

No new cause of action

34. Nothing in this Act and nothing done by or pursuant to a transfer scheme creates any new cause of action in favour of -
- (a) a holder of a debt instrument that was issued by a transferor and guaranteed by the Republic of South Africa before this section comes into force; or
 - (b) a party to a contract with a transferor that was entered into before this section comes into force.

CHAPTER 5 LICENSING

Licenses

35. (1) Any RED established in terms of this Act shall be subject to the provisions of legislation providing for the regulation of the electricity industry in South Africa, and shall be required to apply for and hold a license under that legislation within the periods set out therein.
- (2) A license issued to a RED as contemplated under subsection (1) shall be subject to such conditions, rules and regulations as are provided for in that Act.
- (3) A license held by a transferor or transferors on the date of enactment of a transfer scheme shall, until such time as a license has been issued in terms of subsection (1) to the RED contemplated in that transfer scheme, be deemed to be held by that RED: Provided that –
- (a) the RED concerned shall be obliged to comply with that license as if it was a license issued under subsection (1); and
 - (b) if the licensed area of supply of a transferor is the subject of two or more geographical areas of supply as set out in different transfer schemes, each of the RED's as contemplated in such different transfer schemes shall be deemed to be the holder of the license for that portion of the licensed area of supply that corresponds to the geographical area of supply of the RED concerned;
 - (c) any contract between a transferor and a non-grid service provider or between a non-grid service provider and any other person that relates to or refers to the same geographical area of supply of the RED contemplated in that transfer scheme shall, for the purposes of such a license, be deemed to be an integral part thereof and the provisions of such contract shall be binding on the RED concerned in so far as it relates to any non-grid area of supply.

CHAPTER 6 MUNICIPAL SERVICE DELIVERY AGREEMENTS AND BY-LAWS

Role of REDs as service providers

36. (1) A municipality may, with respect to the services of electricity distribution and retail sales, enter into a service delivery agreement with the RED, as service provider of those services, which is licensed to distribute electricity in the municipal area of that municipality before or on the date of enactment of a transfer scheme affecting that municipality, and each RED shall provide the service that the municipalities require for such purpose pursuant to the service delivery agreement or agreements to which it is party.
- (2) A municipality may enter into and remain a party to a service delivery agreement in accordance with its terms directly or through a multi-jurisdictional municipal service district.

Binding nature of service delivery agreement

37. A municipality and the relevant RED shall at all times remain bound by the provisions of a service delivery agreement in accordance with its terms.

Contents of service delivery agreement

38. (1) The Minister may set standards in the national interest or issue guidelines in the national interest not inconsistent with this Act.
- (2) Guidelines made under subsection (1) shall advise municipalities, multi-jurisdictional municipal service districts and REDs with respect to the form and content of service delivery agreements that they enter into, and may provide for procedures for entering into service delivery agreements, the reviewing thereof and for standard terms, conditions and provisions that must be contained in service delivery agreements, including but not limited to-
- (a) the effective date and duration;
 - (b) amendments thereto;
 - (c) the termination thereof;
 - (d) liability for non-compliance or default and dispute resolution;
 - (e) incentives and penalties to encourage prudence, efficiency, economy and effective use of resources;

- (f) performance standards, targets, indicators and performance measurement;
 - (g) disposal or charging of assets (excluding shares held in that RED);
 - (h) determining of electricity charges and prices;
 - (i) mechanisms to enhance the delivery of efficient services by the RED;
 - (j) unsatisfactory practices or procedures by a municipality or other person that impacts on or hinders a RED in the provision of services;
 - (k) a prohibition on the use of unfair contractual practices and penalties;
 - (l) payment of an amount to a municipality in lieu of electricity tariffs and charges to which it would have otherwise been entitled;
 - (m) the transfer of any subsidies received by a municipality in respect of electricity consumers in the geographical area of supply of the transferee;
 - (n) any other matter that may facilitate the continued provision of service by a RED in accordance with this Act and its license and the application by the municipalities of any service authority responsibilities under the Constitution and the Municipal Systems Act, with respect to electricity distribution and retail sales.
- (2) A notice in terms of subsection (1) -
- (a) may determine different provisions, terms or conditions for service delivery agreements to which different REDs shall be parties; and
 - (b) shall apply to all municipalities or multi-jurisdictional municipal service districts in the geographical area of supply of the RED concerned.

Municipalities as agents of the REDs --

39. (1) A service delivery agreement may authorize a constituent municipality within its municipal area to enter into a service level agreement to act as the agent of a RED, for a stated period, for various services, including receiving complaints, issuing accounts, receiving moneys due to the RED, and for other administrative matters: Provided that such agreement may not be less beneficial to the RED than if such services were performed by itself or any other agent acting on its behalf.

General provision relating to service delivery

40. (1) Notwithstanding the provisions of any other law, the occupier of premises shall give the authorized representative of a RED or a municipality access to such premises at all reasonable hours in order to read, inspect, install or repair any meter or service connection for electricity distribution or to disconnect, stop or restrict the provision of any service.

CHAPTER 6 GENERAL PROVISIONS

Effective date of this Act

41. This Act shall come into operation on a date determined by the President by Proclamation in the *Gazette*

42. Regulations

- (1) The Minister may make regulations-
 - (a) supplementing the provisions of this Act and governing the transfer of officers, employees, assets, liabilities, rights and obligations;
 - (b) prescribing contracts or classes of contracts to which a transfer scheme or anything done pursuant to a transfer scheme do not apply;
 - (c) prescribing laws or provisions of laws that do not apply to a transfer scheme or anything done pursuant to or in terms thereof;
 - (d) any matter that may or must be prescribed in terms of this Act; and
 - (e) any matter that may facilitate the application of this Act.
- (2) The Minister may also issue standards and or guidelines not inconsistent with the provisions of this Act.
- (3) Regulations, standards and guidelines made or issued in terms of subsections (1) or (2) may differentiate in the application thereof as between different REDs.

SCHEDULE 1 TRANSFER SCHEMES

Allocation

1. (1) If an asset, right or liability is one that is capable of being apportioned into different parts, a transfer scheme may provide –
 - (a) that only part of such asset, right or liability is to be transferred by the transferor to the transferee; or
 - (b) that specified parts of such asset, right or liability are to be transferred by the transferor to different transferees,and such parts shall be taken to have been transferred to a transferee or retained by the transferor, as the case may be, as so provided in the transfer scheme.
- (2) If a real right or interest in land is to be apportioned under sub-item (1) -
 - (a) any rent payable under a lease in respect of the real right or interest, and
 - (b) any rent charged on the real right or interest,must be apportioned so that an appropriate part of the rent is payable in respect of or charged on the appropriate part of the real right or interest.
2. (1) If there is an asset, right or liability that both the transferor and transferee make use of or that more than one transferee makes use of and the nature of such asset, right or liability does not permit it to be apportioned, it must be taken to have been transferred to a transferee or retained by the transferor in accordance with the tests in sub items (2) and (3).
- (2) In the case of real right or interest in land the test is -
 - (a) which one of the parties has the greater or greatest need of the real right or interest for business purposes, or
 - (b) if it is not possible to say that one of them has the greater or greatest need, which one of them is likely to make more or the most use of the land.
- (3) In the case of any other asset or right or liability the test is which one of the parties is likely –
 - (a) to make more or the most use of the assets, or
 - (b) to be more or the most affected by the right or liability.

- (4) The tests in sub-items (2) and (3) must be applied at -
 - (a) the time when the transfer scheme comes into force, or
 - (b) if there are two or more schemes and they come into force at different times, the later or latest of the times.

3. Items 1 and 2 do not apply to rights or liabilities under a contract of employment.

Transfers by agreement

4. (1) If a transfer scheme provides for assets, rights or liabilities to be transferred from a transferor to a transferee, they may, subject to the provisions of the transfer scheme and this Act, agree that such of the assets, rights or liabilities as are specified in the agreement are to be transferred from the transferee to the transferor.
- (2) If one or more transfer schemes provide for different assets, rights or liabilities to be transferred to different transferees, any transferee may agree with another that such of the assets, rights or liabilities as are specified in the agreement are to be transferred from one to the other.
- (3) Provisions in sub-sections (1) and (2) above shall not apply to rights or liabilities under a contract of employment.
- (4) An agreement under this item may provide for a transfer to take effect on a date specified in or determined in accordance with the agreement; but the agreement may provide that a transfer is not to take effect unless the circumstances are such as the agreement specifies.

Foreign assets, rights and liabilities

5. (1) This item applies if a transfer scheme provides for the transfer of foreign assets, rights or liabilities from a transferor to a transferee.
- (2) The transferor and the transferee must take such steps as may be necessary to secure that the vesting of the assets, rights or liabilities in the transferee is effective under the relevant foreign law, and the transferor must take the steps at such times as the transferee may specify in directions given to the transferor.
- (3) Until the vesting of the assets, rights or liabilities in the transferee is effective under the relevant foreign law, the transferor must -
 - (a) hold the assets or rights for the transferee's benefit, or
 - (b) discharge the liabilities on the transferee's behalf.

- (4) The transferor is to have all powers necessary for the performance of his duty under sub-item (2), but the transferee must act on the transferor's behalf, so far as possible, in the performance of that duty.
- (5) Nothing in sub-items (2) to (4) affects any law of the Republic of South Africa as it applies to the vesting of the assets, rights or liabilities in the transferee by virtue of the transfer scheme.
- (6) References in this item to foreign assets, rights or liabilities are references to assets, rights or liabilities as respects which any issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the Republic of South Africa.
- (7) Duties imposed on the transferor or the transferee by this item are enforceable in the same way as if they were imposed by a contract between them.

Construction of agreements

6. (1) This item applies -
 - (a) if a transfer scheme provides for the transfer of assets, rights or liabilities from a transferor to a transferee;
 - (b) if immediately before the coming into force of the scheme the transferor was entitled or subject to the assets, rights or liabilities under an agreement to which it was then a party; and
 - (c) whether or not the transferor could assign the assets, rights or liabilities.
- (2) In so far as such agreement relates to the assets, rights or liabilities transferred to the transferee, as regards anything falling to be done after the coming into force of the scheme, the agreement is to have effect as if -
 - (a) the transferee had been a party to it instead of the transferor;
 - (b) a reference to the transferor were a reference to the transferee;
 - (c) a reference to a person employed by or engaged in the business of the transferor and holding a specified office or serving in a specified capacity were a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by or engaged in the business of the transferee; and
 - (d) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.

- (3) (a) A reference mentioned in sub-item (2)(b) or (c) may be express or implied, and if express it is immaterial how it is worded; and
- (b) It is immaterial how a reference mentioned in sub-item (2)(d) is worded.

7. (1) This item applies if -

- (a) a transfer scheme provides for the transfer of assets, rights or liabilities from a transferor to a transferee, and
 - (b) immediately before the coming into force of the scheme any provision of an agreement to which the transferor was not a party, any statutory provision or any provisions of a document (other than an agreement) related to the assets, rights or liabilities transferred to the transferee.
- (2) This item applies whether or not the transferor could assign the assets, rights or liabilities.

(3) So far as the agreement, provision or document relates to the assets, rights or liabilities transferred to the transferee, as respects anything falling to be done after the coming into force of the scheme the agreement, provision or document is to have effect as if -

- (a) a reference to the transferor were a reference to the transferee;
- (b) a reference to a person employed by (or engaged in the business of) the transferor and holding a specified office or serving in a specified capacity were a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by (or engaged in the business of) the transferee;
- (c) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.

(4) A reference mentioned in sub-item (3)(a) or (b) may be express or implied; and if express it is immaterial how it is worded.

(5) It is immaterial how a reference mentioned in sub-item (3)(c) is worded.

(6) A reference mentioned in sub-item (3) to the transferor may be a general reference to a class of persons of which the transferor is one (without the transferor being named).

(7) For the purposes of this item a statutory provision is a provision contained in an Act or in a document made or issued under an Act.

Third parties

8. (1) For the purposes of this item -
 - (a) a party is a person who is a transferor or a transferee under the transfer scheme or schemes referred to in this item;
 - (b) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this item.
- (2) This item applies if -
 - (a) a transfer scheme is made or transfer schemes are made,
 - (b) rights or liabilities of a third party are (apart from the scheme or schemes) enforceable against or by a transferor,
 - (c) in consequence of the scheme or schemes or of anything done under this Schedule the third party's rights or liabilities become enforceable as to different parts against or by different parties, and
 - (d) the value of any assets or interests of the third party is diminished as a result.
- (3) Just compensation must be paid to the third party by one or more of these persons -
 - (a) the parties against or by whom the third party's rights or liabilities become enforceable;
 - (b) the transferor concerned, if he does not fall within item (a).
- (4) If it appears to the transferor that a person is or may be entitled to compensation the transferor must -
 - (a) notify the person that he is or may be entitled, and
 - (b) invite him to make representations to the transferor within the period of 14 days starting with the date the notification is made.
- (5) But if the transferor does not know the person's name and address he must instead publish, in a manner he thinks is appropriate, a notice which -
 - (a) contains information about the assets or interest affected, and
 - (b) invites any person who thinks he is or may be entitled to compensation to make representations to the transferor within the period specified in the notice (which must not be less than 28 days starting with the date of publication of the notice).

- (6) A dispute about whether, or how much, compensation is payable under this item, or about who must pay or be paid it, must be referred to and determined by the Minister.

General

9. (1) Items 5 to 8 have effect as if references to a transfer scheme or schemes included references to an agreement or agreements under item 4.
- (2) Where items 5 to 8 have effect in relation to an agreement under item 4 references to a transferor or a transferee have effect as references to a transferor or a transferee under the agreement.
- (3) .No transfer scheme or amendment thereto shall be enforceable as against third parties unless it has been reduced to writing.
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