

KwaZulu-Natal, South Africa

KwaZulu-Natal Tourism and Film Authority Act, 2024

Act 2 of 2024

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KwaZulu-Natal South Africa

KwaZulu-Natal Tourism and Film Authority Act, 2024 Act 2 of 2024

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(English text signed by the Premier)

ACT

To provide for the establishment of the KwaZulu-Natal Tourism and Film Authority in order to effect the governance and regulation of the tourism sector and audio-visual industry in the Province under the auspices of the KwaZulu-Natal Tourism and Film Authority; to provide for the dissolution of the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority and the transfer of the powers, functions and duties of the former Commission and the former Authority to the KwaZulu-Natal Tourism and Film Authority; to repeal the KwaZulu-Natal Film Commission Act, 2010, and the KwaZulu-Natal Tourism Act, 1996; and to provide for matters connected therewith.

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

Chapter 1

Interpretation, objectives, application and principles

1. Definitions

- (1) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.
- (2) Any term or provision of this Act must be reasonably interpreted in a manner that is consistent with the purpose and objectives of this Act.
- (3) In this Act, unless the context otherwise indicates—
 - “**Agency**” means the KwaZulu-Natal Tourism and Film Authority established in terms of section 7;
 - “**annual performance plan**” has the meaning ascribed to it by the national Department of Planning, Monitoring and Evaluation in its Framework for Strategic Plans and Annual Performance Plans published from time to time;
 - “**audio-visual**” includes the use of recorded pictures, images, videos and sound, or the equipment that produces such recorded pictures, images, videos and sound;
 - “**audio-visual industry**” means the industry related to the development, promotion, marketing, production and use of recorded pictures, images, videos and sound, and includes audio-visual content creators, audio-visual activity operators, audio-visual establishments and other audio-visual stakeholders;
 - “**audit committee**” means an audit committee as contemplated in section 77 of the Public Finance Management Act;

“**Board**” means the Board of the Agency established in terms of section 10;

“**business day**” means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

“**Chairperson**” means the Chairperson of the Board, and includes a person who is acting as Chairperson;

“**Chief Executive Officer**” means the Chief Executive Officer of the Agency appointed in terms of section 36;

“**committee**” means a committee of the Board established in terms of section 25;

“**company**” means a company as defined in the Companies Act, 2008 (Act No. 71 of 2008);

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

“**Department**” means the department or departments responsible for the promotion, development, marketing and regulation of the tourism sector and audio-visual industry in the Province;

“**direct interest**” means—

- (a) the ownership of shares in a company or entity;
- (b) an interest in a close corporation;
- (c) an interest in a partnership;
- (d) a real or personal right in property used by a company, corporation, trust, business or other legal entity;
- (e) an interest in a trust;
- (f) in respect of a business, undertaking or other entity, with or without legal personality, any interest which enables the holder thereof to share in the profits and revenue of such business, undertaking or other entity;
- (g) remuneration, directorship, consultancy and retainership;
- (h) a loan account;
- (i) a remuneration, income, revenue, entitlement to revenue, shares, interest, donation, gift or any other benefit accruing to a person prior to or pursuant to the registration, accreditation, classification, grading and certification of a tourism establishment or a tourism or audio-visual operator;
- (j) the conclusion or existence of any contract or agreement with an applicant for a licence, an existing licence holder or a registrant in terms of this Act; and
- (k) a personal interest,

and “indirect interest”, in respect of a relative, business partner, associate or employer, other than the State, has a corresponding meaning;

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

“**Gazette**” means the official *Provincial Gazette* of the Province;

“**Head of Department**” means the head of the department or heads of the departments responsible for the promotion, development, marketing and regulation of the tourism sector and audio-visual industry in the Province;

“**interim Board**” means the interim Board contemplated in section 59(1)(a)(i);

“**interim Chief Executive Officer**” means the interim Chief Executive Officer as contemplated in section 59(1)(b);

“**internal audit**” means a system of internal audit as contemplated in sections 51 (1)(a)(ii) and 76(4)(e) of the Public Finance Management Act;

“**MEC**” means the Member or Members of the Executive Council responsible for the promotion, development, marketing and regulation of the tourism sector and audio--visual industry in the Province;

“**member**” means a member of the Board as contemplated in section 13;

“**member of a committee**” means a member of a committee established by the Board in terms of section 25;

“**municipality**” means a municipality as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000), and “district municipality” and “metropolitan municipality” have a corresponding meaning;

“**municipal organ of state**” means an organ of state in the local sphere of government;

“**National Film and Video Foundation Act**” means the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997), and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof;

“**national Tourism Act**” means the Tourism Act, 2014 (Act No. 3 of 2014), and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof;

“**organ of state**” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“**person**” includes a natural or a juristic person, a group of such persons or a corporate body;

“**policy**” means a policy approved by—

- (a) national Cabinet and published in the *Government Gazette*;
- (b) the Executive Council or a municipal council and published in the *Gazette*; or
- (c) the Board,

as the case may be;

“**political office bearer**” means a—

- (a) member of the National Assembly, the National Council of Provinces or the national Cabinet;
- (b) member of a Provincial Legislature or a provincial Executive Council;
- (c) municipal councillor;
- (d) diplomatic representative of the Republic who is not a member of the public service;
- (e) member of a house of traditional and Khoi-San leaders;
- (f) traditional leader or Khoi-San leader recognised in terms of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019); or
- (g) national, provincial or local office bearer of a political party, organisation, body, alliance or movement registered in terms of section 15 or 15A of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“**Portfolio Committee**” means the Portfolio Committee or Portfolio Committees of the Provincial Legislature responsible for the promotion, development, marketing and regulation of the tourism sector and audio-visual industry in the Province;

“**Promotion of Access to Information Act**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof;

“**Protection of Personal Information Act**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof;

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

“**Provincial Legislature**” means the Legislature of the Province as contemplated in section 105 of the Constitution, and having the legislative authority of the Province as contemplated in section 104 of the Constitution;

“**Provincial Treasury**” means the Treasury established for the Province in terms of section 17 of the Public Finance Management Act;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999), and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof;

“**regulations**” means a regulation or regulations made in terms of this Act;

“**relative**” means a—

- (a) person who is party to a civil union, a marriage, including a customary marriage, or a party to a permanent relationship which calls for cohabitation and mutual financial and emotional support; or
- (b) person's child, parent, brother or sister, whether such relationship results from birth, marriage or adoption;

“**staff member**” means a member of staff of the Agency transferred to, or appointed by, the Agency in terms of section 39 or 40, as the case may be;

“**sworn declaration**” includes a confirmed statement made before a commissioner of oaths; and

“**this Act**” means the KwaZulu-Natal Tourism and Film Authority Act, 2024, and includes any regulations, notices, practice notes or circulars, made, issued or published in terms thereof.

2. Objectives of Act

The objectives of this Act are to establish the KwaZulu-Natal Tourism and Film Authority as a provincial public entity in accordance with the provisions of the Public Finance Management Act and to provide for the governance structures, management and administration of the Agency to govern and regulate the—

- (a) tourism sector; and
- (b) audio-visual industry,

with reference to applicable national legislation and other relevant provincial legislation.

3. Application of Act

This Act—

- (a) applies to the Province as a whole; and

- (b) binds all provincial and municipal organs of state.

4. Principles

- (1) In the application of this Act, the Agency must—
 - (a) act in—
 - (i) an efficient;
 - (ii) an effective;
 - (iii) a transparent;
 - (iv) a legitimate; and
 - (v) a credible,
manner;
 - (b) act with integrity;
 - (c) observe high ethical standards;
 - (d) commit to service excellence;
 - (e) commit to deliver on its mandate;
 - (f) ensure—
 - (i) just administrative action, reasonableness, procedural and substantive fairness and impartiality with regard to all matters within its functional domain; and
 - (ii) effective, transparent, accountable and coherent consultation and cooperation with all provincial and municipal organs of state and other stakeholders; and
 - (g) adhere to the principles of sound corporate governance.
- (2) The Agency must exercise its powers, perform its functions and carry out its duties in accordance with—
 - (a) applicable constitutional provisions, including the provisions governing cooperative governance;
 - (b) the provisions of this Act and other applicable legislative and policy provisions; and
 - (c) the principles set out in subsection (1).

Chapter 2

Disestablishment of Kwazulu-Natal Film Commission and Kwazulu-Natal Tourism Authority

5. Disestablishment of KwaZulu-Natal Film Commission and KwaZulu-Natal Tourism Authority

The KwaZulu-Natal Film Commission, established in terms of section 2(1) of the KwaZulu-Natal Film Commission Act, 2010 (Act No. 3 of 2010), and the KwaZulu-Natal Tourism Authority, established in terms of section 2(1) of the KwaZulu-Natal Tourism Act, 1996 (Act No. 11 of 1996), are hereby disestablished.

6. Consequences of disestablishment

- (1) The Agency is the successor-in-law to the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority.
- (2) The Agency is responsible for—
 - (a) the management of operations and all risks associated with the—
 - (i) disestablishment of the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority; and
 - (ii) establishment of the Agency; and
 - (b) any power exercised, function performed, and duty carried out by the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority prior to their disestablishment.
- (3)
 - (a) All assets, liabilities, rights and obligations vested in, and all administrative, financial and other records kept by, the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority, vest in the Agency.
 - (b) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property in terms of paragraph (a), and no transfer fee, office fee or other charge is payable in respect of that entry or endorsement.
- (4) With effect from the date of commencement of this Act—
 - (a) all staff members of the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority are deemed to be staff members of the Agency as contemplated in section 39; and
 - (b) the members of the boards of the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority are deemed to have resigned from their positions as members of the respective boards.

Chapter 3

Establishment of Kwazulu-Natal Tourism and Film Authority

7. Establishment of Kwazulu-Natal Tourism and Film Authority

- (1) A juristic person to be known as the KwaZulu-Natal Tourism and Film Authority is hereby established as a provincial public entity in accordance with the provisions of the Public Finance Management Act.
- (2) The Agency may only be dissolved in terms of an Act of the Provincial Legislature.

8. Objectives of Agency

The objectives of the Agency are to—

- (a) market and promote the tourism sector and audio-visual industry;
- (b) facilitate the development of the tourism sector and audio-visual industry;
- (c) create an enabling environment for sustainable growth and job creation in the tourism sector and audio-visual industry;
- (d) contribute to job creation in the tourism sector and audio-visual industry; and

- (e) address historical imbalances in infrastructure and the distribution of skills and resources in the tourism sector and audio-visual industry,
in the Province.

9. Powers, functions and duties of Agency

- (1) The Agency must exercise the powers, perform the functions and carry out the duties as set out in—
- (a) this Act;
 - (b) applicable national and provincial legislation; and
 - (c) any other law.
- (2) The Agency has the following powers, functions and duties:
- (a) act as the custodian for the integrated marketing and promotion of the Province as a tourism and audio-visual destination to local and international markets;
 - (b) act as a hub for tourism and audio-visual-related information;
 - (c) attract local and foreign investment for the establishment, development and growth of tourism and audio-visual infrastructure, facilities and products;
 - (d) provide financial and non-financial support for the development and transformation of the tourism sector and audio-visual industry;
 - (e) attract leisure tourism, business events and audio-visual productions;
 - (f) encourage existing role players and new entrants into the tourism sector and audio-visual industry to support enterprises, employ people, and partner with business entities in the Province;
 - (g) provide support programmes targeting small, medium and micro enterprises in order to facilitate empowerment and employment in the Province;
 - (h) raise additional funds from sources other than appropriations from the Provincial Legislature, to enhance the implementation of the objectives of this Act;
 - (i) advocate for an environment that is conducive to the promotion, growth and transformation of the tourism sector and audio-visual industry;
 - (j) promote coherence of, and cooperation between, all organs of state in respect of tourism sector and audio-visual industry matters through the establishment of appropriate coordinating structures;
 - (k) liaise and interact with all stakeholders and role-players in the tourism sector and audio-visual industry;
 - (l) facilitate and coordinate industry development in the tourism sector and audio-visual industry; and
 - (m) partner with local, national, regional, African and global organisations to further the objectives of this Act.
- (3) The Agency may exercise such other powers, perform such other functions and carry out such other duties as may be reasonably necessary or expedient for the achievement of the objectives of this Act, the Acts referred to in subsection (1)(a) and (b), and any other law referred to in subsection (1)(c), to the extent that such other law is applicable to the Agency.

Chapter 4

Governance arrangements

10. Establishment of Board

- (1) The Agency is governed by a Board which—
 - (a) is responsible for governance, oversight and monitoring; and
 - (b) directs the Agency in the exercise of its powers, the performance of its functions, and the carrying out of its duties in accordance with this Act, the Public Finance Management Act and the principles of good governance.
- (2) The Board, after consultation with the MEC and the Chief Executive Officer, may restructure the Agency if, in its opinion, it is necessary for the effective exercise of powers, performance of functions and carrying out of duties by the Agency.
- (3) The Board is the accounting authority as contemplated in section 49(2)(a) of the Public Finance Management Act.
- (4) The Board must, within a period not exceeding three months after its appointment, conclude a mutually binding agreement with the MEC to regulate the relationship between the MEC and the Board.
- (5) The Board must, within a period not exceeding three months after its appointment, approve a board charter to—
 - (a) regulate the proceedings of the Board and any committee established in accordance with section 25;
 - (b) determine the powers, functions and duties of committees established in accordance with section 25;
 - (c) determine the relationship between the Board and—
 - (i) the Chief Executive Officer;
 - (ii) the board secretary; and
 - (iii) internal audit; and
 - (d) provide for any other matter that may be required for the effective and optimal operation of the Board:

Provided that the Board must annually, within a period not exceeding three months after the beginning of every financial year, review the board charter.

11. Role of MEC

- (1) The MEC—
 - (a) is the executive authority as contemplated in section 1 of the Public Finance Management Act;
 - (b) must, within a period not exceeding three months after the commencement of this Act, appoint the Board as contemplated in section 13; and
 - (c) must monitor the Agency and the Board in the exercise of their powers, the performance of their functions and the carrying out of their duties.

- (2) The members referred to in section 13(c) must—
 - (a) facilitate liaison between the MEC and the Board; and
 - (b) report to the MEC from time to time regarding matters which are considered relevant.
- (3) The MEC may—
 - (a) by notice in the *Gazette*, determine—
 - (i) norms and standards for the exercise of the Agency's powers, the performance of its functions and the carrying out of its duties; and
 - (ii) limits on fees charged by the Agency in the exercise of its powers, the performance of its functions and the carrying out of its duties; and
 - (b) issue directives to the Agency on—
 - (i) policy, planning, strategy and procedural issues to ensure its effective and efficient functioning; and
 - (ii) measures to achieve the norms and standards contemplated in paragraph (a)(i).

12. Role of Head of Department

The Head of Department is the designated accounting officer of the Department as contemplated in the Public Finance Management Act.

13. Composition of Board

The Board consists of—

- (a) at least seven and no more than 11 members appointed by the MEC, comprised of—
 - (i) one person with knowledge of and experience in the tourism sector and audio--visual industry nominated by the KwaZulu-Natal provincial structure of the South African Local Government Association as contemplated in section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), representing organised local government in the Province: Provided that he or she may not be an elected representative of local government; and
 - (ii) the members appointed as provided for in section 15;
- (b) the Chief Executive Officer as an *ex officio* member, who does not have the right to vote at meetings of the Board or any of its committees; and
- (c) one or more employees of the Department, whom the MEC may, in his or her discretion, appoint as his or her representative or representatives on the Board, which representative or representatives may attend meetings of the Board and any of its committees and participate in discussions, but do not have the right to vote at such meetings: Provided that the MEC may vary or remove such representative or representatives as he or she deems necessary.

14. General requirements for members

- (1) Members must—
 - (a) be fit and proper persons;
 - (b) hold office in the best interest of the Agency and the Province;
 - (c) have appropriate qualifications and experience; and
 - (d) be independent, impartial and fair.

- (2) A person is disqualified from becoming or remaining a member if that person—
- (a) is not or is no longer a citizen of the Republic;
 - (b) is a political office bearer;
 - (c) with the exception of a member contemplated in section 13(a)(i), (b) and (c), is in the full-time employ of an organ of state;
 - (d) is an advisor or a special advisor to an organ of state or to a political office bearer;
 - (e) is an official or employee of a municipality established in terms of section 155(1) of the Constitution;
 - (f) has or acquires a direct or indirect interest in any tourism sector or audio-visual industry activity;
 - (g) has or acquires a direct or indirect interest in any business or enterprise that may conflict or interfere with the proper performance of his or her functions as a member;
 - (h) fails to disclose a direct or indirect interest in accordance with section 17(4) or attended or participated in the proceedings of the Board while having an interest referred to in that section;
 - (i) has a direct or indirect interest 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;
 - (j) is or becomes an unrehabilitated insolvent;
 - (k) is or has been declared by a competent court to be of unsound mind;
 - (l) is or becomes a person under curatorship;
 - (m) is or has been removed from office in terms of section 19(1) or (2);
 - (n) is or has been declared a delinquent director as contemplated in section 162 of the Companies Act, 2008 (Act No. 71 of 2008);
 - (o) is or has, at any time, been removed from any office of trust on account of misconduct or dishonesty; or
 - (p) is or has been convicted, in the Republic or elsewhere, of an offence—
 - (i) involving dishonesty, theft, fraud, forgery or uttering a forged document, or perjury;
 - (ii) under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
 - (iii) under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
 - (iv) under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
 - (v) under the Companies Act, 2008 (Act No. 71 of 2008);
 - (vi) under this Act; or
 - (vii) under any other similar law:
- Provided that a disqualification in terms of this paragraph ends five years after the sentence has been completed.
- (3) (a) If any member during his or her term of office is disqualified in terms of subsection (2), or acquires an interest which is likely to be a direct or indirect interest, he or she must, within a period not exceeding ten business days after he or she has been disqualified or after the

acquisition of such interest, or after he or she has become aware of such information, in writing declare such interest to the—

- (i) Chairperson, or if the declaration concerns the Chairperson, the Deputy Chairperson; and
 - (ii) MEC.
- (b) Upon receipt of information from a member as contemplated in paragraph (a), the MEC must, subject to section 19(2), terminate with immediate effect the term of office of such member.

15. Appointment procedure

- (1) Whenever it is necessary to appoint a member or members as contemplated in section 13(a)(ii), the MEC must, within 20 business days—
 - (a) invite nominations through advertisements in the *Gazette* and at least two provincial newspapers, one in English and one in *isiZulu*, which advertisements must prescribe—
 - (i) the nomination procedure and the closing date by which nominations must be received; and
 - (ii) the information, qualifications and experience required for nomination; and
 - (b) compile a list of the names of persons nominated, setting out the full particulars of each individual nominee.
- (2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by—
 - (a) the personal and contact details of the nominee;
 - (b) particulars of the nominee's qualifications and experience; and
 - (c) any other information that may be prescribed as contemplated in subsection (1)(a).
- (3) A person who has been nominated to serve on the Board in terms of subsection (2) must, within ten business days of being nominated, submit to the MEC his or her—
 - (a) signed acceptance of the nomination;
 - (b) sworn statement declaring that he or she is not disqualified from appointment in terms of section 14(1) and (2); and
 - (c) sworn declaration of all his or her direct and indirect interests.
- (4) Any failure by the nominee to disclose any disqualification criterion or any direct or indirect interest in terms of subsection (3)(b) and (c) disqualifies the nominee from being considered for the position of a member.
- (5) The MEC must appoint a panel to review and evaluate all the nominations and thereafter to shortlist and make recommendations to him or her regarding the nominees: Provided that the shortlist and recommendations must be submitted to the MEC within 20 business days after the appointment of the panel.
- (6) The MEC must, within ten business days of receiving the shortlist and recommendations contemplated in subsection (5)—
 - (a) consider the recommendations; and
 - (b) make the required number of appointments from the list of nominees referred to in subsection (1)(b): Provided that if the shortlisted nominees do not comply with the requirements for qualification and the criteria provided for in this Act, the MEC must

advertise for nominations again for the outstanding number of appointments in accordance with the provisions of this section.

- (7) In appointing a member or members contemplated in this section, the MEC must ensure that the Board is broadly representative and collectively composed of persons with corporate governance experience and a broad range of other applicable skills, expertise and experience, and who are preferably resident in KwaZulu-Natal, with specific representation by at least one person who—
- (a) is qualified as a marketer in the Republic and has, for a cumulative period of at least ten years after having so qualified, practised as a marketer in the tourism sector or audio-visual industry;
 - (b) has proven business acumen in, and knowledge of, the audio-visual industry;
 - (c) has proven business acumen in, and knowledge of, the tourism sector;
 - (d) is qualified to be admitted to practise as a legal practitioner in the Republic and has, for a cumulative period of at least ten years after having so qualified, practised as a legal practitioner or performed services related to the application or administration of commercial law;
 - (e) is qualified and registered as a chartered accountant in the Republic and has, for a cumulative period of at least ten years after having so qualified, practised as a chartered accountant; and
 - (f) is qualified as a human resource specialist in the Republic and has, for a cumulative period of at least ten years after having so qualified, practised as a human resource specialist.
- (8) The MEC must notify, in writing, the persons appointed to the Board of their appointment and the date upon which the appointment to the Board takes effect.
- (9) The MEC must, within ten business days of making an appointment as contemplated in subsection (6)(b)—
- (a) inform the—
 - (i) Executive Council;
 - (ii) Portfolio Committee; and
 - (iii) portfolio committee responsible for finance in the Province,of the names of all persons appointed to the Board; and
 - (b) publish the names by notice in the *Gazette* and in at least two provincial newspapers, one in English and one in *isiZulu*.
- (10) Where it is shown that any one or more members were not properly appointed, such circumstance does not invalidate or affect any resolution, decision, authority or action taken by the Board, unless a Court considering the validity of a particular resolution, decision, authority or action decides that such resolution, decision, authority or action must be set aside.

16. Chairperson and Deputy Chairperson

- (1) The MEC must appoint a Chairperson and a Deputy Chairperson from the members: Provided that the Chairperson and Deputy Chairperson must be a member as contemplated in section 13(a)(ii).
- (2) The MEC may, for good reason, withdraw or vary such appointments.
- (3) The Chairperson and Deputy Chairperson are appointed for such a period as the MEC may determine: Provided that such appointments may not extend beyond their term of office as members as contemplated in section 18.

- (4) The Deputy Chairperson must exercise the powers, perform the functions and carry out the duties of the Chairperson if the Chairperson is absent, incapacitated, refuses or fails to act as Chairperson, or if the MEC withdraws the Chairperson's appointment.
- (5) If both the Chairperson and Deputy Chairperson are absent, incapacitated, refuse or fail to exercise their powers, perform their functions or carry out their duties, or if the MEC withdraws their appointments, the MEC must appoint another member as acting Chairperson.

17. Standard of conduct and declaration of interests

- (1) For purposes of this section, "member" includes any—
 - (a) member contemplated in section 13; and
 - (b) member of a committee appointed in accordance with section 25.
- (2) A member contemplated in subsection (1)—
 - (a) must perform the functions of office in good faith and without favour or prejudice;
 - (b) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person;
 - (c) may not directly or indirectly receive anything of value from any person or business that may conflict or interfere with the proper performance of his or her functions or benefit in any manner from the office that he or she holds; and
 - (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Agency.
- (3)
 - (a) A member contemplated in section 13(a) and (c) must submit a sworn declaration to the MEC of his or her direct or indirect interests as contemplated in this Act upon assuming office and thereafter at the beginning of every financial year: Provided that in the event that such a member acquires a direct or indirect interest at any time after the beginning of any specific financial year, he or she must, in writing, declare such interest to the MEC within ten business days of the date of acquisition of such interest.
 - (b) A declaration contemplated in paragraph (a) must be in the format provided in Schedule 2.
- (4) A member contemplated in subsection (1) must—
 - (a) at the commencement of any meeting, submit to the Chairperson of the Board or committee a written declaration of his or her direct or indirect interests in any matter before the Board or committee, in the format provided for in Schedule 2;
 - (b) recuse himself or herself from a matter being discussed, considered or voted upon by the Board or committee if he or she has a direct or indirect interest, or if there is a possibility that a direct or indirect interest might arise, unless the Board or committee has determined and decided that the interest disclosed is trivial or not material; and
 - (c) if at any stage during the course of any proceedings before the Board or a committee, it appears that he or she has or may have a direct or indirect interest, disclose the nature of such interest, recuse himself or herself and leave the meeting, unless the Board or committee has determined and decided that the interest disclosed is trivial or not material.
- (5) Any disclosure made in terms of subsection (4) must be recorded in the minutes of the meeting in question.
- (6) If it is subsequently established that the Board or committee took a decision on a matter in respect of which a member failed to disclose a direct or indirect interest referred to in subsections (3) or (4), such decision by the Board or committee must be reconsidered without the participation of the affected member as soon as reasonably possible after the Board or committee becomes aware of the

non-disclosure: Provided that if such decision adversely affects the rights of any person and has a direct external legal effect, the Board must apply to a competent court to set such decision aside.

- (7) A member contemplated in subsection (1) who contravenes or fails to comply with subsections (2), (3) and (4), as the case may be,—
- (a) is guilty of misconduct; and
 - (b) may be removed by the MEC if, in his or her view, such contravention or failure constitutes good reason for removal.
- (8) Any person may make an application, orally or in writing, for a member to recuse himself or herself where that person has reason to believe that a member has or could reasonably be expected to have a direct or indirect interest in the outcome of a decision of the Board or committee: Provided that the person making such application must give clear reasons for his or her request.
- (9) An application referred to in subsection (8) must be addressed to—
- (a) the Chairperson of the Board or committee, as the case may be; or
 - (b) the Deputy Chairperson of the Board or committee, as the case may be, if the application concerns the Chairperson,
- who must decide on the matter and report the decision to the Board or committee, which decision must be recorded in the minutes of the meeting in question.
- (10) The MEC must keep an updated register of members' interests disclosed in terms of this section, which register is a public document to which members of the public may, subject to the provisions of the Promotion of Access to Information Act and the Protection of Personal Information Act, request access during office hours.

18. Term of office

- (1) Members contemplated in section 13(a) are—
- (a) appointed for a term of five years or such lesser term as the MEC may determine, or, if subsection (2) applies, for a term determined in terms of that subsection;
 - (b) eligible for reappointment for one additional term not exceeding five years after completion of a term contemplated in paragraph (a), subject to the provisions of sections 14 and 15; and
 - (c) after a break of at least three years after an additional term contemplated in paragraph (b) has ended, again eligible for appointment in terms of paragraph (a), subject to the provisions of sections 14 and 15, and if so appointed, again eligible for reappointment in terms of paragraph (b).
- (2) Any appointment in terms of subsection (1) may, on good cause shown, be extended by the MEC for a specified period not exceeding one year.

19. Termination of membership, suspension from and vacating of office

- (1) The appointment of a member contemplated in section 13(a) is terminated when he or she—
- (a) is no longer eligible to be a member in terms of section 14(2);
 - (b) exceeds the member's term of office where his or her term is not extended by the MEC as provided for in section 18(2);
 - (c) resigns;
 - (d) is unable to serve due to death or incapacity; or
 - (e) is removed from office in terms of subsection (2).

- (2) The appointment of a member contemplated in section 13(a) may be terminated by the MEC if—
 - (a) he or she is absent from three or more consecutive meetings of the Board; or
 - (b) the MEC has made a finding that there is sufficient evidence of misconduct, dishonesty, incapacity or incompetence in respect of such member, subject to compliance with due process: Provided that the MEC may suspend a member under investigation without remuneration, subject to compliance with due process.
- (3) A member contemplated in section 13(a) may resign by giving at least 20 business days' written notice to the Chairperson and the MEC: Provided that the MEC may, in his or her discretion, waive the notice period.
- (4) When a member ceases to be a member, he or she may no longer represent the Board in any committee or any other body of the Board.

20. Filling of vacancies

Whenever a vacancy occurs on the Board, the MEC must, within a period not exceeding six months, appoint a person to fill such vacancy for the unexpired portion of the term of office of the member in whose place such person is appointed, in accordance with the provisions of section 13(a)(i) or section 15, as the case may be.

21. Conditions of appointment and remuneration

- (1) In this section "member" includes any—
 - (a) member contemplated in section 13; and
 - (b) member of a committee who is not a member of the Board, as contemplated in section 25.
- (2) The MEC must determine the conditions of appointment of members.
- (3)
 - (a) Subject to subsections (3)(b) and (4)(a), a member may be paid from the funds of the Agency such remuneration and allowances as may be determined by the MEC in consultation with the Member of the Executive Council responsible for finance in the Province.
 - (b) A member who receives remuneration, allowances or other benefits by virtue of his or her office, position, post or employment in—
 - (i) the National Government;
 - (ii) a provincial government;
 - (iii) a municipality;
 - (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
 - (v) a public entity, a national government business enterprise or a provincial government business enterprise as defined in section 1 of the Public Finance Management Act,and who continues to receive such remuneration, allowances or other benefits while serving as a member as contemplated in subsection (1), may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been in were it not for such office, position, post or employment.
- (c) Different remuneration and allowances may be determined for the following categories of members—
 - (i) the Chairperson;

- (ii) the Deputy Chairperson;
- (iii) other members of the Board;
- (iv) the Chairperson of a committee;
- (v) members of committees; and
- (vi) members of committees who are not members of the Board:

Provided that a member contemplated in section 13(a)(i) and (c) may only be reimbursed for expenses as contemplated in subsection (4)(a).

- (4) (a) A member may, in respect of his or her functions as such a 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 or a committee or an official function or event attended in his or her capacity as a member: Provided that a member contemplated in section 13(c) must receive such reimbursement from the funds of the Department.
 - (b) The Member of the Executive Council responsible for finance in the Province must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).
- (5) Members are appointed part-time and in a non-executive capacity.

22. Absence of functional Board

- (1) If, in the opinion of the MEC, the Board does not exercise its powers, perform its functions or carry out its duties as set out in this Act, the Public Finance Management Act, any other relevant law, or in accordance with the principles of good corporate governance, the MEC may, after giving the Board the opportunity to submit written representations, declare the Board dysfunctional by notice in the *Gazette*.
- (2) If the Board has been declared dysfunctional in terms of subsection (1), or in the event that the Board is no longer properly constituted in accordance with the provisions of section 13, the—
 - (a) powers, functions and duties of the accounting authority temporarily vest in the Chief Executive Officer in accordance with the provisions of section 49(2)(b) of the Public Finance Management Act; and
 - (b) MEC must, as soon as reasonably possible, but in any event within a period not exceeding three months, take all necessary steps to ensure that the Agency is governed by a functional Board.

23. Meetings of Board

- (1) The Chairperson decides where and when the Board meets: Provided that the—
 - (a) first meeting of the Board must be held at a place and date determined by the MEC;
 - (b) Board must meet at least quarterly;
 - (c) MEC may, in writing, direct the Board to meet, and may direct the place and date of the meeting; and
 - (d) majority of the members contemplated in section 13(a) may request the Chairperson in writing to convene a meeting at a place and date as set out in the request, in which event the Chairperson must call such a meeting of the Board.

- (2) The Chairperson, or in his or her absence, the Deputy Chairperson, presides at meetings of the Board: Provided that if both the Chairperson and Deputy Chairperson are absent from a part of a meeting, the members present must elect another member to preside at that part of the meeting.
- (3) The Board may invite any staff member or any other person to attend any of its meetings where it is deemed necessary or appropriate: Provided that any such staff member or other person—
 - (a) must comply with section 17; and
 - (b) may not participate in any decision or vote at such a meeting.
- (4)
 - (a) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.
 - (b) Any meeting of the Board convened for the purpose of considering representations or objections in relation to any matter concerning the tourism sector and audio-visual industry, must be accessible to the public.
 - (c) The Chairperson may, in his or her discretion, direct that any person whose presence is not desirable at a meeting contemplated in paragraph (a) or (b) may not attend the meeting or must leave the meeting.
 - (d) Deliberations with a view to making decisions and to voting thereon in respect of any matter at a meeting, must take place behind closed doors.
 - (5) The Board may determine its own procedures subject to the other provisions of this Act.

24. Quorum and decisions

- (1) A majority of the members contemplated in section 13(a) constitutes a quorum for a meeting of the Board.
- (2) A matter before the Board is decided by the votes of a majority of the members present at the meeting: Provided that only a member contemplated in section 13(a) has the right to vote at a meeting.
- (3) If, on any matter before the Board, there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to his or her vote as a member.
- (4) No decision of the Board is invalid merely by reason of a vacancy in the Board, subject to the provisions of subsections (1) and (2).

25. Committees

- (1) The Board—
 - (a) must establish an audit committee;
 - (b) may establish one or more other committees to assist it in the exercise of its powers, the performance of its functions, and the carrying out of its duties;
 - (c) must, for each committee, appoint a Chairperson and other members;
 - (d) may remove a member of a committee from office at any time on good cause shown; and
 - (e) may dissolve a committee at any time.
- (2) When appointing members to the audit committee, the Board must—
 - (a) appoint as Chairperson of the audit committee—
 - (i) a person who is a member as contemplated in section 13(a)(ii); or
 - (ii) a person who is not a member of the Board;

- (b) include persons who are not members of the Board; and
 - (c) ensure compliance with sections 51(1)(a)(ii) and 76(4)(d) of the Public Finance Management Act.
- (3) When appointing members to any committee contemplated in subsection (1)(b), the Board may include members who are not members of the Board.
- (4) A member of a committee who is not a member of the Board—
 - (a) must comply with section 17; and
 - (b) may, except in the case of a member of the audit committee, not participate in any decision of, or vote in, such a committee.
- (5) A committee may make recommendations to the Board for discussion, amendment, rejection or adoption by the Board.
- (6) The provisions of section 21 apply, with the necessary changes, to the conditions of appointment of members of committees.
- (7) A staff member of the Agency appointed to a committee, or invited by a committee to attend a meeting—
 - (a) must comply with section 17(2) and (4): Provided that, in respect of a staff member invited to attend a meeting, section 17(7)(b) does not apply;
 - (b) may not participate in any decision of, or vote in, such a committee; and
 - (c) serves on the committee, or attends a meeting of the committee, subject to the terms and conditions of his or her employment.

26. Minutes of meetings

- (1) The Board must ensure that minutes of every meeting of the Board and its committees are compiled and circulated to all members of the Board or such committee, as the case may be, within a period not exceeding ten business days after such meeting.
- (2) All minutes of meetings referred to in subsection (1) must be—
 - (a) tabled at the next meeting of the Board or committee, as the case may be, for adoption and are, once adopted and signed by the Chairperson of the Board or a committee, deemed to be a correct record of the meeting and constitute *prima facie* evidence of the decisions taken by the Board or committee at such meeting; and
 - (b) listed in a register and kept in hard copy and electronic format once adopted and signed.
- (3) The minutes of all meetings of the Board and its committees are public documents to which members of the public may, subject to the provisions of the Promotion of Access to Information Act and the Protection of Personal Information Act, request access during office hours.

27. Consultation and assistance to Board

- (1) The Board may, whenever necessary, appoint or call to its assistance any person, organisation or institution for purposes of assisting or advising the Board on any matter pertaining to the exercise of its powers, the performance of its functions and the carrying out of its duties in terms of section 10 of this Act.
- (2) The Board must, on appointing a person or entity as contemplated in subsection (1)—
 - (a) comply with the supply chain management system as contemplated in sections 51(1)(a)(iii) and 76 of the Public Finance Management Act; and

- (b) conclude a written agreement with such person or entity concerned, which must include a description of the service to be rendered by the person or entity and the date by which he or she must furnish the Board with a report and recommendations in regard thereto.
- (3) The terms, conditions, remuneration and allowances pertaining to the appointment of a person or entity in terms of this section must be paid out of funds of the Agency as may be determined by it and must be included in the written agreement contemplated in subsection (2).
- (4) A person or entity so appointed or called upon may not participate in any decision of, or vote at, a meeting of the Board or a committee.

28. Delegation by Board

- (1) When necessary for the proper performance of its functions, the Board may delegate any of its powers, functions or duties, excluding those mentioned in subsection (2), to—
 - (a) a member contemplated in section 13(a);
 - (b) a committee established in terms of section 25; or
 - (c) the Chief Executive Officer:

Provided that every delegation must comply with the provisions of section 50(2) and (3).

- (2) The Board may not delegate the following powers, functions and duties:
 - (a) the appointment or reappointment of the Chief Executive Officer and any determination of the Chief Executive Officer's terms and conditions of employment as contemplated in section 36;
 - (b) the determination of the employment policy, financial limits and general terms and conditions of employment for staff members as contemplated in section 40(1) and (3)(a);
 - (c) the financial management responsibilities assigned to the Board in terms of sections 29, 30, 31, 32, and 34; and
 - (d) the approval of the budget as contemplated in section 31(1)(b)(ii).

Chapter 5 Funding, financial management and reporting

29. Funds of Agency

- (1) The funds of the Agency consist of—
 - (a) money appropriated to it by the Provincial Legislature;
 - (b) any amounts payable to the Agency in terms of this Act; and
 - (c) money 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) members;
 - (ii) members of committees;
 - (iii) the Chief Executive Officer;
 - (iv) staff members; and

- (v) persons and entities as contemplated in section 27; and
- (b) to cover the costs of—
 - (i) the day-to-day operation and administration of the Agency, the Board and committees;
 - (ii) the management of the Agency; and
 - (iii) the exercise of the powers, performance of the functions and carrying out of the duties of the Agency in terms of this Act.
- (3) The Chief Executive Officer must, subject to the provisions of the Public Finance Management Act and 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 funds received in terms of subsection (1).
- (4) With effect from the date when this Act comes into operation, any bank accounts or funds operated, or investments held, by the predecessors-in-title to the Agency referred to in section 5 are deemed to be the bank accounts, funds or investments of the Agency.
- (5) The Agency may, subject to the provisions of the Public Finance Management Act and any investment or other policy prescribed in terms thereof, invest monies deposited into its account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

30. Financial accountability and corporate governance

The Board must ensure that the Agency, as a provincial public entity, complies with the provisions of the Public Finance Management Act and sound corporate governance principles and practice.

31. Financial management

- (1) The Board must ensure that the Agency—
 - (a) keeps full, proper and up-to-date books of account and all the necessary records in relation thereto; and
 - (b) prepares and submits the following to the Board for its approval and subsequent submission to the relevant authorities as contemplated in the Public Finance Management Act and other legislative and policy prescripts:
 - (i) strategic plans;
 - (ii) annual budgets;
 - (iii) audited financial statements;
 - (iv) annual performance plans;
 - (v) corporate plans;
 - (vi) annual and other reports;
 - (vii) returns;
 - (viii) notices; and
 - (ix) any other documentation or information that may be required.

- (2) The Chief Executive Officer must submit to the Board for approval—
 - (a) an annual performance plan for the Agency for the next financial year, containing measurable objectives and other information reasonably required by the Board; and
 - (b) a statement of the estimated income and expenditure of the Agency in respect of the following three financial years,
at least six months before the beginning of each financial year.
- (3) The Chief Executive Officer must, on a quarterly basis, submit to the Board up-to-date income and expenditure statements with projected expenditure per programme for that financial year.
- (4) In any financial year, the Chief Executive Officer must submit to the Board for approval every adjusted or supplementary statement 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 prior approval of the Board, establish surplus and reserve funds and deposit into them such amounts as the Board approves: Provided that such deposits must be disclosed to the Provincial Treasury and the Auditor-General within one month of the date of a deposit being made.

32. Audit, reporting and annual report

- (1) The Auditor-General must audit the financial statements of the Agency.
- (2)
 - (a) The Board must, within a period of five months after the end of the financial year, submit an annual report on the activities of the Agency to—
 - (i) Provincial Treasury; and
 - (ii) through the Head of Department, to the MEC.
 - (b) The MEC must, within one month of receiving the annual report from the Head of Department as contemplated in subsection 2(a)(ii), table the annual report in the Provincial Legislature.
- (3) The annual report must—
 - (a) include financial statements as defined in section 1 of the Public Finance Management Act;
 - (b) state the extent to which the Agency has achieved or advanced its objectives referred to in section 8 and the measurable objectives as set out in its annual performance plan during the financial year concerned; and
 - (c) contain relevant information on—
 - (i) the efficient, effective and economical application and use of the Agency's funds and resources; and
 - (ii) planned indicators and actual performance indicators as set out in its annual performance plan.
- (4) Within five months after the annual report has been tabled, a delegation consisting of the Chairperson, the Chief Executive Officer and at least two other members must brief the Portfolio Committee on the annual report.

33. Financial year

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

34. Immovable property

The Agency may, in terms of a policy and procedure determined by the Board and with the written approval of the MEC, acquire, hold or dispose of any immovable property in the course of its business.

35. Legal proceedings

The Agency is an organ of state as contemplated in paragraph (c) of the definition thereof in section 1 of the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002), and any legal proceedings against the Agency must be instituted in accordance with that Act.

Chapter 6 Chief Executive Officer and other staff

36. Appointment of Chief Executive Officer

- (1) The Board, in consultation with the MEC, must appoint a fit and proper, suitably qualified, skilled and experienced person as the Chief Executive Officer of the Agency.
- (2) A person contemplated in subsection (1) must, prior to his or her appointment, submit to the Board a sworn declaration specifying all disciplinary enquiries and proceedings instituted against him or her, whether completed or not, during all previous employment.
- (3) The Chief Executive Officer—
 - (a) is appointed for a term not exceeding seven years; and
 - (b) may be reappointed by the Board in consultation with the MEC for such further periods, each of which may not exceed five years, as may be deemed appropriate.
- (4) The Chief Executive Officer is employed on such terms and conditions of employment as the Board may determine in consultation with the MEC, after he or she has consulted the Member of the Executive Council responsible for finance in the Province.
- (5)
 - (a) The appointment of the Chief Executive Officer is subject to the conclusion of a written annual performance agreement entered into between the Board and the Chief Executive Officer.
 - (b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.
- (6) For purposes of the submission of a sworn declaration of direct and indirect interests, the provisions of section 40(3)(c) apply, with the necessary changes, to the Chief Executive Officer: Provided that the Chief Executive Officer must declare his or her interests to the Board.
- (7) The Chairperson of the Board must—
 - (a) if the Chief Executive Officer is absent or unable to perform his or her functions for any reason, appoint another suitable staff member as acting Chief Executive Officer: Provided that any such appointment may not exceed a period of three months; and
 - (b) if the position of Chief Executive Officer is vacant, appoint another staff member as acting Chief Executive Officer in consultation with the Board and the MEC: Provided that any such acting appointment may not exceed a period of six months.

- (8) An acting Chief Executive Officer—
 - (a) has all the powers, functions and duties of the Chief Executive Officer; and
 - (b) is employed subject to such terms and conditions of employment as determined in accordance with subsection (4).

37. Resignation, disqualification and removal of Chief Executive Officer

- (1) The Chief Executive Officer vacates office—
 - (a) in the case of resignation, when the resignation takes effect;
 - (b) when he or she has become disqualified to be director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
 - (c) upon having been removed from office in terms of subsection (2).
- (2) The Board may, in consultation with the MEC, terminate the employment of the Chief Executive Officer subject to applicable law and due process.

38. Powers, functions and duties of Chief Executive Officer

- (1) The Chief Executive Officer—
 - (a) is accountable to the Board for the exercise of his or her powers, the performance of his or her functions and the carrying out of his or her duties in terms of this Act, and must report to the Board on the management and activities of the Agency at such frequency and in such manner as the Board may determine; and
 - (b) must exercise the powers, perform the functions and carry out the duties as the Board may delegate to him or her.
- (2) The Chief Executive Officer is responsible for—
 - (a) the overall management of the Agency in order to achieve the objectives of this Act;
 - (b) the appointment of staff in accordance with the provisions of section 40;
 - (c) the management of staff, including the maintenance of discipline over staff;
 - (d) the determination, in consultation with the Board, of a code of conduct, applicable to the Chief Executive Officer and all other staff, that is justiciable for purposes of disciplinary proceedings, to ensure—
 - (i) compliance with this Act and any other applicable law;
 - (ii) the efficient, effective and economical application and 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 Board and the Agency; and
 - (vi) transparent, professional, honest, impartial, fair, ethical and equitable service delivery;
 - (e) the keeping and maintenance of the register of interests declared by staff members as contemplated in section 40(3)(c);
 - (f) ensuring that the Agency complies with the provisions of this Act, the Public Finance Management Act, and any other applicable legislative and policy prescripts; and

- (g) exercising other powers, performing other functions and carrying out other duties as contemplated in this Act.
- (3) When necessary for the proper performance of his or her functions, the Chief Executive Officer may delegate any of his or her powers, functions or duties to a staff member: Provided that—
- (a) the Board may determine that a specific power, function or duty may not be delegated by the Chief Executive Officer; and
 - (b) every delegation must comply with the provisions of section 50(2) and (3).

39. Transfer of existing staff to Agency

- (1) All persons employed by the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority are, from the commencement date of this Act and with due regard to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), deemed to be employed by the Agency—
- (a) at the same remuneration and salary scale;
 - (b) with the same benefits and privileges; and
 - (c) on the same terms and conditions of employment,
- as those which governed such person's previous employment with the KwaZulu-Natal Film Commission or the KwaZulu-Natal Tourism Authority, as the case may be: Provided that—
- (i) no person contemplated in this subsection may be dismissed on grounds of operational requirements flowing from the disestablishment of the KwaZulu-Natal Film Commission or the KwaZulu-Natal Tourism Authority; and
 - (ii) the Board may effect reasonable changes to work practices for the purpose of operational and administrative efficiency and uniformity.
- (2) When a person is transferred in terms of subsection (1)—
- (a) no change of employer is deemed to have taken place for the purpose of the Income Tax Act, 1962 (Act No. 58 of 1962);
 - (b) he or she retains all vacation leave, which accrued to his or her credit up to the date immediately before the date of transfer; and
 - (c) any inquiry instituted or intended to be instituted in respect of alleged incapacity of, or misconduct committed by, such person before the date of transfer, and any grievance instituted by such person, must be disposed of or instituted by the Agency, and the Agency must finalise such matters in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

40. Appointment of staff

- (1) The Chief Executive Officer must, subject to the provisions of sections 39 and 40(3)(a)—
- (a) submit to the Board for its approval the staff establishment necessary to enable the Agency to perform its functions, exercise its powers and carry out its duties; and
 - (b) determine specific terms and conditions of employment for individual staff members of the Agency.
- (2) The Chief Executive Officer may only appoint persons to funded posts on the staff establishment and in accordance with applicable legislative and policy provisions.

- (3) Staff members of the Agency—
- (a) are employed subject to the—
 - (i) general terms and conditions of employment as determined by the Board;
 - (ii) specific terms and conditions of employment for individual staff members as determined by the Chief Executive Officer;
 - (iii) applicable policies determined by the Board;
 - (iv) code of conduct provided for in section 38(2)(d); and
 - (v) financial limits set by the Board;
 - (b) must submit a sworn declaration, as part of their application, specifying all disciplinary enquiries and proceedings instituted against them, whether completed or not, during all previous employment;
 - (c) must submit a sworn declaration of their direct and indirect interests to the Chief Executive Officer, who must keep an updated register of such interests: Provided that the provisions of section 17(3) apply, with the necessary changes, to the declaration of direct and indirect interests;
 - (d) must carry out their duties under the supervision of the Chief Executive Officer; and
 - (e) may, with the written consent of such staff member and by written agreement between the Chief Executive Officer and such organ of state and in accordance with the applicable legislative and policy prescripts, be seconded or transferred to another organ of state.
- (4) (a) A person in the service of another organ of state may, with the written consent of such person and by written agreement between the Chief Executive Officer and such organ of state and in accordance with the applicable legislative and policy prescripts, be seconded or transferred to the Agency.
- (b) Persons seconded or transferred to the Agency carry out their duties under the supervision of the Chief Executive Officer.

Chapter 7 Provincial government

41. Provincial Tourism and Audio-visual Policy

- (1) The MEC must, within a period not exceeding six months after the commencement of this Act, and after consultation with—
- (a) the Board;
 - (b) the Provincial Tourism and Audio-visual Committee; and
 - (c) municipalities,
- develop and publish by notice in the *Gazette* a Provincial Tourism and Audio-visual Policy.
- (2) The Policy contemplated in subsection (1) must comply with the national and provincial policies and legislative frameworks relating to tourism and audio-visual matters.
- (3) Members of the Executive Council, whose portfolios may affect the tourism sector and audio-visual industry, must, for the purpose of ensuring coherence of the Policy contemplated in subsection (1) and legislative framework, obtain and consider comments from the MEC in the development of all policies and legislation which may impact on the tourism sector and audio-visual industry in the Province.

- (4)
 - (a) The MEC may, by notice in the *Gazette*, issue policy directives to codify and implement the Policy contemplated in subsection (1).
 - (b) Prior to the publication of a notice referred to in paragraph (a), the MEC must table the proposed policy directives with the Board and with the Provincial Tourism and Audio-visual Committee contemplated in section 45.
 - (c) If the Agency or the Provincial Tourism and Audio-visual Committee submits written comments on the proposed policy directives, the MEC must, within a period not exceeding 15 business days, consider and respond in writing to such comments.

42. Municipal Tourism and Audio-visual Framework Policy

- (1) The MEC must, within a period not exceeding six months after the commencement of this Act, and after consultation with—
 - (a) the Board;
 - (b) the Provincial Tourism and Audio-visual Committee; and
 - (c) municipalities,develop and publish by notice in the *Gazette* a Provincial Municipal Tourism and Audio-visual Framework Policy.
- (2) The Framework Policy contemplated in subsection (1) must comply with the national and provincial policies and legislative frameworks relating to tourism and audio-visual matters.

Chapter 8 Municipalities

43. Municipal Tourism and Audio-visual Policies

- (1) A municipality must develop and implement a Municipal Tourism and Audio-visual Policy.
- (2) A policy contemplated in subsection (1)—
 - (a) must comply with the national and provincial policies and legislative frameworks relating to tourism and audio-visual matters; and
 - (b) may not be prejudicial to the interests of the Province or another municipality.
- (3) A municipality must implement the Municipal Tourism and Audio-visual Framework Policy contemplated in section 42 until such time as the municipality has adopted a Municipal Tourism and Audio-visual Policy contemplated in subsection (1).

44. Functions of municipalities

- (1) A municipality is responsible for local tourism and audio-visual matters within its area of jurisdiction.
- (2) Municipal tourism and audio-visual functions include, but are not limited to, the following:
 - (a) monitoring local tourism and audio-visual operators and establishments for adherence to provincial policies and legislation;
 - (b) promoting, marketing and developing tourism and audio-visual activities within the municipal jurisdictional area;
 - (c) aligning municipal tourism and audio-visual marketing activities with provincial tourism and audio-visual marketing initiatives;

- (d) facilitating participation of local communities in the tourism sector and audio-visual industry;
 - (e) securing the equitable distribution of municipal tourism and audio-visual resources within the municipal jurisdictional area;
 - (f) implementing programmes and adopting measures to transform the local tourism sector and audio-visual industry, including granting preference to designated groups and small, medium and micro-enterprises;
 - (g) implementing provincial tourism and audio-visual policies in conjunction with the Agency;
 - (h) developing and adopting by-laws that promote and support the tourism sector and audio-visual industry; and
 - (i) performing any other function specified in national and provincial legislation.
- (3) Municipalities must comply with the planning and reporting requirements specified in national and provincial tourism and audio-visual legislation.

Chapter 9

Cooperative government

45. Establishment of Provincial Tourism and Audio-visual Committee

- (1) The MEC must, within a period not exceeding three months after the commencement of this Act, establish a Provincial Tourism and Audio-visual Committee by notice in the *Gazette*.
- (2) The Provincial Tourism and Audio-visual Committee consists of members as determined by the MEC from time to time, by notice in the *Gazette*, and is supported by a technical structure established by the Agency in consultation with the Provincial Tourism and Audio-visual Committee.

46. Responsibilities of Provincial Tourism and Audio-visual Committee

The Provincial Tourism and Audio-visual Committee must—

- (a) ensure the coordination of tourism and audio-visual activities in the Province;
- (b) facilitate interaction between the MEC and key role players in the tourism sector and audio-visual industry;
- (c) coordinate tourism and audio-visual planning and implementation at national, provincial and local government levels with the involvement of the private sector; and
- (d) deliberate on representativeness and transformation in the tourism sector and audio-visual industry.

47. Meetings of Provincial Tourism and Audio-visual Committee

- (1) The MEC must convene meetings of the Provincial Tourism and Audio-visual Committee.
- (2) The Provincial Tourism and Audio-visual Committee must meet quarterly: Provided that the MEC may call additional meetings from time to time when necessary.
- (3) The MEC, or a person nominated by him or her, chairs the meeting contemplated in subsection (1).

48. Relationship between Agency, MEC, Provincial Tourism and Audio-visual Committee, government departments, municipalities, public entities and other stakeholders

- (1) The Agency may establish formal cooperation agreements with departments and public entities whose activities have an impact on the development, promotion and marketing of the tourism sector and audio-visual industry in the Province.
- (2) The Agency and the Provincial Tourism and Audio-visual Committee must cooperate with each other to develop, promote and market the tourism sector and audio-visual industry.

Chapter 10

Responsibilities of tourism operators, audio-visual content creators, audio-visual activity operators, tourism and audio-visual establishments and other tourism and audio-visual stakeholders

49. Responsibilities of tourism operators, audio-visual content creators, audio-visual activity operators, tourism and audio-visual establishments and other tourism and audio-visual stakeholders

- (1) Every public or private sector tourism operator, professional audio-visual content creator, audio-visual activity operator, tourism and audio-visual establishment and other tourism and audio-visual stakeholder must comply with—
 - (a) national and provincial legislation and policies regulating the conditions for and standards of its operations;
 - (b) the Provincial Framework Tourism and Audio-visual Policy contemplated in section 42; and
 - (c) provincial tourism and audio-visual policy directives issued by the MEC, as contemplated in section 41(4)(a): Provided that such directives may not infringe on the rights of private sector tourism operators, audio-visual content creators, audio-visual activity operators, tourism and audio-visual establishments and other tourism and audio-visual stakeholders to engage in economic activity.
- (2) A public or private sector tourism operator, audio-visual content creator, audio-visual activity operator, tourism and audio-visual establishment and other tourism and audio-visual stakeholder may not conduct its activities in a manner prejudicial to the tourism sector and audio-visual industry in the Province.

Chapter 11

General provisions

50. Delegations

- (1) The MEC may delegate to the Head of Department—
 - (a) any power or function conferred on the MEC by this Act, except the power or function to—
 - (i) publish the Schedule contemplated in section 59(3);
 - (ii) publish notices in terms of section 11 (3)(a);
 - (iii) issue directives in terms of section 11(3)(b);
 - (iv) make regulations and publish notices in terms of section 57; and
 - (v) amend, substitute or repeal a Schedule; and

- (b) any duty imposed on the MEC by this Act, except a duty regarding the appointment and removal of members as contemplated in section 13(a) and (c) and section 19 respectively.
- (2) All delegations in terms of this Act—
- (a) must be in writing;
 - (b) are subject to such limitations, conditions and directions as the delegating person may impose;
 - (c) do not divest a delegating person of the responsibility and accountability concerning the exercise of the delegated power, the performance of the delegated function or the carrying out of the delegated duty;
 - (d) do not prevent the exercise of the delegated power, the performance of the delegated function or the carrying out of the delegated duty by the delegating person; and
 - (e) must be recorded in the register contemplated in section 51.
- (3) The Board or the Chief Executive Officer, as the case may be, may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this Act, subject to any rights that may have accrued to a person or an entity as a result of such decision.

51. Register of delegations

- (1) The Chief Executive Officer must compile and maintain an updated register of all delegations made in accordance with this Act.
- (2) The register of delegations contemplated in this item must—
- (a) be organised by reference to the functional domain concerned; and
 - (b) correspond with the Register of Delegations form in Schedule 2.
- (3) The register of delegations must be updated upon each—
- (a) new delegation;
 - (b) review or amendment to an existing delegation; and
 - (c) withdrawal of a delegation.
- (4) The register contemplated in subsection (1) is a public document to which members of the public may, subject to the provisions of the Promotion of Access to Information Act and the Protection of Personal Information Act, request access during office hours.

52. Transparency and access to information

The Agency must comply with the constitutional and national legislative framework that promotes transparency and access to information, including the Promotion of Access to Information Act and the Protection of Personal Information Act.

53. Just administrative action

Any decision taken in terms of this Act must comply with the constitutional, national legislative and common law framework relating to just administrative action, including the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

54. Monitoring, evaluation, assessment and reporting

- (1) The MEC must, within six months after the commencement date of this Act—
 - (a) taking into account national norms and standards, in consultation with the Board, develop a framework—
 - (i) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of the Agency; and
 - (ii) establishing the necessary mechanisms, processes, procedures and indicators, to monitor, evaluate, assess, determine and report on the performance and effectiveness of the Agency; and
 - (b) publish the framework contemplated in paragraph (a) by notice in the *Gazette*.
- (2) The Agency must comply with the framework contemplated in subsection (1).
- (3) The Board must ensure that the performance evaluations of the Board, its Chairperson, its members, its committees, the Chief Executive Officer and staff members result in continued improved performance and effectiveness.

55. Use of name of Agency

- (1) No person or entity may, without the prior written permission 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 or entity may falsely claim to be acting on behalf of the Agency.
- (3) Any person or entity who contravenes subsections (1) or (2) is guilty of an offence.

56. Offences, penalties and civil liability

- (1) A member, a member of a committee, a staff member, a person or entity appointed in terms of section 27 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 or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Agency.
- (2) Any person who—
 - (a) in respect of or in connection with anything done or offered by the Agency, bribes or attempts to bribe or corruptly influences or attempts to corruptly influence a member, a member of a committee, a staff member, a person or entity appointed in terms of section 27, or any other person employed or acting on behalf of the Agency;
 - (b) falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of or under direction of the Agency; or
 - (c) contravenes any provision of this Act which constitutes an offence,is guilty of an offence.
- (3) Where any offence committed in terms of this Act also constitutes an offence in terms of any other legislation, a person committing such offence may be prosecuted in terms of either this Act or the other legislation.
- (4) Any court convicting a person in respect of an offence committed in terms of subsection (1) or (2) may impose on such person—
 - (a) a fine or imprisonment for a period not exceeding five years;
 - (b) a fine and imprisonment for a period not exceeding five years; or

- (c) any sentence provided for in other legislation if the person concerned was prosecuted in terms of such other legislation as contemplated in subsection (3).
- (5) If specific legislation or the common law imposes civil liability on the Agency, the Board, a member, a member of a committee, a staff member, a person or entity appointed in terms of section 27 or any other person employed or acting on behalf of the Agency, the provisions of such legislation or the common law, as the case may be, apply.

57. Schedules, regulations and notices

The MEC may, after consultation with the Board and by notice in the *Gazette*—

- (a) publish a Schedule to this Act as contemplated in section 59(3);
- (b) make regulations regarding any administrative or procedural matter necessary to give effect to the provisions of this Act;
- (c) issue notices as required by this Act; and
- (d) amend, substitute or repeal Schedule 2, the Schedule contemplated in section 59(3), and any notice issued in terms of this Act.

58. Savings

- (1) Anything done before the commencement date of this Act under or in terms of a provision repealed or amended by this Act must, unless clearly inappropriate, be regarded to have been done under or in terms of the corresponding provision of this Act.
- (2) Any application, request, proceeding or similar matter pending before the former KwaZulu-Natal Film Commission or the KwaZulu-Natal Tourism Authority at the date contemplated in section 59(2) must be dealt with by the Agency in terms of the KwaZulu-Natal Film Commission Act, 2010 (Act No. 3 of 2010) or the KwaZulu-Natal Tourism Act, 1996 (Act No. 11 of 1996), as the case may be, as they were at the time of such application, request, proceeding or similar matter.
- (3) The Agency is substituted as—
 - (a) litigating party for the KwaZulu-Natal Film Commission and KwaZulu-Natal Tourism Authority in all litigation, labour disputes and mediation, as if the Agency had been the litigant at the time the cause of action or the dispute, as the case may be, arose; and
 - (b) contracting party for the KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority in all contracts, agreements, memoranda of understanding and similar documentation, as if the Agency had been the contracting party at the time of contracting.
- (4) Any registration, licence, permit, authorisation, approval, ruling or direction, which was valid immediately before the commencement of this Act, remains valid and effective on the same terms and conditions under which it was issued: Provided that the terms and conditions applicable to the registration, licence, permit, authorisation, approval, ruling or direction are not inconsistent with the provisions of this Act.
- (5) The repeal of any law in Schedule 1 does not affect any right, privilege, obligation or liability acquired or accrued or incurred in terms of the law so repealed, unless the contrary is provided for in terms of this Act.
- (6) Any reference to the KwaZulu-Natal Film Commission or the KwaZulu-Natal Tourism Authority in any law, unless clearly inappropriate, must be regarded to be a reference to the Agency.

59. Transitional measures

- (1) (a) With effect from the commencement date of this Act, the MEC must, within a period not exceeding ten business days—
- (i) select at least seven and no more than 11 members from the boards of the former KwaZulu-Natal Film Commission and the KwaZulu-Natal Tourism Authority to act as members of an interim Board, until such time as the Board is appointed in accordance with section 13; and
 - (ii) appoint an interim Chairperson and interim Deputy Chairperson from amongst the members selected to the interim Board contemplated in subparagraph (i).
- (b) The interim Board contemplated in subsection (1)(a)(i) must, within a period of five business days after its appointment, in consultation with the MEC, appoint an interim Chief Executive Officer, whose term of office terminates on the date of appointment of the Chief Executive Officer in accordance with section 36.
- (2) With the exception of subsection (1), the operation of this Act is suspended until such date as the interim Board is appointed as contemplated in subsection (1)(a)(i).
- (3) The MEC may, subject to the provisions of this section and sections 6, 39 and 58, by notice in the *Gazette* publish as a Schedule to this Act such transitional arrangements as are deemed necessary.

60. Repeal of laws

The laws specified in the first and second columns of Schedule 1 hereto are repealed to the extent indicated in the third column.

61. Short title and commencement

This Act is called the KwaZulu-Natal Tourism and Film Authority Act, 2024, and commences on the date of publication in the *Gazette*.

Schedule 1 (Section 60)**Repeal of laws**

No. and year of Act	Short title	Extent of repeal
Act No. 11 of 1996	KwaZulu-Natal Tourism Act, 1996	The whole
Act No. 5 of 1997	KwaZulu-Natal Tourism Amendment Act, 1997	The whole
Act No. 7 of 1998	KwaZulu-Natal Tourism Amendment Act, 1998	The whole
Act No. 2 of 2002	KwaZulu-Natal Tourism Authority Amendment Act, 2002	The whole

No. and year of Act	Short title	Extent of repeal
Act No. 3 of 2010	KwaZulu-Natal Film Commission Act, 2010	The whole

Schedule 2 (Sections 17(3), 36(6), 40(3)(c), 17(4)(a) and 51)

Forms

[Editorial note: The forms have not been reproduced.]