

REPUBLIC OF SOUTH AFRICA

ESKOM CONVERSION BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of
Bill published in Government Gazette No. 22116 of 2 March 2001)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC ENTERPRISES)

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BILL

To provide for the conversion of Eskom into a public company having a share capital incorporated in terms of the Companies Act; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973); 5
 - “**date of conversion**” means the date determined in terms of section 3(1);
 - “**Eskom**” means the juristic person referred to in section 2 of the Eskom Act and upon conversion means Eskom Holdings Limited;
 - “**Eskom Act**” means the Eskom Act, 1987 (Act No. 40 of 1987);
 - “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 10
 - “**Minister**” means the Minister of Public Enterprises;
 - “**security**” means any bill of exchange, promissory note or instrument issued by Eskom as security for any loan negotiated by it.

Object of Act

2. The object of this Act is to convert Eskom into a public company having a share capital as contemplated in section 19(1)(a) of the Companies Act, with its entire share capital held by the State with effect from the date of such conversion. 15

Conversion of Eskom

3. (1) Eskom is, with effect from a date determined by the Minister by notice in the *Gazette*, regarded to be a public company incorporated in terms of the Companies Act and is to be known as Eskom Holdings Limited from such date. 20
- (2) The provisions of sections 32, 44(1), 54(2), 59(2)(a), 63(2), 64, 65, 172(1), 172(3)(a), 172(5) and 344(b) of the Companies Act do not apply to Eskom, for the purposes of such conversion only.

Effect of conversion 25

4. (1) Subject to the provisions of this Act, the provisions of the Companies Act apply to Eskom with effect from the date of conversion.
- (2) For as long as the State is the sole or majority shareholder in Eskom, sections 60, 66, 190 and 344(d) of the Companies Act do not apply to Eskom.
- (3) The conversion of Eskom does not— 30
- (a) affect the continued corporate existence of Eskom as from the date of its first establishment;
 - (b) affect any of the rights, liabilities or obligations acquired or incurred by Eskom, or on Eskom’s behalf, at any time before its conversion; and
 - (c) render defective any legal proceedings by or against Eskom. 35

Powers and duties of Eskom

5. (1) Eskom may generate or supply electricity within the Republic of South Africa, subject to the rights of local authorities and holders of licences under the provisions of the Electricity Act, 1987 (Act No. 41 of 1987).
- (2) Eskom may enter upon any land for the purpose of making plans and surveys thereof, but must give the owner at least seven days' notice of such entry. 5
- (3) Eskom must pay compensation for any damage caused by its officers or employees in the performance of their duties upon the land.
- (4) (a) Eskom may, irrespective of whether or not the owner of the land agrees, transfer to its subsidiary companies any servitude or other similar right in terms of which Eskom may effect improvements and conduct electricity on or over such land, by way of a deed of cession attested by a notary. 10
- (b) The relevant registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document in the registrar's office or submitted to the registrar as the registrar considers necessary to give effect to the provisions of this subsection. 15
- (c) No office fees or other levies are payable in respect of such entry or endorsement.
- (d) The provisions of section 13 of the Electricity Act, 1987 (Act No. 41 of 1987), do not apply to a transfer referred to in paragraph (a).

Memorandum and articles of association of Eskom 20

6. (1) The Registrar of Companies, appointed in terms of section 7 of the Companies Act, must, on the date of conversion, register the memorandum and the articles of association of Eskom in terms of section 63(1) of the Companies Act, but no fee is payable in respect of such registration.
- (2) The articles of association of Eskom must be as determined by the Minister. 25

Borrowings secured by Eskom's revenue and assets

7. (1) All borrowings effected by Eskom and any interest or other costs due or to become due in respect thereof must, unless otherwise agreed between Eskom and the lender, be a first charge against all revenues and assets of Eskom and on all moneys recovered or to be recovered by it. 30
- (2) (a) If any interest due in respect of any securities remains unpaid for three months after demand therefor in writing has been lodged with Eskom, the holder thereof may apply to a high court having jurisdiction for the appointment of a receiver of the revenues and assets referred to in subsection (1).
- (b) The court may— 35
- (i) make such order and give such directions as in the circumstances it may deem necessary for the raising and payment of the moneys due; and
 - (ii) in particular, order that any prices for electricity supplied or to be supplied be increased to meet the deficit, and for that purpose the receiver referred to in paragraph (a) must exercise all such powers as Eskom might have exercised under the Eskom Act in respect of amending its prices for electricity, and the exercise of such powers does not require the sanction of any authority. 40
- (3) If such default in payment of interest in whole or in part continues for a further period of three months, the holder of the securities may apply to a high court having jurisdiction for a declaration that the outstanding principal sum for the time being has become due, and the court may make such declaration, together with any consequential order or declaration. 45
- (4) In the event of default in payment of the principal sum of any security for one month after the date on which it is repayable, the provisions of subsections (2) and (3) apply with the necessary changes. 50

Taxation of receipts and accruals of Eskom and subsidiaries

8. (1) The provisions of section 10(1)(cA) of the Income Tax Act do not apply in respect of the receipts and accruals of—
- (a) Eskom; and
 - (b) any association, corporation or company contemplated in paragraph (a) of the definition of "company" in section 1 of the Income Tax Act, the shares of 55

which are held by Eskom, if the operations of such association, corporation or company are ancillary or complementary to the objects of Eskom contained in its Memorandum and Articles of Association referred to in section 6.

(2) (a) The Minister of Finance, after consultation with the Minister and the Minister of Minerals and Energy, must determine the tax values of the capital assets owned by Eskom and any company contemplated in subsection (1)(b) on 1 January 2000 for the purpose of calculating any wear and tear or depreciation allowance as contemplated in the Income Tax Act. 5

(b) The assets contemplated in subsection (2)(a) are, for the purposes of sections 11(e), 12C, and 13 of the Income Tax Act, regarded to have been brought into use for the first time at a cost equal to the value determined in terms of subsection (2)(a). 10

(3) For the purposes of the Income Tax Act—

(a) Eskom;

(b) any subsidiary company of Eskom to which Eskom may transfer any asset, liability, right or obligation or any business of Eskom; and 15

(c) Eskom Holdings Limited,

are, subject to such adjustments as may be necessary, regarded as one and the same entity.

(4) No tax, duty or levy is payable in respect of the transfer of any asset from Eskom to any subsidiary company contemplated in subsection (3)(b). 20

Regulations

9. The Minister may, by notice in the *Gazette*, make regulations which are necessary for the achievement of the objects of this Act.

Repeal of laws

10. The laws mentioned in the Schedule are repealed with effect from the date of conversion. 25

Savings and transitional provisions

11. (1) Despite the repeal of the Eskom Act by section 10, anything done in terms of that Act which may be done under or in terms of this Act, continues to be valid and of force and effect. 30

(2) Any reference to Eskom in the patents register, trade marks register, designs register, deeds register or any other register is with effect from the date of conversion regarded as a reference to Eskom Holdings Limited.

(3) Any legal proceedings that were pending or could have been instituted against Eskom prior to the conversion, may, despite such conversion, be continued or instituted against Eskom Holdings Limited, subject to any law governing prescription of debts. 35

(4) Despite the provisions of subsection (1), the Electricity Council and the Management Board defined in section 1 of the Eskom Act cease to exist, and the terms of office of each of the members thereof terminate with effect from the date of conversion. 40

Short title and commencement

12. (1) This Act is called the Eskom Conversion Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Section 8 is regarded to have come into operation on 1 January 2000.

Schedule

No. and year of law	Short title	Extent of repeal
Act No. 10 of 1985	Transkei Corporations Act, 1985	The whole
Act No. 34 of 1985	Bophuthatswana Electricity Act, 1985	The whole
Act No. 40 of 1987	Eskom Act, 1987	The whole
Act No. 15 of 1991	Eskom Amendment Act, 1991	The whole
Act No. 29 of 1991	Bophuthatswana Electricity Amendment Act, 1991	The whole
Act No. 69 of 1995	Eskom Amendment Act, 1995	The whole
Act No. 126 of 1998	Eskom Amendment Act, 1998	The whole

MEMORANDUM ON THE OBJECTS OF THE ESKOM CONVERSION BILL, 2001

Purpose

1. The purpose of the Bill is to convert Eskom from a statutory juristic body into a public company having a share capital incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), in order to—

- (a) bring about more efficiency and competitiveness in the running of Eskom;
- (b) expose Eskom to global trends; and
- (c) ensure that Eskom observes and is run in terms of a protocol on cooperative governance.

2. Government would like to bring parity between Eskom and all other State-owned entities especially in terms of tax and dividends payment to the State to enable Government to achieve its social objectives.

3. The benefit to the country of the unbundling of Eskom is that in the long run Eskom might decide to draw on the benefits of listing on a stock exchange and, in that event, citizens and foreigners alike will be in a position to acquire shares in Eskom. Eskom can only be listed on a stock exchange if it is a company and Government is preparing for that eventuality, should it arise.

Financial implications for State

None. Instead the State stands to gain from tax collections as well as dividend payments from the incorporation of Eskom.

Departments/organisations consulted

- * The Department of Minerals and Energy;
- * The Department of Finance (National Treasury);
- * The South African Revenue Service;
- * Eskom;
- * The Department of Trade and Industry; and
- * The Department of Communications.

Parliamentary procedure

The Department of Public Enterprises and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.