

PROVINCE OF MPUMALANGA



MPUMALANGA ECONOMIC GROWTH AGENCY ACT, 2005

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To provide for the establishment of the Mpumalanga Economic Growth Agency and for the management thereof by a Board; to develop the business sector in Mpumalanga; to provide funding in respect of approved enterprise development focusing primarily on the previously disadvantaged individuals in Mpumalanga; to promote trade and investment in Mpumalanga; to confer powers and functions upon the Agency; to provide for transitional arrangements; and to provide for matters incidental thereto.

Preamble. WHEREAS it is generally recognized that business development and investment have the potential of being a catalyst for significant economic growth and development within the Province;

AND WHEREAS it is a priority of the Mpumalanga Provincial Government to provide funding in respect of approved enterprise development focusing on the previously disadvantaged individuals within the Province; whilst focusing on business development in Mpumalanga and to promote trade and investment so as to ensure economic growth that will lead to development and improvement of the quality of life of every inhabitant of the Province;

AND WHEREAS the development of business in Mpumalanga and the stimulation of investment will greatly increase entrepreneurial and employment opportunities in the business sector and specifically contribute to the development of entrepreneurial opportunities for previously disadvantaged communities and individuals within the Province so as to attain the goal of reducing poverty and unemployment within the Province;

NOW THEREFORE,

BE IT ENACTED by the Provincial Legislature of Mpumalanga, as follows:

1. Definitions. (1) In this Act, unless the context otherwise indicates -

“**Agency**” means the entity established in terms of section 2;

“**Board**” means the Mpumalanga Economic Growth Agency Board referred to in section 24;

“**Chairperson**” means a person appointed as Chairperson or acting Chairperson in terms of section 11;

“**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 13;

“**committee**” means a committee of the Board appointed in terms of section 5, and includes the tender committee appointed in terms of section 10;

“**community**” means any group of persons or a part of such a group who share common interests and who regard themselves as a community and “**communities**” has a corresponding meaning;

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

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

“**Executive Council**” means the Executive Council of the Province as referred to in section 132 of the Constitution;

“financial year” means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive;

“Functionary” means any person or entity performing a function;

“Government” means the Mpumalanga Provincial Government;

“Member” means a Member of the Board and includes a temporary Member as contemplated in section 7(3);

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

“Mpumalanga Agricultural Development Corporation” means the Corporation established by the Mpumalanga Agricultural Development Corporation Act, 1999 (Act No. 6 of 1999);

“Mpumalanga Housing Finance Company” means the Mpumalanga Housing Finance Company duly registered as a company in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973);

“Mpumalanga Investment Initiative” means Mpumalanga Foreign Direct Investments duly registered as a company in terms of section 21 of the Companies Act, 1973, and trading as Mpumalanga Investment Initiative;

“Mpumalanga Regional Training Trust” means the Mpumalanga Regional Training Trust duly registered as a company in terms of section 21 of the Companies Act, 1973;

“Mpumalanga Tourism and Parks Agency” means the entity established in terms of section 2 of the Mpumalanga Tourism and Parks Agency Act, 2005 (Act No. 5 of 2005);

“Premier” means the Premier of the Province referred to in section 125 of the Constitution;

“prescribed” means prescribed by regulation in terms of this Act;

“previously disadvantaged individuals” means persons who were previously disadvantaged by unfair discrimination and who, in terms of section 9(2) of the Constitution of the Republic of South Africa, 1996, may be protected and advanced to achieve equality and, for the purposes of this Act, includes the following designated groups:

- (a) Men of African, Asian or Coloured descent;
- (b) women, irrespective of descent; and
- (c) disabled persons, irrespective of descent;

“Province” means the Province of Mpumalanga as referred to in section 103(1)(e) of the Constitution, or any part thereof;

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

“Provincial Legislature” means the Provincial Legislature of the Province as referred to in section 104 of the Constitution;

“public service” means the public service contemplated in Chapter III of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Republic” means the Republic of South Africa referred to in section 1 of the Constitution;

“**sector**” means an economic sector as contemplated in the Provincial Growth and Development Strategy and “**sectors**” has a corresponding meaning;

“**stakeholder**” means an organisation, body or person with a direct and continuing interest in the business sector; and

“**this Act**” also means a regulation made under this Act.

(2) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary.

2. Establishment. The Mpumalanga Economic Growth Agency is hereby established as a juristic person.

3. Objects of the Agency. (1) The objects of the Agency are to provide funding in respect of approved enterprise development focussing primarily on previously disadvantaged individuals within the Province, whilst focusing on project management, development and management of immovable property and to promote foreign trade and investment so as to ensure enterprise development that will significantly contribute to economic growth and development within the Province, with specific emphasis on Black Economic Empowerment.

(2) The objects of the Agency expressly exclude the objects of the Mpumalanga Tourism and Parks Agency, the Mpumalanga Agricultural Development Corporation, the Mpumalanga Housing Finance Company, the Mpumalanga Regional Training Trust and the Mpumalanga Gambling Board, unless otherwise such objectives are funding related where such an Agency does not provide funding.

(3) In achieving its objects, the Agency shall endeavour to progressively increase its own revenue generation and collection.

4. Powers and functions of the Agency. (1) Subject to section 3, the general powers and functions of the Agency are as set out in subsection (2) to subsection (6) and the powers and functions pertaining specifically to trade, industry, sector development and investment in the Province are as set out in subsection (7) to subsection (14).

(2) The Agency shall exercise and perform its powers and functions with due regard to section 104, read with section 125 of the Constitution, section 230 of the Constitution, the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996), the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the provisions of all National Legislation and all National policies, guidelines and directives pertaining to trade, industry, sector development and investment, with specific reference to policies, guidelines and directives pertaining to the transformation of the business sector.

(3) The Agency shall exercise and perform its powers and functions, as far as financial and personnel matters are concerned, by -

- (a) Developing, implementing and amending all policies and programmes of the Agency pertaining to financial and personnel matters: Provided that the Board shall develop and implement comprehensive policies regarding all financial and all personnel matters pertaining to the Agency, within six months after the coming into operation of this Act, and subsequently amending such policies and programmes as and when necessary;

(b) ensuring that the Agency adheres to sound financial management, effective and equitable human resource development and efficient office administration in a responsible, accountable and transparent manner; and

(c) disciplining, suspending and dismissing officers and employees of the Agency, with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) The Agency may raise funds in accordance with detailed written funding proposals: Provided that each such funding proposal shall, prior to the raising of funds in accordance therewith, be approved in writing by the Member of the Executive Council.

(5) The Agency shall, in exercising and performing its powers and functions, actively promote, foster and develop trade and industry, sector development and investment in the Province for the benefit of all, with specific emphasis on previously disadvantaged individuals and communities within the Province, by broadening the participation of such individuals and communities in the business sector by liaising and consulting with all relevant stakeholders, including –

(a) individuals and communities;

(b) traditional leaders;

(c) organs of state as contemplated in section 239 of the Constitution;

(d) statutory bodies;

(e) organized labour; and

(f) organized business:

Provided that the Agency shall involve the Department in complying with its obligation to liaise and consult with all relevant stakeholders.

(6) The Agency may, subject to section 23, acquire, hire, lease, sell, let, burden or alienate any goods, supplies or services: Provided that the acquisition or disposal of immovable property shall require the prior written approval of the Member of the Executive Council.

(7) The Agency shall, in consultation with the Department, actively promote and market the Province as an investor-friendly destination and shall furthermore seek to increase and retain investment in the Province.

(8) The Agency shall actively develop and maintain a professional and comprehensive information service and database in respect of existing and potential trade, industry, sector development and investment opportunities in the Province.

(9) The Agency may –

(a) initiate, promote, plan, establish, finance, co-ordinate, manage or carry on any undertaking or business undertaking or project, or acquire any such undertaking and sell or otherwise dispose of any such undertaking or portion thereof or interest therein, subject to the Public Finance Management Act, 1999 and other applicable legislation;

(b) assist, upon request, any person with the initiation, promotion, planning, establishment, financing, co-ordination, management or carrying on of any undertaking or business undertaking or project, or with the acquiring by such person of any undertaking or portion thereof and the selling or disposal of any such undertaking or portion thereof or interest therein.

(10) The Agency may, upon request, facilitate the establishment of joint ventures, and in consultation with the Member of the Executive Council, public-private partnerships.

(11) The Agency shall actively develop and manage all immovable property belonging to the Agency and all immovable property which is under the control of the Agency.

(12) The Agency may, subject to section 66 of the Public Finance Management Act, 1999, guarantee contracts, obligations or undertakings of any person, or bind itself as surety for the due fulfilment of any person's obligations, and enter into surety bonds or deeds of security for that purpose or indemnify any person in respect of any loss or damage arising from the financing by such person of any other person or the entering into of any contract by such person.

(13) The Agency shall actively assist potential and existing investors or traders, *inter alia*, with timeous, relevant, accurate and reliable information and advice.

(14) The Agency may by legal process cause any company or juristic person in which it has any share or interest, to be liquidated or placed under judicial management, and petition a competent court to sequestrate the estate of any of its debtors.

5. Establishment and composition of Board. (1) The affairs of the Agency shall be managed and controlled by a Board to be known as the Mpumalanga Economic Growth Agency Board and which Board shall be the accounting authority for the Agency as contemplated in section 49(2)(a) of the Public Finance Management Act, 1999, and which Board shall exercise and perform the powers and functions conferred or imposed upon the Agency by this Act or any other law.

(2) The Board shall, in respect of the exercise and performance of its powers and functions, including the corporate governance of the Agency, be accountable to the Member of the Executive Council.

(3) The Board shall consist of not fewer than nine and not more than eleven Members eligible to vote at Board meetings.

(4) The Head of the Department or any other official of the Department so designated by the Head of Department shall be a Member of the Board, *ex officio*, without voting powers.

6. Qualifications for Membership of Board. The Members shall be -

- (a) fit and proper persons;
- (b) South African citizens;
- (c) broadly representative of the population of the Province; and
- (d) persons who have sufficient knowledge of, or experience in the development and promotion of trade, industry, sector development and investment in respect of the Province, with specific emphasis on Black Economic Empowerment.

7. Procedure for appointment. (1) The Member of the Executive Council, in consultation with the Executive Council shall, subject to the provisions of subsection (2) and the provisions of section 8, determine and appoint the Members of the Board.

(2) The Member of the Executive Council shall invite, through public invitation, applications for appointment as Member of the Board, within 21 days of the publication of the said advertisement.

(3) The Member of the Executive Council may, in the event of a vacancy on the Board, and with due regard to section 6, appoint a temporary Member of the Board until such vacancy has been duly filled as contemplated in subsection (2): Provided that the term of office of any such temporary Member may not exceed a period of three months in respect of any specific vacancy on the Board.

(4) The Member of the Executive Council may, in the event of all the positions on the Board being vacant, and with due regard to section 6, appoint temporary Members to constitute an interim Board until such vacancies have been duly filled as contemplated in subsection (2): Provided that the term of office of such interim Board may not exceed a period of six months.

8. Disqualification. Notwithstanding the provisions of section 5, 6 or 7, a person is disqualified from being appointed or remaining a Member of the Board if such person -

- (a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, municipality or is in the full-time employ of an organ of State, other than the Agency;
- (b) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (c) is or becomes subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective;
- (d) has been convicted of any offence under this Act, or of any other offence which does not involve dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member; or
- (e) has been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member.

9. Resignation and removal from office. (1) A Member may at any time resign from the Board upon one month's written notice tendered to the Member of the Executive Council who shall forthwith inform the Executive Council and the Board accordingly.

(2) Notwithstanding the provisions of section 12, but subject to the provisions of subsection (3) of this section, the appointment of any Member may, before the expiration of a Member's term of office, be terminated by the Member of the Executive Council, in consultation with the Executive Council -

- (a) on account of his or her improper conduct;
- (b) on account of unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly;
or
- (d) that he or she is or has become disqualified in terms of section 8.

(3) Notwithstanding the provisions of section 5, 6 or 7 and subsection (2) of this section, a person's appointment as Member of the Board may be terminated by the Member of the Executive Council, in consultation with the Executive Council, if such person has been absent from two consecutive meetings of the Board without prior consent of the Board.

(4) The Member of the Executive Council may not terminate the appointment of a Member in terms of subsection (2) or (3) unless the Member of the Executive Council, after having afforded the relevant person an opportunity to state his or her case and having duly considered the matter, including any representations made, explanations given or evidence tendered by such person, is satisfied that the termination of his or her appointment is justified in the circumstances.

(5) For the purposes of subsection (2)(a), non-compliance by a Member with any provision of this Act, *inter alia*, constitutes improper conduct.

10. Vacancies on Board. (1) The office of an appointed Member becomes vacant -

- (a) when he or she dies;
- (b) when his or her written resignation tendered to the Member of the Executive Council or the Board in terms of section 9(1) or 13(6), as the case may be, becomes effective;
- (c) when his or her appointment is terminated in terms of section 9 or 14; or
- (d) if he or she is absent from three consecutive meetings of the Board without the prior consent of the Board.

(2) Subject to section 5(3), a vacancy on the Board shall be filled in accordance with sections 5, 6 and 7 by the appointment of another Member as soon as may be reasonably practicable after the occurrence of such vacancy, and any Member so appointed remains in office for the unexpired portion of his or her predecessor's term of office.

11. Chairperson and Deputy Chairperson. (1) The Member of the Executive Council shall, in consultation with the Executive Council and subject to the provisions of section 8, appoint any Member eligible to vote at Board meetings, as non-executive Chairperson and another Member as non-executive Deputy Chairperson of the Board.

(2) The Chairperson shall exercise and perform the powers and functions assigned to him or her by this Act.

(3) The Chairperson shall preside at all meetings of the Board.

(4) Whenever the Chairperson is absent, the powers, rights and functions of the Chairperson shall be exercised and performed by the Deputy Chairperson and in the absence of both the Chairperson and the Deputy Chairperson, by a Member designated for that purpose, from among

its number, by the Board: Provided that if the office of Chairperson is vacant or the Chairperson refuses or fails to act, the Deputy Chairperson shall perform the powers, rights and functions of the Chairperson until a new Chairperson has been appointed as contemplated in subsection (1).

12. Terms and conditions of office of Member. (1) The term of office of a Member eligible to vote at Board meetings shall be for a period not exceeding four years.

(2) Upon the expiration of the term of office of an appointed Member as contemplated in subsection (1), he or she is eligible for re-appointment: Provided that no term of office of a Member may be extended or a Member be reappointed without fully complying with the procedure for appointment as contemplated in section 7: Provided further that the total period of such terms of office of a Member may not exceed eight years.

(3) A Member holds office on such conditions as to the remuneration, allowances and benefits as the Member of the Executive Council, in consultation with the Executive Council, may from time to time determine, by prior notice in the *Provincial Gazette*.

(4) The appointed Members are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them in connection with the performance of their functions as such Members and may for that purpose be paid such allowances as determined by the Member of the Executive Council as contemplated in subsection (3).

13. Chief Executive Officer. (1) The Chief Executive Officer, appointed in terms of subsection (3), shall be a person who -

- (a) has appropriate qualifications, knowledge or experience regarding the business and operations of the Agency;
- (b) is not subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (c) is not subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective;
- (d) has not been convicted of any offence under this Act, or of any other offence which does not involve dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member; or
- (e) has not been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member.

(2) The Chief Executive Officer is the chief administration and accounting officer of the Agency, subject to the control of the Board.

(3) The Board shall, subject to the provisions of subsection (4) and the provisions of section 8, determine and appoint, in consultation with the Member of the Executive Council, the Chief Executive Officer of the Agency.

(4) The Board shall, after consultation with the Member of the Executive Council invite, through public invitation, applications for appointment as Chief Executive Officer of the Agency, within 21 days of the publication of the said advertisement.

(5) The Chief Executive Officer is appointed for such period and on such terms and conditions of service, as the Board may determine: Provided that -

- (a) the Chief Executive Officer may be so appointed for a period not exceeding five years;
- (b) upon the expiration of the term of office of the Chief Executive Officer, he or she is eligible for re-appointment: Provided that the total period of such terms of office of the Chief Executive Officer may not exceed ten years;
- (c) such terms and conditions relating to the remuneration, allowances and benefits of the Chief Executive Officer shall in each instance be determined by the Member of the Executive Council in consultation with the Executive Council, after consultation with the Board, by prior notice in the *Provincial Gazette*;
- (d) the Chief Executive Officer may not perform any other remunerative work, without the prior written consent of the Board.

(6) The Chief Executive Officer may, on three months' written notice tendered to the Board, resign from his or her office.

(7) Whenever the office of Chief Executive Officer is vacant or the Chief Executive Officer is absent or incapacitated or refuses or fails to act, the powers, rights and functions of the Chief Executive Officer shall be exercised and performed by any person designated as the acting Chief Executive Officer by the Member of the Executive Council: Provided that no such person shall be the acting Chief Executive Officer for a period exceeding six months.

(8) While a person appointed as contemplated in subsection (7), so acts, he or she shall have the powers and discharge the functions of the Chief Executive Officer.

(9) The Chief Executive Officer shall be a Member of the Board, *ex officio*, without voting powers.

14. Removal of Chief Executive Officer from office. (1) The Board may, in consultation with the Member of the Executive Council, remove the Chief Executive Officer from office -

- (a) on account of his or her improper conduct;
- (b) for unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly;
or
- (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 8.

(2) The Board may, in order to determine whether there exists sufficient cause for the removal of the Chief Executive Officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose.

(3) Whenever any inquiry or investigation is initiated as contemplated in subsection (2) is being undertaken, the Board may, in consultation with the Member of the Executive Council, and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the Chief Executive Officer from his or her office pending the outcome of such an inquiry or investigation.

(4) For the purposes of subsection (1)(a), non-compliance by the Chief Executive Officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), *inter alia*, constitutes improper conduct.

15. Employment contract and performance agreement of Chief Executive Officer. (1) The appointment of the Chief Executive Officer by the Board as contemplated in section 13(3) shall be effective from the date of the entering into of a written employment contract with the Board, which employment contract shall be for the duration of his or her term of office as Chief Executive Officer.

(2) The employment contract contemplated in subsection (1) shall, as a minimum, contain the Chief Executive Officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits.

(3) In addition to the employment contract as contemplated in subsection (1), the Chief Executive Officer shall annually conclude a performance agreement with the Board, which performance agreement's term of operation shall coincide with the financial year of the Agency: Provided that such performance agreement shall annually be concluded prior to the commencement of the financial year concerned.

(4) The performance agreement contemplated in subsection (3) shall, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the Chief Executive Officer's job, the key result areas, financial and management criteria, performance guidelines and targets of such job as well as the standards for measuring the performance of the Chief Executive Officer, by the Board, on at least a bi-annual basis.

16. Meetings of Board. (1) The first meeting of the Board shall be held at a place and time determined by the Chairperson, and subsequent meetings of the Board shall be held on such dates and at such times and places as may be determined by resolution of the Board or, failing such a resolution, as may be determined by the Chairperson.

(2) The Chairperson –

(a) may at any time call for a special meeting of the Board if it is justified under the circumstances; and

(b) shall, upon having been presented with a request for that purpose signed by at least three Members, or signed by the Member of the Executive Council, and stating the purpose for which a special meeting is to be convened, forthwith call for a special meeting of the Board, and if the Chairperson fails to convene a special meeting within seven days as from the date of such request, such three Members, or a Member on behalf of the Member of the Executive Council may, on the expiration of such seven days, convene a special meeting of the Board.

(3) Notice of every meeting of the Board shall state the business to be addressed at such meeting and shall be given to all the Members in such reasonable manner and form as the Board may from time to time determine.

(4) The quorum of the Board at a Board meeting shall be at least 51 per cent of the total number of Members.

17. Decisions of Board, and voting powers of Chairperson. (1) A decision agreed upon by the majority of the Members eligible to vote at Board meetings present at any meeting of the Board, subject to section 5(2), constitutes a decision of the Board to be known as a resolution.

(2) In the event of an equality of votes regarding any matter put to the vote, the Chairperson has a casting vote in addition to his or her deliberative vote.

(3) No decision of the Board or an act on the authority of the Board, is invalid merely due to a vacancy in the Board or because any person who is not entitled to take a seat as Member, took a seat as a Member when the decision was taken or the act was authorised, if such decision was taken or the act was authorised by the required majority of the Members eligible to vote at Board meetings who were then present and who were entitled to take seats as Members.

(4) The Board shall cause a record to be kept of the proceedings of any meeting thereof and the Member of the Executive Council may at any reasonable time require that such record be submitted to him or her, for perusal.

(5) Whenever any matter to be dealt with by the Board is of such a nature that it requires the immediate and urgent attention of the Board and it is not possible for the Board to meet in order to attend to such matter, all relevant documentation pertaining to such matter shall forthwith be made available to each Member for consideration.

(6) Any matter as referred to in subsection (5) and agreed upon in writing by a simple majority of the Board Members will, subject to subsection (7), be a resolution of the Board.

(7) Any resolution as contemplated in subsection (6) shall be ratified by the Board at its next ensuing meeting and shall be so recorded.

18. Duty of Members to disclose interest. (1) A Member who has or acquires any direct or indirect financial interest in trade, industry, sector development or investment, shall forthwith disclose to the Board, in writing, full particulars relating to the nature and extent of his or her interest in trade, industry, sector development or investment, and such Member shall further recuse himself or herself from any deliberation during a meeting of the Board from which he or she may potentially derive any direct or indirect financial benefit and he or she may not vote as a Member of the Board on any such matter.

(2) A Member who is interested in a proposed contract which the Board considers entering into or becomes interested in a contract after it has been entered into by the Agency, shall disclose to the Board full particulars relating to the nature and extent of his or her interest in accordance with the provisions of subsection (3) or (5), as the case may be.

(3) A Member referred to in subsection (2) who is interested in such a proposed contract shall

- (a) if the proposed contract is or is to be considered at a meeting of the Board, disclose his or her interest prior to such meeting by way of a written notice to the Board or otherwise table such a notice at the meeting; or

- (b) if the proposed contract is not to be considered at a meeting referred to in paragraph (a), disclose his or her interest by way of a written notice to the Board within seven days as from the day on which he or she first became aware of the proposed contract or, if it has already been entered into, of the contract:

Provided that a written notice given by a Member to the Board thereof to the effect that he or she has an interest in a particular undertaking and is to be regarded as interested in every contract which may be entered into with such undertaking during a period specified in the notice, is for the purposes of this subsection deemed to be sufficient disclosure of interest with respect to all contracts entered into by the Agency with such undertaking during the specified period, provided further that -

- (i) full particulars relating to the nature and extent of such a Member's interest in such undertaking are set out in the notice; and
- (ii) the extent of such a Member's interest in such undertaking is at the time when a contract is entered into by the Agency with the undertaking, not greater than is set out in the notice.

(4) A Member referred to in subsection (2) shall recuse himself or herself from the meeting of the Board during the discussion of the contract in which he or she has an interest and may not take part in any vote in connection with any such discussion or contract or influence or seek to influence any Member as regards such Member's vote or participation in discussions in respect of such contract.

(5) A Member who becomes interested in a contract after it has been entered into by the Agency shall disclose his or her interest by way of a written notice to the Board within seven days as from the day on which he or she became so interested.

(6) A contract as referred to in subsection (2), (3), (4) or (5), which was entered into by the Board and in respect of which a Member did not comply with any of the provisions of subsection (2), (3), (4) or (5) may, by resolution of the Board and on good cause shown, be declared null and void, either partially or in full, and the Board may hold such Member personally liable for any losses or damage suffered by the Board, resulting from such Member's non-compliance with subsection (2), (3), (4) or (5).

(7) A disclosure of interest referred to in subsection (1), (2) or (3) shall, as soon as possible be recorded in the minutes of the appropriate meeting of the Board.

(8) No loan shall be made out of the funds of the Agency, or from any other funds administered by the Agency, to a Member of the Board, or to an officer or employee of the Agency, unless the application for such a loan is made in strict compliance with the procedure, including the submission of all relevant information, as prescribed, and such loan is subsequently considered and approved by the Board, in consultation with the Member of the Executive Council.

(9) Any disclosure as contemplated in either subsection (1), (2) or (3) shall forthwith be reported by the Chairperson to the Member of the Executive Council, in writing.

19. Delegation of powers. (1) The Board may, subject to such conditions as it may determine, in writing delegate any power or function conferred or imposed upon it under this Act, except the powers or functions conferred or imposed upon it under section 17 or this section, to -

- (a) the Chief Executive Officer;

- (b) the Chairperson;
- (c) a committee of Members; or
- (d) a committee of Members and personnel.

(2) A delegation under subsection (1) shall not prevent the Board itself from exercising the power or performing the function concerned.

20. Funding of the Agency. The Agency shall be funded by the Government with such moneys as may be appropriated by the Provincial Legislature, after consideration of a strategic business plan and a proposed budget of estimated revenue and expenditure, duly submitted by the Agency to the Member of the Executive Council, before or on 30 September of every year in respect of the ensuing financial year, as contemplated in section 52 of the Public Finance Management Act, 1999.

21. Revenue of the Agency. (1) For the purposes of achieving its objects, exercising its powers and performing its functions, the Agency shall utilise as its revenue -

- (a) fees and other moneys received or raised by it under the provisions of this Act or any other law;
- (b) penalties, fines, and proceeds from sales of forfeited items received or recovered and allocated to the Agency under the provisions of this Act or any other law;
- (c) such moneys as may be appropriated by the Provincial Legislature for the exercise of the powers and the performance of the functions conferred or imposed upon the Agency in terms of this Act or any other law;
- (d) donations, grants and bequests received by it from the public: Provided that conditional donations, grants or bequests shall be accepted by the Board, only after having obtained prior written approval from the Member of the Executive Council;
- (e) any other money which may accrue or be appropriated to it, or which may be placed at its disposal from any other source whatsoever.

(2) The Board shall, subject to section 7 of the Public Finance Management Act, 1999, open and maintain, with a bank registered in South Africa in terms of the Banks Act, 1990 (Act No. 94 of 1990), an account to be known as the Mpumalanga Economic Growth Agency Account, into which account shall be deposited all the moneys received by the Agency as contemplated in subsection (1), read with section 22(5) of the Public Finance Management Act, 1999.

(3) The Board may, subject to any other law -

- (a) solicit donations, grants or bequests referred to in subsection (1)(d); and
- (b) subject to the terms and conditions relating to such donations, grants and bequests, utilise the moneys concerned in such manner as it may determine.

(4) Any surplus funds which, at any time, stand to the credit of the Mpumalanga Economic Growth Agency Account must, in accordance with the investment policy of the Agency, be invested with the Corporation for Public Deposits, as contemplated in Treasury Regulation 31.3.

22. Appropriation of income and property. The moneys appropriated by the Provincial Legislature to the Agency as contemplated in section 20, shall be utilized in accordance with such appropriation and all other income, property and profits of the Agency, shall be utilised exclusively for the achievement of its objects and in accordance with the provisions of this Act.

23. Procurement. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Agency as contemplated in section 4, the Board shall ensure that such procurement is effected in accordance with, and duly complies with –

- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999;
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999, in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Board, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act, 1999; and
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

(2) The Board shall adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system shall be utilised for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods, by the Agency.

24. Committees of Board. (1) The Board may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so established.

(2)(a) A committee established under subsection (1), consists of no fewer than three Members designated by the Board being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question.

(b) The Board shall designate a Board Member serving on a committee as the chairperson of such committee.

(3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee.

25. Power of Board to make rules and determine procedures. The Board may make internal rules and determine procedures regarding the holding of meetings of the Board and the holding of meetings of committees of the Board.

26. Bookkeeping and auditing. (1) The Board shall cause proper records to be kept of all moneys received or expended by the Agency, of all its assets and liabilities and of all financial transactions entered into by the Agency.

(2) The Board shall establish an Audit Committee for the Agency consisting of at least three persons in accordance with Treasury Regulation 27.

(3) The Audit Committee shall prepare, sign and submit to the Board, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure, of the Agency in respect of the preceding quarter.

27. Quarterly reports. (1) The Board shall submit to the Member of the Executive Council quarterly reports, in strict compliance with the relevant provisions of the Public Finance Management Act, 1999 and the Treasury Regulations, and which reports shall deal with the state of affairs, the activities, the operations, and the financial position of the Agency, including -

- (a) the extent to which the Agency has achieved or advanced its objects during the financial quarter concerned;
- (b) the relevant performance information regarding the economic, efficient and effective utilisation of resources;
- (c) the amount of money, if any, received from the Government or any other source and any other financial commitment furnished to the Agency; and
- (d) the detailed personnel establishment and composition of the Agency.

(2) The Member of the Executive Council shall cause copies of the quarterly report submitted to him or her in terms of subsection (1), to be tabled in the Provincial Legislature within 20 days of receipt thereof if the Provincial Legislature is in session, or if the Provincial Legislature is not in session, within 14 days after commencement of its ensuing session.

(3) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may, at any time, request the Board to submit to him or her, an interim report pertaining to the state of affairs, the activities, the operations, and the financial position of the Agency or pertaining to any specific matter identified by the Member of the Executive Council, and shall be submitted to the Member of the Executive Council within 14 days after such request.

28. Annual report and financial statements. (1) The Board shall ensure that, in preparing and submitting its annual report and financial statements, it complies fully with section 55 of the Public Finance Management Act, 1999 and the Treasury Regulations.

(2) The Agency shall, in its annual report, as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to –

- (a) its achievements;
- (b) its failures;
- (c) the financial implications of all such achievements and failures;
- (d) any recommendations pertaining to its objects, for consideration.

29. Prohibition of use of name of Mpumalanga Economic Growth Agency. No person, company or association of persons may carry on business under a name that is the same as or

so closely resembles that of the Mpumalanga Economic Growth Agency that is calculated to or is reasonably likely to deceive.

30. Regulations. (1) The Member of the Executive Council may, after consultation with the Agency and in consultation with the Executive Council, make regulations regarding any requirements to be complied with and any other matter in respect of which the Member of the Executive Council may make regulations, in terms of this Act.

(2) The Member of the Executive Council shall, within six months after the coming into operation of this Act, make regulations pertaining to all matters that shall be prescribed in terms of this Act.

(3) Regulations made in terms of subsection (1), will be effective from the date of publication thereof in the *Provincial Gazette*, by the Member of the Executive Council.

31. Offences and penalties. Any person who contravenes any provision of this Act, is guilty of an offence and liable to a fine as may be determined from time to time or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

32. Repeal of Law. The Mpumalanga Economic Empowerment Corporation Act, 1999, is hereby repealed.

33. Transitional arrangements. (1) The Premier shall stipulate, by notice in the *Provincial Gazette*, a date upon which the Agency shall, subject to section 21(2)(b) of the Companies Act, 1973 (Act No. 61 of 1973), take transfer of the personnel and the assets, and further assume the liabilities, rights and obligations, of the Mpumalanga Investment Initiative.

(2) The Premier shall stipulate, by notice in the *Provincial Gazette*, a date upon which the Agency shall take transfer of the personnel and the assets, and further assume the liabilities, rights and obligations, of the Mpumalanga Economic Empowerment Corporation established by the Mpumalanga Economic Empowerment Corporation Act, 1999.

(3) All persons employed by the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation are, from the applicable dates stipulated by the Premier in terms of either subsection (1) or subsection (2), and with due regard to section 197 of the Labour Relations Act, 1995, deemed to be employed by the Agency at the same salary and salary scale and on the same terms and conditions of employment than those which governed such person's previous employment with either the Mpumalanga Investment Initiative or the Mpumalanga Economic Empowerment Corporation, as the case may be.

(4) No appointment in terms of this Act shall be made or employment be effected for a period of six months after the coming into operation of this section, without the prior written approval of the Member of the Executive Council first having been obtained in each instance.

(5) Arising out of and subject to the provisions of subsections (1) and (2), the Agency shall become the successor-in-title to the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation and –

- (a) becomes the owner of all movable and immovable property allocated to it in terms of section 21(2)(b) of the Companies Act, 1973 and all movable and immovable property of the Mpumalanga Economic Empowerment Corporation;

- (b) is substituted as litigating party for the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation, in all pending litigation, including arbitrations, labour disputes and mediation, as if the Agency had been the litigant at the time the cause of action arose;
- (c) is substituted as contracting party for the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation, in all contracts as if the Agency had been the contracting party at the time of contracting; and
- (d) is deemed to have issued all financial instruments of the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation.

(6) Anything done by or in respect of the Mpumalanga Investment Initiative and the Mpumalanga Economic Empowerment Corporation is deemed to have been done under this Act, by the Agency, if applicable.

(7) The Members of the Board of the Mpumalanga Investment Initiative, the Chief Executive Officer and the other personnel of the Mpumalanga Investment Initiative, the Members of the Mpumalanga Economic Empowerment Corporation and the Chief Executive Officer and the other personnel of the Mpumalanga Economic Empowerment Corporation shall forthwith, upon request, fully and duly assist the Board of the Agency in the exercise and performance of any of its powers and functions in terms of this Act.

34. Short title and commencement. (1) This Act is called the Mpumalanga Economic Growth Agency Act, 2005, and comes into operation on a date fixed by the Premier by notice in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.