No. 2, 2003 21 July 2003

[English text signed by the Premier]

THE KWAZULU-NATAL BUSINESS REHABILITATION TRUST FUND AMENDMENT ACT, 2003 (ACT NO. 2 OF 2003)

Assented to on 2003-07-02

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments
____ Words underlined with a solid line indicate insertions in existing enactments

ACT

To provide for the amendment of the KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998, so as to further amplify the definition of "financial institution"; to substitute the definition of "Ithala Development Finance Corporation Limited" for the existing definition of "KwaZulu Finance and Investment Corporation Ltd.", and to consequentially amend the phrases throughout the statute; to provide for the appointment of a chief executive officer of the Board; to provide that the chief executive officer shall be the accounting officer of the Board and the Trust Fund and the accounting authority contemplated in Part 2 of Chapter 6 of the Public Finance Management Act, 1999; to provide for the powers, functions and duties of the accounting officer; to provide for the appointment of other staff of the Board; to provide for the repeal of sections 16, 17 and 18; to insert a new section 22A to provide for the validation of certain acts, determinations, decisions and matters, and to provide for transitional provisions; to provide for the coming into operation of the Act; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:

Amendment of section 1 of Act No. 13 of 1998

1. Section 1 of the KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998 (KwaZulu-Natal Act No. 13 of 1998), hereinafter referred to as "the principal Act", is hereby amended --

(a) in respect of the definition of "financial institution" -

(i) by the insertion at the end of paragraph (b) of the conjunction "and"; and

(ii) by the insertion after paragraph (b) of the following, paragraph:

"(c) the Ithala Development Finance Corporation Limited referred to in section 2(1) of the KwaZulu-Natal Ithala Development Finance Corporation Act, 1999 (KwaZulu-Natal Act No. 2 of 1999);";

(b) by the insertion after the definition of "indemnity" of the following definition:

"Ithala Development Finance Corporation Limited" means the Ithala Development Finance Corporation Limited referred to in section 2(1) of the KwaZulu-Natal Ithala Development Finance Corporation Act. 1999 (KwaZulu-Natal Act No. 2 of 1999);"; and

(c) by the deletion of the definition of "KwaZulu Finance and Investment Corporation Ltd.".

Amendment of section 6 of Act No. 13 of 1998

2. Section 6 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) one, nominated by **[KwaZulu Finance Corporation Ltd.]** the Ithala Development Finance Corporation Limited or its successor in title;".

Substitution of section 15 of Act No. 13 of 1998

3. Section 15 of the principal Act is hereby amended by the substitution for section 15 of the following section:

"15. Chief executive officer and staff of Board, finances and accountability

(1) The Minister shall, as soon as possible after the appointment of the members of the Board, in consultation with the Board, appoint a chief executive officer of the Board who -

(a) shall be an *ex officio* member of the Board;

(b) shall, in consultation with the Board and the Minister of Finance, and subject to subsections (4) and (5), appoint such staff as may be reasonably necessary to assist him or her with the work incidental to the performance by the Board of its functions;

(c) shall be responsible for the management of, and administrative control over, the staff appointed under paragraph (b), and shall for those purposes be accountable to the Board;

(d) shall be the accounting officer for the Board and the Trust Fund, and the accounting authority contemplated in Part 2 of Chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and, subject to the provisions of that Act, shall -

(i) administer the funds contemplated in sections 13 and 14, and account for State money received or paid out for, or on account of, the Trust Fund;

(ii) keep the necessary accounting and other related records;

(iii) ensure that all expenditure by the Board is authorised and accounted for;

(iv) ensure efficiency and economy of operations; and

(v) submit audited financial statements to the Minister within five months of the end of a financial year, who shall table such audited financial statements in Parliament; and

(e) may exercise the powers, and shall perform the duties and functions, which the Board may from time to time confer upon or assign to him or her in order to achieve the objects of the Trust Fund, and shall for those purposes be accountable to the Board.

(2) The records referred to in subsection (l)(d)(ii) shall be audited by the Auditor-General.

(3) The defrayal of expenditure in connection with matters provided for in this Act shall be subject to --

(a) requests being received *mutatis mutandis* in the form as prescribed for the budgetary processes of departments of state; and

(b) the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act No. 52 of 1989).

(4) Subject to subsection (5), the chief executive officer and other staff of the Board shall be appointed on such terms and conditions, and receive such remuneration, allowances and other service benefits, as the Minister may determine in consultation with the Minister of Finance.

(5) The chief executive officer and other staff of the Board may only be appointed for the duration of the appointment of the Board, or such extended period as resolved by

Parliament."

Repeal of sections 16,17 and 18 of Act No. 13 of 1998

4. Sections 16, 17 and 18 of the principal Act are hereby repealed.

Insertion of a new section 22A

5. The principal Act is hereby amended by the insertion of the following new section 22A:

"**22A. Validation and transitional provisions**

(1) Any act, determination, decision, matter or any other thing purported to have been done, made, taken, executed or carried out by the Minister, the Minister of Finance or the Board in terms of or in pursuance of this Act from 3 February 1999 to the date of publication of the KwaZulu-Natal Business Rehabilitation Trust Fund Amendment Act, 2003 is not invalid by reason only of the date of coming into operation of this Act not having been determined by notice in the *Provincial Gazette*.

(2) Any act, decision, matter or any other thing purported to have been done, made, taken, executed or carried out by an officer or employee of the Board (appointed in terms of the repealed section 18 of this Act) in terms of or in pursuance of this Act from 3 February 1999 to the date of publication of the KwaZulu-Natal Business Rehabilitation Trust Fund Amendment Act, 2003 is not invalid by reason only of the date of coming into operation of this Act not having been determined by notice in the *Provincial Gazette*.

(3) (a) The appointment of any officer or employee of the Board in terms of or in pursuance of the repealed section 18 this Act from 3 February 1999 to the date of publication of the KwaZulu-Natal Business Rehabilitation Trust Fund Amendment Act, 2003 is not invalid by reason only of the date of coming into operation of this Act not having been determined by notice in the *Provincial Gazette*.

(b) Officers or employees referred to under paragraph (a) are deemed to have been appointed in terms of section 15(1), (4) and (5) of this Act."

Substitution of section 23 of Act No. 13 of 1998

6. Section 23 of the principal Act is hereby amended by the substitution for section 23 of the following section:

"**23. Short title and commencement**

This Act shall be called the KwaZulu-Natal Business Rehabilitation Trust Fund Act, 1998, and shall be regarded to have come into operation on 3 February 1999 [**a date to be determined by the Minister by notice in the *Provincial Gazette***]."

Short title

7. This Act is called the KwaZulu-Natal Business Rehabilitation Trust Fund Amendment Act, 2003.