

**KWAZULU-NATAL
DUBE TRADEPORT CORPORATION BILL, 2009**

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BILL

To provide for the establishment of the Dube TradePort Corporation; to determine the objects, powers, duties and functions of the Dube TradePort Corporation; to determine the manner in which the Dube TradePort Corporation is to be managed, governed, staffed and financed; to provide for the winding up of the Dube TradePort Company; to provide for the Dube TradePort Corporation to be the successor in law of the Dube TradePort Company; and to provide for matters connected therewith.

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

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CHAPTER 1 DEFINITIONS

Definitions

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

"**Board**" means the board of the Dube TradePort Corporation contemplated in section 5;

"**Chief Executive Officer**" means the Chief Executive Officer of the Dube TradePort Corporation, contemplated in section 16;

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

"**Department**" means the Department of Economic Development or any successor provincial department whose functions include that of economic development in KwaZulu-Natal;

"**Dube TradePort**" means the multi-modal development comprising of an international airport, trade zone, agri-zone, associated support services and associated activities, situated 30 kilometers north of the Durban city centre;

"**Dube TradePort Region**" means the region falling within a 30 kilometer radius of the centre of the international airport situated within the Dube TradePort;

"**Dube TradePort Company**" means Dube TradePort Company, Registration Number 2002/002810/07, established in terms of the Companies Act, 1973 (Act No. 61 of 1973);

"**Dube TradePort Corporation**" means the provincial public entity established in terms of section 2;

"**Executive Council**" means the Executive Council of the Province contemplated in section 132 of the Constitution;

"**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, (Proclamation 103 of 1994);

"**Master Plan**" means the Master Plan for the development, design and construction of a multi-modal transportation hub in the Dube TradePort Region as contemplated in section 21;

"**Member of the Executive Council responsible for finance**" means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

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

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

"**provincial public entity**" means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

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

"**regulations**" means regulations made in terms of section 33;

"**responsible Member of the Executive Council**" means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for economic development or that member of the Executive Council of the Province of KwaZulu-Natal to whom the Premier has assigned the administration of this Act;

"**this Act**" includes the regulations.

CHAPTER 2 DUBE TRADEPORT CORPORATION

Establishment of Dube TradePort Corporation

2.(1) There is hereby established a provincial public entity to be known as the Dube TradePort Corporation.

(2) The Dube TradePort Corporation is a juristic person which acts through the Board.

(3) The Dube TradePort Corporation is subject to the Public Finance Management Act.

(4) The Board is the accounting authority of the Dube TradePort Corporation as contemplated in section 49(2)(a) of the Public Finance Management Act.

Objects of Dube TradePort Corporation

3. The objects of the Dube TradePort Corporation are –

- (a) to develop the Dube TradePort;
- (b) to undertake or invest in projects associated with the Dube TradePort;
- (c) to facilitate economic growth in the Province through the Dube TradePort;
- (d) to attract long term investment to the Province;
- (e) to facilitate export and import through the Dube Tradeport; and
- (f) to perform the powers, duties and functions specified in section 4.

Powers, duties and functions of Dube TradePort Corporation and Board

4.(1) The Dube TradePort Corporation must, through the Board –

- (a) ensure the strategic planning, establishment, design, construction, operation, management and control of the Dube TradePort;
- (b) implement and give effect to the Master Plan for the economic growth of the Dube TradePort Region and the Province;
- (c) manage and utilize its resources in accordance with its objects and the requirements of the Master Plan;
- (d) identify, develop, market and promote investment opportunities in the Dube TradePort; and

(e) develop an investment plan for the Dube TradePort.

(2) The Dube TradePort Corporation may –

(a) for the purposes of developing, promoting, marketing or investing in the Province, and subject to the prior written approval of the responsible Member of the Executive Council –

(i) establish and operate one or more companies, close corporations or other similar bodies;

(ii) enter into joint ventures with other institutions, organisations, municipalities, bodies or persons; and

(iii) raise funds through donations and sponsorships;

(b) with the prior written approval of the responsible Member of the Executive Council, acquire and dispose of shares and interests in companies, close corporations or other similar bodies;

(c) liaise with any other entity, organ of state, organisation or institution whose activities or aims have an impact on, and relate to, the development, promotion, marketing or investment in the Province;

(d) investigate and make recommendations to the Executive Council, through the responsible Member of the Executive Council on any matter relating directly or indirectly to the promotion, development, marketing or investment in the Province;

(e) enter into agreements for the attainment of its objects, the exercise of its powers, duties and functions or the management and administration of its affairs, whether or not expressly provided for in this section;

(f) participate in the management, supervision and control of the business or operations of an institution having the same or similar objects as the Corporation;

(g) undertake or invest in projects associated with its objects;

(h) establish a fund to enhance air transport connectivity to the Province;

(i) do any other thing or attend to any other matter necessary for the purposes of achieving its objects and the requirements of the Master Plan; and

(j) do any other thing or attend to any other matter that the responsible Member of the Executive Council considers necessary for the proper implementation of this Act.

(3) In addition to the powers referred to in subsections (1) and (2), the Dube TradePort

Corporation has the powers referred to in section 54(2) of the Public Finance Management Act.

CHAPTER 3 BOARD OF DUBE TRADEPORT CORPORATION

Composition of Board

5.(1) The Board consists of –

- (a) at least three, but not more than eight, members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 16(5).

(2) Members of the Board must be fit and proper persons to serve the best interests of the Province, collectively possessing the following skills and expertise –

- (a) knowledge and expertise in financial management;
- (b) knowledge and expertise in the tourism industry;
- (c) knowledge and expertise in the transport sector;
- (d) knowledge and expertise in the economic development sector;
- (e) knowledge and expertise in the property development industry; and
- (f) any other skill, experience or qualification that, in the opinion of the responsible Member of the Executive Council, might be of benefit to the Dube TradePort Corporation.

(3) In appointing members to the Board, the responsible Member of the Executive Council must ensure that –

- (a) historic imbalances are addressed;
- (b) the Board, collectively, possesses the necessary and appropriate skills and expertise; and
- (c) the Board is representative of persons employed or involved in economic and development enterprises in the Province.

(4) The responsible Member of the Executive Council must designate –

- (a) one of the members of the Board as the Chairperson of the Board; and
- (b) one of the members of the Board as the Deputy Chairperson of the Board.

(5) The responsible Member of the Executive Council may appoint a person as his or her representative who –

- (a) must facilitate liaison between the responsible Member of the Executive Council and the Board;
- (b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
- (c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken.

(6) The responsible Member of the Executive Council must, by notice in the *Gazette* invite any interested parties within the Province to nominate candidates for appointment to the Board.

(7) The invitation for nomination must specify –

- (a) the nomination procedure;
- (b) the requirements for nomination; and
- (c) the closing date for the nomination.

(8) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel to review all the nominations and make recommendations to the responsible Member of the Executive Council on the nominees.

(9) The responsible Member of the Executive Council must cause the names of the persons appointed to the Board to be published 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.

(10) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board in terms of subsection (1), inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

Disqualification from being appointed to Board

6. 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) is directly or indirectly interested in any contract with the Board and fails to declare his or her 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 receipt of an affidavit disclosing full details of an offence by a person who is nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; and
- (g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section;

Declaration of financial or other interests of members of Board

7.(1) A person who has been nominated to serve on the Board in terms of subsection 5(8) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company or other business interests.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 6 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 of the Board, 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 acquires an interest in any company or other business interests, at anytime during his or her tenure as a member of the Board, he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interest as contemplated in subsections (3) and (4), constitutes justifiable and cogent reason for the termination of appointment of such member in terms of section 9(2).

(6) The responsible Member of the Executive Council must keep an updated register of the interests of members of the Board disclosed in terms of this section.

Term of office and reappointment of member of Board

8. The persons appointed to the Board hold office for a period of five years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 5, eligible for re-appointment at the expiry of such period: Provided that no person may be re-appointed after having served on the Board for a continuous period of 10 years.

Vacancies, removal and resignation from office of members of Board

9.(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 justifiable and cogent 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 two 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: Provided that the responsible Member of the Executive Council may waive the resignation notice.

(5) 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.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (2), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 5, subject to subsections 5(2) and 5(3), appoint persons to serve as members of the Board on an interim basis: Provided that-

(a) the persons appointed in terms of this subsection may not remain on the Board for a period of more than 60 days from the date of their appointment; and

(b) the responsible Member of the Executive Council must, subject to section 5, appoint the members of the Board within 60 days of the appointment contemplated in this subsection.

Temporary suspension of member of Board

10. The responsible Member of the Executive Council may suspend a member of the Board whilst the responsible Member of the Executive Council is investigating allegations which, if found to be correct, could result in the member's appointment being terminated in terms of section 9(2).

Meetings and procedures at meetings of Board

11.(1) The first meeting of the Board must be held on a date and at a time and venue determined by the responsible Member of the Executive Council whereafter all future meetings must be as determined by the Chairperson.

(2) The *quorum* for a meeting of the Board is the majority of the members of the Board.

(3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the Chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.

(4) The Chairperson must preside at all meetings of the Board: Provided that in his or her absence the Deputy Chairperson must preside and in the event that neither the chairperson nor the Deputy Chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as Chairperson for the duration of that particular meeting.

(5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the Chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Board must arrange for minutes of its meetings to be kept.

(7) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.

(8) The Chairperson, or a majority of the Board, may call an extraordinary meeting of the Board in which event the provisions of this section apply with the necessary changes.

(9) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

Recusal of member from meetings and proceedings of Board

12.(1) A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if one or more of the following prevail –

- (a) if he or she has a direct or indirect interest; or
- (b) if there is a possibility that a direct or indirect interest might arise.

(2) If at any stage during the course of any proceedings before the Board it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such a member must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it 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.

(5) For the purposes of this section “**indirect interest**” includes, but is not limited to, an interest held by any member’s –

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

Remuneration of members of Board

13.(1)(a) Subject to subsection 2(a), a member of the Board may be paid from the funds of the Commission such remuneration and 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,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(2)(a) A member of the Board and a person who has been co-opted to the Board may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Commission for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.

(b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

Establishment of committees to assist Board

14.(1) The Board may establish committees consisting of one or more of its members to

–

- (a) assist the Board in the performance of any of the powers, duties or functions of the Board contemplated in section 4; or
- (b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Board must –

- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Board;
 - (b) appoint a chairperson of such committee who must be a member of the Board;
- and

(c) determine whether or not such committee may co-opt persons who are not members of the Board, and if so, on what terms and conditions.

(3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Board.

(4)(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 Board may, on invitation by the relevant committee, attend a meeting of that committee.

Co-opting of persons to Board or committees of Board

15.(1) The Board may, if it is of the opinion that a particular person is able to assist it in regard to any of its functions and powers, co-opt such person for that purpose.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board or a committee.

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Board as may be determined by the Board in consultation with the Member of the Executive Council responsible for finance.

CHAPTER 4

CHIEF EXECUTIVE OFFICER AND STAFF OF DUBE TRADEPORT CORPORATION

Chief Executive Officer of Dube TradePort Corporation

16.(1) The Board must, in consultation with the responsible Member of the Executive Council, appoint the Chief Executive Officer of the Dube TradePort Corporation.

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years on terms and conditions of employment determined by the Board, in consultation with the

responsible Member of the Executive Council.

(b) The Chief Executive Officer, may, with the approval of the responsible Member of the Executive Council be re-appointed, for such period as the responsible Member of the Executive Council, may determine.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into with the Dube TradePort Corporation.

(b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(4) For purposes of the declaration of financial or other interests, the provisions of section 7 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the Board.

(5) The Chief Executive Officer is an *ex officio* member of the Board but does not have the right to vote at its meetings.

Functions of Chief Executive Officer

17.(1) The Chief Executive Officer is responsible for –

(a) the administrative and financial management of the Dube TradePort Corporation in accordance with the Public Finance Management Act, subject to the direction of the Board;

(b) the appointment of members of staff of the Dube TradePort Corporation contemplated in section 19(1), in consultation with the Board;

(c) the determination, in consultation with the Board, of a code of conduct, applicable to the Chief Executive Officer, all staff of the Dube TradePort Corporation 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 Dube TradePort Corporation'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 appointed in terms of paragraph (b) and must, for those purposes, be accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by member of staff of the Dube TradePort Corporation; and
- (f) ensuring compliance by the Dube TradePort Corporation with the provisions of the Public Finance Management Act, and any other applicable legislation.

(2) The Chief Executive Officer is accountable to the Board and must report to the Board on the activities of the Dube TradePort Corporation.

(3) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Board must, in consultation with 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

18.(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 Board may, in consultation with the responsible Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

Staff of Dube TradePort Corporation

19.(1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Dube TradePort Corporation 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 Board with the work incidental to the performance by the Board of its functions.

(2) The Board must determine a human resources policy for staff members of the Dube TradePort Corporation, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 17(1)(e), the provisions of section 7(3), (4) and (5) apply with the necessary changes to staff members of the Dube TradePort Corporation.

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

(5) The Board, in consultation with the responsible Member of the Executive Council, must determine –

- (a) the remuneration and conditions of service; and
- (b) the pension and retirement benefits,

of the Chief Executive Officer and the other members of staff of the Dube TradePort Corporation.

Secondment or transfer of staff to Dube TradePort Corporation

20. The Dube TradePort Corporation 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).

CHAPTER 5

MASTER PLAN, POLICY DIRECTIVES AND STRATEGIC GUIDELINES

Master Plan

21.(1)The Board must, within 6 months of the coming into operation of this Act, after consultation with the Chief Executive Officer, establish a Master Plan.

(2) The Master plan contemplated in subsection (1), must comprise of, amongst other things, the cargo terminal, property zone, trade-zone, agri-zone, public transport nodes, road networks, rail, freight and passenger transport networks within the Dube TradePort Region.

(3) The Master Plan must be updated when the need arises to meet the objectives of the Dube TradePort Corporation.

(4) The Master Plan must be approved by the responsible Member of the Executive Council.

(5) The Master Plan must, for the years 2010, 2035 and 2060, provide –

- (a) an overview of the development structure of the Dube TradePort;
- (b) development objectives and master planning for the Dube TradePort; and
- (c) for the development, zoning, transport and bulk infrastructural needs of the Dube TradePort Corporation.

(6) When performing its functions in terms of this Act, the Board must give effect to the Master Plan.

Policy directives and strategic guidelines

22.(a) The responsible Member of the Executive Council may set strategic guidelines for the pursuit of the Dube TradePort Corporation's objectives and may issue policy directives to the Board.

(b) The responsible Member of the Executive Council may withdraw or amend any policy directive issued in terms of paragraph (a).

CHAPTER 6

FUNDING AND FINANCIAL MANAGEMENT OF DUBE TRADEPORT CORPORATION

Funds of Dube TradePort Corporation

23.(1) The funds of the Dube TradePort Corporation consist of –

- (a) money appropriated by the Provincial Legislature;

- (b) interest on investments of the Dube TradePort Corporation; and
- (c) income lawfully derived from any other source.

(2) The Dube TradePort Corporation must utilise its funds –

(a) for the payment of remuneration, allowances and subsistence and travelling expenses of –

- (i) the members of the Board;
- (ii) the Chief Executive Officer; and
- (iii) the members of staff of the Dube TradePort Corporation; and

(b) to cover costs in connection with –

- (i) the day to day operation and administration of the Dube TradePort Corporation and the Board;
- (ii) the operation and management of the Dube TradePort Corporation; and
- (iii) the performance of the duties and functions of the Board and the exercise of its powers in terms of this Act.

(3) The Chief Executive Officer must, with the concurrence of the Board –

- (a) open an account in the name of the Dube TradePort Corporation with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1).

(4) The Board may invest monies deposited into the account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature.

(5) Neither the Dube TradePort Corporation nor the Board may borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act.

Financial management

24.(1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Dube TradePort Corporations's annual budgets, strategic plans, annual performance plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act.

(3) The Chief Executive Officer must, within three months before the end of each financial year, submit to the Board for approval –

(a) a business plan for the Board, containing measurable objectives and the other information contemplated in section 25(3)(b) and (c); and

(b) a statement of the estimated income and expenditure of the Board,

in respect of the following three financial years.

(4) In any financial year the Chief Executive Officer may submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure of the the Dube TradePort Corporation for that financial year.

(5) The Dube TradePort Corporation may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) The Chief Executive Officer may –

(a) with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits or any other institution categorised or listed from time to time by the National Treasury as a Category "A1" financial institution;
or

(b) with the approval of the Board, dispose of that portion in any other manner.

(7) The Chief Executive Officer may, with the approval of the Board, establish reserve funds and deposit therein such amounts as the Board approves.

Audit and annual report

25.(1) The Auditor-General must audit the financial statements of the Dube TradePort Corporation.

(2)(a) The Board must table a report on the activities of the Dube TradePort Corporation during a financial year in the Provincial Legislature within five months after the end of that financial year.

(b) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Board and at least two other members of the Board must brief the relevant Portfolio Committee on the annual report.

(3) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the Dube TradePort Corporation has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 24(3)(a) during the financial year concerned; and

(c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that annual performance plan.

Financial year of Dube TradePort Corporation

26. The financial year of the Dube TradePort Corporation commences on 1 April of a particular year and ends on 31 March of the following year.

Immovable property

27. The Dube TradePort Corporation may, in terms of a policy and procedures determined by the Board and with the approval of the responsible Member of the Executive Council, acquire, hold or dispose of immovable property in the course of its business.

Legal proceedings against Dube TradePort Corporation

28.(1) Any legal proceedings against the Dube TradePort Corporation must be instituted in accordance with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002).

(2) The Dube TradePort Corporation is, for purposes of subsection (1), regarded as an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the said Act.

CHAPTER 7
GENERAL PROVISIONS

Security of confidential information held by Dube TradePort Corporation

29.(1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Dube TradePort Corporation in connection with any legal brief or instruction, unless –

- (a) he or she is ordered to do so by a court of law;
- (b) or unless the person who gave such brief or instruction consents thereto in writing.

(2) No person may disclose any information kept in the register contemplated in sections 7(6), 16(4) and 19(4) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Dube TradePort Corporation; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Dube TradePort Corporation, or any member of staff of the Dube TradePort Corporation.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Dissolution of Dube TradePort Corporation

30. The Dube TradePort Corporation may only be dissolved in terms of an Act of the Provincial Legislature.

Use of name of Dube TradePort or Dube TradePort Corporation

31.(1) No person may, without the prior written authorisation of the Dube TradePort Corporation, in any way represent or make use of the name Dube TradePort, or the name, acronym, logos, designs or material used or owned by Dube TradePort Corporation.

(2) No person may falsely claim to be acting on behalf of the Dube TradePort Corporation.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Delegations

32.(1) The responsible Member of the Executive Council may delegate to the Head of Department –

- (a) any power conferred on the responsible Member of the Executive Council by this Act, except the power to make regulations referred to in section 33; or
- (b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(1)(a) and 9(2).

(2) The Board may, by a special resolution, delegate to the Chief Executive Officer or staff member of the Dube TradePort Corporation, any power or duty conferred or imposed on the Dube TradePort Corporation by this Act.

(3) The Chief Executive Officer may delegate to any member of staff of the Dube TradePort Corporation any power or duty conferred or imposed on the Chief Executive Officer by this Act, except any duty as accounting officer of the Dube TradePort Corporation.

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) Any delegation referred to in subsection (1), (2) or (3) –

(a) must be in writing;

(b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and

(c) may at any time be withdrawn or amended in writing by that person or body.

Regulations

33. The responsible Member of the Executive Council may, in consultation with the Board and by notice in the *Gazette*, make regulations regarding –

(a) any matter that may or must be prescribed in terms of this Act; or

(b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

Winding-up of Dube TradePort Company and transitional provisions

34.(1)(a) The Company, Dube TradePort, bearing Company Registration Number 2002/002810/08, established in terms of the Companies Act, 1973 (Act No. 61 of 1973), must be voluntarily wound up and deregistered.

(b) The members of the Company must, in winding-up the Company referred to in paragraph (a), act with due speed and diligence and must, amongst other things, comply with sections 349 and 350 of the Companies Act, 1973 (Act No. 61 of 1973).

(2) On the date of the winding-up of the Dube TradePort Company, all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Dube TradePort Company are transferred to, and vest in, the Dube TradePort Corporation established in terms of section 2.

(3) The Dube TradePort Corporation is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in

law of, and the successor in title to, the Dube TradePort Company.

(4) The members of the Board of the Dube TradePort Company must act as duly authorized and empowered members of the Board until such time as the responsible Member of the Executive Council has in terms of section 5(1)(a) appointed the Board in terms of this Act.

(5) All members of staff of the Dube TradePort Company must, within six months of the commencement of this Act, be made an employment offer by the responsible Member of the Executive Council for transfer to the Dube TradePort Corporation on a date determined by the responsible Member of the Executive Council.

(6) The remuneration, benefits and privileges offered by the responsible Member of the Executive Council, in accordance with subsection (5), may not be substantially different to or less than those payable to the staff member by the Dube TradePort Company, immediately prior to his or her transfer.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer is deemed to have taken place in respect of a staff member who accepts an employment offer contemplated in subsection (5).

(8) When a person becomes a staff member of the Dube TradePort Corporation in terms of subsection (5) –

(a) he or she retains all vacation leave which accrued to his or her credit up to the date immediately before the date of transfer, adjusted in accordance with the conditions of employment of the Dube TradePort Corporation; and

(b) any inquiry instituted or intended to be instituted in respect of alleged misconduct committed by such person before the date of transfer must be disposed of or instituted by the Dube TradePort Corporation, and the Board must take appropriate steps against the person concerned in accordance with the laws, policy and conditions of employment or service applicable to him or her immediately prior to the date of transfer.

General offences

35.(1) A member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Dube TradePort Corporation is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorized fee or reward from any person in connection with anything done or offered by the Dube TradePort Corporation.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Dube TradePort Corporation, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, adviser, agent or any other person employed or acting on behalf of the Dube TradePort Corporation.

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

(4) Any person who contravenes or fails to comply with the provisions of this Act or any regulation thereunder, is guilty of an offence.

Penalties

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

Short title

37. This Act is called the KwaZulu-Natal Dube TradePort Corporation Act, 2009.