

NORTH WEST DEVELOPMENT CORPORATION LIMITED ACT**NO. 6 OF 1995**

[ASSENTED TO 5 SEPTEMBER, 1995] [DATE OF COMMENCEMENT: 1 OCTOBER, 1994]

(English text signed by the Premier)

ACT

WHEREAS the need for the continuance of the Bophuthatswana National Development Corporation Limited as a development corporation for the North-West Province has been recognised by the North-West Provincial Government;

WHEREAS, that corporation was identified as being instrumental in the success of the reconstruction and development programme in the North-West Province.

AND WHEREAS, in order therefore for that Corporation to continue and to play a meaningful role in the whole of the North-West Province the need arose for legislation properly addressing those issues;

NOW THEREFORE the Premier and the Provincial Legislature of the North West Province have enacted as follows:

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

"Board" means the North-West Development Corporation Limited Board of Directors established by section 3;

"Constitution" means the Constitution of the Republic of South Africa Act, 1993;

"Corporation" means the North-West Development Corporation Limited, established by section 2 of the repealed Bophuthatswana National Development Corporation Limited Act, 1993 and which continues as a Corporation under section 2 of this Act;

"director" means a director of the Corporation;

"financial year" means the financial year of the Corporation, being the period of twelve months commencing on the first day of April in any year and ending on the thirty-first day of March first following, both days inclusive;

"Managing Director" means the Managing Director of the Corporation appointed in terms of section 11 of this Act;

"Premier" means the Premier of the North-West Province as contemplated by section 145 (1) of the Constitution;

"Province" means the North-West Province as contemplated by section 124 (1) of the Constitution;

"Provincial Legislature" means the legislative authority of the North-West Province contemplated by section 125 (2) of the Constitution;

"repealed law" means the Promotion of the Economic Development of Bantu Homelands Act, 1968 and the Bophuthatswana National Development Corporation Limited Act, 1993;

"responsible Member" means the Member of the Executive Council responsible for Economic Affairs; and

"this Act" includes the Regulations.

2. Continued existence of the Corporation.—(1) (a) The Bophuthatswana National Development Corporation Limited initially established under the Promotion of the Economic Development of Bantu Homelands Act, 1968 (Act 46 of 1968) and thereafter dealt with under the Bophuthatswana National Development Corporation Limited Act, 1993 (Act 37 of 1993), shall, notwithstanding the repeal of the last-mentioned Act by this Act, continue to exist and operate as a body corporate under the name of North-West Development Corporation Limited and shall be deemed to have been established under this Act.

(b) Notwithstanding anything to the contrary contained in this Act, all transactions, agreements, proceedings, matters, acts or things which were done by the Corporation prior to the commencement of this Act any previous Act, shall be regarded as concluded, brought, performed, or done in pursuit or furthermore of the objects of the Corporation or the carrying on of its business and operations shall be deemed to have been lawfully concluded, brought, performed, or done in accordance with the provisions of this Act.

(c) Subject to the provisions of subparagraph (d), the aims and objects of the Corporation shall be to, plan, finance, co-ordinate, promote and carry out the economic development of the Province and its people in the field of industry, commerce, finance, mining and other business, resulting in wealth and job creation.

(d) The Corporation shall, in attaining its aims and objects, have due cognizance of the aims and objects of the Reconstruction and Development Programme of the Republic of South Africa.

(2) Without derogating from the generality of paragraph (c) of subsection (1), the Corporation, for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act shall be capable in law of suing and being sued, of purchasing or otherwise acquiring and holding and alienating movable and immovable property and acquiring real and other rights thereto or any interest therein, of entering into contracts and agreements and, generally, of doing and performing such other things and such other acts as bodies corporate by law may do and perform, subject to the provisions of this Act.

(3) From and after the commencement of this Act and subject to the provisions thereof, the Corporation shall be controlled and represented by the North West Development Corporation Board of Directors as hereinafter provided, and all acts of that Board shall be deemed to be acts of the Corporation.

3. Composition of North-West Development Corporation Limited Board of Directors, appointment and termination of appointment of directors, and remunerations, etc. of directors of the Board.—(1) The responsible Member shall—

(a) from time to time determine the number of directors of Board, which number shall not be less than six and not more than fifteen, of whom one shall be the designated chairperson of the Board by the responsible Member;

(b) appoint the said directors of the Board for a period of three years;

(c) appoint a Managing Director by virtue of being suitable in view of any professional, technical, administrative, special or other qualifications, expertise and experience, who shall be the Chief Executive Officer of the Corporation:

Provided that such determination and appointment shall take place in accordance with the principles of transparency and consultation.

(2) The directors shall be appointed by the responsible Member in terms of subsection (1) by virtue of being suitable for membership in view of—

(a) any professional, technical, administrative, special or other qualifications, expertise or experience; and

(b) being representative of the broad classes of people within the Province.

(3) The responsible Member may for each or any director of the Board – hereinafter referred to as an appointed director – appoint an alternate director, and for the purposes of the appointment of such alternate director, the considerations in paragraphs (a) and (b) of subsection (2) which are relevant to the appointment of the director of the Board for whom he or she is an alternate, shall *mutatis mutandis* apply.

(4) The directors of the Board and their alternate directors shall be appointed by the responsible Member on such terms and conditions as he or she may determine: Provided that a director shall be compensated on a basis as determined by the Board for all travelling and other expenses necessarily incurred in connection with the business of the Corporation and attendance of meetings of the Board.

(5) Whenever the director of the Board in respect of whom a person has been appointed as an alternate director is for any reason unable to attend a meeting of the Board or to exercise and perform his or her powers, functions and duties as a director of the Board, such alternate director may in the place of the director for whom he or she is an alternate, attend such meeting of the Board and thereat participate in the proceedings and voting and fully exercise and perform all the other powers, functions and duties of the director for whom he or she is an alternate: Provided that the person appointed as alternate member for the chairperson shall not at any meeting of the Board at which the chairperson is absent, exercise or perform any powers, functions or duties pertaining to the office of chairperson.

(6) An appointed director or alternate director whose term of office has expired, shall be eligible for re-appointment.

(7) Notwithstanding the provisions of this section, a person shall be disqualified from being appointed or remaining as an appointed director of the Board if—

(a) he or she is subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act 1936 (Act 24 of 1936), or if his or her estate is sequestrated in terms of the law of any other country or territory by a competent court or authority of such a country or territory, or if he or she has assigned his estate for the benefit of his or her creditors;

(b) he or she is subject to an order of a competent court declaring him to be of unsound mind or mentally disordered or defective; or

(c) he or she has been convicted of any offence under this Act or of any offence whatsoever, other than an offence which is regarded as a political offence, in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than six months, irrespective of whether such imprisonment was wholly or partially suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his appointment as a director of the Board.

(8) An appointed director or alternate director of the Board shall vacate his or her office if—

(a) he or she is found guilty of misconduct;

(b) he or she is unfit for the duties of his or her office;

(c) he or she becomes subject to a permanent infirmity of mind or body which renders him or her incapable of discharging the duties of his or her office or discharging them properly;

(d) he or she becomes subject to any disqualification referred to in subsection (7);

(e) he or she is absent from three consecutive ordinary meetings of the Board without its permission.

(9) The office of a director shall be deemed to have been vacated—

(a) upon the death of such director; or

(b) upon the expiration of his or her period of office; or

(c) upon receipt by the Board of his or her resignation as a director: Provided that he or she shall have given 30 days' notice, in writing, to the Board of his or her intention to resign and provided further that such resignation is accepted by the Board; or

(d) if he or she is directly or indirectly concerned in any contract with the Corporation or shares in the profits of any contract with the Corporation: Provided that he or she shall not vacate his or her office if he or she has informed the Board of the nature and extent of his or her interest in such contract and he or she does not vote in respect of such contract or any matter arising therefrom.

(10) Where the office of any appointed director or alternate director becomes vacant, whether by virtue of his or her death or removal or resignation from office, the vacancy shall be filled as soon as may be reasonably practicable, by a suitable person appointed for that purpose by the responsible Member *mutatis mutandis* in accordance with the provisions of subsection (3) and the member so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

4. Chairperson and vice-chairperson of Board.—(1) The responsible Member shall from the number of appointed members of the Board, designate a chairperson for the Board.

(2) The responsible Member shall from the number of appointed members of the Board, designate a vice-chairperson.

(3) The chairperson of the Board shall, subject to the provisions of this section, preside at the meetings of the Board.

(4) The vice-chairperson of the Board shall preside at the meetings of the Board and exercise and perform all the powers, functions and duties of the chairperson of the Board whenever the office of chairperson is vacant or the chairperson is absent or suspended or incapacitated or refuses or fails to act, or is subject to the provisions of section 10, and whenever the offices of both chairperson and vice-chairperson are vacant or both the chairperson and vice-chairperson are absent, incapacitated or refuse or fail to act, or they are both subject to the said provisions, the remaining directors shall from the number of the appointed directors designate a person to preside at the particular meeting or meetings of the Board and to exercise and perform all the powers, functions and duties of the chairperson, for as long as any such vacancy exists, or any of the aforementioned circumstances subsist.

(5) Where any question or dispute arises as to whether or not any incapacity is of a temporary or permanent nature or whether any cause is sufficient for invoking the provisions of that subsection, the matter in issue shall be determined by the decision of the majority of directors who are not alleged to be subject to any incapacity or circumstance contemplated by that subsection.

(6) Whenever it comes to the notice of the responsible Member that, in consequence of the existence of vacancies in the Board or the absence, suspension or incapacity of its directors or any refusal or failure to act contemplated by subsection (4), the number of the remaining directors do not, pending the filling of such vacancies or the termination of any of the circumstances hereinbefore mentioned, form a quorum, the responsible Member shall appoint not less than such number of persons as are required to form such a quorum, but not more than such number of persons as are equal to the difference between the full complement of the Board and the remaining members, to act as members of the Board during the period that such vacancies exist or such circumstances subsist, in order to enable the Board to exercise and perform its powers, functions and duties under this Act.

(7) Notwithstanding the provisions of subsection (4), the responsible Member may, if he or she deems it necessary, appoint any person to act as chairperson of the Board in the circumstances contemplated by that subsection for as long as such circumstances subsist.

5. Acts, resolutions and proceedings of Board not invalidated in certain circumstances.—Subject to the provisions of

section 7 (1) and (2) and section 10, the acts, decisions, and proceedings of the Board shall not be rendered invalid or unlawful by reason only of any vacancy occurring therein, as contemplated by section 3, or of any defect or irregularity in the appointment of a member or by reason of the disqualification of any member of the Board.

6. Meetings of Board and notice of meetings.—(1) The meetings of the Board shall be held on such dates and at such times and places as the Board may by resolution determine, but not less than six times every year: Provided that the first meeting of a newly constituted Board shall be held on such date and at such time and place as the responsible Member may by written notice to all the members of the Board determine, which date shall not be later than twenty-one days (Saturdays, Sundays and public holidays excluded), after such constitution of the Board.

(2) The chairperson may at any time call for an extraordinary meeting of the Board, if in his or her opinion, it is justified by the circumstances prevailing and shall, upon having been presented with a requisition for that purpose signed by at least two members of the Board, forthwith call for an extraordinary meeting of the Board, and if the chairperson fails to call for such lastmentioned meeting within seven days as from such presentation, such two members may, on the expiration of such seven days call for an extraordinary meeting.

(3) Notice of meetings of the Board shall be given to all members thereof in such manner and form as the Board may from time to time determine.

7. Quorum and decisions of Board, and voting powers of chairperson.—(1) At any meeting of the Board the quorum shall be a majority of the serving directors.

(2) The decision of the majority of the directors of the Board present at any meeting thereof, shall, subject to the provisions of subsection (1), constitute a decision to be known as a resolution of the Board: Provided that where the directors of the Board present at any meeting thereof constitute a bare quorum a decision or resolution adopted at such meeting shall not be a decision or resolution of the Board nor have any force or effect unless such decision or resolution was adopted unanimously by the directors so present.

(3) In the event of an equality of votes in regard to any matter put to the vote, the chairperson of the Board or person acting as such in terms of section 4 (4) shall have a casting vote in addition to his or her deliberative vote.

8. Procedure when Board unable to meet timeously in respect of urgent business.—(1) Whenever any matter to be dealt with by the Board is of such a nature that it requires the immediate and urgent decision of the Board and the circumstances are such that it would not be possible for the Board to meet timeously, then all the relevant documentation and memoranda setting out fully the matter to be dealt with shall be submitted to each member of the Board for consideration, and any decision agreed upon by a simple majority of the total number of its members shall be regarded as the decision of the Board in regard to such matter.

(2) A decision contemplated by subsection (1) shall be ratified by the Board at its next ensuing meeting and shall be recorded in the minutes of that meeting.

(3) (a) Any director of the Board to whom a matter has been submitted in terms of subsection (1), shall be precluded from any participation in disposing of such matter in terms of that subsection if, in relation to such matter, he or she has any interest of any nature contemplated by paragraph (a) or (b) of section 10 (1), and shall, upon becoming aware of having such an interest, disclose his interest to the chairperson.

(b) Whenever a director of the Board affected by the provisions of paragraph (a) of this subsection, has failed to comply with the provisions of that paragraph, any decision taken at the time of the non-compliance and regarded by subsection (1) as the decision of the Board, shall be null and void, and such director shall be guilty of an offence and liable on conviction to the penalties prescribed in section 10 (3).

9. Minutes of Board.—(1) The Board shall cause minutes to be prepared and kept of the proceedings of every meeting thereof and cause copies of the minutes to be circulated to all the directors of the Board, as well as to the responsible Member.

(2) Every minute prepared in terms of subsection (1), when signed at a subsequent meeting of the Board by the person presiding at such meeting, shall, in the absence of proof of error therein, be deemed to be a true and correct record of the

proceedings which it purports to minute, and shall at any proceedings before a court of law or any tribunal, constitute *prima facie* evidence of the proceedings of the Board and the matters it purports to minute.

10. Commercial and other interests of directors in matters dealt with by Board.—(1) No director of the Board shall be present at any meeting thereof or be present in the room in which such meeting is held, or in any way whatsoever take part in the proceedings of the Board, during the course of the discussion of or voting on—

(a) any matter in which he or she has, directly or indirectly, either by himself or herself or through his or her spouse, partner or business associate or through any person related to him or her within the third degree of consanguinity or affinity, any commercial or pecuniary interest which is greater than that which he or she has as a member of the general public;

(b) any intended or pending legal arbitration or other proceedings to which the Board is or may become a party and in which any such director has, directly or indirectly, either by himself or herself or through his or her spouse, partner or business associate or through any other person related to him or her within the third degree of consanguinity or affinity, any interest, whether as a party, witness or legal representative or otherwise.

(2) If at any stage during the course of any proceedings before the Board, it appears that any director thereof has or may have an interest which may, in terms of subsection (1), preclude him or her from further participation in such proceedings—

(a) he or she shall forthwith and fully disclose the nature of his or her interest and leave the meeting, so as to enable the remaining members thereof who are present at the meeting in question to discuss the matter and to determine whether such member is so precluded;

(b) such disclosure and the decision taken by such remaining members in relation to such determination, shall be recorded in the minutes of such meeting.

(3) If any director of the Board fails to disclose any interest as required by subsection (2) when the Board turns to consider and deal with any matter affected by such interest, or if such director otherwise contravenes or fails to comply with the preceding provisions of this section, the proceedings of the Board shall be null and void and such director shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment, unless it is proved that such director did not know that he or she had such an interest.

11. Managing Director of Corporation.—(1) The responsible Member shall appoint as Managing Director of the Corporation a person who—

(a) is suitable in view of his or her professional, technical, administrative, special or other qualifications, expertise or experience; and

(b) is not disqualified in terms of section 3 (7) from becoming a member of the Board,

and the Managing Director shall be, the accounting officer for the Corporation and, subject to the control of the Board, be the chief executive officer of the Corporation: Provided that the procedure followed by the responsible Member in the appointment of the Managing Director shall be in accordance with the principles of transparency and consultation.

(2) The Managing Director shall be appointed for such period and on such terms and conditions as to service, as the responsible Member may determine: Provided that such terms and conditions relating to the remuneration, allowances and perquisites of the Managing Director shall in each case be determined by the Board in concurrence with the responsible Member.

(3) The Board may by resolution delegate any of its powers, functions or duties in terms of this Act to the Managing Director (excluding the power referred to in section 16), but shall not thereby be divested of any power or be relieved of any function or duty which it may have so delegated, and may revoke or amend any such delegation and amend or withdraw any decision of the Managing Director in terms of a delegation under this subsection.

- (4) The Managing Director may on three months' written notice tendered to the Board, resign from his or her office.
- (5) The responsible Member may subject to the provisions of subsection (6) remove the Managing Director from office—
- (a) on account of his or her misconduct;
 - (b) for unfitness for the duties of his or her office;
 - (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the duties of his or her office or discharging them properly; or
 - (d) on the ground that he or she is or has become subject to a disqualification referred to in section 3 (7).
- (6) (a) The responsible Member shall, if he or she is on reasonable grounds satisfied that there may exist sufficient cause for the removal of the Managing Director from office in terms of subsection (5), after affording the Managing Director the opportunity to address him or her in this regard, and bearing in mind the provisions of section 24 of the Constitution, constitute a committee to enquire into or investigate whether such sufficient cause does indeed exist for the removal of the Managing Director from office.
- (b) The responsible Member may, whenever there is being undertaken any enquiry or investigation for the purpose of establishing whether or not there exists sufficient cause for the removal of the Managing Director from office in terms of subsection (5) as contemplated by subparagraph (a), suspend the Managing Director from his or her office pending the outcome of such an enquiry or investigation.
- (7) Whenever the Managing Director is suspended in accordance with the provisions of subsection (6), he or she shall, in respect of the period of his or her suspension unless the responsible Member after consultation with the Board directs otherwise, not be entitled to any emoluments under this Act: Provided that—
- (a) if the period of his or her suspension endures for longer than three months, the Corporation shall until such time as such suspension is terminated and the Managing Director is either removed from office under subsection (5) or restored to his or her office, pay to the Managing Director an amount equal to such portion of his or her basic salary as would have accrued to him or her in respect of the period in excess of such three-month period;
 - (b) if he or she is restored to his or her office, he or she shall in respect of the period of his or her suspension, and in addition to any amount paid or payable to him or her under paragraph (a) of this proviso (if any), be paid all such emoluments as would have been payable to him or her under this Act had he or she not been so suspended.

12. Deputy Managing Director.—(1) The Managing Director may, subject to the approval of the Board, appoint a person as Deputy Managing Director to assist the Managing Director, subject to his or her directions and control, in exercising and performing the powers, functions and duties conferred and imposed upon him or her by or in terms of this Act.

(2) The Managing Director may, with the approval of the Board and subject to the provisions of the by-laws made under section 16 (if any), remove any Deputy Managing Director from office for any cause specified in paragraph (a), (b), (c) or (d) of section 11 (6).

(3) A Deputy Managing Director may on two months' written notice tendered to the Managing Director resign from his or her office.

13. Officers, employees and other staff of Corporation.— The Board may appoint such officers; employees and workmen, and engage the services of such experts or advisers in any profession, technique or science, for the Corporation as it may deem necessary in order to assist the Corporation in the due, proper and effective exercise, performance and execution of the powers, functions, duties, projects and affairs of the Corporation, subject to the directions of the

responsible Member (if any), and may—

- (a) determine the terms and conditions of service of such officers, employees and workmen;
- (b) negotiate the purposes for and the terms and conditions subject to which the services of experts or advisers shall be engaged by the Corporation;
- (c) on good cause shown, suspend or dismiss any such officer, employee or workman.

14. Matters to be referred to the responsible Member for decision.—(1) 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.

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

(3) In regard to any matter submitted to the responsible Member under subsection (1) or (2)—

- (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.

15. Powers of the Board.—(1) The Board shall have power—

- (a) to establish, plan, finance, co-ordinate, promote and carry on industrial, commercial, financial, mining and other business undertakings or to acquire such undertakings and to sell or otherwise dispose of such undertakings;
- (b) to establish or assist in establishing companies for industrial, commercial, financial, mining or other business purposes;
- (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 and the Republic economically or which relate to the exploitation, development or utilization of a natural resource, which, in addition to the ordinary meaning thereof, shall include labour, land, minerals, metals, precious stones, water, wood, agriculture, fishing and sea products, methods of transport and communication and methods for the development of power;
- (d) to lend money and, to raise or borrow money;
- (e) to 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;
- (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 moneys 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, mining and any other businesses;
- (n) to guarantee the contracts and obligations of any person or to become surety for their due fulfillment, and to enter into surety bonds or deeds of security;
- (o) to 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 an 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 sequestrate 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 subject to the provisions of the Bank Act, 1990 (Act 94 of 1990) take deposits offered by any person for investment and to hold such deposits on such conditions as may be agreed upon, and to arrange and to decide upon the investment and application thereof;
- (u) 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;
- (v) to transfer any kind of movable or immovable property held by the Corporation or any interest in any such property to any development corporation or any corporation;
- (w) 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;

(x) to provide or give pension and sick benefits to any of its officers and employees;

(y) to 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 persons;

(z) 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, functions and duties;

(aa) reward any of its officials, employees or workmen for any suggestion or invention which in material aspects conduces towards greater efficiency, productivity or economy within the Corporation;

(bb) 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

(cc) to exercise any other power which the Premier may consider necessary for the attainment of its objects and which the Premier may confer upon it by proclamation in the *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 any repealed Law, shall be deemed to be tasks and powers imposed or conferred upon the Corporation, by this Act.

16. By-laws of Corporation.—The Board may, with the prior approval of the responsible Member, by notice in the *Gazette*, make by-laws in relation to the following matters—

(a) the proceedings and business of the Corporation;

(b) the duties of officers, employees and other persons in its employment, including delegation of the powers of appointment and dismissal to any particular officer; and

(c) the scales of salaries, wages or other remuneration of persons in its employment, and the contributions to be paid by the Corporation towards any pension or superannuation fund established by it.

17. 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 moneys 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, may from public funds be allocated to the Corporation by the responsible Member, which he or she is hereby authorised to do which contributions shall be regarded as constituting share-capital held by the Provincial Government;

(b) loans granted to the Corporation by the Provincial Government of the Republic on such terms and conditions as the responsible Member in concurrence with the Member of the Executive Council responsible for Finance may from time to time determine in accordance with the provision of the North West 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 moneys payable to the Corporation by its officers, employees and workmen in respect of housing or accommodation provided by the Corporation, as contemplated by section 15 (v);
- (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 15 (z);
- (i) interest derived from the investment of monies by the Corporation in terms of section 21 (a) or (b);
- (j) donations and bequests to the Corporation accepted by it;
- (k) the proceeds of any sale in terms of section 15 (h).

(2) The Member of the Executive Council responsible for Finance may, on behalf of the Provincial Government and, upon such terms and conditions as he deems fit and subject to the provisions of the North West Exchequer Act, 1994 (Act 4 of 1994) 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 Provincial Government by any person authorised thereto in writing by the Member of the Executive Council responsible for Finance.

18. Banking account of Corporation.—(1) The Corporation shall open and maintain with a commercial or other bank or other financial institution registered in the Republic, an account in which shall be deposited, subject to the provisions of section 21, all monies and income of the Corporation under this Act and from which all payments by or on behalf of the Corporation shall be effected.

(2) All cheques and other negotiable instruments drawn on the Corporation shall be signed by the Managing Director, and any one other member of the Board or one officer of the Corporation specifically authorised by the Board for that purpose, or by any two other members of the Board so authorised, or by any one other such member and one such officer so authorised, or by any two officers so authorised.

19. 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 17, as constitute its income for such year and debit such account 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 17 (1) (c) or (d);

(c) the redemption by the Corporation of loans to it or of overdrafts at a bank or financial institution referred to in section 17 (1) (c).

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

(a) a surplus of income over expenditure surplus it shall be carried forward as a credit balance in the revenue account for the next ensuing financial year;

(b) a deficit in that expenditure of the Corporation exceeds its income, the deficit existing in the revenue account for such financial year shall be carried forward as a debit balance in the revenue account for the next ensuing financial year.

(3) Where the provisions of subsection (2) (b) require a deficit to be carried forward as a debit balance, the responsible Member shall, where monies have been appropriated by Provincial Legislature for that purpose, either fully meet such deficit which shall be carried forward as a debit balance in the revenue account, as may be dictated by the circumstances.

(4) The monies paid out by the responsible Member in terms of subsection (3) shall for all purposes in law be regarded as a loan made to the Corporation by the Provincial Government on such terms and conditions and repayable by the Corporation over such period, as the responsible Member in concurrence with the Member of the Executive Council responsible for Finance may in writing determine.

(5) For the purposes of subsection (2)—

(a) the word "income" includes a credit balance in the revenue account; and

(b) the word "expenditure" includes a debit balance in the revenue account,

brought forward from the revenue account for the preceding financial year.

20. Standards to be observed by Corporation in relation to conduct of its business and financial affairs.—(1) The Corporation shall, in the performance of its functions and the conduct of its business, undertakings, and affairs, at all times—

(a) act in such manner, as in its opinion, will best serve to promote and attain its objects as contemplated by section 2;

(b) strive to ensure that the expenditure incurred by it and/or charged to the revenue account in respect of any financial year does not exceed the income of the Corporation for such year,

and shall at all times conduct its business and undertakings in accordance with generally accepted economic and commercial principles.

(2) The responsible Member may, after consultation with the Board in writing issue to the Corporation such general directions in regard to the exercise and performance by the Corporation of its powers, functions and duties under or by virtue of this Act, as the responsible Member considers to be in the interests of the people of the Province.

(3) The Corporation shall, in the exercise and performance of the powers, functions and duties referred to in subsection (2), comply with all such directions issued in terms of that subsection as may be relevant and appropriate in the circumstances of every particular case.

21. Investment of moneys.—The moneys constituting the funds of the Corporation in terms of section 17 and which are not immediately required to meet the current expenditure of the Corporation may be invested at any bank or other financial institution approved by the Board.

22. Financial accountability of Corporation, and provisions relating to audit and annual report.—(1) The Board shall

subject to the provisions of subsection (5), in respect of every financial year, cause proper books and records of account to be kept in accordance with established accounting practice, principles and procedure of—

- (a) all the monies received by the Corporation within the contemplation of section 17 (1);
- (b) all monies deposited in or payments made from the account contemplated by section 18 (1);
- (c) all monies of the Corporation invested or deposited in terms of section 21;
- (d) all movable and immovable property and other assets held by the Corporation, and every loan raised or overdraft obtained by or for the Corporation and the capital amount outstanding on each such loan or overdraft;
- (e) all costs incurred or monies expended or owing by the Corporation in connection with the exercise and performance of its powers, functions and duties under this Act;
- (f) the interest paid or payable by the Corporation in respect of every loan or overdraft referred to in paragraph (d); and
- (g) the interest received or accrued on monies invested or deposited in terms of section 21,

and the Board shall, within three months as from the end of each financial year, or such longer period as the head of the Provincial Department for Finance may allow, submit the said books and records of account together with the financial statements of the Corporation in respect of such year, comprising an income and expenditure statement and a balance sheet, to be audited in accordance with the provisions of subsection (2).

(2) The books and records of account and financial statements contemplated by subsection (1), shall be audited annually by the Auditor General (if he or she is so authorised by law or otherwise) or a practising public accountant and auditor appointed by the responsible Member for that purpose, at the conclusion of which audit the auditor concerned shall furnish his or her report to the Board.

(3) The chairperson of the Board shall as soon as may be reasonably practicable after the end of each financial year, prepare a report in respect of such financial year in regard to the exercise and performance by the Corporation and the Board of the powers, functions and duties conferred and imposed by or in terms of this Act, and to the execution and attainment of the programmes, projects and priorities of the Corporation, and the business, operations and undertakings and any activities and achievements of the Corporation for the purposes of ensuring the proper execution of this Act and attaining its objects.

(4) The Board shall, not later than thirty days after receipt of the auditor's report referred to in subsection (2), submit a copy of the audited financial statements of the Corporation, together with such report and the report referred to in subsection (3), to the responsible Member who shall—

- (a) submit a copy to the Premier; and
- (b) within fourteen days after receipt thereof lay it on the table in the Provincial Legislature, if the Provincial Legislature is then in session, or, if the Provincial Legislature is not then in session, within fourteen days after the commencement of its next ensuing session.

(5) In the event of the Minister of Finance listing the Corporation as a public entity in terms of the Reporting by Public Entities Act, 1993 (Act 93 of 1992), the financial accountability of the Corporation shall be dealt with in accordance with the provisions of that Act.

23. Offices of Corporation, and execution of documents of Corporation.—(1) The Corporation shall have its head office at Mmabatho and may open branch offices in other centres of the Province as and whenever it becomes necessary or expedient: Provided that, with the permission of the responsible Member and the Government of any other Province involved, the Corporation may establish offices in other Provinces in the Republic.

(2) Subject to the provisions of section 18 (2) and subsection (3) of this section, every contract, agreement, authority or approval and any other document or instrument, shall have been duly executed for or on behalf of the Corporation where it complies with the provisions of this Act in all other respects and has been signed by the chairperson of the Board, or if he or she is not available or where any resolution of the Board so requires, by any other director or officer generally or specifically authorised for that purpose by resolution of the Board.

(3) The Managing Director may, in his or her discretion but subject to the provisions of this Act, execute or prepare, and sign, any such notice, document or instrument as may be necessary or expedient for the everyday administration and affairs of the Corporation.

24. Powers of responsible Member to ensure compliance with Act by Corporation.—(1) Whenever the responsible Member is satisfied that a failure to comply with the provisions of this Act has occurred—

(a) on the part of the chairperson of the Board or any other member of the Board or on the part of any person employed by the Corporation or acting on its behalf with the authority of the Board; or

(b) on the part of the Board,

he or she may, by written notice to the Board, inform it accordingly and direct to the Board to take all the necessary steps or cause the same to be taken, so as to make good such failure within a reasonable time, which shall be specified in such notice, and, where applicable, to ensure future compliance with such provisions.

(2) Upon failure by the Board to comply or ensure compliance with a direction contemplated by subsection (1), the responsible Member may apply to the relevant Division of the Supreme Court of South Africa for an order directing the Board to make good the failure in question, whereupon the Court may make such order as it deems fit.

25. Regulations.—(1) The responsible Member may, after consultation with the Board, make regulations not inconsistent with the provisions of the Act, in relation to—

(a) any matter which shall or may be prescribed in terms of this Act;

(b) any matter necessary to be prescribed for the purposes of the due and effective administration and execution of this Act and of ensuring that its objects are attained;

(c) any matter relating to the exercise and performance of the powers, functions and duties of the Corporation in terms of section 15;

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

(e) the official seal of the Board;

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

(2) A regulation made in terms of subsection (1) may provide a penalty, not exceeding one thousand rand, for a contravention thereof or failure to comply therewith.

(3) The regulations which, immediately prior to the date of commencement of this Act are in force in relation to any matter of a nature specified in subsection (1), shall as from such date be deemed to be the regulations made in terms of that subsection.

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

27. Transitional Provision.—(1) All transactions, agreements, contracts, proceedings, matters, acts or things which, after the date of commencement of this Act but prior to the date of promulgation thereof in the *Gazette*, were concluded, brought, performed, or done in pursuit or furtherance of the objects of the Corporation or the carrying on of its business and operations in accordance with the provisions of a repealed law, shall be deemed to have been lawfully concluded, brought, performed or done in accordance with the provisions of this Act.

(2) The Board of Directors appointed in terms of a repealed law and in existence at the date of commencement of this Act, shall continue to be the Board of Directors of the Corporation until such time as the responsible Member appoints a Board of Directors in terms of section 3 of this Act, in which event the firstmentioned Board shall, notwithstanding any provision in any law to the contrary, be dissolved from the date of the appointment of the new Board.

(3) Any interim management structure which exists at the date of the coming into effect of this Act, shall be dissolved on the date of appointment of the new Board of Directors by the responsible Member and shall from that date onwards have no powers, duties or functions in relation to the Corporation.

28. Special powers of the responsible Member to convert the Corporation into a company.—(1) The responsible Member may by notice in the *Gazette* declare that the Corporation, with effect from a date indicated in the *Gazette*, has been authorised to be incorporated as a company.

(2) Such incorporation shall take place subject to such conditions as may be imposed by the responsible Member (which conditions shall be published in the notice contemplated by subsection (1)) and shall deal with *inter alia*:

(a) the contents of the articles of association and statutes of the prospective company in relation to—

(i) the sphere and scope of business or activity of the contemplated company; and

(ii) any of the other matters which, in terms of Schedule 1 or 7 to the Companies Act, 1973 (Act 61 of 1973), ought to be prescribed in the said articles or statutes;

(b) the devolution of assets, liabilities and funds of the Corporation to the newly formed company;

(c) the transfer of parastatal staff to the company, and other arrangements regarding staff;

(d) shareholding in the company, and the conversion of the shares in the Corporation to shares in the company;

(e) authority for the conversion of the Provincial Government shareholding in the Corporation to shareholding in the company;

(f) the future relationship between the Provincial Government and the new company, including the financial and operational accountability of the new company;

(g) the transfer of the Corporation's commercial and other enterprises to the company;

(h) the legal succession to the Corporation;

(i) transitional provisions and arrangements in respect of the period of transfer of the Corporation into a company; and

(j) any other matter which in the opinion of the responsible Member is necessary for the successful transfer of the Corporation into a company.

29. Repeal of laws.—The Bophuthatswana National Development Corporation Limited Act, 1993, (Act 37 of 1993) is hereby repealed.

30. Short title.—This Act shall be called the North West Development Corporation Limited Act, 1995, and shall be deemed to have come into operation on 1 October, 1994.