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**GENERAL NOTICE**

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**NOTICE 357 OF 2009****DEPARTMENT OF TRANSPORT  
PUBLICATION FOR COMMENTS: SOUTH AFRICAN MARITIME  
AUTHORITY (SAMSA) AMENDMENT BILL, 2009**

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill by not later than 22 May 2009 .Submission should be posted to the Director – General Department of Transport for the attention of T.H.M Mphahlele

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**REPUBLIC OF SOUTH AFRICA**

**SOUTH AFRICAN MARITIME SAFETY AUTHORITY**

**AMENDMENT BILL, 2009**

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*(As introduced in the National Assembly as a section 75 Bill)*  
*(The English text is the official text of the Bill)*  
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(MINISTER OF TRANSPORT)

**[B —2009]**

010309nb

**GENERAL EXPLANATORY NOTE:**

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

**To amend the South African Maritime Safety Authority Act, 1998, so as to modify two definitions; to further regulate the constitution and operation of the Authority; to introduce consistency with the Public Finance Management Act, 1999; to reconstitute the Maritime Fund within the accounts of the Authority; to further regulate statutory protections to the Authority, its Board members, staff and other persons acting on its behalf; to enable the making of marine rules by the Authority; and for related matters.**

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

**Amendment of section 1 of Act 5 of 1998**

1. Section 1 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998) (hereinafter called the principal Act), is amended—

(a) by the substitution in paragraph (b) of the definition of "**charge**" for the words preceding subparagraph (i) of the following words:

"a fee or other charge in respect of a matter in relation to which expenses are incurred by the Authority under this or any other Act, including a fee or other charge in respect of, or for an application for—"; and

(b) by the substitution for the definition of "**this Act**" of the following definition:

" '**this Act**' includes the regulations and any direction under section 7 [or 30];".

**Substitution of section 3 of Act 5 of 1998**

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

**"Objects**

**3.** The Authority's objects are—

(a) to promote maritime safety and security;

(b) to protect the marine environment from—

- (i) pollution from ships; and
- (ii) other environmental damage caused by shipping; and
- (c) to co-ordinate maritime search and rescue."

### **Substitution of section 4 of Act 5 of 1998**

3. The following section is substituted for section 4 of the principal Act:

#### **"Functions**

4. The Authority's functions are—
- (a) to regulate, control and administer all matters related to maritime affairs as provided for by or under the Acts referred to in section 2(2) or any other Act;
  - (b) to promote the development of ship registration in the Republic;
  - (c) to facilitate the development of the Republic's maritime transport industry;
  - (d) to facilitate the expansion of maritime employment opportunities for South Africans;
  - (e) to advise the Minister on—
    - (i) all matters related to this Act;
    - (ii) all matters related to the Authority's functions; and

- (iii) the performance of any function conferred on the Minister or any other functionary in the national executive in terms of the laws referred to in paragraph (a);
- (f) to participate in international bodies and other meetings dealing with maritime affairs, including the International Maritime Organization;
- (g) to provide, on request, services to the maritime industry on a commercial basis;
- (h) to provide, on request, services of a maritime nature to the State or an organ of state on a commercial basis;
- (i) to perform such other functions as are conferred on it by or under any other Act;
- (j) to provide consultancy services relating to any of the matters referred to in this section;
- (k) to perform any other prescribed functions relating to any of the matters referred to in this section; and
- (l) to perform functions incidental to any of the previously described functions."

#### **Amendment of section 5 of Act 5 of 1998**

- 4. Section 5 of the principal Act is amended—
  - (a) by the substitution for subsection (2) of the following subsection:

"(2) Subject to section [4] 7, the functions to provide services may be performed at the discretion of the Authority."; and

(b) by the insertion after subsection (3) of the following subsection:

"(3A) To avoid doubt, where the Authority performs a function in a way described in subsection (3)(b) or (c), the Authority may allow the other person concerned to charge the person in respect of whom the function is being performed a reasonable fee for the performance of that function."

#### **Amendment of section 6 of Act 5 of 1998**

5. Section 6 of the principal Act is amended by the substitution for paragraph (a) of the following paragraph:

"(a) its **[objectives]** objects mentioned in section 3; and"

#### **Substitution of section 7 of Act 5 of 1998**

6. The following section is substituted for section 7 of the principal Act:

**"Directions by Minister**

7. (1) The Minister may, after consulting the Board, give the Authority written directions about the performance of its functions.

(2) However, directions about the performance of functions that are conferred on the Authority by or under another Act may be only of a general nature.

(3) The Minister must cause a copy of every direction given to the Authority to be published in the Gazette within 21 days after it is given.

(4) The Authority must comply with the directions given to it by the Minister.

(5) The Board must include in its annual report for a financial year—

(a) a summary of the directions given to the Authority in that financial year; and

(b) a summary of action that the Authority has taken in that financial year because of the directions given to it in that or any other financial year."

## Insertion of sections 8A and 8B in Act 5 of 1998

7. The following sections are inserted in the principal Act after section 8:

### **"Minister may give Authority notices about its strategic direction**

**8A.** (1) The Minister may give the Authority written notices setting out his or her views about the following matters:

(a) the appropriate strategic direction of the Authority;

(b) the manner in which the Authority should perform its functions.

(2) The Authority must, in performing its functions, take account of the notices given to it by the Minister.

(3) The Board must, in preparing each business plan, take account of the notices given to the Authority by the Minister.

(4) The Board must include in its annual report for a financial year—

(a) a summary of the notices given to the Authority in that financial year; and

(b) a summary of action that the Authority has taken in that financial year because of the notices given to it in that or any other financial year.

**Minister may direct Authority to give information**

**8B.** (1) The Minister may, in writing, direct the Authority to give to a stated ministerial nominee any information relating to the operations of the Authority that the nominee requests.

(2) The Authority must comply with a direction by the Minister.

(3) The Board must include in its annual report for a financial year details of directions by the Minister in that financial year.

(4) In this section 'ministerial nominee' means a person whose functions include advising the Minister about the performance and strategies of the Authority."

**Amendment of section 12 of Act 5 of 1998**

8. Section 12 of the principal Act is amended—

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

"The Authority is to have a Board consisting of the following members:"

(b) by the deletion of the word "**and**" at the end of paragraph (c) of subsection (1);

(c) by the insertion after paragraph (c) of subsection (1) of the following paragraph:

"(cA) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office;"

(d) by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs, respectively:

"(a) are to be appointed by the Minister [from a list of names of persons which, at the Minister's request by notice in the media, have been submitted to him or her within the period specified in the notice by any person or body having an interest in the maritime or related industry] by written instrument; and

(b) hold office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Minister determines in writing."

(e) by the substitution for subsection (4) of the following subsection:

"(4) The Minister may appoint a person as a member only if the Minister is satisfied that the person has suitable expertise in one or more of the following:

(a) international shipping;

(b) domestic shipping;

(c) maritime law;

- (d) corporate governance;
  - (e) financial management;
  - (f) marketing and promotion;
  - (g) business;
  - (h) maritime infrastructure;
  - (i) economic analysis;
  - (j) current and emerging technologies;
  - (k) environmental management.";
- (f) by the substitution for subsection (5) of the following subsection:
- "(5) The appointment of a member is not invalid because of a defect or irregularity in connection with the appointment."; and
- (g) by the deletion of subsection (6).

#### **Insertion of sections 12A and 12B in Act 5 of 1998**

9. The following sections are inserted in the principal Act after section 12:

#### **"Functions**

**12A.** The Board has the following functions:

- (a) to ensure the proper and efficient performance of the Authority's functions;
- (b) to determine the Authority's policy in relation to any matter.

### **Powers**

**12B.** The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions."

### **Substitution of section 13 of Act 5 of 1998**

10. The following section is substituted for section 13 of the principal Act:

#### **"Period of office of members**

**13.** (1) Subject to this Part, a member mentioned in section 12(1)(a), (b) and (d) holds office for the period, not exceeding three years, specified in the instrument of appointment, but is eligible for reappointment.

(2) However, a member may not be reappointed for more than two consecutive periods of office."

**Substitution of section 14 of Act 5 of 1998**

11. The following section is substituted for section 14 of the principal Act:

**"Remuneration and allowances of members**

- 14.** (1) A member mentioned in section 12(1)(a), (b) and (d) is to be paid the remuneration and allowances that the Minister, in consultation with the Minister of Finance, determines in writing.
- (2) Remuneration and allowances payable in terms of this section are to be paid out of the money of the Authority."

**Substitution of section 15 of Act 5 of 1998**

12. The following section is substituted for section 15 of the principal Act:

**"Outside employment or other activities that conflict with member's duties**

- 15.** A member appointed as a part-time member may not engage in any paid employment, or any other activity, that, in the opinion

of the Minister, conflicts or could conflict with the proper performance of the member's duties."

### **Insertion of section 15A in Act 5 of 1998**

13. The following section is inserted in the principal Act after section 15:

#### **"Leave of absence**

**15A.** (1) The Minister may grant leave of absence to the Chairperson on the terms and conditions that the Minister determines.

(2) The Chairperson may grant leave of absence to any other member (other than the Chief Executive Officer) on the terms and conditions that the Chairperson determines."

### **Amendment of section 16 of Act 5 of 1998**

14. Section 16 of the principal Act is amended—  
(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

"(a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.";

(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:

"(a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The Minister may appoint a person to act as a member referred to in section 12(1)(d) (in this section called an ordinary member)—

(a) during a vacancy in the office of [a] an ordinary member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when [a] an ordinary member is acting as the Deputy Chairperson, is absent from

duty or from the Republic or is, for any other reason, unable to perform the functions of the office.";

(d) by the insertion after subsection (3) of the following subsection:

"(3A) An appointment under subsection (1), (2) or (3) must be in writing."; and

(e) by the addition of the following subsection:

"(6) Anything done by or in relation to a person purporting to act under this section is not invalid merely because—  
(a) the occasion for the appointment had not arisen;  
(b) there was a defect or irregularity in connection with the appointment;  
(c) the appointment had ceased to have effect; or  
(d) the occasion to act had not arisen or had ceased."

#### **Substitution of section 18 of Act 5 of 1998**

15. The following section is substituted for section 18 of the principal Act:

#### **"Termination of appointment**

18. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

- (2) The Minister must terminate the appointment of a member if—
- (a) the member becomes insolvent, applies to take the benefit of any law for the relief of insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
  - (b) the member becomes a political office bearer or otherwise engages in paid employment, or any other activity, that the Minister is satisfied conflicts or could conflict with the proper performance of the member's duties;
  - (c) the member is absent, except on leave of absence, from three consecutive meetings of the Board;
  - (d) the member fails to comply with section 21D(1) or 21E(2);
  - (e) the member fails to comply with section 50(2) or (3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (f) the Minister is satisfied that the performance of the member has been unsatisfactory for a significant period of time;
  - (g) the member has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
  - (h) the member has, at any time, been removed from an office of trust because of misconduct.

(3) The Minister may terminate the appointment of all members or specified members if the Minister is satisfied that—

- (a) the Authority has failed to comply with section 8A(2), 8B(2), 21E(1) or 30A;
- (b) the Board has failed to comply with—
- (i) section 8A(3) or (4), 8B(3), 21A, 21B, 21C, 21D(2) or 28; or
- (ii) section 51 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (c) the performance of the Board has been unsatisfactory for a significant period of time.
- (4) This section does not apply to the Chief Executive Officer."

#### **Amendment of section 19 of Act 5 of 1998**

16. Section 19 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:
- "(1) The Board must hold such meetings as are necessary for the effective and efficient performance of its functions, but the Chairperson must ensure that at least four meetings are held each financial year."
- (b) by the insertion after subsection (3) of the following subsection:
- "(3A) Each member is entitled to receive reasonable notice of the Board's meetings."
- (c) by the substitution for subsection (4) of the following subsection:

"(4) **[Subject to section 15]** The Chairperson **[presides]** is to preside at all meetings at which he or she is present.";

(d) by the insertion after subsection (6) of the following subsection:

"(6A) However, if—

- (a) a member is required by section 50 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
- (b) when the member leaves the meeting concerned there is no longer a quorum present, the remaining members constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter."; and

(e) by the substitution for subsections (7) and (8) of the following subsections, respectively:

"(7) At a meeting, all questions are to be decided by resolution passed by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting has a deliberative vote and, if **[necessary]** the voting is equal, also a casting vote.".

**Amendment of section 20 of Act 5 of 1998**

17. Section 20 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) The Board may, subject to this **[Chapter]** Part, regulate proceedings at its meetings as it considers appropriate."

**Substitution of section 21 of Act 5 of 1998**

18. The following section is substituted for section 21 of the principal Act:

**"Resolutions without meetings**

**21.** (1) A resolution is regarded to have been passed at a meeting of the Board if, without meeting, a sufficient number of members indicate agreement with the resolution in accordance with the method determined by the Board in accordance with subsection (2).

(2) Subsection (1) does not apply unless the Board—

(a) determines that it applies; and

(b) determines the method by which members are to indicate agreement with a resolution.

(3) In this section 'sufficient number of members', in relation to a resolution, means a majority of the number of members who would have been entitled to vote on the resolution at a meeting of the Board if they had been present at the meeting."

**Insertion of sections 21A, 21B, 21C, 21D, 21E and 21F in Act 5 of 1998**

19. The following sections are inserted in Part 1 of Chapter 2 of the principal Act after section 21:

**"Board minutes**

**21A.** (1) The Board must cause minutes of the proceedings at its meetings to be entered in one or more books (in this section called a minute book) to be kept for that purpose at the Authority's head office.

(2) A resolution that is passed in accordance with section 21 is regarded to be a minute of a meeting and is to be entered in the minute book and noted by the next following meeting of the Board.

(3) For the purposes of this section, loose leaves of paper do not constitute a minute book unless they are bound together permanently, without means of removing or inserting leaves, and the pages are consecutively numbered.

(4) The minutes of a meeting of the Board purporting to be signed by the member who presided at that meeting or by the member who presided at the next following meeting is evidence of the proceedings at that meeting.

(5) Where minutes have been kept in accordance with this section of the proceedings at a meeting of the Board, then, in the absence of evidence to the contrary, the meeting is regarded to have been duly held and convened and all proceedings of the meeting to have been duly conducted, and all appointments of persons are regarded to be valid.

#### **Minuting of disclosures of interest**

**21B.** Every disclosure of interest made in terms of section 50 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is to be recorded in the minutes of the meeting of the Board at which the disclosure is made.

#### **Register of members' interests**

**21C.** (1) The Board must keep at the Authority's head office a register of members' interests and cause to be entered in the register the details of all disclosures of interest made in terms of section 50 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

- (2) The register is to be available for public inspection.

### **Attendance register**

**21D.** (1) Every member and every other person who is present at a meeting of the Board must, at the meeting, enter his or her name under the date of the meeting in a book (in this section called an attendance register) to be kept for that purpose at the Authority's head office.

(2) If, in terms of section 20(2)(a), a member is regarded as being present at a meeting of the Board, the Board must, at the meeting, cause to be entered in the attendance register, under the date of the meeting—

- (a) the member's full given names and surname; and  
(b) a statement about the member's actual location and the means of communication used.

(3) The attendance register must comply with the requirements of section 21A(3).

(4) The attendance register is to be available for public inspection.

## Register of members

21E. (1) The Authority must keep at its head office a register of members and cause to be entered in the register—

- (a) each member's full given name and surname, identity number, occupation, residential, business and postal addresses, and date of appointment; and
- (b) any changes occurring from time to time in those particulars, and the dates and nature of the changes.

(2) Every member must in writing give the Authority the information specified in subsection (1)—

- (a) in the case of an appointment as a member, within 14 days after the date of the appointment; and
- (b) in the case of a change in the particulars, but excluding any change due to the vacation of his or her office, within seven days after the date of the occurrence of the change.

(3) Information given in terms of subsection (2) must upon receipt, and, if any member has vacated his or her office, a statement to that effect must without delay, be entered in the register.

(4) The register is to be available for public inspection.

### Minister to notify changes in membership

21F. Every appointment, removal, death or resignation of a member (other than the Chief Executive Officer) is to be notified by the Minister by notice in the Gazette.

### Amendment of section 22 of Act 5 of 1998

20. Section 22 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) There is to be a Chief Executive Officer of the Authority, who **[subject to subsection (5)]** is to be appointed by the Minister by written instrument on the recommendation of the Board.";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) The appointment of a person as Chief Executive Officer is not invalid because of a defect or irregularity in connection with the appointment.

(1B) The appointment, removal, death or resignation of a Chief Executive Officer is to be notified by the Minister by notice in the Gazette.";

(c) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) Subject to this **[Chapter]** Part, the person appointed as Chief Executive Officer holds office for **[a]** the period, not exceeding **[five]** three years, specified in the instrument of appointment, but is eligible for reappointment.

(3) The Chief Executive Officer **[manages]** is to conduct and manage the affairs of the Authority subject to the **[control and]** directions of, and in accordance with policies determined by, the Board."; and

(d) by the deletion of subsections (5) and (6).

#### **Substitution of section 23 of Act 5 of 1998**

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

#### **"Chief Executive Officer not to engage in other work**

23. The Chief Executive Officer may not engage in any paid employment outside the functions of the office without the **[prior approval of the Board]** Minister's written consent.".

**Substitution of section 24 of Act 5 of 1998**

22. The following section is substituted for section 24 of the principal Act:

**"Chief Executive Officer's remuneration**

24. (1) The Chief Executive Officer is to be paid the remuneration and allowances that the Minister, in consultation with the Minister of Finance, determines in writing.

(2) Remuneration and allowances payable in terms of this section are to be paid out of the money of the Authority."

**Insertion of sections 24A and 24B in Act 5 of 1998**

23. The following sections are inserted in the principal Act after section 24:

**"Leave of absence**

24A. (1) The Chief Executive Officer has the recreation leave entitlements that the Minister determines in writing.

(2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines in writing.

**Terms and conditions not provided for by Act**

**24B.** The Chief Executive Officer holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Minister determines in writing."

**Substitution of section 25 of Act 5 of 1998**

24. The following section is substituted for section 25 of the principal Act:

**"Resignation**

25. The Chief Executive Officer may resign by notice in writing to the **[Board]** Minister."

**Insertion of sections 25A and 25B in Act 5 of 1998**

25. The following sections are inserted in the principal Act after section 25:

**"Disclosure of interests**

25A. The Chief Executive Officer must give written notice to the Minister of all interests (financial or otherwise) that the Chief Executive Officer has or acquires and that could conflict with the proper performance of the Chief Executive Officer's functions.

**Termination of appointment**

25B. The Minister may at any time, in writing, terminate the appointment of the Chief Executive Officer."

**Amendment of section 26 of Act 5 of 1998**

26. Section 26 of the principal Act is amended—

(a) by the substitution for the words preceding subparagraph (i) of subsection (1)(a) of the following words:

"The [**Board, subject to paragraph (b)**] Minister may, after consulting the Board, appoint a person (other than a member) to act as Chief Executive Officer—";

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) However, a person appointed to act [**as Chief Executive Officer**] during a vacancy may not continue so to act for more than 12 months at a time.";

- (c) by the substitution for subsection (2) of the following subsection:

"(2) A person, other than an officer, who is acting as Chief Executive Officer is [**entitled to**] to be paid the same remuneration and allowances as are payable to the Chief Executive Officer.";

- (d) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"An officer who is acting as Chief Executive Officer [**must be continued**] is to continue to be paid the remuneration and allowances payable to the officer, but is also to be paid—"; and

- (e) by the addition of the following subsection:

"(4) Anything done by or in relation to a person purporting to act under this section is not invalid merely because—

(a) the occasion for the appointment had not arisen;

- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased."

#### **Amendment of section 27 of Act 5 of 1998**

27. Section 27 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The Chief Executive Officer may, on behalf of the Authority, employ such staff as the he or she considers necessary for the performance of the Authority's functions and the exercise of its powers."; and

- (b) by the insertion after subsection (1) of the following subsection:

"(1A) Staff are to be employed on the terms and conditions that the Board determines in writing."

#### **Insertion of section 27A in Act 5 of 1998**

28. The following section is inserted in Part 2 of Chapter 2 of the principal Act after section 27:

**"Consultants**

27A. (1) The Chief Executive Officer may, on behalf of the Authority, engage persons with suitable qualifications and experience as consultants to the Authority.

(2) A consultant is to be engaged on the terms and conditions that the Board determines in writing."

**Addition of Part 3 to Chapter 2 of Act 5 of 1998**

29. The following Part is added to Chapter 2 of the principal Act after section 27A:

***"Part 3******Committees*****Committees**

27B. (1) The Board may, in writing, establish committees for the purpose of assisting the Board in the performance of its functions and the exercise of its powers.

(2) A committee may consist—

- (a) wholly of members;
- (b) wholly of persons who are not members; or
- (c) partly of members and partly of other persons.

(3) The procedures under which a committee is to operate are to be determined by the Board in writing.

### **Disclosure of interests at meetings**

**27C.** (1) A member of a committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee must disclose the nature of the interest at a meeting of the committee as soon as possible after the relevant facts have come to the member's knowledge.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the committee at which the disclosure is made.

(3) The Board must terminate the appointment of a member of a committee if the member fails, without reasonable excuse, to comply with subsection (1).

## Resignation

27D. A member of a committee may resign by giving the Board a written resignation.

## Other terms and conditions

27E. (1) A member of a committee holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Board, in consultation with the Minister, determines in writing.

(2) Remuneration and allowances (if any) to which a member of a committee is entitled as such a member are to be paid out of the money of the Authority."

## Substitution of section 28 of Act 5 of 1998

30. The following section is substituted for section 28 of the principal

Act:

**"Business plan**

28. (1) The Board must prepare a business plan for the Authority at least once each financial year and give it to the Minister.

(2) If the Minister asks the Board to give the plan to the Minister by a specified day, the Board must give the plan to the Minister by that day.

(3) The plan must cover a period of at least three financial years.

(4) The Board must keep the Minister informed about—

(a) significant changes to the plan; and

(b) matters that arise that might significantly affect the achievement of the objectives of the plan.

(5) The plan must include details of the following matters:

(a) assumptions about the Authority's operational environment;

(b) the Authority's strategies;

(c) performance indicators for the Authority;

(d) review of performance against previous business plan;

(e) analysis of risk factors likely to affect maritime safety and security and the protection of the marine environment;

(f) human resource strategies and labour relations strategies.

(6) The plan must also cover any other matters required by the Minister, which may include further details about the matters specified in subsection (5).

(7) In preparing the plan the Board must take account of notices given under section 8A."

### **Insertion of section 28A in Act 5 of 1998**

31. The following section is inserted in the principal Act after section 28:

#### **"Minister's response to business plan**

**28A.** (1) The Minister must respond to a business plan within 60 days of being given the plan.

(2) The Minister's response may include a direction to the Board to vary the plan.

(3) A direction by the Minister must be in writing and must set out its reasons.

(4) If directing a variation of the business plan, the Minister must consider—

(a) the objectives and policies of the Government;

(b) the objects of this Act; and

(c) any other considerations the Minister considers appropriate.

(5) If the Minister's response includes a direction to vary the business plan, the Board must prepare a revised plan and give it to the Minister within 28 days of being given the response."

### **Substitution of section 29 of Act 5 of 1998**

32. The following section is substituted for section 29 of the principal Act:

#### **"Performance indicators**

29. When including details of the performance indicators for the Authority in the business plan, the Board must consider—

- (a) the need for high standards of maritime safety and security;
- (b) the need for a high standard of protection for the marine environment;
- (c) the objectives and policies of the Government known to the Board;
- (d) any directions given by the Minister under section 7;
- (e) the performance of functions that are directly funded by the State;
- (f) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements; and

(g) any other consideration affecting the Authority's performance that the Board thinks appropriate."

#### **Substitution of section 30 of Act 5 of 1998**

33. The following section is substituted for section 30 of the principal Act:

##### **"Board to comply with business plan**

30. So far as is practicable, the Board must ensure that the performance of the Authority's functions are consistent with, and designed to give effect to, the current business plan."

#### **Insertion of section 30A in Chapter 3 of Act 5 of 1998**

34. The following section is inserted in Chapter 3 of the principal Act after section 30:

##### **"Service charter**

30A. (1) The Authority must prepare and make available to the public a service charter.

(2) The service charter must include—

- (a) a statement by the Authority of the standards of service that the public can expect to apply to the performance of the Authority's functions;
- (b) details of the procedures to be followed under the service charter by a person who claims the standards were not met;
- (c) details of the remedies that are available under the service charter to the person affected if it is established by that person, to the Authority's satisfaction, that the standards were not met; and
- (d) provision for the appointment by the Authority of an appropriate independent person to assist in the resolution of disputes about alleged failures to meet the standards specified in the service charter.

(3) The service charter may allow for a person to be appointed as a deputy to the person appointed for the purposes of subsection (2)(d), and for the functions and powers of the deputy.

(4) The Authority and any officer or agent of the Authority has a public duty to observe the provisions of the service charter.

(5) If the Authority fails to prepare and make available a service charter within the time that the Minister determines, the Minister must prepare a service charter and make it available to the public.

(6) The Authority (if the Authority has prepared it) and the Minister (if the Minister has prepared it) may at any time, in writing, amend

the service charter, and must make the amendments available to the public.

(7) This section does not affect any right existing apart from this section to make a complaint or to bring proceedings."

#### **Amendment of section 31 of Act 5 of 1998**

35. Section 31 of the principal Act is amended—

- (a) by the substitution for the words following on paragraph (b) of subsection (1) of the following words:

"the Minister may, at any time, cause the asset to be transferred to the Authority."; and

- (b) by the substitution for subsection (2) of the following subsection:

"(2) Subsection (1) **[is not construed as preventing]** does not prevent the State from transferring any asset to the Authority otherwise than under that subsection **[provided the asset is transferred in order to further the objectives of the Authority referred to in section 3]**".

#### **Substitution of section 32 of Act 5 of 1998**

36. The following section is substituted for section 32 of the principal Act:

**"Statutory transfer of land to Authority**

32. (1) If the Minister by notice in the Gazette for the purposes of this section—

- (a) describes any land in which the State holds an interest; and
- (b) describes that interest, the interest is transferred to the Authority on the day specified in the notice, not being earlier than the day of publication of the notice.

(2) If the interest of the State is of such a kind that it is not held from another person, the transfer has effect as a grant of ownership to the Authority.

(3) The Minister must cause to be lodged with a registrar a copy of the notice, certified in writing signed by an officer of the Department authorised by the Minister for the purpose.

(4) Despite anything to the contrary in any law, the registrar with whom a copy is lodged must record the transfer as nearly as possible as if it were a dealing in land and must deal with and give effect to the copy as if it were a grant or conveyance duly executed under the laws of the Republic.

(5) Despite anything to the contrary in any law, an interest in respect of land transferred to the Authority under subsection (1) cannot be acquired by prescription.

(6) In this section—

'interest' includes any servitude, lease or other real right;

'land' includes buildings and fixed structures;

'registrar' has the meaning it has in section 102 of the Deeds

Registries Act, 1937 (Act No. 47 of 1937)."

**Substitution of section 34 of Act 5 of 1998**

37. The following section is substituted for section 34 of the principal Act:

**"Liabilities in respect of personnel**

34. The Minister may, in consultation with the Authority, determine in writing for the purposes of section 37(g) the total amount (if any) of the provisions to be made by the Authority on account of liabilities transferred from the State in respect of personnel transferred from the State."

**Amendment of section 36 of Act 5 of 1998**

38. Section 36 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) Where, immediately before the commencement of this

**[Act] section—**

*(a)* **[in respect of]** a function of the Authority **[which]** was **[formerly]** being performed by the Department; and

*(b)* a right of the State existed, arising out of a debt, liability or obligation of any other person in favour of the State in respect of a service or facility provided by the Department in the performance of that function,

the right of the State is transferred to the Authority to the extent that the Minister determines in writing **[having regard to the objectives of the Authority referred to in section 3]**."

#### **Substitution of section 37 of Act 5 of 1998**

39. The following section is substituted for section 37 of the principal

Act:

#### **"Capital of Authority**

37. The Authority's capital is the sum of—

*(a)* the value of assets transferred to the Authority by or under this Act;

*(b)* any amounts paid to the Authority out of money appropriated by Parliament for the purpose of providing capital;

- (c) any reserves resulting from the Authority's operations (whether because of the retention of surpluses or otherwise) or from the revaluation of the Authority's assets;
- (d) any retained surpluses other than reserves; and
- (e) any operating results affecting the Authority's capital, not being reserves or retained profits,

less—

- (f) debts, liabilities and obligations of the State transferred to the Authority by section 33;
- (g) the amount (if any) determined under section 34;
- (h) any amounts of capital repaid to the State by the Authority.

(2) Interest is not payable to the State on the Authority's capital, but the Authority's capital is repayable to the State at the times, and in the amounts, that the Minister, in consultation with the Minister of Finance, determines in writing.

(3) In making a determination under subsection (2), the Minister must take account of any advice that the Board has given to the Minister in relation to the Authority's financial affairs."

#### **Amendment of section 38 of Act 5 of 1998**

40. Section 38 of the principal Act is amended—

- (a) by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

"(1) The Maritime Fund continues as a fund in the accounts of the Authority.

(2) The Authority **[must]** is to administer the Fund in the prescribed manner and the **[accounts relating to the Fund must be audited annually by the Auditor-General]** financial affairs of the Fund in any financial year are to be reflected in the Authority's accounts and financial records for that year.

(3) The Authority is to collect for the benefit of the Fund—

(a) any amounts ordered by the Authority to be forfeited by way of penalty under the laws referred to in section 2(2);

(b) any amounts declared to be payable to the Fund in terms of any other law; and

(c) any other amounts that become payable to the Fund from time to time.

(4) Money in the Fund **[may]** is to be applied only for the purpose of furthering the **[objectives]** objects of the Authority **[referred to in section 3]."**

- (b) by the insertion after subsection (4) of the following subsection:

"(4A) The Board must include in its annual report for a financial year a report on the activities of the Fund in that financial year."; and

(c) by the deletion of subsections (5) and (7).

#### **Substitution of section 39 of Act 5 of 1998**

41. The following section is substituted for section 39 of the principal Act:

#### **"Grants and borrowings from State**

39. The Minister of Finance may, out of money appropriated by Parliament for the purpose, grant or lend money to the Authority on such terms and conditions as [~~that~~] the Minister [~~may determine~~] determines writing."

#### **Substitution of section 40 of Act 5 of 1998**

42. The following section is substituted for section 40 of the principal Act:

**"Borrowings otherwise than from State**

40. (1) The Authority may ask the Minister of Finance to borrow money [from any source, including a foreign source] on the Authority's behalf otherwise than from the State.

(2) Money may be borrowed wholly or partly in foreign currency."

**Substitution of section 41 of Act 5 of 1998**

43. The following section is substituted for section 41 of the principal Act:

**"State may guarantee borrowings by Authority**

41. (1) The Minister, on behalf of the State, may enter into a contract guaranteeing the performance by the Authority of obligations incurred by it under section 40.

(2) However, the Minister must first get the written consent of the Minister of Finance.

(3) A contract under this section may include—  
(a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or

- (b) a provision waiving the immunity of the State from suit in courts of a foreign country."

#### **Amendment of section 42 of Act 5 of 1998**

44. Section 42 of the principal Act is amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:

"The Authority may ask the Minister to give security over the whole or part of [its] the Authority's assets for—"; and

- (b) by the addition of the following subsection, the existing section becoming subsection (1):

"(2) However, the Minister must first get the written consent of the Minister of Finance."

#### **Insertion of section 42A in Act 5 of 1998**

45. The following section is inserted in the principal Act after section 42:

**"Audit**

42A. The accounts and financial records of the Authority are to be audited by the Auditor-General."

**Repeal of section 43 of Act 5 of 1998**

46. Section 43 of the principal Act is repealed.

**Amendment of section 44 of Act 5 of 1998**

47. Section 44 of the principal Act is amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) The Minister may within 60 days after receiving a notice of the proposed determination, give the Authority notice in writing approving or disapproving the proposed determination, but **[when the Minister does]** in doing so, the Minister must have regard to the **[objectives]** objects and functions of the Authority.";

(b) by the insertion after subsection (10) of the following subsection:

"(10A) This section does not affect the operation of section 5(3A)."; and

(c) by the deletion of subsection (11).

**Insertion of section 45A in Act 5 of 1998**

48. The following section is inserted in the principal Act after section 45:

**"Restriction on use of words 'South African Maritime Safety****Authority**

**45A.** (1) No person may use in connection with that person's trade, business, profession or occupation—

- (a) any name, title or description that includes the words South African Maritime Safety Authority or a translation of those words in any other language; or
- (b) any other word, abbreviation or emblem that imports or suggests that the person enjoys the patronage of the Authority.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) This section does not apply to the Authority or to anyone appropriately authorised by the Authority."

**Amendment of section 46 of Act 5 of 1998**

49. Section 46 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Authority, members, officers and other persons acting on behalf of the Authority are exempt from liability for loss or damage resulting from anything done or omitted to be done in good faith in the performance, or purported performance, of the Authority's functions.";

(b) by the substitution for the words preceding subparagraph (i) of subsection (2)(a) of the following words:

"The State indemnifies the Authority [**its officers and any person or body acting on its authority**] in respect of any civil liability [**they**] it may incur for loss or damage [suffered by any person by reason of anything done or not done in the carrying out of the Authority's duties referred to in section 4] resulting from anything done or omitted to be done by a member, an officer or a person acting on behalf of the Authority in the performance, or purported performance, of the Authority's functions, in an amount equal to the amount by which that liability and any related reasonable costs and expenses exceeds—"; and

(c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) The State is liable for all unrecoverable reasonable costs and expenses incurred or to be incurred by or on behalf of the Authority, in relation to any incident, in [the carrying out of any duty referred to in section 4 to prevent or combat pollution of the marine environment by ships] performing any function to prevent or combat pollution of the marine environment.";

and

(d) by the addition to subsection (3) of the following paragraph:

"(c) In this subsection 'incident' means any occurrence that causes or threatens pollution of the marine environment.".

#### **Substitution of section 47 of Act 5 of 1998**

50. The following section is substituted for section 47 of the principal Act:

#### **"Delegation by Minister**

47. The Minister may delegate, in writing, all or any of the powers [**contemplated in sections**] of the Minister under section 31, 32,

5, 36 [and] or 49 to [an officer of the Department] the person for the time being holding the office of Director-General of the Department."

### **Substitution of section 48 of Act 5 of 1998**

51. The following section is substituted for section 48 of the principal Act:

#### **"Delegation by Board**

**48.** (1) The Board may, by resolution of a majority of its members, delegate all or any of its functions or powers to—

(a) a member of the Board; or

(b) a member of the Authority's staff who has the expertise appropriate to the function or power delegated.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with the written directions of the Board.

(3) The delegation continues in force despite a change in the membership of the Board.

(4) The delegation may be varied or revoked by resolution of the Board, whether or not there has been a change in the membership of the Board.

(5) A certificate signed by the Chairperson stating any matter with respect to the delegation is evidence of the matter.

(6) A document purporting to be a certificate mentioned in subsection (5) is deemed to be such a certificate and to have been duly given unless the contrary is established."

### **Insertion of section 48A in Act 5 of 1998**

52. The following section is inserted in the principal Act after section 48:

#### **"Delegation by Chief Executive Officer**

**48A.** (1) The Chief Executive Officer may delegate, in writing, all or any of his or her functions or powers to a member of the Authority's staff who has the expertise appropriate to the function or power delegated.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with the written directions of the Chief Executive Officer.

(3) The delegation may be varied or revoked at any time by the Chief Executive Officer.

(4) A certificate signed by the Chief Executive Officer stating any matter with respect to the delegation is evidence of the matter.

(5) A document purporting to be a certificate mentioned in subsection (4) is deemed to be such a certificate and to have been duly given unless the contrary is established."

#### **Repeal of sections 50, 51 and 52 of Act 5 of 1998**

53. Sections 50, 51 and 52 of the principal Act are repealed:

#### **Amendment of section 53 of Act 5 of 1998**

54. Section 53 of the principal Act is amended—

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

"The Minister may, after consulting the Authority, make regulations

**[not inconsistent with this Act]**—"; and

(b) by the insertion after paragraph (c) of subsection (1) of the following paragraph:

"(cA) regulating the keeping and inspection of the registers mentioned in sections 21C, 21D and 21E, including the making of copies of, or extracts from, the entries in them."

**Insertion of section 53A in Act 5 of 1998**

55. The following section is inserted in the principal Act after section 53:

**"Marine rules**

**53A.** (1) The Authority may, by notice in the *Gazette*, make rules (in this section called marine rules) about any matter, other than the fixing of penalties, in relation to which provision may be made by regulations under—

- (a) section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);
- (b) section 14 of the Marine Traffic Act, 1981 (Act No. 2 of 1981);
- (c) section 28 of the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981);
- (d) section 3 of the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986);
- (e) section 3 of the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987);
- (f) section 21 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996); or
- (g) section 56 of the Ship Registration Act, 1998 (Act No. 58 of 1998).

(2) Marine rules are to be read subject to the relevant Act referred to in subsection (1) and, in the case of any inconsistency, are taken to be valid rules only to the extent that they are not in excess of the power conferred by that Act.

(3) Despite anything to the contrary in any law, the regulations referred to in subsection (1) may—

- (a) make provision about a matter by applying, adopting or incorporating any matter contained in marine rules as existing at any time;
- (b) prescribe penalties, not exceeding the maximum penalty that may be imposed for a contravention of, or failure or refusal to comply with, a provision of those regulations, for a contravention of, or failure or refusal to comply with, any marine rule about a matter in relation to which provision may be made by those regulations;
- (c) with the necessary changes, apply the provisions (if any) of the relevant Act relating to the detention of ships for a contravention of, or failure or refusal to comply with, a provision of those regulations also to a contravention of, or failure or refusal to comply with, any marine rule about a matter in relation to which provision may be made by those regulations;
- (d) make any incidental or supplementary provision about any of the previously described matters that may be reasonably necessary or expedient."

**Saving**

56. This Act does not affect the period of appointment or the terms and conditions of appointment of any person holding office as a member of the Board of the South African Maritime Safety Authority (including the Chief Executive Officer) immediately before the commencement of this Act.

**Short title and commencement**

57. This Act is called the South African Maritime Safety Authority Amendment Act, 2009, and commences on a day fixed by the President by proclamation in the *Gazette*.

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