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## Contents

| No. | | Gazette No. | Page No. |
|---|---|---|---|
| GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS | | | |
| **Public Enterprises, Department of / Openbare Ondernemings, Departement van** | | | |
| 4241 | South African Airways Act (5/2007): Publication of explanatory summary of the repeal of the South African Airways Bill | 49978 | 3 |
| 4242 | Rule 276 (1)(b) of the Rules of the National Assembly: Publication of explanatory summary of the National State Enterprises Bill, 2023 | 49978 | 11 |

# GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

## DEPARTMENT OF PUBLIC ENTERPRISES

**NO. 4241** **9 January 2024**

### PUBLICATION OF EXPLANATORY SUMMARY OF THE REPEAL OF THE SOUTH AFRICAN AIRWAYS BILL

1.Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Public Enterprises intends to introduce the Repeal of the South African Airways Bill, 2023 (the Bill) in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

3. The Bill seeks to repeal the South African Airways Act No 5 of 2007 in its entirety.

4. A copy of the Bill and the Memorandum on the Objects is attached and can also be found, after introduction on the websites of the Department of Public Enterprises at www.dpe.gov.za. It is also available free online at www.gpwonline.co.za

REPUBLIC OF SOUTH AFRICA

# REPEAL OF THE SOUTH AFRICAN AIRWAYS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. of 2023)*
*(The English text is the official text of the Bill)*

**(MINISTER OF PUBLIC ENTERPRISES)**

**[B – 2023]**

**BILL**

**To repeal the South African Airways Act, 2007; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Definitions**

**1.** In this Act, unless the context indicates otherwise—

**"company"** means South African Airways Limited, a public company duly incorporated in terms of the Companies Act, or its successor in title; and

**"Shareholder Representative"** means the Cabinet Member designated in terms of section 3(2).

**Repeal of Act 5 of 2007**

**2.** The South African Airways Act, 2007 (Act No.5 of 2007), is hereby repealed.

**Effect of repeal**

**3.** (1) The repeal of the South African Airways Act, 2007, in terms of section 2 does not affect the continued corporate existence of the company under the Companies Act.

(2) The State shall hold shares in the company.

(3) As long as the State holds shares in the company, the President must designate a Cabinet Member as Shareholder Representative.

(4) The rights attached to the shares in the company, of which the State is the holder, are exercised by the Shareholder Representative on behalf of the State.

(5) Notwithstanding any provision of the law to the contrary, the Shareholder Representative may in terms of one or more transactions transfer shares in the company, of which the State is the holder, to such transferee or transferees in such manner and on such terms and conditions as the Cabinet, on the recommendation of the Shareholder Representative, approves.

**Short title and Commencement**

**4.** This Act is called the Repeal of the South African Airways Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette.*

Annexure B2

ce060723

**MEMORANDUM ON THE OBJECTS OF THE REPEAL OF THE SOUTH AFRICAN AIRWAYS BILL**

**BACKGROUND**

1. The purpose of the Repeal of the South African Airways Bill, 2003 ("the Bill"), is to repeal the South African Airways Act, 2007 (Act No. 5 of 2007) ("the Act"). The Act was enacted to provide for the transfer of shares in Transnet Limited to the South African Airways (Proprietary) Limited ("SAA") to the State, to provide for the conversion of South African Airways (Proprietary) Limited into a public company having a share capital incorporated in terms of the Companies Act 1973, and to provide for matters connected therewith.

2. The repeal of the Act is intended to facilitate the repositioning and restructuring of SAA by Government through the introduction of a strategic equity partner. In this regard, Cabinet has approved the acquisition of 51% shareholding in SAA by Takatso Proprietary Limited ("Takatso"). This acquisition would mean the Government will become the minority shareholder, holding the remaining 49% in SAA.

3. In terms of the Sale and Purchase Agreement entered between the Department of Public Enterprises ("the Department") and Takatso the repeal of the Act is one of the condition precedents for the conclusion of the transaction in light of the fact that

the Minister will no longer have full shareholder rights contained in section 3(3) of the Act.

4. In light of the fact that the shareholder Minister will no longer hold the majority of voting powers in SAA, and that the shareholder Minister will not be able to fulfil the objects of the Act, it is imperative to repeal the Act.

**CLAUSE- BY- CLAUSE ANALYSIS**

5. Clause 1 makes provision for the Definitions used in the Bill.

6. Clause 2 deals with the repeal of the Act.

7. Clause 3 deals with the effect of repeal. The clause provides that the repeal of the Act does not affect the continued corporate existence of the company under the Companies Act. It provides that as long as the State holds shares in the company, the President must designate a Shareholder Representative. It provides for the Shareholder Representative to exercise the rights attached to the shares in the company on behalf of the State.

8. Clause 4 deals with the short tittle and commencement of the Act.

**FINANCIAL IMPLICATIONS**

9. None.

## PARTIES CONSULTED

10. Stakeholders consulted outside the Department are the Presidency on Socio-Economic Impact Assessment System (SEIAS").

## PARLIAMENTARY PROCEDURE

11. In Tongoane and Others v Minister of Agriculture and Land Affairs and Others , ("Tongoane") the CC confirmed the test formulated in order to determine the classification of a Bill ("tagging test"). According to the CC, what matters for the purposes of tagging, is not the substance or purpose of the Bill, but rather whether the provisions of the Bill in "substantial measure" fall within a functional area listed in Schedule 4.

12. In commenting on the "substantial measure test", the CC made the following remarks:

> *"**[60]** The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content. …*
>
> ***[71]** On the other hand, the "substantial measure" test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.*
>
> ***[72]** To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by*

*whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.*". **[Our emphasis]**

13. As stated above, a Bill, the provisions of which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution of the Republic of South Africa, 1996 ("Constitution"), must be classified as a section 76 Bill. To test whether the provisions of a Bill fall within a functional area listed in Schedule 4, the cumulative effect of all the provisions of the Bill must be taken into account in order to determine its impact on the provinces.

14. The Bill seeks to repeal the SAA so as to fulfil one of the conditions of the Sale and Purchase Agreement entered into between the Department and Takatso. The Department and State Law Advisers are of the view that the subject matter of the Bill does not fall within any of the functional areas listed in Schedule 4 to the Constitution. In view of the above discussion, the Department and the Office of the Chief State Law Advisor are of the opinion that this Bill must be dealt with in accordance with the procedure established in terms of section 75.

15. We are also of the view that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leadership in terms of section 39(1)*(a)(i)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities.

## DEPARTMENT OF PUBLIC ENTERPRISES

**NO. 4242** **9 January 2024**

**PUBLICATION OF EXPLANATORY SUMMARY OF THE NATIONAL STATE ENTERPRISES BILL, 2023**

1.Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Public Enterprises intends to introduce the National State Enterprises Bill, 2023 (the Bill) in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

3. The Bill seeks to :

a) provide for the development of a strategy for national enterprises,

b) establish the State Asset Management SOC Ltd,

c) provide for the State as the sole shareholder of a holding company,

d) consolidate the State's shareholdings in national state enterprises,

e) provide for the powers of the shareholder on behalf of the State,

f) provide for the phased succession of national state enterprises to the holding company,

g) provide for the holding company's powers as a shareholder of subsidiaries,

h) provide for appropriate and effective monitoring and reporting mechanisms over the subsidiaries and;

i) provide for matters connected therewith.

4. A copy of the Bill and Memorandum on the objects is attached and can also be found, after introduction on the website of the Department of Public Enterprises at www.dpe.gov.za. It is also available free online at www.gpwonline.co.za

REPUBLIC OF SOUTH AFRICA

# NATIONAL STATE ENTERPRISES BILL

As introduced in the National Assembly (proposed section 75);
Explanatory summary of Bill and prior notice of its introduction published in Government Gazette (XXXX)
(The English text is the official text of the Bill)

(**MINISTER OF PUBLIC ENTERPRISES**)

**[B—2023]**

## BILL

**To provide for the development of a strategy for national state enterprises; to establish the State Asset Management SOC Ltd; to provide for the State as the sole shareholder of a holding company; to consolidate the State's shareholdings in national state enterprises; to provide for the powers of the shareholder on behalf of the State; to provide for the phased succession of national state enterprises to the holding company; to provide for the holding company's powers as shareholder of subsidiaries; to provide for appropriate and effective monitoring and reporting mechanisms over subsidiaries; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS**, the State recognises the value of its shareholding in national state enterprises and wishes to optimise that shareholding to achieve long-term strategic interventions for developmental purposes and secure these enterprises for future generations;

**AND WHEREAS,** the State wishes to enhance its capacity as owner of national state enterprises through a strategy for those enterprises and for the operational implementation of that strategy by a holding company on the State's behalf;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa as follows: —

## ARRANGEMENT OF SECTIONS

### CHAPTER 1

### DEFINITIONS AND OBJECTS OF ACT

1. Definitions

2. Objects of Act

### CHAPTER 2

### NATIONAL STRATEGY

3. National Strategy

4. Content of National Strategy

5. Review of National Strategy

### CHAPTER 3

### HOLDING COMPANY

6. Establishment of holding company

7. Objectives of holding company

8. Shareholder powers and duties

9. Powers, functions and duties of Board

10. Composition of Board

11. Standards of director conduct

12. Board committees

13. Reporting

14. Audit of holding company

**CHAPTER 4**

**LEGAL SUCCESSION**

15. Promotion of co-operative government

16. Due diligence

17. Legal succession to holding company

**CHAPTER 5**

**USE OF LAND AND RIGHTS IN LAND**

18. Transfer of property between subsidiaries

19. Right of use of servitudes

**CHAPTER 6**

**GENERAL**

20. Presidential Advisory Committee

21. Regulations

22. Application of the Companies Act to holding company and its subsidiaries

23. Transitional provisions

24. Amendment and repeal of laws

25. Short title and commencement

SCHEDULE A - STATE ENTERPRISES CAPABLE OF BEING TRANSFERRED TO HOLDING COMPANY

SCHEDULE B – TRANSITIONAL PROVISIONS

SCHEDULE C – AMENDMENT AND REPEAL OF LAWS

## CHAPTER 1

## DEFINITIONS AND OBJECTS OF ACT

### Definitions

**1.** (1) In this Act, unless the context indicates otherwise—

**"Board"** means the board of directors of the holding company;

**"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008);

**"holding company"** means the State Asset Management SOC Limited established in terms of section 6;

**"national commercial state-owned enterprises"** means those enterprises listed in Schedules 2 and 3B to the Public Finance Management Act;

**"National Strategy"** means the strategy for national commercial state-owned enterprises contemplated in Chapter 2;

**"President"** means the President of the Republic of South Africa;

**"Presidential Advisory Committee"** means the committee appointed by the President in terms of section 20;

**"prescribed"** means prescribed by regulation in terms of section 21;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"shareholder"** means the State as represented by the President;

**"state enterprise"** means a company listed in Schedule A;

**"this Act"** includes any regulations made in terms of section 21.

(2) Unless the context indicates otherwise, a word or phrase defined in the Companies Act has that meaning in this Act.

**Objects of Act**

**2.** The objects of this Act are to—

*(a)* enhance the operational efficiency of national commercial state-owned enterprises to achieve the State's developmental objectives through a National Strategy to be implemented by a holding company and national commercial state-owned enterprises;

*(b)* establish the State Asset Management SOC Limited as a holding company incorporated in terms of the Companies Act;

*(c)* transfer the shareholding of state enterprises to the holding company to ensure that the holding company exercises the ownership function over its subsidiaries in accordance with the Companies Act, this Act and any applicable legislation;

*(d)* ensure the proper governance of the holding company and its subsidiaries; and

*(e)* promote the commercial sustainability of the holding company and its subsidiaries.

## CHAPTER 2

## NATIONAL STRATEGY

**National Strategy**

**3.** (1) The President must develop a National Strategy in the prescribed manner—

*(a)* on the advice of the Presidential Advisory Committee; and

*(b)* after consultation with the holding company and the ministers responsible for the

national commercial state-owned enterprises.

(2) Before the President promulgates the National Strategy, the President must—

*(a)* publish the draft National Strategy for comment in the *Gazette*;

*(b)* consider those comments; and

*(c)* secure its approval by Cabinet.

(3) The President must table the promulgated National Strategy in Parliament together with a digest of the comments received.

**Content of National Strategy**

**4.** The National Strategy must contain—

*(a)* the approach to the manner in which performance of the holding company and its subsidiaries is to be measured;

*(b)* in respect of the holding company and national commercial state-owned enterprises—

(i) their sectoral and specific objectives and strategies;

(ii) their performance targets;

(iii) their costed and funded developmental obligations;

(iv) any permitted alterations of shareholding;

(v) any recapitalisation and other matters relating to financial turnaround;

(vi) any potential private sector investment; and

*(c)* how dividends are to be applied or disbursed.

**Review of National Strategy**

**5.** (1) Subject to subsection (2), the President must review the National Strategy every five years.

(2) At the request of the holding company or a minister responsible for a national commercial state-owned enterprise, the President may review the National Strategy before the expiry of the 5 years.

(3) A review in terms of this section must be in accordance with section 3 and the prescribed procedure for consultation.

## CHAPTER 3

## HOLDING COMPANY

**Establishment of holding company**

**6.** (1) Notwithstanding the Companies Act, the President must ensure that the necessary steps are taken for the formation and incorporation of the holding company as a company contemplated in subsection (2).

(2) The Companies and Intellectual Property Commission must—

*(a)* register the Memorandum of Incorporation and incorporate the holding company under the name "State Asset Management SOC Limited" with the State as the sole shareholder; and

*(b)* issue to the holding company the necessary documents to enable it to conduct business as a holding company.

(3) The State is the sole shareholder of the holding company and the

President is the representative of the shareholder but may transfer the administration of this Act or any power or function referred to in this Act to a member of Cabinet in accordance with section 97 of the Constitution.

**Objectives of holding company**

**7.** (1) The objectives of the holding company are to—

*(a)* advise the President on—

(i) the development and review of the National Strategy contemplated in Chapter 2;

(ii) the phased succession of state enterprises to the holding company; and

(iii) any other corporate finance matters involving the State;

(*b*) conduct due diligence of state enterprises as provided for in section 16;

(*c*) on instruction by the shareholder, co-operate with the relevant board of the recommended state enterprise to prepare for the implementation of the transfers contemplated in section 17;

(*d*) exercise the rights and observe the restrictions as the sole or majority shareholder of any subsidiary of the holding company on behalf of the State; and

(*e*) exercise the rights and observe the restrictions as a minority shareholder in companies on behalf of the State.

**Shareholder powers and duties**

**8.** (1) The shareholder must promote and support the functions of the holding company and table a report annually in Parliament on the commercial

sustainability, developmental impact and material risks of the investment in the holding company.

(2) Notwithstanding the Companies Act, the shareholder may only appoint a director to the Board in accordance with section 68 of the Companies Act on the recommendation of the Board after a prescribed transparent process contemplated in section 10.

(3) The shareholder may remove a director of the Board in accordance with sections 69 and 71 of the Companies Act and this Act.

(4) The shareholder must commission an independent assessment of the Board's performance in the form and manner as prescribed once every three years and publish the report on the holding company's website.

**Powers, functions and duties of Board**

**9.** (1) In the exercise of its powers and the performance of its functions and duties to manage the business and affairs of the holding company, the Board must—

*(a)* advise the shareholder on—

(i) the development and review of the National Strategy;

(ii) the phased succession for the transfer of state enterprises to the holding company;

*(b)* on instruction by the shareholder, conduct due diligence of a state enterprise listed in Schedule A;

*(c)* after the completion of the due diligence referred to in paragraph *(b)*—

(i) decide whether to recommend to the shareholder that the state enterprise be transferred in terms of section 17; and

(ii) if so, and on the instruction of the shareholder, prepare for the implementation of the recommended state entity's transfer in collaboration with the board of that state enterprise; and

*(d)* exercise the rights and observe the restrictions as a sole or majority shareholder of any subsidiaries of the holding company on behalf of the State; and

(*e*) exercise the rights and observe the restrictions as a minority shareholder in companies on behalf of the State.

(2) The Board must ensure that its business and affairs and those of its subsidiaries are conducted in a manner consistent with this Act, the Companies Act, the memorandum of incorporation, any applicable legislation and the National Strategy. In particular, it must—

*(a)* with the consent of the shareholder conclude a corporate plan in respect of itself;

*(b)* prepare and approve an annual budget to give effect to that corporate plan;

(*c*) conclude a corporate plan with each of its subsidiaries;

(*d*) in the case of a financially dependent subsidiary that requires funding from—

(i) the State, submit a borrowing plan for approval by the shareholder and the Minister responsible for Finance; or

(ii) a third party that requires a guarantee from the State, submit that requirement for approval by the shareholder and the Minister responsible for Finance;

*(e)* without delay, notify the shareholder of any adverse events that may affect the ability of a subsidiary to meet its performance targets or to comply with this Act and the reasons therefore;

(f) implement an appropriate procurement and provisioning system for itself and a procurement and provisioning framework for its subsidiaries that is in accordance

with section 217 of the Constitution; and

*(g)* develop a system for properly evaluating all major capital investment projects of its subsidiaries.

(3) The Board must establish a reporting framework for its subsidiaries.

(4) The Board must establish a financial and operational performance monitoring framework for its subsidiaries.

(5) The Board is responsible for the appointment of the Chief Executive Officer and Chief Financial Officer of the holding company.

(6) The Board must determine the remuneration of its members that is market related—

(*a*) on the recommendation of its remuneration committee; and

(*b*) with the approval of the Minister responsible for Finance.

**Composition of Board**

**10.** (1) The Board must, after implementing the prescribed transparent process, recommend the appointment by the shareholder of persons as directors on grounds of their skill, knowledge, experience and integrity, which, when considered collectively, will enable them to fulfil the objectives of the holding company.

(2) If the shareholder decides not to appoint a person recommended by the Board, the Board must recommend an alternative person to be appointed as a director.

(3) The Board must comprise a minimum of three and a maximum of nine appointed directors.

(4) Appointed directors serve a term of three years and may not be

reappointed for more than two additional terms.

(5) The Chief Executive Officer and Chief Financial Officer of the holding company are ex-officio directors of the Board.

**Standards of director conduct**

**11.** In addition to the standards of director conduct contemplated in section 76 of the Companies Act and governed by the common law, a director of the holding company must act in the best interests of the company taking into account its developmental objectives, its business sustainability and the public interest.

**Board committees**

**12.** In addition to any other Board committees permitted in terms of section 72 of the Companies Act, the Board must appoint—

*(a)* an audit and risk committee;

*(b)* a nominations and governance committee

*(c)* a remuneration committee; and

*(d)* a social and ethics committee.

**Reporting**

**13.** (1) The Board must submit to the shareholder an integrated annual report within six months of the end of each financial year in respect of the holding company and the annual reports of each of its subsidiaries which report must

include—

*(a)* the audited financial statements including, but not limited to, profit and loss statements, statement of financial position and statement of cash flows;

(*b*) the audit reports and any necessary commentaries on those financial statements;

(*c*) a detailed evaluation of performance against targets;

(*d*) material risks;

(*e*) significant and material transactions concluded and their respective values;

(*f*) capital investments undertaken by the holding company and its subsidiaries;

*(g)* capitalisation and any other shareholder support from the State and the deployment of the capitalisation;

*(h)* information required under the Companies Act for public companies;

*(i)* a report on corporate governance; and

*(j)* a business sustainability report.

(2) The Board must submit to the shareholder the holding company's unaudited financial statements by no later than 31 May of every year.

(3) The shareholder must table a copy of the integrated annual report contemplated in subsection (1) in the National Assembly.

(4) The shareholder may request such other reporting information as may be prescribed.

**Audit of holding company**

**14.** Despite section 90(1) of the Companies Act, the Auditor-General must, in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004), ensure that the financial statements of the holding company and its subsidiaries are audited each year.

## CHAPTER 4

## LEGAL SUCCESSION

### Promotion of co-operative government

**15.** Pursuant to section 41 of the Constitution, the Ministers responsible for state enterprises and the relevant organs of state must co-operate with the holding company to implement any required legal succession as contemplated in this Chapter.

### Due diligence

**16.** (1) When the holding company is conducting a due diligence in terms of section 9(1)*(b)*, the responsible Minister, the accounting authority and all other personnel of that state enterprise must co-operate and provide it with access to all requested information.

(2) Based on that due diligence, the holding company must make findings and recommendations to the shareholder on whether the state enterprise should be a subsidiary of the holding company.

(3) The holding company may recommend —

(*a*) that the state enterprise be transferred to the holding company; or

(*b*) any action that must be taken by the state enterprise or the Minister responsible for that enterprise in order for it to be transferred to the holding company; and

*(c)* any proposed amendments to the state enterprise's memorandum of incorporation.

(4) The shareholder, upon receipt of the findings and recommendations of the holding company—

*(a)* must share the findings and recommendations of the holding company with the Cabinet for its consideration; and

*(b)* may, after consultation with the Cabinet, determine that the state enterprise be transferred to the holding company.

**Legal succession to holding company**

**17.** (1) If the shareholder has determined that a state enterprise must be transferred in terms of section 16(4)*(b)*, the President must by Proclamation in the *Gazette,* on a stipulated date—

*(a)* make any amendments to the memorandum of incorporation of the state enterprise;

*(b)* transfer the shareholding in a state enterprise to the holding company; and

*(c)* remove the name of the state enterprise from Schedule A.

(2) On the date stipulated in subsection (1)—

*(a)* the shares in the state enterprise are transferred to the holding company;

*(b)* the name of that enterprise is removed from the relevant schedule to the Public Finance Management Act; and

*(c)* the repeal or amendment of any law regulating that enterprise provided for in Schedule C must come into operation.

(3) The Companies and Intellectual Property Commission must register any amendments to the memorandum of incorporation made by the shareholder in the Proclamation.

## CHAPTER 5

## USE OF LAND AND RIGHTS IN LAND

### Transfer of property between subsidiaries

**18.** (1) A subsidiary may enter into an agreement with another subsidiary to transfer specified property to that subsidiary.

(2) In order to record the transfer of immovable property or real rights in terms of sub-section (1), the Registrar of Deeds exercising jurisdiction over the area in which the immovable property is situated must—

*(a)* record and effect the transfer of the immovable property to the subsidiary; and

*(b)* register any bond in favour of the subsidiary in place of the entity on the same terms as concluded with the entity; and

*(c)* not charge any levy, tax, transfer duty or any other charge or fee imposed by legislation.

### Right of use of servitudes

**19.** (1) A subsidiary of the holding company may request the right of use of a servitude registered in the name of the State for the purpose of giving effect to its objectives by submitting its request in writing to the Director-General of the Department responsible for Public Works and provide information on the following:

*(a)* The purpose of the right of use;

*(b)* the servitude in question;

*(c)* the extent and nature of any changes to the land;

*(d)* the technical and operational use of the servitude;

*(e)* the safety and environmental impact of the use of the servitude as well as regulatory, mitigation, and rehabilitation undertakings;

*(f)* the proposed compensation for the right of use, any costs incurred in respect of damage to land or other assets, the environment or third parties, and any indemnities offered; and

*(g)* any other information material to the right of use of the servitude.

(2) The State, in response to a request referred to in subsection (1)—

*(a)* may request further information;

*(b)* must, within 60 days after the request or the receipt of further information contemplated in paragraph *(a)*, refuse or grant the request for the right to the use of the servitude; and

*(c)* may only refuse the request if the granting of the right of use—

(i) will materially impair the operations of the State;

(ii) will affect its safe use of the servitude; or

(iii) is offered on commercial terms that are not market related.

(3) In order to register a servitude granted in terms of this section, the Registrar of Deeds exercising jurisdiction over the area in which the immovable property is situated must —

*(a)* register the servitude; and

(*b*) not charge any levy, tax, transfer duty or any other charge or fee imposed by legislation.

## CHAPTER 6

## GENERAL

### Presidential Advisory Committee

**20.** (1) The President must establish an advisory committee to advise on the National Strategy contemplated in Chapter two and whenever a review is required in terms of section 5.

(2) The Presidential Advisory Committee must include:

*(a)* three members of the national executive appointed by the President;

*(b)* one person appointed by organised business that is party to the National Economic Development and Labour Council;

*(c)* one person appointed by organised labour that is party to the National Economic Development and Labour Council;

*(d)* experts appointed by the President in respect of sectors in which the subsidiaries of the holding company and the national commercial state-owned enterprises operate; and

*(e)* a representative of the holding company appointed by the Board.

(3) The President must prescribe the terms and conditions of appointment of the members in respect of subsection (2) *(b)* to *(e)*.

(4) The Committee must develop its own rules to govern its proceedings.

**Regulations**

**21.** The President, may, by notice in the *Gazette*, make regulations regarding—

*(a)* the frequency, form and manner of reporting;

*(b)* the development of the National Strategy contemplated in section 3;

*(c)* the procedure for consultation relating to the development and review of the National Strategy;

*(d)* the process for the appointment of directors;

*(e)* the form and manner of the independent assessment of the Board's performance;

*(f)* other reporting information that the shareholder may request;

*(g)* any matter which is required or permitted to be prescribed under this Act; and

*(h)* generally, any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

**Application of Companies Act and Public Finance Management Act**

**22.** (1) The provisions of the Companies Act that are not in conflict with this Act or any other applicable legislation apply to the holding company and its subsidiaries.

(2) A provision of the Companies Act does not apply to the holding company or its subsidiaries if—

(*a*) any special or contrary arrangement is made in this Act or any other applicable

legislation; or

(*b*) that provision is clearly inappropriate or inapplicable.

(3) Except for sections 47 and 48, the Public Finance Management Act does not apply to the holding company or its subsidiaries.

**Transitional provisions**

**23.** Schedule B applies to the appointment of the members of the first Board.

**Amendment and repeal of laws**

**24.** (1) Each of the laws listed in Part 1 of Schedule C are amended to the extent specified and take effect on the date of the commencement of this Act.

(2) Each of the laws listed in Part 2 of Schedule C are amended to the extent specified and take effect, in respect of each state enterprise, on the date contemplated in section 17(2)*(c)*.

**Short title and commencement**

**25.** (1) This Act is called the National State Enterprises Act, 2023 and comes into operation on a date fixed by the President by proclamation in the *Gazette.*

(2) Different dates may be fixed in respect of the coming into effect of different provisions of this Act.

## SCHEDULE A

## STATE ENTERPRISES CAPABLE OF BEING TRANSFERRED TO HOLDING COMPANY

1. Air Traffic and Navigation Services Company Limited
2. Airports Company Limited
3. Broadband Infraco SOC Ltd.
4. CEF (Pty) Limited
5. Denel SOC Limited
6. Eskom Holdings SOC Limited
7. Sentech SOC Limited
8. South African Airways SOC Limited
9. South African Forestry Company SOC Limited
10. South African National Roads Agency Limited
11. South African Nuclear Energy Corporation Limited
12. South African Post Office SOC Limited
13. Transnet SOC Limited

## SCHEDULE B

## TRANSITIONAL PROVISIONS

1. The shareholder must specify the number of directors to be elected to the first Board.

2. In order for these directors of the Board to be identified for election, the President must establish an independent panel by notice in the *Gazette* to call for nominations and interview candidates.

3. The composition of the panel is as follows:

*(a)* A retired judge appointed by the President to chair the panel;

*(b)* two members of the national executive appointed by the President;

*(c)* a person appointed by organised business that is party to the National Economic Development and Labour Council;

*(d)* a person appointed by organised labour that is party to the National Economic Development and Labour Council; and

*(e)* three persons appointed by the President who have been or are chief executive officers of public companies.

4. The panel must call for nominations and interview the candidates and recommend them on the grounds of their skill, knowledge, experience and integrity, which, when considered collectively, will enable them to fulfil the objectives of the holding company.

5. If the shareholder decides not to elect any person recommended by the panel, the panel must recommend an alternative person.

6. The panel must determine its own rules to govern its proceedings subject to the following:

*(a)* The nominations are publicly called for;

*(b)* the publication of the names of the candidates;

*(c)* the candidates' rights to privacy are respected.

7. Subject to the laws governing the public service, the Minister responsible for Public Enterprises must provide the panel with such personnel and facilities as are necessary to assist the panel to perform its functions.

## SCHEDULE C

## AMENDMENT AND REPEAL OF LAWS

*(Section 24)*

### Part 1

| **No. and year of Act** | Short title | **Extent of Amendment or Repeal** |
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| Act No. 71 of 2008 | Companies Act, 2008 | **Amendment of section 1 of Act 71 of 2008**<br><br>**1.** Section 1 of the Companies Act, 2008, is hereby amended by the substitution for the definition of 'state-owned company' of the following definition:<br><br>"'**state owned company'** means an enterprise that is registered in terms of this Act as a company, and–<br><br>*(a)* is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or<br><br>*(b)* is the holding company established in terms of section 6 of the National Enterprises Act, 2023, or any of its subsidiaries; or<br><br>*(c)* is owned by a municipality, as contemplated in in the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000);". |

**Part 2**

| No. and year of Act | Short title | Extent of Amendment or Repeal |
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| Act No. 38 of 1977 | Central Energy Fund Act, 1977 | **Amendment of section 1 of Act 38 of 1977**<br><br>**1.** Section 1 of the Central Energy Fund Act, 1977, is hereby amended by—<br><br>*(a)* the substitution in subsection (4) for paragraph *(a)* of the following paragraph:<br><br>"*(a)* a chairman appointed by the **[Minister of Mineral and Energy Affairs]** board of directors of the CEF (Proprietary) Limited for a period not exceeding five years**[, on such conditions, including conditions relating to remuneration and allowances, as the said Minister may, with the concurrence of the Minister of Finance, determine, and who may be reappointed]**;";<br><br>*(b)* the substitution in subsection (4) for paragraph *(c)* of the following paragraph:<br><br>"*(c)* not more than five other directors appointed by the **[Minister of Mineral and Energy Affairs]** holding company **[on such conditions, including conditions relating to remuneration and allowances, as the said Minister may, with the concurrence of the Minister of Finance, determine].**";<br><br>*(c)* the substitution for subsection (5) of the following subsection:<br><br>"(5) A director referred to in subsection (4)*(c)* shall hold office for such |

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| | | period, but not exceeding five years, as the **[Minister of Mineral and Energy Affairs]** holding company may determine at the time of **[his]** appointment, and shall be eligible for reappointment**[: Provided that if in his opinion good reasons exist for doing so, the said Minister may at any time terminate the period of office of any such director]**."; and<br><br>*(d)* the substitution for subsection (7) of the following subsection:<br><br>"(7) Subject to the provisions of subsection (8), the remuneration and allowances of a director, and the cost of transport facilities or other benefits afforded **[to him]** in respect of **[his]** services as a director, shall be **[paid out of moneys appropriated by Parliament for such purpose]** determined by the board of directors of the CEF (Proprietary) Limited.".<br><br>**Amendment of section 1D of Act 38 of 1977**<br><br>**2.** Section 1D of the Central Energy Fund Act, 1977, is hereby amended by the deletion of subsections (1), (2), (3) and (4).<br><br>**Substitution of section 1E of Act 38 of 1977**<br><br>**3.** The following section is hereby substituted for Section 1E of the Central Energy Fund Act, 1977:<br><br>"**Accountability, Accounting and Records**<br><br>**1E.** (1) The board of directors of CEF (Proprietary) Limited is charged with the |

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| | | responsibility of accounting for all money received by CEF (Proprietary) Limited or the SFF Association, and for all payments made by CEF (Proprietary) Limited out of the Central Energy Fund and the Equalization Fund and other payments made by CEF (Proprietary) Limited or the SFF Association.<br><br>(2) The board of directors of the CEF (Proprietary) Limited shall—<br><br>*(a)* keep full and true records of all transactions entered into by CEF (Proprietary) Limited for account of the Central Energy Fund or the Equalization Fund and of all other transactions of CEF (Proprietary) Limited and the SFF Association;<br><br>*(b)* cause the books and accounts relating to the transactions referred to in paragraph *(a)* to be balanced as at the thirty-first day of March in each year;<br><br>*(c)* after the balancing referred to in paragraph *(b)* prepare, in respect of the Central Energy Fund, the Equalization Fund, CEF (Proprietary) Limited and the SFF Association, separate statements of income and expenditure during the preceding financial year and balance sheets showing their assets and liabilities as at the end of that financial year.".<br><br>**Insertion of section 1F in Act 38 of 1977**<br><br>**4.** The following section is hereby inserted in the Central Energy Fund Act, 1977, after section 1E:<br><br>"**Definition of holding company** |

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| | | **1F.** In this Act, "holding company" means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023.".<br><br>**Amendment of Arrangement of Sections in Act 38 of 1977**<br><br>**5.** The Arrangement of Sections after the long title of the Central Energy Fund Act, 1977, is hereby amended by—<br><br>*(a)* the substitution for "1E. Accountability in respect of Central Energy Fund and Equalization Fund and auditing of accounts of and reporting on transactions of CEF (Proprietary) Limited and SFF Association" of the following:<br><br>"1E. Accountability, Accounting and Records"; and<br><br>*(b)* the insertion after "1E. Accountability in respect of Central Energy Fund and Equalization Fund and auditing of accounts of and reporting on transactions of CEF (Proprietary) Limited and SFF Association" of the following:<br><br>"1F. Definition of holding company". |
| Act No. 9 of 1989 | Legal Succession to the South African Transport Services Act, 1989 | **Amendment of section 1 of Act 9 of 1989**<br><br>**1.** Section 1 of the Legal Succession to the South African Transport Services Act, 1989, is hereby amended by the substitution for the definition of "Company" of the following definition:<br><br>"**'Company'** means **[the company referred to in** |

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| | | **section 2]**Transnet SOC Limited;". |
| | | **Repeal of of Chapters I, II, III, VI and VII of Act 9 of 1989**<br>**2.** Chapters I, II, III, VI, and VII of the Legal Succession to the South African Transport Services Act, 1989, are hereby repealed. |
| | | **Substitution of section 37 of Act 9 of 1989**<br>**3.** The following section is hereby substituted for section 37 of the Legal Succession to the South African Transport Services Act, 1989:<br>"**Short title**<br>**37.** This Act is called the Legal Succession to the South African Transport Services Act, 1989.". |
| | | **Repeal of Schedules 1 and 2 to Act 9 of 1989**<br>**4.** Schedules 1 and 2 to the Legal Succession to the South African Transport Services Act, 1989, are hereby repealed. |
| | | **Amendment of Arrangement of Sections in Act 9 of 1989**<br>**5.** The Arrangement of Sections after the long title of the Legal Succession to the South African Transport Services Act, 1989, is hereby amended by the substitution for "37. Short Title and Commencement" of the following: |

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| | | "37. Short Title". |
| Act No. 128 of 1992 | Management of State Forests Act, 1992 | **Amendment of section 1 of Act 128 of 1992**<br><br>**1.** Section 1 of the Management of State Forests Act, 1992, is hereby amended by—<br><br>*(a)* the substitution for the definition of "Company" of the following definition:<br><br>"'**Company'** means the **[company mentioned in section 2]** South African Forestry Company SOC Limited;";<br><br>*(b)* the insertion after the definition of "Forest Act" of the following definition:<br><br>"**'holding company'**" means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Amendment of section 2 of Act 128 of 1992**<br><br>**2.** Section 2 of the Management of State Forests Act, 1992, is hereby amended by the substitution for subsections (4) and (5) of the following subsections:<br><br>"(4) The **[Minister]** holding company shall take up shares in the Company so incorporated on behalf of the State, and then exercise the State's rights as member and shareholder of the Company.<br><br>(5) The shares contemplated in subsection (4) shall only be sold or otherwise disposed of **[with the approval, by resolution, of Parliament]** in accordance with the National Strategy contemplated in the National State Enterprises Act, 2023.". |

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| Act No. 44 of 1994 | Airports Company Act, 1993 | **Amendment of section 1 of Act 44 of 1993**<br><br>**1.** Section 1 of the Airports Company Act, 1993, is hereby amended by the insertion after the definition of "financial year" of the following definition:<br><br>"'**holding company**' means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Repeal of section 2 of Act 44 of 1993**<br><br>**2.** Section 2 of the Airports Company Act, 1993, is hereby repealed.<br><br>**Amendment of section 3 of Act 44 of 1993**<br><br>**3.** Section 3 of the Airports Company Act, 1993, is hereby amended by—<br><br>*(a)* the substitution for subsection (4) of the following subsection:<br><br>"(4) The rights attached to the shares in the company of which the State is the holder shall be exercised by the **[Shareholding Minister]** holding company on behalf of the State."; and<br><br>*(b)* the deletion of subsections (5) and (6).<br><br>**Amendment of section 5 of Act 44 of 1993**<br><br>**4.** Section 5 of the Airports Company Act, 1993, is hereby amended by the substitution for subparagraph |

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| | | (i) of paragraph *(a)* of subsection (2A) of the following subparagraph:<br><br>"(i) the holding company**[, as defined in section 1 of the Companies Act]**;".<br><br>**Repeal of section 8 of Act 44 of 1993**<br><br>**5.** Section 8 of the Airports Company Act, 1993, is hereby repealed.<br><br>**Amendment of section 13 of Act 44 of 1993**<br><br>**6.** Section 13 of the Airports Company Act, 1993, is hereby amended by the substitution for subsections (3) and (4) of the following subsections:<br><br>"(3) The company shall not, unless agreed to by the Minister with the concurrence of the **[Shareholding Minister]** holding company, take any action contemplated in subsection (1) unless it has indicated at least three financial years prior to taking such action, its intentions in that regard.<br><br>(4) The Minister may, with the concurrence of the **[Shareholding Minister]** holding company and the Minister responsible for Finance, compensate the company from moneys appropriated by Parliament for the continued operation of an aerodrome or carrying on of a relevant activity contemplated in subsection (1).". |
| Act No. 45 of 1993 | Air Traffic and Navigation Services Company Act,1993 | **Amendment of section 1 of Act 45 of 1993**<br><br>**1.** Section 1 of the Air Traffic and Navigation Services Company Act,1993, is hereby amended by |

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| | | the insertion after the definition of "financial year" of the following definition:<br><br>"**"holding company"**" means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Amendment of section 2 of Act 45 of 1993**<br><br>**2.** Section 2 of the Air Traffic and Navigation Services Company Act,1993, is hereby amended by the deletion of paragraphs *(a)* and *(d)* of subsection (7).<br><br>**Substitution of section 3 of Act 45 of 1993**<br><br>**3.** The following section is hereby substituted for section 3 of the Air Traffic and Navigation Services Company Act,1993:<br><br>"**Share capital of company**<br><br>**3.** (1) The holding company shall be the holder of the shares in the company.<br><br>(2) The said shares shall only be sold or otherwise disposed of in accordance with the National Strategy contemplated in the National State Enterprises Act, 2023.<br><br>(3) The rights attached to the shares of which the State is the holder shall be exercised by the holding company on behalf of the State.".<br><br>**Amendment of section 5 of Act 45 of 1993** |

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| | | **4.** Section 5 of the Air Traffic and Navigation Services Company Act,1993, is hereby amended by the deletion of subsection (3).<br><br>**Repeal of sections 7, 8 and 9 of Act 45 of 1993**<br><br>**5.** Sections 7, 8 and 9 of the Air Traffic and Navigation Services Company Act,1993, are hereby repealed.<br><br>**Amendment of section 12 of Act 45 of 1993**<br><br>**6.** Section 12 of the Air Traffic and Navigation Services Company Act,1993, is hereby amended by—<br><br>*(a)* the substitution for subsection (1) of the following subsection:<br><br>"(1) If the company has indicated in **[a business]** its corporate plan **[contemplated in section 7]** concluded in terms of section 9(2)(c) of the National State Enterprises Act, 2023 that it intends to close or sell any air navigation infrastructure mentioned in section 6 (1)(a) or to terminate or substantially curtail an air traffic service or air navigation service which was rendered by the State or any person on behalf of the State immediately prior to the transfer date, the company shall at the same time as it submits such **[business]** corporate plan to the **[Shareholding Minister in terms of section 7]** holding company, submit a copy thereof to the Committee."; and<br><br>*(b)* by the substitution for subsections (3) and (4) of the following subsections:<br><br>"(3) The company shall not, |

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| | | unless agreed to by the Minister with the concurrence of the **[Shareholding Minister]** holding company, take any action contemplated in subsection (1) unless it has in terms of that subsection indicated at least three financial years prior to taking such action its intentions in that regard.<br><br>(4) The Minister may, with the concurrence of the **[Shareholding Minister]** holding company and the Minister responsible for Finance, compensate the company from moneys appropriated by Parliament for the continued operation of an air navigation infrastructure, an air traffic service or an air navigation service contemplated in subsection (1).". |
| Act No. 63 of 1996 | Sentech Act, 1996 | **Amendment of section 1 of Act 63 of 1996**<br><br>**1.** Section 1 of the Sentech Act, 1996, is hereby amended by—<br><br>*(a)* the substitution for the for the definition of "company" of the following definition:<br><br>"'**Company'** means the public company, Sentech SOC Limited, contemplated in section 4;";and<br><br>*(b)* the insertion after the definition of "Electronic Communications Act" of the following definition:<br><br>"'**holding company'** means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Amendment of section 4 of Act 63 of 1996** |

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| | | **2.** Section 4 of the Sentech Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:<br><br>"(4) The name of the public company referred to in subsection (3) *(a)* shall be Sentech SOC Limited.".<br><br>**Repeal of section 6 of Act 63 of 1996**<br><br>**3.** Section 6 of the Sentech Act, 1996, is hereby repealed.<br><br>**Amendment of section 7 of Act 63 of 1996**<br><br>**4.** Section 7 of the Sentech Act, 1996, is hereby amended by—<br><br>*(a)* the substitution for paragraph *(c)* of subsection (1) of the following paragraph:<br><br>"*(c)* the **[Minister]** holding company shall appoint a non-executive director as chairperson of the board;"; and<br><br>*(b)* the deletion of subsection (2).<br><br>**Repeal of section 8 of Act 63 of 1996**<br><br>**5.** Section 8 of the Sentech Act, 1996, is hereby repealed. |
| Act No. 7 of 1998 | The South African National Roads Agency Limited and National Roads Act, 1998 | **Amendment of section 1 of Act 7 of 1998**<br><br>**1.** Section 1 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the insertion after the definition of "Department" of the following definition:<br><br>"**'holding company'** means the State Asset |

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| | | Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;". |
| | | **Amendment of section 3 of Act 7 of 1998**<br>**2.** Section 3 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the deletion of subsection (4). |
| | | **Amendment of section 4 of Act 7 of 1998**<br>**3.** Section 4 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the deletion of subsection (2). |
| | | **Repeal of sections 5 and 6 of Act 7 of 1998**<br>**4.** Sections 5 and 6 of The South African National Roads Agency Limited and National Roads Act, 1998, are hereby repealed. |
| | | **Amendment of section 12 of Act 7 of 1998**<br>**5.** Section 12 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:<br>"(3) The members of the Board contemplated in subsection (2)(a) and (e) are appointed by the holding company.". |
| | | **Repeal of sections 13, 14, 15, 16, 17 and 18 of Act 7 of 1998** |

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| | | **6.** Sections 13, 14, 15, 16, 17 and 18 of The South African National Roads Agency Limited and National Roads Act, 1998, are hereby repealed.<br><br>**Amendment of section 19 of Act 7 of 1998**<br><br>**7.** Section 19 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by—<br><br>*(a)* the substitution for paragraph *(b)* in subsection (1) of the following paragraph:<br><br>"*(b)* The Chief Executive Officer **[will be the accounting officer and chief administrative and]** is the executive officer of the Agency.";<br><br>*(b)* the substitution for paragraph *(a)* in subsection (2) of the following paragraph:<br><br>"*(a)* The **[Minister]** Board must**[, after consideration of the recommendation of the Board,]** appoint a Chief Executive Officer.";<br><br>*(c)* the deletion of paragraph *(c)* in subsection (2); and<br><br>*(d)* the substitution for paragraph *(b)* in subsection (5) of the following paragraph:<br><br>"*(b)* The secretary of the Board must ensure that a copy of the Chief Executive Officer's notice of resignation is forwarded to the **[Minister]** holding company forthwith.".<br><br>**Repeal of sections 20, 21 and 22 of Act 7 of 1998**<br><br>**8.** Sections 20, 21 and 22 of The South African |

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| | | National Roads Agency Limited and National Roads Act, 1998, are hereby repealed.<br><br>**Amendment of section 33 of Act 7 of 1998**<br><br>**9.** Section 33 is amended by the deletion of subsections (2) and (3).<br><br>**Repeal of sections 35, 36, 37 and 38 of Act 7 of 1998**<br><br>**10.** Sections 35, 36, 37, and 38 of The South African National Roads Agency Limited and National Roads Act, 1998, are hereby repealed. |
| Act No. 46 of 1999 | Nuclear Energy Act, 1999 | **Amendment of section 1 of Act 46 of 1999**<br><br>**1.** Section 1 of the Nuclear Energy Act, 1999, is hereby amended by the insertion after the definition of "enrich" of the following definition:<br><br>"'**holding company**' means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Amendment of section 4 of Act 46 of 1999**<br><br>**2.** Section 4 of the Nuclear Energy Act, 1999, is hereby amended by the substitution for subsection (4) of the following subsection:<br><br>"**[(a)]** The State's rights as member and shareholder of the Corporation are to be exercised by the **[Minister]** holding company.<br><br>**[(b) The relationship between the** |

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| | | **Corporation and the Minister representing the State as the only member and shareholder, may be closer defined in an agreement entered into by the Corporation and the Minister for that purpose, subject to this Act.]**". |
| | | **Repeal of sections 6, 7, 9 and 15 of Act 46 of 1999**<br>**3.** Sections 6, 7, 9 and 15 of the Nuclear Energy Act, 1999, are hereby repealed. |
| | | **Amendment of section 16 of Act 46 of 1999**<br>**4.** Section 16 of the Nuclear Energy Act, 1999, is hereby amended by—<br>*(a)* the substitution for paragraphs *(a)* and *(b)* in subsection (2) of the following paragraphs:<br>"*(a)* a chairperson, appointed by the **[Minister]**Board;<br>*(b)* not fewer than five and not more than seven suitably qualified directors appointed by the **[Minister]**holding company;"; and<br>*(b)* the deletion of subsections (6), (7) and (8). |
| | | **Repeal of sections 17, 21, 22, 23, 24, 25, 26, 27 and 32 of Act 46 of 1999**<br>**5.** Sections 17, 21, 22, 23, 24, 25, 26, 27, and 32 of the Nuclear Energy Act, 1999, are hereby repealed. |

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| Act No. 13 of 2001 | Eskom Conversion Act, 2001 | **Amendment of section 1 of Act 13 of 2001**<br><br>**1.** Section 1 of the Eskom Conversion Act, 2001, is hereby amended by—<br><br>*(a)* the substitution for the definition of "Eskom" of the following definition:<br><br>"**'Eskom'** means **[the juristic person referred to in section 2 of the Eskom Act and upon conversion means]** Eskom Holdings SOC Limited, and for purposes of section 5, includes the National Transmission Company of South Africa SOC Limited and any company established by Eskom to perform its functions in respect of distribution;";<br><br>*(b)* by the insertion after the definition of "Eskom Act" of the following definition:<br><br>"**'holding company'** means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;"; and<br><br>*(c)* the substitution for the definition of "Shareholder compact" with the following definition:<br><br>"**'Shareholder compact'** means the performance agreement to be entered into between Eskom and the **[government of the Republic of South Africa]** holding company, including the annexures thereto, as amended from time to time;".<br><br>**Amendment of section 3 of Act 13 of 2001**<br><br>**2.** Section 3 of the Eskom Conversion Act, 2001, |

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| | | is hereby amended by the deletion of subsection (2). |
| Act No. 5 of 2007 | South African Airways Act, 2007 | The repeal of the whole Act. |
| Act No. 33 of 2007 | Broadband Infraco Act, 2007 | **Amendment of section 1of Act 33 of 2007**<br><br>**1.** Section 1 of the Broadband Infraco Act, 2007, is hereby amended by the insertion after the definition of "Expropriation Act" of the following definition:<br><br>"'**holding company**' means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Repeal of section 5 of Act 33 of 2007**<br><br>**2.** Section 5 of the Broadband Infraco Act, 2007, is hereby repealed.<br><br>**Amendment of section 7 of Act 33 of 2007**<br><br>**3.** Section 7 of the Broadband Infraco Act, 2007, is hereby amended by the substitution for subsection (8) of the following subsection:<br><br>"(8) This section applies to Infraco only for as long as the **[State]** holding company is the majority shareholder in Infraco.".<br><br>**Amendment of section 8 of Act 33 of 2007**<br><br>**4.** Section 8 of the Broadband Infraco Act, 2007, is hereby amended by the deletion of subsection (7). |

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| Act No. 22 of 2011 | South African Post Office SOC Ltd Act, 2011 | **Amendment of section 1 of Act 22 of 2011**<br><br>**1.** Section 1 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by the insertion after the definition of "financial statements" of the following definition:<br><br>"**'holding company'** means the State Asset Management SOC Ltd established under section 6 of the National State Enterprises Act, 2023;".<br><br>**Amendment of section 3 of Act 22 of 2011**<br><br>**2.** Section 3 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by—<br><br>*(a)* the deletion of subsection (3);<br><br>*(b)* the deletion of paragraph *(a)* in subsection (4); and<br><br>*(c)* the deletion of subsection (5).<br><br>**Repeal of sections 5 and 6 of Act 22 of 2011**<br><br>**3.** Sections 5 and 6 of the South African Post Office SOC Ltd Act, 2011, are hereby repealed.<br><br>**Substitution of section 7 of Act 22 of 2011**<br><br>**4.** The following section is hereby substituted for section 7 of the South African Post Office SOC Ltd Act, 2011:<br><br>"**Government support to Post Office and loans by Post Office and sunsidiaries**<br><br>**7.** (1) Parliament may fund the normal expenditure of the Post Office to ensure |

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| | | universal postal services and any other social mandate services as determined by the Minister, out of money appropriated for the purpose.<br><br>(2) A request for financial support must be prepared by the Post Office and approved by the holding company by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the government's expenditure proposal for appropriation purposes.<br><br>(3) The payment of financial support is subject to the appropriation made by Parliament and must be for such purposes and periods and subject to such conditions as the Minister may determine, after consultation with the Minister of Finance.<br><br>(4) Government institutions which include national and provincial departments, national and provincial government components and municipalities are encouraged to utilise Post Office infrastructure in the delivery of their services and set aside certain services to be provided by the Post Office to assist in eliminating over-reliance on government funding by the Post Office and ensure efficient utilisation of Post Offices.".<br><br>**Amendment of section 8 of Act 22 of 2011**<br><br>**5.** Section 8 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by the substitution of subsection (3) with the following subsection:<br><br>"(3) The Chairperson must be appointed by the **[Minister]** Board from the |

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| | | non-executive members of the Board."<br><br>**Substitution of section 9 of Act 22 of 2011**<br><br>**6.** The following section is hereby substituted for section 9 of the South African Post Office SOC Ltd Act, 2011:<br><br>"**Functions of Board**<br><br>**9.** The Board—<br><br>*(a)* must give effect to the corporate plan contemplated in section 9 (2)(c) of the National State Enterprises Act, 2023 in order to achieve the objectives of the Post Office;<br><br>*(b)* must develop a credit plan facility wherein-<br><br>(i) the Post Office shall enter into an agreement and negotiate payment arrangements with its creditors; and<br><br>(ii) such plan must include evaluation of the Post Office debts, source funding either from the fiscus or in the market and appropriate steps to cancel evergreen contracts;<br><br>*(c)* must notify the holding company immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Post Office; and<br><br>*(d)* generally, must refer to the holding company any matter that may adversely |

affect the functioning of the Post Office.".

**Amendment of section 10 of Act 22 of 2011**

**7.** Section 10 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by—

*(a)* the substitution for the words preceding sub-paragraph (i) of paragraph *(a)* of subsection (3) of the following words:

"*(a)* A person nominated for appointment as a member of the Board must, before appointment and upon a request from the **[Minister]** holding company, submit to the **[Minister]** holding company a written statement containing—";

*(b)* by the substitution for sub-paragraphs (i) and (ii) of paragraph *(b)* of subsection (3) of the following sub-paragraphs:

"(i) further financial interest contemplated in paragraph (a)(i), the member must immediately in writing disclose that fact to the **[Minister]** holding company and the Board; or

(ii) direct or indirect interest contemplated in subsection (1) *(g)* or section 13, the member must immediately declare that fact to the **[Minister]** holding company and the Board."; and

*(c)* by the substitution for paragraph *(a)* of subsection (4) of the following subsection:

"*(a)* Any member of the Board of the Post Office referred to in section 3(2)*(c)*

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| | | must as soon as possible **[after the commencement of this Act]**, but not later than three months thereafter, submit to the **[Minister]** holding company and the Board a written statement containing the disclosure and declaration referred to in subsection (3) *(a)*.". |
| | | **Amendment of section 11 of Act 22 of 2011**<br><br>**8.** Section 11 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by—<br><br>*(a)* the substitution in section 11 for the expression "Minister" wherever it occurs of the expression "holding company"; and<br><br>*(b)* by the deletion of subsection (9). |
| | | **Repeal of section 12 of Act 22 of 2011**<br><br>**9.** Section 12 of the South African Post Office SOC Ltd Act, 2011, is hereby repealed. |
| | | **Amendment of section 16 of Act 22 of 2011**<br><br>**10.** Section 16 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:<br><br>"(1) The Board must**[, with the approval of the Minister]** appoint a chief executive officer, chief financial officer and chief operating officer to ensure that the Post Office meets its objects.". |

**Amendment of section 17 of Act 22 of 2011**

**11.** Section 17 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by—

*(a)* the substitution in section 17 for the expression "Minister" wherever it occurs of the expression "holding company"; and

*(b)* the substitution for subsection (5) of the following subsection:

"(5) The chief executive officer, chief financial officer and chief operating officer are entitled to a remuneration package determined by the Board **[with the concurrence of the Minister, the Minister acting after consultation with the Minister of Finance]**.".

**Repeal of sections 18 and 21 of Act 22 of 2011**

**12.** Sections 18 and 21 of the South African Post Office SOC Ltd Act, 2011, are hereby repealed.

**Amendment of section 22 of Act 22 of 2011**

**13.** Section 22 of the South African Post Office SOC Ltd Act, 2011, is hereby amended by—

*(a)* the deletion of subsection (2);

*(b)* the substitution for paragraph (a) of subsection (3) of the following paragraph:

"*(a)* The Post Office must, before it establishes a subsidiary or revives a dormant subsidiary, submit a

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| | | feasibility study and business plan of the proposed subsidiary to the **[Minister]** holding company for consideration.";<br><br>*(c)* by the deletion in subsection (3) of paragraphs *(b)* and *(c)*.<br><br>**Repeal of sections 23, 24, 25, 27, 28, and 29 of Act 22 of 2011**<br><br>**14.** Sections 23, 24, 25, 27, 28 and 29 of the South African Post Office SOC Ltd Act, 2011, are hereby repealed. |

# MEMORANDUM ON THE OBJECTS OF THE NATIONAL STATE ENTERPRISES BILL, 2023

## 1. BACKGROUND TO AND OBJECTS OF BILL

1.1 It is accepted that during the past decade the performance of South African commercial State-Owned Companies (SOCs) have for the most part been sub-optimal. Key weaknesses of the system have been noted as being an excessive politicisation of Board and senior management appointments in SOCs, weak coordination of both national objectives and sectoral approaches and a deficit of the required professional skills and sound corporate governance approaches. The consequences of these weaknesses are that not only have commercial SOCs not contributed to the aims of a developmental state, but they have also generally proved to be a massive drain on the fiscus.

1.2 Reports about South Africa's ownership of SOCs have also highlighted that South Africa's developmental agenda is not well defined and accordingly the role of SOCs in pursuing developmental objectives remains unclear. The National Planning Commission reported that multiple interlocutors highlighted that to increase transparency, coherence and accountability in SOC policy, there is a need for greater formalisation of the role of the State as a shareholder, including the limits of state interference in the functioning of SOC boards. A contributing factor to the absence of clarity is the lack of a universally agreed state-ownership strategy among government departments.

1.3 The National State Enterprises Bill (Bill) was Gazetted for public comment in



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September 2023. The Bill gives effect to international good practice as well as prior recommendations on the National Development Plan's Vision 2030, Presidential Review Committee on State-Owned Entities, National Planning Commission, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Zondo Commission) and the recommendations of the Presidential State-owned Enterprises Council (PSEC).

1.4 Some 3 500 comments were received during the public comment process. The key learnings from these reiterated the need for transparent governance and accountability arrangements to be set in place before the proposal would be supported. The comments can be grouped into three high-level thematic areas namely:

1.4.1 The need for a clear state ownership strategy as enunciated in the NDP, the PRC and NPC reports;

1.4.2 The need to harmonise the relevant legislative prescripts applicable to SAMSOC and its subsidiaries;

1.4.3 The need for transparent and appropriate governance and accountability mechanisms to be set in place for both commercial state-owned enterprises, SAMSOC and its subsidiaries to ensure political insulation, to support and promote professionalisation, integrity, efficiency and effectiveness of SAMSOC and subsidiary operations.

1.5 These comments were internalised and given effect to in this Bill which sought to address relevant issues by:

1.5.1 Creating a national strategy for national state-owned enterprises;

1.5.2 Establishing the State Asset Management SOC Limited (SAMSOC);

1.5.3 Providing for the State as the sole shareholder of the SAMSOC;

1.5.4 Consolidating the State's shareholdings in strategic state-owned enterprises;

1.5.5 Providing for the powers of the shareholder;

1.5.6 Providing for the phasing in of strategic state-owned enterprises as subsidiaries of SAMSOC;

1.5.7 Providing for the SAMSOC's powers;

1.5.8 Providing for the appropriate balance of developmental and commercial objectives of these SOCs; and

1.5.9 Providing for the monitoring of operational and financial performance of subsidiaries.

1.6 The Bill provides for the development of a national strategy for the ownership of commercial state-owned enterprises. This national strategy provides the state's ownership approach to commercial enterprises and is based on a transparent process, including the opportunity for public comments on the national strategy.

1.7 The Bill provides for the establishment of a state-owned holding company, SAMSOC, to advance the socio-economic objectives of the country to preserve and grow the long-term value of national assets for the benefit of all citizens and future generations and thereby increase the value of investments in selected state-owned companies.

1.8 The establishment of SAMSOC in terms of this enabling legislation and the

Companies Act, 2008 (Companies Act) gives effect to a Cabinet decision to adopt a centralised shareholder model as proposed by the PSEC for the ownership of a limited number of duly proclaimed SOCs.

1.9 As such, SAMSOC will act as the centralised shareholder of SOCs and ensure that subsidiary companies' operations are politically insulated, professionalised and transparent. SAMSOC will thereby enhance the impact that these SOCs can make on the South African economy

## 2 CHAPTER AND SECTION BY SECTION ANALYSIS

2.1 The Bill is comprised of six chapters and three schedules namely:

- 2.1.1 Chapter 1: Definition and Objects of Act;
- 2.1.2 Chapter 2: National Strategy;
- 2.1.3 Chapter 3: Holding Company;
- 2.1.4 Chapter 4: Legal Succession;
- 2.1.5 Chapter 5: Use of Land and Rights in Land;
- 2.1.6 Chapter 6: General
- 2.1.7 Schedule A: State Enterprises Capable of Being Transferred to Holding Company
- 2.1.8 Schedule B – Transitional provisions
- 2.1.9 Schedule C – Amendment and repeal of laws.

Each of the Chapters and Schedules are discussed in more detail below.

### Chapter 1: Definition and objects of Act

2.2 Section 1 contains the Bill's definitions section. Key definitions include:

2.2.1 "holding company" means the State Asset Management SOC Limited established in terms of section 6;

2.2.2 "national commercial state-owned enterprises" means those enterprises listed in Schedules 2 and 3B to the Public Finance Management Act;

2.2.3 "Presidential advisory committee" means the committee appointed by the President in terms of section 20;

2.2.4 "shareholder" means the State as represented by the President;

2.2.5 "President" means the President of the Republic of South Africa;

2.2.6 "state enterprise" means a company that is listed in Schedule A.

2.3 Section 2 contains the objects of the Act. The objects of the Act respond to the previously identified needs to:

2.3.1 Create a framework for the approval of a national strategy to guide the operations of the holding company and national commercial state-owned enterprises; and

2.3.2 Provide for the establishment of a commercially sustainable state-owned holding company to exercise the shareholder functions in line with the policy intent of a centralised approach to the governance, accountability, sustainability and operations of selected commercial state enterprises listed in Schedule A.

**Chapter 2: National Strategy**

2.4 Chapter 2 is comprised of three sections which collectively provide for the creation of a national strategy for national commercial state-owned enterprises,

outlines the high-level requirements for the content of the national strategy and provides for the review of the national strategy. This Chapter responds to the identified need for a coherent strategic approach which underpins the state's ownership in national commercial state-owned enterprises.

2.4.1 Section 3 enjoins the President to develop the national strategy on the advice of a Presidential Advisory Committee and after consultation with the ministers responsible for the national commercial state-owned enterprises and the holding company. The section further requires that the national strategy be publicly consulted after its development, that the comments be considered and that the national strategy be approved by Cabinet and tabled in Parliament.
Section 4 outlines the high-level requirements which must be contained in the national strategy. Requirements include the approach to the manner in which performance of the holding company and its subsidiaries is to be measured and in respect of both the holding company, its subsidiaries and other national commercial state-owned enterprises sectoral and specific objectives and strategies; performance targets; costed and funded developmental obligations; any permitted alterations of shareholding; any recapitalisation and other matters relating to financial turnaround; any potential private sector investment; and how dividends are to be applied or disbursed.

2.4.2 Section 5 provides for the five-yearly review of the national strategy to ensure that the strategic intent remains current and appropriate for the country's needs. A provision is included for in-year review of the national strategy if required.

**Chapter 3: Holding Company**

2.5 Chapter 3 is comprised of nine sections and provides for the establishment of the holding company which will exercise the state's shareholdings of selected state enterprises in line with the adoption of the centralised model. The Chapter provides a bespoke set of governance, accountability and financial management provisions to ensure the transparent operations of the holding company, predominantly in terms of the Companies Act. As the PFMA does not, in the normal course of events, apply to the holding company or its subsidiaries particular attention has been placed on ensuring that the financial management provisions are appropriate for a state-owned company.

2.5.1 Section 6 establishes the SAMSOC as a holding company with the state as the sole shareholder and the President as its shareholder representative. The President is given the power to transfer the administration of this Act or any power or function referred to in this Act to a member of Cabinet in accordance with section 97 of the Constitution.

2.5.2 Section 7 provides for the objectives of SAMSOC. These objectives include SAMSOC exercising the rights and observing the restrictions as a shareholder over any subsidiary or minority holding in a company. It's objectives also include the provision of advice to the President on the development and review of the National Strategy, the phasing in of state enterprises to the holding company after the completion of the required due diligence. Also, SAMSOC's objectives include the conducting of the required due diligence as provided for in section 16 and, on instruction from the shareholder, cooperate with the relevant Board in order to

facilitate the implementation of transfers as contemplated in section 17.

2.5.3 Section 8 contains the shareholder powers and duties which include promoting and supporting the functions of the holding company and reporting annually on these to Parliament on the commercial sustainability, developmental impact and material risks of the investment in the holding company. The shareholder powers differ from typical arrangements in respect of state-owned companies in that the shareholder confirms the appointment of directors recommended by the Board. While the shareholder has a right of refusal, there is no absolute right to appoint directors of own choice. These provisions have been included to ensure a level of political insulation for board appointments. The shareholder is also enjoined to undertake an independent assessment of board performance ever three years over and above the normal performance reviews and to publish the outcomes of this report to ensure transparency of operations.

2.5.4 Section 9 contains the powers, functions and duties of the Board. As can be expected from the prior sections these include:

2.5.4.1 The provision of advice on the development of the national strategy and the phased succession for the transfer of state enterprises to the holding company;

2.5.4.2 On instruction from the shareholder conduct the prescribed due diligence and, if appropriate, prepare for the onboarding of any state-enterprise as a subsidiary;

2.5.4.3 Exercising the rights as shareholder on behalf of the state over its subsidiaries;

2.5.4.4 Ensuring that SAMSOC and its subsidiaries operate in terms of the Companies Act in order to meet the expectations contained in the national strategy and in particular adhere to a number of bespoke governance and accountability arrangements which are supported by an appropriate financial management regime. SAMSOC and its subsidiaries are given broad operational independence but any funding or guarantees from the state must be authorised by the shareholder and the Minister of Finance. This approach has been adopted to ensure that SAMSOC does not use its independence in a manner which places a drain on the fiscus.

2.5.4.5 The relationship between SAMSOC and its subsidiaries are governed by the use of typical corporate planning instruments. SAMSOC is responsible for ensuring that reporting frameworks and financial and operational performance frameworks are in place for its subsidiaries. It is specifically recorded that the Board is responsible for the appointment of the Chief Executive Officer and the Chief Financial Officer. These mechanisms are further examples of the political insulation which the Bill seeks to address.

2.5.5 Section 10 caters for the composition of the Board and confirms that the Board is responsible for recommending directors for appointment and when doing so must be mindful of their skill, knowledge, experience and integrity. A mechanism is created whereby the shareholder can refuse to appoint the recommended director but may not simply appoint his own choice of director. The size of the Board is

limited as are the number of terms a director may serve in line with good practice. Both the Chief Executive Officer and the Chief Financial Officer are ex-officio directors of the Board.

2.5.6 Section 11 contains a specific standards of director conduct provision which draws from the common law and the Companies Act but also includes a reference to SAMSOC's developmental objectives, its business sustainability and the public interest as is befitting a state-owned company.

2.5.7 Section 12 ensures that certain identified board committees are appointed including the nominations committee which is responsible for making recommendations in respect of future directors.

2.5.8 Section 13 contains reporting provisions to ensure the transparency and accountability of SAMSOC to both the shareholder and the public. The reporting requirements include financial management provisions as well as the requirement to provide an integrated annual report which must be tabled at Parliament.

2.5.9 Section 14 provides that the Public Audit Act will apply to SAMSOC and its subsidiaries. The provisions of that Act enjoin the Auditor General to ensure that the audit of SAMSOC is made according to appropriate guidelines. As such, the Auditor General may elect to authorise designated private sector auditors to undertake the audit functions.

**Chapter 4: Legal succession**

2.6 This Chapter is comprised of three sections which cater for the internalisation

of co-operative governance when facilitating required legal succession. The due diligence provisions discussed previously are contained in this Chapter as are legal succession provisions.

2.6.1 Section 15 is the co-operative governance provision and enjoins the Ministers responsible for state enterprises and the relevant organs of state to cooperate with SAMSOC to implement any required legal succession as contemplated in this Chapter.

2.6.2 Section 16 is the due diligence section. The section provides for the accounting authority and other personnel of a state enterprise to cooperate with the holding company and to provide it with required information. The section further provides for SAMSOC to make recommendations to the shareholder and to recommend that a state enterprise shareholding be transferred to it or for corrective action to be taken prior to such transfer. The shareholder must share these findings and recommendations with Cabinet and after consultation with Cabinet determine that the state enterprise shareholding be transferred to SAMSOC.

2.6.3 Section 17 provides the mechanism whereby the shareholding in a state enterprise may be transferred to SAMSOC and the consequent removal of the name of that state enterprise from the PFMA Entity Schedules and the repeal or amendment of law as set out in Schedule C on a specific date.

**Chapter 5: Use of land and rights in land**

2.7 This Chapter contains provisions relating to the use of land and land rights and contains two sections.

2.7.1 Section 18 contains a mechanism whereby subsidiary land holdings may be transferred to another subsidiary. The intent behind this section is to allow for consolidated property holdings to promote better efficiencies. Any such transfer is exempted from statutory fees and charges.

2.7.2 Section 19 contains a provision for the use of state servitudes by a subsidiary company and that such right may be registered without attracting any statutory fees and charges.

**Chapter 6: General**

2.8 This Chapter contains 6 sections and caters for the Presidential Advisory Committee to advise on the national strategy, the making of regulations in terms of the Act, the application of the Companies Act as well as transitional provisions, the amendment and repeal of legislation and the short title and commencement provisions.

2.8.1 Section 20 establishes a Presidential Advisory Committee to advise on the National Strategy or its review. The composition of this committee is prescribed to ensure a mix of independence and appropriate skills when such advice is provided.

2.8.2 Section 21 is the provision which empowers regulations to be made to underpin the proper implementation or administration of the Act.

2.8.3 Section 22 confirms the application of the Companies Act to SAMSOC and its

subsidiaries unless a Companies Act provision has been superseded by a provision in this Act or other applicable legislation which makes the Companies Act provision clearly inappropriate or inapplicable.

2.8.4 Section 23 contains a transitional provision which applies to the appointment of the first SAMSOC Board. This provision internalises the recommendations of the Zondo Commission and ensures the political insulation of the first Boards appointment. Thereafter the Board is responsible for recommending future directors which entrenches political insulation in director appointments.

2.8.5 Section 24 makes provision for the amendment and repeal of legislation.

2.8.6 Section 25 contains the short title and commencement provisions.

**Schedule A: State enterprises capable of being transferred to holding company**

2.9 Schedule A contains a list of state enterprises capable of being transferred to SAMSOC over time. The Schedule only lists companies and it is envisaged that other commercial state entities which are not companies would first be corporatised by amendment to their enabling legislation and that that legislation would ensure that a mechanism was included to add them to the Schedule so that they might be transferred to SAMSOC in due course. A similar expectation exists in terms of those commercial state enterprises which require legislative enablement so that they may be unbundled or restructured.

**Schedule B – Transitional provisions**

2.10 As already noted Schedule B provides the transitional mechanism to ensure the political insulation of the first board appointment process. A transparent appointment process is outlined and the shareholder is enjoined to confirm recommended directors for appointment or exercise a right of refusal. The shareholder does not have the right to appoint a director not recommended by the panel.

**Schedule C – Amendment and repeal of legislation**

2.11 Schedule C has two parts.

2.11.1 The first part of the Schedule contains amendments which take effect on the date of the commencement of this Act.

2.11.2 The second part of the Schedule contains amendments which take effect on the date contemplated in section 17(2)(c).

## 3 CONSULTATION

3.1 The Bill is the product of substantial research and deliberations spanning a period of over ten years. As early as 2010/11 the South African PRC on State-Owned Enterprises issued a number of recommendations relating to the operation of commercial state-owned companies.

3.2 The National Development Plan acknowledged the role of state-owned companies and listed a number of enabling factors which would support their

operations.

3.3 The National Planning Commission recently further enhanced the work of the PRC on State-Owned Enterprises having reliance on a number of specifically commissioned work products.

3.4 The Bill is a product of these refinements as well as the more recent initiatives and recommendations driven by PSEC as representatives of individuals drawn from the state, labour and private sector.

3.5 A draft version of the Bill was *Gazetted* for public comment in September 2023 and some 3 5000 submissions were received. This version of the Bill has internalised the received substantive comments to ensure that the Bill which will be introduced into Parliament has catered for the development of a national strategy for commercial state-owned enterprises and to ensure that appropriate checks and balances, both governance and accountability and financial arrangements, for a state-owned company which will operate in terms of its enabling legislation and the Companies Act and outside of the ambit of the Public Finance Management Act

## 4. IMPLICATIONS FOR PROVINCES

The Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), since it contains no provisions to which the procedure set out in section 74 or 76 or 77 of the Constitution applies.

## 5. FINANCIAL IMPLICATIONS FOR STATE

5.1 SAMSOC has been established on the basis that it shall become self-sustainable in the short term. SAMSOC will derive dividends from its subsidiary companies, and it is envisaged that, once the Presidentially designated subsidiaries are proclaimed, this income stream will be sufficient to cover its operational costs.

5.2 It is anticipated that the total running costs, inclusive of human resources, has been budgeted as approximately R50 million annualised costs in 2024/25 and rising to approximately R58 million in year three of its operations.

5.3 Given the significance of this initiative the President, as endorsed by Cabinet, has undertaken that the necessary allocations will be made to underpin the holding company establishment while the Department of Public Enterprises has already received an allocation to cover the pre-establishment processes.

## 6. PARLIAMENTARY PROCEDURE

6.1 The Constitution of the Republic of South Africa, 1996 ("the Constitution") distinguishes between four categories of Bills: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged, otherwise it would be constitutionally invalid.

6.2 The Bill has been considered against the provisions of the Constitution relating to the classification of Bills.

6.3 Section 75 of the Constitution sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.

6.4 Section 76 of the Constitution on the other hand provides for a procedure that must be followed for all the Bills referred to in that section.

6.5 Section 76(3) of the Constitution provides as follows:

> ***"76.*** *(3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:*
> *(a) Section 65 (2);*
> *(b) section 163;*
> *(c) section 182;*
> *(d) section 195 (3) and (4);*
> *(e) section 196; and*
> *(f) section 197.*".

6.6 In summary, a Bill will be considered a section 76 Bill—

(a) if it provides for legislation mentioned in paragraphs *(a)* to *(f)* of section 76(3); or

(b) if its provisions in substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.

6.7 In *Tongoane v Minister of Agriculture and others CCT 2010 (8) BCLR 741 (CC) ("Tongoane judgment'),* the Constitutional Court confirmed and upheld the test for tagging that was formulated in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)* where the Constitutional Court held that—

> "the heading of section 76, namely, 'Ordinary Bills affecting provinces' provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.".

6.8 At paragraph 58, the Constitutional Court held that "[w]hat matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill "in substantial measure fall within a functional area listed in schedule 4". The Constitutional Court, at paragraphs 70 and 72, further held that "the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence".

6.9 At paragraph 59 the Constitutional Court held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution, and not on whether any of its provisions are incidental to its substance.

6.10 It is thus necessary to examine all the provisions of the Bill as a whole to determine the extent to which they substantially affect any of the matters listed in Schedule 4 to the Constitution.

6.11 The main purpose of the Bill is to provide for the development and review of a national strategy for national commercial state-owned enterprises; to provide for the establishment of the State Asset Management SOC Limited with the State as its shareholder; to provide for the phased succession of national commercial state-owned enterprises to the holding company; to provide for consequential amendments to laws affected by the enactment of this Bill; and to provide for matters connected therewith.

6.12. The State Law Advisers and the Department of Public Enterprises are of the view that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 or 77 of the Constitution applies.

## 7. REFERRAL TO NATIONAL HOUSE OF TRADITIONAL LEADERS

The State Law Advisers and the Department of Public Enterprises are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill does not contain any provisions which directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities and does not pertain to any matter referred to in section 154(2) of the Constitution.

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