

Northern Cape, South Africa

## Northern Cape Economic Development, Trade and Investment Promotion Agency Act, 2008

Act 4 of 2008

Legislation as at 16 November 2009

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Northern Cape Economic Development, Trade and Investment Promotion Agency Act, 2008 (Act 4 of 2008)

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## Northern Cape South Africa

# Northern Cape Economic Development, Trade and Investment Promotion Agency Act, 2008 Act 4 of 2008

Published in Northern Cape Provincial Gazette 1356 on 16 November 2009

Assented to on 4 November 2009

Commenced on 1 April 2010 by Northern Cape Economic Development,  
Trade and Investment Promotion Agency Act, 2008: Commencement

*[This is the version of this document as it was from 16 November 2009 to 5 August 2013.]*

## ACT

**To provide for the establishment of an economic development, trade and investment promotion agency for the Northern Cape Province and for the management thereof by a Board; to provide for the functioning of the Agency, financial control measures and reporting on the activities of the Agency; to provide for the founding of the Agency; and to provide for matters connected therewith.**

WHEREAS a need exists within the Northern Cape Province for economic development, trade and investment promotion opportunities;

AND WHEREAS the establishment of an economic development, trade and investment promotion agency for the Northern Cape Province is a response to the challenge of translating high-level investment and business opportunities in the area into actual business operations that may contribute directly to economic growth and social equity for the people of the Northern Cape Province;

BE IT THEREFORE ENACTED by the Northern Cape Provincial Legislature, as follows:-

### 1. Interpretation

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

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

“**Board**” means the Board of the Agency established in terms of section 5;

“**chairperson**” means a person appointed as chairperson or acting chairperson in terms of section 6;

“**chief executive officer**” means the chief executive officer appointed in terms of section 12;

“**committee**” means a committee of the Board appointed in terms of section 23;

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

“**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;

“**family member**” means a person’s-

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

“**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;

“**organ of state**” has the meaning set out in section 239 of the [Constitution](#);

“**political office-bearer**” means—

- (a) a member of the National Assembly or the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature;
- (c) a diplomatic representative of the Republic who is not a member of the public service;
- (d) a member of a house or council of traditional leaders;
- (e) a member of a municipal council; or
- (f) a national or provincial office-bearer of any political party;

“**Premier**” means the Premier of the Province referred to in section 125 of the [Constitution](#);

“**Province**” means the Northern Cape Province referred to in section 103(1)(f) 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 referred to in section 104 of the [Constitution](#);

“**Republic**” means the Republic of South Africa referred to in section 1 of the [Constitution](#);

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

“**spouse**” means a person’s—

- (a) partner in a marriage or civil union;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

“**the Company**” means the Northern Cape Economic Development Company, an association incorporated under section 21 of the Companies Act, 1973 ([Act No. 61 of 1973](#)), with registration number 2002/026543/08; and

“**this Act**” includes any regulation made under this Act.

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

## 2. Establishment of the Agency

- (1) An economic development, trade and investment promotion agency for the Northern Cape Province is hereby established as a juristic person, to consist of—
  - (a) an economic development unit; and

- (b) a trade and investment promotion unit.
- (2) The Premier must, within 6 months after the coming into operation of this Act, and after public consultation, by proclamation in the *Provincial Gazette*, name the Agency.

### 3. Objects of the Agency

- (1) The objects of the Agency are to ensure enterprise development that will significantly contribute to economic growth and development within the Province by—
  - (a) planning and assistance with business enterprise and rural development;
  - (b) the provision of funding in respect of approved enterprise development;
  - (c) project management, development and management of immovable property, and
  - (d) the promotion of foreign trade and investment.
- (2) In achieving its objects, the Agency must endeavour to progressively increase its own revenue generation and collection.

### 4. Powers and functions of the Agency

- (1) The Agency must, in consultation with the Department, actively promote and market the Province as an investor-friendly destination to increase and retain investment in the Province.
- (2) The Agency must, 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, by liaising and consulting with all relevant stakeholders, including—
  - (a) individuals and communities;
  - (b) organized formal tourism;
  - (c) organs of state;
  - (d) statutory bodies;
  - (e) organized labour; and
  - (f) organized business,and involve the Department in complying with its obligations to liaise and consult with all relevant stakeholders.
- (3) The Agency may, with the prior written approval of the responsible Member, raise funds in accordance with detailed written funding proposals.
- (4) The Agency may, subject to section 66 of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)),-
  - (a) guarantee contracts, obligations or undertakings of any person; or
  - (b) bind itself as surety for the due fulfillment of any person's obligations, and enter into surety bonds or deeds of security for that purpose; or
  - (c) 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.
- (5) The Agency may, upon request, facilitate—
  - (a) the establishment of joint ventures; and
  - (b) public-private partnerships, in consultation with the responsible Member.

- (6) The Agency may, subject to [section 22](#)-
  - (a) with the prior written approval of the responsible Member, acquire and dispose of immovable property; and
  - (b) acquire, hire, lease, sell, let, burden or alienate any goods, supplies or services.
- (7) The Agency must actively develop and manage all immovable property belonging to it and all immovable property which is under its control.
- (8) The Agency must 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 must actively assist potential and existing investors or trade partners with timeous, relevant, accurate and reliable information and advice.
- (10) The Agency may, with the prior written consent of the responsible Member, negotiate and affect the takeover of—
  - (a) any existing enterprise in the Province; or
  - (b) any project of such enterprise.
- (11) 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 ([Act No. 1 of 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 portion thereof and the selling or disposal of any such undertaking or portion thereof or interest therein.
- (12) The Agency must 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.
- (13) The Agency must exercise and perform its powers and functions, as far as financial and personnel matters are concerned, by—
  - (a) developing and implementing all policies and programmes of the Agency pertaining to financial and personnel matters, 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 or dismissing any employee of the Agency, with due regard to the provisions of the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)).
- (14) The Agency may, with the prior written approval of the responsible Member —
  - (a) take up shares in any company established under the Companies Act, 1973 ([Act No. 61 of 1973](#)); or
  - (b) acquire a legitimate financial interest in any other enterprise.

## 5. Establishment of Board

A Board for the Agency is hereby established-

- (a) to manage and control the affairs of the Agency;
- (b) to be the accounting authority for the Agency as contemplated in section 49(2)(a) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)); and
- (c) to exercise the powers and perform the functions conferred or imposed upon the Agency by this Act or any other law.

## 6. Composition of the Board

- (1) The Board consists of at least 5 members, but no more than 8 members, eligible to vote at meetings of the Board, appointed by the responsible Member by virtue of their proven acumen, knowledge or experience of business or with related skills, having due regard to the inclusion of previously disadvantaged persons, young persons, women, disabled persons and persons from the various district municipalities of the Province.
- (2) The chief executive officer and Head of Department, or an officer designated by the Head of Department, are entitled to be present and take part in the discussions at meetings of the Board, but are not members of the Board and may not vote at such meetings.
- (3) A member contemplated in subsection (1) may be appointed only after the responsible Member has, by notice in the *Provincial Gazette* and in not less than two newspapers circulating in the Province, invited interested parties to nominate persons suitable for appointment as members of the Board.
- (4) Members appointed in terms of subsection (1) are non-executive members of the Board.
- (5) The responsible Member appoints a member of the Board as chairperson and another member as deputy chairperson.
- (6) The chairperson presides at all meetings of the Board and the deputy chairperson presides at meetings in the absence of the chairperson.
- (7) Before being appointed a member of the Board, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she—
  - (a) is eligible for such appointment; and
  - (b) is not disqualified in terms of this Act from such appointment.
- (8) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Board, or to undertake or cause to be undertaken any investigation or enquiry in that regard.

## 7. Term of office of members of Board

- (1) A member of the Board may serve for a term not exceeding 5 years.
- (2) No person may serve as a member of the Board for more than two terms.

## 8. Eligibility to serve on the Board

- (1) To be eligible to serve as a member of the Board, and to continue to hold that office, a person must—
  - (a) be a fit and proper person;
  - (b) not be subject to any disqualification set out in subsection (2);

- (c) have submitted to the responsible Member the affidavit referred to in [section 6\(7\)](#); and
  - (d) be a citizen of the Republic and ordinarily residing in the Province.
- (2) A person may not be a member of the Board if that person-
- (a) is a political office-bearer;
  - (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;
  - (c) was once, or is removed from an office of trust on account of misconduct;
  - (d) is subject to an order of a competent court holding that person to be mentally deranged;
  - (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft; fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 ([Act No. 12 of 2004](#)), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act; 1998 ([Act No. 121 of 1998](#)), an offence under the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#)) or an offence involving dishonesty; or
  - (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.
- (3) The provisions of subsections (1) and (2), read with the changes required by the context, apply to any official referred to in [section 6\(2\)](#).

## 9. Conflicting interests

- (1) A member of the Board must not-
- (a) engage in any activity that may undermine the integrity of the Board;
  - (b) attend, participate in or influence the proceedings during a meeting of the Board if, in relation to the matter before the Board, that member has an interest that precludes the member from performing the duties of a member of the Board in a fair, unbiased and proper manner;
  - (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b);
  - (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a member of the Board; or
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.
- (2) If, at any time, it appears to a member of the Board that a matter before the Board concerns an interest of that member referred to in subsection (1)(b), the member must-
- (a) immediately and fully disclose the nature of that interest to the meeting; and
  - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

## 10. Removal from office

- (1) The responsible Member may, by written notice, remove any member of the Board from office—
- (a) on the grounds of misconduct or incompetence;
  - (b) if the member becomes subject to a disqualification contemplated in [section 8\(2\)](#);



- (c) if the member is absent for more than two meetings of the Board in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.
- (2) A decision to remove a member of the Board on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member.
- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member.
- (4) The responsible Member may at any time disband the Board if he or she is, on reasonable grounds, convinced that the Board is not functioning properly or that it will be in the community's or public interest to do so.

## 11. Remuneration of members of Board

- (1) A member of the Board must be paid such reasonable remuneration and allowances out of the funds of the Board as the responsible Member, in consultation with the Member of the Executive Council responsible for finance in the Province, may from time to time determine.
- (2) A member of the Board, who is in the full-time employ of any organ of state, may not receive remuneration in terms of subsection (1).
- (3) Remuneration determined in terms of subsection (1) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective.
- (4) Members of the Board are entitled to be reimbursed for any traveling and subsistence expenses reasonably incurred by them for the performance of their functions as members of the Board.

## 12. Staff of Agency and remuneration

- (1) The Board-
  - (a) must, subject to sections [13](#), [14](#) and [15](#), appoint a suitably qualified and experienced person as chief executive officer, who—
    - (i) subject to the direction and control of the Board, is responsible for all financial and administrative responsibilities pertaining to the functions of the Agency; and
    - (ii) is accountable to the Agency;
  - (b) must subject to [section 2\(1\)](#), determine a staff establishment for the Agency; and
  - (c) may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Agency to perform its functions.
- (2) [Section 8\(1\) and \(2\)](#) and [section 9](#), read with the changes required by the context, apply to the chief executive officer and each staff member to be appointed in terms of this Act.
- (3) The Board, in consultation with the Provincial Treasury and subject to [section 25\(1\)\(b\)](#), may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1).
- (4) The Board may delegate its powers in terms of subsection (1)(c) to the chief executive officer.
- (5) When making an appointment in terms of subsection (1), the Board must—
  - (a) give preference to candidates living in the Province; and
  - (b) have due regard to the inclusion of previously disadvantaged persons, young persons, women and disabled persons.

### 13. Chief executive officer

- (1) The chief executive officer, appointed in terms of [section 12\(1\)](#), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Agency.
- (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 must, when appointing a chief executive officer, through public invitation, request applications for that position, to be submitted to the Board within 21 days after such request.
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service, as the Board may determine, but-
  - (a) the chief executive officer may be so appointed for a period not exceeding 5 years;
  - (b) upon the expiration of the term of office of the chief executive officer, he or she is eligible for reappointment for one further term of 5 years only;
  - (c) the chief executive officer may not undertake any other remunerative work, without the prior written consent of the Board.
- (5) The chief executive officer may, on 3 months' written notice tendered to the Board, resign from his or her office.
- (6) 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 and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the responsible Member, but no such person may be the acting chief executive officer for a period exceeding 6 months in total.
- (7) While a person appointed as contemplated in subsection (6) so acts, he or she may exercise the powers and perform the functions of the chief executive officer.

### 14. Removal of chief executive officer from office

- (1) The Board may 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;
  - (d) on the ground that he or she is or has become subject to a disqualification envisaged in [section 8\(2\)](#).
- (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 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](#)), amongst other things, 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 12\(1\)](#) becomes effective from the date of the entering into a written employment contract with the Board, which employment contract must be for the duration of his or her term of office as chief executive officer.
- (2) The employment contract contemplated in subsection (1) must, 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 must annually, prior to the commencement of the financial year concerned, conclude a performance agreement with the Board which performance agreement's term of operation must coincide with the financial year of the Agency.
- (4) The performance agreement contemplated in subsection (3) must, 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 biannual basis.

## 16. Meetings of the Board

- (1) The chairperson may determine the date, time and place for the first meeting of the Board, and the chairperson, in consultation with the Board, may determine the date, time and place for each subsequent meeting.
- (2) The chairperson, in consultation with the Board, may determine procedures at meetings of the Board, after due consideration of the principles of openness and transparency.
- (3) A majority of the members of the Board contemplated in [section 6\(1\)](#) is a quorum for a meeting of the Board.
- (4) The Board must attempt to reach its decision by consensus.
- (5) If the Board is unable to reach a consensual decision in any matter before it, the Board may resolve the matter by a simple majority vote on a motion.
- (6) 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.
- (7) Subject to subsections (4), (5) and (6), the Board may establish rules for its own proceedings.
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Board.
- (9) Minutes of the proceedings of meetings of the Board must be retained at the offices of the Board and must be open to the public for inspection.
- (10) No person who has access to any information classified by the Board as confidential, may, without permission of the Board, divulge such information.
- (11) If a particular person is able to assist the Board in the consideration of a particular matter, the Board may co-opt that person for that purpose.
- (12) A person so co-opted is not entitled to vote at any meeting of the Board or a committee of the Board.
- (13) The Board must meet at least once every 3 months to, amongst other things, consider the report referred to in [section 20\(3\)](#).

- (14) The responsible Member may call a meeting of the Board if the Board fails to comply with subsection (13).
- (15) The chairperson must call an extraordinary meeting of the Board, if so requested by the chief executive officer.
- (16) 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 the matter, all relevant documentation pertaining to such matter must forthwith be made available to each member by the chief executive officer for consideration.
- (17) A matter referred to in subsection (16) and agreed upon in writing by a simple majority of the Board members will, subject to subsection (18), be a resolution of the Board.
- (18) A resolution contemplated in subsection (17), must be reported to the Board by the chief executive officer at its next ensuing meeting and must be so recorded in the minutes of that meeting.

## **17. Certain loans prohibited**

No loan may be made out of the funds of the Agency, or from any other funds administered or held in trust by the Agency, to a member of the Board, or a member of the staff of the Agency, or to a family member of such member of the Board or member of the staff of the Agency.

## **18. Delegation**

- (1) The Agency may, subject to subsections (2), (3) and (4), in writing, delegate any of its powers, functions or duties in terms of this Act, to the chief executive officer or a committee of the Board.
- (2) The chief executive officer may, with the written permission of the Board, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff of the Agency.
- (3) A delegation or sub-delegation, as the case may be, may be withdrawn by the Board or the chief executive officer with the concurrence of the Board, respectively.
- (4) The Agency may not delegate any power to be exercised, function to be performed or duty to be carried out by it-
  - (a) in terms of any other law;
  - (b) in or after consultation with the responsible Member; or
  - (c) with the approval or consent of the responsible Member.

## **19. Finances**

- (1) The Agency is financed from—
  - (a) money appropriated by the Provincial Legislature for the Agency;
  - (b) any money payable to the Agency in terms of this Act;
  - (c) income derived by the Agency from its investment and deposit of surplus money in terms of subsection (6); and
  - (d) all monies accruing to the Agency from any source.
- (2) The financial year of the Agency is the period from 1 April in any year to 31 March of the following year.
- (3) Each year, at a time determined by the responsible Member, but no later than 30 June of that year, the Agency must submit to the responsible Member a statement of the Agency's estimated income

and expenditure, and requested appropriation from the Provincial Legislature, in respect of the next ensuing financial year.

- (4) The Agency must open and maintain an account in the name of the Agency with a registered bank in the Republic and-
  - (a) any money received by the Agency must be deposited into that account; and
  - (b) every payment on behalf of the Agency must be made from that account.
- (5) Cheques drawn on the account of the Agency must be signed on its behalf by two persons authorized for that purpose by resolution of the Board.
- (6) The Board may invest or deposit money of the Agency that is not immediately required for contingencies or to meet current expenditures-
  - (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or
  - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 ([Act No. 46 of 1984](#)).
- (7) Any money standing to the credit of the Agency at the end of any financial year of the Agency, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Agency, must be paid into the Provincial Revenue Fund.

## 20. Accountability, audits and reports

- (1) The Agency must—
  - (a) account for state and other money received by, or paid for, or on account of the Board; and
  - (b) cause the necessary accounting and related records to be kept,in accordance with the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)).
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General.
- (3) The Agency must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities.
- (4) The Agency must submit the report and statements referred to in section 55(1) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), to the responsible Member in the way required by section 55(3) of that Act.
- (5) The responsible Member must, as soon as practicable after receiving the report and statements referred to in subsection (4), table it in the Provincial Legislature.
- (6) The Agency must, in the report contemplated in subsection (4), 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.
- (7) The Board must establish an audit committee for the Agency consisting of at least three persons in accordance with Treasury Regulation 27.

- (8) The audit committee must 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.

## **21. Appropriation of income and property**

The moneys appropriated by the Provincial Legislature to the Agency as contemplated in [section 19](#), must be utilized in accordance with such appropriation and all other income, property and profits of the Agency must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act.

## **22. 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 must 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 ([Act No. 1 of 1999](#));
  - (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999 ([Act No. 1 of 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 ([Act No. 1 of 1999](#)); and
  - (d) the Preferential Procurement Policy Framework Act, 2000 ([Act No. 5 of 2000](#)).
- (2) The Board must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the Agency.

## **23. 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 must 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.

## **24. Prohibition of use of name of 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 Agency that it is reasonably likely to deceive.

## 25. Regulations

- (1) The responsible Member may make regulations regarding—
  - (a) any matter pertaining to the Board;
  - (b) conditions of service of staff of the Agency;
  - (c) the limitation of any power or function of the Agency referred to in [section 4](#);
  - (d) any fee payable in terms of this Act; and
  - (e) in general, any matter in respect of which it is necessary or expedient to make regulations in order to achieve the objects of this Act, but any regulation with financial implications may only be made with the concurrence of the Member of the Executive Council responsible for finance.
- (2) Before making regulations in terms of subsection (1), the responsible Member must publish the draft regulations for public comment in the *Provincial Gazette*.
- (3) Any regulation made in terms of subsection (1)(d), may only be made with the concurrence of the Member of the Executive Council responsible for financial matters in the Province.

## 26. Offences and penalties

Any person who contravenes any provision of this Act is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

## 27. Transitional and founding arrangements

- (1) With effect from the date on which this Act comes into operation, subject to the approval of the members of the Company first being obtained, the staff, assets, liabilities and records of the Company are transferred from the Company to the Agency and the Agency becomes the successor-in-law of the Company.
- (2) The staff of the Company—
  - (a) are transferred in accordance with the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), for the unexpired term of their respective contracts with the Company; and
  - (b) are employed by the Agency with retention of their respective remunerative packages for that unexpired term.
- (3) The responsible Member may, for a period not exceeding 12 months after the coming into operation of this Act, second any officer on the establishment of the Department to the Agency to be of assistance in founding the Agency.

## 28. Short title and commencement

This Act is called the Northern Cape Economic Development, Trade and Investment Promotion Agency Act, 2008, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.