

Limpopo, South Africa

Limpopo Tourism Act, 2018

Act 4 of 2018

Legislation as at 15 February 2019

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Contents

Chapter 1 – Introductory provisions	1
1. Definitions	1
2. Objects of Act	2
Chapter 2 – Policy statement and role of MEC	2
3. Policy statement	2
4. Role of MEC	2
Chapter 3 – Limpopo Tourism Agency	2
5. Continuation of Limpopo Tourism Agency	2
6. Functions of Agency	3
7. Board of Agency	3
8. Composition of Board	3
9. Appointment of Board	4
10. Chairperson and Deputy Chairperson	4
11. Term of office	4
12. Disqualification from membership of the Board	4
13. Allowances and remuneration of members	5
14. Vacation of office and filling of vacancies	5
15. Removal of member	6
16. Committees of Board	6
17. Meetings of Board	6
18. Quorum and decisions	7
19. Appointment of experts	7
20. Chief Executive Officer	7
21. Staff of Agency	8
22. Transfer of staff from Agency	8
23. Funding of Agency	8
Chapter 4 – Delegations	8
24. Delegations by MEC	8
25. Delegations by Board	9
Chapter 5 – Regulations	9
26. Regulations	9
Chapter 6 – General provisions	10
27. Transitional provisions	10
28. Repeal of law	10

29. Short title and commencement	10
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Limpopo South Africa

Limpopo Tourism Act, 2018

Act 4 of 2018

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ACT

To provide for the development, management and promotion of sustainable tourism in Limpopo; to provide for the registration of tourism businesses; to provide for the continued existence of the Limpopo Tourism Agency; to provide for the governance and functions of the Agency; to repeal the Limpopo Tourism Act, 2009 (Act No. 2 of 2009); and to provide for matters incidental thereto.

BE IT ENACTED by the Limpopo Provincial Legislature as follows:—

Chapter 1 Introductory provisions

1. Definitions

In this Act, any word or expression to which a meaning has been assigned in the Tourism Act, 2014 (Act No. 3 of 2014) bears the same meaning and unless the context indicates otherwise—

“**Agency**” means the Limpopo Tourism Agency contemplated in section 5;

“**Board**” means the Board of the Limpopo Tourism Agency, constituted in terms of section 8;

“**Chairperson**” means the person designated by the MEC in terms of section 10;

“**Chief Executive Officer**” means the Chief Executive Officer of the Agency appointed in terms of section 20;

“**Department**” means the Department responsible for tourism matters in the province;

“**Head of Department**” means the head of the department responsible for tourism matters in the province;

“**Limpopo Tourism Act, 2009**” means the Limpopo Tourism Act, 2009 (Act No. 2 of 2009);

“**MEC**” means the Member of the Executive Council responsible for tourism matters in the province;

“**member**” means a member of the Board referred to in section 8;

“**national tourism sector strategy**” means the national tourism sector strategy contemplated in section 4 of the Tourism Act, 2014 (Act No. 3 of 2014);

“**PFMA**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**prescribed**” means prescribed by regulation;

“**provincial tourism sector strategy**” means the tourism strategy developed for the province;

“**responsible tourism**” means responsible tourism as contemplated in section 2(2) of the Tourism Act, 2014 ([Act No. 3 of 2014](#));

“**this Act**” includes any subordinate legislation made in terms of this Act; and

“**Tourism Act, 2014**” means the Tourism Act, 2014 ([Act No. 3 of 2014](#)).

2. Objects of Act

The objectives of this Act are to—

- (a) promote growth in and development of the provincial tourism sector;
- (b) promote the practicing of responsible tourism in the province;
- (c) promote quality tourism products and services within the province;
- (d) enhance cooperation and coordination between all spheres of government in developing and managing tourism matters;
- (e) provide for the effective marketing of the province as a tourist destination; and
- (f) provide for a tourism agency to assist in achieving the objectives of this Act.

Chapter 2 Policy statement and role of MEC

3. Policy statement

The MEC may issue a policy statement in respect of any matter concerning the management, development and promotion of tourism in the province.

4. Role of MEC

The MEC must—

- (a) develop a provincial tourism sector strategy aligned with the objectives of the national tourism sector strategy;
- (b) monitor the implementation of the provincial tourism sector strategy and any other related tourism strategies in the province;
- (c) facilitate, monitor and support transformation programmes in the tourism industry;
- (d) implement measures to support tourism skills development and capacity building programmes;
- (e) register tourist guides in terms of the Tourism Act, 2014; and
- (f) register tourism businesses in terms of the prescribed procedure.

Chapter 3 Limpopo Tourism Agency

5. Continuation of Limpopo Tourism Agency

- (1) The Limpopo Tourism Agency established by section 5 of the Limpopo Tourism Act, 2009 continues to exist as a juristic person despite the repeal of that Act by [section 28](#).

- (2) The Agency comprises of—
 - (a) a Board constituted by the MEC in terms of this Act;
 - (b) a Chief Executive Officer; and
 - (c) staff of the Agency.

6. Functions of Agency

The Agency must—

- (a) market the province as a tourist destination;
- (b) market provincial tourism products and facilities;
- (c) develop and implement a marketing strategy for tourism that promotes-
 - (i) the objects of this Act; and
 - (ii) the provincial tourism sector strategy;
- (d) advise the MEC on any matter relating to tourism marketing; and
- (e) perform any other function the MEC may assign or delegate to the Agency.

7. Board of Agency

- (1) The Board is responsible for performing the functions of the Agency.
- (2) The Board is the accounting authority contemplated in section 49(2)(a) of the PFMA.
- (3) The Board must annually enter into an agreement with the MEC which includes-
 - (a) the performance of the functions of the Board;
 - (b) compliance with policies; and
 - (c) any other matter necessary to achieve the objects of this Act.
- (4) The Board must regularly review processes and procedures to ensure the effectiveness of the internal control system of the Board.
- (5) The Board must appoint a secretariat to assist the Board in performing its functions.

8. Composition of Board

- (1) The Board must consist of—
 - (a) at least three and not exceeding five members with knowledge and experience in tourism marketing, the tourism industry or financial and business management;
 - (b) a representative of the Department, nominated by the Head of Department; and
 - (c) a representative of the South African Local Government Association, nominated by its chief executive officer.
- (2) The Chief Executive Officer and the Chief Financial Officer of the Agency are *ex officio* non-voting members of the Board.

9. Appointment of Board

- (1)
 - (a) Before appointing the members contemplated in [sections 8\(1\)\(a\)](#), the MEC must, by notice in the *Provincial Gazette* and in two newspapers circulating throughout the province, invite such nominations for membership of the Board.
 - (b) The notice must specify a period of at least 30 days for nominations to be submitted to the MEC.
 - (2) A nomination made pursuant to the notice in terms of subsection (1) must be supported by-
 - (a) a detailed *curriculum vitae* of the nominee;
 - (b) supporting documents that reflect the nominee's knowledge and experience that will contribute to the functioning of the Agency;
 - (c) a letter from the nominee accepting the nomination; and
 - (d) a declaration by the nominee wherein the nominee declares any direct or indirect interest, which may constitute a conflict of interest with regard to that nominee's responsibilities if appointed to the Board.
 - (3) When appointing members, the MEC must ensure that the Board collectively possesses sufficient knowledge and experience concerning corporate governance principles and issues relevant to the functions of the Agency.
 - (4) After appointing the members, the MEC must, by notice in the *Provincial Gazette* publish the names of the appointed members and the date of commencement of their terms of office.
 - (5) Where the nominations received do not qualify in terms of this Act or if the MEC receives no nominations or an insufficient number of nominations within the period specified in the invitation, the MEC may, after complying with subsection (3), appoint the required number of members.

10. Chairperson and Deputy Chairperson

- (1) The MEC must designate a member, as Chairperson, and another member as Deputy Chairperson of the Board, for a period not exceeding that member's term of office as a member.
- (2) The MEC may not designate a member mentioned in [section 8\(1\)\(b\)-\(c\)](#) or [section 8\(2\)](#) as Chairperson or Deputy Chairperson of the Board.
- (3) The Deputy Chairperson must exercise the powers and perform the duties of the Chairperson whenever the Chairperson is unable to do so.

11. Term of office

- (1) A member holds office for a period not exceeding three years from date of appointment.
- (2) The MEC may extend a member's term of office once only, for a period not exceeding two years, without following the procedures set out in [section 9](#).

12. Disqualification from membership of the Board

A person may not be appointed or remain a member of the Board if that person—

- (a) is not fit and proper to hold office as a member;
- (b) is not a South African citizen and ordinarily resident in the Republic;
- (c) is an unrehabilitated insolvent;
- (d) is a member of the provincial legislature;

- (e) has been declared unable to conduct his or her own affairs by a competent court;
- (f) has been declared by a court of law to be of unsound mind;
- (g) has at any time been convicted of an offence involving dishonesty;
- (h) has at any time been removed from an office of trust on account of misconduct; or
- (i) subject to [section 8\(1\)\(b\)-\(c\)](#), is employed in the public service or the holder of any other remunerated position within government.

13. Allowances and remuneration of members

- (1) The MEC, in consultation with the Member of the Executive Council responsible for financial matters in the province, may from time to time determine the remuneration or allowances payable to a member.
- (2) A member employed by government is not entitled to any remuneration or allowance.
- (3) The remuneration and allowances determined in terms of subsection (1) must be—
 - (a) in accordance with any applicable treasury norms and standards in terms of the PFMA; and
 - (b) paid from monies appropriated by the Provincial Legislature for that purpose.

14. Vacation of office and filling of vacancies

- (1) A member of the Board must vacate office if that member—
 - (a) resigns by providing 2 months written notice to the MEC and the Chairperson of the Board, provided that the MEC may accept a shorter notice period in a specific case;
 - (b) ceases to hold any qualification necessary for that member's appointment to the Board;
 - (c) is unable to perform his or her functions due to mental illness or severe or profound intellectual disability contemplated in the Mental Health Care Act, 2002 ([Act 17 of 2002](#));
 - (d) becomes subject to any disqualification contemplated in [section 12](#); or
 - (e) is removed from office by the MEC, in terms of [section 15](#).
- (2)
 - (a) If for any reason the office of a member of the Board becomes vacant before the member's term of office expires, the MEC may, subject to [section 9](#), appoint a suitably qualified person to fill the vacancy for the unexpired portion of the period for which such member was appointed.
 - (b) If the unexpired portion of the period contemplated in subsection (2)(a) is less than 12 months, the MEC may appoint any suitably qualified person to fill the vacancy for the unexpired portion of the period for which such member was appointed, without following the procedure in [section 9](#).
- (3) The MEC may on good cause shown dissolve the Board by way of notice in the *Provincial Gazette* and appoint a new Board in accordance with [section 9](#).
- (4)
 - (a) If the Board is dissolved in terms of subsection (3), the MEC may defer the reconstitution of the Board and, in the notice by which the MEC has so dissolved the Board or by any subsequent notice in the *Provincial Gazette*, appoint one or more persons, on such conditions as the MEC may deem necessary, to manage the affairs of the Board until the appointment of the new Board in terms of [section 9](#).
 - (b) The person or persons appointed in terms of subsection 4 (a) to manage the affairs of the Board, shall be the accounting authority contemplated in section 49(2)(b) of the PFMA until such time as a new Board is appointed in terms of [section 9](#).

15. Removal of member

- (1) The MEC may remove a member from office on account of-
 - (a) misconduct;
 - (b) conduct that brings the Board into disrepute;
 - (c) failure to comply with the provisions of this Act or the PFMA;
 - (d) inability to perform the duties of the member efficiently;
 - (e) absence from three consecutive board meetings without the consent of the Board; or
 - (f) being disqualified in terms of [section 12](#).
- (2) The MEC may not remove a member from office in terms of subsection (1) unless the MEC has afforded the member an opportunity to make representations to the MEC.
- (3) The MEC may suspend a member from office whilst carrying out an investigation or inquiry against such member.

16. Committees of Board

- (1) The Board may establish one or more committees to assist the Board with exercising its powers and functions in terms of this Act.
- (2) The Board must-
 - (a) determine the functions of the committee;
 - (b) determine the operating procedures of the committee, including-
 - (i) the quorum for a meeting of the committee;
 - (ii) the manner in which the committee takes decisions;
 - (c) designate members who are suitably qualified or experienced in relation to the functions of a committee; and
 - (d) designate a member serving on a committee as Chairperson of such committee.
- (3) The Board may, at any time-
 - (a) remove a member from a committee; or
 - (b) dissolve a committee.

17. Meetings of Board

- (1) The Board must meet at least four times a year.
- (2) The Chairperson decides when and where the Board meets, but the majority of the members may, in writing, request the Chairperson to convene a meeting at a time and place set out in the request.
- (3) The MEC may at any time request a meeting with the Board.
- (4) The Chairperson presides at meetings of the Board, but if the Chairperson and the Deputy Chairperson are absent from a meeting, the members present must elect another member to preside at the meeting.
- (5) The Chairperson or presiding member may, after consultation with the Board allow any person who is not a member to attend a meeting of the Board as an observer, on such conditions as the Chairperson or presiding member may determine.

- (6) A member of the Board who has any personal or financial interest in any matter before the Board must disclose that interest and withdraw from the proceedings of the Board when that matter is considered.
- (7) The Board may, subject to the provisions of this Act, determine its own meeting procedures.
- (8) The Board may meet without the members mentioned in [section 8\(2\)](#) when considering the performance, remuneration or actions of such members.

18. Quorum and decisions

- (1) The quorum for a meeting of the Board must be the majority of its members.
- (2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.
- (3) In the event of an equality of votes regarding a matter voted upon, the Chairperson has a casting vote in addition to the Chairperson's deliberative vote.
- (4)
 - (a) Whenever a matter requires the urgent attention of the Board and it is not possible for the Board to meet at the time, the Chairperson must ensure that each member-
 - (i) is immediately furnished with all relevant information and documentation pertaining to the matter; and
 - (ii) records that member's decision on the matter and forwards the record to the Chairperson.
 - (b) A decision of the majority of the members on the matter is a resolution of the Board, and must be-
 - (i) ratified by the Board at the next meeting of the Board; and
 - (ii) recorded in the minutes.

19. Appointment of experts

The Board may appoint experts to assist the Board in performing its functions.

20. Chief Executive Officer

- (1) The Board must—
 - (a) publish an advertisement in at least two newspapers circulating throughout the province inviting applications for the position of a Chief Executive Officer; and
 - (b) appoint a Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer must be a fit and proper person with appropriate qualifications and experience.
- (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board, after consultation with the MEC, may determine.
- (4) The Chief Executive Officer-
 - (a) is appointed for a term not exceeding five years;
 - (b) is accountable to the Board;
 - (c) must annually enter into a written performance agreement with the Board; and
 - (d) may not perform any other remunerative work without the written consent of the Board.

- (5) Whenever the position of the Chief Executive Officer is vacant, the Board must designate an official of the Agency as acting Chief Executive Officer, for a period not exceeding six months.
- (6) The Board may not designate a member as an acting Chief Executive Officer.

21. Staff of Agency

- (1) The Chief Executive Officer must, with the concurrence of the Board-
 - (a) establish a staff structure for the Agency;
 - (b) appoint staff to assist the Agency in performing its functions; and
 - (c) determine the terms and conditions of employment of the staff of the Agency.
- (2) The Board must, with the concurrence of the MEC and the Member of the Executive Council responsible for finance, determine the remuneration levels of the staff of the Agency.

22. Transfer of staff from Agency

- (1) The MEC may, after consultation with the Board, and with due regard to labour laws, transfer any member of staff from the Agency to the Department.
- (2) The transfer in terms of subsection (1) may only occur if—
 - (a) the member of staff consents thereto; and
 - (b) the transfer is in the public interest or on any other reasonable ground.

23. Funding of Agency

The funds of the Agency consists of-

- (a) monies appropriated by the Provincial Legislature for the exercise of the powers and the performance of the functions of the Agency; and
- (b) subject to the PFMA, money accruing to the Agency from sources approved by the MEC with the concurrence of the Member of Executive Council responsible for financial matters in the province.

Chapter 4 Delegations

24. Delegations by MEC

- (1) The MEC may delegate any power or function conferred, entrusted or imposed upon the MEC under this Act, except the power to-
 - (a) appoint members of the Board; and
 - (b) make regulations,to the Head of Department with or without the authority to further delegate such power or function.
- (2) Any delegation in terms of subsection (1)—
 - (a) is subject to such conditions, limitations and directions that the MEC may impose;
 - (b) must be in writing;
 - (c) does not divest the MEC of the responsibility concerning the exercise of the delegated power or performance of the delegated function;

- (d) does not prevent the MEC from exercising the delegated power or performing the delegated function; and
- (e) may at any time be withdrawn by the MEC.

25. Delegations by Board

- (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or functions to—
 - (a) a member;
 - (b) a committee of the Board referred to in [section 16](#); or
 - (c) the Chief Executive Officer.
- (2) The Board may not delegate the power to—
 - (a) appoint a Chief Executive Officer; or
 - (b) determine the conditions of service of the Chief Executive Officer.
- (3) A delegation in terms of subsection (1)—
 - (a) is subject to such conditions, limitations and directions that the Board may impose;
 - (b) must be in writing;
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or performance of the delegated function;
 - (d) does not prevent the Board from exercising the delegated power or performing the delegated function; and
 - (e) may at any time be withdrawn by the Board.
- (4) The Board may confirm, vary or revoke any decision taken as a result of a delegation in terms of subsection (1), subject to any right that may have vested as a consequence of the decision.

Chapter 5 Regulations

26. Regulations

- (1) The MEC may make regulations relating to—
 - (a) the registration of tourism businesses;
 - (b) any matter which in terms of this Act is required to be prescribed;
 - (c) any fee payable under this Act; and
 - (d) in general, any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act.
- (2) Regulations made under this Act may provide for offences and penalties.

Chapter 6

General provisions

27. Transitional provisions

- (1) The member of the Board established in terms of legislation repealed by this Act continues to be a member under this Act for the unexpired term of office.
- (2) Any staff structure established in terms of legislation repealed by this Act, continues as a staff structure established under this Act.
- (3) All staff of the Agency appointed in terms of legislation repealed by this Act continue as staff appointed under this Act, unless transferred in terms of any other legislation governing the transfer of staff.
- (4) The Chief Executive Officer appointed in terms of legislation repealed by this Act continues to be the Chief Executive Officer under this Act for the unexpired term of office.

28. Repeal of law

The Limpopo Tourism Act, 2009 ([Act No. 2 of 2009](#)) is hereby repealed.

29. Short title and commencement

This Act is called the Limpopo Tourism Act, 2018, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.