

REPUBLIC OF SOUTH AFRICA

ONDERSTEPOORT BIOLOGICAL PRODUCTS INCORPORATION BILL

*(As amended by the Portfolio Committee on Agriculture, Water Affairs and Forestry
(National Assembly))*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 37B—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE INLYWING VAN ONDERSTEPOORT BIOLOGIESE PRODUKTE

*(Soos gewysig deur die Portefeuljekomitee oor Landbou, Waterwese en Bosbou
(Nasionale Vergadering))*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 37B—99]

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BILL

To provide for the establishment of a company to manage the institution known as Onderstepoort Biological Products, the appointment of directors, the holding and disposal of shares in the company, the transfer of personnel to the company and the transfer of funds and assets to the company; 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 otherwise indicates—
 - (i) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (iii) 5
 - (ii) “company” means the public company referred to in section 2; (ii)
 - (iii) “Director-General” means the Director-General of the Department of Agriculture in the National Government; (i)
 - (iv) “Minister” means the Minister responsible for agriculture in the National Government; (iv) and 10
 - (v) “OBP” means the Directorate of Onderstepoort Biological Products, a division of the Department of Agriculture in the National Government. (v)

Incorporation of public company

2. (1) The Minister shall request the Registrar of Companies to incorporate in terms of the Companies Act a public company to be known as Onderstepoort Biological Products Ltd. 15

(2) The request shall be accompanied by the memorandum and articles of association of the proposed company, signed by the Minister.

(3) Once the Minister has signed the memorandum and articles of association they shall be deemed to comply with the requirements of the Companies Act for the purposes of the incorporation of the company in terms of that Act. 20

(4) (a) On receipt of the said request and the memorandum and articles thus signed, the Registrar of Companies shall register the company in terms of section 63(1) of the Companies Act, and in terms of section 64(1) of that Act endorse thereon a certificate that the company is incorporated. 25

(b) No fee shall be payable in respect of the incorporation of the company.

(c) The Registrar of Companies may, in order to comply with the provisions of this section, issue such directions and authorise such deviations from the regulations made in terms of the Companies Act and the forms prescribed by that Act as he or she may deem necessary. 30

Board of directors

3. (1) The Minister shall appoint the first board and subsequent boards of directors of the company while the State is the sole shareholder in the company.

(2) A board of directors appointed in terms of subsection (1) shall consist of not fewer than five and not more than seven persons.

(3) (a) Whenever a member of the board has to be appointed in terms of subsection (1), the Minister shall—

- (i) by notice in at least two national newspapers and by announcement on national radio stations, invite persons to submit to him or her, within the period mentioned in the notice, the names of persons with the knowledge and experience stated in the notice; 5
- (ii) establish a committee consisting of the number of persons which the Minister may determine, one of which shall be the chairperson of the parliamentary portfolio committee on agriculture, designate a chairperson for the committee and submit to the committee all the nominations received. 10

(b) The committee shall from the nominations submitted to it, compile a shortlist of eligible candidates and submit it to the Minister for an appointment contemplated in subsection (1). 15

(4) No person shall be appointed in terms of subsection (1) if—

- (a) he or she is disqualified from being a director of a company in terms of the Companies Act;
- (b) he or she is a member of any legislature.

Shareholding in company and disposal of shares 20

4. (1) The State shall, notwithstanding the provisions of the Companies Act, on incorporation be the sole shareholder of the shares in the company and the Minister shall exercise all rights attached thereto.

(2) (a) The board of directors may, while the State is the sole shareholder, alter the share capital of the company as contemplated in section 75(1) and (2) of the Companies Act. 25

(b) Any alteration of share capital referred to in paragraph (a) shall be effected with the approval of the Minister and in accordance with the guidelines of the Office for Public Enterprises and the National Framework Agreement or any subsequent guidelines or agreements issued or entered into by the National Government, granted with the concurrence of the Minister of Finance. 30

(3) The board of directors may, subject to the provisions of the Companies Act and the memorandum and articles of association of the company, with the approval of the Minister and on the conditions and at the monetary value approved by the Minister of Finance, redeem, sell or otherwise dispose of shares in the company held by the State. 35

(4) No money or fee in terms of the Companies Act or stamp duty in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), shall be payable in respect of—

- (a) shares held by the State on incorporation of the company;
- (b) the creation or issue of any shares connected with the alteration of the share capital of the company as contemplated in subsection (2); 40
- (c) the redemption, sale or any other means of disposal or transfer of shares by the State as contemplated in subsection (3).

Proceeds of sale of shares

5. The proceeds of any sale of shares in the company by the State shall be paid into the National Revenue Fund. 45

Transfer of funds

6. (1) The Director-General may on incorporation of the company transfer any amount standing to the credit of the OBP in any fund or account or allocated to the OBP in terms of any budget immediately prior to such incorporation, to the company.

(2) The Minister may on request of the company transfer such amounts to the company as may be approved by him or her in conjunction with the Minister of Finance. 50

Transfer of assets

7. (1) The Director-General may, with the approval of the Minister granted, in the case of immovable property and any rights in such property, with the concurrence of the Minister of Public Works, or, in the case of movable property and any rights in such property, with the concurrence of the Minister of Finance, transfer such property to the company. 5

(2) A registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall, upon submission to him or her of a certificate by the Director-General to the effect that a real right in respect of immovable property has been transferred to the company in terms of subsection (1), make such entries or endorsements as are necessary in any register or document to effect registration of such right in the name of the company, and no stamp duty, office fee or other fee shall be payable in respect thereof. 10

Consequences of incorporation of company

8. (1) The company shall on incorporation be deemed to be the successor in title to the OBP and all agreements to which the OBP is a party, and all material rights, immaterial rights, liabilities and obligations of the OBP existing immediately prior to the incorporation of the company shall pass to the company and no stamp duty, fee or other money shall be payable in respect thereof. 15

(2) Anything done by or on behalf or in respect of the OBP shall, as from the date of incorporation of the company, be deemed to have been done by or on behalf of or in respect of the company. 20

(3) The first financial year of the company shall, notwithstanding the date of incorporation thereof, be deemed to be the period commencing on 1 April immediately preceding the date of incorporation of the company.

Transfer of personnel

9. (1) The company may, in consultation with the Director-General, designate any officer or employee of the OBP for transfer to the company. 25

(2) An officer or employee designated in terms of subsection (1) may accept or decline such transfer and, if he or she accepts, shall, notwithstanding any provision to the contrary in the Public Service Act, 1994 (Proclamation No. 103 of 1994), become an employee of the company as from the date agreed upon between such person, the Director-General and the company and notified in writing to all employees designated in terms of subsection (1). 30

(3) The conditions of employment of a person transferred to the company in terms of subsection (2) shall be negotiated between the company and that person: Provided that such person shall retain all vacation and sick leave standing to his or her credit, including any monetary benefits attached thereto. 35

(4) (a) Any person transferred to the company in terms of subsection (2) who immediately prior to such transfer was a member of the Government Employees Pension Fund shall join such pension, provident or other fund as the company may establish or subscribe to. 40

(b) The Government Employees Pension Fund shall pay, in respect of each person transferred to the company, into a fund referred to in paragraph (a) an amount equal to the financing percentage of the Government Employees Pension Fund, multiplied by the actuarial liability of that Fund towards such person, plus interest calculated at the bank rate from the date of transfer of such person to the date of payment. 45

(c) Any person transferred to the company shall, upon becoming a member of a fund referred to in paragraph (a), have no further claim against the Government Employees Pension Fund and the Government Employees Pension Fund shall cede any claim which it may have against that person to such a fund. 50

(5) For the purposes of this section—

(a) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund means the actuarial liability as determined by an actuary appointed by the Minister of Finance; and

(b) the financing percentage of a pension fund means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of 55

the fund, after such assets and liabilities have been reduced by the amount of the liability of the fund towards all its pensioners, as determined at the time of the most recent actuarial assessment of the fund or any reappraisal thereof done on the instructions of the Minister of Finance; and

(c) bank rate means the rate determined from time to time under section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989). 5

(6) (a) The Director-General may, until personnel are transferred in terms of subsection (2), designate personnel of the Department to assist the company.

(b) The company shall reimburse the State for expenses incurred in terms of paragraph (a). 10

General

10. The provisions of the Companies Act shall, subject to any provision to the contrary in this Act, apply to the company.

Short title

11. This Act shall be called the Onderstepoort Biological Products Incorporation Act, 15 1999.

MEMORANDUM ON THE OBJECTS OF THE ONDERSTEPSPOORT BIOLOGICAL PRODUCTS INCORPORATION BILL

Onderstepoort Biological Products (OBP) is an animal vaccine manufacturing facility owned by the State. At present it is a directorate of the national Department of Agriculture that operates on a trade account. For financial viability, OBP urgently needs multi-component vaccine production technology, production facilities of international standard and an aggressive marketing strategy and capability.

Financial viability would best be realised if OBP operates as a company rather than as part of a State department. Legislation is required to effect the conversion of OBP into a state-owned company.

The Onderstepoort Biological Products Incorporation Bill provides for the establishment of a public company with the State as initial shareholder of the company. Present employees of OBP may become employees of the company and will retain their existing pension fund and medical aid benefits. Employees not transferred to the company will remain Public Service employees and will be dealt with in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995).

The company will operate as a normal commercial company and provision is made that, the State may, if it so desires, involve other institutions as shareholders. Normal principles of company law will apply regarding all relevant matters not specifically provided for in the Bill.

The restructuring of OBP was initiated during 1996 in accordance with the guidelines of the Office for Public Enterprises and the National Framework Agreement. The labour force of OBP represented by the Restructuring and Transformation Committee of OBP fully supports the restructuring of OBP to a State company. The Sectoral Task Team has endorsed the decision and the Government's advisers on the restructuring of State assets, HSBC Investment Banking, were also involved in the process.

The Deloitte & Touche Consulting Group undertook a feasibility study for the privatisation of OBP during 1997. A seminar was also held during 1997 where the National Department of Agriculture, representatives of the Office for Public Enterprises, the Department of Finance, the Onderstepoort Veterinary Institute and the Onderstepoort Institute for Exotic Diseases of the Agricultural Research Council discussed the restructuring and privatisation of OBP. The office of the Minister for Agriculture and Land Affairs contacted the Departments of Finance, Public Enterprises and Trade and Industry through the respective Ministers.

PARLIAMENTARY PROCEDURE

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