

GNR.1237 of 2 October 1998: Administrative Regulations

DEPARTMENT OF LAND AFFAIRS

as amended by

Notice	Government Gazette	Date
R.1198	23853	27 September 2002
R.521	24734	17 April 2003
R.823	26553	16 July 2004
R.288	27426	31 March 2005
R.907	28012	16 September 2005
R.229	28606	17 March 2006

GENERAL NOTE

In terms of GNR.907 of 2005, the word "Board", wherever it occurs, but excluding the definition of "accounting authority" in regulation 1, is substituted by the words "accounting authority".

Under [section 2A \(7\)](#) of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act [No. 3 of 1994](#)), I, Derek André Hanekom, Minister of Land Affairs, hereby make the regulations set out in the Schedule.

SCHEDULE

KWAZULU-NATAL INGONYAMA TRUST ACT, 1994 (ACT [NO. 3 of 1994](#)): ADMINISTRATIVE REGULATIONS

ARRANGEMENT OF REGULATIONS

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1. Definitions.—In these Regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act, bears that meaning and—

“**Act**” means the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act [No. 3 of 1994](#));

“**accounting authority**” means the Board; and

[Definition of “[accounting authority](#)” inserted by GNR.907 of 2005.]

“**Advisory Committee**” means a committee established in terms of [section 2A \(5\)](#) of the Act;

“**Board**” means the KwaZulu-Natal Ingonyama Trust Board established in terms of section 2A of the Act;

“**Chairperson**” means the Ingonyama or his or her nominee presiding at a meeting of the accounting authority, or in his or her absence, the vice chairperson or acting chairperson as the case may be;

“**Department**” means the Department of Land Affairs in the national government;

“**Director-General**” means the Director-General of the Department;

“**Secretariat**” means the Secretariat established in terms of [regulation 5](#);

“**head of the Secretariat**” means the person who has been designated as head of the Secretariat in terms of [regulation 6 \(3\)](#);

[Definition of “head of the Secretariat” substituted by GNR.907 of 2005.]

“**Trust**” means the corporate body established in terms of section 2 of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act [No. 3 of 1994](#)); and

“**Trust land**” means land which vests in and is held in trust by the Ingonyama in terms of section 3 (1) of the Act.

2. Terms of Office and Remuneration of Members of the accounting authority.—

(1) A member of the accounting authority appointed in terms of section 2A (3) (b) or (c) of the Act who is not in the service of the State, shall be remunerated at a rate determined from time to time by the Minister in consultation with the Minister of Finance. Provided that, should the Minister find it necessary to extend the term of office of the members of the Board, he or she may extend such term, in writing, on the conditions he or she may determine.

[[Sub-r. \(1\)](#) substituted by GNR.1198 of 2002 and by GNR.521 of 2003, amended by GNR.823 of 2004, by GNR.288 of 2005, substituted by GNR.907 of 2005, and by GNR.229 of 2006.]

(2) Any member of the accounting authority not in the service of the public service shall be remunerated at a rate determined from time to time by the Minister in consultation with the Minister of Finance.

3. Circumstances under which members of the accounting authority vacate their office and the filling of vacancies.—(1) A member of the accounting authority vacates his or her office if he or she—

- (a) is not re-appointed on the expiry of a period of four years from the date of his or her appointment;
- (b) resigns by notice in writing addressed to the Minister;
- (c) dies, or is found to be of unsound mind as determined by medical or psychiatric evidence or has been declared incapable of managing his or her affairs;
- (d) is or becomes insolvent, or enters into a compromise with his or her creditors, or fails to satisfy a judgment against him or her within a period of 10 days of acquiring knowledge thereof, or if his or her estate is sequestrated;

- (e) is convicted of an offence involving dishonesty or corruption, or is sentenced to imprisonment without the option of a fine;
- (f) is absent from three consecutive meetings of the accounting authority without the written leave of the accounting authority, which written leave may be given retrospectively;
- (g) is removed from office by the Minister, where the latter is of the opinion that sufficient reasons exist for such termination, and after he has consulted in the manner described in section 2A (3) (b) or (c); or
- (h) is no longer qualified to be a member in terms of the provisions of this Act.

(2) Whenever the office of a member of the accounting authority becomes vacant before the expiration of the period for which he or she was appointed, a replacement to fill the vacancy for the unexpired portion of the initial period for which the vacating member was appointed, must be appointed in the same manner in which the vacating member was appointed.

4. Venue for Meetings of the accounting authority.—(1) The first meeting of the accounting authority will be held at a venue to be determined by the Minister, in consultation with the Premier and the Chairperson.

(2) Thereafter, but subject to the provisions of these Regulations, the accounting authority will meet at a venue to be determined by the accounting authority from time to time.

5. The Secretariat.—A Secretariat shall be established by the accounting authority in consultation with the Director-General, to—

[Words preceding para. (a) substituted by GNR.907 of 2005.]

- (a) support the functions and activities of the accounting authority; and
- (b) perform such administrative and other functions as may from time to time be assigned to it by the accounting authority.

6. (1) The Secretariat may be staffed by members of the public service designated to the Trust or other persons under contract to the Trust itself who are able to provide technical, secretarial and other support required by the accounting authority.

[Sub-r. (1) substituted by GNR.907 of 2005.]

(2) Staff of the Secretariat may be seconded from a Local Authority or from Provincial Government Departments.

(3) The Secretariat shall be headed by an officer of the Department designated as such by the Director-General or a person in the employ of the Trust designated by the accounting authority in consultation with the Director-General.

[Sub-r. (3) substituted by GNR.907 of 2005.]

(4)

[Sub-r. (4) deleted by GNR.907 of 2005.]

(5) Subject to any contrary or more specific provision of these Regulations, the general duties and functions of the Secretariat shall include—

- (a) maintaining a diary of meetings of the accounting authority or committees thereof, arranging meetings, arranging the attendance of meetings by accounting authority members, arranging venues for accounting authority meetings; and generally administering the proceedings of the accounting authority and performing administrative functions in connection with such proceedings or the efficient

functioning of the accounting authority, in accordance with the directions of the Chairperson of the accounting authority;

- (b) arranging the affairs of the accounting authority in such manner as to ensure that time is available to deal with matters contemplated in these Regulations;
- (c) executing all decisions of the accounting authority timeously or causing such decisions to be executed timeously;
- (d) informing the public and all interested parties of decisions of the accounting authority, and
- (e) attending meetings of the accounting authority and generally providing documents and information to the accounting authority

7. (1) The accounting authority may, by entering into a contract as contemplated in [regulation 21](#) and after approval of the Department, procure accommodation, furniture, equipment and other facilities which may be required for its functioning, the functioning of the Secretariat and the proper administration and management of the Trust.

(2) The provisions of [subregulation \(1\)](#) shall not be construed so as to limit assistance which the accounting authority may require from the Department and any other national, provincial, municipal or traditional authority to effectively execute its functions and perform its duties.

[[R. 7](#) substituted by GNR.907 of 2005.]

8. Advisory Committees.—(1) An advisory committee may consist of such number of persons as the accounting authority may determine with due regard to the additional administrative, financial, legal, technical and other expertise and assistance that the accounting authority requires in order to carry out its functions.

[[Sub-r. \(1\)](#) substituted by GNR.907 of 2005.]

(2) Individuals appointed to an advisory committee must possess appropriate knowledge and expertise for the purposes for which such advisory committee is established.

(3) A member of an advisory committee shall hold office for such period as the accounting authority may determine at the time of his or her appointment.

(4) When a department of state has nominated a member of an advisory committee, it may substitute another person for that member, after consultation with the accounting authority.

(5) Any member of an advisory committee not in the service of the Public Service shall be remunerated at a rate determined from time to time by the Minister in consultation with the Minister of Finance.

(6) The accounting authority shall appoint at least one of its members to be a member of every advisory committee appointed by it.

(7) The chairperson of every advisory committee shall be a member of the accounting authority appointed to such advisory committee and designated as such by the accounting authority from time to time.

9. Chairperson of the accounting authority.—Whenever the Chairperson of the accounting authority is for any reason unable or fails to act as such, the vice chairperson, or failing him or her, a person elected by the members present for that meeting, acts as chairperson and performs all the duties and exercises all the powers of the Chairperson.

10. Convening of the meetings of the accounting authority and Advisory Committees.—(1) The accounting authority shall meet not less than six times a year, or as often as may be necessary, on such dates and at such times as the accounting authority may determine.

(2) An advisory committee shall meet as often and at such times and places as that committee, subject to the directions of the accounting authority, if any, may from time to time determine: Provided that a member of the accounting authority may at any time attend any such meeting and participate in the deliberations of the advisory committee.

11. The Chairperson may at any time convene a special meeting of the accounting authority at a time and place which he or she determines.

(2) The Chairperson shall call a special meeting of the accounting authority to be held on such dates and at such time as he or she may determine, but within a period not exceeding 10 (ten) days after the date of receipt of a request in writing for such a meeting by not fewer than three (3) members of the accounting authority.

(3) If the Chairperson does not, within such 10 (ten) days after such a request call a special meeting, any three (3) members of the accounting authority may, on the expiration of those 10 (ten) days, call a meeting.

12. All meetings held pursuant to these Regulations shall be open to the public and the press: Provided that, if the accounting authority considers that any matter can be more effectively and advantageously dealt with in the absence of members of the public and the press, it may exclude the public and the press from any meeting or portion thereof at which such matter is dealt with: Provided further that any decision of the accounting authority or an advisory committee regarding any matter taken at a meeting from which the public and the press have been excluded shall be made known to the public within a reasonable time in the manner directed by the accounting authority.

13. Notice of meetings and agenda.—(1) The head of the Secretariat must give seven (7) working days written notice of a meeting of the accounting authority to all the members of the accounting authority.

(2) The Chairperson may in any case or urgency determine that a lesser period of notice is sufficient for summoning a meeting, in which case the reasons for such urgency must be specified in the notice summoning the meeting.

(3) The inadvertent omission to notify any of the members of the accounting authority does not invalidate any resolution passed at any such meeting, providing that a quorum was present.

(4) The notice of a meeting must be accompanied by the agenda for that meeting.

14. (1) A member of the accounting authority must notify the head of the Secretariat in writing of any matter that he or she desires to place on the agenda no matter which is not on the agenda which accompanies the notice of the meeting shall be discussed at the meeting unless the accounting authority gives consent to the inclusion of further items; provided that the meeting may discuss an unopposed motion of a formal nature.

(2) Such notice must be given to the head of the Secretariat at least seven (7) days before the meeting at which the matter is to be discussed.

15. Quorum and procedures for meetings.—(1) Five members of the accounting authority shall form a quorum for a meeting of the accounting authority.

(2) If a quorum is not present within 30 minutes of the time stated for the commencement of the meeting, no meeting shall take place and the Secretariat shall convene a further meeting and shall serve a second notice on the members of the accounting authority for such meeting to be held within a reasonable period, and on that later date, the members present at that meeting form a quorum for that meeting: Provided that the Minister and the Premier of the Province of KwaZulu-Natal shall be notified of the failure of a quorum.

16. The accounting authority shall decide on any matter by a majority of votes cast by the members present at any meeting, and in the event of an equality of votes on any matter considered at a meeting, the Chairperson has a casting vote in addition to his or her deliberative vote.

17. (1) If at any stage during the course of any proceedings it appears that a member of the accounting authority has, or may have, any interest which precludes him or her from performing his or her functions as a member of the accounting authority in a fair, unbiased or proper manner—

- (a) that member must fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether that members should be prohibited from participating in the further proceedings at such meeting by reason of a conflict of interests; and
- (b) such disclosure, and the decision taken by the remaining members must be recorded in the minutes of the meeting in question.

(2) The temporary withdrawal of a member under this regulation shall not mean that a quorum is lost.

(3) If any member fails to disclose any interest referred to in [subsection \(1\)](#) or if, having such an interest, he or she attends or in any manner participates in, or influences the proceedings at the meeting concerned, the relevant proceedings shall be null and void.

18. No decision made by, or act performed under, the authority of the accounting authority is invalid by reason only of an interim vacancy on the accounting authority or that committee, or by the fact that any person not entitled to sit as a member of the accounting authority sat as such a member at the time when the decision was taken or the act was authorized: Provided that the decision was taken or the act was authorized by a meeting convened in accordance with these Regulations.

19. The accounting authority may determine further rules of a technical nature relating to the procedure at its meetings, which are necessary or expedient for the proper performance of its functions and the exercise of its powers, and any decision in this regard must be taken after due consideration of the principles of openness and transparency.

20. The keeping of minutes and registers.—(1) A record shall be kept of—

- (a) any decision of the accounting authority;
- (b) any written or oral evidence given to the accounting authority;
- (c) any matter recorded of any on-site inspections; and
- (d) the proceedings of the accounting authority generally:

Provided that it shall be a sufficient compliance with (b) above for any evidence recorded manually or electronically or otherwise to be retained in the form in which it was recorded.

(2) Minutes shall be kept of all meetings of the accounting authority, which, together with all correspondence, documents and the like held by the accounting authority, other than internal correspondence, documents and the like of an administrative nature, shall be documents of public record.

(3) The Chairperson shall ensure that all correspondence, documents and the like held by the accounting authority, other than internal correspondence, documents and the like of an administrative nature, are retained in a place accessible to the public at all reasonable times.

(4) Any person with an interest in any matter under discussion by the accounting authority may, against payment of the cost of transcription of recordings or any costs the accounting authority's secretariat may determine, obtain copies of whatever document of public record is available.

(5) The Secretariat shall circulate copies of the minutes to every member of the accounting authority present at the meeting to which the minutes pertain. Unless other arrangements are made with any member, circulation of the minutes must occur as soon as possible after each meeting, but at the latest with the notice and agenda for the next meeting.

(6) Copies of the confirmed minutes shall, in addition to being sent to the members of the accounting authority, be sent to the Minister, the Premier of the Province of KwaZulu-Natal, the Chairperson of the KwaZulu-Natal House of Traditional Leaders and to such members of the KwaZulu-Natal Executive Council as have a direct interest in the affairs of the accounting authority.

(7) The head of the Secretariat must ensure that an attendance register is kept in which every participant present at a meeting of the accounting authority is required to sign his or her name.

(8) Such register is to be kept at the offices of the Secretariat, and such other place as may be determined by the accounting authority in consultation with the Secretariat.

21. Contracts.—(1) The accounting authority may enter in-to contracts for any services or undertakings which it is empowered to carry out and for supplies for any such services or undertakings and generally for all purposes incidental to its duties.

(2) Every contract by the accounting authority shall be deemed to be duly executed if signed by the Chairperson or by one or more authorised members of the accounting authority and certified by the head of the Secretariat as having been authorised by resolution of the accounting authority.

22. Office hours of the Secretariat and filing of documents.—The office of the Secretariat shall be open to the public for any purpose consistent with the objects and purposes of the accounting authority during the same office hours as are prescribed for the Department of Land Affairs.

23. Policy matters and further.—(1) The accounting authority may adopt a mission statement and may from time to time amend such statement, and such mission statement shall be made known to the public at large in such manner as the accounting authority may from time to time determine.

(2) The mission statement shall set out the manner in which the accounting authority will give effect to the objects imposed on it by the Act and what criteria, standards and values it will apply in the execution of the mandate vested in it by the Act.

(3) The accounting authority shall, on the adoption of a mission statement, adhere to the provisions thereof, and ensure that all persons or institutions to whom the accounting authority delegates or assigns any duty or function also adheres thereto.

(4) The accounting authority may from time to time formulate, adopt and enforce policies to give effect to the objectives of the Act, and in particular, to ensure that the assets of the accounting authority are utilized effectively for the benefit, material welfare and social well-being of the members of the tribes and communities referred to in section 2 (2) of the Act.

24. The accounting authority may from time to time recommend to the Minister the promulgation of regulations to facilitate the functioning of the accounting authority, and it shall in particular recommend the promulgation of regulations in respect of the following matters:

- (a) The procedure whereby land may be allocated to potential users;
- (b) the rental, levies and other charges for the right to use land;
- (c) the distribution of the income received by the accounting authority so as to comply with the requirements that the land and, by extension, the produce of the land, is

used for the benefit of the members of the tribes and communities referred to in [the Schedule](#) to the Act.

[[R. 24](#) substituted by GNR.907 of 2005.]

25. Disputes arising from a decision made or action taken by the accounting authority.—The accounting authority shall strive to settle any conflict or dispute that may arise as a result of any act or omission of the accounting authority by negotiations, and where necessary by mediation, rather than by confrontation. and if settlement of any such conflict or dispute cannot be achieved in that manner, then it shall be referred to arbitration in terms of the Arbitration Act, 1965 (Act [No. 42 of 1965](#)).

26. Short title.—These Regulations shall be known as the KwaZulu-Natal Ingonyama Trust Administrative Regulations, 1995.