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GOVERNMENT NOTICE

DEPARTMENT OF WATER AFFAIRS AND FORESTRY**No. 273****30 March 2007****THE SOUTH AFRICAN NATIONAL WATER RESOURCES
INFRASTRUCTURE AGENCY LIMITED DRAFT BILL**

The Minister of Water Affairs and Forestry, Mrs Lindiwe B. Hendricks, hereby publishes the draft South African National Water Resources Infrastructure Agency Limited Bill for comments.

Written comments and inputs are invited from interested parties and the general public, which must be submitted in writing on or before **20 April 2007** to the **Director General** Department of Water Affairs and Forestry, Sedibeng Building 185 Schoeman Street, Private Bag X313, **PRETORIA**, 0001 for the attention of **Dr Cornelius Ruiters, Deputy Director-General: National Water Resources Infrastructure Branch**. Facsimile: (012) 336-7309 or e-mail: RuitersC@dwaf.co.za:

DRAFT BILL

To provide for the establishment of The South African National Water Resources Infrastructure Agency as a juristic person wholly owned by the State to be responsible to fund, further develop, alter, maintain, refurbish, operate and manage national water resources infrastructure; to enter into a shareholder compact; to regulate the appointment of members of the Board of the Agency and its Chief Executive Officers; to regulate the governance of the Agency and the Board; to provide for the transfer of the assets and functions of the national water resources infrastructure and the incorporation of the TCTA into the Agency; to regulate reporting and accountability and to provide for matters connected therewith.

PREAMBLE

RECOGNISING—

- that it is the National Government's responsibility for and authority over the nation's water resources and its use;

ACKNOWLEDGING

- that it is necessary to ensure that, in relation to water resources development on a national level, the required national water resources infrastructure must be developed efficiently and effectively in a sustainable, equitable and reliable manner in order to make water available to water users and to water management institutions for further distribution;
- that in relation to commercially viable water resources development on a national level it is necessary to provide for the utilisation of private sector funds;
- that the current water resources infrastructure asset base and associated revenue stream could be better utilised to procure funding for development of water resources infrastructure required for meeting social needs; and

RECOGNISING THEREFORE

- that a juristic person wholly owned by the State, to fund, further develop, alter, maintain, refurbish, operate and manage the national water resources infrastructure must be established,

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

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2. Purpose of Act

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SCHEDULE

CHAPTER 1

DEFINITIONS, INTERPRETATION AND PURPOSE

1. Definitions and interpretation—(1) In this Act, unless the context shows that another meaning is intended —

“Agency” means the South African National Water Resources Infrastructure Agency established as a juristic person by section 3;

“Board” means the Board of the Agency contemplated in section 9;

“Chief Executive Officer” means the Chief Executive Officer contemplated in section 24(1);

“Chief Financial Officer” means the Chief Financial Officer contemplated in section 24(2);

“Companies Act” means the Companies Act of 1973, (Act No. 61 of 1973);

“corporate plan” means the business and financial plan contemplated in section 32;

“Minister” means the Minister of Water Affairs and Forestry;

“National Water Act” means the National Water Act, 1998 (Act No. 36 of 1998), as amended;

“national water resources infrastructure” means any water work or part thereof that—

(a) transfers water across national boundaries or between water management areas;

(b) serves multiple user sectors or large geographic areas;

(c) comprises several interconnected catchments; or

(d) serves a strategic purpose;

“public service” means the public service contemplated in section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“prescribed” means prescribed from time to time by regulation;

“primary functions” means the functions contemplated in sections 6 and 7 of the Act, but excludes additional functions set out in section 7(3);

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999) and applies to the Agency as a Schedule 2 public entity in terms of that Act;

“**regulation**” means any regulation made under section 55;

“**TCTA**” means the Trans-Caledon Tunnel Authority a body corporate established in terms of Government Notice No. 2361 dated 12 December 1986 with powers to implement international agreements in terms of section 103 of the National Water Act;

“**this Act**” includes any regulation and Schedule;

“**the Department**” means the Department of Water Affairs and Forestry;

“**water management institution**” means a water management institution contemplated in section 1 of the National Water Act;

“**water work**” includes any borehole, dam, weir, canal, pipeline, pump station, reservoir, structure, earthwork or equipment built, installed or used for in connection with water use.

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech or grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.

2. Purpose of Act.—The purpose of this Act is to—

- (a) establish a juristic person under the ownership control of the State to own, fund, further develop, alter, maintain, refurbish, operate and manage existing and new national water resources infrastructure in an efficient and cost effective manner to meet the social and economic development needs of current and future users in the national interest;
- (b) alleviate the burden on the State's resources in water resources development; and
- (c) serve and to achieve the development and transformation, objectives, representivity, service delivery, social and economic development of government.

CHAPTER 2

ESTABLISHMENT OF THE AGENCY

3. Establishment of the Agency.—(1) Pursuant to section 2, the South African National Water Resources Infrastructure Agency as a juristic person will be established upon being incorporated as a company in accordance with subsection (3).

(2) The main objects of the Agency and, accordingly, those of the company, will be to perform the functions set out in sections 6 and 7.

(3) The Minister must take all steps that are necessary for the formation, incorporation and registration of the memorandum and articles of association of the Agency as a public company in terms of Chapter IV of the Companies Act.

(4) Despite the provisions of the Companies Act—

(a) the State is the only member and shareholder of the Company upon its incorporation and at any time thereafter; and

(b) the Registrar of Companies must, at no cost to the State—

(i) register the memorandum and articles of association and all other necessary documents signed by the Minister;

(ii) incorporate the company as a public company under the name “The South African National Water Resources Infrastructure Agency Limited”; and

(iii) issue a certificate of incorporation.

(5) The State’s rights as member and shareholder of the Agency are to be exercised by the Minister.

(6) The Minister may not, except as provided in an Act of Parliament, sell or otherwise dispose of any shareholdings of the Agency.

(7) The Minister on recommendation of the Agency request the Minister of Trade and Industry to declare a particular provision of the Companies Act not to be applicable to the Agency.

(8) The relationship between the Minister representing the State as the only member and shareholder and the Agency must be defined in a shareholder compact entered into between the Minister and the Agency.

(9) The Minister as Executive Authority is accountable to Parliament for the Agency.

4. Agency’s memorandum and articles of association.—(1) The memorandum and articles of association of the Agency must be consistent with this Act.

(2) Despite the Company’s Act, an amendment to the memorandum or articles of association affecting any provision of this Act, will not be operative or have any legal force unless and until the relevant provision of this Act has been amended accordingly and has come into effect.

5. Application of Companies Act to Agency.—(1) The provisions of the Companies Act that are not in conflict with this Act, will apply to the Agency.

(2) Any provision where the Minister of Trade and Industry has issued a declaration under section 3(7) is not applicable to the Agency.

6. Object of Agency.—(1) The main object of the Agency is to ensure the sustainable, equitable and reliable supply of water from national water resources infrastructure with minimal risk to meet nationally and regionally defined social and economic objectives.

(2) Additional objects include—

- (a) to utilise its asset base and cash flow to raise funds to develop infrastructure for commercial and social development purposes;
- (b) to recover in full or in part the costs of infrastructure development, operation and maintenance by means of water use charges in terms of the pricing strategy under the National Water Act; and
- (c) to allow for the professional expertise developed for commercial projects to be utilised for social and economic projects.

7. Functions of Agency.—(1) Without derogating from the generality of the provisions of section 6, the Agency is given the power to perform functions that include—

- (a) the strategic planning with regard to the development of national water resources infrastructure, taking into account sustainable, equitable and reliable development that are within the framework of national policy,
- (b) the planning and design of new national water resources infrastructure;
- (c) altering, maintaining and refurbishing existing infrastructure;
- (d) operating and managing existing and new national water resources infrastructure;
- (e) funding, acquiring and disposing of national water resources infrastructure;
- (f) attracting, developing and maintaining appropriate skills;
- (g) achieving efficient and effective water supply to all users that it supply;
- (h) creating jobs in the infrastructure development process in compliance with government policy;
- (i) managing an asset inventory and information system associated with the infrastructure;

- (j) ensuring sustainable, equitable and reliable development;
- (k) establishing compliance and prevention fraud mechanisms to ensure that the integrity of the Agency is maintained;
- (l) establishing a procurement policy; and
- (m) entering into stakeholders agreements with the following levels of interaction —
 - (i) the Agency's water users for sustainable business; and
 - (ii) any stakeholders representing civil society interest in sustainable, equitable and reliable infrastructure development.

(2) The Agency may perform any other function necessary for the realisation of its objects.

(3) The Agency may by agreement carry out additional functions, which may include—

- (a) supporting the management and administration of water resources infrastructure managed by other water management institutions and Water Boards as defined in the Water Services Act, 1997 (Act No. 108 of 1997);
- (b) providing technical, management and financial advisory services, training and other support services to water management institutions, Water Boards as defined in the Water Services Act, 1997, and the Department; and
- (c) subject to the approval of the Minister, the Ministers of Public Enterprises and Trade and Industries, provide its services outside the Republic of South Africa.

(4) To perform any other function directed by the Minister or as may be delegated to it by or under this Act.

(5) The Agency may perform additional functions or functions that are incidental to its primary functions only if it —

- (a) does not limit its capacity to perform its primary functions;
- (b) is not to the financial prejudice of itself or detrimentally affect another water management institution or to the financial prejudice of its clients or stakeholders; and
- (c) is provided for in the corporate plan.

(6) In performing its functions and exercising any of its powers, the Agency must—

- (a) be customer orientated;
- (b) ensure compliance with national policy on restructuring objectives;
- (c) in terms of its constitutional mandate ensure representivity in the Agency; and
- (d) act according to its social and economic responsibility.

(7) Except in so far as this Act provides otherwise, the responsibility and capacity to perform the primary functions contained in this Act are entrusted to the Agency only.

CHAPTER 3

SHAREHOLDER COMPACT

8. Shareholder compact.—(1) The Minister must by 1 April 2008 conclude a shareholder compact with the Agency.

(2) The compact must —

- (a) include operational and performance indicators against which the performance of the Agency will be measured;
- (b) contain specific service delivery targets and undertakings that the Agency must achieve;
- (c) give direction as regards to the utilisation of any surplus revenue; and
- (d) contain any other detail that the Minister requires to be incorporated in the compact.

(3) The shareholder compact must be reviewed at intervals of not more than 5 years.

(4) The shareholder compact must not be in conflict with the provisions contained in this Act.

CHAPTER 4

GOVERNANCE OF AGENCY

9. Governing Board—(1) The Agency is governed by and acts through its Board of members.

(2) All acts of or under the authority of the Board of members will be the acts of the Agency.

(3) The Board—

- (a) is the accounting authority of the Agency and is accountable in terms of the Public Finance Management Act;
- (b) is responsible for the management of the affairs of the Agency; and
- (c) exercises the powers and performs the functions of the Agency.

10. Role of Board.—(1) Without limiting section 9, the Board's functions include, to—

- (a) give effect to the strategy and policy of the Agency to achieve the objectives of the Agency;
- (b) retain full and effective control over the Agency and monitor and evaluate the implementation of strategies, policies and corporate plans;
- (c) ensure that procedures are in place that protect the Agency's assets and records;
- (d) ensure appropriate insurance and indemnity agreements are in place;
- (e) identify, manage and monitor risk areas and key risks impacting on the achievement of its objects;
- (f) ensure the integrity of the Agency's risk management;
- (g) review management performance criteria and performance related elements of remuneration;
- (h) ensure that the Chief Executive Officer and the Chief Financial Officer perform in terms of their contracts;
- (i) ensure effective communication policy;
- (j) have an effective internal and external audit system;
- (k) develop a code of conduct for the Board;
- (l) ensure that the responsible Chief Executive Officer or Chief Financial Officer of the Agency keep—

- (i) proper records and accounts of the activities, transactions and affairs of the Agency and of the Board; and
- (ii) any other records or accounts to explain sufficiently and accurately the financial operations and financial position of the Agency;

and

- (m) ensure compliance with all applicable laws, regulations and codes of best business practice.

11. Composition of Board.—(1) The Board of the Agency consists of the following members—

- (a) seven non- executive members appointed by the Minister; and
- (b) two executive members appointed as contemplated in section 24.

(2) The two executive members referred to in subsection (1)(b) are members of the Board by virtue of their appointment, but may not be the chairperson or the deputy chairperson of the Board or of any committee constituted under section 17.

(3) The Board must appoint a secretary to the Board who has the necessary experience and qualifications to properly discharge his or her duties.

(4) The Board may appoint one or more executive managers for their technical skill onto the Board. Such a member has no voting rights.

(5) The Board must meet at least 4 times a year and at any other time that the Board may decide.

12. Nominations for appointment to Board.—(1) For the appointment of non-executive members, the Minister must by notice in two newspapers and by notice in the *Gazette* invite all interested persons to submit, within the period and in the manner mentioned in the notice, the name of a person fit to be appointed as a member of the Board.

(2) The Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of the non-executive members of the Board.

(3) In establishing a nomination committee, the Minister must ensure that the committee is constituted with special attention to race, gender and geographical spread.

(4) The nomination committee in making recommendations for appointment to the Board by the Minister must consider—

- (a) the proven skills, knowledge and experience of an applicant on issues of—
 - (i) risk management;

- (ii) financial management;
- (iii) water resources infrastructure development;
- (iv) social development and poverty eradication;
- (v) governance compliance;
- (vi) transformation and diversity equity; or
- (vii) environmental management and compliance.

necessary for the efficient and effective exercising of the Board's powers and performing its functions or duties; and

- (b) the need for representation by previously disadvantaged persons due to past racial and gender discrimination.

(5) If a suitable person or the required number of persons are not nominated as contemplated in subsection (4), the Minister may call for further nominations in the manner set out in subsection (1).

(6) The Minister must, by notice in the Gazette and, within 30 days after the appointment of the members of the Board, publish the names of members and the date of commencement of their term of office.

13. Chairperson and deputy chairperson.—(1) The Minister must appoint one of the members appointed as non-executive members as the chairperson and another of such members as the deputy chairperson of the Board.

(2) If the chairperson of the Board is absent or unable to perform any function of the chairperson, the deputy chairperson acts on his or her behalf. If both the chairperson and deputy chairperson of the Board are absent or unable to perform any function of the chairperson, the Minister may designate any other non-executive member to act as chairperson during such absence or incapacity.

14. Term of office and conditions of appointment.—(1) Non-executive members of the Board —

- (a) hold office for a term not exceeding 3 years;
- (b) may be chosen for re-appointment but may not serve as a member of the Board for more than 2 terms, which terms must be subject to a rotation programme determined by the Board;
- (c) are appointed upon conditions as the Minister may determine; and
- (d) may be paid from the revenues of the Agency an amount of remuneration and allowances as determined by the Minister from

time to time in alignment with the Department of Public Service and Administration and National Treasury regulations and guidelines.

(2) A non-executive Board member is an appointment on a part-time basis.

15. Vacancies from office.—(1) Any vacancy on the Board must be filled in the same manner in which the member who vacates the office was appointed.

(2) If the office of the chairperson or deputy chairperson of the Board becomes vacant, a chairperson or deputy chairperson, as the case may be, must be appointed in accordance with section 13.

16. Disqualification and termination from office.—(1) A non-executive member of the Board must vacate office if—

- (a) the member is removed from office in terms of subsection (3);
- (b) the member is disqualified in terms of the Companies Act;
- (c) the member is convicted of an offence involving dishonesty;
- (d) the member is declared to be of unsound mind by a competent authority;
- (e) the member is declared insolvent or is an unrehabilitated insolvent;
- (f) the member is absent from two or more meetings in one calendar year without the chairperson's permission; and
- (g) the member resigns after giving at least 30 days written notice of resignation to the chairperson.

(2) The chairperson and deputy chairperson must give written notice of resignation to the Minister.

(3) The Minister may remove all or a non-executive member from office on any other reasonable grounds other than what is contemplated under subsection (1).

(4) The Board may suspend any member of the Board during any investigation into misconduct or during a misconduct hearing against that member.

17. Establishment of committees.—(1) The Board may from time to time appoint one or more committee or standing committee as it feels necessary to support the effective functioning of the Board.

(2) The Board is responsible for—

- (a) assigning members of the Board to serve on a committee, based on their knowledge and skills;
- (b) determining—

- (i) the terms of reference of any committee;
- (ii) composition;
- (iii) tenure;
- (iv) reporting mechanisms to the Board and
- (v) removing any member appointed to a committee.

(3) Non-executive members must be in the majority on any committee.

(4) The Board may appoint appropriate specialists for their technical support onto a committee.

(5) Unless specially delegated by the Board, a committee has no decision-making powers and can only make recommendations for consideration by the Board members.

(6) A committee must meet as often as is necessary to perform and execute its terms of reference and in accordance with any procedures as the committee decides.

(7) A non-executive member of a committee must be appointed as its chairperson.

(8) Remuneration and allowances as set out in section 14(1)(d) apply.

18. Fiduciary duties of Board members.—(1) A Board member must perform his or her functions of office and at all times exercise the utmost good faith, honesty and integrity in performing those functions.

(2) A Board member must at all times exercise the utmost duty of care and diligence in performing a member's function, and in furtherance of this duty, without limiting its scope, must—

- (a) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
- (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
- (c) regularly attend all meetings; and
- (d) exercise an active and independent discretion with respect to all matters to be decided by the Board.

(3) A Board member is required to exercise due diligence in relation to-

- (a) the business of; and
- (b) preparation for and attendance at meetings of,

the Board and any committee to which the Board member is appointed.

(4) A Board member must not exceed the powers provided for in law, in legislation or the articles and memorandum of association of the Agency.

(5) A Board member must comply with an internal code of conduct that the Agency may establish for Board members.

(6) In determining the degree of care and diligence required to be exercised by a Board member, regard must be had to the skills, knowledge or insight possessed by that member and to the degree of risk involved in any particular circumstances.

(7) A Board member, or former Board member, must not make improper use of their position as a member or of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to prejudice the Agency.

(8) A Board member must treat any confidential matters relating to the Agency, learned in the capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Agency.

(9) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body of a corporate body, and it does not prevent any criminal or civil proceedings being instituted in respect of such a liability.

(10) A member who contravenes or fails to comply with these provisions is guilty of misconduct and commits an offence.

19. Disclosure of interest of a Board member.—(1) If a Board member has a direct or indirect pecuniary or other interest in any matter in which the Agency is concerned, the Board member must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.

(2) If the Board member is present at a meeting of the Board at which the matter referred to in subsection (1) is to be considered, the Board member must disclose the nature of his or her interest to the meeting immediately before the matter is considered.

(3) If the Board member is aware that the matter is to be considered at a meeting of the Board at which he or she does not intend to be present, he or she must disclose the nature of his or her interest to the chairperson before the meeting is held.

(4) A Board member who has made a disclosure under subsection (1) must not—

- (a) be present during any deliberation; or

- (b) take part in any decision of the Board in relation to the matter in question.

(5) Any disclosure made under this section must be noted in the minutes of the relevant meeting of the Board.

20. Recovery of improper profits.—(1) If a Board member makes any personal gain, either directly or indirectly, as a result of his or her position as a member of the Board, the Agency, or the Minister in the name of the Agency, may recover from the Board member as a debt due to the Agency, through a competent court, either or both of the following -

- (a) if that Board member, or any other Board member, made a profit, an amount equal to that profit; and
- (b) if the Agency has suffered loss or damage as a result of the improper profit, an amount equal to that loss or damage.

21. Validity of decisions.—(1) An act or decision of the Board is not invalid merely because of-

- (a) a defect or irregularity in, or in connection with, the appointment of a Board member; or
- (b) a vacancy in the membership of the Board, including a vacancy resulting from the failure to appoint an original Board member.

(2) Anything done by or in relation to a person purporting to act as chairperson or as a Board member is not invalid merely because—

- (a) the occasion for the person to act had not arisen or had ceased;
- (b) there was a defect or irregularity in relation to the appointment; or
- (c) the appointment had ceased to have effect.

22. Delegation of functions by Board.—(1) Subject to subsection (2) the Board by special resolution may delegate any of the powers, functions or duties conferred upon it under this Act to—

- (a) the Chief Executive Officer;
- (b) the Chief Financial Officer;
- (c) a Board member;
- (d) an employee of the Agency; or
- (e) a committee established under section 17.

(2) Any power or duty delegated must be exercised or performed subject to such conditions as the Board considers necessary.

(3) The Agency is not divested of any power nor relieved of any function or duty that is delegated.

(4) Any delegation—

(a) must be in writing;

(b) does not prohibit the Board that made the delegation from exercising that power or performing that duty; and

(c) may at any time be withdrawn or amended in writing by the Board.

(5) The following powers, functions or duties may not be delegated—

(a) the power to appoint an executive manager;

(b) the power to appoint the Chief Executive Officer;

(c) as far as the Board has to decide, the power to appoint the Chief Financial Officer;

(d) as far as the Board has to decide on the shareholder compact; and

(e) as far as the Board has to decide, the Agency's corporate plan.

23. Procedure for meetings.—(1) The procedure for meetings are as contained under the Schedule to the Act.

CHAPTER 5

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

24. Appointment of Chief Executive Officer and Chief Financial Officer.—(1) The Board members must appoint a person determined by the Board to act as the Chief Executive Officer of the Agency.

(2) The Chief Executive Officer must with the approval of the Board, appoint a Chief Financial Officer.

(3) The Chief Executive Officer and the Chief Financial Officer referred to in subsections (1) and (2)—

(a) are executive members of the Board;

(b) must be appointed after following an open and transparent recruitment process; and

(c) must be fit and proper persons with appropriate qualifications and experience to carry out the functions of their positions.

(4) The Chief Executive Officer is head of the Agency's administration and subject to the general and specific directives and instructions that the Board may issue from time to time, the Chief Executive Officer responsibilities include—

- (a) managing the affairs and day to day business of the Agency;
- (b) implementing the policies and carrying out the decisions of the Board;
- (c) the organisation, control and management of employees;
- (d) the formation and development of an efficient and cost effective administration; and
- (e) carrying out any powers directed or delegated under this Act.

(5) The Chief Financial Officer responsibilities include—

- (a) risk management of any project of the Agency;
- (b) assisting the Board to comply with the responsibilities in terms of the Public Finance Management Act;
- (c) ensuring that all money payable to the Agency is properly collected;
- (d) ensuring that all money spent by the Agency is properly spent and properly authorised;
- (e) ensuring that there is adequate control over all assets acquired for the purposes of the Agency, managed or controlled by it;
- (f) ensuring that all liabilities incurred on behalf of the Agency are properly authorised;
- (g) ensuring efficiency and economy of operations and avoidance of waste and extravagance;
- (h) ensuring that the financial system is in line with generally accepted accounting practices and procedures; and
- (i) ensuring an adequate budgeting and financial system.

(6) The Chief Executive Officer and the Chief Financial Officer must ensure that the assets of the Agency are used to develop funding for social projects.

25. Term of office and condition of appointment.—(1) A Chief Executive Officer and a Chief Financial Officer are appointed on a full time basis for a term not exceeding 5 years and may be re-appointed for a further period not exceeding 5 years at a time at the discretion of the Board.

(2) The Chief Executive Officer holds office on the terms and conditions as the Board may determine and the Chief Financial Officer, as the Chief Executive Officer may determine within the limits prescribed by the Board.

(3) An annual performance agreement must be entered into with the Chief Executive Officer and the Chief Financial Officer stipulating measurable objectives relating to the performance of that officer's functions under this Act.

(4) The Chief Executive Officer and the Chief Financial Officer are entitled to remuneration determined by the Board in compliance with national policy.

(5) The Chief Executive Officer and the Chief Financial officer are accountable to the Board.

(6) A Board may, subject to applicable law, for good reason remove the Chief Executive Officer and the Chief Financial Officer from his or her office.

(7) An acting Chief Executive Officer and an acting Chief Financial Officer who are not disqualified under section 26 may be appointed to act in the place of a Chief Executive Officer or a Chief Financial Officer, as the case may be, —

- (a) if the holder of that office is absent from the Republic or is away on normal leave;
- (b) when, because of illness or incapacity, the holder of that office is temporarily unable to perform the duties connected with that office;
- (c) while that office is vacant; or
- (d) if the holder of that office has been suspended pending any investigation against that officer.

26. Disqualification and vacation from office.—(1) A Chief Executive Officer or a Chief Financial Officer must vacate his or her office if—

- (a) the Board terminates the Chief Executive Officer's or the Chief Financial Officer's appointment;
- (b) the Chief Executive Officer or a Chief Financial Officer —
 - (i) is removed from office in terms of section 25(6);
 - (ii) is disqualified in terms of the Companies Act;
 - (iii) is found guilty of misconduct;
 - (iv) fails to perform the duties connected with that office or to perform them diligently and efficiently;
 - (v) is convicted of an offence involving dishonesty;

- (vi) is declared to be of unsound mind by a competent authority;
- (vii) is declared insolvent or is an unrehabilitated insolvent;
- (viii) is absent from two or more Board meetings in one calendar year without the chairperson's permission; and
- (ix) resigns after giving at least 30 days written notice of resignation to the chairperson.

(2) The Board may suspend a Chief Executive Officer or the Chief Financial Officer during any investigation into misconduct or during a misconduct hearing against the Chief Executive Officer or the Chief Financial Officer.

27. Delegation by Chief Executive Officer and the Chief Financial Officer.—(1) The Chief Executive Officer or the Chief Financial Officer may delegate to an employee of the Agency any power or duty conferred or imposed on that office under this Act.

(2) Any power or duty delegated must be exercised or performed subject to such conditions as the Board considers necessary.

(3) Any delegation—

- (a) must be in writing;
- (b) does not prohibit the holder of the office that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by the holder of that office.

28. Appointment of employees.—(1) The Chief Executive Officer must determine a staff establishment necessary to enable the Agency to perform its functions and exercise its powers.

(2) An employee is employed subject to the terms and conditions determined by the Chief Executive Officer in accordance with the policy of and within the financial limits set by the Board.

29. Fair and equitable employment practices.—The Agency must establish and follow employment practices which are fair and equitable.

CHAPTER 6

FINANCIAL MATTERS, REPORTING AND ACCOUNTABILITY

30. Financing.—(1) The funds of the Agency consist of—

- (a) revenue from water use charges as contemplated under Chapter 5 of the National Water Act;
 - (b) income derived by it from the performance of its services contemplated under section 7(3) and (4) of the Act;
 - (c) loans raised by it in terms of section 31;
 - (d) income derived by it on investments in terms of subsection (3);
 - (e) income derived by it in the performance of its Treaty functions;
 - (f) donations and contributions lawfully received by the Agency from any source;
 - (g) subsidies granted by the State; and
 - (g) money appropriated for its purposes by Parliament.
- (2) The Agency must utilise—
- (a) its funds to cover costs in connection with the performance and exercise of its primary functions, powers and duties in terms of this Act;
 - (b) any donation or contribution contemplated in subsection (1)(f) in accordance with any conditions that may be imposed, provided it is not inconsistent with the objectives of this Act; and
 - (c) any subsidy granted under subsection (1)(g) with the prior approval of the Minister and utilised for the purpose that it was granted for.
- (3) The Agency may invest any of its funds not immediately required by the Agency, subject to the requirements under the Public Finance Management Act.
- (4) The Chief Executive Officer, must, with the approval of the Board and subject to the requirements of the Public Finance Management Act—
- (a) open a banking account in the name of the Agency with an institution registered as a bank in terms of the Bank Act, 1990 (Act No. 94 of 1990); and
 - (b) deposit all money received by the Agency into the account.

31. Borrowing by Agency.—(1) The Agency, with the written approval of the Minister may approach National Treasury for funding.

(2) A loan referred to in subsection (1) is subject to interest and conditions of repayment as determined by the Minister in concurrence with the Minister of Finance.

(3) The Agency may, with the written approval of the Minister in concurrence with the Minister of Finance raise loans by any other source.

(4) Any loan raised in terms of subsection (3) must be within a borrowing limit and subject to any conditions determined by the Minister, in concurrence with the Minister of Finance for each financial year.

(5) The Agency may —

(a) borrow money for any purpose necessary for the exercising of its powers and the performance of any of its primary functions or duties under this Act; and

(b) only borrow money in a foreign currency in compliance with section 66(7) of the Public Finance Management Act.

(6) The prior written approval of the Minister, in concurrence with the Minister of Finance, must first be obtained in respect of any contractual agreement by the Agency, whether within or outside the Republic, that is dependent on the issue of any guarantee, indemnity or security that will bind the National Revenue Fund.

(7) The Agency must ensure that its obligations under a loan are fulfilled on due date.

32. Corporate plan.—(1) The Agency must prepare a corporate plan for each financial year.

(2) The first corporate plan for the Agency must—

(a) be completed within 60 days after the Minister has signed a shareholder compact with the Agency;

(b) be for a period of not less than five years; and

(c) begin when the first financial year starts, which must not be more than one year after the Board is established.

(3) Each subsequent corporate plan must be updated annually.

(4) The Board may review and revise a corporate plan at any time, and must do so when directed by the Minister in terms of section 35.

33. Contents of corporate plan.—(1) A corporate plan must be in the form determined by the Minister and contain—

(a) an outline of—

(i) the overall strategies and policies to achieve the Agency's objectives covering a period of five years, commencing on the first day of the following financial year; and

- (ii) the overall financial strategies for the Agency including the setting of charges, borrowing, investment, purchasing and disposal strategies.
- (b) an operational, development and funding plan explaining the Agency's proposed operations and maintenance, development and betterment projects, activities and other objectives for the following five financial years, including—
 - (i) the timing and cost of its operation, maintenance, development and betterment projects, activities and other objectives;
 - (ii) the manner in which it is proposed to finance them;
 - (iii) the planned performance indicators applicable to them;
 - (iv) a statement of the Agency's estimated revenue and expenditure;
- (c) projection and planned utilisation of dividends based on the dividend policy;
- (d) any investment plan;
- (e) financial and performance indicators and targets considered by the Board to be appropriate, based on those in the shareholder compact;
- (f) a forecast of capital expenditure, revenue, expenditure and borrowings;
- (g) its social responsibility plan;
- (h) any other information that the —
 - (i) Board considers necessary; or
 - (ii) Minister directs; and
 - (i) is consistent with the Public Finance Management Act.

34. Matters to be considered in setting financial targets.—(1) In preparing or revising a financial target, the Board must have regard to—

- (a) the shareholder compact entered into with the Minister;
- (b) the need to maintain the Agency's financial viability;
- (c) the need to maintain a reasonable level of reserves, especially to provide for —
 - (i) the development of water resources infrastructure as instructed by the Minister;

- (ii) any estimated future demand for the services of the Agency; and
- (iii) any need to improve the accessibility of, and performance standards for, the services provided by the Agency;
- (d) the need to meet the development objectives of government; and
- (e) other matters determined by the Minister.

35. Corporate plans to be given to Minister.—(1) The Board must submit a copy of its corporate plan not later than 60 days before the end of each financial year for the following financial year to the Minister.

(2) When the Board revises a corporate plan, it must immediately make a copy available to the Minister.

(3) The Minister may -

- (a) within 60 days after receiving a copy of a prepared plan; or
- (b) within 30 days after receiving a copy of a revised plan,

make comments on the plan to the Board.

(4) The Board must consult in good faith with the Minister following communication to it of the Minister's comments and must make any changes to the plan that are agreed upon by the Minister and the Board.

(5) The Minister may, from time to time, direct the Board to include in, or omit from, a corporate plan, any matter, including a financial matter.

(6) Before giving a directive under this item, the Minister must consult with the Board as to any matter to be included in the directive.

(7) The Board must comply with a directive given under this section.

36. Financial accountability.—(1) The financial year of the Agency is for the period from 1 April in any year to 31 March of the following year.

(2) The Agency must keep proper books and records of account of each financial year in accordance with generally accepted accounting practice and procedure, with regard to its income, expenditure during the financial year and the state of its assets and liabilities during and as at the end of the financial year.

(3) Where required the financial records must indicate separate activities or projects of the Agency.

37. Annual report.—(1) The Agency must in respect of each financial year, prepare annual financial reports on —

- (a) its activities and performance of its functions during the financial year; and

- (b) the financial statements for the financial year.
- (2) The Agency must submit the report referred to in subsection (1)—
 - (a) not later than 60 days to the Minister and the National Treasury after the end of the financial year in question; and
 - (b) within five months of the end of the financial year to the Auditor-General.
- (3) The report referred to in subsection (1) must contain —
 - (a) a report of the business of the Agency which accurately outlines its service delivery business, operations, projects, finance, transactions and activities during the financial year;
 - (b) relevant information about the Agency's performance with a view of how far the Agency succeeded in applying its resources effectively, efficiently and economically during the financial year;
 - (c) audited financial statements for the financial year and its financial position as at the end of that year;
 - (d) the auditor's report;
 - (e) any other information required by the shareholders or stakeholders compact;
 - (f) a copy of each directive given to it during that year by the Minister; and
 - (g) contain such further information as the Minister may determine.
- (4) The financial reports must fairly present the state of affairs of the financial transactions of the Agency during the financial year to which they relate and the financial position of the Agency as at the end of the year.
- (5) An annual independent audit must also be carried out on the functioning of the Board, particularly on corporate governance and included in the annual report.
- (6) The Agency must publish its annual report and make copies available at the offices of the Agency for inspection and purchase by the public.

38. Quarterly reports. — (1) Notwithstanding the provisions of section 37, the Agency must prepare quarterly financial reports.

- (2) The reports referred to in subsection (1) must include —
 - (a) details of its activities and performance of its functions during the quarterly period;

- (b) financial statements of the quarterly period;
- (c) a report of the business of the Agency which accurately outlines its service delivery business, operations, projects, finance transactions and activities during the quarterly period;
- (d) its financial position as at the end of the quarterly period; and
- (e) be in the form, manner and contain such further information as the Minister may determine.

(3) The report referred to in subsection (1) must be submitted to the Minister within 30 days after the end of each quarterly period in question.

39. Tabling in Parliament. —The Minister must table in Parliament the corporate plan referred to in sections 32 and 35 and its annual report referred to in section 37 within fourteen days after receiving each report if Parliament is in ordinary session, or, if not in ordinary session, within fourteen days after commencement of its next ensuing ordinary session.

40. Board to notify Minister of significant events.—If matters arise that might prevent, or materially affect achievement of the objectives of the Agency in terms of the corporate plan or financial targets contained in the corporate plan, the Board must immediately notify the Minister of the existence of such matters.

41. Agency must act in compliance with corporate plan.—The Agency must act only in compliance with its corporate plan, as it exists from time to time, unless the Minister has directed otherwise.

CHAPTER 7

DISESTABLISHMENT OF TCTA AND TRANSFER OF NATIONAL WATER RESOURCES INFRASTRUCTURE

42. Disestablishment of TCTA.—(1) The Minister must disestablish the TCTA as a statutory body within 12 months after the incorporation of the Agency as a company in terms of Section 3.

(2) Disestablishment of the TCTA must be by Notice in the *Gazette* after consultation with the Minister of Finance and the Minister of Public Enterprises, the Board of the TCTA, the Board of the Agency and all other applicable stakeholders.

(3) Upon disestablishment, the Minister must appoint a liquidator to wind up the affairs of the TCTA in compliance with Clause 30 of Government Notice No. 2361.

(4) The Minister may direct the transfer of any function or service of the TCTA prior to its disestablishment into the Agency.

(5) Any guarantee or indemnity actual or implied by the State in favour of any contractual obligation or associated liability by the TCTA remains valid until the Minister in consultation with the Minister of Finance and the Agency, agrees otherwise.

43. Transfer of national water resources infrastructure.—(1) The Minister must in consultation with the Agency and within 12 months after the incorporation of the Agency as a company in terms of Section 3, transfer water works that the Minister deems to be national water resources infrastructure to the Agency.

(2) A transfer referred to in subsection (1) includes—

- (a) all assets and associated liabilities;
- (b) contractual and non-contractual rights, functions, directives, or duties and non-Treaty functions of TCTA;
- (c) operation and maintenance of the water works;
- (d) Treaty functions in accordance with the Articles of the Treaty;
- (e) financial and treasury advisory services; and
- (f) the transfer of employees and officials of the Department and TCTA as contemplated in section 56,

associated with the national water resources infrastructure being transferred.

(3) The Minister must prior to the transfer contemplated under subsection (1)

-
- (a) compile an inventory of such assets and associated liabilities; and
- (b) ensure compliance with section 115 of the National Water Act.

(4) A transfer is—

- (a) free of any outstanding water use charges or any liability that may be associated with the transfer of employees and officials as contemplated in section 56; and
- (b) without any royalty or dividend, if any, associated with the transfer.

(5) A transfer under subsection (1) includes a transfer of assets and liabilities under section 89 of the National Water Act.

(6) The Minister must, either by way of a written directive or in the shareholder compact give direction as regards to the utilisation of any surplus revenue, if any, into capital improvements or social projects of the asset being transferred.

(7) Subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister acts on behalf of the State for the transfer of all assets, land, and rights that are transferred to the Agency.

(8) With reference to the TCTA —

“**Treaty**” means the Treaty on the Lesotho Highlands Water Project between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho signed on 24 October 1986, including any subsequent amendments; and

“**Treaty functions**” means the functions that the TCTA must perform to implement, operate and maintain that part of phase 1 of the Project situated in the Republic of South Africa, in accordance with the provisions of the Treaty and includes any specific powers and duties assigned to it by the Treaty.

44. Transfer of non-national water resources infrastructure schemes.—(1) The Minister may transfer the operation and maintenance of non-national water resources infrastructure schemes to the Agency.

(2) The transfer referred to in subsection (1) must be by means of a service level agreement with the ownership remaining with the State.

45. Registering of real rights.—(1) The relevant Registrar of Deeds must make the necessary entries in the register in terms of the Deeds Registration Act, 1937 (Act No. 47 of 1937) when a real right of the State has passed to or becomes vested in the Agency.

46. Transfer of personal servitude.—(1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution may be transferred from —

(a) the Minister to the Agency; or

(b) a water management institution to the Agency.

(2) The relevant Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude in terms of subsection (1).

47. Disposing of national water resources infrastructure by Agency.—No national water resources infrastructures may be transferred, sold or disposed of by the Agency without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.

48. Acquiring of State land.—(1) Upon request by the Agency, in consultation with the Minister and the Ministers of Public Works or Land Affairs, as the case may be, land may be made available by the State for transfer or registration of a servitude over any land for the carrying out of any function or duty by the Agency under this Act.

(2) Any disposal of a national water resources infrastructure under section 47, or acquisition under this section, must be in compliance with national policy.

49. Exemption from paying certain duties and fees.—(1) Despite any other law, the Agency or any other party is exempted from paying any transfer duty, tax, stamp duty, registration fees, office charges or any associated fees —

- (a) for the transfer of land to the Agency;
 - (b) for the transfer of real rights in land and other immovable property to the Agency;
 - (c) in connection with the acquisition of land, real rights in land and other immovable property by the Agency; or
 - (d) the transfer of personal rights to the Agency.
- (2) No duty will be paid by the Agency to secure—
- (a) any loan made by the Agency;
 - (b) the payment of moneys owing by the Agency;
 - (c) the mortgaging and pledging of property to secure the payment of the purchase price or any part thereof; or
 - (d) the issue or reissue of any kind of debenture or debenture stock or other security, with or without security.

(3) The exemption which provision is made for in this section applies to any subsidiary company established under section 57, provided that the State is the sole member and shareholder of that company.

CHAPTER 8

GENERAL POWERS OF MINISTER

50. Delegation by Minister.—(1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of this Act to the Director-General of the Department.

- (2) The Minister may not delegate the power to—
- (a) make a regulation; or
 - (b) appoint a member of the Board.
- (3) The Minister is not divested of any power nor relieved of any function or duty that is delegated.
- (4) Any delegation—

(a) does not prohibit the Minister from exercising that power or performing that duty; and

(b) may at any time be withdrawn or amended in writing by the Minister.

(5) The Minister may give a directive to the Director-General in relation to the delegation referred to in subsection (1).

(6) The Director-General must give effect to the directive.

51. Request to perform additional functions.—(1) The Minister may, in consultation with the Agency, authorise the Agency to exercise any additional power or to perform any additional function.

(2) Any additional power or function referred to in subsection (1) must be in writing setting out the funding arrangements, terms and conditions relating thereto.

52. Provision of information by Agency.—(1) The Minister may direct the Board to give to the Minister specific information.

(2) The Board must comply with such directive.

(3) The Agency must provide the Minister or any person authorised by the Minister with -

(a) the information which the Minister requires on the affairs and financial position of the Agency; and

(b) access to such books, accounts, documents and assets of the Agency as the Minister may require.

(4) The Minister may appoint a person to investigate the affairs or financial position of the Agency and recover the reasonable fees and disbursements of that person from the Agency.

(5) A member of the Board and an employee of the Board have the same duties towards the Minister or a person authorised by the Minister as the Agency has in subsection (1), except to the extent that a member of the Board or employee can show that he or she is unable to comply.

53. Taking possession of books, records and assets.—(1) The Minister or a person authorised by the Minister may enter into any premises of the Agency and take possession of any book, record or asset of the Agency where this is necessary in order to obtain any information to which the Minister is entitled to or for the purposes of any investigation that the Minister is entitled to conduct in terms of section 52.

54. Intervention by Minister.—(1) If the Agency-

(a) is in financial difficulties or is being otherwise mismanaged;

(b) is unable to exercise its powers or perform its functions or duties effectively due to dissension among Board members;

- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it has a duty to under this Act;
- (d) has failed to comply with any of the requirements of this Act, the National Water Act or any other Act where applicable;
- (e) has failed to comply with any directive given by the Minister under this Act; or
- (f) has obstructed the Minister, a person authorised by the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act,

the Minister may direct the Agency to take any action specified by the Minister.

(2) A directive contemplated in subsection (1)(e) must state -

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which those steps must be taken.

(3) If the Agency fails to remedy the situation within the given period, the Minister may-

- (a) after having given the Agency a reasonable opportunity to be heard; and
- (b) after having afforded the Agency a hearing on any submissions received,

take over the relevant power or duty of the Agency.

(4) If the Minister takes over a power or duty of the Agency-

- (a) the Minister may do anything which the Agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the Agency;
- (b) the Board of the Agency may not, while the Minister is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
- (c) an employee or a contractor of the Agency must comply with a directive given by the Minister;
- (d) as soon as the Minister is satisfied that the Agency is once more able to exercise its powers or perform its duties effectively, the Minister must cease exercising any such powers and performing any such duties; and

- (e) the Minister may recover from the Agency all reasonable costs incurred, including any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister, or any person under the control of the Minister.

55. Regulations by Minister.—(1) The Minister may make regulations on any matter that is necessary to facilitate the effective carrying out of this Act.

(2) The Minister must, within 30 days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces for considerations.

(3) In considering regulations—

- (a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly;
- (b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces,

whether the regulations—

- (i) are consistent with the Purpose of this Act;
- (ii) are within the powers conferred by this Act;
- (iii) are consistent with the Constitution; and
- (iv) require clarification.

(4) The National Council of Provinces may reject regulations tabled before the National Council of Provinces in terms of subsection (2) within 14 days after the date on which the regulations were tabled. If the National Council of Provinces reject any regulation, the rejection must be referred to the National Assembly for consideration.

(5) The National Assembly may, not later than the twentieth sitting day of the National Assembly after the date on which the regulations were tabled and after considering any rejection of a regulation by the National Council of Provinces, reject those regulations.

(6) If the National Assembly or the National Council of Provinces rejects any regulations, it must state its reasons.

(7) The Minister must, within 30 days after being informed in writing that the National Assembly has rejected any regulations, repeal or amend those regulations so as to address the matters raised by the National Assembly.

(8) Any regulation rejected by the National Assembly remain in force until repealed or amended.

CHAPTER 9**GENERAL AND MISCELLANEOUS PROVISIONS**

56. Transfer of staff.—(1) Employees and officers of the Department employed in terms of the Public Service Act or employees employed by the TCTA, may by agreement between the Agency and the Department or the TCTA, as the case may be, and with their consent, be transferred to the service of the Agency in a permanent capacity.

(2) On appointment—

- (a) a persons' salary or salary scale;
- (b) conditions of employment;
- (c) service benefits due to the person; or
- (d) retirement date,

may not be less favourable than those payable or due to the employee or officer by the Department or the TCTA, as the case may be, immediately before the date of the transfer.

(3)(a) Employees under contract to the Department in terms of section 76 of the National Water Act may by agreement between the Agency and the Department and with their consent, be transferred to the employ of the Agency.

(b) Upon transfer —

- (i) the terms and conditions may not be less favourable than the terms and conditions of any contract entered into under the National Water Act immediately before the date of transfer; and
- (ii) the provisions relating to pension funds and to accumulated vacation leave set out in subsections (4) to (9) below, apply to the employees referred to in subsection (3)(a), where applicable.

(4) An employee or officer of the Department who is a member of the Government Employees Pension Fund administered by the Department of Finance, must become a member of an own approved pension fund from the date of transfer.

(5) The period of pensionable service with the Department will be regarded and treated as the period of pensionable service benefits to be transferred to an approved pension fund which the employee or official becomes a member of from the date of transfer. The amount of the transfer benefit must be calculated according to the Rules of the Government Employees Pension Law of 1996 (Proclamation 21 of 1996) as amended.

(6) The claim of an employee or official against the new pension fund on the date of transfer of the employee or employee must not be less than the claim that the employee or official had against the pension fund administered by the Department of Finance.

(7) For the purpose of this section, pensionable service includes any pensionable service rendered or bought back by an employee or official while in the employment of the State.

(8) The Department or the TCTA, as the case may be, must at the date of transfer pay the cash value of any accumulated vacation leave due to an employee or officer of the Department or TCTA.

(9) Any payment or condition of transfer referred to in this section must be in compliance with national policy and any applicable bargaining council agreement.

(10) The Minister may with the consent of the person concerned, place any person in the service of the Department at the disposal of the Agency in compliance with section 15(3) of the Public Service Act, to perform services with the Agency for a period and terms that the Minister considers fit.

57. Subsidiary company.—The Agency may only establish a subsidiary company by —

- (a) a special resolution of the Board;
- (b) with approval of the Minister of Public Enterprises; and
- (c) in consultation with the Minister and the Ministers of Public Service and Administration and Finance.

58. Liquidation.—Despite the provisions of any other law, the Agency or any subsidiary company, as the case may be, may not be placed under judicial management or liquidation except on the authority of an Act of Parliament adopted specially for that purpose.

59. Security of information.—(1) A person may not disclose any information kept by the Agency unless—

- (a) it is in terms and subject to any law that compels or authorises the disclosure;
- (b) necessary for the proper functioning of the Agency; or
- (c) it is legally required for the purpose of monitoring, evaluating, investigating or considering any activity relating to the Agency.

(2) Contravention of this section constitutes an offence.

60. Documents relating to litigation against Agency.—The Agency must provide the Minister with copies of all pleadings, affidavits and other documents in its possession relating to any legal proceedings brought against the Agency.

61. Limitation of liability.—Neither the Agency nor any employee of the Agency is liable for any damage or loss caused by—

- (a) the exercise of any power or the performance of any duty under this Act; or
- (b) the failure to exercise any power, or perform any duty under this Act,

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

62. Transitional provisions and savings.—Anything done under the National Water Act or any law repealed by that Act that forms part of this Act, and which is still valid at the commencement of this Act, remains in force —

- (a) to the extent that it is not inconsistent with the National Water Act or this Act; and
- (b) until anything done under the National Water Act or this Act overrides it.

63. Amendment to the National Water Act.—

Section 1 (xxvi) of the National Water Act, 1998, is hereby amended by the substitution for the definition of “water management institution” of the following definition:

“ ‘water management institution’ means a catchment management agency, a water user association, a body responsible for international water management, the Agency as referred to in the South African National Water Resources Infrastructure Agency Limited Act, 2007 or any person who fulfils the function of a water management institution in terms of this Act;”.

64. State bound. —This Act binds all organs of State.

65. Offences and penalties—(1) Any person who—

- (a) fails to provide access to any book, accounts, documents or assets when required to do so under this Act;
- (b) fails to comply with a directive issued under this Act;
- (c) fails or refuses to give data or information, or gives false or misleading data or information when required to give information under this Act;
- (d) intentionally refuses to perform a duty, or obstruct any person in the exercise of any power or performance of any of that person’s duties in terms of this Act;
- (e) makes personal gains, accepts any unauthorised fee or reward, either directly or indirectly as a result of his or her position with the Agency;
- (f) uses the Agency’s name, logo or design without authority to do; or

(g) contravenes any section which contravention of is regarded as an offence,

is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and imprisonment.

(2) In the case of a second or subsequent conviction, is liable to a fine or imprisonment for a period not exceeding ten years or to both a fine and imprisonment.

66. Short title and commencement.—(1) This Act is called the South African National Water Resources Infrastructure Agency Limited Act, 2007 and comes into effect on a date determined by the President by Proclamation in the *Gazette*.

SCHEDULE

[Section 23]

PROCEEDINGS OF THE AGENCY BOARD

1. Convening meetings.—(1) Meetings must be held at the times and, subject to subitem (3), the places determined by the Board.

(2) The chairperson may convene a meeting at any time and must do so when requested by one third of the Board members.

(3) The chairperson may, from time to time, determine that a meeting be held by telephone, closed-circuit television or other means of communication.

2. Notices of meeting.—(1) Except as provided in subitem (3), the chairperson or the Chief Executive Officer must give at least seven days' written notice to Board members of any meeting convened at the request of one third of the Board members.

(2) A notice given in terms of sub-item (1) must-

(a) specify the date and time of the meeting; and

(b) state the general nature of the business of the meeting; and either

(c) state the place of the meeting; or

(d) specify the means of communication by which the meeting will be held.

(3) The Chief Executive Officer or chairperson must give notice of a meeting -

(a) in writing; and

(b) not less than seven days in advance except in cases of emergency or where every Board member agrees to accept short notice.

(4) If notice of a meeting is given the Board must, if requested by a Board member, allow that member to participate in the meeting in the manner contemplated in item 8.

(5) The proceedings of, or resolutions passed at a meeting of, a Board are not invalid merely because -

(a) the Chief Executive Officer omitted to send a notice to a Board member; or

(b) a member did not receive a notice of the meeting.

3. Quorum.—(1) No business may be conducted at a meeting unless a quorum of members is present.

(2) A quorum is a majority of the members to attend a meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.

(4) If a quorum is not present at an adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is automatically cancelled.

4. Adjournment.—(1) The person presiding at a meeting at which a quorum is present—

(a) may adjourn the meeting with the meeting's consent; and

(b) must adjourn the meeting if the meeting so directs.

(2) An adjourned meeting must be held at the time and place agreed to by the meeting before it is adjourned.

(3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

5. Person presiding at meetings.—(1) Subject to item 7(4)-

(a) the chairperson must preside at all meetings of the Board at which the chairperson is present; and

(b) in the absence of the chairperson, the deputy chairperson must preside at a meeting of the Board.

(2) If neither the chairperson nor the deputy chairperson is present, the meeting must appoint a Board member present at the meeting to preside, unless the Minister has appointed a chairperson in terms of section 13(2) of the Act.

6. Voting.—(1) A question arising at a meeting must be determined by a majority of votes of Board members present and voting.

(2) If voting on a question is equal, the person presiding has a casting vote as well as a deliberative vote.

7. Minutes.—(1) The Chief Executive Officer must ensure that complete and accurate minutes of each meeting are kept.

(2) Draft minutes of each meeting must -

(a) be presented to the next meeting of the Board for amendment, if necessary, and adoption; and

(b) be entered in a durable, bound volume of minutes.

(3) The person presiding at the next meeting must sign and date an affirmation to the effect that any minutes of the previous meeting have been adopted by the meeting.

(4) The chairperson of the Board must provide the Minister with a summary of the minutes after every Board meeting.

8. Participation in meetings.—(1) The Board may, by resolution, permit Board members to participate in a particular meeting by telephone, closed-circuit television or other means of communication.

(2) A Board member who participates in a meeting under permission given under sub-item (1) must be regarded as being present at the meeting.

9. Resolutions without meetings.—(1) If the majority of the Board members for the time being (other than a Board member who is absent from South Africa at the time) sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms must be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last member signs the document.

(2) For the purpose of sub-item (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more Board members, must be taken to be one document.

(3) A document referred to in this item may be in an acceptable electronic format.

10. Execution of documents.—(1) Subject to sub-item (2), a document is duly executed by the Board if it is executed on behalf of the Board by any two Board members.

(2) The Board may, either generally or in a particular case or class of cases, by resolution authorise the Chief Executive Officer to execute documents on behalf of the Board.

11. Power to regulate proceedings.—Subject to this Schedule, the Board may regulate its own proceedings.
