

No. 7

21 Oktober 2010

[English text signed by the Premier]

**KWAZULU-NATAL
TRADE AND INVESTMENT AGENCY ACT, 2010
(Act No. 05 of 2010)**

Assented to on 09-09-2010

ACT

To provide for the establishment of an economic development agency to be known as Trade and Investment KwaZulu-Natal in order to attract foreign and domestic investment and to generate exports and export capacity in the Province; to determine the objects, powers, duties and functions of the Agency; to determine the manner in which the Agency is to be managed, governed, staffed and financed; to provide for the formulation of a Provincial Investment and Export Policy; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

*Section*CHAPTER 1
DEFINITIONS

1. Definitions

CHAPTER 2
TRADE AND INVESTMENT KWAZULU-NATAL

2. Establishment of the Trade and Investment KwaZulu-Natal
3. Objects of the Agency
4. Powers, duties and functions of the Agency

CHAPTER 3
BOARD OF THE AGENCY

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

CHAPTER 4
CHIEF EXECUTIVE OFFICER AND STAFF OF THE AGENCY

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

- CHAPTER 5
DETERMINATION OF PROVINCIAL INVESTMENT AND EXPORT POLICY
21. Provincial Investment and Export Policy
22. Provincial Investment and Export Plan

23. Policy directives

CHAPTER 6

FUNDING AND FINANCIAL MANAGEMENT OF THE AGENCY

24. Funds of the Agency

25. Financial management

26. Audit and annual report

27. Establishment and administration of special funds

28. Financial year of the Agency

29. Immovable property

30. Legal proceedings against the Agency

CHAPTER 7

GENERAL PROVISIONS

31. Security of confidential information held by the Agency

32. Dissolution of the Agency

33. Use of name of the Agency

34. Delegations

35. Regulations

36. Winding-up of Company and transitional provisions incidental thereto

37. General offences

38. Penalties

39. Short title

CHAPTER 1 DEFINITIONS

Definitions

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

"**Agency**" means Trade and Investment KwaZulu-Natal established in terms of section 2;

"**Board**" means the Board of the Agency appointed in terms of section 5;

"**Chief Executive Officer**" means the Chief Executive Officer of the Agency, appointed in terms of section 16;

"**close corporation**" means a corporation as defined in section 1(1) of the Close Corporations Act, 1984 (Act No. 69 of 1984);

"**Company**" means the association incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing Company Registration Number 98/11946/08, and known as Trade and Investment KwaZulu-Natal;

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

"**Department**" means the Department of Economic Development and Tourism in the Province of KwaZulu-Natal;

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

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

"**Head of Department**" means the person appointed as Head of the Department in terms of the Public Service Act, as amended;

"**member**" means a member of the Board of the Agency appointed in terms of section 5;

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

"**National Treasury**" means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"**organised local government**" means the provincial organisation representing municipalities in KwaZulu-Natal, recognised in terms of section 163 of the Constitution and section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

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

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

"regulations" means regulations made in terms of section 35;

"responsible Member of the Executive Council" means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Economic Development and Tourism or that member of the Executive Council of the Province of KwaZulu-Natal to whom the Premier has assigned the administration of this Act;

"this Act" includes the regulations.

CHAPTER 2 TRADE AND INVESTMENT KWAZULU-NATAL

Establishment of the Trade and Investment KwaZulu-Natal

2. (1) There is hereby established an Agency for the promotion of trade and investment in the Province to be known as Trade and Investment KwaZulu-Natal.

(2) The Agency is a juristic person which acts through the Board.

(3) The Agency is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

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

Objects of the Agency

3. The objects of the Agency are –

- (a) to attract foreign and domestic investment;
- (b) to generate exports and export capacity; and
- (c) to perform the powers, duties and functions specified in section 4.

Powers, duties and functions of the Agency

4. (1) The Agency must –

- (a) identify, develop, market and promote investment opportunities in the Province to international and domestic investors;
- (b) develop the export capacity of the Province;
- (c) develop the export market of the Province;
- (d) foster trade and investment within the Province;
- (e) develop a provincial investment and export plan for the development, promotion and marketing of investment in and exports from the Province; and
- (f) keep and maintain a database of investment opportunities within the Province in such a manner as to benefit all sectors of the economy.

(2) The Agency may –

- (a) for the purposes of developing, promoting, and marketing investment in and the export capacity of the Province, and subject to the prior written approval of the responsible Member of the Executive Council and section 54(2) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) –
 - (i) establish and operate one or more companies, close corporations or other similar bodies, and may acquire or dispose of any interest or share in any such company, close corporation or other similar body;
 - (ii) enter into joint ventures with other institutions, organisations, municipalities, bodies or persons;
 - (iii) partner with, or acquire or dispose of any interest or share in any company, close corporation or other similar body; and
 - (iv) raise funds through donations and sponsorships;
- (b) liaise with any other entity, organ of state, organisation or institution whose activities or aims impact on, or relate to, the development, promotion or marketing of investment in the Province;
- (c) investigate and make recommendations to the Executive Council, through the

responsible Member of the Executive Council, on any matter relating directly or indirectly to the promotion, development or marketing of investment in the Province;

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

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

(3) In addition to the powers referred to in subsection (2), the Agency has the powers referred to in section 34 of, and Schedule 2 to, the Companies Act, 1973 (Act No. 61 of 1973).

CHAPTER 3 BOARD OF THE AGENCY

Composition of the Board

5.(1) The Board consists of –

(a) at least five, but not more than 20, members appointed by the responsible Member of the Executive Council; and

(b) the Chief Executive Officer, *ex officio*, as contemplated in section 16(5).

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

(a) appropriate knowledge or experience in organised constituencies within the business industry; and

(b) the following skills and expertise –

(i) legal skills, experience and qualifications;

(ii) financial skills, experience and qualifications;

(iii) investment and export experience or qualifications;

(iv) labour market experience or qualifications;

(v) human resource or educational experience or qualifications;

- (vi) community development skills and experience; and
- (vii) planning or development skills and experience.

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

- (a) historic imbalances are addressed;
- (b) the Board, collectively, possess the necessary and appropriate skills and expertise;
- (c) the Board is representative of persons employed or involved in the import, export, trade and investment business enterprises in the Province;
- (d) municipal interests are represented on the Board in such a manner that equitable spatial representation of municipalities is achieved: Provided that no more than four persons may be appointed to the Board to give effect to the provisions of this paragraph; and
- (e) organised local government is represented on the Board.

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

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

(5) The responsible Member of the Executive Council may appoint an employee of the Department as his or her representative who –

- (a) must facilitate liaison between the responsible Member of the Executive Council and the Board;
- (b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
- (c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken.

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

(7) The invitation for nomination must specify –

- (a) the nomination procedure;
- (b) the requirements for nomination; and
- (c) the closing date for the nomination.

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

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

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

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

Disqualification from being appointed to the Board

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

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Agency and fails to declare his or her interest and the nature thereof in the manner required by this Act;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon receipt of an affidavit disclosing full details of an offence by a person nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; and

(g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section.

Declaration of financial or other interests of a member of the Board

7.(1) A person who has been nominated to serve on the Board in terms of subsection 5(6) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company or other business interests.

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

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

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

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

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

Term of office and re-appointment of a member of the Board

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

Vacancies, removal and resignation from office of a member of the Board

9. (1) A member of the Board must vacate office on becoming subject to a disqualification contemplated in section 6.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are justifiable and cogent reasons for doing so.

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

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

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

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

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

Temporary suspension of a member of the Board

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

Meetings and procedures at meetings of the Board

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

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

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

(4) The chairperson must preside at all meetings of the Board. If the Chairperson is absent, the deputy chairperson must preside and in the event that neither the chairperson nor the deputy chairperson are present at a meeting of the Board, the

members then present may elect, from their own number, a person to act as chairperson for the duration of that particular meeting.

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

(6) The Board must keep minutes of its meetings.

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

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

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

Recusal of a member from meetings and proceedings of the Board

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

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

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

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

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

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

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

Remuneration of members of the Board

13.(1)(a) A member of the Board may be paid from the funds of the Agency such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance; and

(b) a member of the Board who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

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

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

(2)(a) A member of the Board and a person who has been co-opted to the Board may, in respect of his or her functions as a member or co-opted member, receive reimbursement

from the funds of the Agency for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board; and

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

Establishment of committees to assist the Board

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

—

(a) assist the Board in the performance of any of the powers, duties or functions of the Agency contemplated in section 4; or

(b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

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

(a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board;

(b) appoint a chairperson of such committee who must be a member of the Board; and

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

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

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

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

Co-opting of persons to the Board or committees of the Board

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

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

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Agency as may be determined in terms of section 13(2)(a) by the Board in consultation with the Member of the Executive Council responsible for finance.

CHAPTER 4
CHIEF EXECUTIVE OFFICER AND STAFF OF THE AGENCY

Chief Executive Officer of the Agency

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

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years; and
(b) the Chief Executive Officer may be re-appointed for one additional term of office not exceeding five years.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board; and
(b) the Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

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

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

Functions of the Chief Executive Officer

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

- (a) the administrative and financial management of the Board in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the direction of the Board;
- (b) the appointment of members of staff of the Agency contemplated in section 19(1) in consultation with the Board;
- (c) the determination in consultation with the Board of a code of conduct, applicable to the Chief Executive Officer, all staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure –
 - (i) compliance with applicable law, including this Act;
 - (ii) the effective, efficient and economical use of the Agency's funds and resources;
 - (iii) the promotion and maintenance of a high standard of professional ethics;
 - (iv) the prevention of conflicts of interest;
 - (v) the protection of confidential information held by the Agency; and
 - (vi) professional, honest, impartial, fair, ethical and equitable service;
- (d) the maintenance of discipline over the staff appointed in terms of paragraph (b) and must, for those purposes, be accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by member of staff of the Agency; and
- (f) ensuring compliance by the Board with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable legislation.

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

Resignation and removal from office of the Chief Executive Officer

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

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

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

Staff of the Agency

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

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and
- (b) to assist the Board with the work incidental to the performance by the Board of its functions.

(2) The Board must, subject to section 24(4), determine a human resources policy for members of staff of the Agency, including the Chief Executive Officer.

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

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

Secondment or transfer of staff to the Agency

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

CHAPTER 5
DETERMINATION OF PROVINCIAL INVESTMENT AND EXPORT POLICY

Provincial Investment and Export Policy

21. The responsible Member of the Executive Council must, after consultation with the Board, develop a Provincial Investment and Export Policy.

Provincial Investment and Export Plan

22.(1) The Board must, within six months of the development of the Provincial Investment and Export Policy in terms of section 21, develop a Provincial Investment and Export Plan in order to achieve and give effect to the policies and objectives developed by the responsible Member of the Executive Council in terms of this Act.

(2) When performing its functions in terms of this Act, the Agency must give effect to the Provincial Investment and Export Plan.

Policy directives

23. The responsible Member of the Executive Council may –

- (a) set strategic guidelines for the pursuit of the Agency's objectives;
- (b) issue policy directives to the Board; and
- (c) withdraw or amend any policy directive issued in terms of paragraph (a).

CHAPTER 6
FUNDING AND FINANCIAL MANAGEMENT OF THE AGENCY

Funds of the Agency

24. (1) The funds of the Agency consist of –

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

(2) The Agency must utilise its funds –

- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of –
 - (i) the members of the Board;
 - (ii) the Chief Executive Officer; and
 - (iii) the members of staff of the Agency; and
- (b) to cover costs in connection with –
 - (i) the day to day operation and administration of the Agency; and
 - (ii) the performance of the duties and functions of the Agency and the exercise of its powers in terms of this Act.

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

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

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

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

of the Chief Executive Officer and the other members of staff of the Agency.

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

(6) The Agency may not borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act, 1999 (Act No.1 of 1999).

Financial management

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

(2) The Chief Executive Officer must ensure that the Agency's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

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

(a) a business plan for the Agency, containing measurable objectives and the other information contemplated in section 26(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Agency,

in respect of the following three financial years.

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

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

(6) The Chief Executive Officer may with the approval of the Board –

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

(b) dispose of that portion in any other manner.

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

Audit and annual report

26. (1) The Auditor-General must audit the financial statements of the Agency.

(2)(a) The Board must table a report on the activities of the Agency during a financial year in the Provincial Legislature within five months after the end of that financial year; and

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

(3) The report must –

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

(b) state the extent to which the Agency has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 25(3)(a) during the financial year concerned; and

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

Establishment and administration of special funds

27.(a) The Agency may, in consultation with the responsible Member of the Executive Council, establish and maintain special funds, including a fund for the bringing into the mainstream of import and export the previously disadvantaged groups; and

(b) the Agency must administer such funds in the manner determined by the responsible Member of the Executive Council.

Financial year of the Agency

28. The financial year of the Agency commences on 1 April of a particular year and ends on 31 March of the following year.

Immovable property

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

Legal proceedings against the Agency

30.(1) Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).

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

CHAPTER 7
GENERAL PROVISIONS

Security of confidential information held by the Agency

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

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

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

- (a) in terms of any law that compels or authorises such disclosure;

- (b) materially necessary for the proper functioning of the Agency; or
 - (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Agency, or any member of staff of the Agency.
- (3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Dissolution of the Agency

32. The Agency may only be dissolved in terms of an Act of the Provincial Legislature.

Use of name of the Agency

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

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

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

Delegations

34. (1) The responsible Member of the Executive Council may delegate to the Board –

- (a) any power conferred on the responsible Member of the Executive Council by this Act, except the power to make regulations referred to in section 35; or
- (b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(2) and 9(2).

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

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

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

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

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

Regulations

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

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

Winding-up of Company and transitional provisions incidental thereto

36.(1)(a) The Company, Trade and Investment KwaZulu-Natal, bearing Company Registration Number 98/11946/08, established in terms of the Companies Act, 1973 (Act No. 61 of 1973), must be voluntarily wound up and deregistered; and

(b) the members of the Company must, in winding-up the Company referred to in subsection (1), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973).

(2) On the date of the winding-up of the Company contemplated in subsection (1), all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Company are transferred to, and vest in, Trade and Investment KwaZulu-Natal established in terms of section 2.

(3) Trade and Investment KwaZulu-Natal is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in law of, and the successor in title to, the Company.

(4) The members of the Board of the Company must act as duly authorised and empowered members of the Board of the Agency until such time as the responsible Member of the Executive Council has in terms of section 5(2) appointed the Board in terms of this Act.

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

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

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

(8) When a person becomes a member of staff of the Agency in terms of subsection (5)

—

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

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

General offences

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

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Agency, induces or attempts to influence a member of the Board, a member of staff, an advisor, agent or any other person employed by, or acting on behalf of the Agency to commit a criminal offence.

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

Penalties

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

Short title

39. This Act is called the KwaZulu-Natal Trade and Investment Agency Act, 2010.

No. 7

21 Oktober 2010

[Engelse teks deur die Premier geteken]

**KWAZULU-NATAL WET OP ~~ON~~ HANDELS- EN
BELEGGINGSAGENTSAP, ~~2010~~ 2010
(No. 05 van 2010)**

Goedgekeur op 09-09-2010

WET

Om voorsiening te maak vir die instelling van 'n ekonomiese ontwikkelingsagentskap wat bekend staan as Handel en Belegging KwaZulu-Natal ten einde buitelandse en binnelandse beleggings te lok en om uitvoere en uitvoerkapasiteit in die provinsie te genereer; om die oogmerke, bevoegdhede, pligte en funksies van die Agentskap te bepaal; om die wyse waarop die Agentskap bestuur, beheer, beman en gefinansier word, te bepaal; om voorsiening te maak vir die formulering van 'n Provinsiale Beleggings- en Uitvoerbeleid; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

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

INDELING VAN ARTIKELS

*Artikel*HOOFSTUK 1
OMSKRYWINGS

1. Omskrywings

HOOFSTUK 2
HANDEL EN BELEGGING KWAZULU-NATAL

2. Instelling van die Handel en Belegging KwaZulu-Natal
3. Oogmerke van die Agentskap
4. Bevoegdhede, pligte en funksies van die Agentskap

HOOFSTUK 3
DIE AGENTSKAPSRaad

5. Samestelling van die Raad
6. Onbevoegdheid vir aanstelling op die Raad
7. Verklaring van finansiële of ander belange deur lede van die Raad
8. Ampstermyn en heraanstelling van lid van die Raad
9. Vakatures, ontslag en bedanking uit amp van lede van die Raad
10. Tydelike skorsing van lid van die Raad
11. Vergaderings en vergaderingsprosedures van die Raad
12. Onttrekking van lid van vergaderings en verrigtinge van die Raad
13. Vergoeding van lede van die Raad
14. Instelling van komitees om die Raad by te staan
15. Koöptering van persone aan die Raad of komitees van die Raad

HOOFSTUK 4
HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DIE AGENTSKAP

16. Hoof- Uitvoerende Beampte van die Agentskap
17. Funksies van die Hoof- Uitvoerende Beampte
18. Bedanking en ontslag uit amp van die Hoof- Uitvoerende Beampte
19. Personeel van die Agentskap

20. Sekondering of oorplasing van personeel na die Agentskap

HOOFSTUK 5

BEPALING VAN PROVINSIALE BELEGGINGS- EN UITVOERBELEID

21. Provinsiale Beleggings- en Uitvoerbeleid
22. Provinsiale Beleggings- en Uitvoerplan
23. Beleidsvoorskrifte

HOOFSTUK 6

BEFONDSING EN FINANSIËLE BESTUUR VAN DIE AGENTSKAP

24. Fondse van die Agentskap
25. Finansiële bestuur
26. Oudit en jaarverslag
27. Stigting en administrasie van spesiale fondse
28. Finansiële jaar van die Agentskap
29. Vaste eiendom
30. Regstappe teen die Agentskap

HOOFSTUK 7

ALGEMENE BEPALINGS

31. Sekuriteit van vertroulike inligting gehou deur die Agentskap
32. Ontbinding van die Agentskap
33. Gebruik van naam van die Agentskap
34. Delegering
35. Regulasies
36. Likwidasië van Maatskappy en oorgangsbepalings wat daarmee verband hou
37. Algemene oortredings
38. Strawwe
39. Kort titel

HOOFSTUK 1 OMSKRYWINGS

Omskrywings

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

"Agentskap" Handel en Belegging KwaZulu-Natal ingestel ingevolge artikel 2;

"beslote korporasie" 'n korporasie soos omskryf in artikel 1(1) van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984);

"Departement" die Departement van Ekonomiese Ontwikkeling en Toerisme in die provinsie KwaZulu-Natal;

"georganiseerde plaaslike regering" die provinsiale organisasie wat munisipaliteite in KwaZulu-Natal verteenwoordig, erken ingevolge artikel 163 van die Grondwet en artikel 2 van die Wet op Georganiseerde Plaaslike Regering, 1997 (Wet No. 52 van 1997);

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

"hierdie Wet" insluitende die regulasies;

"Hoof- Uitvoerende Beampte" die Hoof- Uitvoerende Beampte van die Agentskap, aangestel ingevolge artikel 16;

"Hoof van Departement" die persoon aangestel as hoof van die departement ingevolge die Staatsdienswet, soos gewysig;

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

"lid" 'n lid van die Agentskapsraad aangestel ingevolge artikel 5;

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

"Maatskappy" die assosiasie wat ingelyf is ingevolge artikel 21 van die Maatskappywet, 1973 (Wet No. 61 van 1973), met Maatskappyregistrasienuommer 98/11946/08, en bekend as Handel en Belegging KwaZulu-Natal;

"Nasionale Tesourie" die Nasionale Tesourie ingestel deur artikel 5 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

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

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

"Raad" die Agentskapsraad aangestel ingevolge artikel 5;

"regulasies" regulasies wat uitgevaardig is ingevolge artikel 35;

"Uitvoerende Raad" die Uitvoerende Raad van die provinsie KwaZulu-Natal bedoel in artikel 132 van die Grondwet; en

"verantwoordelike lid van die Uitvoerende Raad" die lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir ekonomiese ontwikkeling en toerisme of enige ander lid van die Uitvoerende Raad wat deur die Premier toegewys is.

HOOFSTUK 2

HANDEL EN BELEGGING KWAZULU-NATAL

Instelling van die Handel en Belegging KwaZulu-Natal

2.(1) Daar word hiermee 'n agentskap ingestel vir die bevordering van handel en belegging in die provinsie wat bekend staan as Handel en Belegging KwaZulu-Natal.

- (2) Die Agentskap is 'n regs persoon wat deur die Raad werk.
- (3) Die Agentskap is 'n provinsiale openbare entiteit onderhewig aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).
- (4) Die Raad is die rekeningpligtige gesag van die Agentskap, soos bedoel in artikel 49(2)(a) van die Wet op Openbare Finansiële Bestuur.

Oogmerke van die Agentskap

3. Die oogmerke van die Agentskap is –

- (a) om buitelandse en binnelandse beleggings te lok;
- (b) om uitvoere en uitvoerkapasiteit te genereer; en
- (c) om die bevoegdhede, pligte en funksies gespesifiseer in artikel 4 te verrig.

Bevoegdhede, pligte en funksies van die Agentskap

4.(1) Die Agentskap moet –

- (a) beleggingsgeleenthede in die provinsie vir internasionale en binnelandse beleggers identifiseer, ontwikkel, bemark en bevorder;
- (b) die uitvoerkapasiteit van die provinsie ontwikkel;
- (c) die uitvoermark van die provinsie ontwikkel;
- (d) handel en belegging binne die provinsie bevorder;
- (e) 'n provinsiale beleggings- en uitvoerplan vir die ontwikkeling, bevordering en bemarking van belegging in en uitvoere van die provinsie ontwikkel; en
- (f) 'n databasis van beleggingsgeleenthede binne die provinsie op so 'n wyse hou en byhou dat alle sektore van die ekonomie daarby baat vind.

(2) Die Agentskap kan –

- (a) vir die doeleindes van ontwikkeling, bevordering, en bemarking van belegging in en die uitvoerkapasiteit van die provinsie, en onderhewig aan die vooraf skriftelike goedkeuring van die verantwoordelike lid van die Uitvoerende Raad en artikel 54(2) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) –

- (i) een of meer maatskappye, beslote korporasies of ander soortgelyke liggame stig en bedryf, en enige belang of aandele in sodanige maatskappy, beslote korporasie of ander sodanige soortgelyke liggaam koop of verkoop;
 - (ii) gesamentlike ondernemings met ander instellings, organisasies, munisipaliteite, liggame of persone aangaan;
 - (iii) vennote of aandeelhouders in maatskappye, beslote korporasies of ander liggame word en om alles of deel van sodanige aandele of belange te verkoop; en
 - (iv) genoeg fondse insamel deur middel van donasies en borgskappe;
- (b) met enige ander entiteit, staatsorgaan, organisasie of instelling skakel wie se aktiwiteite of doelstellings 'n impak het op of verband hou met die ontwikkeling, bevordering of bemarking van belegging in die provinsie;
- (c) deur die verantwoordelike lid van die Uitvoerende Raad ondersoek instel en aanbevelings maak aan die Uitvoerende Raad, aangaande enige saak wat direk of indirek verband hou met die bevordering, ontwikkeling of bemarking van belegging in die provinsie;
- (d) ooreenkomste sluit vir die bereiking van sy oogmerke, die uitoefening van sy bevoegdhede, pligte en funksies of die bestuur en administrasie van sy sake of spesifiek in hierdie artikel daarvoor voorsiening gemaak is of nie; en
- (e) enige ander ding doen of aan enige ander saak aandag skenk wat die verantwoordelike lid van die Uitvoerende Raad nodig ag vir die behoorlike implementering van hierdie Wet.

(3) Buiten die bevoegdhede vermeld in subartikel (2), het die Agentskap die bevoegdhede vermeld in artikel 34 van, en bylae 2 tot, die Maatskappywet, 1973 (Wet No. 61 van 1973).

HOOFSTUK 3 DIE AGENTSKAPSRAAD

Samestelling van die Raad

5.(1) Die Raad bestaan uit –

- (a) ten minste vyf, maar nie meer nie as 20, lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
 - (b) die Hoof- Uitvoerende Beampste, *ex officio*, soos bedoel in artikel 16(5).
- (2) Lede van die Raad moet gepaste en geskikte persone wees om die beste belange van die provinsie te dien, en gesamentlik oor die volgende beskik –
- (a) toepaslike kennis of ondervinding in georganiseerde kiesafdelings binne die besigheidsbedryf; en
 - (b) die volgende vaardighede en kundigheid:
 - (i) regsvaardighede, -ondervinding en -kwalifikasies;
 - (ii) finansiële vaardighede, ondervinding en kwalifikasies;
 - (iii) ondervinding of kwalifikasies in belegging en uitvoere;
 - (iv) ondervinding of kwalifikasies in die arbeidsmark;
 - (v) ondervinding of kwalifikasies in menslike hulpbronne of opvoedkunde;
 - (vi) gemeenskapsontwikkelingsvaardighede en -ondervinding; en
 - (vii) vaardighede en ondervinding in beplanning of ontwikkeling.
- (3) By aanstelling van lede op die Raad, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat –
- (a) historiese ongelykhede aangespreek word;
 - (b) die Raad gesamentlik oor die nodige en toepaslike vaardighede en kundigheid beskik;
 - (c) die Raad verteenwoordigend is van persone wat in diens of betrokke is by die invoer-, uitvoer-, handel- en beleggingsbesigheidsondernemings in die provinsie;
 - (d) munisipale belange op die Raad verteenwoordig is op sodanige wyse dat billike ruimtelike verteenwoordiging van munisipaliteite bereik word: Met dien verstande dat nie meer as vier persone op die Raad aangestel mag word om uitvoering te gee aan die bepalings van hierdie paragraaf nie; en
 - (e) georganiseerde plaaslike regering op die Raad verteenwoordig word.
- (4) Die verantwoordelike lid van die Uitvoerende Raad moet –
- (a) een van die lede van die Raad as die voorsitter van die Raad aanwys; en
 - (b) een van die lede van die Raad as die adjunkvoorsitter van die Raad aanwys.

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

- (a) skakeling tussen die verantwoordelike lid van die Uitvoerende Raad en die Raad moet vergemaklik;
- (b) van tyd tot tyd aan die verantwoordelike lid van die Uitvoerende Raad verslag moet doen aangaande aangeleenthede wat as tersaaklik beskou word; en
- (c) vergaderings van die Raad mag bywoon en aan besprekings deelneem, maar nie die reg het om te stem wanneer 'n raadsbesluit geneem word nie.

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

(7) Die uitnodiging om benoemings moet die –

- (i) benoemingsprosedure;
- (ii) vereistes vir benoeming; en
- (iii) sluitingsdatum vir benoeming,

spesifiseer.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat ingedien word in reaksie op die kennisgewing oorweeg, en 'n keurpaneel aanstel bestaande uit die senior departementele beamptes om al die benoemings te oorweeg en aanbevelings aangaande die benoemdes aan die verantwoordelike lid van die Uitvoerende Raad te maak.

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

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

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

Onbevoegdheid vir aanstelling op die Raad

6. 'n Persoon is onbevoeg vir aanstelling op die Raad of om op die Raad te bly dien, op grond van die feit dat hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is of word;
- (c) direk of indirek belang het in enige kontrak met die Agentskap en versuim om sy of haar belang en die aard daarvan te verklaar op die wyse wat deur hierdie Wet vereis word;
- (d) onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp ontslaan is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind is en gevonnissen is tot 'n termyn van gevangenisstraf sonder keuse van 'n boete, behalwe dat die verantwoordelike lid van die Uitvoerende Raad, by die openbaarmaking van volle besonderhede van 'n misdryf in 'n beëdigde verklaring van 'n persoon wat vir aanstelling benoem is, 'n skuldigbevinding kan oorsien op 'n wyse wat konsekwent is met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel eindig vyf jaar nadat die vonnis uitgedien is; en
- (g) versuim om 'n belang in ooreenstemming met artikel 7 te verklaar of die verrigtinge van die Raad bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos bedoel in die vermelde artikel.

Verklaring van finansiële of ander belange van lede van die Raad

7.(1) 'n Persoon wat benoem is om op die Raad te dien ingevolge subartikel 5(6) moet, binne 10 dae na benoeming, 'n skriftelike verklaring aan die verantwoordelike lid van die Uitvoerende Raad voorlê van alle direkte of indirekte belange in enige maatskappy of ander besigheidsbelange.

(2) Enige versuim deur die benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, diskwalifiseer sodanige benoemde ingevolge artikel 6 om oorweeg te word vir die posisie as lid van die Raad.

(3) Elke lid van die Raad moet, by aanvaarding van die amp en aan die begin van elke finansiële jaar van die Agentskap, 'n skriftelike verklaring van sy of haar direkte of indirekte belang in enige maatskappy of ander besigheidsbelang voorlê op die wyse waarvoor in artikel 234(3)(a) van die Maatskappywet, 1973 (Wet No. 61 van 1973) voorsiening gemaak word.

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

(5) Enige versuim deur die lid om sy of haar belang te verklaar soos bedoel in subartikels (3) en (4) moet lei tot beëindiging van aanstelling van sodanige lid ingevolge artikel 10(2).

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

Ampstermyn en heraanstelling van 'n lid van die Raad

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

Vakatures, ontslag en bedanking uit amp van 'n lid van die Raad

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

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

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

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

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

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

- (a) die persone aangestel ingevolge hierdie subartikel nie op die Raad mag aanbly vir 'n tydperk van meer as 00 dae na die datum van hul aanstelling nie; en
- (b) die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 5, die lede van die Raad aanstel binne 00 dae na die aanstelling bedoel in hierdie subartikel.

Tydelik skorsing van 'n lid van die Raad

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

Vergaderings en vergaderingsprosedures van die Raad

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

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

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

(4) Die voorsitter moet by alle vergaderings van die Raad voorsit. Indien die voorsitter afwesig is, moet die adjunkvoorsitter as voorsitter optree en indien beide die voorsitter en die adjunkvoorsitter by 'n vergadering van die Raad afwesig is, kan die lede teenwoordig, uit hul eie geledere, 'n persoon verkies om as voorsitter op te tree vir die duur van daardie spesifieke vergadering.

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

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

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

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

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

Onttrekking van 'n lid van vergaderings en verrigtinge van die Raad

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

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

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

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

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

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

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

Vergoeding van lede van die Raad

13.(1)(a) 'n Lid van die Raad kan uit die fondse van die Agentskap sodanige vergoeding en toelae betaal word soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies; en
(b) 'n Lid van die Raad wat vergoeding, toelae of ander voordele ontvang uit hoofde van sy of haar pos of diens in –

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

wat voortgaan om sodanige vergoeding, toelaes of ander voordele te ontvang terwyl hy of sy as 'n lid van die Raad dien, mag slegs vergoeding en toelae ontvang soos vermeld in paragraaf (a) tot die omvang wat vereis word om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou gewees het indien dit nie vir sodanige pos of diens was nie.

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

Instelling van komitees om die Raad by te staan

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

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

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

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

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

(4)(a) Die Hoof- Uitvoerende Beampte mag vergaderings van die Raad bywoon en daaraan deelneem, maar het nie die reg om te stem nie; en

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

Koöptering van persone aan die Raad of komitees van die Raad

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

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

(3) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) moet sodanige vergoeding en toelae uit die fondse van die Agentskap ontvang soos deur die Raad bepaal

ooreenkomstig artikel 13(2)(a), in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

HOOFSTUK 4

HOOF- UITVOERENDE BEAMPTTE EN PERSONEEL VAN DIE AGENTSKAP

Hoof- Uitvoerende Beamppte van die Agentskap

16.(1) Die Raad moet, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, die Hoof- Uitvoerende Beamppte van die Agentskap aanstel.

(2)(a) Die Hoof- Uitvoerende Beamppte word aangestel vir 'n tydperk wat nie vyf jaar oorskry nie; en

(b) Die Hoof- Uitvoerende Beamppte mag heraangestel word vir een bykomende ampstermyn wat nie vyf jaar oorskry nie.

(3)(a) Die aanstelling van die Hoof- Uitvoerende Beamppte is onderhewig aan die sluiting van 'n skriftelike prestasie-ooreenkoms wat aangegaan word tussen daardie persoon en die Raad; en

(b) Die Raad en die Hoof- Uitvoerende Beamppte mag, skriftelik en volgens ooreenkoms, die prestasie-ooreenkoms wysig.

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

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

Funksies van die Hoof- uitvoerende beamppte

17.(1) Die Hoof- Uitvoerende Beamppte is verantwoordelik vir –

- (a) die administratiewe en finansiële bestuur van die Raad in ooreenstemming met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en die opdrag van die Raad;
- (b) die aanstelling van personeellede van die Agentskap bedoel in artikel 19(1) in oorleg met die Raad;
- (c) die bepaling van 'n gedragskode, in oorleg met die Raad, van toepassing op die Hoof- Uitvoerende Beampte, alle personeel van die Agentskap en bereikbaar vir doeleindes van dissiplinêre stappe, om –
 - (i) nakoming van toepaslike reg, insluitend hierdie Wet;
 - (ii) die doeltreffende, doelmatige en ekonomiese gebruik van die Agentskap se fondse en hulpbronne;
 - (iii) die bevordering en handhawing van 'n hoë standaard van professionele etiek;
 - (iv) die voorkoming van botsende belange;
 - (v) die beskerming van vertroulike inligting gehou deur die Agentskap; en
 - (vi) professionele, eerlike, onpartydige, regverdige, etiese en billike diens, te verseker;
- (d) die handhawing van dissipline oor die personeel aangestel ingevolge paragraaf (b) en moet, vir daardie doeleindes, aan die Raad verantwoordbaar wees;
- (e) die byhou en instandhouding van die register van belange verklaar deur 'n personeellid van die Agentskap; en
- (f) versekering van nakoming deur die Raad van die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en enige ander toepaslike wetgewing.

(2) Indien die Hoof- Uitvoerende Beampte om enige rede nie in staat is om enige van sy of haar funksies uit te voer nie, moet die Raad, in oorleg met die verantwoordelike Lid van die Uitvoerende Raad, 'n ander persoon aanstel as Waarnemende Hoof- Uitvoerende Beampte tot die Hoof- Uitvoerende Beampte in staat is om daardie funksies te hervat.

Bedanking en ontslag uit amp van die Hoof- Uitvoerende Beampte

18.(1) Die Hoof- Uitvoerende Beampte ontruim sy of haar amp –

- (a) in die geval van bedanking, wanneer die bedanking van krag word;
- (b) wanneer, ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), die persoon wat daardie amp beklee, onbevoeg raak om as direkteur van 'n maatskappy te dien; en
- (c) by ontslag uit amp ingevolge subartikel (2).

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

Personeel van die Agentskap

19.(1) Die Hoof- Uitvoerende Beampte moet, onderhewig aan subartikel (2), personeellede van die Agentskap in diens neem soos wat redelikerwys nodig blyk te wees –

- (a) om hom of haar by te staan in die verrigting van sy of haar funksies ingevolge hierdie Wet; en
- (b) om die Raad by te staan met die werk eie aan die verrigting van sy funksies deur die Raad.

(2) Die Raad moet, onderhewig aan artikel 24(4), 'n menslike hulpbronbeleid vir personeellede van die Agentskap bepaal, insluitend die Hoof- Uitvoerende Beampte.

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

(4) Die Hoof- Uitvoerende Beampte moet 'n opgedateerde register byhou van die belange van personeellede van die Agentskap wat ingevolge subartikel (3) verklaar is.

Sekondering of oorplasing van personeel na die Agentskap

20. Die Agentskap kan die dienste benut van persone wat vanaf die staatsdiens gesecondeer of oorgeplaas word in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

HOOFSTUK 5

BEPALING VAN PROVINSIALE BELEGGINGS- EN UITVOERBELEID

Provinsiale Beleggings- en Uitvoerbeleid

21. Die verantwoordelike lid van die Uitvoerende Raad moet, na oorlegpleging met die Raad, 'n Provinsiale Beleggings- en Uitvoerbeleid ontwikkel.

Provinsiale Beleggings- en Uitvoerplan

22.(1) Die Raad moet, binne ses maande na die ontwikkeling van die Provinsiale Beleggings- en Uitvoerbeleid ingevolge artikel 21, 'n Provinsiale Beleggings- en Uitvoerplan ontwikkel om die beleid en oogmerke wat deur die verantwoordelike lid van die Uitvoerende Raad ingevolge hierdie Wet ontwikkel is, te bereik en uitvoering daaraan te gee.

(2) Wanneer die Agentskap sy funksies ingevolge hierdie Wet verrig, moet hy uitvoering gee aan die Provinsiale Beleggings- en Uitvoerplan.

Beleidsvoorskrifte

23.(1) Die verantwoordelike lid van die Uitvoerende Raad kan –

- (a) strategiese riglyne stel vir die nastrewing van die Agentskap se oogmerke;
- (b) beleidsvoorskrifte aan die Raad uitreik; en
- (c) enige beleidsopdragte uitgereik ingevolge paragraaf (a) onttrek of wysig.

HOOFSTUK 6
BEFONDSING EN FINANSIËLE BESTUUR VAN DIE AGENTSKAP

Fondse van die Agentskap

24.(1) Die fondse van die Agentskap bestaan uit –

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

(2) Die Agentskap moet sy fondse benut –

- (a) vir die betaling van vergoeding, toelaes en reis- en verblyfkoste van –
 - (i) die lede van die Raad;
 - (ii) die Hoof- Uitvoerende Beampte; en
 - (iii) die personeellede van die Agentskap; en
- (b) om kostes te dek met betrekking tot –
 - (i) die dag-tot-dag bedryf en administrasie van die Agentskap; en
 - (ii) die verrigting van die pligte en funksies van die Agentskap en die uitoefening van sy bevoegdhede ingevolge hierdie Wet.

(3) Die Hoof- Uitvoerende Beampte moet, met die instemming van die Raad –

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

(4) Die Raad, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, moet –

- (a) die vergoeding en diensvoorwaardes; en
- (b) die pensioen- en aftreevoordele,

van die Hoof- Uitvoerende Beampte en die ander personeellede van die Agentskap bepaal.

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

(6) Die Agentskap mag nie geld leen of waarborge, kwytskeldings of sekuriteite uitreik of enige ander transaksies wat die Agentskap bind, aangaan nie, tensy sodanige lening, waarborg, kwytskelding, sekuriteit of ander transaksie ingevolge hierdie Wet gemagtig word en nie teenstrydig is met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No.1 van 1999) nie.

Finansiële bestuur

25.(1) Die Hoof- Uitvoerende Beampte moet volledige en behoorlike rekeningboeke en al die nodige rekords wat daarop betrekking het, byhou.

(2) Die Hoof- Uitvoerende Beampte moet verseker dat die Agentskap se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state voorberei en voorgelê word in ooreenstemming met die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

(3) Die Hoof- Uitvoerende Beampte moet binne drie maande voor die einde van elke finansiële jaar –

(a) 'n besigheidsplan vir die Agentskap, wat meetbare doelwitte bevat en die ander inligting bedoel in artikel 26(3)(b) en (c); en

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

(4) In enige finansiële jaar kan die Hoof- Uitvoerende Beampte aangepaste of bykomende state van die beraamde inkomste en uitgawes van die Agentskap vir daardie finansiële jaar aan die Raad voorlê vir goedkeuring.

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

(6) Die Hoof- Uitvoerende Beampte kan met die goedkeuring van die Raad –

(a) 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) op enige ander manier van daardie gedeelte afstand doen.

(7) Die Hoof- Uitvoerende Beampte kan, met die goedkeuring van die Raad, reserwefondse stig en bedrae soos deur die Raad goedgekeur, daarin deponeer.

Oudit en jaarverslag

26.(1) Die Ouditeur-Generaal moet die finansiële state van die Agentskap oudit.

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

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

(3) Die verslag moet –

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

(b) die omvang verklaar waartoe die Agentskap sy oogmerke vermeld in artikel 3 bereik of bevorder het en die meetbare doelwitte soos uiteengesit in sy besigheidsplan soos bedoel in artikel 25(3)(a) gedurende die betrokke finansiële jaar; en

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

Stigting en administrasie van spesiale fondse

27.(a) Die Agentskap kan, in oorleg met die verantwoordelike lid van die Uitvoerende Raad, spesiale fondse stig en onderhou, insluitend 'n fonds om die voorheen benadeelde groepe in die hoofstroom van invoer en uitvoer te bring; en

(b) Die Agentskap moet sodanige fondse administreer op die wyse soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad.

Finansiële jaar van die Agentskap

28. Die finansiële jaar van die Agentskap begin op 1 April van 'n spesifieke jaar en eindig op 31 Maart van die volgende jaar.

Vaste eiendom

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

Regstappe teen die Agentskap

30.(1) Enige regstappe teen die Agentskap moet ingestel word in ooreenstemming met die Wet op die Instel van Geregtelike Verrigtinge teen Sekere Staatsorgane, 2002 (Wet No. 40 van 2002).

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

HOOFSTUK 7

ALGEMENE BEPALINGS

Sekuriteit van vertroulike inligting gehou deur die Agentskap

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

(a) hy of sy deur 'n geregshof daartoe gelas word; of

(b) die persoon wat sodanige opdrag of instruksie gegee het, skriftelik daartoe instem.

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

- (a) ingevolge enige wet is wat sodanige openbaarmaking verplig of magtig;
- (b) wesenlik nodig is vir die behoorlike funksionering van die Agentskap; of
- (c) gemaak is vir doeleindes van monitering, evaluering, ondersoek of oorweging van enige aktiwiteit wat op die Agentskap, of enige personeelid van die Agentskap, betrekking het.

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

Ontbinding van die Agentskap

32. Die Agentskap mag slegs ontbind word ingevolge 'n wet van die Provinsiale Wetgewer.

Gebruik van naam van die Agentskap

33.(1) Geen persoon mag, sonder vooraf skriftelike magtiging van die Agentskap, op enige wyse die Agentskap verteenwoordig of gebruik maak van die naam, akroniem, logo, ontwerpe of materiaal gebruik of besit deur die Agentskap nie.

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

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

Delegering

34.(1) Die verantwoordelike lid van die Uitvoerende Raad mag aan die Raad –

- (a) enige bevoegdheid delegeer wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet verleen is, buiten die bevoegdheid om regulasies vermeld in artikel 36 uit te vaardig; of

(b) enige plig delegeer wat aan die verantwoordelike lid van die Uitvoerende Raad deur hierdie Wet opgelê is, buiten enige plig aangaande die aanstelling en beëindiging van die amp van die lede van die Raad bedoel in artikels 5(2) en 9(2).

(2) Die Raad kan, deur 'n spesiale beslissing, enige bevoegdheid of plig wat deur hierdie Wet aan die Raad verleen of opgelê is, aan die Hoof- Uitvoerende Beampte of personeellid van die Agentskap delegeer.

(3) Die Hoof- Uitvoerende Beampte kan aan enige personeellid van die Agentskap enige bevoegdheid of plig wat deur hierdie Wet aan die Hoof- Uitvoerende Beampte verleen of opgelê is, delegeer behalwe enige plig as rekenpligtige beampte van die Agentskap.

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

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

(a) moet skriftelik wees;

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

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

Regulasies

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

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

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

Likwidasie van maatskappy en oorgangsbepalings wat daarmee verband hou

36.(1)(a) Die Maatskappy, Handel en Belegging KwaZulu-Natal, met Maatskappyregistrasienommer 98/11946/08, ingestel ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), moet vrywillig gelikwideer en geskrap word; en

(b) Die lede van die Maatskappy moet, by likwidasie van die Maatskappy vermeld in subartikel (1), onder andere voldoen aan artikels 349 en 350 van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(2) Op die datum van likwidasie van die Maatskappy bedoel in subartikel (1), word alle bates, laste, regte, pligte en verpligtinge, insluitend enige onbestede gedeelte van enige opgelope fondse of fondse ontvang deur die Maatskappy, oorgeplaas na, en berus by, Handel en Belegging KwaZulu-Natal, ingestel ingevolge artikel 2.

(3) Handel en Belegging KwaZulu-Natal is, met betrekking tot die bates, laste, regte, pligte en verpligtinge en fondse vermeld in subartikel (2), vir alle doeleindes regtens die opvolger van, en die regsopvolger tot, die Maatskappy.

(4) Die lede van die Raad van die Maatskappy moet as behoorlik gemagtigde en bemagtigde lede van die Agentskapsraad optree tot sodanige tyd as wanneer die verantwoordelike lid van die Uitvoerende Raad, ingevolge artikel 5(2), die Raad ingevolge hierdie Wet aangestel het.

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

(6) Die vergoeding, voordele en voorregte wat deur die verantwoordelike lid van die Uitvoerende Raad in ooreenstemming met subartikel (1) gebied word, mag nie minder wees nie as dit betaalbaar aan die personeellid deur die Maatskappy, onmiddellik voor sy of haar oorplasing.

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

(8) Wanneer 'n persoon ingevolge subartikel (5) 'n personeellid van die Agentskap word –

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

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

Algemene oortredings

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

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Agentskap gedoen of gebied word, 'n lid van die Raad, 'n personeellid, adviseur, agent of enige ander persoon in diens van of waarnemend namens die Agentskap, oorreed of probeer beïnvloed om 'n kriminele oortreding te began.

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

Strawwe

38. Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet is aanspreeklik vir 'n boete of gevangenisstraf vir 'n tydperk wat nie 5 jaar oorskry nie of beide.

Kort titel

39. Hierdie Wet word genoem die KwaZulu-Natal Wet op Handels- en Beleggingsagentskap, 2010.

No. 7

21 kuMfumfu 2010

[Umbhalo wesiNgisi unyathelwe nguNdunankulu]

UMTHETHO WESIKHUNGO SEZOHWEBO NOKUTSHALWA KWEZIMALI WAKWAZULU-NATALI, 2010

(Umthetho Na. 05 ka 2010)

Uvunywe ngomhlaka 09-09-2010

UMTHETHO

Wokuhlinzekela ukusungulwa kwesikhungo sokuthuthukiswa komnotho esizokwaziwa nge-Trade and Investment KwaZulu-Natal ukuze kuhehwe utshalomali lwasemazweni angaphandle nolwalapha ekhaya futhi kwandiswe impahla engenayo nephumayo esiFundazweni; wokunquma ngezinhloso, amandla, amaqhaza kanye nemisebenzi yesiKhungo; wokunquma indlela okuzophathwa, kubuswe, kuqashwe futhi kusekwe ngayo isiKhungo ngezimali; wo kuhlinzekela ukwakhiwa kweNqubomgomo yokuTshalwa kweziMali neMpahla ePhumayo yesiFundazwe; nokuhlinzeke la okunye okuphathelene nalokho.

MAKUMISWE UMTHETHO yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

UKUHLELEKA KWEZIGABA

Isigaba

ISAPHLUKO 1

IZINCAZELO

1. Izincazelo

ISAPHLUKO 2

I-TRADE AND INVESTMENT KWAZULU-NATAL

2. Ukusungulwa kwe-Trade and Investment KwaZulu-Natal
3. Izinhloso zesiKhungo
4. Amandla, izibopho nemisebenzi yesiKhungo

ISAPHLUKO 3

IBHODI YESIKHUNGO

5. Ukwakheka kweBhodi
6. Ukuhoxiswa ekuqokelweni eBhodini
7. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu eBhodi
8. Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi
9. Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwamalungu eBhodi
10. Ukumiswa okwesikhashana kwelungu leBhodi
11. Imihlangano kanye nezinqubo zemihlangano yeBhodi
12. Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi
13. Ukuholelwa kwamalungu eBhodi
14. Ukusungulwa kwamakomidi asiza iBhodi
15. Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi

ISAPHLUKO 4

ISIKHULU ESIPHEZULU KANYE NABASEBENZI BESIKHUNGO

16. Isikhulu esiPhezulu sesiKhungo
17. Imisebenzi yesiKhulu esiPhezulu

18. Ukwesula kanye nokususwa esikhundleni kwesiKhulu esiPhezulu
19. Abasebenzi besiKhungo
20. Ukusiswa noma ukudluliselwa esiKhungweni kwabasebenzi

ISAPHLUKO 5

UKUNQUNYWA KWENQUBOMGOMO YOKUTSHALWA KWEZIMALI NEMPAHLA EPHUMAYO YESIFUNDAZWE

21. INqubomgomo yokuTshalwa kweziMali neMpahla ePhumayo yesiFundazwe
22. UHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe
23. Iziqondiso zeNqubomgomo

ISAPHLUKO 6

UXHASOMALI NOKUPHATHWA KWEZIMALI ZESIKHUNGO

24. Uxhasomali lwesiKhungo
25. Ukuphathwa kwezimali
26. Ukucwaningwa kwamabhuku kanye nombiko wonyaka
27. Ukusungulwa kanye nokuphathwa kwezimali ezi khethekile
28. Unyaka wezimali wesikhungo
29. Impahla engenakususwa
30. Ukuthathelwa izinyathelo zomthetho kwesiKhungo

ISAPHLUKO 7

IZINHLINZEKO EZEJWAYELEKILE

31. Ukuphepha kolwazi oluyimfihlo olugcinwe yisiKhungo
32. Ukuhlakazwa kwesiKhungo
33. Ukusetshenziswa kwegama lesiKhungo
34. Ukudluliselwa kwamandla
35. IMithethonqubo
36. Ukuvalwa kweNkampani kanye nezinhlinzeko zesikhashana zalezo zinguquko
37. Amacala ajwayelekile
38. Izinhlawulo
39. Isihloko esifingqiwe

ISAHLUKO 1
IZINCAZELO

Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

"isiKhungo" kusho i-Trade and Investment KwaZulu-Natal esungulwe ngokwesigaba 2;

"iBhodi" kusho iBhodi yesiKhungo eqokwe ngokwesigaba 5;

"isiKhulu esiPhezulu" kusho isiKhulu esiPhezulu sesiKhungo, esiqokwe ngokwesigaba 16;

"iBhizinisi elizimele" kusho ibhizinisi elizimele njengoba kuchazwe esigabeni 1(1) soMthetho wamaBhizinisi aziMele, 1984 (uMthetho No. 69 ka 1984);

"inkampani" kusho inkampani njengoba kuchazwe kuMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973);

"iNkampani" kusho inhlango edidiyelwe ngokwesigaba 21 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), eneNombolo yokuBhalisa kweziNkampani engu-98/11946/08, futhi yaziwa ngokuthi i-Trade and Investment KwaZulu-Natal;

"uMthethosisekelo" kusho uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

"uMnyango" kusho uMnyango Wezokuthuthukiswa Komnotho Nezokuvakasha esiFundazweni saKwaZulu-Natali;

"uMkhandlu oPhethe" kusho uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali ohlongozwe esigabeni 132 soMthethosisekelo;

"iGazethi" kusho iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

"iNhloko yoMnyango" kusho umuntu oqokwe njengeNhloko yoMnyango ngokwesigaba 12 soMthetho Wemisebenzi Kahulumeni nezichibiyelo zawo ;

"ilungu" kusho ilungu leBhodi sesiKhungo eliqokwe ngokwesigaba 5;

"iLungu loMkhandlu oPhethe elibhekele ezezimali" kusho ilungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

"uMgcinimafa kaZwelonke" kusho uMgcinimafa kaZwelonke osungulwe yisigaba 5 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka-1999);

"ohulumeni basekhaya abahlelekile" kusho inhlangotho yesifundazwe emele omasipala KwaZulu-Natali, eyamukelwe ngokwesigaba 163 soMthethosisekelo kanye nesigaba 2 soMthetho woHulumeni baseKhaya abahlelekile, 1997 (uMthetho No. 52 ka 1997);

"iKomidi lemiSebenzi yasePhalamende" kusho iKomidi lemiSebenzi yasePhalamende lesiShayamthetho sesiFundazwe elibhekele ukuthuthukiswa kwezomnotho nezokuvakasha;

"isiFundazwe" kusho isiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 103 soMthethosisekelo futhi igama "isifundazwe" linencazelo efanayo;

"imithethonqubo" kusho imithethonqubo eyenziwe ngokwesigaba 35;

"iLungu eliqondene loMkhandlu Ophethe" kusho iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ukuthuthukiswa komnotho nezokuvakasha noma lelo lungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali uNdunankulu angalijuba ukuba liphathe ngokwalo Mthetho;

"lo Mthetho" ubandakanya imithethonqubo.

ISAHLUKO 2

I-TRADE AND INVESTMENT KWAZULU-NATAL

Ukusungulwa kwe-Trade and Investment KwaZulu-Natal

2.(1) Ngalokhu kusungulwa isikhungo esizogquguzela ezohwebo kanye nokutshalwa kwezimali esiFundazweni esizokwaziwa ngokuthi yi-Trade and Investment KwaZulu-Natal.

(2) Isikhungo siyisakhiwo esimiswe ngokomthetho nesisebenza ngeBhodi.

(3) Isikhungo siyisakhiwo sikahulumeni wesifundazwe ngokoMthetho Wokuphathwa Kwezimali Zikahulumeni, 1999 (uMthetho No. 1 ka-1999)

(4) IBhodi yilona elingumgwamanda onesibopho sokubika ngesiKhungo njengoba kulongozwa esigabeni 49(2)(a) soMthetho Wokuphathwa Kwezimali Zikahulumeni..

Izinhloso zesiKhungo**3. Izinhloso zesiKhungo –**

- (a) ukuheha abatshalizimali basemazweni angaphandle nabalapha ekhaya;
- (b) ukwandisa amathuba okuhanjiswa kwempahla emazweni angaphandle nezindawo zokuhambisa impahla; kanye
- (c) nokwenza imisebenzi, ukugcina izibopho kanye nokusebenzisa amandla okubalulwe esigabeni 4.

Amandla, izibopho nemisebenzi yesiKhungo**4.(1) Isikhungo kumele –**

- (a) sihlonze, sithuthukise, siqhakambise futhi sigqugquzele amathuba okutshalwa kwezimali akhona esiFundazweni kubatshalizimali bamazwe angaphandle nabakuleli;
- (b) sisungule izindlela zokuhanjiswa kwempahla emazweni angaphandle esiFundazweni;
- (c) sisungule izindlela zokuqhakanjiswa kwempahla ephumayo yesiFundazwe;
- (d) sikhulise ezohwebo nokutshalwa kwezimali esiFundazweni;

(e) sisungule uhlelo lokutshalwa kwezimali esifundazweni nempahla ephumayo ukuze kuthuthukiswe, kugqugquzelwe kuphinde kuqhakanjiswa u kutshalwa kwezimali nempahla ephumayo yesiFundazwe; futhi

(f) silondolozwe siphinde sigcine imininingwane kwikhompyutha yamathuba ezokutshalwa kwezimali esiFundazweni ukuze ngaleyo ndlela kuhlomule yonke imikhakha yezomnotho.

(2) Isikhungo –

(a) ngenhloso yokuthuthukisa, yokugqugquzela, kanye neyokuqhakambisa ukutshalwa kwezimali nempahla ephumayo esiFundazweni, futhi kuncike kwimvume ebhalwe phansi yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho nasesigabeni 54(2) soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999) –

(i) singasungula futhi siqhube inkampani eyodwa noma ngaphezulu, ibhizinisi elizimele noma imigwamanda efanayo futhi singathenga noma sidayisele lezo zinkampani, lelo bhizinisi elizimele noma leyo migwamanda amasheya;

(ii) singahlanganyela ebhizinisini nezinye izikhungo, izinhlangano, omasipala, imigwamanda noma abantu;

(iii) singasebenzisana, noma sithenge noma sidayise noma yimaphi amasheya kunoma yiziphi izinkampani, amabhizinisi azimele noma kweminye imigwamanda efanayo; futhi

(iv) singaqoqa izimali ngokuthola usizo lweminikelo kanye noxhasomali;

(b) singaxhumana nanoma yiliphi elinye ibhizinisi, uhlaka lombuso inhlangano noma i sikhungo esimisebenzi yaso noma esizinhloso zaso zinomthelela futhi zihambisana nokuqhakanjiswa kwezentuthuko, nokugqugquzela ukutshalwa kwezimali esiFundazweni;

(c) singaphenya futhi senze izincomo eMkhandlwini oPhethe, ngeLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, nga noma yiluphi udaba oluphathelene ngqo noma oluphathelene ngandlela thile nokugqugquzelwa, nokuthuthukiswa noma nokuqhakanjiswa kokutshalwa kwezimali esiFundazweni;

(d) singangena ezivumelwaneni ukuze siphumelelise izinhloso zaso, sisebenzise amandla aso, sigcine izibopho futhi senze imisebenzi yaso noma siphathe futhi silawule izindaba zaso, okungaba ezingahlinzekelwe noma ezihlinzekelwe kulesi sigaba; futhi

(e) singenza noma i yiphi enye into noma singenelele kunoma yiluphi udaba iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho elibona lunesidingo ukuze kuqaliswe ngandlela efanele lo Mthetho.

(3) Ukwengeza emandleni okukhulunywa ngawo esigatshaneni (2), isiKhungo, sinamandla okukhulunywe ngawo esigabeni 34, nakuSheduli 2, eMthethweni weziNkampani, 1973 (uMthetho No. 61 ka 1973).

ISAHLUKO 3 IBHODI YESIKHUNGO

Ukwakheka kweBhodi

5.(1) IBhodi iqukethe –

- (a) okungenani amalungu amahlanu, kepha angekho ngaphezulu kwama-20, aqokwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho; kanye
- (b) nesiKhulu esiPhezulu, ngokwesikhundla saso, njengoba kulongozwe esigabeni 16(5).

(2) AmaLungu eBhodi kumele abe ngabantu abafanelekile futhi abakulungele ukusebenzela isiFundazwe ngentshisekelo, ewonke –

- (a) abe nolwazi noma nesipiliyoni esifanele emikhandlwini ehleliwe emkhakheni wezamazwini; futhi
- (b) abe nala makhono nobuhlakani okulandelayo:
- (i) amakhono, isipiliyoni kanye nokuqeqeshwa kwezomthetho;
- (ii) amakhono, isipiliyoni kanye nokuqeqeshwa kwezezimali;
- (iii) isipiliyoni noma ukuqeqeshwa ekutshalweni kwezimali kanye nakwezokuhanjiswa kwempahla emazweni angaphandle;
- (iv) isipiliyoni noma ukuqeqeshwa kwezokuqhakambisa abasebenzi;
- (v) isipiliyoni noma ukuqeqeshwa emkhakheni wezemfundo noma wokuphathwa kwezindaba zabasebenzi;
- (vi) isipiliyoni namakhono okuthuthukiswa komphakathi; kanye
- (vii) nesipiliyoni namakhono okuhlela noma kwezentuthuko.

(3) Ekuqokeleni amalungu eBhodini, iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele liqinisekise ukuthi –

- (a) kubhekelelwa ukungalingani kwaphambilini;
- (b) amalungu, ewonke, anamakhono nobuhlakani obufanele nobudingekayo;
- (c) iBhodi imele abantu abaqashwe noma ababandakanyeka ekungeneni nasekuphumeni kwempahla, kwezohwebo noma ebhizinisini lezokutshalwa kwezimali esiFundazweni;
- (d) izintshisekelo zo masipala zimelwe eBhodini ngendlela elinganayo neqinisekisa ukuthi omasipala bamelelekile: Kuncike ekutheni angeke babe ngaphezu kwabane abantu abayoqokelwa eBhodini ukuze kusebenze izinhlinzeko zale ndima; futhi
- (e) ohulumeni basekhaya abahlelekile bamelelekile eBhodini.

(4) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele likhethe –

- (a) ilungu elilodwa leBhodi njengoSihlalo weBhodi; kanye
- (b) noyedwa emalungwini eBhodi njengeSekela likaSihlalo weBhodi.

(5) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho lingaqoka umsebenzi woMyango njengozolimela –

- (a) okumele asize ngokuxhumanisa iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho neBhodi;
- (b) okumele abike kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngaso sonke isikhathi mayelana nezindaba ezibonakala zifanele; futhi
- (c) ongethamela imihlangano yeBhodi futhi azibandakanye ezingxoxweni, kepha ongenalo ilungelo lokuvota uma iBhodi ithatha isinqumo.

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

(7) Isimemo seziphakamiso kume sicacise –

- (a) inqubo yeziphakamiso;
- (b) okudingekayo kwiziphakamiso; kanye
- (c) nosuku lokuvalwa kweziphakamiso.

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

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

(10) ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ezinyangeni ezimbili ngemuva kokuqokwa kwamalungu eBhodi ngokwesigatshana (2), lazise uMkhandlu oPhethe kanye neKomidi lemisebenzi yasePhalamende lesiShayamthetho ngamagama amalungu aqokiwe kubandakanya isikhathi abasiqokelwe.

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

Ukuhoxiswa ekuqokelweni eBhodini

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

- (a) ucwile ezikweletini ngendlela engenakuhlengeka;
- (b) akaphilile ekhanda noma umenyezelwe inkantolo njengogula ngengqondo;
- (c) uhlomula ngqo noma ngandlela thile kunoma yisiphi isivumelwano somsebenzi nesikhungo futhi uyehluleka ukudalula lokho kuhlomula kanye nendlela ahlomula ngayo ngokwalo Mthetho;
- (d) ungumuntu ozinto zakhe zilawulwa umthetho;
- (e) noma ngasiphi isikhathi uke wamiswa esikhundleni ngenxa yokungaziphathi kahle okuhlanganisa ukweba kanye nokukhwabanisa;
- (f) useke waboshwa futhi wagwetshwa isikhathi eside ngaphandle kokunikezwa ilungelo lokukhetha phakathi kokukhokha inhlawulo noma ukuboshwa, ngaphandle kokuthi iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, lapho umuntu ophakanyiselwe

ukuqokwa eveza obala yonke imininingwane y okwephula umthetho ngokwenza isitatimende esifungelwe, lingahoxisa leso sigwebo ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukuhoxiswa ngokwalesi sigatshana kuphela eminyakeni emihlanu ngemuva kokuphela kwalesi sigwebo; futhi

(g) uyehluleka ukudalula ukhlohlomula ngokuhambisana nesigaba 7 noma ubambe iqhaza kwizinqubo zeBhodi ngesikhathi enokhlohlomula okuhlongozwe esigabeni esishiwoyo;

Ukudalula ukhlohlomula ngokwezezimali nokunye ukhlohlomula kwelungu leBhodi

7.(1) Umuntu ophakanyiselwe ukuba asebenze eBhodini ngokwesigatshana 5(6) kumele, ezinsukwini eziyi-10 ephakanyisiwe, adalule ngokubhalwe phansi kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho konke ukhlohlomula ngqo noma ngandlela thile anakho kunoma iyiphi inkampani noma kwamanye amabhizinisi.

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

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

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

(5) Noma yikuphi ukwehluleka ohlangothini lwelungu ukudalula ukhlohlomula kwalo njengoba kuhlongoz we sigatshaneni (3) kanye no (4) kungaholela ekutheni lelo lungu lihoxiswe ekuqokelweni esikhundleni ngokwesigaba 9(2).

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

Isikhathi sokuba sesikhundleni nokuqokwa kabusha kwelungu leBhodi

8. Umuntu oqokelwe eBhodini uba sesikhundleni isikhathi esiyiminyaka emihlanu noma esingaphansi njengoba kunganquma iLungu eliqondene loMkhandlu Ophethe futhi, kuye ngokuhambisana nesigaba 5, angakwazi ukuphinde akhethwe ekupheleni kwaleso sikhathi: Inqobo nje uma engekho umuntu ongaphinde akhethwe ngemuva kokusebenza eBhodini isikhathi esiyiminyaka eyishumi elandelanayo.

Izikhala zomsebenzi, ukususwa nokwesula esikhundleni kwelungu leBhodi

9.(1) ILungu leBhodi kumele lishiye isikhundla uma lihoxiswa ngokuhlongozwe esigabeni 6.

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

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

(4) ILungu lingesula esikhundleni ngokuthi libhale isaziso sezinsuku ezingekho ngaphansi kwama-30 lisibhekise eLungwini eliqondene loMkhandlu Ophethe: Inqobo nje uma iLungu eliqondene loMkhandlu Ophethe lingasilandeli isikhathi sesaziso. .

(5) Noma nini lapho kuvela isikhala somsebenzi eBhodini, iLungu eliqondene loMkhandlu Ophethe, ngokuncike esigabeni 5, kumele liqoke umuntu ozovala lesi sikhala somsebenzi kuleso sikhathi esisasele sokuba sesikhundleni kwelungu okuzoqokelwa kuso lowo muntu.

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

(a) abantu abaqokwe ngokwalesi sigatshana angeke baqhubeke nokuba seBhodini isikhathi esingaphezu kwezinsuku ezingama-90 kusuka osukwini abaqokwe ngalo; futhi

(b) iLungu eliqondene loMkhandlu Ophethe, kuncike kwisigaba 5, kumele liqoke amalungu eBhodi ezinsukwini ezingama-90 kwenziwe ukuqokwa okuhlongozwe kulesi sigatshana.

Ukumiswa okwesikhashana kwelungu leBhodi

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

Imihlangano kanye nezinqubo zemihlangano yeBhodi

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

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

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

(4) Usihlalo kumele engamele yonke imihlangano yeBhodi, Uma uSihlalo engekho usekela sihlalo kumele engamele futhi esimweni uma usihlalo noma usekela kasihlalo engekho emhlanganweni weBhodi, amalungu akhona angakhetha, kuwona, umuntu ozobamba njengo sihlalo ngesikhathi salowo mhlango.

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

(6) IBhodi kumele igcine amaminithi emihlangano yalo.

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

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

(9) IBhodi, ngokubona kwalo, lingavumela amalungu omphakathi ukuba ethamele umhlangano weBhodi.

Ukuhoxa kwelungu emihlanganweni kanye nenqubo yeBhodi

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

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

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

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

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

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

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

(a) kukazakwabo welungu ebhizinisini, umhlobo noma umqashi, ngaphandle koMbuso;

(b) komlingani welungu, kowakwalo ngokomshado wesintu, noma kongumasihlalisane noma kwelihlalisana naye sabantu abashadile; noma

(c) kwengane, komzali noma kozalana nalo.

Ukuholelwa kwamalungu eBhodi

13.(1)(a) ILungu leBhodi lingakhokhelwa ezimalini zesiKhungo iholo kanye nezibonelelo njengalokhu kunganquma iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali; futhi

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

(i) kuhulumeni kazwelonke;

(ii) kuhulumeni wesifundazwe;

(iii) kumasipala; noma

(iv) ebhizinisini, kumgwamanda noma esikhungweni lapho uhulumeni kazwelonke kanye nowesifundazwe ebandakanyeka ekulawuleni,

futhi eliqhubeka nokuthola lelo holo, lezo zibonelelo noma eminye imihlomulo ngesikhathi lisasebenza njengelungu leBhodi, lingathola iholo kanye nezibonelelo kuphela okukhulunywe ngakho endimeni (a) ngendlela edingekayo ukulibeka esimweni sezimali ebelivele lizoba kusona ukube belingaqashiwe kulowo msebenzi.

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

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

Ukusungulwa kwamakomidi azosiza iBhodi

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

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

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

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

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

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

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

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

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

(b) umsebenzi weBhodi, uma emenywe yilelo komidi, angawuhambela umhlangano walelo komidi.

Ukwengezwa kwabantu eBhodini noma emakomidini eBhodi

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

(2) Umuntu owengezwe ngokwesigatshana (1) akavumelekile ukuvota emhlanganweni webhodi noma wamakomidi.

(3) Umuntu owengezwe ngokwesigatshana (1) angaholelwa iholo lalokho noma isibonelelo ezimalini zesiKhungo ngendlela enganqunywa yiBhodi ngokuhambisana nesigaba 13(2)(a) ngemuva kokubonisana neLungu loMkhandlu Ophethe elibhekele ezezimali.

ISAHLUKO 4**ISIKHULU ESIPHEZULU KANYE NABASEBENZI BESIKHUNGO****IsiKhulu Esiphezulu sesiKhungo**

16.(1) IBhodi, ngokubonisana neLungu eliqondene loMkhandlu Ophethe, kumele iqoke isiKhulu esiPhezulu sesiKhungo.

(2)(a) IsiKhulu esiPhezulu siqokelwa esikhundleni isikhathi esingeqile eminyakeni emihlanu; futhi

(b) IsiKhulu esiPhezulu singaphinde siqokwe elinye ihlandla elingeqile eminyakeni emihlanu.

(3)(a) Ukuqokwa kwesiKhulu esiPhezulu kuncike ekuphothulweni kwesivumelwano sokusebenza esibhaliwe okungena kuso lowo muntu kanye neBhodi; futhi

(b) IBhodi kanye nesiKhulu esiPhezulu, ngokubhaliwe nangesivumelwano, bangachibiyela isivumelwano sokusebenza.

(4) Ngezinhlalo zokudalula ukuhlomula ngokwezezimali nokunye ukuhlomula , izinhlinzeko zesigaba 7 zisebenza nezinguquko ezidingekile esiKhulwini esiPhezulu ngaphandle kokuthi isiKhulu esiPhezulu kumele sidalule ukuhlomula kwaso eBhodini.

(5) IsiKhulu esiPhezulu siyilungu elihola iBhodi kodwa asinalo ilungelo lokuvota emhlanganweni yayo.

Imisebenzi yesiKhulu esiPhezulu

17.(1) IsiKhulu esiPhezulu sibhekele –

(a) ukulawulwa kanye nokuphathwa kwezimali zeBhodi ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kanye nokulawulwa kweBhodi;

(b) ukuqokwa kwabasebenzi besiKhungo okuhlongozwe esigabeni 19(1) ngokubonisana neBhodi.

(c) ngokubonisana neBhodi, ukunqunywa kwenqubo yokuziphatha, eqondene nesiKhulu esiPhezulu, abasebenzi bonke besiKhungo kanye nezosebenza ngezinhloso zokuqondiswa kwezigwegwe, ukuqinisekisa –

(i) ukuhambisana nomthetho osebenzayo, kubandakanya lo Mthetho;

(ii) ukusetshenziswa ngokufanele, ngokunesidingo nangokunenzuzo kwezimali nezinsiza zesiKhungo;

(iii) ukugqugquzelwa kanye nokugcinwa kwezinga eliphezulu lenqubomgomo mayelana nemigomo yokusebenza ngendlela;

(iv) ukunqanda ukushayisana kwemibono;

(v) ukuvikelwa kolwazi oluyimfihlo olugcinwe yisiKhungo; kanye

(vi) nezinga, nokwethembeka, nokuzimela, nokwenzelana ngobuqotho, nenqubomgomo kanye nokusebenza ngokulingene;

(d) ukulawulwa kokuziphatha kwabasebenzi abaqokwe ngokwendima (b) futhi kumele, ngalezo zinhloso, kwenziwe yiBhodi;

(e) ukulondolozwa kanye nokugcinwa kwerejista yokuhlomula okumenyenzelwe yilungu labasebenzi besiKhungo; kanye

(f) nokuqinisekiswa kokuhlangabezana kweBhodi nezihlinzeko zoMthetho wezokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999), kanye nanoma yimiphi eminye imithetho esebenzayo.

(2) Uma isikhulu esiPhezulu nganoma yisiphi isizathu singakwazi ukwenza imisebenzi yaso, iBhodi kumele, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, liqoke omunye umuntu ozoba yiBamba lesikhulu esiPhezulu kuze kube isikhulu esiPhezulu siyakwazi ukuba siqale ukwenza leyo misebenzi.

Ukwesula kanye nokususwa esikhundleni kwesikhulu esiPhezulu

18.(1) Isikhulu esiPhezulu sishiya isikhundla –

(a) lapho s esula, noma kuba nokwesula;

(b) ngenkathi, ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), umuntu ophethe leso sikhundla eba ngohoxiswayo ukuba asebenze njengomqondisi wenkampani; noma

(c) lapho sixoshwa esikhundleni ngokwesigatshana (2).

(2) IBhodi ngokubonisana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ingamisa umsebenzi wesikhulu esiPhezulu ngokuhambisana nomthetho wokuqasha nowabasebenzi osebenzayo.

Abasebenzi besiKhungo

19.(1) Isikhulu esiPhezulu kumele, kuncike esigatshaneni (2), siqashe amalungu abasebenzi besiKhungo uma kuba nesidingo esifanele –

(a) sokusiza ekufezeni imisebenzi yaso ngokwalo Mthetho; kanye

(b) nokusiza iBhodi ngomsebenzi othintana nokwenziwa yiBhodi emisebenzini yayo.

(2) IBhodi kumele, kuncike esigabeni 24(4), inqume inqubomgomo yezindaba eziphathele nabasebenzi kumalungu abasebenzi besiKhungo, kubandakanya isikhulu esiPhezulu.

(3) Ngokwezinhloso zokudalulwa kokuhlomula ngakwezezimali okunye ukuhlomula, nangokuncike esigabeni 17(1)(e), izihlinzeko zesigaba 7(3), (4) kanye no 7(5) zisebenza noshintsho oludingekile kumalungu abasebenzi besiKhungo.

(4) IsiKhulu esiPhezulu kumele sigcine irejista evuselelwe yokuhlomula kwamalungu abasebenzi besiKhungo okudalulwe ngokwesigatshana (3).

Ukusiswa noma ukudluliselwa esiKhungweni kwabasebenzi

20. IsiKhungo singasebenzisa usizo lwabantu abasisiwe noma abadluliselwe besuka kuhulumeni ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelo No. 103 sika 1994).

ISAHLUKO 5

UKUNQUNYWA KWENQUBOMGOMO YESIFUNDAZWE YOKUTSHALWA KWEZIMALI NEMPAHLA EPHUMAYO

INqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo

21. ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho kumele, ngemuva kokubonisana neBhodi, lisungule iNqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo.

UHlelo LwesiFundazwe lokuTshalwa kweziMali neMpahla ePhumayo

22.(1) IBhodi kumele, ezinyangeni eziyisithupha kusungulwe iNqubomgomo yesiFundazwe yokuTshalwa kweziMali neMpahla ePhumayo ngokwesigatshana (1), isungule uHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe ukuze iphumelelise futhi iqalise ukusebenza kwezinqubomgomo kanye nezinjongo ezisungulwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho.

(2) Uma sesenza imisebenzi yaso ngokwesigaba salo Mthetho, isiKhungo kumele siqalise ukusebenza koHlelo lokuTshalwa kweziMali neMpahla ePhumayo lwesiFundazwe.

Iziqondiso zeNqubomgomo**23. ILungu eliqondene loMkhandlu Ophethe -**

- (a) linganquma imikhombandlela yamasu okufezekisa izinhloso zesiKhungo;
- (b) linganikezela imiyalelo yenqubomgomo eBhodini; futhi
- (c) lingahoxisa noma lichibiyele noma yimuphi umyalelo wenqubomgomo okhishwe ngokwendima (a).

ISAHLUKO 6**UXHASOMALI NOKUPHATHWA KWEZIMALI ZESIKHUNGO****Izimali zesiKhungo****24.(1) Izimali zesiKhungo ziqukethe –**

- (a) imali es iyabelwe yisiShayamthetho sesiFundazwe;
- (b) inzalo yezimali ezitshalwe yisiKhungo; kanye
- (c) nengeniso etholakale ngokusemthethweni kunoma yimuphi umthombo.

(2) Isikhungo kumele sizisebenzise izimali zaso –

- (a) ngokukhokhel a amaholo, izibonelelo zokuphila kanye nezindleko zokuhamba –
 - (i) zamalungu eBhodi;
 - (ii) zesiKhulu esiPhezulu; kanye
 - (iii) nezamalungu abasebenzi besiKhungo; kanye
- (b) nokukhokhela izindleko eziphathelene –
 - (i) nokuqhutshwa kwansuku zonke kanye nokuphathwa kwesiKhungo; kanye
 - (ii) nokuqhutshwa kwemisebenzi kanye nokusebenza kwesiKhungo nokuthi isikhungo sisebenzise amandla aso ngokwalo Mthetho.

(3) Isikhulu esiPhezulu, ngokuvumelana neBhodi kumele –

- (a) sivule i-akhawunti egameni lesikhungo esikhungweni esibhaliswe njengebhange ngokoMthetho wamaBhange, 1990 (uMthetho No. 94 ka 1990); futhi
- (b) sifake lapho yonke imali etholwe ngokwesigatshana (1).

(4) IBhodi, ngokuthintana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, kumele inqume –

(a) umholo nezimo zokusebenza; kanye

(b) nempesheni nemihlomulo yomhlalaphansi,

yesiKhulu esiPhezulu kanye namanye amalungu abasebenzi besiKhungo.

(5) IsiKhungo singatshala izimali ezifakwe kwi-akhawunti yaso ezingadingi ukusetshenziswa ngokushesha: Kuncike ekutheni iBhodi kumele ithathe izinyathelo ezifanele ukuqinisekisa ukuthi ukutshalwa kwezimali akukona okohlobo olungaqondakali lokuzalanisa imali.

(6) IsiKhungo senqatshelwe ukuboleka imali noma ukukhipha iziqinisekiso, izinxephezelo noma izibambiso noma ukungena kunoma yinhloboni yokusetshenziswa kwemali okwenqatshelwe isiKhungo ngaphandle uma lokh o kuboleka, isiqinisekiso, isinxephezelo, isibambiso noma okunye ukusetshenziswa kwemali kugunyazwe kulo Mthetho futhi kungashayisani noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

Ukuphathwa kwezimali

25.(1) IsiKhulu esiPhezulu kumele senze ukuba kugcinwe amabhuku agcwele futhi afanele e-akhawunti kanye nayo yonke imininingwane edingekile ephathelene nayo.

(2) IsiKhulu esiPhezulu kumele siqinisekise ukuthi isabelomali sonyaka sesiKhungo, izinhlelo zenhlangano, imibiko yonyaka kanye nezitatimende zezimali ezicwaningiwe ziyalungiswa futhi zilethwa ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

(3) IsiKhulu esiPhezulu kumele, ezinyangeni ezintathu ngaphambi kokuba kuphele unyaka wezimali, silethe ukuze kuvunywe yiBhodi –

(a) uhlelo lwamabhezini esiKhungo, oluqukethe izinjongo ezilinganisiwe kanye neminye imininingwane ehlongozwe esigabeni 26(3)(b) kanye no (c); kanye

(b) nesitatimende sesilinganiso senzuzo kanye nezindleko zesiKhungo,

maqondana neminyaka emithathu elandelayo yezimali.

(4) Kunoma yimuphi unyaka wezimali isiKhulu esiPhezulu singaletha eBhodini ukuze kugunyazwe izitatimende zemali eyengeziwe noma esetshenzisiwe engenisweni noma ezindlekweni zesikhungo zangalowo nyaka wezimali.

(5) IsiKhungo angeke sizibandakanye kunoma yisiphi isivumelwano sezimali esingaphezu kwesabelomali esisinikeziwe kanye nesikuzuzile eceleni.

(6) IsiKhulu esiPhezulu ngokuvunyelwa yiBhodi –

(a) singatshala noma iyiphi ingxenye engasetshenziswanga yezimali zayo eNhlanganweni yokuTshalwa kweziMali zikaHulumeni noma kwesinye isikhungo esihlukanisiwe noma esibhalisiwe izikhathi ngezikhathi nguMnyango kaMgcinimafa wesiFundazwe njengesisoSohlwini olungu “A1” lwezikhungo zezimali; noma

(b) singahlela leyo ngxenye ngenye indlela.

(7) IsiKhulu esiPhezulu ngokugunyaza kweBhodi, singasungula izikhwama eziseceleni futhi sifake kuzo lezo zimali njengalokhu iBhodi ingavuma.

Ukucwaningwa kwamabhuku kanye nombiko wonyaka

26.(1) UMcwaningimabhuku-Jikelele kumele acwaninge izitatimende zemali yesiKhungo.

(2)(a) IBhodi kumele yethule umbiko ngezinto ezenziwa yisiKhungo ngesikhathi sonyaka wezimali kwiSishayamthetho sesiFundazwe ezinyangeni ezinhlanu ngemuva kokuphela konyaka wezimali; futhi

(b) ezinyangeni ezinhlanu ngemuva kokwethulwa kombiko, izithunywa ezibandakanya amalungu okungenani amabili eBhodi kumele zichazele iKomidi lesiShayamthetho elibhekele ezezimali ngombiko wonyaka.

(3) Umbiko kumele –

- (a) ubandakanye isitatimende esikhombisa imali esisele emalini engenile nesetshenziwe esi gxivizwe nguMcwaningimabhuku-Jikelele;
- (b) uveze indima isiKhungo esiyikhathulile noma esifinyelele kuyo ngezinhlalo zaso ngokususela esigabeni 3 kanye nesilinganiso sezinjongo njengoba kubekiwe kuhlelo lwebhizinisi kanjengoba kuhlangozwe esigabeni 26(3)(a) ngesikhathi salowo nyaka wezimali othintekayo; futhi
- (c) uqukathe imininingwane efanele yokusebenza maqondana nezomnotho, ukunikezelwa kwezinsiza okube wusizo nempumelelo kanye nokuqhathanisa phakathi kokuhleliwe kanye nokwenziwe okukhombisayo njengoba kubekiwe kulolo hlelo lwebhizinisi.

Ukusungulwa kanye nokuphathwa kwezimali ezikhethekile

- 27.(a)** IsiKhungo ngokuthintana neLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, singasungula futhi sigcine izimali ezikhethekile, kubandakanya izimali ezejwayelekile ezisetshenziselwa ukufaka abantu ababencishwe amathuba emkhakheni wokungeniswa kwempahla kuleli nempahla ethunyelwa kwamanye amazwe.
- (b) IsiKhungo kumele silawule lezo zimali ngendlela enqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

Unyaka wezimali wesiKhungo

- 28.** Unyaka wezimali wesiKhungo uqala mhla lu-1 kuMbaso ngalowo nyaka futhi uphela mhla zinga-31 kuNdasa ngonyaka olandelayo.

Impahla engenakususwa

- 29.** IsiKhungo ngokwenqubomgomo kanye nangezinqubo ezinqunywe yiBhodi futhi nangokuvuma kweLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, singathola, singagcina noma singalahla impahla engenakususwa ekusebenzeni kwaso.

Ukuthathelwa izinyathelo zomthetho kwesiKhungo

30.(1) Noma yikuphi ukuthathelwa izinyathelo zomthetho okubhekiswe esiKhungweni kumele kwenziwe ngokuhambisana noMthetho wesesiKhungo sokuThathelwa iziNyathelo zoMthetho kweziNhlaka ezithile zikaHulumeni, 2002 (uMthetho No. 40 ka 2002).

(2) IsiKhungo, ngokwezihloso zesigatshana (1), sithathwa njengohlaka lukahulumeni oluhlongozwe endimeni (c) yencazelo yalokho okusesigabeni 1 salowo Mthetho.

ISAPHELA 7**IZINHLINZEKO EZIJWAYELEKILE****Ukuphepha kolwazi oluyimfihlo olugcinwe yisiKhungo**

31.(1) Ngokweyame kuMthethosisekelo, uMthetho wokuGqugquzelwa kokuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), akekho umuntu ongadalula noma yiluphi ulwazi olulethwe esiKhungweni oluphathelele nanoma yikuphi okuthinta umthetho noma umyalelo, ngaphandle –

(a) uma eyalelwe ukuba enze lokho yinkantolo yezomthetho;

(b) noma ngaphandle uma umuntu okhipha lowo myalelo enikeze imvume ngokubhalwe phansi.

(2) Akekho umuntu ongadalula noma yiluphi ulwazi olugcinwe kwirejista ehlongozwe esigabeni 7, 16(4) kanye no 19(4) ngaphandle uma lokho kudalulwa –

(a) kungokwanoma yimuphi umthetho ophoqeelayo noma ogunyaza lokho kudalulwa;

(b) kunesidingo esibalulekile sokusebenza kwesiKhungo; noma

(c) kwenziwa ngezinhloso zokubheka, zokuhlola, zokuphenya noma zokucubungula noma yikuphi okwenziwayo okuphathelele nesiKhungo, nanoma yiliphi ilungu labasebenzi besiKhungo.

(3) Noma yimuphi umuntu owephula isigatshana (1) noma (2) unecala.

Ukuhlakazwa kwesiKhungo

32. IsiKhungo singahlakazwa kuphela ngokoMthetho weSishayamthetho s esiFundazwe.

Ukusetshenziswa kwegama lesiKhungo

33.(1) Akekho umuntu, ngaphandle kokugunyazwa okubhalwe phansi yisiKhungo, noma ngayiphi indlela ongamela noma asebenzise igama lesiKhungo, isifinyezo, uphawu, umdwebo noma impahla esetshenziswa noma engeyesikhungo.

(2) Akekho umuntu ngokuphambene ongathi usebenza egameni lesiKhungo.

(3) Wonke umuntu owephula isigatshana (1) noma (2) unecala.

Ukudluliselwa kwamandla

34.(1) ILungu eliqondene loMkhandlu Ophethe lingadlulisela eBhodini –

(a) noma yimaphi amandla anikezwe iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwamandla okwenza imithethonqubo okukhulunywa ngawo esigabeni 37; noma

(b) noma yimuphi umsebenzi odingeka kwiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwalo Mthetho, ngaphandle kwanoma yimiphi imisebenzi ephathelene nokuqokwa, kanye nokumiswa kokusebenza, kwamalungu eBhodi okuhlongozwe esigabeni 5(2) kanye no 10(2).

(2) IBhodi, ngesisombululo esikhethekile, lingadlulisela esiKhulwini esiPhezulu noma kwilungu labasebenzi besiKhungo, noma yimaphi amandla noma imisebenzi edingeka noma ephathelene neBhodi ngokwalo Mthetho.

(3) Isikhulu esiPhezulu singadlulisela kunoma yiliphi ilungu labasebenzi besiKhungo noma yimaphi amandla noma umsebenzi odingeka noma ophathelene nesikhulu esiPhezulu ngokwalo Mthetho, ngaphandle kwanoma yimuphi umsebenzi wesikhulu esinesibopho sokubika sesiKhungo.

(4) Noma yimaphi amandla noma umsebenzi odluliselwe ngokwesigatshana (1), (2) noma (3) kumele ukuba usetshenzwe noma wenziwe ngokweyame kuleyo migomo njengalokhu umuntu noma umgwamanda owenze ukudluliselwa ekubone kunesidingo.

(5) Noma yikuphi ukudluliselwa kwamandla okushiwoyo esigatshaneni (1), (2) noma (3) –

(a) kumele kubhalwe phansi;

(b) kungavimbeli umuntu noma umgwamanda owenze ukudluliselwa kwamandla ekutheni basebenzise amandla noma benze lowo msebenzi; futhi

(c) noma ngasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhaliwe yilowo muntu noma umgwamanda.

Imithethonqubo

35. ILungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuthintana neBhodi futhi ngokwenza isaziso kwi*Gazethi*, lingenza imithethonqubo ephathelene –

(a) nanoma yiluphi udaba olungabhalwa noma okumele lubhalwe ngokwalo Mthetho; noma

(b) nanoma yikuphi ukuphathwa noma izindaba eziphathelene nenqubo edingekile ukuba iqalise kwizi nhlinzeko zalo Mthetho.

Ukuhlakazwa kweNkampani kanye nezinhlinzeko zezikhashana eziphathelene nalokho

36.(1)(a) iNkampani, i-Trade and Investment KwaZulu-Natal eneNombolo yokuBhaliswa kweziNkampani 98/11946/08, esungulwe ngokoMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973), ingahlakazwa ngokuzikhethela futhi ibhaliswe kabusha; futhi

(b) Amalungu eNkampani kumele, ekuhlakazweni kweNkampani okukhulunywa ngakho esigatshaneni (1), phakathi kokunye, ahambisane nezigaba 349 kanye no 350 soMthetho weziNkampani, 1973 (uMthetho No. 61 ka 1973).

(2) Ngelanga lokuhlakazwa kweNkampani okuhlongozwe esigatshaneni (1), zonke izimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho, kubandakanya noma iyiphi ingxenye engasetshenzisiwe yezimali eziyinzuzo noma ezitholwe yiNkampani zidluliselwa, futhi zitshalwa, kwi-Trade and Investment KwaZulu-Natal esungulwe ngokwesigaba 2.

(3) I-Trade and Investment KwaZulu-Natal, maqondana nezimpahla, izikweletu, amalungelo, imisebenzi kanye nezibopho nezimali okukhulunywe ngakho esigatshaneni (2), ngazo zonke izinhloso ingundlalifa kwezomthetho, kanye nondlalifa egameni, leNkampani.

(4) Amalungu eBhodi yeNkampani kumele asebenze njengamalungu eBhodi yesiKhungo agunyaziwe kuze kube yisikhathi lapho iLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ngokwesigaba 5(2) liyoqoka khona iBhodi ngokwalo Mthetho.

(5) Onke amalungu abasebenzi beNkampani kumele, ezinyangeni eziyisithupha kuqale ukusebenza kwalo Mthetho, baqashwe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho ukuze badluliselwe esiKhungweni ngosuku olunqunywe yiLungu loMkhandlu oPhethe elibhekele ukuthuthukiswa komnotho.

(6) Amaholo, imihlomulo kanye nezibonelelo ezinikezelwa yiLungu lomkhandlu oPhethe elibhekele ukuthuthukiswa komnotho, ngokuhambisana nesigatshana (5), akungabi ngaphansi kwalokhu obekukhokhelwa ilungu labasebenzi beNkampani, ngemuva kokudluliselwa kwalo.

(7) Ngokwenhloso yoMthetho weNtela, 1962 (uMthetho No. 58 ka 1962), akukho ukushintshwa komqashi okuyothathwa njengokwenzekile maqondana namalungu abasebenzi abavuma umsebenzi ohlongozwe esigatshaneni (5).

(8) Ngenkathi umuntu eba yilungu labasebenzi besiKhungo ngokwesigatshana (5) –

(a) ugcina izinsuku zakhe zekhefu abevele enazo kuze kube yilesi sikhathi ashintshwe ngaso, okuhlelwe ngokuhambisana nezimo zokuqasha zesiKhungo ; futhi

(b) noma yiluphi uphenyo obeluvele lukhona noma obeluhlosiwe ukuba lube khona maqondana nokungaziphathi kahle okwenziwe yilowo muntu ngaphambi kosuku lokudluliselwa kwakhe kwenye indawo kumele kwazeke noma kuvezwe yisiKhungo futhi isiKhungo kumele simthathele izinyathelo ezifanele lowo muntu othintekayo ngokuhambisana nomthetho, nenqubomgomo kanye nemibandela yomsebenzi noma yokusebenza abelwe yona ngokushesha ngemuva kokushaya kosuku lokudluliselwa kwakhe.

Amacala ajwayelekile

37.(1) Ilungu leBhodi, ilungu labasebenzi, umeluleki, i-ejenti nanoma yimuphi omunye umuntu oqashiwe noma omele isiKhungo unecala uma emukela ngqo noma ngandlela thile noma yikuphi ukugwazelwa nanoma emukela noma iyiphi imali noma umklomelo okungagunyaziwe kunoma yimuphi umuntu ngokuphathelene nanoma yikuphi okwenziwa noma okunikezelwa yisiKhungo.

(2) Noma yimuphi umuntu unecala uma, maqondana noma ngokuphathelene nanoma yikuphi okwenziwa noma okunikezelwa yisiKhungo, efaka umoya othile noma ezama ukufaka umoya ilungu leBhodi, umsebenzi, umeluleki, i-ejenti nanoma yimuphi umuntu oqashiwe noma oyibamba egameni lesiKhungo wokuthi enze ubugebengu.

(3) Noma yimuphi umuntu ngokungemthetho othi ugunyaziwe ukuba abize noma athathe izimali, iminikelo noma okunikelwayo egameni, noma ngokuyalelwa yisiKhungo unecala.

Izinhlawulo

38. Noma yimuphi umuntu otholakala enecala ngokwalo Mthetho uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni eyi-5 noma kokubili isigwebo nenhlawulo.

Isihloko esifushane

39. Lo Mthetho ubizwa ngokuthi uMthetho wesiKhungo sezoHwebo nokuTshalwa kweziMali waKwaZulu-Natali, 2010.