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THE PRESIDENCY

No. 792

4 August 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 12 of 2005: National Ports Act, 2005



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.

(English text signed by the President.)
[Assented to 31 July 2005.]

ACT

To provide for the establishment of the National Ports Authority and the Ports Regulator; to provide for the administration of certain ports by the National Ports Authority; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

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DEFINITIONS AND OBJECTS OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “agreement” includes any form of concession or partnership;
 - “Authority” means, subject to section 3, National Ports Authority Limited, 10 contemplated in section 4;
 - “Board” means the board of directors of the Authority contemplated in Chapter 4;
 - “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);
 - “concession” means a concession agreement entered into in terms of section 56;
 - “family member” means a parent, child or spouse of a person, and includes a 15 partner living with that person as if they were married to each other;
 - “Harbour Master” means an employee of the Authority contemplated in section 74(3);
 - “incorporation date” means the date on which the Authority is incorporated as a company in terms of section 4; 20
 - “Legal Succession Act” means the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
 - “licence” means a licence to provide a port service or operate a port facility, issued in terms of section 57 or deemed to be held in terms of section 65 and “licensed” must be interpreted accordingly; 25
 - “licensed operator” means a person licensed, or deemed to be licensed, to provide a port service or operate a port facility;
 - “Minister” means the Minister of Transport or a duly appointed representative;
 - “National Ports Authority (Pty) Ltd” means the Transnet subsidiary company contemplated in section 3(2); 30
 - “National Ports Authority of South Africa” means the business unit or division of Transnet which immediately prior to the commencement of the Act constituted and was known as the “National Ports Authority of South Africa”;
 - “National Port Consultative Committee” means a committee set up in terms of section 82; 35
 - “navigational aids” means lighthouses, radio navigational aids, buoys, beacons and any other device or system used to assist the safe and efficient navigation of vessels;
 - “off-shore cargo handling facility” means an off-shore facility within or beyond the port limits used for the transfer of cargo from a vessel to the land and vice versa; 40
 - “partnership” includes a public-private partnership and a public-public partnership;
 - “PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “pilot” means a person licensed in terms of section 77 to provide pilotage services;
 - “port” means any of the ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has 45 been determined as such in terms of section 10(2);

“Port Consultative Committee” means a committee appointed in terms of section 81;

“port infrastructure” means the basic structure of a port, including breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewerage and similar services; 5

“port repair facilities” means dry docks, vessel repair facilities within a port and any other facilities which are designated as such by the Authority by publication in the *Gazette*;

“port services” means stevedoring, cargo handling, terminal operations, storage of cargo within a port, tug services, floating crane services, berthing services, fire fighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided within a port which are designated as such by the Authority by notice in the *Gazette*; 10

“port terminal” means terminal infrastructure, cargo-handling equipment, sheds and other land-based structures used for the loading, storage, transshipment and discharging of cargo or the embarkation and disembarkation of passengers; 15

“prescribe” means prescribe by regulation;

“regulation” means any regulations promulgated under this Act;

“Regulator” means the Ports Regulator established by section 29;

“Shareholding Minister” means the Minister of Public Enterprises or a duly appointed representative; 20

“South African Maritime Safety Authority” means the authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

“terminal infrastructure” means terminal buildings, workshops, substations, surfacing, rail sidings and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries; 25

“terminal operations” means services provided at a port terminal, consisting of handling cargo, storing cargo, transshipment of cargo and delivering cargo to vessels and services related thereto; 30

“this Act” includes the regulations made by the Minister, the rules made by the Authority, and the directives made by the Regulator;

“Transnet” means Transnet Limited, the company contemplated in section 2 of the Legal Succession Act;

“vessel” means any water navigable craft or structure and includes a seaplane and a non-displacement craft. 35

(2) Nothing contained in this Act must be construed as conferring on the Authority any right of ownership in, or authorising the Authority to provide, services or facilities which are provided in terms of the Telecommunications Act, 1996 (Act No. 103 of 1996).

Objects of Act 40

2. The objects of this Act are to—

- (a) promote the development of an effective and productive South African ports industry that is capable of contributing to the economic growth and development of our country;
- (b) establish appropriate institutional arrangements to support the governance of ports; 45
- (c) promote and improve efficiency and performance in the management and operation of ports;

- (d) enhance transparency in the management of ports;
- (e) strengthen the State's capacity to—
 - (i) separate operations from the landlord function within ports;
 - (ii) encourage employee participation, in order to motivate management and workers;
 - (iii) facilitate the development of technology, information systems and managerial expertise through private sector involvement and participation; and
- (f) promote the development of an integrated regional production and distribution system in support of government's policies.

CHAPTER 2

ESTABLISHMENT AND INCORPORATION OF AUTHORITY

Process before establishment of Authority

3. (1) (a) From the date this Act comes into effect until the date determined by the Shareholding Minister in terms of section 27(1), the National Ports Authority of South Africa— 15

- (i) is for all purposes deemed to be the Authority; and
- (ii) must perform the functions of the Authority as if it were the Authority.

(b) For the purposes of paragraph (a) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to National Ports Authority of South Africa and the divisional board and any functionary thereof, respectively, unless it is clearly inappropriate. 20

(c) Any appointment to the divisional board or of any functionary of National Ports Authority of South Africa made after the commencement of this Act, must be made in terms of this Act. 25

(2) As soon as this Act takes effect the Shareholding Minister must ensure that the necessary steps are taken for the incorporation of the National Ports Authority of South Africa as a company contemplated in subsection (3).

(3) The Registrar of Companies must—

- (a) register the memorandum and articles of association and incorporate National Ports Authority of South Africa under the name "National Ports Authority (Pty) Ltd" with Transnet as the sole member and shareholder; 30
- (b) issue to that entity the necessary documents to enable it to conduct business as a corporate entity.

(4) (a) On the date determined by the Shareholding Minister in terms of section 27(1), all assets, liabilities, rights and obligations of Transnet in respect of National Ports Authority of South Africa vest in National Ports Authority (Pty) Ltd. 35

(b) From the date contemplated in paragraph (a) until the date on which the Authority becomes the successor to National Ports Authority (Pty) Ltd as contemplated in section 4, National Ports Authority (Pty) Ltd— 40

- (i) is for all purposes deemed to be the Authority; and
- (ii) must perform the functions of the Authority as if it were the Authority.

(c) For the purposes of paragraph (b) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to National Ports Authority of South Africa (Pty) Ltd and the board and any functionary of that company, respectively, unless it is clearly inappropriate. 45

Act No. 12,2005**NATIONAL PORTS ACT, 2005**

(d) Any appointment to the board or of any functionary of National Ports Authority (Pty) Ltd must be made in terms of this Act.

Conversion of Authority

4. (1) Notwithstanding sections 32, 66, 190 and 344(d) of the Companies Act, on a date after the incorporation of National Ports Authority (Pty) Ltd, and with the concurrence of the Minister, the Shareholding Minister may take the necessary steps to convert the company into a public company, styled "National Ports Authority Limited", vested with the authority to own, manage, control and administer ports within the Republic. 5

(2) Where National Ports Authority (Pty) Ltd is converted as contemplated in subsection (1), the State's rights as a shareholder of the Authority are to be exercised by the Shareholding Minister and, where required by this Act, with the concurrence of the Minister. 10

Authority's memorandum and articles of association

5. (1) The memorandum and articles of association of the Authority must be drawn up in such a manner that the contents thereof are consistent with this Act. 15

(2) In the event of any conflict between a provision of the memorandum or articles of association on the one hand, and a provision of this Act on the other hand—

(a) the provision of this Act prevails; and

(b) the provision of the memorandum or articles of association only has legal effect if this Act is amended so as to remove the conflict. 20

Non-application of provision of Companies Act

6. A provision of the Companies Act does not apply to the Authority if—

(a) any special or contrary arrangement is provided for in this Act; or

(b) the Minister of Trade and Industry has issued a declaration under section 7. 25

Certain provisions of Companies Act may be declared inapplicable to Authority

7. (1)(a) The Shareholding Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Authority. 35

(b) The request must be fully motivated by the Authority.

(2)(a) The Registrar of Companies must publish particulars about the request and the motivation contemplated in subsection (1), by notice in the *Gazette*. 30

(b) In such notice, the Registrar must invite interested persons to submit representations to a person named in the notice within the period stipulated in that notice.

(3)(a) After having considered the representations contemplated in subsection (2), if any, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of the provision concerned to be inapplicable to the Authority with effect from the date stipulated in that notice. 35

(b) The Minister of Trade and Industry may only issue the declaration if satisfied on reasonable grounds that the inapplicability of that provision to the Authority — 40

(i) will contribute to the Authority's efficiency;

(ii) will not reduce or limit the Authority's accountability as a public institution or reduce the transparency of its functioning and operations; and

- (iii) will not be prejudicial to the rights, interests or claims of the Authority's creditors or employees or to the rights or interests of any other person.

Authority's financial year

8. The Authority's financial year runs from 1 April in any year to 31 March in the following year, both days included.

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Judicial management and liquidation

9. Despite any other law, the Authority may not be placed under judicial management or liquidation, except if authorised by an Act of Parliament enacted specifically for that purpose.

CHAPTER 3

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PORTS UNDER JURISDICTION OF AUTHORITY AND FUNCTIONS OF AUTHORITY

Ports under jurisdiction of Authority

10. (1) All ports fall under the jurisdiction of the Authority.

(2) The Minister may by notice in the *Gazette* determine ports in addition to the ports contemplated in subsection (1) which fall under the jurisdiction of the Authority.

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(3) The Minister may, after consultation with the Authority, review, vary or extend the boundaries of ports and must consult with the municipality concerned if such review, variation or extension affects the municipal boundaries.

(4) When exercising the powers referred to in subsections (2) and (3), the Minister must—

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- (a) follow an open and transparent process, which must include a viability study and a strategic environmental impact assessment; and
- (b) obtain Cabinet approval.

Functions of Authority

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11. (1) The main function of the Authority is to own, manage, control and administer ports to ensure their efficient and economic functioning, and in doing so the Authority must—

- (a) plan, provide, maintain and improve port infrastructure;
- (b) prepare and periodically update a port development framework plan for each port, which must reflect the Authority's policy for port development and land use within such port;
- (c) control land use within ports, and has the power to lease land under such conditions as the Authority may determine;
- (d) provide or arrange for road and rail access within ports;
- (e) arrange for services such as water, light, power and sewerage and telecommunications within ports;
- (f) maintain the sustainability of the ports and their surroundings;
- (g) regulate and control—
 - (i) navigation within port limits and the approaches to ports;

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- (ii) the entry of vessels into ports, and their stay, movements or operations in and departures from ports;
 - (iii) the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers;
 - (iv) the development of ports; 5
 - (v) off-shore cargo-handling facilities, including navigation in the vicinity of such facilities;
 - (vi) pollution and the protection of the environment within the port limits;
 - (vii) the enhancement of safety and security within the port limits;
 - (h) ensure that adequate, affordable and efficient port services and facilities are provided; 10
 - (i) exercise licensing and controlling functions in respect of port services and port facilities;
 - (j) ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently; 15
 - (k) promote efficiency, reliability and economy on the part of the licensed operators in accordance with recognised international standards and public demand;
 - (l) promote the achievement of equality by measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of facilities in the ports environment; 20
 - (m) prescribe the limits within which and the levels to which dredging may be carried out in the ports and the approaches thereto;
 - (n) provide or arrange for tugs, pilot boats and other facilities and services for the navigation and berthing of vessels in the ports; 25
 - (o) provide, control and maintain vessel traffic services;
 - (p) promote the use, improvement and development of ports;
 - (q) advise on all matters relating to the port sector, port services and port facilities:
 - (r) promote greater representivity, in particular to increase the participation in terminal port operations of historically disadvantaged persons; 30
 - (s) exercise the licensing of the erection and operation of off-shore cargo-handling facilities and services relating thereto;
 - (t) discharge or facilitate the discharge of international obligations relevant to ports; 35
 - (u) facilitate the performance of any function of any organ of state in a port;
 - (v) promote research and development in the spheres of port services and facilities.
- (2) The Authority may—
- (a) undertake any other activities within a port that encourage and facilitate the development of trade and commerce for the economic benefit and interest of the national economy; 40
 - (b) collaborate with educational institutions for the promotion of technical education regarding port services and facilities;
 - (c) provide any service, including a port service or the operation of a port facility, which is required for the safe, efficient and orderly operation or management of a port; 45
 - (d) **perform** such other functions as may be necessary in order to achieve the objects of this Act;
 - (e) encourage and facilitate private and public sector investments and participation in the provision of port services and facilities; 50
 - (f) enter into agreements in terms of this Act.

(3) The Authority may enter into any agreement with any other statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority.

(4) The Authority as an operator of last resort must do everything reasonably necessary for the effective and economic management, planning, control and operation of ports. 5

(5) The Authority must—

(a) annually report to the Minister, and for that purpose section 44 applies with the necessary changes; and

(b) submit a copy of that report to the Shareholding Minister. 10

Aims of Authority

12. The Authority must, in all its activities, aim to—

(a) conduct business in a manner designed to achieve the objects of this Act and which does not jeopardise the national interest; 15

(b) remain financially autonomous;

(c) enable the port users to access the port system in the most efficient way possible;

(d) satisfy all reasonable demands for port services and facilities;

(e) co-ordinate the general activities of the ports;

(f) ensure that orderly, efficient and reliable port services, including safe and secure cargo-storage and cargo-handling facilities, are provided to port users; 20

(g) promote the development and expansion of port services and facilities elsewhere in the world in collaboration with other countries and international organisations in a manner consistent with the objectives of this Act;

(h) promote and undertake the necessary measures to enhance safety and security of life and property in ports; 25

(i) integrate biophysical, social and economic issues in all forms of decision-making with regard to port development and operations.

Co-operative governance

13. (1) To give effect to the principles of co-operative governance and inter-governmental relations contemplated in Chapter 3 of the Constitution, all organs of state as defined in section 239 thereof must co-operate with one another in order to— 30

(a) ensure the effective management of all ports;

(b) ensure the effective oversight of ports; and

(c) co-ordinate the performance and minimise the duplication of functions. 35

(2) The Authority must conclude a memorandum of understanding with the relevant organs of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister must, by notice in the *Gazette*, publish any co-operative memorandum of understanding concluded in terms of subsection (2).

CHAPTER 4

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BOARD, STAFF AND ASSETS OF AUTHORITY

Composition of Board

14. (1) Subject to subsection (7), the Board consists of a minimum of seven and a maximum of 13 members, appointed by the Shareholding Minister after consultation with the Minister. 45

(2) The members of the Board must have special knowledge or experience that would be of value to the Authority in the performance of its functions, in such fields as— --

- (a) management of ports;
- (b) international trade;
- (c) corporate management;
- (d) maritime transport;
- (e) commerce, finance and legal and economic matters; 5
- (f) transport and logistics, ships agency, clearing and forwarding.

(3) The Shareholding Minister must appoint one member of the Board as the chairperson.

(4) The Board must elect a deputy chairperson from among its members.

(5) Members of the Board may not represent particular interests of a certain group, but must promote the harmonious development and improvement of the ports to the benefit of all users and the economy. 10

(6) In selecting persons for appointment to the Board, cognisance must be taken to the objects of this Act and the functions of the Authority.

(7) The board of National Ports Authority (Pty) Ltd, as it existed immediately prior to the date on which the Authority becomes the successor to National Ports Authority (Pty) Ltd, constitutes the first Board of the Authority and must be deemed to have been appointed in terms of this Act. 15

Nomination and appointment of members of Board

15. (1) (a) The Shareholding Minister must call for nominations through the national media. 20

(b) Subject to sections 14 and 17, the Shareholding Minister must appoint a member of the Board from among the persons nominated.

(2) (a) Whenever a position on the Board becomes vacant, the Shareholding Minister may appoint any person to serve for the unexpired period of the term of office of the previous member irrespective of when the vacancy occurs. 25

(b) The person contemplated in paragraph (a) must preferably have special knowledge and experience, contemplated in section 14(2).

Functions of Board

16. (1) The Board represents the Authority and all actions performed by the Board in terms of this Act and within its authority are deemed to be actions of the Authority. 30

(2) The Board—

- (a) approves the strategic and business plans of the Authority, including budgets, pricing mechanisms policy and financing arrangements;
- (b) institutes the necessary control measures to ensure that the Authority is managed and operated in accordance with sound business principles; 35
- (c) approves port reform measures, including concession agreements contemplated in section 56;
- (d) ensures that small and medium-sized enterprises owned by historically disadvantaged groups have an equitable opportunity to participate in the operations of facilities in the ports environment; 40
- (e) appoints and enters into a performance contract with the chief executive officer of the Authority;
- (f) sets criteria and policy for the effective execution of the Authority's regulatory and control functions; 45
- (g) evaluates the overall policy for the development, improvement and extension of ports;
- (h) approves the sale, acquisition and long-term lease of property in ports;
- (i) approves the long-term lease of land;
- (j) maintains sound relations with the State and other industry stakeholders; 50
- (k) approves contracts for major works and purchases subject to section 54 of the PFMA;

- (l) approves the appointment of senior executive employees of the Authority; and
 (m) gives effect to the Government's national commercial ports policy.
- (3) Nothing in subsection (1) precludes the Board from performing any function reasonably necessary for the effective and economic management, planning, operation and control of ports and which is not in conflict with this Act. 5
- (4) Under no circumstances should land within ports owned by the Authority be sold.

Persons disqualified from membership of Board

17. A person may not be appointed or remain a member of the Board if such a person—
- (a) is not a citizen of South Africa; 10
 - (b) is an unrehabilitated insolvent;
 - (c) has been declared by a court to be mentally ill;
 - (d) has been convicted of an offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 15
 - (e) has been convicted—
 - (i) whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty; or
 - (ii) has been convicted of an offence under this Act; 20
 - (f) has any financial interest in the business of any port;
 - (g) is otherwise disqualified from serving as director in terms of the Companies Act.

Terms of office of members of Board

18. (1) The chairperson and the other members of the Board hold office for a period determined by the Shareholding Minister, but not exceeding three years. 25
- (2) (a) The chairperson may be reappointed for further periods not exceeding three years each.
- (b) The other members of the Board may be reappointed to ensure continuity, but may not serve for more than six consecutive years. 30
- (3) The Shareholding Minister must remove a member of the Board from office—
- (a) for failing to perform his or her functions diligently;
 - (b) for failing to comply with section 19(1), (2) or (3);
 - (c) for being absent without good reason from three consecutive meetings of the Board without the permission of the chairperson; or 35
 - (d) for misconduct.
- (4) A member of the Board may resign by giving one month's written notice to the Shareholding Minister.
- (5) A member of the Board is appointed on such terms and conditions and is entitled to such remuneration as the Shareholding Minister may, with the concurrence of the Minister of Finance, stipulate in that member's letter of appointment. 40
- (6) The Shareholding Minister may extend the terms of office of members of the Board upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board.

Disclosure of interest by members of Board 45

19. (1) A member of the Board must, upon appointment, submit to the Shareholding Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions.
- (2) A member of the Board may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest. 50

(3) If any member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he ~~or~~ she must immediately in writing declare that fact to the Shareholding Minister and the Board.

(4) If an organisation or enterprise in which a member of the Board has an interest contemplated in section (2) is requested to offer its services to the Authority, the organisation or enterprise must immediately, in writing, declare the member's interest to the Shareholding Minister and the Board. 5

Meetings of Board

20. (1) (a) The first meeting of the Board must be held at a time and place determined by the Shareholding Minister and thereafter Board meetings must be held at such times and places as the Board may determine. 10

(b) The Board must meet at least once every three months.

(2) The chairperson—

(a) may convene a special meeting of the Board; and

(b) must convene a special meeting of the Board within 14 days of the receipt of a written request to convene such a meeting signed by not less than one quarter of the members of the Board. 15

(3) Whenever the chairperson is not available, the deputy chairperson exercises the powers of the chairperson, subject to such directions as the chairperson may give.

(4) A quorum for any meeting of the Board is a majority of all members of the Board. 20

(5) All decisions of the majority of the members of the Board present at a meeting are binding on the Board and the Authority.

(6) In the case of an equality of votes at any meeting of the Board, the chairperson has a casting vote in addition to a deliberative vote.

Delegation and assignment of functions by Board

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21. (1) The Board may, by a resolution passed by 75 per cent of its members—

(a) delegate any of its powers and assign any of its duties conferred or imposed by ~~or~~ under this Act and the memorandum and articles of association of the Authority, to any member of the Board, the chief executive officer or any employee of the Authority; and 30

(b) amend or revoke such delegation or assignment.

(2) Notwithstanding a delegation or assignment under subsection (1), the Board is not divested of any power or duty so delegated or assigned.

(3) (a) Any delegation or assignment contemplated in subsection (1)—

(i) may be made subject to such conditions as the Board may determine; 35

(ii) may include the power to subdelegate or reassign subject to the conditions contemplated in subparagraph (i);

(iii) must be communicated to the delegatee or assignee in writing.

(b) The written communication contemplated in paragraph (a)(iii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed. 40

Appointment of chief executive officer

22. (1) The Board must, with the approval of the Shareholding Minister, appoint a chief executive officer within three months of the incorporation date, or such longer period as the Shareholding Minister may determine. 45

(2) The Board must invite applications for the post of chief executive officer by publishing an advertisement in the media.

(3) A person appointed as chief executive officer must—

(a) have qualifications or experience relevant to the functions of the Authority;

(b) have extensive knowledge of port affairs; and 50

(c) not be disqualified as contemplated in section 17(a) to (f).

(4) The appointment of the chief executive officer is subject to the conclusion of a performance contract with the Authority.

(5) A chief executive officer—

(a) is appointed for the period specified in his or her letter of appointment; and 5

(b) may be reappointed.

(6) The person who fulfils the function of the chief executive officer of National Ports Authority (Pty) Ltd immediately prior to the incorporation date serves as the chief executive officer until the Board appoints a chief executive officer in terms of this section. 10

Functions of chief executive officer

23. (1) The chief executive officer is responsible for—

(a) the execution of the policy and directives of the Board;

(b) the implementation of the Authority's functions;

(c) the organisation, control and management of the day-to-day business of the Authority; and 15

(d) ensuring that the Authority achieves its goals.

(2) The chief executive officer may in writing delegate any of his or her powers or assign any of his or her duties to a senior employee of the Authority, but must advise the Board from time to time of any such delegation or assignment. 20

Vacating of and removal from office of chief executive officer

24. (1) The Board must, subject to applicable labour legislation, remove the chief executive officer from office—

(a) for misconduct;

(b) for failing to perform the duties connected with that office diligently; 25

(c) if the chief executive officer becomes subject to any disqualification contemplated in section 17(a) to (f).

(2) (a) The chief executive officer may resign on two months' written notice to the Board.

(b) If the Board is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Board and must be regarded as having been received by the Board on the date on which it is handed to the chairperson. 30

Acting chief executive officer

25. (1) The Board may in writing appoint any senior employee of the Authority to act as chief executive officer when the holder of that office— 35

(a) is temporarily unable to perform the duties connected with that office; or

(b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) The chief executive officer may in writing appoint any senior employee of the Authority to act as chief executive officer for any period that the chief executive officer is absent from the Republic. 40

(3) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer.

Appointment and transfer of staff of Authority

26. (1) The chief executive officer may appoint such persons as he or she deems fit for the proper discharge of the functions of the Authority. 45

(2) All persons who immediately prior to the date on which National Ports Authority (Pty) Ltd is incorporated, were in the employ of National Ports Authority of South Africa are deemed to have been transferred to the service of National Ports Authority (Pty) Ltd

on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer.

(3) All persons who immediately prior to the date determined in terms of section 27(1) were in the employ of National Ports Authority (Pty) Ltd are deemed to have been transferred to the service of the Authority on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer. 5

(4) For the purpose of the application of the Income Tax Act, 1962 (Act No. 58 of 1962), to the transfer of employees contemplated in subsections (2) and (3), it is deemed that the Authority, National Ports Authority (Pty) Ltd and National Ports Authority of South Africa are the same employer. 10

Transfer of ports, land and other rights and obligations

27. (1) (a) On a date after the commencement of this Act, determined by the Shareholding Minister by notice in the *Gazette*, National Ports Authority (Pty) Ltd becomes the successor to National Ports Authority of South Africa. 15

(b) The date contemplated in paragraph (a) must be determined after consultation with the Minister and with the concurrence of the Minister of Finance.

(2) On the date determined in terms of subsection (1), Transnet must transfer to National Ports Authority (Pty) Ltd the business of the National Ports Authority of South Africa and— 20

(a) all land and immovable property relating to the business of National Ports Authority of South Africa and owned by Transnet will vest in the National Ports Authority (Pty) Ltd; and

(b) all movable property and all liabilities, rights and obligations of Transnet relating to the National Ports Authority of South Africa as determined by the Shareholding Minister will vest in National Ports Authority (Pty) Ltd. 25

(3) Upon the vesting contemplated in subsection (2), the Board of National Ports Authority (Pty) Ltd must inform the National Treasury in the manner contemplated in section 54(2) of the PFMA.

(4) On the date contemplated in subsection (1) and arising out of the vesting in terms of subsection (2), and without derogating from the generality of that subsection, National Ports Authority (Pty) Ltd— 30

(a) becomes the owner of all land and immovable property situated within ports;

(b) becomes the owner of all lighthouses and other navigational aids;

(c) is substituted as the litigating party for Transnet in all pending litigation relating to the business of the National Ports Authority, including arbitration and mediation, as if it had been the litigant from the beginning; and 35

(d) is substituted as the contracting party for Transnet in all contracts relating to the business of the National Ports Authority as if the Authority had been the contracting party from the beginning. 40

(5) Subsections (2) and (4) are not to be interpreted as conferring on National Ports Authority (Pty) Ltd a right of ownership in—

(a) movable or immovable property which, before the date determined in terms of subsection (1), was vested in a person other than Transnet Limited or any of its Divisions; 45

(b) telecommunication facilities or petroleum pipelines of Transnet Limited or any of its Divisions.

(6) Despite section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar of deeds referred to in section 102 of the latter Act must, on submission of a certificate by the Shareholding Minister that land has vested under this section, make such entries and endorsements free of charge as the registrar considers necessary in any appropriate register in order to register the transfer of such land in the name of the Authority. 5

(7) A registrar of deeds must, on submission of a certificate by the Shareholding Minister that a servitude, other real right or lease has vested under this section, make such entries and endorsements as the registrar considers necessary in or on any appropriate register in order to register such vesting in the name of the Authority. 10

(8) (a) Despite any provision in any other law to the contrary, and with the concurrence of the Minister of Finance, Transnet, National Ports Authority (Pty) Ltd and the Authority are exempt from—

- (i) any tax, value-added tax, capital gains tax, stamp duties, transfer duties or registration fees payable in terms of any law in relation to the transfer of assets or rights; 15
- (ii) any fee or charge required in terms of the Companies Act; and
- (iii) any fee or charge required in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(b) The exemption referred to in paragraph (a) applies to the processes contemplated in sections 3, 4 and 27. 20

State guarantees

28. Subject to section 66 of the PFMA, the Authority may borrow money or issue a guarantee, indemnity or security, or enter into any other transaction contemplated in that section. 25

CHAPTER 5

PORTS REGULATOR

Establishment of Regulator

29. There is hereby established an independent ports regulatory body, vested with legal personality, to be known as the Ports Regulator. 30

Functions of Regulator

30. (1) The main functions of the Regulator are to—

- (a) exercise economic regulation of the ports system in line with government's strategic objectives;
- (b) promote equity of access to ports and to facilities and services provided in ports; 35
- (c) monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act.

(2) The Regulator must—

- (a) hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48; 40
- (b) negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; 45
- (c) advise and receive advice from any other regulatory authority;
- (d) consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner;

- (e) promote regulated competition;
- (f) regulate the provision of adequate, affordable and efficient port services and facilities.

(3) The Regulator may, with the concurrence of the Minister, and by notice in the *Gazette*, issue directives not in conflict with this Act for matters relating to the proper performance of the functions of the Regulator, including — 5

- (a) forms to be used when complaints or appeals are submitted to the Regulator;
- (b) time periods within which complaints or appeals must be submitted;
- (c) information to be supplied when a complaint or appeal is submitted;
- (d) filing fees for the lodging of complaints or appeals with the Regulator; 10
- (e) access by the Regulator to confidential information of the Authority;
- (f) manner and form of participation in proceedings of the Regulator;
- (g) procedures regarding the running of the business of the Regulator;
- (h) the filing of prices charged by the provider of any port service other than the Authority. 15

(4) The Regulator may enter into an agreement with any other statutory body in order to co-ordinate and harmonise the performance of functions similar or related to those of the Regulator.

(5) Whenever necessary or required by the Minister, the Regulator must report to the Minister on any matter relating to the application or purposes of this Act. 20

(6) The Regulator must, as soon as practicable after 31 March of each year but not later than 30 June of each year, submit to the Minister a report giving particulars regarding the activities of the Regulator during the year which ended on the first-mentioned date.

(7) The Minister must table in Parliament any report— 25

- (a) contemplated in subsection (5), if such report deals with a substantial matter relating to the application or purposes of this Act; and
- (b) contemplated in subsection (6).

(8) Any report referred to in subsection (7) must be tabled—

- (a) within 10 business days after receiving the report from the Regulator; or 30
- (b) if Parliament is not then sitting, within 10 business days after the commencement of the next session.

Nomination and appointment of members of Regulator

31. (1) (a) The Regulator consists of a chairperson and a minimum of six and a maximum of 12 other members appointed by the Minister for a period of up to five years at a time. 35

(b) The members of the Regulator may be re-appointed.

(2) The Minister must call for nominations of members to the Regulator in the national media and appoint the members from the persons so nominated.

(3) Notwithstanding subsection (2), the Minister may appoint persons other than those nominated. 40

(4) The members of the Regulator must, when viewed collectively, comprise sufficient persons with suitable qualifications or experience in economics, the law, commerce, ports, the shipping industry and public affairs.

(5) Each member of the Regulator must— 45

- (a) be a citizen of the Republic, who is ordinarily resident therein;
- (b) be committed to the purposes and principles enunciated in this Act; and
- (c) be available to fulfil his or her role as a member.

(6) A person may not be a member of the Regulator if that person—

- (a) is an unrehabilitated insolvent; 50
- (b) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
- (c) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 55

- (d) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act; or
- (f) has any financial interest in the business of any port.

(7) A member of the Regulator who is not an officer in the public service must be paid such allowance for his or her services as the Minister with the concurrence of the Minister of Finance may determine. 5

(8) The Minister may extend the terms of office of members of the Regulator upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board. 10

Disclosure of interests and certain prohibitions

32. (1) A member of the Regulator must, upon appointment, submit to the Minister a written statement in which it is declared whether or not that member has any direct or indirect interest which could compromise the Regulator in the performance of its duties.

(2) A member of the Regulator may not— 15

- (a) engage in any activity that may undermine the integrity of the Regulator;
- (b) participate in any investigation, hearing or decision of the Regulator concerning a matter in respect of which that person or a family member or a business partner or associate of that member has a direct financial interest or any other personal interest; or 20
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

Vacation of office of members of Regulator

33. (1) The Minister must remove a member of the Regulator from office—

- (a) for being absent without good reason from three consecutive meetings of the Regulator without the permission of the chairperson; 25
- (b) for failing to perform his or her functions diligently;
- (c) for ceasing or failing to comply with any requirement referred to in sections 31(5) or 32(1) or (2); or
- (d) for misconduct. 30

(2) A member of the Regulator may resign by giving one month's written notice to the Minister.

(3) If a member of the Regulator for any reason ceases to hold office, the Minister may appoint another person in his or her stead for the remainder of the term of office of the member. 35

Appointment of Regulator's chief executive officer

34. (1) (a) The Minister must, after advertising in the media and after consultation with the Regulator, appoint a person as chief executive officer of the Regulator.

(b) Sections 31(5) and (6) and 32(1) and (2) apply to the chief executive officer with the changes required by the context. 40

(2) Subject to the directions of the Regulator, the chief executive officer is responsible for—

- (a) the management of the day-to-day affairs of the Regulator;
- (b) the administrative control over the resources of the Regulator and members of staff appointed in terms of section 37. 45

(3) The chief executive officer is ex officio a member of the Regulator.

Vacating of and removal from office of Regulator's chief executive officer

35. (1) The Regulator must, after consultation with the Minister, remove the chief executive officer from office —

- (a) for misconduct;
- (b) for failing to perform the duties connected with that office diligently; 5
- (c) if the chief executive officer ceases or fails to comply with any requirement referred to in section 31(5) or 32(1) or (2).

(2) (a) The chief executive officer may resign on two months' written notice to the Regulator.

(b) If the Regulator is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Regulator and must be regarded as having been received by the Regulator on the date on which it is handed to the chairperson. 10

Regulator's acting chief executive officer

36. (1) The Minister may in writing appoint any senior employee of the Regulator to act as chief executive officer when the holder of that office — 15

- (a) is temporarily unable to perform the duties connected with that office for any reason whatsoever; or
- (b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer. 20

Secretariat of Regulator

37. (1) The chief executive officer must —

- (a) on such conditions as the Regulator, with the approval of the Minister, may determine, appoint such employees as may be required to perform the work connected with the functions of the Regulator; and 25
- (b) pay its employees such remuneration, allowances, subsidies and other benefits as the Regulator may determine in accordance with a remuneration structure approved by the Minister with the concurrence of the Minister of Finance.

(2) A member of the secretariat of the Regulator may not — 30

- (a) engage in any activity that may undermine the integrity of the Regulator or the Authority;
- (b) participate in any investigation, hearing or decision of the Regulator or of the Authority concerning a matter in respect of which that person or a family member of that member has a direct financial interest or any other personal interest; 35
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

Services of non-employees

38. (1) The Regulator may, with the approval of the Minister, in the performance of its functions in terms of this Act, for specific projects — 40

- (a) enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Regulator; and
- (b) determine the remuneration, including reimbursement for traveling, subsistence and other expenses of such persons. 45

(2) Section 37(2) applies to a person appointed under subsection (1) with the changes required by the context.

Meetings of Regulator

39. (1) The Regulator must meet as often as may be required for the proper performance of its functions. 50

(2) The Minister must designate a member of the Regulator as the chairperson.

(3) In the absence of the chairperson from a meeting of the Regulator, the members present at that meeting must elect one of their number to preside at that meeting.

(4) The chairperson must, upon a written request of at least two members, convene a special meeting to be held as soon as possible but not later than one week after the date of receipt of such request. 5

(5) The quorum for any meeting of the Regulator is a simple majority of its members.

(6) The chairperson must determine the procedure to be followed at meetings.

(7) The meetings of the Regulator are open to the public.

Minutes of meetings

10

40. (1) The Regulator must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members and the Minister.

(2) The minutes, when signed by the chairperson, are in the absence of proof of any error—

(a) regarded as a true and correct record of the proceedings; 15

(b) evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

Decisions of Regulator

41. (1) Any decision of the Regulator must—

(a) be taken within a procedurally fair process in which the affected persons have the opportunity to submit their views; 20

(b) be in writing;

(c) include reasons for the decision.

(2) The decision of the majority of members present at a meeting constitutes a decision of the Regulator. 25

(3) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(4) Any person directly affected by a decision of the Regulator must be furnished with a copy of the decision and the reasons therefor.

Funding of Regulator

30

42. (1) The funds of the Regulator consist of—

(a) money appropriated by Parliament;

(b) interest on investments;

(c) fees charged for the filing of complaints or appeals with the Regulator.

(2) The Regulator must utilise its funds to defray expenses in connection with the performance of its functions in terms of this Act. 35

Accounting and accountability

43. (1) The Regulator must exercise its fiscal, accounting and reporting duties in accordance with the provisions of the **PFMA**.

(2) The Regulator's chief executive officer is the accounting officer of the Regulator and must— 40

(a) open an account in the name of the Regulator with a financial institution and deposit therein all moneys received in terms of section 42(1);

(b) cause proper records to be kept of all financial transactions, assets and liabilities of the Regulator; 45

(c) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the Regulator for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

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(3) The records, statement and balance sheet referred to in subsection (2) must be audited by the Auditor-General.

(4) The financial year of the Regulator ends on 31 March in each year.

(5) The Regulator must in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance. 5

Annual report

44. The annual report contemplated in section 30(6) must include—

- (a) an audited balance sheet and statement of income and expenditure; 10
- (b) a report on the audit contemplated in section 43(3);
- (c) an account of the execution of the business plan of the Regulator;
- (d) the business plan and statement of the Regulator's estimated income and expenditure for the following financial year;
- (e) the envisaged strategies of the Regulator; 15
- (f) such matters as the Regulator may wish to report on;
- (g) such other information as the Minister may require.

Delegation of powers

45. (1) The Regulator may by resolution and with the approval of the Minister delegate in writing any power vested in it by this Act to the chief executive officer or any member of the Regulator. 20

(2) A delegation under subsection (1) does not prevent the Regulator from exercising the power itself.

(3) The Regulator may by resolution, and the Minister may by written notice to the Regulator, at any time amend or cancel a delegation made under subsection (1). 25

Appeals

46. (1) Any port user or licensed operator whose rights are adversely affected by a decision of the Authority may appeal against that decision to the Regulator in the manner directed under section 30(3).

- (2) After considering the appeal the Regulator must — 30
- (a) confirm, set aside or vary the decision; or
 - (b) substitute the decision of the Authority for its own.

Complaint against Authority

47. (1) Any complaint against the Authority must be lodged with the Regulator in the manner directed under section 30(3). 35

(2) A complaint against the Authority may be based on any ground provided for by the Regulator by direction under section 30(3) or on the ground that—

- (a) access to ports and port facilities are not provided in a non-discriminatory, fair and transparent manner;
- (b) small and medium-sized enterprises owned by historically disadvantaged groups do not have an equitable opportunity to participate in the operation of facilities in the ports environment; 40
- (c) Transnet is treated more favourably and that it derives an unfair advantage over other transport companies.

Investigation of complaint 45

48. (1) The Regulator may investigate any complaint against the Authority and must conclude the investigation as speedily as possible.

(2) A complaint against the Authority must be conducted in the manner directed under section 30(3).

Hearings before Regulator

49. (1) The Regulator may conduct a hearing into any matter referred to it, but must conduct a hearing in respect of a matter referred to it in terms of section 46. 5

(2) Hearings before the Regulator must be conducted in the manner directed under section 30(3).

Right to participate in hearing

50. The following persons may participate in a hearing in person or through a representative and may put questions to witnesses and inspect any book, document or item presented at the hearing: 10

- (a) Any person appointed by the Regulator;
- (b) the complainant;
- (c) the Authority;
- (d) any other person who has a material interest in the hearing, unless the presiding member of the Regulator rules that another participant adequately represents that interest. 15

Taking of evidence at hearing

51. (1) The Regulator may, by direction under section 30(3), determine the rules of procedure for the taking of evidence before the Regulator. 20

(2) A person questioned by the Regulator must answer each question truthfully and to the best of that person's knowledge, but a person is not obliged to answer any question if the answer is self-incriminating.

(3) No self-incriminating answer given or statement made during the course of a hearing of the Regulator is admissible as evidence in criminal proceedings against the person concerned, except in criminal proceedings in which that person is tried for an offence relating to— 25

- (a) the administering or taking of an oath or the administering or making of an affirmation;
- (b) the giving of false evidence; 30
- (c) the making of a false statement; or
- (d) a failure to answer lawful questions fully or satisfactorily.

Rules of procedure

52. Subject to such rules of procedure as the Regulator may make, the member of the Regulator presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case. 35

Interim relief

53. The Regulator may, if so requested by a person who lodged a complaint with the Regulator, make such interim order as it may deem necessary in the circumstances.

Orders of Regulator 40

54. (1) In addition to its other powers in terms of this Act, the Regulator may—

- (a) make an appropriate order in relation to any complaint, including—
 - (i) interdicting any conduct or action;
 - (ii) declaring the whole or any part of an agreement to be void;
- (b) condone any breach of its rules and procedures on good cause shown. 45

(2) (a) The Regulator may at any time adjourn a hearing for a reasonable period of time, if there is need to do so.

(b) If the Regulator adjourns a hearing in terms of paragraph (a) it may, on application, make such interim order as it deems fit.

Winding up and dissolution of Regulator

55. (1) The Minister may by notice in the *Gazette* determine the date on which the Regulator will cease to operate.

(2) Upon the winding-up of the Regulator's activities, the Minister must—

- (a) subject to applicable labour laws, determine the future of the Regulator's employees; and **5**
- (b) with the concurrence of the Minister of Finance, determine how the Regulator's assets and liabilities must be dealt with.

CHAPTER 6

**PROVISION OF PORT SERVICES AND PORT FACILITIES
AND USE OF LAND** **10**

Agreements in port operations and services

56. (1) The Authority may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to— **15**

- (a) design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto;
- (b) provide any other service within a port designated by the Authority for this purpose;
- (c) perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or **20**
- (d) perform any combination of the functions referred to in paragraphs (a), (b) and (c). **25**

(2) An agreement concluded in terms of this section must provide for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement. **25**

(3) The services authorised under the agreement contemplated in subsection (1) may include stevedoring on board a vessel.

(4) Notwithstanding any other provision of this Act, the Authority may enter into agreements in terms of which it contracts out any service which the Authority is required to provide in terms of this Act. **30**

(5) An agreement contemplated in subsection (1) or (4) may only be entered into by the Authority in accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective. **35**

Licence regarding port services and facilities

57. (1) Unless an agreement contemplated in section 56 has been concluded, no person other than the Authority may provide a port service or operate a port facility otherwise than in terms of a licence issued under this section.

(2) Any person may, subject to the provisions of this Act, apply to the Authority for a licence. **40**

(3) Any application for a licence must be lodged in the prescribed manner and in accordance with an invitation issued by the Authority by notice in the *Gazette*.

(4) The Authority must, in an invitation contemplated in subsection (3), specify—

- (a) the kind of service in respect of which applications are invited; **45**
- (b) the form in which applications must be submitted, including any fee payable upon submission of an application;
- (c) the manner in which it is contemplated that the service must be provided;
- (d) the place where and times when any application form or relevant document may be obtained from the Authority; and **50**
- (e) the period within which such applications must be lodged.

(5) The Authority may require an applicant for a licence, at the applicant's expense, to furnish the Authority, within the period specified by it, with such further information as may be necessary in order to consider the application.

(6) Within six weeks after receiving an application in accordance with subsection (2), the Authority must— 5

- (a) issue a licence subject to specified terms and conditions; or
- (b) refuse to issue a licence and give written reasons for such refusal.

(7) (a) The Authority may exempt a person from having to obtain a licence in terms of this Act if—

- (i) an agreement contemplated in section 11(3) has been concluded; and 10
- (ii) the Authority is satisfied that the activities of the person concerned are, for purposes of this Act, sufficiently regulated by the other statutory body or organ of state contemplated in that section.

(b) An exemption contemplated in paragraph (a) may be made subject to such conditions, authorised by this Act, as the Authority may deem fit. 15

Conditions of licence

58. (1) A licence issued under section 57 must set out—

- (a) the duration of the licence;
- (b) the types of services or facilities to be provided by the licensed operator;
- (c) the annual licence fee payable by the licensed operator; 20
- (d) the duties and obligations of the licensed operator in respect of the services or facilities provided by it; and
- (e) such other terms and conditions as may be necessary.

(2) The terms and conditions of a licence may—

- (a) control and restrict, directly or indirectly, the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator; 25
- (b) restrict the carrying on by the licensed operator of any trade or business which is not related to the activity authorised in the licence;
- (c) provide for the modification of the licence; 30
- (d) provide for the determination of performance standards; and
- (e) provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator.

Restriction on transfer of licence

59. (1) A licence may not be transferred to any third party without the prior written consent of the Authority. 35

(2) Any transfer of a licence in contravention of subsection (1) is of no force or effect.

Suspension or cancellation of licence

60. (1) Subject to this section, the Authority may cancel or for a reasonable period suspend a licence, if— 40

- (a) the licensed operator contravenes or breaches any condition of its licence, any provision of this Act or the regulations, or any directive issued by the Authority in terms of this Act;
- (b) the licensed operator is sequestered, liquidated or placed under judicial management; 45
- (c) the licensed operator has made any assignment to, or composition with, its creditors; or
- (d) the safety of vessels and persons within ports or the national security of the Republic so requires.

(2) The Authority may direct a licensed operator to take specified measures to remedy any contravention or breach contemplated in subsection (1) (a). 50

(3) Prior to acting under subsection (1) or (2), the Authority must give written notice to the licensed operator—

- (a) indicating the intention to cancel or suspend the licence or the intention to issue a direction;
- (b) setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and 5
- (c) affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.

(4) Where a licence is cancelled or suspended under subsection (1), the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port— 10

- (a) provide the port service or operate the port facility;
- (b) engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and 15
- (c) recover any expenses from the licensed operator concerned.

Directives affecting licensed operators and other persons

61. (1) The Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators—

- (a) to ensure the reliability of the supply of port services and facilities; or 20
- (b) in the interest of public safety or the environment.

(2) Before issuing a directive under subsection (1), the Authority must give written notice to the affected licensed operator—

- (a) indicating the intention to issue the directive;
- (b) setting out the reasons why it is considering issuing the directive; and 25
- (c) affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.

Duties of licensed operators

62. (1) A licensed operator must—

- (a) provide the port services and operate the port facilities specified in its licence; 30
- (b) comply with this Act and any other law;
- (c) meet the performance standards specified in its licence; and
- (d) provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.

(2) Every licensed operator must— 35

- (a) within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including—
 - (i) the quality and level of its service in the financial year under review; 40
 - (ii) its compliance with the terms and conditions of its licence, this Act and the regulations;
 - (iii) steps taken to eliminate anti-competitive and discriminatory practices;
 - (iv) its audited annual financial statements; 45
 - (v) the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation; and
- (b) from time to time, and where applicable, submit to the Authority— 50
 - (i) such statistical information relating to its licensed operations as may reasonably be required by the Authority;

- (ii) its cargo forecast over the period and in the form determined by the Authority; and
- (iii) future development plans relating to any service or facility which it is obliged to provide under the conditions of its licence.

(3) The Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator in terms of subsection (2). 5

(4) Any information required by the Authority in terms of subsection (3) must be lodged by the licensed operator within the period and in the manner determined by the Authority. 10

(5) A licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of—

- (a) any change in the control of the licensed operator;
- (b) any industrial dispute between the licensed operator and its employees;
- (c) any industrial accident or disaster involving any employee or agent of the licensed operator; 15
- (d) any occurrence of fire within its premises within the port;
- (e) any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;
- (f) any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and 20
- (g) any spillage or pollution that may have an impact on the environment.

Routine inspections

63. (1) In order to determine whether licence conditions are being complied with, any person duly authorised by the Authority in writing may, during office hours, enter any premises occupied by a licensed operator to inspect any activity, process, building or facility therein. 25

(2) A person contemplated in subsection (1) may, when conducting an inspection, require the licensed operator to produce any book, record, statement or other document relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom. 30

Special powers in emergency

64. (1) The Shareholding Minister may, with the concurrence of the Minister, on the occurrence of any event which gives rise to an emergency which creates a real and imminent threat to the national interest of the Republic or public safety, authorise the Authority, for as long as such threat exists, to— 35

- (a) suspend the licence of a licensed operator, take temporary possession (either itself or through an authorised agent) of any port facility or undertaking relating to a port service of such licensed operator and operate it in such a manner as it deems fit; or 40
- (b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public in general.

(2) Where the Authority takes possession of any port facility or undertaking under subsection (1) (a), adequate compensation must be paid, in the amount agreed between the Authority and the affected licensed operator, and failing agreement, in the amount determined by the Shareholding Minister, whose decision is binding upon the parties. 45

Operations existing on commencement of Act

65. (1) Any person who provided a port service or operated a port facility immediately prior to the date on which this Chapter came into force, is deemed to hold a licence for the provision of such port service or the operation of such port facility, but such person must apply for a licence in terms of section 57 within six months of the date determined by the Shareholding Minister by notice in the *Gazette*. 50

(2) A person contemplated in subsection (1) is deemed to hold a licence until the Authority has decided on its licence application.

(3) A person contemplated in subsection (1) must be issued a licence in terms of section 57 to provide the port service or operate the port facility contemplated in that subsection, if the Authority is reasonably satisfied that such person is capable of complying with the terms and conditions of the licence. 5

(4) (a) Subsection (1) does not apply to a person who, immediately before the date on which this Chapter came into effect, provided a stevedoring service.

(b) Any permission or authorisation to provide a stevedoring service granted before this Chapter came into effect lapses at the end of the period for which the permission or authorisation was granted. 10

(5) Transnet is, in respect of port services or port facilities provided or operated by the South African Port Operations Division of Transnet or Spoornet, a division of Transnet, immediately prior to the commencement of this Chapter deemed to be the holder of a licence to provide port services or to operate port facilities, but must apply for such licence within six months of the date determined by the Shareholding Minister by notice in the *Gazette*. 15

(6) The deeming contemplated in subsection (5) remains valid until the Authority has decided on the licence application or until such time as a third party is authorised to provide such services or operate such facilities in terms of an agreement or licence concluded or issued under this Chapter. 20

(7) Any licence issued to Transnet pursuant to an application contemplated in subsection (6) is subject to the condition that such licence will terminate in the event that a third party is authorised to provide the relevant services or operate the relevant facilities in terms of an agreement or licence concluded or issued under this Chapter. 25

Off-shore cargo-handling facilities

66. (1) No person may erect or operate an off-shore cargo-handling facility otherwise than in terms of a licence issued by the Authority under this section.

(2)(a) Any lease agreement covering off-shore cargo handling facilities in the Republic which existed on the date of commencement of this section is deemed to be a licence issued in terms of this Act for the duration of such lease agreement. 30

(b) Any such agreement remains valid for the duration of the term thereof.

(3) Sections 56 to 65 apply with the changes required by the context to the erection or operation of an off-shore cargo-handling facility.

Restructuring and reform of ports

35

67. (1) If, in any area within a port—

(a) it is necessary to change the use to which immovable property may be put in order to improve the safety, security, efficiency and effectiveness of the operations of the port, the Authority may in writing addressed to the lessee and every lawful occupier of such property, direct that the use be altered to a new use; 40

(b) the terms of a long-term lease which existed immediately before this section took effect are substantially prejudicial to the operation of a port, including terms providing for unreasonable low rentals or containing no restrictions on sub-letting or no provision confining the use of the property to a use relating to the relevant port, the Authority may in writing addressed to the lessee direct that the applicable terms be renegotiated in order to remove the prejudice; or 45

- (c) persons from historically disadvantaged groups are excluded from taking part in the economic activities of the port in terms of long-term leases which existed immediately before this section took effect, the Authority may in writing addressed to the lessee direct that any such lease be renegotiated in order to ensure equitable access to the economic activities in the area in question. 5
- (2) (a) A directive issued under subsection (1) (a) may stipulate that any lease that is inconsistent with the new use shall be invalid from a date stipulated in the notice.
- (b) Before issuing a directive under subsection (1) (a), the Authority must in writing give the lessee and every lawful occupier of the property concerned— 10
- (i) reasonable notice of the proposed change in use;
 - (ii) full reasons for the proposed change in use; and
 - (iii) a reasonable opportunity to make representations on the proposed change in use.
- (3) (a) In the event of a directive being issued under subsection (1) (b) or (c), the Authority and the lessee must endeavour to negotiate the terms of a new lease in relation to the immovable property. 15
- (b) If the Authority and the lessee are unable to reach an agreement as to the new terms of the lease in question, the Authority may, by written notice addressed to the lessee, declare the relevant lease to be invalid as from a date specified in the notice. 20
- (4) If the application of this section results in an expropriation of property, section 25 of the Constitution applies.

CHAPTER 7

DEVELOPMENT, ENVIRONMENT AND CLOSURE OF PORTS

Planning, construction, development and maintenance of ports 25

68. (1) The Authority must—
- (a) facilitate the building and exploitation of the infrastructure of ports;
 - (b) regulate and control development within ports, in accordance with approved port development framework plans; and
 - (c) ensure that the infrastructure of ports is managed and maintained in a manner which ensures efficient, safe and orderly port operations. 30
- (2) The Authority may enter into agreements for the planning, construction, development and maintenance of port infrastructure.

Protection of environment

69. (1) The Authority must in the performance of its functions ensure that a fair and reasonable balance is achieved between the protection of the environment and the establishment, development and maintenance of ports. 35
- (2) (a) The Authority must ensure that sustainable and transparent port planning processes are undertaken when formulating any port development framework. 40
- (b) When undertaking any port planning process, the Authority must ensure that stakeholders are consulted and that all relevant biophysical and economic aspects are taken into account.

Closure of port

70. (1) Subject to subsection (2), the Authority may only close a port which is non-viable and after Cabinet has issued a written directive authorising the closure of such port. 45
- (2) The Cabinet directive contemplated in subsection (1) may only be issued following Cabinet's consideration of a report compiled by a committee appointed by the Minister to conduct an inquiry into the impact of the contemplated port closure.

(3) The Cabinet may, based on the findings of the enquiry contemplated in subsection (2), direct the Authority —

- (a) to refrain from closing the port;
- (b) to delay the closure of the port for a specific period; or
- (c) to amend its proposed course of action in a specified manner.

5

CHAPTER 8

COMMERCIAL ASPECTS

Commercial functions of Authority

71. Notwithstanding any provisions of this Act, from the date that the Authority becomes the successor to the National Ports Authority (Pty) Ltd as contemplated in section 4(1), the funds and assets of the Authority may only be used for the performance of the Authority's functions and activities relating thereto, including the maintenance of port infrastructure and the management and development of ports. 10

Authority's tariff book

72. (1) (a) The Authority must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs. 15

(b) The Authority may, with the approval of the Ports Regulator, amend the tariff book whenever it is necessary to do so.

(2) The Authority must, prior to any substantial alteration of a tariff, consult with the National Port Consultative Committee. 20

(3) Subject to section 9 of the Competition Act, 1998 (Act No. 89 of 1998), the tariffs contemplated in subsection (1) may vary between ports.

(4) Notwithstanding the provisions of this section, the Authority may enter into an agreement with a licensed operator or a party to an agreement or a port user for the variation of any tariff contemplated in subsection (1). 25

Fees payable to Authority

73. (1) The Authority may charge fees, in accordance with a tariff determined in terms of section 72, for—

(a) the provision of port and other services, including — 30

(i) vessel traffic service charges;

(ii) pilotage dues for the provision of pilotage;

(iii) light dues for the provision of navigational aids along the coast of the Republic and within ports;

(iv) towage dues for the provision of tug services; 35

(v) berthing charges for the use of berthing facilities and services; and

(vi) port and ship security;

(b) the provision and maintenance of port infrastructure, port terminals and port facilities, including —

(i) land rentals; 40

(ii) port dues for the provision and maintenance of entrance channels, breakwaters, basins, navigational aids and maintenance dredging inside port limits;

(iii) cargo dues for the provision and maintenance of port infrastructure; and 45

(iv) berth dues for vessels occupying quays or repair quays while not engaging in the loading or unloading of cargo;

(c) granting concessions and licences; and

(d) any other services provided by the Authority in the performance of its functions. 50

(2) The Authority may also, in relation to off-shore cargo-handling facilities, charge fees as contemplated in subsection (1).

(3) The Authority may on good cause shown, remit or waive the whole or any part of any fee payable to the Authority.

(4) The Authority may require any person to furnish such security as it deems fit for the payment of any fee payable to the Authority. 5

(5) The fees contemplated in subsection (1) (a) and (b) become due to the Authority and payable without demand when the services have been rendered and facilities have been provided,

(6) If any request for the rendering of services or the provision of facilities is withdrawn or cancelled, without prior notice of withdrawal or cancellation having been given timeously to the Authority, the fees contemplated in subsection (1) (a) and (b) remain due and payable as if the services or facilities had been rendered or provided. 10

(7) The fees and charges levied by National Ports Authority of South Africa immediately before the commencement of this section continue to be valid as if determined by the Authority under this section until rescinded, varied or withdrawn by the Authority in terms of this Act. 15

CHAPTER 9

SAFETY ASPECTS

Safety of navigation and shipping in ports 20

74. (1) Subject to the provisions of this Act, the Authority must, for the purpose of ensuring safety of navigation and shipping in ports—

- (a) control marine and other traffic in each port;
- (b) control the entry, stay, movement and operations of vessels in ports, and the departures of vessels from ports; 25
- (c) regulate the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers in ports;
- (d) provide or procure pilotage services, license pilots and regulate the safe provision of pilotage services by licensed pilots;
- (e) provide or procure tug services, license tug service providers and regulate the safe provision of tug services by licensed tug service providers; 30
- (f) provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits and at such other places as the Authority may determine;
- (g) undertake dredging and maintain channels at the depths published by the Authority; and 35
- (h) remove or cause to be removed any obstruction or object from the waters of the ports that may pose a danger to shipping or navigation.

(2) The Authority may—

- (a) order that a vessel which has been arrested or attached by order of court or another relevant authority be moved to another place within the port and, if necessary, move such vessel to that place; 40
- (b) search for, raise, remove or destroy any sunken, stranded or abandoned vessel or wreck within the port limits, and recover the costs incurred in connection with such searching, raising, removal or destruction from the owner of the vessel or any other person who had the beneficial use of the vessel at the time it sank, became stranded or was abandoned; 45

- (c) search for and remove any wreck or obstruction which may endanger the safety of any vessel entering or leaving the port, and recover the costs ~~of~~ such search and removal from the owner of the wreck or obstruction, or from any person responsible for the presence of such wreck or obstruction;
- (d) give notice to the owner or other person legally responsible for the upkeep of any vessel within port limits, calling upon such owner or person to remove or otherwise dispose of such vessel, or part thereof, which is not seaworthy, or is likely to become an obstruction, wreck or derelict or a threat to the environment or public safety, and recover from that owner or person all costs incurred for the removal or disposal should the owner or person fail to comply with such notice within the time specified therein; and
- (e) after written demand for any costs contemplated in this subsection, and on non-payment thereof, institute an admiralty action in terms ~~of~~ section 3 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), to recover the costs.
- (3) (a) The Harbour Master is, in respect ~~of~~ the port for which he or she is appointed, the final authority in respect of all matters relating to pilotage, navigation, navigational aids, dredging and all other matters relating to the movement of vessels within port limits.
- (b) For purposes of paragraph (a), the Harbour Master may give such written or verbal instructions as may reasonably be necessary for—
- (i) promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port;
 - (ii) regulating the movement or mooring and unmooring ~~of~~ a vessel in the port;
 - (iii) controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;
 - (iv) regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage and garbage from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;
 - (v) the detention of a vessel reasonably suspected of causing oil pollution and ensuring that the total cost ~~of~~ the pollution clean-up operation is recovered, or acceptable guarantees are provided, prior to the vessel being given permission to leave the port;
 - (vi) carrying into effect the provisions of this Act.
- (4) The Harbour Master must take such steps as may reasonably be necessary to bring an instruction issued under subsection (3) to the notice of any person likely to be affected by it.

Pilotage

75. (1) Subject to subsection (2), a pilot must navigate every vessel entering, leaving or moving in a port.
- (2) Pilotage is not compulsory in respect of any vessel or class of vessels that have been exempted from pilotage by the Authority in writing.
- (3) The pilot's function is to navigate a vessel in the port, to direct its movements and to determine and control the movements ~~of~~ the tugs assisting the vessel under pilotage.
- (4) The pilot must determine the number of tugs required for pilotage with the concurrence of the master of the vessel.

(5) In the event of a disagreement between the pilot and the master of the vessel regarding the number of tugs to be used as contemplated in subsection(4), the Harbour Master takes the final decision.

(6) The master of the vessel must at all times remain in command of the vessel and neither the master nor any person under the master's command may, while the vessel is under pilotage, in any way interfere with the navigation or movement of the vessel or prevent the pilot from carrying out his or her duties, except in an emergency, where the master may intervene to preserve the safety of the vessel, cargo or crew and take whatever action he or she considers reasonably necessary to avert the danger. 5

(7) Where the master of the vessel intervenes as contemplated in subsection(6), he or she must immediately inform the pilot of the vessel and, after having restored the situation, must permit the pilot to proceed with the execution of his or her duties. 10

(8) The master of the vessel must ensure that the officers and crew are at their posts, that a proper lookout is kept and that the pilot is given all assistance necessary in the execution of his or her duties. 15

Liability of pilot

76. (1) Neither the Authority nor the pilot is liable for loss or damage caused by anything done or omitted by the pilot in good faith whilst performing his or her functions in terms of this Act.

(2) Notwithstanding any other provision of this Act, the pilot is deemed to be the servant of the owner or master of the vessel under pilotage and such owner or master is liable for the acts or omissions of the pilot. 20

Certification and licensing of pilot

77. (1) No person may perform the functions of a pilot in a port without having been duly certificated by the South African Maritime Safety Authority and licensed by the Authority to do so. 25

(2) The Minister may prescribe requirements for the licensing of pilots.

(3) The South African Maritime Safety Authority may recommend to the Minister the minimum qualifications required for any person to be licensed as a pilot, including the content and nature of examinations, if any, to be undertaken. 30

(4) The South African Maritime Safety Authority must consult with the Authority regarding the content of the minimum qualifications referred to in subsection(2), before any recommendation is made.

Lighthouses and other navigational aids

78. (1) The Authority must operate and maintain lighthouses and other navigational aids under its control in terms of standards determined by the South African Maritime Safety Authority in order to assist the navigation of vessels within port limits and along the coast of the Republic. 35

(2) The Authority may not cease operating any lighthouse or navigational aid under its control, irrespective of whether such lighthouse or aid is replaced by a new lighthouse or aid on the same or adjacent location, or reduce the service provided by any lighthouse or aid in any manner, without the consent of the South African Maritime Safety Authority and having consulted the Port Consultative Committee of the port closest to the lighthouse or aid. 40

(3) Subject to subsection(2), the Authority may erect new lighthouses or install other navigational aids on locations and in the manner which the Authority may think fit, or improve or extend the service provided by existing lighthouses and other navigational aids. 45

(4) The Port Consultative Committee of the port closest to a lighthouse or navigational aid may make recommendations to the Authority with regard to the improvement or extension of the service provided by such lighthouse or aid.

(5) The Authority may remove any light or device which may confuse a vessel if the owner of the property on which the light or device is used or the person having charge of such light or device fails to extinguish or effectively screen the light or remove the device within seven days of notice to do so having been served on him or her, and may recover the expenses for the removal from that owner or person. 5

CHAPTER 10

MINISTERIAL DIRECTIONS AND PORT REGULATIONS 10

Ministerial direction

79. (1) The Minister may, in writing, direct the Authority to perform a specified act within the Authority's power or not to perform a specified act, if such direction is necessary —

- (a) to safeguard the national security of the Republic; 15
- (b) to promote the national, strategic or economic interests of the Republic; or
- (c) to discharge an international obligation of the Republic.

(2) The Minister must consult with the Authority and the Shareholding Minister prior to giving a direction under subsection (1).

(3) The Authority must take all necessary steps to give effect to a direction issued under subsection (1). 20

(4) (a) The Minister may, out of monies appropriated by Parliament for that purpose, compensate the Authority for any loss suffered by the Authority as a result of the obligation to perform or not perform an act contemplated in subsection (1).

(b) In addition, should the performance of such an act not be in the commercial interests of the Authority, the financing of such activity is the responsibility of the State. 25

Port regulations

80. (1) The Minister may, by notice in the *Gazette*, make regulations in respect of—

- (a) a framework for the economic participation and empowerment of historically disadvantaged groups in port operations; 30
- (b) fitness standards for the safe use of the infrastructure and equipment in the provision of any port facility or port service;
- (c) rules of procedure for Port Consultative Committees;
- (d) port limits;
- (e) transitional matters in order to ensure a smooth transition from National Ports Authority of South Africa to National Ports Authority (Pty) Ltd, and from that company to the Authority; 35
- (f) a framework for economic participation in port operations and services by public entities, private entities and public-private partnerships;
- (g) any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act. 40

(2) The Authority may, with the approval of the Minister, by notice in the *Gazette*, make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in particular regarding —

- (a) the manner in which control of a port must be exercised and the grounds on which access to a port may be refused;
 - (b) orderly vessel traffic, including the prevention and removal of any obstruction or impediment to navigation within the port limits;
 - (c) the use of navigational aids, lights and signals to be used in ports and steps to be taken to avoid collision by vessels navigating in the ports; 5
 - (d) the supervision, regulation and control of all activities conducted in or on the waters of the ports;
 - (e) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities; 10
 - (f) the declaration and definition of wharves on which cargo will be landed and from which cargo will be shipped in vessels;
 - (g) the protection of the environment within ports, the cleaning of land and waters of the ports and the prevention of oil, filth, rubbish or any other matter from being thrown into the sea, including the discharge of ballast water; 15
 - (h) the maintenance by the Authority of security within ports;
 - (i) places of refuge for vessels;
 - (j) the information which has to be supplied by the masters, owners, agents and other persons in respect of vessels arriving and departing and the time and manner in which this information is to be supplied; 20
 - (k) the information which has to be supplied by the masters, owners, agents and other persons in respect of cargo loaded or discharged in the ports, and the time and manner in which such information is to be supplied;
 - (l) the prohibition of embarkation and disembarkation of persons at places other than those determined by the Authority for this purpose; 25
 - (m) the prohibition of the loading, handling or discharging of dangerous cargoes at wharves where such loading, handling or discharging appears especially dangerous to the public;
 - (n) the limits within which, and the levels to which, dredging may be carried out in ports and approaches thereto; 30
 - (o) the information which has to be furnished to the Authority by port users in relation to their activities within ports;
 - (p) the establishment, construction, maintenance and operation of off-shore cargo handling facilities;
 - (q) road and rail traffic within ports subject to the Railway Safety Regulator Act, 2002 (Act No. 16 of 2002); 35
 - (r) any other matter for which it is necessary or expedient to make rules so that the Authority is able to perform its functions effectively and efficiently.
- (3) The Authority may prescribe rules in respect of each port, setting out the hours of the port's operation and the relationship between concessionaires or contractors contemplated in section 56, on the one hand, and licensees on the other. 40
- (4) The regulations and rules contemplated in this section may create offences and the Minister may stipulate a penalty of a fine or of imprisonment for a period not exceeding six months or both a fine and such imprisonment.

CHAPTER 11

45

GENERAL

Port Consultative Committee

81. (1) The Minister must appoint a Port Consultative Committee for each port, consisting of the Harbour Master of the relevant port and—

- (a) two persons representing the Authority; 50
- (b) three persons representing the local port users;

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- (c) two persons representing the local and provincial governments, respectively, of the area in which the port is situated;
- (d) two persons representing organised labour;
- (e) one person representing the South African Maritime Safety Authority.
- (2) The function of the Port Consultative Committee is, with regard to any matter concerning a port— 5
 - (a) to provide a forum for the exchange of views between the Authority and other interested parties; and
 - (b) to advise the Minister.
- (3) The Authority must consult the Port Consultative Committee regarding— 10
 - (a) any major scheme relating to the expansion or development of a particular port;
 - (b) any other matter on which the Minister or the Shareholding Minister may require the Authority to consult the Committee.

National Port Consultative Committee15

- 82.** (1) The Minister must appoint a National Port Consultative Committee consisting of at least—
- (a) one representative from each Port Consultative Committee;
 - (b) four representatives of national government departments;
 - (c) a representative of the National Port Users Forum; 20
 - (d) a representative of organised labour; and
 - (e) a representative of the Authority.
- (2) The functions of the National Consultative Committee are—
- (a) to advise the Minister on national commercial ports policy matters;
 - (b) to advise the Minister on measures that need to be taken to improve the regulatory framework governing management and operations of ports; 25
 - (c) to consider any proposed substantial alteration to the Authority's tariffs; and
 - (d) to consider any other matter that the Minister or the Shareholding Minister may require the Committee to consider.
- (3) The Minister must appoint an official of the Department of Transport as chairperson of the National Port Consultative Committee. 30

Port access

83. Subject to this Act, a port must be freely accessible to any person who conducts lawful business in it.

Co-operation with authorities35

84. The Authority must co-operate with immigration, customs, law enforcement and any other authority required to perform any function within a port, and must afford such authority every facility reasonably necessary, subject to such compensation as may be agreed between the Authority and the other authority or, failing an agreement, such compensation as the Minister may determine. 40

Liability of Authority

85. Neither the Authority nor an employee or a representative of the Authority is liable for loss or damage caused by anything done or omitted by the Authority, the employee or the representative in good faith whilst performing any function in terms of this Act.

Confidential information

86. (1) No person may disclose any confidential information concerning the affairs of the Authority or any other person obtained—

- (a) in carrying out any function in terms of this Act; or
 - (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act. 5
- (2) Subsection (1) does not apply to information disclosed for the purposes of—
- (a) the proper administration or enforcement of this Act; or
 - (b) the administration of justice.

Offences

10

87. (1) A person is guilty of an offence if he or she—

- (a) wilfully or negligently endangers the safety of navigation, persons or property in a port;
- (b) having been directed or summonsed under section 51 to appear before the Regulator, without sufficient cause— 15
 - (i) refuses so to appear;
 - (ii) refuses to be sworn in or to make an affirmation after being directed to do so;
 - (iii) refuses to answer, or fails to answer to the best of his or her knowledge, any question put; or 20
 - (iv) refuses to comply with a requirement to produce a book, document or item specified in the directive summons;
- (c) without lawful authority, interferes with a pilot while a vessel is under pilotage;
- (d) contravenes section 59(1), 66(1) or 86(1); 25
- (e) hinders or obstructs a person acting under section 48 or 63(1);
- (f) fails to comply with a requirement contemplated in section 63(2); or
- (g) fails to comply with an instruction of the Harbour Master given under section 74(3).

(2) Any person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years, or both. 30

Amendment of law

88. (1) Section 1 of the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002), is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (e) of the definition of “organ of state” and by the substitution for paragraph (f) of that definition, of the following paragraphs: 35

“(f) National Ports Authority Limited, contemplated in section 4 of the National Ports Act, 2005, and any entity deemed to be the National Ports Authority in terms of section 3 of that Act;

(g) any person for whose debt an organ of state contemplated in paragraphs (a) to [(e)][(f)] is liable;”.

40
Repeal of law, and saving

89. (1) The Legal Succession Act is hereby repealed in so far as it relates to any provision for the management and operation of the ports referred to in this Act.

(2) (a) Despite subsection (1), the port regulations made under section 21 of the Legal Succession Act and which were in force immediately prior to the commencement of this Act remain in force in so far as they are not inconsistent with this Act, until amended or repealed under this Act. 45

(b) Any reference in such regulations to “harbour” must be interpreted to mean “port”. 50

Short title and commencement

90. This Act is called the National Ports Act, 2005, and comes into effect on a date determined by the President by proclamation in the *Gazette*.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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CAPE TOWN, 31 MARCH 1993

KAAPSTAD, 31 MAART 1993

No. 14697

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 557.

31 March 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 44 of 1993: Airports Company Act, 1993.

No. 557.

31 Maart 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 44 van 1993: Lughawensmaatskappywet, 1993.

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 transfer of certain assets and functions of the State to a public company to be established and for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 25 March 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

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

- (i) “airport” means an airport as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962), and includes an aerodrome transferred in terms of section 6(1)(a) of this Act; (v) 5
- (ii) “airport charge” means an amount levied by the company—
 - (a) on an operator of an aircraft in connection with the landing, parking or take-off of such aircraft at a company airport, including an amount determined to any extent by reference to the number of passengers on board an aircraft; or 10
 - (b) on aircraft passengers in connection with their arrival at or departure from a company airport by means of an aircraft; (vi)
- (iii) “Committee” means the Regulating Committee established by section 11; (iv) 15
- (iv) “company” means the Airports Company Limited contemplated in section 2; (vii)
- (v) “company airport” means an airport contemplated in section 4; (viii)
- (vi) “Department” means the Department of Transport; (iii) 20
- (vii) “financial year”, in relation to the company, means a year terminating on the last day of March; (ii)
- (viii) “Minister” means the Minister of Transport; (ix)
- (ix) “permission” means a permission mentioned in section 12(1); (xii)
- (x) “relevant activity”, in relation to a company airport, means the provision at such airport of any service or facility for the purposes of— 25
 - (a) the landing, parking or take-off of an aircraft;
 - (b) the servicing of an aircraft, including the supply of fuel; or

- (c) the handling of aircraft passengers or their baggage or of cargo at all stages while they are or it is on the premises of such airport, including the transfer of such passengers, their baggage or such cargo to and from an aircraft; (xi)
- (xi) "Shareholding Minister" means the Minister mentioned in section 3(4); (i)
- (xii) "transfer date" means the date on which the Minister gives effect to the provisions of section 6(1), and which shall be published by the Minister by notice in the *Gazette*. (x)

Establishment of public company

10

2. (1) On a date to be fixed by the Minister by notice in the *Gazette* there shall be established a public company to be known as the Airports Company Limited.

(2) Notwithstanding the provisions of the Companies Act, 1973 (Act No. 61 of 1973), the Shareholding Minister shall on behalf of the State sign the memorandum of association and the articles of association of the proposed company. 15

(3) If the memorandum of association and the articles of association have been so signed they shall, as far as the signing thereof is concerned, be deemed to comply with the requirements of the Companies Act, 1973; for the registration in terms of the said Act, of any such memorandum or articles.

(4) On receipt of the memorandum and articles so signed the registrar of companies shall register the said memorandum and articles as contemplated in section 63 of the Companies Act, 1973, and endorse thereon a certificate that the company is incorporated. 20

(5) No fees shall be payable in terms of the Companies Act, 1973, in respect of the checking of documents, the reservation of the name, the registration of the said memorandum and articles and the issue of a certificate to commence business. 25

(6) The provisions of sections 66 and 344(d) of the Companies Act, 1973, shall not apply to the company as long as the State is the sole member and shareholder of the company.

(7) (a) The directors shall be non-executive and executive directors. 30

(b) The majority of the directors shall be non-executive directors.

(c) The majority of the non-executive directors shall be persons who are not officers or employees as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984).

(d) The Shareholding Minister shall, in appointing the non-executive directors contemplated in paragraph (c), consult with appropriate interested parties. 35

Share capital of company

3. (1) The State shall be the holder of the shares in the company.

(2) The said shares shall only be sold or otherwise disposed of with the approval, by resolution, of Parliament. 40

(3) The rights attached to the shares of which the State is the holder shall be exercised by the Shareholding Minister on behalf of the State.

(4) The State President shall designate a Minister as the Shareholding Minister.

Objects of company

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4. The objects of the company are the acquisition, establishment, development, provision, maintenance, management, control or operation of any airport, any part of any airport or any facility or service at any airport normally related to the functioning of an airport.

Functions of company

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5. (1) The functions of the company shall be to achieve its objects with the means at its disposal.

(2) The company shall—

(a) not have any financial interest, direct or indirect, in the provision of any air service as defined in section 1 of the Air Services Licensing Act, 1990 55

- (Act No. 115 of 1990), or in section 1 of the International Air Services Act, 1949 (Act No. 51 of 1949);
- (b) not unduly discriminate against or among various users or categories of users of any company airport;
 - (c) conduct its business in such a manner that the national interest is not jeopardized;
 - (d) conduct its business in such a manner as to ensure that the company does not engage in any restrictive practice as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);
 - (e) not change the level or modify the structure of any airport charge more than twice within a financial year;
 - (f) publish any airport charge by notice in the *Gazette* at least three months prior to the coming into operation of such charge; and
 - (g) take all the necessary steps to facilitate the performance of any function or duty by any department of State at a company airport in terms of any law.
- (3) The company may, in order to perform its functions or attain any of its objects, raise money from time to time with the approval of the Shareholding Minister and the Minister of Finance by way of loans from any source.

Transfer of aerodromes to company

6. (1) On or after 1 April 1993, subject to the provisions of this section and after consultation with the Shareholding Minister, the Minister of Public Works and the Minister of Finance, the Minister—
- (a) shall by agreement—
 - (i) transfer to the company the responsibility for the maintenance, management, control and operation of all the aerodromes which have been or are in the process of being established by the said date in terms of section 6 of the Aviation Act, 1962 (Act No. 74 of 1962); and
 - (ii) transfer to the company such assets owned by, or liabilities, rights or obligations of, the State as may be necessary for the effective maintenance, management, control and operation of the said aerodromes; and
 - (b) may under subsection (3) or (4) transfer any person to the company or make available the services of any person to the company.
- (2) The agreement mentioned in subsection (1)(a) shall include provisions concerning—
- (a) the relationship between the company and the State as member and shareholder of the company;
 - (b) the extent of the assets, liabilities, rights and obligations to be transferred in terms of that subsection; or
 - (c) any other matter which the Minister deems expedient for the functioning of the company.
- (3) The Minister may, in accordance with the provisions of an agreement concluded between the Department and the company, with the concurrence of the Commission for Administration transfer to the company any person who is an officer or employee in the Department in terms of the Public Service Act, 1984 (Act No. 111 of 1984).
- (4) (a) Notwithstanding any provision to the contrary in any other law, the Minister may make available to the company the services of any person who is an officer or employee in the Department in terms of the Public Service Act, 1984 (Act No. 111 of 1984), and place such person under the control of the company for such period as he may deem fit but without prejudice to such person's position as such officer or employee.
- (b) The company shall compensate the Department at a scale determined by the Minister, with the concurrence of the Minister of State Expenditure, for the services of any person so made available to the company.

(c) A person dealt with in accordance with paragraph (a) may within 90 days after such action make representations to the Minister advancing reasons for his services not being made available to the company under paragraph (a), whereupon the Minister may amend or withdraw his decision.

(d) The Minister may delegate, on such conditions as he may deem fit, to an officer in the Department any power granted to him by this subsection. 5

(5) The company shall, as consideration for the transfer of assets, liabilities, rights or obligations in terms of subsection (1)(a), issue to the State additional fully paid-up shares in the company to a value determined by the Minister, with the concurrence of the Minister of Finance, the Minister of Public Works and the Shareholding Minister and after consultation with the company, and such value shall be deemed to be reasonable consideration for such transfer. 10

(6) Notwithstanding any provision to the contrary in any other law, the company shall on the transfer date become the owner of the assets, movable and immovable, transferred to it in terms of subsection (1)(a). 15

(7) Notwithstanding the provisions of section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him of a certificate by the Minister of Public Works that State land has been transferred in terms of subsection (1)(a), free of charge make such entries and endorsements as he may deem necessary in or on any appropriate register, title deed or other document in his office or laid before him, in order to register the transfer of such land in the name of the company. 20

(8) A registrar referred to in subsection (7) shall, on submission to him of a certificate by the Minister of Public Works that a servitude, other real right or lease has been transferred in terms of subsection (1)(a) or that a servitude exists over State land which has been transferred in terms of that subsection, free of charge make such entries and endorsements as he may deem necessary in or on any appropriate register, title deed or other document in his office or laid before him, in order to— 25

(a) register the transfer of such servitude, other real right or lease in the name of the company; or

(b) confirm the existence of the servitude over the State land so transferred in favour of any other person. 30

(9) Notwithstanding legal provisions to the contrary, no servitude or other right of any kind in respect of State land transferred to the company in terms of subsection (1)(a) shall be acquired by prescription. 35

(10) The company shall be substituted for the State as a contracting party in respect of any contract transferred to the company in terms of subsection (1)(a), without such substitution bringing about novation of such contract. 40

(11) Any litigation resulting from any cause of action in relation to the maintenance, management, control and operation of an aerodrome transferred to the company in terms of subsection (1)(a) which arose —

(a) before the transfer date, shall be conducted by or against the State, as the case may be; and 45

(b) on or after the transfer date, shall be conducted by or against the company, as the case may be.

(12) Notwithstanding any provision to the contrary in any other law, the company shall be exempt from any stamp duties, transfer duties or registering fees payable in terms of any law in relation to the transfer to the company of assets or rights in terms of subsection (1)(a). 50

(13) Unless otherwise provided for in this Act, the company shall not alienate or encumber, otherwise than in the normal course of its business, assets transferred to the company in terms of subsection (1)(a) having a value of more than 10 per cent of the value contemplated in subsection (5). 55

(14) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), the assets mentioned in subsection (1)(a) shall be deemed to have been acquired in terms of that subsection by the company at a price equivalent to the value determined in terms of subsection (5).

Submission of business plan

7. (1) Unless otherwise provided for in this Act, the company shall not later than three months prior to the commencement of any financial year, submit to the Shareholding Minister a business plan.

(2) The said business plan shall in respect of the ensuing financial year and each of the four immediately following financial years, contain the prescribed information and such other information as the Shareholding Minister may require.

(3) The procedures for approving that business plan shall be as prescribed.

Annual report

8. (1) The company shall submit to the Shareholding Minister an annual report, including its audited and approved financial statements in respect of all its business and in respect of each company airport separately, within three months of the end of each financial year.

(2) The Shareholding Minister shall lay the said report upon the Table in Parliament within 30 days after the receipt thereof, if Parliament is in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

Sale of expropriated land

9. Any land expropriated by the State under section 3(2)(h) of the Expropriation Act, 1975 (Act No. 63 of 1975), read with section 16 of this Act, and transferred to the company in terms of the first-mentioned Act, shall not be sold without the consent of the Shareholding Minister.

Minister may issue orders

10. (1) The Minister may by order require the company to do or not to do what is mentioned in the order, if the Minister considers it necessary or expedient so to order —

- (a) in the interest of national security; or
- (b) to discharge or facilitate the discharge of an international obligation of the State.

(2) Any order under subsection (1) shall not be inconsistent with the provisions of the Aviation Act, 1962 (Act No. 74 of 1962), or the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), unless such inconsistency is in the interest of national security.

(3) The Minister shall consult with the company prior to an order by him under subsection (1).

(4) The company shall take all the necessary steps to give effect to an order under subsection (1).

(5) The Minister shall to such extent as he may determine with the concurrence of the Minister of State Expenditure, out of moneys appropriated by Parliament compensate the company for any cost which the company cannot readily recover from the users of company airports and which it incurs as a direct result of any order by the Minister under subsection (1).

(6) No person shall disclose any order under subsection (1) or thing done by virtue of such order if the Minister has stated in such order that the disclosure of such order or thing is contrary to national security or relations with a country or territory outside the Republic.

(7) The Minister shall lay a copy of every order under subsection (1) of this section, except an order contemplated in subsection (6) of this section, upon the Table in Parliament in the manner contemplated in section 8(2) within 30 days after it was issued.

(8) Any person who contravenes the provisions of subsection (6) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

Regulating Committee

11. (1) There is hereby established a committee to be known as the Regulating Committee.

(2) The members of the Committee shall be appointed by the Minister and shall consist of—

(a) a chairman; and

(b) four other persons, of whom at least two are not officers or employees as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984),

who, in the opinion of the Minister, are suitably qualified to perform the functions or exercise the powers of the Committee in terms of this Act and the Air Traffic and Navigation Services Company Act, 1993.

(3) A member of the Committee shall hold office on such conditions as may be prescribed.

(4) A member of the Committee who is not an officer or an employee as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984), shall receive, from money appropriated by Parliament for this purpose, such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of State Expenditure.

(5) Subject to the provisions of this Act and the Air Traffic and Navigation Services Company Act, 1993, the Committee shall, after consultation with the Minister, determine the procedures to be followed in the performance of its functions or the exercise of its powers.

(6) All administrative work in connection with the performance of the functions or the exercise of the powers of the Committee shall be done by officers and employees in the Department designated for such purpose by the Director-General: Transport.

(7) The Committee shall as soon as practicable after 31 March of each year but not later than 30 June of that year submit to the Minister a report giving particulars regarding the activities of the Committee during the year which ended on the first-mentioned date.

(8) The Minister shall lay a copy of the report mentioned in subsection (7) of this section upon the Table in Parliament in the manner contemplated in section 8(2) within 30 days after it was submitted to him.

Economic regulation of company

12. (1) The company shall not levy any airport charge at any company airport unless it is in possession of a valid written permission thereto.

(2) Unless otherwise provided for in this Act, the company shall apply to the Committee for the issuing of a permission, at the beginning of the third financial year of the period of validity of any permission held by the company.

(3) Any such application shall in respect of the financial year mentioned in subsection (2) of this section, be accompanied by the approved business plan contemplated in section 7.

(4) The company shall, at the request of the Committee, make available to the Committee such information pertaining to the matters mentioned in subsection (10) as may be required by the Committee.

(5) The Committee shall, within six months after receipt of an application mentioned in subsection (2), issue to the company a permission, which shall be valid from the beginning of the ensuing financial year.

(6) A permission shall be valid for a period of five financial years.

(7) The Committee shall, as conditions of the permission issued in terms of subsection (5) —

(a) for each company airport or jointly for all company airports, determine for each financial year for which a permission is valid —

(i) a limit on the total amount that may be levied by way of all airport charges;

(ii) a limit on the amount of any particular airport charge or any category of airport charges; or

(iii) a combination of the limits mentioned in subparagraphs (i) and (ii); and

- (b) prescribe in respect of any relevant activity at any or all company airports service standards which shall conform to internationally accepted and recommended practices.
- (8) The Committee shall not amend any condition in respect of the last two financial years of a permission mentioned in subsection (2) which will be replaced by the permission to be issued in terms of subsection (5). 5
- (9) In performing any function in terms of subsection (7), the Committee may consult with interested parties as it thinks fit.
- (10) The Committee shall perform its functions in terms of subsection (7) in such manner as it deems is best calculated to— 10
- (a) restrain the company from abusing its monopoly position, in such a manner as not to place undue restrictions on the company's commercial activities;
 - (b) promote the reasonable interests and needs of users of company airports; 15
 - (c) promote the safe, efficient, economical and profitable operation of company airports;
 - (d) encourage timely improvement of facilities at company airports so as to satisfy anticipated demands by the users of the airports; and
 - (e) ensure that the company, after taking into consideration any compensation paid or to be paid to the company by the State in terms of the provisions of this Act or any other law, is able to finance its obligations and has a reasonable prospect of earning a commercial return. 20
- (11) The Committee may at any time amend any condition, mentioned in subsection (7), of a permission, if the Minister approves such amendment. 25
- (12) The company shall at all times comply with the conditions mentioned in subsection (7).

Sale or closure of aerodrome or curtailment of relevant activity

13. (1) If the company has indicated in a business plan contemplated in section 7 that it intends to close or sell any aerodrome contemplated in section 6(1)(a) or to terminate or substantially curtail a relevant activity which was carried on by the Department or any person on behalf of the Department immediately prior to the transfer date at any such aerodrome, the company shall at the same time as it submits such business plan to the Shareholding Minister in terms of section 7, submit a copy thereof to the Committee. 30 35
- (2) The Committee shall—
- (a) consider and evaluate the implications of the intended action of the company mentioned in subsection (1) for —
 - (i) the transport system of the Republic;
 - (ii) the users of the said aerodrome or relevant activity; 40
 - (iii) the community or region which the said aerodrome serves; and
 - (iv) any other affected institution or person; and
 - (b) make recommendations to the Minister regarding any action which he may take in terms of subsection (3) or (4).
- (3) The company shall not, unless agreed to by the Minister with the concurrence of the Shareholding Minister, take any action contemplated in subsection (1) unless it has indicated at least three financial years prior to taking such action, its intentions in that regard. 45
- (4) The Minister may, with the concurrence of the Shareholding Minister and the Minister of State Expenditure, compensate the company from moneys appropriated by Parliament for the continued operation of an aerodrome or carrying on of a relevant activity contemplated in subsection (1). 50

Failure of company to comply with provisions

14. (1) Any person who feels aggrieved by the failure of the company to comply

with any provision of section 5(2) or 12(1) or (12), may lodge with the Committee a complaint, which shall be accompanied by proof of the failure.

(2) On receipt of any such complaint, or if the Committee on reasonable grounds suspects that the company fails so to comply, the Committee shall investigate such complaint or suspicion.

(3) If, after such an investigation, the Committee is satisfied that the company fails to comply with any provision mentioned in subsection (1), the Committee may—

- (a) in writing direct the company to comply with such provision within the period determined by the Committee;
- (b) by notice in the *Gazette*, declare unlawful any action of the company in relation to its non-compliance with the said provision;
- (c) in writing direct the company to compensate for any loss sustained by or damage done to any person as a result of such action of the company; or
- (d) in writing withdraw or suspend, on such conditions as may be determined by the Committee, any permission issued in terms of section 12(5).

(4) The Committee shall not act under subsection (3)(b), (c) or (d) unless—

- (a) the Committee has notified the company in writing of its intention to take such action; and
- (b) the Committee has given the company the opportunity to address representations to the Committee, within the period determined by the Committee, in respect of the said non-compliance.

Regulations

15. (1) The Minister may make regulations —

- (a) regarding any matter which in terms of this Act is permitted or required to be prescribed;
- (b) after consultation with the Minister of Trade and Industry, regarding the sale of liquor, as defined in section 1 of the Liquor Act, 1989 (Act No. 27 of 1989), on the premises of any company airport;
- (c) after consultation with the Minister of Law and Order, regarding security arrangements in respect of any company airport;
- (d) regarding any other matter the regulation of which may, in the opinion of the Minister, be necessary or desirable in order to achieve or promote the objects of this Act.

(2) A regulation under subsection (1) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding six months or of both a fine and such imprisonment.

Interpretation of Act 63 of 1975

16. As from the date of the establishment of the company, section 3(2)(h) of the Expropriation Act, 1975 (Act No. 63 of 1975), shall be deemed to include the company.

Transitional provisions

17. (1) Notwithstanding any provision to the contrary in any other law, the Minister may, during the period from the date on which this section comes into operation to the transfer date, with the concurrence of the Shareholding Minister, the Minister of Finance and the Minister of State Expenditure, take such steps or authorize such thing to be done as may be necessary to promote—

- (a) the transfer to the company of aerodromes, assets, liabilities, rights or obligations mentioned in section 6(1)(a); and
- (b) the management on a commercial basis of the aerodromes mentioned in section 6(1).

(2) The steps contemplated in subsection (1) may include, by notice in the *Gazette*, the conditional or unconditional suspension of any provision of any law: Provided that such suspension shall —

- (a) not be inconsistent with the provisions of this Act; and
- (b) lapse on the transfer date.
- (3) (a) Notwithstanding any provision to the contrary in this Act, during the period mentioned in subsection (1) the Minister, the Shareholding Minister, the Minister of State Expenditure, the Minister of Finance and the company shall agree on the business plan and the conditions of the permission which will come into operation on the transfer date.
- (b) The said permission shall lapse at the end of the first financial year.
- (c) The company shall at least six months before the end of the financial year mentioned in paragraph (b) of this subsection, apply in the manner contemplated in section 12 for a permission.

Substitution of certain words in Act 51 of 1949

18. The International Air Services Act, 1949, is hereby amended by the substitution for the words "aerodrome" and "aerodromes", wherever they occur, of the words "airport" and "airports", respectively.

Amendment of section 1 of Act 74 of 1962, as amended by section 3 of Act 12 of 1965, section 1 of Act 83 of 1969, section 1 of Act 63 of 1981, section 1 of Act 4 of 1982, section 33 of Act 115 of 1990 and section 1 of Act 16 of 1992

19. Section 1 of the Aviation Act, 1962, is hereby amended—
- (a) by the deletion of the definition of "aerodrome";
 - (b) by the insertion of the following definition after the definition of "aircraft":

"'airport' means a defined area on any land or water or building intended to be used either wholly or in part for the arrival, departure or movement of aircraft, and includes any building, installation or equipment within any such area which is intended to be so used;"; and
 - (c) by the deletion of the definition of "liquor".

Repeal of sections 6, 6bis and 8 of Act 74 of 1962

20. Sections 6, 6bis and 8 of the Aviation Act, 1962, are hereby repealed.

Substitution of section 7 of Act 74 of 1962, as amended by section 46 of Act 97 of 1986

21. The following section is hereby substituted for section 7 of the Aviation Act, 1962:

"Acquisition of land or rights in connection with licensed airports

7. [(1)] The Minister may out of moneys appropriated by Parliament for the purpose—

- (a) [for the purpose of ensuring] in order to ensure that proper effect may be given to the provisions of any regulation made under paragraph (m) of subsection (1) of section *twenty-two*, acquire land and interests in and rights to and over land adjoining or adjacent to any [aerodrome not belonging to the State] airport in respect of which a licence under the regulations has been or is to be issued; and
- (b) acquire land and interests in and rights to and over land for the purpose of the erection and maintenance of warning lights and other aids to safety in air navigation (including pipe lines or power lines or the like, whether underground or overhead, required in connection with such lights or other aids) which are deemed necessary in connection with any [aerodrome not belonging to the State] airport in respect of which a licence under the regulations has been or is to be issued.

[(2) The provisions of subsection (2) of section six shall *mutatis mutandis* apply in respect of the acquisition of land, interests or rights under subsection (1) of this section].”

Substitution of section 9 of Act 74 of 1962, as amended by section 5 of Act 63 of 1981 and section 4 of Act 4 of 1982. 5

22. The following section is hereby substituted for section 9 of the Aviation Act, 1962:

“Establishment of airports on undermined or certain other land

9. [Notwithstanding the provisions of section ten no] (1) No [aerodrome] airport shall be established — 10

(a) on any undermined ground or within a distance of ninety-five metres from any undermined ground or any open mine excavation unless, in the opinion of the [Government Mining Engineer] regional director as defined in section 1 of the Minerals Act, 1991 (Act No. 50 of 1991), such [aerodrome] airport could be used with safety; or 15

(b) on any ground which in the opinion of the Minister of Mineral and Energy Affairs may be required for purposes of mining or prospecting for minerals, except [—

(i) in the case of an aerodrome contemplated in subsection (1) of section six, after consultation with the Minister of Mineral and Energy Affairs; or 20

(ii) in the case of any other aerodrome] with the approval of the said Minister.

(2) The Minister of Mineral and Energy Affairs may, subject to such conditions as he may deem necessary, delegate to the Director-General: Mineral and Energy Affairs or any other officer in the service of the Department of Mineral and Energy Affairs any power conferred upon him in terms of subsection (1).” 25

Substitution of section 10 of Act 74 of 1962, as amended by section 5 of Act 4 of 1982 and section 46 of Act 97 of 1986 30

23. The following section is hereby substituted for section 10 of the Aviation Act, 1962:

“Permission to use land held under any prospecting or mining permit or mining licence for airports 35

10. Notwithstanding anything contained in [Chapter X of the Mining Rights Act, 1967 (Act No. 20 of 1967)] the Minerals Act, 1991 (Act No. 50 of 1991), or any other law, the Minister may [use or] permit the use of [ground] land held under [mining title, or of open proclaimed land] any prospecting or mining permit or mining licence, 40 for the establishment of [aerodromes] airports or for landing places for aircraft, provided such use is not, in the opinion of the [Government Mining Engineer] regional director mentioned in section 9(1)(a), likely to interfere with mining operations or purposes incidental thereto.” 45

Amendment of section 15 of Act 74 of 1962, as amended by section 1 of Act 1 of 1984 46

24. Section 15 of the Aviation Act, 1962, is hereby amended by the deletion in paragraph (a) of subsection (1) of the words “or of the South African Railways Police Force”.

Amendment of section 22 of Act 74 of 1962, as amended by section 5 of Act 12 of 1965, section 3 of Act 83 of 1969, section 25 of Act 62 of 1973, section 7 of Act 4 of 1982, section 2 of Act 1 of 1984, section 5 of Act 16 of 1992 and section 16 of the Air Traffic and Navigation Services Company Act, 1993

25. Section 22 of the Aviation Act, 1962, is hereby amended — 5
- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (d) of the following subparagraph:
 - “(ii) the scales of charges at licensed [aerodromes] airports, except a company airport as defined in section 1 of the Airports Company Act, 1993 [or at aerodromes (whether licensed or not) established and maintained in terms of the provisions of section six, and exemption from payment or variation as to the payment of such charges];”;
 - (b) by the addition, in subsection (1), to paragraph (d) of the following subparagraph:
 - “(vi) technical, operational, security and safety standards in respect of a company airport as defined in section 1 of the Airports Company Act, 1993;”;
 - (c) by the deletion in subsection (1) of paragraph (e). 20

Substitution of certain words in Act 74 of 1962

26. The Aviation Act, 1962, is hereby amended, subject to sections 21, 22, 23 and 25 of this Act, by the substitution for the words “aerodrome” and “aerodromes”, wherever they occur, of the words “airport” and “airports”, respectively. 25

Amendment of section 1 of Act 10 of 1972, as amended by section 1 of Act 63 of 1978 and section 1 of Act 4 of 1981

27. Section 1 of the Civil Aviation Offences Act, 1972, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “aerodrome”;
 - (b) by the substitution in subsection (1) for the words “airport” and “aerodrome”, wherever they occur in the definition of “air navigation facility”, of the words “designated airport” and “airport”, respectively;
 - (c) by the substitution in subsection (1) for the definition of “airport” of the following definition:
 - “‘airport’ means [any aerodrome established and maintained] an airport as defined in [terms of] section [6] 1 of the Aviation Act, 1962 (Act No. 74 of 1962 [and includes any aerodrome or heliport designated by the Minister by notice in the Gazette as an airport for the purposes of this Act];”;
 - (d) by the substitution in subsection (1) for the definition of “airport manager” of the following definition:
 - “‘airport manager’ includes any person appointed in writing by the company as such and includes any person appointed in writing by the airport manager or the company to discharge any function imposed, or to exercise any power conferred, upon the airport manager by this Act;”;
 - (e) by the substitution in subsection (1) for paragraph (b) of the definition of “authorized person” of the following paragraph: 45

“(b) [any member of the Railways Police Force appointed under section 57(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)] any person appointed in writing by the company, with the approval of the Minister, as an authorized person for the purposes of this Act;” 5

(f) by the insertion in subsection (1) of the following definition after the definition of “commander”:

“‘company’ means the company as defined in section 1 of the Airports Company Act, 1993;” 10

(g) by the insertion in subsection (1) of the following definition after the definition of “convention country”:

“‘designated airport’ means any company airport as defined in section 1 of the Airports Company Act, 1993, and includes any airport or heliport designated by the Minister by notice in the Gazette as a designated airport for the purposes of this Act;” 15

(h) by the substitution in subsection (1) for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister of Transport [Affairs];” and

(i) by the substitution in subsection (1) for the word “airport”, wherever it occurs in the definition of “restricted area”, of the word “designated airport”. 20

Amendment of section 2B of Act 10 of 1972, as inserted by section 3 of Act 63 of 1978

28. Section 2B of the Civil Aviation Offences Act, 1972, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 25

“(a) an employee of the State or the company;”

Amendment of section 2J of Act 10 of 1972, as inserted by section 3 of Act 63 of 1978

29. Section 2J of the Civil Aviation Offences Act, 1972, is hereby amended by the substitution in subsection (4) for the word “Finance” of the words “State Expenditure”. 30

Amendment of section 2K of Act 10 of 1972, as inserted by section 3 of Act 63 of 1978

30. Section 2K of the Civil Aviation Offences Act, 1972, is hereby amended by the deletion in subsection (5) of the words “of the Railway Police Force or”.

Amendment of section 2L of Act 10 of 1972, as inserted by section 3 of Act 63 of 1978 and amended by section 2 of Act 4 of 1981 35

31. Section 2L of the Civil Aviation Offences Act, 1972, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) No charges or rates of compensation shall be prescribed under the regulations except [in consultation] with the concurrence of the Minister of [Finance] State Expenditure.” 40

Amendment of section 2M of Act 10 of 1972, as inserted by section 3 of Act 63 of 1978 and substituted by section 3 of Act 4 of 1981

32. Section 2M of the Civil Aviation Offences Act, 1972, is hereby amended by the insertion after the words “Director-General: Transport” of the words “or the managing director of the company”. 45

Insertion of section 2N in Act 10 of 1972

33. The following section is hereby inserted in the Civil Aviation Offences Act, 1972, after section 2M:

“Compensation to company

2N. The Minister may, to such extent as he may determine and with the concurrence of the Minister of State Expenditure, out of moneys appropriated by Parliament compensate the company for any cost it incurs which is directly related to the performance of its functions or duties in terms of the provisions of this Act and which the company cannot readily recover from the users of a company airport as defined in section 1 of the Airports Company Act, 1993.”

Substitution of certain words in Act 10 of 1972

34. The Civil Aviation Offences Act, 1972, is hereby amended, subject to section 27 of this Act, by the substitution for the words “aerodrome” and “airport”, wherever they occur, of the words “airport” and “designated airport”, respectively.

Amendment of section 3 of Act 27 of 1989, as amended by section 32 of Act 60 of 1989

35. Section 3 of the Liquor Act, 1989, is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:

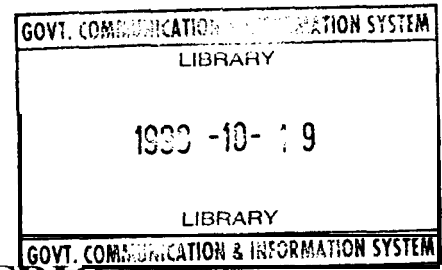
“(h) [the Department of Transport or a person to whom permission was granted in terms of section 6bis of the Aviation Act, 1962 (Act No. 74 of 1962); with regard to the sale of liquor by virtue of that section] the company as defined in section 1 of the Airports Company Act, 1993, or a person acting on behalf of the said company, with regard to the sale of liquor on the premises of a company airport as defined in section 1 of the said Act, but subject to any regulation that may be made under section 15(1)(b) of the said Act;”

Commencement of certain sections

36. Sections 18 up to and including 35 shall come into operation on the transfer date.

Short title and commencement

37. (1) This Act shall be called the Airports Company Act, 1993, and the provisions thereof, other than the provisions of sections 18 to 35, shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
(2) Different dates may be so fixed in respect of different provisions of this Act.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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No. 18798

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 470.

31 March 1998

No. 470.

31 Maart 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 7 of 1998: The South African National Roads Agency Limited and National Roads Act, 1998.

No. 7 van 1998: Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperken en op Nasionale Paaie, 1998.

ACT

To make provision for a national roads agency for the Republic to manage and control the Republic's national roads system and take charge, amongst others, of the development, maintenance and rehabilitation of national roads within the framework of government policy; for that purpose to provide for the establishment of The South African National Roads Agency Limited, a public company wholly owned by the State; to provide for the governance and management of that company ("the Agency") by a board of directors and a chief executive officer, respectively, and to define the Agency's powers and functions and financial and operational accountability, and regulate its functioning; to prescribe measures and requirements with regard to the Government's policy concerning national roads, the declaration of national roads by the Minister of Transport and the use and protection of national roads; to repeal or amend the provisions of certain laws relating to or relevant to national roads; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless inconsistent with the context—
 - (i) “advertisement” means a visible representation of a word, name, or abbreviation of a word or name, or any visible representation of a letter, figure, object, sign or symbol, or a light not intended for illumination or as a warning against danger, but does not include a road traffic sign; (ii) 20
 - (ii) “building restriction area” means the area consisting of land (but excluding land in an urban area)—
 - (a) situated alongside a national road within a distance of 60 metres from the boundary of the national road; or 25
 - (b) situated within a distance of 500 metres from any point of intersection; (iii)
 - (iii) “Chief Executive Officer” means the Chief Executive Officer of the Agency contemplated in section 19; (xii)
 - (iv) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xvii) 30
 - (v) “construct”, with regard to a road, including a national road, includes to widen, divert, alter, repair, upgrade and expand; (i)
 - (vi) “Department” means the Department of Transport in the national sphere of government; (iv) 35
 - (vii) “incorporation date” means the date on which the Agency is incorporated as a company in accordance with section 3 and issued with a certificate to commence business; (xiii)
 - (viii) “interprovincial bridge” means a bridge across the boundary between adjoining provinces of the Republic; (xiv) 40
 - (ix) “interstate bridge” means a bridge across the boundary between the Republic and any adjoining country; (xv)
 - (x) “land” includes a real right in or over any land; (x)
 - (xi) “Minister” means the Minister of Transport in the national sphere of government; (xviii) 45
 - (xii) “municipality”—
 - (a) until the legislation envisaged in section 155(2) of the Constitution takes effect, means any local government body vested with municipal legislative and executive jurisdiction (whether on an exclusive or a shared basis) in respect of a particular area in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), in compliance with section 155(1) of the Constitution; 50
 - (b) as from the date when that legislation takes effect, means any municipality as contemplated in that legislation; (xix)
 - (xiii) “national road”— 55
 - (a) means any road or route declared a national road under section 40(1); and
 - (b) includes any road or route which, in terms of section 40(5), is regarded and treated as a national road so declared; and

- (c) includes any part of the road which is a toll road as defined in this section, as well as any “interprovincial bridge” and “interstate bridge” as so defined which is used in conjunction with a national road; (xx)
- (xiv) “point of intersection” means the point where the centre line— 5
 - (a) of a national road meets the centre line of any road crossing the national road; or
 - (b) of any road meets the boundary of any national road with which it links up; (xvi)
- (xv) “Premier” includes the member of the Executive Council of a province designated by the Premier of the province for the purposes of this Act; (xxiii) 10
- (xvi) “prescribed” means prescribed from time to time by regulation; (xxviii)
- (xvii) “previous Act” means the National Roads Act, 1971 (Act No. 54 of 1971), and, where appropriate, includes any other law amended or repealed by this Act; (xxix) 15
- (xviii) “public road” means a road which the public has the right to use; (xxi)
- (xix) “regulation” means any regulation made and in force under section 58(1), and includes any regulation mentioned in section 58(3), for as long as it continues in force under section 58(3); (xxiv) 20
- (xx) “road” means a public road and includes, in addition to the roadway—
 - (a) the land of which the road consists or over which the road reserve in question extends;
 - (b) anything on that land forming part of, connected with, or belonging to the road; and 25
 - (c) land acquired for the construction of a connection between a national road and another road; (xxii)
- (xxi) “the Agency” means the national roads agency envisaged for the Republic by section 2 and which in terms of that section, is established by the incorporation of a company, named The South African National Roads Agency Limited, in accordance with section 3; (v) 30
- (xxii) “the Board” means the Agency’s Board of Directors contemplated in section 12; (vii)
- (xxiii) “the Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (vi) 35
- (xxiv) “the South African Roads Board” means the South African Roads Board established by section 2 of the South African Roads Board Act, 1988 (Act No. 74 of 1988); (viii)
- (xxv) “this Act” includes the Schedules and the regulations; (xi)
- (xxvi) “toll plaza” means a structure on a toll road where toll is payable in terms of this Act, or any electrical, electronic or mechanical device on a toll road for recording the liability to pay toll, or any combination of such a structure and such a device, and includes a toll gate; (xxvii) 40
- (xxvii) “toll road” means any toll road declared under subsection (1)(a) of section 27, the declaration of which is effective in terms of subsection (2) of that section, and includes any national road or portion of a national road (whether with or without any bridge or tunnel thereon) which, in terms of section 27(6), must be regarded and treated as a toll road; (xxvi) 45
- (xxviii) “township” means an area divided into erven or plots, whether with or without public open spaces, and into streets bounded by the erven, plots or open spaces and— 50
 - (a) established or recognised as a township under any law; or
 - (b) recognised by the Agency as a township for the purposes of this Act, to the extent so recognised; and (ix)
- (xxix) “urban area” means any area consisting of— 55
 - (a) a township mentioned in paragraph (a) of the definition of “township”, but excluding land in that area—
 - (i) which is commonage land; or
 - (ii) which is used or destined to be used mainly for farming or horticulture or the keeping of animals; or 60
 - (iii) which consists of any other open space which has not been developed or reserved for public purposes; or
 - (b) a township mentioned in paragraph (b) of that definition which the Agency by notice in the *Gazette* has declared to be an urban area for the purposes of this Act. (xxv) 65

CHAPTER 1

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED: INCORPORATION, ESTABLISHMENT AND RELATED MATTERS

Establishment of a national roads agency for Republic

2. (1) There will be a national roads agency for the Republic for the purpose of taking charge of the financing, management, control, planning, development, maintenance and rehabilitation of the South African national roads system. 5

(2) That agency will be established upon being incorporated as a company in accordance with section 3.

(3) The main objects of the agency and, accordingly, those of that company, will be to perform the functions specified in section 25 in pursuance of the purpose mentioned in subsection (1) of this section. 10

Incorporation of The South African National Roads Agency Limited

3. (1) The Minister must take all the steps that are necessary for the formation and incorporation of that agency as a public company with a share capital within the meaning of the Companies Act, subject to section 2, this section and section 4. 15

(2) Despite the provisions of the Companies Act, the State will be the only member and shareholder of that company upon its incorporation and at any time thereafter.

(3) Despite the provisions of the Companies Act—

(a) the Minister, who represents the State, will sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company; 20

(b) the Registrar of Companies must register the memorandum of association and articles of association as signed by the Minister, and incorporate the company as a public company under the name “The South African National Roads Agency Limited”, with the State as its only member and shareholder, and issue to the company a certificate to commence business with effect from the date of the company’s incorporation. 25

(4) (a) The State’s rights as member and shareholder of the Agency are to be exercised by the Minister. 30

(b) The relationship between the Agency and the Minister representing the State as the only member and shareholder, will be as defined in an agreement entered into by the Agency and the Minister for that purpose, subject to this Act.

Agency’s memorandum and articles of association

4. (1) The memorandum of association and articles of association of the Agency must be so drawn up that the contents thereof are consistent with this Act. 35

(2) Despite the Companies Act, an amendment of the memorandum of association or articles of association affecting any arrangement made by any provision of this Act, will not be operative or have any legal force unless and until the relevant provision of this Act has been amended accordingly and that amendment has come into effect. 40

Application of Companies Act to Agency

5. (1) The provisions of the Companies Act which are not in conflict with this Act, apply to the Agency, subject to subsection (2).

(2) A provision of the Companies Act will not apply to the Agency in the following circumstances, namely, where— 45

(a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or incapable of being applied; or

(b) the Minister of Trade and Industry has issued a declaration under section 6 with regard to the provision.

Certain provisions of Companies Act may be declared not applicable to Agency 50

6. (1) The Minister, on the recommendation of the Agency, may from time to time as

and when considered necessary, request the Minister of Trade and Industry to declare any particular provision of the Companies Act not to be applicable to the Agency.

(2) The request must be fully motivated, and the necessary particulars about the request must be made known by the Registrar of Companies, together with the motivation therefor, by notice in the *Gazette*. In that notice that Registrar must also invite interested persons who may have any objections to such a declaration, to submit their objections and representations to a person named in the notice, or, if sent by post, to place that person in possession of their objections and representations, not later than 21 days after the date of the notice. 5

(3) After having considered the objections and representations (if any) received within the 21 day period, the Minister of Trade and Industry, by notice in the *Gazette*, may declare the whole or any part of any provision of the Companies Act about which the above-mentioned request was made, not to be applicable to the Agency with effect from a date stated in that notice, if satisfied on reasonable grounds that the non-application of that provision to the Agency— 10

- (a) will contribute to the Agency's efficiency or will reduce its operating costs; and 15
- (b) will not reduce or limit the Agency's accountability as a public institution or from the requirements of transparency as regards its functioning and operations; and 20
- (c) will not be prejudicial to the rights, interests or claims of the Agency's creditors or employees or to the rights or interests of any other interested parties.

Agency the successor to certain property, assets and liabilities

7. (1) On the incorporation date, the Agency will become entitled to and have claim to any moneys which, immediately before that date, stand to the credit of the National Roads Fund, mentioned in section 2(1) of the previous Act. 25

(2) On the incorporation date, the following immovable property will pass to and vest in the Agency:

- (a) The immovable property of the South African Roads Board consisting of land, and any servitudes on or over land, on which national roads are situated; 30
- (b) land and any servitudes or other real rights with regard to land (including any right to use land temporarily), acquired by the South African Roads Board or the State in terms of the previous Act for the purposes of or in connection with national roads; 35
- (c) any other immovable property of the South African Roads Board acquired in terms of the previous Act from moneys made available from that National Roads Fund;
- (d) any State land on which a national road is situated, or any servitude or other real right with regard to land held by the State for the purposes of or in connection with a national road situated on the latter land. 40

(3) (a) The Minister and the Agency may enter into an agreement providing for the Agency to take over—

- (i) any assets (except immovable assets) of which the South African Roads Board is the owner for the purposes of or in terms of the previous Act; and 45
- (ii) any liabilities which were incurred by the South African Roads Board in terms of the previous Act or pursuant to its operations and activities thereunder.

(b) The assets and liabilities specified in that agreement, which the Minister must cause to be published in the *Gazette*, will pass to and vest in the Agency on the day on which that agreement is so published. 50

(4) (a) The Minister, by notice in the *Gazette*, may declare that any movable or immovable property belonging to and under the control of the State for the purposes of the previous Act and which is specified in the notice, except any immovable property mentioned in subsection (2)(b) and (d), will pass to and vest in the Agency on the date mentioned in the notice. 55

(b) The Minister must lay the notice mentioned in paragraph (a) on the table in the National Assembly within 14 days after publication of that notice in the *Gazette*, if the

National Assembly is sitting then, or, if the National Assembly is not sitting then, within 14 days after the beginning of its next sitting.

(5) Where any immovable property passes to and becomes vested in the Agency in terms of subsection (2), section 31 or 32 (as the case may be) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), will apply for the purpose of registering the Agency's newly acquired ownership of or entitlement to that immovable property. 5

(6) Where the ownership in any particular immovable property of the State has passed to and become vested in the Agency in terms of subsection (4), the Registrar of Deeds, upon being furnished with the notice that has been issued in respect of that immovable property in terms of that subsection, must— 10

(a) make the necessary entries in the appropriate registers kept by that Registrar in terms of the Deeds Registries Act, 1937; and

(b) also—

(i) make the necessary endorsements on the relevant title deeds and other documents or records relating to that immovable property; or 15

(ii) where applicable, issue a deed of grant in the name of the Agency in order to register the Agency's title to that property.

Nature of State's financial interest in Agency

8. (1) In exchange for the nett value of the assets invested in the Agency in terms of section 7, the State, as provided in an agreement entered into by the Agency and the Minister acting with the approval of the Minister of Finance, will be issued with fully paid-up shares in the Agency— 20

(a) for an amount equal to the nett value of the assets so invested in the Agency; or

(b) for an amount equal to a percentage, specified in the agreement, of the nett value of the assets so invested, subject to subsection (2). 25

(2) If the amount for which shares in the Agency are to be issued to the State is less than the nett value of the assets invested in the Agency, the Agency will be indebted to the State for an amount equal to the difference between the nett value of the assets so invested and the value of the shares so issued. The terms and conditions of that loan must be set out in the agreement mentioned in subsection (1). In that agreement provision may be made that the Agency issues the State with debentures for the whole or any part of the amount of the loan. 30

(3) For the purposes of this section, any reference to the nett value of the assets invested in the Agency, however expressed, must be understood to mean all the moneys mentioned in subsection (1) of section 7 plus the value of all the movable, immovable and other property (assets) made over or transferred to the Agency in terms of subsections (2), (3) and (4) of that section, minus an amount representing the sum of all the liabilities made over to the Agency under subsection (3) of that section. 35

(4) Where the value of any assets consisting of immovable property is to be determined for the purposes of this section, regard must be had to the criteria mentioned in section 12(1) and (5)(b), (c), (d), (e), (f) and (h) of the Expropriation Act, 1975 (Act No. 63 of 1975). 40

Financial year

9. The Agency's financial year will be from 1 April in any year to 31 March in the following year, both days included. 45

Judicial management, and liquidation

10. Despite the provisions of any other law, the Agency may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose. 50

Pre-incorporation acts on behalf of Agency

11. (1) Where, at any time before the incorporation date but after the promulgation of this Act in the *Gazette*, the Minister has selected and, under section 12(3), has appointed, with effect from the incorporation date, the Board's members belonging to the class mentioned in that section, the Minister, by written notice to those persons, may authorise them to act as members of the Board— 5

(a) for the purposes mentioned in subsections (2)(a) and (b) and (3)(a); and

(b) until their appointment as members of the Board takes effect.

(2) (a) Those acting members of the Board (hereafter called the acting appointed members) must meet on the date stated by the Minister in that notice to select, and, in accordance with section 19, to appoint with effect from the incorporation date, the first Chief Executive Officer. 10

(b) Those acting members (hereinafter called the acting appointed members) must thereafter forthwith issue a provisional letter of appointment to the person so appointed.

(c) The appointment of the first Chief Executive Officer on the authority of paragraph (b) must be ratified by the Board members mentioned in section 12(3) within seven days after the incorporation date. 15

(3) Despite any provisions to the contrary in the Companies Act or this Act—

(a) the appointed acting members and the person so appointed by them, will jointly, with effect from the date of that person's provisional letter of appointment until immediately before the incorporation date, be competent to perform any act and do anything which, had the Board been in existence during that period, would have been within its sphere of competence in terms of this Act, and which may be necessary to perform or do for the purpose of ensuring that the prospective national roads agency for the Republic is in a position to start functioning and commence its business as the Agency on the incorporation date; and 20 25

(b) that person, during that period, may act as Chief Executive Officer and perform any act and do anything within the sphere of competence of the Chief Executive Officer in terms of this Act, which may be necessary to perform or do to achieve the purpose mentioned in paragraph (a). 30

(4) Any act performed or thing done in terms of subsection (2) before the incorporation date, must be ratified by the Board at its first meeting on or after that date, and will have legal consequences for, be binding on the Agency and be regarded and treated for all purposes, as if performed or done from the very outset by the Board or the Chief Executive Officer (as the case may be). 35

CHAPTER 2

GOVERNANCE AND STAFFING OF AGENCY

Board of Directors

12. (1) The Agency is governed and controlled, in accordance with this Act, by a Board of Directors. The Board of Directors represents the Agency, and all acts of or under the authority of that Board will be the acts of the Agency. 40

(2) The Board consists of eight members of whom seven must be appointed by the Minister. The eighth member is the Chief Executive Officer, by virtue of holding that office. 45

(3) The members to be appointed, are the chairperson, who must be a fit and proper person for that office, and six additional members, of whom —

(a) one must be a representative of the Department of Finance who has been nominated by that Department; and

(b) five must be persons having special qualifications, skills, expertise or experience in matters concerning national roads or the business or operations of the Agency. 50

(4) A person who in terms of the Companies Act is disqualified from being appointed a director of a company, may not be appointed a member of the Board in terms of subsection (3). 55

(5) In applying the Companies Act to the Agency, the Chief Executive Officer will be regarded and treated as the Agency's managing director.

Terms of office, service conditions and remuneration of appointed members of Board

- 13.** (1) An appointed member of the Board— 5
- (a) holds office for a period of three years, unless a shorter term of office has been stipulated in the member's letter of appointment, subject to subsection (2) and section 14;
 - (b) serves as member on the terms and conditions determined by the Minister and specified in the member's letter of appointment. 10
- (2) An appointed member of the Board may resign therefrom on one month's written notice given to the Minister.
- (3) (a) A member of the Board, except the Chief Executive Officer and any appointed member who also holds any post or office in or under any department, administration or organisational component mentioned in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), or in or under any institution, organisation or body established by or under any other law and funded wholly or partly by the State, will be remunerated, at a daily rate determined by the Minister from time to time, for each day in any month (including any part of a day) on which the member was officially occupied with the business or affairs of the Agency. 15 20
- (b) However, an appointed member holding a post or office in or under such a department, administration or organisational component may, with the permission of that member's employer and the Minister of Finance, be paid an honorarium for services rendered as member of the Board. The honorarium will be determined by the Minister with the agreement of the Minister of Finance. 25
- (4) (a) The remuneration to which a member of the Board becomes entitled during any month in terms of subsection (3)(a), will be payable as a director's fee within one week after the end of that month.
- (b) For the purposes of subsection (3)(a) and paragraph (a) of this subsection, "month" means any one of the 12 months on the calendar. 30

Vacancies in Board

- 14.** (1) An appointed member of the Board vacates office—
- (a) in the case of resignation, when the member's resignation takes effect;
 - (b) when, in terms of the Companies Act, the member has become disqualified to serve as a director of a company; 35
 - (c) in the case of a member representing the Department of Finance, when that Department has requested the Minister in writing to substitute another representative for its serving representative on the Board.
- (2) The Minister may remove any appointed member of the Board from office—
- (a) for misconduct; 40
 - (b) for failing to perform the duties of a member or to perform them diligently and efficiently;
 - (c) if, because of any physical or mental illness or disability, the member has become incapable of performing a member's duties or performing them efficiently; 45
 - (d) for being absent from three consecutive meetings of the Board without the chairperson's permission and without good reason.
- (3) (a) A vacancy in the office of an appointed member must be filled by the Minister, as soon as possible, through the appointment of another member who meets the requirements stipulated in section 12(3) for the office that has become vacant. 50
- (b) A member appointed in terms of paragraph (a) holds office for the unexpired portion of the predecessor's term of office.

Board meetings

- 15.** (1) Any meeting of the Board will be held at the place and time determined by the Board. 55
- (2) A quorum for any meeting of the Board will be five members.
- (3) The decision of the majority of the members present at any meeting of the Board

will be the decision of the Board, provided there is a quorum. Where there is an equality of votes, the chairperson who has a casting vote in addition to a deliberative vote, must exercise that casting vote so as to break the deadlock in decision making.

(4) Except as provided by this section, the Board determines the procedure applicable at its meetings.

5

Committees of Board

16. (1) The Board may from time to time appoint one or more committees to assist the Board in performing its functions.

(2) A committee—

(a) may consist of members of the Board or of one or more of those members and one or more other persons. However, a committee must be chaired by a committee member who is also a member of the Board; 10

(b) may be a standing committee or be appointed for a particular task and period only;

(c) may perform investigatory and research functions only, upon the completion of which it must report its findings, conclusions and recommendations to the Board for further action (if any); 15

(d) may determine the procedure to be followed with regard to a matter relevant at a meeting only in so far as this section and any rules made by the Board in terms of subsection (4), do not make any provision for the matter. 20

(3) A majority of all the members of a committee will form a quorum.

(4) The procedure applicable at the meetings of any committee will be as determined by rules which the Board must make for that purpose.

(5) Committee members who are not also members of the Board, may be remunerated on the same basis as that provided for in section 13(3)(a) which, for that purpose, will apply to those committee members, reading in the changes necessary in the context. However, in so applying that section to committee members, the daily rate of remuneration mentioned therein must be determined by the Board but may not exceed the maximum amount that the Minister may fix from time to time and make known to the Board by written notice. 25 30

(6) A member of any committee holds office at the Board's pleasure.

(7) The Board may fill a vacancy in any committee.

Board and committees to keep minutes

17. (1) The Board and any committee must have minutes prepared and kept of the proceedings of their respective meetings and must have copies of the minutes circulated to their respective members. 35

(2) The minutes so prepared, when signed at a next meeting by the person who chairs that meeting, will, in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute and will be sufficient evidence of those proceedings and matters at any proceedings before a court of law, any tribunal or a commission of inquiry. 40

Delegation and assignment of functions by Board

18. (1) (a) Subject to subsection (2), the Board by special resolution may delegate any of the powers, functions or duties conferred or imposed on it by the operation of section 12(1) or conferred or imposed on it elsewhere by this Act, to any appointed member of the Board or the Chief Executive Officer, or any employee of the Agency. 45

(b) However, the Agency will not be divested of any power nor be relieved of any function or duty it may have delegated.

(2) The delegation—

(a) may be made on and subject to any conditions determined by the Board; 50

(b) may be given together with the power to subdelegate, on and subject to any conditions so determined (if any);

(c) must be communicated to the delegatee in writing. The written communica-

tion must contain full particulars of the matters being delegated and of the conditions determined under paragraph (a), if any, and, where the power of sub-delegation is also conferred, must state that fact as well as any conditions determined under paragraph (b), if any.

(3) The Board, by special resolution, may at any time— 5

(a) amend or revoke a delegation made under subsection (1);

(b) withdraw any decision made by the delegatee with regard to a delegated matter and decide the matter itself.

(4) The Board may from time to time, at its pleasure, entrust any of its powers, functions or duties to the Chief Executive Officer or any appointed member of the Board or any employee of the Agency, subject to the Board's instructions, supervision and control. 10

(5) The powers, functions and duties conferred and imposed on the Board by this section and those contemplated in the following sections, may not be delegated or entrusted in terms of subsection (1) or (4): 15

(a) Section 20(2) and (4);

(b) section 21;

(c) section 22(1);

(d) section 27(1);

(e) section 28, in so far as the Board necessarily has to decide on the conclusion and contents of the agreement contemplated in that section; 20

(f) section 35, in so far as the Board necessarily has to decide on the Agency's business plan and strategic plan.

Chief Executive Officer: Appointment and functions

19. (1) (a) The Agency's organisation and its day to day business and operations will be under the charge and general management and control of the Chief Executive Officer appointed for the Agency in terms of subsection (2), subject to the general or special directions and instructions that the Board may issue to the Chief Executive Officer from time to time (if any). 25

(b) The Chief Executive Officer will be the accounting officer and chief administrative and executive officer of the Agency. 30

(c) Any person appointed in that office will serve, in addition, as a member of the Board during incumbency of that office, and will perform all the functions and duties of a managing director as far as the Agency as company is concerned.

(2) Subject to section 11(2), the members of the Board mentioned in section 12(3) must appoint as Chief Executive Officer of the Agency a fit and proper person who is suitable for that office. 35

(3) A person who in terms of the Companies Act is disqualified from being appointed a director of a company, may not be appointed as Chief Executive Officer.

(4) The Chief Executive Officer may not take up any other employment or take on and perform any work for pay or reward outside the duties of that office, except with the written permission of the Minister, on the recommendation of the Board, given beforehand. 40

(5) (a) The Chief Executive Officer may resign from office on one month's written notice given to the Board. However, when the Board is not sitting, the notice of resignation may be handed to the chairperson or secretary of the Board for the Board's attention. A notice of resignation so handed in, will be regarded and treated as having been received by the Board on the same day. 45

(b) The secretary of the Board must ensure that a copy of the Chief Executive Officer's notice of resignation is forwarded to the Minister forthwith. 50

Chief Executive Officer: Vacation of and removal from office

20. (1) The Chief Executive Officer vacates office—

(a) in the case of resignation, when the resignation takes effect;

(b) when, in terms of the Companies Act, the person holding that office has become disqualified to serve as a director of a company; 55

(c) upon having been removed from office in terms of subsection (2).

(2) Subject to subsection (3), the Minister, at the request of the Board, may remove the Chief Executive Officer from office—

- (a) for misconduct;
- (b) for failing to perform the duties connected with that office or to perform them diligently and efficiently;
- (c) if, because of any physical or mental illness or disability, the holder of that office has become incapable of performing or efficiently performing the functions and duties connected with that office.

(3) The Chief Executive Officer may not be removed from office unless the Minister is satisfied that removal from office is justified in the circumstances. However, where the allegations that are relied on by the Board in making that request are not admitted or are denied or are said by the Chief Executive Officer not to justify removal, the Minister may not decide the matter unless the Minister has appointed an impartial person to investigate those allegations, and—

- (a) the investigator has given the Chief Executive Officer sufficient opportunity to respond to those allegations or show cause why they do not justify removal from office (as the case may be), and to make representations and give whatever explanations may be regarded necessary; and
- (b) has duly considered the investigator's report as to the truth or accuracy, or otherwise, of those allegations and/or as to the question whether or not they are sufficient to justify removal from office.

(4) The Board may suspend the Chief Executive Officer from office pending the outcome of the investigation on any condition as to remuneration that the Minister may approve and that is fair in the circumstances.

Acting Chief Executive Officer

21. (1) The Board may appoint any employee of the Agency who is not disqualified in terms of the Companies Act to be a director of a company, to act as Chief Executive Officer—

- (a) during any period that the Chief Executive Officer is absent from the Republic;
- (b) when, because of illness or incapacity, the holder of that office is temporarily unable to perform the duties connected with that office;
- (c) while that office is vacant; or
- (d) if the holder of that office has been suspended under section 20(4), for the duration of the period of suspension.

(2) A person appointed to act as Chief Executive Officer will, for the duration of the period of appointment, have the status, be entitled to all the privileges, be subject to all the obligations and be competent to exercise and perform all the powers, functions and duties, conferred and imposed on the Chief Executive Officer in terms of this Act, and any act or thing performed or done or omitted by that person during that period of appointment, will be regarded and treated for the purposes of this Act as having been performed, done or omitted by the Chief Executive Officer.

Delegations by Chief Executive Officer

22. (1) The Chief Executive Officer, with the Board's approval, may delegate any of the powers, functions or duties of that office in terms of this Act, to any employee of the Agency.

(2) Section 18(1)(b), (2)(a) and (c) and (3), will apply, reading in the changes necessary in the context, to any delegation in terms of this section.

Staff of Agency

23. (1) (a) Subject to the general or special directions of the Board (if any), the Chief Executive Officer may appoint staff for the Agency to perform the work necessary for or arising from the performance of the Agency's functions in terms of this Act.

(b) The remuneration, allowances and service benefits of the Agency's staff will be as determined by the Board from time to time.

(2) Employees of the Department may by agreement between the Agency and the Department and with their consent, be transferred to the service of the Agency in a permanent capacity.

(3) The transfer of those employees will be subject to the terms of and arrangements made by that agreement and to the following conditions, namely that—

- (a) the salaries or wages, and the allowances (if any) to be paid to them, and service benefits due to them, by the Agency, may not be less than those payable or due to them by the Department immediately before transfer; and
- (b) those employees' respective periods of pensionable service with the State will be regarded and treated as pensionable service for the purposes of any pension fund or scheme of which they may become members after transfer. If, upon the transfer of those employees' benefits from the Government Service Pension Fund to the first-mentioned pension fund or scheme there is an actuarial deficit in the firstmentioned pension fund in respect of those employees' pensions, the deficit must be made up by the Agency or the Department, or both, as provided for in that agreement;
- (c) the leave which had been accumulated by each of those employees whilst in the service of the State, will be regarded and treated as if it were leave accumulated by such an employee in the service of the Agency, except where the employee has requested the Department in writing to be paid the cash value of the accumulated leave, in which case the Department must make that payment. Liability for the cost of either arrangement will be as stipulated in that agreement.

(4) (a) The Minister, at the request of the Agency, may place any person in the service of the Department at the disposal of the Agency in accordance with section 15(3) of the Public Service Act, 1994, to perform service with the Agency for a period the Minister considers fit. However, the Minister may do so only with the person's consent.

(b) For as long as that person renders service with the Agency, the Agency must compensate the Department for the remuneration and allowances paid by the Department to that person, and for any other moneys spent by the Department on that person's other service benefits and any other costs to the Department arising from placing that person at the Agency's disposal.

Fair and equitable employment practices

24. The Agency must establish and follow employment practices which are fair and equitable.

CHAPTER 3

FUNCTIONS, POWERS AND RESPONSIBILITIES OF AGENCY

Main functions of Agency

25. (1) The Agency, within the framework of government policy, is responsible for, and is hereby given power to perform, all strategic planning with regard to the South African national roads system, as well as the planning, design, construction, operation, management, control, maintenance and rehabilitation of national roads for the Republic, and is responsible for the financing of all those functions in accordance with its business and financial plan, so as to ensure that government's goals and policy objectives concerning national roads are achieved, subject to section 32(3).

(2) For the purposes of subsection (1)—

- (a) the Agency, on the incorporation date, will take over from the South African Roads Board the responsibility for all projects and work which, before that date, had been commenced in terms of the previous Act by the South African Roads Board in connection with the planning, design, construction, operation,

- management, control, maintenance and rehabilitation of a national road or the planning of a proposed national road, and which is still pending on that date;
- (b) the Agency, as from the incorporation date, will be competent to continue with and to carry out those projects and that work or to have them carried out subject to the provisions of this Act and any existing contracts and agreements concluded by the South African Roads Board with regard to the execution of the projects or the performance of the work. 5

(3) Except in so far as this Act provides otherwise, the responsibility and capacity to perform the functions mentioned in subsection (1) in the Republic, are entrusted to the Agency only. 10

Additional powers of Agency

26. In addition to the Agency's main powers and functions under section 25, the Agency is competent—

- (a) at the request of a municipality or the Premier of a province, and with the Minister's approval, to perform any work in connection with any road (whether a national road or a road of which that municipality or province is the road authority), including the planning, design and construction of such a road, or to have it done under its supervision, for the account of that municipality or province. The Agency may charge a fee for any service rendered under this paragraph; 15 20
- (b) to perform any of the functions mentioned in section 25(1), or work for the purposes of or in connection with functions of that nature, in any other country, in accordance with and subject to section 31 and the provisions of an operating agreement contemplated in section 31;
- (c) to appoint any private person, institution or body, in terms of a contract concluded for that purpose, in order to perform any work on behalf of the Agency with regard to the planning or design of a national road or proposed national road or the construction, operation, management, control, maintenance or rehabilitation of a national road, or in order to perform any work in the execution of a project or in connection therewith, and to monitor the execution and the work performance; 25 30
- (d) to participate with the Minister's approval in ventures, involving national roads and other roads, jointly with the road authorities, or (as the case may be) any private persons or bodies, who have or will have ownership or control of the other roads; 35
- (e) to provide, establish, erect and maintain facilities on national roads for the convenience and safety of road users;
- (f) to operate any national road or part thereof as a toll road and levy a toll on the users of such a road as provided for in this Chapter, and to collect the toll or have it collected by any authorised person, and for those purposes to provide, establish, erect, operate and maintain toll plazas on a national road, subject to section 27 or 28; 40
- (g) to charge a levy, fee or rent for any authorisation, approval or permission that may be granted or given by the Agency to any person from time to time in terms of section 44, 48, 50 or 52 for the provision, construction, erection, establishment, carrying on or operation on, over or underneath any national road, of anything provided for in the section concerned; 45
- (h) to fence any national road;
- (i) to plant trees, shrubs, other plants or grass, and protect or promote any vegetation, alongside the roadways of national roads, and to take any other steps or perform any other work considered desirable for the convenience of users of a national road or the appearance of a national road or in order to prevent soil erosion on a national road or to prevent it arising as a result of the construction of a national road; 50
- (j) to establish and operate an information and management system concerning national roads; 55
- (k) to use any portion of a national road that is not immediately required for traffic purposes, for any purposes which the Agency considers fit, subject to this Act;
- (l) to exploit, for gain or reward, any immovable property owned by or under the control of the Agency (except roads), that is not used or immediately required 60

- for use in connection with the Agency's organisation or administration or its functions, operations, projects or work in terms of this Act;
- (m) to undertake or conduct any research, investigations or inquiries and collect any information in connection with roads, whether in the Republic or elsewhere; 5
 - (n) to advise the Minister about any matter relating to a particular national road or to national roads generally;
 - (o) to recommend to the Minister the introduction of legislation with regard to roads or road traffic;
 - (p) to advise the Minister, on request, on questions with regard to roads which may arise with the government of any other country; 10
 - (q) to take out insurance against any risk, loss or damage connected with the exercise of its powers or the performance of its functions or duties in terms of this Act;
 - (r) to liaise with bodies of professional persons performing work with regard to national roads in the Republic or similar roads elsewhere; 15
 - (s) to liaise and exchange information, knowledge and expertise with the official bodies or authorities entrusted with control over roads of a national or international character in other countries, and to participate in the conferences, seminars and workshops of those bodies or authorities and in the activities of any multinational or international association of those bodies or authorities; 20
 - (t) to purchase, hire or otherwise acquire, and hold, and to sell, exchange or let, or, with the Minister's approval, to donate or otherwise dispose of or deal with, movable or immovable property for the purposes of this Act, including office accommodation for the Board and the Agency's employees. However, immovable property of a value exceeding R2 000 000 or any higher amount that the Minister from time to time may determine by notice in the *Gazette*, may not be sold or otherwise alienated except with the approval of the Minister; 25 30
 - (u) to grant a bursary, loan or subsidy to any person for study or research in any subject or field in connection with roads, or grant a subsidy to any institution or body engaged in research of that nature, if the study or research, in the Agency's opinion, will help it in achieving its objects and performing its functions in terms of this Act or will contribute to efficiency or economy within the Agency; 35
 - (v) to exercise any power and perform any function conferred or imposed on the Agency elsewhere by or in terms of this Act or by any other Act of Parliament; and
 - (w) to do anything else which is reasonably ancillary to any of its main functions and powers in terms of section 25. 40

Levying of toll by Agency

- 27. (1)** Subject to the provisions of this section, the Agency—
- (a) with the Minister's approval—
 - (i) may declare any specified national road or any specified portion thereof, including any bridge or tunnel on a national road, to be a toll road for the purposes of this Act; and 45
 - (ii) may amend or withdraw any declaration so made;
 - (b) for the driving or use of any vehicle on a toll road, may levy and collect a toll the amount of which has been determined and made known in terms of subsection (3), which will be payable at a toll plaza by the person so driving or using the vehicle, or at any other place subject to the conditions that the Agency may determine and so make known; 50
 - (c) may grant exemption from the payment of toll on a particular toll road—
 - (i) in respect of all vehicles of a category determined by the Agency and specified in a notice in terms of subsection (2), or in respect of the vehicles of a category so determined and specified which are driven or used on the toll road at a time so determined and specified; 55

- (ii) to all users of the road of a category determined by the Agency and specified in such a notice, irrespective of the vehicles driven or used by them on the toll road, or to users of the road of a category so determined and specified when driving or using any vehicles on the toll road at a time so determined and specified; 5
- (d) may restrict the levying of toll on a particular toll road to the hours or other times determined by the Agency and specified in such a notice;
- (e) may suspend the levying of toll on a particular toll road for any specified or unspecified period, whether in respect of all vehicles generally, or in respect of all vehicles of a category determined by the Agency and specified in such a notice, and resume the levying of toll after the suspension; 10
- (f) may withdraw the following, namely—
 - (i) any exemption under paragraph (c);
 - (ii) any restriction under paragraph (d);
 - (iii) any suspension under paragraph (e). 15
- (2) A declaration, amendment, withdrawal, exemption, restriction or suspension under subsection (1), will become effective only 14 days after a notice to that effect by the Agency has been published in the *Gazette*.
- (3) The amount of toll that may be levied under subsection (1), any rebate thereon and any increase or reduction thereof— 20
 - (a) is determined by the Minister on the recommendation of the Agency;
 - (b) may differ in respect of—
 - (i) different toll roads;
 - (ii) different vehicles or different categories of vehicles driven or used on a toll road; 25
 - (iii) different times at which any vehicle or any vehicle of a particular category is driven or used on a toll road;
 - (iv) different categories of road users, irrespective of the vehicles driven or used by them;
 - (c) must be made known by the head of the Department by notice in the *Gazette*; 30
 - (d) will be payable from a date and time determined by the Minister on the recommendation of the Agency, and must be specified in that notice. However, that date may not be earlier than 14 days after the date on which that notice was published in the *Gazette*.
- (4) The Minister will not give approval for the declaration of a toll road under subsection (1)(a), unless— 35
 - (a) the Agency, in the prescribed manner, has given notice, generally, of the proposed declaration, and in the notice—
 - (i) has given an indication of the approximate position of the toll plaza contemplated for the proposed toll road; 40
 - (ii) has invited interested persons to comment and make representations on the proposed declaration and the position of the toll plaza, and has directed them to furnish their written comments and representations to the Agency not later than the date mentioned in the notice. However, a period of at least 30 days must be allowed for that purpose; 45
 - (b) the Agency in writing—
 - (i) has requested the Premier in whose province the road proposed as a toll road is situated, to comment on the proposed declaration and any other matter with regard to the toll road (and particularly, as to the position of the toll plaza) within a specified period (which may not be shorter than 60 days); and 50
 - (ii) has given every municipality in whose area of jurisdiction that road is situated the same opportunity to so comment;
 - (c) the Agency, in applying for the Minister's approval for the declaration, has forwarded its proposals in that regard to the Minister together with a report on the comments and representations that have been received (if any). In that report the Agency must indicate the extent to which any of the matters raised in those comments and representations have been accommodated in those proposals; and 55

- (d) the Minister is satisfied that the Agency has considered those comments and representations.

Where the Agency has failed to comply with paragraph (a), (b) or (c), or if the Minister is not satisfied as required by paragraph (d), the Minister must refer the Agency's application and proposals back to it and order its proper compliance with the relevant paragraph or (as the case may be) its proper consideration of the comments and representations, before the application and the Agency's proposals will be considered for approval.

(5) Any person liable for toll who, at a toll plaza or other place for the payment of toll determined and made known in terms of subsection (1), refuses or fails to pay the amount of toll that is due—

- (a) is guilty of an offence and punishable on conviction with imprisonment for a period not longer than six months or a fine, or with both the term of imprisonment and the fine; and
- (b) is liable, in addition, to pay to the Agency a civil fine of R1 000. This amount may be increased in 1999 and annually thereafter in accordance with the increase in the official consumer price index for the relevant year as published in the *Gazette*.

(6) Any national road or portion of a national road (including any bridge or tunnel thereon) which under section 9 of the previous Act had been declared a toll road for the purposes of that Act and which immediately before the incorporation date exists and is operated as such under the previous Act, will be regarded and treated for all purposes as if it had been declared a toll road under subsection (1) of this section.

Operation of toll roads and levying of toll by authorised persons

28. (1) Despite section 27, the Agency may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised—

- (a) to operate, manage, control and maintain a national road or portion thereof which is a toll road in terms of section 27 or to operate, manage and control a toll plaza at any toll road; or
- (b) to finance, plan, design, construct, maintain or rehabilitate such a national road or such a portion of a national road and to operate, manage and control it as a toll road.

(2) That person (in this section called the authorised person) will be entitled, subject to subsections (3) and (4)—

- (a) to levy and collect toll on behalf of the Agency or for own account (as may be provided for in the agreement)—
 - (i) on the toll road specified in the agreement;
 - (ii) during the period so specified; and
 - (iii) in accordance with the provisions of the agreement only; and
- (b) in the circumstances mentioned in subsection (1)(b), to construct or erect, at own cost, a toll plaza and any facilities connected therewith for the purpose of levying and collecting toll.

(3) Where the agreement provides for any of the matters mentioned in section 27(1)(b), (c), (d), (e) and (f)(ii), the authorised person will be subject to the duties imposed on the Agency by that section in all respects as if the authorised person were the Agency.

(4) The amount of the toll that may be levied by an authorised person as well as any rebate on that amount or any increase or reduction thereof, will be determined in the manner provided for in section 27(3), which section will apply, reading in the changes necessary in the context, and, if applicable, the changes necessitated by virtue of the agreement between the Agency and the authorised person.

Points demerit system

29. (1) Subject to this section, the Agency, with the Minister's approval, may determine, set up and apply a points demerit system with regard to persons who refuse or fail to pay the amount of any toll for which they are liable to the Agency in terms of section 27 or 28, and whereby provision is made—

- (a) for recording a specified number of demerit points against the name of the offender for each occasion on which the offender refuses or fails to pay the toll;
- (b) for imposing any specified civil penalty and any sanction mentioned in subsection (2)(b) on any offender whose demerit points equal or exceed a specified number. 5
- (2) (a) Without limiting the Agency's powers under subsection (1)—
 - (i) with regard to the recording of demerit points against offenders, provision may be made that the number of demerit points that may be recorded per occasion of non-payment of toll may be increased in accordance with a specified sliding scale or formula— 10
 - (aa) for second and subsequent cases of non-payment of toll;
 - (bb) according to the size of the amounts determined as toll, so that the greater the amount determined as toll, the higher the number of demerit points recorded upon not paying the toll. 15
 - (b) In addition to or instead of a civil penalty, any one of the following sanctions may be imposed on offenders in appropriate circumstances:
 - (i) A reprimand and a warning issued in writing; or
 - (ii) suspension of the offender's right to use the toll road concerned. The suspension will be for a period determined by the Agency and specified in its written notice of suspension to the offender; or 20
 - (iii) a prohibition on the use of that road, issued in writing by the Agency; or
 - (iv) any prescribed sanction that is lesser than that provided for in subparagraph (ii) or (iii).
- (3) The Minister will not grant approval in terms of subsection (1), unless— 25
 - (a) the Agency, in the prescribed manner, has given notice of the proposed introduction of the points demerit system, and in the notice—
 - (i) has broadly outlined the proposed system; and
 - (ii) has invited interested persons to comment on the proposed points demerit system and, in particular, on the civil penalties and other sanctions proposed, and has invited them to furnish their written comments and representations to the Agency not later than 30 days after the date of the notice; 30
 - (b) the Agency, in applying for the Minister's approval, has forwarded its proposals with regard to the points demerit system to the Minister together with a report on the comments and representations that have been received (if any). In that report the Agency must indicate the extent to which any of the matters raised in those comments and representations have been accommodated in those proposals; and 35
 - (c) satisfied that the Agency has considered those comments and representations. 40

Where the Agency has failed to comply with paragraph (a) or (b), or if the Minister is not satisfied as required by paragraph (c), the Minister must refer the Agency's application and proposals back to it and order its proper compliance with that paragraph or (as the case may be) its proper consideration of the comments and representations, before the application and the Agency's proposals will be considered for approval. 45

- (4) The provisions of any points demerit system as approved by the Minister must be published in the prescribed manner, and will take effect and become enforceable and binding 30 days after publication.
- (5) The Agency may not impose any civil penalty or other sanction on any person in terms of subsection (2)(b) unless the Agency beforehand has applied the rules of natural justice with regard to the person. 50

Agency may institute legal proceedings to recover outstanding toll moneys

- 30.** (1) The Agency may institute legal proceedings to recover toll moneys owing to it by any person liable for toll in terms of this Act.
- (2) The Agency's right to do so will not be reduced, limited or affected in any other way where, and only because— 55

- (a) the person concerned has been convicted and sentenced in the circumstances mentioned in paragraph (a) of section 27(5), or has paid or is liable to pay the civil fine provided for in paragraph (b) of that section; or
- (b) a civil penalty or other sanction has been imposed in terms of section 29 on the person concerned.

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Agency may render assistance to other countries in certain circumstances

31. (1) Where the Republic and any other country have entered into an agreement in terms of which the Republic undertakes to assist the other country in connection with the planning, design, construction, operation, management, control, maintenance or rehabilitation of any road of a national or main character in that other country, the Agency, subject to paragraph (b), may in that other country perform any function or work or undertake any operations with regard to the agreed assistance—

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- (a) which, in terms of this Act, it is competent to perform or undertake in the Republic, if and to the extent requested thereto by the Government of the Republic or if designated for that purpose by a provision of the agreement to which the Government of the Republic has agreed after consultation with the Agency; and
- (b) in accordance with an operating agreement entered into between the Agency, the Government of the Republic and the government of that other country.

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(2) The Agency may not spend its own funds in performing any function or work or undertaking any operations in another country in terms of subsection (1) and may, in addition, charge a fee for so performing any function or work or so undertaking any operations.

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Protection of national interest and Republic's strategic and economic interests

32. (1) If the Agency should act contrary to the national interest or the strategic or economic interests of the Republic, the Minister, by notice in writing to the Board, may order the Agency to discontinue the offending act or conduct.

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(2) The Board and the Chief Executive Officer are responsible to ensure that any lawful order issued under subsection (1) is complied with.

(3) (a) The Minister may request the Agency in writing to plan, design and construct a new national road or to maintain or rehabilitate any particular national road, despite the fact that such a project has not been budgeted for by the Agency and is not included in its business and financial plan, subject to paragraph (b).

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(b) The Agency must comply with the Minister's request and commence with the project if—

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- (i) the Minister has certified the project as being urgently necessary in the national interest or for the strategic or economic interests of the Republic; and
- (ii) the State bears the cost of the project and makes the necessary funds available to the Agency for that purpose.

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CHAPTER 4

FINANCES AND ACCOUNTABILITY

Loans and Government guarantees for loans

33. (1) (a) The State, represented by the Minister, may grant loans to the Agency from moneys made available by Parliament for that purpose.

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(b) The Agency will pay interest on such a loan at a rate determined by the Minister acting with the agreement of the Minister of Finance, and must repay the loan in the instalments and within the period determined by the Minister so acting.

(2) (a) The Agency, with the written permission of the Minister granted with the agreement of the Minister of Finance, may raise loans from any other source to finance any expenditure that may be incurred by the Agency during any financial year for the purposes of the planning, design, construction, maintenance or rehabilitation of any national road.

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(b) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.

(3) The State, represented by the Minister acting with the agreement of the Minister of Finance, may guarantee any loan raised by the Agency in terms of subsection (2).

Funding of Agency

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34. (1) The Agency is funded and provided with capital from—

- (a) the capital invested in or lent to the Agency as contemplated in section 8;
- (b) the levies on petrol and distillate fuel to be paid to the Agency in compliance with or in terms of any law by or in terms of which that levy is imposed;
- (c) loans granted to or raised by the Agency in terms of section 33;
- (d) interest on the Agency's cash balances or on moneys invested by it;
- (e) income earned from the Agency's participation in joint ventures in terms of section 26(d);
- (f) income derived from the sale of the Agency's assets;
- (g) all toll payable to the Agency in terms of Chapter 3;
- (h) fines payable by persons as penalty on their conviction of offences created by this Act, and all civil fines or penalties payable by persons for contravening of this Act, whether imposed under section 27(5) or through the application of a points demerit system in terms of section 29, or otherwise;
- (i) income generated through developing, leasing out or otherwise managing its assets within the scope of this Act;
- (j) any other levies and any fees, rentals or other moneys charged by and payable to the Agency in terms of this Act;
- (k) moneys appropriated by Parliament from time to time to supplement the Agency's funds; and
- (l) moneys received by way of grant, donation or inheritance from any source, whether inside or outside the Republic.

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(2) Moneys that in terms of subsection (1) are the funds of the Agency, will be used in accordance with the Agency's business and financial plan as approved by the Minister, to meet the expenditure incurred by the Agency in connection with its functioning, operations and work in terms of this Act.

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(3) The Agency must keep separate accounts of all moneys received as toll or otherwise in connection with toll roads and of the interest earned on the investment of those moneys. Those moneys may be used only for—

- (a) meeting expenditure connected with the acquisition of land for toll roads, any investigations and surveys with regard to toll roads and the planning, designing and construction of, and any other work in connection with, toll roads, including the erection of toll plazas and any facilities in connection therewith;
- (b) the maintenance and operation of toll roads and toll plazas and any facilities connected with toll roads and toll plazas;
- (c) paying off any loan mentioned in section 61(5)(a) or raised in terms of section 33 to finance toll roads, and the payment of interest on such a loan.

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(4) For the purposes of subsection (1)(b)—

- (a) "distillate fuel" means diesel fuel, and includes any other substance, or any mixture of diesel fuel and such other substance, which is normally capable of being used as fuel in a compression ignition engine; and
- (b) "petrol" means, in addition to petrol, any other substance, or any mixture of petrol and such other substance, which is normally capable of being used as fuel in a spark ignition engine.

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Business and financial plan, and strategic plan

35. (1) (a) Not later than 30 days before the end of each financial year the Agency must submit its business and financial plan for the following financial year to the Minister for approval.

(b) However, the business and financial plan for the Agency's first financial year must be submitted to the Minister for approval within 90 days after the incorporation date. 5

(2) A business and financial plan must set out and explain the Agency's proposed operations, projects, activities and other objectives for the following financial year, as well as—

(a) the cost of those operations, projects, activities and other objectives; 10

(b) the manner in which it is proposed to finance them;

(c) the planned performance indicators applicable to them;

(d) a statement of the Agency's estimated income and expenditure for that financial year;

(e) any other information and particulars that may be prescribed; and 15

(f) any additional relevant information that may be requested by the Minister in writing.

(3) (a) The Agency must submit to the Minister for approval, not later than 30 days before the end of its first financial year and of every financial year thereafter, a strategic plan covering the period of five years commencing on the first day of the first-following financial year concerned. 20

(b) A strategic plan must be annexed to the Agency's business and financial plan for any financial year which is also the first year of the five-year period to be covered by the strategic plan.

(4) The following matters will be as prescribed, namely— 25

(a) the format and structure of the business and financial plan and, if considered necessary, that of the strategic plan;

(b) the extent to and manner in which the Agency must consult with interested persons or members of the public in connection with any business and financial plan or any strategic plan. 30

(5) Any business and financial plan and strategic plan must be made known by the Agency by having it published in the *Gazette*. However, if satisfied that in the circumstances the interests of the public require that greater prominence be given to such a plan, the Minister may order the further publication of the plan, at the expense of the State, in one or more newspapers with a nation-wide circulation. 35

(6) This section does not prevent the Agency from undertaking any planning for a longer term.

Accounting and auditing

36. (1) The Agency must keep proper books and records of account for each financial year in accordance with generally accepted accounting practice and procedure, with regard to its income, expenditure and transactions during the financial year and the state of its assets and liabilities during and as at the end of the financial year. 40

(2) Annually, as soon as possible after the end of each financial year, the Agency must have the following financial statements prepared for that year, namely, a statement of income and expenditure, a cash-flow statement and a balance sheet, which must accurately reflect the Agency's transactions and financial sources, position and state of affairs so as to comply with the requirements of the Companies Act. 45

(3) (a) The Agency's books and records of account and financial statements must be audited annually by the Auditor-General.

(b) The Chief Executive Officer must annually, within three months after the end of the financial year, submit the Agency's financial statements as approved by the Board and certified to that effect by the Chief Executive Officer, to the Auditor-General for auditing who, upon completion of the audit, must furnish an auditor's report to the Board through its chairperson. 50

(c) The chairperson must forthwith, on receipt of the auditor's report, convene a meeting of the Board. At that meeting the auditor's report must be considered by the Board.

(4) In the auditor's report the Auditor-General must express an opinion, amongst others—

- (a) as to whether the information contained in the Agency's financial statements has been presented on a basis consistent with that of the previous financial year (where applicable);
- (b) as to the transactions and activities of the Agency which had come to the Auditor-General's attention in the course of the examination during auditing and which were not authorised (if any), whether by or in terms of this Act or by any directives issued thereunder;
- (c) as to the transactions and activities of the Agency which so had come to the Auditor-General's attention and which were not consistent with the objects and functions of the Agency in all material respects (if any);
- (d) as to whether, broadly speaking, there are adequate measures and procedures in place for the proper management of the Agency, that is to say, for managing the Agency effectively, efficiently and according to sound economic principles.

The auditor's report in addition must draw attention to any other matters arising from the auditing which, in the Auditor-General's opinion, should be brought to the notice of the Minister and Parliament in the interest of the public or the national interest.

Annual report

37. (1) Annually, within five months after the end of the financial year, the Agency must submit a report to the Minister about the business, operations, projects, finances, transactions and activities of the Agency during the financial year and its financial position as at the end of that year.

(2) For that purpose the annual report, amongst others, must include the following:

- (a) The audited financial statements of the Agency for the financial year covered by the annual report;
- (b) the auditor's report;
- (c) a synopsis by the Board which, in broad terms, outlines the Agency's business, operations, projects and activities during that financial year and gives the necessary background information, explanations or reasons for anything dealt with in the financial statements, and—
 - (i) setting out the extent to which the Agency has succeeded in achieving or advancing its various detailed objectives as set out in its business and financial plan for that financial year and in its then current strategic plan; and
 - (ii) containing all relevant information about the Agency's performance with a view to determining how far the Agency has succeeded in applying its resources effectively, efficiently and economically during that financial year, as well as a comparison between the planned performance indicators for that financial year as set out in that year's business and financial plan, and the actual performance indicators as at the end of that year; and
 - (iii) specifying the amounts of money received by the Agency from the State (if any) and the manner in which it was made available to it and, if any amount was made available by the State for any particular purpose, also the purpose in question; and
 - (iv) specifying any liability incurred or commitment undertaken by the State (if any) for the Agency's benefit.

(3) The Agency's annual report must be laid on the table in the National Assembly within 14 days after the Minister has received it, if the National Assembly is sitting then, or, if the National Assembly is not sitting then, within 14 days after the beginning of its next sitting.

Certain provisions of Act 93 of 1992 applicable to Agency

38. The provisions of section 8, section 11(1), (2), (4) and (5) and sections 12(3) and 14 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), will be applicable to the Agency, reading in the changes necessary in the context.

CHAPTER 5

5

OFFICIAL POLICIES ON, AND DECLARATION, USE AND PROTECTION OF, NATIONAL ROADS

National roads policy

39. (1) The Government's policy with regard to national roads must be made known from time to time by the Minister by notice in the *Gazette*. The notice must state, 10 amongst others—

(a) the goals with regard to national roads which the Government wants to achieve; and

(b) the policy objectives to be followed so that those goals may be achieved.

(2) Whenever any proposals relevant to determining or amending the national roads 15 policy is to be considered and decided by the Government, the Minister by notice published in the *Gazette* must make known those proposals and in that notice invite any interested persons and the public to comment on the proposals and make representations with regard thereto.

(3) The Agency must determine its business and financial plan and strategic plan and 20 the standards and criteria for road design and construction and for road safety within the framework of the national roads policy as determined by the Government and published in terms of subsection (1).

Declaration of national roads

40. (1) Subject to subsections (2) and (3), the Minister may from time to time by 25 notice in the *Gazette*—

(a) declare any existing road, or any route of which the boundaries have been fixed by survey, to be a national road; and

(b) amend or withdraw any declaration so made.

(2) A national road may be declared under subsection (1) only on the recommendation 30 of the Agency, and then only—

(a) with the agreement of the Premier of each province in which the road is situated, in the case of an existing road that is to be declared a national road, subject to subsection (3);

(b) in the case of a new road that will have a substantial impact on the traffic flows 35 in any one or more provinces, after consultation with the Premier of the province or Premiers of the provinces in which the road is proposed to be situated (as the case may be).

(3) For the purposes of obtaining the agreement of a Premier required by subsection (2)(a), the Minister and the Premier must act in a manner and spirit consistent with the 40 principles of co-operative government prescribed by section 41 of the Constitution. Where the Premier's agreement cannot be obtained after having made every reasonable effort to settle the dispute or difference and having exhausted all the mechanisms and procedures available for that purpose, the matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution for decision. 45

(4) Within a prescribed period after the date on which a national road was declared under subsection (1), the Agency in writing must request the Registrar of Deeds who has jurisdiction, to endorse the fact of that declaration on the title deeds of the land affected by the declaration. Such an endorsement may be made in any manner considered fit by 50 that Registrar of Deeds.

(5) Any road or route which under section 4(1)(a) of the previous Act had been declared a national road for the purposes of that Act and which, immediately before the

incorporation date, exists as a national road under the previous Act, will be regarded and treated for all purposes as if it had been declared a national road under subsection (1) of this section.

Expropriation of land for purposes of national road

41. (1) Subject to subsection (2) and to the obligation to pay compensation, for which the Agency will be responsible, the Minister, if satisfied on reasonable grounds that the Agency reasonably requires—

- (a) any land for a national road or for works or other purposes connected with a national road, including any access road, the acquisition, excavation, mining or treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage or maintenance of any plant, vehicles, machines, equipment, tools, stores or material, may expropriate that land for the Agency;
- (b) gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or any of the purposes mentioned in paragraph (a), may take it for the Agency or authorise the Agency to take it;
- (c) the right to use land temporarily for any of the purposes for which the Minister is competent to expropriate land under paragraph (a), may take that right for the Agency or authorise the Agency to take that right.

(2) The Minister may not exercise a power in terms of subsection (1) unless satisfied on reasonable grounds that the Agency is unable to acquire the land or anything mentioned in paragraph (b) of that subsection, or the right to use the land temporarily, by agreement with the owner of the land or the holder of any relevant right in respect of the land, as the case may be.

(3) Subject to the obligation to pay compensation, and if satisfied on reasonable grounds that any land is or will be divided by a road contemplated in paragraph (a) of subsection (1) in such a manner that the land or any part of it is or will be useless to its owner, the Minister may expropriate that land or the relevant part thereof.

(4) Where the Minister expropriates any land for the Agency in terms of subsection (1) or (3), the Agency becomes the owner thereof on the date of expropriation of the land concerned.

(5) Subject to this section, the provisions of sections 7 to 24 of the Expropriation Act, 1975, will apply with regard to any expropriation in accordance with subsection (1) or (3), reading in the changes necessary in the context. However, any reference in those sections of the Expropriation Act, 1975, to “section 2”, must be understood as a reference to this section.

State land may be made available to Agency for purposes of national road

42. (1) On request made by the Agency in consultation with the Minister, the Minister of Public Works may make any State land available for transfer to the Agency for the purposes of or in connection with a national road or for any of the related purposes mentioned in section 41(1), at a fair price. In determining a price that is fair, the criteria that are mentioned in the following provisions of section 12 of the Expropriation Act, 1975, reading in the changes necessary in the context, must be applied:

- (a) Subsection (1), except paragraph (b) thereof; and
- (b) subsection (5)(b), (c), (d), (e), (f) and (h).

(2) For the purposes of subsection (1), any reference in the provisions mentioned in paragraphs (a) and (b) of that subsection—

- (a) to compensation that is to be paid, however expressed, must be interpreted as a reference to the price that is to be paid in terms of subsection (1);
- (b) to property expropriated or the expropriation of property, however expressed, must be interpreted as a reference to State land made available or (as the case may be) the making available of State land, in terms of that subsection; and

- (c) to a date of notice, however expressed, must be interpreted as a reference to the date of the notice by which the Minister of Public Works informs the Agency that the relevant State land has been made available to it under this section.

Entry upon land

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43. (1) Subject to subsections (2), (3) and (4), a member or employee of the Agency or other person authorised in writing thereto by the Board (hereafter generically called an Agency delegate), may, with the permission of the owner of any land, enter upon that land with the necessary workers, machines, vehicles, equipment, tools, instruments or materials to perform or carry out on, below the surface of or in connection with that land, any investigation, survey, observation or other act necessary for or in connection with the exercise or performance of a power, function or duty conferred or imposed on the Agency by or in terms of this Act. 10

(2) (a) Where the owner of any land has refused the Agency delegate permission to enter upon that land, the High Court within whose area of jurisdiction that land is situated, may on application by the Agency and subject to paragraph (b), issue an order authorising the Agency delegate to enter upon that land if satisfied, after consideration of the criteria mentioned in section 36(1)(a), (b), (c), (d) and (e) of the Constitution, that entry upon that land by the Agency delegate is reasonably necessary and justifiable in the circumstances. 15 20

(b) The provisions of paragraph (a) may not be applied to gain access to any dwelling or any other building on the land in use for residential purposes. However, the occupier of the dwelling or other residential building may agree to the Agency delegate entering it for the purpose of performing or carrying out therein any activity mentioned in subsection (1). 25

(c) A court order issued in terms of paragraph (a) must specify the purpose for which entry upon the land is authorised, the acts that may be performed or carried out on the land in connection with that purpose and the persons by whom, the means whereby or the manner in which they are to be performed, and may stipulate any conditions with regard thereto. 30

(3) The Agency must repair or pay for any damage arising from any act performed by or on the authority of the Agency delegate in the exercise of any power conferred by or in terms of this section.

Access to and egress from national roads

44. (1) No person may— 35

- (a) take a vehicle onto a national road except at an entrance provided for that purpose;
- (b) take a vehicle off a national road except at an exit provided for that purpose;
- (c) enter a national road which is fenced, except at an entrance provided for that purpose; 40
- (d) leave a national road which is fenced, except at an exit provided for that purpose.

(2) Only the Board and any person acting on its written authority may provide or authorise an entrance to or an exit from a national road.

(3) Such an authorisation must be reduced to writing and may be granted by the Agency on any conditions that it considers desirable, including conditions with regard to the nature of the entrance or exit that is authorised, the place where or manner in which the entrance or exit may be erected, constructed or otherwise provided, or its use. The Agency may at any time alter, substitute or cancel such a condition or impose a new condition and insert it in the authorisation. 45 50

(4) An entrance to or exit from a national road—

- (a) provided or authorised in terms of the previous Act or in terms of any other law repealed by this Act, which is in existence and in use immediately before the incorporation date;

- (b) which is lawfully in existence and in use immediately before the date on which the road or route in question is declared under section 40(1)(a) to be a national road, will, until the Agency has issued a written authorisation in respect of it under subsection (2) or has removed or closed it under subsection (5), be regarded and treated for all purposes as if it had been provided or authorised under subsection (2), subject—
- (i) in the case of an entrance or exit mentioned in paragraph (a), to the conditions or requirements which immediately before the incorporation date applied with regard to its nature, establishment or use;
 - (ii) in the case of an entrance or exit mentioned in paragraph (b), to the condition that its nature may not be changed and that it may not be used for a purpose for which it was not used before the date mentioned in that paragraph, except if authorised in writing by the Agency.
- (5) Despite any contrary provision of any other law, an entrance to or exit from any national road, or to or from any road in a building restriction area mentioned in paragraph (b) of the definition of “building restriction area” in section 1, may be removed or closed to traffic by the Agency which may, if considered necessary, provide another entrance or exit and take whatever other steps it considers necessary to make the other entrance or exit suitable for use.
- (6) The Agency in its discretion may compensate a person who suffers any direct loss as a result of the removal or closure of an entrance or exit under subsection (5). However, in considering compensation, the Agency must take into account the existence of an alternative entrance or exit or the provision of another entrance or exit under that subsection.
- (7) For the purposes of this section, “entrance” and “exit”, with regard to a road, means any road (whether a public road or not), bridge, subway, gate, sty, passage or other means by which the road can be entered or left, respectively.
- (8) A person is guilty of an offence—
- (a) upon contravening the provisions of subsection (1), and liable on conviction to a term of imprisonment not longer than three months, or a fine;
 - (b) when providing or making an entrance to or exit from a national road without the Agency’s written authorisation in terms of subsection (2), and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Closing or diverting national road

45. (1) The Agency may close a national road to traffic or divert the roadway of a national road whenever in its opinion it is necessary or desirable to do so.

(2) Any person who without the permission of the Agency uses a national road so closed to traffic, is guilty of an offence and liable on conviction to a term of imprisonment not longer than three months, or a fine, or to both the term of imprisonment and the fine.

Damaging of national road

46. (1) Any person who damages a national road wilfully or negligently, is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

(2) (a) The court convicting a person of an offence contemplated in subsection (1) may, in addition to imposing a sentence on such a person, order that person to pay to the Agency an amount which, in the court’s opinion, is equal to the amount of the damage caused.

(b) Such an order will have the force of a civil judgment and may be enforced in the same manner as a civil judgment.

- (3) The owners or occupiers of land adjoining any national road must—
- (a) take all measures on their land that are reasonably necessary to prevent the occurrence of any damage to the national road concerned, including any measures as prescribed from time to time for that purpose;
 - (b) refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that national road.
- (4) The owner or occupier of any land adjoining a national road will be liable for any damage to the national road which was or reasonably should have been foreseen and which could have been avoided had the owner or occupier taken measures in compliance with subsection (3)(a), or refrained in compliance with subsection (3)(b) from doing or permitting anything contemplated in the latter subsection.
- (5) (a) For the purposes of ensuring compliance with subsection (3), the Agency by notice in writing may demand that the owner or occupier of any land adjoining a national road does the following to prevent the occurrence of any damage which, in the Agency's opinion, is likely to be caused to a national road:
- (i) Takes on that land the measures, specified in the notice, within the period mentioned therein, or allows the Agency to take those measures itself; or
 - (ii) forthwith stops doing or permitting anything particularly specified in the notice, at any place, on or below the surface of that land, specified in the notice.
- (b) The demand made in the notice may amongst others order the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act, on the land.
- (6) (a) If the owner or occupier of the land fails or refuses to comply with that notice, the Agency may apply to the High Court within whose area of jurisdiction that land is situated for an order directing the owner or occupier—
- (i) to take the measures specified in the notice, on that land, or to allow the Agency to do so itself; or
 - (ii) (as the case may be) to stop doing or permitting the thing so specified at the specified place on that land.
- (b) The court may order that all or any of the measures demanded by the Agency or any other measures that the court considers fit, be taken by the owner or occupier, or, as the case may be, that the owner or occupier ceases doing or permitting all or any of the things complained of, if satisfied—
- (i) that due to the circumstances prevailing on the particular land, damage is likely to be caused to the national road in question; and
 - (ii) that the damage to that national road is likely to be avoided by taking those measures or by ceasing to do or to permit those things.
- (c) The court may order either of the parties to bear the costs of complying with that order, depending on whatever may be fair and just in the circumstances, and may make any order as to the costs of the proceedings that it considers fit.
- (7) In any deserving case the Agency, in its discretion and without prejudice to any of its rights, may with the Minister's approval pay the whole or any part of the costs incurred by the owner or occupier of land in complying with any notice issued under subsection (5).

Disposing of national roads' storm-water

- 47.** (1) The Agency may divert storm-water from or under a national road onto any land but must pay compensation for any damage caused by the diversion of the storm-water except in the circumstances mentioned in subsection (2).
- (2) Where a township is established on land adjoining a national road, the person establishing the township must receive and dispose of the storm-water discharged or diverted from the national road, and the Agency will not be liable for any damage caused in the township by the storm-water.

Structures and other works on, over or below national roads or certain other land

- 48.** (1) Except as provided in subsection (2), no person may do any of the following things without the Agency's written permission or contrary to that permission, namely—
- (a) on or over, or below the surface of, a national road or land in a building restriction area, erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land); 5
 - (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a national road or land in a building restriction area; 10
 - (c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a national road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.
- (2) Subject to any condition imposed under section 49(3)(a)(iii) or (iv), the provisions of subsection (1), except in so far as they prohibit the erection, construction, laying or establishment of a structure or other thing on or over, or below the surface of, a national road, do not apply to—
- (a) a structure erected or constructed by the South African Rail Commuter Corporation Limited on land under its control; 20
 - (b) any dwelling on a farm and any other structure on a farm used only for farming operations in the true sense.
- (3) (a) The Agency, in its discretion, may give or refuse its permission in terms of subsection (1).
- (b) When giving permission, the Agency may prescribe— 25
 - (i) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;
 - (ii) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and 30
 - (iii) the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid, established or made.
- (4) (a) If an obligation to remove a structure or other thing is prescribed by a condition imposed under subsection (3)(b), the Registrar of Deeds having jurisdiction in respect of the area concerned must, at the written request of the Agency, note the obligation on the title deed of the land affected thereby and in the appropriate register kept by that Registrar. 35
- (b) The costs in connection with that noting must be paid by the person to whom the permission has been given. 40
 - (c) The Agency may enforce compliance with an obligation that has been so noted.
 - (d) The provisions of section 49(6)(a) and (b), reading in the changes necessary in the context, will apply to an obligation so noted.
- (5) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the Agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 days calculated from the date of the notice. 50
- (6) If the person to whom a notice has been issued in terms of subsection (5), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person.
- (7) (a) Despite the provisions of any other law, the Agency may remove or shift, to a place determined by it, any structure or other thing (except a structure or thing mentioned in subsection (2)) which, before the date on which the road or route 55

concerned is declared a national road in terms of section 40 or was declared a national road under the previous Act, was erected, constructed, laid or established on or over, or below the surface of—

- (i) that national road;
- (ii) land in a building restriction area; or
- (iii) other land situated within a distance from that national road as specified in a condition imposed under section 49(3)(a)(iv).

(b) In the case of a power line or telephone line, any sewage disposal works or water reticulation, supply or disposal works or other works so erected, constructed, laid or established subject to a condition, imposed under any law, in terms of which any other person is responsible for the removal or shifting thereof, the Agency may recover the costs of the removal or shifting from that other person.

(8) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

Agency's approval necessary for division of certain land

49. (1) If land or any part of land (except land or any part of land under the control of the South African Rail Commuter Corporation Limited) is situated in a building restriction area, a surveyor-general may not approve the diagram or general plan of any division of that land or part (whether for the establishment or extension of a township or for any other purpose) unless the Agency in writing has given its approval for the division.

(2) The Agency may refuse to give its approval only if satisfied that the division for which approval is asked may frustrate any of the objects of this Act.

(3) (a) The Agency may give its approval subject to any conditions—

- (i) prohibiting the division or further division of the land or of a specified part of it;
- (ii) limiting the use to which the land or any specified part of it may be put;
- (iii) limiting the number or extent of buildings or other structures which may be erected on the land or on any specified part of it;
- (iv) prohibiting the erection, construction or establishment of any structure or other thing on or over, or below the surface of, the land, or on or over, or below the surface of, a specified part of it, within a specified distance from the road in question.

(b) In giving its approval, the Agency may stipulate that if the land or a specified part of it is consolidated with other land, the title to the consolidated land will be subject to a condition imposed under paragraph (a).

(4) A condition referred to in subsection (3) may be imposed in such a manner as to permit non-compliance therewith or departure therefrom with the Agency's approval.

(5) (a) Despite any contrary provision contained in the Deeds Registries Act, 1937—

- (i) the person giving transfer of land to which one or more of the conditions referred to in subsection (3) apply, must insert each condition that so applies in the deed of transfer;
- (ii) the Registrar of Deeds must endorse on the title deed of the land retained by the person giving transfer, each of those conditions that applies to the land so retained;
- (iii) a certificate of consolidated title issued in respect of consolidated land mentioned in subsection (3)(b), must contain every condition to which the title to that land is made subject in terms of a stipulation made under that subsection.

(b) The Agency may enforce compliance with any such condition.

(6) (a) Despite any contrary provision contained in the Deeds Registries Act, 1937, or any other law, a Registrar of Deeds, with the Agency's written approval, may cancel any

condition which in terms of subsection (5) has been inserted in a deed of transfer or certificate of consolidated title or has been endorsed on a title deed.

(b) The cancellation may be done on the written application of the owner of the land in question, accompanied by the Agency's written approval therefor and proof that all mortgagees (if any) have been notified of the proposed cancellation. 5

(c) Transfer duty or office fees will not be payable for such a cancellation.

Advertisements on or visible from national roads

50. (1) Except as provided in subsection (2), no person may—

- (a) display an advertisement on a national road, or permit it to be so displayed;
- (b) display, outside an urban area, any advertisement visible from a national road, 10
or permit any advertisement which is so visible, to be so displayed;
- (c) display any advertisement visible from a national road in an urban area, on any land adjoining the national road or on land separated from the national road by a street, or permit it to be so displayed.

(2) Subsection (1) does not apply to the displaying of any advertisement complying 15
with the prescribed requirements (if any) as to the nature, contents or size of such an advertisement or the time, manner or place of its display, where the display thereof is authorised by or under the regulations concerned, or the advertisement—

- (a) is displayed on a building in which a business or undertaking is carried on, and contains no more than the name of the business or undertaking or description 20
of its nature, the name of its proprietor and the further information (if any) as authorised by or under the regulations concerned; or
- (b) is displayed on any vehicle, or is displayed on any other machine or implement and contains no more than the trade name of that machine or 25
implement and the name of its manufacturer, so long as the main purpose for which the vehicle, machine or implement is used, is not the displaying of the advertisement; or
- (c) is displayed in terms of an authorisation conferred, before or after the incorporation date, under the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940), for as long as the advertisement is displayed 30
in accordance with the requirements which, in terms of that authorisation, are applicable to it or were applicable to it immediately before the incorporation date, as the circumstances may require; or
- (d) is lawfully displayed at any place immediately before the road or route in question is declared a national road under section 40(1), for as long as it is 35
displayed continuously at the same place, unless its removal has been directed under subsection (3) of this section and the period within which it had to be removed, has expired; or
- (e) is displayed by the State, or is displayed, in the performance of its functions, by a body established by or under any law, or has to be displayed, in terms of 40
any law, at the place where, and under the conditions under which, it is in fact displayed.

(3) Any person who displays an advertisement contrary to the provisions of subsection (1) or permits it to be so displayed, or who displays any advertisement 45
mentioned in paragraph (d) of subsection (2) in a manner or in circumstances which, were it not for subsection (2), would have been a contravention of subsection (1), and who has been directed by the Agency by notice in writing to remove that advertisement, must do so within the period stated in the notice which may not be shorter than 14 days.

(4) If the person to whom a notice in terms of subsection (3) is directed, fails to remove the advertisement specified in the notice within the period stated therein, it may 50
be removed by the Agency itself which may recover the costs of the removal from that person.

(5) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine.

Disused vehicles or machinery and other rubbish on or near national roads

- 51.** (1) No person may—
- (a) deposit or leave a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a national road;
 - (b) without the Agency's written permission or contrary to any condition imposed by the Agency and set out in the written permission, deposit or leave, so as to be visible from a national road, any disused vehicle, machine or part, or any rubbish or other refuse—
 - (i) on land outside an urban area and within 150 metres from the boundary of a national road; or
 - (ii) on land within an urban area and adjoining a national road or separated from a national road by any street.
- (2) The Agency may remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse, found on a national road, and may recover the costs of the removal from the person who deposited or left the disused vehicle, machine or part or the rubbish or other refuse on that road.
- (3) If, on any land mentioned in subsection (1)(b), there is found any disused vehicle or machine or disused part of a vehicle or machine, or any rubbish or other refuse, which is visible from a national road and the person who deposited or left it there or any person entitled to remove it, has been directed by the Agency by notice in writing to remove it from the land or to take the necessary steps to render it invisible from a national road—
- (a) such a person must remove the disused vehicle, machine or part or the rubbish or other refuse from the land or take those necessary steps within the period stated in the notice, except if—
 - (i) that person produces a written permission of the Agency authorising the presence of that vehicle, machine, part, rubbish or other refuse on that land under the circumstances in question; or
 - (ii) in the case of a person so entitled, that person satisfies the Agency of not having deposited or left the vehicle, machine, part, rubbish or other refuse on that land and not having permitted its being deposited or left there and, where it was deposited or left there by the agent or employee of the person so entitled, of not having been aware of that fact;
 - (b) the Agency, if the vehicle, machine, part, rubbish or other refuse has not been removed within the period stated in the notice and if satisfied that no person holds a written permission of the Agency in terms of paragraph (a)(i), may remove the vehicle, machine, part, rubbish or other refuse from that land or take any steps that the Agency considers necessary to render the vehicle, machine, part, rubbish or other refuse invisible from the national road, and may recover the costs of the removal or of those steps from the person who in terms of paragraph (a) was under a duty to make the removal or take the necessary steps.
- (4) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Trading on national road or in building restriction area

- 52.** (1) Except as provided in subsection (2), no person may without the Agency's written permission or contrary to the terms of the written permission, carry on any trade or expose, offer or manufacture for sale any goods on a national road or in a building restriction area.
- (2) Subsection (1) does not apply to any person who, after the date on which a road or route is declared a national road under section 40, continues, on land forming part of the national road or building restriction area, any business or undertaking which was

carried on or conducted on that land immediately before that date, unless that person, by notice in writing, has been directed by the Agency to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.

(3) Any employee of the Agency or person authorised thereto in writing by the Agency, any employee of the Agency mentioned in section 54(1), any employee of a municipality or province designated or appointed to perform law enforcement functions on a national road by virtue of an agreement entered into under section 54(3), and any person who in terms of a road traffic law is a traffic officer for the purpose of the road traffic law, may—

- (a) if such an employee, officer or person (in this section called the competent official) suspects on reasonable grounds that a person has performed an act for which the Agency's written permission is required in terms of subsection (1), demand that the person then and there produces to the competent official the Agency's written permission to perform that act; 10
- (b) if the person to whom the demand is made, fails to produce such a written permission to the competent official, or if the competent official suspects on reasonable grounds that a person has performed on a national road or in a building restriction area any act that is unlawful in terms of subsection (1)— 15
 - (i) demand that the person's full name and residential address be furnished by the latter then and there; 20
 - (ii) order that person to remove from the building restriction area or the national road—
 - (aa) every article with or in respect of which that act has been performed or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; or 25
 - (bb) any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; 30
- (c) remove from the national road or the building restriction area any article, structure, tent, vehicle, implement or other object mentioned in paragraph (b)(ii), or which the competent official finds on the national road or in the building restriction area and suspects on reasonable grounds to have been used, or to be destined for use, by any person in connection with a contravention of subsection (1). 35
- (4) (a) A person is guilty of an offence—
 - (i) upon contravening any provision of subsection (1); or
 - (ii) when failing to furnish the latter's full name and residential address to a competent official demanding it in terms of subsection (3)(b)(i); or 40
 - (iii) upon having failed to obey an order given to that person under subsection (3)(b)(ii). 45
- (b) A person convicted of an offence mentioned in paragraph (a) will be punishable with a term of imprisonment not longer than three months, or a fine.

Agency may pay compensation for damage or loss due to its activities

53. The Agency, at its discretion and on any conditions it considers fit, may—

- (a) pay the costs or part of the costs incurred by a municipality or province in connection with a road or other works which, by agreement between the Agency and the municipality or Premier of the province, as the case may be, may have become necessary as a result of the construction, maintenance or rehabilitation of a national road; 50
- (b) pay an amount to any person for any damage, loss or inconvenience which, in the opinion of the Agency, has been or will be suffered by the person as a result

of the exercise or performance of any of the powers, functions or duties entrusted to the Agency or any other person by or in terms of this Act, and for which no compensation is payable in terms of this Act.

Law enforcement on national roads

54. (1) The Agency may authorise any of its employees to take steps on a national road or any other property of the Agency, in the manner and on the conditions as prescribed, with a view to preventing any offences created by this Act, any other contraventions thereof and any offences in terms of the road traffic and the road safety laws being committed on the national road or other property. 5

(2) Such an authorised employee will have the powers of arrest and detention conferred on a peace officer in terms of Chapter 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), with regard to any person who, on a national road or the property mentioned in subsection (1), has committed any offence referred to in that subsection in the presence of the authorised employee or who is suspected by the authorised employee, on reasonable grounds, so to have committed such an offence. 10

(3) Despite subsections (1) and (2), the Agency may enter into an agreement with— 15

(a) any municipality, in terms of which the municipality is authorised, and undertakes, to perform the law enforcement functions mentioned in subsections (1) and (2), on a national road within the municipal area, through employees of the municipality designated or appointed by it for that purpose; 20

(b) the Premier of any province, in terms of which the province is authorised and undertakes to perform those law enforcement functions on the national roads in the province, or any of those national roads as specified in the agreement, through employees of the province designated or appointed by the province for that purpose. 25

CHAPTER 6

GENERAL AND MISCELLANEOUS PROVISIONS

Agency exempt from paying certain duties and fees

55. Despite any other law, no transfer duty, stamp duty, registration fees or office fees will be payable by the Agency for the transfer of land, real rights in land and other immovable property to the Agency or in connection with the Agency's acquisition of land, real rights in land and other immovable property in any other manner. 30

Extension of periods stated, specified or prescribed in notices, etc.

56. (1) Where, in a notice or any other document to any person issued in terms of this Act, the Agency has stated, specified or prescribed a period within which the person must or may perform, carry out, do or cease any act, activity or other thing, the Agency, on application by that person and at its discretion, may allow that person a further period for performing, carrying out, doing or ceasing that act, activity or thing. 35

(2) Any further period so allowed, will be regarded and treated for the purposes of this Act as if it were the period stated, specified or prescribed in the Agency's notice or other document. 40

Appeals to Minister against certain decisions of Agency

57. (1) Where the Agency has refused a person's application for an approval or permission contemplated in section 48 or 49 or has granted a limited or conditional approval or permission, the person may appeal to the Minister against the refusal, limitation or condition in question, and the Minister may dismiss the appeal or allow it 45

in whole or in part, or take any other decision that the Agency could have taken with regard to the application.

(2) Any approval, permission, limitation or condition which on appeal has been granted or imposed by the Minister, will be regarded and treated for the purposes of this Act as if it were granted or imposed by the Agency.

(3) An appeal in terms of subsection (1) must be lodged with the Minister in the manner and form and within the period as prescribed.

Regulations

58. (1) The Minister, after consultation with the Agency, may make regulations that are not inconsistent with this Act—

- (a) prohibiting or regulating the diversion of storm-water onto, over or under a national road or the alteration of the natural flow of any water in relation to a national road;
- (b) prohibiting or regulating the installation or existence of any street-light or other light emitting rays onto a national road;
- (c) about traffic on a national road or the use or protection of a national road or the use or presence of vehicles or animals or any other thing on a national road, provided such a regulation is not in conflict with any road traffic law;
- (d) prescribing a form to be used in connection with any claim for compensation or in connection with any application, authorisation, approval, permission or exemption provided for in this Act, or prescribing the information to be furnished and procedure to be followed in connection with any of those matters;
- (e) with regard to anything which in terms of this Act may or must be prescribed, governed or determined by regulation or which, in terms of this Act, may or must be provided for by regulation.

(2) Different regulations may be made under subsection (1) for different national roads, and the regulations may provide that a person who contravenes or fails to comply with any particular regulation will be guilty of an offence and liable on conviction to a term of imprisonment or a fine not exceeding that prescribed in the regulations. However, the maximum period of a term of imprisonment so prescribed may not exceed six months, whilst any fine imposable in conjunction therewith or as an alternative thereto will be calculable in accordance with section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

(3) The regulations made under section 20 of the previous Act and in force immediately before the incorporation date, remain in force and continue to apply in so far as they are not inconsistent with this Act—

- (a) despite the repeal of that section by this Act; and
- (b) until they are amended, substituted or repealed under this section.

Limitation on legal proceedings against Agency

59. (1) (a) Except as provided in subsection (2), legal proceedings may not be brought against the Agency, any member of the Board, an employee of the Agency or any other person for any damage or loss allegedly suffered by a person (in this section called the claimant) as a result of any act with regard to a national road which allegedly was performed or omitted by any of the persons mentioned in paragraph (b)—

- (i) unless instituted within 15 calendar months after the date upon which the claimant became aware of the alleged act or omission, or after the date on which the claimant may reasonably be expected to have become aware of the alleged act or omission, whichever is the earlier date; and
 - (ii) before the expiry of at least three calendar months after written notification of the claimant's intention to institute the legal proceedings, containing sufficient particulars of the alleged act or omission, has been served on the defendant or respondent, unless the defendant or respondent in writing has denied liability.
- (b) For the purposes of paragraph (a), the persons concerned are the following:

- (i) Any of the members of the Board;
- (ii) the Chief Executive Officer;
- (iii) any of the other employees of the Agency acting in the performance of their duties;
- (iv) any person acting on behalf of the Agency on the authority of the Board. 5

(2) The High Court that has jurisdiction to determine the legal proceedings contemplated by the claimant in any particular case, may on application by that claimant order that any requirement of subsection (1)(a) be dispensed with or relaxed or that non-compliance therewith be condoned if the interests of justice so require.

(3) Neither the Agency nor any person mentioned in subsection (1)(b) or any person who operates or has constructed a national road, will be liable for any damage or loss suffered by any person through the use of any part of the national road other than the roadway or as a result of the closure or deviation of a national road under this Act. 10

Amendment and repeal of laws

60. (1) The laws mentioned in items 1 and 2 of Schedule 1 to this Act are amended, with effect from the incorporation date, to the extent specified in those items. 15

(2) Subject to section 61, the laws mentioned in the first two columns of Schedule 2 to this Act are repealed, with effect from the incorporation date, to the extent shown opposite those laws in the third column of that Schedule.

Transitional provisions, and savings

61. (1) Subject to this Act, any notice, authorisation, permission, approval, decision, exemption, direction, order, suspension, determination or condition issued, given, granted, made or imposed under any provision of the previous Act, and any other act or thing performed or done under such a provision, will be regarded and treated as having been issued, given, granted, made, imposed, performed or done under the corresponding provision of this Act by the person or functionary competent in terms of this Act to do so. 25

(2) Except where any other provision is made by this Act or in any agreement entered into by the Minister and the Agency and published in terms of section 7(3), and subject to subsection (3) of this section, the Agency will be the legal successor of the South African Roads Board or the State with regard to, and must be substituted for the South African Roads Board or the State in, any contract or agreement entered into with any person before the incorporation date by or on behalf of the South African Roads Board (including an agreement with a municipality or the Premier of a province), or by or on behalf of the Minister representing the State (as the case may be), if— 30

- (a) by the incorporation date, the term of the relevant contract or agreement has not yet expired; and
- (b) that contract or agreement is one which has been concluded in terms of the previous Act and which relates to any matter falling within the scope of the Agency's powers, functions and duties in terms of this Act. 40

(3) (a) Unless any other provision has been made in an agreement entered into by the Minister and the Agency and published in terms of section 7(3)—

- (i) the State, as represented by the Minister, will be substituted for the South African Roads Board as party in any legal proceedings instituted by or against the South African Roads Board before the incorporation date and still pending on that date, where the legal proceedings entail a contractual or delictual claim founded on a cause of action relating to or arising from the financing, construction, operation, management, control, maintenance or rehabilitation of a national road under the previous Act; 45
- (ii) any legal proceedings entailing a contractual or delictual claim founded on a cause of action which arose before the incorporation date, relates to or arises from the financing, construction, operation, management, control, maintenance or rehabilitation of a national road under the previous Act and which is brought after the incorporation date, must be instituted by or against the State as represented by the Minister. 50 55

(b) For the purposes of any claim referred to in paragraph (a), the Minister will be regarded and treated, in all respects, as the legal successor to the South African Roads Board.

(4) Any determination of the amount of toll, exemption from payment of toll, and restriction or suspension of the levying of toll in terms of the previous Act, which is in force in respect of a particular toll road immediately before the incorporation date, will continue in force in respect of that road in all respects as if made, granted or imposed under this Act, until it is determined anew, or is altered, withdrawn or terminated (as the case may be) under Chapter 3. 5

(5) (a) The Agency will succeed the South African Roads Board as debtor under the loans which before the incorporation date were raised by that Board in terms of section 2(2A) of the previous Act for the purposes of or in connection with the existing toll roads. 10

(b) Any guarantee issued in terms of the previous Act by the State to cover the loan obligations of the South African Roads Board to which the Agency succeeds in terms of paragraph (a) of this subsection, will be regarded and treated in all respects as if it had been issued in terms of section 33(3) of this Act to cover the fulfilment of those obligations by the Agency. 15

(c) With a view to accommodating the intrinsic funding levels associated with the existing toll roads, the State, represented by the Minister and acting with the agreement of the Minister of Finance, may from time to time increase the amount of any guarantee mentioned in paragraph (b) so as to cover any replacement or additional loans that may be raised by the Agency for the purposes of or in connection with any existing toll road. 20

(d) For the purposes of this subsection, “existing toll road” means any national road which was declared a toll road under section 9 of the previous Act and to which the provisions of section 27(6) of this Act apply. 25

State bound by this Act

62. This Act binds the State.

Short title and commencement

63. (1) This Act is called The South African National Roads Agency Limited and National Roads Act, 1998, and comes into operation on 1 April 1998. 30

(2) Subsection (1) must not be understood as requiring or permitting the application, as from the date so determined, of any provision reliant on the occurrence of the incorporation date.

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.

5

SCHEDULE 1**Laws amended in terms of section 60(1)**

Amendment of section 2 of Act 54 of 1971, as amended by section 43 of Act 62 of 1973, section 7 of Act 72 of 1975, section 20 of Act 102 of 1976, section 1 of Act 38 of 1978, section 1 of Act 3 of 1979, section 1 of Act 93 of 1981, section 1 of Act 10 of 1983, section 2 of Act 79 of 1983, section 1 of Act 38 of 1985, section 2 of Act 100 of 1992 and section 3 of Act 24 of 1996

10

1. Section 2(1A) of the National Roads Act, 1971, is hereby amended— 15

- (a) in paragraph (a), by the deletion of the words “for the benefit of the fund”;
- (b) by the insertion in paragraph (h) of the following definition before the definition of “distillate fuel”:

“ ‘Board’ means the Board of Directors of The South African National Roads Agency Limited contemplated in section 3 of The South African National Roads Agency Limited and National Roads Act, 1998;”;

20

- (c) by the addition of the following paragraph:

“(i) The moneys payable in terms of this subsection shall be used to fund the operations and other affairs of The South African National Roads Agency Limited.”.

25

Amendment of section 3 of Act 80 of 1988

2. Section 3 of the Transport Deregulation Act, 1988, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) With effect from the date of commencement of this section those powers, functions and duties which are conferred upon or entrusted to the Commission by or under [the National Roads Act, 1971 (Act No. 54 of 1971),] the National Road Safety Act, 1972 (Act No. 9 of 1972), and the Urban Transport Act, 1977 (Act No. 78 of 1977), shall be exercised and performed by the South African Roads Board and for the purposes of the said Acts the last-mentioned Board shall for all purposes be deemed to be the successor of the Commission.”.

30

35

SCHEDULE 2

Laws repealed by section 60(2)

(Laws of the Republic unless otherwise specified)

Number and year of law	Short title	Extent of repeal
Act No. 54 of 1971	National Roads Act, 1971	The whole, except section 2(1A)
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 43
Act No. 26 of 1974	National Roads Amendment Act, 1974	The whole
Act No. 72 of 1975	Finance Act, 1975	Section 7
Act No. 102 of 1976	Finance Act, 1976	Section 20
Act No. 38 of 1978	National Roads Amendment Act, 1978	The whole
Act No. 3 of 1979	National Roads Amendment Act, 1979	The whole
Act No. 8 of 1979, of the former Republic of Transkei	Roads Act, 1979	The whole, in so far as it relates to national roads
Act No. 66 of 1980	National Roads Amendment Act, 1980	The whole
Act No 93 of 1981	National Roads Amendment Act, 1981	The whole
Act No. 5 of 1982	National Roads Amendment Act, 1982	The whole
Act No. 10 of 1983	National Roads Amendment Act, 1983	The whole
Act No. 79 of 1983	Second National Roads Amendment Act, 1983	The whole
Act No. 58 of 1985	National Roads Amendment Act, 1985	The whole
Act No. 52 of 1991	Transnet Limited Amendment Act, 1991	Sections 33, 34 and 35
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act, 1991	Section 34
Act No. 100 of 1992	National Roads Amendment Act, 1992	The whole
Act No. 27 of 1994	National Roads General Amendment Act, 1994	The whole
Act No. 24 of 1996	National Roads Amendment Act, 1996	The whole