

**KWAZULU-NATAL
PROVINCIAL TOURISM BILL, 2012**

BILL

To provide for the sustainable development and promotion of tourism in KwaZulu-Natal; ; **to provide for powers and functions of the department;** to provide for the establishment of the KwaZulu-Natal Tourism Authority; to determine the objectives, powers, duties and functions of the Tourism Authority, **to provide for the establishment of the Tourism Protector,** to provide for the objectives, powers, duties and functions of other tourism related structures; to provide for developmental and transformation of the Tourism industry in the province of KwaZulu-Natal; to provide for the repeal of the KwaZulu-Natal Tourism Act, 1996 (Act No. 11 of 1996); and to provide for matters incidental thereto.

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

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CHAPTER 1
DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise –

"**Authority**" means the KwaZulu-Natal Tourism Authority established in terms of section 2;

"**Board**" means the Board of the Authority appointed in terms of section 13;

"**Chief Executive Officer**" means the Chief Executive Officer of the Authority appointed in terms of section 15;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Department**" means the department of Economic Development and Tourism in the Province of KwaZulu-Natal or, where the Premier assigns the administration of this Act to another member of the Executive Council, the department in the Provincial Government of KwaZulu-Natal for which that member of the Executive Council is responsible;

"**Executive Council**" means the Executive Council of the Province of KwaZulu-Natal;

"**financial year**" means the period as contemplated in section 50;

"**Gazette**" means the official *Provincial Gazette* of KwaZulu-Natal;

"**Head of Department**" means the person appointed as head of the Department in terms of section 12 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"**member**" means a member of the Board of the Authority appointed in terms of section 13;

"**Member of the Executive Council responsible for environmental affairs**" means the member of the Executive Council responsible for environmental affairs in the Province;

"**Member of the Executive Council responsible for finance**" means the member of the Executive Council responsible for finance in the Province;

"**Member of the Executive Council responsible for local government**" means the member of the Executive Council responsible for local government in the Province;

"**municipality**" means a municipality contemplated in section 155 of the Constitution, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

"**Portfolio Committee**" means the Portfolio Committee of the Provincial Legislature responsible for Economic Development and Tourism;

"**Prescribed**" means prescribed by regulation under section 31, 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 of KwaZulu-

Natal as contemplated in section 105 of the Constitution, and having legislative authority for the Province as contemplated in section 104(1) of the Constitution;

“Provincial Tourism Registrar” means the registrar of tourism businesses and tourist guides as contemplated in chapter 7 of this Act.

“Regulations” means regulations made in terms of section 46;

“Responsible Member of the Executive Council” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for Economic, Development and Tourism or any other Member of the Executive Council to whom the Premier has assigned the administration of this Act in terms of section 132 of the Constitution;

“Tourism Inspectors” mean tourism compliance officers as appointed by the Tourism Protector in Section 8

“Tourism Protector” means Tourism Protector established in terms of section 5; and

“This Act” includes the regulations as outlined in section 4.

CHAPTER 2

OBJECTS OF THE ACT, EXEMPTIONS AND FUNCTIONS
OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

2. The objects of this Act shall be to–

- (a) promote and ensure sustainable tourism development in KwaZulu-Natal;
- (b) establish the KwaZulu-Natal Tourism Authority;
- (c) promote responsible tourism for the benefit of the citizens of the province of KwaZulu-Natal, and enjoyment by the citizens of South Africa, and foreign visitors;
- (d) provide for the effective domestic and international marketing of the province of KwaZulu-Natal as a tourist destination;
- (e) promote quality tourism products and services;
- (f) promote and provide for growth, development and transformation of the tourism sector and
- (g) enhance co-operation and co-ordination between all spheres of Government and the private sector in developing and managing tourism

Exemptions

3. This Act does not apply to –

- (a)
- (b)

Functions of responsible Member of Executive Council

4. The responsible Member of the Executive Council must –

- (a) within 12 months after the coming into operation of the Act, –
 - (i) develop provincial policy and norms and standards, joint planning and marketing pertaining to the tourism issues;
 - (ii) develop Regulations relating to registration, classification, accreditation, licensing and levying of tourism operators, tourism establishments and other tourism stakeholders in the province, including sanctions for non-compliance;

- (iii) establish and set guidelines for conducting business with regard to the tourism issues in the province;
- (iv) identify and sign cooperation agreements and concessions with other government departments or public entities and other collaborations as deemed necessary;
- (b) where necessary, establish a social responsibility programme in respect of tourism issues; and
- (c) establish the dedicated tourism fund that will enable the province to comply with the provisions of this Act as detailed in section 49 (a)
- (d) perform such other functions as may be assigned to him or her in terms of this Act.

CHAPTER 3

PROVINCIAL AGENCY FOR TOURISM PROTECTION

Appointment and establishment of the Tourism Protector

5. (1) The Member of the Executive Council may designate a suitably qualified officer of the Department as the Tourism Protector and establish a unit dealing with the function within the department.
- (2) The Tourism Protector contemplated in subsection (1) is not a juristic person.
- (3) The responsible Member of the Executive Council must, in terms of the relevant provisions of the Public Service Act, 1994 (Proclamation No.104 of 1994), appoint the Tourism Protector at the level determined by the responsible Member of the Executive Council and gazette the appointment
- (4) Where the Tourism Protector is unable to discharge his or her duties for whatever reason, the responsible Member of the Executive Council may appoint a person as Acting Tourism Protector pending the appointment of a full time Tourism Protector;
- (5) All staff members assigned to provide administrative support to the Office of the Tourism Protector as contemplated in subsection (5) must be subject to the control and the direction of the Tourism Protector.
- (6) Where a need arises, the Tourism Protector may in the performance of his or her duties and functions, be assisted by any person or body whose services may be

obtained by him or her, on terms and conditions that would be agreed on, for the purposes of a particular investigation or probity.

- (7) A person referred to in subsection (7) may be dispatched to any part of the Province or Republic to conduct an investigation contemplated in subsection (7).

Objects of the Tourism Protector

6. The objects of the Tourism Protector are to –

- (i) ensure compliance with the provisions of this Act, and investigate cases where tourists rights have been violated.
- (ii) foster confidence in the Province in respect of the tourism related matters;
- (ii) ensure that the mechanisms provided to protect tourists, businesses, and citizens in terms of this Act are in place;
- (iv) to ensure that it carries out investigations and recommend norms and standards which will ensure the transformation of the tourism industry;
- (v) negotiate redress mechanisms where tourists rights have been violated;
- (vi) champion safety and security of domestic and international tourists

Powers, duties and functions of the Tourism Protector

7. The Tourism Protector must –

- (a) receive and investigate tourism complaints in accordance with this Act;
- (b) facilitate the mediation or conciliation disputes arising in terms of this Act between or among persons resident, or conducting tourism business within the province;
- (c) resolve a dispute contemplated in paragraph (b) and where the dispute can be determined in terms of the Consumer Protection Act refer the dispute to the Office of the Consumer Protector;
- (d) resolve a dispute contemplated in paragraph (b), and where the dispute can be determined in terms of the Competition Laws refer the dispute to the Competition Commission;
- (e) make recommendations to the Member of the Executive Council and take remedial action in respect of the complaints lodged with the Tourism Protector;

- (f) advise the responsible Member of the Executive Council on any matter referred to the Tourism Protector;
- (g) investigate and make recommendations to the responsible Member of the Executive Council, regarding any matter relating directly or indirectly to tourism issues in the Province;
- (h) collaborate with national, provincial and international stakeholders and participate in all educational programmes aimed at promoting awareness to the stakeholders in the tourism industry with regard to the handling and dealing with tourists safety and other tourism related issues;
- i) engage stakeholders in the tourism industry, consumers and organizations or institutions whose activities or aims have an impact on and relate to the tourism issues in the Province; (ii) business and further ensuring that business complies with the standing policies and legislation pertaining to tourism;
- (j) develop programmes in order to pursue the objects of the Act outlined in section 2;
- (k) within the framework of national and provincial tourism policies, assist and advise the Member of Executive Council in ensuring compliance;
- (m) perform such other functions as may be assigned in terms of this Act.

8. Powers, duties and functions of the Tourism Protector

(a) The Tourism Protector has power to-

- (i) Receive and investigate tourism complaints, injustices and any unfair treatment pertaining to the tourism industry in accordance with this act
- (ii) call for and copy records, accounts, and other documents relating to the industry, and inspecting articles relating to the industry in order to examine whether or not an individual tourism establishment of tourism business complied with the industry norms and standards.
- (iii) examine any building, vehicle or person relating to the tourism industry.

- (b)** No one shall interfere or obstruct the Tourism Protector in the discharge of his duties.

9. The Tourism Protector shall employ Tourism inspectors who shall-
- a) Carry out routine inspections to ascertain if establishments maintain minimum standards as set out for various sectors of the tourism industry.
 - b) Carry out routine registration and onsite inspections to enforce the maintenance of minimum standards and to ensure that businesses or establishments comply with this act.
 - c) **Inspect illegal activities** of tourism businesses and examine documents for suspicious operators
 - e) **coordinate with other concerned agencies on the work of tourism inspection**

Forms of inspection

Three forms of inspections shall be enacted depending on the nature of cases being investigated

Regular systematic inspection

- i) Regular systematic inspections shall be carried out according to inspection plans on a regular basis and at a specified time and shall be performed at least once a year.

Inspection following an advance notice

- ii) Inspection following an advance notice shall be conducted when it is necessary, by giving prior notice to the persons responsible for the administration or operation of the tourism business at least twenty-four hours in advance.

Emergency inspection

- iii) Emergency inspections shall be conducted without advance notice being given in instances where suspicious or evidence of information that might be concealed from the inspectors has been established.
- iv) Determine if the individuals or organisations that violate provision of the tourism act and other statutes shall be re-educated, warned, fined or punished according to the laws as determined case by case.

CHAPTER 4

KWAZULU-NATAL TOURISM AUTHORITY

Establishment of KwaZulu-Natal Tourism Authority

10.(1) There is hereby established a juristic person called the KwaZulu-Natal Tourism Authority.

(2) The Authority is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Objectives of Authority

11. The objectives of the Authority are –

- (a) to market the Province nationally and internationally as a prime tourist destination; and
- (b) to perform the powers, duties and functions specified in section 4.

Powers, duties and functions of Authority

12.(1) The Authority must –

- (a) market and promote the Province to international and domestic tourism markets –
 - (i) in co-operation with other provinces and municipalities; and
 - (ii) in line with national policy, programmes and strategies.
- (b) develop the tourism brand for the Province;
- (c) support municipalities in the Province to –
 - (i) develop and implement their tourism marketing strategies; and
 - (ii) market and promote their municipal areas as tourism destinations;
- (d) create and maintain the Provincial Knowledge Management system;
- (e) monitor tourism growth in the Province; and
- (f) establish and operate one or more companies, closed corporations or other similar bodies, and to buy and sell shares in such companies, closed corporations or other such similar bodies;
- (ii) investigate and make recommendations to the responsible Member of the

Executive Council any matter related to the promotion, growth and marketing of tourism in the Province.

(2) The Authority may for the purposes of –

- (a) implementing the provincial tourism policy in relation to marketing
- (b) promoting and marketing KwaZulu-Natal as a prime destination for tourists –
 - (i) enter into joint ventures with other institutions, organizations, bodies or persons;
 - (iii) become partners or shareholders in companies, closed corporations or other bodies and to sell all or part of such shares or interests;
 - (iv) raise funds through donations and sponsorships;
 - (v) enter into agreements and contracts with any institution, body, organisation, or person anywhere in South Africa;
 - (vi) enter into international agreements and contracts, with the approval of the responsible Member of the Executive Council;
 - (viii) consult and liaise with any organ of state, organization, institution, body or committee on any matter pertaining to the promotion, growth and marketing of tourism in the Province;
 - (ix) enter into agreements for the attainment of its objects, the exercise of its powers, duties and functions;
 - (x) subject to the prior approval of the responsible Member of the Executive Council and the Member of the Executive Council responsible for finance
 - (aa) acquire an interest in companies, partnerships or other bodies and dispose of such interests in whole or in part; or
 - (bb) enter into joint ventures with other institutions, organisations, municipalities, bodies or persons;
 - (xi) generally, do anything –
 - (aa) necessary or expedient for the carrying out of its powers, functions or duties in promoting and marketing the province; or
 - (bb) reasonably incidental or ancillary to the carrying out of such powers, functions or duties.

CHAPTER 3
BOARD OF THE AUTHORITY

Composition of Board

13. (1) The Board consists of –
- (a) not less than 11 members appointed by the responsible Member of the Executive Council; and
 - (b) the Chief Executive Officer, ex officio, as contemplated in section 15.
- (2) The responsible Member of the Executive Council may designate an employee of the Department –
- (a) to facilitate liaison between the responsible Member of the Executive Council and the Board;
 - (b) to report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
 - (c) to attend meetings of the Board and participate in discussions of the Board.
- (3) The person designated in terms of subsection (2) does not have the right to vote when a decision of the Authority is taken.
- (4) Members of the Board must –
- (a) be fit and proper persons to serve the best interests of the Province;
 - (b) be characterised by their independence, impartiality and fairness; and
 - (c) collectively possess –
 - (i) legal skills, experience and qualifications;
 - (ii) financial skills, experience and qualifications;
 - (iii) extensive knowledge of and experience in business management including human resources management and labour relations;
 - (iv) extensive knowledge of and experience in tourism marketing
 - (v) extensive knowledge and experience in community development;
 - (vi) extensive knowledge and experience in planning or development; and
 - (vii) any other skill, experience or qualification that might be of benefit to the Authority.

- (5) In appointing members of the Board, the responsible Member of the Executive Council, must ensure –
- (a) that historic imbalances are addressed; and
 - (b) that the Board, collectively possess the necessary and appropriate skills, experience and expertise.
- (6) The responsible Member of the Executive Council must, by notice in the *Gazette* and at least two newspapers circulating in the Province, invite interested parties within the Province to nominate candidates to serve on the Board.
- (7) The invitation for nominations in terms of subsection (6) must specify the –
- (a) nomination procedure;
 - (b) requirements for nomination;
 - (c) date by which a nomination must be received by the responsible Member of the Executive Council; and
 - (d) the manner in which acceptance by nominees, should be submitted.
- (8) The responsible Member of the Executive Council must appoint a selection panel comprising –
- (a) senior Departmental officials; and
 - (b) any other person that the responsible Member of Executive Council may deem fit, to –
 - (i) review all the nominations,
 - (ii) shortlist, evaluate or interview the nominees; and
 - (iii) make recommendations to the responsible Member of the Executive Council on the nominees.
- (9) The responsible Member of the Executive Council must, subject to subsection
- (10) appoint the members of the Board and designate –
- (a) one of the members of the Board as the chairperson; and
 - (b) one of the members of the Board as the deputy chairperson.

- (11) The responsible Member of the Executive Council must publish the names of the persons appointed to the Board in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Board.
- (12) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board, inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.
- (13) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

Disqualification from being appointed to Board

- 14.(1) A person is disqualified from being appointed to the Board or from remaining on the Board, by reason that 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 Authority and fails to declare the interest and the nature thereof in the manner required by this Act;
 - (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, except that the responsible Member of the Executive Council may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution; and
 - (g) fails to disclose an interest in accordance with section 10 or attended or participated in the proceedings of the Board while having an interest contemplated in section 10.

- (2) A disqualification in terms of subsection (1)(f) ends five years after the sentence has been completed.

Term of office of members of Board

- 15.(1) Persons appointed to the Board hold office for a period of three years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 5, eligible for reappointment at the expiration of such period.
- (2) No person may be reappointed after having served on the Board for more than two consecutive terms.

Declaration of financial or other interests by nominees to Board

- 16.(1) A nominee to the Board must –
- (a) within 10 days of having accepted the nomination as contemplated in subsection 5(7)(d), submit to the responsible Member of the Executive Council, a written declaration of any and all financial or other interests in the tourism sector or related organisations which could be related to or may be in conflict with an appointment as a member of the Board, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
 - (b) in the declaration referred to in paragraph (a), include financial and other interests in the activities of the Authority or related interests of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Board.
- (2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 8 to be considered for the position of the member of the Board.
- (3) Every member of the Board must, upon assuming office and at the beginning of

every financial year, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 234(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973).

- (4) Where a member of the Board or family member or close associate experiences a change in financial or any other circumstances and acquires an interest in the activities of the Board or has reason to know of any changed circumstances, the member of the Board must, within 10 days of the date of the changed circumstances, submit a written declaration of change of financial or other interests to the responsible Member of the Executive Council.
- (5) The responsible Member of the Executive Council must –
 - (a) keep a register of the interests of members of the Board disclosed in terms of this section; and
 - (b) update that register from time to time.
- (6) For the purposes of this section -
 - (a) “a close associate” includes, but is not limited to, a business partner or employer; and
 - (b) “a family member” includes, but is not limited to –
 - (i) a spouse of a member;
 - (ii) a partner in a customary union or a person with whom a member cohabits or lives as though they were married; or
 - (iii) a child, parent or sibling of a member.

Failure to declare financial or other interests

- 18.(1) A member of the Board who fails to make a declaration envisaged in section 8 may, subject to subsection (2), be disqualified from remaining on the Board.
- (2) The responsible Member of the Executive Council, on becoming aware that a member of the Board has failed to comply with the provisions of section 10, must investigate the matter and consider appropriate disciplinary action.

Recusal of member of Board

- 19.**(1) A member of the Board must recuse himself or herself in any matter or proceeding where he or she, a family member or close associate has or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the Board.
- (2) Any person may make an application, orally or in writing, for a member of the Board to recuse himself or herself where that person has reason to believe that the member of the Board, a family member or close associate has or could reasonably be expected to have a financial or other conflict of interest in the outcome of a decision by the Board.
- (3) A person making an application referred to in subsection (2) must give reasons for his or her request.
- (4) In the event of an application referred to in subsection (2), the chairperson of the Board must decide on the matter, save that in cases where the application concerns the chairperson of the Board the matter must be decided on by the deputy chairperson.
- (5) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.
- (6) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid.

Vacancies, removal and resignation from office of members of Board

- 20.** (1) A member of the Board must vacate office if he or she becomes subject to a disqualification contemplated **in section 6**.
- (2) The responsible Member of the Executive Council may, after having afforded a

member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are good reasons for doing so.

- (3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from three consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.
- (4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member of the Executive Council.
- (5) The responsible Member of the Executive Council may waive the resignation notice contemplated in subsection (4), if such waiver would not be detrimental to the efficient functioning of the Board.
- (6) Whenever a vacancy occurs on the Board, the responsible Member of the Executive Council must, subject to section 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.
- (7) The responsible Member of the Executive Council may, subject to sub-section (2) and after consultation with the Executive Council, terminate the appointment of –
 - (a) all the members of the Board; or
 - (b) the majority of the members of the Board, which termination may render the Board inoperable.
- (8) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of sub-section (7), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 7, subject to sub-sections 5(4), 5(5) and 5(6), appoint persons to serve as members of the Board on an interim basis: Provided that-
 - (a) the persons appointed in terms sub-section (8) may not remain on the

Board for a period of more than 90 days from the date of their appointment;
and

- (b) the responsible Member of the Executive Council, shall, subject to section 7, appoint the members of the Board within 90 days of the appointment contemplated in sub-section (8).

Meetings of Board

- 21. (1) The Board must hold routine quarterly meetings and may convene special meetings as required and the chairperson may direct how the meetings should be held.

- (2) Every member of the Board must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

- (3) In the event that the chairperson or the deputy chairperson of the Board is absent from any meeting of the Board, the members present at that meeting may elect one of their member to preside at that meeting.

- (4) A special meeting of the Board may be called at the request of –
 - (a) the chairperson; or
 - (b) the majority of the members of the Board by written petition, whereupon the chairperson must, in writing, notify every member of the Board of the time and place of the special meeting.

- (5) A *quorum* for a meeting of the Board is a majority of its members.

- (6) Any decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes on any matter, the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the Board.

- (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 proceedings of all meetings of the Board must be duly recorded, minuted and retained on file.
- (9). (a) The minutes of the previous meeting must be read at the commencement of each meeting.
- (b) The minutes may be regarded as read if copies thereof were furnished to the members of the Board prior to the meeting.
- (c) The chairperson may only sign the minutes once objections or corrections have been dealt with.
- (10) The chairperson must decide on issues of order or procedure: Provided that if any member objects to any such decision, the issue must be put to the vote and the decision of the majority of the members is final and binding on the Board.
- (11) A member of the Board who has an interest in relation to any matter to be discussed at a meeting of the Board, which reasonably considered, may preclude him or her from performing his or her duties in a fair, unbiased and proper manner, must recuse himself or herself from such meeting.
- (12) A member of staff of the Authority may, on invitation by the Board, attend a meeting of the Board.
- (13) The Board may invite any person to attend any of its meetings.

Committees of Board

- 22.** (1) The Board may appoint one or more committees, not limited to its own members, to assist it in the exercise of its powers and the performance of its duties and functions.

- (2) Any committee appointed in terms of subsection (1) must be chaired by a member of the Board.
- (3) A committee contemplated in subsection (1) must perform such duties and functions as the Board may determine.
- (4) The Board may, at any time, dissolve or reconstitute such a committee.
- (5) The Board–
 - (a) may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subsection (1);
 - (b) is not absolved from exercising or performing any power, duty or function so delegated or assigned; and
 - (c) may amend, review or rescind any decision of a committee.
- (6) Any delegated or assigned power, duty or function exercised or performed by a committee is regarded to have been exercised or performed by the Board.
- (7) (a) The Chief Executive Officer may attend and take part in, but may not vote at a meeting of a committee.
 - (b) A member of staff of the Authority may, on invitation by the relevant committee, attend a meeting of that committee.

Remuneration of members of Board

- 23.(1)** (a) A member of the Board may be paid such remuneration or allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.
- (b) A member of the Board who receives remuneration, allowances or other benefits by virtue of his or her post or employment in–
 - (i) the national government;
 - (ii) a provincial government;

(iii) a municipality; or

(iv) a corporation, body or institution in which the national or a provincial government has a controlling interest, 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 in which he or she would have been were it not for such post or employment.

- (2) (a) A member of the Board and a member of a committee of the Board may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board or a committee of the Board.
- (b) The responsible Member of the Executive Council must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

CHAPTER 4

CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AUTHORITY

Chief Executive Officer of Authority

- 24.(1)** The Authority must, with the approval of the responsible Member of the Executive Council and using a method which will, in the opinion of the responsible Member of the Executive Council, reach the greatest number of residents of the Province, invite applications for the position of the Chief Executive Office.
- (2) The Authority must, with the approval of the responsible Member of the Executive Council, appoint a selection panel to review all the applications, shortlist and interview applicants.
- (3) The Authority must, subject to the provisions of subsection (2) and with the approval of the responsible Member of the Executive Council, appoint a suitably

qualified, skilled and experienced person as the Chief Executive Officer of the Board.

- (4) (a) The Chief Executive Officer is appointed for a period not exceeding five years.
 (b) The Chief Executive Officer, may, with the approval of the responsible Member of the Executive Council be reappointed, for such period as the responsible Member of the Executive Council, may determine.
- (5) (a) The appointment of the Chief Executive Officer is subject to the conclusion of annual written performance agreements to be entered into between that person and the Board.
 (b) The Authority and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.
- (6)(a) For purposes of the declaration of financial or other interests, the provisions of
 (b) The Authority must keep and maintain a register of financial or other interests declared by the Chief Executive Officer.
- (7) The Chief Executive Officer is an *ex officio* member of the Authority but does not have the right to vote at its meetings.

Functions of Chief Executive Officer

25.(1) The Chief Executive Officer is the chief administrative officer of the Authority and is responsible for –

- (a) the administrative and financial management of the Authority in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the direction of the Board;
- (b) in consultation with the Board, the appointment of members of staff of the Authority contemplated in section 20 (1);
- (c) in consultation with the Board, the determination of a code of conduct, applicable to the Chief Executive Officer, all staff of the Authority 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 Board'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; and
 - (vi) professional, honest, impartial, fair, ethical and equitable service;
- (d) the maintenance of discipline over the staff;
- (e) the keeping and maintenance of the register of interests declared by members of staff of the Board; and
- (f) ensuring compliance by the Authority with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable legislation.
- (2) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Authority must, in writing, and with the approval of the responsible Member of the Executive Council, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

Resignation and removal from office of Chief Executive Officer

26.(1) The Chief Executive Officer vacates office –

- (a) in the case of resignation, when the resignation takes effect;
 - (b) **when, in terms of the Companies Act, 1973 (Act No. 61 of 1973), the person holding that office has become disqualified to serve as director of a company;** and
 - (c) upon having been removed from office in terms of subsection (2).
- (2) The Authority may, with the approval of the responsible Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

Staff of Authority

27.(1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Authority as may be reasonably necessary –

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and
- (b) to assist the Authority with the work incidental to the performance of its functions.

(2) The Authority must determine human resources policies for staff, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 18(1)(e), the provisions of section 10 apply with the necessary changes to staff.

(4) The Chief Executive Officer must keep an updated register of the interests of staff, disclosed in terms of subsection (3).

Secondment or transfer of staff to Board

28. The Authority may utilise the services of persons seconded or transferred from the public service, in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or from a municipality, other organs of state and the private sector.

CHAPTER 5

PROVINCIAL REGISTRAR OF TOURIST GUIDES, OPERATORS, FACILITIES AND SERVICES

Appointment of Provincial Tourism Registrar

29. (1) The responsible member of the Executive Council, must appoint a Provincial Tourism Registrar

Powers and duties of Provincial Registrar

- 30.** (i) promote and develop the tourist guide sector within the province and deal with any matters relating to tourist guides which include but not limited to registration, disciplinary actions and complains lodged in terms of the Act;
- (ii) drive the implementation of businesses and tourist guides registration systems;
- (iii) **develop targeted capacity building programmes aimed at enhancing the tourist guiding sector and provide monitoring and evaluation**
- (iv) develop **a tourist guide professionalisation** strategy;
- (v) **develop monitoring and evaluation measures to ensure implementation of tourist guides quality assurance activities;**
- (vi) develop and keep an updated provincial database of all registered tourism businesses and tourist guides
- (v) establish tour guides coordinating structures**

Registration of tourism establishment or operators

31. Registration of all tourism establishment, operators and tourist guides shall be mandatory

Effect of registration

32. The member of the Executive Council responsible for tourism in the province shall promulgate tourism registration regulations within 12 months of the promulgation of

this Act

CHAPTER 8

PROVINCIAL TOURISM FUNCTION

33. The provincial Department of Economic Development and Tourism shall work closely with the National Department of Tourism and Tourism KwaZulu-Natal and other sector departments and agencies to advance policy, planning and development of the tourism industry in the province.
- (i) The department will perform amongst other things the following functions -
 - (a) Implement national principles, objectives and policy guidelines as is appropriate to provincial and local conditions;
 - (b) Deliver on legislation and statutory obligations;
 - (c) Develop Provincial tourism policies and support municipalities in developing local tourism policies;
 - (d) Coordinate public sector in order to ensure an integrated tourism development approach;
 - (e) Coordinate and support municipalities to integrate tourism into their integrated development plans and to deliver on their public sector mandate in regard to tourism;
 - (f) Develop a Master Plan for tourism in KZN that sets out the key strategic objectives and the plan to achieve these objectives;
 - (g) Facilitate the development of market – driven tourism products and services in response to market intelligence;
 - (h) Investment facilitation through existing provincial and local agencies;
 - (i) ensure spatial development coordination for tourism development;
 - (j) Quality assurance;
 - (k) Registration of tourism businesses;
 - (l) Registration of tourist guides;
 - (m) Champion, monitor, evaluate and report on transformation and in particular the implementation of the Tourism Sector Codes; and
 - (n) Play a prominent role in tourism development activities such as
 - (i) protection for tourism consumers;
 - (ii) the involvement of local communities;
 - (iii) sustainable tourism development and environmental engagement
 - (iv) providing tourism response to climate change;
 - (v) safety and security of visitors;

- (vi) develop and implement tourism capacity building programmes;
- (vii) develop and implement entrepreneurship programmes that support emerging tourism enterprises;
- (n) Track international trends and align these to national, provincial and local plans

34. Establishment of Provincial Tourism Committee

36. The Member of the Executive Council may by notice in the Gazette establish a Provincial Tourism Committee comprising municipal representatives of metropolitan, local and district municipalities in the province.

(i) The Provincial Tourism Committee shall comprise:

- (a) One elected public representative from each metropolitan and district municipality in the province to be selected from the Economic Development and Planning Committee or equivalent municipal committee of councillors responsible for tourism within each metropolitan or district municipal area;
- (b) Municipal managers of each district and metropolitan municipality in the province
- (c) Chief Executive Officer of the Authority
- (d) Chairperson or deputy-chairperson of the authority; and
- (e) The Head of the Department

(ii) Objectives and responsibilities of a Provincial Tourism Committee

37. The objectives and responsibilities of the Provincial Tourism Committee shall be to-

- (a) co-ordinate the formulation of provincial tourism policy with municipalities;
- (b) Assist municipalities to develop municipal tourism policies within the framework of national and provincial tourism policies and legislation;
- (c) Formulate methods and processes to evaluate the implementation of provincial tourism policy at municipal level;
- (d) Align tourism planning and development initiatives of provincial importance,
- (e) Play an oversight role in the implementation of the Provincial Tourism Masterplan, and
- (f) Any other function or activity assigned in this act.

Meetings of the Provincial Tourism Committee

38. The minister must convene meetings of the Provincial Tourism Committee no less than two times a year. **Member of the Executive Council responsible for Tourism**

may convene an extended PTC meeting attended by District and all Local Mayors in the province of KwaZulu Natal as and when he/she deems necessary

Term of office of members of Provincial Tourism Committee

39. The term of office of the Provincial Tourism Committee shall coincide with and run parallel to the term of office of the municipal councils. The Minister shall call for nominations of the new PTC members by municipalities within three months after the date of local government elections and shall convene a PTC meeting within six months after the date of local government elections.

40. Establishment of the Provincial Tourism Forum

- (a) The Member of the Executive Council may by notice in the Gazette establish a Provincial Tourism Forum comprising municipal representatives of metropolitan, local and district municipalities in the province, the tourism trade associations, and other organisations that the Minister may deem necessary to be coopted to the forum.
- (b) The Provincial Tourism Forum Committee shall comprise
- (i) The Head of Department for the Department of Economic Development and Tourism or his/ her nominee
 - (ii) The senior tourism officials for the Department of Economic Development and Tourism in the province of KwaZulu-Natal
 - (iii) The CEO of Tourism KwaZulu-Natal his nominee,
 - (iv) The senior management of Tourism KwaZulu-Natal COO of TKZN or his nominee,
 - (v) The Municipal Manager of every District Municipality in the Province or his or her nominee,
 - (vi) The senior tourism officials of every District Municipality in the Province charged with the planning, developing, marketing and promoting tourism in within a district municipality,
 - (vii) Other organisations and entities as may be invited to sit in the forum by the declaration of the Minister.

- (c)** The objects of the PTF shall be -
- (i) The PTF is established to enable the provincial government, Tourism KwaZulu-Natal and municipalities in the Province to co-ordinate and integrate their respective policies, plans, strategies, projects and programmes to plan and develop market and promote the Province as a tourist destination of choice.
 - (ii) Secondly, the PTF shall serve as a Technical Committee of the Provincial Tourism Committee that sifts issues to be tabled at the PTC and advice the PTC on strategic issues with regard to latest trends and developments within the tourism industry.
 - (iii) to enable the provincial government, TKZN and municipalities to communicate with each other and to co-ordinate their activities at the operational level,
 - (iv) to enable the provincial government and TKZN to provide advice and assistance to municipalities to develop, implement and periodically review their municipal tourism policies and to ensure that such policies are integrated with national and provincial tourism policies.

(d) Meetings and operational support of the PTF shall be-

- (i) The PTF must meet at least two times in every calendar year.
- (ii) Meetings of the PTF may be held at such places in the Province as the participants may from time to time agree but in the absence of any agreement, the Head of Department for Economic Development and Tourism will decide the place of any meeting.
- (iii) The Head of Department for Economic Development and Tourism. shall chair the PTF meetings. Alternatively, the Head of Department may request the CEO of Tourism TKZN to chair the meetings.
- (iv) A quorum for any meeting of the PTF shall be the presence of 50 + 1 % of members of the PTF. at least three representatives of TKZN, representatives from at least one third of the district municipalities in the province and a representative from the Department of Arts, Culture and Tourism.
- (v) The Department of Economic Development and Tourism will provide secretarial support for the operation of the PTF and shall bear the costs

reasonably and necessarily incurred in and about the activities of the PTF.

- (vi) Minutes will be kept of all meetings of the PTF and shall be confirmed as correct at a subsequent meeting of the PTF. Copies of such minutes shall be sent to the Minister responsible for tourism in KwaZulu-Natal and the Provincial Tourism Committee

CHAPTER 9

POLICY DETERMINATION AND PROVINCIAL TOURISM ACTION PLAN

- 41.** (i) The Member of the Executive Council shall develop provincial tourism policy;
 - (ii) the provincial tourism policy shall provide a framework for sustainable and integrated tourism planning approach
 - (iii) the provincial tourism policy shall be reviewable every five years taking into cognisance new trends and paradigm shifts in tourism
- 42.** (i) The Member of the Executive Council shall develop a provincial tourism Masterplan that translates the provincial tourism policy and the provincial tourism into implementable programmes;
 - (ii) the provincial tourism masterplan shall provide a twenty year implementation plan reviewable every five years;
 - (iii) all provincial stakeholders dealing with one or more of tourism functions shall base their strategies, plans and activities on the Provincial Tourism Masterplan

CHAPTER 10
MUNICIPAL TOURISM

43. Functions of district municipalities shall include, but not limited to-
- (a) Develop district tourism sector strategies
 - (b) Integrating provincial tourism objectives into District plans and priorities;
 - (c) Driving the development of and implementation of local tourism policy;
 - (d) Urban and rural planning and development of tourism products and services;
 - (e) Budget for the effective implementation and growth of tourism in line with the Provincial objectives;
 - (f) Allocate Institutional capacity and dedicated and skilled Human resources to perform tourism function;
 - (g) provision of local infrastructure;
 - (h) Creation and co-ordination of tourism experience routes across its district and beyond municipal boundaries;
 - (i) Providing Tourism support to entrepreneurs and investors.
 - (j) Maintaining database of registered tourism products and service providers;
 - (k) Drive quality assurance
 - (l) Provision of local infrastructure;
 - (m) Health, safety, licensing and local by-law compliance;
 - (n) Local information services; and
 - (o) Facilitate the participation of local communities in the tourism industry
44. The role of the local municipalities shall be -
- (a) Develop local tourism sector strategies
 - (b) Integrating tourism policies into local economic development plans;
 - (c) Developing and implementing local tourism by-laws;
 - (d) Maintenance of specific aspects of the tourism product at local level;
 - (e) Provision and maintenance of tourist services, sites and attractions and public services;
 - (f) Maintaining database of registered tourism products and service providers;
 - (g) Drive quality assurance
 - (h) Provision of local infrastructure;
 - (i) Health, safety, licensing and local by-law compliance;
 - (j) Local information services;

- (k) Facilitate the participation of local communities in the tourism industry
45. The Member of the Executive Council in consultation with the district mayors through the Provincial Tourism Committee shall establish the District and Local Tourism Forums;
46. The District and Local Tourism Forum shall comprise-
- (a) Mayor of the District and Local Municipality shall chair the meetings.
 - (b) Chairperson of the District and Local Municipality Tourism Portfolio Committee
 - (c) One elected public representative from each local municipality selected from the Economic Development and Planning Committee or equivalent municipal committee of Councilors responsible for tourism within each local municipality.
 - (d) Managers responsible for tourism in the district and local municipalities.
 - (e) Integrated Development Planning Manager for the district and local municipality.
 - (f) Tourism Officers responsible for tourism from the district and local municipalities
 - (g) Department of Economic Development and Tourism representative responsible for planning
 - (h) Tourism KwaZulu Natal representatives responsible for marketing and development.
 - (i) Chairperson of the Regional Destination Marketing Organisation.
 - (j) Chairperson of the Local Tourism Committee from each local municipality.
 - (k) Representatives from provincial agencies and entities dealing with tourism issues at a local level
 - (l) Representatives from sector departments with a tourism supporting role.
 - (m) Other tourism organizations playing a role within a district and local municipality on approval by the Mayor.
48. The Objectives and responsibilities of the District and Local Tourism Forums shall be to-
- (a) Ensure implementation of regional provisions of the Provincial Tourism Master Plan
 - (b) Ensure regional alignment to National and Provincial Tourism Sector Strategies
 - (c) Coordinate all tourism related activities within a particular District and Local Municipality.
 - (d) Assist the District and Local Council in integrating provincial tourism objectives into District and Local plans and priorities;
 - (e) Interpreting, understanding and driving implementation of local tourism policy;
 - (f) Inform district and local budgetary process for the effective implementation and growth of tourism in line with the Provincial objectives;
 - (g) Ensure collaboration of all local stakeholders in creation of tourism Institutional capacity, in both public and private sector, and dedicated and skilled Human resources to perform tourism functions;

- (h) Ensure collaboration of all stakeholders in the provision and maintenance of tourist services, sites and attractions and public services;
 - (i) Advise Local Council on provision of local infrastructure, including signage;
 - (j) Advise Local Council on creation and co-ordination of tourism experience routes across its district and beyond municipal boundaries;
 - (k) Ensure effective marketing and promote specific local attractions; and
 - (l) Ensuring provision of tourism support to entrepreneurs and investors
49. Term of office of members of District and Local Tourism Forum shall be indefinite with the Mayor Exercising executive powers in terms of the organisations represented in the composition of the committee;
50. District and Local Tourism Forums shall meet not less than four times a year per calendar year. The meetings shall take place before quarterly meetings of the PTF and PTC.
- 51 The Member of the Executive Council may by notice in the Gazette require all district and local municipalities including the metropolitan to establish Community Tourism Organisations
- (i) The Community Tourism Organisations shall be autonomous organisations, established and co-funded by the local municipality, owned and managed by the community.
 - (ii) Only one Community Tourism Organisation may be endorsed by the municipality and registered with the provincial Department of Economic Development and Tourism.
 - (iii) The chairperson of the Community Tourism Organisation must represent the Community Tourism Organisation in the Local Tourism Forum, District Tourism Forum, Community Tourism Association and the Provincial Tourism Forum.
53. The Member of the Executive Council shall establish the provincial Community Tourism Association as an provincial overarching structure with a Constitution, mandated to manage and coordinate activities of all the Community Tourism Organisations in the province.

CHAPTER 11

FUNDING OF TOURISM FUNCTION IN THE PROVINCE
FUNDING OF TOURISM ACTIVITIES AND MANAGEMENT OF THE FUND

54. The MEC shall establish a dedicated Tourism Development Fund in consultation with the Provincial Treasury to support projects that encourage tourism growth, investment, planning, product development and industry capacity building in line with the Provincial Tourism Masterplan.
- (a) The Tourism Development Fund shall be used to-
- (i) Support the creation or revitalization of tourism attractions, sites and experiences in the province
 - (ii) Support innovative and demand-driven product development which demonstrate market potential
 - (iii) Enhance service excellence and business operations through training programmes
 - (iv) Assist municipalities with tourism planning and capacity support to ensure that the tourism industry is well positioned to make future strategic decisions, address trends and opportunities
 - (v) Assist communities with investment readiness, investor relations, investment attraction and communications.
 - (vi) Promote transformation of the industry through targeted interventions
 - (vii) Provide operational support to community-based projects that address provincial and national priorities.
 - (viii)** Provide collateral for negotiating tourism related B-BBEE deals and concessions.
 - (ix)** Co-fund tourism public-private sector partnerships (PPPs) according to the Treasury Tourism PPPs Framework.

CHAPTER 12
GENERAL PROVISIONS

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