

NO. 207 OF 1993: CASTLE MANAGEMENT ACT, 1993.

STATE PRESIDENT'S OFFICE

No. 134.

28 January 1994

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

ACT

To establish the Castle Control Board for the purpose of exercising certain powers and performing certain functions and duties in respect of the land and buildings comprising the Castle; to provide for the purchase of the Castle by the Board; to provide for the employment of staff by the Board; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 14 January 1994.)

Preamble

WHEREAS the land occupied by the Castle of the Cape of Good Hope, the outworks and certain land beyond the same, together with all and whatever buildings and fortifications are erected thereon ("the Castle"), was granted, in freehold, unto the respective officers of the Ordinance of Victoria, Queen of the United Kingdom of Great Britain and Ireland, by Deed of Grant dated 23 March 1840, given under the hand of George Thomas Napier, Governor of the Cape of Good Hope, and the Public Seal of the Settlement of the Cape of Good Hope;

WHEREAS the Castle is by section 1 of the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922), deemed to have been transferred to the Government of the Union of South Africa with effect from 1 December 1921, for use exclusively for the benefit of the defence force organizations and establishments and land defences of the Union of South Africa or to conserve the value thereof for the benefit of the said organizations, establishments and defences, in accordance with that Act, and has since remained the property of the Republic of South Africa for use exclusively for the benefit of, or to conserve its value for the benefit of, the South African Defence Force or any part thereof, and is, furthermore, under the provisions of the National Monuments Act, 1969 (Act No. 28 of 1969), deemed to be a national monument;

AND WHEREAS it is desirable to make further provision to preserve and protect the military and cultural heritage of the Castle, to optimize the tourism potential of the Castle and to maximize the accessibility of the Castle to the public:

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

Definitions

1. In this Act, unless the context otherwise indicates "Board" means the Castle Control Board established by section 2; "Civilian Staff" means the Executive Director and other staff referred to in section 13(1); "Conditions" means

- (a) any right, obligation, liability or duty, in favour or in respect of the Castle under the original Deed of Grant or any transfer deed (or any endorsement thereon) under which ownership of the Castle is vested in the Government;
- (b) the provisions of the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922), or of any other law by which ownership of the Castle is vested in the Government;
- (c) any other obligation or liability referred to in section 1 (1) of the Defence Endowment Property and Account Act, 1922, in respect of the Castle: and
- (d) any servitude granted over the Castle under section 3(2)bis of the Defence Endowment Property and Account Act, 1922;

"council" means the council established by section 2 of the National Monuments Act, 1969 (Act No. 28 of 1969);

"Executive Director" means the Executive Director appointed in terms of section 13(1);

"member" includes the chairperson and an alternate member referred to in section 4(3);

"Minister" means the Minister of Defence or, upon the Board having purchased the Castle as contemplated in section 14(1)(k), the Minister of National Education; and

"the Castle" means the property referred to in Items Numbers 32 and 72 of the Schedule to the Defence Endowment Property and Account Act, 1922, and includes any building or portion of a building thereon.

Establishment of Castle Control Board

2. There is hereby established a juristic person to be known as the Castle Control Board, which shall exercise the powers and perform the functions and duties conferred and imposed upon it by this Act.

Objects of Board

3. The objects of the Board shall, subject to the Conditions and the provisions of this Act, be to

- (a) preserve and protect the military and cultural heritage of the Castle;
- (b) optimize the tourism potential of the Castle; and
- (c) maximize the accessibility to the public of the whole or any part, as the case may be, of that part of the Castle which is not used by the South African Defence Force or any part thereof.

Constitution of Board

4. (1) The Board shall consist of the following members:

- (a) A representative of the South African Defence Force appointed by the Minister of Defence;

- (b) the officer commanding of the Western Province Command of the South African Defence Force;
 - (c) a representative of the City Council of Cape Town appointed by that Council;
 - (d) a representative of the Council of the William Fehr Collection established by section 7 of the Cultural Institutions Act (House of Assembly), 1989 (Act No. 66 of 1989), appointed by the Council;
 - (e) a representative of the Department of Public Works appointed by the Minister of Public Works;
 - (f) the Executive Director;
 - (g) a representative of the council appointed by the council;
 - (h) a representative of the Cape Town Chamber of Commerce appointed by that Chamber or its successor in title;
 - (i) a representative of the South African tourism industry appointed by the South African Tourism Board established by section 2 of the Tourism Act, 1993 (Act No. 72 of 1993);
 - (j) two persons appointed by the Minister, after consultation with the Minister of National Education, on account of their respective knowledge of the military history of South Africa and of the management of museums; and
 - (k) a representative of the provincial legislature for the Province of the Western Cape appointed by that legislature.
- (2) A chairperson shall be appointed by the council from the members referred to in subsection (1) except the members mentioned in paragraphs (b) and (f) thereof.
 - (3) Every person or body which appoints a member under subparagraph (a), (c), (d), (e), (g), (h), (i), (j) or (k) of subsection (1), and each of the members mentioned in subparagraphs (b) and (f) of that subsection, shall appoint an alternate member to act in the place, and exercise all the powers and perform all the functions and duties, of such member at any meeting of the Board which such member is unable to attend.
 - (4) The appointments of members, except those members mentioned in paragraph (b) or (f) of subsection (1), and of alternate members shall take effect simultaneously with the appointment of the chairperson in terms of subsection (2), and shall be for a period of two years.
 - (5) The members mentioned in paragraphs (b) and (f) of section (1) shall serve as such members for as long as they serve in their respective capacities mentioned in those paragraphs.
 - (6) The members shall at the first meeting of the Board, by resolution, elect from among their number a vicechairperson to exercise the powers and perform the functions and duties of the chairperson at any meeting of the Board which the chairperson is unable to attend.
 - (7) A member referred to in paragraph (a), (c), (d), (e), (g), (h), (i), (j) or (k) of subsection (1), or an alternate member, may, at any time, upon at

least two months' written notice tendered to the Board, and to the person who or body which has appointed him or her, resign from the Board.

Meetings of Board

5. (1) A quorum at a meeting of the Board shall be the chairperson or vice-chairperson and at least six other members.
- (2) In the event of an equality of votes the chairperson or vice chairperson, as the case may be, shall have a casting vote.
- (3) The meetings of the Board shall be held at such ~~times~~ and places as may be determined by resolution of the Board, or by the chairperson on a written request of any three members of the Board: Provided that the first meeting of the Board shall take place within one month of the appointment of the members, at such time and place as the chairperson may determine.
- (4) Save as otherwise provided in this Act, the Board shall determine its own procedures.

Secretary of Board

6. The Executive Director shall act as secretary of the Board and shall, in that capacity, be responsible for the keeping of minutes of meetings of the Board, including the preservation in perpetuity of minutes which have been duly accepted by the Board and certified and signed by the chairperson and one other member.

Persons disqualified from being members of Board

7. No person shall be appointed or remain a member of the Board if such person-
- (a) is not a citizen of, and not permanently resident in, the Republic;
- (b) except in the case of a member mentioned in section 4(1) (b) or (f) acting in his or her respective official capacity, has, whether personally or through his or her association with any other person, a direct or indirect financial interest in the renovation, upkeep or running of the Castle or in any museum, display, exhibition, business, enterprise or function in or in connection with the Castle;
- (c) is an unrehabilitated insolvent or is under any form of judicial administration;
- (d) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (e) has been convicted, whether in the Republic or elsewhere, of any offence involving dishonesty or for which such person has been sentenced to imprisonment without the option of a fine, irrespective of whether such sentence has been fully or partly suspended;
- (f) has reached the age of 70 years;
- (g) at the relevant time is, or during the preceding six months has been, an office-bearer or employee of any party, movement, organization or body of a political nature; or

(h) has in terms of any law been nominated as a candidate for election as
a member of any legislative body or has under any law been appointed or designated as such member.

Removal from office

8. Notwithstanding the provisions of section 4(4), a member, except a member mentioned in paragraph (b) or (f) of section 4(1), may, with due regard to the requirements of the rules of natural justice, be removed from office by the Board or, upon application by any body or person having locus standi,
by any competent court on account of misconduct or unwillingness or inability to efficiently perform the duties of his or her office or, except in the case of the member appointed as chairperson in terms of section 4(2), by reason of his or her absence from two consecutive meetings of the Board without prior permission of the chairperson, except on good cause shown.

Vacancies on Board

9. A vacancy on the Board occasioned by a member except a member mentioned in paragraph (b) or (f) of section 4(1)
- (a) becoming disqualified under section 7;
 - (b) tendering his or her resignation in terms of section 4(7);
 - (c) being removed from office in terms of section 8; or
 - (d) dying in office, or on account of physical disablement being incapable of performing the duties of his or her office for a period exceeding four months, shall be filled by the appointment as soon as possible, for the unexpired period of his or her term of office, of another person in accordance with the provisions of section 4(1).

Allowances

10. The chairperson, members and alternate members, respectively, shall receive such allowances in respect of expenses incurred by them in the exercise of their powers or the performance of their functions or duties
as may be approved by the Minister in concurrence with the Minister of State Expenditure.

Disclosure of conflict of interests

11. (1) Subject to the provisions of subsection (2), no member shall vote or in any other manner participate in or be present at the proceedings of a meeting of the Board if, in respect of any matter before the Board, he or she has an interest which precludes him or her from exercising his or her powers or performing his or her functions or duties as such member in a proper manner.
- (2) If at any stage during the course of any proceedings of the Board it appears that a member has or may have any interest which may cause a conflict of interests to arise on his or her part with regard to the business at hand before the Board
- (a) such member shall forthwith fully disclose the nature of his or
her interest and leave the meeting so as to enable the remaining members to decide whether such member is precluded from participating in such meeting by reason of his or her conflicting interests: and

(b) such disclosure and decision shall be recorded in the minutes of that meeting.

(3) Any discussion of or resolution by the Board taken or passed in breach of the provisions of this section shall, subject to the provisions of section 12, be void and of no effect.

Proceedings not invalid under certain circumstances

12. Notwithstanding the provisions of section 11, a decision taken or a resolution passed by the Board shall not be invalid merely by reason of an irregularity in the appointment of a member to, or a vacancy in, the Board or the fact that any person not entitled to act as a member, participated as such at a meeting of the Board when such decision or resolution was taken or passed, if such decision was taken or such resolution was passed by a majority of the members present at the time and entitled so to act, and the members at the time constituted a quorum.

Civilian Staff for Castle

13. (1) (a) The Board shall appoint a suitably qualified and experienced person as Executive Director of the Civilian Staff and Administration for the Castle to assist the Board, subject to its direction and control, in the performance of all financial, administrative and clerical functions and work arising from the application of this Act.

(b) The Board shall authorize the Executive Director to appoint such other staff as it deems necessary.

(2) The Civilian Staff shall receive such remuneration, allowances, subsidies and other employment benefits and shall be appointed on such terms and conditions and for such periods as the Board may from time

to

time determine:

Provided that a person who immediately prior to the commencement of this Act was an officer or employee appointed, or deemed to have been appointed, in terms of the Public Service Act, 1984 (Act No. 111 of 1984), and who is at that time serving as a staff member in the Castle, shall, unless such person is unwilling or unable to continue to perform the functions and duties attached to such appointment, be deemed to have been appointed as contemplated in subsection (1)(b) on such terms and conditions of service as may

be

determined.

(3) In making a determination referred to in subsection (2), the Board shall take care not to exceed the limits of its estimated income and expenditure referred to in section 18(5).

(4) Notwithstanding anything to the contrary contained in the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), the Civilian Staff shall, for the purposes of that Act, be deemed to constitute an associated institution as contemplated in that Act.

Powers and functions of Board

14. (1) The Board may, subject to the Conditions and in order to achieve its object referred to in section 3

- (a) charge or authorize the charging of entrance fees to the Castle or to any part thereof;
- (b) undertake or authorize the undertaking of general or specialized public tours of the Castle or any part thereof;
- (c) demarcate areas of the Castle to which the public may or may not have access;
- (d) operate or, subject to any condition which it may impose, authorize the operation of book, souvenir or other shops in the Castle;
- (e) enter into contracts for the promotion of the Castle as a tourist attraction or for the display of advertisements in, or concerning, the Castle;
- (f) arrange, in consultation with, and subject to the consent of, the South African Defence Force or a Citizen Force Regiment, for visits of a specialized nature by specific persons or groups of persons to the Castle occupied by that Force or Citizen Force Regiment.
- (g) enter into contracts with the South African Defence Force, against payment by the Board or any other specified party, for the rendering of a ceremonial or any other service or function by that Force in, or with regard to, the Castle;
- (h) subject to any applicable law, enter into contracts with the South African Defence Force, against payment by the Board or any other specified party, for the operation of a restaurant, cafe or bar in the Castle during hours agreed upon between the Board and that Force;
- (i) invest surplus funds and open accounts at any deposit-taking or financial institution;
- (j) obtain legal advice, instruct legal representatives and institute or defend any legal action;
- (k) notwithstanding the fact that the Castle is at any time or may at any time be required for the purposes of the South African Defence Force or any Citizen Force Regiment contemplated in the Defence Endowment Property and Account Act, 1922, purchase the Castle for an amount being the larger of
- (i) the amount determined by the Minister of Public Works, in consultation with the Minister of Defence and the Minister of State Expenditure, as being equal to the market value of the land on which it is situated, no value whatsoever being attached to any buildings erected thereon; or
- (ii) the amount required to construct a complete command headquarters with equipment, amenities, roads and fences:

Provided that the Board shall not be obliged to purchase the Castle until it has sufficient funds for the purchase;

- (l) undertake or, on such terms and conditions as it may determine, authorize the undertaking for profit of craft shops and industries and other businesses in unused spaces in the Castle;
- (m) impose conditions and restrictions on entry by any member of the public, or the public in general, to the Castle;
- (n) purchase, hire, possess or otherwise acquire movable property and, subject to the provisions of section 16, encumber or alienate such property;
- (o) in pursuance of its objects in terms of this Act, hire or let services;
- (p) perform or exercise any function or power entrusted or conferred upon it in terms of any other law;
- (q) with the approval of the Minister, acting with the concurrence of the Minister of Finance, borrow money on such terms and conditions as the Board may approve, by way of loans from any source and, subject to the provisions of section 16, against the security which the Board may deem fit; and
- (r) do everything that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value or profitability of the property or rights of the Board:

Provided that the Board may do nothing which will affect the rights which any trust or body, the South African Defence Force or any Citizen Force Regiment enjoyed with respect to the occupation and use of any part of the Castle immediately prior to the commencement of this Act, except in so far as may be necessary to give effect to the provisions of this Act.

- (2) The amount accruing to the State Revenue Fund out of the sale of the Castle to the Board, as contemplated in paragraph (k) of subsection (1), shall be employed for the provision of the suitable permanent accommodation contemplated in section 15(2).

Transfer of Castle

- 15. (1) The Registrar of Deeds in charge of the deeds registry in which is registered any title deed relating to the Castle shall, in the event of the Board having purchased the Castle under section 14(1)(k), by endorsement on such deed, record the transfer of the Castle to the Board and make such entries as may be required in consequence thereof.
- (2) Notwithstanding the provisions of subsection (1), the South African Defence Force or any Citizen Force Regiment shall, after such transfer, under such terms and conditions as may be agreed to by the Board, have the right to remain in occupation of those parts of the Castle which it occupied immediately prior to such transfer until suitable permanent accommodation as contemplated in section 14(1)(k) has been provided to it by the State.

Prohibition on alienation, mortgaging, lease or encumbrance of Castle or other

property

16. Subject to the provisions of this Act, the Board shall not, on account of its having obtained ownership of the Castle in consequence of the purchase contemplated in section 4(1)(k), alienate, mortgage or lease the Castle, or alienate, lease or in any way encumber any of the contents of any museum or permanent exhibition or display which is housed in the Castle, and any purported alienation, mortgaging, lease or encumbrance of the Castle or any of such contents shall be void and of no effect.

Ownership of Castle to revert to State upon insolvency of Board

17. In the event of the Board becoming insolvent, ownership of the Castle shall revert to the State.

Funds of Board and keeping of accounts

18. (1) The funds of the Board shall consist of

- (a) any moneys paid to the Board out of moneys which may from time to time be appropriated by Parliament to assist the Board;
- (b) money or revenue received by it in pursuance of any provision of this Act;
- (c) money borrowed by the Board in accordance with section 14(1)(q); and
- (d) such other money as may from time to time accrue, become payable or be donated to the Board.

(2) The Board shall allocate so much of its surplus funds as the Minister of State Expenditure may annually determine, to the maintenance and upkeep of the Castle.

(3) The Board shall utilize its funds to defray expenses in connection with the exercise of its powers and the performance of its functions and duties in accordance with the statement of its estimated income and expenditure as approved by the Minister in terms of subsection (5).

(4) The Board shall, subject to the provisions of this Act, utilize donations and contributions for the purpose, and subject to the conditions, determined by the donor or contributor.

(5) The Board shall in each financial year, on a date determined by the Minister within 60 days after the commencement of that financial year, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval.

(6) The Board may invest any unexpended portion of its funds with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or, subject to the approval of the Minister acting in concurrence with the Minister of State Expenditure, in any other manner.

(7) The Board may utilize any interest earned on an investment contemplated in subsection (6) to defray expenses in connection with the exercise of its powers or the performance of its functions and duties.

Accounting officer

19. (1) The Executive Director shall be the accounting officer charged with the responsibility of accounting to Parliament for all money or revenue received, the utilization thereof and the use and care of the property of the Board.
- (2) The accounting officer shall be responsible for the keeping of such records of account as are necessary to represent fairly the state of affairs and business of the Board and to explain the transactions and financial position of the Board.

Auditing

20. The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Board.

Financial obligations and control

21. (1) The Board shall furnish the Minister with such information as he or she may from time to time require in connection with the activities and financial position of the Board, and shall as soon as practicable after the end of each financial year submit to the Minister an annual report on the affairs and functions of the Board in respect of that financial year, which shall include, inter alia
- (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure;
 - (c) a statement of cash flow information.
- (2) The financial statements referred to in subsection (1) (a), (b) and (c) shall be in conformity with generally accepted accounting practice.
- (3) The Minister shall, as soon as practicable after a report has in terms of subsection (1), been submitted to him or her, table it in Parliament.

Recovery of loss and damage

22. (1) If a person who is or was in the employment of the Board caused the Board any loss or damage because he or she-
- (a) failed to collect money due to the Board for the collection of which he or she is or was responsible;
 - (b) is or was responsible for an irregular payment of money of the Board or for a payment of such money not supported by a proper voucher;
 - (c) is or was responsible for fruitless expenditure of money of the Board owing to an omission to carry out his or her duties;
 - (d) is or was responsible for a deficiency in, or the destruction of, or any damage to, money, stamps, face values and forms having potential value, securities, equipment, stores or any other property of the Board; or

(e) is or was responsible for a claim against the Board owing to a failure to carry out his or her duties, the accounting officer shall determine the amount of such loss or damage, and order that person, by notice in writing, to pay the Board, within 30 days of the date of such notice, the whole or any part of the amount as determined.

(2) If a person who is in the employment of the Board and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice concerned, the amount shall, subject to the provisions of subsections (4), (5) and (6), be deducted from his or her monthly salary: Provided that such deduction shall not in any month exceed a quarter of his or her monthly salary.

(3) If a person who was in the employment of the Board and who has in terms of subsection (1) been ordered to pay an amount fails to pay the amount within the period stipulated in the notice concerned, the accounting officer shall, subject to the provisions of subsections (4), (5) and (6), recover the amount from the person concerned by legal process.

(4) If a person who has in terms of subsection (1) been ordered to pay an amount, offers, within the period stipulated in the notice concerned, to pay the amount in instalments, the accounting officer may allow payment in such instalments as he or she may consider reasonable.

(5) A person who has in terms of subsection (1) been ordered to pay an amount. may within a period of 30 days of the date of such order, appeal in writing against such order to the Minister, stating the grounds of his or her appeal, and the Minister may, after such investigation as he or she may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or in part, as the Minister may deem fair and reasonable, from the payment of such amount.

Short title

23. This Act shall be called the Castle Management Act, 1993.