

NORTHERN CAPE PROVINCE

PROFENSI YA KAPA-BOKONE

NOORD-KAAP PROVINSIE

IPHONDO LOMNTLA KOLONI

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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 79 OF 2008

NORTHERN CAPE PROVINCIAL GOVERNMENT

DEPARTMENT OF TOURISM, ENVIRONMENT AND CONSERVATION

PUBLICATION FOR PUBLIC COMMENT: NORTHERN CAPE TOURISM ENTITY
BILL, 2008

The Northern Cape Tourism Entity Bill, 2008 contained in this Notice, is hereby published for public comment. **Written representations** may be made to the Department of Tourism, Environment and Conservation and must be directed to:

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no later than 12 September 2008.

PW Saaiman, MPL

MEC: Economic Affairs, Tourism, Environment and Conservation

Date: 21 August 2008

KENNISGEWING 79 VAN 2008**PROVINSIALE REGERING VAN DIE NOORD-KAAP****DEPARTEMENT VAN TOERISME, OMGEWING EN BEWARING****PUBLIKASIE VIR OPENBARE KOMMENTAAR: WETSONTWERP OP DIE NOORD-KAAPSE TOERISME-ENTITEIT, 2008**

Die Wetsontwerp op die Noord-Kaapse Toerisme Entiteit, 2008 soos vervat in hierdie Kennisgewing, word hierby vir openbare kommentaar gepubliseer. **Skriftelike voorleggings** kan gedoen word aan die Departement van Toerisme, Omgewing en Bewaring en moet gerig word aan:

Les Abrahams

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Privaatsak X6010

Kimberley

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Faks: (053) 832 1026

Tel: (053) 832 1022

E-pos: labrahams@ncpg.gov.za**nie later as 12 September 2008 nie.**

PW Saaiman, LPW

LUR: Ekonomiese Sake, Toerisme, Omgewing en Bewaring

Datum: 21 Augustus 2008

NORTHERN CAPE TOURISM ENTITY BILL, 2008

BILL

To provide for the establishment of a tourism marketing and promotion entity for the Northern Cape Province and for the management thereof by a Board; to provide for the functioning of the Entity, financial control measures and reporting on the activities of the Entity; to provide for the founding of the Entity; to provide for a consultative and provincial tourism forum; and to provide for matters connected therewith.

PREAMBLE

WHEREAS a need exists within the Northern Cape Province for the sustained utilization of tourism marketing and promotion opportunities;

AND WHEREAS the establishment of a statutory tourism marketing and promotion entity for the Northern Cape Province is a response to the challenge to further market and promote the Province as a preferred tourism destination;

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

ARRANGEMENT OF SECTIONS

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CHAPTER I INTERPRETATION

Interpretation

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

“**Board**” means the Board of the Entity 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 16;

“**committee**” means a committee of the Board appointed in terms of section 15;

- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Department**” means the Department responsible for tourism in the Province; 5
- “**district municipality**” means a category C municipality envisaged in section 155(1)(c) of the Constitution;
- “**Entity**” means the entity established in terms of section 2; 10
- “**Executive Council**” means the Executive Council of the Province as referred to in section 132 of the Constitution;
- “**family member**” means a person’s – 15
- (a) spouse; or
 - (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption; 20
- “**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;
- “**municipality**” means any municipality in the Province established in terms of the Structures Act; 25
- “**organ of state**” has the meaning set out in section 239 of the Constitution;
- “**political office-bearer**” means – 30
- (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; 35
 - (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; 40
- “**Premier**” means the Premier of the Province referred to in section 125 of the Constitution;
- “**product owner**” means a person who is directly involved, invests in and benefits from tourism as a business; 45
- “**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; 5
- “**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution; 10
- “**responsible Member**” means the Member of the Executive Council responsible for the portfolio of tourism in the Province; 10
- “**spouse**” means a person’s –
- (a) partner in a marriage or civil union;
 - (b) partner in a customary union according to indigenous law; or 15
 - (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;
- “**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 20
- “**the Company**” means the Northern Cape Tourism Authority, an association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), with registration number 1997/16953/08; and 25
- “**this Act**” includes a 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. 30

CHAPTER II ESTABLISHMENT OF ENTITY AND BOARD

- Establishment of the Entity** 35
2. (1) A tourism Entity for the Northern Cape Province is hereby established as a juristic person.
- (2) The Premier must, before the coming into operation of this Act, by proclamation in the *Provincial Gazette*, - 40
- (a) name the Entity; and
 - (b) proclaim a brand for the Entity. 45

Objectives of the Entity

3. (1) Without infringing on the rights of municipalities regarding local tourism, the Entity must market and promote the Province as a tourist destination and in order to do so must pursue the following objectives: 5
- (a) the managing, planning and directing of the marketing activities of all sectors of the Province's tourism industry, namely meetings, incentives, conventions, exhibitions, events and leisure marketing, and visitor and support services; 10
 - (b) the facilitation of the development of new tourism products and destinations throughout the Province;
 - (c) co-operation with other bodies involved in the marketing of trade and investment in the Province; 15
 - (d) providing a vehicle which facilitates public and private sector co-operation, participation, decision-making and funding in the context of marketing the Province as a tourism destination; 20
 - (e) aligning marketing activities in all sectors of tourism in the Province, in collaboration with existing entities;
 - (f) facilitating the pursuit of transformation and empowerment goals within all sectors of the Province's tourism industry; 25
 - (g) fostering relations and entering into agreements with organizations of all kinds, both public and private, for the purpose of promoting the objectives of the Entity; and 30
 - (h) fostering close co-operation between the public and private sectors in the pursuit of tourism growth for the benefit of all the people of the Province. 35
- (2) In achieving its objects, the Entity must endeavour to progressively increase its own revenue generation and collection.

Powers and functions of the Board

4. (1) In order to achieve the objectives of the Entity, the Board may – 40
- (a) in consultation with the responsible Member and the Member of the Executive Council responsible for Finance, lease, purchase or otherwise acquire, let, sell, exchange or alienate, mortgage, burden with a servitude or confer any real right in immovable property; 45
 - (b) hire, purchase or acquire, hire out, sell, exchange or alienate, pledge or confer any other real right in movable property;

- (c) negotiate or, in consultation with the responsible Member, co-operate with any government, provincial administration or local government, or any other board or person, in the Republic or elsewhere, with regard to any matter which is directly or indirectly aimed at the achievement of the objectives of the Board; 5
- (d) in consultation with the responsible Member, enter into agreements with a similar body, within the Republic or elsewhere, for the promotion of tourism in the respective areas for which the Entity and that body have been established, and for that purpose the Board, or a member or members of the Board, may undertake journeys inside and outside the Republic; 10
- (e) in consultation with the responsible Member, open and administer offices which may be necessary or advisable for the effective and proper exercise of its powers, the performance of its functions and the carrying out of its duties; 15
- (f) acquire insurance cover – 20
- (i) for itself against any loss, damage, risk or liability which it may suffer or incur; and
- (ii) for the members of the Board and committees and employees in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring when performing their duties as such members or employees; 25
- (g) open and maintain an account in the name of the Entity with a registered Bank in the Republic; 30
- (h) draw up, make, publish and sell or make available free of charge, books, guides, maps, publications, photographs, films, videos and similar matter intended to inform persons, in the Republic or elsewhere, of tourist attractions and services in the Province; 35
- (i) gather, evaluate and process information relating to tourism in the Province and make such information available to persons who are engaged in the tourism industry; 40
- (j) give marketing advice and guidance to persons who are engaged in the tourism industry in the Province;
- (k) with a view to the effective marketing of, and the provision of information relating to any service, facility or product offered in connection with tourism, determine, publish and regulate the use of such distinguishing signs and wording as the Board may deem fit; 45

- (l) in consultation with the responsible Member and the Member of the Executive Council responsible for Finance, establish, manage and administer any pension or provident fund or medical aid scheme for the benefit of the Entity's employees, or have such fund or scheme administered by another person or body; 5
- (m) negotiate and co-operate with any educational institution regarding the institution, continuation or expansion of courses for the training of persons for careers in the tourism industry; 10
- (n) approve the use of trading names by the Entity for specific tourism marketing projects; and
- (o) perform any other activities which may contribute towards the achievement of the objectives of the Entity. 15
- (2) In order to achieve the objectives of the Entity, the Board must --
- (a) work with the Department and municipalities to implement the tourism development and marketing strategies of the Province and municipalities; 20
- (b) integrate transformation objectives into the operational activities of the Entity; 25
- (c) work with other national and provincial public entities, particularly those tasked with trade and investment promotion; and
- (d) work with sector-specific bodies which contribute to the growth of the tourism industry in the Province. 30
- (3) The Board 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 tourism, trade, industry, sector development and investment, with specific reference to policies, guidelines and directives pertaining to the transformation of the tourism and business sectors. 35
40
- (4) The Board 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 Entity 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; 45

- (b) ensuring that the Entity adheres to sound financial management, effective and equitable human resource development and efficient office administration in a responsible, accountable and transparent manner; and 5
- (c) employing, disciplining, suspending or dismissing any employee of the Entity, with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995).

Establishment of Board

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5. A Board for the Entity is hereby established -

- (a) to manage and control the affairs of the Entity; 15
- (b) to be the accounting authority for the Entity 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 Entity by this Act or any other law. 20

Composition of the Board

- 6. (1) The Board consists of 7 members eligible to vote at meetings of the Board, appointed by the responsible Member by virtue of their proven acumen, knowledge or experience of tourism or with related professional skills, having regard to – 25
 - (a) women; 30
 - (b) disabled persons;
 - (c) young persons;
 - (d) persons from the different regions of the Province; and
 - (e) persons with a labour union background. 35
- (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. 40
- (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. 45
- (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. 50

- (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 as member of the Board, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she – 5
- (a) is eligible for such appointment; and
- (b) is not disqualified in terms of this Act from such appointment. 10
- (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. 15

Term of office of members of Board

7. (1) The responsible Member appoints the members of the Board for a period of 4 years. 20
- (2) A member may be reappointed after serving his or her initial term, but not for a period of more than 8 years in total.

Eligibility to serve on the Board 25

8. (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; 30
- (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 35
- (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 - 40
- (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; 45
- (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; 50

- | | |
|--|----|
| (e) has been convicted in the preceding 10 years 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; | 5 |
| (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; or | 10 |
| (g) is younger than 18 years of age. | 15 |

Code of conduct and conflicting interests

- | | |
|--|----|
| 9. (1) A member of the Board must not - | |
| (a) engage in any activity that may undermine the integrity of the Board; | 20 |
| (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; | 25 |
| (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b); | 30 |
| (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. | 35 |
| (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 - | 40 |
| (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.

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Removal from office

10. (1) The responsible Member may, by written notice, remove any member of the Board from office --

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- (a) on the grounds of misconduct or incompetence;

- (b) if the member becomes subject to a disqualification contemplated in section 8(2);

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- (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.

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- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member.

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- (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 public interest to do so.

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Meetings of the Board

11. (1) The chairperson must determine the date, time and place for the first meeting of the Board, and the chairperson, in consultation with the Board, must determine the date, time and place for each subsequent meeting.

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- (2) The chairperson, in consultation with the Board, must determine procedures at meetings of the Board, after due consideration of the principles of openness and transparency.

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- (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.

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- (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. 5
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Board. 10
- (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. 15
- (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. 20
- (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 21(3). 25
- (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. 30
- (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. 35
- (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. 40
- (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. 45

Remuneration of members of Board

12. (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. 5
- (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). 10
- (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. 15

Certain loans prohibited

13. No loan may be made out of the funds of the Entity, or from any other funds administered or held in trust by the Entity, to a member of the Board, or a member of the staff of the Entity, or to a family member of such member of the Board or member of the staff of the Entity. 20

Delegation 25

14. (1) The Board may, subject to subsections (2), (3) and (4), in writing, delegate any of the powers, functions or duties of the Entity in terms of this Act, to the chief executive officer or a committee of the Board. 30
- (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 Entity.
- (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. 35
- (4) The Entity may not delegate any power to be exercised, function to be performed or duty to be carried out by it - 40
- (a) in terms of any other law;
- (b) in or after consultation with the responsible Member; or 45
- (c) with the approval or consent of the responsible Member.

Committees of Board

15. (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. 5
- (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. 10
- (b) The Board must designate a Board member serving on a committee as the chairperson of such committee. 15
- (3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee. 15

CHAPTER III STAFF OF THE ENTITY

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Staff of Entity and remuneration

16. (1) The Board – 25
- (a) must, subject to sections 17, 18 and 19, 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 Entity; and 30
- (ii) is accountable to the Board;
- (b) must determine a staff establishment for the Entity; and 35
- (c) may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Board to perform its functions. 40
- (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. 40
- (3) The Board, with the concurrence of 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). 45

- (4) The Board may delegate its powers in terms of subsection (1)(c) to the chief executive officer.

Chief executive officer

17. (1) The chief executive officer, appointed in terms of section 16(1), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Entity. 5
- (2) The chief executive officer is the chief administration and accounting officer of the Entity, subject to the control of the Board. 10
- (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. 15
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service, as the Board may determine, but - 20
- (a) may not be so appointed for a period 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; 25
- (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. 30
- (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. 35
- (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. 40
- (8) Notwithstanding the provisions of this section and section 16(1), the chief executive officer of the Company, as on the date on which this Act comes into operation, is deemed to be the duly appointed chief executive officer of the Entity for the unexpired term of the chief executive officer's employment agreement with the Company. 45

Removal of chief executive officer from office

18. (1) The Board may remove the chief executive officer from office –
- (a) on account of his or her improper conduct; 5
 - (b) for unfitness to perform 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 performing the functions of his or her office or performing them properly; 10
 - (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 8(2). 15
- (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), or is being undertaken, the Board may, 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. 20
- (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. 25

Employment contract and performance agreement of chief executive officer

19. (1) The appointment of the chief executive officer by the Board as contemplated in section 16(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. 35
- (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. 40
- (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 Entity. 45

- (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 bi-annual basis. 5

CHAPTER IV
FINANCIAL MATTERS 10

Finances

20. (1) The Entity is financed from -- 15
- (a) money appropriated by the Provincial Legislature for the Entity;
 - (b) any money payable to the Entity in terms of this Act;
 - (c) income derived by the Entity from its investment and deposit of surplus money in terms of subsection (6); and 20
 - (d) all monies accruing to the Entity from any source.
- (2) The financial year of the Entity is the period from 1 April in any year to 31 March of the following year. 25
- (3) Each year, at a time determined by the responsible Member, but no later than 30 June of that year, the Entity must submit to the responsible Member a statement of the Entity's estimated income and expenditure, and requested appropriation from the Provincial Legislature, in respect of the next ensuing financial year. 30
- (4) The Board must open and maintain an account in the name of the Entity with a registered bank in the Republic and - 35
- (a) any money received by the Entity must be deposited into that account; and
 - (b) every payment on behalf of the Entity must be made from that account. 40
- (5) Cheques drawn on the account of the Entity 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 Entity 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 5
- (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). 10
- (7) Any money standing to the credit of the Entity at the end of any financial year of the Entity, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Entity, must be paid into the Provincial Revenue Fund. 15

Accountability, audits and reports

21. (1) The Entity must –
- (a) account for state monies and other money received by, or paid for, or on account of the Board; and 20
- (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). 25
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General. 30
- (3) The Entity must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities.
- (4) The Entity 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. 35
- (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. 40
- (6) The Entity 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 - 45
- (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. 5
- (7) The Board must establish an audit committee for the Entity 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 Entity in respect of the preceding quarter. 10
- (9) The Entity must, when requested, in accordance with section 115(b) of the Constitution, report to the Provincial Legislature or any of its committees on any matter pertaining to its functions. 15

Appropriation of income and property

22. The moneys appropriated by the Provincial Legislature to the Entity as contemplated in section 19, must be utilized in accordance with such appropriation and all other income, property and profits of the Entity must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act. 20

Procurement

23. (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 Entity as contemplated in section 4, the Board must ensure that such procurement is effected in accordance with, and duly complies with – 30
- (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); 35
 - (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; 40
 - (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 45

(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 Entity. 5

CHAPTER V GENERAL MATTERS 10

Prohibition of use of name and brand of Entity

24. No person, company or association of persons may carry on business under a name or use the brand that is the same as or so closely resembles that of the Entity that it is reasonably likely to deceive. 15

Regulations

25. (1) The responsible Member may make regulations regarding – 20
- (a) any matter pertaining to the Board;
 - (b) conditions of service of staff of the Entity; 25
 - (c) the limitation of any power or function of the Entity referred to in section 4;
 - (d) any fee payable in terms of this Act; and 30
 - (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. 35
- (2) Before making regulations in terms of subsection (1), the responsible Member must publish the draft regulations for public comment in the *Provincial Gazette*. 40
- (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.

Offences and penalties

26. 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. 5

Consultative tourism forum

27. (1) A consultative forum, to deliberate on any matter pertaining to tourism growth in the Province and to make recommendations to the responsible Member on any such matter, is hereby established. 10
- (2) The consultative tourism forum must meet at least once in every 6 months under the chairpersonship of the responsible Member, and consists of - 15
- (a) all the members of the Economic Cluster of the Executive Council of the Province; and
- (b) the executive mayors of the 5 regional municipalities in the Province, or their nominees. 20

Provincial tourism forum

28. (1) A provincial tourism forum is hereby established to make recommendations to the Entity regarding matters pertaining to tourism at a regional or local level. 25
- (2) The provincial tourism forum consists of -
- (a) the chief executive officer who is the chairperson of the regional tourism forum; and 30
- (b) one person nominated by each of the district tourism associations contemplated in subsection (3). 35
- (3) To participate in the activities of the provincial tourism forum, the municipal manager of each district municipality in the Province must -
- (a) establish a district tourism association to consist of - 40
- (i) a representative of each local municipality;
- (ii) product owners; and
- (iii) other stakeholders, 45
- in the area of jurisdiction of the district municipality;

- (b) call regular meetings of the association and act as chairperson at those meetings;
- (c) provide the chief executive officer with a copy of the constitution of the association. 5
- (4) The provincial tourism forum must meet at least once every 3 months at a venue and time determined by the chief executive officer to deliberate on and make recommendations to the Entity regarding matters pertaining to tourism at a regional or local level. 10
- (5) All matters relating to meetings and the functioning of the provincial tourism forum contemplated in subsection (1), must be attended to by the chief executive officer or a member of the staff of the Board designated by the chief executive officer. 15
- (6) The provisions of sections 7, 8, 9, 10 and 11, read with the changes required by the context, apply to members of the provincial tourism forum contemplated in subsection (1). 20

Implementation of recommendations of the provincial tourism forum

- 29. (1) Recommendations made by the provincial tourism forum must be put onto the agenda of the next ensuing meeting of the Board for consideration and decision. 25
- (2) Recommendations accepted by the Board must forthwith be implemented by the Entity, while recommendations rejected by the Board must be reported to the responsible Member by the chief executive officer, accompanied by the reasons for such rejection. 30
- (3) The responsible Member must consider the matter and may –
 - (a) direct the Entity to implement, with or without amendments, the recommendation made by the provincial tourism forum; or 35
 - (b) endorse the rejection by the Board of the recommendation made by the provincial tourism forum.

Transitional and founding arrangements

- 30. (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 Entity and the Entity becomes the successor-in-law of the Company. 45
- (2) The transfer of staff must take place in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

- (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 Entity to be of assistance in founding the Entity.

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Repeal of law

31. The Northern Cape Tourism Act, 1998 (Act No. 5 of 1998), is hereby repealed.

Short title and commencement

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32. This Act is called the Northern Cape Tourism Entity Act, 2008, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.
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