaglegging

32.(1) Ten einde enige inligting vereis deur die Kantoor van die Verbruikersbeskermer met betrekking tot 'n ondersoek te bekom, kan 'n ondersoekbeampte, onderhewig aan die bepalings van hierdie artikel, gedurende kantoורהure enige perseel betree waarop waarin enige boek, dokument of ander voorwerp wat met daardie ondersoek verband hou, is of vermoedelik is, en kan –

- (a) daardie perseel inspekteer of deursoek, en daar sodanige navrae doen as wat nodig mag wees vir die doel om enige sodanige inligting te bekom;
- (b) enige voorwerp gevind op of in die perseel wat met die betrokke ondersoek verband hou of mag hou, ondersoek, en inligting aangaande daardie voorwerp van die eienaar of persoon in beheer van die perseel of van enige persoon in wie se besit of beheer daardie voorwerp is, versoek;
- (c) afskrifte van of uittreksels maak uit enige boek of dokument gevind op of in die perseel wat met die betrokke ondersoek verband hou of mag hou, en 'n verduideliking van enige inskrywing daarin van enige persoon wat vermoedelik die nodige inligting het, versoek; of
- (d) teen die uitreiking van 'n kwitansie, op enigiets op of in die perseel beslag lê wat met die betrokke ondersoek verband hou of redelikerwys mag hou, indien die ondersoekbeampte dit vir verdere ondersoek of vir veilige bewaring moet hou.

(2) Tensy die eienaar of persoon in beheer van die betrokke perseel skriftelik toestemming gegee het, mag 'n ondersoekbeampte slegs 'n perseel betree en enige bevoegdheid bedoel in subartikel (1) uitoefen kragtens 'n lasbrief vir deursoeking, wat slegs deur 'n landdros of 'n regter uitgereik mag word indien dit uit inligting wat aan die landdros of regter gegee is onder eed of plegtige verklaring blyk dat daar redelike gronde bestaan om te vermoed dat 'n boek, dokument of ander voorwerp wat getuienis vir die ondersoek mag verskaf op of in daardie perseel is.

(3) 'n Lasbrief vir deursoeking bedoel in subartikel (2) moet –

- (a) 'n ondersoekbeampte vermeld in die lasbrief magtig om die perseel wat in die

lasbrief aangewys is, te betree vir die doel om enige bevoegdheid bedoel in subartikel (1) uit te oefen;

(b) in die dag uitgevoer word, tensy die landdros of regter spesifiek die nagtelike uitvoering daarvan magtig; en

(c) van krag wees totdat dit uitgevoer word, deur 'n bevoegde hof gekanselleer word, of 'n tydperk van een week vanaf die dag van uitreiking daarvan verstryk, wat ook al eerste plaasvind.

(4) 'n Onderzoekbeampte wat 'n lasbrief vir deursoeking kragtens hierdie artikel uitvoer, moet, voor sodanige uitvoering, indien enige persoon wie se regte beïnvloed mag word, dit vereis –

(a) sy of haar aanstellingsertifikaat aan daardie persoon toon; en

(b) 'n afskrif van die lasbrief aan daardie persoon oorhandig.

(5) 'n Persoon uit wie se besit of beheer 'n boek of dokument kragtens hierdie artikel geneem is, moet, so lank as wat dit in die besit of beheer van die betrokke ondersoekbeampte of van die Kantoor is, op versoek toegelaat word om afskrifte daarvan te maak of om uittreksels daarvan te neem op enige redelike tyd op sy of haar eie koste en onder die toesig van daardie ondersoekbeampte of 'n persoon in diens van die Kantoor.

(6) 'n Persoon is skuldig aan 'n misdryf indien hy of sy –

(a) 'n ondersoekbeampte dwarsboom of belemmer in die verrigting van sy of haar funksies ingevolge hierdie artikel; of

(b) nadat 'n navraag aan hom of haar gerig is kragtens subartikel (1)(a), of inligting of 'n verduideliking kragtens subartikel (1)(b) of (c) van hom of haar versoek is, 'n antwoord of inligting of 'n verduideliking gee wat vals of misleidend is, wetend dat dit vals of misleidend is.

Bedinging van skikking om verbruikersklagte op te los

33.(1) Die Kantoor van die Verbruikersbeskermer kan 'n ooreenkoms met enige persoon beding en sluit vir –

(a) die staking of vermyding van die besigheidspraktyk wat tot die

verbruikersklagte aanleiding gegee het;

(b) die vergoeding, met of sonder belang, aan die verbruiker wat geraak is;

(c) die staking of vermyding van enige aspek van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het; of

(d) enige ander aangeleentheid ten opsigte van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het.

(2) 'n Skikking bedoel in subartikel (1) –

(a) kan te eniger tyd na die instelling van 'n ondersoek aangegaan word, maar voor die uitreik van 'n bevel deur die Hooggeregshof ingevolge artikel 37;

(b) moet skriftelik wees en deur die betrokke partye onderteken wees; en,

(c) kan onderhewig wees aan bevestiging deur die Hooggeregshof ooreenkomstig artikel 37.

Instelling van geregtelike stappe na voltooiing van ondersoek

34.(1) By voltooiing van 'n ondersoek en onderhewig aan subartikel (6), kan die Verbruikersbeskermer geregtelike stappe instel ter ondersteuning van die verbruiker in die Verbruikerstribunaal indien hy jurisdiksie het oor die persoon wat na bewering verantwoordelik is vir die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het.

(2) Vir die doeleindes van sodanige geregtelike stappe, word die Verbruikersbeskermer geag om *locus standi* te hê.

(3) Indien 'n verbruikersklagte ten opsigte van 'n taai ooreenkoms of 'n billikheidskwessie na die Verbruikersbeskermer se mening 'n grondwetlike regs-kwessie opper, kan die Kantoor geregtelike stappe ter ondersteuning van die verbruiker in die Hooggeregshof instel;

(4) Vir die doeleindes van die verrigtinge bedoel in subartikel (3), word die Verbruikersbeskermer geag om *locus standi* in sodanige verrigtinge te hê;

(5) Wanneer die Kantoor geregtelike stappe in die Verbruikerstribunaal of in die

Hooggeregshof instel, word die Verbruikersbeskermer gesitueer as Eerste Eiser of Eerste Applikant en die verbruiker gesitueer as Tweede Eiser of Tweede Applikant, na gelang van die geval.

(6) Die Verbruikersbeskermer moet die toepaslike forum kies waarin die aangeleentheid vervolgt moet word deur die bepalings van hierdie Wet in ag te neem, veral ten opsigte van die vlot afhandeling van die litigasie en doeltreffende vergoeding vir die verbruiker.

(7) Wanneer die toepaslike forum gekies word soos bedoel in subartikel (6), moet die Verbruikersbeskermer die kostes van die litigasie vir die betrokke partye in ag neem en dienooreenkomstig geregtelike stappe in werking stel in die forum waar kostes die minste knellend vir 'n verweerder sal wees.

(8) Geen geregtelike stappe mag deur die Verbruikersbeskermer ingestel word nie, tensy die verbruiker –

- (a) 'n dokument teken waarin die verbruiker die geloofwaardigheid van die klagte bevestig en die Verbruikersbeskermer vrywaar; en
- (b) 'n dokument teken wat die Kantoor vrywaar van die gevolge van enige vals getuienis wat deur hom of haar aangebied mag word.

Deel 3

Beregting en hersiening van verbruikersklagtes

Hersieningspaneel

35.(1) Indien die Kantoor van die Verbruikersbeskermer besluit om nie geregtelike stappe in te stel of die aangeleentheid na 'n ander owerheid te verwys of om voor die Verbruikerstribunaal voort te gaan nie, moet die Verbruikersbeskermer die verbruiker en die persoon of besigheid teen wie die verbruikersklagte ingedien is, skriftelik van sodanige besluit in kennis stel tesame met die redes daarvoor.

(2) Die redes vir die beslissing bedoel in subartikel (1) moet sodanige kennisgewing bedoel in subartikel (1) vergesel.

(3) Indien die verbruiker benadeel word deur die beslissing van die Verbruikersbeskermer om nie geregtelike stappe in te stel nie, kan die verbruiker, binne

veertien dae na ontvangs van die beslissing, die beslissing vir hersiening na die Hersieningspaneel verwys.

(4) Die Hersieningspaneel vermeld in subartikel (1) moet by die Kantoor geleë wees.

(5) Die Kantoor moet die verwysing vir 'n hersiening noteer en die verantwoordelike lid van die Uitvoerende Raad onverwyld inlig oor die behoefte om die Hersieningspaneel byeen te roep.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet die Hersieningspaneel byeenroep binne veertien dae nadat die verbruiker 'n hersiening van die Verbruikersbeskermer se beslissing bedoel in sub-artikel (1) versoek het.

(7) Die Hersieningspaneel wat ingevolge subartikel (6) deur die verantwoordelike lid van die Uitvoerende Raad byeengeroep word, moet uit 'n *ad hoc*-komitee van drie persone met ondervinding en kennis van verbruikersaangeleenthede bestaan.

(8) Die persone bedoel in subartikel (7), mag in diens van die staat wees, maar nie by die Kantoor in diens wees nie.

(9) Onderhewig aan die wette wat die staatsdiens bestuur, moet 'n persoon wat op die Hersieningspaneel aangestel is, wat nie in die voltydse diens van die staat is nie, op sodanige voorwaardes en teen sodanige besoldiging aangestel word soos voorgeskryf deur die verantwoordelike lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

(10) Onderhewig aan die reëls van natuurlike geregtigheid, kan die Hersieningspaneel die meriete van die beslissing oorweeg en enige verbale of skriftelike voorleggings, indien enige, deur die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer.

(11) Die Hersieningspaneel kan sy eie beslissing deur dié van die Verbruikersbeskermer vervang en die Verbruikersbeskermer gelas om geregtelike stappe in te stel of om die Verbruikersbeskermer se beslissing om nie geregtelike stappe in te stel nie, te bevestig.

(12) Daar word na die beslissing van die Hersieningspaneel, geneem ingevolge subartikel (11), verwys as die hersieningsuitspraak.

(13) Die hersieningsuitspraak bedoel in subartikel (12) is finaal en bindend vir die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer.

(14) Die Hersieningspaneel moet die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer skriftelik oor die hersieningsuitspraak inlig en 'n gratis afskrif van die hersieningsuitspraak aan elkeen verskaf.

Uitwerking van hersieningsuitspraak

36. Indien die Hersieningspaneel die Verbruikersbeskermer gelas om verrigtinge namens 'n verbruiker in te stel, is artikel 29 van toepassing met die nodige veranderinge wat deur die konteks vereis word.

HOOFSTUK 5 SKIKKINGS BEDING DEUR KANTOOR VAN VERBRUIKERSBESKERMER

Bevestiging van skikking beding deur Kantoor van Verbruikersbeskermer

37.(1) Die Kantoor kan by die Hooggeregshof aansoek doen om bevestiging van 'n skikking wat ingevolge hierdie Wet beding en gesluit is.

(2) Die Hooggeregshof kan, met behoorlike inagneming van die belang van verbruikers en besighede wat geraak is en die betrokke partye, 'n bevel uitreik wat –

- (a) die skikking bevestig;
- (b) die skikking bevestig met sodanige wysigings soos ooreengekom deur die betrokke partye en onderhewig aan sodanige voorwaardes as wat die hof nodig ag;
- (c) daardie skikking tersyde stel indien, nadat die partye betrokke by die skikking die geleentheid gebied is om gehoor te word, die hof tevrede is dat die skikking

nie die staking of vermyding van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het, sal verseker nie.

(3) 'n Bevel ingevolge subartikel (2) moet in die *Koerant* gepubliseer word.

HOOFSTUK 6 WETSTOEPASSING EN GEREGTELIKE VERRIGTINGE

Deel 1

Vertroulikheid, beperking van aanspreeklikheid, afstanddoening van voordele en siviele regsmiddele

Vertroulikheid

38. Geen ondersoekbeampte of persoon in diens van die Kantoor van die Verbruikersbeskermer of wat pligte vir die Kantoor uitvoer, mag enige inligting openbaar wat deur hom of haar bekom is in die uitoefening, verrigting of uitvoering van enige bevoegdhede, funksies of pligte ingevolge hierdie Wet nie, buiten –

- (a) soverre dit nodig mag wees vir die doel van die deeglike en behoorlike uitoefening, verrigting of uitvoering van enige bevoegdheid, funksie of plig ingevolge hierdie Wet; of
- (b) op die bevel van 'n geregshof.

Beperking van aanspreeklikheid

39. Geen persoon, met inbegrip van die staat, is aanspreeklik ten opsigte van enigiets wat ter goeder trou kragtens hierdie Wet gedoen is nie, buiten dat die onus om goeder trou te bepaal, op sodanige persoon of die staat rus.

Afstanddoening van voordele

40. Enige ooreenkoms of kontraktuele term wat behels om die bepalinge van hierdie Wet uit te sluit of om die toepassing daarvan te beperk, is van nul en gener waarde.

Regsmiddele

41. Geen bepaling van hierdie Wet kan vertolk word as dat dit enige persoon ontnem van enige siviele regsmiddel of reg om strafregtelike vervolging in te stel nie.

Deel 2
Misdrywe en strawwe

Algemene misdrywe

42.(1) 'n Persoon is skuldig aan 'n misdryf indien –

- (a) hy of sy as die eienaar of houer van enige besigheid of lisensie om te bedryf, misbruik van 'n verbruiker binne sy of haar besigheidspersoneel toelaat;
- (b) hy of sy hom- of haarself of enige ander persoon in diens van sodanige persoon met betrekking tot goedere of dienste, aan die verbruiker wanvoorstel.

(2) 'n Lid van die Verbruikerstribunaal, 'n personeellid, adviseur, agent of ander persoon in diens van of wat namens die Verbruikerstribunaal optree, is skuldig aan 'n misdryf indien hy of sy direk of indirek enige ongemagtigde fooi of beloning van enige persoon aanvaar met betrekking tot of in verband met enige diens wat gelewer is of enigiets wat deur die Verbruikerstribunaal gedoen of aangebied word.

(3) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enige diens wat gelewer is of enigiets wat deur die Verbruikerstribunaal gedoen of aangebied word, enige personeellid of enige adviseur, agent of ander persoon in diens van of wat namens die Verbruikerstribunaal optree, omkoop of poog om om te koop, of korrup beïnvloed of poog om korrup te beïnvloed.

(4) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie namens of op bevel van die Verbruikerstribunaal te hef of in te samel, is skuldig aan 'n misdryf.

Misdrywe rakende verhoor van Verbruikerstribunaal

43. 'n Persoon wat –

- (a) versuim om voor die Verbruikerstribunaal te verskyn op die datum, tyd en plek wanneer daar van hom of haar ingevolge artikel 22 vereis word om dit te doen sonder om 'n persoon aan te stel om namens hom of haar te verskyn;

(b) voor die Verbruikerstribunaal verskyn ingevolge artikel 22, maar sonder die voorsitter se toestemming versuim om aanwesig te bly tot die afsluiting van die verhoor of vergadering;

(c) opgeroep is om ingevolge artikel 22 te verskyn en getuienis te lewer, of om enige boek, plan of ander dokument of artikel te toon wat sodanige persoon op daardie tyd in sy of haar besit mag hê, versuim of weier om dit te doen;

(d) ingevolge artikel 22 vereis word om getuienis te lewer, weier om die eed of 'n plegtige verklaring af te lê; of

(e) opsetlik 'n verhoor of vergadering van die Verbruikerstribunaal ontwrig of die Verbruikerstribunaal of enige lid daarvan in die verrigting van sy of haar funksies opsetlik dwarsboom of belemmer,

is skuldig aan 'n misdryf.

Strawwe

44. Enige persoon wat skuldig bevind is aan 'n misdryf –

(a) ingevolge artikel 42(2), (3) of (4), stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie daardie tydperk bepaal deur nasionale wetgewing vir korrupsie oorskry nie; of

(b) ingevolge artikel 30(4), 32(6), 42(1) of 43, stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie, of aan beide sodanige boete en sodanige gevangenisstraf.

HOOFSTUK 7 ALGEMENE BEPALINGS

Regulasies

45.(1) Die verantwoordelike lid van die Uitvoerende Raad kan regulasies uitvaardig rakende –

(a) enige aangeleentheid wat ingevolge hierdie Wet vereis word of toegelaat word om voor te skryf;

(b) enige betaling en bedrag van enige fooie betaalbaar ingevolge hierdie Wet;

(c) die wyse waarop, en die dae waarop, indien van toepassing, enige aansoek ingevolge hierdie Wet gedoen of ingedien kan of moet word;

- (d) die wyse en vorm van diens, aflewering of versending van enige dagvaarding, kennisgewing of ander dokument wat ingevolge hierdie Wet beteken, afgelewer of versend moet word;
- (e) die wyse en vorm van die publikasie van kennisgewing of ander dokument wat ingevolge hierdie Wet gepubliseer moet word;
- (f) die vorm, inhoud en grootte, indien van toepassing, van enige kennisgewing, kommunikasie of ander dokument wat ingevolge hierdie Wet uitgereik, afgelewer, beteken, gegee of gepubliseer moet word;
- (g) tydperke, of die verlenging van tydperke, wat ingevolge hierdie Wet voorgeskryf moet word;
- (h) die besonderhede van die perseel ingevolge waarvan die klagte ingedien word;
- (i) die tarief van getuiefooie betaalbaar by appèl of hersieningsverrigtinge;
- (j) die vorm en wyse waarop 'n klagte aan die Kantoor van die Verbruikersbeskermer voorgelê moet word;
- (j) prosedure wat gevolg moet word vir die hantering van 'n besigheidsentiteit waarvan gevind is dat hy die bepalings van hierdie Wet oorskry het; en
- (k) in die algemeen, enige aangeleentheid ten opsigte waarvan die verantwoordelike lid van die Uitvoerende Raad dit nodig of gerade ag om regulasies uit te vaardig ten einde die oogmerke van hierdie Wet te bereik.

(2) Enige regulasie rakende fooi of gelde wat betaal moet word, moet deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad vir finansies uitgevaardig word.

Oorgangsreëling

46. Enige klagte ingedien by die Verbruikersbesigheidseenheid van die Departement voor die inwerkingtreding van hierdie Wet ingevolge enige wetgewing, hetsy herroep of gewysig, en die regulasies wat ingevolge daardie wetgewing uitgevaardig is, moet van afgesien word en ingevolge hierdie Wet gefinaliseer word.

Kort titel en inwerkingtreding

47.(1) Hierdie Wet word genoem die KwaZulu-Natal Wet op Verbruikerbeskerming, 2013, en tree in werking op 'n datum wat deur die verantwoordelike lid van die Uitvoerende Raad deur middel van kennisgewing in die *Koerant* bepaal sal word.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan verskillende datums vir die inwerkingtreding van verskillende artikels van hierdie Wet bepaal.

No. 2

13 kuNhlolanja 2014

[Umbhalo weSingisi unyathelwe nguNdunankulu]

**UMTHETHO WOKUVIKELA ABATHENGI
WAKWAZULU-NATALI, 2013**
(Umthetho Na. 04 ka 2013)

Uvunywe mhlaka 31-10-2013

UMTHETHO

Wokuhlinzekela ukuqinisekiswa nokuvikelwa kwamalungelo abathengi KwaZulu-Natali; wokuhlinzekela ukusungulwa kweHhovisi loMvikeli wabaThengi KwaZulu-Natali; wokunquma izinhloso, amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi; wokuhlinzekela ukuphenywa kwezikhalo zabathengi; wokuhlinzekela ukunxeshezela kwabathengi; wokuhlinzekela ukufundisa nokuqwashisa ngamalungelo namajoka abathengi; wokuhlinzekela ukusungulwa kweziGungu zabaThengi; wokunquma izinhloso, amandla, amajoka nemisebenzi yeziGungu zabaThengi; kanye nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje: -

UKUHLELEKA KWEZIGABA

*Isigaba*ISAHLUKO 1
IZINCAZELO

1. Izincazelo

ISAHLUKO 2
IZINHLOSO ZOMTHETHO, OKUKHULULIWE KANYE NEMISEBENZI YELUNGU
LOMKHANDLU OPHETHE

2. Izinhloso zoMthetho
3. Abakhululiwe eMthethweni
4. Imisebenzi yeLungu loMkhandlu oPhethe

- ISAHLUKO 3
IZINHLANGANO ZOKUVIKELWA KWABATHENGI KWAZULU-NATALI
5. Ukusungulwa kweHhovisi loMvikeli wabaThengi laKwaZulu-Natali
6. Izinhloso zeHhovisi loMvikeli wabaThengi laKwaZulu-Natali
7. Amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi
8. Ukusungulwa kweziGungu zabaThengi
9. Izinhloso zesiGungu sabaThengi
10. Amandla, amajoka nemisebenzi yesiGungu sabaThengi
11. Ukwakheka kwesiGungu sabaThengi
12. Ukuhoxiswa ekuqokelweni esiGungwini sabaThengi
13. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi
14. Ukwehluleka ukudalula ukuhlomula kwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi
15. Isikhathi sokuba sesikhundleni samalungu esiGungu sabaThengi
16. Izikhala, ukuxoshwa nokwesula kwamalungu esiGungu sabaThengi
17. Ukumiswa okwesikhashana kwelungu lesiGungu sabaThengi
18. Ukwakheka kwesiGungu sabaThengi
19. Ukuholelwa kwamalungu esiGungu sabaThengi
20. Usizo longoti nolunye usizo esiGungwini sabaThengi
21. Izinhlelo zesiGungu sabaThengi
22. Ukubizelwa esigcawini kofakazi nokukhishwa kwemibhalo phambi kwesiGungu

sabaThengi

ISAHLUKO 4
UKUQINISEKISWA NOKUVIKELWA KWAMALUNGELO ABATHENGI

INgxenye 1
Okwejwayelekile

23. Amalungelo abaThengi
24. Ukuqinisekiswa kwamalungelo abathengi
25. Ukuvikelwa kwamalungelo abathengi
26. Ukusetshenziswa kwamalungelo umthengi

INgxenye 2
Ukufakwa nokuphenywa kwezikhalo zabathengi

27. Ukufakwa kwesikhalo eHhovisi loMvikeli wabaThengi
28. Inqubo yophenyo
29. Ukubhekwa okokuqala kwesikhalo somthengi
30. Ukubizelwa esigcawini nokuphekwa ngemibuzo kwabantu nokukhishwa kwezincwadi nemibhalo
31. Ukuqokwa kwabaphenyi
32. Ukusesha nokushaqwa kwempahla
33. Izingxoxo zezinhlelo zokuxazulula isikhalo somthengi
34. Ukuqalwa kwezinhlelo ezilandela ukuphothulwa kophenyo

INgxenye 3
Ukwehlulelwa nokubuyekeza kwesikhalo somthengi

35. Ithimba lokubuyekeza
36. Ukusebenza kwesinqumo sokubuyekeza

ISAHLUKO 5
IZINHLELO EZIBEKWE ETAFULENI IHHOVISI LOMVIKELI WABATHENGI

37. Ukuqinisekiswa kwezinhlelo ezibekwe etafuleni iHhovisi loMvikeli wabaThengi

ISAHLUKO 6
UKUSEBENZA KOMTHETHO NENQUBO YOKWAHLULELA

INgxenye 1
Ubumfihlo, imikhawulo yokubophezeleka, ukutholakala kwemihlomulo nezinye izindlela zokulungisa

38. Ubumfihlo
39. Imikhawulo yokubophezeleka

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- 40. Ukutholakala lwemihlomulo
- 41. Izindlela zokulungisa

INgxenye 2
Amacala nezigwebo

- 42. Amacala ejwayelekile
- 43. Amacala mayelana nezigcawu zeziGungu zabaThengi
- 44. Izigwebo

ISAPHLUKO 7
IZINHLENGEKO EZEJWAYELEKILE

- 45. Imithethonqubo
- 46. Izinhleنگeko zesikhashana
- 47. Isihloko esifingqiwe nokuqala kokusebenza komthetho

ISAPHLUKO 1
IZINCAZELO

Izincazelo

- 1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

“**ibhizinisi**” kushiwo –

- (a) ukunikeza, ukuhleنگeka noma ukwenza kutholakale noma isiphi isidingo sokuphila; noma
- (b) ukufuna noma ukuthola noma iyiphi imali engenayo;

“**iKhomishana**” kushiwo iKhomishana yabaThengi kaZwelonke esungulwe ngokwesigaba 85 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“**uMthethosisekelo**” kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

“**imiphilandawonye**” kushiwo imiphilandawonye njengoba ichazwe esigabeni 1 soMthetho wemiPhilandawonye, 1981 (uMthetho No. 91 ka 1981);

“umthengi” kushiwo umthengi uma kuqondiswe kunoma yiziphi izimpahla ezithile noma imisebenzi, kuchaza-

- (a) umuntu okudayiswa kuyena lezo mpahla noma imisebenzi emsebenzini ovamile womdayisi;
- (b) umuntu ongene esivumelwaneni sokuthengiselana nomdayisi emsebenzini ovamile womdayisi, ngaphandle uma leso sivumelwano sokuthengiselana singathinteki ekusebenzini kwalo Mthetho ngesigaba 5(2) noma ngokwesigaba 5(3);
- (c) uma isimo okukhulunyelwa kuso siphoka kanjalo noma sivumela, umsebenzisi walezo zimpahla noma umemukeli noma umhlomuli waleyo misebenzi, ngale kokuthi lowo msebenzisi, umemukeli noma umhlomuli waba yingxenye na yesivumelwano sokuthengiselana maqondana nokulethwa kwalezo zimpahla noma imisebenzi; futhi
- (d) othenga ilungelo lokusebenzisa igama lenkampani ngokwesivumelwano sokuthengiselana ilungelo lokusebenzisa igama lenkampani, kuye kufinyelele ezingeni elisebenzayo ngokwesigaba 5(6)(b) kuya ku (e);

“uMvikeli wabaThengi” kushiwo umuntu oqokwe njengenhloko yeHhovisi loMvikeli wabaThengi KwaZulu-Natali ngokwesigaba 5(3);

“uhlaka lokuvikelwa kwabathengi” kushiwo noma iluphi uhlaka lokuvikelwa kwabathengi njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“isiGungu sabaThengi” kushiwo isigungu sabathengi esisungulelwe isiFundazwe ngokwesigaba 8(1);

“inkantolo” kushiwo noma iyiphi inkantolo ehlongozwe kwisahluko 8 soMthethosisekelo, ngaphandle kwesiGungu sabaThengi;

“uMnyango” kushiwo umnyango kuHulumeni wesiFundazwe saKwaZulu-Natali obhekele ezabathengi;

“ukukhangisa” uma kusetshenziswe -

- (a) kwaqondiswa kunoma yiziphi izimpahla, kuchaza ukubeka, ukubukisa noma ukuveza lezo zimpahla phambi komphakathi ekuqhutshweni kwebhizinisi kwansukuzonke ngendlela ehambisana nesimemo esivulelekile emalungeni omphakathi ukuba azohlola, aphinde akhethe, lezo noma ezifana nazo izimpahla ukuze zithengiselwe amakhasimende; noma
- (b) kwaqondaniswa nentengo, uphawu, isaziso noma okunye ukuboniswa, kuchaza ukubeka noma ukushicilela noma yini ngendlela ezokwakha ngokuphusile ukumataniswa phakathi kwentengo, uphawu, isaziso noma okunye ukuboniswa kanye nanoma yiziphi ezinye izimpahla ezithile noma imisebenzi.

“uMkhandlu oPhethe” kushiwo uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali njengoba kuhlangozwe esigabeni 132 soMthethosisekelo;

“ingqalasizinda” kushiwo noma isiphi isakhiwo, indawo noma okwakhelwe ukufeza umsebenzi othile, noma lapho kutholakala khona izidingo ezithile;

“ukuhlomula ngokwezezimali” kushiwo ubunikazi bamasheya enkampanini, ukuhlomula kwelungu ebhizinisini elihlanganyele futhi, mayelana nebhizinisi noma umsebenzi owenziwayo, noma ikuphi ukuhlomula okwenza ohlomulayo athole inzalo nenzuzo kulelo bhizinisi noma kulowo msebenzi;

“iGazethi” kushiwo iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

“izimpahla” kuhlanganisa -

- (a) noma yini edayiswa ukuze isetshenziswe ngabantu;
- (b) noma iyiphi into ebambekayo engaphawuliwe ndlela thize esiqeshini (a), kuhlanganisa nanoma yiluphi ulimi into ebhalwe ngalo noma okungenzeka ibhalwe ngalo noma yalotshwa ngalo;
- (c) noma yibuphi ubuciko bokubhala, umculo, izithombe, izithombe ezihambayo, umdlalo, ulwazi, imininingwane, isofthiwe, ikhodi noma omunye umkhiqizo obhaliwe noma oqoshiwe nganoma yiluphi ulimi, noma ilayisense yokusebenzisa lowo mkhiqizo ongabambeki;
- (d) intshisekelo yezomthetho mayelana nomhlaba noma noma iyiphi impahla

engasuki, ngaphandle kwentshisekelo engena ngaphansi kwencazelo ye
"misebenzi" kulesi sigaba; kanye
(e) negesi, amanzi kanye nogesi;

"iNhloko yoMnyango" kushiwo isikhulu esiphezulu somnyango kuHulumeni
wesiFundazwe saKwaZulu-Natali obhekele ezabathengi;

"umphenyi" kushiwo umuntu oqokwe ngokwesigaba 31(1)(a);

"iLungu loMkhandlu oPhethe elibhekele ezeziMali" kushiwo iLungu
loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

"iHhovisi" kushiwo iHhovisi loMvikeli wabaThengi laKwaZulu-Natali elisungulwe
ngokwesigaba 5(1);

"isikhulu sezepolitiki" kushiwo –

- (a) ilungu lePhalamende likaZwelonke, loMkhandlu kaZwelonke
weziFundazwe noma leKhabhinethi;
- (b) ilungu lesishayamthetho sesifundazwe noma loMkhandlu oPhethe
wesiFundazwe;
- (c) ikhansela likamasipala;
- (d) omele iRiphabhulikhi kwamanye amazwe ongelona ilungu
labasebenzi bakahulumeni;
- (e) ilungu lendlu yabaholi bomdabu; noma
- (f) isikhulu, kuzwelonke noma esifundazweni, seqembu lezepolitiki,
senhlangano, somgwamanda, sombimbi, noma seqembu elibhaliswe
ngokwesigaba 15 noma 15A soMthetho weKhomishana yoKhetho, 1996
(uMthetho No. 51 ka 1996);

"umxazululi onamandla okulawula" mayelana nanoma iyiphi impikiswano
evuka ngesivumelwano noma isivumelwano sokuthengiselana phakathi
kwekhasimende nomdayisi-

(a) ongaphansi kwamandla okulawula "komxazululi", noma 'umxazululi
ongumthetho', ngokwanoma yimuphi umthetho kazwelonke, kuchaza lowo

mxazululi, noma umxazululi ongumthetho; noma

(b) 'isikhungo sezimali', njengoba sichazwe kwi- Financial Services Ombud Schemes Act, 2004 (uMthetho No. 37 ka 2004), kuchaza 'umxazululi', njengoba kuqagulwe ngokuhambisana nesigaba 13 noma 14 salowo Mthetho;

"umuntu" kushiwo umuntu qobo noma umuntu ngokomthetho, iqembu labantu noma umgwamanda ohlanganyele, ngaphandle uma ingqikithi isho okwehlukile kunencazelo efanayo;

"iKomidi lemiSebenzi lesiShayamthetho" kushiwo iKomidi lemiSebenzi lesiShayamthetho sesiFundazwe elibhekele ezokuthuthukiswa komnotho nezokuvakasha;

"izakhiwo" kushiwo umhlaba, nanoma isiphi isakhiwo, uhlaka, okunamasondo, umkhumbi, ibhanoyi noma okokufaka impahla;

"okunqunywe" kushiwo okunqunywe umthethonqubo, futhi igama **"ukunquma"** linencazelo efanayo;

"inani" uma kusetshenziswe maqondana-

(a)umfanekiso odingeka ukuba ukhonjiswe ngesigaba 23, kuhlanganisa noma yiluphi uphawu, isaziso noma umfanekiso obonakalayo okungenzeka ngokuphusile kuyamaniswe nenkomba noma kuveze ukumataniseka phakathi kwanoma yiziphi izimpahla noma imisebenzi kanye nenani lokubhekela okungenzeka umdayisi azimisele ukuthengisa ngalo noma ukuthengisa lezo zimpahla noma imisebenzi; noma

(b)ukubhekela noma yisiphi isivumelwano sokuthengiselana, kuchaza isamba semali esikhokhwa noma esingakhokhwa ngumthengi kumdayisi ngokwaleso sivumelano sokuthengiselana, kuhlanganisa noma yisiphi isamba okudingeka ukuba umdayisi asibize, asikhokhise noma asithathe ngokwanoma yimuphi umgomo womphakathi;

"ukuziphatha okungavunyelwe" kushiwo ukwenza noma ukungenzi into ethile

okushayisanayo nalo Mthetho;

“ukugqugquzela” kushiwo –

- (a) ukukhangisa, ukuveza obala noma ukuthembisa ukuhlinzeka noma iyiphi impahla noma umsebenzi njengengxenywe yebhizinisi, emphakathini wonke noma emphakathini othile ukuze ukubone;
- (b) ukwenza izethulo njengengxenywe yebhizinisi ezingabonakala njengokukhangisa ngokuhlinzeka noma iyiphi impahla noma imisebenzi ukuze kubonakale; noma
- (c) ukwenza noma ikuphi njengengxenywe yebhizinisi okungathathwa njengokunxenxa noma njengemizamo yokunxenxa umuntu ukuba kudayiselwane naye;

“isiFundazwe” kushiwo isifundazwe saKwaZulu-Natali esisungulwe ngokwesigaba 103 soMthethosisekelo futhi igama **“okwesifundazwe”** linencazelo efanayo;

“isiShayamthetho sesiFundazwe” kushiwo isiShayamthetho sesiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 105 soMthethosisekelo futhi esinamandla okushaya imithetho esiFundazweni njengoba kuhlongozwe esigabeni 104(1) soMthethosisekelo;

“umsebenzi kahulumeni” kushiwo umsebenzi kahulumeni njengoba kuchazwe esigabeni 1 soMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994), futhi kubandakanya umsebenzi kamasipala;

“imithethonqubo” kushiwo imithethonqubo eyakhiwe ngokwalo Mthetho;

“umaziphathe olawulayo” kushiwo uhlaka lombuso noma uphiko olwakhiwe ngokomthetho kazwelonke noma wesifundazwe olubhekele ukulawula imboni, noma umkhakha wanoma iyiphi imboni;

“ummangalelwa” kushiwo umuntu noma inkampani emangalelwayo ngokwalo Mthetho;

“iLungu loMkhandlu oPhethe” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezabathengi;

“umdayisi” mayelana nezimpahla ezithile, kushiwo umuntu, ngokuqhuba ibhizinisi, ohlinzeka lezo zimpahla kumthengi;

“isiKhwama seNgeniso” kushiwo isiKhwama seNgeniso sesiFundazwe esisungulwe ngokwesigaba 226 soMthethosisekelo;

“umsebenzi” kuhlangukisa, kodwa akugcini lapho-

(a)noma yimuphi umsebenzi noma isibophezelo esenziwa ngumuntu oyedwa ukuze kuhlomule omunye umuntu ndlela thize noma ngokuqondile;

(b)ukuhlinzekwa kwanoma iyiphi imfundo, ulwazi, iseluleko noma ukuthintwa ukuze weluleke, ngaphandle kweseluleko esincike emgomeni ngokomthetho iFinancial Advisory and Intermediary Services Act, 2002 (uMthetho No. 37 ka 2002);

(c)noma yimiphi imisebenzi yokubhanga, noma ehlobene nawo noma imisebenzi efana naleyo yezimali, noma umsebenzi owenziwayo, ukuvikela ngokufaka ngaphansi kwakho noma ukuthwala kwanoma iyiphi ingcuphe ngumuntu oyedwa enzela omunye umuntu, ngaphandle ukufika ezingeni lapho khona imisebenzi enjalo-

(i) yakha iseluleko noma imisebenzi yokulamula encike emgomeni ngokoMthetho iFinancial Advisory and Intermediary Services Act, 2002 (uMthetho no.37 ka 2002); noma

(ii) ulawulwa ngokoMthetho iLong-term Insurance Act, 1998 (uMthetho No. 52 ka 1998), noma uMthetho Woshwalense Wesikhathi Esifushane, ka-1998 (uMthetho No.53 ka-1998);

(d)ukuhanjiswa komuntu oyedwa noma nanoma yiziphi izimpahla;

(e)ukuhlinzekwa kwalokhu-

(i) noma iyiphi indawo yokuhlala noma okokuhamba;

(ii)noma yini okokuqhuba ubumnandi noma umkhiqizo ofuze lona noma ukutholakala kwanoma yibuphi ubumnandi noma umkhiqizo ongabambeki;

- (iii) ukutholakala kwanoma iyiphi ingqalasizinda kagesi yezokuxhumana;
- (iv) ukutholakala, noma okwelungelo lokutholakala, emcimbini noma kunoma yimaphi amanye amagceke, umsebenzi noma isakhiwo; noma
- (v) ukutholakala noma ukusetshenziswa kwanoma yimaphi amagceke noma enye indawo eqashisiwe;
- (f) ilungelo lokuhlala, noma amandla noma igunya mayelana, nanoma yimuphi umhlaba noma enye impahla engagudluki, ngaphandle kwale eqashisiwe; kanye
- (g) amalungelo omuntu othenge ilungelo lokusebenzisa igama lenkampani maqondana nesivumelwano sokuthengiselana ilungelo lokusebenzisa igama lenkampani, ukufinyelela ezingeni elisebenzayo ngokwesigaba 5(6)(b) kuya ku (e), ngale kokuthi lowo muntu odayisa, onikezela noma ohlinzeka ngemisebenzi uyalibamba iqhaza kuwona, uyawugada noma uyingxenye yalowo msebenzi;

“ohlinzeka ngomsebenzi” kushiwo umuntu ogqugquzela, ohlinzeka noma ofuna ukuhlinzeka nganoma imuphi umsebenzi;

“umhlinzeki” kushiwo umuntu okhangisa noma iyiphi impahla noma imisebenzi;

“ukuhlinzeka” uma kusetshenziswe njengegama eliyisenzo-

- (a) maqondana nezimpahla, kuhlenganisa ukuthengisa, ukuqashisa, ukushintshisa kanye nokuqasha emsebenzini wansukuzonke webhizinisi ukubhekela; noma
- (b) maqondana nemisebenzi, kuchaza ukuthengisa imisebenzi, noma ukuwenza noma ukubanga ukuba wenziwe noma uhlinzekwe, noma ukunikezela ngokutholakala kwendawo, umcimbi, umsebenzi noma isakhiwo emsebenzini wansukuzonke webhizinisi ukubhekela;

“lo Mthetho” kubandakanya nemithethonqubo; futhi

“ukudayiselana” kuchaza -

- (a) maqondana nomuntu owenza ngokwesidingo somsebenzi wansukuzonke webhizinisi-
- (i) isivumelwano phakathi kwalowo muntu kanye nomunye umuntu oyedwa noma abaningi ngokuthengiselana noma amandla okuthengiselana noma yiziphi

izimpahla noma imisebenzi ngokushintshisana ukubhekela; noma
 (ii) ukuthengiswa yilowo muntu kwanoma yiziphi izimpahla ngokuyalelwa ngumthengi ukubhekela; noma
 (iii) ukwenziwa ngu, noma ngokuyalelwa yilowo muntu kwanoma yimiphi imisebenzi eyenzela noma ngokuyalelwa ngumthengi ukubhekela; noma
 (b) ukuxhumana okuqondiswe kukhona esigabeni 5(6), ngale kokuthi kungena ngaphansi kwesiqephu (a);

ISAHLUKO 2
IZINHLOSO ZOMTHETHO, ABAKHULULIWE KANYE NEMISEBENZI YELUNGU
LOMKHANDLU OPHETHE

Izinhloso soMthetho

2. Izinhloso zalo Mthetho –

- (a) ukuhlinzekela uhlaka olungaguquki, olwazekayo futhi olusebenzayo lokulawula izikhalo zabathengi esiFundazweni;
- (b) ukuhlinzekela izinhlelo zokugqugquzela ukuzethemba kwabathengi;
- (c) ukuhlinzeka ngezinhlelo zokuvikelwa kwabathengi kuzo zonke izindawo esiFundazweni ngakolunye uhlangothi kugqugquzelwa ukusebenza nokuncintisana kwezokudayisa;
- (d) ukwakha isisekelo sokulinganisa amathuba akhona kwezomnotho phakathi kwabathengi abebekade bengenakho ukuhlonipheka phambilini kanjalo namandla nokusebenza kwebhizinisi;
- (e) ukugqugquzela nokuqhubela phambili isimo esihle kwezomnotho kubathengi esiFundazweni; kanye
- (f) nokuhlinzekela uhlelo olutholakala kalula, olungashintshi, olusebenzayo futhi olusheshayo lokubhekana nezabathengi esiFundazweni.

Abakhululiwe eMthethweni

3. Lo Mthetho awusebenzi –

- (a) esikhulwini njengoba kuchazwe esigabeni 1(1) soMthetho wokuyiNqubo noKwenziwayo, 1964 (uMthetho No. 91 ka 1964), uma senza imisebenzi yaso;
- (b) kwisithunywa senkantolo nakunoma iliphi iphoyisa lenkantolo elenza

umsebenzi walo ngokomyalelo wenkantolo; kanye
(c) nasejajini noma emantshini, eyenza umsebenzi wayo.

Imisebenzi yeLungu loMkhandlu oPhethe

4. ILungu loMkhandlu oPhethe kumele –

- (a) ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho, –
 - (i) lakhe inqubomgomo yesifundazwe nezindlela namazinga amayelana nezindaba ezithinta abathengi;
 - (ii) lakhe futhi libeke imikhombandlela yokusebenzisana mayelana nezindaba ezithinta abathengi esiFundazweni;
- (b) uma kunesidingo, lakhe uhlelo lokubhekelela umphakathi mayelana nezindaba ezithinta abathengi; futhi
- (c) lenze eminye imisebenzi njengoba lingajutshwa ukuba liyenze ngokwalo Mthetho.

ISAHLUKO 3

IZINHLANGANO ZOKUVIKELWA KWABATHENGI KWAZULU-NATALI

Ukusungulwa kweHhovisi loMvikeli wabaThengi kwaZulu-Natali

5.(1) Kuncike kwisigaba 84 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008), ngalokhu kusungulwa ihhovisi elizokwaziwa ngeHhovisi loMvikeli wabaThengi.

(2) IHhovisi elihlongozwe kwisigatshana (1) aliyena umuntu ngokomthetho.

(3) ILungu loMkhandlu oPhethe kumele, ngokwezinhlinzeko ezifanele zoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994), liqoke uMvikeli wabaThengi njengenhloko yeHhovisi loMvikeli wabaThengi ezingeni elinqunywe iLungu loMkhandlu oPhethe.

(4) Uma uMvikeli wabaThengi engakwazi ukwenza imisebenzi yakhe ngenxa yanoma isiphi isizathu, iLungu loMkhandlu oPhethe kumele liqoke umuntu ozokuba yiBamba loMvikeli wabaThengi kuze kuqokwe uMvikeli wabaThengi ozosebenza ngokugcwele.

(5) Imisebenzi yezokuphatha neyobubhalane ehambisana namajoka eHhovisi kumele yenziwe abasebenzi boMnyango abaqokelwe ukwenza leyo misebenzi yiNhloko yoMnyango.

(6) Bonke abasebenzi abajutshwe ukwenza imisebenzi yezokuphatha neyobubhalane eHhovisi njengoba kulongozwe esigatshaneni (5), bayolawulwa futhi bayalelwe uMvikeli wabaThengi.

(7) IHhovisi lingasebenzisa usizo lwabantu abasiselwe noma abadluliselwe kulona besuka kuhulumeni ngokuhambisana nezinhlizeko zoMthetho wemiSbenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994).

(8) Uma kuvela isidingo, uMvikeli wabaThengi, lapho enza imisebenzi namajoka akhe, angasizwa inoma imuphi umuntu noma umgwamanda ngaphansi kwemibandela ethile futhi isikhathi esithile okungavunyelwana ngaso, ngezinhloso zokuthi kuqhutshwe uphenyo oluthile egameni loMvikeli wabaThengi.

(9) Umuntu okukhulunywe ngaye kwisigatshana (8) –

(a) angathunyelwa kunoma iyiphi ingxenye yesiFundazwe noma yeRiphabhulikhi ukuba ayoqhuba uphenyo oluhlongozwe kwisigatshana (8); futhi

(b) angakhokhelwa iholo, izibonelelo nezindleko njengoba kunganquma iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezeziMali.

Izinhloso zeHhovisi loMvikeli wabaThengi

6. Izinhloso zeHhovisi loMvikeli wabaThengi –

(a) ukuqinisekisa ukuhlinzekwa kohlaka lwezikhalo zomphakathi ezingaguquki futhi ezaziwayo esiFundazweni;

(b) ukugxilisa ukuzethemba kubathengi esiFundazweni;

(c) ukuqinisekisa ukuthi izinhlelo ezihlinzekiwe ukuvikela abathengi ngokwalo Mthetho ziyasetshenziswa;

(d) ukuqinisekisa ukuthi kwakhiwa isisekelo sokwenza kube nokulingana endimeni yezomnotho phakathi kwabathengi ababencishwe amathuba phambilini

kanye namabhizinisi;

(e) ukuqinisekisa ukugqugquzelwa kanye nokusimamiswa kwezomnotho kubathengi esiFundazweni; kanye

(f) nokuqisekisa ukuthi abathengi esiFundazweni bahlinzekwa ngohlelo lokubabhekelela olutholakala kalula, olungashintshi, oluwusizo, olusheshayo nolusebenzayo.

Amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi

7.(1) IHhovisi loMvikeli wabaThengi kumele –

- (a) lemukele futhi liphenye izikhalo zabathengi ngokuhambisana nalo Mthetho;
- (b) lihlinzekele ukuxazululwa noma ukulungiswa kwezinkinga ezivela ngokwalo Mthetho phakathi kwabathengi kwabathengi, kwabanikazi bezindawo, noma kwabantu abaqhuba amabhizinisi, esiFundazweni;
- (c) ledlulisele izinkinga ezihlongozwe endimeni (b) esiGungwini sabaThengi esifanele esiFundazweni;
- (d) lenze izincomo kwiLungu loMkhandlu oPhethe futhi lithathe izinyathelo ezifanele zokusombulula isikhalo esifakwe eHhovisi;
- (e) leluleke iLungu loMkhandlu oPhethe nganoma iluphi idaba oludluliselwe eHhovisi yiLungu loMkhandlu oPhethe;
- (f) liphenye futhi lenze izincomo eLungwini loMkhandlu oPhethe mayelana nanoma iluphi udaba oluthintana ngqo noma ngandlela thile nezinto noma nezindaba ezithinta abathengi esiFundazweni;
- (g) leluleke iLungu oMkhandlu oPhethe mayelana nokusungulwa kwezinhlelo zokusiza umphakathi okuhloswe ngazo ukugqugquzela kanye nokuthuthukisa izimo zezomnotho kubathengi esiFundazweni;
- (h) lise iLungu loMkhandlu oPhethe ekwakheni inqubomgomo nasekusunguleni izindlela namazinga esifundazweni, njengoba kuhlongozwe esigabeni 4(a)(i) salo Mthetho;
- (i) lihlanganyele nezinye izinhlaka ezibambe iqhaza kuzwelonke, esifundazweni nasemhlabeni jikelele futhi libambe iqhaza ezihlelweni zezemfundo okuhloswe ngazo ukuqwashisa abathintekayo embonini yezokuthengiselana mayelana nokuphathwa kwabathengi;
- (j) liqale futhi libambe iqhaza ezinhlelweni okuhloswe ngazo ukwehlisa izinga

lokuhlukunyezwa nokuxhashazwa kwabathengi esiFundazweni;

(k) lisize futhi leluleke iLungu loMkhandlu oPhethe ngokusungula uhlelo lokufezekisa izinhloso zoMthetho ezibekwe esigabeni 2;

(l) lisebenzise uhlaka lwezinqubomgomo zabathengi zesifundazwe nezikazwelonke, ukusiza nokweluleka iLungu loMkhandlu oPhethe mayelana nokweluleka nokulawula –

(i) ababambe iqhaza embonini yezokuthengiselana, abathengi kanye nezinhlangano noma nezikhungo ezimisebenzi yazo noma ezizinhloso zazo zinomthelela noma ziyahambisana nezindaba zabathengi esiFundazweni; kanye

(ii) nophiko lwezamabhizinisi ngaphakathi eMnyangweni olubhekele ukuthuthukiswa kwawo wonke amabhizinisi amancane, imiphilandawonye, ukuthuthukiswa nokusimamiswa komnotho womphakathi, nezinye izinhloso ezithi azifane nalo kweminye iminyango esiFundazweni; kanye

(iii) namabhizinisi kanye nokuqinisekisa ukuthi amabhizinisi ayahambisana nezinqubomgomo nemithetho ekhona emayelana nabathengi; futhi

(m) lenze eminye imisebenzi njengoba lingajutshwa ngokwalo Mthetho.

(2) Ngaphezu kwamandla, kwamajoka noma kwemisebenzi ehlongozwe esigatshaneni (1), iHhovisi kumele, ngemuva komhla zingama-31 kuNdasa wonyaka ngamunye, lithumele kwiLungu loMkhandlu oPhethe, umbiko wonyaka ngemisebenzi yalo yonyaka wonke kubandakanya imisebenzi ehlongozwe kwisigatshana (1).

(3) ILungu loMkhandlu oPhethe kumele lethule ikhophi yombiko wonyaka elithunyelelwe wona ngokwesigatshana (1), kwisiShayamthetho sesiFundazwe ezinsukwini eziyi-14 liwutholile.

Ukusungulwa kweziGungu zabaThengi

8.(1) ILungu loMkhandlu oPhethe kumele, ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho, ngesaziso kwiGazethi, lisungule isiGungu noma iziGungu zabaThengi zesiFundazwe.

(2) IsiGungu sabaThengi okukhulunywe ngaso esigatshaneni (1) –

- (a) sakhelwe indawo ebalulwe kwisaziso; futhi
- (b) siyohlala kuleyo ndawo ebalulwe kwisaziso.

(3) ILungu loMkhandlu oPhethe, ngesaziso kwiGazethi –

- (a) lingachibiyela indawo yesiGungu sabaThengi esihlongozwe kwisigatshana (2); noma
- (b) lingahoxisa isaziso esihlongozwe kwisigatshana (1) futhi lihlakaze isiGungu sabaThengi esihlongozwe kwisigatshana (1);

(4) ILungu loMkhandlu oPhethe, kuncike kwisigaba 10(1)(b), linganquma ukuthi, mayelana nezinhlalo ezithile, isiGungu sabaThengi sihlale kwenye indawo ngaphandle kwendawo yaso isiGungu sabaThengi.

Izinhloso zesiGungu sabaThengi

9. Izinhloso zesiGungu sabaThengi –

- (a) ukwamukela, ukulalela nokunquma nganoma iluphi udaba oluthinta abathengi; kanye
- (b) nokuphatha noma iziphi izikhalo noma izihibe ezithinta abathengi.

Amandla, amajoka nemisebenzi yesiGungu sabaThengi

10.(1) IsiGungu sabaThengi kumele –

- (a) semukele, silalele, sicubungule bese siinquma nganoma isiphi isikhalo sabathengi esilethwe kusona ukuze sibhekane naso njengoba kuhlangezwe kulo Mthetho;
- (b) sihlale ngalezo zinsuku nangalawo mahora nakuleyo ndawo eyonqunywa isikhulu esengamele noma uSihlalo, ngokubonisana noMvikeli wabaThengi;
- (c) sibambe futhi siqube imihlangano ngezikhathi nasezindaweni eziyonqunywa isikhulu esengamele noma uMvikeli wabaThengi kuzo zonke izindawo zesiFundazwe;
- (d) sisebenzise imithetho ekhona eNingizimu Afrika uma sesicubungula izikhalo

noma izihibe ezimayelana nabathengi;

(e) sibeke imigomo eyejwayelekile eyosetshenziwa ukuxazulula ukungaboni ngasolinye phakathi kwabathengi namabhizinisi;

(f) siyalele uMvikeli wabaThengi ukuba aqophe, ohlwini lwamabhizinisi angenzi ngendlela egculisayo, igama lebhizinisi, igama lomnikazi webhizinisi kanye nemiphumela etholwe uMvikeli wabaThengi mayelana nesigatshana (2)(a), (b) no (c); futhi

(g) sisebenzise noma imaphi amandla aso futhi senze imisebenzi esijutshelwe yona ngokwalo Mthetho.

(2) IsiGungu sabaThengi –

(a) singakhokhisa izindleko, ngezinga eliyonqunywa noma ngesamba esinqunywe isiGungu sabaThengi, noma imuphi umuntu otholakala enecala lokwenza ngendlela engafanelekile kumthengi, ngesenzo esishayisanayo noma esingalandeli lo Mthetho noma eminye imithetho ekhona;

(b) mayelana nesikhalo somthengi esiphathelene nokudayiselana noma nokuziphatha umthengi akubona kuchemile, kunokwenzelela noma kungenasidingo, singaphenya mayelana nalokho;

(c) ecaleni elimayelana nesikhalo somthengi, uma sinelisekile ukuthi isikhalo siwumdlalo nje noma singukuchitha isikhathi, singakhokhisa umthengi izindleko zecala; futhi

(d) singabhekana nanoma iluphi udaba oludingekile noma olunokuthintana nokwenza kwaso imisebenzi yaso ngokwalo Mthetho.

(3) Isikhulu esongamele sesiGungu sabaThengi kumele ngokushesha, ngemuva komhla zingama-31 kuNdasa wonyaka ngamunye, sithumele kwiLungu loMkhandlu oPhethe umbiko wonyaka ngemisebenzi yesiGungu sabaThengi.

(4) Umbiko othunyelelwe iLungu loMkhandlu oPhethe ngokwesigatshana (3) kumele ubandakanye uhlu lwezigameko ezingezinhle oluhlongozwe esigabeni 10(1)(f).

(5) ILungu loMkhandlu oPhethe lingacela ukuba isiGungu sabaThengi siletthe eminye imibiko kulona njengeLungu loMkhandlu oPhethe izikhathi ngezikhathi.

(6) ILungu loMkhandlu oPhethe kumele lihambise kwisiShayamthetho sesiFundazwe ikhophi yombiko wonyaka ohlongozwe kwisigatshana (3), ezinsukwini eziyi-14 liwutholile.

Ukwakheka kwesiGungu sabaThengi

11.(1) IsiGungu sabaThengi sakhiwe –

- (a) amalungu aphakathi kwayisithupha nayisishiyagalombili aqokwe iLungu loMkhandlu oPhethe; kanye
- (b) noSihlalo, oqokwe ngokwesigaba 12 salo Mthetho.

(2) Ubulungu obuhlongozwe esigatshaneni (1) kumele kubandakanye –

- (a) uSihlalo, okumele kube nguMmeli ogogodile noma uMmeli wasemaJajini noma imantshi eseyathatha umhlalaphansi noma uthisha wezomthetho enyuvesi onesipiliyoni seminyaka okungenani emihlanu esebenza ngomthetho noma kwezobulungiswa;
- (b) usekela kaSihlalo, okumele kube nguMmeli ogogodile noma uMmeli wasemaJajini noma imantshi eseyathatha umhlalaphansi noma uthisha wezomthetho enyuvesi onesipiliyoni seminyaka okungenani emithathu esebenza ngomthetho noma kwezobulungiswa;
- (c) umuntu oyedwa onolwazi nesipiliyoni emkhakheni wezabathengi, wezomnotho nakwezokudayisa;
- (d) umuntu oyedwa onolwazi nesipiliyoni emkhakheni wezabathengi kodwa ongangene kuwona futhi ongahlomuli kwezezimali, okungaba ukuhlomula ngqo noma ngandlela thile;
- (e) umuntu oyedwa njengonobhala wesiGungu sabaThengi ukuze enze imisebenzi yezokuphatha ehambisana nemizebenzi yesiGungu sabaThengi; kanye
- (f) nomunye umuntu oyedwa ozosiza unobhala wesiGungu sabaThengi njengoba kungadingeka.

(3) Ekuqokeni amalungu esiGungu sabaThengi, iLungu loMkhandlu oPhethe kumele liqinisekise ukuthi kubhekelelwa ukungalingani kwaphambilini.

(4) ILungu loMkhandlu oPhethe kumele, ngesaziso emaphephandabeni amabili atholakala kuso sonke isifundazwe nangokusebenzisa indlela engakwazi ukufinyelela kubantu abaningi esiFundazweni, ameme abantu noma izinhlango ezinentshisekelo esiFundazweni ukuba ziphakamise abantu abazoqokelwa kwisiGungu sabaThengi.

(5) Isaziso esihlongozwe kwisigatshana (4), kumele sicacise –

- (a) inqubo yokuphakamisa;
- (b) okudingekayo kwabaphakanyiswayo; kanye
- (c) nosuku lokuvalwa kweziphakamiso.

(6) ILungu loMkhandlu oPhethe kumele licubungule zonke iziphakamiso ezilethiwe eziphendula isaziso, futhi lingaqoka ithimba elakhiwe izikhulu zomnyango ezingeqile kwezine ukubuyekeza zonke iziphakamiso futhi lenze izincomo kwiLungu loMkhandlu oPhethe mayelana nabaphakanyiselwe kwisiGungu sabaThengi.

(7) ILungu loMkhandlu oPhethe kumele lishicilele amagama abantu abaqokelwe esiGungwini sabaThengi kwiGazethi nasemaphephandabeni okungenani amabili atholakala esifundazweni, ngokushesha ngemuva kokuba labo bantu sebazisiwe, ngezincwadi, mayelana nokuqokelwa kwabo esiGungwini sabaThengi.

(8) ILungu loMkhandlu oPhethe kumele, ezinyangeni ezimbili ngemuva kokuqoka amalungu, lihlinzeke iKomidi lemiSebenzi lesiShayamthetho ngamagama amalungu aqokiwe kubandakanya nesikhathi sawo sokuba sezikhundleni.

(9) Lesi sigaba sisebenza nezinguquko ezifanele uma kugcwaliswa isikhala somsebenzi esiGungwini sabaThengi.

Ukuhoxiswa ekuqokelweni esiGungwini sabaThengi

12. Umuntu uyahoxiswa ekuqokelweni esiGungwini sabaThengi noma ekuqhubekeni nokusebenza esiGungwini sabaThengi uma –

- (a) ecwile noma ecwila ezikweletini ngokungenakuhlengeka;
- (b) emenyezelwe inkantolo yomthetho njengongaphilile engqondweni
- (c) ehlomula ngqo noma ngendlela thile esivumelwaneni somsebenzi noMvikeli

wabaThengi noma nesiGungu sabaThengi futhi ehluleka ukudalula lokho kuhlomula kwakhe nohlobo lwakho ngendlela edingeka kulo Mthetho;

(d) engaphansi kokuphathelwa izinto zakhe umthetho;

(e) eke waxoshwa esikhundleni ngenxa yokuziphatha budlabha okubandakanya ukuntshontsha noma ukukhwabanisa;

(f) eke watholakala enecala futhi wagwetshwa ukubhadla ejele ngaphandle kokubonelelwa ngenhlawulo, ngaphandle kokuthi, iLungu loMkhandlu oPhethe, uma lowo ophakanyisiwe edalula yonke imininingwane yecala ngencwadi efungelwe, lingahoxisa lokho ngokuhambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukuhoxiswa ngokwalesi sigatshana kuyaphela ngemuva kweminyaka emihlanu kuphothulwe isigwebo;

(g) ehluleka ukudalula ukuhlomula anakho ngokuhambisana nesigaba 13 noma uma ethamele noma ebambe iqhaza emhlanganweni yesiGungu sabaThengi ngenkathi ehlomla njengoba kulongozwe kulesi sigaba;

(h) esebenza ngaphansi kukahulumeni;

(i) eyisikhulu sezepolitiki;

(j) engesona isakhamuzi sakwiRiphabhulikhi; noma

(k) engahlali esiFundazweni.

Ukudalulwa kokuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi

13.(1) Umuntu ophakanyiselwe ukusebenza esiGungwini sabaThengi ngokwesigaba 11 kumele, ezinsukwini eziyi-10 ephakanyisiwe, athumele incwadi yokudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula anakho kunoma iyiphi inkampani, umphilandawonye nanoma ikuphi okunye ukuhlomula anakho kwezamabhezini, kwiLungu loMkhandlu oPhethe.

(2) Noma ikuphi ukwehluleka kwelungu ukudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula elinakho ngokwesigatshana (1) kuyalihoxisa lelo lungu ngokwesigaba 12 ukuba liqokelwe esiGungwini sabaThengi.

(3) Noma iliphi ilungu lesiGungu sabaThengi kumele, uma lingena esikhundleni futhi

ekuqaleni konyaka ngamunye wezimali wesiGungu sabaThengi, lilethe incwadi yokudalula ukuhlomula ngqo noma ngandlela thile elinakho kunoma iyiphi inkampani, umphilandawonye noma ibhizinisi kwiLungu loMkhandlu oPhethe.

(4) Uma ilungu lesiGungu sabaThengi liqala ukuhlomula kunoma iyiphi inkampani, umphilandawonye noma ibhizinisi, nganoma isiphi isikhathi ngesikhathi lisesesikhundleni njengelungu lesigungu sabaThengi kumele, zingapheli izinsuku eziyishumi liqalile ukuhlomula, lilethe incwadi yokudalula lokho ukuhlomula kwiLungu loMkhandlu oPhethe.

(5) Noma ikuphi ukwehluleka kwelungu ukudalula ukuhlomula kwalo njengoba kuhlangezwe kwisigatshana (3) no (4) kuyoholela ekuhoxisweni kwalelo lungu ekutheni liqokwe ngokwesigaba 16(2).

Ukwehluleka kwelungu lesiGungu sabaThengi ukudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula

14.(1) Ilungu lesiGungu sabaThengi elehluleka ukudalula njengoba kuvezwe esigabeni 13, kuncike kwisigatshana (2), lingahoxiswa ekutheni liqhubeke nokuba sesiGungwini sabaThengi.

(2) ILungu loMkhandlu oPhethe, uma lithola ukuthi ilungu lesiGungu sabaThengi lehlulekile ukulandela izinhlinzeko zesigaba 13, kumele liphenye ngalokho bese lithatha izinyathelo zokuqondisa izigwegwe ezifanele.

Isikhathi sokuba sesikhundleni selungu lesiGungu sabaThengi

15.(1) Ilungu liqokelwa ukusebenza kwisiGungu sabaThengi iminyaka eyisihlanu noma ngaphansi njengoba kunganquma iLungu loMkhandlu oPhethe.

(2) Ilungu lingakwazi ukuthi libuye liqokelwe elinye ihlandla.

Izikhala zomsebenzi, ukuxoshwa nokwesula kwamalungu esiGungu sabaThengi

16.(1) Ilungu lesiGungu sabaThengi kumele lihoxe esikhundleni salo uma lihoxiswa

njengoba kuhlangozwe kwisigaba 12.

(2) ILungu loMkhandlu oPhethe, ngemuva kokunikeza ilungu ithuba nokubeka uhlangothi lwalo, lingaxosha lelo lungu nganoma isiphi isikhathi, uma, ngokubona kwalo, kunezizathu ezibambekayo nezifanele zokwenze njalo.

(3) ILungu lingesula esikhundleni ngokuthi linikeze iLungu loMkhandlu oPhethe incwadi yesaziso sezinsuku ezingekho ngaphansi kwama-30: Kuncike ekutheni iLungu loMkhandlu oPhethe lingasichitha lesa saziso sokwesula.

(4) Noma inini uma kuvela isikhala somsebenzi kwisiGungu sabaThengi, iLungu loMkhandlu oPhethe kumele, kuncike kwisigaba 11, liqoke umuntu ozovala lesa sikhala kulesa sikhathi esisasele selungu elishiyayo.

(5) ILungu loMkhandlu oPhethe, kuncike kwisigatshana (2), lingaxosha amalungu athile noma wonke amalungu esiGungu sabaThengi.

(6) Uma iLungu loMkhandlu oPhethe lisebenzisa amandla alo ngokwesigatshana (5), uma lenqena ukulandela inqubo yokuqokwa kwamalungu esiGungu abaThengi ebekwe esigabeni 11, kodwa ngokulandela izigatshana (2) no (3) zesigaba 11, lingaqoka abantu abazosebenza njengamalungu esiGungu sabaThengi okwesikhashana: Kuncike ekutheni –

(a) abantu abaqokelwa ukungena ezikhundleni zamalungu axoshiwe ngokwesigatshana (5), ngeke baqhubeke nokuba sesiGungwini sabaThengi isikhathi esingaphezu kwezinsuku ezingama-90 kusukela osukwini lokuqokwa kwabo; futhi

(b) iLungu loMkhandlu oPhethe, kuncike kwisigatshana 11, kumele liqoke amalungu azosebenza ngokugcwele njengamalungu esiGungu sabaThengi zingakapheli izinsuku ezingama-90 emva kokuqokwa okuhlangozwe endimeni (a) yalesi sigatshana.

Ukumiswa isikhashana kwelungu lesiGungu sabaThengi

17.(1) ILungu loMkhandlu oPhethe, ngemuva kokusebenzisa imithetho efanele yezobulungiswa, lingamisa ilungu lesiGungu sabaThengi libe liholo ngokugcwele uma –

- (a) kunezinsolo zokuthi ilungu lenze icala elibucayi; futhi
- (b) iLungu loMkhandlu oPhethe likholwa ukuthi ukuba khona kwalelo lungu esiGungwini sabaThengi kungaphazamisa uphenyo mayelana nalezo zinsolo zokuphula umthetho, noma kungabeka engozini izimpilo noma ukuphepha komuntu othile noma kwempahla kahulumeni: Kuncike ekutheni ukumiswa kwalolu hlobo kuyisenzo sokuqinisekisa ukuthi konke kuqhubeka kahle futhi akuphathelene nemiphumela yophenyo.

(2) Uma ilungu limisiwe ngenhloso yokuqhuba kahle uphenyo njengoba kuhrongozwe kwisigatshana (1), iLungu loMkhandlu oPhethe kumele libize isigcawu secala ezinsukwini ezingama-60 kusukela lelo lungu limisiwe.

Ukwakheka kwesiGungu sabaThengi

18.(1) Kuncike kwisigatshana (4), isibalo sabangabamba umhlangano wesiGungu sabaThengi ngamalungu amathathu.

(2) Ngaphandle uma kuhrinzeke, isinqumo seningi lamalungu esiGungu sabaThengi yisona sinqumo sesiGungu sabaThengi.

(3) ILungu lesiGungu sabaThengi kumele lizihoxise lona emhlanganweni uma linokuthinteka noma ukubandakanyeka elinakho odabeni oludingidwayo okungenzeka kulithikameze ekutheni lithathe isinqumo esifanele ngodaba, noma okungenzeka kubonakale kanjalo.

(4) Uma kunoma isiphi isigaba somhlangano wesiGungu sabaThengi –

- (a) usihlalo ehluleka ukuqhubeka nokuba usihlalo noma engekho, kumele umhlangano uqalwe phansi;
- (b) noma iliphi ilungu lihluleka ukuqhubeka noma lingekho, umhlangano kumele uqhutshwe amalungu asele; futhi
- (c) amalungu amabili noma ngaphezulu ehluleka ukuqhubeka noma engekho,

umhlangano kumele uqalwe phansi ngaphandle uma bonke ababambe iqhaza bevumelana ngokubhala phansi ukuthi bayasemukela isinqumo seningi lamalungu asele.

(5) Uma umhlangano uqhubeka bese kuba nokulingana kwamavoti esinqumweni esithile, usihlalo uyothatha isinqumo esingujuqu.

Ukukhokhelwa kwamalungu esiGungu sabaThengi

19.(1)(a) Ilungu lesiGungu sabaThengi lingakhokhelwa lelo holo nezibonelelo njengoba kunganquma iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) Ilungu lesiGungu sabaThengi elithola iholo, izibonelelo noma eminye imihlomulo ngenxa yomsebenzi noma yokuqashwa kwalo –

(i) kuhulumeni kazwelonke;

(ii) kuhulumeni wesifundazwe;

(iii) kumasipala; noma

(iv) kwinhlangano, kumgwamanda noma esikhungweni esilawulwa uhulumeni kazwelonke noma wesifundazwe,

futhi eliqhubekayo nokuthola lawo maholo, lezo zibonelelo noma eminye imihlomulo ngenkathi lisebenza njengelungu lesiGungu sabaThengi, liyothola kuphela iholo nezibonelelo okukhulunywe ngakho endimeni (a) ngendlela edingekile ukuze ilungu libe sesimweni sezezimali ebelivele lizokuba kusona ukube belingaqashiwe noma belingasebenzi.

(2)(a) Ilungu lesiGungu sabaThengi kanye nomuntu owengeziwe esiGungwini sabaThengi, mayelana nemisebenzi yakhe njengelungu noma njengelungu elengeziwe, angathola inkokhelo mayelana nezindleko zokuhamba ngokomsebenzi ezidingekayo ukuze ahambele imihlangano noma enze imisebenzi yesiGungu sabaThengi.

(b) ILungu loMkhandlu oPhethe, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume izinqubo, kubandakanya izilinganiso, zokulawulwa, zokuphathwa nezokwenziwa kwezicelo zokuthola izimali zezibonelelo zokuhamba ngokomsebenzi njengoba kuhlangozwe endimeni (a).

Usizo longoti nolunye usizo olunikezwa isiGungu sabaThengi

20.(1) IsiGungu sabaThengi singaqoka ongoti noma abanye abantu abahlinzeka ngemisebenzi ethile esingabona befanele ukuthi basize isiGungu sabaThengi ukuze sisebenzise amandla aso, senze imisebenzi sifeze namajoka aso.

(2) Imigomo, imibandela, nezimali ezikhokhelwa noma imuphi ungoti noma umuntu oqokwe ngokwesigatshana (1), kanye nomsebenzi ozokwenziwa noma usizo oluzonikezelwa kumele kunqunywe isiGungu sabaThengi, futhi kumele kubhalwe encwadini yesivumelwano okungenwe kusona mayelana nalokho phakathi kwesiGungu sabaThengi nalowo ngoti noma nalowo muntu.

(3) Ongoti noma abanye abantu abaqokwe ngokwesigatshana (1) angeke bavote kunoma isiphi isinquno esithathwa isiGungu sabaThengi.

Amacala esiGungwini sabaThengi

21.(1) Amacala athethwa yisiGungu sabaThengi kumele –

- (a) aqalwe ngokuthi kukhishwe amasamanisi ngefomu elinqunyiwe abhekiswe kumuntu othintekayo nganoma iyiphi indlela njengoba kunganqunywa, okungabandakanya ukuthi akhishelwe umuntu ongaphandle kwiFundazwe;
- (b) avuleleke emphakathini;
- (c) ashushiswe yinoma imuphi umuntu okumele ukuthi aqokwe iHhovisi;
- (d) avumele noma imuphi umuntu okungenzeka ngandlela thile athinteki mayelana necala ukuba azivelele yena mathupha noma amelwe noma asizwe ummeli noma ummeli wasemajajini nanoma imuphi omunye umuntu; futhi
- (e) avumele umuntu othweswe amacala noma othintekayo emacaleni noma esinqunweni secala ukuba azivelele yena mathupha noma amelwe noma asizwe ummeli, ummeli wasemajajini noma omunye umuntu.

(2) IsiGungu sabaThengi singayalela umphakathi noma elinye lamalungu aso ukuba lingasihambeli isigcawu secala elisesiGungwini sabaThengi noma ingxenye yalo, uma sikholelwa ekutheni lokho kungaphazamisa –

- (a) ukuqhutshwa kwecala noma ukucutshungulwa kwalolo daba; noma
- (b) ukuvikeleka kobumfihlo bomuntu osolwa ngokubandakanyeka ezenzweni

ezingemukelekile noma owephule izinhlinzeko zoMthetho noma zobumfihlo banoma iluphi ulwazi olumayelana nalowo muntu.

(3) IsiGungu sabaThengi kumele sigcine amarekhodi ecala.

(4) Noma imuphi umuntu othintekayo ecaleni ebeliqukwa, angathola amakhophi amarekhodi ahlangozwe esigatshaneni (3) ngendlela enqunyiwe.

Ukubizelwa esigcawini kofakazi kanye nokukhishwa kwamadokodo phambi kwesiGungu sabaThengi

22.(1) Ukuze kucaciswe mayelana nanoma iluphi udaba oluphathelene necala eliqukwa yisiGungu sabaThengi, isiGungu sabaThengi –

(a) ngesamanisi elibhekiswe kunoma imuphi umuntu, kubandakanya lowo muntu okubhekiswe kuye isikhalo somthengi, ngefomu elinqunyiwe ngesandla sikanobhala wesiGungu sabaThengi futhi sathunyelwa ngendlela enqunyiwe, kumele –

(i) sibizele lowomuntu phambi kwesiGungu sabaThengi ngesikhathi nasendaweni ebhalwe kulelo samanisi, ukuze azonikeza ubufakazi; futhi

(ii) siyalele lowo muntu ukuba aveze noma iziphi izincwadi, imibhalo noma izinto ezikuyena noma azigcinile noma ezilawulwa yilowo muntu futhi okubonakala ukuthi zingadingeka, zibalulekile futhi ziwusizo ekuqulweni kwecala phambi kwesiGungu sabaThengi;

(b) singayalela lowo muntu ukuthi enze isifungo noma enze isiqinisekiso; futhi

(c) siphonse lowo muntu imibuzo futhi sihlole noma iyiphi incwadi, umbhalo noma into evezwe ilowo muntu.

(2) Isifungo noma isiqinisekiso esihlongozwe kwisigatshana (1)(b) singenziwa inoma imuphi umuntu ogunyaziwe ukwenzisa isifungo noma ukwamukela isiqinisekiso ngokoMthetho wezobuLungiswa mayelana nabaSebenzi bezoMthetho noKhomishana beziFungo, 1963 (uMthetho No. 16 ka 1963).

(3) Umuntu uyotholakala enecala uma, ngemuva kokuba esenikezwe isamanisi ngokwalesi sigaba –

- (a) ehluleka ngaphandle kwesizathu esifanele ukuvela endaweni nangesikhathi esinqunywe kwisamanisi, noma ukuqhubeka nokuba khona kuze kuphothulwe icala noma kuze kube uhoxiswa yisiGungu sabaThengi ukuqhubeka nokuza ecaleni;
- (b) enqaba ukwenza isifungo noma isiqinisekiso;
- (c) enqaba ukuphendula, noma ukuphendula ngokugcwele nangokwenelisayo noma ngokolwazi lwakhe nokukholelwa kwakhe kunoma imuphi umbuzo aphonswa wona ngokusemthethweni;
- (d) ehluleka ukuveza noma iyiphi incwadi, umbhalo noma into ethile ekuyena, ayigcinile noma elawulwa nguyena, okudingeka ukuthi ayibeke obala; noma
- (e) enza isitatimende esingamanga ngaphambi kwesiGungu sabaThengi azi ukuthi leso sitatimende singamanga noma engazi futhi engakholwa ukuthi siyiqiniso.

(4) Umuntu obizelwe esigcawini ngokwalesi sigaba angangaba nalo ilungelo lokunqaba ukuphendula noma imuphi umbuzo ngokwalesi sigaba noma ukuveza noma iyiphi incwadi, umbhalo noma into ethile ngesizathu sokuthi ngalokho uyobe esezifaka ecaleni: Kuncike ekutheni, uma leyo mpendulo, leyo ncwadi, lowo mbhalo noma leyo nto ethile ingenza ukuthi lowo muntu azithole esebhekene namacala, abukho ubufakazi balokho okuyovumeleka kunoma iliphi icala elimayelana nalowo muntu, ngaphandle uma lowo muntu ebhekene necala elihlongozwe kwisigatshana (2)(c) kuya ku (e), noma esigabeni 319(3) soMthetho weNqubo yamaCala obuGebengu, 1955 (uMthetho No. 56 ka 1955).

(5) Umuntu ovele esigcawini sesiGungu sabaThengi njengofakazi unelungelo lokuthola izimali ezinqunyiwe ezikhokhelwa ofakazi.

ISAHLUKO 4 UKUQINISEKISWA NOKUVIKELWA KWAMALUNGELO ABATHENGI

INgxenye 1 Okwejwayelekile

Amalungelo abathengi

23.(1) Noma imuphi umthengi unelungelo –

- (a) lokuthola izimpahla nezidingo ezibalulekile njengokudla okwanele, izingubo,

indlu yokuhlala, ukunakekelwa kwezempilo, imfundo, amanzi ahlanzekile kanye nokuthuthwa kwendle;

(b) lokuphepha nokuvikeleka ezinhlelweni zokukhiqiza noma emikhiqizweni engabeka engcupheni impilo yakhe;

(c) lokwaziswa, nokuhlinzekwa ngamaqiniso adingekayo ukuze athathe izinqumo eziphusile futhi avikelwe ekudukisweni ngezikhango namagama empahla akhohlisayo;

(d) lokukhetha ezimpahleni ezahlukahlukene nasemisebenzini ehlinzekwa ngamanani ashiyanayo ngesiqinisekiso sezinga elifanele lempahla;

(e) lokuthi amelwe uma kwakhiwa noma kusetshenzisa izinqubomgomo zikahulumeni nalapho kwakhiwa impahla noma kuhlinzekwa izidingo;

(f) lokuthi akhokhelwe noma kulungiswe ngendlela isikhalo sakhe, kubandakanya ukunxeshezela uma kungenziwanga ngendlela abefuna ngayo, noma uma enikezwe impahla noma izidingo ezishodayo;

(g) lokufundiswa njengomthengi nelokuthola ulwazi namakhono adingekayo ukuze akwazi ukuzithathela izinqumo ezifanele neziphusile mayelana nempahla kanye nezidingo, ngesikhathi esifanayo azi ngamalungelo abathengi nokuthi asetshenziswa kanjani; kanye

(h) nelokuhlala nokusebenza endaweni ephaphile engabeki engcupheni izimpilo zabantu kanye nezezizukulwane ezizayo.

(2) IHhovisi kumele lithathe izinyathelo ezifanele zokuqinisekisa ukuthi amalungelo ahlangozwe kwisigatshana (1) ayaziwa yibo bonke abathengi esiFundazweni.

Ukuqinisekiswa kwamalungelo abathengi

24. Noma imuphi kulaba bantu abalandelayo, ngendlela ehlinzekwe kulo Mthetho, angaya esiGungwini sabaThengi noma kuMvikeli wabaThengi uma amalungelo akhe ngokwalo Mthetho ephuliwe, ekhinyabeziwe noma esengozini noma uma kwenzeke noma isiphi isigameko esingavumelekile:

(a) umuntu oziyela yena ngokwakhe;

(b) umuntu ogunyaziwe oya egameni lomunye umuntu ongeke wakwazi ukuziyela yena;

(c) umuntu oyilungu noma okhuluma egameni leqembu noma labantu abathile

abakhinyabezekile;

(d) umuntu okhuluma egameni lomphakathi, uma lowo muntu egunyazwe uMvikeli wabaThengi noma isiGungu sabaThengi, njengoba kungaba njalo ukuthi akhulume egameni lomphakathi; noma

(e) inhlango ekhulumela amalungu ayo.

Ukuvikelwa kwamalungelo abathengi

25. Uma umthengi esebenzise, enze noma efune ukusebenzisa noma iliphi ilungelo elibekwe kulo Mthetho noma esivumelwaneni sokudayiselana nomdayisi, umdayisi akumele, ngenxa yalokho –

(a) acwase ngqo noma ngandlela thile lowo mthengi, uma kuqhathaniswa nendlela lowo mdayisi apha ngayo noma imuphi omunye umthengi osebenzisa, owenza noma ofuna ukusebenzisa lelo lungelo;

(b) ahlawulise umthengi;

(c) ashintshe noma azame ukushintsha, imigomo nemibandela yokudayiselana nomthengi, ngendlela ezocindezela umthengi; noma

(d) athathe noma isiphi isinyathelo sokusheshisa, sokusebenzisa noma sokuqeda isivumelwano nomthengi.

Ukusetshenziswa kwamalungelo omthengi

26.(1) Umuntu ohlongozwe esigabeni 25 angazama ukusebenzisa noma imaphi amalungelo ngokwalo Mthetho noma ngokwesivumelwano sokudayiselana, noma azame ukuxazulula ukungaboni ngasolinye nomdayisi ngokuthi –

(a) adlulisele udaba kuMvikeli wabaThengi;

(b) adlulisele udaba esiGungwini sabaThengi, uma ukulidlulisela kuvumelekile ngokwalo Mthetho uma kuba nokungaboni ngasolinye; noma

(c) adlulisele udaba kumxazululi onamandla okulucubungula.

(2) Uma udaba oluhlongozwe esigatshaneni (1) lungamthinti umdayisi ohlongozwe esigatshaneni (1)(c), umuntu ohlongozwe esigabeni 25 angazama ukusebenzisa noma

imaphi amalungelo ngokwalo Mthetho noma ngokwesivumelwano sokudayiselana, noma azame ukuxazulula ukungaboni ngasolinye ngokuthi –

- (a) adlulisele udaba kumxazululi wakuleyo mboni, ogunyazwe ngokwesigaba 82(6) soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008), uma umdayisi enaye umxazululi walolo hlobo;
- (b) adlulisele udaba kwi-ejenti yokuxazululwa kwezinkinga ehlongozwe esigabeni 70 soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 k 2008);
- (c) afake isikhalo ehhovisi leKhomishana yabaThengi ngokuhambisana nesigaba 7 soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008); noma
- (d) aye esiGungwini esinamandla okulawula kulolo daba, uma isiphunzile yonke imizamo ekhona yokulungisa lolo daba ngokoMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008).

INgxenye 2

Ukufaka isikhalo nokuphenywa kwesikhalo somthengi

Ukufaka isikhalo eHhovisi loMvikeli wabaThengi

27.(1) Noma imuphi umthengi angafaka isikhalo eHhovisi loMvikeli wabaThengi ngendlela enqunyiwe.

(2) Isikhalo somthengi esihlongozwe kwisigatshana (1) esingabhaliwe phansi kumele sibhalwe phansi iHhovisi.

(3) IHhovisi lingavula ifayela noma idokodo elimayelana nesikhalo somthengi futhi kumele ligcine uhlu kanye nohlelo lokugcina amafayela ezikhalo zabathengi.

Inqubo yokuphenya

28.(1) Uma esethole isikhalo somthengi ngokwalo Mthetho, uMvikeli wabaThengi kumele ayalele umuntu osebenza ngaphakathi eHhovisi loMvikeli wabaThengi noma umphenyi, ukuba aphenye ngesikhalo ngokushesha.

(2) Umuntu noma umphenyi okukhulunywe ngaye kwisigatshana (1) kumele ahlole kuqala isikhalo somthengi njengoba kuhlongozwe kulo Mthetho.

(3) IHhovisi angeke libizele umuntu esigcawini ukuba azophenywa singakahlolisiswa kuqala isikhalo zomthengi.

(4) Uma, ngenkathi kusahlolisiswa kuqala isikhalo, uMvikeli wabaThengi ebona ukuthi isikhalo somthengi singaxazululwa kagcono omunye umaziphathe, nganoma isiphi isikhathi angadlulisela noma iluphi uphenyo noma ingxenye yalo kulowo maziphathe kubandakanya umaziphathe okwesinye isifundazwe: Kuncike ekutheni iHhovisi noma inini lingaqhubeka nophenyo mayelana nalolo daba.

Ukuhlolisiswa kuqala kwesikhalo somthengi

29.(1) IHhovisi loMvikeli wabaThengi kumele lihlole kuqala isikhalo somthengi esifakwe ngokwesigaba 27(1).

(2) IHhovisi lingashintsha ukuhlola kwalo noma inini ngenkathi lisenza uphenyo, mhlawumbe okungaba yingenxa yokuthola ubufakazi obusha noma ngenxa yomthetho, futhi liqhubeke ngokulandela ukuhlola osekuchitshiyelwe.

(3) IHhovisi kumele lihlole ukuthi isikhalo somthengi esifakwe ngokwesigaba 27(1), sifakwe yilowo mthengi okhalazayo ngqo.

(4) Okhalazayo uyena okumele adalule ukuthi uyena ngqo ongumthengi okhalazayo.

(5) Uma ofake isikhalo njengoba kuhlangozwe kwisigatshana (3) kungeyena umthengi ngqo, iHhovisi angeke lisiphenye isikhalo.

(6) IHhovisi kumele lihlole ukuthi isikhalo somthengi esibhekiswe ebhizinisini, noma kumuntu othi uqhuba ibhizinisi noma imisebenzi yamabhizinisi, sisezingeni lokuba yicala lobugebengu noma lingaba yisikhalo esejwayelekile.

Ukubizelwa esigcawini nokuphekwa ngemibuzo kwabantu nokukhishwa kwezincwadi nemibhalo

30.(1) Ngenhloso yokuphenya njengoba kuhlongozwe esigabeni 28(1) uMvikeli wabaThengi, noma umuntu osebenzela iHhovisi loMvikeli wabaThengi, ogunyazwe uMvikeli wabaThengi, –

(a) angabizeka esigcawini noma imuphi umuntu akholwa ukuthi –

(i) uzokwazi ukunikeza noma iluphi ulwazi mayelana nophenyo; noma

(ii) ugcine noma uphethe noma iyiphi incwadi, umbhalo noma into ethile ephathelene nalolo daba,

ukuze avele phambi komuntu osebenzela iHhovisi ngesikhathi nasendaweni echazwe kwisamanisi, ukuze aphekwe ngemibuzo noma aveze leyo ncwadi, lowo mbhalo noma leyo nto; futhi

(b) angapheka ngemibuzo lowo muntu, ngaphansi kwesifungo noma kwesiqinisekiso esingenziwa uMvikeli wabaThengi noma omunye umuntu osebenza eHhovisi loMvikeli wabaThengi, ogunyazwe uMvikeli wabaThengi, futhi ahlole noma agcine lezo zincwadi, mibhalo noma lezo zinto ukuze kutholakale olunye ulwazi noma ukuze ziphephe.

(2) Isamanisi okukhulunywe ngalo kwisigatshana (1)(a) kumele –

(a) libe kwifomu elinqunyiwe eliveza umuntu obizelwe esigcawini;

(b) liqukathe imininingwane yodaba lowo muntu abizelwe ukuzophendula ngalo;

(c) lisayinwe uMvikeli wabaThengi noma omunye umuntu osebenzela iHhovisi ogunyazwe uMvikeli wabaThengi; futhi

(d) lithunyelwe ngendlela enqunyiwe.

(3) Umuntu ovela esigcawini ngenxa yesigatshana (1)(a) –

(a) angasizwa ngenkathi ephekwa ngemibuzo umuntu angazikhethela yena; futhi

(b) unelungelo lokuthola izimali ezabelwe leyo nhloso ngokomthetho, njengezimali ezikhokhelwa ofakazi, imali elingana nemali etholwa ofakazi noma etholwa abantu abangofakazi eNkantolo ePhakeme etholakala kuleyo ndawo abizelwe kuyona.

(4) Umuntu uyothweswa icala uma, ngenkathi ebizelwe esigcawini ngokwalesi sigaba –

(a) ehluleka ngaphandle kwezizathu ezizwakalayo ukuza endaweni

nangesikhathi esinqunywe kwisamanisi, noma ehluleka ukuqhubeka nokuba kuleyo ndawo kuze kuphothulwe icala, noma kuze kube uhoxiswa uMvikeli wabaThengi ukuqhubeka nokuba lapho; noma
(b) enqaba ukwenza isifungo noma isiqinisekiso.

(5) Umuntu ophekwa ngemibuzo ngokwesigatshana (1), kumele aphendule umbuzo ngamunye ngokwethembeka nangayo yonke indlela angakwazi ngayo, kodwa umuntu akaphoqiwe ukuphendula noma imuphi umbuzo uma impendulo izocindezela yena.

(6) Akukho mpendulo noma sitatimende esinokuzicindezela esenziwe kumuntu owenza umsebenzi wakhe ngokwalesi sigaba esiyothathwa njengobufakazi obucindezela umuntu olette leyo mpendulo noma leso sitatimende ecaleni, ngaphandle uma kuyicala lokukhuluma okungelona iqiniso ngaphansi kwesifungo noma kuyicala elihlongozwe kwisigatshana (5), futhi kuyosetshenziswa ingxenye yempendulo noma yesitatimende ehambisanayo necala elisetifuleni.

Ukuqokwa kwabaphenyi

31.(1) UMvikeli wabaThengi –

- (a) angaqoka noma imuphi umsebenzi ofanelekile eHhovisi nanoma imuphi omunye umuntu ofanelekile oqashwe uMbuso, njengomphenyi; futhi
- (b) kumele anikeze umphenyi ngamunye isitifiketi ngendlela enqunyiwe esishoyo ukuthi lowo muntu uqokwe njengomphenyi ngokwalo Mthetho.

(2) Uma umphenyi enza noma imuphi umsebenzi womphenyi ngokwalo Mthetho, umphenyi –

- (a) kumele abe nesitifiketi sokuqokwa esikhishelwe lowo mphenyi ngokwesigatshana (1);
- (b) kumele aveze isitifiketi kunoma imuphi umuntu –
 - (i) othintekayo ezenzweni zomphenyi ngokwalo Mthetho; futhi
 - (ii) ocela ukubona sitifiketi; futhi
- (c) unamandla alingana nawephoyisa lomthetho njengoba kuchazwe esigabeni 1 soMthetho weNqubo yamaCala, 1977 (uMthetho No. 51 ka 1977), futhi angasebenzisa ngokusemthethweni lawo mandla alingana nawephoyisa lomthetho.

(3) UMvikeli wabaThengi angaqoka noma aqashe okwesikhashana noma imuphi umuntu ofanelekile njengomphenyi ozokwenza ucwaningo, acubungule amabhuku, aseshe noma enze olunye uphenyo egameni loMvikeli wabaThengi.

(4) Umuntu oqokwe ngokwesigatshana (3) akayena umphenyi njengoba kuhlangozwe esigatshaneni (1).

(5) Kuncike emithethweni elawula imisebenzi kahulumeni, iLungu loMkhandlu oPhethe, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali, lingaqoka abantu abasebenzela ihhovisi nanoma ibaphi abanye abantu abafanelekile njengabaphenyi, okumele balawulwe futhi bayalelwe uMvikeli wabaThengi.

(6) UMvikeli wabaThengi uthathwa njengomuntu oqokwe njengomphenyi.

(7) Umphenyi kumele ahlinzekwe ngesitifiketi sokuqokwa esisayinwe egameni loMvikeli wabaThengi futhi esishoyo ukuthi ungumphenyi oqokwe ngokwalo Mthetho.

(8) Umphenyi kumele, uma esenza noma imuphi umsebenzi wakhe ngokwalo Mthetho, aphaathe isitifiketi sokuqokwa kwakhe.

Ukusesha nokushaqwa kwempahla

32.(1) Ukuze kutholakale noma iluphi ulwazi oludingwa iHhovisi loMvikeli wabaThengi mayelana nophenyo, umphenyi, kuncike ezinhlinzekweni zalesi sigaba futhi ngezikhathi zokusebenza, angangena kunoma isiphi isakhiwo lapho kugcinwe khona noma kusolakala ukuthi kugcinwe khona incwadi, umbhalo noma into ethile ephathelene nalolo phenyo, futhi –

(a) angahlola noma aseshe lezo zakhiwo, futhi abuze uma kudingeka ukuze athole noma iluphi ulwazi;

(b) angahlola noma yini etholakale esakhiweni okungenzeka ihlobane nophenyo olwenziwayo futhi acele kumuntu olawula isakhiwo noma kumuntu ongumnikazi waleyo nto, ulwazi mayelana naleyo nto;

(c) angenza amakhophi noma athathe noma iyiphi incwadi noma umbhalo

otholakale esakhiweni okungenzeka kuhlobane nophenyo olwenziwayo, futhi acele kunoma imuphi umuntu okusolakala ukuthi unolwazi oludingekayo, ukuba achaze njengoba kungadingeka; noma

(d) angashaqa noma iyiphi into esesakhiweni ewusizo noma okungenzeka ibe usizo ophenyweni olwenziwayo bese ekhipha irisidi yalokho, uma umphenyi edinga ukuyigcina leyo nto ukuze aphinde ayihlolisise noma ayigcine ndaweni ephephile.

(2) Ngaphandle uma umnikazi noma umuntu ophethe esakhiweni ekhiphe imvume ebhalwe phansi, umphenyi angangena esakhiweni futhi angasebenzisa amandla akhe ahlongozwe kwisigatshana (1) kuphela uma enencwadi emgunyaza ukwenze njalo, engakhishwa kuphela imantshi noma ijaji uma idingeka ngokolwazi olunikezwe imantshi noma ijaji ngesifungo noma ngesiqinisekiso sokuthi kunezizathu ezizwakalayo zokusola ukuthi leyo ncwadi, lowo mbhalo noma leyo nto equkethe ubufakazi ophenyweni ikuleso sakhiwo.

(3) Imvume yokusesha ehlongozwe kwisigatshana (2) kumele –

(a) igunyaze umphenyi obhalwe kuyona ukuba angene esakhiweni esibhalwe kuleyo mvume ukuze enze umsebenzi wakhe njengoba kuhlongozwe kwisigatshana (1);

(b) ifezekiswe emini, ngaphandle uma imantshi noma ijaji likubeke kwacaca ukuthi kumele kwenziwe ebusuku; futhi

(c) kuqhubeke nokwenziwa kuze kufezekiswe, kuze kumiswe inkantolo efanele, noma isikhathi esingangesonto kusukela osukwini okugcina ngalo, noma ikuphi okufika kuqala.

(4) Umphenyi owenza umsebenzi wakhe ngokwemvume yokusesha ebekwe kulesi sigaba, ngaphambi kokuqala ukwenza lowo msebenzi wokusesha, futhi uma kucela umuntu okungase kuphazamiseke amalungeo akhe, kumele –

(a) akhombise lowo muntu isitifiketi sokuqokwa kwakhe; futhi

(b) anikeze lowo muntu ikhophi yemvume yokusesha.

(5) Umuntu okuthathwe kuyena incwadi noma umbhalo ngokwalesi sigaba, uma leyo ncwadi noma lowo mbhalo usagcinwe umphenyi, kumele avunyelwe uma ecela

ukwenza amakhophi noma ukuthatha okuthile kuwona nganoma isiphi isikhathi esifanele ngezindleko zakhe futhi eqashwe umphenyi noma umuntu osebenzela iHhovisi.

(6) Umuntu uyotholakala enecala uma –

(a) ephazamisa noma efihlela umphenyi owenza umsebenzi wakhe ngokwalesi sigaba; noma

(b) ngemuva kokuphenywa ngokwesigatshana (1)(a), noma kucelwe kuye ulwazi noma incazelo ngokwesigatshana (1)(b) noma (c), enikezela ngempendulo noma ngencazelo engamanga noma edukisayo, ebe azi kamhlophe ukuthi ingamanga noma iyadukisa.

Ukuxoxisana ngezihlelo zokuxazulula isikhalo somthengi

33.(1) IHhovisi loMvikeli wabaThengi lingaxoxisana futhi lifike esivumelwaneni nanoma imuphi umuntu ukuze –

(a) kumiswe noma kugwenywe izezo zebhizinisi eziholele esikhaweni somthengi;

(b) kunxeshezwe, sekuhlangene nenzalo noma kungahlangene nenzalo, umthengi ohlukumezekile;

(c) kumiswe noma kugwenywe noma iziphi izezo zebhizinisi eziholele esikhaweni somthengi; noma

(d) kugwenywe noma iluphi udaba oluphathelele nomsebenzi webhizinisi oluholele esikhaweni somthengi.

(2) Isivumelwano esihlongozwe kwisigatshana (1) –

(a) singenziwa noma inini ngemuva kokuqalwa kophenyo, kodwa ngaphambi kokuthi iNkantolo ePhakeme ithathe isinqumo ngokwesigaba 37;

(b) kumele sibhalwe phansi sisayinwe izinhlangothi ezithintekayo; futhi

(c) kungalindeleka ukuba siqinisekiswa iNkantolo ePhakeme ngokuhambisana nesigaba 37.

Ukufaka icala ngemuva kokuphuthulwa kophenyo

34.(1) Uma sekuphuthulwe uphenyo futhi ngokuncike kwisigatshana (6), uMvikeli

wabaThengi angafaka icala elekelela umthengi esiGungwini sabaThengi uma sinawo amandla okulawula kulowo muntu osolwa ngezenzo ebhizinisini eziholele esikhalweni somthengi.

(2) Ngezinhlalo zecala, uMvikeli wabaThengi uthathwa njengonamandla okukhalaza.

(3) Uma, ngokubona koMvikeli wabaThengi, isikhalo somthengi siphathelene nesivumelwano okungafinyelelwanga kuso noma nezinto eziphathelene nokulingana kwezomthetho ngokuhambisana noMthethosisekelo, iHhovisi lingafaka icala leseke umthengi eNkantolo ePhakeme.

(4) Ngezinhlalo zecala elihlongozwe kwisigatshana (3), uMvikeli wabaThengi uthathwa njengonamandla okukhalaza kulelo cala.

(5) Noma inini uma iHhovisi libeka amacala esiGungwini sabaThengi noma eNkantolo ePhakeme, uMvikeli woMphakathi uthathwa njengoMmangali wokuQala bese kuthi umthengi athathwe njengoMmangali wesiBili kulelo cala, njengoba kungaba njalo.

(6) UMvikeli wabaThengi kumele akhethe isigungu esifanele esizoshushisa lolo daba ngokubhekelela kuqala izinhlinzeko zalo Mithetho, ebhekelela ikakhulukazi ukuma kanye nemiphumela elindelekile yecala nokuthi umthengi aneliseke.

(7) Uma esekhetha isigungu esifanele njengoba kuhlangozwe kwisigatshana (6), uMvikeli wabaThengi kumele abhekelele izindleko zecala ezinhlangothini ezithintekayo aqhube icala kuleso sigungu esinezindleko ezincane kummangalelwa.

(8) Akukho cala eliyofakwa uMvikeli woMphakathi uma umthengi –

(a) engakasayini incwadi lapho yena umthengi evuma ubukhona besikhalazo futhi eqinisekisa kuMvikeli woMphakathi; futhi

(b) engakasayini incwadi eqinisekisa iHhovisi emayelana nemibandela yanoma ibuphi ubufakazi obungamanga obungalethwa uyena.

INgxenye 3
Ukwehlulelwa nokubuyekeza kwezikhalo zabathengi

Ithimba okubuyekeza

35.(1) Uma iHhovisi loMvikeli wabaThengi linquma ukungafaki cala noma ukungaludluliseli udaba komunye umaziphathe noma ukungaludingidi phambi kwesiGungu sabaThengi, uMvikeli wabaThengi kumele azise umthengi kanye nomuntu noma nebhizinisi obekufakwe ngalo isikhalo mayelana naleso sinqumo kanjalo nezizathu zaso.

(2) Izizathu zesinqumo esihlongozwe kwisigatshana (1) kumele zihambisane nesaziso esihlongozwe kwisigatshana (1).

(3) Uma umthengi engenelisekile ngesinqumo soMvikeli woMphakathi sokungafaki icala, umthengi angadlulisela lesi sinqumo eThimbeni lokuBuyekeza ezinsukwini eziyishumi nane ethole lesi sinqumo.

(4) IThimba lokuBuyekeza okukhulunywe ngalo kwisigatshana (1) kumele libe seHhovisi.

(5) IHhovisi kumele likhombise ukuthi lazisiwe ngokubuyekeza kwesinqumo bese lazisa iLungu loMkhandlu oPhethe ngesidingo sokuthi kubizwe iThimba lokuBuyekeza.

(6) ILungu loMkhandlu oPhethe kumele libize iThimba lokuBuyekeza ezinsukwini eziyishumi nane kusukela osukwini umthengi acele ngalo ukuba kubuyekwezwe isinqumo soMvikeli wabaThengi esihlongozwe esigatshaneni (1).

(7) IThimba lokuBuyekeza elibizwe iLungu loMkhandlu oPhethe ngokwesigatshana (6), kumele lakhiwe ikomidi elakhelwe lokho elibunjwe abantu abathathu abanesipiliyoni nolwazi ezintweni ezithinta abathengi.

(8) Abantu abahlongozwe esigatshaneni (7), bangaqashwa uHulumeni kodwa kungabi abaqashwe iHhovisi.

(9) Kuncike emithethweni elawula imisebenzi kahulumeni, umuntu oqokelwe kwiThimba lokuBuyekeza ongasebenzi ngokugcwele kuHulumeni kumele aqokwe ngaphansi

kwemibandela futhi aholelwe ngendlela enganqunywa iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(10) Kuncike emithethweni ejwayelekile yezobulungiswa, iThimba okuBuyekeza lingabheka izizathu zesinqumo neminye imibiko ebhaliwe noma eshiwo ngomlomo, uma ikhona, yomthengi, yomuntu noma yebhizinisi okukhalazwa ngalo kuMvikeli wabaThengi.

(11) IThimba lokuBuyekeza lingabeka esalo isinqumo esikhundleni sesinqumo soMvikeli wabaThengi futhi liyalele uMvikeli wabaThengi ukuthi afake icala noma liqinisekise isinqumo soMvikeli wabaThengi sokuthi lingafakwa icala.

(12) Isinqumo seThimba lokuBuyekeza esithathwe ngokwesigatshana (11) sithathwa njengesinqumo esibuyekeziwe.

(13) Isinqumo esibuyekeziwe esihlongozwe kwisigatshana (12) singujuqu futhi sibophezela umthengi, umuntu noma ibhizinisi okukhalazwa ngalo kanjalo noMvikeli wabaThengi.

(14) IThimba lokuBuyekeza kumele, ngencwadi, lazise umthengi, umuntu noma ibhizinisi okukhalazwa ngalo kanjalo noMvikeli wabaThengi ngesinqumo esibuyekeziwe futhi kumele libanikeze bonke ikhophi yamahhala yesinqumo esibuyekeziwe.

Ukusebenza kwesinqumo esibuyekeziwe

36. Uma iThimba lokuBuyekeza liyalela uMvikeli wabaThengi ukuba avule icala egameni lomthengi, isigaba 29 sisebenza nezinguquko ezidingekayo ngokuhambisana nalokho.

ISAHLUKO 5 IZINHLELO EZIBEKWA ETAFULENI IHHOVISI OMVIKELI WABATHENGI

Ukuqinisekiswa kwezinhlelo ezibekwe etafuleni iHhovisi loMvikeli wabaThengi

37.(1) IHhovisi lingafaka isicelo eNkantolo ePhakeme sokuthi kuqinisekise izinhlelo ezibekwe etafuleni futhi kavunyelwana ngazo ngokwalo Mthetho.

(2) INkantolo ePhakeme, ngokubhekelela ukweneliseka komthengi nokwamabhizinisi nezinhlangothi ezithintekayo, ingakhipha umyalelo –

(a) wokuqinisekisa lezo zinhlelo;

(b) wokuqinisekisa izinhlelo ezihambisana nezichibiyelo izinhlangothi ezithintekayo ezingavumelana ngazo nangaphansi kwemibandela engabekwa yinkantolo;

(c) wokuthi kubekwe eceleni lezo zinhlelo uma, ngemuva kokuba izinhlangothi ezithintekayo sezinikeziwe ithuba lokubeka udaba lwazo, inkantolo inelisekile ukuthi izinhlelo angeke ziqinisekise ukuthi izenzo zebhizinisi eziqubule isikhalo somthengi angeke ziphele noma zigwemeke.

(3) Umyalelo ngokwesigatshana (2) kumele ushicilelwe kwiGazethi.

ISAHLUKO 6 UKUSEBENZA KOMTHETHO NENQUBO YOKWAHLULELA

INgxenye 1

Ubumfihlo, imikhawulo yokubophezeleka, ukutholakala kwemihlomulo nezinye izixazululo

Ubumfihlo

38. Akukho mphenyi noma umuntu osebenzela iHhovisi loMvikeli wabaThengi noma owenza imisebenzi yeHhovisi ongadalula noma iluphi ulwazi alutholile ngenkathi enza imisebenzi, esebenzisa amandla noma efeza amajoka angokwalo Mthetho, ngaphandle uma –

(a) kungadingeka ukuze enze ngendlela imisebenzi, asebenzise amandla noma afeze kahle amajoka akhe ngokwalo Mthetho; noma

(b) kungumyalelo wenkantolo yomthetho.

Imikhawulo yokubophezeleka

39. Akekho umuntu, kubandakanya noMbuso, obophezelekile ezintweni ezenziwa ngokuvumelana ngokwalo Mthetho, kulele ekutheni isivumelwano esenziwe ngokuzwana kumele sisuke kulowo muntu noma kuMbuso.

Ukunganakwa kwalo Mthetho

40. Noma isiphi isivumelwano noma ukubonisana okuhlose ukushiya ngaphandle izinhlinzeko zalo Mthetho noma ukungasebenzisi izinhlinzeko zawo kuyothathwa njengokungekho emthethweni nokungasebenzi.

Izixazululo

41. Akukho nhlinzeko yalo Mthetho engathathwa njengevimbela noma imuphi umuntu isixazululo odabeni lwakhe noma elungelweni lokufaka noma iliphi icala.

*INgxenye 2
Amacala nezigwebo*

Amacala ejwayelekile

42.(1) Umuntu uyothweswa icala uma –

- (a) yena njengomnikazi webhizinisi noma njengomnikazi welayisensi yebhizinisi, evumela ukuhlukunyezwa kwabathengi ebhizinisini lakhe;
- (b) ekhohlisa umthengi mayelana naye uqobo noma mayelana nomunye umuntu oqashwe uyena mayelana nezimpahla noma nezidingo.

(2) Ilungu lesiGungu sabaThengi, ilungu labasebenzi, umeluleki, i-ejenti noma omunye umuntu oqashwe noma osebenza egameni lesiGungu sabaThengi uyothweswa icala uma emukela ngqo noma ngandlela thile inkokhelo noma umvuzo ongagunyaziwe kunoma imuphi umuntu mayelana noma maqondana nemisebenzi noma ngezinye izinto ezenziwe noma ezihlinzekwe isiGungu sabaThengi.

(3) Noma imuphi umuntu uyotholakala enecala uma, mayelana nemisebenzi eyenziwe yisiGungu sabaThengi, egwaza noma ezama ukugwaza, noma ekhohlakalisa noma ezama ukukhohlakalisa, noma iliphi ilungu labasebenzi noma umeluleki, noma i-ejenti noma omunye umuntu oqashwe noma osebenza egameni lesiGungu sabaThengi.

(4) Noma imuphi umuntu oqamba amanga athi ugunyazwe ukuba abize noma aqoqe izimali egameni noma ngomyalelo wesiGungu sabaThengi uyothweswa icala.

Amacala mayelana nezigcawu zesiGungu sabaThengi**43. Umuntu –**

- (a) ohluleka ukuvela phambi kwesiGungu sabaThengi ngosuku nesikhathi abizwe ukuba avele ngaso ngokwesigaba 22 ngaphandle kokuthi aqoke umuntu ozovela egameni lakhe;
- (b) ovela phambi kwesiGungu sabaThengi ngokwesigaba 22 kodwa ngaphandle komyalelo kaSihlalo ohlulekayo ukuqhubeka nokuba khona kuze kuphotulwe isigcawu noma umhlangano;
- (c) ngokwesigaba 22 obizekwe ukuba ezokwethula ubufakazi, noma aveze noma iyiphi incwadi, isu noma omunye umbhalo noma into lowo muntu ekuyena, ohlulekayo noma owenqabayo ukwenze njalo;
- (d) ngokwesigaba 22 ocelwe ukuba anikeze ubufakazi, owenqabayo ukufunga noma ukwenza isiqinisekiso; noma
- (e) ophazamisa ngamabomu ukuthethwa kwecala noma umhlangano wesiGungu sabaThengi noma ofihlela noma okhinyabeza isiGungu sabaThengi noma ilungu laso ekutheni lenze imisebenzi yalo, uyothweswa icala.

Izigwebo**44. Noma imuphi umuntu otholakala enecala –**

- (a) ngokwesigaba 42(2), (3) noma (4), uyohlawuliswa noma abhadle ejele isikhathi esingeqile kuleso esinqunywe umthetho kazwelonke mayelana namacala enkohlakalo; noma
- (b) ngokwesigaba 30(4), 32(6), 42(1) noma 43, uyohlawuliswa noma abhadle ejele iminyaka engeqile kwemihlanu, noma kokubili isigwebo nenhlawulo.

**ISAHLUKO 7
IZINHLINZEKO EZEJWAYELEKILE****Imithethonqubo****45.(1) ILungu loMkhandlu oPhethe lingenza imithethonqubo mayelana –**

- (a) nanoma iluphi udaba ngokwalo mthetho oludingekayo noma olugunyaziwe

ukuba lwenziwe;

(b) nokukhokhwa kwanoma iziphi izimali okumele zikhokhwe ngokwalo Mthetho;

(c) nendlela, nezinsuku, uma zikhona, okumele kufakwe ngazo noma isiphi isicelo ngokwalo Mthetho;

(d) nendlela yokusebenza, ngokuthunyelwa noma ngokuhanjiswa kwesamanisi, kwesaziso noma kwenye incwadi okudingeka ukuba ithunyelwe ihanjiswe noma idluliselwe ngokwalo Mthetho;

(e) nendlela yokushicilelwa kwesaziso noma komunye umbhalo okudingeka ukuba ushicilelwe ngokwalo Mthetho;

(f) nefomu, nendikimba kanye nobukhulu, uma kudingeka, kwanoma isiphi isaziso, incwadi noma omunye umbhalo okudingeka ukuba ukhishwe, uhanjiswe, udluliselwe, unikezelwe noma ushicilelwe ngokwalo Mthetho;

(g) nezikhathi, noma nokwelulwa kwezikhathi, okunqunywe ngokwalo Mthetho;

(h) nemininingwane yezakhiwo okufakwe isikhalo mayelana nazo;

(i) nezintela zezimali ezikhokhelwa ofakazi ngokuvela emacaleni noma ekubuyekezweni kwamacala;

(j) nendlela okumele kuthunyelwe ngayo isikhalo eHhovisi loMvikeli wabaThengi;

(j) nenqubo okumele ilandelwe ekubhekaneni namabhizinisi okutholakale ukuthi ashayisene nezinhlizeko zalo Mthetho; kanye

(k) nokubhekana nanoma iluphi udaba, ngokujwayelekile, iLungu loMkhandlu oPhethe elibona lufanele noma ludingeka ukuba kwenziwe imithethonqubo ukuze kufezwe izinhloso zalo Mthetho.

(2) Noma imuphi umthethonqubo mayelana nezimali okumele zikhokhwe kumele wenziwe iLungu oMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

Izinhlizeko zesikhashana

46. Noma isiphi isikhalo esifakwe oPhikweni lwezamaBhizinisi loMnyango esifakwe ngaphambi kokuqala kokusebenza kwalo Mthetho ngokwanoma imuphi omunye umthetho okungaba osuchithiwe noma osuchitshiyelwe, nemithethonqubo eyakhiwe ngokwaleyo mithetho, kumele sikhishwe ukuze senziwe ngokwalo Mthetho.

Isihloko esifingqiwe nokuqala kokusebenza komthetho

47.(1) Lo Mthetho ubizwa ngoMthetho wokuVikela abaThengi waKwaZulu-Natali, 2010, futhi uyoqala ukusebenza ngosuku oluyonqunywa iLungu loMkhandlu oPhethe ngesaziso kwiGazethi.

(2) ILungu loMkhandlu Phethe linganquma izinsuku ezahlukene zokuqala kokusebenza kwezigaba ezahlukene zalo Mthetho.

No. 3

13 February 2014

[English text signed by the Premier]

KWAZULU-NATAL
ITHALA DEVELOPMENT FINANCE CORPORATION ACT, 2013
(Act No. 05 of 2013)

Assented to on 23- 01 -2014

ACT

To provide for the continued existence of the KwaZulu-Natal Ithala Development Finance Corporation Limited, formerly known as KwaZulu Finance and Investment Corporation Limited, with the primary purpose of promoting, supporting and facilitating sustainable socio-economic development in the Province of KwaZulu-Natal, in accordance with the growth and development strategy of the Province; to determine the objectives, powers, duties and functions of the KwaZulu-Natal Ithala Development Finance Corporation Limited; to determine the manner in which the KwaZulu-Natal Ithala Development Finance Corporation Limited is to be managed, staffed and financed; and to provide for matters incidental thereto.

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

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CHAPTER 1 DEFINITIONS

Definitions

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

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Banks Act or the Regulations relating to Banks, bears the meaning so assigned thereto;

“**Board**” means the Board of the Corporation appointed in terms of section 6;

“**Chief Executive Officer**” means the Chief Executive Officer of the Corporation, appointed in terms of section 17;

“**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);

“**Company**” means the Ithala State-owned Company Limited, a subsidiary of the Ithala Development Finance Corporation Limited, being a state-owned company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“**Corporation**” means the Ithala Development Finance Corporation Limited referred to in section 2;

“**Department**” means the department in the Provincial Government of KwaZulu-Natal responsible for Economic Development;

“**deposit**” means a deposit as defined in section 1 of the Banks Act;

“**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;

“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);

“indirect interest” includes, but is not limited to, a personal financial interest as defined in section 1 of the Companies Act, of a related or interrelated person as contemplated in section 2 of the Companies Act;

“interest” includes, but is not limited to, a personal financial interest as defined in section 1 of the Companies Act;

“liquid asset” means a liquid asset as defined in section 1 of the Banks Act;

“member” means a member of the Board of the Corporation appointed in terms of section 6;

“Member of the Executive Council for Finance” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Finance;

“member of the public” includes a juristic person;

“National Treasury” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Portfolio Committee” means the Portfolio Committee of the Provincial Legislature responsible for Economic Development;

“Premier” means the Premier of the Province of KwaZulu-Natal referred to in section 125(1) of the Constitution;

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

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“Provincial Government” means the Provincial Government of the Province of KwaZulu-Natal and, unless the context indicates otherwise, includes every Department in the Provincial Government;

“Provincial Legislature” means the Legislature of the Province of KwaZulu-Natal referred to in section 105 of the Constitution and having the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Registrar of Banks” means the Registrar of Banks designated under section 4 of the Banks Act;

“regulations” means regulations made in terms of section 33;

“regulations relating to Banks” means the regulations in terms of section 90 of the Banks Act;

“responsible Member of the Executive Council” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Economic Development;

“shares” means shares in the company contemplated in chapter 7;

“share capital” means funds raised by issuing shares in return for cash or other considerations; and

“this Act” includes the regulations.

CHAPTER 2
ITHALA DEVELOPMENT FINANCE CORPORATION

Ithala Development Finance Corporation

2.(1) The KwaZulu Finance and Investment Corporation Limited, established by Proclamation R. 73 of 1978, and subsequently renamed by the KwaZulu-Natal Ithala Development Corporation Act, 1999 (Act No. 2 of 1999), as Ithala Development Finance Corporation Limited, continues to exist and is to be known as the Ithala Development Finance Corporation Limited.

(2) The Corporation, referred to in subsection (1), continues to be a juristic person.

(3) The Corporation is a provincial public entity subject to the Public Finance Management Act.

(4) Any reference in any other law or document to –

- (a) the Black Investment Corporation of South Africa Limited;
- (b) the Corporation for Economic Development and Tourism Limited;
- (c) the KwaZulu Development Corporation Limited; or
- (d) the KwaZulu Finance and Investment Corporation Limited,

must be construed as a reference to the Ithala Development Finance Corporation Limited.

Objects and area of operation of Corporation

3. The objects of the Corporation are to promote, support and facilitate social and economic development in the Province by –

- (a) mobilising financial resources and providing financial and related support services to persons domiciled, ordinarily resident or carrying on business, within the Province;
- (b) planning, executing, financing and monitoring the implementation of development projects and programmes in the Province;
- (c) promoting, assisting and encouraging the development of the human resources and social, economic, financial and physical infrastructure of the Province;
- (d) promoting, encouraging and facilitating private sector investment in the Province and the participation of the private sector and community organisations in development projects and programmes and in contributing to economic growth and development generally; and
- (e) acting as the agent of the Provincial Government for performing any development-related functions and responsibilities which, in the opinion of the Provincial Government, may be more efficiently or effectively performed by a corporate entity.

Powers, duties and functions of Corporation

4. In attaining the objects contemplated in section 3 and subject to sections 54(2), 66 and 68 of the Public Finance Management Act, 1999, the Corporation may –

(a) raise funds and other resources from the public and private sectors by securing loans, soliciting and receiving grants and donations on such conditions as may be agreed upon and subject to any conditions that may be determined or prescribed by the responsible Member of the Executive Council;

(b) plan, facilitate, promote, carry out, finance, invest in, or underwrite any project, programme or enterprise aimed at furthering the social or economic development and tourism of the Province;

(c) furnish technical and other advice, training, information, guidance and generally offer such support and assistance as may be required for any project, programme, or enterprise contemplated in paragraph (b);

(d) through the Company, lend or advance money, with or without security, on such conditions as it deems fit, take such security as it deems fit in connection therewith, including –

- (i) mortgage bonds;
- (ii) notarial bonds;
- (iii) pledges;
- (iv) cessions;
- (v) liens;
- (vi) hypothecs;
- (vii) guarantees;
- (viii) deeds of suretyship; or
- (ix) any other form of cover or security,

and take such steps as it deems necessary for the recovery of any debt and the protection and enforcement of any right in connection therewith;

(e) guarantee, underwrite, or stand surety for the debts or contractual obligations of any person, indemnify any person against any loss, damage and costs arising from the debts or other obligations of any other person and, for that purpose, enter into security bonds or furnish any other required form of security;

(f) acquire, hold, develop, improve, manage, deal with, hire, let, sell, transfer, donate, cede, hypothecate, or otherwise encumber or alienate movable or immovable property,

whether corporeal or incorporeal;

(g) establish juristic persons or associations of persons capable of carrying out any object, power, function, or duty that the Corporation may carry out in terms of this Act, acquire an interest in any such juristic person and alienate any such interest, or subscribe to membership of any such association and terminate such membership;

(h) hold shares in the Company contemplated in Chapter 7;

(i) act as director, trustee, administrator, manager, executor, judicial manager, liquidator, agent or representative of any person, public body, estate or business and designate any representative to act for such purpose;

(j) charge and accept remuneration for any service rendered to, or on behalf of, any person, including the Provincial Government;

(k) pay all expenses in connection with its administration, open, operate and close banking accounts, overdraw such accounts, make, draw, accept, or endorse negotiable instruments, invest funds not immediately required for its affairs;

(l) create reserve funds, take all such steps as it considers necessary for the protection and preservation of its –

(i) investments; or

(ii) financial interests,

and generally do all things necessary for the management and administration of its financial affairs; and

(m) pay all expenses in connection with the protection, preservation and maintenance of its rights and assets;

(n) take all steps it considers necessary for –

(i) the recovery of any liability; or

(ii) the enforcement of any obligation owing to it by any person,

including the institution of such legal proceedings as it considers necessary; and

(o) employ, suspend, discharge, remunerate, train and house the staff members of the Corporation;

(p) provide the staff members of the Corporation with pension benefits, sick leave benefits, or other benefits of employment and generally do all things necessary to develop and maintain an adequate staff complement within the Corporation;

(q) have an official seal and use such seal for any purpose in the Province;

(r) generally, do all things necessary for –

(i) the attainment of its objects;

- (ii) the exercise of its powers; or
- (iii) the management and administration of its affairs; and
- (s) 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; and
- (t) authorise the Company to accept, hold and invest deposits offered by any person, on such conditions as the Minister of Finance or the Registrar of Banks may determine.

Shares, share capital and shareholding

5.(1) At the date of commencement of this Act, the authorised share capital of the Corporation is its issued share capital as held by the Corporation in the Company.

(2) Subject to such conditions as the responsible Member of the Executive Council may prescribe, the Corporation may transfer all or part of the issued shares to any –

- (a) juristic person;
- (b) association of persons; or
- (c) public or private sector body,

whose objects are not inconsistent with those of the Corporation: Provided that individual natural persons may not become shareholders of the Corporation.

(3) The Board, with the approval of –

- (a) the responsible Member of the Executive Council; and
- (b) where shares have been transferred to shareholders as contemplated in subsection (2), the shareholders voting in general meeting,

may, from time to time –

- (a) increase the share capital of the Corporation, to the extent the Board considers expedient, by the creation of –
 - (i) ordinary or preference shares; or
 - (ii) shares of any other type or class it may decide upon,and issue such shares on agreed terms; and
- (b) change –
 - (i) the authorisation and classification of shares;
 - (ii) the numbers of authorised shares of each class; and
 - (iii) the preferences, rights, limitations and other terms associated with each class of shares.

(4) Any share in the Company may be issued with such preferred, deferred or other special rights, or subject to such restrictions as the Board may decide, whether in regard to dividends, voting, return of share capital, or otherwise.

(5) In the case of preference shares, the Board may decide –

- (a) that the shareholders are not entitled to vote; or
- (b) that such shares may be redeemed.

(6) Each issued share, regardless of its class, has associated with it one general voting right.

(7) Despite anything to the contrary in this Act, every share issued has associated with it an irrevocable right of the shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share.

CHAPTER 3 BOARD OF CORPORATION

Composition of Board

6.(1) The Board consists of –

- (a) at least seven, but not more than thirteen, members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 17(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, expertise and qualifications –
 - (i) legal skills, experience and qualifications;
 - (ii) financial skills, experience and qualifications;
 - (iii) investment experience or qualifications;

- (iv) marketing experience or qualifications;
- (v) human resource or labour experience or qualifications; and
- (vi) 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, possesses the necessary and appropriate skills and expertise;
- (c) the Board is representative of persons employed or involved in the import, trade and investment business enterprises in the Province; and
- (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 subsection.

(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 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.

(6) The invitation for nomination must specify –

- (a) the nomination procedure;
- (b) the requirements for nomination; and
- (c) the closing date for the nomination.

(7) The responsible Member of the Executive Council must appoint a nomination committee to make recommendations to the Responsible Member of the Executive Council for the members of the Board.

(8) 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, immediately after such persons have been notified, in writing, of their appointment to the Board.

(9) 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.

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

Disqualification from being appointed to Board

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

- (a) is a member of Parliament, any provincial legislature or any municipal council;
- (b) is or becomes an unrehabilitated insolvent;
- (c) is or has been declared by a competent court to be of unsound mind;
- (d) is directly or indirectly involved in any contract with the Corporation and fails to declare his or her involvement in such a contract and the nature thereof in the manner required by this Act;
- (e) is a person under curatorship;
- (f) has, at any time, been removed from an office of trust on account of misconduct involving theft or fraud;
- (g) 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
- (h) fails to disclose an interest contemplated in paragraph (d), or attended or participated in the proceedings of the Board while having an interest contemplated in the said paragraph.

(2) A person who is subjected to a disqualification contemplated in subsection (1)(a), (1)(b) or (1)(g) may be nominated for appointment as a member but may only be appointed, if at the time of such appointment, he or she is no longer subjected to that disqualification.

Declaration of financial or other interests of members of Board

8.(1) A person who has been nominated to serve on the Board in terms of section 6(5) must, within ten 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 7(1)(h) to be considered for the 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 Corporation, submit a written declaration to the responsible Member of the Executive Council of his or her direct or indirect interest in any company or other business.

(4) Where a member 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 ten 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 a justifiable reason for the termination of appointment of such member in terms of section 10(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

9. The persons appointed to the Board hold office for a term of three years, or such shorter period as the responsible Member of the Executive Council may determine, and are, subject to section 6, eligible for re-appointment at the expiry of such term: Provided that no person may be re-appointed after having served on the Board for three consecutive terms.

Vacancies, removal and resignation from office of members of Board

10.(1) A member ceases to be a member immediately upon becoming disqualified in terms of section 7.

(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 in person 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 and, other than a vacancy arising by virtue of the responsible Member of the Executive Council exercising his or her powers in terms of subsection (2), the responsible Member of the Executive Council must, subject to section 6, 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 6, but subject to sections 6(2) and 6(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, within 60 days of the appointment contemplated in this subsection and subject to section 6, appoint the members of the Board for a term as contemplated in section 9.

Temporary suspension of member of Board

11. 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 appointment of the member being terminated in terms of section 10(2).

Meetings and procedures at meetings of Board

12.(1) Any meeting of the Board must be held at a venue, on a date and at a time determined by the chairperson of the Board.

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

(3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the chairperson of the Board.

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

(8) A majority of the Board may call an extraordinary meeting of the Board.

(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

13.(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)(a) 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.

(b) The member contemplated in subsection (2)(a) may not participate in any voting connected with a matter in which he or she has or may have an interest contemplated in subsection (1).

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

(4) Where it emerges that the Board took a decision on a matter in respect of which a member has an undisclosed interest and voted, such decision is voidable.

(5) The decision contemplated in subsection (4) may –

- (a) subject to approval by the responsible Member of the Executive Council, be ratified by a resolution of the Board following disclosure of such interest; or
- (b) be declared to be valid by a court of law.

Remuneration of members of Board

14.(1)(a) A member of the Board may be paid from the funds of the Corporation 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 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 subsection (1)(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 may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Corporation 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 for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in subsection (2)(a).

Establishment of committees to assist Board

15.(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 Corporation 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) The Board must establish –

- (a) an audit committee, in accordance with the provisions of the Public Finance Management Act; and
- (b) a remuneration committee, which is responsible for –
 - (i) making recommendations regarding remuneration allowances and other benefits of the persons contemplated in section 25(2)(a); and
 - (ii) determining procedures, including control measures for the management,

handling and processing of claims for subsistence and travelling expenses.

- (3) 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.
- (4) 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.
- (5)(a) The Chief Executive Officer may attend and take part in, but may not vote, at a meeting of a committee contemplated in subsections (1) and (2).
- (b) A staff member of the Corporation may, by invitation from the relevant committee, attend a meeting of that committee, but may not vote.

Co-opting of persons to Board or committees of Board

16.(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 of the Board.

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

CHAPTER 4 CHIEF EXECUTIVE OFFICER AND STAFF OF CORPORATION

Chief Executive Officer of Corporation

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

(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 Corporation.

(b) The Corporation and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement contemplated in subsection (3)(a).

(4) For purposes of the declaration of financial or other interests, the provisions of section 8 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

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

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

(b) the appointment of members of staff of the Corporation contemplated in section 20(1), after consultation with the Board;

(c) the determination of a code of conduct applicable to the Chief Executive Officer and all members of staff of the Corporation, with the approval of the Board, to ensure –

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

(ii) the effective, efficient and economical use of the funds of the Corporation 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 Corporation; and
 - (vi) professional, honest, impartial, fair, ethical and equitable service; and
- (d) the maintenance of discipline of the members of staff of the Corporation appointed in terms of subsection (1)(b);
- (e) the keeping and maintenance of the register of interests declared by members of staff of the Corporation; and
- (f) ensuring compliance with the provisions of the Public Finance Management Act, and any other applicable legislation by the Board.

(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 any suitable candidate from the staff members of the Corporation as Acting Chief Executive Officer until the Chief Executive Officer is able to resume his or her functions.

Resignation and removal from office of Chief Executive Officer

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

- (a) in the case of resignation, when the resignation takes effect;
- (b) when he or she becomes disqualified in terms of section 7; 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 employment of the Chief Executive Officer in accordance with applicable employment and labour law.

Staff of Corporation

20.(1) The Chief Executive Officer must, subject to section 18(1)(b) and subsection (2), employ members of staff of the Corporation 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 work incidental to the performance of its functions.

(2) The Board must, subject to section 25(4), determine a human resources policy for members

of staff of the Corporation, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 18(1)(e), the provisions of section 8(3), (4) and (5) apply, with the necessary changes, to members of staff of the Corporation.

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

Secondment or transfer of staff to Corporation

21. The 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 POLICY DIRECTIVES AND CORPORATE PLAN

Policy directives to Board

22.(1) The Responsible Member of the Executive Council, after consultation with the Board and the Portfolio Committee, and in consultation with the Premier in Executive Council, may set strategic guidelines for the pursuit of the Corporation's objects by issuing policy directives to the Board.

(2) The responsible Member of the Executive Council may, similarly, withdraw or amend any policy directive contemplated in subsection (1).

(3) The responsible Member of the Executive Council may not issue any policy directive inconsistent with the provisions of this Act or any other law binding on the Corporation.

(4) A policy directive contemplated in subsection (1) must be –

- (a) in writing;
- (b) signed by the Member of the Executive Council; and
- (c) addressed to the Chairperson of the Board.

(5) The Board must ensure –

- (a) that a record is kept of all current policy directives; and
- (b) that members of the public have the right of access to this record.

(6) The Board must report to the responsible Member of the Executive Council on the extent of its compliance or non-compliance with all existing policy directives in its annual report.

Corporate Plan of Corporation

23. The Board must ensure that a corporate plan is developed and implemented in accordance with the provisions of the Public Finance Management Act.

Prohibitions and restrictions on distribution of Corporation's profits

24. The Member of the Executive Council may, by notice in the *Gazette*, impose such prohibitions and restrictions on –

- (a) the distribution of the profits of the Corporation; and
- (b) the disposal of the major assets of the Corporation,

as he or she considers necessary for the good governance of the Corporation.

CHAPTER 6 FUNDING AND FINANCIAL MANAGEMENT OF CORPORATION

Funds of Corporation

25.(1) The funds of the Corporation consist of –

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

(2) The Corporation must utilise its funds –

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

- (ii) the co-opted members of the Board or the members of the committees of the Board;
 - (iii) the Chief Executive Officer; and
 - (iv) the members of staff of the Corporation; and
- (b) to cover costs in connection with –
- (i) the day to day operation and administration of the Corporation; and
 - (ii) the performance of the duties and functions of the Corporation 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 Corporation with a company or an institution registered as a bank in terms of the Banks Act; and
 - (b) deposit therein all moneys received in terms of subsection (1).
- (4) The Board, after 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 all members of staff of the Corporation.
- (5) The Corporation may invest moneys 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.

Financial management

- 26.(1) The Chief Executive Officer must cause full and proper books of account of the Corporation and all the necessary records of the Corporation in relation thereto to be kept.
- (2) The Chief Executive Officer must ensure that the annual budgets, corporate plans, annual reports and audited financial statements of the Corporation 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 Corporation: containing measurable objectives and the other information contemplated in section 27(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Corporation,

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 Corporation for that financial year.

(5) The 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 the Corporation 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

27.(1) The Auditor-General must audit the financial statements of the Corporation.

(2)(a) The Board must table a report on the activities of the 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 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 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 26(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

28.(1) The Corporation 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 investment the previously disadvantaged groups.

(2) The Corporation must administer such funds in the manner determined by the responsible Member of the Executive Council.

CHAPTER 7 ITHALA STATE-OWNED COMPANY LIMITED

Ithala State-owned Company Limited

29. At the commencement of this Act, the Corporation is the sole shareholder of the Company.

Powers of Company

30.(1) The Company has all the powers and capacity of a juristic person, except to the extent that the Banks Act, the Companies Act, or its Memorandum of Incorporation provides otherwise.

(2) Notwithstanding anything to the contrary contained in this Act, the Company has the power to accept, hold and invest deposits offered by any person on such conditions as the Minister of Finance or the Registrar of Banks may determine in terms of the Banks Act.

Compliance with requirements of Banks Act

31. For as long as the Company accepts deposits from the public, it must comply with any requirement or condition imposed by the Minister of Finance or the Registrar of Banks in terms of the Banks Act.

Winding-up of Company

32.(1) Where the Company operates as contemplated in section 31, the relevant provisions of the Banks Act apply in respect of the winding-up or deregistration of the Company.

(2) Subject to subsection (1), the Company may be wound up or deregistered in terms the Companies Act.

(3) On the date of the winding-up of the Company contemplated in subsection (2), 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 Corporation established in terms of section 3.

(4) Notwithstanding the disestablishment of the Corporation, the Company continues to exist as a separate legal entity registered in terms of the Companies Act.

(5) The winding up of any juristic person that is a shareholder in the Company does not affect the status of the Company.

CHAPTER 8 GENERAL PROVISIONS

Security of confidential information held by Corporation

33.(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 Corporation, unless –

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

(2) No person may disclose any information kept in the registers contemplated in sections 8(6) and 20(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 Corporation; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Corporation, or any member of staff of the Corporation.

(3) No person may disclose or use, for personal gain or otherwise, any information of a confidential nature relating to the business of the Corporation, without the prior consent of the Corporation.

Dissolution of Corporation

34. The Corporation may not be wound-up except in terms of an Act of the Provincial Legislature.

Use of name of Corporation

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

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

Delegations

36.(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 by this Act, except the power to make regulations in terms section 37; 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 contemplated in sections 6(3) and 10(2).

(2) The Chief Executive Officer may delegate to any member of staff of the Corporation any power or duty conferred or imposed on the Chief Executive Officer by this Act, except any duty

as an *ex officio* member of the Board or accounting officer of the Corporation.

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

(4) Any delegation referred to in subsection (1) or (2) –

- (a) must be in writing;
- (b) does not prohibit the person 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.

Regulations

37.(1) The responsible Member of the Executive Council may, after consultation with the Board, the Portfolio Committee and any shareholders, who either solely or jointly hold twenty-five percent or more of the shares in the Company, make regulations regarding –

- (a) the circumstances under which and conditions upon which the Corporation may borrow funds;
- (b) the circumstances under which and conditions upon which the Corporation may dispose of any major assets;
- (c) the circumstances under which and conditions upon which the Corporation may distribute any surplus funds;
- (d) the voting rights of shareholders in the Company; or
- (e) the holding of, and procedure at, meetings of shareholders and the taking of decisions by shareholders without holding a meeting.

(2) In addition to matters contemplated in subregulation (1), the responsible Member of the Executive Council may regulate on –

- (a) the keeping of registers and records by the Board and right of the public to access any such register or record;
- (b) the form and contents of the annual report of the Corporation;
- (c) the location of the public office of the Corporation;
- (d) the giving and receiving of notices by the Corporation;

- (e) any other matter that the responsible Member of the Executive Council considers necessary for the proper implementation or the administration of this Act; or
- (f) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(3) Any regulation with financial implications must be made in consultation with the Member of the Executive Council responsible for Finance.

General offences

38.(1) Any member who wilfully or in a grossly negligent manner fails to comply with section 8(3), (4) or 13(2), or any former member who failed to comply with, or contravened, any of the sections contemplated in this subsection, while being a member, is guilty of an offence.

(2) Any person who wilfully or in a grossly negligent manner fails to comply with section 20(3) is guilty of an offence.

(3) Any person who wilfully or in a grossly negligent manner contravenes section 35 is guilty of an offence.

(4) Any person who wilfully or in a grossly negligent manner contravenes section 26(1), (2) and (3), is guilty of an offence.

(5) A person is guilty of an offence if he or she directly or indirectly accepts any bribe or corruptly receives any fee or reward from any person in connection with anything done or offered by the Corporation.

(6) A person is guilty of an offence if he or she, in respect of, or in connection with, anything done or offered by the Corporation, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence any person employed by, or acting on behalf of, the Corporation.

(7) Any person who wilfully or in a grossly negligent way falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Corporation, is guilty of an offence.

Penalties

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

Repeal of law

40. The KwaZulu-Natal Ithala Development Corporation Act, 1999 (Act No. 2 of 1999), is hereby repealed.

Transitional arrangements and savings

41. Any act purported to have been done or performed in terms of a law repealed by this Act by the responsible Member of the Executive Council, the Corporation, a member or any employee of the Corporation before the commencement of this Act, and which may be done or performed in terms of this Act, must be regarded as having been done or performed in accordance with this Act.

Short title

42. This Act is called the KwaZulu-Natal Ithala Development Finance Corporation Act, 2013, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

No. 3

13 Februarie 2014

[Engelse teks deur die Premier geteken]

KWAZULU-NATAL
WET OP ITHALA ONTWIKKELINGSFINANSIERINGSKORPORASIE,
2013
(No. 05 van 2013)

Goedgeteken op 23-01-2014

WET

Om voorsiening te maak vir die voorgesette bestaan van die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk, voorheen bekend as KwaZulu Finansierings- en Beleggingskorporasie Beperk, met die hoofdoel om volhoubare sosio-ekonomiese ontwikkeling in die Provinsie van KwaZulu-Natal te bevorder, ondersteun en fasiliteer in ooreenstemming met die groei- en ontwikkelingstrategie van die Provinsie; om die oogmerke, bevoegdhede, pligte en werksaamhede van die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk te bepaal; om die wyse te bepaal waarop die KwaZulu-Natal Ontwikkelingsfinansieringskorporasie Beperk bestuur, beman en

gefinansier sal word; en om vir aangeleenthede wat daarmee verband hou voorsiening te maak.

DAAR WORD soos volg deur die Provinsiale Wetgewer van die Provinsie van KwaZulu-Natal bepaal:-

RANGSKIKKING VAN ARTIKELS

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HOOFSTUK 1 OMSKRYWINGS

Omskrywings

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

“**aandele**” aandele in die maatskappy bedoel in artikel 7;

“**aandelekapitaal**” fondse ingesamel deur die uitreiking van aandele in ruil vir kontant of ander oorwegings;

“**Bankewet**” die Bankewet, 1990 (Wet No. 94 van 1990), en enige woord of uitdrukking waaraan ‘n betekenis toegewys is in die Bankewet of die Regulasies betreffende Banke, dra die betekenis daaraan toegewys;

“**belang**” sluit in, maar is nie beperk nie tot, ‘n persoonlike finansiële belang soos omskryf in artikel 1 van die Maatskappywet;

“**Departement**” die departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir Ekonomiese Ontwikkeling;

“**Departementshoof**” die persoon aangestel as Departementshoof ingevolge artikel 12 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994);

“**deposito**” ‘n deposito soos omskryf in artikel 1 van die Bankewet;

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet 108 van 1996);

“**hierdie Wet**” sluit die regulasies in;

“**Hoof- Uitvoerende Beamppte**” die Hoof- Uitvoerende Beamppte van die Korporasie aangestel ingevolge artikel 17;

“**Koerant**” die amptelike *Provinsiale Koerant* van KwaZulu-Natal;

“Korporasie” die Ithala Ontwikkelingsfinansieringskorporasie Beperk verwys na in artikel 2;

“lid” ‘n Raadslid van die Korporasie aangestel ingevolge artikel 6;

“lid van die publiek” sluit in ‘n regspersoon;

“Lid van die Uitvoerende Raad vir Finansies” die Lid van die Uitvoerende Raad van die Provinsie van KwaZulu-Natal verantwoordelik vir Finansies;

“Maatskappy” Ithala Beperk, ‘n Maatskappy in Staatsbesit, ‘n filiaal van die Ithala Ontwikkelingsfinansieringskorporasie Beperk, synde ‘n Maatskappy in Staatsbesit geïnkorporeer ingevolge die Maatskappywet, 2008 (Wet No. 71 van 2008);

“Maatskappywet” die Maatskappywet, 2008 (Wet No. 71 van 2008);

“Nasionale Tesourie” die Nasionale Tesourie ingestel deur artikel 5 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

“onregstreekse belang” sluit in, maar is nie beperk nie tot, ‘n persoonlike finansiële belang soos omskryf in artikel 1 van die Maatskappywet, van ‘n verwante of onderling verwante persoon soos bedoel in artikel 2 van die Maatskappywet;

“Portefeuljekomitee” die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir Ekonomiese Ontwikkeling;

“Premier” die Premier van die Provinsie van KwaZulu-Natal verwys na in artikel 125(1) van die Grondwet;

“Provinsiale Regering” die Provinsiale Regering van die Provinsie van KwaZulu-Natal en, tensy die samehang anders aandui, sluit elke Departement in die Provinsiale Regering in;

6

“**Provinsiale Wetgewer**” die Wetgewer van die Provinsie van KwaZulu-Natal verwys na in artikel 105 van die Grondwet en wat beskik oor 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 “**provinsiaal**” het ‘n ooreenstemmende betekenis;

“**Raad**” die Raad van die Korporasie aangestel ingevolge artikel 6;

“**Registrateur van Banke**” die Registrateur van Banke toegewys kragtens artikel 4 van die Bankewet;

“**regulasies**” regulasies gemaak ingevolge artikel 33;

“**regulasies betreffende Banke**” die regulasies ingevolge artikel 90 van die Bankewet;

“**roerende bate**” ‘n roerende bate soos omskryf in artikel 1 van die Bankewet;

“**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; en

“**Wet op Openbare Finansiële Bestuur**” Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

HOOFSUK 2 ITHALA ONTWIKKELINGSFINANSIERINGSKORPORASIE

Ithala Ontwikkelingsfinansieringskorporasie

2.(1) Die KwaZulu Finansierings- en Beleggingskorporasie Beperk, ingestel deur Proklamasie R. 73 van 1978, en vervolgens hernoem deur die KwaZulu-Natal Wet op Ithala Ontwikkelingsfinansieringskorporasie, 1999 (Wet No. 2 van 1999), as Ithala

Ontwikkelingsfinansieringskorporasie Beperk, gaan voort om te bestaan en sal bekend staan as die Ithala Ontwikkelingsfinansieringskorporasie Beperk.

(2) Die Korporasie, verwys na in subartikel (1), bly 'n regs persoon.

(3) Die Korporasie is 'n provinsiale openbare entiteit behoudens die Wet op Openbare Finansiële Bestuur.

(4) Enige verwysing in enige ander wet of dokument na –

- (a) die Bantoebeleggingskorporasie van Suid-Afrika Beperk;
- (b) Ekonomiese Ontwikkelingskorporasie en Toerisme Beperk;
- (c) die KwaZulu Ontwikkelingskorporasie Beperk; of
- (d) die KwaZulu Finansies- en Beleggingskorporasie Beperk,

moet geag word as 'n verwysing na die Ithala Ontwikkelingsfinansieringskorporasie Beperk.

Oogmerke en bedryfsgebied van Korporasie

3. Die oogmerke van die Korporasie is om sosiale en ekonomiese ontwikkeling in die Provinsie te bevorder, ondersteun en fasiliteer deur –

- (a) finansiële hulpbronne te mobiliseer en finansiële en verwante ondersteuningsdienste te voorsien aan persone wat in die Provinsie domisilieer, gewoonlik woonagtig is of wat voortgaan om sake te bedryf binne die Provinsie;
- (b) beplanning, uitvoering, finansiering en monitering van die inwerkingstelling van ontwikkelingsprojekte en -programme in die Provinsie;
- (c) bevordering van, hulpverlening aan en aanmoediging van die ontwikkeling van die Provinsie se menslike hulpbronne en sosiale, ekonomiese, finansiële en fisiese infrastruktuur;
- (d) bevordering, aanmoediging en fasilitering van privaatsektorbelegging in die Provinsie en die deelname van die privaatsektor- en gemeenskapsorganisasies aan ontwikkelingsprojekte en -programme en bydrae tot ekonomiese groei en ontwikkeling in die algemeen te bevorder; en
- (e) op te tree as die Provinsiale Regeringsagent vir die verrigting van enige take en verantwoordelikhede wat met ontwikkeling verband hou wat, na die mening van die

Provinsiale Regering, meer doeltreffend en doelmatig verrig kan word deur 'n korporatiewe entiteit.

Bevoegdhede, pligte en werksaamhede van Korporasie

4. Met die verwesenliking van die oogmerke bedoel in artikel 3 en behoudens artikels 54(2), 66 en 68 van die Wet op Openbare Finansiële Bestuur, kan die Korporasie –

(a) fondse en ander hulpbronne vanaf die openbare en private sektore insamel deur lenings te waarborg, toekennings en skenkings aan te vra en te ontvang op sodanige voorwaardes waarvoor ooreengekom mag word en behoudens enige voorwaardes wat deur die verantwoordelike Lid van die Uitvoerende Raad bepaal of voorgeskryf kan word;

(b) enige projek, program of onderneming beplan, fasiliteer, bevorder, uitvoer, finansier, belê in, of onderskryf, gemik op die bevordering van sosiale en ekonomiese ontwikkeling en toerisme in die Provinsie;

(c) tegniese en ander advies, opleiding, inligting en leiding voorsien en in die algemeen sodanige ondersteuning en bystand aanbied wat vir enige projek, program of onderneming benodig word, soos bedoel in paragraaf (b);

(d) deur die Maatskappy, geld leen of voorskiet, met of sonder sekuriteit, op sodanige voorwaardes soos hy mag goeddink, sodanige sekuriteit in verband daarmee neem soos hy mag goeddink, met inbegrip van –

(i) verbande;

(ii) notariële verbande;

(iii) pande;

(iv) sessies;

(v) retensieregte;

(vi) hipoteke;

(vii) waarborge;

(viii) sekuriteitsaktes; of

(ix) enige ander vorm van dekking of sekuriteit,

en sodanige stappe neem soos hy mag goeddink vir die verhaling van enige skuld en die beskerming en afdwinging van enige reg in verband daarmee; en

(e) waarborg, onderskryf of borg staan vir die skulde of kontraktoelike verpligtinge van enige persoon, enige persoon vrywaar van enige verlies, skade en kostes voortspruitend

uit die skulde of ander verpligtinge van enige ander persoon en, vir daardie doel, sekuriteitsaktes aangaan of enige ander vereiste vorm van sekuriteit voorsien;

(f) roerende of vaste eiendom, hetsy liggaamlik of onliggaamlik, verkry, hou, ontwikkel, verbeter, bestuur, daarmee handel, huur, verhuur, verkoop, oordra, skenk, sedeer, verhipotekeer, of andersins beswaar of vervreem;

(g) regspersone of verenigings van persone instel wat in staat is om uitvoering te gee aan enige oogmerk, bevoegdheid, werksaamheid of plig wat die Korporasie kan uitvoer ingevolge hierdie Wet, 'n belang by enige sodanige regspersoon verkry en enige sodanige belang vervreem, of om 'n lid van enige sodanige vereniging te word en sodanige lidmaatskap te beëindig;

(h) aandele behou in die Maatskappy bedoel in Hoofstuk 7;

(i) optree as direkteur, trustee, administrateur, bestuurder, eksekuteur, geregtelike bestuurder, likwidateur, agent of verteenwoordiger van enige persoon, openbare liggaam, boedel of besigheid en enige verteenwoordiger aan te wys om op te tree vir sodanige doel;

(j) besoldiging vir enige diens wat vir, of namens, enige persoon, met inbegrip van die Provinsiale Regering, te eis en te aanvaar;

(k) alle uitgawes in verband met sy administrasie betaal, bankrekeninge open, bedryf en sluit, sodanige rekeninge oortrek, om verhandelbare dokumente op te stel, aanvaar of endosseer en fondse wat nie onmiddellik vir sy sake benodig word nie, belê;

(l) reserwefondse skep, alle sodanige stappe neem soos wat hy nodig ag vir die beskerming en bewaring van sy –

(i) beleggings; of

(ii) finansiële belange,

en in die algemeen alle dinge doen wat nodig is vir die bestuur en administrasie van sy finansiële sake; en

(m) alle uitgawes in verband met die beskerming, bewaring en instandhouding van sy regte en bates betaal;

(n) alle stappe neem wat hy nodig ag vir –

(i) die verhaling van enige skuld; of

(ii) die afdwinging van enige verpligting wat aan hom verskuldig is deur enige persoon,

ingesluit die instelling van sodanige regstappe wat hy as dienstig ag; en

(o) personeellede van die Korporasie aanstel, skors, ontslaan, besoldig, oplei en huisves;

- (p) personeellede van die Korporasie voorsien van pensioenvoordele, siekteverlofvoordele of ander diensvoordele en in die algemeen alles doen wat nodig is om 'n toereikende personeelsterkte te ontwikkel en in stand te hou binne die Korporasie;
- (q) 'n amptelike seël hê en sodanige seël vir enige doel in die Provinsie gebruik;
- (r) in die algemeen, alle dinge doen wat nodig is vir –
 - (i) die verwesenliking van sy oogmerke;
 - (ii) die uitoefening van sy bevoegdhede; of
 - (iii) die bestuur en administrasie van sy sake; en
- (s) enige ander ding doen of aandag skenk aan enige ander aangeleentheid wat die verantwoordelike Lid van die Uitvoerende Raad nodig ag vir die behoorlike inwerkingstelling van hierdie Wet; en
- (t) die Maatskappy bemaatig om deposito's wat aangebied word deur enige persoon te aanvaar, hou en belê, op sodanige voorwaardes soos die Minister van Finansies of Registrateur van Banke kan bepaal.

Aandele, aandelekapitaal en aandeelhouing

5.(1) Die gemagtigde aandelekapitaal van die Korporasie is sy uitgereikte aandelekapitaal op die inwerkingtredingsdatum van hierdie Wet, soos gehou deur die Korporasie in die Maatskappy.

(2) Behoudens sodanige voorwaardes wat die verantwoordelike Lid van die Uitvoerende Raad kan voorskryf, kan die Korporasie alle uitgereikte aandele of 'n gedeelte daarvan oordra aan enige –

- (a) regspersoon;
- (b) vereniging van persone; of
- (c) openbare of privaatsektorliggaam,

wie se oogmerke nie met dié van die Korporasie strydig is nie: Met dien verstande dat individuele natuurlike persone nie aandeelhouers van die Korporasie kan word nie.

(3) Die Raad, met die goedkeuring van –

- (a) die verantwoordelike Lid van die Uitvoerende Raad; en
- (b) die aandeelhouers wat stem op 'n algemene vergadering, waar aandele oorgedra is aan aandeelhouers soos bedoel in subartikel (2),

kan, van tyd tot tyd –

(a) die aandeelkapitaal van die Korporasie verhoog in die mate wat die Raad dienstig ag, deur die skep van –

(i) gewone of voorkeuraandele; of

(ii) aandele van enige ander tipe of klas waarop hy kan besluit,

en sodanige aandele op ooreengekome voorwaardes uitreik; en

(b) die volgende verander –

(i) die bemagtiging en klassifikasie van aandele;

(ii) die getal gematigde aandele van elke klas; en

(iii) die voorkeure, regte, beperkings en ander voorwaardes gekoppel aan elke klas aandele.

(4) Enige aandeel in die Maatskappy kan uitgereik word met sodanige preferente, uitgestelde of ander spesiale regte, of behoudens sodanige beperkings waarop die Raad kan besluit, hetsy met betrekking tot dividende, stemming, teruggawe van aandeelkapitaal, of andersins.

(5) In die geval van voorkeuraandele, kan die Raad besluit –

(a) dat die aandeelhouers nie daarop geregtig is om te stem nie; of

(b) dat sodanige aandele afgelos kan word.

(6) Elke uitgereikte aandeel, ongeag sy klas, het een algemene stemreg daaraan gekoppel.

(7) Ten spyte van enigiets strydig met hierdie Wet, is elke uitgereikte aandeel gekoppel aan 'n onherroeplike reg van die aandeelhouer om te stem oor enige voorstel ten einde die voorkeure, regte, beperkings en ander voorwaardes gekoppel aan daardie aandeel te wysig.

HOOFSTUK 3 RAAD VAN KORPORASIE

Samestelling van Raad

6.(1) Die Raad bestaan uit –

(a) minstens sewe en hoogstens dertien lede aangestel deur die verantwoordelike Lid van die Uitvoerende Raad; en

(b) die Hoof- Uitvoerende Beampste, *ex officio*, soos bedoel in artikel 17(5).

(2) Lede van die Raad moet geskikte en gepaste persone wees om te dien in die belange van die Provinsie, en moet gesamentlik die volgende besit –

(a) toepaslike kennis of ondervinding in georganiseerde konstituerende dele binne die sakebedryf; en

(b) die volgende vaardighede, kundigheid en kwalifikasies –

(i) regsvaardighede, ondervinding en kwalifikasies;

(ii) finansiële vaardighede, ondervinding en kwalifikasies;

(iii) beleggingsondervinding of kwalifikasies;

(iv) bemarkingsondervinding of kwalifikasies;

(v) menslike hulpbron- of arbeidsondervinding of kwalifikasies; en

(vi) beplanning- of ontwikkelingsvaardighede en ondervinding.

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

(a) historiese wanbalanse aangespreek word;

(b) die Raad gesamentlik die nodige en toepaslike vaardighede en kundigheid besit;

(c) die Raad verteenwoordigend is van persone in diens van of betrokke by die invoer, handel- en beleggingsakeondernemings in die Provinsie; en

(d) munisipale belange verteenwoordig word in die Raad op sodanige wyse dat billike ruimtelike verteenwoordiging van munisipaliteite behaal word: Met dien verstande dat hoogstens vier persone aangestel kan word op die Raad ten einde uitwerking te gee aan die bepalings van hierdie subartikel.

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

(a) een van die lede van die Raad as Voorsitter van die Raad; en

(b) een van die lede van die Raad as Ondervoorsitter van die Raad,

aanwys.

(5) Die verantwoordelike Lid van die Uitvoerende Raad moet, by kennisgewing in die *Koerant*, enige belanghebbende partye binne die Provinsie uitnoui om kandidate te benoem vir aanstelling in die Raad.

(6) Die uitnodiging vir benoeming moet die volgende spesifiseer –

- (a) die benoemingsprosedure;
- (b) die benoemingsvereistes; en
- (c) die sluitingsdatum vir die benoeming.

(7) Die verantwoordelike Lid van die Uitvoerende Raad moet 'n benoemingskomitee aanstel om aanbevelings te maak aan die verantwoordelike Lid van die Uitvoerende Raad vir lede van die Raad.

(8) Die verantwoordelike Lid van die Uitvoerende Raad moet teweegbring dat die name van die persone aangestel in die Raad gepubliseer word in die *Koerant* en in minstens twee koerante, onmiddelik nadat sodanige persone skriftelik in kennis gestel is van hul aanstelling in die Raad.

(9) Die verantwoordelike Lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede in die Raad ingevolge subartikel (1), die Uitvoerende Raad en die Portefeuljekomitee inlig van die name van die aangestelde lede, insluitend die ampstermyn van hul aanstelling.

(10) Die artikel is van toepassing, met die nodige veranderings, op die vul van 'n vakature in die Raad.

Onbevoegdheid om in Raad aangestel te word

7.(1) 'n Persoon is onbevoeg om aangestel te word in die Raad of om in die Raad aan te bly, uit hoofde van die feit dat hy of sy –

- (a) 'n Parlements lid, lid van enige provinsiale wetgewer of enige munisipale raad is;
- (b) 'n ongerehabiliteerde insolvent is of word;
- (c) deur 'n bevoegde hof as geestelik siek verklaar is of word;
- (d) regstreeks of onregstreeks betrokke is by enige kontrak met die Korporasie en versuim om sy of haar betrokkenheid by so 'n kontrak en die aard daarvan te verklaar op die wyse vereis deur hierdie Wet;
- (e) 'n persoon onder kuratorskap is;
- (f) te eniger tyd uit 'n posisie van vertrouwe verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit;

(g) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis kan kondoneer by ontvangs van 'n beëdigde verklaring waarin volle besonderhede van 'n misdryf, deur 'n persoon benoem vir aanstelling, verklaar word 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, eindig; en

(h) versuim om 'n belang bedoel in paragraaf (d) openbaar te maak, of aan die verrigtinge van die Raad deelgeneem het of dit bygewoon het, terwyl 'n belang besit is soos bedoel in vermelde paragraaf.

(2) 'n Persoon wat onderhewig is aan 'n onbevoegdheid bedoel in subartikel (1)(a), (1)(b) of (1)(g) kan benoem word vir aanstelling as 'n lid maar kan slegs aangestel word indien hy of sy, ten tye van sodanige aanstelling, nie meer onderhewig is aan daardie onbevoegdheid nie.

Verklaring van finansiële of ander belange van Raadslede

8.(1) 'n Persoon wat benoem is om in die Raad te dien ingevolge artikel 6(5) moet, binne tien dae na die benoeming, 'n skriftelike verklaring van alle regstreekse of onregstreekse belange in enige maatskappy of ander sakebelange by die verantwoordelike Lid van die Uitvoerende Raad indien.

(2) Enige versuim deur die benoemde om finansiële of ander belange bekend te maak ingevolge subartikel (1) diskwalifiseer sodanige benoemde, ingevolge artikel 7(1)(h), van ooreweging vir die posisie as Raadslid.

(3) Elke Raadslid moet, by aanvaarding van die ampstermyn en aan die begin van elke boekjaar van die Korporasie, 'n skriftelike verklaring indien by die verantwoordelike Lid van die Uitvoerende Raad van sy of haar regstreekse of onregstreekse belang in enige maatskappy of ander sakebelang.

(4) Waar 'n lid 'n belang in enige maatskappy of enige ander sakebelang verkry te eniger tyd tydens sy of haar ampstermyn as 'n Raadslid, moet hy of sy, binne tien dae vanaf die datum van die verkryging van sodanige belang, 'n skriftelike verklaring van sodanige belang by die verantwoordelike Lid van die Uitvoerende Raad indien.

(5) Enige versuim aan die kant van die lid om sy of haar belang bekend te maak, soos bedoel in subartikels (3) en (4), maak 'n grondige rede uit vir die beëindiging van die aanstelling van sodanige lid ingevolge artikel 10(2).

(6) Die verantwoordelike Lid van die Uitvoerende Raad moet 'n opgedateerde register van die belange van Raadslede, wat bekend gemaak is ingevolge hierdie artikel, byhou.

Ampstermyn en heraanstelling van Raadslede

9. Die persone aangestel in die Raad beklee die amp vir 'n tydperk van drie jaar, of sodanige korter tydperk soos deur die verantwoordelike Lid van die Uitvoerende Raad bepaal en is, behoudens artikel 6, verkiesbaar vir heraanstelling by die verstryking van sodanige tydperk: Met dien verstande dat geen persoon heraangestel kan word nadat hy of sy vir meer as drie opeenvolgende termyne op die Raad gedien het nie.

Vakatures, ontslag en bedanking uit amp van Raadslede

10.(1) 'n Lid wat onbevoeg raak ingevolge artikel 7, hou onmiddelik op om 'n lid te wees.

(2) Die verantwoordelike Lid van die Uitvoerende Raad kan, nadat die lid 'n geleentheid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige en afdoende redes is om dit te doen.

(3) 'n Lid moet sy of haar amp ontruim indien hy of sy sonder vooraf toestemming van die Raad afwesig is van twee opeenvolgende vergaderings van die Raad waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is.

(4) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike Lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike Lid van die Uitvoerende Raad van die bedankingskennisgewing kan afsien.

(5) Wanneer 'n vakature op die Raad ontstaan, en buiten 'n vakature wat ontstaan uit hoofde van die verantwoordelike Lid van die Uitvoerende Raad wat sy of haar bevoegdhede uitoefen

ingevolge subartikel (2), moet die verantwoordelike Lid van die Uitvoerende Raad, behoudens artikel 6, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(6) Sou dit gebeur dat die verantwoordelike Lid van die Uitvoerende Raad sy of haar bevoegdhede uitoefen ingevolge subartikel (2), kan hy of sy, nieeenstaande die prosedure vir die aanstelling van die Raadslede uiteengesit in artikel 6, maar behoudens artikels 6(2) en 6(3), persone aanstel om te dien as Raadslede op 'n tussentydse basis: Met dien verstande dat –

- (a) die persone aangestel ingevolge hierdie subartikel nie op die Raad kan aanbly vir 'n tydperk van meer as 60 dae vanaf hul aanstellingsdatum nie; en
- (b) die verantwoordelike Lid van die Uitvoerende Raad, onderhewig aan artikel 6, binne 60 dae vanaf die aanstelling bedoel in hierdie subartikel, die Raadslede moet aanstel vir 'n termyn soos bedoel in artikel 9.

Tydlike skorsing van Raadslid

11. Die verantwoordelike Lid van die Uitvoerende Raad kan 'n Raadslid skors terwyl die verantwoordelike Lid van die Uitvoerende Raad bewerings ondersoek wat, indien gevind word om juis te wees, kan lei tot die beëindiging van die lid se aanstelling ingevolge artikel 10(2).

Vergaderings en vergaderingsprosedures van Raad

12.(1) Enige vergadering van die Raad moet gehou word op 'n tyd, datum en 'n plek bepaal deur die voorsitter van die Raad.

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

(3) Die verrigtinge by 'n vergadering van die Raad moet behoudens die bepalings van hierdie artikel deur die voorsitter van die Raad bepaal word.

(4) Die voorsitter van die Raad moet voorsit by alle vergaderings van die Raad: Met dien verstande dat in sy of haar afwesigheid die ondervoorsitter van die Raad moet voorsit en, in die geval dat beide die voorsitter en ondervoorsitter nie teenwoordig is by 'n vergadering van die

Raad nie, die aanwesige lede uit hul eie geledere 'n persoon kan verkies om as voorsitter van die Raad waar te neem vir die duur van daardie bepaalde 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, besit die voorsitter van die Raad '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 Raadslede dan teenwoordig en wat geregtig is daarop om as Raadslede te sit.

(8) 'n Meerderheid van die Raad kan 'n buitengewone vergadering van die Raad roep.

(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

13.(1) 'n Raadslid 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 regstreekse of onregstreekse belang het; of
- (b) indien daar 'n moontlikheid bestaan dat 'n regstreekse of onregstreekse belang mag ontstaan.

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

(b) Die lid bedoel in subartikel (2)(a) kan nie deelneem aan enige stemming verbonde aan 'n aangeleentheid waarin hy of sy 'n belang, bedoel in subartikel (1), kan hê nie.

(3) Enige bekendmaking ingevolge subartikel (1) moet aangeteken word in die notules 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) Die besluit bedoel in subartikel (4) kan –

- (a) behoudens die goedkeuring van die verantwoordelike Lid van die Uitvoerende Raad, bekragtig word deur 'n resoluëie van die Raad na die bekendmaking van sodanige belang; of
- (b) deur 'n gehof as geldig verklaar word.

Besoldiging van Raadslede

14.(1)(a) 'n Raadslid kan sodanige besoldiging en toelaes betaal word uit die fondse van die Korporasie, soos bepaal kan word deur die verantwoordelike Lid van die Uitvoerende Raad in oorlegpleging met die Lid van die Uitvoerende Raad vir Finansies.

(b) 'n Raadslid, wat besoldiging, toelaes en ander voordele ontvang uit hoofde van sy of haar pos of indiensneming 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 Raadslid dien, kan slegs vergoeding en toelaes ontvang soos vermeld in subartikel (1)(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 Raadslid kan, ten opsigte van sy of haar werksaamhede as 'n lid of gekoöpteerde lid, vergoeding ontvang uit die fondse van die Korporasie vir redelike werklike reis-en-verblyfuitgawes 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-verblyfuitgawes bedoel in subartikel (2)(a).

Instelling van komitees om Raad by te staan

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

- (a) die Raad by te staan in die verrigting van enige van die bevoegdhede, pligte of werksaamhede van die Korporasie bedoel in artikel 4; of
- (b) navraag of navorsing te doen oor enige aangeleentheid wat binne die mandaat van die Raad ingevolge hierdie Wet val.

(2) Die Raad moet die volgende instel –

- (a) 'n ouditkomitee, in ooreenstemming met die bepalings van die Wet op Openbare Finansiële Bestuur; en
- (b) 'n besoldigingskomitee wat verantwoordelik is vir –
 - (i) die maak van aanbevelings betreffende besoldigingstoelaes en ander voordele van die persone bedoel in artikel 25(2)(a); en
 - (ii) die bepaling van prosedures, insluitend beheermaatreëls vir die bestuur, hantering en verwerking van eise vir reis-en-verblyfuitgawes.

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

- (a) die verwysingsterme van sodanige komitee bepaal, insluitend, maar nie beperk nie tot, hetsy of nie sodanige komitee ophou om te bestaan wanneer die taak of take toegeken daaraan deur die Raad voltooi is;
- (b) 'n voorsitter van sodanige komitee aanstel, wat 'n Raadslid moet wees; en
- (c) bepaal hetsy of nie sodanige komitee persone wat nie Raadslede is nie kan koöpteer en, indien wel, op watter terme en voorwaardes.

(4) Die Raad kan, te eniger tyd, die bestaan van 'n komitee, of enige mandaat aan 'n komitee gegee, beëindig, hetsy sodanige komitee die taak of take toegeken daaraan deur die Raad voltooi het aldan nie.

(5)(a) Die Hoof- Uitvoerende Beampte kan 'n vergadering van 'n komitee bedoel in subartikels (1) en (2) bywoon en deelneem daaraan, maar kan nie stem nie.

(b) 'n Personeellid van die Korporasie kan, by uitnodiging van die betrokke komitee, 'n vergadering van daardie komitee bywoon, maar kan nie stem nie.

Koöptering van persone tot Raad of komitees van Raad

16.(1) Die Raad kan, indien hy van mening is dat 'n bepaalde persoon in staat is om die Raad by te staan met betrekking tot enige van sy werksaamhede en bevoegdhede, sodanige persoon koöpteer vir daardie doel.

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

(3) 'n Persoon gekoöpteer ingevolge subartikel (1) kan sodanige besoldiging en toelaes betaal word uit die fondse van die Korporasie soos deur die Raad bepaal kan word, in oorleg met die Lid van die Uitvoerende Raad vir Finansies.

HOOFSTUK 4

HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN KORPORASIE

Hoof- Uitvoerende Beampte van Korporasie

17.(1) Die Raad moet, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, die Hoof- Uitvoerende Beampte van die Korporasie aanstel.

(2)(a) Die Hoof- Uitvoerende Beampte word aangestel vir 'n tydperk van hoogstens vyf jaar.

(b) Die Hoof- Uitvoerende Beampte kan heraangestel word vir een bykomende ampstermyn van hoogstens vyf jaar.

(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 Korporasie.

(b) Die Korporasie en die Hoof- Uitvoerende Beampte kan, skriftelik en volgens ooreenkoms, die prestasie-ooreenkoms bedoel in subartikel (3)(a) wysig.

(4) Vir die doeleindes van die verklaring van finansiële of ander belange, is die bepalings van artikel 8 van toepassing, met die nodige veranderings, 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* Raadslid maar het nie die reg om by die Raad se vergaderings te stem nie.

Wersaamhede van Hoof- Uitvoerende Beampte

18.(1) Die Hoof- Uitvoerende Beampte is verantwoordelik vir –

- (a) die administratiewe en finansiële bestuur van die Korporasie in ooreenstemming met die Wet op Openbare Finansiële Bestuur, kragtens die opdrag van die Raad;
- (b) die aanstelling van personeellede van die Korporasie, na oorlegpleging met die Raad, bedoel in artikel 20(1);
- (c) met die goedkeuring van die Raad, die bepaling van 'n gedragskode van toepassing op die Hoof- Uitvoerende Beampte en alle personeellede van die Korporasie ten einde –
 - (i) nakoming van toepaslike wetgewing, met inbegrip van hierdie Wet;
 - (ii) die doeltreffende, doelmatige en ekonomiese gebruik van die 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 Korporasie; en
 - (vi) professionele, eerlike, onpartydige, regverdige, etiese en billike diens, te verseker; en
- (d) die handhawing van dissipline van die personeellede van die Korporasie aangestel ingevolge subartikel (1)(b);
- (e) die byhou en instandhouding van die register van belange verklaar deur personeellede van die Korporasie; en
- (f) die versekering van nakoming van die bepalings van die Wet op Openbare Finansiële Bestuur deur die Raad, en enige ander toepaslike wetgewing.

(2) Indien die Hoof- Uitvoerende Beampte, om enige rede, nie in staat is om enige van sy of haar wersaamhede te verrig nie, moet die Raad, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, enige geskikte kandidaat uit die personeellede van die Korporasie aanstel

as Waarnemende Hoof- Uitvoerende Beampte totdat die Hoof- Uitvoerende Beampte in staat is om sy of haar werksaamhede te hervat.

Bedanking en ontslag uit amp van Hoof- Uitvoerende Beampte

19.(1) Die Hoof- Uitvoerende Beampte ontruim amp –

- (a) in die geval van bedanking, wanneer die bedanking van krag word;
- (b) wanneer hy of sy onbevoeg raak ingevolge artikel 7; 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 Korporasie

20.(1) Die Hoof- Uitvoerende Beampte moet, behoudens artikel 18(1)(b) en subartikel (2), personeellede van die 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 werksaamhede ingevolge hierdie Wet; en
- (b) om die Raad by te staan met werk bykomstig tot die verrigting van sy werksaamhede.

(2) Die Raad moet, behoudens artikel 25(4), 'n menslike hulpbronbeleid bepaal vir personeellede, insluitend die Hoof- Uitvoerende Beampte, van die Korporasie.

(3) Vir doeleindes van die verklaring van finansiële of ander belange, en behoudens artikel 18(1)(e), is die bepalings van artikel 8(3), (4) en (5) van toepassing, met die nodige veranderings, op personeellede van die Korporasie.

(4) Die Hoof- Uitvoerende Beampte moet 'n opgedateerde register, van die belange van personeellede van die Korporasie wat ingevolge subartikel (3) verklaar is, byhou.

Afstaan aan of oorplasing van personeel na Korporasie

21. Die Korporasie kan die dienste aanwend van persone wat afgestaan is of oorgeplaas is vanaf die staatsdiens, in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1993).

HOOFSTUK 5 BELEIDSRIGLYNE EN KORPORATIEWE PLAN

Beleidsriglyne aan Raad

22.(1) Die verantwoordelike Lid van die Uitvoerende Raad, na oorlegpleging met die Raad en die Portefeuljekomitee, en in oorleg met die Premier in Uitvoerende Raad, kan strategiese riglyne stel vir die nastrewing van die Korporasie se oogmerke deur beleidsriglyne aan die Raad uit te reik.

(2) Die verantwoordelike Lid van die Uitvoerende Raad kan, eweneens, enige beleidsriglyn bedoel in subartikel (1) onttrek of wysig.

(3) Die verantwoordelike Lid van die Uitvoerende Raad kan nie enige beleidsriglyn uitreik wat teenstrydig met die bepalings van hierdie Wet of enige ander wet wat bindend op die Korporasie is nie.

(4) 'n Beleidsriglyn bedoel in subartikel (1) moet –

- (a) skriftelik wees;
- (b) deur die Lid van die Uitvoerende Raad onderteken wees; en
- (c) geadresseer word aan die Voorsitter van die Raad.

(5) Die Raad moet verseker –

- (a) dat 'n rekord gehou word van alle huidige beleidsriglyne; en
- (b) dat lede van die publiek toegangsreg tot hierdie rekord het.

(6) Die Raad moet aan die verantwoordelike Lid van die Uitvoerende Raad, in sy jaarverslag, verslag lewer oor die mate waarin hy alle geldende beleidsriglyne nagekom of nie nagekom het nie.

Korporatiewe Plan van Korporasie

23. Die Raad moet die ontwikkeling en inwerkingstelling van 'n korporatiewe plan in ooreenstemming met die bepalinge van die Wet op Openbare Finansiële Bestuur verseker.

Verbiedinge en beperkings op verspreiding van Korporasiewinste

24. Die Lid van die Uitvoerende Raad kan, by kennisgewing in die *Koerant*, sodanige verbiedinge en beperkings op –

- (a) die verdeling van die Korporasiewinste; en
- (b) die vervreemding van die Korporasie se groot bates,

oplê wat hy of sy vir goeie bestuur van die Korporasie nodig mag ag.

HOOFSTUK 6
BEFONDSING EN FINANSIËLE BESTUUR VAN KORPORASIE

Fondse van Korporasie

25.(1) Die fondse van die Korporasie bestaan uit –

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

(2) Die Korporasie moet sy fondse aanwend –

- (a) vir die betaling van besoldiging, toelaes en reis-en-verblyfuitgawes van –
 - (i) die lede;
 - (ii) die gekoöpteerde lede van die Raad of lede van die komitees van die Raad;
 - (iii) die Hoof- Uitvoerende Beampte; en
 - (iv) die personeellede van die Korporasie; en
- (b) om kostes te dek met betrekking tot –
 - (i) die dag-tot-dag bedryf en administrasie van die Korporasie; en
 - (ii) die uitvoering van die pligte en funksies van die 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 open in die naam van die Korporasie by 'n maatskappy of 'n instelling geregistreer as 'n bank ingevolge die Bankewet; en
- (b) alle geld wat ingevolge subartikel (1) ontvang is, daarin deponeer.

(4) Die Raad moet, na oorlegpleging met die verantwoordelike Lid van die Uitvoerende Raad –

- (a) die besoldiging en diensvoorwaardes; en
- (b) die pensioen- en aftreevoordele,

van die Hoof- Uitvoerende Beampte en alle personeellede van die Korporasie bepaal.

(5) 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 neem om te verseker dat die belegging nie spekulatief van aard is nie.

Finansiële bestuur

26.(1) Die Hoof- Uitvoerende Beampte moet volledige en behoorlike rekeningboeke van die Korporasie en al die nodige rekords van die Korporasie wat daarop betrekking het, byhou.

(2) Die Hoof- Uitvoerende Beampte moet verseker dat die jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state van die Korporasie 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 Korporasie, wat meetbare doelwitte bevat, en die ander inligting bedoel in artikel 27(3)(b) en (c); en

- (b) 'n staat van die beraamde inkomste en uitgawes van die Korporasie,

aan die Raad voorlê vir goedkeuring met betrekking tot die volgende drie finansiële jare.

(4) In enige finansiële jaar kan die Hoof- Uitvoerende Beampte aangepaste of bykomende state van die beraamde inkomste en uitgawes van die Korporasie vir daardie finansiële jaar aan die Raad voorlê vir goedkeuring.

(5) Die Korporasie kan nie enige finansiële verbintenis aangaan nie, bo en behalwe sy goedgekeurde begroting en sy opgegaarde reserwes.

(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 goedgekeur deur die Raad, daarin deponeer.

Oudit en jaarverslag

27.(1) Die Ouditeur-generaal moet die finansiële verslae van die Korporasie oudit.

(2)(a) Die Raad moet 'n verslag oor die aktiwiteite van die Korporasie tydens '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 Raadslede 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 Korporasie sy oogmerke vermeld in artikel 3 bereik of bevorder het en die meetbare doelwitte soos uiteengesit in sy besigheidsplan, soos bedoel in artikel 26(3)(a), tydens die betrokke finansiële jaar; en

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

Instelling en administrasie van spesiale fondse

28.(1) Die Korporasie kan, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, spesiale fondse instel en byhou, insluitend 'n fonds om voorheen benadeelde groepe in die beleggingshoofstroom in te bring.

(2) Die Korporasie moet sodanige fondse administreer op die wyse bepaal deur die verantwoordelike Lid van die Uitvoerende Raad.

**HOOFSTUK 7
ITHALA BEPERK MAATSKAPPY IN STAATSBESIT****Ithala Beperk Maatskappy in Staatsbesit**

29. By die inwerkingtreding van hierdie Wet is die Korporasie die alleenaandeelhouer van die Maatskappy.

Bevoegdhede van Maatskappy

30.(1) Die Maatskappy besit al die bevoegdhede en kapasiteit van 'n regspersoon, met uitsondering van die omvang wat die Bankewet, die Maatskappywet, of sy Akte van Oprigting, andersins voorsien.

(2) Ondanks enigiets strydig wat vervat is in hierdie Wet, het die Maatskappy die bevoegdheid om deposito's wat enige persoon aanbied op sodanige voorwaardes soos deur die Minister van Finansies of die Registrateur van Banke bepaal ingevolge die Bankewet, te ontvang, hou en belê.

Nakoming van vereistes van Bankewet

31. Vir solank as wat die Maatskappy deposito's van die publiek ontvang, moet hy aan enige vereiste of voorwaarde wat deur die Minister van Finansies of die Registrateur van Banke, ingevolge die Bankewet, opgelê word, voldoen.

Ontbinding van Maatskappy

32.(1) Waar die Maatskappy in bedryf is soos bedoel in artikel 31, is die tersaaklike bepalings van die Bankwet van toepassing ten opsigte van die ontbinding of deregistrasie van die Maatskappy.

(2) Behoudens subartikel (1), kan die Maatskappy ontbind of deregistreer word ingevolge die Maatskappywet.

(3) Op die datum van die ontbinding van die Maatskappy bedoel in subartikel (2) 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, die Korporasie ingestel ingevolge artikel 3.

(4) Nieteenstaande die ontbinding van die Korporasie, gaan die Maatskappy voort om te bestaan as 'n aparte regsentiteit geregistreer ingevolge die Maatskappywet.

(5) Die ontbinding van enige regspersoon wat 'n aandeelhouer in die Maatskappy is beïnvloed nie die status van die Maatskappy nie.

**HOOFSTUK 8
ALGEMENE BEPALINGS****Sekuriteit van vertroulike inligting gehou deur Korporasie**

33.(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 Korporasie voorgelê word 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 registers bedoel in artikels 8(6) en 20(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 Korporasie; of

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

(3) Geen persoon kan, vir persoonlike gewin of andersins, enige inligting van 'n vertroulike aard betreffende die sake van die Korporasie bekend maak of gebruik sonder die vooraf goedkeuring van die Korporasie nie.

Ontbinding van Korporasie

34. Die Korporasie kan slegs ontbind word ingevolge 'n Wet van die Provinsiale Wetgewer.

Gebruik van Korporasiename

35.(1) Geen persoon kan, sonder vooraf skriftelike magtiging van die Korporasie, op enige wyse die Korporasie verteenwoordig of gebruik maak van die naam, akroniem, logo, ontwerp of materiaal gebruik of besit deur die Korporasie nie.

(2) Geen persoon kan valslik beweer om namens die Korporasie op te tree nie.

Delegerings

36.(1) Die verantwoordelike Lid van die Uitvoerende Raad kan aan die Departementshoof –

(a) enige bevoegdheid deleger wat aan die verantwoordelike Lid van die Uitvoerende Raad deur hierdie Wet verleen is, buiten die bevoegdheid om regulasies ingevolge artikel 37 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 bedoel in artikels 6(3) en 10(2).

(2) Die Hoof- Uitvoerende Beampte kan aan enige personeellid van die Korporasie enige bevoegdheid of plig deleger wat deur hierdie Wet aan die Hoof- Uitvoerende Beampte verleen of opgelê is, behalwe enige plig as 'n *ex officio* Raadslid of rekenpligtige beampte van die Korporasie.

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

(4) Enige delegering verwys na in subartikel (1) of (2) –

- (a) moet skriftelik wees;
- (b) verbied nie die persoon wat die delegering gedoen het om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en
- (c) mag te eniger tyd skriftelik deur daardie persoon onttrek of gewysig word.

Regulasies

37.(1) Die verantwoordelike Lid van die Uitvoerende Raad kan, na oorlegpleging met die Raad, die Portefeuljekomitee en enige aandeelhouers, wat hetsy alleenlik of gesamentlik vyf en twintig persent of meer van die aandele in die maatskappy besit, regulasies uitvaardig met betrekking tot –

- (a) die omstandighede waaronder en voorwaardes waarop die Korporasie fondse kan leen;
- (b) die omstandighede waaronder en voorwaardes waarop die Korporasie oor enige groot bates kan beskik;
- (c) die omstandighede waaronder en voorwaardes waarop die Korporasie enige oorskotfondse kan verdeel;
- (d) die stemreg van aandeelhouers in die Maatskappy; of
- (e) die hou van en prosedure by aandeelhouersvergaderings en die neem van besluite deur aandeelhouers sonder om 'n vergadering te hou.

(2) Die verantwoordelike Lid van die Uitvoerende Raad kan, bykomend tot aangeleenthede bedoel in subregulasie (1), regulasies maak betreffende –

- (a) die byhou van registers en rekords deur die Raad en die publiek se toegangsreg tot enige sodanige register of rekord;
- (b) die vorm en inhoud van die Korporasie se jaarverslag;
- (c) die ligging van die Korporasie se openbare kantoor;
- (d) die gee en ontvangs van kennisgewings deur die Korporasie;

- (e) enige ander aangeleentheid wat die verantwoordelike Lid van die Uitvoerende Raad nodig ag vir die behoorlike inwerkingstelling of administrasie van hierdie Wet; of
- (f) enige administratiewe of prosedure-aangeleentheid benodig om uitwerking te gee aan die bepalings van hierdie Wet.

(3) Enige regulasie met finansiële implikasies moet gemaak word in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir Finansies.

Algemene misdrywe

38.(1) Enige lid wat opsetlik of op 'n growwe nalatige wyse versuim om aan artikel 8(3), (4) of 13(2) te voldoen, of enige voormalige lid wat versuim het om te voldoen aan, of enige van die artikels bedoel in hierdie subartikel oortree het terwyl hy of sy 'n lid was, is skuldig aan 'n misdryf.

(2) Enige persoon wat opsetlik of op 'n growwe nalatige wyse versuim om te voldoen aan artikel 20(3), is skuldig aan 'n misdryf.

(3) Enige persoon wat opsetlik of op 'n growwe nalatige wyse artikel 35 oortree, is skuldig aan 'n misdryf.

(4) Enige persoon wat opsetlik of op 'n growwe nalatige wyse artikel 26(1), (2) en (3) oortree, is skuldig aan 'n misdryf.

(5) 'n Persoon is skuldig aan 'n misdryf indien hy of sy regstreeks of onregstreeks enige omkoopgeld aanvaar of enige ongemagtigde fooi of beloning ontvang vanaf enige persoon in verband met enigiets gedoen of gebied deur die Korporasie.

(6) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Korporasie gedoen of gebied word, enige persoon in diens van of waarnemend namens die Korporasie, omkoop of poog om om te koop of omkoopbaar beïnvloed of poog om omkoopbaar te beïnvloed.

(7) Enige persoon wat opsetlik of op 'n growwe nalatige wyse 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 Korporasie, is skuldig aan 'n misdryf.

Boetes

39. Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet is strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of beide sodanige boete en gevangenisstraf.

Herroeping van wet

40. Die KwaZulu-Natal Wet op Ithala Ontwikkelingsfinansieringskorporasie, 1999 (Wet No. 2 van 1999) word hiermee herroep.

Oorgangsbepalings en besparings

41. Enigiets wat gedoen is of as gedoen beskou word ingevolge 'n wet herroep deur hierdie Wet deur die verantwoordelike Lid van die Uitvoerende Raad, die Korporasie, 'n lid of enige werknemer van die Korporasie voor die inwerkingtreding van hierdie Wet, en wat gedoen of uitgevoer kan word ingevolge hierdie Wet, moet beskou word as gedoen of uitgevoer in ooreenstemming met hierdie Wet.

Kort titel

42. Die Wet word die KwaZulu-Natal Wet op Ithala Ontwikkelingsfinansieringskorporasie, 2013, genoem en tree in werking op 'n datum wat bepaal sal word deur die verantwoordelike Lid van die Uitvoerende Raad by kennisgewing in die *Koerant*.

**MEMORANDUM
OOR DIE OOGMERKE
VAN DIE
KWAZULU-NATAL WETSONTWERP OP
ITHALA ONTWIKKELINGSFINANSIERINGSKORPORASIE, 2013**

1. ALGEMENE AGTERGROND

Die voormalige Nasionale Minister van Finansies, Mnr Trevor A Manuel, het ernstige bedenkinge gehad oor die Wet en het versoek dat artikel 30 van die Wet op Ithala Ontwikkelingsfinansieringskorporasie, 1999 (Wet No. 2 of 1999) (huidige Wet), herroep word omrede dit die KwaZulu-Natal Provinsiale Wetgewer alleenreg gegee het om die Ithala Beperk Korporasie te ontbind, ter uitsluiting van die howe.

Die mees deurslaggewende bekommernis ingevolge artikel 30 van die Wet op Ithala Ontwikkelingsfinansieringskorporasie was die feit dat, sou die Ithala Ontwikkelingsfinansieringskorporasie finansiële probleme in die gesig staar, die deponeerders in gevaar kon wees en benadeel kon word as gevolg van die feit dat die Registrateur van Banke nie 'n wenslike proses kan aanwend nie, aangesien ontbinding ingevolge artikel 30 slegs gedoen kon word deur 'n Wet van die Parlement.

Met die wysiging ten einde die strydpunt van artikel 30 aan te spreek, het die huidige Nasionale Minister van Finansies, Mnr Pravin J Gordhan, aangevoer dat die wysiging aan artikel 30 nie die bedenkinge geopper deur die voormalige Minister voldoende aangespreek het nie, en het versoek dat die bewoording van die vermelde artikel 30 herformuleer word met die doel dat Ithala Beperk, 'n Maatskappy in Staatsbesit, en 'n filiaal van die Ithala Ontwikkelingskorporasie, uitgesluit word van ontbinding ingevolge die Wet op Ithala Ontwikkelingsfinansieringskorporasie en aldus voortgaan om te bestaan, nieteenstaande die ontbinding van die Korporasie en om vervolgens te weerspieël dat die Maatskappy in Staatsbesit, Beperk, die instelling is wat deposito's aanvaar en nie die Ithala Ontwikkelingsfinansieringskorporasie nie.

Vervolgens is daar by noukeurige bestudering van die huidige Wet gevind dat vele klousules uitgedien geraak het en nie onderskeid getref het tussen die rol van die Ithala Ontwikkelingsfinansieringskorporasie en dié van Ithala Beperk, 'n Maatskappy in Staatsbesit, nie. Dit is teen hierdie agtergrond dat die herroeping van die huidige Wet en die ontwikkeling van 'n nuwe Wet versoek is.

Gesien in die lig van die voormelde, beoog hierdie Wetsontwerp om –

- (a) voorsiening te maak vir die voortgesette bestaan van die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk (voorheen bekend as die KwaZulu Finansies- en Beleggingskorporasie Beperk);

- (b) bevordering van, hulpverlening aan, en fasilitering van sosio-ekonomiese ontwikkeling in die Provinsie van KwaZulu-Natal;
- (c) die oogmerke, bevoegdhede, pligte en werksaamhede van die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk te bepaal, in ooreenstemming met die groei- en ontwikkelingstrategie van die Provinsie op 'n volhoubare wyse;
- (d) die wyse te bepaal waarop die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk bestuur, beheer, beman en gefinansier sal word; en
- (e) voorsiening te maak vir aangeleenthede bykomend daartoe.

2. KLOUSULE VIR KLOUSULE VERDUIDELIKING

Ter opsomming maak die Wetsontwerp soos volg voorsiening –

HOOFSTUK 1 (OMSKRYWINGS)

Klousule 1:

Klousule 1 maak voorsiening vir die omskrywings van woorde wat in die Wetsontwerp gebruik word.

HOOFSTUK 2: (KWAZULU-NATAL ITHALA ONTWIKKELINGS-FINANSIERINGSKORPORASIE BEPERK, OOGMERKE EN BEDRYFSGEBIED VAN KORPORASIE, BEVOEGDHEDE, PLIGTE EN WERKSAAMHEDE VAN KORPORASIE, AANDELE, AANDELEKAPITAAL EN AANDEELHOUDING)

Klousule 2:

Klousule 2 maak voorsiening vir die voortgesette bestaan van die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie en sy voortgesette erkenning as 'n regs persoon.

Voorsiening word ook gemaak dat die Korporasie 'n openbare entiteit is behoudens die Wet op Openbare Finansiële Bestuur.

Klousule 2 maak verder voorsiening dat enige verwysing in enige ander wet na die Bantoebeleggingskorporasie van Suid-Afrika, of die KwaZulu Ontwikkelingskorporasie Beperk, of die KwaZulu Finansies- en Beleggingskorporasie Beperk, beskou moet word as 'n verwysing na die KwaZulu-Natal Ithala Ontwikkelingsfinansieringskorporasie Beperk.

Klousule 3:

Klousule 3 maak voorsiening vir die oogmerke en bedryfsgebied van die Korporasie wat sosiale en ekonomiese ontwikkeling in die Provinsie sal bevorder, ondersteun en fasiliteer deur –

- (a) finansiële hulpbronne te mobiliseer en finansiële en ondersteuningsdienste te voorsien aan persone wat in die Provinsie domisilieer, gewoonlik woonagtig is of wat voortgaan om sake te bedryf binne die Provinsie;
- (b) beplanning, uitvoering, finansiering en monitering van die inwerkingstelling van ontwikkelingsprojekte en -programme in die Provinsie;
- (c) bevordering van, hulpverlening aan en aanmoediging vir die ontwikkeling van die Provinsie se menslike hulpbronne en sy sosiale, ekonomiese, finansiële en fisiese infrastruktuur;
- (d) privaatsektorbelegging in die Provinsie, die deelname van die privaatsektor en gemeenskapsorganisasies aan ontwikkelingsprojekte en -programme en bydraes tot ekonomiese groei en ontwikkeling in die algemeen te bevorder, aanmoedig en fasiliteer; en
- (e) op te tree as die Provinsiale Regeringsagent vir verrigting van enige take en verantwoordelikhede wat verband hou met ontwikkeling en wat, na die mening van die Regering, meer doeltreffend en doelmatig verrig kan word deur 'n korporatiewe entiteit.

Klousule 4:

Klousule 4 handel breedvoerig oor die bevoegdhede, pligte en werksaamhede van die Korporasie.

Klousule 5:

Klousule 5 maak voorsiening vir die wyse waarop die Raad en die verantwoordelike Lid van die Uitvoerende Raad moet handel met aandele, aandelekapitaal en aandeelhouding ingevolge die Wetsontwerp.

HOOFSTUK 3 (RAAD VAN KORPORASIE)**Klousule 6:**

Klousule 6 bepaal die samestelling van die Raad.

Klousule 7:

Klousule 7 maak voorsiening vir onbevoegdheid vir aanstelling in die Raad.

Klousule 8:

Klousule 8 maak voorsiening vir die verklaring van finansiële of ander belange deur Raadslede.

Klousule 9:

Klousule 9 maak voorsiening vir die ampstermyn en heraanstelling van 'n Raadslid.

Klousule 10:

Klousule 10 maak voorsiening vir die vul van vakatures, ontslag en bedanking uit amp deur Raadslede.

Klousule 11:

Klousule 11 maak voorsiening vir die tydelike skorsing van 'n Raadslid.

Klousule 12:

Klousule 12 maak voorsiening vir vergaderings en vergaderingsprosedures by vergadering van die Raad.

Klousule 13:

Klousule 13 maak voorsiening vir die onttrekking van 'n lid van vergaderings en verrigtinge van die Raad.

Klousule 14:

Klousule 14 maak voorsiening vir die besoldiging van Raadslede.

Klousule 15:

Klousule 15 maak voorsiening vir die instelling van komitees om die Raad by te staan.

Klousule 16:

Klousule 16 maak voorsiening vir koöptering van persone tot die Raad of komitees van die Raad.

HOOFSTUK 4 (HOOF- UITVOERENDE BEAMPTE EN PERSONEEL VAN KORPORASIE)

Klousule 17:

Klousule 17 maak voorsiening vir die aanstelling van die Hoof- Uitvoerende Beampte.

Klousule 18:

Klousule 18 maak voorsiening vir die werksaamhede, en die uiteensetting daarvan, van die Hoof- Uitvoerende Beampte.

Klousule 19:

Klousule 19 maak voorsiening vir die bedanking van die Hoof- Uitvoerende Beampte.

Klousule 20:

Klousule 20 maak voorsiening vir die aanstelling van personeel van die Korporasie.

Klousule 21:

Klousule 21 maak voorsiening vir die afstaan aan of oorplasing van personeel na die Korporasie.

HOOFSTUK 5 (BELEIDSRIGLYNE, KORPORATIEWE PLAN EN VERBIEDINGE EN BEPERKINGS OP VERSPREIDING VAN KORPORASIEWINSTE)

Klousule 22:

Klousule 22 maak voorsiening vir beleidsriglyne aan die Raad.

Klousule 23:

Klousule 23 maak voorsiening dat die korporatiewe plan ontwikkel moet word in ooreenstemming met die bepalings van die Wet op Openbare Finansiële Bestuur.

Klousule 24:

Klousule 24 maak voorsiening vir die verbiedinge en beperkings op verspreiding van die Korporasie se winste en die vervreemding van sy groot bates.

HOOFSTUK 6 (BEFONDSING EN FINANSIËLE BESTUUR VAN KORPORASIE)**Klousule 25:**

Klousule 25 maak voorsiening vir die fondse van die Korporasie, die wyse waarop dit bekom, aangewend en belê word wanneer dit nodig is om so te doen, ingevolge hierdie Wetsontwerp.

Klousule 26:

Klousule 26 maak voorsiening vir die wyse waarop die Hoof- Uitvoerende Beampte die finansies van die Korporasie behoort te bestuur.

Klousule 27:

Klousule 27 maak voorsiening vir die oudit en tertafellegging van die Korporasie se finansiële state.

Klousule 28:

Klousule 28 maak voorsiening vir die instelling en administrasie van spesiale fondse ingevolge hierdie Wetsontwerp.

HOOFSTUK 7 (ITHALA BEPERK MAATSKAPPY IN STAATSBESIT)**Klousule 29:**

Klousule 29 maak voorsiening vir die besit van aandele in KwaZulu-Natal Ithala Beperk, 'n Maatskappy in Staatsbesit. Dit verklaar dat, by die aanvang van die Wet, die Korporasie die alleenaandeelhouer van KwaZulu-Natal Ithala Beperk, 'n Maatskappy in Staatsbesit, is.

Klousule 30:

Klousule 30 maak voorsiening vir die bevoegdhede van KwaZulu-Natal Ithala Beperk, 'n Maatskappy in Staatsbesit, ingevolge hierdie Wetsontwerp.

Klousule 31:

Klousule 31 beoog om the KwaZulu-Natal Ithala Beperk, 'n Maatskappy in Staatsbesit, te verplig om te voldoen aan die vereistes van die Bankewet vir solank as wat die Maatskappy deposito's van die publiek ontvang.

Klousule 32:

Klousule 32 maak voorsiening vir die ontbinding van die Maatskappy ingevolge hierdie Wetsontwerp.

HOOFSTUK 8 (ALGEMENE BEPALINGS)**Klousule 33:**

Klousule 33 maak voorsiening vir die sekuriteit van vertroulike inligting wat deur die Korporasie gehou word.

Klousule 34:

Klousule 34 maak voorsiening vir die ontbinding van die Korporasie.

Klousule 35:

Klousule 35 maak voorsiening vir die gebruik van die naam van die Korporasie.

Klousule 36:

Klousule 36 maak voorsiening vir die delegerings van bevoegdhede deur die verantwoordelike Lid van die Uitvoerende Raad en die Hoof- Uitvoerende Beampste.

Klousule 37:

Klousule 37 bemagtig die verantwoordelike Lid van die Uitvoerende Raad om regulasies te maak. Hierdie klousule voorsien ook riglyne ingevolge waarvan die verantwoordelike Lid van die Uitvoerende Raad sodanige regulasies kan maak.

Klousule 38:

Klousule 38 maak voorsiening vir algemene misdrywe.

Klousule 39:

Klousule 39 maak voorsiening vir strawwe met betrekking tot misdrywe waarvoor voorsiening gemaak word in klousule 38 van hierdie Wetsontwerp.

Klousule 40:

Klousule 40 maak voorsiening vir die herroeping van die KwaZulu-Natal Wet op Ithala Ontwikkelingskorporasie, 1999.

Klousule 41:

Klousule 41 maak voorsiening vir oorgangsbepalings.

Klousule 42:

Klousule 42 bevat die kort titel van die Wet.

3. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING

The finansiële implikasies is gegrond op die voortgesette bestaan van die Korporasie en sal voorsien word vir in die huidige 2013/2014.

4. DEPARTEMENTE / LIGGAME GERAADPLEEG

- 4.1 Nasionale Tesourie;
- 4.2 Kabinetklusters;
- 4.3 Kabinet;
- 4.4 Openbare Sektor Prokureursforum;
- 4.5 Ithala Ontwikkelingsfinansieringskorporasie; en
- 4.6 Lede van die publiek by wyse van openbare oorlegpleging.

5. GRONDWETLIKE IMPLIKASIES

Geen.

No. 3

13 kuNhlolanja 2014

[Umbhalo weSingisi unyathelwe nguNdunankulu]

**UMTHETHO WAKWAZULUNATALI WE-ITHALA
DEVELOPMENT FINANCE CORPORATION, 2013**

(Umthetho Na. 05 ka 2013)

Uvunywe mhlaka 23-01-2014

UMTHETHO

Wokuhlinzekela ukuqhubeka kokubakhona kweKwaZulu-Natali Ithala Development Finance Corporation Limited, eyayaziwa ngokuthi iKwaZulu-Natali Finance and Investment Corporation Limited, ngenjongo enkulu yokugqugquzela, yokweseka kanye nokwelekelela entuthukweni yomphakathi nokusimamisa ezomnotho esiFundazweni saKwaZulu-Natali, ngokuhambisana nesu lesiFundazwe lokukhula kanye nokuthuthuka; nokunquma indlela iKwaZulu-Natali Ithala Development Finance Corporation Limited ezophathwa ngayo, ezoqasha ngayo izisebenzi nezohlinzekwa ngayo ngezimali; nokuhlinzekela ezinye izindaba eziphathelene nalokho.

NGAKHO-KE MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

UKUHLELEKA KWEZIGABA

Isigaba

ISAHLUKO 1

IZINCAZELO

1. Izincazelo

ISAHLUKO 2

ITHALA DEVELOPMENT FINANCE CORPORATION LIMITED

2. Ithala Development Finance Corporation Limited
3. Izinjongo kanye nendawo lthala elisebenzela kuyo
4. Amajoka, amandla nemisebenzi yeThala
5. Amasheya, amasheya ayisisekelo nobunikazimasheya

ISAHLUKO 3

IBHODI YETHALA

6. Ukubunjwa kweBhodi
7. Ukungafaneleki ukuqokelwa kwiBhodi
8. Ukudalulwa kokuhlomula ngokwezezimali noma ngokunye kwamalungu eBhodi
9. Isikhathi sokuba sesikhundleni kanye nokuqokwa kabusha kwelungu leBhodi
10. Izikhala zomsebenzi, ukuxoshwa kanye nokusula esikhundleni kwelungu leBhodi
11. Ukumiswa kwesikhashana kwelungu leBhodi
12. Imihlangano kanye nezinqubo emihlanganweni yeBhodi
13. Ukuhoxa kwelungu emihlanganweni nasezinqubeni zeBhodi
14. Amaholo amalungu eBhodi
15. Ukusungulwa kwamakomidi azosiza iBhodi
16. Ukuqokelwa kwabantu kwiBhodi noma emaKomidini eBhodi

ISAHLUKO 4

ISIKHULU ESIPHEZULU KANYE NABASEBENZI BETHALA

17. Isikhulu esiPhezulu seThala
18. Imisebenzi yesikhulu esiPhezulu
19. Ukusula nokugudluzwa esikhundleni kwesikhulu esiPhezulu
20. Abasebenzi beThala
21. Ukusiswa noma ukudluliselwa kwabasebenzi

ISAHLUKO 5

IMIKHOMBANDLELA YOMGOMO NOHLELO LWEBHIZINISI LETHALA

22. Imikhombandlela yomgomo wokusebenza kweBhodi
23. Uhlelo lwebhizinisi leThala
24. Okwenqatshelwe kanye nemibandela yokwehlukaniswa kwenzuzo yeThala

ISAHLUKO 6

UKUHLINZEKWA NGEZIMALI

KANYE NOKUPHATHWA KWEZIMALI ZETHALA

25. Izimali zeThala
26. Ukuphathwa kwezimali
27. Umbiko wocwaningo lwezimali kanye nombiko wonyaka
28. Ukusungulwa nokuphathwa kwezimali ezikhethekile

ISAHLUKO 7

I-STATE OWNED COMPANY LIMITED

29. I-State Owned Company Limited
30. Amandla eNkampani
31. Ukuhambisana nomyalelo woMthetho wamaBhangi
32. Ukuvalwa kweNkampani

ISAHLUKO 8

IZINHLINZEKO EZEJWAYELKILE

33. Ukuvikelwa kolwazi oluyimfihlo olugodlwe lthala
34. Ukuhlakazwa kweThala
35. Ukusetshenziswa kwegama leThala
36. Ukudluliselwa kwamandla
37. Imithethonqubo
38. Amacala ajwayelekile
39. Izinhlawulo
40. Ukuchithwa komthetho
41. Amalungiselelo oguquko kanye nokusalayo
42. Isihloko esifingqiwe

ISAHLUKO 1

IZINCAZELO

Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

“**uMthetho wamaBhange**” kushiwo uMthetho wamaBhange, 1990 (uMthetho No. 94 ka 1990), nanoma iliphi igama elinikezwe incazelo eMthethweni wamaBhange noma kwiMithethonqubo ephathelene namaBhange, linaleyo ncazelo elinikezwe yona;

“**iBhodi**” kushiwo iBhodi leThala eliqokwe ngokwesigaba 6;

“**isiKhulu esiPhezulu**” kushiwo isiKhulu esiPhezulu seThala, esiqokwe ngokwesigaba 17;

“**uMthetho weziNkampani**” kushiwo uMthetho weziNkampani, 2008 (uMthetho No. 71 ka 2008);

“**iNkampani**” kushiwo Ithala State-owned Company Limited, engaphansi kwe-Ithala Development Finance Corporation Limited, okuyinkampani eyenganyelwe umbuso ngokoMthetho weziNkampani, 2008 (uMthetho No. 71 ka 2008);

“**uMthethosisekelo**” kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

“i-Corporation” kushiwo Ithala Development Finance Corporation Limited echazwe esigabeni 2;

“uMnyango” kushiwo umnyango kaHulumeni wesiFundazwe saKwaZulu-Natali obhekele ukuthuthukiswa komnotho;

“idiphozithi” kushiwo imali efakwayo njengoba kuchazwe esigabeni 1 soMthetho wamaBhange;

“iGazethi” kushiwo *iGazethi* esemthethweni yesiFundazwe saKwaZulu-Natali;

“iNhloko yoMnyango” kushiwo umuntu oqokwe njengeNhloko yoMnyango ngokwesigaba 12 soMthetho weMisebenzi kaHulumeni, (iSimemezelo 103 sika 1994);

“ukuhlomula okuseceleni” kubandakanya, kepha kungagcini lapho, ukuhlomula komuntu siqu sakhe ngezimali njengoba kuchazwe esigabeni 1 soMthetho weziNkampani, ukuhlomula komuntu ohlobene naye njengoba kuhlangezwe esigabeni 2 soMthetho weziNkampani;

“ukuzihlomulisa” kubandakanya, kepha kungagcini lapho, ukuzihlomulisa komuntu qobo ngezimali njengoba kuchazwe esigabeni 1 soMthetho weziNkampani;

“impahla engukheshi” kushiwo impahla engukheshi njengoba kuchazwe esigabeni 1 soMthetho wamaBhange;

“ilungu” kushiwo ilungu leBhodi yeThala eliqokwe ngokwesigaba 6;

“iLungu loMkhandlu oPhethe elibhekele ezezimali” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

“ilungu lomphakathi” kubandakanya umuntu ngokomthetho;

“uMgcinimafa kaZwelonke” kushiwo uMgcinimafa kaZwelonke osungulwe yisigaba 5 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

“uNdunankulu” kushiwo uNdunankulu wesiFundazwe saKwaZulu-Natali ochazwe esigabeni 125(1) soMthethosisekelo;

“iKomidi leMisebenzi yasePhalamende” kushiwo iKomidi lemiSebenzi yasePhalamende kwisiShayamthetho saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho;

“isiFundazwe” kushiwo isiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 103 soMthethosisekelo kanti futhi igama **“okwesifundazwe”** linencazelo efanayo;

“uHulumeni wesiFundazwe” kushiwo uHulumeni wesiFundazwe esiFundazweni saKwaZulu-Natali futhi, ngaphandle uma ingqikithi isho okwehlukile, ubandakanya yonke iMinyango kaHulumeni wesiFundazwe;

“isiShayamthetho sesiFundazwe” kushiwo isiShayamthetho sesiFundazwe saKwaZulu-Natali okukhulunywe ngaso esigabeni 105 soMthethosisekelo nesigunyaza umthetho wesiFundazwe njengoba kuhlangozwe esigabeni 104(1) soMthethosisekelo;

“uMthetho wokuPhathwa kweziMali zikaHulumeni” kushiwo uMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

“uMbhalisi wamaBhange” kushiwo uMbhalisi wamaBhange okhethwe ngaphansi kwesigaba 4 soMthetho wamaBhange;

“imithethonqubo” kushiwo imithethonqubo eyenziwe ngokwesigaba 33;

“iLungu loMkhandlu oPhethe elibhekele” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho;

“amasheya” kushiwo amasheya enkampanini ehlongozwe kwiSahluko 7;

“amasheya ayisisekelo seThala” kushiwo imali etholakale ngokudayisa amasheya noma ngokuphathelene nalokho; futhi

“lo Mthetho” ubandakanya nemithethonqubo.

ISAHLUKO 2
ITHALA DEVELOPMENT FINANCE CORPORATION

Ithala Development Finance Corporation

2.(1) IKwaZulu-Natali Finance kanye ne-Investment Corporation Limited, eyasungulwa yiSimemezelo R. 73 sika 1978, ngemuva kwalokho eyaqanjwe kabusha ngoMthetho waKwaZulu-Natali we-Ithala Development Corporation, 1999 (uMthetho No. 2 ka 1999), yabizwa nge-Ithala Development Finance Corporation Limited, iyaqhubeka nokuba khona futhi izobizwa nge-Ithala Development Finance Corporation Limited.

(2) Ithala, okukhulunywe ngayo esigatshaneni (1), iyaqhubeka nokuba wumuntu ngokomthetho;

(3) Ithala isikhungo sikhulumeni wesifundazwe esenganyelwe ngokoMthetho wokuPhathwa kweziMali zikaHulumeni.

(4) Nanoma ikuphi okushiwo kunoma yimuphi umthetho noma umqulu maqondana —

(a) ne-Black Investment Corporation of South Africa Limited;

(b) ne-Corporation for Economic Development and Tourism Limited;

(c) neKwaZulu Development Corporation Limited; noma

(d) neKwaZulu Finance and Investment Corporation Limited,

kumele kuthathwe ngokuthi ukhuluma nge-Ithala Development Finance Corporation Limited.

Izinjongo nendawo Ithala elisebenzela kuyo

3. Izinjongo zeThala ukugquguzela, ukweseka nokwelekelela entuthukweni yomphakathi ukusimamisa ezomnotho esifundazweni —

(a) ngokuqokelela iznsiza zezimali kanye nokuhlinzeka ngosizo lwezezimali nemisebenzi yokweseka okuphathelele nazo kubantu abayizakhamuzi, ngokujwayelekile abahlala noma abaqhubela imisebenzi yamabhizinisi abo kulesi siFundazweni;

(b) ngokuhlela, ngokuqalisa, ngokusiza ngezimali nokuqapha ukuqalisa kwemiklamo nezinhlelo zesiFundazwe;

(d) ngokugquguzela, ngokukhuthaza nokusiza umkhakha ozimele ekutheni utshale izimali esiFundazweni nokuthi imikhakha ezimele kanye nezinhlangano zomphakathi

zibambe iqhaza ekuthuthukisweni kwemiklamo nezinhlelo ukufaka isandla ekukhuliseni ezomnotho nakwintuthuko jikelele;

(e) ngokusebenza njenge-ejenti kaHulumeni wesiFundazwe ukwenza nanoma yimuphi umsebenzi ophathelene nentuthuko namajoka ngokubona kaHulumeni wesiFundazwe, angenzeka kahle nangempumelelo uma enziwa umgwamanda wethala.

Amajoka, amandla nemisebenzi yeThala

4. Ukufeza izinhloso ezihlongozwe esigabeni 3 ngokuncike ezigabeni 54(2), 66 no 68 zoMthetho wokuPhathwa kweziMali zikaHulumeni, iThala –

(a) lingaqokelela izimali kanye nezinye izinsiza ezinhlakeni zomphakathi nasemkhakheni ozimele ngokuthola izimali ezibolekiso, ukunxenxa nokwemukela uxhaso lwezimali kanye neminikelo ngaphansi kwemibandela okuvunyelwene ngayo futhi nangokweyame kunoma yimuphi umbandela onganqunywa iLungu loMkhandlu oPhethe;

(b) lingahlela, lise, ligqugquzele, liqhube, lixhase ngezimali, litshale izimali noma linikeze isiqinisekiso nganoma yimuphi umklamo, uhlelo noma ibhizinisi eliphathelene nokuthuthukiswa komphakathi kwezomnotho nakwezokuvakasha esiFundazweni;

(c) linganikeza izeluleko mayelana nemisebenzi yezobuchwepheshe nezinye nje izeluleko ezingadingelwa nanoma yimuphi umklamo, uhlelo noma ibhizinisi elihlongozwe kwindima (b);

(d) ngokusebenzisa iNkampani engaphansi kwalo, lingabolekisa noma likhokhe imali ungakenziwa umsebenzi, ngesibambiso noma ngale kwaso, ngemibandela elingayibona ifanele mayelana nalokho, kubandakanya –

(i) amabhondi ezindlu;

(ii) amabhondi empahla egudluzekayo;

(iii) izibambiso;

(iv) impahla ethathekayo;

(v) impahla eyisibambiso ebuyiselwa emuva uma sekuphele izikweletu;

(vi) izinikezelo;

(vii) izibambiso;

(viii) izivumelwano zokukhokhela obolekayo uma esehlulekile ukukhokha; noma

(ix) naluphi olunye uhlobo lomshalensi noma lesibambiso,

futhi lingathatha izinyathelo elizibona zifanele ukuze kubuyiselwe noma isiphi isikweletu futhi kuvikelwe kuphinde kusetshenziswe nanoma iliphi ilungelo eliphathelene nalokho;

(e) lingaqinisekisa, limela noma lingenele isivumelwano sokuvikela namuphi umuntu ngezikweletu zakhe noma ngezivumelwano zezibopho, livikele nanoma yimuphi umuntu ekulahlekelweni, ekonakalweni, nasekungeneneni ezindlekweni ezidalwa yizikweletu noma izivumelwano zezibopho mayelana eziphathelene nanoma yimuphi omunye umuntu futhi, ngaleyo nhloso, lingathatha ibhondi njengesibambiso noma lihlinzeke noma iluphi uhlobo lwesibambiso olungadingeka;

(f) lingathola, ligcine, ithuthukisa, lenza ngcono, liphathe, ibhekele, liqashe, liqashise, lidayise, lidlulisele, linikele, lidedele, libambise noma livimbe impahla egudluzekayo noma engenakugudluzwa kungakhathaleki ukuthi iwuhlobo oluphilayo noma olungaphili;

(g) lingasungula izikhungo ezingabantu ngokomthetho noma izinhlango zabantu ezingakwazi ukwenza nanoma yini, ukusebenzisa amandla, ukwenza umsebenzi, noma umsebenzi lthala elingawenza ngokwalo Mthetho, lithole ingxenye yenzuzo kunoma yimuphi umuntu ongokomthetho futhi bahlukaniselane leyo nzuzo, noma ibhalisele ubulungu kunoma iyiphi inhlango eyenza okufanayo noma liqede lobo bulungu;

(h) lingaba namasheya eNkampanini ehlongozwe kwiSahluko 7;

(i) lingasebenza njengomqondisi, i-trusti, umsingathi, umphathi, umdidiyeli, umphathiswa kwezobulungiswa, umabi wamafa, i-ejenti noma umkhulumeli wanoma yimuphi umuntu, wesikhungo somphakathi, wamafa noma webhizinisi futhi ingabeka nanoma ngubani ozolimela ekufezeni leyo nhloso;

(j) lingakhokhisa futhi lemukela inkokhela yanoma imuphi umsebenzi owenziwe noma egameni lanoma ngubani, kubandakanya uHulumeni wesiFundazwe;

(k) lingakhokha zonke izindleko eziphathelene nokuphathwa kwalo, lingavula, liqhube futhi livale ama-akhawonti asebhange, likhiphe ngokweqile imali ekhona kulawo ma-akhawonti, lingenza, likhiphe, lemukele noma ligunyaze naziphi izethembiso ezingenamibandela, litshale izimali elinazo ezingadingeki ngokushesha ukubhekana nezindaba eziphathelene nalo;

(l) lingasungula izikhwama zemali elondolozwe, lingathatha zonke izinyathelo ezidingekayo ukuze livikele futhi ligade;

(i) izimali zalo ezitshaliwe; noma

(ii) imihlomulo yalo yezindaba eziphathelene nezezimali,

futhi ngokujwayelekile lingenza zonke izinto ezinesidingo sokuphathwa nokusingathwa kwezindaba eziphathelene nezimali zalo;

- (m) lingakhokha zonke izindleko eziphatelene nokuvikelwa, ukulondolozwa nokugcinwa kwamalungelo alo nezimpahla zalo;
- (n) lingathatha zonke izinyathelo elizibona zidingekile ukuze –
- (i) kukhokhwe naziphi izikweletu; noma
 - (ii) kulandelelwe nasiphi isibopho sokukweleta lthala nanoma imuphi umuntu, kubandakanya ukuthathwa kwezinyathelo zomthetho ezilibona zifanelekile;
- (o) lingaqasha, limise, lixoshe, likhokhele, liqeqeshe futhi lihlalise abasebenzi beThala;
- (p) lingahlinzeka abasebenzi beThala ngemihlomulo yezempesheni, imihlomulo yelivu yokugula noma eminye imihlomulo ephathelene nokusebenza futhi ngokujwayelekile lingenza zonke izinto ezidingekayo ukuze lithuthukise futhi ligcine abasebenzi abasebenza kwiThala;
- (q) lingaba nesitembu esisemthethweni futhi lisisebenzise nganoma iyiphi inhloso esiFundazweni;
- (r) ngokwejwayelekile, lingenza konke okudingekayo ukuze –
- (i) lifeze izinjongo zalo;
 - (ii) lisebenzise amandla alo; noma
 - (iii) kuphathwe futhi kusingathwe izindaba zalo;
- (s) lingenza nayiphi eny into lilandelele nanoma iluphi udaba iLungu loMkhandlu elibhekele elibona njengolunesidingo ekuqalisweni ngendlela kwalo Mthetho; futhi
- (t) lingagunyaza iNkampani ukuba yemukele, igcine futhi itshale izimali ezifakwa yinoma imuphi umuntu ngemibandela enganqunywa uNgqongqoshe wezeziMali kanye noMbhalisi wamaBhange.

Amasheya, amasheya ayisisekelo senkampani nobunikazi bamasheya

5.(1) Ekuqalisweni kwalo Mthetho, amasheya ayisisekelo seThala agunyazwe yilawo masheya abiwe njengamasheya agcinwe lthala eNkampanini.

(2) Kweyame kwimibandela enganqunywa iLungu loMkhandlu oPhethe, lthala lingadlulisela wonke noma ingxenywe yamasheya abiwe kunoma –

- (i) yimuphi umuntu ngokomthetho;
- (ii) iyiphi inhlango yabantu; noma
- (iii) isikhungo somphakathi noma esizimele,

Okuzinhloso zaso zingashayisani nezeThala: Kuncike ekutheni umuntu ngamunye ozimele yedwa angeke aba ngumnikazimasheya eThala.

(3) IBhodi ngokugunyazwa –

- (a) yiLungu loMkhandlu oPhethe elibhekele; futhi
- (b) lapho amasheya esedluliselwe kubanikazimasheya njengoba kuhlangozwe esigatshaneni (2), abanikazimasheya abavotayo emhlanganweni omkhulu wokuqala onyakeni;
- izikhathi ngezikhathi –
- (a) lingenyusa amasheya ayisisekelo seThala, ngendlela iBhodi eliyibona ifanelekile, ngokudaleka –
- (i) kwamasheya ajwayelekile; noma
- (ii) amasheya ayinoma uluphi uhlobo noma isigaba esinganqunywa, ngokwaba lawo masheya ngemibandela okuvunyelwene ngayo; futhi
- (b) bangaqagula–
- (i) ukugunyazwa nokuhlelwa ngezigtshana kwamasheya;
- (ii) isibalo samasheya agunyaziwe kuleso naleso sigaba samasheya; kanye
- (iii) nokukhetheka, amalungele, imikhawulo naminye imibandela ephathelene nesigaba ngasinye samasheya.
- (4) Nanoma yiluphi uhlobo lwamasheya eNkampanini angakhishwa ngokwamalungelo ahlukile noma akhethekile, noma kuncike kuleyo mibandela njengoba kunganquma iBhodi, maqondana nezinzuzo, ukuvota, ukubuyelwa isamba samasheya noma okwehlukile.
- (5) Lapho kunamasheya akhethekile, iBhodi linganquma ukuthi –
- (a) abanikazimasheya abanalo ilungelo lokuvota; noma
- (b) lokuthi lawo masheya angabuyiselwa abanikazi.
- (6) Lelo nalelo sheya, kungakhathaleki ukuthi likusiphi isigaba, lihambisana nelungelo elilodwa lokuvota okujwayelekile.
- (7) Ngaphezu kwanoma yini eyehlukile kulo Mthetho, lelo nalelo sheya elikhishiwe lihambisana nelungelo elinenakuguqulwa lomnikazimasheya lokuvota kunoma isiphi isiphakamiso sokuchitshiyelwa kwamasheya akhethekile, amalungelo, imikhawulo neminye imibandela ehambisana nalelo sheya.

ISAHLUKO 3
IBHODI YETHALA

Ukubunjwa kweBhodi

6.(1) IBhodi liqukethe –

(a) okungenani amalungu ayisikhombisa, kodwa engeqile kwayishumi nantathu, aqokwe yiLungu loMkhandlu oPhethe; kanye

(b) nesiKhulu esiPhezulu, *ngokwesikhundla saso*, njengoba kuhlangozwe esigabeni 17(5).

(2) AmaLungu eBhodi kumele abe ngabantu abafanelekile futhi abakulungele ukusebenzela isiFundazwe ngentshisekelo, onke

(a) abe nolwazi noma isipiliyoni solokusebenza ngokuhleleka nabantu abasembonini; kanye

(b) nala makhono, ubungoti kanye neziqo –

(i) amakhono, isipiliyoni neziqo kwezomthetho;

(ii) amakhono, isipiliyoni neziqo kwezokuphathwa kwezimali;

(iii) isipiliyoni kwezokutshalwa kwezimali noma iziqo;

(iv) isipiliyoni sokudayisa noma iziqo;

(v) isipiliyona okanye neziqo ezindabeni zokuphathwa komnyango wabasebenzi noma wezindaba zomsbenzi; kanye

(vi) namakhono kanye nesipiliyoni kwezokuhlela noma kwezentuthuko.

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

(a) kubhekelelwa ukungalingani kwaphambilini;

(b) iBhodi, iyonke, inamakhono nobungoti obufanele nobudingekayo; futhi

(c) iBhodi imele abantu abaqashwe noma ababandakanyeka emabhizinisini ezomnotho ongena ezweni, kwezohwebo nezokutshalwa kwezimali esiFundazweni; futhi

(d) omasipala balekelel iBhodi ngendlela yokuthi bonke bayameleka ngokwezindawo: Kuncike ekutheni kuyoqokelwa eBhodini abantu abangeqile kwabane abayokwenza ukuthi kusetshenziswe izinhlinzeko zalesi sigatshana.

(4) ILungu loMkhandlu oPhethe elibhekele kumele liqoke –

(a) oyedwa kumalungu eBhodi njengoSihlalo weBhodi; kanye

(b) noyedwa kumalungu eBhodi njengeSekela likaSihlalo weBhodi.

(5) ILungu loMkhandlu oPhethe elibhekele kumele, ngesaziso kwiGazethi, limeme noma yiziphi izinhlangothi ezinentshisekelo esiFundazweni ukuba ziphakamise abangaqokelwa kwiBhodi.

(6) Isimemo seziphakamiso kumele sicacise –

- (a) inqubo yeziphakamiso;
- (b) okudingekayo kwiziphakamiso; kanye
- (c) nosuku lokuvalwa kweziphakamiso.

(7) ILungu loMkhandlu oPhethe elibhekele kumele liqoke ikomidi elizokwenzela amalungu eBhodi izincomo ngeziphakamiso kwiLungu loMkhandlu oPhethe elibhekele.

(8) ILungu loMkhandlu oPhethe elibhekele kumele liqinisekise ukuthi wonke amagama abantu abaqokelwe eBhodini ashicilelwa *kwiGazethi* kanye nasemaphephandabeni okungenani amabili afundwa kakhulu esiFundazweni, ngokushesha ngemuva kokuba labo bantu sebazisiwe, ngokuthi babhalelwe, ngokuqokelwa kwabo kwiBhodi.

(9) ILungu loMkhandlu oPhethe elibhekele kumele, ezinyangeni ezimbili ngemuva kokuqokwa kwamalungu eBhodi ngokwesigatshana (1), lazise uMkhandlu oPhethe kanye neKomidi lemiSebenzi yesiShayamthetho ngamagama amalungu aqokiwe kubandakanya isikhathi abasiqokelwe.

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

Ukungafaneleki ukuqokelwa kwiBhodi

7. Umuntu akafanelekile ukuqokelwa kwiBhodi noma ekutheni aqhubeke nokusebenza kwiBhodi, ngesizathu sokuthi –

- (a) uyilungu lePhalamende, lanoma yisiphi isiShayamthetho sesiFundazwe noma uMkhandlu kaMasipala;
- (b) ucwile noma ucwila ezikweletini ngendlela engenakuhlengeka;
- (c) uthathwe noma uthathwa inkantolo njengogula ngengqondo;
- (d) uhlomula ngqo noma ngandlela thile kunoma kwiNhlangothi futhi ehluleka ukudalula lokho kuhlomula kanye nendlela ahlomula ngayo ngokwalo Mthetho;
- (e) engumuntu ozinto zakhe zilawulwa umthetho;

(f) noma ngasiphi isikhathi eke wamiswa esikhundleni ngenxa yokungaziphathi kahle okuhlanganisa ukweba kanye nokukhwabanisa;

(g) eseke waboshwa futhi wagwetshwa isikhathi eside ngaphandle kokubonelelwa ngokuthi akhokhe inhlawulo, ngaphandle uma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, uma lithola incwadi efungelwe edalula imininingwane ephelele yecala elenziwe yilowo muntu ophakanyisiwe ukuze aqokwe, lingahoxisa lesi sigwebo ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukungafaneleki ngokwalesi sigatshana kuphela eminyakeni emihlanu ngemuva kokuphela kwalesi sigwebo; futhi

(h) uyehluleka ukudalula ukuhlomula okuhlongozwe kwindima (d), noma wethamele okanye ubambe iqhaza kwizinqubo zeBhodi ngesikhathi enokuhlomula okuhlongozwe endimeni esishiwoyo.

(2) Umuntu ongafanelekile ohlongozwe esigatshaneni (1)(a), (1)(b) noma (1)(g) angeke aphakanyiselwa ukuqokwa njengelungu, kepha angaqokwa kuphela uma ngesikhathi salokho kuqokwa engasabhekene nokungafaneleki ukuba abe ngoqokwayo.

Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi

8.(1) Umuntu ophakanyiselwe ukuba asebenze kwiBhodi ngokwesigatshana 6(5) kumele, ezinsukwini eziyi-10 ephakanyisiwe, adalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele konke ukuhlomula ngqo noma ngandlela thile anakho kunoma iyiphi inkampani noma kwamanye amabhizinisi.

(2) Noma yikuphi ukwehluleka kophakanyisiwe ukudalula ukuhlomula ngokwezezimali kanye nokunye ukuhlomula ngokwesigaba (1) kumenza angafaneleki lowo ophakanyisiwe ngokwesigaba 7(1)(h) ukuba acatshangelwe esikhundleni sokuba yilungu leBhodi.

(3) Onke amalungu eBhodi kumele, ngaphambi kokungena esikhundleni futhi ekuqaleni kwayo yonke iminyaka yezimali zeThala, lidalule ngokubhalwe phansi ukuhlomula elinakho ngqo noma ngandlela thile kwiLungu loMkhandlu oPhethe kunoma iyiphi inkampani noma elinye ibhizinisi.

(4) Lapho ilungu liba nentshisekelo yokuhlomula 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 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 10(2).

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

Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi

9. Abantu abaqokelwe kwiBhodi baba sesikhundleni isikhathi esiyiminyaka emithathu noma esingaphansi njengoba iLungu loMkhandlu oPhethe elibhekele linganquma futhi, ngokuncike esigabeni 6, bangakwazi ukuphinde baqokwe ekupheleni kwaleso sikhathi: Kuncike ekutheni akekho umuntu ongaphinde akhethwe ngemuva kokusebenza kwiBhodi isikhathi esiyiminyaka emi-3 ilandelanayo.

Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi

10.(1) ILungu leBhodi kumele lishiye isikhundla uma lihoxiswa njengoba kuhlangozwe esigabeni 7.

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

(3) ILungu kumele lishiye isikhundla uma liphuthe emsebenzini, ngaphandle kokunikezwa imvume yokuphutha yiBhodi, emihlanganweni emibili elandelanayo yeBhodi uma lalinikezwe isaziso kusenesikhathi ngomlomo noma ngeposi.

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

(5) Noma nini lapho kuvela isikhala somsebenzi kwiBhodi, futhi, kungumsebenzi ovela ngokwesikhundla seLungu loMkhandlu oPhethe elibhekele lisebenzisa amandla alo ngokwesigatshana (2), iLungu loMkhandlu oPhethe kumele, kuncike esigabeni 6, kumele liqoke umuntu ozogwalisa lesa sikhala somsebenzi kuleso sikhathi esisasele sokuba sesikhundleni kwelungu okuzoqokelwa kuso lowo muntu.

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

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

(b) iLungu loMkhandlu oPhethe elibhekele ngaphambi kwezinsuku ezingama-60 kwenziwe ukuqokwa okuhlongozwe kulesi sigatshana futhi, kuncike kwisigaba 6, kumele liqoke amalungu eBhodi azosebenga kuleyo sikhathi esibekiwe njengoba kuhlangozwe esigabeni 9.

Ukumiswa okwesikhashana kwelungu leBhodi

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

Imihlangano kanye nezinqubo emihlanganweni yeBhodi

12.(1) Nanoma yimuphi umhlangano weBhodi kumele ubanjwe endaweni, ngosuku nangesikhathi esinqunywe usihlalo weBhodi.

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

(3) Inqubo emhlanganweni weBhodi kumele, kuncike ezinhlinzekweni zalesi sigaba, inqunywe ngusihlalo weBhodi.

(4) USihlalo weBhodi kumele engamele yonke imihlangano yeBhodi: Kuncike ekutheni uma engekho uSihlalo iSekela likaSihlalo kumele lengamele futhi uma uSihlalo noma iSekela likaSihlalo lingekho emhlanganweni weBhodi, amalungu akhona angakhetha, phakathi kwawo, umuntu ozobamba njengosihlalo walowo mhlangano.

(5) Isinqumo seBhodi kumele sithathwe yiningi lamavoti amalungu akhona emhlanganweni futhi, uma 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 kwiBhodi: Kuncike ekutheni isinqumo sithathwa yiningi elidingekayo lamalungu eBhodi akhona futhi avumelekile ukuhlala njengamalungu eBhodi.

(8) Iningi lamalungu eBhodi, lingabiza umhlangano oyisipesheli weBhod.

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

Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi

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

(b) Ilungu elihlongozwe esigatshaneni (2)(a), livumeleke ukuba livote uma kuvotwa maqondana nodaba elinokuthinteka okuhlongozwe esigatshaneni (1).

(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 liphinde lavota, leso sinqumo seBhodi angeke samukeleke.

(5) Isinqumo esihlongozwe esigatshaneni (4) –

(a) kuncike ekuvumeni kweLungu loMkhandlu oPhethe elibhekele ukuthi lungalungiswa ngokunquma kweBhodi enva kokudalula lokho kuthinteka; noma

(b) ngokuthi kuqinisekiswa inkantolo ukuthi kusemthethweni.

Ukuholelwa kwamalungu eBhodi

14.(1)(a) Ilungu leBhodi lingakhokhelwa ezimalini zeThala iholo kanye nezibonelelo njengalokhu kunganquma iLungu loMkhandlu oPhethe elibhekele 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) kwiThala, esikhungweni somphkathi noma esikhungweni esilawulwa uHulumeni kaZwelonke noma wesiFundazwe,

futhi eliqhubeka nokuthola lelo holo, lezo zibonelelo noma eminye imihlomulo ngesikhathi lisasebenza njengelungu leBhodi, lingathola iholo kanye nezibonelelo kuphela okukhulunywe ngakho esigatshaneni (1)(a) ngendlela edingekayo ukulibeka esimweni sezimali ebelivele lizoba kusona ukube belingaqashiwe kuleso sikhundla noma kulowo msebenzi.

(2)(a) Ilungu leBhodi maqondana nemisebenzi yalo njengelungu noma njengelungu elengeziwe kwiBhodi, lingathola isibonelelo ezimalini zeThala 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 esigatshaneni (2)(a).

Ukusungulwa kwamakomidi azosiza iBhodi

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

- (a) asize iBhodi ekusetshenzisweni kwanoma yimaphi amandla, ekwenziweni kwemisebenzi yeThala ehlongozwe esigabeni 4; noma
- (b) aphenye noma aqhube ucwaningo kunoma yiluphi udaba olungena ngaphansi kwezinjongo zeBhodi ngokwalo Mthetho.

(2) IBhodi kumele lisungule –

- (a) iKomidi, ngokuhambisana nezinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni;
- (b) ikomidi elibhekele ukuholela –

- (i) elenza izincomo eziphathelene nezibonelelo kanye nemihlomulo yabantu ehlongozwe esigabeni 25(2)(a); futhi
- (ii) elinquma izinqubo, kubandakanya izindlela zokulawula ezisetshenziswa abaphathi uma kuqhutshwa izimangalo zezindleko zokuhamba ngokomsebenzi.

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

- (a) linqume indlela yokusebenza kwalelo komidi kubandakanya, phakathi kokunye, ukuthi kumele yini noma cha ukuthi lelo komidi liqedwe uma seliphothule umsebenzi noma imisebenzi eliyinqunyelwe yiBhodi;
- (b) liqoke uSihlalo walelo komidi okumele abe yilungu leBhodi; futhi
- (c) linqume ukuthi ngabe kufanele noma cha ukuthi lelo komidi lifake abantu abangesiwona amalungu eBhodi, futhi uma kunjalo, ngaphansi kwayiphi imibandela nemigomo.

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

(5)(a) IsiKhulu esiPhezulu singethamela futhi sibambe iqhaza, kodwa singavoti, emihlanganweni yalelo komidi okuhlongozwe esigatshaneni (1) no (2).

(b) Ilungu labasebenzi beThala, uma limenywe yilelo komidi, lingawethamela umhlangano walelo komidi kepha akavumelekile ukuvota.

Ukwengezwa kwabantu kwiBhodi noma emakomidini eBhodi

16.(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 zeThala ngendlela enganqunywa yiBhodi ngemuva kokubonisana neLungu loMkhandlu elibhekele ezeZimali.

ISIAHLUKO 4

ISIKHULU ESIPHEZULU KANYE NABASEBENZI BETHALA

IsiKhulu esiPhezulu seThala

17.(1) IBhodi, ngokubonisana neLungu loMkhandlu oPhethe elibhekele, kumele liqoke isiKhulu esiPhezulu seThala.

(2)(a) IsiKhulu esiPhezulu siqokelwa esikhundleni isikhathi esingeqile eminyakeni emihlanu.

(b) IsiKhulu esiPhezulu singaphinde siqokelwe elinye ihlandla elongeziwe esikhathini esingeqile eminyakeni emihlanu.

(3)(a) Ukuqokwa kwesiKhulu esiPhezulu kuncike ekuphuthulweni kwesivumelwano sokusebenza esibhaliwe esingena kusona neThala.

(b) Ithala kanye nesiKhulu esiPhezulu, ngokubhaliwe nangesivumelwano, bangachibiyela isivumelwano sokusebenza okuhlongozwe esigatshaneni (3)(a).

(4) Ngezinhliso zokudalula ukuhlomula ngokwezezimali nokunye ukuhlomula, izinhlinzeko zesigaba 8 zisebenza nezinguquko ezidingekile esiKhulwini esiPhezulu ngaphandle kokuthi isiKhulu esiPhezulu kumele sidalule ukuhlomula kwaso kwiBhodi.

(5) IsiKhulu esiPhezulu siyilungu elihola iBhodi kodwa asinalo ilungelo lokuvota emihlanganweni yayo.

Imisebenzi yesiKhulu esiPhezulu

18.(1) IsiKhulu esiPhezulu sibhekele –

(a) ukulawulwa kanye nokuphathwa kwezimali zeThala ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 ngaphansi kokulawula kweBhodi;

(b) uqokwa kwamalungu abasebenzi beThala okuhlongozwe esigabeni 20(1) ngokubonisana neBhodi;

(c), ukunquma, ngokubonisana neBhodi, ngomgomo wokuziphatha, osetshenziswa yisiKhulu esiPhezulu, kubo bonke abasebenzi beThala ukuqinisekisa –

(i) ukuhambisana nemithetho ekhona, kubandakanya nalo Mthetho;

(ii) ukusetshenziswa ngokufanele, kwezimali nezinsiza zeThala ngendlela efanele;

(iii) ukugqugquzelwa kanye nokugcinwa kwezinga eliphezulu nemigomo yokusebenza ngendlela;

(iv) ukunqanda ukushayisana kwezintshisekelo;

- (v) ukuvikeleka kolwazi oluyimfihlo olugcinwe lthala; kanye
- (vi) nezinga, nokwethembeka, nokuzimela, nobuqotho, nokuhlinzekwa izidingo ngokulingana;
- (d) ukulawulwa kokuziphatha kwabasebenzi abaqokwe ngokwesigatshana (1)(b);
- (e) ukulondolozwa kanye nokugcinwa kwerejista yokuhlomula okumenyezwe yilungu labasebenzi beNhlango; kanye
- (f) nokuqinisekisa ukuhlangabezana kweThala nezihlinzeko zoMthetho wezokuPhathwa kweziMali zikaHulumeni, kanye nanoma yimiphi eminye imithetho esebenzayo.

(2) Uma isikhulu esiPhezulu nganoma yisiphi isizathu singakwazi ukwenza imisebenzi yaso, iBhodi kumele, ngokubonisana neLungu loMkhandlu oPhethe elibhekele, liqoke omunye umuntu ozoba yiBamba lesikhulu esiPhezulu kuze kube isikhulu esiPhezulu siyakwazi ukwenza leyo misebenzi.

Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu

19.(1) Isikhulu esiPhezulu sishiya isikhundla –

- (a) uma sesula, noma kuba nokwesula;
- (b) uma, sihoxiswa esikhundleni ngokwesigaba 7; futhi
- (c) uma sixoshwa esikhundleni ngokwesigatshana (2).

(2) IBhodi ngokubonisana neLungu loMkhandlu oPhethe ingamisa isikhulu esiPhezulu emsebenzini ngokuhambisana nomthetho wokuqasha nowezabasebenzi osebenzayo.

Abasebenzi beThala

20.(1) Isikhulu esiPhezulu kumele, kuncike esigabeni 18(1)(b) kanye nesigatshana (2), siqashe abasebenzi beThala uma kuba nesidingo –

- (a) abazosiza ekwenzeni imisebenzi yaso ngokwalo Mthetho; futhi
- (b) abazosiza iBhodi ngomsebenzi othinta ukusebenza kweBhodi.

(2) IBhodi kumele, kuncike esigabeni 25(4), ibeke inqubomgomo yezabasebenzi yabasebenzi beThala, kubandakanya nesikhulu esiPhezulu.

(3) Ngokwezinhloso zokudalulwa kokuhlomula ngakwezezimali noma okunye ukuhlomula, futhi kuncike esigabeni 8(3), 4 no 5 ezisebenza nezinguquko ezidingekayo kubasebenzi beThala.

(4) IsiKhulu esiPhezulu kumele sigcine irejista evuselelwe yokuhlomula kwabasebenzi beThala okudalulwe ngokwesigatshana (3).

Ukusiwa noma ukudluliselwa kwabasebenzi beThala

21. Ithala lingasebenzisa usizo lwabantu abasisiwe noma abadluliselwe kulo besuka kuhulumeni ngokuhambisana nezinhlizeko zoMthetho weMisebenzi kaHulumeni, 1994 (Isimemezelo No. 103 sika 1994).

ISAHLUKO 5

IMIKHOMBANDLELA YOMGOMO KANYE NOHLELO LWEBHIZINISI LETHALA

Imikhombandlela yomgomo wokusebenza kweBhodi

22.(1) ILungu loMkhandlu oPhethe, ngemuva kokubonisana neBhodi kanye neKomidi lasePhalamende, futhi nangemuva kokubonisana noNdunankulu eMkhandlwini oPhethe, angabeka amasu okusebenza azofeza izinjongo zeThala ngokukhiphela iBhodi imikhombandlela yomgomo

(2) ILungu loMkhandlu oPhethe ngokufanayo lingahoxisa noma lichibiyele nanoma yimiphi imikhombandlela yomgomo ehlongozwe esigatshaneni (1).

(3) ILungu loMkhandlu oPhethe angeke lakhipha nanoma imiphi imikhombandlela yomgomo engahambisani nezinhlizeko zalo Mthetho nanoma yimuphi umthetho obophezela Ithala.

(4) Imikhombandlela yomgomo ehlongozwe esigatshaneni (1) kumele –

- (a) ibhalwe phansi;
- (b) isayinwe iLungu loMkhandu oPhethe; futhi
- (c) ikhulume ngqo nosihlalo weBhodi.

(5) Ibhodi kumele liqinisekise ukuthi –

- (a) kugcinwa onke amarekhodi emikhombandlela yomgomo; futhi
- (b) amalungu omphakathi ayakwazi ukuthola amarekhodi.

(6) Ibhodi kumele lethule umbiko kwiLungu loMkhandlu oPhethe maqondana nayo yonke imikhombandlela yomgomo kumbiko wonyaka.

Izinhlelo zebhizinisi leThala

23. IBhodi kumele liqinisekise ukuthi kwakhiwa futhi kuqaliswa izinhlelo zebhizinisi leThala ezihambisana nezinhlinzeko zoMthetho wokuPhathwa kweziMali zikaHulumeni.

Okwenqatshelwe kanye nemibandela yokwehlukani kwenzuzo yeThala

24. ILungu loMkhandlu oPhethe lingabeka okwenqatshelwe kanye nemibandela ngokukhpha isaziso kwiGazethi –

(a) ngokwehlukani kwenzuzo yeThala; futhi

(b) nangokuchithwa kwezimpahla ezinkulu zeThala,

njengoba lingabona kudingekile ukuthi lthala liphathwe ngokuhle.

ISAHLUKO 6**UKUHLINZEKWA NGEZIMALI****KANYE NOKUPHATHWA KWEZIMALI ZETHALA****Izimali zeThala**

25.(1) Izimali zeThala ziqukethe –

(a) imali ehlukaniwe yiSishayamthetho sesiFundazwe;

(b) inzuzo kutshalomali leThala; kanye

(c) nenzuzo ngokusemthethweni eqhamuka kunoma imuphi umthombo.

(2) Ithala kumele lisebenzise izimali zalo –

(a) ukukhokha amaholo, izimali ezongeziwe kanye nokuqhuba umsebenzi nezindleko zokuhamba –

(i) kumalungu eThala;

(ii) nakumalungu asisiwe eBhodi noma amalungu amakomidi eBhodi;

(iii) iLungu loMkhandlu oPhethe;

(iv) nakubasebenzi beThala; kanye

(b) nokukhokhela izindleko eziphathelele –

(i) nokusebenza kwansuku zonke kanye nokuphathwa kweThala; kanye

(ii) nokwenziwa komsebenzi kanye nemisebenzi yeThala nokuqhutshwa kwamandla alo ngokwalo Mthetho.

(3) IsiKhulu esiPhezulu esiPhethe kumele, ngokuvumelana neBhodi –

- (a) sivule i-akhawonti egameni leThala neNkampani noma lesikhungo esibhaliswe njengebhange ngokoMthetho wezamaBhange; futhi
- (b) sifake yonke imali etholakalayo ngokwesigatshana (1).

(4) IBhodi, ngemva kokuthintana neLungu loMkhandlu oPhethe elibhekele, kumele linqume

–

- (a) inkokhelo kanye nemibandela yomsebenzi ; kanye
- (b) nempesheni nenzuzo yomhlalaphansi,

yesiKhulu esiPhezulu esiPhethe kanye nawo onke amalungu abasebenzi beThala.

(5) Inhlangano ingatshala izimali ezifakwe kwi-akhawonti ezingeke zidinge ukusetshenziswa masinya: Kuncike ekutheni iBhodi kumele lithathe izinyathelo ezingqala ukuqinisekisa ukuthi utshalomali alusilo oluwuhlobo lokuzalanisa.

Ukuphathwa kwezimali

26.(1) IsiKhulu esiPhezulu esiPhethe kumele ligcwalise futhi ibhuku elifanele lezikweletu zeThalao kanye nayo yonke imininingwane efanele yeThala okumele ukuba igcinwe.

(2) IsiKhulu esiPhezulu esiPhethe kumele siqinisekise ukuthi isabelomali ngonyaka seThala, izinhlelo zebhizinisi, imibiko yonyaka kanye nokucutshungulwa kwezitatimende zemali yeThala ziyalungiswa futhi zilethwe ngokuhambisana noMthetho wokuPhathwa kweziMali zoMphakathi.

(3) IsiKhulu esiPhezulu kumele, ezinyangeni ezintathu ngaphambi kokuba kuphele unyaka wezimali, silethe ukuze kuvunywe yiBhodi –

- (a) uhlelo lokusebenza lweThala, oluqukethe izinjongo eziphathekayo kanye neminye imininingwane ehlongozwe esigabeni 27(3)(b) kanye no (c); kanye

(b) nesitatimende sesilinganiso senzuzo kanye nezindleko zeThala, maqondana neminyaka emithathu elandelayo yezimali.

(4) Kunoma yimuphi unyaka wezimali isiKhulu esiPhezulu singaletha kwiBhodi ukuze kugunyazwe izitatimende zemali eyengeziwe noma esetshenzisiwe engenisweni noma ezindlekweni zeThala zalowo nyaka wezimali.

(5) Ithala angeke lizibandakanye kunoma yisiphi isivumelwano sezimali esingaphezu kwesabelomali esinikeziwe kanye nekuzuzile eceleni.

(6) IsiKhulu esiPhezulu –

(a) ngokuvuma kweBhodi, singatshala noma iyiphi ingxenye engasetshenziswanga yezimali zalo lthala neNhlango yokuTshalwa kweziMali zikaHulumeni noma kwesinye isikhungo esihlukanisiwe noma esibhalisiwe izikhathi ngezikhathi nguMnyango kaMgcinimafa kaZwelonke 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

27.(1) UMcwaningimabhuku-Jikelele kumele acwaninge izitatimende zemali yeThala.

(2)(a) IBhodi kumele yethule umbiko ngezinto ezenziwa lthala ngesikhathi sonyaka wezimali kwiSishayamthetho sesiFundazwe ezinyangeni ezinhlanu ngemuva kokuphela konyaka wezimali.

(b) Ezinyangeni ezinhlanu ngemuva kokwethulwa kombiko, izithunywa ezibandakanya usihlalo weBhodi namalungu okungenani amabili eBhodi kumele bachazele iKomidi lesiShayamthetho elibhekele ezezimali ngombiko wonyaka.

(3) Umbiko kumele –

(a) ubandakanye isitatimende esikhombisa imali esisele emalini engenile nesetshenzisiwe esigxivizwe nguMcwaningimabhuku-Jikelele

(b) uveze indima lthala eliyikhathulile noma elifinyelele kuyo ngezinhloso zayo okukhulunywe ngazo esigabeni 3 kanye nesilinganiso sezinjongo njengoba kubekiwe ohlelweni lokusebenza njengoba kuhlongozwe esigabeni 26(3)(a) ngalowo nyaka wezimali othintekayo; futhi

(c) uqukathe imininingwane efanele mayelana nezomnotho, okusetshenziswa ngendlela efanele nenemiphumela ebonakalayo, kanye nokuqhathanisa phakathi kokuhleliwe kanye nokwenziwe njengoba kubekiwe kulolo hlelo lwebhizinisi.

Ukusungulwa nokuphathwa kwezikhwama ezikhethekile

28.(1) Ithala ngokubonisana neLungu loMkhandlu oPhethe elibhekele, lingasungula futhi ligcine izikhwama ezikhethekile, kubandakanya isikhwama sokufaka ababencishwe amathuba phambilini kuchungechunge lokutshalwa kwezimali.

(2) Ithala kumele liphathe lesi sikhwama ngendlela ezonqunywa yiLungu loMkhandlu oPhethe elibhekele.

ISAHLUKO 7

ITHALA STATE-OWNED COMPANY LIMITED

Ithala State-owned Company Limited

29. Ekuqalisweni kwalo Mthetho, Ithala ilona elizoba ngumnikazi wawo wonke amasheya eThala.

Amandla eThala

30.(1) Ithala linawo wonke amandla negunya lomuntu ngokomthetho, ngaphandle lapho uMthetho wamaBhange, weziNkampani noma iMemorandamu yeThala isho okwehlukile.

(2) Ngaphandle kokwehlukile kulo Mthetho, Ithala linamandla okugunyaza, okubamba nowokwemukela izimali ezifakwa yinoma yimuphi umuntu ngaleyo mibandela enganqunywa uNgqongqoshe wezeziMali noma uMbhalisi wamaBhange ngokoMthetho wamaBhange.

Ukuhambisana nokudingwa uMthetho wamaBhange

31. Uma nje Ithala lisemukela izimali ezivela emphakathini, kumele lihambisane nanoma yini edingekayo noma imibandela ebekwe uNgqongqoshe wezeziMali noma uMbhalisi wamaBhange ngokoMthetho wezamaBhange.

Ukuvalwa kweThala

32.(1) Lapho Ithala lisebenza njengoba kuhlangozwe esigabeni 31, ngokusebenzisa izinhlinzeko ezihambisana noMthetho wamaBhange maqondana nokuvalwa noma nokwesulwa kweThala.

(2) Kuncike esigabeni (1), Ithala lingavalwa noma lesulwe ngokoMthetho weziNkampani.

(3) Ngelanga lokuvalwa kweThala okuhlangozwe esigatshaneni (2), zonke izimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho, kubandakanya nanoma iyiphi ingxenye engasetshenzisiwe yezimali eziyinzuzo noma ezitholwe yiThala zidluliselwa, futhi zinikezelwa, kwiThala esungulwe ngokwesigaba 3.

(4) Ngaphandle kokuvalwa kweThala, iNkampani iyoqhubeka nokuba ngumuntu ozimela ngokomthetho obhaliswe ngaphansi koMthetho weziNkampani.

ISAHLUKO 8
IZINHLINZEKO EZEJWAYELKILE

Ukuvikelwa kolwazi oluyimfihlo olugodlwe yiThala

33. (1) Kuncike kuMthethosisekelo nakuMthetho wokuGqugquzelwa kokuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), akekho umuntu ongadalula noma yiluphi ulwazi olulethwe kwiNhlango oluphathelene 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 ezigabeni 8(6) no 20(4) ngaphandle uma lokho kudalulwa –

- (a) kungokwanoma yimuphi umthetho ophoqeleyo noma ogunyaza lokho kudalulwa;
- (b) kunesidingo esibalulekile sokusebenza kweThala; noma
- (c) kwenziwe ngezinhloso zokubheka, zokuhlola, zokuphenya noma zokucubungula noma yikuphi okwenziwayo okuphathelene neThala, nanoma yiliphi ilungu labasebenzi beThala.

(3) Akekho umuntu ongadalula noma asebenzise, ngenhloso yokuzihlomulisa yena uqobo noma ngenhloso eseceleni nanoma yiluphi ulwazi oluyimfihlo oluphathelene nebhezini leThala, ngaphandle kokuthola imvume eThala.

Ukuhlakazwa kweThala

34. Ithala liyohlakazwa kuphela ngokoMthetho wesiShayamthetho sesiFundazwe.

Ukusetshenziswa kwegama leThala

35.(1) Akekho umuntu, ngaphandle kokugunyazwa okubhalwe phansi lthala, noma ngayiphi indlela ongamela noma asebenzise igama leThala, isifinyezo, uphawu, umdwebo noma impahla esetshenziswa noma okungeyeThala.

(2) Akekho umuntu ongaqamba amanga athi wenza okuthile egameni leThala.

Ukudluliselwa kwamandla

36.(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 okukhulunywe ngawo esigabeni 37;

(b) nanoma yimuphi umsebenzi okumele wenziwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwanoma yimiphi imisebenzi ephathelene nokuqokwa, kanye nokumiswa emsebenzini, kwamalungu eBhodi okuhlongozwe ezigabeni 6(3) kanye no 10(2).

(2) Isikhulu esiPhezulu singadlulisela kunoma yiliphi ilungu labasebenzi beThala noma yimaphi amandla noma umsebenzi owabelwe isikhulu esiPhezulu ngokwalo Mthetho, ngaphandle komsebenzi wokuba yisikhulu esinesibopho sokubika seThala.

(3) Noma yimaphi amandla noma umsebenzi odluliselwe ngokwesigatshana (1), (2) noma (3) kumele ukuba kutshenziswe noma kwenziwe ngokuhambisana naleyo mibandela njengalokhu umuntu noma umgwamanda owenze ukudluliselwa ubone kunesidingo.

(4) Noma yikuphi ukudluliselwa kwamandla okukhulunywe ngakho esigatshaneni (1), (2) noma (3) –

(a) kumele kubhalwe phansi;

(b) kungavimbeli umuntu noma umgwamanda odlulisele ekutheni basebenzise amandla ekutheni basebenzise amandla noma benze lowo msebenzi; futhi

(c) noma yingasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhaliwe yilowo muntu noma umgwamanda.

Imithethonqubo

37.(1) ILungu loMkhandlu oPhethe elibhekele, ngemva kokubonisana neBhodi, iKomidi lemiSebenzi yasePhalamende kanye nanoma yibaphi abanikazimasheya, abanamasheya angamashumi amabili nanhlanu amaphesenti noma ngaphezulu ngayedwana noma ngokuhlanganyela eNkampanini, kumele lenze imithethonqubo ephathelene –

(a) nezimo kanye nemibandela lthala elingaboleka izimali ngaphansi kwazo;

(b) nezimo kunye nemibandela lthala elingachitha ngaphansi kwazo naziphi izimpahla ezinkulu;

(c) nezimo kunye nemibandela lthala elingaba ngaphansi kwazo naziphi izimali eziyizinsalela;

- (d) amalungelo okuvota kubanikazimasheya eThala; noma
- (e) ukubanjwa kanye nenqubo yomhlangano wabanikazimasheya kanye nokuthathwa kwezinqumo ngabanikazimasheya ngale kokubamba umhlangano.

(2) Ukwengeza ezintweni ezihlongozwa kumthethonqutshana (1), iLungu loMkhandlu oPhethe elibhekele lingalawula mayelana –

- (a) nokugcinwa kwamarejista kanye namarekhodi kweBhodi kanye nelungelo lomphakathi lofinyelela kuleyo rejista noma kulelo rekhodi;
- (b) nokuhleleka kanye nokuqukethwe wumbiko wonyaka weThala;
- (c) indawo okuzozinza kuyo ihhovisi lomphakathi leThala;
- (d) ukunikezwa nokwemukelwa kwezaziso yiThala;
- (e) nanoma yiluphi udaba iLungu loMkhandlu oPhethe eliluthatha njengolunesidingo ukuze kuqaliswe ngendlela ukusebenza kwalo Mthetho; noma
- (f) naluphi udaba lwezokuphatha nenqubo oludingekayo ukuze kufezekiswe izihlinzeko zalo Mthetho.

(3) Namuphi umthethonqubo onomthelela wezimali kumele wenziwe ngokubonisana neLungu loMkhandlu oPhethe elibhekelele ezezimali.

Amacala ajwayelekile

38.(1) Nanoma iliphi ilungu, ngabomu noma ngobudedengu obukhulu, elehluleka ukuhambisa ngokwezigaba 8(3), (4) noma 13(2), noma yiliphi ilungu elehluleka ukulandela noma eliphula nanoma iziphi izigaba ezihlongozwe kulesi sigatshana, ngenkathi esayilungu, uyobekwa icala.

(2) Nanoma imuphi umuntu ngabomu noma ngobudedengu obukhulu, owehluleka ukuhambisa ngokwesigaba 20(3) uyobekwa icala.

(3) Nanoma imuphi umuntu ngabomu noma ngobudedengu obukhulu, owephula isigaba 35 uyobekwa icala.

(4) Nanoma imuphi umuntu ngabomu noma ngobudedengu obukhulu, owephula isigaba 26(1), (2) no (3) uyobekwa icala.

(5) Umuntu uyobekwa icala uma emukela ngqo noma ngenye indlela naliphi intshontsho noma emukela imali ngendlela enenkohlakalo noma emukela umvuzo kunanoma yimuphi umuntu mayelana nanoma yini eyenziwa noma eyenziswa lthala.

(6) Umuntu ubekwa icala uma, mayelana, noma ngokuxhumene nanoma yini eyenziwa noma eyenziswa yiThala, egwazela noma ezama ukugwazela noma ethonya ngokunenkohlakalo noma ezama ukuthonya ngokunenkohlakalo nanoma imuphi umuntu oqashwe, noma osebenza egameni leThala.

(7) Nanoma imuphi umuntu, ngabomu noma ngobudedengu obukhulu, owaqamba amanga okuthi ugunyazwe ukuba akhokhise noma aqoqe izimali, iminikelo egameni, noma ngomyalelo weThala uyobekwa icala.

Izinhlawulo

39. Noma yimuphi umuntu otholakala enecala ngokwalo Mthetho uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni eyi-5 noma kokubili inhlawulo nesigwebo.

Ukuchithwa komthetho

40. UMthetho waKwaZulu-Natali we-Ithala Development Corporation, 1999 (uMthetho No. 2 1999), ngalokhu uyachithwa.

Amalungiselelo ezinguquko kanye nokusalayo

41. Noma yisiphi isenzo okwakuhloswe ukuthi senziwe, sakhiwe ngokomthetho ochithwe yilo Mthetho yiLungu loMkhandlu oPhethe elibhekele, Ithala, ilungu noma umsebenzi waseThala ngaphambi kokuqalisa kwalo Mthetho, futhi okungenziwa noma kwakhiwe ngokwalo Mthetho, kumele kuthathwe ngokuthi kwenziwe noma kwakhiwe ngokuhambisana nalo Mthetho.

Isihloko esifingqiwe

42. Lo Mthetho uzobizwa ngoMthetho waKwaZulu-Natali we-Ithala Development Finance Corporation Act, 2013, futhi uzoqala ukusebenza kusukela ngosuku olunqunywe yiLungu loMkhandlu oPhethe ngesaziso *kwiGazethi*.

IMEMORANDAMU NGEZINHLOSO
ZOMTHETHOSIVIVINYO WETHALA DEVELOPMENT FINANCE CORPORATION, 2013

1. INHLOSO NGOMTHETHOSIVIVINYO

UNgqongqoshe wezeZimali kaZwelonke waphambilini uMnu. Trevor A Manual wabhala incwadi eyayicela ukuthi isigaba 30 soMthetho weThala Development Finance Corporation, 1999 (uMthetho No. 2 ka 1999) (njengamanje osebenzayo) uchithwe ngesizathu sokuthi wabe unikeza isiShayamthetho sesiFundazwe saKwaZulu-Natali igunya lokuhlakaza IThala Limited ngaphandle kwenkantolo.

Okubaluleke kakhulu okukhathalelwe isigaba 30 soMthetho weThala Development Finance Corporation iqiniso lokuthi uma kwenzeka IThala Development Finance Corporation ibhekana nezinkinga zezimali, ofaka imali kungambeka engcupheni futhi kubadalele umonakalo ngenxa yesizathu sokuthi uMbhalisi wamaBhange angeke akwazi ukuqasha abazobasiza njengoba ukuhlakazwa kwalo ngokwesigaba 30 kwenziwa kuphela ngokoMthetho wePhalamende.

Kungalesi sizathu okuholele ekutheni kunxuswe ukuba kuchithwe isigaba 30. UNgqongqoshe wezeZimali kaZwelonke okhona njengamanje, uMnu. Pravin J Gordan, ukwenqabile ukuchitshiyelwa kwesigaba 30 ngesizathu sokuthi akulungisi izinto ezaphakanyiswa ngowayenguNgqongqoshe waphambilini wabhala incwadi ecela ukuthi isigaba 30, sibhalwe kabusha ukuze IThala State Owned Company Limited, eyingxenywe yeThala Development Corporation, igunyazwe ukuthi ingahlakazwa ngokoMthetho weThala Development Corporation kepha iqhubeke nokusebenza nakuba iNhlango ihlakaziwe noma ivaliwe ngaphezu kwalokho, ukukhombisa ukuthi i-State Owned Company Limited iyisikhungo sokufaka imali hhayi IThala Development Finance Corporation.

Ngaphezu kwalokhu, ekucutshungulweni koMthetho osebenzayo njengamanje, izigaba zomthetho eziningi kutholakale ukuthi zisalele emuva azilungisiwe futhi azilibeki ngendlela ecacile iqhaza leThala Development Finance Corporation njengeqhaza le-State Owned Company Limited, yilesi sizathu-ke esiholele ekutheni kudingeke ukuthi kuchithwe futhi kuphindwe kwakhiwe uMthetho omusha.

Ukucacisa okungenhla, lo Mthethosivivinyo uqonde –

- (a) ukuhlinzekela ukuqhubeka kokuba khona koMthetho weKwaZulu-Natali Ithala Development Finance Corporation Limited (owawaziwa ngokuthi iKwaZulu Finance and Investment Corporation Limited);

(b) ukugqugquzela, ukweseka nokulungiselela ukuthuthukiswa komphakathi kwezomnotho esiFundazweni saKwaZulu-Natali;

(c) Ukunquma izinjongo, amandla, imisebenzi yeKwaZulu-Natali Ithala Development Finance Corporation Limited; ngokuhambisana namasu okukhulisa nokuthuthukisa ezomnotho esiFundazweni, ngendlela esebenzayo;

(d) Ukunquma indlela okuzophathwa, kwenganyelwe, kuqashe ngayo izisebenzi futhi nokuzohlinzekwa ngayo izimali zeKwaZulu-Natali Ithala Development Finance Corporation Limited; kanye

(e) nokuhlinzekela okunye okuphathelene nalokho.

2. UKUCHAZWA KWESIGABA NGASINYE

Kafishane, uMthethosivivinyo uhlinzeka kanje –

Isigaba somthetho 1

Sihlinzekela ngokuchazwa kwamagama asetshenziswe kuMthethosivivinyo.

ISAHLUKO 2 (IZINJONGO, INDAWO ITHALA ELISEBENZELA KUYO, AMANDLA, IMISEBENZI NAMAJOKA ETHALA, AMASHEYA, AMASHEYA AYISISEKELO SETHALA NOBUNIKAZIMASHEYA BEKWAZULU-NATALI ITHALA DEVELOPMENT FINANCE CORPORATION LIMITED)

Isigaba somthetho 2

Isigaba somthetho 2 sihlizeka ngokuqhubeka kokubakhona kwe-Ithala Development Finance Corporation Limited kanye nokuqhubeka kokuthathwa njengomuntu ngokomthetho.

Futhi kwenziwe isihlinzeko sokuthi Ithala lingumgwamanda oncike kuMthetho wokuPhathwa kweziMali zikaHulumeni.

Ngaphezu kwalokho sihlizeka ngokuthi nanoma ikuphi okushiwo kunoma imuphi umthetho maqondana ne-Black Investment Corporation of South Africa, iKwaZulu Development Corporation Limited, noma iKwaZulu Finance and investment Corporation Limited kumele kuthathwe ngokuthi ukhuluma nge-Ithala Development Finance Corporation Limited..

Isigaba somthetho 3

(e) Isigaba somthetho 3 sihlizekela ngezinjongo nendawo iThala elisebenzela kuyo ukugqugquzela, ukweseka nokwelekelela entuthukweni yomphakathi ukusimamisa ezomnotho esiFundazweni;

(a) ngokwakha izindlela zokuthola imali nokuhlinzeka ngosizo lwezezimali nemisebenzi yokweseka kubantu abakhe, abavame ukuhlala, noma ukuqhuba umsebenzi wabo wamabhizinisi esiFundazweni;

(b) ngokuhlela, ukwenza nokuxhasa ngezimali kanye nokuqapha ukwenziwa kwezinhlelo zentuthuko esiFundazweni;

(c) ngokuphakamisa, ukweseka nokugqugquzela ukuthuthukiswa kwezindaba zamakhono omsebenzi kanye eziphathelene nomphakathi, ezomnotho, ezezimali kanye nezakhiwo zezingqalazinda;

(d) ngokuphakamisa, ukugqugquzela kanye nokwelekelela umkhakha ozimele ekutheni utshale izimali esiFundazweni nokubambiqhaza emkhakheni ozimele nasezinhlanganweni zomphakathi nakwimiklamo nezinhlelo zentuthuko nasekufakeni isandla ekukhuliseni ezomnotho nakwintuthuko jikelele;

(e) ngokusebenza njenge-ajenti kaHulumeni wesiFundazwe ekwenzeni nanoma yimuphi umsebenzi ophathelene nentuthuko kanye nezibopho ezithinta intuthuko uhulumeni wesiFundazwe acabanga ukuthi zingenzeka kangcono nangempumelelo umgwamanda wenhlangano ezimele.

Isigaba somthetho 4

Isigaba somthetho 4 sicacisa ngamandla, imisebenzi kanye namajoka eThala.

Isigaba somthetho 5

Isigaba somthetho 5 sihlizekela ngendlela iBhodi kanye neLungu loMkhandlu oPhethe okumele iphathe ngayo amasheya, amasheya ayisisekelo senkampani nobunikazi bamasheya ngokoMthethosivivinyo.

ISAHLUKO 3 (IBHODI YETHALA)**Isigaba somthetho 6**

Isigaba somthetho 6 sinquma ngokubunjwa kwebhodi.

Isigaba somthetho 7

Isigaba somthetho 7 sihlizekela ngokungafaneleki ukuqokelwa kwiBhodi.

Isigaba somthetho 8

Isigaba somthetho 8 sihlizekela ngokudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi.

Isigaba somthetho 9

Isigaba somthetho 9 sihlizekela ngesikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi.

Isigaba somthetho 10

Isigaba somthetho 10 sihlizekela ngokugcwaliswa kwezikhala zomsebenzi, ukususwa nokwesulwa esikhundleni kwamalungu eBhodi.

Isigaba somthetho 11

Isigaba somthetho 11 sihlizeka ngokumiswa okwesikhashana kwelungu lebhodi.

Isigaba somthetho 12

Isigaba somthetho 12 sihlizekela ngemihlangano kanye nezinqubo emihlanganweni yeBhodi.

Isigaba somthetho 13

Isigaba somthetho 13 sihlizekela ngokuhoxiswa kwelungu emihlanganweni kanye nenqubo yeBhodi.

Isigaba somthetho 14

Isigaba somthetho 14 sihlizekela ngokuholelwa kwamalungu eBhodi.

Isigaba somthetho 15

Isigaba somthetho 15 sihlizekela ngokusungulwa kwamakomidi azosiza iBhodi.

Isigaba somthetho 16

Isigaba somthetho 16 sihlizekela ngokwengezwa kwabantu kwiBhodi noma emakomidini eBhodi.

ISAHLUKO 4 (ISIKHULU ESIPHEZULU KANYE NABASEBENZI BETHALA)**Isigaba somthetho 17**

Isigaba somthetho 17 sihlizekela ngokuqokwa kwesiKhulu esiPhezulu.

Isigaba somthetho 18

Isigaba somthetho 18 sihlizeka futhi sibeka imisebenzi eyenziwa isiKhulu esiPhezulu.

Isigaba somthetho 19

Isigaba somthetho 19 sihlizekela ngokwesula nokususwa esikhundleni kwesiKhulu esiPhezulu.

Isigaba somthetho 20

Isigaba somthetho 20 sihlizeka ngokuqashwa kwabasebenzi beThala.

Isigaba somthetho 21

Isigaba somthetho 21 sihlizekela ngokusiswa nokudluliselwa kwabasebenzi beThala.

ISAHLUKO 5 (IMIKHOMBANDLELA YOMGOMO KANYE NOHLELO LWEBHIZINISI LETHALA)

Isigaba somthetho 22

Isigaba somthetho 22 sihlizekela ngemikhombandlela yomgomo wokusebenza kweBhodi.

Isigaba somthetho 23

Isigaba somthetho 23 sihlizekela ngokuthi uhlelo lwebhizinisi leThala okumele ukuthi lwakhiwe ngokuhambisana nezinhlizeko zoMthetho weziMali zikaHulumeni.

Isigaba somthetho 24

Isigaba somthetho 24 sihlizekela ngokwenqatshelwe kanye nemibandela yokwehlukaniwa kwenzuzo yeThala kanye nokuchithwa kwezimpahla ezinkulu zalo.

ISAHLUKO 6 (UKUHLINZEKWA NGEZIMALI KANYE NOKUPHATHWA KWEZIMALI ZETHALA)**Isigaba somthetho 25**

Isigaba somthetho 25 sihlizekela ngezimali zeThala, nokuthi zitholakala kanjani, zisetshenziswa kanjani futhi zitshalwa kanjani uma kunesidingo salokho ngokwalo Mthethosivivinyo.

Isigaba somthetho 26

Isigaba somthetho 26 sihlizekela ngendlela isiKhulu esiPhezulu okumele siPhathe ngayo izimali zeThala.

Isigaba somthetho 27

Isigaba somthetho 27 sihlizekela ngokucwaningwa kwamabhuku kanye nombiko wonyaka weThala.

Isigaba somthetho 28

Isigaba somthetho 28 sihlizekela ngokusungulwa nokuphathwa kwezikhwama ezikhethekile ngokwalo Mthethosivivinyo.

ISAHLUKO 7 (ITHALA STATE OWNED COMPANY LIMITED)**Isigaba somthetho 29**

Isigaba somthetho 29 sihlizekela ngobunikazi bamasheya kwi-Ithala State Owned Company Limited. Sibeka ukuthi ngokuqalisa kwalo Mthetho, iThala iyona ezoba ngumnikazi wawo onke amasheya kwi-Ithala State Owned Company Limited.

Isigaba somthetho 30

Isigaba somthetho 30 sihlizekela ngamandla e-Ithala State Owned Company Limited ngokwalo Mthethosivivinyo.

Isigaba somthetho 31

Isigaba somthetho 31 siphokelela Ithala State Owned Company Limited ukuba ihambisane nokudingwa uMthetho wamaBhange uma nje lisemukela izimali ezifakwa umphakathi.

Isigaba somthetho 32

Isigaba somthetho 32 sihlizekela ngokuvalwa kweThala ngokwalo Mthethosivivinyo.

ISAHLUKO 8 (IZINHLINZEKO EZEJWAYELEKILE)**Isigaba somthetho 33**

Isigaba somthetho 33 sihlizekela ngokuvikelwa kolwazi oluyimfihlo olugodlwe lthala.

Isigaba somthetho 34

Isigaba somthetho 34 sihlizekela ngokuhlakazwa kweThala.

Isigaba somthetho 35

Isigaba somthetho 35 sihlizekela ngokusetshenziswa kwegama leThala.

Isigaba somthetho 36

Isigaba somthetho 36 sihlizekela ngokudluliselwa kwamandla yiLungu loMkhandlu kanye nesiKhulu esiPhezulu.

Isigaba somthetho 37

Isigaba somthetho 37 sinika amandla iLungu loMkhandlu oPhethe elibhekele ukwakha imithethonqubo. Lesi sigaba somthetho sihlizeka futhi ngemihlahlandlela iLungu loMkhandlu oPhethe elingayisebenzisa uma lakha leyo mithethonqubo.

Isigaba somthetho 38

Isigaba somthetho 38 sihlizekela ngamacala ajwayelekile.

Isigaba somthetho 39

Isigaba somthetho 39 sihlizekela ngezinhlawulo maqondana nokutholakala unecala ngokunhlizekwe esigabeni somthetho 38 salo Mthethosivivinyo.

Isigaba somthetho 40

Isigaba somthetho 40 sihlizekela ngokuchithwa komthetho we-Ithala Development Corporation yaKwaZulu-Natali, 1999.

Isigaba somthetho 41

Isigaba somthetho 41 sihlizekela ngamalungiselelo oquku.

Isigaba somthetho 42

Isigaba somthetho 42 siqukethe isihloko esifingqiwe soMthetho.

3. IZIMALI EZIZODINGWA UHULUMENI WESIFUNDAZWE

Izimali ezizodingeka zincike ekuqhubekeni komthetho osebenzayo weNhlango futhi zizothathwa kwisabelo mali sika 2013/14

4. IMINYANGO/IMIGWAMANDA OKUXHUNYANWE NAYO

- (a) IHhovisi lezeZimali likaZwelonke;
- (b) Amakomidi amancane eKhabhinethi;
- (c) Ikhabinethi;
- (d) IsiGungu sabaMeli bakaHulumeni;
- (e) Ithala Development Finance Corporation;
- (f) Amalungu omPhakathi nokuThintwana nabo eMphakathini.

5. IZINGQINAMBA ZOMTHETHO

Azikho.