

**KWAZULU-NATAL
FILM COMMISSION BILL, 2009**



BILL

To provide for the establishment of the KwaZulu-Natal Film Commission; to determine the objects, powers, duties and functions of the KwaZulu-Natal Film Commission; to determine the manner in which the KwaZulu-Natal Film Commission is to be managed, governed, staffed and financed; and to provide for matters connected therewith.

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

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CHAPTER 1 DEFINITIONS

Definitions

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

"**Board**" means the Board of the Commission appointed in terms of section 5;

"**Chief Executive Officer**" means the Chief Executive Officer of the Commission, appointed in terms of section 16;

"**Commission**" means the KwaZulu-Natal Film Commission established in terms of section 2;

"**Company**" means the association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing registration number 2003/028677/08, and known as the KwaZulu-Natal Film Commission;

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

"**Department**" means the Department in the Provincial Government of KwaZulu-Natal responsible for economic development;

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

"**film**" means the –

- (a) capturing;
- (b) fixation;
- (c) storage; or
- (d) reproduction,

by –

- (i) film;
- (ii) magnetic tape;
- (iii) disc;

- (iv) television;
- (v) video; or
- (vi) any other means or material,

of data, signals or a sequence of images capable, when used in conjunction with any mechanical, electronic or other device, of being seen as a moving picture, and includes the associated sounds embodied in what is commonly known as a soundtrack;

"film production" means any film, television, video or multimedia production, and **"film producer"** and **"film products"** have a corresponding meaning;

"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);

"Industrial Development Corporation" means the public corporation established under section 2 of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940);

"member" means a member of the Board of the Commission appointed in terms of section 5;

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

"organised local government" means the KwaZulu-Natal Local Government Association being that organization in the Province of KwaZulu-Natal recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as representing the majority of municipalities in the Province;

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

"**prescribed**" means prescribed by regulation under section 33 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 the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

"**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;

"**the film industry**" means the film, television, video and related multimedia industry;

"**this Act**" includes the regulations;

"**Trade and Investment KwaZulu-Natal**" means –

(a) the association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), bearing Company Registration Number 98/11946/08; or

(b) the successor in law of, and the successor in title to, such association.

KWAZULU-NATAL FILM COMMISSION

Establishment of KwaZulu-Natal Film Commission

2.(1) There is hereby established a commission for the promotion of the film industry in the Province, to be known as KwaZulu-Natal Film Commission.

(2) The Commission is a juristic person.

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

Objects of Commission

3. The objects of the Commission are –

- (a) to promote and market the Province as a global destination for film production;
- (b) to develop, promote and market, locally, nationally and internationally, the film industry in the Province;
- (c) to facilitate investment in the film industry in the Province;
- (d) to provide and encourage the provision of opportunities for persons, especially from disadvantaged communities, to enter and participate in the film industry in the Province;
- (e) to address historical imbalances in the infrastructure and in the distribution of skills and resources in the film industry in the Province; and
- (f) to contribute to an enabling environment for job creation in the film industry in the Province.

Powers, duties and functions of Commission

4.(1) The Commission must –

- (a) administer funds appropriated by the Provincial Legislature;
- (b) initiate and administer the funding from sources other than appropriations from the Provincial Legislature;
- (c) attract international film productions to the Province;

- (d) facilitate the establishment, development and growth of infrastructure and facilities for the film industry in the Province;
 - (e) attract foreign and local investment and funding for the establishment, development and growth of infrastructure and facilities for the manufacturing of film products in the Province;
 - (f) co-ordinate and facilitate human resource and human intellectual development in the film industry in the Province;
 - (g) provide advice, support and access to provincial funding for film producers in the Province;
 - (h) promote film productions reflecting the cultural diversity of the Province;
 - (i) conduct research and development into all areas of film production in the Province;
 - (j) promote the Province as a location for film productions, locally, nationally and internationally;
 - (k) attract film producers and facilitate their initiatives to carry out film productions in the Province;
 - (l) encourage film producers to employ provincial personnel and facilities for film productions;
 - (m) establish relationships with local and international persons, organisations and film commissions, to encourage and facilitate the transfer of knowledge and skills to the film industry in the Province;
 - (n) compile a database of, and provide information with regard to –
 - (i) provincial film producers, audio-visual technicians, actors, performers and musicians; and
 - (ii) accommodation, catering, transportation and other related facilities in the Province;
 - (o) advise film-makers on any aspect of film production including, but not limited to, municipal by-laws, traffic ordinances, environmental legislation and employment legislation and practices; and
 - (p) advise the Provincial Government on policy and legislation including regulations required or appropriate for the promotion of the film industry in the Province.
- (2) In order to promote uniformity and co-operation by all organs of state in the provincial

and local spheres of government on matters related to the film industry, the Commission must –

- (a) at least once a year, convene meetings between organs of state in the provincial and local spheres that have an interest in any matter related to the film industry;
- (b) act as a link between organs of state in both the provincial and local spheres and stakeholders in the film industry in the Province; and
- (c) liaise and interact with any organisation, structure or body that has an interest in any matter related to the film industry.

(3) The Commission may –

- (a) enter into agreements with any person with expert knowledge in a particular field, so as to assist or advise the Commission in connection with any matter relating to its objects, powers, duties and functions; and
- (b) generally, do everything that is necessary to achieve its objectives.

(4) In order to contribute to the development of human capacity in the film industry in the Province, the Commission may provide bursaries and scholarships to students studying or intending to study in the field of film production.

CHAPTER 3 BOARD OF COMMISSION

Composition of Board

5.(1) The Board consists of –

- (a) at least five, but not more than 20, 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 –

- (a) appropriate knowledge, experience and skills in the film industry, and
- (b) the following skills and expertise –

- (i) legal skills, experience and qualifications;
- (ii) financial skills, experience and qualifications;
- (iii) print or electronic media skills;
- (iv) community development skills and experience; and
- (v) entertainment industry experience.

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

- (a) that historic imbalances are addressed; and
- (b) that a balance of interest between persons representing –
 - (i) the Department;
 - (ii) the Department of Arts, Culture and Tourism;
 - (iii) the KwaZulu-Natal Tourism Authority;
 - (iv) stakeholders in the film industry;
 - (v) Trade and Investment, KwaZulu-Natal;
 - (vi) organised local government;
 - (vii) tertiary Institutions;
 - (viii) local film offices; and
 - (ix) the Industrial Development Corporation,is maintained.

(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 member of the Board referred to in subsection 3(b)(i) –

- (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 nominations must specify –

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

(8) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of senior departmental officials 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 Commission 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 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; or

(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 section 5(6) 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 and of any 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 from being appointment to the Board.

(3) Every member of the Board must, upon assuming office and at the beginning of every financial year of the Commission, 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 any other business interest, at any time 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 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.(1) 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 opinion, 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 by giving not less than 30 days written 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 sections 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 permanent 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, may 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 a 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 keep minutes of its meetings.

(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 occur

—

- (a) if he or she has a direct or indirect interest in the matter; or
- (b) if there is a possibility that a direct or indirect interest in the matter 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 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 are 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 Commission 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 Agency 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 COMMISSION

Chief Executive Officer of Commission

16.(1) The Board must, in consultation with the responsible Member of the Executive Council, appoint a suitably qualified, skilled and experienced person as Chief Executive Officer of the Commission.

(2)(a) The Chief Executive Officer is appointed for a period not exceeding five years.

(b) The Chief Executive Officer may be re-appointed for one additional term of office not exceeding five years.

(3)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board.

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

(4) For purposes of the declaration of financial or other interests, the provisions of

section 7 apply with the necessary changes to the Chief Executive Officer 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 Board 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 Commission contemplated in section 19(1);
- (c) in consultation with the Board, the determination of a code of conduct, applicable to the Chief Executive Officer, all staff of the Commission 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 Commission'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 Commission; 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 members of staff of the Commission; and
- (f) ensuring compliance by the Board 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 Board must, in writing, and 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 Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

Staff of Commission

19.(1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Commission 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, subject to section 23(4), determine a human resources policy for staff members of the Commission, 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 Commission.

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

Secondment or transfer of staff to Commission

20. The Commission 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

DETERMINATION OF PROVINCIAL CODE OF CONDUCT FOR FILM PRODUCERS

Provincial Code of Conduct for Film Producers

21.(1) The responsible Member of the Executive Council must –

- (a) by notice in the *Gazette*; and
- (b) after consultation with the Board,

determine a Provincial Code of Conduct for Film Producers.

(2) The Provincial Code of Conduct for Film Producers takes effect upon the publication of the notice referred to in subsection (1).

(3) The responsible Member of the Executive Council may, by notice in the *Gazette* and after consultation with the Board –

- (a) amend;
- (b) substitute; or
- (c) withdraw,

the Provincial Code of Conduct for Film Producers.

Policy directives

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

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

CHAPTER 6
FUNDING AND FINANCIAL MANAGEMENT OF COMMISSION

Funds of Commission

23.(1) The funds of the Commission consist of –

- (a) money appropriated by the Provincial Legislature;
- (b) interest on investments of the Commission; and
- (c) income lawfully derived from any other source.

(2) The Commission 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 Commission; and

(b) to cover costs in connection with –

- (i) the day to day operation and administration of the Commission; and
- (ii) the performance of the duties and functions of the Commission 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 Commission 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, 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 Commission.

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

(6) The Commission may not 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, 1999 (Act No. 1 of 1999).

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 Commission's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(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 Commission, 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 Commission, 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 Commission for that financial year.

(5) The Commission 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 Commission.

(2)(a) The Board must table a report on the activities of the Commission 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 Commission 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 business plan.

Financial year of Commission

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

Immovable property

27. The Commission 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 Commission

28.(1) Any legal proceedings against the Commission 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 Commission 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 Commission

29.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Commission 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, 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 Commission; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Commission, or any member of staff of the Commission.

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

Dissolution of Commission

30. The Commission may only be dissolved in terms of an Act of the Provincial Legislature.

Use of name of Commission

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

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

(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), 6 and 9(2).

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

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

(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) A 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 Company and transitional provisions incidental thereto

34.(1)(a) The Company, KwaZulu-Natal Film Commission, bearing Company Registration Number 2003/028677/08, 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 Company contemplated in subsection (1), all assets, liabilities, rights, duties and obligations, including any unspent portion of any funds accrued or received by the Company are transferred to, and vest in, the KwaZulu-Natal Film Commission established in terms of section 2.

(3) The Commission is, in respect of the assets, liabilities, rights, duties and obligations and funds referred to in subsection (2), for all purposes the successor in law of, and the successor-in-title to, the Company.

(4) The members of the Board of the Company must act as duly authorised and empowered members of the Board of the Commission 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 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 Commission 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 less favourable than those payable to the staff member by the 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 Commission 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 Commission; 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 Commission and the Commission 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, an adviser, agent or any other person

employed or acting on behalf of the Commission is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Commission.

(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 Commission, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a member of the Board, a member of staff, an adviser, agent or any other person employed by, or acting on behalf of, the Commission.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Commission 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 Film Commission Act, 2009.