

KwaZulu-Natal, South Africa

KwaZulu-Natal Trade and Investment Agency Act, 2010

Act 5 of 2010

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KwaZulu-Natal South Africa

KwaZulu-Natal Trade and Investment Agency Act, 2010

Act 5 of 2010

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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.

(English text signed by the Premier)

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

Chapter 1 Definitions

1. Definitions

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

2. Establishment of the Trade and Investment KwaZulu-Natal

- (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.

3. Objects of the Agency

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](#).

4. Powers, duties and functions of the Agency

- (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

5. Composition of the Board

- (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.

6. Disqualification from being appointed to the Board

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.

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

- (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.

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

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.

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

- (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.

10. Temporary suspension of a member of the Board

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\(2\)](#).

11. Meetings and procedures at meetings of the Board

- (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.

12. Recusal of a member from meetings and proceedings of the Board

- (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.

13. Remuneration of members of the Board

- (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, andwho 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).

14. Establishment of committees to assist the Board

- (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.

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

- (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

16. Chief Executive Officer of the Agency

- (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.

17. Functions of the Chief Executive Officer

- (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.

18. Resignation and removal from office of the Chief Executive Officer

- (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.

19. Staff of the Agency

- (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).

20. Secondment or transfer of staff to the Agency

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

21. Provincial Investment and Export Policy

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

22. Provincial Investment and Export Plan

- (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.

23. Policy directives

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

24. Funds of the Agency

- (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](#)).

25. Financial management

- (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.

26. Audit and annual report

- (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.

27. Establishment and administration of special funds

- (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.

28. Financial year of the Agency

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

29. Immovable property

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.

30. Legal proceedings against the Agency

- (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

31. Security of confidential information held by the Agency

- (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.

32. Dissolution of the Agency

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

33. Use of name of the Agency

- (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.

34. Delegations

- (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.

35. Regulations

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.

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

- (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.

37. General offences

- (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.

38. Penalties

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.

39. Short title

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