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## GENERAL NOTICE

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### NOTICE 1288 OF 2003

The Electricity Distribution Industry Restructuring Bill has been introduced to Cabinet by the Minister of Minerals and Energy. Cabinet has approved that the Bill be released for public comments.

Comments on the Bill should be forwarded to:

Attention: The Director-General  
Ms N. Magubane  
Department of Minerals and Energy  
Private Bag X59  
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The deadline for the submission of comments is 23 May 2003.

**ELECTRICITY DISTRIBUTION INDUSTRY  
RESTRUCTURING BILL  
(To be introduced)**

**MINISTER OF MINERALS AND ENERGY**

# ELECTRICITY DISTRIBUTION INDUSTRY RESTRUCTURING ACT

ACT No. • of 2003

To establish a national framework for the restructuring of the distribution industry, to provide for the creation of regional electricity distributors into which the relevant officers, employees, assets, liabilities, rights and obligations may be transferred, to provide for certain structures and functions in the restructured electricity distribution industry, and to provide for matters connected therewith.

## PREAMBLE

Whereas the National Electricity Regulator is empowered to issue licenses to electricity distributors in order to facilitate the efficient and economically viable distribution of electricity in the national interest;

And whereas the electricity distribution industry is in need of being restructured in order to create efficient and economically viable electricity distributors;

And whereas as part of such restructuring, regional electricity distributors have to be created municipal controlled entities, which shall be registered as companies in terms of the Companies Act, 1973 (Act No. 61 of 1973);

And whereas as part of such restructuring, the officers, employees, assets, liabilities, rights and obligations of existing electricity distributors in South Africa may be transferred into these regional electricity distributors;

And whereas legislation needs to be enacted to provide for (i) the incorporation of regional electricity distributors; (ii) the transfer of such officers, employees, assets, liabilities, rights and obligations to the relevant regional electricity distributor; and (iii) the establishment of

certain new structures with specific powers, duties and functions to operate in respect to the restructured electricity distribution industry;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: -

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## CHAPTER 1 INTERPRETATION

### Definitions

1. In this Act, any word or meaning assigned thereto in the Electricity Regulation Act shall have that meaning, and --

“affiliate”, with respect to a company means -

- (a) a company which is a subsidiary of another company;
- (b) a company which is the subsidiary of the same company as another company or;
- (c) a company which is controlled by the same company as another company;

“by-law” means subordinate legislation passed by the council of a municipality;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973), and unless otherwise indicated means such act as amended and re-enacted from time to time;

“confidential information” means any information to which access can be denied under any applicable legislation in South Africa;

“Constitution” means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

“control” means the ability to exercise the following powers to govern the financial and operating policies of an entity in order to obtain benefits from its activities -

- (a) to appoint or remove at least the majority of the board of directors or equivalent governing body;
- (b) to cast at least the majority of the votes at the meeting of the board of directors or equivalent governing body; or
- (c) to control the majority of the voting rights at a general meeting of a company or equivalent governing body;

“Deeds Registries Act” means the Deeds and Registries Act, 1937 (Act No. 47 of 1937);

“distribute” means the distribution of electricity through a distribution system, which is a system, which consists, either completely or mainly, of electric lines of a nominal voltage not exceeding 132 kilovolts and electrical plant, and which is used for conveying electricity to any premises or to any other distribution system;

“distribution system” means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;

“distributor” means a person who distributes electricity through a distribution system<sup>1</sup>;

“EDI Holdings” means Electricity Distribution Industry Holdings (Proprietary) Limited, a company duly registered and incorporated with limited liability in terms of the company laws of the Republic of South Africa and which has been incorporated by the Minister in order to facilitate the reorganisation of electricity distribution systems in South Africa;

“Electricity Act” means the Electricity Act, 1987 (Act No. 41 of 1987), and unless otherwise indicated, means such act as amended and re-enacted from time to time;

“Electricity Regulation Act” means legislation providing for the regulation of the electricity industry in South Africa;

“Eskom” means the juristic person referred to in section 2 of the Eskom Act, and upon conversion pursuant to the Eskom Conversion Act, 2001 (Act No. 13 of 2001), Eskom Holdings Limited;

“Eskom Act” means the Eskom Act, 1987 (Act No. 40 of 1987);

“existing electricity distributor” means any electricity distributor that has to be licensed in terms of the Electricity Regulation Act on the date of commencement of this Act, whether such electricity distributor is actually licensed in terms of that Act or not;

“Expropriation Act” means the Expropriation Act, 1975 (Act No.63 of 1975);

“generate”, in relation to this Act means to produce electricity for sale or provide ancillary services for a purpose dealt with by this Act, other than ancillary services provided by a transmitter or distributor as part of the operation of a transmission or distribution system;

“generation facility” means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor as part of the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose;

“generator” means a person who generates electricity at a generation facility;

“incorporate” means incorporation in terms of the Companies Act;

“land” means land, tenements, immovable property and servitudes, or any interest therein;

“law” includes any Proclamation, regulation, government notice, by-law, ordinance or any other instrument with the force of law that is in force on the date of promulgation of this Act;

“license” means a license issued by the NERA under the Electricity Regulation Act;

“Minister” means the Minister of Minerals and Energy;

“multi-jurisdictional municipal service district” means a grouping of two or more municipalities established in terms of section 87 or 88 of the Municipal Systems Act;

“municipal controlled entity” means

- (a) a company, co-operative, trust, fund or any other corporate entity established in terms of national or provincial legislation and which operates under the control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company; or
- (b) a service utility established in terms of section 82(1)(c) of the Municipal Systems Act;

“Municipal Systems Act” means the Municipal Systems Act, 2000 (Act No.32 of 2000)

“municipality”, when referred to as

- (a) an entity, means a municipality as described in section 2 of the Municipal Systems Act; and
- (b) a geographic area, means a municipal area determined in terms of the Local Government - Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“NERA” means the National Electricity Regulatory Authority established under the Electricity Regulation Act;

“person” means and includes any natural person, company, body corporate, trust, a statutory body, a partnership or an association of persons, whether incorporated or not, as the case may be;

“prescribe” means prescribe by regulation and “prescribed” has a corresponding meaning;

“RED” means a regional electricity distributor referred to in section 2 of this Act;

“retail” means -

- (a) to sell or offer to sell electricity to a consumer; or

- (b) to act or offer to act as agent or broker for a retailer or consumer with respect to the sale or offering for sale of electricity<sup>2</sup>;

“retailer” means a person who retails electricity, whether as a captive market retailer or a contestable market retailer;

“service area”, with respect to a RED, means the area in which the RED is authorized by its license to undertake activities pursuant to its license;

“service authority” means the power of a municipality to regulate the provision of a municipal service by a service provider;

“service delivery agreement” means an agreement between a municipality or a multi-jurisdictional municipal service district and a RED in terms of which electricity distribution and retail services are provided by that RED for its own account or in order to discharge any responsibilities that a municipality or multi-jurisdictional municipal service district, exercising its service authority, may have with respect to electricity distribution or retail sales;

“service level agreement” means an agreement for the provision of goods or services by one party to the other;

“special supply agreement” means an agreement for the supply of electricity prescribed in the regulations;

“subsidiary”, with respect to a company, has the same meaning as in the Companies Act;

“transfer scheme” means a scheme issued in terms of guidelines which may be published by the Minister pursuant to section 8 hereof, whereby the officers, employees, assets, liabilities, rights and obligations of such transferor are transferred;

“transferee” means a RED to which officers, employees, assets, liabilities, rights or obligations are transferred by or pursuant to a transfer scheme under this Act;

“transferor” means—

- (a) Eskom;
- (b) each municipality and any entity or company owned by a municipality or municipalities that owns or operates an electricity distribution or retail business; and
- (c) such other entity as may partake in a transfer scheme, in terms of the guidelines published by the Minister;

“transmission system” means a system for transmitting electricity, and includes any structures, equipment or other assets used for that purpose;

“transmit” means the transmission of electricity through a transmission system which consists, either completely or mainly, of electric lines of a nominal voltage exceeding 132 kilovolts and electrical plant, and which is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another;

“transmitter” means a person who transmits electricity through a transmission system.

## PURPOSE OF ACT

The purpose of this Act is to provide for, facilitate and ensure the establishment of REDs, and to this end -

- (a) empower the Minister of Minerals and Energy to facilitate and ensure the establishment of such REDs;
- (b) enable existing electricity distributors to become part of such REDs in the national interest;
- (c) provide the statutory means to facilitate the transfer of officers, employees, rights, obligations, assets and liabilities from existing electricity distributors to such REDs;
- (d) provide for the promotion of such REDs through EDI Holdings.

## CHAPTER 2 EDI HOLDINGS

### Powers of EDI Holdings

2(1). The company known as EDI Holdings (Pty) Ltd shall, in addition to and notwithstanding any of its powers, duties and functions in terms of the Companies Act, be a shareholder in any RED established under this Act.

(2) The Minister, after consultation with the Minister of Finance, may determine the classes, number and value of shares held by EDI Holdings (Pty) Ltd and any other shareholder in a RED.

### Control and directors of EDI Holdings

3. (1) The State shall be the holder of the total issued share capital of EDI Holdings and the rights relating to such shares shall be exercised by the Minister in consultation with the Minister of Finance.

(2) The directors of EDI Holdings shall be as set out in its Statutes and Articles of Association.

### Funding of EDI Holdings

4. The funds of EDI Holdings shall consist of -

- (a) appropriations;



- (b) payments provided for in transfer schemes;
- (c) monies for services rendered; and
- (d) monies accruing from any other source.

#### **Assets of EDI Holdings**

5. (1) The assets of EDI Holdings shall consist of such movable and immovable assets as are necessary to exercise its powers and perform its functions and duties in terms of its Statutes and Articles of Association, and shall include its shareholding in a RED.

#### **Accounting and bookkeeping**

6. The provisions of the Public Finance Management Act, 2000 shall apply to EDI Holdings.

### **CHAPTER 3 TRANSITION OF EXISTING ELECTRICITY DISTRIBUTORS TO REDs**

#### **Incorporation of REDs**

7. (1) Insofar as not already effected prior to the coming into operation of this Act, the Minister shall instruct EDI Holdings to promote the establishment and incorporation of six REDs for the purpose of transferring officers, employees, assets, liabilities rights and obligations of existing electricity distributors to such REDs.

(2)

Each RED will be subject to the multi-jurisdictional ownership of the contributing municipalities.

#### **Transfer by transferors**

8. (1) The Minister may, by notice in the Gazette, publish guidelines in respect of transfer schemes: Provided that he or she shall by a later notice, at least ninety days before the actual date of implementation, publish the date or dates on which the said transfer scheme shall come into operation.
- (2) A transfer scheme implemented under subsection (1) shall contain such particulars and provisions relating to the transfer of officers, employees, assets, liabilities, rights and obligations as are provided for in this Act.

- (3) Each transferor is hereby empowered to transfer such officers, employees, assets, liabilities, rights and obligations to a RED as are set out in a transfer scheme contemplated in subsection (1).

### Scope of transfer schemes

9. (1) The scope of a transfer scheme shall, notwithstanding anything else that may be included in such a scheme in terms of this Act, include
- (a) the number and identity of transferors and the transferee that shall, on being included in a transfer scheme, partake in that transfer scheme;
  - (b) the employees, officers, assets, liabilities rights and obligations in the service or employ of and belonging to or under the control of the transferor that are to be transferred to the transferee concerned;
  - (c) the geographical area of distribution of the transferee;
  - (d) anything to which the transferor may become entitled or subject after the scheme is made and before it comes into force;
  - (e) anything belonging to or over which the transferor may validly exercise ownership rights or may validly dispose of situated anywhere in the Republic of South Africa or elsewhere;
  - (f) anything of the transferor established by, owing its existence to or subsisting under a law;
  - (g) anything of the transferor subsisting under the law of any part of the Republic of South Africa or of any country or territory outside the Republic of South Africa;
- (2) (a) A transfer scheme may include provision for the payment of an amount to a transferor that it would have been entitled to as part of the electricity charges or tariffs if the transfer scheme were not promulgated and did not come into effect.
- (b) The amount of such payment shall be prescribed by the Minister: Provided that the Minister shall, in determining that payment, take into account any income that the relevant municipality may receive in the form of dividends, interest or other payments as a shareholder in a transferee.
- (3) A transfer scheme may make such additional, incidental, consequential or transitional provisions as the Minister approves of.

- (4) A transfer scheme may contain provisions dealing with other matters not specifically referred to in this Act that the Minister or NERA considers necessary or advisable in connection with such a transfer scheme.
- (5) Supplemental guidelines on the transfer schemes, or changes to existing schemes may be issued by the Minister under this Act, to deal with any issues that were not included in the original or another previous transfer scheme: Provided that the provisions of the Act shall apply to such supplemental transfer schemes as if they were original transfer schemes.

### **Divisions**

10. (1) A transfer scheme may divide any property, rights or liabilities of a transferor and in connection with the division may –
  - (a) create for a transferor or transferee an interest in any property to which the scheme relates;
  - (b) create new rights and liabilities as between a transferor and a transferee with respect to any property to which the scheme relates; and
  - (c) in connection with any provision made by virtue of paragraph (a) or (b), make incidental provision as to the interests, rights and liabilities of other persons with respect to any property to which the scheme relates: Provided that such incidental provision is not detrimental to the rights of such other persons as it existed immediately before the promulgation of the transfer scheme.
- (2) A transfer scheme may impose obligations on a transferor and transferee to take any necessary steps to secure that the following have effect -
  - (a) any interest, right or liability created by virtue of subsection (1)(a) or (1)(b); and
  - (b) any incidental provision made by virtue of subsection (1)(c).

### **Obligations in relation to agreements or instruments**

11. (1) A transfer scheme may –
  - (a) impose on a transferor or transferee an obligation to enter into a agreement with a specified person or persons, who may be or include a transferor or transferee, and set out the type or nature of the agreement to be entered into;

- (b) impose on a transferor or transferee an obligation to execute a specified instrument in favour of a specified person or persons, who may be or include a transferor or transferee;
- (c) make provision, for instance, where part of particular property is transferred, that rights and liabilities specified or identified in the scheme are enforceable by or against a transferor or transferee, or both; and
- (d) require the transferor or transferee to register in accordance with the scheme any agreement or instrument executed under such scheme.

#### Submission of transfer schemes for approval

12. (1) On the publication of the implementation date(s) as contemplated in section 8(1), but not later than 60 days before the actual date of enactment, one or more transferors and transferees may submit a proposed transfer scheme to EDI Holdings for consideration and for ensuring their compliance with the Guidelines issued by the Minister.
- (2) After submission of a transfer scheme pursuant to subsection (1) but prior to the implementation date contemplated in section 8(1), EDI Holdings may advise a transferor or transferee to modify or amend a proposed scheme on such terms as the Minister, after consulting with such transferor, or transferee, NERA and EDI Holdings and such other national-, provincial -, and local government officials, authorities or bodies as he or she may deem necessary.
- (3) Save as otherwise provided for in this Act, EDI Holdings or the State shall not be liable for anything done as a consequence of or relating to the implementation of a transfer scheme under this section.

#### Minister's schemes

13. (1) If -
- (a) a transferor fails, within 60 days before the implementation date specified in section 8(1), to submit a transfer scheme for the consideration of EDI Holdings, or
  - (b) EDI Holdings is not satisfied that a particular transfer scheme is in compliance with the Minister's Guidelines, either with or without modifications,

EDI Holdings shall submit a report hereon to the Minister for consideration of any further action she may decide to take after consultation with the NERA and such other national, provincial, and local government officials, bodies or authorities as he or she may deem necessary.

(2)

- (3) Neither EDI Holdings nor the State shall not be liable for anything done as a consequence of or relating to the enactment of a transfer scheme enacted under this section.

### Status of transfer scheme

14. Nothing in this Act shall be interpreted to preclude or limit the NERA from exercising its powers in terms of the Electricity Regulation Act.

### Binding on all persons

16. (1) Each transfer scheme is binding on -
- (a) the transferor set out in that scheme; and
  - (b) the transferee set out in that scheme;
- (2) Save as otherwise provided for in this Act, a transfer scheme does not require the consent or approval of -
- (a) the transferor;
  - (b) the transferee; or
  - (c) any other person.

### Officers and employees

17. The transfer of any officer or employee pursuant to the enactment of a transfer scheme shall take place in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable law.

### Payment for transfer

18. (1) A transfer scheme may require the transferee to pay or provide consideration for anything transferred by or pursuant to that scheme and may specify to whom the payment or consideration shall be made or provided.
- (2) A transfer scheme may -
- (a) fix the amount and nature of the payment or consideration;
  - (b) specify a method for determining the amount and nature of the payment or consideration; or
  - (c) provide that the amount and nature of the payment or consideration be determined by the Minister, after consultation with the Minister of Finance.

- (3) A transfer scheme may require that the payment be made in cash, by set off, or through the issuance of shares, debt instruments or other securities to specified persons or in any other form specified by the scheme.

#### Payment by shares, debt instruments or other securities

19. (1) If a transfer scheme requires that payment as contemplated under section 18 be made through the issuance of shares, debt instruments or other securities the scheme may specify the terms, nature and conditions of such shares, debt instruments or other securities, including the value to be attributed thereto, the conditions under or on which it may be encumbered, sold or otherwise disposed of, and the entities to which it may be sold or otherwise be disposed to.

(2)(a) Notwithstanding the provisions of subsection (1), a transfer scheme may provide that shares, debt instruments and other securities as contemplated in that subsection may be issued to transferors or municipalities set out in such scheme without payment for such shares, debt instruments or other securities being made.

(b) (3) A transferor or other person contemplated in subsections (1) and (2) shall be empowered to hold any shares, debt instruments or other securities referred to in those subsections.

(4) No stamp duties, office fees or other charges shall be payable on the creation and issuing of shares as contemplated in this section.

#### Valuations

20. (1) A transfer scheme shall -
- (a) fix the value of anything transferred by or pursuant to that scheme;
  - (b) in the absence of a specific value, specify a method for determining the value of anything transferred by or pursuant to the scheme; or
  - (c) in the absence of either a specific value or a method for determining a value, provide that the EDI Holdings shall determine the value of anything transferred by or pursuant to the scheme.
- (2) (a) The values established in terms of subsection (1) shall be the value entered into the accounts of the transferee.
- (b) A transfer scheme may provide that the initial amounts to be included in the accounts of the transferee as representing its profits or losses has to be determined as if the profits or losses that had been sustained by a transferor prior to such transfer were actually the profits or losses sustained by the transferee.

**Special provisions relating to land**

21. (1) For the purposes of this section the following rights affecting land are relevant land rights -
- (a) a reversionary right;
  - (b) a right of pre-emption;
  - (c) a right of forfeiture;
  - (d) a right of resumption;
  - (e) an option; and
  - (f) a right similar to anything falling within paragraphs (a) to (e).
- (2) No relevant land right is to operate or become exercisable as a result of a transfer of land -
- (a) under a transfer scheme,
  - (b) in consequence of anything done under this Act in relation to a transfer scheme, or
  - (c) pursuant to an obligation imposed by a provision included in a scheme by virtue of section
- (3) In the case of a transfer mentioned in subsection (2) a relevant land right is to have effect as if no transfer of the land had taken place.
- (4) Subsection (5) applies if
- (a) apart from subsections (2) and (3) a relevant land right would have operated in favour of a person or become exercisable by him or her; and
  - (b) the circumstances are such that in consequence of those subsections the right cannot subsequently operate in his or her favour or become exercisable by him or her.
- (5) In such a case just compensation is payable to him or her by the person to whom the land is transferred or the person transferring it, or both, in respect of the right's extinguishment.



- (6) A dispute about whether or how much compensation is payable or about the person to or by whom it is payable must be dealt with pursuant to the provisions of the Expropriation Act.
- (7) If it appears to the person transferring the land that a person is or may be entitled to compensation he or she must -
  - (a) notify that person in writing that he or she is or may be entitled, and
  - (b) invite him or her to make representations to the person transferring the land, and to do so not later than the expiry of the period of 14 days starting with the date of issue of the notification.
- (8) If the person transferring the land is not aware of the name and address of the person concerned he or she must publish in such manner as he or she thinks appropriate a notice -
  - (a) containing information about the right affected, and
  - (b) inviting any person who thinks he or she is, or may be entitled to compensation, to make representations to the person transferring the land, and to do so within the period specified in the notice, which shall not be less than 28 days of the date of publication of the notice..
- (9) Subsections (2) and (3) apply in relation to the doing of any thing in relation to land, including the grant or creation of a real right or interest in it or right over it as they apply in relation to a transfer of land, and a reference in this section to the person to whom the land is transferred or the person transferring it is to be construed accordingly.
- (10) No stamp duties, office fees or other charges shall be payable for the transfer of any land in terms of or pursuant to a transfer scheme.

#### **Transfer of land and immovable assets not held under title deed**

- 22(1) (a) On the production of a certificate by a transferee, signed by the Minister that land or any registerable right to land not held under any deed of title, or other immovable assets not otherwise identifiable, as more fully described in such certificate, was transferred to such transferee by a transferor by or pursuant to a transfer scheme, it shall be deemed to be conclusive evidence of the facts stated in such certificate.
- (b) On production of a certificate by a transferee in terms of paragraph (a), a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other documents to register that asset in the name of transferee.

- (2) Subsection (1) does not give any person an interest in land that the transferor did not have.

#### **Certain rights not affected by transfer**

23. (1) Unless expressly otherwise provided for in this Act, a transfer by or pursuant to a transfer scheme -
- (a) shall be deemed not to constitute -
    - (i) a breach, termination, repudiation or frustration of any contract, including a contract of insurance,
    - (ii) a breach of any law; or
    - (iii) an event of default or force majeure;
  - (b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any license, permit or other right;
  - (c) shall be deemed not to give rise to any right to terminate or repudiate a contract, license, permit or other right; and,
  - (d) shall be deemed not to give rise to any estoppel, or similar right.

#### **Information for transferees**

24. A transferor shall provide a transferee with records or copies of records, including customer records, and other information, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer scheme, respectively, including the relevant personal information.

#### **Other matters relating to transfer schemes**

25. Schedule 1 relates to other complimentary matters on transfer schemes and the provisions of this Chapter shall, where applicable, be read together with such Schedule.

## CHAPTER 4 TRANSFER SCHEMES - GENERAL PROVISIONS

### Effective date

26. A transfer scheme shall specify the date referred to in subsection 8(1) as the date that the transfer, subject to section 23, takes effect and all officers, employees, assets, liabilities, rights and obligations that are transferred by the scheme shall, in accordance with its provisions, be thereby transferred to the transferee on that date.

### Retroactive transfer

27. A transfer scheme may provide that a transfer shall be deemed to have taken effect on a date earlier than the date the transfer scheme is made on the effective date specified in section 22, but such date shall not be earlier than the day this Chapter comes into force.

### Sequence of events

28. A transfer scheme may provide that transfers specified in the scheme and other transactions associated with such transfers shall be deemed to have occurred in a sequence and at times specified in the scheme.

### Assistance by EDI Holdings

29. (1) EDI Holdings will on request provide a pro forma transfer scheme for a transferor or transferee's consideration.
- (2) Upon request by a transferor or transferee or the Minister, EDI Holdings may -
- (a) provide a specific transfer scheme for a specified transfer; or
  - (b) assist a particular transferor or transferee in the process of transferring the officers, employees, assets, liabilities, rights and obligations to a specified RED pursuant to a transfer scheme.

### General description of things transferred

30. A transfer scheme may describe officers, employees, assets, liabilities, rights or obligations to be transferred -
- (a) by reference to specific officers, employees, assets, liabilities, rights or obligations;
  - (b) by reference to any class of officers, employees, assets, liabilities, rights or obligations; or

- (c) partly in accordance with clause (a) and partly in accordance with clause (b).

#### **National Government liability not limited**

31. The liability of the Republic of South Africa as guarantor of a security or other liability of a transferor pursuant to a written guarantee given by the National Government before this section comes into force is not affected by anything in this Act or by any transfer by or pursuant to the transfer scheme: Provided that insofar as such guarantee relates to anything transferred to a RED in terms of a transfer scheme the aggregate of such guarantee shall reduce with the value of anything thus transferred, and to the extent set out in such scheme, become a guarantee in favor of the transferee.

#### **Enforcement of things transferred**

32. (1) A transfer scheme may provide,
- (a) that any liability or obligation that is transferred by the scheme may be enforced against -
    - (i) the transferor;
    - (ii) the transferee; or
    - (iii) both of them; and
  - (b) that any right that is transferred by the scheme may be enforced by -
    - (i) the transferor;
    - (ii) the transferee; or
    - (iii) both of them.

#### **Actions and other proceedings**

33. (1) Subject to section 33, any action or other proceeding that was commenced by or against a transferor before a transfer scheme takes effect and that relates to an officer, employee, asset, liability, right or obligation that is transferred by the scheme shall be continued by or against the transferee.
- (2) An action or other proceeding shall not be commenced against a transferee in respect of any officer, employee, asset, liability, right or obligation that has been transferred to the transferee if, had there been no transfer, the time for commencing the action or other proceeding would have expired.

**No new cause of action**

34. Nothing in this Act and nothing done by or pursuant to a transfer scheme creates any new cause of action in favour of -
- (a) a holder of a debt instrument that was issued by a transferor and guaranteed by the Republic of South Africa before this section comes into force; or
  - (b) a party to a contract with a transferor that was entered into before this section comes into force.

## CHAPTER 5 LICENSING

### Licenses

35. (1) Any RED established in terms of this Act shall be subject to the provisions of legislation providing for the regulation of the electricity industry in South Africa, and shall be required to apply for and hold a license under that legislation within the periods set out therein.
- (2) A license issued to a RED as contemplated under subsection (1) shall be subject to such conditions, rules and regulations as are provided for in that Act.
- (3) A license held by a transferor or transferors on the date of enactment of a transfer scheme shall, until such time as a license has been issued in terms of subsection (1) to the RED contemplated in that transfer scheme, be deemed to be held by that RED: Provided that –
- (a) the RED concerned shall be obliged to comply with that license as if it was a license issued under subsection (1); and
  - (b) if the licensed area of supply of a transferor is the subject of two or more geographical areas of supply as set out in different transfer schemes, each of the RED's as contemplated in such different transfer schemes shall be deemed to be the holder of the license for that portion of the licensed area of supply that corresponds to the geographical area of supply of the RED concerned;
  - (c) any contract between a transferor and a non-grid service provider or between a non-grid service provider and any other person that relates to or refers to the same geographical area of supply of the RED contemplated in that transfer scheme shall, for the purposes of such a license, be deemed to be an integral part thereof and the provisions of such contract shall be binding on the RED concerned in so far as it relates to any non-grid area of supply.

## CHAPTER 6 MUNICIPAL SERVICE DELIVERY AGREEMENTS AND BY-LAWS

### Role of REDs as service providers

36. (1) A municipality may, with respect to the services of electricity distribution and retail sales, enter into a service delivery agreement with the RED, as service provider of those services, which is licensed to distribute electricity in the municipal area of that municipality before or on the date of enactment of a transfer scheme affecting that municipality, and each RED shall provide the service that the municipalities require for such purpose pursuant to the service delivery agreement or agreements to which it is party.
- (2) A municipality may enter into and remain a party to a service delivery agreement in accordance with its terms directly or through a multi-jurisdictional municipal service district.

### Binding nature of service delivery agreement

37. A municipality and the relevant RED shall at all times remain bound by the provisions of a service delivery agreement in accordance with its terms.

### Contents of service delivery agreement

38. (1) The Minister may set standards in the national interest or issue guidelines in the national interest not inconsistent with this Act.
- (2) Guidelines made under subsection (1) shall advise municipalities, multi-jurisdictional municipal service districts and REDs with respect to the form and content of service delivery agreements that they enter into, and may provide for procedures for entering into service delivery agreements, the reviewing thereof and for standard terms, conditions and provisions that must be contained in service delivery agreements, including but not limited to-
- (a) the effective date and duration;
  - (b) amendments thereto;
  - (c) the termination thereof;
  - (d) liability for non-compliance or default and dispute resolution;
  - (e) incentives and penalties to encourage prudence, efficiency, economy and effective use of resources;

- (f) performance standards, targets, indicators and performance measurement;
  - (g) disposal or charging of assets (excluding shares held in that RED);
  - (h) determining of electricity charges and prices;
  - (i) mechanisms to enhance the delivery of efficient services by the RED;
  - (j) unsatisfactory practices or procedures by a municipality or other person that impacts on or hinders a RED in the provision of services;
  - (k) a prohibition on the use of unfair contractual practices and penalties;
  - (l) payment of an amount to a municipality in lieu of electricity tariffs and charges to which it would have otherwise been entitled;
  - (m) the transfer of any subsidies received by a municipality in respect of electricity consumers in the geographical area of supply of the transferee;
  - (n) any other matter that may facilitate the continued provision of service by a RED in accordance with this Act and its license and the application by the municipalities of any service authority responsibilities under the Constitution and the Municipal Systems Act, with respect to electricity distribution and retail sales.
- (2) A notice in terms of subsection (1) -
- (a) may determine different provisions, terms or conditions for service delivery agreements to which different REDs shall be parties; and
  - (b) shall apply to all municipalities or multi-jurisdictional municipal service districts in the geographical area of supply of the RED concerned.

#### Municipalities as agents of the REDs --

39. (1) A service delivery agreement may authorize a constituent municipality within its municipal area to enter into a service level agreement to act as the agent of a RED, for a stated period, for various services, including receiving complaints, issuing accounts, receiving moneys due to the RED, and for other administrative matters: Provided that such agreement may not be less beneficial to the RED than if such services were performed by itself or any other agent acting on its behalf.



**General provision relating to service delivery**

40. (1) Notwithstanding the provisions of any other law, the occupier of premises shall give the authorized representative of a RED or a municipality access to such premises at all reasonable hours in order to read, inspect, install or repair any meter or service connection for electricity distribution or to disconnect, stop or restrict the provision of any service.

## CHAPTER 6 GENERAL PROVISIONS

### Effective date of this Act

41. This Act shall come into operation on a date determined by the President by Proclamation in the *Gazette*

### 42. Regulations

- (1) The Minister may make regulations-
  - (a) supplementing the provisions of this Act and governing the transfer of officers, employees, assets, liabilities, rights and obligations;
  - (b) prescribing contracts or classes of contracts to which a transfer scheme or anything done pursuant to a transfer scheme do not apply;
  - (c) prescribing laws or provisions of laws that do not apply to a transfer scheme or anything done pursuant to or in terms thereof;
  - (d) any matter that may or must be prescribed in terms of this Act; and
  - (e) any matter that may facilitate the application of this Act.
- (2) The Minister may also issue standards and or guidelines not inconsistent with the provisions of this Act.
- (3) Regulations, standards and guidelines made or issued in terms of subsections (1) or (2) may differentiate in the application thereof as between different REDs.

## SCHEDULE 1 TRANSFER SCHEMES

### Allocation

1. (1) If an asset, right or liability is one that is capable of being apportioned into different parts, a transfer scheme may provide -
  - (a) that only part of such asset, right or liability is to be transferred by the transferor to the transferee; or
  - (b) that specified parts of such asset, right or liability are to be transferred by the transferor to different transferees,and such parts shall be taken to have been transferred to a transferee or retained by the transferor, as the case may be, as so provided in the transfer scheme.
- (2) If a real right or interest in land is to be apportioned under sub-item (1) -
  - (a) any rent payable under a lease in respect of the real right or interest, and
  - (b) any rent charged on the real right or interest,must be apportioned so that an appropriate part of the rent is payable in respect of or charged on the appropriate part of the real right or interest.
2. (1) If there is an asset, right or liability that both the transferor and transferee make use of or that more than one transferee makes use of and the nature of such asset, right or liability does not permit it to be apportioned, it must be taken to have been transferred to a transferee or retained by the transferor in accordance with the tests in sub items (2) and (3).
- (2) In the case of real right or interest in land the test is -
  - (a) which one of the parties has the greater or greatest need of the real right or interest for business purposes, or
  - (b) if it is not possible to say that one of them has the greater or greatest need, which one of them is likely to make more or the most use of the land.
- (3) In the case of any other asset or right or liability the test is which one of the parties is likely -
  - (a) to make more or the most use of the assets, or
  - (b) to be more or the most affected by the right or liability.

- (4) The tests in sub-items (2) and (3) must be applied at -
  - (a) the time when the transfer scheme comes into force, or
  - (b) if there are two or more schemes and they come into force at different times, the later or latest of the times.
3. Items 1 and 2 do not apply to rights or liabilities under a contract of employment.

#### **Transfers by agreement**

4. (1) If a transfer scheme provides for assets, rights or liabilities to be transferred from a transferor to a transferee, they may, subject to the provisions of the transfer scheme and this Act, agree that such of the assets, rights or liabilities as are specified in the agreement are to be transferred from the transferee to the transferor.
- (2) If one or more transfer schemes provide for different assets, rights or liabilities to be transferred to different transferees, any transferee may agree with another that such of the assets, rights or liabilities as are specified in the agreement are to be transferred from one to the other.
- (3) Provisions in sub-sections (1) and (2) above shall not apply to rights or liabilities under a contract of employment.
- (4) An agreement under this item may provide for a transfer to take effect on a date specified in or determined in accordance with the agreement; but the agreement may provide that a transfer is not to take effect unless the circumstances are such as the agreement specifies.

#### **Foreign assets, rights and liabilities**

5. (1) This item applies if a transfer scheme provides for the transfer of foreign assets, rights or liabilities from a transferor to a transferee.
- (2) The transferor and the transferee must take such steps as may be necessary to secure that the vesting of the assets, rights or liabilities in the transferee is effective under the relevant foreign law, and the transferor must take the steps at such times as the transferee may specify in directions given to the transferor.
- (3) Until the vesting of the assets, rights or liabilities in the transferee is effective under the relevant foreign law, the transferor must -
  - (a) hold the assets or rights for the transferee's benefit, or
  - (b) discharge the liabilities on the transferee's behalf.

- (4) The transferor is to have all powers necessary for the performance of his duty under sub-item (2), but the transferee must act on the transferor's behalf, so far as possible, in the performance of that duty.
- (5) Nothing in sub-items (2) to (4) affects any law of the Republic of South Africa as it applies to the vesting of the assets, rights or liabilities in the transferee by virtue of the transfer scheme.
- (6) References in this item to foreign assets, rights or liabilities are references to assets, rights or liabilities as respects which any issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the Republic of South Africa.
- (7) Duties imposed on the transferor or the transferee by this item are enforceable in the same way as if they were imposed by a contract between them.

### Construction of agreements

6. (1) This item applies -
  - (a) if a transfer scheme provides for the transfer of assets, rights or liabilities from a transferor to a transferee;
  - (b) if immediately before the coming into force of the scheme the transferor was entitled or subject to the assets, rights or liabilities under an agreement to which it was then a party; and
  - (c) whether or not the transferor could assign the assets, rights or liabilities.
- (2) In so far as such agreement relates to the assets, rights or liabilities transferred to the transferee, as regards anything falling to be done after the coming into force of the scheme, the agreement is to have effect as if -
  - (a) the transferee had been a party to it instead of the transferor;
  - (b) a reference to the transferor were a reference to the transferee;
  - (c) a reference to a person employed by or engaged in the business of the transferor and holding a specified officer or serving in a specified capacity were a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by or engaged in the business of the transferee; and
  - (d) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.

- (3) (a) A reference mentioned in sub-item (2)(b) or (c) may be express or implied, and if express it is immaterial how it is worded; and
- (b) It is immaterial how a reference mentioned in sub-item (2)(d) is worded.

7. (1) This item applies if -

- (a) a transfer scheme provides for the transfer of assets, rights or liabilities from a transferor to a transferee, and
  - (b) immediately before the coming into force of the scheme any provision of an agreement to which the transferor was not a party, any statutory provision or any provisions of a document (other than an agreement) related to the assets, rights or liabilities transferred to the transferee.
- (2) This item applies whether or not the transferor could assign the assets, rights or liabilities.
- (3) So far as the agreement, provision or document relates to the assets, rights or liabilities transferred to the transferee, as respects anything falling to be done after the coming into force of the scheme the agreement, provision or document is to have effect as if -
- (a) a reference to the transferor were a reference to the transferee;
  - (b) a reference to a person employed by (or engaged in the business of) the transferor and holding a specified office or serving in a specified capacity were a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by (or engaged in the business of) the transferee;
  - (c) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.
- (4) A reference mentioned in sub-item (3)(a) or (b) may be express or implied; and if express it is immaterial how it is worded.
- (5) It is immaterial how a reference mentioned in sub-item (3)(c) is worded.
- (6) A reference mentioned in sub-item (3) to the transferor may be a general reference to a class of persons of which the transferor is one (without the transferor being named).
- (7) For the purposes of this item a statutory provision is a provision contained in an Act or in a document made or issued under an Act.

**Third parties**

8. (1) For the purposes of this item -
- (a) a party is a person who is a transferor or a transferee under the transfer scheme or schemes referred to in this item;
  - (b) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this item.
- (2) This item applies if -
- (a) a transfer scheme is made or transfer schemes are made,
  - (b) rights or liabilities of a third party are (apart from the scheme or schemes) enforceable against or by a transferor,
  - (c) in consequence of the scheme or schemes or of anything done under this Schedule the third party's rights or liabilities become enforceable as to different parts against or by different parties, and
  - (d) the value of any assets or interests of the third party is diminished as a result.
- (3) Just compensation must be paid to the third party by one or more of these persons -
- (a) the parties against or by whom the third party's rights or liabilities become enforceable;
  - (b) the transferor concerned, if he does not fall within item (a).
- (4) If it appears to the transferor that a person is or may be entitled to compensation the transferor must -
- (a) notify the person that he is or may be entitled, and
  - (b) invite him to make representations to the transferor within the period of 14 days starting with the date the notification is made.
- (5) But if the transferor does not know the person's name and address he must instead publish, in a manner he thinks is appropriate, a notice which -
- (a) contains information about the assets or interest affected, and
  - (b) invites any person who thinks he is or may be entitled to compensation to make representations to the transferor within the period specified in the notice (which must not be less than 28 days starting with the date of publication of the notice).

- (6) A dispute about whether, or how much, compensation is payable under this item, or about who must pay or be paid it, must be referred to and determined by the Minister.

### General

9. (1) Items 5 to 8 have effect as if references to a transfer scheme or schemes included references to an agreement or agreements under item 4.
- (2) Where items 5 to 8 have effect in relation to an agreement under item 4 references to a transferor or a transferee have effect as references to a transferor or a transferee under the agreement.
- (3) No transfer scheme or amendment thereto shall be enforceable as against third parties unless it has been reduced to writing.
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