

LEGAL SUCCESSION TO THE SOUTH AFRICAN TRANSPORT SERVICES AMENDMENT BILL, 2008

**PRESENTATION TO THE SELECT
COMMITTEE ON TRANSPORT
20 AUGUST 2008**



BACKGROUND

- Cabinet approved in 2004 that urgent action should be taken to improve the efficiency of passenger rail transport in the Country
- It authorised the consolidation of the SARCC, Metro Rail its commuter services operator and long distance rail operator, Shosholoza Meyl.
- Cabinet further directed that the consolidation should be executed in two phases.



BACKGROUND CONT.....

- The first phase has been concluded on 1 March 2006, entailed the consolidation of Metro Rail within the SARCC
- The second phase which was planned for conclusion in March 2007 entails incorporating the assets, finances and personnel of Shosholoza Meyl within SARCC



BACKGROUND CONT....

- Transnet Ltd is a public company with the state as sole shareholder and currently provides among other transport services, rail passenger and freight services in South Africa
- Metro Rail and Shosholoza Meyl have been, and in the latter case continue to be business units of Transnet without separate legal personality

BACKGROUND CONTI.....

- Previously Metrorail and Transnet provided rail commuter services in urban centres in terms of the Rail Commuter Agreement entered into on 28th August 2000 between Transnet and SARCC
- Shosholozza Meyl currently provides long-haul rail passenger services
- On 26 December 2005, Transnet entered into an agreement of sale with the SARCC in respect of business of Metrorail

BACKGROUND CONT...

- 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 and this meant the agreement was cancelled.
- On 1st May 2006, ownership in respect of all assets and liabilities of the business passed to the SARCC

BACKGROUND CONTI...

- The effect of this agreement is that SARCC provides rail commuter services directly to the public
- Except for urban rail commuter services, Transnet continued to run the business of the former SATS including long distance rail passenger services, Shosholoza Mely

BACKGROUND CONT...

- Transnet and the SARCC now wish to enter into an agreement of sale in respect of Shosholoza Meyl and have made it necessary for certain amendments to be affected to the Legal Succession Act to ensure that the provision of rail commuter services and long-haul passenger services remains legally acceptable.

OBJECTS OF THE BILL

- To amend the Legal Succession to the South African Transport Services Act No. 9 of 1998 so as to insert table of contents
- To amend certain definitions
- To amend so as to allow for the Long Haul Passenger Rail Services and Long Distance Bus Services within the Passenger Rail Agency of South Africa, formerly known as SARCC
- To provide for matters connected therewith

SECTION 1 (DEFINITIONS) (CLAUSE 1)

Table of contents inserted to facilitate reading of the Act

- The Definition of the word “Corporation”
 - is amended by deletion of reference to SARCC Ltd and replaced by reference to the “Passengers Rail Agency of South Africa”.
 - The purpose of the amendment is to reflect the new role of the Corporation.

SECTION 1(DEFINITIONS) CONTI...

- The Definition of the word “**local government body**”
 - is deleted because the name is outdated and the new word that is being used for such a body is “Municipality”

SECTION 1 CONTI...

- The Definition of “Transport Authority”
 - This definition is amended and substituted for a new definition
 - The purpose is to add and distinguish “Transport Authorities” as dealt with in the NLTAA, 2000(Act No. 22 of 2000)

TRANSMED (CLAUSE 2)

- Clause 2 of the Amendment Bill amends Section 10 of the Act to protect the interests of employees whom will be affected by the transfer to either remain being members of Transmed or choose a medical aid of their own choice.

RELATIONSHIP BETWEEN THE STATE AND THE COMPANY (CLAUSE 3)

- Clause 3 of the Amendment Bill amends section 15 by deletion because the relationship between the State and the Company cease to exist because of the transfer of long haul passenger rail services and long distance bus services.

SECTION 22 (CLAUSE 4)

- Clause 4 of the Bill amend section 22 of the Principal Act for a new subsection.
 - The amendment changes the name of South African Rail Commuter Corporation limited and replaces it with the word Passenger Rail Agency of South Africa.
 - The section also empowers the Minister to establish the new Agency.

SECTION 23 MAIN OBJECTS AND POWERS (CLAUSE 5)

- Clause 5 of the Bill amend section 23 of the Principal Act by substitution of the whole section 23 for a new section 23.
 - The purpose of the amendment is to add the powers of the corporation and remove the restriction of powers that was placed by the Principal Act.

SECTION 23 MAIN OBJECTS AND POWERS (CLAUSE 5)

-The object of the corporation has been newly defined. The corporation's object will in consultation with the Department of Transport be to provide passenger rail and the 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 2002).

SECTION 23 MAIN OBJECTS AND POWERS(CLAUSE 5)

- The corporation shall have the capacity and powers of a natural person of full capacity in so far as juristic person is cable of having such capacity or of exercising such powers.
- The corporation shall have full capacity to enter into contracts and perform other legal acts. The corporation is now empowered to borrow money, lend or invest money.

SECTION 23 MAIN OBJECTS AND POWERS(CLAUSE 5)

-The corporation is also empowered by the amendment Bill to form companies or acquire interest therein and to finance them, for purposes of realizing or advancing its objects and to transfer all or any portion of its business, assets and liabilities to such companies.

SECTION 24 (CLAUSE 6)

- Clause 6 amend section 24 of the Principal Act by substitution of the reference to Association of Regional Service Councils to **South African Local Government Association” (SALGA).**

NEW_SECTION 25A CLAUSE 7

- Clause 7 amend section 25 of the Principal Act by addition of new subsection 25A.
 - The new added subsection 25A provides for the transfer of long distance passenger and long distance bus services.
 - It also provides for exemptions on the transfer of land from the Company to the Authority.

APPLICATION OF LAWS (CLAUSE 8)

- Clause 8 of the Bill amends section 31 of the Principal Act by insertion of section 17 between reference to section 13 (7) and section 18.
 - The purpose of insertion of section 17 is to make section 31 (1) (a) to be applicable also to the Corporation.

(CLAUSE 8)

- Clause 8 of the Bill amends section 14 the Principal Act by substituting the word “Company” with the expression “Company and the Corporation” wherever Company appears
 - The reason is to give Corporation equal status with the Company.

CONSULTATION

- An amendment Bill was published for comment on 02 October 2007
- The intention to introduce the Bill in Parliament was published in Government Gazette No 30344 on the 02 October 2007 Notice No. 1250.
- Comments were received from SARCC, Mlangeni Gasela Attorneys

CONCLUSION

**It is recommended that the
Committee approve the
Amendment Bill**

THANK YOU