

KwaZulu-Natal, South Africa

KwaZulu-Natal Growth Fund Agency Act, 2024

Act 4 of 2024

Legislation as at 24 May 2024

FRBR URI: /akn/za-kzn/act/2024/4/eng@2024-05-24

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KwaZulu-Natal South Africa

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Act 4 of 2024

Published in Provincial Gazette 2689 on 24 May 2024

Assented to on 9 April 2024

Commenced on 24 May 2024

[This is the version of this document from 24 May 2024 and includes any amendments published up to 28 June 2024.]

(English text signed by the Premier)

ACT

To establish the KwaZulu-Natal Growth Fund Agency as a provincial public entity, responsible for the administration, control and management of investments from a dedicated project finance fund; to provide for its governing structures, powers, functions, finance and funding; to provide for the transfer of staff from The KZN Growth Fund Trust and the appointment of staff; to provide for transitional arrangements; and matters incidental thereto.

RECOGNISING THAT—

- (a) it is an objective of the Constitution to improve the quality of life of all citizens and free the potential of each person;
- (b) the Constitution provides that to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken;
- (c) to give effect to the aforementioned provisions of the Constitution, the Provincial Government established The KZN Growth Fund Trust as a dedicated project finance trust fund to support economic activities and promote black economic empowerment in the Province; and
- (d) the Provincial Government subsequently resolved to disestablish The KZN Growth Fund Trust and to create a provincial public entity to continue with the mandate of the Trust;

THE PROVINCIAL LEGISLATURE of the Province of KwaZulu-Natal therefore enacts the following:—

Chapter 1 Definitions and objectives

1. Definitions

- (1) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.
- (2) Any reference to “the Act” or “this Act” includes any subordinate legislation issued in terms of a provision of this Act.
- (3) 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.
- (4) In this Act, unless the context indicates otherwise—

“**Accounting Authority**” means the Board of the KwaZulu-Natal Growth Fund Agency provided for in Chapter 3;

“**Agency**” means the KwaZulu-Natal Growth Fund Agency established in terms of section 3;

“**Auditor-General**” means the Auditor-General of South Africa established in terms of the Constitution of the Republic of South Africa, 1996 and the Public Audit Act, 2004 (Act No. 25 of 2004);

“**beneficiary**” means the owner or owners of a “beneficiary project”;

“**beneficiary project**” means a viable and sustainable project, approved by the Board to receive investment funding from the Fund; and “beneficiary projects” has a corresponding meaning;

“**Board**” means the Board of the Agency provided for in Chapter 3;

“**capital amount**” means monies—

- (a) appropriated from time to time by the Provincial Legislature in terms of section 29(1)(a)(i);
- (b) raised or received through any lawful means in terms of section 29(1) (b) to (g); and
- (c) held in trust by the Trust, for the purpose of investing in beneficiary projects, on termination and winding-up as provided for in section 36(2),

and includes interest on the capital amount, but excludes any other form of funding of a non-capital nature appropriated for other specific purposes by the Provincial Legislature in terms of section 29(1)(a)(ii);

“**Chief Executive Officer**” means Chief Executive Officer of the Agency appointed in terms of section 25;

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

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

“**Department**” means the government department responsible for economic development in the Province;

“**Executive Council**” means the Executive Council of the Province of KwaZulu-Natal;

“**financial year**” means the period from 1 April in any year to 31 March of the following year;

“**Fund**” means the dedicated project finance fund, to be known as the Growth Fund, established in terms of section 4;

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

“**immediate family**” means a parent, sibling, spouse, child by blood, adoption or marriage; grandparent and grandchild;

“**investment**” means an investment in a beneficiary project from the capital amount available in the Fund, made by the Agency in accordance with the provisions of this Act;

“**MEC**” means the Member of the Executive Council responsible for economic development in the Province;

“**Member of the Executive Council responsible for finance**” means the Member of the Executive Council responsible for finance in the Province;

“**National Treasury**” means the National Treasury established in terms of section 5 of the Public Finance Management Act;

“**organ of state**” has the meaning assigned to it in section 239 of the Constitution;

“**person**” includes a natural or juristic person;

“**prescribed**” means prescribed by regulation in terms of this Act and “prescribe” has a corresponding meaning;

“**Promotion of Access to Information Act**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

“**Protection of Personal Information Act**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**Province**” means the Province of KwaZulu-Natal;

“**Provincial Government**” means the government of the Province;

“**Provincial Legislature**” means the Legislature of the Province;

“**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);

“**regulations**” means regulations promulgated in terms of section 35;

“**Remuneration of Public Office Bearers Act**” means the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998);

“**staff**” of the Agency includes persons appointed in terms of section 27(2) and seconded or transferred in terms of section 27(4);

“**the Trust**” means The KZN Growth Fund Trust established in terms of the Amended and Restated Deed of Trust for The KZN Growth Fund Trust (Master’s Reference No. IT 1437/2007/PMB), established in accordance with the provisions of the Trust Property Control Act;

“**Trust Deed**” means the Amended and Restated Deed of Trust for The KZN Growth Fund Trust (Master’s Reference No. IT 1437/2007/PMB); and

“**Trust Property Control Act**” means the Trust Property Control Act, 1988 (Act No. 57 of 1988).

2. Objectives of Act

The objectives of the Act are—

- (a) to establish the KwaZulu-Natal Growth Fund Agency as a provincial public entity, responsible for—
 - (i) creating an enabling environment in KwaZulu-Natal for inclusive economic growth through investment in sustainable projects in order to create employment and enhance social well-being; and
 - (ii) promoting black economic empowerment;
- (b) to establish a Growth Fund as a dedicated provincial project finance fund available for investment by the Agency pursuant to the objectives set out in subsection (a);
- (c) to provide for the administration, control and management of the Agency and the Fund; and
- (d) to create a regulatory framework for the implementation and enforcement of the provisions of this Act.

Chapter 2

KwaZulu-Natal Growth Fund Agency and Growth Fund

3. Establishment of KwaZulu-Natal Growth Fund Agency

- (1) A juristic person to be known as the KwaZulu-Natal Growth Fund Agency is hereby established as a provincial public entity as defined in the Public Finance Management Act.
- (2) The Agency is the successor-in-law in respect of all rights, duties and obligations of the Trust.

4. Establishment of Growth Fund

- (1) A dedicated provincial project finance fund, to be known as the Growth Fund, is hereby established.
- (2) The Fund must be administered, controlled and managed by the Agency as directed by the Board, subject to the provisions of this Act and the Public Finance Management Act.
- (3) Any capital amounts received by the Agency from time to time must—
 - (a) be deposited into a separate bank account registered in the name of the Fund in accordance with the provisions of section 7 of the Public Finance Management Act; and
 - (b) be used for the sole purpose of investing in beneficiary projects to give effect to the objectives of the Act set out in section 2(a).
- (4) Immediately upon termination and winding up of the Trust in terms of section 36(1), the capital amounts held in trust by the Trust—
 - (a) vest in the Agency in terms of section 36(2); and
 - (b) must be deposited into the bank account of the Fund referred to in subsection (3)(a).
- (5) Investments from the capital amount may only be made after such investment has been approved by the Board in accordance with the provisions of this Act.

5. Functions and powers of Agency

- (1) The Agency is responsible for the administration, control and management of the Fund and for making investments in beneficiary projects from the capital amount, and must—
 - (a) perform its functions and exercise its powers to achieve the objectives of the Act, subject to the—
 - (i) Constitution and the Public Finance Management Act; and
 - (ii) provisions of this Act and any other applicable legislative and policy provisions;
 - (b) open and operate its own bank accounts, subject to the provisions of this Act and section 7 of the Public Finance Management Act;
 - (c) where necessary for the performance of its functions, the exercise of its powers and the achievement of the objectives of the Act, appoint its own staff in accordance with the provisions of Chapter 4;
 - (d) utilise the capital amount to make investments in projects in accordance with an investment policy adopted by the Board, for the sole purpose of giving effect to the objectives of the Act as set out in section 2(a);
 - (e) take all necessary steps prior to making an investment to determine the viability and long-term sustainability of a proposed project;

- (f) once an investment is approved in principle by the Board but before making the investment, enter into an agreement with the beneficiary on the terms and conditions governing the investment as determined by the Board;
 - (g) monitor compliance with and enforce agreements entered into between the Agency and beneficiaries;
 - (h) take all steps necessary to ensure that beneficiary projects are managed and controlled in accordance with the law and the principles of good governance;
 - (i) subject to policies and guidelines adopted by the Board, provide ongoing support and mentorship to beneficiaries to ensure the sustainability of beneficiary projects;
 - (j) report quarterly to the MEC on the state of the beneficiary projects and the achievement of the objectives of the Act: Provided that the MEC may request additional reports from time to time; and
 - (k) establish and maintain an up-to-date official website with all information regarding its operations—
 - (i) required to be made public in terms of this Act or any other law, and
 - (ii) of relevance or interest to the public and its beneficiaries.
- (2) The Agency may, where necessary for the performance of its functions, the exercise of its powers and the achievement of the objectives of the Act—
- (a) procure, in accordance with applicable legal prescripts, the services of persons having technical or specialised knowledge of any matter related to the operations of the Agency or a beneficiary project, and determine the remuneration, including reimbursement for traveling, subsistence and other expenses of such persons;
 - (b) provide training, skills development and education to its own staff and beneficiaries on any matter related to its functions and powers;
 - (c) subject to the provisions of section 54(2) of the Public Finance Management Act—
 - (i) establish or participate in the establishment of companies;
 - (ii) participate in associations, joint ventures and partnerships; and
 - (iii) acquire or dispose of any interest in a company, partnership or other legal persons, unless exempted by the MEC in terms of section 54(4) of the Public Finance Management Act;
 - (d) enter into agreements with other organs of state and institutions;
 - (e) hire, let, acquire or dispose of any right in, or to, immovable property, in accordance with applicable legal prescripts and the prior written approval of the Board after consultation with the MEC;
 - (f) register immovable property and other assets in its name;
 - (g) raise or receive funds through any lawful means, including but not limited to—
 - (i) the receipt of additional funding from the Provincial Government to be utilised for specific purposes;
 - (ii) the acceptance of unconditional donations, bequests and sponsorships for the purpose of achieving the objectives of the Act; and
 - (iii) fees and charges levied for services rendered related to the performance of its functions and the exercise of its powers;

- (h) invest any of its funds not immediately required in the Fund;
 - (i) transfer, at the end of a financial year, into the Fund such funds as may remain from any funds raised by it in terms of subsection (g): Provided that such funds may only be spent to realise the objectives of this Act as set out in section 2(a);
 - (j) procure necessary goods and services, subject to its available budget and the applicable legal prescripts;
 - (k) donate or otherwise dispose of its obsolete or useless equipment, subject to policies determined by the Board for the disposal of such movable property;
 - (l) insure itself against—
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in respect of Board members, staff members or other persons contracted to them; and
 - (m) institute legal proceedings or defend any legal proceedings against it;
- (3) 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).

6. Supervisory functions and powers of MEC

- (1) The MEC must monitor the Agency and its governing Board in the performance of its functions and the exercise of its powers.
- (2) The MEC must annually enter into a Memorandum of Agreement with the governing Board of the Agency to regulate the relationship between the MEC and the Agency.
- (3) Unless provided for in any applicable legislative or other prescript, the MEC must determine fees and other charges that may be levied by the Agency in terms of the categories provided for in Schedule 2.

Chapter 3 Governing Board of Agency

7. Board

- (1) The Agency is governed by a Board, which directs the entity in the performance of its functions and the exercise of its powers in accordance with this Act, the Public Finance Management Act and the principles of good governance.
- (2) The Board is the accounting authority of the Agency in terms of section 49(2)(a) of the Public Finance Management Act.

8. Composition of Board

- (1) The Board consists of—
 - (a) not fewer than five and not more than seven members appointed by the MEC in terms of section 10; and
 - (b) the Chief Executive Officer, who is an *ex officio* member of the Board, but does not have the right to vote at meetings.

- (2) When appointing a member or members of the Board in terms of section 10, the MEC must ensure that the Board is collectively composed of persons with experience and a track record of adhering to the principles of good governance: Provided that the Board must include—
- (a) at least three persons with financial qualifications and experience in—
 - (i) investment finance;
 - (ii) equity and development finance; or
 - (iii) financial management;
 - (b) at least two persons with legal qualifications and experience in—
 - (i) corporate finance;
 - (ii) project finance; or
 - (iii) banking;
 - (c) at least one person with qualifications and experience in—
 - (i) engineering;
 - (ii) infrastructure development; or
 - (iii) quantity surveying; and
 - (d) at least one person with qualifications and experience in human resource management.

9. General requirements for Board members

- (1) Board members must—
- (a) be fit and proper persons;
 - (b) hold office in the best interest of the Agency and the Province;
 - (c) have appropriate knowledge, experience and skills as provided for in section 8(2); and
 - (d) be independent, impartial and fair.
- (2) A person is disqualified from becoming or remaining a Board member if that person—
- (a) is an office bearer as defined in the Remuneration of Public Office Bearers Act;
 - (b) is an official or employee in terms of the Public Service Act, 1994 (Proclamation No.103 of 1994);
 - (c) is an official or employee of a municipality established in terms of section 155(1) of the Constitution;
 - (d) is or becomes an unrehabilitated insolvent;
 - (e) is or has been declared by a competent court to be of unsound mind;
 - (f) 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;
 - (g) fails to disclose any other interest and the nature thereof in the manner required by this Act;
 - (h) is a person under curatorship;
 - (i) has at any time been removed from an office of trust on account of misconduct involving dishonesty, theft or fraud;

- (j) has been convicted of an offence—
 - (i) involving dishonesty, theft or fraud; or
 - (ii) not involving dishonesty, theft or fraud, and sentenced to more than three months imprisonment without the option of a fine: Provided that a disqualification in terms of this item ends five years after the sentence has been completed; or
- (k) has been removed from office in terms of section 17.

10. Appointment procedure for Board members

- (1) Whenever it is necessary to appoint a Board member or members, the MEC must—
 - (a) invite nominations for suitable persons to serve on the Board through advertisements in the *Gazette* and at least two Provincial newspapers, one in English and one in *isiZulu*, which must stipulate—
 - (i) the nomination procedure and the closing date by which nominations must be received;
 - (ii) the information, qualifications and experience required to be nominated; and
 - (iii) persons disqualified from being appointed as Board members in terms of section 9(2); and
 - (b) thereafter compile a list of the names of nominees and their nominators, setting out the required particulars of each individual nominee and his or her nominator.
- (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;
 - (c) contact details of the nominator;
 - (d) particulars of the relationship between the nominator and the nominee; and
 - (e) any other information that may be required.
- (3) A person who has been nominated to serve on the Board in terms of subsection (2) must, within ten days of being nominated, submit to the MEC his or her—
 - (a) signed acceptance of the nomination; and
 - (b) statement declaring that he or she is not disqualified from appointment in terms of this Act or any other applicable legislation.
- (4) Any failure by a nominee to comply with subsection (3)(a) and (b) disqualifies the nominee from being considered for the position of a Board member.
- (5) The MEC may appoint an independent external selection panel to review and evaluate all the nominations and thereafter to shortlist the names of suitable nominees and make recommendations to the MEC in that regard.
- (6) The MEC must make the appointments from the list of nominees referred to in subsection (1)(b).
- (7) When making the appointments the MEC must—
 - (a) comply with the provisions of section 8(1)(a);
 - (b) adhere to the collective composition of the Board as provided for in section 8(2);
 - (c) adhere to the general requirements for Board members as provided for in section 9;

- (d) consider gender and demographic representativity, as well as the conduct and track record of nominees in similar positions of trust; and
 - (e) notify the persons appointed to the Board of their appointment in writing, and the date upon which the appointment to the Board takes effect.
- (8) The MEC must, within a period not exceeding 60 days from the date of appointment of the Board—
- (a) inform the Executive Council and the portfolio committee of the Provincial Legislature responsible for economic development, in writing, of the names of the persons appointed to the Board; and
 - (b) cause the names of the persons so appointed to be published in the *Gazette* and at least two Provincial newspapers, one in English and one in *isiZulu*.
- (9) Where it is shown that any one or more Board 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.

11. Chairperson and Deputy-Chairperson of Board

- (1) The MEC must appoint a Chairperson and a Deputy-Chairperson from amongst the Board members.
- (2) The MEC may withdraw or vary such appointments, subject to compliance with due process.
- (3) The Deputy-Chairperson must exercise all the powers, functions and 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.
- (4) If both the Chairperson and Deputy Chairperson are absent, incapacitated, refuse or fail to undertake their duties, or if the MEC withdraws their appointments, the MEC must appoint another Board member as Acting Chairperson for a period not exceeding 60 days from the date of his or her appointment by the MEC.

12. Term of office and reappointment of Board members

- (1) Board members are —
 - (a) appointed for a term of five years or such lesser period as the MEC may determine, or, if section 18(2) applies, for a term determined in terms of that section;
 - (b) eligible for reappointment at the discretion of the MEC for one additional term not exceeding five years, subject to the provisions of section 9; and
 - (c) after a break of at least three years after an additional term contemplated in paragraph (b) has ended, and subject to section 10, again eligible for appointment in terms of paragraph (a) and, if so appointed, again eligible for reappointment in terms of paragraph (b).
- (2) Notwithstanding the provisions of subsection (1), the term of office of a Board member not eligible for reappointment may be extended by the MEC for a period not exceeding one year.

13. Terms and conditions of appointment of Board members

- (1) (a) The MEC must determine the conditions of appointment of Board members and must provide for the payment of remuneration and allowances determined by the MEC in consultation with the Member of the Executive Council responsible for finance;

- (b) a Board member who receives remuneration, allowances or other benefits as a full-time employee of—
 - (i) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
 - (ii) 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,
 - (iii) and who continues to receive remuneration, allowances or other benefits from such employment, may only receive allowances as a Board member to the extent required to place such member in the financial position he or she would have been in were it not for serving as a Board member; and
- (c) different remuneration and allowances may be determined for the following categories of Board members—
 - (i) the Chairperson;
 - (ii) the Deputy-Chairperson;
 - (iii) the Chairperson of a Committee of the Board; and
 - (iv) the other Board members.
- (2) (a) A Board member may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the attendance of a Board meeting, a meeting of a Board committee, or official function or event attended in his or her capacity as a Board member.
- (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 travelling expenses referred to in paragraph (a).
- (3) Any remuneration and allowances payable to Board members must be paid by the Agency.
- (4) Board members are appointed part-time and in a non-executive capacity.

14. Conduct of Board members

A Board member—

- (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; and
- (c) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Agency.

15. Declaration of financial or other interests by Board members

- (1) A Board member must, within ten days of being appointed and annually thereafter, submit a financial disclosure to the MEC in a format substantially compliant with Form 1 of Schedule 1.
- (2) Where a Board member acquires an interest in any company, or other business interests after submission of any financial disclosure provided for in subsection (1) and before the next disclosure is due, he or she must, within ten days of the date of the acquisition of such an interest, submit an additional written declaration to the MEC in a format substantially compliant with Form 1 of Schedule 1.
- (3) Any failure by a Board member to disclose any interests in terms of subsections (1) and (2) may result in the removal of the member, subject to compliance with the provisions of section 9(2).

- (4) The MEC must keep an updated register of the interests of Board members disclosed in terms of this section.

16. Termination of membership of Board members

- (1) A Board member's appointment is terminated when that person—
 - (a) is no longer eligible in terms of section 12 to be a member;
 - (b) exceeds the member's term of office where his or her term is not extended by the MEC as provided for in section 12(2);
 - (c) resigns;
 - (d) is unable to serve due to death or incapacity; or
 - (e) is removed from office in terms of section 17.
- (2) A Board member may resign by giving at least three months written notice to the MEC, but the MEC may accept a shorter period in a specific case.
- (3) Unless subsequently appointed to a committee in terms of section 23(2), when a Board member ceases to be a member of the Board, he or she may no longer represent the Board in any structure or committee: Provided that a Board member removed from office in terms of section 17 is not eligible for any further appointment.

17. Removal from office and suspension of Board members

- (1) The MEC may remove a Board member from office on the grounds of—
 - (a) misconduct, dishonesty, incapacity or incompetence;
 - (b) absence from three consecutive meetings of the Board without the prior permission of the Chairperson of the Board, except on good cause shown;
 - (c) insolvency; or
 - (d) conviction of a criminal offence without the option of a fine.
- (2) A Board member may be removed from office on the ground of misconduct, dishonesty, incapacity or incompetence only after a finding to that effect has been made by the MEC, subject to compliance with due process.
- (3) The MEC may suspend a Board member under investigation without remuneration, subject to compliance with due process.

18. Filling of vacancies on Board

- (1) Any vacancy on the Board contemplated in—
 - (a) section 10, in the case of an ordinary Board member; and
 - (b) section 11, in the case of the Chairperson or Deputy-Chairperson,
 - (c) must be filled within a period of 60 days.
- (2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of the vacating Board member or Chairperson or Deputy-Chairperson.

19. Absence of functional Board

In the absence of a functional Board, the powers, functions and duties of the accounting authority of the Agency vest in the Chief Executive Officer as provided for in section 49(2)(b) of the Public Finance Management Act: Provided that—

- (a) the MEC may designate another suitably qualified and experienced person to exercise the powers and perform the functions and duties of the accounting authority;
- (b) Provincial Treasury may, in exceptional circumstances, approve or instruct another functionary of a public entity to be the accounting authority of the Agency; and
- (c) the MEC must, as soon as reasonably possible, but in any event within a period not exceeding six months, take all necessary steps to ensure that the entity is governed by a functional Board.

20. Meetings of Board

- (1) The Chairperson of the Board decides where and when the Board meets: Provided that—
 - (a) the Board meets at least quarterly;
 - (b) the MEC may, in writing, direct the Board to meet, and may direct the place and time of the meeting; and
 - (c) the majority of the Board members in office at that time may request the Chairperson in writing to convene a meeting at a place and time set out in the request.
- (2) The Chairperson, or in his or her absence, the Deputy-Chairperson presides at meetings of the Board, but if they are both absent from a meeting, the Board members present must elect another member to preside at the meeting.
- (3) The Board may determine its own procedures subject to the other provisions of this Act.
- (4) The Board may, in its discretion—
 - (a) allow members of the public to attend any meeting of the Board; and
 - (b) invite any member of staff or any other person to attend any of its meetings where it is deemed necessary or appropriate.
- (5) A Board member must recuse himself or herself from a matter being considered or voted upon by the Board 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 determines that the interest disclosed is trivial or not material.
- (6) If, at any stage during the course of any proceedings before the Board it appears that a Board member present at that meeting has or may have an interest contemplated in subsection (5), such a member must forthwith disclose the nature of his or her interest and leave the meeting.
- (7) Any disclosure made in terms of subsection (5) or (6) must be recorded in the minutes of the meeting in question.
- (8) If it subsequently emerges that the Board took a decision on a matter in respect of which a Board member failed to disclose a material interest referred to in subsection (5) or (6), such decision by the Board must be reconsidered without the participation of the affected member as soon as reasonably possible after the Board 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 aside such decision.

- (9) For the purposes of this section “indirect interest” includes, but is not limited to, an interest held by any Board member’s—
 - (a) immediate family; or
 - (b) business partner, associate or employer, other than the State.
- (10) A Board member who contravenes or fails to comply with subsections (5) and (6) is guilty of misconduct, and such contravention or failure may constitute good reason for the removal of such member.
- (11) Any person may make an application, orally or in writing, for a Board member to recuse himself or herself where that person has reason to believe that the such member, his or her immediate family, or close associate has or could reasonably be expected to have a financial or other interest in the outcome of a decision of the Board: Provided that the person making such application must give clear reasons for his or her request.
- (12) An application referred to in subsection (11) must be—
 - (a) addressed to the Chairperson of the Board; or
 - (b) addressed to the Deputy-Chairperson of the Board if the application concerns the Chairperson of the Board,
 - (c) who must decide on the matter and report the decision to the Board.

21. Minutes of Board meetings

- (1) The Board must ensure that minutes of every meeting of the Board and its committees are compiled and circulated to all Board and committee members.
- (2) All minutes of meetings referred to in subsection (1) must be—
 - (a) tabled at the next Board or committee meeting 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 meetings; 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 any other applicable legislation, request access during office hours.

22. Quorum and decisions at Board meetings

- (1) A majority of the Board members appointed in terms of section 8(1) 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 Board members present at the meeting.
- (3) If, on any matter before the Board, there is an equality of votes, the Board 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).

23. Establishment of Board committees

- (1) The Board may establish no more than four committees to assist it in the exercise of its powers and performance of its functions, including but not limited to—
 - (a) an Audit and Risk Committee;
 - (b) an Investment and Project Oversight Committee; and
 - (c) a Human Resource and Ethics Committee.
- (2) When appointing members to a committee, the Board is not restricted to Board members: Provided that the majority of committee members must be Board members.
- (3) The Board—
 - (a) must determine the functions and terms of reference of a committee;
 - (b) must appoint the chairperson of a committee, who must be a Board member, and other members of the committee;
 - (c) may remove a committee member from office at any time on good cause shown;
 - (d) may determine the meeting procedures of a committee; and
 - (e) may dissolve a committee at any time.
- (4) Sections 13 and 15 apply, with the necessary changes, to the conditions of appointment of committee members.
- (5) Committees established by the Board do not have final decision-making powers on matters affecting the Agency and must—
 - (a) make recommendations to the Board for discussion, amendment, rejection or adoption; and
 - (b) regularly report to the Board on their work.
- (6) A staff member of the Agency appointed to a committee, or invited by a committee to attend a meeting—
 - (a) must attend and participate in, but may not vote at a meeting of that committee; and
 - (b) serves on the committee, or attends a meeting of the committee, subject to the terms and conditions of that person's employment.
- (7) Section 14 applies, with the necessary changes, to the conduct of committee members and staff of the Agency in attendance at committee meetings.

24. Delegation of powers and assignment of duties by Board

- (1) When necessary for the proper performance of its functions, the Board may delegate any of its powers or assign any of its duties, excluding those mentioned in subsection (2), to—
 - (a) a Board member;
 - (b) a committee established in terms of section 23; or
 - (c) an appropriate staff member of the Agency.
- (2) The Board may not delegate or assign the following powers and functions —
 - (a) the appointment or reappointment of the Chief Executive Officer and the determination of his or her conditions of service provided for in section 25;

- (b) the determination of employment policies, financial limits or terms and conditions on the employment of staff provided for in section 27;
 - (c) the fiduciary duties and general responsibilities of the Board as the accounting authority of the Agency; and
 - (d) the approval of the budget.
- (3) A delegation or assignment in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to such limitations, conditions and directions as the Board may impose;
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
 - (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Board.
- (4) All delegations and assignments in terms of subsection (1) must be maintained in an updated register.
- (5) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Chapter 4

Chief Executive Officer and staff of Agency

25. Chief Executive Officer

- (1) The Board, in consultation with the MEC, must appoint a suitably qualified, skilled and experienced person as the Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer—
 - (a) is appointed for a term not exceeding five years; and
 - (b) may, in consultation with the MEC, be reappointed by the Board, for additional terms not exceeding five years at a time.
- (3) 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.
- (4) The appointment of the Chief Executive Officer is subject to the conclusion of an annual written performance agreement between the Chief Executive Officer and the Board, which may be amended in writing and by agreement between the parties to the agreement.
- (5) The provisions of section 15, with the necessary changes, apply to the Chief Executive Officer: Provided that the Chief Executive Officer must make his or her declaration of interests to the Board in a format substantially compliant with Form 2 of Schedule 1.
- (6) 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 27(1) and (2);
 - (c) the management of staff members, including the maintenance of staff discipline;

- (d) the determination, in consultation with the Board, of a code of conduct applicable to the Chief Executive Officer and all other staff members, which is justiciable for purposes of disciplinary proceedings, to ensure—
 - (i) compliance with applicable legal and policy prescripts, including this Act;
 - (ii) the effective, efficient and economical use of funds and resources of the Agency;
 - (iii) the promotion and maintenance of a high standard of professional ethics and conduct;
 - (iv) the prevention of conflicts of interest;
 - (v) the protection of confidential information held by the Board; and
 - (vi) professional, honest, impartial, fair, ethical and equitable service delivery.
 - (e) the keeping and maintenance of the register of interests declared by staff members; and
 - (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.
- (7) The Chief Executive Officer—
- (a) is accountable to the Board for the exercise of his or her powers and the performance of his or her functions in terms of this Act, and must report to the Board on the activities, functions and management of the Agency at such frequency and in such manner as the Board may determine; and
 - (b) must perform such duties and exercise such powers as the Board may assign or delegate to him or her.
- (8) The Chairperson of the Board must—
- (a) appoint another suitable staff member as acting Chief Executive Officer if the Chief Executive Officer is absent or unable to perform his or her functions for any reason: Provided that any such appointment may not exceed a period of 60 days; 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 twelve calendar months.
- (9) An acting Chief Executive Officer—
- (a) has all the powers and duties of the Chief Executive Officer; and
 - (b) is employed subject to such terms and conditions of employment as the Chairperson of the Board may determine in accordance with subsection (3), subject to any limitations and conditions determined by the MEC.

26. Resignation and removal from office 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 a 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 in accordance with the applicable law and due process.

27. Employment of staff

- (1) The Chief Executive Officer, with the concurrence of and within the financial limits set by the Board, must—
 - (a) determine a staff establishment necessary to enable the Agency to perform its functions and exercise its powers; and
 - (b) determine the terms and conditions of service for employees of the Agency.
- (2) The Chief Executive Officer may only appoint persons to funded posts on the staff establishment and in accordance with the applicable legislative and policy provisions.
- (3) Employees of the Agency—
 - (a) are employed subject to—
 - (i) the applicable terms and conditions of service;
 - (ii) the applicable policies determined by the Board;
 - (iii) the code of conduct provided for in section 25(6)(d); and
 - (iv) the financial limits set by the Board.
 - (b) must perform their duties under the supervision of the Chief Executive Officer;
 - (c) must, in a format substantially compliant with Form 2 of Schedule 1, declare their financial interests to the Chief Executive Officer, who must keep an updated register of such interests: Provided that the provisions of section 15 apply, with the necessary changes, to the declaration of financial and other interests; and
 - (d) may, with the consent of that employee, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.
- (4) A person in the service of another organ of state may, by 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: Provided that persons so seconded, perform their functions under the supervision of the Chief Executive Officer.

Chapter 5 Finance and funding of Agency

28. Financial accountability

The Board must ensure that—

- (a) the Agency conducts and manages its financial affairs in an accountable and transparent manner;
- (b) complies with the provisions of the Public Finance Management Act and any other applicable legislative and policy prescripts; and
- (c) observes sound corporate governance principles and practices.

29. Funds

- (1) The funds of the Agency consist of—
 - (a) money appropriated by the Provincial Legislature—
 - (i) as a contribution to the capital amount in the Fund for the purpose of investment in beneficiary projects in accordance with the provisions of this Act; and

- (ii) for the purpose of the administration and daily operations of the Agency in accordance with the provisions of subsection (5);
 - (b) income derived from the performance of its functions, including but not limited to income from fees, charges and the provision of services;
 - (c) funding received from organs of state for specific purposes or projects;
 - (d) voluntary contributions, donations and bequests;
 - (e) income from any source identified in section 5(2)(g);
 - (f) income from investments in accordance with section 5(2)(h); and
 - (g) money lawfully derived from any other source.
- (2) The Chief Executive Officer must promptly deposit all moneys received in terms of subsection (1)(a) into the appropriate bank accounts.
- (3) With effect from the date when this Act comes into operation any bank accounts, funds, or investments held by the Trust, are deemed to be the bank accounts, funds or investments of the Agency.
- (4) Any unexpended balance in the Fund at the end of a financial year is carried forward as a credit in the Fund.
- (5) The Agency must utilise the funds appropriated by the Provincial Legislature in terms of subsection (1)(a)(ii)—
- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of its—
 - (i) Board members; and
 - (ii) Chief Executive Officer and staff members; and
 - (b) to cover the costs of the—
 - (i) day-to-day operations and administration of the Agency and the Board; and
 - (ii) performance of the duties and functions and the exercise of the powers of the Agency and the Board in terms of this Act, and matters related thereto.

30. Financial management

- (1) The Board must ensure that the Agency—
- (a) maintains full and proper books of account and all the necessary records in relation to—
 - (i) moneys appropriated by the Provincial Legislature in terms of section 29(1)(a); and
 - (ii) any other funds of the Agency received in terms of section 29(1)(b) to (g);
 - (b) prepares and submits to the relevant authorities the necessary returns, notices, annual budgets, strategic and business plans, annual performance plans, annual and other reports, audited financial statements and any other documentation or information required to be submitted in terms of the Public Finance Management Act or any other applicable legislative and policy prescripts; and
 - (c) prepares and submits to the MEC within three months of the end of each financial year the annual financial statements and any other documentation or information reasonably required by the MEC in respect of the funds or finances of the Agency.

- (2) The Chief Executive Officer must submit to the Board for approval—
 - (a) within three months before the end of each financial year, a business plan for the Agency, containing measurable objectives and other information reasonably required by the Board; and
 - (b) within six months before the beginning of each new financial year, a statement of the estimated income and expenditure of the Agency in respect of the following three financial years.
- (3) The Chief Executive Officer must submit quarterly to the Board up-to-date income and expenditure statements with projected expenditure per programme for that financial year.
- (4) The Agency may not enter into any financial commitment beyond its approved budget and its accumulated reserves.
- (5) Subject to an investment policy approved by the Board, the Chief Executive Officer must invest any surplus funds with the Corporation for Public Deposits, or any other institution with an investment grade rating.
- (6) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit into them such amounts as the Board approves: Provided that such deposits are disclosed to the Provincial Treasury and the Auditor-General within one month of the date of a deposit being made.

31. Audit and annual report

- (1) The Board must prepare and submit, within two months after the end of each financial year, the financial statements of the Agency and the Fund to the Auditor-General, who must audit the financial statements of the Agency and the Fund.
- (2) The Board must submit an annual report on the activities of the Agency, including investments from the Fund, during a financial year within—
 - (a) three months after the end of each financial year to the MEC for tabling in the Provincial Legislature within five months after the end of that financial year; and
 - (b) five months after the end of each financial year to the Provincial Treasury.
- (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, during the financial year concerned, achieved or advanced its objectives provided for in section 2 and the measurable objectives, as set out in its business plan provided for in section 30(2)(a); and
 - (c) contain relevant performance information regarding the efficient, effective and economical application of resources and a comparison between planned and actual performance indicators as set out in the annual performance plan.

Chapter 6 General provisions

32. Confidential information held by Agency

- (1) Subject to the Constitution, the Promotion of Access to Information Act, the Protection of Personal Information Act and any other applicable law, no person may disclose any information held by the Agency, unless—
 - (a) he or she is ordered to do so by a court of law; or

- (b) the person to whom such information relates, consents thereto in writing.
- (2) Any person who contravenes subsection (1) is guilty of an offence.

33. Misrepresentation

- (1) No person may, without the prior written authorisation of the Board, in anyway represent or make use of the name, acronym, logos, designs or any other material or property used or owned by the Agency.
- (2) No person may falsely claim to be acting on behalf of the Agency.
- (3) No person may falsely claim that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Board.
- (4) Any person who contravenes subsections (1), (2) or (3), is guilty of an offence.

34. Offences and penalties

- (1) Any person who commits an offence in terms of section 32 or 33 of this Act, must be charged accordingly and is liable to a fine or to imprisonment for a period not exceeding five years upon conviction by a competent court.
- (2) Where an offence committed in terms of this Act also constitutes an offence provided for in any other law, a person committing such offence may be prosecuted in terms of either this Act, or the other law.

35. Regulations and Schedules

- (1) The MEC may, after consultation with the Board and by notice in the *Gazette*—
 - (a) make regulations not inconsistent with the provisions of this Act or any other applicable legislation, regarding—
 - (i) any matter permitted to be prescribed in terms of this Act; and
 - (ii) any administrative or procedural matter necessary to give effect to the provisions of this Act; and
 - (b) amend the Schedules to this Act.
- (2) The absence of any regulations does not absolve any person from complying with the provisions of this Act or implementing any matter provided for in this Act.

36. Termination of Trust and transitional arrangements

- (1) The MEC must, within a period not exceeding 60 days after the coming into operation of this Act, and subject to the provisions of the Trust Property Control Act and directives issued by the Master of the High Court, terminate the Trust: Provided that during the period of termination and winding-up of the Trust, the Agency may access the funds of the Trust for administrative and operational purposes.
- (2) Upon winding up of the Trust by the Trustees, all Trust assets, including the net income and capital of the Trust, vest in the Agency.
- (3) The MEC must, within a period of 60 days after the coming into effect of this Act appoint a Board in compliance with the provisions of Chapter 3 of this Act: Provided that in the interim—
 - (a) the MEC must select a sufficient number of Trustees from the Trust as members of an interim Board; and

- (b) appoint an interim Chairperson and Deputy-Chairperson from amongst the members selected to the interim Board referred to in paragraph (a).
- (4) All employees of the Trust are regarded as having been employed in terms of section 27 of this Act, on substantially the same terms and conditions as those that previously governed their employment: Provided that the Board may effect reasonable changes to work practices for the purpose of operational and administrative efficiency and uniformity.
- (5) Employees referred to in subsection (4)—
 - (a) retain their vacation leave accrued up to the date immediately before the date of transfer to the Agency, adjusted in accordance with the conditions of employment of the Agency; and
 - (b) in relation to whom any enquiry or proceedings instituted or intended to be instituted in respect of alleged misconduct committed by, or incapacity of, an employee before the date of transfer, must be finalised or instituted by the Agency in accordance with the legislative and policy prescripts and conditions of employment applicable to such employee whilst he or she was still in the employ of the Trust.
- (6) The termination of the Trust does not affect any right, privilege, obligation or liability acquired or accrued or incurred by the Trust prior to its termination, unless the contrary is provided for in terms of this Act.

37. Short title

This Act is called the KwaZulu-Natal Growth Fund Agency Act, 2024.

First Schedule

Forms

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

Second Schedule (Section 6(3))

Categories of fees and charges

The Agency may levy the following fees and charges:

- (a) agent and agency fees;
- (b) arrangement fees;
- (c) breakage and damage charges;
- (d) commitment fees;
- (e) compulsory fees or charges required in terms of any applicable legislative or other prescripts;
- (f) default interest charges;
- (g) due diligence investigation fees;
- (h) engineering or any other technical project related specialist fees;
- (i) costs incurred in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (j) forensic investigation fees;
- (k) the Johannesburg Interbank average rate of interest, plus a risk related margin;
- (l) legal and conveyancing fees;

- (m) project manager fees;
- (n) raising and transactional fees;
- (o) turnaround and restructuring specialist fees; and
- (p) valuation fees.