

**EASTERN CAPE RURAL DEVELOPMENT AGENCY ACT
NO. 9 OF 1999**

[ASSENTED TO 24 JANUARY, 2000]
[DATE OF COMMENCEMENT: TO BE PROCLAIMED]

(English text signed by the Premier)

This Act has been updated to *Provincial Gazette* 2751 dated 4 May, 2012.

ACT

To provide for the establishment of the Eastern Cape Rural Development Agency, with the object of promoting, supporting and facilitating rural development in the Eastern Cape Province in an appropriate and sustainable manner; to make provision for the abolition of the Agricultural Bank of Transkei and the Ciskeian Agricultural Bank Limited; and to provide for matters connected therewith.

[Long title substituted by s. 1 of Act No. 1 of 2012.]

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

1. Definitions.—In this Act unless the context indicates otherwise—

“**Agency**” means the Eastern Cape Rural Development Agency referred to in section 2 (1);
[Definition of “Agency” inserted by s. 1 (a) of Act No. 1 of 2012.]

“**auditor**” means corporation’s external auditor referred to in section 21;

“**board**” means the board of directors of the corporation referred to in section 8;

“**chairperson**” and “**deputy chairperson**” mean the chairperson and deputy chairperson of the board, respectively, referred to in section 12;

“**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“**corporation**”
[Definition of “corporation” deleted by s. 1 (b) of Act No. 1 of 2012.]

“**department**” means the department responsible for the administration of this Act;
[Definition of “department” inserted by s. 1 (c) of Act No. 1 of 2012.]

“**director**” means a director of the board referred to in section 8;

“**executive director**” means the executive director of the corporation referred to in section 13;

“**Executive Council**” means the Executive Council of the Province;

“**Gazette**” means the *Provincial Gazette* of the Eastern Cape Province;

“**government**” means the government of the Province;

“**Legislature**” means the Provincial Legislature;

“**Member of the Executive Council**” means the Member of the Executive Council whose portfolio includes the administration of this Act;

“**non-executive director**” means a director other than the executive director and includes the chairperson and deputy chairperson;

“**Office of the Auditor-General**” means the Auditor-General of the Republic of South Africa, or his authorised representative in the Province;

“**ordinary director**” means a director other than the chairperson, deputy chairperson, or executive director;

“**person**” includes a juristic person and an association of persons;

“**prescribe**” means prescribe by regulation;

“**Premier**” means the Premier of the Province;

“**Province**” means the Province of the Eastern Cape as defined in the Constitution and “**provincial**” has the corresponding meaning;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
[Definition of “Public Finance Management Act” inserted by s. 1 (d) of Act No. 1 of 2012.]

“**regulation**” means a regulation made in terms of this Act;

“**shares**” means the shares of the Eastern Cape Rural Finance Corporation Limited referred to in section 7; and “**shareholder**” and “**share holding**” have corresponding meanings;

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

2. Establishment of the Eastern Cape Rural Finance Corporation Limited.—(1) There is hereby established a statutory body to be known as the Eastern Cape Rural Development Agency, with the objects, powers, functions, and duties assigned to it in this Act.

[Sub-s. (1) substituted by s. 2 of Act No. 1 of 2012.]

(2) The corporation referred to in subsection (1) is a juristic person with limited liability and perpetual

succession, capable of suing and being sued in its own name.

3. Objects of corporation.—The objects of the corporation are to promote, support and facilitate rural development in the Province by—

(1) mobilising financial resources and providing financial and supportive services to persons domiciled, ordinarily resident or carrying on business within the Province;

(2) promoting and encouraging private sector investment in the Province and the participation of the private sector in contributing to economic growth;

(3) promoting, assisting and encouraging the development of the Province's human resources and financial infrastructure, in association with other institutions having similar or related objects;

(4) acting as the government's agent for performing any development-related tasks and responsibilities that the government considers may be more efficiently or effectively performed by a corporate entity;

(5) driving and coordinating integrated programmes of rural development, land reform and agrarian transformation in the Province;

[Sub-s. (5) inserted by s. 3 of Act No. 1 of 2012.]

(6) project managing rural development interventions in the Province;

[Sub-s. (6) inserted by s. 3 of Act No. 1 of 2012.]

(7) promoting applied research and innovative technologies for rural development in the Province;

[Sub-s. (7) inserted by s. 3 of Act No. 1 of 2012.]

(8) planning, monitoring, implementing and evaluating rural development in the Province;

[Sub-s. (8) inserted by s. 3 of Act No. 1 of 2012.]

(9) facilitating the participation of the private sector and community organizations in rural development programmes.

[Sub-s. (9) inserted by s. 3 of Act No. 1 of 2012.]

4. Powers of the agency.—For the purpose of attaining its objects, subject to the Public Finance Management Act, the agency has the power to—

(1) raise funds and other resources from the public and private sectors by—

(a) raising loans, soliciting and receiving grants and donations, and issuing shares, debentures and debenture stock on such conditions as may be agreed upon; and

(b) accepting, holding and investing deposits offered by any person for investment in accordance with the requirements of any law governing the acceptance, holding and investment of deposits;

(2) lend or advance money, with or without security, on such conditions as it thinks fit, take such security as it thinks fit in connection therewith, including mortgage bonds, notarial bonds, pledges, cessions, liens, hypothecs, guarantees, deeds of suretyship, or any other form of cover or security and take such steps as it thinks necessary for the recovery of any debt and the protection and enforcement of any right in connection therewith;

(3) guarantee, underwrite, or stand surety for the debts or contractual obligations of any person, indemnify any person against any loss, damage, or costs arising from the debts or other obligations of any other person and, for that purpose, furnish any required form of security;

(4) acquire, hold, develop, improve, manage, deal with or in, hire, let sell, transfer, donate, cede, hypothecate, otherwise encumber or alienate movable or immovable property, whether corporeal or incorporeal;

(5) establish juristic persons or associations of persons capable of carrying out any object power, function, or duty that the corporation may carry out in terms of this Act, acquire an interest in any such juristic person and alienate any such interest, or subscribe to membership of any such association and terminate such membership;

(6) accept appointment and act as director, trustee, administrator, manager, executor, judicial manager, liquidator, agent representative, or secretary of any person, public body, estate, or business and, in that connection, designate one or more representatives to act for such purpose on its behalf;

(7) charge and accept remuneration for any service rendered to or on behalf of any person, including the government;

(8) pay all expenses in connection with its administration, open, operate and close banking accounts, overdraw such accounts, make, draw, accept, or endorse negotiable instruments, invest funds not immediately required for its affairs, create reserve funds, and generally do all things necessary for the management and administration of its financial affairs;

(9) take all such steps as it thinks necessary for and pay all expenses in connection with the protection, preservation and maintenance of its rights and assets, whether corporeal or incorporeal, or for the recover of any liability, or the enforcement of any obligation owing to it by any person, including the institution of such legal proceedings as it thinks fit;

(10) establish a fund to support rural development programmes in accordance with guidelines or policy directives issued by the MEC in accordance with section 6.

[Sub-s. (10) inserted by para. 4 (b) of Act No. 1 of 2012.]

(11) employ, discharge, or suspend officers or employees, remunerate them, train them, house them, provide them with pension, sick or other benefits of employment and generally do all things necessary to develop and maintain an adequate staff complement;

[Sub-s. (11), previously sub-s. (10), renumbered by sub-s. 4 (3) of Act No. 1 of 2012.]

(12) have an official seal and use such seal for any purpose in the Republic of South Africa;

[Sub-s. (12), previously sub-s. (11), renumbered by sub-s. 4 (3) of Act No. 1 of 2012.]

(13) generally, do all things necessary for the attainment of its objects, the exercise of its powers, or the management and administration of its affairs, whether or not expressly provided for in this section.

[S. 4 amended by para. 4 (a) of Act No. 1 of 2012. Sub-s. (13), previously sub-s. (12), renumbered by sub-s. 4 (3) of Act No. 1 of 2012.]

5. Method and area of operations of corporation.—(1) As far as is possible and consistent with good business practice, the corporation must conduct its activities in such a way as to—

- (a) raise and apply its funds and other resources in a responsible manner and in such a way that the corporation's activities are sustainable;
- (b) support the government's agricultural, land reform and rural development strategies;
- (c) maximise and spread the development impact of such activities;
- (d) develop synergistic relationships with other agencies for the delivery of development in the Province and avoid duplicating functions and resources;
- (e) promote and encourage private sector participation in economic growth and employment creation;
- (f) reinforce and promote values consistent with the Constitution.

(2) The agency may operate throughout the Province and its activities need not be confined to rural areas

[Sub-s. (2) substituted by s. 5 of Act No. 1 of 2012.]

(3) If it considers it necessary for the attainment of its objects, the corporation may become involved in projects and programmes and enter into transactions with persons outside the Province.

6. Policy directives.—(1) After consultation with the board, the Member of the Executive Council may set broad guidelines for the attainment of the corporation's objects, by issuing policy directives to the board and the Member of the Executive Council may similarly withdraw or amend any policy directive so issued.

(2) The Member of the Executive Council must not issue any policy directive inconsistent with the provisions of this Act or any other law binding on the corporation.

(3) A policy directive must be—

- (a) in writing;
- (b) signed by the member of the Executive Council; and
- (c) addressed to the chairperson.

(4) The board must ensure that a record is kept of all current policy directives and members of the public have the right of access to this record.

(5) The board must report to the Member of the Executive Council on the extent of its compliance or non-compliance with all existing policy directives under cover of its annual report.

7. Shares, share capital and share holding.—(1) The initial authorised share capital of the corporation shall be an amount of ten million rand, which shall be divided into one thousand ordinary shares having a par value of ten thousand rand each.

(2) The government shall subscribe to the authorised share capital at such times and in such amounts as the board and the Member of the Executive Council agree.

(3) Any share issued to the government must be paid for by the government out of funds duly appropriated by the Legislature for that purpose and such payment must be made at such times and in such amounts as the board agrees.

(4) Subject to such conditions as the Member of the Executive Council may prescribe, the government may transfer all or part of the issued shares to any juristic person, association of persons, or public or private sector body, whose objects are consistent with those of the corporation and, by agreement with any such shareholder, may re-acquire all or any such shares: Provided that individual natural persons may not hold shares in the corporation.

(5) Any share in the corporation may be issued with such preferred, defamed or other special rights, or subject to such restrictions as the board may decide, whether in regard to dividends, voting, return of share capital, or otherwise; and, in the case of preference shares, the board may decide that the shareholders are not entitled to vote and/or that such shares are, or are at the option of the board, liable to be redeemed.

(6) From time to time, the board, with the approval of the shareholders in general meeting, may increase the corporation's share capital to the extent it thinks expedient, by the creation and issue of ordinary or preference shares, or shares of any other type or class it may decide.

(7) From time to time, the board, on the recommendation of the auditor and with the approval of the shareholders in general meeting, may reduce the corporation's issued share capital, by repaying any paid-up share capital which exceeds the corporation's needs, or by cancelling any paid-up share capital which is not represented by available assets: Provided that the rights of the corporation's creditors must not be prejudiced by such a reduction.

(8) Whilst the government is the sole shareholder, any matter requiring the decision, or approval of the shareholders in general meeting or otherwise may be decided, or approved by the Member of the Executive Council and his or her written decision or approval will constitute necessary resolution.

8. Board of directors.—(1) The affairs of the Agency must be governed a by Board appointed by the MEC.

(2) The Board is the Accounting Authority of the Agency and must—

- (a) give strategic direction to the Agency;
- (b) be responsible for the performance of the Agency;
- (c) be accountable to the MEC for the performance of the Agency; and
- (d) be supported by a chief executive officer and other employees.

(3) In addition to the duties and responsibilities as accounting authority of the Agency provided for in the Public Finance Management Act the Board must—

- (a) provide effective, transparent and accountable corporate governance and conduct effective oversight of the affairs of the Agency, by adopting governance rules in accordance with subsection (4);
- (b) comply with all applicable legislation and agreements; and
- (c) at all times act in accordance with the code of conduct for members of the Board as may be prescribed by the MEC.

(4) The Board must adopt governance rules that substantially comply with the principles of good governance for a public entity contemplated in the Public Finance Management Act.

[S. 8 substituted by s. 6 of Act No. 1 of 2012.]

9. Duties of directors, prohibitions and penalties.—(1) Directors have a fiduciary duty towards the corporation and must display reasonable skill and care in performing their functions.

(2) The provisions of sections 423, 424, 425 and 426 of the Companies Act apply to the corporation's directors.

(3) Except for matter relating to his or her conditions of appointment no director may directly or indirectly have a material interest in any contract or proposed contract with the corporation, whether in the ordinary course of business or otherwise; nor may any director be a member, director, trustee or agent of a juristic person or association of persons who has or proposes to acquire such an interest whether directly or indirectly.

(4) The provisions of sections 225, and 227 of the Companies Act apply to the corporation and its directors.

10. Constitution of Board.—(1) The Board consists of not less than seven and not more than eleven

members appointed by the MEC from applications and nominations received as contemplated in section 10B.

(2) The members of the Board must when viewed collectively be persons who are suited to serve on the Board by virtue of their qualifications, skills, expertise experience and knowledge in the fields of rural development, business and financial management, fund and investment management law, traditional affairs.

(3) The MEC, after consultation with the Premier and Provincial Treasury may appoint an officer in the service in the administration of the Province of the Eastern Cape as a member of the Board.

(4) The chief executive officer is an *ex officio* member of the Board.

(5) The Board must represent the demographics of the Province.

[S. 10 substituted by s. 7 of Act No. 1 of 2012.]

10A. Nomination procedure.—(1) The MEC must, at least 90 days before the expiry of every term of office of the members of the Board, invite applications or nominations for persons to be appointed for the ensuing term of office of the Board by notice in the *Gazette* and an advertisement in at least two leading newspapers in the Province.

(2) The invitation for applications or nominations referred to in subsection (1) must provide for the applications or nominations to be submitted within 30 days from the date of the invitation or the date of publication of the notice.

(3) Any application or nomination made pursuant to a notice or an advertisement in terms of subsection (1) must be made in the form determined by the MEC and accompanied by—

- (a) the personal details of the applicant or nominee;
- (b) particulars of the applicant's or nominee's qualifications or experience in the matters contemplated in section 10;
- (c) in the case of a nomination, a letter of acceptance of nomination by the nominee;
- (d) a sworn declaration by the applicant or nominee that he or she is not disqualified in terms of section 11A;
- (e) a disclosure of the information contemplated in section 11E; and
- (f) permission by the applicant or nominee to verify the information provided by him or her.

(4) The MEC must, within 30 days from the expiry date specified in the notice and the advertisement evaluate the applications and nominations received by him or her and appoint the members of the Board for the ensuing term of office of the Board.

(5) When evaluating the nominations the MEC must take into consideration—

- (a) the applicant's or nominee's knowledge and experience of the matters referred to in section 10;
- (b) the need for appointing persons previously disadvantaged by unfair discrimination;
- (c) the geographic spread in the Province;
- (d) the need to ensure that the Board is composed of persons covering a broad range of appropriate experience and expertise: and
- (e) the Agency's objectives.

(6) If insufficient unsuitable or no applications and nominations are received within the period specified in the invitations or the notice the MEC may appoint to the Board the required number of persons who, but for the fact that they did not apply or were not nominated in terms of the procedure contemplated in this section, qualify to be appointed in terms of this Act.

(7) The MEC must, as soon as practicable after the appointment of the members of the Board, publish by notice in the *Gazette* the name of the persons appointed.

[S. 10A inserted by s. 8 of Act No. 1 of 2012.]

11. Term of office.—(1) A Board member holds office for a period of three years from the date of appointment and is eligible for re-appointment for one additional term not exceeding three years.

(2) Despite subsection (1), the MEC may, by notice in the *Gazette*, after consultation with the Board, extend the term of office of all the Board members for a period of six months, but he or she may only extend the term of office of the Board twice.

[S. 11 substituted by s. 9 of Act No. 1 of 2012.]

11A. Disqualification from appointment to or remaining as member of Board.—A person is disqualified from being appointed or remaining a member of the Board if that person—

- (a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, Municipal Council or is in the full-time employ of an organ of state with the exception of the representatives of the Departments contemplated in section 10;
- (b) is not a South African citizen or a permanent resident in the Republic;
- (c) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (d) is declared by a competent court to be of unsound mind or suffers a mental illness or has a severe or profound intellectual disability as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (e) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 2008 (Act No. 71 of 2008), or of contravening this Act, irrespective of whether such imprisonment was wholly or partly suspended or not;
- (f) has been convicted of an offence, other than an offence contemplated in paragraph (e) and sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not;
- (g) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board;
- (h) fails to disclose an interest as contemplated in section 11E; or
- (i) is disqualified in terms of the Companies Act.

[S. 11A inserted by s. 10 of Act No. 1 of 2012.]

11B. Resignation of member and vacation of office.—(1) A Member of the Board may at any time resign from the Board upon one month's written notice tendered to the chairperson who must immediately inform the MEC, the Board and the chief executive officer accordingly.

(2) A member of the Board who resigns as contemplated in subsection (1) must vacate his or her office at the end of the notice period contemplated therein.

(3) A member of the Board ceases to be a member and must vacate his or her office with immediate effect if he or she—

- (a) is no longer eligible in terms of section 11A to be a member: or
- (b) is removed from office by the MEC in terms of section 11C.

[S. 11B inserted by s. 10 of Act No. 1 of 2012.]

11C. Removal of member of Board, dissolution of Board and appointment of interim Board.—(1) The MEC may remove, with immediate effect, a member of the Board from office on account of any or all of the following—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently; and
- (c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown; and
- (d) failure to disclose an interest in terms of section 11E or voting or attendance at or participation in, proceedings of the Board while having an interest contemplated in section 11E.

(2) The MEC may dissolve the Board with immediate effect, if it fails in any or all of the following—

- (a) discharging its fiduciary duties;
- (b) achieving its objectives in terms of this Act; and
- (c) carrying out its duties.

(3) Upon the dissolution of the Board contemplated in subsection (2), the MEC must appoint an interim Board consisting of between seven and nine members and he or she does not have to follow the nomination and appointment procedure contemplated in section 10B.

(4) The MEC must appoint the interim Board within 30 days after the dissolution of the Board and the term of office of the interim Board is a period not exceeding six months.

(5) The MEC must appoint the chairperson and deputy chairperson of the interim Board.

(6) The provisions of this Act regarding the Board apply to the interim Board.

[S. 11C inserted by s. 10 of Act No. 1 of 2012.]

11D. Appointment of member to vacant seat.—(1) When a seat on the Board becomes vacant as a result of any action referred to in section 11B, or if a Board member dies before the expiration of his or her term of office the Board must, as soon as is practicable after the seat becomes vacant notify the MEC that the seat has become vacant.

(2) The MEC must, as soon as is practicable after the receipt of the notification from the Board—

- (a) in an open and transparent manner, invite applications or nominations for a person to be appointed to the vacant seat;
- (b) evaluate the applications and nominations received; and
- (c) appoint a nominee or candidate to the vacant seat.

(3) If insufficient, unsuitable or no nominations are received as contemplated in subsection (2) (b), the MEC may appoint to the vacant seat on the Board any person who, but for the fact that he or she was not nominated or did not apply in terms of the procedure contemplated in subsection (2), qualify to be appointed in terms of this Act.

(4) The MEC must, as soon as practicable after the appointment of the member to the vacant seat on the Board, publish by notice in the *Gazette* the name of the person appointed.

(5) The person who is appointed to the vacant seat on the Board fills the vacancy for the unexpired portion of the period of office of the vacating member.

[S. 11D inserted by s. 10 of Act No. 1 of 2012.]

11E. Disclosure of interest.—(1) A person may only be appointed to the Board, if he or she has made the following disclosure—

- (a) whether, directly or indirectly, personally or through his or her spouse, partner or associate, he or she has a financial interest in core business of the Agency and stipulate the nature and extent of that interest; or
- (b) whether, his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).

(2) If, at any stage during the course of any proceedings before the Board, it appears that any Board member has or may have an interest which may cause a conflict of interest—

- (a) that Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether that Board member is precluded from participating in that meeting by reason of a conflict of interest; and
- (b) the disclosure of interest by that member and the decision taken by the remaining Board members regarding the matter, must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting; of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board in terms of which such Member of the Board, his or her spouse, partner or associate obtains any interest will be null and void.

[S. 11E inserted by s. 10 of Act No. 1 of 2012.]

12. Chairperson and deputy chairperson.—(1) The MEC must appoint a chairperson and the Board must appoint a deputy chairperson.

(2) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.

(3) If both the chairperson and the deputy chairperson are for any reason unable to preside at a Board meeting, the members present must elect one of the members to preside at that meeting and the person elected may perform all the functions and exercise all the powers of the chairperson.

(4) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the Board and if the chairperson or deputy chairperson has vacated office, the MEC must appoint a chairperson or deputy chairperson from the Board members for the remaining term of office of the Board.

[S. 12 substituted by s. 12 of Act No. 1 of 2012.]

12A. Meetings of Board.—(1) The MEC must, as soon as is practicable after the appointment of the Board for the first term of office, determine the time and place of its first meeting.

(2) The Board must determine the time and place of any future meetings for the first and subsequent terms of office of the Board.

(3) The Board meets as often as circumstances require, but at least four times in every financial year.

(4) A majority of Board members constitutes a quorum at a meeting.

(5) Every Board member, including the chairperson, has one vote and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

(6) Subject to the approval of the Board, any person who is not a Board member may attend or take part, but may not vote, in a meeting of the Board.

(7) The Board must adopt governance rules which provides for the conduct of proceedings at meetings and recording of the proceedings and including the governance rules for special meetings.

[S. 12A inserted by s. 13 of Act No. 1 of 2012.]

12B. Decisions of Board.—(1) A decision of the majority of Board members present at any duly constituted meeting constitutes a decision of the Board.

(2) No decision taken by or act performed under the authority of the Board is invalid by reason of—

(a) a vacancy on the Board at the time the decision was taken or the act was authorised; or

(b) the fact that any person who was not entitled to sit as a Board member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

[S. 12B inserted by s. 13 of Act No. 1 of 2012.]

(Editorial Note: Section 13 of Act No. 1 of 2012 further inserts sections 12C and 12D. However, these sections were not included in the original *Provincial Gazette*.)

13. Executive management and employees.—(1) The Board must—

(a) appoint a chief executive officer for a period of 5 years which may be renewable; and

(b) determine the conditions of appointment of the chief executive officer.

(2) The chief executive officer must enter into a performance agreement with the Board on acceptance of his or her appointment and he or she is accountable to the Board.

(3) The chief executive officer is the head of the Agency's administration and, subject to directives from the Board, the functions of the chief executive officer are, amongst others, to—

(a) manage the affairs of the Agency;

(b) implement the policies and decisions of the Board;

(c) manage and recruit employees to perform the work necessary to achieve the objects of the Agency; and

(d) develop efficient, transparent and cost-effective administrative systems.

(4) The Agency must determine the conditions of service for its employees, including remuneration which must be determined in accordance with an approved remuneration policy.

(5) Subject to the PFMA, the chief executive officer may delegate any original or delegated duty or power to any employee appointed in terms of subsection (3) (c) in accordance with section 15.

[S. 13 substituted by s. 14 of Act No. 1 of 2012.]

14. Board Committees.—(1) The board may establish board committees to assist in discharging its responsibilities.

(2) The Board may co-opt any person outside the Board to sit in a committee if that person has skills and expertise and he or she must serve in an advisory capacity without voting powers.

[Sub-s. (2) substituted by s. 15 of Act No. 1 of 2012.]

(3) The board has the power to determine the mandate, composition, powers, functions and duration of any board committee and may amend these from time to time, or disestablish any such committee.

(4) Board committees are accountable to the board and must keep records of their proceedings and resolutions in the same manner as the board.

15. Delegations by Board.—(1) the Board must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system may —

- (a) in writing delegate appropriate powers, excluding the power to establish a committee, prescribe governance rules for a committee and appropriating funds, to a committee, the chief executive officer, a member of the Board or an employee of the Agency; and
- (c) approve the delegation of any of the powers delegated to the chief executive officer by the Board or granted to him or her under this Act to any employee of the Agency.

(Editorial Note: Alphabetical numbering as per original *Provincial Gazette*.)

(2) A delegation in terms of subsection (1)—

- (a) is subject to such limitations and conditions as the Board may impose;
- (b) may authorise sub delegation; and
- (c) does not divest the Board or the chief executive officer in the event of a delegation in terms of subsection (1) (c) of the delegated power.

(3) The Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Board or an employee of the Agency as a result of a delegation in terms of subsection (1).

[S. 15 substituted by s. 16 of Act No. 1 of 2012.]

16. Keeping of accounts.—The board must cause the corporation to keep proper accounting records, in accordance with section 284 of the Companies Act.

17. Annual reporting.—(1) The Member of the Executive Council must prescribe the corporation's financial year.

(2) Not more than six months after the end of each financial year of the corporation, or such longer period as the Member of the Executive Council in consultation with the Office of the Auditor-General authorises in writing, the board must submit an annual report to the Member of the Executive Council, consisting of the corporation's audited annual financial statements as contemplated in section 18, a report by the auditor as contemplated in section 22 and any other matter prescribed by the Member of the Executive Council.

(3) The Member of the Executive Council must lay a copy of the corporation's annual report on the table of the Legislature not more than 14 days after receipt if the Legislature is in ordinary session at that time, or, if the Legislature is not in ordinary session at that time, then not more than 14 days after the commencement of the next ordinary session of the Legislature.

18. Annual financial statements.—(1) The board must ensure that annual financial statements are made out for each financial year of the corporation.

(2) The corporation's annual financial statements must comprise—

- (a) a balance sheet;
- (b) an income statement;
- (c) a cash flow statement;
- (d) notes to the financial statements;

- (e) a director's report as contemplated in section 19;
- (f) group annual financial statements if applicable; and
- (g) any other reports or statements prescribed by the Member of the Executive Council.

(3) The corporation's annual financial statements must comply with sections 286, 289, 290 and 291 of the Companies Act, except that it is not necessary for them to be laid before a general meeting whilst the government is the sole shareholder.

(4) The corporation's annual financial statements must disclose the accounting and disclosure policies applied by the corporation.

(5) The corporation's annual financial statements must be approved by the board and signed by two directors authorised for that purpose by the board.

19. Director's report.—(1) The corporation's annual financial statements must include a report by its directors with respect to its state of affairs, business and financial position and the degree to which its objects have been attained.

(2) To the extent that the relevant matters are not dealt with elsewhere in the corporation's annual report the director's report must further:

- (a) set out the corporation's statutory objects and functions, as well as its objectives as determined by the board;
- (b) state the extent to which the corporation has achieved its objectives for the financial year concerned;
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources;
- (d) indicate the amount of money, if any, received from the government or any other organ of the state and any financial commitment furnished by the government or any other organ of the state;
- (e) deal with the matters provided for in sections 295, 296 and 297 of Schedule 4 of the Companies Act;
- (f) contain a summary of all policy directives issued by the Member of the Executive Council in terms of section 6 during the year under review;
- (g) indicate the extent to which the corporation has complied with all current policy directives and, in the event of non- or only partial compliance, indicate the reasons therefore;
- (h) deal with any other matter prescribed by the Member of the Executive Council.

20. Audit.—(1) The corporation's accounting records and financial statements must be audited annually by the corporation's auditor.

(2) The functions and duties of the auditor are as set out in section 300 of the Companies Act.

21. Appointment of Auditor.—(1) The Member of the Executive Council must appoint the corporation's auditor annually, on the recommendation of the board and after consultation with the Office of the Auditor-General.

(2) Only practising public accountants and auditors registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), qualify to be appointed as the corporation's auditor.

(3) An auditor must not be discharged before the expiry of his or her terms of appointment, except by the Member of the Executive Council, acting after consultation with the board and the Office of the Auditor-General.

(4) In performing his or her duties, the auditor has the right of access at all reasonable times to all the corporation's accounting records and all its books, vouchers, documents and property and may require from any director any information and explanations that he or she thinks are necessary.

22. Auditor's report.—(1) After completing the corporation's audit, the auditor must submit a written report to the Member of the Executive Council, in accordance with section 301 of the Companies Act and providing for the further matters set out in subsections (2) and (3).

(2) The auditor must state separately, in respect of each of the following matters, whether in the auditor's opinion—

- (a) the annual financial statements fairly represent the corporation's financial position and results, in accordance with generally accepted accounting practice, applied on a basis consistent with that of the preceding year;

- (b) the information furnished in the annual financial statements and directors' report is fair in all material respects and, where applicable, on a basis consistent with that of the preceding year;
- (c) the corporation's transactions that came to the auditors notice in the course of his or her examination were made in accordance with the applicable laws and directives and were in all material respects in accordance with the corporation's statutory objects, powers and functions.

(3) The auditor must draw attention to any matter which, in the auditors opinion, should in the public interest be brought to the notice of the Member of the Executive Council or of the Legislature, including, without limiting the generality of this provision, any matter contemplated in section 5 of the Auditor-General Act 1995 (Act No. 12 of 1995).

23. Audit committee.—(1) The board must establish an audit committee for the purpose of assisting the board in discharging its responsibility for safeguarding the corporation's assets, maintaining proper accounts and records and developing and maintaining proper internal control systems.

(2) The audit committee must consist of at least three members, the majority of whom must be persons other than employees of the corporation, or of any subsidiary of the corporation.

(3) The audit committee must be chaired by a non-executive director other than the chairperson.

(4) The audit committee must keep a record of its proceedings and resolutions in the same manner as any other board committee.

(5) The auditor has the right to attend meetings of the audit committee and has the right of access to its records.

(6) The composition and membership of the audit committee must be disclosed in the corporation's annual report.

24. Head office.—(1) The Member of the Executive Council must prescribe an office of the corporation to be its head office.

(2) The head office of the corporation is the office at which the corporation must keep all records required by law and at which it may validly be served with any notice or process of the court.

25. Use of name of corporation.—(1) No person other than the corporation may carry on business in the Province under the same name as the corporation, or under a name so similar as to be likely to mislead the public.

(2) Upon the commencement of this Act, the Registrar of Companies must be notified of the corporation's name and requested to enter it in the register kept in terms of the Companies Act.

26. Prohibition on distribution of profits and disposal of major assets.—(1) Whilst the government is the sole shareholder, the corporation must use its funds solely for the furtherance of its objects or for investment and must not distribute any of its profits or gains to any person.

(2) The corporation must not dispose of the whole or substantially the whole of its undertakings, or the whole or the greater part of its assets, unless the shareholders in a general meeting approve or ratify the transaction in specific terms.

27. Dissolution of corporation.—The corporation may only be dissolved by an Act of the Legislature.

28. Duty not to furnish false or misleading information.—The provisions of sections 248, 249, 250 and 251 inclusive of the Companies Act apply to the directors, auditors, officials and employees of the corporation.

29. Offences and penalties.—(1) Any person who knowingly commits any act that is prohibited by this Act or who is knowingly a party to the commission of such an act, will be guilty of an offence.

(2) Any person who commits an offence in terms of this Act will be liable, upon conviction, to be sentenced to a fine, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

30. Regulations.—(1) The Member of the Executive Council may make regulations concerning—

- (a) the issuing of, transfer of and payment for shares;
- (b) the voting rights of shareholders;
- (c) the holding of and procedure at shareholders' meetings and the taking of decisions by shareholders without holding a meeting;
- (d) the number and composition of the board of directors;
- (e) the selection, election, nomination, appointment, reappointment, removal, conditions of office, remuneration and duties of directors;
- (f) the powers and duties of the chairperson, duty chairperson and executive director;
- (g) the holding of, the quorum for, and procedure at board meetings;
- (h) the keeping of registers and records by the board;
- (i) the form and contents of the corporation's annual report;
- (j) the composition, powers and duties of the audit committee;
- (k) the location of the corporation's head office;
- (l) the giving and receiving of notices by the corporation;
- (m) any other matter necessary for the proper implementation or administration of this Act.

(2) If shareholders other than the government hold shares, the Member of the Executive Council must consult with such shareholders before issuing, amending, or withdrawing any regulation.

31. Abolition of existing provincial rural finance institutions and repeal of laws.—(1) Decree No. 3 of 1990 (Transkei) shall be repealed upon a date to be fixed by the Premier by Proclamation in the *Gazette*: Provided that such date must not be earlier than the date upon which the Agricultural Bank of Transkei, established by the said decree, is abolished.

(2) The Member of the Executive Council is empowered to—

- (a) cause the said Agricultural Bank of Transkei and the Ciskeian Agricultural Bank Limited, established under Section 5 of the Ciskeian Corporations Act, No. 16 of 1981 (Ciskei), or either of them, to be wound up;
- (b) provide by Proclamation for the method of winding-up of the said bank or banks, including the manner of settlement of its or their obligations and liabilities and the transfer of its or their remaining rights and assets, if any, to the corporation, or to a subsidiary of the corporation;
- (c) provide in like manner for the abolition of the said bank or banks pursuant to their winding-up;
- (d) provide in the said Proclamation for any associated matter.

32. Short title and commencement.—(1) This Act will be called the Eastern Cape Rural Development Agency Act, 1999, and will come into effect upon a date fixed by the Premier by Proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.

[S. 32 substituted by s. 17 of Act No. 1 of 2012.]

(Editorial Note: Section 17 of Act No. 1 of 2012 amends section 17 of this Act. However, the context of the amendment suggests that it should amend section 32 of this Act.)
