

NORTH WEST AGRICULTURAL SERVICES CORPORATION ACT**NO. 4 OF 1995**

[ASSENTED TO 23 AUGUST, 1995] [DATE OF COMMENCEMENT: 25 AUGUST, 1995]

(English text signed by the Premier)

ACT

To provide for the transformation of the Agricultural Development Corporation of Bophuthatswana, Limited, to the North-West Agricultural Services Corporation Limited, so as to continue to promote and carry out the agricultural development of the North-West Province of the Republic of South Africa and the development of its people by establishing, inaugurating, planning, carrying on and carrying out agricultural industrial, commercial, financial and other agricultural business undertakings and projects; and to provide for matters incidental thereto.

1. Definitions.—In this Act, unless inconsistent with the context —

"**Board**" means the board of directors referred to in section 9;

"**Corporation**" means the North-West Agricultural Services Corporation, Limited, referred to in subsection (2) of section 2;

"**Constitution**" means the Republic of South Africa Constitution Act, 1993 (Act 200 of 1993);

"**director**" means a director of the Corporation appointed by the responsible Member in terms of section 9 (2);

"**Province**" means the Province of North-West as contemplated in section 124 (1) read with Part 1 of Schedule 1 of the Constitution and "**provincial**" shall bear a like meaning;

"**Provincial Legislature**" means the Legislative Assembly of the North-West Province;

"**regulations**" means the regulations made under section 21;

"**Republic**" means the Republic of South Africa as contemplated in section 1 of the Constitution;

"**responsible Member**" means the member of the Executive Council responsible for agricultural matters; and

"**this Act**" includes the Regulations.

2. Transformation of the Agricultural Development Corporation of Bophuthatswana, Limited, as the North-West Agricultural Services Corporation, Limited.—(1) The body corporate called the Agricultural Development Corporation of Bophuthatswana, Limited, constituted and registered in the registers of the Registrar General under section 4 of the Promotion of the Economic Development of Black States Act, 1968 (Act 46 of 1968) shall, subject to subsection (2) of this section, and notwithstanding the repeal of that Act, continue to exist and to be so registered and shall continue to be a body corporate with perpetual succession capable of suing and being sued in its own name and of performing all such acts as are necessary for or incidental to the attainment of its objects and the exercise of its powers.

(2) As from the date of commencement of this Act, the corporation referred to in subsection (1) shall be known as the North-West Agricultural Services Corporation, Limited, and at such commencement the Registrar General shall enter such change of name in his or her registers.

(3) Any reference in any other law or in any document to the Agricultural Development Corporation of Bophuthatswana, Limited, shall be construed as a reference to the North-West Agricultural Services Corporation, Limited.

3. Objects of the Corporation.—The objects of the Corporation shall be to plan, finance, co-ordinate, promote and carry out the development of the Province and its people in the fields of agriculture and agriculture related industries either directly or by means of other agencies.

4. Powers of the Corporation.—(1) For the purposes of attaining its objects, the Corporation shall have power—

(a) to establish, plan, finance, co-ordinate, promote and carry on industrial, commercial and financial undertakings of an agricultural nature and other business undertakings of an agricultural nature or to acquire such undertakings and to sell or otherwise dispose of such undertakings;

(b) to establish or assist in establishing companies for industrial purposes of an agricultural nature;

(c) to inaugurate, plan, finance, co-ordinate, promote or carry out or to assist in the inauguration, planning, financing, co-ordination, promotion or carrying out of projects which are intended to benefit and develop the people of the Province economically or which relate to exploitation, development or utilization of a natural resource, which, in addition to the ordinary meaning thereof, shall include labour, land, water, wood, agriculture and fishing;

(d) to lend money and, on such conditions as the responsible Member may determine in consultation with the Member of the Executive Council responsible for financial matters, to raise or borrow money;

(e) to, subject to such conditions as the responsible Member may determine in consultation with the Member of the Executive Council responsible for financial matters, control, carry out, guarantee, underwrite, finance or bring about the issue of any loan or of any shares, stock or debentures, or to advance money for that purpose;

(f) to provide capital or other means, and to furnish technical and other assistance and expert and specialized advice, information and guidance;

(g) to apply its funds or moneys to the establishment of a reserve fund, or to invest any funds or moneys not immediately required for its affairs in any manner approved by the responsible Member in consultation with the Member of the Executive Council responsible for financial matters;

(h) for the performance of its activities to purchase, hire or otherwise acquire land or buildings, to erect buildings on its land, to sell, let or otherwise dispose of or mortgage such land or buildings;

(i) to accept donations and to receive any monies offered or due to it;

(j) to act as broker;

(k) to open banking accounts;

(l) to pay all expenses in connection with its establishment and administration;

(m) to plan, encourage, co-ordinate, undertake or finance the training of the people of the Province as employees, officers, managers or directors in the fields of industry, commerce, finance and any other businesses;

(n) to guarantee the contracts and obligations of any person or to become surety for their due fulfilment, and to enter into surety bonds or deeds of security;

(o) to, subject to the provisions of the North-West Exchequer Act, 1994, issue, negotiate, accept, endorse or discount debentures, bills of exchange and other negotiable instruments;

(p) to purchase, hire, develop or hold or to subscribe to or otherwise acquire or take over movable property of any kind, including any shares, stocks, debentures and securities, or any interest in any business of or a mortgage over any property, and to let, sell or otherwise alienate it or pledge it or deal otherwise therewith;

(q) by legal process to cause any company, corporation or juristic person in which it has any share or interest, to be liquidated or placed under judicial management and may for that purpose itself be appointed as liquidator or judicial manager, and to petition a competent court to sequester the estate of any of its debtors;

(r) to act, where necessary, to protect its investments, or otherwise to act as director, manager, trustee, curator, executor or administrator of any business, estate, trust, company, juristic person or persons or to designate a person or persons to act for any such purpose on its behalf;

(s) to lend money with or without security to persons and in connection with the lending of money to take such security as it may deem fit, including special mortgage bonds over immovable property, notarial bonds over movable property, pledges of movable property, cessions of rights and in general any other form of cover or security;

(t) to act as agent or representative in connection with any matter of whatsoever nature for or on behalf of a person in connection with all or any of its objects or itself to appoint agents or representatives in connection with any of its objects;

(u) with the approval of the responsible Member and subject to such conditions as may be determined by him or her, to transfer any kind of movable or immovable property held by the Corporation or any interest in any such property to any corporation or Government department or institution;

(v) to employ, remunerate, house, discharge or suspend officers and employees required for its operations and to indemnify such officers and employees in respect of any harm, damage or loss suffered by them in the course of the execution of their duties;

(w) to provide or give pension, medical, leave, statutory and other benefits to any of its officers and employees;

(x) with the prior approval of the responsible Member, acquire land by purchase, lease or otherwise, for the purpose of erecting thereon dwelling-houses for persons in its employ, erect such dwelling-houses and enter into agreements with such persons for the letting or sale of such dwelling-houses to such person;

(y) with the prior approval of the responsible Member, make loans available to employees of the Corporation for the purchase by them of vehicles and equipment to be used by them in the exercise and performance of their powers, function and duties;

(z) reward any of its official, employees or workmen for any suggestion or invention which in material aspects conduces towards greater efficiency, productivity or economy within the Corporation, subject to the responsible Member's prior approval;

(aa) incur expenditure in respect of official entertainment by the Board for the purposes of or in connection with advancing, promoting, or executing the affairs, operations and objects of the Corporation; and

(bb) to exercise any other power which the responsible Member may, after consultation with the

Corporation, consider necessary for the attainment of its objects and which the responsible Member may confer upon it by proclamation in the *Provincial Gazette*,

and may, generally do anything that is necessary for or conducive to the attainment of its objects and the exercise of its powers, whether or not it relates to any matter expressly mentioned in this section.

(2) The tasks and powers imposed or conferred upon the Corporation by or under the repealed Promotion of the Economic Development of Bantu Homelands Act, 1968 (Act 46 of 1968), shall be deemed to be tasks and powers imposed or conferred upon the Corporation, by this Act in so far as those powers are not contrary to the provisions of this Act or the Constitution.

5. Change of name.—(1) The responsible Member may, after consultation with the Corporation, by proclamation in the *Provincial Gazette* from a date fixed by him or her in such proclamation, change the name under which the Corporation is known.

(2) Upon the date so fixed the Registrar General shall enter the change of name in his or her registers.

6. Liquidation of Corporation.—The Corporation shall not be liquidated except by or under the authority of an Act of the Provincial Legislature.

7. Financing of Corporation and guarantees in respect of certain loans to it.—(1) The Corporation shall be financed and be provided with working capital out of—

(a) such monies as may from time to time be appropriated to the Corporation by the Provincial Legislature, together with such monies which, upon the commencement of this Act, had from public funds been allocated to the Corporation by Law, and any increase or decrease thereof as contemplated by section 15 (2), which contributions shall be regarded as constituting share capital held by the Province;

(b) loans granted to the Corporation by the Province on such terms and conditions as the responsible Member in concurrence with the member of the Executive Council responsible for financial matters may from time to time determine in accordance with the provisions of section 25 of the North-West Provincial Exchequer Act, 1994;

(c) loans raised or overdrafts obtained from any bank or financial institution registered in the Republic or elsewhere;

(d) loans negotiated by the Corporation with other states, or with international bodies, agencies, institutions or financiers;

(e) all fees, charges and monies payable to the Corporation in respect of services rendered or supplied by the Corporation;

(f) the proceeds derived by the Corporation from the realisation of any of its assets or property;

(g) rent or other monies payable to the Corporation by its officers, employees and workmen in respect of housing or accommodation provided by the Corporation, as contemplated by section 4 (x);

(h) interest payable to the Corporation by its officers, employees and workmen in respect of the outstanding balances on loans granted to them by the Corporation in terms of section 4 (y);

(i) interest derived from the investment of monies by the Corporation in terms of section 7,

(j) donations and bequests to the Corporation accepted by it;

(k) the proceeds of any sale in terms of section 4 (h).

Provided that the acquisition of capital or funds for the Corporation in terms of paragraph (c) or (d) of this subsection shall be subject to the prior written consent of the Provincial Treasury.

(2) The Member of the Executive Council responsible for financial matters may, on behalf of the Province and upon such terms and conditions as he or she deems fit, and in accordance with the provisions of the North-West Provincial Exchequer Act, 1944, guarantee the repayment of the capital of, and the payment of the interest on and any charges incurred in connection with, any loan raised or negotiated by the Corporation in terms of subsection (1).

(3) Any agreement entered into in pursuance of the provisions of subsection (2), may be signed on behalf of the Province by any person authorised thereto in writing by the Member of the Executive Council responsible for financial matters.

8. Investment of monies.—The monies constituting the funds of the Corporation in terms of section 6 and which are not immediately required to meet the current expenditure of the Corporation may be invested on call at any bank or other financial institution registered in the Republic of South Africa, and approved in writing by the responsible Member.

9. Indemnification of certain persons.—The Corporation may, with the prior approval of the responsible Member and subject to the conditions determined by him or her, indemnify any person with whom the Corporation entered into an agreement in terms of which such person undertakes to establish in the agricultural field, an industrial, commercial, financial or other business undertaking in the Province, against any loss which such person may incur in connection with such undertaking while such contract is of force and effect, and which, by reason of the costs connected therewith, is, in the opinion of the responsible Member, not economically insurable and cannot be prevented by such person and in respect of which he or she, in the opinion of the responsible Member, would have a right to damages if such undertaking were established elsewhere in the Republic but will, in the Province, have no such right to damages or not be able to enforce any such right effectively.

10. Board of directors.—(1) The affairs of the Corporation shall be managed and controlled by a Board of directors which may exercise all the powers of the Corporation.

(2) The responsible Member shall from time to time determine the number of directors of the Board and he shall appoint them and designate one of the directors as chairperson of the Board.

(3) The responsible Member shall choose all directors appointed by him or her for their ability and experience in business or administration or their knowledge of the requirements of the rural population or of the Province or their suitability otherwise for appointment as directors.

(4) The Board of directors which were appointed as a board for the Agricultural Development Corporation of Bophuthatswana, Limited before the coming into effect of this Act shall be deemed to be dissolved in the event of the responsible Member appointing a Board of directors in terms of subsection (2).

11. Alternate directors.—(1) If the responsible Member is of the opinion that circumstances so require, he or she may appoint an alternate director to act in the place of a director during the absence of such director or his or her incapacity to act as a director.

(2) An alternative director, when acting in the place of a director, shall in all respects have all the powers and discharge all the duties of that director.

(3) The alternate director shall be remunerated out of the remuneration which is due to the director in whose place he or she is acting or which would have been due to such director if he or she had acted as director and in the manner determined by the Board.

12. Tenure and conditions of office of directors.—(1) The responsible Member shall determine the period of office of the directors and also the period of office of the chairperson of the Board.

(2) A director shall hold office on such conditions as to remuneration as the responsible Member may determine and on such other conditions as may be prescribed by the regulations.

13. Shares and share capital.—(1) The issued share capital of the Corporation shall be the capital, as contemplated by section 6 (1) (a).

(2) The authorised share capital of the Corporation may, upon recommendation of the Board, be increased or reduced to such an extent as the responsible Member, in consultation with the Member of the Executive Council responsible for financial matters, may determine, and such capital shall be divided into ordinary shares of one rand each.

(3) Only the Province is capable of becoming a shareholder in the Corporation.

14. Liability of shareholder.—The liability of a shareholder in the Corporation shall be limited to the amount unpaid on the shares held by it.

15. Expenditure.—The expenditure incurred by or on behalf of the Board, including the remuneration of directors and alternate directors shall be defrayed from the funds of the Corporation.

16. Revenue account of Corporation.—(1) The Corporation shall have a revenue account for each financial year and shall credit such account with such monies, contemplated by section 6, as constitute its income for such year and debit such amount with all monies expended or owing by it during such year in the performance of its functions, the everyday administration of its affairs and the normal course of its business and operations in terms of this Act, and shall, in so doing, make proper provision for—

(a) the depreciation or diminution in value of its assets;

(b) the payment of interest and other charges in respect of loans or any overdraft raised, obtained or negotiated by it in terms of section 6 (1) (c) and (d);

(c) the redemption by the Corporation of loans to it or of overdrafts at a bank or financial institution referred to in section 6 (1) (c) and (d).

(2) Whenever at the end of any financial year there is in the revenue account—

(a) a surplus of income over expenditure the surplus shall be regarded as constituting an increase in the share capital of the Corporation as contemplated by section 6 (1) (a);

(b) a deficit, in that expenditure of the Corporation exceeds its income, shall be regarded as a decrease in the share capital of the Corporation as contemplated by section 6 (1) (a).

17. Appropriation of profits.—All income and property and all profits of the Corporation from whatever source the same may be acquired, shall be applied exclusively to the promotion of the objects of the Corporation, and no dividend shall be paid to the shareholder: Provided that the responsible Member may, direct that the profits or any portion of the profits of the Corporation shall be paid to a particular corporation, which shall apply any amount so received to the attainment of its objects.

18. Accounts and Audit.—(1) The Board shall cause proper books of account to be kept., and also all necessary books and records in relation thereto.

(2) The accounts of the Corporation shall be audited by the Auditor-General, or a person who is a registered accountant and auditor, appointed by him or her.

19. Information to be furnished to the responsible Member and to the Provincial Legislature.—(1) As soon as practicable after the end of every financial year, the Board shall submit to the responsible Member—

(a) a balance sheet and a statement of income and expenditure which reflects a true and correct view of the state of the affairs of the Corporation as at the end of the last preceding financial year;

(b) a report signed by the auditor appointed under section 17 (2) stating that to the best of his or her knowledge and belief and on information supplied to him or her, the balance sheet and statement of income and expenditure reflects a true statement of the assets and liabilities of the Corporation as of the end of the last preceding financial year, and of the income and expenditure for the period covered. In the event of the auditor being unable to make such a report, or to make it without qualification, he or she shall set out in such report either the facts or circumstances which prevent him or her from making such a report, or the qualification itself; and

(c) a report of the Board concerning the operations of the Corporation during the past financial year.

(2) The responsible Member shall lay copies of the balance sheet, statement of income and expenditure and report referred to in subsection (1), on the Table of the Provincial Legislature within one month after the receipt thereof by him, if the Provincial Legislature is in ordinary session, or, if the Provincial Legislature is not in ordinary session, within one month after the commencement of its next ensuing ordinary session.

20. Exercise of powers by the Corporation and submission of matters by the Board to the responsible Member.—(1) The Corporation shall exercise its powers subject to the directions of the responsible Member.

(2) The Board shall submit to the responsible Member for decision—

(a) any matter which the responsible Member in terms of this Act, is required to decide upon, approve or determine; and

(b) any matter which the responsible Member has required the Board to submit to him or her for decision relating to the exercise of its powers by the Corporation.

(3) The Board may of its own motion submit to the responsible Member any matter for decision.

(4) In regard to any matter submitted to the responsible Member under subsection (2) or (3)—

(a) the responsible Member may give his or her decision after consultation with the Board;

(b) the responsible Member may, either in general or in particular, impose such condition as he or she may think fit,

and every such decision given or condition imposed, shall for all purposes be deemed to be a decision given or condition imposed by the Corporation, and no such decision or condition may be withdrawn or amended by the Board except with the approval of the responsible Member.

21. Regulations.—The responsible Member may make regulations as to—

(a) the place where head office of the Corporation shall be situated;

(b) the date upon which the financial year of the Corporation shall end in every year;

(c) the procedure relating to the submission of matters in terms of section 19 (1);

(d) the conditions of appointment and the powers and duties of a chairperson, acting chairperson and directors, and the quorum and procedure at meetings of the Board;

(e) the keeping of registers, records and books of account by the Board;

(f) an official seal of the Board and the use thereof;

(g) the preparation and submission of annual balance sheets, statements of income and expenditure and reports of the Board and its auditor;

(h) the service of notices;

(i) such other matters as are necessary or useful to be prescribed for the attainment of the objects of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.

22. Application of Act 61 of 1973.—(1) The provisions of the Companies Act, 1973, which were excluded from application to the Corporation in terms of the provisions whereby the Corporation was established under the Promotion of the Economic Development of Black States Act, 1968, shall, subject to the provisions of subsection (2), continue to be so excluded.

(2) The responsible Member may by proclamation in the *Provincial Gazette* declare that any provision of the Companies Act, 1973, which is not inconsistent with the provisions of this Act, shall apply to the Corporation with such modifications as he or she may determine, and may withdraw or amend any such proclamation.

23. Short title.— This Act shall be called the North-West Agricultural Service Corporation Limited Act, 1995.