

REPUBLIC OF SOUTH AFRICA

LEGAL SUCCESSION TO THE SOUTH AFRICAN TRANSPORT SERVICES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31059 of 15 May 2008)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 43—2008]

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“(1) On the date referred to in section 3(1), a legal person, which shall be called the **[South African Rail Commuter Corporation Limited]** Passenger Rail Agency of South Africa, shall be established.”.

Substitution of section 23 of Act 9 of 1989, as amended by section 16 of Act 52 of 1991 and section 3 of Act 47 of Act 47 of 1992

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3. The following section is hereby substituted for section 23 of the principal Act:

“Objects and powers of Corporation

- 23.** (1) The main object and the main business of the Corporation are to—
- (a) ensure that, at the request of the Department of Transport or any local government body designated under section 1 as a transport authority, rail commuter services are provided within, to and from the Republic in the public interest; and
 - (b) provide, in consultation with the Department of Transport, for long haul passenger rail and long distance bus services within, to and from the Republic in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).
- (2) The second object and the secondary business of the Corporation is to generate income from the exploitation of the assets acquired by it.
- (3) In carrying out its objects and business, the Corporation shall have due regard to key government social, economic and transport policy objectives.
- (4) Without derogating from the generality of the provisions of subsections (1) and (2), the Corporation may—
- (a) enter into contracts and perform any other legal acts;
 - (b) acquire or alienate movable and immovable property or rights therein;
 - (c) acquire or alienate rights in corporeal things and deal therewith in any other manner;
 - (d) borrow, lend or invest money;
 - (e) make, draw, issue, execute, accept, endorse, discount, buy or sell financial instruments, including promissory notes, bills of exchange, debentures, stock, shares and any other type of negotiable or transferable document, and may acquire or alienate them in any other manner;
 - (f) enter into indemnities, guaranties and suretyships and may secure payment in terms thereof in any manner;
 - (g) make donations;
 - (h) grant service benefits of any nature, including pension and incentives schemes to members of the Board of Control and employees;
 - (i) conclude partnership contracts and may participate in joint ventures;
 - (j) form companies or acquire any interest therein and may finance any company for the purposes of realising or advancing its objects, and may transfer all or any portion of its business, assets and liabilities to such companies; and
 - (k) generally, to do anything or perform any other act, whether within or outside the Republic, that may assist the Corporation in achieving its objects.”.

Amendment of section 24 of Act 9 of 1989, as amended by section 17 of Act 52 of 1991 and section 4 of Act 47 of Act 47 of 1992

4. Section 24 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

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“(c) one of the members of the Board of Control shall be nominated by the **[Association of Regional Services Councils]** South African Local Government Association recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997); and”.

Insertion of section 25A in Act 9 of 1989

5. The following section is hereby inserted in the principal Act after section 25:

“Transfer of assets in long-distance passenger rail and long-distance bus services

25A. (1) Right of ownership in long-distance passenger rail assets and long-distance bus services owned by the Company and identified by the Minister, in consultation with the Minister for Public Enterprises, shall be transferred to the Corporation on the date set by the Minister. 5

(2) As consideration for the assets contemplated in subsection (1), the Corporation shall issue fully paid-up shares in the Corporation to the Company, and the rights attached to such shares shall be exercised by the Minister. 10

(3) The value of the assets acquired by the Corporation in terms of subsection (1) shall be determined by the Minister in consultation with the Minister of Finance.”. 15

Amendment of section 31 of Act 9 of 1989, as amended by section 22 of Act 52 of 1991, section 7 of Act 47 of 1992 and section 2 of Act 43 of 1995

6. Section 31 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“The provisions of sections 13, 17, 18 and 19 of, and of items 5 to 9 and 12 of Schedule 1 to, this Act shall apply *mutatis mutandis* to the Corporation; provided that—”; and

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 25

“(a) the reference in sections 13 (7), 17, 18 (1) and 19 (1) to the Minister shall be interpreted as a reference to the Minister of Transport;”.

Substitution of word in Act 9 of 1989

7. The principal Act is hereby amended—

(a) by the substitution for the word “Company”, wherever it occurs in section 7, of the expression “Company and the Corporation”; and 30

(b) by the substitution for the word “Company”, wherever it occurs in section 14(1), excluding section 14(1)(a)(iii), and items 5 to 9 and 12 of Schedule 1, of the expression “Company or the Corporation, as the case may be,”.

Short title and commencement 35

8. This Act is called the Legal Succession to the South African Transport Services Amendment Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE LEGAL
SUCCESSION TO THE SOUTH AFRICAN TRANSPORT SERVICES
AMENDMENT BILL, 2008**

1. BACKGROUND

- 1.1 In December 2004, Cabinet approved that urgent action should be taken to improve the efficiency of the passenger rail services in the country and authorised the consolidation of the South African Rail Commuter Corporation (the SARCC), its commuter services operator, Metrorail, and the long-distance operator, Shosholozza Meyl. Cabinet further directed that the consolidation of the passenger rail entities should be executed in two phases. The first phase that has been concluded on 1 May 2006 entailed the consolidation of Metrorail within the SARCC and the second phase, which is planned for conclusion by March 2007, entails incorporating the assets, finances and personnel of Shosholozza Meyl within the SARCC.
- 1.2 Transnet Ltd (Transnet) is a public company with the State as sole shareholder. Currently it provides, amongst other, transport services, rail passenger and freight services in South Africa. Metrorail and Shosholozza Meyl have been, and in the latter case continued to be, business units of Transnet without separate legal personality. Previously, Transnet and Metrorail provided rail commuter services in urban centres in terms of a Rail Commuter Services Agreement entered into on 28 August 2000 between Transnet and the SARCC, a legal entity established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) (the Act). Shosholozza Meyl currently provides long-haul rail passenger services.
- 1.3 On 26 December 2005, Transnet entered into an agreement of sale with the SARCC in respect of the business of Metrorail. In terms of the agreement, the SARCC took over the management and operational control of Metrorail's business, which included risk and reward in respect of rail commuter services provided by Metrorail. Effective the same day, the Services Agreement in respect of Metrorail's business was cancelled. On 1 May 2006, ownership in respect of all assets and liabilities of the business passed to the SARCC. The effect of this agreement is that from merely being obliged to ensure that Transnet provided rail commuter services, the SARCC now provides rail commuter services directly to the public.
- 1.4 Except for urban rail commuter services, Transnet continued to run the business of the former South African Transport Services (SATS), including long-distance rail passenger services i.e. Shosholozza Meyl. In terms of the Cabinet direction, referred to in paragraph 1.1, Transnet and the SARCC now wish to enter into an agreement of sale in respect of Shosholozza Meyl. In order to ensure that the provision of rail commuter services and long-haul passenger services remains legally unassailable, certain amendments to the Act are necessary.

2. DISCUSSION

- 2.1.1 The definition of "Corporation" is amended by the substitution for the name "South African Rail Commuter Corporation Limited" of the name "Passenger Rail Agency of South Africa". The purpose of the amendment is to reflect the new role of the Corporation.
- 2.1.2 The definition of "local government body" is deleted as it is not used in the Act anymore.
- 2.1.3 The definition of "Transport Authority" is amended in order to add and distinguish transport authorities as dealt with in the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

- 2.2 The proposed amendment to section 22 of the Act changes the name of the South African Rail Commuter Corporation Limited to “Passenger Rail Agency of South Africa”.
- 2.3 The purpose of the amendment of section 23 of the Act is to add the powers of the Corporation and to remove the restriction that was placed on the Corporation by the Act.
- 2.3.1 It is proposed that the objects of the corporation will be to, in consultation with the Department of Transport, provide for passenger rail and for long-distance bus services within, to and from the Republic in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).
- 2.3.2 Some of the powers will be the capacity to enter into contracts and perform other legal acts, to borrow money, lend or invest money, to form companies and to acquire an interest therein and to finance them for the purposes of realising or advancing its objects and to transfer all or any portion of its business, assets and liabilities to such companies.
- 2.4 The amendment proposed to section 24 of the Act seeks to replace the expression “Association of Regional Service Councils” with a reference to the South African Local Government Association.
- 2.5 The Bill also seeks to insert a new section 25A into the Act. The new subsection seeks to empower the Minister of Transport, in consultation with the Minister for Public Enterprises, to identify and transfer certain assets owned by Transnet to the Corporation.

3. CONSULTATION

The general public was consulted through the publication of the Bill in *Government Gazette* No. 30344 of 2 October 2007. Comments were received and were incorporated in the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 SHOSHOLOZA MEYL

The findings of an extensive due diligence report that was concluded in November 2007, showed that the operational deficit for the 2006/07 financial year was R735m. The Business and Consolidation implementation Plan that was concluded in May 2008 projected the short-term capital funding requirement for 2008/09 at R422m. National Treasury only allocated R500m, R450m and R400m operational subsidy for the 2008/09 to 2010/11 MTEF-budget cycle. The balance of the funding will be motivated in alignment with the Business and Consolidation Implementation Plan for long-distance passenger rail services, during the 2009/10 MTEF-budget cycle. The Business Plan sets the shortfall as follows:

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|-------------------------------|-----------------|
| ● 08/09 – Operational – R735m | Capital – R442m |
| ● 09/10 – Operational – R845m | Capital – R892m |
| ● 10/11 – Operational – R784m | Capital – R634m |

4.2 AUTOPAX

In January 2008 the due diligence, business valuation and the draft Business Plan were completed. The key issues raised in these reports are as follows:

- Transnet currently extends a line of credit to Autopax of R110 million. Autopax creditors are all current and other than the Transnet facility there is no outstanding liability of any significance.
- The net-asset-value of the company is R25 million subject to pension, leave pay and medical liabilities.

- The Business Plan projects an operating deficit for the next three financial years. The deficit is projected as follows:

– 08/09 – Operational – R54 m	Capital – R117m
– 09/10 – Operational – R79m	Capital – R69m
– 10/11 – Operational – R119m	Capital – R76m

The funding requirement will be motivated in alignment with the Business Plan for long distance passenger road services, during the 2009/10 MTEF-budget cycle.

5. PARLIAMENTARY PROCEDURE

- 5.1 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 established by 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.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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