

KwaZulu-Natal, South Africa

## KwaZulu-Natal Moses Kotane Research Institute Act, 2024

Act 3 of 2024

Legislation as at 24 May 2024

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KwaZulu-Natal Moses Kotane Research Institute Act, 2024 (Act 3 of 2024)

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# KwaZulu-Natal South Africa

## KwaZulu-Natal Moses Kotane Research Institute Act, 2024 Act 3 of 2024

*Published in Provincial Gazette 2690 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 15 November 2024.]*

(English text signed by the Premier)

### ACT

**To provide for the establishment of the Moses Kotane Research Institute; to determine the objects, powers, duties and functions of the Moses Kotane Research Institute; to determine the manner in which the Moses Kotane Research Institute is to be managed, governed, staffed and financed; and to provide for matters connected therewith.**

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

#### Chapter 1 Definitions

##### 1. Definitions

In this Act, unless the context otherwise indicates—

“**Act**” means this Act, and includes the regulations;

“**Board**” means the Board of the Institute appointed in terms of section 5;

“**Chief Executive Officer**” means the Chief Executive Officer of the Institute appointed in terms of section 17;

“**Company**” means the Non-Profit Company registered under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), with Registration No. 2007/031250/08 known as the Moses Kotane Institute or the successor-in-law of, and the successor-in-title to, such company;

“**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 contemplated in section 132 of the Constitution;

“**financial year**” means the period commencing on 1 April of a particular year and ending on 31 March of the following year;

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

“**Head of Department**” means the person appointed as head of the Department in terms of section 12 of the Public Service Act, 1994 ([Proclamation 103 of 1994](#));

“**indirect interest**” includes, but is not limited to, an interest held by any members of the Board—

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they were married; or
- (c) child, parent or sibling;

“**Institute**” means the Moses Kotane Research Institute established in terms of section 2;

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

“**member**” means a member of the Board appointed in terms of section 5;

“**Portfolio Committee**” means the Portfolio Committee of the Provincial Legislature responsible for economic development;

“**prescribed**” means prescribed by regulation under section 30, and “prescribe” has a corresponding meaning;

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

“**Provincial Government**” means the government of the Province of KwaZulu-Natal;

“**Provincial Legislature**” means the Legislature of the Province as contemplated in section 105 of the Constitution, and having the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

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

“**regulations**” means regulations made in terms of section 30.

## Chapter 2 Moses Kotane Research Institute

### 2. Establishment of Moses Kotane Research Institute

- (1) The Moses Kotane Research Institute is hereby established as the successor-in-law to the Company.
- (2) The Institute is a juristic person.
- (3) The Institute is a provincial public entity as defined in section 1 of the Public Finance Management Act.
- (4) The Board is the Accounting Authority of the Institute, as provided for in section 49(2)(a) of the Public Finance Management Act.

### 3. Objects of Institute

The objects of the Institute are to—

- (a) conduct research that responds to the needs of the provincial economy through—
  - (i) economic research;
  - (ii) advisory services;
  - (iii) capacity building; and

- (iv) enterprise development;
- (b) strategically lead innovation and maritime coordination and implementation activities;
- (c) provide economic research geared to ensure that service delivery programmes are designed;
- (d) undertake economic modelling aimed at forecasting future economic trends;
- (e) establish and maintain a knowledge repository portal;
- (f) facilitate the gathering of market intelligence information;
- (g) undertake regular benchmarking studies with comparable economies;
- (h) undertake market analysis research;
- (i) enhance the knowledge economy through relevant sector-based research, including but not limited to, the following sectors:
  - (i) information and communication technology;
  - (ii) maritime;
  - (iii) tourism;
  - (iv) rural and township development;
  - (v) agriculture; and
  - (vi) manufacturing;
- (j) coordinate and facilitate the mechanisms to strengthen partnerships with academic institutions and the private sector in the province; and
- (k) facilitate and promote innovation, training and skills development in all aspects contemplated in paragraphs (a) to (j).

#### 4. Powers, duties and functions of Institute

- (1) The Institute, subject to the provisions of section 2(4), must—
  - (a) administer funds appropriated to it by the Provincial Legislature;
  - (b) source and administer the funding of initiatives from sources other than allocations from the Provincial Legislature;
  - (c) collaborate with other institutions with similar interests to execute the research mandate;
  - (d) promote the Institute as a world class research hub, through international seminars;
  - (e) establish relationships with local and international stakeholders in the field of research, innovation and the maritime industry;
  - (f) compile a database and provide economic related information for the Province;
  - (g) advise stakeholders on economic research matters, based on research outcomes; and
  - (h) advise the Provincial Government on policy, legislation, and regulations related to research, innovation and the maritime industry.
- (2) In order to promote uniformity and co-operation by all organs of state in the provincial and local spheres of government on matters related to economic research, innovation and the development of the maritime sector, the Institute must—
  - (a) act as a link between organs of state in the provincial and local spheres of government, and external stakeholders; and

- (b) liaise and interact with any organisation, structure or body that has an interest in any matter related thereto.
- (3) In order to give effect to its obligations, subject to the provisions of section 2(4), the Institute may —
- (a) enter into agreements with any person with expert knowledge in a particular field, so as to assist or advise the Institute in connection with any matter relating to its objects and functions;
  - (b) generally, do everything that is necessary to achieve its objectives; and
  - (c) acquire, hold or dispose of immovable property in the course of its business.
- (4) In order to contribute to the development of human capacity regarding research skills in the Province, the Institute may, subject to the provisions of section 2(4), provide bursaries and scholarships to students studying or intending to study in the economic research sphere, or any field, which may support the Institute in its operations and strategic objectives.

### **Chapter 3**

#### **Board of Institute**

##### **5. Composition of Board**

- (1) The Board consists of—
- (a) a minimum of five and a maximum of seven members appointed by the MEC; and
  - (b) the Chief Executive Officer, *ex officio*, as contemplated in section 17(5):
- Provided that an Interim Board must be constituted as contemplated in section 31(4).
- (2) Members of the Board must be fit and proper persons to serve the best interests of the Institute, collectively possessing appropriate knowledge or experience in the academic, research or maritime fields or possessing the following skills and expertise—
- (a) research and publication skills, experience and qualifications;
  - (b) maritime skills, experience and qualifications;
  - (c) economic corporate and public governance skills, experience and qualifications;
  - (d) legal skills, experience and qualifications; and
  - (e) financial and auditing skills, experience and qualifications.
- (3) In appointing members to the Board, the MEC must ensure—
- (a) that historic imbalances are addressed; and
  - (b) that the Board collectively possesses the necessary and appropriate skills and expertise.
- (4) In appointing members to the Board, the MEC must appoint persons representing—
- (a) tertiary institutions;
  - (b) research institutions;
  - (c) stakeholders in the economic sector;
  - (d) the legal sector;
  - (e) business fora; and

- (f) such other person or persons as the MEC may deem fit and necessary to address specific needs in the Board, such as persons with financial expertise.
- (5) The MEC must designate—
  - (a) one of the members of the Board as the Chairperson of the Board; and
  - (b) one of the members of the Board as the Deputy-Chairperson of the Board.
- (6) The MEC may appoint a representative from the Department to—
  - (a) act as liaison between the MEC and the Board;
  - (b) report to the MEC from time to time regarding matters, which are considered relevant; and
  - (c) attend meetings of the Board and participate in discussions: Provided that he or she does not have the right to vote when a decision of the Board is being taken.
- (7) The MEC must, by notice in the *Gazette*, invite any interested parties within the Province to nominate candidates for appointment to the Board.
- (8) The invitation for nominations must specify—
  - (a) the nomination procedure;
  - (b) the requirements for nominations; and
  - (c) the closing date for the nominations.
- (9) The MEC must—
  - (a) appoint a selection panel consisting of senior departmental officials to review the nominations and make recommendations to the MEC regarding the candidates for appointment to the Board;
  - (b) consider all recommended candidates for appointment; and
  - (c) subject to the provisions of subsection (1)(a), appoint as many candidates as may be necessary.
- (10) The MEC must, within 60 days after the appointment of members of the Board in terms of subsection (1), inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.
- (11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

## 6. Disqualification from being appointed to Board

A person is disqualified from being appointed to the Board or from remaining a member of the Board if he or she—

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) has a direct or indirect interest in any contract with the Institute;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine: Provided that a disqualification in terms of this paragraph ends five years after the sentence has been completed; or



- (g) fails to disclose an interest in accordance with section 7(1), or attended or participated in the proceedings of the Board while having an interest contemplated in section 7.

## **7. Declaration of financial or other interests of members of Board**

- (1) A 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 the Schedule.
- (2) Where a member of the Board acquires an interest in any company, or other business interests, during his or her tenure as a member of the Board he or she must, within ten days of the date of the acquisition of such an interest, submit a written declaration to the MEC in a format substantially compliant with Form 1 of the Schedule.
- (3) Any failure by a 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 members of the Board disclosed in terms of this section.

## **8. Term of office and reappointment of member of Board**

- (1) A member is appointed to serve on the Board for a period of three years or such lesser period as the MEC may determine.
- (2) Upon the expiry of his or her term of office, a member may be eligible for reappointment, for one further term not exceeding five years, or for such lesser period as the MEC may determine.

## **9. Vacancies, removal and resignation from office of members of Board**

- (1) A member of the Board must vacate office if he or she becomes disqualified as contemplated in section 6.
- (2) A Member of the Board 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) A member may be removed from office by the MEC if he or she is absent from three or more consecutive meetings of the Board.
- (4) A member may resign from office by giving not less than 30 days written notice to the MEC: Provided that the MEC may waive the resignation notice period.
- (5) Whenever a vacancy occurs on the Board, the MEC must appoint a person to fill such vacancy for the unexpired portion of the term of office of the member in whose place such person is appointed, in accordance with the provisions of section 5.
- (6) In the absence of a functional Board—
  - (a) the functions and powers of the Board temporarily vest in the Chief Executive Officer in accordance with the provisions of section 49(2)(b) of the Public Finance Management Act; and
  - (b) the MEC must, as soon as reasonably possible, but in any event within a period not exceeding 60 days take all necessary steps to ensure that the entity is governed by a functional Board.

## **10. Suspension of member of Board**

The MEC may, subject to compliance with due process, suspend a member of the Board whilst the MEC is investigating allegations which, if found to be correct, may result in the removal of the member as contemplated in section 9(2).

## 11. Meetings and procedures at meetings of Board

- (1) The first meeting of the Board must be held on a date and at a time and venue determined by the MEC, whereafter all future meetings must be as determined by the Chairperson.
- (2) A majority of the serving members of the Board constitutes a quorum for a meeting of the Board, and a matter before the Board is decided by the votes of a majority of the members present at the meeting.
- (3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the Chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.
- (4) The Chairperson must preside at all meetings of the Board: Provided that in his or her absence the Deputy-Chairperson must preside and in the event that neither the Chairperson nor the Deputy-Chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as Chairperson for the duration of that particular meeting.
- (5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the Chairperson has a casting vote in addition to his or her deliberative vote.
- (6) The Board must arrange for minutes of its meetings to be kept.
- (7) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.
- (8) The Chairperson, or a majority of the Board, may call an extraordinary meeting of the Board, in which event the provisions of this section apply with the necessary changes.
- (9) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

## 12. Recusal of member from meetings and proceedings of Board

- (1) A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if—
  - (a) he or she has a direct or indirect interest in the matter; or
  - (b) there is a possibility that a direct or indirect interest in the matter may arise.
- (2) If at any stage during the course of any proceedings before the Board it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such a member must forthwith disclose the nature of his or her interest and leave the meeting.
- (3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.
- (4) If it is subsequently established that the Board took a decision on a matter in respect of which a member failed to disclose a material interest referred to in subsection (1), 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 such a decision aside.

## 13. Remuneration of members of Board

- (1) (a) Subject to subsections (1)(b) and (2)(a), a member of the Board may be paid from the funds of the Board such remuneration and allowances as may be determined by the MEC in consultation with the Member of the Executive Council for Finance.

- (b) A member of the Board who receives remuneration, allowances or other benefits by virtue of his or her office, position, post or employment in—
  - (i) the National Government;
  - (ii) a provincial government;
  - (iii) a municipality;
  - (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
  - (v) a public entity, a national government business enterprise or a provincial government business enterprise as defined in section 1 of the Public Finance Management Act, and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been in were it not for such office, position, post or employment.
- (c) Different remuneration and allowances may be determined for the following categories of members of the Board—
  - (i) the Chairperson;
  - (ii) the Deputy Chairperson; and
  - (iii) the other members of the Board.
- (2) (a) A member of the Board may, in respect of his or her functions as a member, receive reimbursement from the funds of the Board for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.
- (b) The Member of the Executive Council for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

#### 14. Establishment of committees to assist Board

- (1) The Board may establish committees consisting of one or more of its members to—
  - (a) assist the Board in the performance of any of the powers, duties or functions of the Institute contemplated in section 4; or
  - (b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.
- (2) When establishing a committee contemplated in subsection (1), the Board must—
  - (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board; and
  - (b) appoint a Chairperson of such committee.
- (3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Board.

## 15. Consultation and assistance to Board

- (1) The Board may, whenever necessary, appoint or call to its assistance any person for purposes of assisting or advising the Board on any matter pertaining to the exercise of its powers, functions and duties in terms of section 4 of this Act.
- (2) The Board must, on appointing any person as contemplated in subsection (1), conclude a written agreement with the person concerned, which must include a description of the service to be rendered by the person and the date by which he or she must furnish the Board with a report and recommendations in regard thereto.
- (3) The terms, conditions, remuneration and allowances pertaining to the appointment of any person in terms of this section must be paid out of the funds of the Institute as may be determined by it, and must be included in the written agreement contemplated in subsection (2).
- (4) The Board may consult any person, organisation or institution with regard to any matter it deems necessary to enable it to perform its functions.

## 16. Advisory panels

- (1) The Board may establish one or more advisory panels, consisting of persons who have special knowledge or experience in the field relating to the required expertise, to assist it in the exercise of its powers and performance of its functions.
- (2) When appointing members to an advisory panel, the Board is not restricted to members of the Board
- (3) The Board—
  - (a) must determine the functions and terms of reference of the advisory panel;
  - (b) must appoint the Chairperson of the advisory panel, who must be a member of the Board;
  - (c) may remove a member of the advisory panel from office at any time on good cause shown;
  - (d) may determine the procedures of the advisory panel; and
  - (e) may dissolve the advisory panel at any time.
- (4) Any advisory panels established by the Board must make recommendations to the Board for discussion, amendment, rejection or adoption by the Board.
- (5) The Board must determine the remuneration and terms and conditions of appointment, of members of the advisory panel that are not members of the Board.

## Chapter 4

### Chief Executive Officer and staff of Institute

## 17. Chief Executive Officer of Institute

- (1) The Board must, in consultation with the MEC, appoint a suitably qualified, skilled and experienced person as Chief Executive Officer of the Institute.
- (2)
  - (a) The Chief Executive Officer is appointed for a period not exceeding five years.
  - (b) The Chief Executive Officer may, in consultation with the MEC, be reappointed by the Board, for additional terms not exceeding five years at a time.
- (3)
  - (a) The appointment of the Chief Executive Officer is subject to the conclusion of an annual, written performance agreement entered into between the Chief Executive Officer and the Board.

- (b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.
- (4) For purposes of the declaration of financial or other interests, the provisions of section 7 apply with the necessary changes to the Chief Executive Officer: Provided that the Chief Executive Officer must declare his or her interests to the Board, in a format substantially compliant with Form 2 of the Schedule.
- (5) The Chief Executive Officer is an *ex officio* member of the Board but does not have the right to vote at its meetings.

## 18. Functions of Chief Executive Officer

- (1) The Chief Executive Officer is responsible for—
  - (a) the overall management of the Institute in order to achieve the objectives of this Act;
  - (b) the appointment of staff in accordance with the provisions of section 20;
  - (c) the management of members of staff, including the maintenance of discipline over staff;
  - (d) the determination, in consultation with the Board, of a code of conduct, applicable to the Chief Executive Officer and all other members of staff, and justiciable for purposes of disciplinary proceedings, to ensure—
    - (i) compliance with applicable law, including this Act;
    - (ii) the effective, efficient and economical use of the Institute's funds and resources;
    - (iii) the promotion and maintenance of a high standard of professional ethics;
    - (iv) the prevention of conflicts of interest;
    - (v) the protection of confidential information held by the Board or the Institute; and
    - (vi) professional, honest, impartial, fair, ethical and equitable service delivery;
  - (e) the keeping and maintenance of the register of interests declared by members of staff; and
  - (f) ensuring that the Institute complies with the provisions of this Act, the Public Finance Management Act, and any other applicable legislative and policy prescripts.
- (2) 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 Institute 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.
- (3) 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 three months; and
  - (b) if the position of Chief Executive Officer is vacant, appoint another staff member as acting Chief Executive Officer in consultation with the Board and the MEC: Provided that any such acting appointment may not exceed a period of twelve months.
- (4) 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 Board may determine in accordance with subsection (3), subject to any limitations and conditions determined by the MEC.

## 19. 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 director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
  - (c) upon having been removed from office in terms of subsection (2).
- (2) The Board may, in consultation with the MEC, terminate the employment of the Chief Executive Officer, subject to compliance with due process.

## 20. Staff of Institute

- (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 Institute to perform its functions and exercise its powers; and
  - (b) determine the remuneration and other terms and conditions of service for employees of the Institute.
- (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 Institute—
  - (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 18(1)(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 declare their financial or other interests to the Chief Executive Officer, who must keep an updated register of such interests: Provided that the provisions of sections 7 and 17(4) apply with the necessary changes, to the declaration of 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 prescriptions, be seconded or transferred to the Institute.

## 21. Secondment or transfer of staff to Institute

The Institute may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of section 15 of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), and the Public Service Regulations, 2016.

## Chapter 5 Supervisory role of MEC

### 22. Supervisory powers of MEC

- (1) The MEC must monitor the Board in the exercise of its powers and the performance of its functions.
- (2) The MEC may—
  - (a) issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning; and
  - (b) by notice in the *Gazette*, determine norms and standards for the performance by the Institute of its functions and powers, and may issue directives on measures to achieve those norms and standards.

## Chapter 6 Funding and financial management of Institute

### 23. Funds of Institute

- (1) The funds of the Institute may consist of—
  - (a) money appropriated by the Provincial Legislature;
  - (b) interest on investments of the Institute; and
  - (c) income lawfully derived from any other source.
- (2) The Institute must utilise its funds—
  - (a) for the payment of remuneration, allowances and subsistence and travelling expenses of—
    - (i) the members of the Board;
    - (ii) the Chief Executive Officer; and
    - (iii) the members of staff of the Institute; and
  - (b) to cover costs in connection with—
    - (i) the day to day operation and administration of the Institute; and
    - (ii) the performance of the duties and functions of the Institute and the exercise of its powers in terms of this Act.
- (3) The Chief Executive Officer must, with the concurrence of the Board—
  - (a) open an account in the name of the Institute with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
  - (b) deposit therein all money received in terms of subsection (1).
- (4) The Institute may invest monies deposited into its account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

### 24. Financial management

- (1) The Chief Executive Officer must ensure that full and proper books of account and all the necessary records in relation thereto are kept.

- (2) The Chief Executive Officer must ensure that the Institute's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act.
- (3) The Chief Executive Officer must, three calendar months before the end of each financial year, submit to the Board for approval—
  - (a) a strategic plan for the Institute, containing measurable objectives; and
  - (b) a statement of the estimated income and expenditure of the Institute, in respect of the following three financial years.
- (4) In any financial year, the Chief Executive Officer may submit adjusted or supplementary statements of the estimated income and expenditure of the Institute for that financial year, to the Board for approval.
- (5) The Institute, subject to the provisions of subsection (4), may not enter into any financial commitment beyond its approved budget and its accumulated reserves.
- (6) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit therein such amounts as the Board approves.

## 25. Audit and annual report

- (1) The Auditor-General must audit the financial statements of the Institute.
- (2) The Board must submit an annual report on the activities of the Institute 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 Institute has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan during the financial year concerned; and
  - (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

## 26. Legal proceedings against Institute

- (1) Any legal proceedings against the Institute must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).
- (2) The Institute is an organ of state as contemplated in section 239 of the Constitution.



## Chapter 7 General provisions

### 27. Security of confidential information held by Institute

- (1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) and any other applicable law, no person may disclose any information held by the Institute, 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) No person may disclose any information kept in the register contemplated in sections [7](#), [17\(4\)](#) and [20\(3\)\(c\)](#) unless such disclosure is—
  - (a) in terms of any law that compels or authorises such disclosure;
  - (b) materially necessary for the proper functioning of the Institute; or
  - (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Institute, or any member of staff of the Institute.
- (3) Any person who contravenes subsection [\(1\)](#) or [\(2\)](#) is guilty of an offence.

### 28. Use of name of Institute

- (1) No person may, without the prior written authorisation of the Institute, in any way represent or make use of the name, acronym, logos, designs or material used or owned by the Institute.
- (2) No person may falsely claim to be acting on behalf of the Institute.
- (3) Any person who contravenes subsections [\(1\)](#) or [\(2\)](#) is guilty of an offence.

### 29. Delegations

- (1) The MEC may delegate to the Head of Department—
  - (a) any power conferred on the MEC by this Act, except the power to make regulations referred to in section [30](#); or
  - (b) any duty imposed on the MEC by this Act, except any duty regarding the appointment, and removal of members of the Board as contemplated in sections [5](#) and [9\(2\)](#) respectively.
- (2) The Board may delegate any power or duty conferred or imposed on the Board by this Act to the Chief Executive Officer or any staff member of the Institute.
- (3) The Chief Executive Officer may delegate any power or duty conferred or imposed on her or him by this Act, to any staff member of the Institute.
- (4) Any power or duty delegated in terms of subsections [\(1\)](#), [\(2\)](#) or [\(3\)](#) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.
- (5) Any delegation referred to in subsections [\(1\)](#), [\(2\)](#) or [\(3\)](#)—
  - (a) must be in writing;
  - (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
  - (c) may at any time be withdrawn or amended in writing by that person or body: Provided that all delegations must be maintained in a Register managed by the Chief Executive Officer.

### 30. Regulations

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

- (a) make regulations regarding—
  - (i) any matter that may or must be prescribed in terms of this Act; or
  - (ii) any administrative or procedural matter necessary to give effect to the provisions of this Act; and
- (b) amend the Schedule to this Act.

### 31. Winding-up of Company and transitional provisions incidental thereto

- (1)
  - (a) The Company must, within a period not exceeding 12 calendar months, be voluntarily wound up and deregistered.
  - (b) The Directors of the Company must, in winding-up the Company referred to in paragraph (a), amongst other things, comply with the provisions of the Companies Act, 2008 (Act No. 71 of 2008).
- (2) On the date of the winding-up of the Company contemplated in subsection (1), all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Company, are transferred to, and vest in, the Institute established in terms of section 2.
- (3) The Institute is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor-in-law of, and the successor-in-title to, the Company.
- (4) The Directors of the Company must act as the Interim Board until such time as the MEC has, in terms of section 5(1), appointed the Board of the Institute in terms of this Act, which process will automatically terminate the term of office of the Directors of the Company.
- (5) All staff members of the Company are regarded as having been employed in terms of section 20 of this Act, on the same terms and conditions applicable immediately prior to the commencement of this Act.
- (6) When a person becomes a staff member of the Institute in terms of subsection (5)—
  - (a) he or she retains all vacation leave which accrued to his or her credit up to the date immediately before the date of transfer, adjusted in accordance with the conditions of employment of the Institute; and
  - (b) any inquiry instituted or intended to be instituted in respect of alleged misconduct committed by, or incapacity of, such person before the date of transfer, must be disposed of or instituted by the Institute and the Institute must take appropriate steps against the person concerned in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

### 32. General offences

- (1) A member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Institute is guilty of an offence if he or she directly or indirectly accepts any bribe or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Institute.
- (2) Any person is guilty of an offence if he or she, in respect of, or in connection with, anything done or offered by the Institute, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Institute.

- (3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Institute, is guilty of an offence.

### **33. Penalties**

Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years.

### **34. Short title**

This Act is called the KwaZulu-Natal Moses Kotane Research Institute Act, 2024.

## **Schedule (Sections 7(1), 17(4) and 20(3)(c))**

### **Forms**

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