

REPUBLIC OF SOUTH AFRICA

ARMAMENTS CORPORATION OF SOUTH AFRICA, LIMITED BILL

*(As amended by the Portfolio Committee on Defence (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE)

[B 18D—2003]

ISBN 0 621 29670 8

No. of copies printed 1 800

BILL

To provide for the continued existence of the Armaments Corporation of South Africa, Limited; to provide for the functions, accountability and finances of the Corporation; and to provide for matters connected therewith.

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

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SCHEDULE

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- (a) “Armaments Development and Production Act” means the Armaments Development and Production Act, 1968 (Act No. 57 of 1968); 15
- (b) “Board” means the Board of Directors contemplated in section 6;
- (c) “Chief Executive Officer” means the Chief Executive Officer appointed in terms of section 10;
- (d) “Chief Financial Officer” means the Chief Financial Officer appointed in terms of section 11; 20
- (e) “commercial matériel” means any material, equipment, facilities or services other than defence material;
- (f) “Corporation” means the Armaments Corporation of South Africa, Limited contemplated in section 2(1), and its subsidiaries; 25
- (g) “defence matériel” means any material, equipment, facilities or services used principally for military purposes;
- (h) “Department” means the Department of Defence;
- (i) “dispose of defence matériel” means the process by which excess, redundant, forfeited or surplus defence matériel is transferred to the Corporation by the Department for the purposes of upgrading, sale, donation or destruction; 30
- (j) “employee” means an employee appointed in terms of section 13;
- (k) “Minister” means the Minister of Defence;
- (l) “organ of state” means an organ of state as defined in section 239 of the Constitution; 35
- (m) “Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (n) “Secretary for Defence” means the Secretary for Defence contemplated in section 7 of the Defence Act, 2002 (Act No. 42 of 2002);
- (o) “this Act” includes any regulation made under section 18. 40

CHAPTER 1

ARMAMENTS CORPORATION OF SOUTH AFRICA, LIMITED
AND ITS OBJECTIVES AND FUNCTIONS

Continued existence of Corporation

2. (1) The Armaments Corporation of South Africa, Limited established by section 2 of the Armaments Development and Production Act continues to exist under that name despite the repeal of that Act. 45
- (2) (a) The State remains the sole shareholder of the Corporation.
- (b) The Minister exercises ownership control over the Corporation on behalf of the State. 50

- (3) The Corporation is a juristic person capable of suing and being sued in its own name.
- (4) Subject to this Act, the Corporation may—
- (a) purchase or otherwise acquire, hold or alienate property, movable or immovable; and
 - (b) perform such acts as are necessary for or incidental to the carrying out of its objectives and the performance of its functions. 5
- (5) (a) No person may carry on business under a name in which the expression “Armaments Corporation of South Africa” or “Armscor” appears or which so closely resembles any of those names that it may confuse people.
- (b) A person who contravenes paragraph (a) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 10

Objectives of Corporation

3. (1) The objectives of the Corporation are to meet—
- (a) the defence matériel requirements of the Department effectively, efficiently and economically; and 15
 - (b) the defence technology, research, development, analysis, test and evaluation requirements of the Department effectively, efficiently and economically.
- (2) The Corporation must adhere to accepted corporate governance principles, best business practices and generally accepted accounting practices within a framework of established norms and standards that reflect fairness, equity, transparency, economy, efficiency, accountability and lawfulness. 20

Functions of Corporation

4. (1) For the purpose of this section—
- (a) “defence industrial participation” means the process by which defence acquisition is used to leverage defence industrial and economic benefits for the Republic; 25
 - (b) “defence operational research” means the use of scientific or specialised techniques, employing mathematical methods, simulation and qualitative or logical reasoning in systematic and general approaches to defence problem solving and decision making; and 30
 - (c) “defence-related industries” means those organisations in the public and private sector, including the commercial companies and business units of such organisations, which are directly or indirectly active in the research, development, manufacture and marketing of defence matériel. 35
- (2) The Corporation must—
- (a) acquire such defence matériel on behalf of the Department as the Department may require;
 - (b) manage such technology projects as may be required by the Department;
 - (c) establish a programme management system in support of the acquisition and technology projects contemplated in paragraphs (a) and (b); 40
 - (d) provide for a quality assurance capability in support of—
 - (i) the acquisition and technology projects contemplated in paragraphs (a) and (b); and
 - (ii) any other service contemplated in this section required by the Department; 45
 - (e) establish a system for tender and contract management in respect of defence matériel and, if required in a service level agreement or if requested in writing by the Secretary for Defence, the procurement of commercial matériel;
 - (f) dispose of defence matériel in consultation with the person who originally manufactured the matériel; 50
 - (g) establish a compliance administration system for the Department as required by applicable international law, the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), and the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); 55
 - (h) support and maintain such strategic and essential defence industrial capabilities, resources and technologies as may be identified by the Department;
 - (i) provide defence operational research;
 - (j) establish a defence industrial participation programme management system;

- (k) provide marketing support to defence-related industries in respect of defence matériel, in consultation with the Department and the defence-related industries in question;
 - (l) manage facilities identified as strategic by the Department in a service level agreement; and 5
 - (m) maintain such special capabilities and facilities as are regarded by the Corporation not to be commercially viable, but which may be required by the Department for security or strategic reasons.
- (3) (a) The Corporation may, with the approval of the Minister—
- (i) exploit such commercial opportunities as may arise out of the Corporation's duty to acquire defence matériel or to manage technology projects; 10
 - (ii) procure commercial matériel on behalf of any organ of state at the request of the organ of state in question; and
 - (iii) and subject to the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), and the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), perform any function which the Corporation may perform for or on behalf of the Department in terms of this Act for or on behalf of any sovereign State. 15
- (b) The Minister may impose such conditions in respect of the performance of a function contemplated in paragraph (a)(iii) as may be necessary in the national interest. 20

Service level agreements

5. (1) The Corporation must enter into a service level agreement with—
- (a) the Department in respect of any function contemplated in section 4 relating to the Department; 25
 - (b) any other organ of state on whose behalf the Corporation procures commercial matériel; and
 - (c) any foreign State in respect of any function contemplated in section 4(3)(a)(iii).
- (2) A service level agreement must be concluded between the Board and the accounting officer or accounting authority, as the case may be, of the Department, other organ of state or foreign State and must, amongst other things—
- (a) be based on the shareholder's compact contemplated in the Public Finance Management Act;
 - (b) be focused on the functions of the Corporation; 35
 - (c) specify measurable objectives and milestones;
 - (d) specify a system to monitor the delivery of service;
 - (e) provide for the maintenance of the Corporation's capabilities over the long term;
 - (f) provide for the terms and conditions applicable to the service to be rendered by the Corporation; and 40
 - (g) set out the rate at which the Corporation may charge for its services.

CHAPTER 2

BOARD OF DIRECTORS AND EMPLOYEES OF CORPORATION

Corporation managed by Board of Directors 45

6. (1) The affairs of the Corporation are managed and controlled by a Board of Directors consisting of—
- (a) nine non-executive members;
 - (b) two executive members, namely a Chief Executive Officer and a Chief Financial Officer; and 50
 - (c) the Secretary for Defence and the Chief of the South African National Defence Force, who serve as *ex officio* members.
- (2) The Board is the accounting authority for the Corporation as contemplated in section 49(2)(a) of the Public Finance Management Act.

Non-executive members of Board

7. (1) The non-executive members of the Board must be appointed by the Minister on the grounds of their knowledge and experience which, when considered collectively, should enable them to attain the objectives of the Corporation.
- (2) The Minister must designate one of the non-executive members of the Board as chairperson of the Board and another one as deputy chairperson of the Board. 5
- (3) No member of the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council may be appointed as a member of the Board.
- (4) Subject to section 6(1)(c), no officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or person appointed under a special contract contemplated in section 12A of that Act may be appointed as a member of the Board. 10
- (5) A non-executive member of the Board—
- (a) holds office for three years and may be re-appointed for one further term; and 15
- (b) may resign by giving one month's written notice to the Minister.
- (6) A non-executive member of the Board must be paid out of the funds of the Corporation such remuneration for his or her services as the Minister, after consultation with the Minister of Finance, may determine.

Vacation of office by members of Board 20

8. A member of the Board must vacate office if—
- (a) he or she becomes disqualified to serve on the Board by virtue of section 7(3) or (4);
- (b) he or she resigns; or
- (c) his or her services are terminated by the Minister on good cause shown. 25

Meetings of Board and decisions

9. (1) The chairperson of the Board must determine the time when and place where meetings of the Board will take place.
- (2) The chairperson of the Board presides at meetings of the Board at which he or she is present. 30
- (3) If the chairperson of the Board is absent or unable to perform his or her functions as chairperson, the deputy chairperson must act as chairperson, and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson.
- (4) If both the chairperson and deputy chairperson are absent from a meeting of the Board, the non-executive members present must elect a non-executive member to act as chairperson at that meeting, and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson. 35
- (5) The quorum for any meeting of the Board is the majority of the members in office at the time.
- (6) The decision of the majority of members present at a duly constituted meeting is the decision of the Board and in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 40
- (7) No decision of the Board or act performed under the authority of the Board is invalid merely by reason of a vacancy on the Board, or by reason of the fact that any person who was not entitled to sit as a member sat as a member when the decision was taken or the act was authorised, if the decision was taken or act was authorised by the required majority of members present at the time and entitled to sit as members. 45

Chief Executive Officer

10. (1) The Board must appoint a Chief Executive Officer for such period and on such conditions as the Board may determine, after consultation with the Minister. 50
- (2) Subject to the directions of the Board, the Chief Executive Officer is responsible for—
- (a) the day-to-day management of the affairs of the Corporation; and
- (b) administrative control over the employees.

Chief Financial Officer

11. The Chief Executive Officer must, in consultation with the Board, appoint the Chief Financial Officer for such period and on such conditions as the Board may determine.

Committees

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12. (1) The Board must establish an audit committee contemplated in section 77 of the Public Finance Management Act.

(2) The Board may establish such other committees to assist it in the performance of its functions as may be necessary.

(3) Any person appointed to a committee contemplated in this section who is not in the full-time employment of the State, must be paid out of the funds of the Corporation such remuneration and allowances as the Minister may determine, on the recommendation of the Board and after consultation with the Minister of Finance. 10

Employees of Corporation

13. (1) Subject to the written policies and procedures of the Corporation, the Chief Executive Officer may appoint such members of staff for the Corporation as are necessary to perform the work arising from or connected with the Corporation's functions. 15

(2) The conditions of service of such employees, including their remuneration, allowances, subsidies and other service benefits, must be determined by the Board. 20

(3) Subject to applicable labour legislation, the Chief Executive Officer may second any staff member to an organ of State for such period of time and under such conditions as the Board may determine.

Conflict of interest

14. (1) A member of the Board must— 25

(a) disclose to the Board any direct or indirect interest that such member, or his or her spouse, partner or family member, may have in any matter relating to the acquisition or procurement activities of the Corporation; and

(b) withdraw from participation in the activity in question unless the Board decides that the interest is trivial or irrelevant. 30

(2) An employee of the Corporation or a member of a committee contemplated in section 12 must—

(a) disclose to the Chief Executive Officer any direct or indirect interest that such employee or member, or his or her spouse, partner or family member, may have in any matter relating to the acquisition or procurement activities of the Corporation; and 35

(b) withdraw from participation in the activity in question unless the Chief Executive Officer decides that the interest is trivial or irrelevant.

(3) Any member of the Board, employee of the Corporation or member of a committee contemplated in section 12 who fails to make disclosure in accordance with subsection (1)(a) or (2)(a), as the case may be, or fails to withdraw in terms of subsection (1)(b) or (2)(b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment. 40

CHAPTER 3

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FINANCIAL AND AUDIT MATTERS

Funds of Corporation

15. (1) The funds of the Corporation consist of—

(a) the share capital of the Corporation as determined by the Minister in consultation with the Minister of Finance; 50

(b) money appropriated by Parliament;

(c) revenue, including interest derived from its investments;

- (d) money raised or borrowed by the Corporation; and
- (e) money obtained from such other source as may be consistent with the objectives and functions of the Corporation.

(2) The Corporation may establish reserves for such purposes as it may deem fit if they are consistent with its objectives and functions, and may invest that portion of the money which it does not immediately require into a reserve fund in any manner which is to the advantage of the Corporation. 5

(3) Income or revenue derived from the Corporation's assets, interest on its moneys and services rendered by it must be included in the projected annual budget and corporate plan. 10

Audit of financial statements

16. (1) The annual financial statements of the Corporation must be audited annually in terms of section 58 of the Public Finance Management Act.

(2) The Corporation must allow any internal auditor of the Department access to all documentation pertaining to a service level agreement between the Corporation and the Department. 15

System for evaluating acquisitions

17. (1) The Corporation must provide the Secretary for Defence with a system, as required by section 38(1)(a)(iii) of the Public Finance Management Act, to evaluate all defence matériel acquisitions, prior to a final decision being made on such an acquisition. 20

(2) The system referred to in subsection (1) must be fair, equitable, transparent, competitive and cost effective and must comply with all relevant national legislation.

(3) The system must be supported by a tender and contract management system.

CHAPTER 4

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REGULATIONS AND DELEGATION

Regulations

18. (1) The Minister may make regulations regarding—

- (a) the place where the head office of the Corporation must be situated;
- (b) conditions or restrictions subject to which the Board must manage and control the affairs of the Corporation, including the circumstances in which the Board must manage and control such affairs subject to the approval of the Minister or the Minister acting in consultation with any other responsible Minister of State and the manner in which such affairs must be managed and controlled in particular circumstances or in relation to companies promoted by the Corporation; 30
- (c) the procedure at meetings of the Board and the keeping of records and minutes;
- (d) a code of conduct to be adhered to by employees;
- (e) the procedure for dealing with complaints and grievances of employees and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such employees must be submitted; and 40
- (f) any other matter which it may be necessary or expedient to prescribe in order to achieve the objectives of the Corporation. 45

(2) Any regulation which is likely to result in state expenditure must be made with the concurrence of the Minister of Finance.

Delegation

19. (1) The Board may—

- (a) in writing delegate any of its powers to any official of the Corporation or any committee established in terms of this Act; and 50

- (b) assign any employee of the Corporation or any committee to perform any of the Corporation's duties.
- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to such limitations and conditions as the Board may impose;
- (b) may either be to a specific individual or to the holder of a specific post within the Corporation; and
- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The Board may confirm, vary or revoke any decision taken by an employee or committee as a result of a delegation or assignment in terms of subsection (1) subject to any rights that may have become vested as a consequence of the decision.

CHAPTER 5

MISCELLANEOUS PROVISIONS

Safeguarding of information, records, property and premises

20. (1) The Corporation must take such measures as are necessary for the efficient protection or safeguarding of—
- (a) information, records and property belonging to or under the control of the Corporation; or
- (b) any premises upon which any activity of the Corporation is being performed.
- (2) If the Corporation takes any measures contemplated in subsection (1), it must cause such notices to be published or such warnings to be erected as may in each particular case be necessary to warn the public of any danger or harm which may be caused by such measures.

Subsidiaries

21. (1) The Corporation may, subject to the Public Finance Management Act and with the approval of the Minister, form wholly owned subsidiaries.
- (2) The Corporation may only dispose of a subsidiary with the approval of the Minister.

Intellectual property

22. (1) Notwithstanding any other law, all intellectual property rights in any product, service, item, method or any other thing of any nature vested in the Department must be held in the custody of the Corporation on behalf of the Department.
- (2) The Corporation must manage and utilise intellectual property rights acquired for and on behalf of the Department as directed by the Secretary for Defence in a service level agreement.

Repeal of laws and savings

23. (1) Subject to this section, the laws referred to in column 2 of the Schedule are hereby repealed to the extent set out in column 3 of that Schedule.
- (2) (a) The board of directors contemplated in section 5 of the Armaments Development and Production Act, which was in office immediately before the date of commencement of this Act, must be regarded as having been appointed in terms of section 7 of this Act for the remainder of its members' original terms of office.
- (b) The persons who were chairperson and deputy chairperson of the board of directors remain chairperson and deputy chairperson for the remainder of their terms of office.
- (3) Every person who was an employee of the Armaments Corporation of South Africa, Limited contemplated in section 2 of the Armaments Development and Production Act immediately before the date of commencement of this Act must be regarded as having been appointed in terms of section 13 of this Act, and the employment agreement existing between that person and the Armaments Corporation of South Africa, Limited immediately before the date of commencement of this Act continues to have full force and effect without any change.

Short title and commencement

24. This Act is called the Armaments Corporation of South Africa, Limited Act, 2003, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE

Repeal of laws

(Section 23)

No. and year of law	Short title	Extent of repeal
Act No. 57 of 1968	Armaments Development and Production Act, 1968	The whole
Act No. 65 of 1972	Armaments Development and Production Amendment Act, 1972	The whole
Act No. 20 of 1977	Armaments Development and Production Amendment Act, 1977	The whole
Act No. 5 of 1978	Armaments Development and Production Amendment Act, 1978	The whole
Act No. 86 of 1980	Armaments Development and Production Amendment Act, 1980	The whole
Act No. 56 of 1982	Armaments Development and Production Amendment Act, 1982	The whole
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Section 38
Act No. 46 of 1992	Armaments Development and Production Amendment Act, 1992	The whole
Act No. 31 of 1993	Armaments Development and Production Amendment Act, 1993	The whole

MEMORANDUM ON THE OBJECTS OF THE ARMAMENTS CORPORATION OF SOUTH AFRICA, LIMITED BILL, 2003

1. The Armaments Corporation of South Africa, Limited ("the Corporation") was established by section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968) ("the Act"). The Corporation had three major functions, namely—

- (a) the development and manufacturing of armament;
- (b) the acquisition of armament on behalf of Government; and
- (c) control over import and export of armament into or from the Republic.

2. However, significant changes occurred during the 1990s in respect of the Corporation. The functions of developing and manufacturing armament were transferred from the Corporation to Denel (Pty) Ltd. Control over conventional armament was transferred to the National Conventional Arms Control Committee. The creation of the Defence Secretariat in 1995 led to greater control over the acquisition of armament by the Department of Defence. As a result of these changes the White Paper on Defence, the Defence Review and the White Paper on Defence Related Industries called for the review of the role, functions and mandate of the Corporation. In response thereto the Minister of Defence issued a written instruction on 25 November 1999 that the Act must be reviewed and redrafted in order that the Corporation be correctly positioned within Government.

3. It is proposed in the Bill that the Corporation continues to exist as a juristic person with the State as sole shareholder. The object of the Corporation would now be to meet—

- (a) the defence matériel requirements of the Department effectively, efficiently and economically; and
- (b) the defence technology, research, development, analysis, test and evaluation requirements of the Department effectively, efficiently and economically.

4. FINANCIAL IMPLICATIONS FOR STATE

There are no additional financial implications for the State. The Corporation is already funded by means of a transfer payment from the budget of the Department of Defence.

5. CONSULTATION

5.1 Participation on the Drafting Committee. In addition to role players within the Department of Defence, the following organisations were represented on the Drafting Committee:

- The Department of Defence
- The Department of Public Enterprises (represented by Denel)
- The Department of Foreign Affairs
- The National Treasury
- The Department of Trade and Industry
- The South African Aerospace, Maritime and Defence Industries Association
- The Centre for Conflict Resolution, University of Cape Town
- Armaments Corporation of South Africa, Limited.

5.2 Wider Consultation. In resolving the cardinal policy issues posed by the Bill, expert advice was sought from the following:

- The Accountant-General of the Republic
- The State Tender Board
- The National Treasury
- The Auditor-General of the Republic
- The South African Institute of Government Auditors.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Defence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution. It contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.