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VAN
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We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

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DEPARTMENT OF HEALTH

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GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

DEPARTMENT OF WATER AFFAIRS AND FORESTRY
DEPARTEMENT VAN WATERWESE EN BOSBOU

No. 277

24 March 2000

TRANS-CALEDON TUNNEL AUTHORITY

NOTICE IN TERMS OF CHAPTER 10 OF THE NATIONAL WATER ACT, 1998

By virtue of the powers vested in me in terms of sections 102 and 103 of the National Water Act, 1998 (Act 36 of 1998), I, Ronald Kasrils, Minister of Water Affairs and Forestry, hereby amend Government Notice No. 2631 dated 12 December 1986 by replacing the Schedule to that Government Notice with the following Schedule.

RONALD KASRILS
MINISTER OF WATER AFFAIRS AND FORESTRY

SCHEDULE

Definitions

1. In this Schedule, unless the context otherwise indicates –

“Authority” means the Trans-Caledon Tunnel Authority referred to in clause 2;

“Board of Directors” means the Board of Directors referred to in clause 5 (1);

“Chief Executive Officer” means the person appointed as the Chief Executive Officer of the Authority in terms of clause 17;

“Commission” means the Lesotho Highlands Water Commission established in terms of the Treaty;

“director” means a member of the Board of Directors;

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

“National Water Act” means the National Water Act, 1998 (Act 36 of 1998);

“non-Treaty functions” means those functions which the Authority must perform in terms of clause 3 (b).

“Project” means the Lesotho Highlands Water Project as provided for in the Treaty;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act 1 of 1999);

“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;

“Treaty functions” means those functions which the Authority must perform in terms of clause 3 (a), including any specific powers and duties assigned to the Authority by the Treaty.

Part 1: Continued existence, objects, functions and powers of Trans-Caledon Tunnel Authority

Continued existence

2. The Trans-Caledon Tunnel Authority established in terms of Government Notice No. 2631 dated 12 December 1986 continues as a body corporate without a break in its corporate existence despite the replacement of the Schedule to that Government Notice with the Schedule to this Government Notice.

Objects

3. The objects of the Authority are –
- (a) 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
 - (b) to perform the functions set out in clause 24 (a) and (b) and any other additional functions which the Authority may be required to perform in terms of a direction by the Minister under section 103 (2) of the National Water Act.

Functions and powers

4. The Authority must subject to the other provisions of this Schedule do all that is necessary or expedient to achieve its objects mentioned in clause 3, and may for this purpose –
- (a) appoint its own staff, subject to clause 19;

- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment for or on behalf of the Authority;
- (c) acquire or dispose of any right in or to movable or immovable property;
- (d) open and operate its own bank accounts;
- (e) invest any of its money, subject to clause 27;
- (f) borrow money, subject to clause 26;
- (g) insure itself against –
 - (i) any loss, damage or risk; or
 - (ii) any liability the Authority may incur in the application of this Schedule;
- (h) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
- (i) institute or defend any legal action;
- (j) collect and disseminate all relevant information; and
- (k) exercise any other power included in section 104 of the National Water Act.

Part 2: Board of Directors

Board of Directors to govern Authority

5. (1) The Authority is governed by a Board of Directors consisting of –
- (a) persons appointed by the Minister; and
 - (b) the Chief Executive Officer.
- (2) The Minister –
- (a) determines the number of persons to be appointed in terms of subclause (1) (a); and
 - (b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only by not filling a vacancy when a vacancy arises.

(3) The Board of Directors takes all decisions of the Authority except those assigned –

- (a) to another functionary of the Authority by this Schedule or the Treaty; or
- (b) by the Board to another functionary in terms of clause 16.

Qualifications

6. (1) A director must –

- (a) have appropriate managerial, technical or financial qualifications and experience; and
- (b) otherwise be a fit and proper person to hold office as a member of the Board.

(2) A person who has or acquires a private business interest that conflicts with the interests of the Authority, may not become or remain a director.

Chairperson and Deputy Chairperson

7. (1) The Minister must appoint one of the directors appointed in terms of clause 5 (1) (a) as the Chairperson and another of such directors as the Deputy Chairperson of the Board of Directors.

(2) The Deputy Chairperson acts as chairperson if –

- (a) the Chairperson is absent or unable to perform the functions of chairperson; or
- (b) the office of chairperson is vacant.

Terms of office

8. (1) A director referred to in clause 5 (1) (a) is appointed for a term not exceeding three years.

(2) The Chairperson and Deputy Chairperson are appointed for the remaining part of their current terms or such shorter term as the Minister may determine.

(3) There is no limit to the number of terms the Chairperson, the Deputy Chairperson or a director referred to in clause 5 (1) (a) may serve.

Conditions of appointment

9. (1) The Minister determines the conditions of appointment of the Chairperson, the Deputy Chairperson and the other directors referred to in clause 5 (1) (a) who are not officials in the public service or otherwise in public office, taking into account –

- (a) the conditions of appointment of members of other statutory institutions; and
- (b) any applicable directives of the National Treasury.

(2) The Chairperson, the Deputy Chairperson and the other directors referred to in clause 5 (1) (a) are appointed part-time.

(3) Any remuneration and allowances determined in terms of subclause (1) must be paid from the funds of the Authority.

Conduct of directors

10. (1) A director –

- (a) must perform the functions of office in good faith and without favour or prejudice;
- (b) must disclose to the Board of Directors any personal or private business interest that that director or any spouse, partner or close family member may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the director's interest in the matter is trivial or irrelevant;
- (c) may not use the position or privileges of a director for private gain or to improperly benefit another person;
- (d) must comply with an internal code of conduct which the Authority must establish for directors and staff; and

- (e) may not act in any other way that compromises the credibility or integrity of the Authority.

(2) A director who contravenes or fails to comply with subparagraph (1) is guilty of misconduct.

Termination of membership

11. (1) A person referred to in clause 5 (1) (a) ceases to be a director when that person –

- (a) is no longer eligible in terms of clause 6 to be a director;
- (b) resigns; or
- (c) is removed from office in terms of subclause (3).

(2) A director referred to in clause 5 (1) (a) may resign by giving at least three month's written notice to the Minister, but the Minister may accept a shorter notice period in a specific case.

(3) The Minister may remove a director referred to in clause 5 (1) (a) from office on the ground of misconduct, incompetence or incapacity, or on any other reasonable ground.

Filling of vacancies

12. A vacancy in the Board of Directors is filled –

- (a) in the case of the Chairperson or Deputy Chairperson, by appointing another director as the Chairperson or Deputy Chairperson of the Board; and
- (b) in the case of a director referred to in clause 5 (1) (a), by appointing a person as a director in terms of that clause.

Part 3: Operating procedures of Board of Directors

Meetings

13. (1) The Chairperson decides when and where the Board of Directors meets, but a majority of the directors may request the Chairperson in writing to convene a Board meeting at a time and place set out in the request.

(2) The Chairperson or the Deputy Chairperson presides at meetings of the Board, but if both are absent from a meeting, the directors present must elect another director to preside at the meeting.

Procedures

14. The Board of Directors may determine its own procedures.

Quorum and decisions

15. (1) A majority of all the directors constitutes a quorum for a meeting of the Board of Directors.

(2) A matter before the Board is decided by the votes of a majority of the directors present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the director presiding at the meeting must exercise a casting vote in addition to that director's vote as a director.

Assignment of powers and duties

16. (1) When necessary for the proper performance of its functions, the Board of Directors may –

- (a) delegate, subject to clause 26 (3), any of the Board's powers to –
 - (i) a director;
 - (ii) a committee of the Board; or
 - (iii) the Chief Executive Officer; or

- (b) instruct any such director or committee, or the Chief Executive Officer, to perform any of the Board's duties.

(2) A delegation or instruction in terms of subclause (1) –

- (a) is subject to any limitations, conditions and directions the Board may impose;
- (b) must be in writing;
- (c) may include the power to sub-delegate; and
- (d) does not divest the Board of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Board may confirm, vary or revoke any decision taken in consequence of a delegation, sub-delegation or instruction in terms of this clause, subject to any rights that may have accrued to a person as a result of the decision.

Part 4: Administration

Appointment of Chief Executive Officer

17. (1) The Board of Directors must appoint a person determined by the Board with the concurrence of the Minister, as the Chief Executive Officer of the Authority.

(2) The person appointed as the Chief Executive Officer –

- (a) must have appropriate qualifications and experience for such appointment; and
- (b) is employed subject to the terms and conditions of employment determined by the Board of Directors.

Responsibilities of Chief Executive Officer

18. (1) The Chief Executive Officer is the head of the Authority's administration.

(2) As head of the Authority's administration, the Chief Executive Officer is responsible for –

- (a) implementing the policies and carrying out the decisions of the Board of Directors;
- (b) the formation and development of an efficient administration;
- (c) the organisation, control and management of the staff; and
- (d) the exercise of those of the Authority's powers -
 - (i) assigned to the Chief Executive Officer in terms of this Schedule; or
 - (ii) delegated to the Chief Executive Officer in terms of clause 16.

(3) If the Chief Executive Officer is not also the Head of Operation and Maintenance referred to in clause 22 (1), the Chief Executive Officer must provide the Head of Operation and Maintenance with the necessary administrative and financial means to fulfil the functions of that office.

Employment of staff

19. (1) The Chief Executive Officer -

- (a) within the financial limits set by the Board of Directors, must determine a staff establishment necessary for the work of the Authority, including to provide assistance with the general implementation of the Treaty; and
- (b) may appoint persons in posts on the staff establishment.

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

(3) (a) A person in the service of another organ of state may be seconded to the Authority by agreement between the Authority and such organ of state.

(b) Persons seconded to the Authority perform their functions under the supervision of the Chief Executive Officer.

(4) A person in the service of the Authority may be seconded to another organ of state by agreement between the Authority and such organ of state.

Part 5: Performance of functions

Different functions to be managed as different units

20. (1) The Authority must manage its Treaty functions separately from its non-Treaty functions and account for them separately as required by section 105 (1) of the National Water Act.

(2) The Authority's Treaty responsibilities are not applicable to its non-Treaty functions.

Treaty functions

General obligation

21. The Authority must –

- (a) perform its Treaty functions in accordance with Articles 8A and 9 of the Treaty; and
- (b) comply with the requirements the Treaty imposes on it when performing its Treaty functions.

Appointment of Head of Operation and Maintenance

22. (1) For the purpose of performing its Treaty functions, the Authority, in consultation with the Commission, must appoint an employee of the Authority as the Head of Operation and Maintenance.

(2) The Head of Operation and Maintenance functions within the administration of the Authority.

Functions of Head of Operation and Maintenance

23. The Head of Operation and Maintenance –

- (a) must establish the operational policies of the Authority in implementing the Treaty functions;
- (b) must perform the functions assigned to the office of Head of Operation and Maintenance in terms of Article 8A of the Treaty;
- (c) is accountable to the Commission in respect of the Authority's Treaty functions;
- (d) must liaise with the Commission in order to enable the Commission to perform its monitoring and advisory functions in terms of the Treaty; and
- (e) must in relation to the Authority's Treaty functions comply with the policies, procedures and expenditure limits determined by the Commission and recorded in the Governance Manual envisaged in Article 9 (11) (c) of the Treaty.

Non-Treaty functions

List of non-Treaty functions

24. The Authority has the following non-Treaty functions, namely -

- (a) to fulfil all the Republic's financial obligations in terms of or resulting from the Treaty, including –
 - (i) the raising of money; and
 - (ii) liability and financial risk management;
- (b) to receive all water delivered at the Designated Delivery Point (as defined in Article 1 of the Treaty) by the Lesotho Highlands Development Authority in terms of the Treaty, and to release such water at the Designated Outlet Point (as defined in Article 1 of the Treaty) to the Department of Water Affairs and Forestry;
- (c) to perform any additional functions incidental to the release of such water to the Department of Water Affairs and Forestry; and
- (d) to perform any other functions that may be assigned to the Authority in terms of section 103 (2) of the National Water Act.

Part 6: Financial matters

Funding of Authority

25. (1) The funds of the Authority consists of –

- (a) income derived by it from the performance of its Treaty and non-Treaty functions;
- (b) loans raised by it in terms of clause 4 (f);
- (c) income derived by it from investments; and
- (d) money appropriated for its purposes by Parliament, provided that Parliament will only be approached for an appropriation if funds derived from the sources mentioned in paragraphs (a), (b) and (c) are insufficient to enable the Authority to comply with clause 24 (a).

(2) The Chief Executive Officer must without delay notify the Director-General of the Department of Water Affairs and Forestry if the funds derived from the sources mentioned in subclause (1) (a), (b) and (c) are insufficient to enable the Authority to comply with clause 24 (a).

Borrowing of money by Authority

26. (1) The Authority may, subject to subclauses (2), (3) and (4) -

- (a) raise money by way of loans, including bank overdrafts, within a borrowing limit approved by the Minister acting with the concurrence of the Minister of Finance;
- (b) issue any stock, debentures or other securities for the purposes of such loans; and
- (c) purchase any stock, debentures or other securities issued by it, in order to promote the marketing of such stock, debentures or other securities.

(2) The Authority may borrow money -

- (a) to meet the Republic's financial obligations in terms of or resulting from the Treaty;
- (b) to finance any capital project necessary for the performance of any of its functions;
- (c) to pay interest on or repaying a loan raised by it;
- (d) to meet any of its current expenses, including administrative or incidental expenses; and
- (e) for any other purpose necessary for the performance of any of its functions.

(3) (a) Only the Board of Directors may on behalf of the Authority borrow money or issue any guarantee, indemnity or security for the purposes of money borrowed by it.

(b) The Board may not delegate this power except with the prior written approval of the Minister of Finance given in terms of section 66 (6) of the Public Finance Management Act.

(4) The Authority –

- (a) must annually submit to the Minister of Finance a borrowing programme for the year;
- (b) may not borrow money in a foreign currency above the limit that may be prescribed by regulation in terms of section 66 (7) of the Public Finance Management Act;
- (c) may not conclude a borrowing agreement conditional on the issue of a guarantee, indemnity or security which will bind the National Revenue Fund before the requirements of section 70 of the Public Finance Management Act have been met; and
- (d) must ensure that its obligations under a loan are fulfilled on the due date.

Investments by Authority

27. The Authority may invest any of its funds not immediately required by the Authority –

- (a) subject to any investment policy that may be prescribed in terms of section 7 (4) of the Public Finance Management Act; and
- (b) in a manner approved by the Minister.

Financial accountability

28. (1) The Board of Directors is the accounting authority of the Authority for the purposes of the Public Finance Management Act, and must for this purpose comply with the provisions of that Act to the extent that that Act is applicable to the Authority.

- (2) The Chief Executive Officer must –
- (a) keep the Board informed of all issues relevant to the financial management of the Authority; and
- (b) assist the Board to comply with its responsibilities in terms of the Public Finance Management Act.

Part 7: Miscellaneous

Application of Schedule 4 of Act 36 of 1998

29. Schedule 4 of the National Water Act, does not apply to the Authority, except item 17.

Disestablishment of Authority

30. (1) If the Authority is disestablished, the Minister must appoint a liquidator to wind up the affairs of the Authority.

(2) The liquidator must in so far as is appropriate follow the procedures applicable to the winding up of companies in terms of the Companies Act, 1973 (Act 61 of 1973), when performing the task mentioned in subclause (1).

(3) Any surplus derived from the liquidation accrues to the national government.

Transitional provisions

31. A person who immediately before this Government Notice took effect –

- (a) held office as the Chairperson, the Deputy Chairperson or a director of the Authority, continues in such office for the unexpired portion of that person's term; and
- (b) was in the employ of the Authority as the Chief Executive Officer or holder of another post on the staff establishment of the Authority, continues without a break in such employment.

Commencement

32. This Government Notice takes effect on the date of its publication in the *Government Gazette*.

TRANS-CALEDON TONNELOWERHEID
KENNISGEWING INGEVOLGE HOOFSTUK 10 VAN DIE NASIONALE
WATERWET, 1998

Uit hoofde van die bevoegdhede my verleen ingevolge artikels 102 en 103 van die Nasionale Waterwet, 1998 (Wet 36 van 1998), wysig ek, Ronald Kasrils, Minister van Waterwese en Bosbou, hierby Goewermentskennisgewing Nr. 2631 gedateer 12 Desember 1986 deur die Bylae by daardie Goewermentskennisgewing deur die volgende Bylae te vervang.

RONALD KASRILS
MINISTER VAN WATERWESE EN BOSBOU

BYLAE**Woordomskrywings**

1. In hierdie Bylae, tensy uit die samehang anders blyk, beteken –

“direkteur” ‘n lid van die Raad van Direkteure;

“Hoof-uitvoerende Beampte” die persoon ingevolge klousule 17 as Hoof-uitvoerende Beampte van die Owerheid aangestel;

“Kommissie” die Lesotho Hoogland Waterkommissie ingevolge die Verdrag ingestel;

“Minister” die Minister van Waterwese en Bosbou;

“Nasionale Waterwet” die Nasionale Waterwet, 1998 (Wet 36 van 1998);

“nie-Verdragsfunksies” daardie funksies wat die Owerheid ingevolge klousule 3 (b) moet uitvoer;

“Owerheid” die Trans-Caledon Tonnelowerheid bedoel in klousule 2;

“Projek” die Lesotho Hoogland Waterprojek waarvoor in die Verdrag voorsiening gemaak word;

“Raad van Direkteure” die Raad van Direkteure bedoel in klousule 5 (1);

“Verdrag” die Verdrag op die Lesotho Hoogland Waterprojek tussen die Regering van die Republiek van Suid-Afrika en die Regering van die Koninkryk van Lesotho onderteken op 24 Oktober 1986, met inbegrip van enige latere wysigings;

“Verdragsfunksies” daardie funksies wat die Owerheid ingevolge klousule 3 (a) moet verrig, met inbegrip van enige spesifieke bevoegdhede en pligte wat die Verdrag aan die Owerheid opdra;

“Wet op Openbare Finansiële Bestuur” die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999).

Deel 1: Voortbestaan, oogmerke, funksies en bevoegdhede van Trans-Caledon Tonnelowerheid

Voortbestaan

2. Die Trans-Caledon Tonnelowerheid, ingestel ingevolge Goewermentskennisgewing Nr. 2631 gedateer 12 Desember 1986, bestaan sonder onderbreking in sy regs persoonlikheid voort as ‘n regspersoon ondanks die vervanging van die Bylae by daardie Goewermentskennisgewing deur die Bylae by hierdie Goewermentskennisgewing.

Oogmerke

3. Die oogmerke van die Owerheid is –
- (a) om daardie deel van die Projek wat in die Republiek van Suid-Afrika geleë is, ooreenkomstig die bepalings van die Verdrag te implementeer, te bedryf en in stand te hou; en
 - (b) om die funksies te verrig wat in klousule 24 (a) en (b) vermeld word asook enige ander bykomende funksies wat van die Owerheid vereis mag word ingevolge ‘n opdrag deur die Minister kragtens artikel 103 (2) van die Nasionale Waterwet uitgereik.

Funksies en bevoegdhede

4. Die Owerheid moet, behoudens die ander bepalings van hierdie Bylae, alles doen wat nodig of wenslik is om sy oogmerke vermeld in klousule 3 te bereik, en kan vir hierdie doel –
- (a) sy eie personeel behoudens klousule 19 aanstel;

- (b) by ooreenkoms die dienste van enige persoon, met inbegrip van enige staatsorgaan, verkry vir die verrigting vir of namens die Owerheid van enige spesifieke handeling, taak of opdrag;
- (c) enige reg in of op roerende of onroerende eiendom verkry of daaroor beskik;
- (d) sy eie bankrekenings open en bedryf;
- (e) sy geld behoudens klousule 27 belê;
- (f) geld behoudens klousule 26 leen;
- (g) homself verseker teen –
 - (i) enige verlies, skade of risiko; of
 - (ii) enige aanspreeklikheid wat die Owerheid mag oploop met betrekking tot die toepassing van hierdie Bylae;
- (h) enige regshandeling aangaan, met inbegrip van handeling in samewerking met of ten behoeve van enige ander persoon of staatsorgaan;
- (i) enige regsaksie instel of verdedig;
- (j) alle tersaaklike inligting insamel en versprei; en
- (k) enige ander bevoegdheid bedoel in artikel 104 van die Nasionale Waterwet uitoefen.

Deel 2: Raad van Direkteure

Raad van direkteure bestuur Owerheid

5. (1) Die Owerheid word bestuur deur 'n Raad van Direkteure bestaande uit –

- (a) persone deur die Minister aangestel; en
- (b) die Hoof-uitvoerende Beampte.

(2) Die Minister –

- (a) bepaal die aantal persone wat ingevolge subklousule (1) (a) aangestel moet word; en
- (b) kan van tyd tot tyd die getal wysig wat ingevolge paragraaf (a) bepaal is, maar 'n vermindering in die getal kan slegs bewerkstellig word deur nie 'n vakature te vul wanneer dit ontstaan nie.

(3) Die Raad van Direkteure neem al die besluite van die Owerheid, behalwe daardie besluite wat –

- (a) deur hierdie Bylae of die Verdrag aan 'n ander funksionaris van die Owerheid toegewys is; of
- (b) deur die Raad ingevolge klousule 16 aan 'n ander funksionaris toegewys is.

Kwalifikasies

6. (1) 'n Direkteur moet –

- (a) oor toepaslike bestuurs-, tegniese of finansiële kwalifikasies bekik; en
- (b) andersins 'n persoon wees wat geskik en bevoeg is om die amp van lid van die Raad te beklee.

(2) 'n Persoon wat 'n private besigheidsbelang wat bots met die belange van die Owerheid, het of verkry, mag nie 'n direkteur word of as direkteur aanbly nie.

Voorsitter en Ondervoorsitter

7. (1) Die Minister moet een van die direkteure ingevolge klousule 5 (1) (a) aangestel, as Voorsitter en 'n ander as Ondervoorsitter van die Raad van Direkteure aanstel.

(2) Die Ondervoorsitter tree as voorsitter op wanneer –

- (a) die Voorsitter afwesig is of nie die funksies van voorsitter kan uitvoer nie; of
- (b) die amp van voorsitter vakant is.

Ampstermyne

8. (1) 'n Direkteur bedoel in klousule 5 (1) (a) word aangestel vir 'n ampstermyn van nie meer as drie jaar nie.

(2) Die Voorsitter en Ondervoorsitter word aangestel vir die oorblywende deel van hulle lopende ampstermyne of die korter termyn wat die Minister mag bepaal.

(3) Daar is geen beperking op die aantal ampstermyne wat die Voorsitter, die Ondervoorsitter of 'n direkteur bedoel in klousule 5 (1) (a) mag dien nie.

Aanstellingsvoorwaardes

9. (1) Die Minister bepaal die aanstellingsvoorwaardes van die Voorsitter, die Ondervoorsitter en die direkteure bedoel in klousule 5 (1) (a) wat nie beamptes in diens van die staat of andersins in 'n openbare amp is nie, met inagneming van –

- (a) die voorwaardes van aanstelling van lede van ander statutêre instellings; en
- (b) enige toepaslike instruksies van die Nasionale Tesourie.

(2) Die Voorsitter, die Ondervoorsitter en die ander direkteure bedoel in klousule 5 (1) (a) beklee hul amp deelyds.

(3) Enige besoldiging en toelaes ingevolge subklousule (1) bepaal, word uit die fondse van die Owerheid betaal.

Gedrag van direkteure

10. (1) 'n Direkteur –

- (a) moet die pligte van die amp in goeie trou en sonder begunstiging of vooroordeel uitvoer;
- (b) moet aan die Raad van Direkteure enige persoonlike- of private besigheidsbelang wat daardie direkteur, of enige gade, sakegenoot of intieme familielid, mag hê in enige aangeleentheid voor die Raad, openbaar, en van die verrigtinge van die Raad onttrek wanneer daardie aangeleentheid oorweeg word, tensy die Raad beslis dat die direkteur se belang in die aangeleentheid onbeduidend of irrelevant is;
- (c) mag nie die amp of voorregte van 'n direkteur aanwend om private voordeel daaruit te trek, of om 'n ander persoon onbehoorlik te bevoordeel nie;
- (d) moet voldoen aan 'n interne gedragskode wat die Owerheid vir direkteure en personeel moet opstel; en

- (e) mag nie op enige ander manier optree wat die geloofwaardigheid of integriteit van die Owerheid in die gedrang bring nie.

(2) 'n Direkteur wat subklousule (1) oortree of nie daaraan voldoen nie, is aan wangedrag skuldig.

Beëindiging van lidmaatskap

11. (1) 'n Persoon bedoel in klousule 5 (1) (a) hou op om 'n direkteur te wees wanneer daardie persoon –

- (a) ingevolge klousule 6 nie meer bevoeg is om 'n direkteur te wees nie;
- (b) bedank; of
- (c) ingevolge subklousule (3) uit die amp verwyder word.

(2) 'n Direkteur bedoel in klousule 5 (1) (a) kan bedank deur ten minste drie maande skriftelik kennis aan die Minister te gee, maar die Minister kan in 'n spesifieke geval 'n korter kennisgewingstydperk aanvaar.

(3) Die Minister kan 'n direkteur bedoel in klousule 5 (1) (a) op grond van wangedrag, onbekwaamheid of onbevoegdheid, of weens enige ander redelike grond, uit die amp verwyder.

Vul van vakatures

12. 'n Vakature in die Raad van Direkteure word gevul –

- (a) in geval van die Voorsitter of Onder-voorsitter, deur 'n ander direkteur as Voorsitter of Onder-voorsitter van die Raad aan te stel; en
- (b) in geval van 'n direkteur bedoel in klousule 5 (1) (a), deur 'n persoon ingevolge daardie klousule as direkteur aan te stel.

Deel 3: Werkswyse van Raad van Direkteure

Vergaderings

13. (1) Die Voorsitter besluit wanneer en waar die Raad van Direkteure vergader, maar 'n meerderheid van die direkteure mag die Voorsitter skriftelik versoek om 'n Raadsvergadering te belê op 'n tyd en plek in die versoek vermeld.

(2) Die Voorsitter of Ondervoorsitter sit by Raadsvergaderings voor, maar as albei van 'n vergadering afwesig is, moet die direkteure wat teenwoordig is 'n ander direkteur kies om by die vergadering voor te sit.

Prosedure

14. Die Raad van Direkteure bepaal sy eie prosedure.

Kworum en besluite

15. (1) 'n Meerderheid van al die direkteure maak 'n kworum vir 'n vergadering van die Raad van Direkteure uit.

(2) 'n Aangeleentheid voor die Raad word beslis deur 'n meerderheidstem van die direkteure wat by die vergadering teenwoordig is.

(3) Indien daar oor enige aangeleentheid voor die Raad 'n staking van stemme is, moet die direkteur wat by die vergadering voorsit 'n beslissende stem benewens daardie direkteur se stem as 'n direkteur uitbring.

Toewysing van bevoegdhede en pligte

16. (1) Wanneer dit nodig is vir die behoorlike verrigting van sy funksies, kan die Raad van Direkteure –

(a) behoudens klousule 26 (3), enige van die Raad se bevoegdhede delegeer aan –

- (i) 'n direkteur;
- (ii) 'n kommitee van die Raad; of
- (iii) die Hoof-uitvoerende Beampte; of

- (b) aan so 'n direkteur of kommitee, of die Hoof-uitvoerende Beampte, opdrag gee om enige van die Raad se pligte uit te voer.

(2) 'n Delegasie of opdrag ingevolge subklousule (1) –

- (a) is onderworpe aan enige beperkinge, voorwaardes en voorskrifte wat die Raad mag opleë;
- (b) moet op skrif wees;
- (c) kan die bevoegdheid insluit om te sub-delegeer; en
- (d) onthef die Raad nie van die verantwoordelikheid betreffende die uitoefening van die bevoegdheid of die uitvoer van die plig nie.

(3) Die Raad kan enige besluit ingevolge hierdie klousule geneem uit hoofde van 'n delegasie, sub-delegasie of opdrag, bekragtig, wysig of terugtrek behoudens enige regte wat 'n persoon as gevolg van die besluit mag toegeval het.

Deel 4: Administrasie

Aanstelling van Hoof-uitvoerende Beampte

17. (1) Die Raad van Direkteure moet 'n persoon deur die Raad met instemming van die Minister bepaal, as Hoof-uitvoerende Beampte van die Owerheid aanstel.

(2) Die persoon as Hoof-uitvoerende Beampte aangestel –

- (a) moet oor toepaslike kwalifikasies en ondervinding vir sodanige aanstelling beskik; en
- (b) word aangestel behoudens die diensvoorwaardes wat die Raad bepaal.

Verantwoordelikhede van Hoof-uitvoerende Beampte

18. (1) Die Hoof-uitvoerende Beampte is die hoof van die Owerheid se administrasie.

(2) As hoof van die Owerheid se administrasie, is die Hoof-uitvoerende Beampte verantwoordelik vir –

- (a) die implementering van die beleid en die uitvoer van die besluite van die Raad van Direkteure;
- (b) die instelling en ontwikkeling van 'n doeltreffende administrasie;
- (c) die organisering, beheer en bestuur van die personeel; en
- (d) die uitoefening van daardie bevoegdhede van die Owerheid –
 - (i) wat ingevolge hierdie Bylae aan die Hoof-uitvoerende Beampte toegewys is; of
 - (ii) wat ingevolge klousule 16 aan die Hoof-uitvoerende Beampte gedelegeer is.

(3) Indien die Hoof-uitvoerende Beampte nie ook die Hoof van Bedryf en Instandhouding bedoel in klousule 22 (1) is nie, moet die Hoof- uitvoerende Beampte die Hoof van Bedryf en Instandhouding van die nodige administratiewe en finansiële middele voorsien om die funksies van daardie amp te verrig.

Indiensneming van personeel

19. (1) Die Hoof-uitvoerende Beampte –

- (a) moet binne die finansiële perke deur die Raad van Direkteure vasgestel, 'n personeeldiensstaat bepaal wat vir die werksaamhede van die Owerheid nodig is, insluitende om bystand met die algemene uitvoering van die Verdrag te verleen; en
- (b) kan persone in poste op die diensstaat aanstel.

(2) 'n Werknemer van die Owerheid word in diens gehou op die diensvoorwaardes deur die Hoof-uitvoerende Beampte bepaal ooreenkomstig die beleid van en binne die finansiële perke vasgestel deur die Raad van Direkteure.

(3) (a) 'n Persoon in diens van 'n ander staatsorgaan kan by ooreenkoms tussen die Owerheid en so 'n staatsorgaan aan die Owerheid gesekondeer word.

(b) Persone aan die Owerheid gesekondeer, verrig hul funksies onder toesig van die Hoof-uitvoerende Beampte.

(4) 'n Persoon in diens van die Owerheid mag by ooreenkoms tussen die Owerheid en 'n ander staatsorgaan na daardie staatsorgaan gesekondeer word.

Deel 5: Verrigting van funksies

Verskillende funksies om as verskillende eenhede bestuur te word

20 (1) Die Owerheid moet sy Verdragsfunksies afsonderlik van sy nie-Verdragsfunksies bestuur en afsonderlik daarvan rekenskap gee soos deur artikel 105 (1) van die Nasionale Waterwet vereis.

(2) Die Owerheid se verantwoordelikhede ingevolge die Verdrag is nie op die nie-Verdragsfunksies van toepassing nie.

Verdragsfunksies

Algemene verpligting

21. Die Owerheid moet –

- (a) sy Verdragsfunksies ooreenkomstig Artikel 8A en 9 van die Verdrag verrig; en
- (b) voldoen aan die vereistes wat die Verdrag hom oplê wanneer die Owerheid sy Verdragsfunksies verrig.

Aanstelling van Hoof van Bedryf en Instandhouding

22. (1) Vir die doel van die verrigting van sy Verdragsfunksies moet die Owerheid, in oorleg met die Kommissie, 'n werknemer van die Owerheid as die Hoof van Bedryf en Instandhouding aanstel.

(2) Die Hoof van Bedryf en Instandhouding funksioneer binne die administrasie van die Owerheid.

Funksies van Hoof van Bedryf en Instandhouding**23. Die Hoof van Bedryf en Instandhouding –**

- (a) moet die bedryfsbeleid van die Owerheid met betrekking tot die implementering van die Verdragsfunksies vasstel;
- (b) moet die funksies uitvoer wat ingevolge Artikel 8A van die Verdrag aan die amp van Hoof van Bedryf en Instandhouding toegewys is;
- (c) is aan die Kommissie verantwoordingspligtig ten opsigte van die Owerheid se Verdragsfunksies;
- (d) moet met die Kommissie skakel ten einde die Kommissie in staat te stel om sy monitorings- en raadgevende funksies ingevolge die Verdrag te verrig; en
- (e) moet met betrekking tot die Owerheid se Verdragsfunksies voldoen aan die beleid, prosedures en kostebeperkings wat deur die Kommissie bepaal en opgeneem word in die Bestuurshandleiding beoog in Artikel 9 (11) (c) van die Verdrag.

Nie-Verdragsfunksies**Lys van nie-Verdragsfunksies****24. Die Owerheid het die volgende nie-Verdragsfunksies, naamlik –**

- (a) om aan al die Republiek se finansiële verpligtinge ingevolge of voortspruitende uit die Verdrag, te voldoen, met inbegrip van –
 - (i) die leen van geld; en
 - (ii) skuld en finansiële risikobestuur;
- (b) om al die water deur die Lesotho Hoogland Ontwikkelingsowerheid gelewer by die Aangewese Leweringspunt (soos omskryf in Artikel 1 van die Verdrag), te ontvang, en om daardie water by die Aangewese Uitlaatpunt (soos omskryf in Artikel 1 van die Verdrag), aan die Departement van Waterwese en Bosbou te lewer;
- (c) om enige bykomende funksies insidenteel tot die lewering van daardie water aan die Departement van Waterwese en Bosbou te verrig; en
- (d) om enige ander funksies te verrig wat ingevolge artikel 103 (2) van die Nasionale Waterwet aan die Owerheid opgedra mag word.

Deel 6: Finansiële aangeleenthede

Befondsing van Owerheid

25. (1) Die fondse van die Owerheid bestaan uit –

- (a) inkomste deur hom verkry by die verrigting van sy Verdrags- en nie-Verdragsfunksies;
- (b) lenings ingevolge klousule 4 (f) aangegaan;
- (c) inkomste deur hom verkry uit beleggings; en
- (d) geld deur die Parlement vir hom bewillig, op voorwaarde dat die Parlement vir 'n bewilliging genader sal word slegs indien fondse verkry uit die bronne genoem in paragrawe (a), (b) en (c) onvoldoende is om die Owerheid in staat te stel om aan klousule 24 (a) te voldoen.

(2) Die Hoof-uitvoerende Beampte moet die Direkteur-Generaal van die Departement van Waterwese en Bosbou sonder versuim in kennis stel indien die fondse verkry uit die bronne in subklousule (1) (a), (b) en (c) genoem, onvoldoende is om die Owerheid in staat te stel om aan klousule 24 (a) te voldoen.

Geldlenings deur die Owerheid

26. (1) Die Owerheid kan, behoudens subklousule (2), (3) en (4) –

- (a) geld deur middel van lenings, met inbegrip van bankoortrekkings, opneem binne 'n leningsperk deur die Minister, handelende met die instemming van die Minister van Finansies, goedgekeur;
- (b) enige aandele, skuldbriewe of ander sekuriteite vir die doel van sodanige lenings uitreik; en
- (c) enige aandele, skuldbriewe of ander sekuriteite deur die Owerheid uitgereik, aankoop ten einde die bemarking van sulke aandele, skuldbriewe of ander sekuriteite te bevorder.

(2) Die Owerheid kan geld leen –

- (a) om die Republiek se finansiële verpligtinge ingevolge of voortspruitende uit die Verdrag, na te kom;
- (b) om enige kapitaalprojek wat noodsaaklik is vir die verrigting van enige van sy funksies te finansier;
- (c) om rente te betaal op 'n lening deur hom aangegaan of die lening terug te betaal;
- (d) om enige van sy lopende uitgawes, met inbegrip van administratiewe of bykomende kostes, te dek; en
- (e) vir enige ander doel wat noodsaaklik is vir die verrigting van enige van sy funksies.

(3) (a) Slegs die Raad van Direkteure mag namens die Owerheid geld leen of enige waarborg, vrywaring of sekuriteit uitreik vir die doel van geld deur hom geleen.

(b) Die Raad mag nie hierdie bevoegdheid deleger nie, behalwe met die voorafgaande skriftelike goedkeuring van die Minister van Finansies gegee ingevolge artikel 66 (6) van die Wet op Openbare Finansiële Bestuur.

(4) Die Owerheid –

- (a) moet jaarliks aan die Minister van Finansies 'n leningsprogram vir die jaar voorlê;
- (b) mag nie 'n bedrag geld in 'n buitelandse geldeenheid leen bo die perk wat ingevolge artikel 66 (7) van die Wet op Openbare Finansiële Bestuur voorgeskryf mag word nie;
- (c) mag nie 'n leningsooreenkoms aangaan wat as voorwaarde het die uitreik van 'n waarborg, vrywaring of sekuriteit wat die Nasionale Inkomstefonds sal bind alvorens daar nie aan die vereistes van artikel 70 van die Wet op Openbare Finansiële Bestuur voldoen is nie; en
- (d) moet toesien dat sy verpligtinge ingevolge 'n lening op die vervaldatum nagekom word.

Beleggings deur Owerheid

27. Die Owerheid kan sy fondse wat nie dadelik benodig word nie, belê –

- (a) behoudens enige beleggingsbeleid wat ingevolge artikel 7 (4) van die Wet op Openbare Finansiële Bestuur voorgeskryf mag word; en
- (b) op 'n wyse wat die Minister goedkeur.

Finansiële verantwoordingspligtigheid

28. (1) Die Raad van Direkteure is vir die doel van die Wet op Openbare Finansiële Bestuur die rekenpligtige gesag van die Owerheid, en moet vir hierdie doel aan die bepalings van daardie Wet voldoen in die mate waarin daardie Wet op die Owerheid van toepassing is.

(2) Die Hoof-uitvoerende Beampte moet –

- (a) die Raad op hoogte hou van alle aangeleenthede wat betrekking het op die finansiële bestuur van die Owerheid; en
- (b) die Raad bystaan om aan sy verantwoordelikhede ingevolge die Wet op Openbare Finansiële Bestuur te voldoen.

Deel 7: Diverse aangeleenthede

Toepassing van Bylae 4 van Wet 36 van 1998

29. Bylae 4 van die Nasionale Waterwet, behalwe item 17, is nie op die Owerheid van toepassing nie.

Ontbinding van die Owerheid

30. (1) Indien die Owerheid ontbind word, moet die Minister 'n likwidateur aanstel om sake van die Owerheid te likwideer.

(2) Die likwidateur moet by die uitvoering van die taak in subklousule (1) genoem, sover toepaslik die prosedures van toepassing op die likwidasie van maatskappye ingevolge die Maatskappyewet, 1973 (Wet 61 van 1973), volg.

(3) Enige surplus verkry uit die likwidasie val die nasionale regering toe.

Oorgangsbepalings

31. 'n Persoon wat onmiddellik voordat hierdie Goewermentskennisgewing in werking getree het –

- (a) die amp van Voorsitter of Onder-Voorsitter of direkteur van die Owerheid bekleë het, bly in daardie amp aan vir die onverstreke deel van daardie persoon se ampstermyn; en
- (b) in diens van die Owerheid was as Hoof-uitvoerende Beampte of bekleër van 'n ander pos op die diensstaat van die Owerheid, bly sonder onderbreking in sodanige diens aan.

Inwerkingtreeding

32. Hierdie Goewermentskennisgewing tree in werking op die datum van publikasie daarvan in die *Staatskoerant*.

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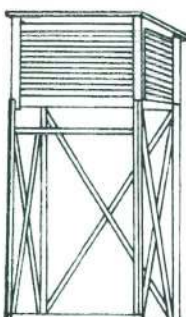
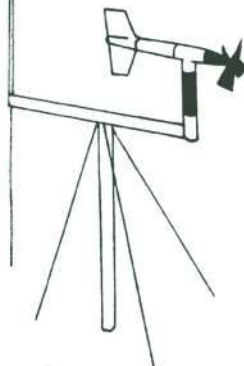


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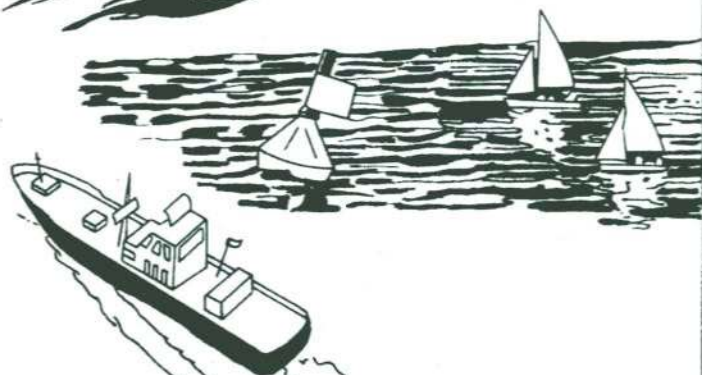
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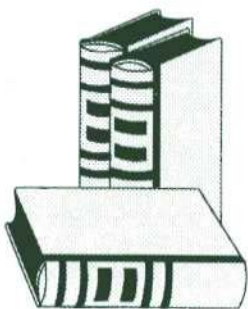
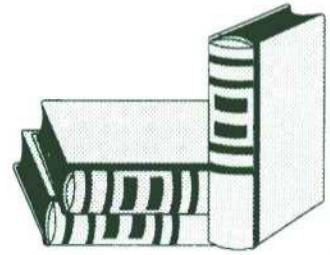
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