

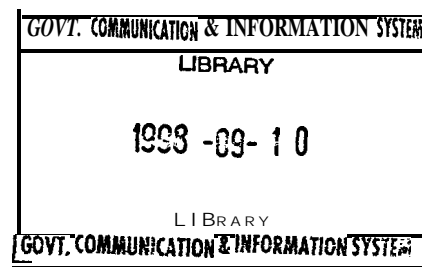
REPUBLIC OF SOUTH AFRICA

CONVERSION OF SASRIA BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 108—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE OMSKEPPING VAN SASRIA

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 108—98]

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BILL

To provide for the conversion of the South African Special Risks Insurance Association into a public company, with a share capital, and for connected matters.

PREAMBLE

Recognising that the South African Special Risks Association ("SASRIA") was incorporated in 1979 in terms of the Companies Act, 1973, to provide insurance against damage to property caused by political acts;

Recognizing that, in terms of the Reinsurance of Damage and Losses Act, 1989, SASRIA's main business was extended and thereupon covered loss of or damage to property caused by defined political acts and non-political acts (such as riots, strikes and public disorder), as well as loss suffered by moneylenders in respect of mortgage loans ("special risks");

Recognising that, due to the insurance industry not being prepared to underwrite the risk in question, the Government agreed, in the public interest, to act as reinsurer of last resort;

Recognising that the Government conferred "monopoly status on SASRIA by allowing it to be the sole supplier of insurance cover for special risks in the Republic;

Recognizing that SASRIA was exempted from tax until the 1996 tax year and as a result thereof has accumulated substantial reserves, which it as a section 21 company is not allowed to distribute; and

Recognizing that, as a result of restrictions in the Companies Act, 1973, the restructuring of SASRIA to normalise the short-term insurance industry as regards special risks could not commence,

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Purpose of Act
3. Conversion of SASRIA
4. Effect of conversion
5. Share capital
6. Minister's rights and duties
7. Reserves
8. Termination of existing agreement with SASRIA
9. Disposal of State's shareholding
10. Repeal of Act 56 of 1989
11. Short title

Definitions

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

- (i) **“Agreement”** means the agreement which the Minister has, in terms of section 2 of the Reinsurance of Damage and Losses Act, 1989 (Act No. 56 of 1989), entered into with SASRIA before this Act took effect; (iv) 5
- (ii) **“Companies Act”** means the Companies Act, 1973 (Act No. 61 of 1973); (ii)
- (iii) **“Company”** means the public company, SASRIA Limited, referred to in section 3; (i)
- (iv) **“Minister”** means the Minister of Finance; (iii)
- (v) **“SASRIA”** means the South African Special.. Risks Insurance Association, incorporated in terms of section 21 of the Companies Act; (v) 10
- (vi) **“special risks”** means “loss in respect of a mortgage loan” and “loss of or damage to property” as defined in section 1 of the Reinsurance of Damage and Losses Act, 1989, including consequential loss referred to in section 2(a)(ii) of that Act. (vi) 15

Purpose of Act

2. The purpose of this Act is—

- (a) to convert SASRIA into a public company, having a share capital, as described in section 19 of the Companies Act, with the shares to be held by the State;
- (b) to provide flexibility regarding the future restructuring of the Company by entitling the Minister to dispose of all or any of the State’s shareholding in the Company; and 20
- (c) generally, to ensure the orderly restructuring of the State’s role in the short-term insurance industry as regards special risks and to reduce the State’s risk exposure. 25

Conversion of SASRIA

3. From a date determined by the Minister by notice in the *Gazette*, SASRIA is converted into a public company, known as SASRIA Limited, having a share capital, as described in section 19 of the Companies Act.

Effect of conversion

4. (1) The provisions of section 29 of the Companies Act, excluding those provisions requiring the payment of fees, apply to the conversion of SASRIA into a public company, having a share capital, in accordance with section 3 of this Act.

(2) No stamp duty is payable in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), in respect of the issue of the ordinary share as contemplated in section 5(1)(a) of this Act. 35

(3) The conversion of SASRIA into a public company, having a share capital, does not affect any obligation in terms of the Income Tax Act, 1962 (Act No. 58 of 1962). ---

Share capital

5. (1) Upon the conversion of SASRIA into a public company, the Company has— 40

- (a) a share capital of R 1, represented by one ordinary share with a nominal value of R1, held by the State; and
- (b) the State as its only member.

(2) While the State is the sole or majority shareholder in the Company, sections 66, 190 and 344(d) of the Companies Act do not apply to the Company. 45

Minister's rights and duties

6.(1) The Minister exercises the rights and performs the duties of the State as member of, and shareholder in, the Company.

(2) While the State is the sole member of, and sole shareholder in, the Company, the Minister may—

(a) alter the memorandum and articles of association of the Company, subject to subsection (3);

(b) appoint the board of directors of the Company; and

(c) do anything necessary to give effect to the conversion of SASRIA into a public company and to restructure the Company.

(3) The Minister may not alter the Company's main business of carrying on short-term insurance for special risks other than to that of **short-term reinsurance** for special risks.

Reserves

7. (1) Within six months after the conversion of SASRIA into a public company, the Minister must **determine**—

(a) ~~the~~ percentage of the Company's current reserves which is essential for the Company to do its main business as a short-term insurer for special risks or as a short-term reinsurer for special risks; and

(b) the percentage ~~of~~ those reserves which is not essential for that purpose.

(2) When making a determination in terms of subsection(1), the Minister must take into account the result of ~~an~~ independent actuarial assessment obtained by the Minister for the purposes of that subsection.

(3) ~~While~~ the State is the sole member of, and sole shareholder in, the Company, the Minister may—

(a) declare a dividend to be paid from any excess reserves determined in terms of subsection (1)(b); and

(b) use the proceeds of that dividend to reduce state debt.

Termination of existing agreement with SASRIA

8. (1) If the Minister terminates the Agreement in terms of clause 6 of the Agreement—

(a) the Government of the Republic is released from its liabilities in terms of section 2 of the **Reinsurance of Damage and Losses Act, 1989** (Act No. 56 of 1989), with effect from the date as stipulated in the Agreement; and

(b) sections 3 ~~and~~ 4 of that Act, despite the termination of the Agreement, remain applicable as **if** the Agreement had not been terminated.

(2) Subsection (1)(b) does not affect the Government of the Republic's **reinsurance** obligations referred to in clause 6.3 of the Agreement.

(3) Subsection (1)(b) lapses when the repeal of the **Reinsurance of Damage and Losses Act, 1989**, takes effect in terms of section 10 of this Act.

Disposal of State's shareholding

9. The Minister may, after consultation with the insurance **industry**, sell or in any other way dispose of the State's **shareholding** in the Company or part of its shareholding.

Repeal of Act 56 of 1989

10. The **Reinsurance of Damage and Losses Act, 1989** (Act No. 56 of 1989), and the **Reinsurance of Material Damage and Losses Amendment Act, 1990** (Act No. 65 of 1990), are repealed with effect from a date determined by the Minister by notice in the *Gazette*.

Short title

11. This Act is called the Conversion of SASRIA Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE CONVERSION OF SASRIA BILL, 1998

Background

The South African Special Risks Insurance Association (“**SASRIA**”) was incorporated in 1979 as an association not for gain in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), with the object of providing insurance cover against damage and loss arising from political acts. The Government at the time accepted the **reinsurance** risk in the public interest as the insurance industry was not prepared to underwrite the risk involved. The Government conferred monopoly status on SASRIA, allowing it to be the sole supplier of insurance cover for special risks (as defined in clause 1 of the Bill) in the Republic.

As a section 21 company SASRIA is not allowed to distribute profits. For this reason and also because of its previous exemption from tax, SASRIA has accumulated substantial reserves. Those reserves are probably in excess of what SASRIA at present needs as cover to conduct its current business.

The transfer of assets from a section 21 company is restricted by section 21 (2)(b) of the Companies Act, 1973. That section provides that the assets of such a company must “be given or transferred to some other association or institution or associations or institutions having objects similar to its main object” determined by the members of that company at or before its dissolution or, failing such determination, by a court having jurisdiction. As a result of those restrictions in the Companies Act, 1973, the restructuring of **SASRIA** to normalise the short-term insurance industry as regards special risks could not commence.

Objects of Bill

The object of the Bill is to convert SASRIA into a public company, with a share capital, as described in section 19 of the Companies Act. The conversion will take effect from a date determined by the Minister of Finance (“the Minister”) in the **Gazette**. The total **shareholding** in the converted SASRIA will be **held** by the State.

The Bill provides for the Minister to determine, taking into account the results of an independent actuarial assessment, the portion of the reserves that the converted SASRIA would need to continue with its business as a short-term insurer for special risks. In terms of the Bill the Minister may—

- (a) declare a dividend to be paid from any excess reserves which are not required for that purpose; and
- (b) use the proceeds of that dividend to reduce state debt.

The monopoly with regard to insurance for special risks which SASRIA enjoys at present in terms of the Reinsurance of Damage and Losses Act, 1989 (Act No. 56 of 1989), will be retained for the time being until that Act is repealed on a date to be determined by the Minister by notice in the **Gazette**. However, the Government’s burden in carrying the reinsurance risk will be terminated as soon as would be possible, given the terms of the present agreement between the Government and SASRIA and the provisions of the Bill.

Consultation

The insurance industry has been consulted through its representation on the board of **SASRIA**.

Parliamentary procedure

The Department of Finance and the State Law Advisers are of the opinion that the Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996.