

**KWAZULU-NATAL
YOUTH LEADERSHIP DEVELOPMENT FOUNDATION BILL, 2015**

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BILL

To establish a statutory foundation to be known as the KwaZulu-Natal Youth Leadership Development Foundation; to enable the trust fund of the Foundation to be utilised to promote and advance –

(a) youth development and empowerment;

(b) youth leadership skills;

(c) youth talent;

(d) effective participation of the youth in government, private sector and civic programmes;

(e) the uptake and employment of the youth in scarce skills professions;

(f) participation of the youth in international development programmes;

(g) scholarships or grants for the youth; and

(h) any charitable, educational, philanthropic or public benefit activity or purpose in respect of the youth and youth development and empowerment,

in the Province of KwaZulu-Natal; to determine the object and functions of the Foundation; to determine the manner in which the foundation 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 indicates otherwise –

“**Board**” means the Board of Trustees of the KwaZulu-Natal Youth Leadership Development Foundation referred to in section 5(1);

“**Chief Financial Officer**” means the Chief Financial Officer of the Foundation referred to in section 14(1);

“**Constitution**” means the Constitution, 1996;

“**Executive Council**” means the Executive Council of the Province of KwaZulu-Natal;

“**financial year**” means the period from 1 April in any year to 31 March of the following year;

“**Foundation**” means the KwaZulu-Natal Youth Development Foundation established by section 2(1).

“**Gazette**” means the official *Provincial Gazette* of KwaZulu-Natal;

“**Head of Secretariat**” means the Head of Secretariat of the Board referred to in section 15(1);

“**Member of the Executive Council responsible for Finance**” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for Finance;

“**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**nonprofit organisation**” means a nonprofit organisation as defined in section 1(1) of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997);

“**Premier**” means the Premier of the Province of KwaZulu-Natal as contemplated in section 125 of the Constitution;

“**prescribed**” means prescribed in terms of this Act and “**prescribe**” has a corresponding meaning;

“**Province**” means the province of KwaZulu-Natal established in terms of section 103 of the Constitution;

“**Provincial Government**” means the government of the Province of KwaZulu-Natal;

“**Provincial Legislature**” means the Legislature of the Province of KwaZulu-Natal;

“**public benefit activity**” includes any activity listed in Parts I and II of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962);

“**public benefit organisation**” means a public benefit organisation as defined in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962);

“**regulations**” means regulations made in terms of section 26;

“**staff**”, in relation to the “**Board**” and the “**Foundation**”, includes persons designated, seconded or transferred in terms of section 15(1)(b) and (2);

“**this Act**” includes the regulations.

CHAPTER 2 KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION

Establishment of KwaZulu-Natal Youth Leadership Development Foundation

2.(1) A juristic person to be known as the KwaZulu-Natal Youth Leadership Development Foundation is hereby established.

(2) The Foundation is –

- (a) a statutory trust; and
- (b) a provincial public entity.

(3)(a) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Foundation, subject to any exemption of the Foundation from any provision of that Act as contemplated in section 92 of the Public Finance Management Act, 1999.

(b) Any reference in this Act to the Public Finance Management Act, 1999, is regarded as a reference to that Act, subject to any exemption of the Foundation from any provision of that Act as contemplated in section 92 of that Act.

(c) The Board of Trustees of the Foundation is the accounting authority of the Foundation.

(4) The Trust Property Control Act, 1988 (Act No. 57 of 1988), does not apply to the Foundation and a member of the Board of Trustees of the Foundation referred to in section 5(1) is exempted from furnishing any form of security.

(5) The Board of Trustees of the Foundation must make the required application for the Foundation

–

- (a) to be listed as a provincial public entity in terms of the Public Finance Management Act, 1999;
- (b) to be approved as a public benefit organisation in terms of section 30(3) of the Income Tax Act, 1962 (Act No. 58 of 1962); and
- (c) to be registered as non-profit organisation in terms of section 13(1) of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997).

Object of Foundation

3.(1) The object of the Foundation is to create a trust fund to be administered and utilised for the promotion and advancement of –

- (a) youth development and empowerment;
- (b) youth leadership skills;
- (c) youth talent;
- (d) effective participation of the youth in government, private sector and civic programmes;
- (e) the uptake and employment of the youth in scarce skills professions;
- (f) participation of the youth in international development programmes;
- (g) scholarships or grants for the youth; and
- (h) any charitable, educational, philanthropic or public benefit activity or purpose in respect of the youth and youth development and empowerment,

in the Province –

- (i) to the extent;
- (ii) in the manner;
- (iii) in accordance with such procedures; and
- (iv) on such conditions,

as the Board, subject to the regulations contemplated in section 26(1) and (2), may determine.

(2) Subject to section 16(2)(a) any person or body other than –

- (a) a member of the Board of Trustees of the Foundation: or
- (b) a family member or close associate of a member of the Board,

may, after due consideration by the Board of Trustees of the Foundation of an application in the prescribed form and lodged in the prescribed manner, be approved by the Board as a beneficiary

or recipient of a payment, scholarship or grant, whether conditional or not, from the trust fund of the Foundation.

Powers, duties and functions of Foundation

4. The Foundation, acting through the Board of Trustees of the Foundation –

- (a) must perform the functions and carry out duties and responsibilities imposed by this Act;
- (b) may exercise any power conferred by any other provision of this Act or any other law;
- (c) may, in the exercise of its powers or the performance of its duties and functions in terms of this Act, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the Foundation and must determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons;

and

- (d) may, generally, do everything which is necessary or expedient to achieve its object referred to in section 3 and to perform the duties and carry out the functions referred to in paragraph (a).

CHAPTER 3

BOARD OF TRUSTEES OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION

Composition of Board of Trustees of Foundation

5.(1)(a) The Foundation acts through a Board of Trustees (hereinafter referred to as “the Board”) consisting of at least three, but not more than seven, members appointed by the Premier.

(b) One of the members of the Board must be designated by the Premier as Chairperson of the Board.

(c) The members of the Board must be fit and proper persons to serve the best interests of the Foundation, collectively possessing appropriate knowledge, experience and skills: Provided that –

- (i) at least two members of the Board must have proven knowledge or experience of financial management; and
- (ii) at least one member of the Board must have proven experience in youth or entrepreneur development.

(d) A member of Board may not hold office in or on behalf of a political party or have a high political profile.

(e) The Premier must, within two months after the appointment of the members of the Board, inform the Executive Council and the relevant Portfolio Committee of the names of the members of the Board including the term of their appointment.

(2) The Chairperson of the Board must –

(a) facilitate liaison between the Premier and the Board; and

(b) report to the Premier on a quarterly basis regarding the activities of the Board and the Foundation and matters which are considered relevant.

(3) At the first meeting of the Board referred to in section 9(1), the members of the Board must elect a Deputy Chairperson from amongst the members of the Board.

(4)(a) Any vacancy on the Board amongst the members must be filled in the same manner in which the member who vacates the office was appointed.

(b) If the office of Deputy Chairperson of the Board becomes vacant, a Deputy Chairperson must be elected in accordance with subsection (3).

(5) No deficiency in the number of members of the Board affects or impairs the corporate existence of the Foundation or any rights, duties or powers conferred or imposed by this Act upon the Foundation or the Board.

Term of office and reappointment of members of Board

6. Members of the Board hold office for a period of five years or such lesser period as the Premier may determine and are eligible for re-appointment at the expiry of such period: Provided that no member 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

7.(1) The Premier may, after having afforded a member of the Board the opportunity to state his or her case, at any time terminate the term of office of such member if, in the opinion of the Premier, there are justifiable and cogent reasons for doing so.

(2) A member of the Board may resign by giving not less than 30 days written notice to the Premier: Provided that the Premier may waive the resignation notice.

- (3) A member of the Board must vacate office if –
- (a) the member is convicted of an offence of which dishonesty is an element;
 - (b) the member has been declared insolvent; or
 - (c) the member is absent from two or more meetings of the Board in one financial year without the permission of the Chairperson.
- (4) Whenever a vacancy occurs on the Board, the Premier must, subject to section 5(4)(a), appoint a person to fill such vacancy for the unexpired portion of the period of appointment of the member of the Board in whose place such person is appointed.

Temporary suspension of member of Board

8. The Premier may suspend a member of the Board whilst the Premier is investigating allegations which, if found to be correct, may result in the member's appointment being terminated in terms of section 7(1) or (3).

Meetings and procedures at meetings of Board

9.(1) The first meeting of the Board must be held on a date and at a time and venue determined by the Premier, whereafter all future meetings must be as determined by the Chairperson: Provided that the Board must meet at least five times in any given financial year.

(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 of the Board 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 of the Board 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 and record its decisions and resolutions in writing.

(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 –

(a) Director-General of the Province may attend and participate;

(b) Chief Financial Officer may attend and participate; and

(b) Head of Secretariat may participate,

but may not vote, in a meeting of the Board.

Recusal of member of Board from meetings and proceedings of Board

10.(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 financial or other interest in the matter; or

(b) if there is a possibility that a direct or indirect financial or other 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 of the Board 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 (2) 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 of the Board has failed to disclose an interest contemplated in subsection (1) of this section, such decision by the Board is invalid.

(5) For the purposes of this section "**indirect financial or other 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

11.(1)(a) Subject to subsections (1)(b) and (2)(a), a member of the Board may be paid such remuneration and allowances as may be determined by the Premier 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 office, position, post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality;
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest; or
- (v) a public entity, a national government business enterprise or a provincial government business enterprise as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999),

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 in were it not for such office, position, post or employment.

(c) Different remuneration and allowances may be determined for the following categories of members of the Board –

- (i) the Chairperson;
- (ii) the Deputy Chairperson; and
- (iii) the other members of the Board.

(2)(a) A member of the Board may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board.

(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 travelling expenses contemplated in paragraph (a).

Establishment of committees to assist Board

12.(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 its powers, duties or functions; 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.

Co-opting of persons to committees of Board

13.(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 powers, duties or functions, co-opt such person for that purpose to a committee of the Board for such period as the Board may determine.

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

(3)(a) A person co-opted in terms of subsection (1) may, in respect of his or her functions as a co-opted member of a committee of the Board, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of a committee 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 travelling expenses contemplated in paragraph (a).

CHAPTER 4

CHIEF FINANCIAL OFFICER OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION, HEAD OF SECRETARIAT OF BOARD AND OTHER STAFF OF FOUNDATION

Chief Financial Officer of Foundation

14.(1) The Board may, in consultation with the Premier, appoint a fit and proper and suitably qualified person as the Chief Financial Officer of the Foundation.

(2) The Chief Financial Officer –

- (a) is directly responsible and accountable to the Board;
- (b) must report to the Board; and
- (c) must, within three months of being appointed, conclude a written performance agreement with the Board.

(3) The Board may, in consultation with the Premier, terminate the Chief Financial Officer's appointment in accordance with applicable employment and labour law.

Head of Secretariat of Board and staff of Foundation

15.(1) The Director-General of the Province must –

- (a) designate a senior manager, employed by the Provincial Government in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as the Head of Secretariat of the Board to render administrative, technical and professional secretarial and other support services to the Board in exercising its powers, performing its duties and fulfilling its functions; and
- (b) designate such other persons, employed by the Provincial Government in terms of the Public Service Act, 1994, as may be reasonably necessary, to assist –

- (i) the Board with the administrative, technical and secretarial work incidental to the exercise of its powers, the performance of its duties and the fulfilment of its functions; and
 - (ii) the Foundation with the achievement of its objects, the exercise of its powers, the performance of its duties and the fulfilment of its functions,
- in terms of this Act.
- (2) The Board and the Foundation may utilise the services of persons seconded or transferred in accordance with the provisions of the Public Service Act, 1994.
- (3) The Head of Secretariat –
- (a) is directly responsible and accountable to the Director-General of the Province for the performance and operations of the Secretariat of the Board;
 - (b) must report to the Director-General of the Province and the Chairperson of the Board on the activities of the Secretariat of the Board and the staff of the Foundation referred to in subsections (1)(b) and (2); and
 - (c) must, within three months of being designated as such, conclude a written performance agreement with the Director-General of the Province.
- (4) The staff of the Foundation, designated in terms of subsection (1)(b) or seconded or transferred in terms of subsection (2), must report and are accountable to the Head of Secretariat of the Board.

CHAPTER 5

TRUST FUND, BANK ACCOUNT AND FINANCIAL MANAGEMENT OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION

Trust fund and bank account of Foundation

16.(1) The trust fund of the Foundation consists of –

- (a) all moneys appropriated by Parliament or the Provincial Legislature from time to time for the purposes contemplated in section 3(1) and paid over to the Foundation at such times and in such manner as determined by the National Treasury or the Provincial Treasury, as the case may be;
- (b) donations or contributions lawfully received by the Foundation from any source;
- (c) interest on investments of the Foundation;
- (d) income lawfully derived from any other source; and
- (e) any other moneys lawfully obtained for the benefit of the Foundation.

(2) The Foundation must utilise the moneys forming its trust fund –

- (a) for the purposes contemplated in section 3(1); and
- (b) to cover lawful and reasonable costs in connection with the day-to-day operation and administration of the Foundation, including the payment of –
 - (i) the remuneration or allowances, if any, in terms of section 11(1); and
 - (ii) the reasonable and actual subsistence and traveling expenses, in terms of sections 11(2) and 13(3),

of the members of the Board.

(3)(a) The Board must, with the concurrence of the Member of the Executive Council responsible for Finance, open an account in the name of the Foundation with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and promptly deposit into it all moneys received in terms of subsection (1).

(b) All payments from the account of the Foundation must be made on the authority of the Board or a person designated in writing for that purpose by the Board.

(c) No payment may be made from the account of the Foundation other than for the purposes contemplated in subsection (2).

Financial management of Foundation

17.(1) Subject to the provisions of this Act and the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Board is the accounting authority of the Foundation and is responsible for the financial management of the trust fund of the Foundation and in particular for –

- (a) all expenditure out of the trust fund of the Foundation; and
- (b) the receipt for the credit of the Foundation of all moneys due or accruing to the trust fund of the Foundation.

(2) The Board must cause full and proper books of account and all the necessary records in relation thereto to be kept in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), generally accepted accounting practices and such other principles and practices as may be prescribed by the National Treasury and determined by the Auditor-General.

(3) The Board must ensure that the Foundation'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), subject to any exemption of the Foundation from any provision of that Act as contemplated in section 92 of the Public Finance Management Act, 1999.

(4) The Board must, within three months before the end of each financial year, submit to the Provincial Treasury for approval –

(a) a business plan for the Foundation, containing measurable objectives and the other information contemplated in section 18(3)(b) and (c); and

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

in respect of the following three financial years.

(5) In any financial year the Board may submit to the Provincial Treasury for approval adjusted or supplementary statements of the estimated income and expenditure of the Foundation for that financial year.

(6) The Foundation may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(7) The Board may –

(a) with the approval of the Provincial Treasury, invest any unexpended portion of the trust fund moneys of the Foundation 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 Provincial Treasury, dispose of that portion in any other manner.

(8) The Board may, with the approval of the Provincial Treasury, establish a reserve for the Foundation and deposit into it such amounts as the Provincial Treasury approves.

(9) Any unexpended balance in the trust fund of the Foundation at the end of a financial year is carried forward as a credit in the trust fund of the Foundation for the next financial year.

Audit and annual report of Foundation

18.(1) The Auditor-General must audit the financial statements of the Foundation.

(2)(a) The Board must table a report on the activities of the Foundation 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 Foundation has achieved or advanced its object referred to in section 3 and the measurable objectives as set out in its business plan, as contemplated in section 17(4)(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.

CHAPTER 6 GENERAL PROVISIONS

Legal proceedings against Foundation

19.(1) Any legal proceedings against the Foundation 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 Foundation 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.

Limitation of liability

20. Neither the Board nor any individual member of the Board, the Chief Financial Officer of the Foundation, the Head of Secretariat of the Board or a member of staff of the Foundation, is liable for anything done in good faith in the exercise of a power or the performance of a duty or function in terms of this Act.

Foundation must establish website

21.(1) The Foundation must –

(a) design, establish and maintain its own official website; and

(b) place on that official website any information to be made public, including all relevant information and application forms to enable prospective beneficiaries to lodge applications for payments, scholarships or grants from the trust fund of the Foundation for consideration by the Board of Trustees of the Foundation.

(2) The Head of Secretariat of the Foundation must maintain and regularly update the official website of the Foundation.

Security of confidential information held by Foundation

22.(1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and any applicable law, no person may disclose any information submitted to the Foundation, unless –

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

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

Use of name of Foundation

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

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

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

General offences

24.(1) A member of the Board, the Chief Financial Officer of the Foundation, the Head of Secretariat of the Board, a member of staff of the Foundation, an adviser, agent or any other person engaged, employed by, or acting on behalf of, the Board or Foundation is guilty of an offence if he or she directly or indirectly accepts any bribe or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Board or Foundation.

(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 Board or Foundation, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, a member of the Board, the Chief Financial Officer of the Foundation, the Head of Secretariat of the Board, a member of staff of the Foundation, an adviser, agent or any other person engaged, employed by, or acting on behalf of, the Board or Foundation.

(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 Board or Foundation, is guilty of an offence.

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

Penalties

25. Any person convicted of an offence –

- (a) in terms of section 24(1) or (2), is liable to a fine, or to imprisonment for a period not exceeding that determined by national legislation for corruption; or
- (b) in terms of section 23(3), 24(3) or (4) or 26(3), is liable to a fine, or to imprisonment for a period not exceeding 5 years.

Regulations

26.(1) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and any exemption of the Foundation from any provision of that Act as contemplated in section 92 of the Public Finance Management Act, 1999, the Member of the Executive Council responsible for finance may, after consultation with the Premier and the Board and by notice in the *Gazette*, make regulations concerning –

- (a) the details of the administration and management of the trust fund of the Foundation, including –
 - (i) the procedure for making payments from the trust fund account of the Foundation;
 - (ii) the nature and type of applications to be considered for funding by the Foundation;
 - (iii) the format and the contents of applications for funding;
 - (iv) the procedure for inviting applications for funding;
 - (v) the criteria and weighting for assessment and approval of applications for funding; and

- (vi) the sourcing of donations or contributions for the Foundation, including the procedure for inviting or soliciting donations or contributions;
 - (b) the manner in which the accounts of the Foundation are to be kept;
 - (c) conflict of interest of, and the acceptance of gifts by, a member of the Board, the Chief Financial Officer of the Foundation, the Head of Secretariat of the Board, or a member of staff of the Foundation; and
 - (d) any other matter which he or she may consider necessary or expedient in relation to the control of the trust fund of the Foundation.
- (2) The Premier may, after consultation with the Board and by notice in the *Gazette*, make regulations regarding –
- (a) any other matter that may or must be prescribed in terms of this Act; or
 - (b) any other administrative or procedural matter necessary or expedient for the effective carrying out or furtherance of the object of the Foundation.
- (3) The regulations may provide that any person contravening any regulation or failing to comply therewith is guilty of an offence and liable on conviction to a fine, or to imprisonment not exceeding five years.

Delegations

- 27.(1)** The Premier may delegate to the Director-General of the Province –
- (a) any power conferred on the Premier by this Act, except the power to make regulations referred to in section 26; or
 - (b) any duty imposed on the Premier by this Act, except any duty regarding the appointment, termination of office or temporary suspension, of members of the Board contemplated in sections 5(1)(a), 7(1) and 8.
- (2) The Board may, by special resolution, delegate to –
- (a) the Chief Financial Officer; or
 - (b) the Head of Secretariat of the Board,
- any power or duty conferred or imposed on the Board by this Act.
- (3) Any power or duty delegated in terms of subsection (1) or (2) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

- (4) Any delegation referred to in subsection (1) or (2) –
- (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.

Dissolution and liquidation of Foundation

28. The Foundation may only be dissolved and liquidated in terms of an Act of the Provincial Legislature.

Short title

29. This Act is called the KwaZulu-Natal Youth Leadership Development Foundation Act, 2015.

**MEMORANDUM ON THE OBJECTS
OF THE
KWAZULU-NATAL
YOUTH LEADERSHIP DEVELOPMENT FOUNDATION BILL, 2015**

1. BACKGROUND

The Premier of KwaZulu-Natal expressed the desire for establishing a “foundation” aimed at promoting youth leadership development in the Province.

1.1 Concept of a foundation

It would appear that the term “foundation” is loosely used, as defined for instance in *Wikipedia*, as “a legal categorization of non-profit organisations that will typically either donate funds and support to other organisations, or provide the source of funding for its own charitable purposes.”

This is an American interpretation or concept of the term “foundation”.

The term further has a specific legal meaning in other countries in Europe (where a foundation is a distinct legal entity) and Canada. However, in the United Kingdom, while the word “foundation” is sometimes used in the title of a charity, the term is not generally used in English law and has no precise meaning in English law.

1.2 Position in South African Law

The situation in the United Kingdom is also true of South Africa where the concept of a “foundation” has no real basis in law. Although the term “foundation” may be used in describing an organisation, the manner in which it is constituted depends on its role and obligations and how it has been constituted as an entity that is allowed for in South African law. It has been noted that for instance, the *Nelson Mandela Foundation*, is actually established by way of a *trust*.

Most trusts in South Africa are established by way of trust deed in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988). This has the effect of creating the trust as a separate entity with trustees authorised to do various things on behalf of the trust as mandated by the trust deed.

1.3 Currently, the National Treasury actively discourages the use, in the public sector, of the mechanism of trusts established in terms of the Trust Property Control Act, 1988.

The draft policy framework for the *Governance and Administration of Public Sector Institutions* issued by the Department of Public Service and Administration (DPSA) and National Treasury,

dated 1 August 2005, makes certain recommendations on the use of corporate forms and entities in the public sector. The framework lists a prohibited entity as being trusts established in terms of the Trust Property Control Act, 1988. These proposals emanate from a review of corporate forms and entities as part of a National Cabinet initiative in the overall review process of public sector institutions. One critical issue raised as part of this review process of public sector institutions and entities is the perceived lack of control over certain institutions and entities and accountability for their actions. Trusts established in terms of the Property Control Act, 1988, are not subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

1.4 The draft policy Framework does not prohibit the use of statutory trusts by the public sector.

The **KwaZulu-Natal Youth Leadership Development Foundation Bill**, therefore, seeks to establish a statutory trust or foundation to be known as the KwaZulu-Natal Youth Leadership Development Foundation to enable the trust fund of the Foundation to be utilised to promote and advance –

- (a) youth development and empowerment;
- (b) youth leadership skills;
- (c) youth talent;
- (d) effective participation of the youth in government, private sector and civic programmes;
- (e) the uptake and employment of the youth in scarce skills professions;
- (f) participation of the youth in international development programmes;
- (g) scholarships or grants for the youth; and
- (h) any charitable, educational, philanthropic or public benefit activity or purpose in respect of the youth and youth development and empowerment,

in the Province.

The Bill also determines the object and functions of the envisaged KwaZulu-Natal Youth Development Foundation as well as the manner in which the foundation is to be managed, governed, staffed and financed.

2. CLAUSE BY CLAUSE EXPLANATION

In summary the Bill provides as follows –

CHAPTER 1 (DEFINITIONS)

Clause 1:

Clause 1 contains the definitions which are largely self-explanatory.

CHAPTER 2 (KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION)

Clause 2:

Clause 2 seeks to establish a statutory body (trust or foundation) to be known as the KwaZulu-Natal Youth Leadership Development Foundation, which will be listed as a Provincial Public Entity in terms of the Public Finance Management Act, 1999. Members of the Board of Trustees of the Foundation will be exempt from the provisions of the Trust Property Control Act, 1988, which require members of bodies of this nature to provide security.

The Board of Trustees are required to make application for –

- (a) the listing of the Foundation as a provincial public entity in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) the approval of the Foundation as a public benefit organisation in terms of the Income Tax Act, 1962 (Act No. 58 of 1962); and
- (c) the registration of the Foundation as a non-profit organisation in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997).

The Public Finance Management Act, 1999, (PFMA) applies to the Foundation to ensure proper and appropriate standards of financial control. Possible exemptions from certain provisions of the PFMA by the National Minister of Finance in terms of section 92 of the PFMA are, however, possible. This retains the PFMA as a basis for sound financial control, but would expressly offer the possibility of exemptions to be determined nationally by the National Minister of Finance in terms of the National Act (the PFMA).

Section 92 of the PFMA provides as follows –

“92. Exemptions

The Minister [of Finance, national], by notice in the National Government Gazette, may exempt any institution to which this Act applies, or any category of those institutions, from any specific provisions of this Act for a period determined in the notice.”

In accordance with the provisions of the PFMA, Clause 2 of the Bill expressly states that the Board of Trustees of the Foundation is the accounting authority of the Foundation.

Clause 3:

Clause 3(1) provides for the object of the Foundation which includes the manner in which it should be administered and managed. Clause 3 (2) determines who may be the beneficiary or the recipient of a payment, scholarship or grant from the trust fund of the Foundation.

Clause 4:

Clause 4 provides for the duties, powers and functions of the Foundation.

CHAPTER 3 (BOARD OF TRUSTEES OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION)

Clause 5:

The Foundation acts through a Board of Trustees and clause 5 deals with the composition of the Board of Trustees of the Foundation and how the Board is constituted.

Clause 6:

Clause 6 provides for the term of office (five years) and reappointment of members of the Board.

Clause 7:

Clause 7 deals with vacancies, removal and resignation from office of members of the Board.

Clause 8:

Clause 8 provides for temporary suspension of a member of the Board pending investigation of allegations which could lead to the termination of the member's appointment.

Clause 9:

Clause 9 deals in detail with meetings and procedures at meetings of the Board. A decision of the Board is taken by a majority of the votes of the members and the Chairperson has a casting vote. The Director-General of the Province and the Chief Financial Officer of the Foundation may attend and participate, but may not vote, in a meeting of the Board. The Head of Secretariat of the Board, of course, also attends and may participate in meetings of the Board, but may not vote.

Clause 10:

Clause 10 provides for the recusal of a member of the Board from meetings and proceedings of the Board if such member has a direct or indirect interest in a matter. A member must disclose his or her interest and the disclosure must be recorded in the minutes of the meeting.

Clause 11:

Clause 11 addresses in detail the remuneration of members of the Board, as well as subsistence and travelling expenses. The possibility of “double dipping” (the undesirable and unethical practice of simultaneously receiving more than one full remuneration or income from several different government or public sector sources funded by taxpayers) is expressly prohibited.

Clause 12:

Clause 12 authorises the Board to establish committees to assist the Board.

Clause 13:

Clause 13 authorises the Board to co-opt persons to committees of the Board to assist the Board for such period as the Board may determine. Co-opted persons may not vote at a meeting of a committee of the Board. The clause also deals with the reimbursement of expenses reasonably and actually incurred by co-opted persons.

CHAPTER 4 (CHIEF FINANCIAL OFFICER OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION, HEAD OF SECRETARIAT OF BOARD AND OTHER STAFF OF FOUNDATION)

Clause 14:

Clause 14 provides that the Board may, in consultation with the Premier, appoint a fit and proper and suitably qualified person as the Chief Financial Officer of the Foundation.

The Chief Financial Officer –

- (a) is directly responsible and accountable to the Board;
- (b) must report to the Board; and
- (c) must, within three months of being appointed, conclude a written performance agreement with the Board.

Clause 15:

Clause 15 deals with the Head of Secretariat of the Board and other staff of the Foundation.

Instead of the Foundation having a CEO, it is proposed that the Director-General must designate a senior manager employed by the Provincial Government in terms of the Public Service Act, 1994, as the Head of Secretariat of the Board to render administrative, technical and professional secretarial and other support services to the Board.

Instead of the Foundation being authorised to appoint its own staff complement it is proposed that the Director-General must also designate other persons employed by the Provincial Government in terms of the Public Service Act, 1994, to assist the Board with its administrative, technical and secretarial work.

The implication of this is that costs will be contained in that the Foundation will not need to employ and manage its own staff (save for the Chief Financial Officer referred to in clause 14). Practically, public servants attached to the Chief Directorate: Youth Development on the approved establishment of the Office of the Premier will be designated to assist the Board and the Foundation. These designated staff members will report to, and be managed by, the Chief Director/General Manager: Youth Development who will be designated as the Head of Secretariat of the Board.

This will establish a close link and practical working relationship between the Board and the Office of the Premier in the Provincial Government.

Provision is also made for the Board and the Foundation to utilise the services of persons seconded or transferred in accordance with the provisions of the Public Service Act, 1994.

CHAPTER 5 (FUNDING AND MANAGEMENT OF KWAZULU-NATAL YOUTH LEADERSHIP DEVELOPMENT FOUNDATION)

Clause 16:

Clause 16 provides for what constitutes sources of the trust fund of the Foundation. In terms of this clause, the Board must, with the concurrence of the MEC for finance, open a bank account for the Foundation.

Clause 17:

Clause 17 places the responsibility for the management of the trust fund of the Foundation on the Board in accordance with the provisions of the Public Finance Management Act, 1999.

Clause 18:

Clause 18 provides for the auditing of financial statements of the Foundation and the tabling of a report on its activities before the Provincial Legislature and the Portfolio Committee.

CHAPTER 6 (GENERAL PROVISIONS AND SHORT TITLE)

Clause 19:

Clause 19 provides that, for purposes of legal proceedings against the Foundation, the provisions of the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002), apply to the Foundation.

Clause 20:

Clause 20 provides for limitation of liability of an individual member of the Board, the Chief Financial Officer of the Foundation, the Head of Secretariat of the Board or a member of staff of the Foundation, for anything done in good faith.

Clause 21:

Clause 21 provides that the Foundation must establish an official website and must place on that website any information to be made public, including all relevant information and application forms to enable prospective beneficiaries to lodge applications for payments, scholarships or grants from the trust fund of the Foundation for consideration by the Board of Trustees of the Foundation.

Clause 22:

Clause 22 seeks to prevent persons from disclosing confidential information submitted to the Foundation, unless such disclosure is in terms of the law or an order of court.

Clause 23:

Clause 23 seeks to prevent unauthorised use of the name, acronym, logos, designs or material used or owned by the Foundation.

Clause 24:

Clause 24 criminalises certain conduct by members of the Board of Trustees of the Foundation and private individuals.

Clause 25:

Clause 25 provides for penalties for persons found guilty of contravening certain provisions of the Bill.

Clause 26:

Clause 26 gives the Premier and the MEC for Finance the power to make regulations.

Clause 27:

Clause 27 provides for a wide range of delegations.

Clause 28:

Clause 28 provides that the Foundation may only be dissolved by an Act of the Provincial Legislature.

Clause 29:

Clause 29 provides for the short title.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

The administrative and secretarial work incidental to the performance of the functions of the Board and Foundation must be performed by officers in the Office of the Premier. It is anticipated that the Bill will not substantially increase organisational or personnel requirements for the Provincial Government.

4. DEPARTMENTS / BODIES / PERSONS CONSULTED

The –

- 4.1 Honourable Premier;
- 4.2 Office of the Premier;
- 4.3 Provincial Treasury;
- 4.4 National Treasury; and
- 4.5 National Youth Development Agency (NYDA),

were consulted in the drafting of the Bill.

5. FINANCIAL IMPLICATIONS

There are no undue financial implications for the Provincial Government. Parliament and the Provincial Legislature are not legally obliged to appropriate funds for the envisaged Foundation.

6. CONTACT PERSONS

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