

**CORPORATIONS TRANSITIONAL PROVISIONS ACT  
NO. 12 OF 1995 (EASTERN CAPE)**

[ASSENTED TO 12 DECEMBER, 1995]

[DATE OF COMMENCEMENT: 29 DECEMBER, 1995]

**as amended by**

Corporations Transitional Provisions Amended Act (Eastern Cape), No. 6 of 2002

---

**ACT**

ARRANGEMENT OF SECTIONS

- [1.](#) Amendment of section 1 of Act 16 of 1981, as amended by section 1 of Act 19 of 1984 and section 1 of Decree No. 32 of 1993
- [2.](#) Amendment of section 4 of Act 16 of 1981, as amended by section 3 of Act 19 of 1984 and section 3 of Decree No. 32 of 1993
- [3.](#) Amendment of section 7 of Act 16 of 1981, as amended by section 5 of Act 19 of 1984 and section 4 of Decree No. 32 of 1993
- [4.](#) Insertion of sections 7A and 7B in Act 16 of 1981
- [5.](#) Amendment of section 8 of Act 16 of 1981
- [6.](#) Amendment of section 11 of Act 16 of 1981
- [7.](#) Amends the Ciskeian Corporations Act, No. 16 of 1981
- [8.](#) Insertion of section 15A in Act 16 of 1981
- [9.](#) Amendment of Act 16 of 1981
- [10.](#) Construction of references in Act 16 of 1981
- [11.](#) Amendment of section 1 of Act 10 of 1985, as amended by section 1 of Decree No. 2 of 1991
- [12.](#) Amendment of section 2A of Act 10 of 1985, as inserted by section 2 of Decree No. 2 of 1991
- [13.](#) Amendment of section 5 of Act 10 of 1985
- [14.](#) Insertion of section 5A in Act 10 of 1985
- [15.](#) Amendment of section 6 of Act 10 of 1985
- [16.](#) Amendment of section 7 of Act 10 of 1985
- [17.](#) Amendment of section 9 of Act 10 of 1985
- [18.](#) Amendment of section 11 of Act 10 of 1985
- [19.](#) Substitution of section 13 of Act 10 of 1985
- [20.](#) Amendment of Act 10 of 1985
- [21.](#) Amendment of item 20 of Schedule to Act 10 of 1985
- [22.](#) Construction of references in Act 10 of 1985
- [23.](#) Application of amendments and interpretation of terms
- [24.](#) Amalgamation of boards of various corporations
- [25.](#) Acting chief administrative officers of corporations with new boards
- [26.](#) Short title

PREAMBLE

WHEREAS the National Government has, under section 235 (8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), assigned the administration of the Ciskeian Corporations Act, 1981 (Act No. 16 of 1981), of the former Ciskei and the Corporations Act, 1985 (Act No. 10 of 1985), of the former Transkei to the Province of the Eastern Cape in so far as they apply to corporations or a development corporation which has been created in connection with a functional area specified in Schedule 6 to the Constitution; and

WHEREAS it is consequently necessary to amend the said Acts so as to adapt them to the provincial structures under the Constitution; and

WHEREAS it has become necessary in view of the impending restructuring of corporations to provide for necessary attendant interim adjustments to the structures thereof; and

WHEREAS it is necessary to provide for matters associated therewith.

NOW, THEREFORE, BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:—

PART I

AMENDMENTS TO CISKEIAN CORPORATIONS ACT, 1981

**1. Amendment of section 1 of Act 16 of 1981, as amended by section 1 of Act 19 of 1984 and section 1 of Decree No. 32 of 1993.**—Section 1 of the Ciskeian Corporations Act, 1981 (Act No. 16 of 1981) (hereinafter referred to as the Ciskeian Act), applicable in the former territory of Ciskei, is amended by—

- (a) the insertion after the definition of “board” of the following definition:

“‘Constitution’ means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);”;
- (b) by the deletion of the definition of “Ciskei”;
- (c) by the substitution for the definition of “Gazette” of the following definition:

“‘Gazette’ means the *Provincial Gazette* of the Province of the Eastern Cape;
- (d) by the substitution for the definition of “Government” of the following definition:

“‘Government’—

  - (a) with regard to a corporation created in connection with a functional area falling outside the provisions of Schedule 6 to the Constitution, means the national government;
  - (b) with regard to a corporation created in connection with a functional area falling within the provisions of Schedule 6 to the Constitution, means the government of the Province of the Eastern Cape;”;
- (e) by the deletion of the definition of “Head of State”;
- (f) by the deletion of the definition of “Minister”;
- (g) by the insertion after the definition of “Minister” of the following definition:

“‘Premier’ means the Premier of the Province of the Eastern Cape;”;
- (h) by the insertion after the definition of “prescribed” of the following definition:

“‘relevant Member’ means—

  - (a) the member of the Executive Council of the Province of the Eastern Cape responsible for economic matters, who shall administer the provisions of this Act, other than sections 3, 7, 8 (2), 8 (4), 9 and 11 in so far as they relate to corporations other than the development corporation;
  - (b) in relation to sections 3, 7, 8 (2), 8 (4), 9 and 11, the member of the Executive Council of the Province of the Eastern Cape to whom, subject to paragraph (a), the administration of the said sections, or the powers, duties and functions therein mentioned, have been assigned in terms of section 15 A;”.

**2. Amendment of section 4 of Act 16 of 1981, as amended by section 3 of Act 19 of 1984 and section 3 of Decree No. 32 of 1993.**—Section 4 of the Ciskeian Act is amended by the substitution for subsection (3) of the following subsection:

“(3) The relevant Member may, in consultation with the member of the Executive Council responsible for financial matters, guarantee in the name of the Government the repayment of the capital of, and the repayment of interest on, and of any charges incurred in connection with, any loan negotiated or to be negotiated by the development corporation or a corporation.”.

**3. Amendment of section 7 of Act 16 of 1981, as amended by section 5 of Act 19 of 1984 and section 4 of Decree No. 32 of 1993.**—Section 7 (1) of the Ciskeian Act is amended by the substitution for paragraph (c) of the following paragraph:

“(c) No member of the National Assembly, Senate, Provincial Legislature or a member of the Executive Council shall, unless the Premier has so authorized, be appointed as a director or alternate director of the development corporation or a corporation.”.

**4. Insertion of sections 7A and 7B in Act 16 of 1981.**—The following sections are inserted in the Ciskeian Act

after section 7:

**"Reconstitution of board of directors and extension of period of office**

**7A.** The Premier may, at any time, after consultation with the relevant board, reconstitute any board appointed prior to the commencement of the Constitution or may extend the period of office of members of such a board.

**Exercise of powers of board subject to relevant Member's direction**

**7B.** (1) A board may, at any time, submit to the relevant Member for decision any matter relating to the powers of the development corporation or a corporation and shall do so when the relevant Member so requires.

(2) The relevant Member may, after consultation with the board, refer the matter to the Premier for his or her consideration.

(3) The Premier, when giving a decision, may impose such conditions as he or she may deem fit with a view to promoting the objects of this Act.

(4) A decision given or condition imposed by the Premier under subsection (3) shall be deemed to have been given or imposed by the board:

Provided that no such decision or condition may be withdrawn or amended by the board except with the approval of the Premier."

**5. Amendment of section 8 of Act 16 of 1981.—**Section 8 of the Ciskeian Act is amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The share capital of the development corporation or a corporation shall be divided into ordinary shares of one rand each and may from time to time be increased by the relevant Member in consultation with the member of the Executive Council responsible for financial matters."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) Subject to the provisions of Presidential Proclamation R. 12 of 1995, only the Government shall be capable of becoming a shareholder in the development corporation and only the Government and the development corporation shall be capable of becoming shareholders in a corporation."

**6. Amendment of section 11 of Act 16 of 1981.—**Section 11 of the Ciskeian Act is amended by the substitution for subsection (2) of the following subsection:

"(2) The relevant Member shall lay a copy of the balance sheet, statement of income and expenditure and reports referred to in subsection (1) on the Table of the Provincial Legislature within one month after the receipt thereof by him or her."

**7. Amends the Ciskeian Corporations Act, No. 16 of 1981, by repealing section 13 and substituting section 13A.**

[S. 7 amended by s. 1 of Act No. 6 of 2002.]

**8. Insertion of section 15A in Act 16 of 1981.—**The following section is inserted in the Ciskeian Act after section 15:

**"Assignment of specific powers, duties or functions**

**15A.** The Premier may, in respect of any existing corporation other than the development corporation, by proclamation in the *Provincial Gazette*, assign to a specific member of the Executive Council of the Province of the Eastern Cape, the administration of, or the powers, duties or functions vested in a relevant Member under sections 3, 7, 8 (2), 8 (4), 9 and 11."

**9. Amendment of Act 16 of 1981.—**The Ciskeian Act is amended by the substitution for "President", "Head of State" or "President-in-Council", wherever they occur, of "Premier".

**10. Construction of references in Act 16 of 1981.—**Any reference in the Ciskeian Act to—

(a) the territory formerly known as Ciskei shall be construed as a reference to a constituent part of the

territory comprising the Province of the Eastern Cape;

- (b) a citizen of Ciskei shall be construed as a reference to a citizen of the Republic of South Africa, resident in the Province of the Eastern Cape; and
- (c) a non-citizen of Ciskei shall be construed as a reference to a non-citizen of the Republic of South Africa.

## PART II

### AMENDMENTS TO CORPORATIONS ACT, 1985 (TRANSKEI)

#### **11. Amendment of section 1 of Act 10 of 1985, as amended by section 1 of Decree No. 2 of 1991.**

—Section 1 of the Corporations Act, 1985 (Act No. 10 of 1985) (hereinafter referred to as the Transkeian Act), applicable in the former territory of Transkei, is amended by—

- (a) the insertion after the definition of “board” of the following definition:

“‘Constitution’ means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);”;
- (b) the substitution for the definition of “Government” of the following definition:

“‘Government’ means—

  - (a) with regard to a corporation created in connection with a functional area falling outside the provisions of Schedule 6 to the Constitution, means the national government;
  - (b) with regard to a corporation created in connection with a functional area falling within the provisions of Schedule 6 to the Constitution, means the government of the Province of the Eastern Cape;”;
- (c) the deletion of the definition of “Minister”;
- (d) by the insertion after the definition of “Minister” of the following definition:

“‘Premier’ means the Premier of the Province of the Eastern Cape;”
- (e) by the insertion after the definition of “prescribed” of the following definition:

“‘relevant Member’ means—

  - (a) the member of the Executive Council of the Province of the Eastern Cape responsible for economic matters who shall administer the provisions of this Act, other than sections 6, 7 (2), 7 (4), 8, 9 and 11 in so far as they elate to corporations other than the development corporation;
  - (b) in relation to sections 6, 7 (2), 7 (4), 8, 9 and 11, the member of the Executive Council of the Province of the Eastern Cape to whom, subject to paragraph (a), the administration’ of the said sections, or the powers, duties and functions therein mentioned, have been assigned in terms of sections 2 (2) and 16;”;
- (f) the deletion of the definition of “Transkeian Company”.

#### **12. Amendment of section 2A of Act 10 of 1985, as inserted by section 2 of Decree No. 2 of 1991.**

—Section 2A of the Transkeian Act is amended by the substitution for “Chairman of the Military Council” of “Premier”.

**13. Amendment of section 5 of Act 10 of 1985.**—Section 5 (1) of the Transkeian Act is amended by the substitution for paragraph (c) of the following paragraph:

“(c) No member of the National Assembly, the Senate or a Provincial Legislature shall, at any time, be appointed as a director or alternate director of a corporation.”.

**14. Insertion of section 5A in Act 10 of 1985.**—The following section is inserted after section 5 of the Transkeian Act:

#### **“Reconstitution of board of directors and extension of period of office**

**5A.** The Premier may, at any time, after consultation with the relevant board, reconstitute any board appointed prior to the commencement of the Constitution or may extend the period of office of members of a board.”.

**15. Amendment of section 6 of Act 10 of 1985.**—Section 6 of the Transkeian Act is amended by the substitution for subsection (1) of the following subsection:

“(1) A board may, at any time, submit to the relevant Member for decision any matter falling within the powers of a corporation and shall do so when the relevant Member so requires.”.

**16. Amendment of section 7 of Act 10 of 1985.**—Section 7 of the Transkeian Act is amended—

(a) by the substitution in subsections (1) and (2) for “Minister of Finance” of “member of the Executive Council responsible for financial matters”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of the Presidential Proclamation R. 12 of 1995, only the Government and other corporations shall be capable of becoming shareholders in a corporation.”; and

(c) by the substitution in subsection (4) for “National Assembly” of “Provincial Legislature”.

**17. Amendment of section 9 of Act 10 of 1985.**—Section 9 of the Transkeian Act is amended by the substitution for “Minister of Finance” of “member of the Executive Council responsible for financial matters”.

**18. Amendment of section 11 of Act 10 of 1985.**—Section 11 (2) of the Transkeian Act is amended by the substitution for “National Assembly” or “Assembly”, wherever they occur, of “Provincial Legislature” and “Legislature”, respectively.

**19. Substitution of section 13 of Act 10 of 1985.**—The following section is substituted for section 13 of the Transkeian Act:

**“Dissolution of corporations**

**13.** (1) The Premier may, by proclamation in the *Provincial Gazette*, dissolve the development corporation or a corporation.

(2) The Premier in such proclamation—

(a) shall regulate all matters resulting from such dissolution including assets, liabilities, rights and obligations of such corporations;

(b) may in so doing prescribe that certain provisions of the Companies Act, 1973 (Act No. 61 of 1973), and the Insolvency Act, 1936 (Act No. 24 of 1936), shall with or without modification apply to such dissolution *mutatis mutandis*; and

(c) may assign the powers and functions exercised by officials and appointees under the Acts referred to in paragraph (b) to any other person whom he or she considers appropriate in the circumstances.

(3) The Premier shall submit such proclamation to the Provincial Legislature within 30 days of such dissolution.

(4) The registrar of companies shall enter the dissolution in his or her registers.”.

**20. Amendment of Act 10 of 1985.**—The Transkeian Act (including the Schedule thereto) is amended by the substitution for “President” and “Prime Minister”, wherever they occur, of “Premier”.

**21. Amendment of item 20 of Schedule to Act 10 of 1985.**—Item 20 of the Schedule to the Transkeian Act is amended by the substitution for “Minister of Finance” of “member of the Executive Council responsible for financial matters”.

**22. Construction of references in Act 10 of 1985.**—Any reference in the Transkeian Act, or the Schedule thereto, to—

(a) the territory formerly known as Transkei shall be construed as a reference to a constituent part of the

territory comprising the Province of the Eastern Cape;

- (b) a citizen of Transkei shall be construed as a reference to a person who is a citizen of the Republic of South Africa, resident in the Province of the Eastern Cape;
- (c) a non-citizen of Transkei shall be construed as a reference to a non-citizen of the Republic of South Africa; and
- (d) a Transkeian company shall be construed as a reference to a company or other similar body operating in the Province of the Eastern Cape and registered under a law of the Republic of South Africa.

**23. Application of amendments and interpretation of terms.**—(1) The amendments effected by this Act and the provisions of the Ciskeian Act and the Transkeian Act shall not apply in respect of functional areas which fall outside the functional areas mentioned in Schedule 6 of the Constitution or which relate to matters referred to in paragraphs (a) to (e) of section 126 (3) of the Constitution.

(2) Any reference in the Ciskeian Act and the Transkeian Act to "Minister" shall be construed as a reference to the "relevant Member" referred to in section 1 (h).

### PART III

#### TRANSITIONAL MEASURES

**24. Amalgamation of boards of various corporations.**—(1) Notwithstanding the provisions of any other law, the Premier of the Province of the Eastern Cape may, by proclamation in the *Provincial Gazette*, terminate the appointment of any person to a board established in terms of the Ciskeian Corporations Act, 1981 (Act 16 of 1981), and the Corporations Act, 1985 (Act 10 of 1985) (Transkei), and thereupon declare that—

- (a) the boards of corporations mentioned in such proclamation shall be dissolved with effect from a date specified therein; and
- (b) from the date specified in such proclamation a new board, replacing those boards dissolved in terms of paragraph (a), is established,

and thereupon any reference in any law to a board of a corporation dissolved in terms of paragraph (a) shall be deemed to be a reference to a board constituted under paragraph (b).

(2) A board established in terms of subsection (1) (b) shall be known by the name given to it by the Premier.

(3) The provisions of the Ciskeian Act and the Transkeian Act relating to a board shall apply *mutatis mutandis* to the board constituted under subsection (1) (b).

**25. Acting chief administrative officers of corporations with new boards.**—(1) A board established in terms of section 24 (1) (b) may appoint a person to act as the chief administrative officer of such corporation on such conditions as it may determine.

(2) The future of any person who occupied the position of a chief administrative officer or managing director in any corporation whose board has been dissolved in terms of section 24 (1) (a) shall be determined in accordance with the retrenchment policies agreed to between the corporation concerned and the officer of the corporation concerned by which such officer or managing director is employed.

(3) Any reference in the Ciskeian and Transkeian Acts to a chief administrative officer or managing director of a board dissolved in terms of section 24 (1) (a) shall, on the appointment of an acting chief administrative officer referred to in subsection (1), be construed as a reference to such administrative officer.

**26. Short title.**—This Act shall be called the Corporations Transitional Provisions Act, 1995 (Eastern Cape).

---