

REPUBLIC OF SOUTH AFRICA

# **NATIONAL PORTS AUTHORITY BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No. 24261 of 17 January 2003 )  
(The English text is the official text of the Bill)*

(ACTING MINISTER OF TRANSPORT)

**[B 5-2003]**

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# **BILL**

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

BE IT THEREFORE 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. In this Act, unless the context indicates otherwise—
  - "Authority" means National Ports Authority Limited, contemplated in section 3;
  - "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 34;
  - "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 52(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 35 or deemed to be held in terms of section 43 and "licensed" must be interpreted accordingly;
  - "licensed operator" means a person licensed to provide a port service or operate a port facility;
  - "Minister" means the Minister of Transport or a duly appointed representative;
  - "navigational aids" means lighthouses, radio navigational aids, buoys and beacons;
  - "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;
  - "PFMA" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - "pilot" means a person licensed in terms of section 56 to provide pilotage services;
  - "port" means a harbour contemplated in section 10(1) or a port which, for purposes of this Act, has been determined as such in terms of section 10(2);
  - "Port Consultative Committee" means a committee appointed in terms of section 60;
  - "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 telecommunications and similar services;

**"port repair facilities"** means dry docks, vessel repair facilities, warehouses and railways 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 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 water, lights, power, sewerage, telecommunications and similar services within terminal boundaries;

**"terminal operations"** means services provided at a port terminal, consisting of handling cargo, storing cargo and delivering cargo to vessels and services related thereto;

**"this Act"** includes the regulations;

**"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.

## **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; and
  - (b) 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 transfer of technology, information systems and managerial expertise through private sector involvement and participation.

## **CHAPTER 2**

### **ESTABLISHMENT AND INCORPORATION OF AUTHORITY**

#### **Establishment of Authority**

3. (1) Upon incorporation by the Shareholding Minister of a company known as National Ports Authority Limited, that company is established as the authority to own, manage, control and administer ports on behalf of the State.

(2) The Authority is subject to the PFMA.

#### **Incorporation of Authority**

4. (1) The Shareholding Minister must take the necessary steps for the formation and incorporation of the Authority as a public company with a share capital, and the issuing of a certificate to commence business in terms of the Companies Act.

(2) The State shall be the only member and shareholder of the Authority.

(3) The Shareholding Minister must on behalf of the State sign the memorandum and articles of association and all other documents necessary in connection with the formation and incorporation of the Authority as a company.

(4) Notwithstanding section 32 of the Companies Act, the Registrar of Companies must register the memorandum and articles of association and incorporate the Authority as a public company under the name "National Ports Authority Limited" with the State as its only shareholder, and issue to the Authority a certificate to commence business with effect from the date of its incorporation as a company.

(5) 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 has been made 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 the Authority**

7. (1) (a) The Shareholding Minister may, on the recommendation of the Authority, 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.

(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

### DECLARATION OF PORTS AND FUNCTIONS OF AUTHORITY

#### Ports under jurisdiction of Authority

10. (1) All harbours under the jurisdiction of the National Ports Authority of Transnet immediately prior to the commencement of this Act fall under the jurisdiction of the Authority as from the date determined in terms of section 27(1) .

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

(b) The Minister may only issue a determination under paragraph (a) after an open and transparent process, which must include a viability study and an environmental impact assessment, and with Cabinet approval.

(3) The Minister may 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.

#### 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 road and rail access to ports;
- (e) arrange for services such as water, light, power, sewerage and telecommunications;
- (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) encourage and facilitate private sector investment and participation in the provision of port services and facilities;
- (i) enter into concessions and public-private partnerships in terms of this Act;
- (j) ensure that adequate, affordable and efficient port services and facilities are provided;
- (k) exercise licensing, regulating and controlling functions in respect of port services and facilities;
- (l) ensure that any person who is required to render any port services and facilities is able to provide those services and facilities efficiently;
- (m) promote efficiency, reliability and economy on the part of the licensed operators in accordance with recognised international standards and public demand;
- (n) 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;

- (a) prescribe the limits within which and the levels to which dredging may be carried out in the ports and the approaches thereto;
  - (p) provide or arrange for tugs, pilot boats and other facilities and services for the navigation and berthing of vessels in the ports;
  - (q) provide, control and maintain vessel traffic services;
  - (r) disseminate navigational information;
  - (s) promote the use, improvement and development of ports;
  - (t) advise on all matters relating to the port sector, port services and port facilities;
  - (u) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons;
  - (v) approve or license the establishment and planning of off-shore cargo -handling facilities and services relating thereto;
  - (w) discharge or facilitate the discharge of international obligations;
  - (x) facilitate the performance of any function of any organ of state in a port;
  - (y) assist in search, rescue and salvage operations within port limits and, in the Authority's discretion, beyond the port limits;
  - (z) 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.
- (3) The Authority as an operator of last resort must do everything necessary for the effective and economic management, planning, control and operation of the ports.

#### **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;
  - (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) foster the development and expansion of port services and facilities elsewhere in the world in collaboration with other countries and international organisations;
  - (h) promote intra and inter port competitiveness;
  - (i) promote measures for the safety of life in ports.

#### **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) The Board consists of a minimum of seven and a maximum of 13 members, appointed by the Shareholding 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) commerce, finance and legal and economic matters.

(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.

#### Nomination and appointment of members of Board

15. (1) (a) Whenever a vacancy occurs in the Board, 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) (a) The Shareholding Minister may, prior to the incorporation date, appoint the members of the first Board in accordance with the procedure contemplated in subsections (1) and (2).

(b) Any such appointment takes effect on the incorporation date.

#### 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) determines 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) introduces port reform measures;
- (d) appoints and enters into a performance contract with the chief executive officer of the Authority;
- (e) sets criteria and policy for the effective execution of the Authority's regulatory and control functions;
- (f) evaluates the overall policy for the development, improvement and extension of ports;
- (g) approves the sale, acquisition and long-term lease of property, excluding land, in ports;
- (h) approves the granting of concessions and licences;
- (i) maintains sound relations with the State, and other industry stakeholders;
- (j) approves contracts for major works and purchases subject to section 54 of the PFMA;
- (k) approves the appointment of senior executive employees of the Authority; and
- (l) 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) The Board must ensure that under no circumstances land owned by the Authority is 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) 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) Members of the Board may be reappointed to ensure continuity .

(4) The Shareholding Minister must remove a member of the Board from office-

- (a) for failing to perform his or her duties 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 ;
- (d) for becoming an employee of the State; or
- (e) 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 possibly 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 or contemplates acquiring an interest that could possibly 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, 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 national 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 (e).

(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 Transnet's National Ports Authority Division 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 regulatory and control 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 may 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 (e).

(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 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 because of illness or incapacity; 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 determined in terms of section 27(1) were in the employ of Transnet's National Ports Authority 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.

(3) For the purpose of the application of the Income Tax Act, 1962 (Act No. 58 of 1962), to the transfer of employees contemplated in subsection (2), it is deemed that the Authority and Transnet are the same employer.

#### **Transfer of ports, land and other rights and obligations to Authority**

27. (1) On a date after the incorporation date, determined by the Shareholding Minister by notice in the *Gazette*, the Authority becomes the successor to the National Ports Authority, a division of Transnet

(2) On the date determined in terms of subsection (1) the Authority acquires the business of Transnet's National Ports Authority Division as a going concern and-

- (a) all land and immovable property relating to the business of that Division and owned by Transnet vest in the Authority; and
- (b) all movable property and all liabilities, rights and obligations of Transnet relating to that Division, as determined by the Shareholding Minister in the notice contemplated in subsection (1) vest in the Authority.

(3) The Authority holds all such property on behalf of the State.

(4) Upon the vesting contemplated in subsection (2), the Board must inform the National Treasury in the manner contemplated in section 54(2) of the PFMA.

(5) 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 Authority—

- (a) becomes the owner of all land and immovable property situated within the port limits, including the bed of the waters within the port limits measured to the high water mark;
- (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 ports, including arbitrations, 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 ports as if the Authority had been the contracting party from the beginning.

(6) Subsections (2) and (5) are not to be interpreted as conferring on the Authority a right of ownership in movable or immovable property which, before the said date, was vested in a person other than Transnet.

(7) 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.

(8) 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.

#### **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 a ports regulatory body to be known as the Ports Regulator.

#### **Functions of Regulator**

30. (1) The Regulator must—
- (a) prevent any abuse of power by the Authority and ensure equity of access to the ports and to the provision of port services;
  - (b) monitor the business relationship between Transnet and the Authority to ensure that Transnet does not derive an unfair advantage over other transport companies;
  - (c) ensure that revenues generated by the Authority are used to the benefit of the Authority and its customers;
  - (d) ensure that access to ports and port facilities are provided in a non-discriminatory, fair and transparent manner;
  - (e) issue directives to the Authority;
  - (f) ensure that small and medium -sized enterprises owned by historically disadvantaged groups have an equitable opportunity to participate in the operation of facilities in the ports environment;
  - (g) seek to 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;
  - (h) advise and receive advice from any other regulatory authority.

- (2) For purposes of subsection (1) the Regulator may-
- (a) subject to the payment of the prescribed filing fees, if any, consider any complaint or matter submitted to it; and
  - (b) take such steps as may be necessary in the circumstances.
- (3) The Regulator may, with the concurrence of the Minister, and by notice in the *Gazette*, issue directives not in conflict with this Act for matters relating to the proper performance of the functions of the Regulator, including-
- (a) forms to be used when a matter is submitted to the Regulator;
  - (b) time periods within which matters must be submitted;
  - (c) information to be supplied when a matter is submitted;
  - (d) access by the Regulator to confidential information of the Authority;
  - (e) manner and form of participation in proceedings of the Regulator;
  - (f) procedures regarding the running of the business 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 -
- (a) when viewed collectively, comprise sufficient persons with legal training and experience; and
  - (b) be available to fulfil their role as members.
- (3) Each member of the Regulator must -
- (a) be a citizen of the Republic ;
  - (b) have suitable qualifications or experience in economics, law, commerce , industry or public affairs; and
  - (c) be committed to the purposes and principles enunciated in this Act.
- (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; or
  - (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.
- (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.

#### **Funding of Regulator**

32. The funds of the Regulator consist of monies appropriated by Parliament as part of the Vote of the Department of Transport.

#### **Secretariat of Regulator**

33. (1) The administrative work in connection with the performance of the functions of the Regulator must be carried out by a secretariat consisting of officers in the public

service seconded to the service of the Regulator in terms of any law governing the public service.

(2) The Regulator may, with the approval of the Minister acting with the concurrence of the Minister of Finance, 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 travelling, subsistence and other expenses of such persons.
- (3) A member of the secretariat 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 of that member has a direct financial interest or any similar personal interest;
  - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions within the Regulator .

## **CHAPTER 6**

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

#### **Agreements and partnerships in port operations and services**

34. (1) The Authority may enter into a concession agreement or a public -private partnership 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 and operate a port terminal and provide services relating thereto; or
- (b) provide any other service within a port designated by the Authority for this purpose.

(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**

35. (1) Unless an agreement contemplated in section 34 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 a reasonable period 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 .

#### **Conditions of licence**

36. (1) A licence issued under section 35 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 its 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**

37. (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**

38. (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 direction 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 licensed port service or operate the licensed 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 operator concerned.

#### **Directives affecting licensed operators and other persons**

39. (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**

40. (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 ; and
  - (iv) its audited annual financial statements; and
- (b) from time to time, and where applicable submit to the Authority -
  - (i) such statistical information relating to its licensed operations as may be reasonably 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, 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; and
- (f) any proceedings or claim instituted or made against the licensed operator which could affect its ability to perform any obligation or to comply with any term or condition of its licence.

### **Routine inspections**

41. (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**

42. (1) The Shareholding Minister may on the occurrence of any industrial unrest, strike, lock-out or any other 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 undertaking 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 undertaking under subsection (1)(a), adequate compensation must be paid, in the amount agreed between the Authority and the affected licensed operator, and falling agreement, in the amount determined by the Minister, whose decision is binding upon the parties .

### **Operations existing on commencement of Act**

43. (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 35 within six months of the date on which this Chapter comes into effect.

(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 35 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 on which this Chapter came into effect.

(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 in terms of a concession, public-private partnership or licence granted, concluded or issued under this Chapter .

(7) Any licence issued to Transnet pursuant to an application contemplated in subsection (6) must include the condition that such licence will terminate in the event that a third party is authorised to provide the relevant services in terms of a concession , public-private partnership or licence granted, concluded or issued under this Chapter .

### **Off-shore cargo-handling facilities**

44. (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) If so directed by the Authority in writing, the holder of a licence in terms of this section must at its own cost dismantle and remove the off-shore cargo-handling facility on termination or expiration of a licence issued under this section in respect of such facility.

(3) (a) If the holder of the licence fails to comply with the direction under subsection (2), the Authority may dismantle and remove such facility .

(b) The licence holder is liable for all costs incurred by the Authority in effecting such dismantling and removal .

(4) Sections 35 to 43 apply with the changes required by the context to the erection or operation of an off-shore cargo-handling facility.

### **Restructuring and reform in Maydon Wharf Area**

45. (1) The Authority may determine the use to which any land or immovable property within the Maydon Wharf area may be put .

(2) (a) The Authority may, by notice in writing addressed to any person affected, direct that the use to which particular land or immovable property within the Maydon Wharf area may be put, must be altered to a new use .

(b) Before issuing a notice under paragraph (a), the Authority must in writing give the owner or lawful occupier-

- (i) a reasonable notice period of the proposed change in use; and
- (ii) a reasonable opportunity to make representations on the proposed change in use .

(3) A notice contemplated in subsection (2) may stipulate that any lease that is inconsistent with the new use shall be invalid from a date stipulated in the notice .

(4) The Authority may direct that a particular lease of land or immovable property in the Maydon Wharf area, which was entered into prior to the date of commencement of this Chapter, must be renegotiated, if the terms of such lease are unrelated to market conditions .

(5) In the event of a direction being made under subsection (4), the Authority and the lessee must endeavour to negotiate the terms of a new lease in relation to the land or immovable property.

(6) (a) If the Authority and the lessee are unable to reach an agreement as contemplated in subsection (5), the Authority must, by written notice to the licensed operator, declare that the relevant lease is invalid .

(b) Before issuing a declaration under paragraph (a), the Authority must give the lessee-

- (i) a reasonable notice period of the proposed declaration; and
- (ii) a reasonable opportunity to make representations on the proposed declaration.

## **CHAPTER 7**

### **DEVELOPMENT, ENVIRONMENT AND CLOSURE OF PORTS**

#### **Construction, development and maintenance of ports**

46. (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 establish public-private partnerships and enter into agreements for the construction, development and maintenance of port infrastructure.

#### **Protection of environment**

47. The Authority must in the performance of its functions ensure that proper balance is achieved between the protection of the environment and the establishment, development and maintenance of ports.

### **Closure of port**

48. (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**

49. 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**

50. (1) The Authority must, with the approval of the Minister, publish an annual tariff book, which must contain tariffs for services and facilities offered by the Authority.

(2) The tariffs contemplated in subsection (1) may vary between ports.

(3) Notwithstanding the provisions of this section, the Authority may enter into an agreement with a licensed operator or a party to a concession contract or a public-private partnership or port user in respect of any tariff contemplated in subsection (1).

(4) The Authority must, prior to any substantial alteration of a published tariff, consult with the Port Consultative Committees.

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

51. (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 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 movement of cargo within ports; and
  - (iv) berth dues for the provision and maintenance of quay wall infrastructure;and
- (c) granting concessions and licences.

(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 Transnet's National Ports Authority Division immediately before the commencement of this Act 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

52. (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 pilotage services, license pilots, and regulate the safe provision of pilotage services by licensed pilots;
- (e) provide tug services, license tug service providers and regulate the safe provision of tug services by licensed tug service providers;
- (f) provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits and at such other places as the Authority may determine;
- (g) undertake dredging and maintain channels at the depths published by the Authority; and
- (h) remove 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 to 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, sell the relevant vessel or wreck and out of the proceeds of the sale defray such unpaid costs, rendering the surplus, if any, to the person entitled to it, or recovering any unpaid balance from the owner or other person referred to in the relevant paragraph.

(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) the welfare of persons working or living on a vessel in the port;
- (v) 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;
- (vi) 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;
- (vii) carrying into effect the provisions of this Act.

(4) The Harbour Master must take such steps as may be reasonably necessary to bring an instruction issued under subsection (3) to the notice of any person likely to be affected by it.

#### **Safety on land within ports**

53. The Authority may separate cargo from passenger operations to secure safety of life and protection against injury.

#### **Pilotage**

54. (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**

55. 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.

#### **Licensing of pilot**

56. (1) No person may perform the duties of a pilot in a port without having been duly licensed by the Authority to do so.

- (2) The Minister must prescribe the 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**

57. (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 having notified 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 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 which may confuse a vessel if the owner of the property on which the light is used or the person having charge of such light fails to extinguish or effectively screen it 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**

58. (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 must, 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**

59. (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) the provision of vessel traffic services by the Authority, including the establishment of a vessel traffic regulator to promote safe and efficient navigation;
- (i) filing fees for the loading of matters with the Regulator ;
- (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 regulations for the control and management of ports and the approaches thereto and for the maintenance of good order in ports and 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) guidelines for entering into a concession or public-private partnership agreement contemplated in section 34;
- (l) the limits within which, and the levels to which, dredging may be carried out in ports and approaches thereto;
- (m) the information which has to be furnished to the Authority by port users in relation to their activities within ports;
- (n) the establishment, construction, maintenance and operation of off-shore cargo handling facilities;
- (o) road and rail traffic within ports;
- (p) any other matter that it is necessary or expedient to prescribe in order for the Authority to perform its functions properly .

(3) The Authority may prescribe port 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 contemplated in this section may create offences and 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**

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

- (a) 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;
  - (f) one person representing the Department of Transport; and
  - (g) one person representing the Department of Public Enterprises.
- (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 substantial or structural alteration in the Authority's tariffs;
  - (c) any other matter on which the Minister or the Shareholding Minister may require the Authority to consult the Committee.

#### **Port access**

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

#### **Co-operation with authorities**

62. 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 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.

#### **Offences**

63. (1) A person is guilty of an offence if he or she—
- (a) wilfully or negligently endangers the safety of navigation or property in a port;
  - (b) without lawful authority, interferes with a pilot while a vessel is under pilotage;
  - (c) contravenes section 35(1);
  - (d) hinders or obstructs a person acting under section 41(1);
  - (e) *fails* to comply with a requirement contemplated in section 41(2); or
  - (f) fails to comply with an instruction of the Harbour Master given under section 52(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**

64. 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) the National Ports Authority established by section 3 of the National Ports Authority Act 2003~~
- (g) any person for whose debt an organ of state contemplated in paragraphs (a) to [(e)] (f) is liable

#### **Repeal of law, and saving**

65. (1) With effect from the date determined in terms of section 27(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 Bill.

(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**

66. 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 proposed Act ;
- (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.