

REPUBLIC OF SOUTH AFRICA

# NATIONAL PORTS AUTHORITY BILL

*(As presented by the Portfolio Committee on Transport (National Assembly))  
(The English text is the official text of the Bill)*

(ACTING MINISTER OF TRANSPORT)

**[B 5B -2003]**

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**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.

## **BILL**

**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.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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## CHAPTER 1

### 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, 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 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;

"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;

"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);

"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;

"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;

"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, Nqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has 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;

"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*;

"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;

"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;  
"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;  
"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;  
"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.

(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**

2. The objects of this Act are to—

- (a) promote and improve efficiency and performance in the management and operation of ports;
- (b) establish appropriate institutional arrangements to support the governance of ports;
- (c) 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;
- (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—

- (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.

(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.

(2) As soon as possible after the commencement of this Act and after consultation with the Shareholding Minister, Transnet must take the necessary steps 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;
- (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.

(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—

- (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.

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

(5) (a) Notwithstanding subsections (2), (3) and (4), if the incorporation of National Ports Authority of South Africa is not effected within three years from the date of commencement of this Act, the Shareholding Minister may cause the National Ports Authority of South Africa to be incorporated as a public company, in which case section 4 applies with the necessary changes.

(b) The power contemplated in paragraph (a) must be exercised with the concurrence of the Minister.

(c) If the Shareholding Minister acts under paragraph (a), sections 26(2) and (3) and 27 must be construed as if the Authority became the successor of National Ports Authority of South Africa.

#### **Conversion of Authority**

4. (1) Notwithstanding sections 32, 66, 190 and 344(d) of the Companies Act—

- (a) on the date after the incorporation of National Ports Authority (Pty) Ltd, and after consultation with the Minister and the board of the company, the Shareholding Minister must take the necessary steps to convert the company into a public company vested with the authority to own, manage, control and administer ports within the Republic;
- (b) on the date of conversion, the State becomes the only member and shareholder of the Authority;
- (c) the Registrar of Companies must register the conversion and the company under the name "National Ports Authority Limited".

(2) The State's rights as a shareholder of the Authority are to be exercised by the Shareholding Minister.

#### **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.

(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.

#### **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.

#### **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.

(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*.

(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.

(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 -

- (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.

#### **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**

#### **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.

(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—

- (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**

**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;
  - (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;
  - (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;
- (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;
- (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;
- (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;
- (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;
- (s) exercise the licensing and regulation 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;

- (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;
  - (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;
  - (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;
  - (f) enter into agreements in terms of this Act.
- (3) The Authority may enter into any agreement with any other statutory body 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) 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.

#### **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;
  - (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;
  - (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;
  - (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 –
- (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.
- (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

### 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.

(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;
- (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.

(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.

#### Nomination and appointment of members of Board

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

(b) The Shareholding Minister must appoint a member of the Board from among the persons nominated.

(2) Before appointing a person to the Board, the Shareholding Minister must-

- (a) by notice in the *Gazette* and publication in the national media, give notice of his or her intention to appoint that person and invite public comment or objections within the period specified in the notice; and
- (b) take into account any comment or objections received as a result of such notice.

(3) 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.

#### 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.

(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;
- (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;

- (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;
  - (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;
  - (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.
- (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;
- (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;
- (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;
- (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 of the Board holds office for a period not exceeding three years from the date of appointment or reappointment.

(2) Each other member of the Board holds office for a period determined by the Shareholding Minister, but not exceeding three years.

(3) (a) Members of the Board may be reappointed to ensure continuity.

(b) The reappointment of members is subject to the process referred to in section 15(2).

(4) 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
- (d) for misconduct.

(5) A member of the Board may resign by giving one month's written notice to the Shareholding Minister.

(6) 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.

### **Disclosure of interest by members of Board**

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.

(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.

### **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.

(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.

(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.

(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**

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

(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;

(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.

### **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.

(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
- (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
- (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.

#### **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
- (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.

#### **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;
- (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.

#### **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-

- (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.

(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.

(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.

(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.

### **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*, the National Ports Authority (Pty) Ltd becomes the successor to National Ports Authority of South Africa.

(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 the National Ports Authority (Pty) Ltd the business of the National Ports Authority of South Africa and-

(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 the National Ports Authority (Pty) Ltd.

(3) Upon the vesting contemplated in subsection (2), the Board of the 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, the National Ports Authority (Pty) Ltd-

(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

(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.

(5) Subsections (2) and (4) are not to be interpreted as conferring on the 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 National Ports Authority (Pty) Ltd;

(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.

(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.

(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;
- (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.

#### **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.

## **CHAPTER 5**

### **PORTS REGULATOR**

#### **Establishment of Regulator**

29. There is hereby established an independent ports regulatory body to be known as the Ports Regulator.

#### **Functions of Regulator**

30. (1) The Regulator must—

- (a) hear complaints and appeals relating to any abuse of power by the Authority;
- (b) ensure equity of access to the ports and to the provision of port services;
- (c) 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;
- (d) advise and receive advice from any other regulatory authority;
- (e) consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner;

(2) 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—

- (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;
- (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.



(3) 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.

(4) 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.

(5) 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.

(6) The Minister must table in Parliament any report -

- (a) contemplated in subsection (4), if such report deals with a substantial matter relating to the application or purposes of this Act; and
- (b) contemplated in subsection (5).

(7) Any report referred to in subsection (6) must be tabled -

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

#### **Members of Regulator**

**31.** (1) (a) The Regulator consists of a chairperson and of not more than four other members appointed by the Minister for a period of up to five years at a time.

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

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

(3) Each member of the Regulator must -

- (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.

(4) A person may not be a member of the Regulator if that person -

- (a) is an unrehabilitated insolvent;
- (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;
- (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.

(5) 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.

#### **Nomination and appointment of members of Regulator**

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

(2) Before appointing a person as a member of the Regulator, the Minister must -

- (a) by notice in the *Gazette* and publication in the national media, give notice of his or her intention to appoint that person and invite public comment or objections within the period specified in the notice; and
- (b) take into account any comment or objection received as a result of such notice.

(3) 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.

- (4) A member of the Regulator may not–
- (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
  - (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;
  - (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(3) or 32(3) or (4); or
  - (d) for misconduct.
- (2) A member of the Regulator may resign by given 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.

#### **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(3) and (4) and 32(3) and (4) apply to the chief executive officer with the changes required by the context.
- (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.
- (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;
  - (c) if the chief executive officer ceases or fails to comply with any requirement referred to in section 31(3) or 32(3) or (4).
- (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.

#### **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 –
- (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 anew 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.

### **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
  - (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 -
- (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;
  - (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-
- (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.
- (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.
- (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) 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**

- 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;
  - (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;

- (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.

(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**

**42.** (1) The funds of the Regulator consist of –

- (a) money appropriated by Parliament;
- (b) interest on investments.

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

#### **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 –

- (a) open and 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;
- (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.

(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.

#### **Annual report**

**44.** The annual report contemplated in section 30(5) must include –

- (a) an audited balance sheet and statement of income and expenditure;
- (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;
- (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.

(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).

## **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(2).

- (2) After considering the appeal the Regulator must -
- (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(2).

(2) A complaint against the Authority may be based on any ground provided for by the Regulator by direction under section 30(2) 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;
- (c) Transnet is treated more favourably and that it derives an unfair advantage over other transport companies.

## **Investigation of complaint**

**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(2).

## **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.

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

## **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:

- (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.

## **Taking of evidence at hearing**

**51.** (1) The Regulator may, by direction under section 30(2), determine the rules of procedure for the taking of evidence before the Regulator.

(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-

- (a) the administering or taking of an oath or the administering or making of an affirmation;
- (b) the giving of false evidence;

- (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.

#### **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**

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.
- (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
  - (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**

#### **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-
- (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
  - (d) perform any combination of the functions referred to in paragraphs (a), (b) and (c).
- (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.
- (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.

(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.

#### **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.

(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;
- (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
- (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–

- (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
- (ii) the Authority is satisfied that the activities of the person concerned is, for purposes of this Act, sufficiently regulated by the other statutory body 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.

#### **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;
- (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;
- (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;
- (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.

(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—

- (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;
- (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).

(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
- (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—

- (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
- (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
- (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
- (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;
- (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—

- (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;
  - (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;
  - (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 -
- (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).

(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.

(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;
- (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
- (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.

(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.

#### **Special powers in emergency**

**64.** (1) The Shareholding Minister may 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-

- (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
- (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.

#### **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*.

(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.

(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.

(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*.

(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.

(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.

#### **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.

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

**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, 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;
- (b) the terms of a long-term lease which existed immediately before this section took effect are substantially unrelated to current market conditions, including unreasonable low rentals, 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 lease be renegotiated in order to bring the terms thereof in line with market conditions;  
or
- (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.

(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 –

- (a) reasonable notice of the proposed change in use;
- (b) full reasons for the proposed change in use; and
- (c) 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.

(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.

(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**

**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.

(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.

(2) (a) The Authority must ensure that sustainable and transparent port planning processes are undertaken when formulating any port development framework.

(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.

(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.

## **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.

#### **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.

(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.

(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).

#### **Fees payable to Authority**

73. (1) The Authority may charge fees for-

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

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

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

- (i) land rentals;
- (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
- (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.

(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) 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.

(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.

## CHAPTER 9

### SAFETY ASPECTS

#### Safety of navigation and shipping in ports

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;
- (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; 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
- (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;
- (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;
- (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.

(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.

(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.

#### **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.

#### **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.

(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.

(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.

(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 of the nature of the intended action and having consulted the Port Consultative Committee of the port closest to the lighthouse or aid.

(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.

(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.

## CHAPTER 10

### MINISTERIAL DIRECTIONS AND PORT REGULATIONS

#### 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;
- (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).

(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.

#### Port regulations

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

- (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) appeals and grievance procedures of port users;
- (c) a framework for the economic participation and empowerment of historically disadvantaged groups in port operations;
- (d) fitness standards for the safe use of the infrastructure and equipment in the provision of any port facility or port service;
- (e) rules of procedure for Port Consultative Committees;
- (f) the maintenance by the Authority of security within ports;
- (g) port limits;
- (h) places of refuge for vessels;
- (i) 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;
- (j) any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

(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 good order in ports, in particular regarding -

- (a) orderly vessel traffic, including the prevention and removal of any obstruction or impediment to navigation within the port limits;
- (b) 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;
- (c) the supervision, regulation and control of all activities conducted in or on the waters of the ports;
- (d) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities;
- (e) the declaration and definition of wharves on which cargo will be landed and from which cargo will be shipped in vessels;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) the prohibition of embarkation and disembarkation of persons at places other than those determined by the Authority for this purpose;
- (j) 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;
- (k) the limits within which, and the levels to which, dredging may be carried out in ports and approaches thereto;
- (l) the information which has to be furnished to the Authority by port users in relation to their activities within ports;
- (m) the establishment, construction, maintenance and operation of off-shore cargo handling facilities;
- (n) road and rail traffic within ports subject to the Railway Safety Regulator Act, 2002 (Act No. 16 of 2002);
- (o) any other matter for which it is necessary or expedient to make rules so that the Authority is able to perform its functions properly.

(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 34, on the one hand, and licensees on the other.

(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**

### **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;
- (b) three persons representing the local port users;
- (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-

- (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 -

- (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 Committee**

**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;
  - (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;
  - (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.

#### **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 authorities**

**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.

#### **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.
- (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**

**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-
  - (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
  - (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);
  - (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.

#### **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:

- "(f) National Ports Authority Limited contemplated in section 4 of the National Ports Authority Act, 2003, 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;"

#### **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.

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

#### **Short title and commencement**

**90.** This Act is called the National Ports Authority Act, 2003, and comes into effect on a date determined by the President by proclamation in the *Gazette*.

# **MEMORANDUM ON THE OBJECTS OF THE NATIONAL PORTS AUTHORITY BILL, 2003**

## **1. GENERAL**

Ports are important for any country's economic growth. In recent times, the functions of ports have changed from merely being points of entrance or exit, to being industrial and logistics focal points. The main purpose of the National Ports Authority Bill, 2003 ("the Bill"), is to ensure that ports in our country comply with modern demands by the provisioning of efficient, safe and affordable port services.

The Bill seeks to -

- (a) provide for the establishment of the National Ports Authority ("the Authority"), and the appointment of its Board, to own, manage, control and administer ports on behalf of the State;
- (b) provide for the appointment of a chief executive officer of the Authority and the appointment and transfer of staff from Transnet's National Ports Authority to the Authority;
- (c) provide for the transfer of ports, land and other rights and obligations from Transnet to the Authority;
- (d) provide for the establishment of the Ports Regulator and the appointment of its members and of a secretariat to assist the Regulator in the performance of its functions;
- (e) ensure that access to ports and ports facilities is provided in a non-discriminatory, fair and transparent manner and that disadvantaged groups have equal opportunities to participate in the operations of ports;
- (f) authorise the Authority to enter into concession agreements or public-private partnerships so as to ensure proper development and maintenance of ports;
- (g) provide for the licensing of port services and facilities;
- (h) authorise the charging of certain fees;
- (i) authorise the making of regulations necessary for the proper execution of the Bill;
- (j) amend the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002), in order to ensure that legal actions against the Authority are instituted in the same manner as against other organs of state.

## **2. CONSULTATION**

The following persons or bodies were consulted:

Association of Ship Agents and Brokers of South Africa

BP Southern Africa

Department of Land Affairs

Department of Public Enterprises

Department of Trade and Industry

Dock and General Workers Union

Engen Petroleum

Limited

Ethekwini Municipality

Garlicke and Bousfield

Island View Shipping

National Ports Authority of SA (a division of Transnet)

National Port Users Forum

National Treasury

Rennies Richards Bay Coal Terminal

South African Petrol Refinery

Sasol Oil (Pty) Ltd

Shell South Africa Energy (Pty) Limited

Smit Marine

South African Port Operations

Spoornet

Total South Africa (Pty) Ltd

UNICORN LINES

### **3. FINANCIAL IMPLICATIONS FOR STATE**

There are no financial implications for the State regarding the establishment and incorporation of the National Ports Authority. It is anticipated that Government's contribution to the Ports Regulator will be covered by existing allocations to Departments within the Medium Term Expenditure Framework (MTEF).

### **4. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Transport are of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.