

REPUBLIC OF SOUTH AFRICA

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# INDEPENDENT ELECTRICITY MANAGEMENT OPERATOR BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 42237  
of 20 February 2019)  
(The English text is the official text of the Bill)*

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(MRS NWA MAZZONE, MP)

[B 14—2019]

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# **BILL**

**To provide for the establishment of an Independent Electricity Management Operator as a public-private partnership entity which will provide an independent system operation to ensure safe, secure and efficient operation of the integrated power system and trading of electricity at wholesale level, and to allow metropolitan municipalities to purchase electricity directly from independent power producers; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## DEFINITIONS AND OBJECTS OF ACT

## Definitions

1. In this Act, unless the context otherwise indicates—
- “**ancillary services**” means services supplied to IEMO by generators, distributors or end-use customers, necessary for the reliable and secure transport of power from generators to distributors and other customers; 5
- “**Board**” means the Board of IEMO contemplated in section 9;
- “**chief executive officer**” means the chief executive officer appointed by the Board as contemplated in section 25; 10
- “**chief financial officer**” means the chief financial officer appointed by the Board as contemplated in section 25;
- “**Commission**” means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008); 15
- “**Department**” means the department responsible for energy;
- “**Director-General**” means the Director-General of the Department;
- “**dispatch**” means the scheduling, coordination and management of the flow of electricity produced by generation facilities or consumed by the demand-side resource into and out of the transmission power system, including the start-up and shut-down of those facilities; 20
- “**distribution**” means ‘distribution’ as defined in section 1 of the Electricity Regulation Act;
- “**distribution power system**” means an interconnected network for the conveyance of electricity which operates at or below a nominal voltage of 132kV; 25
- “**effective date**” means the date on which IEMO is established as a state-owned entity;
- “**Electricity Regulation Act**” means the Electricity Regulation Act, 2006 (Act No. 4 of 2006);
- “**Eskom Holdings**” means the company envisaged in section 3 of the Eskom Conversion Act, 2001 (Act No. 13 of 2001); 30
- “**expansion plan**” means a plan for development of the transmission network;
- “**generation**” means ‘generation’ as defined in section 1 of the Electricity Regulation Act;
- “**generation licensee**” means the holder of a licence to construct or operate a generation facility in terms of the Electricity Regulation Act; 35
- “**Grid Code**” means the transmission or distribution Grid Code applicable in terms of the Electricity Regulation Act;
- “**integrated power system**” means a power system that is interconnected to a generation facility, transmission power system and distribution power system; 40
- “**integrated resource plan**” means an integrated resource plan as contemplated in section 25 of the Electricity Regulation Act;
- “**IEMO**” means the Independent Electricity Management Operator Pty Ltd established by section 3;
- “**IEMO Customers**” means the customers— 45
- (a) to whom IEMO may sell electricity;
- (b) from whom IEMO may buy electricity; and
- (c) who provide ancillary services, as identified by the Minister through regulations or by notice in the *Gazette*;
- “**licence**” means a licence issued under the Electricity Regulation Act; 50
- “**licensee**” means the holder of a licence issued under the Electricity Regulation Act;
- “**market operation**” means the purchase of power from generation and sale to IEMO customers at a wholesale price;
- “**member**” means a member of the Board, and can be used interchangeably with the term “director”; 55
- “**Memorandum of Incorporation**” means the Memorandum of Incorporation of IEMO referred to in section 5;
- “**metropolitan municipality**” means a Category A municipality, as defined in section 155 of the Constitution of the Republic of South Africa, 1996; 60

- “**Minister**” means the Minister of Mineral Resources and Energy;
- “**national control centre**” means the control centre operated for the control and management of the dispatch and supply of electricity by the generation licensees into the transmission power system;
- “**NERSA**” means the National Energy Regulator of South Africa established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004); 5
- “**system operation**” means the operation of the integrated power system in real time, which includes electricity dispatch;
- “**trading**” means ‘trading’ as defined in section 1 of the Electricity Regulation Act; 10
- “**transmission**” means ‘transmission’ as defined in section 1 of the Electricity Regulation Act;
- “**transmission power system**” means an interconnected network for the conveyance of electricity which operates above a nominal voltage of 132kV;
- “**transmitter**” means the owner of a transmission power system; and 15
- “**this Act**” includes the regulations made in terms of this Act.

## Objects of Act

2. The objects of this Act are to provide for the incorporation of IEMO as a private company that—
- (a) is financially viable and that will manage the system in an efficient manner; 20
  - (b) will act as a trader of electricity in line with Government policy;
  - (c) will prepare appropriate input into the planning of electricity supply and transmission planning;
  - (d) is responsible for the establishment, practice and maintenance of the integrated power system; 25
  - (e) ensures efficient dispatch within the integrated power system; and
  - (f) provides for matters related thereto.

## CHAPTER 2

### ESTABLISHMENT OF IEMO

#### Establishment of IEMO 30

3. (1) (a) There is hereby established a juristic person to be known as the Independent Electricity Management Operator Pty Ltd.
- (b) The Minister must affect the incorporation of IEMO in terms of the Companies Act.
- (c) The State shall not be allowed to be a shareholder of IEMO. 35
- (2) Notwithstanding the Companies Act, the Minister or a person designated by him or her must, on behalf of the State, sign the Memorandum of Incorporation and all other documents necessary for the incorporation of the company.
- (3) The Commission must—
- (a) register the Memorandum of Incorporation as signed in terms of subsection 40 (2);
  - (b) incorporate the company as a private company under the name “Independent Electricity Management Operator of South Africa Holdings”, with “IEMO Holdings” as its shortened form; and
  - (c) issue to the company the necessary documentation to enable it to conduct its business as a corporate entity. 45
- (4) No fee is payable in respect of the incorporation of IEMO.

#### Share capital of IEMO

4. (1) The share capital of IEMO shall be two million rand, and shall be divided into two million ordinary shares of one rand each. 50
- (2) The liability of a shareholder shall be limited to the amount unpaid on the shares held by him.
- (3) IEMO may, from time to time, with the consent of the Board, increase its share capital by the issue of shares upon such terms as the Board may approve.

(4) The premium obtained on any issue of shares shall be added to the reserve fund of IEMO.

### **Restriction of right to hold or acquire shares in IEMO**

5. (1) Subject to the provisions of subsection (2), no shareholder shall hold more than 10 000 shares in IEMO. 5

(2) If the number of shares held by a shareholder in IEMO increases to more than 10 000 shares, he or she shall as soon as practicable dispose of the number of shares held by him or her in excess of 10 000.

(3) No shares in IEMO shall be held in the name of or transferred to a nominee unless that nominee is a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992). 10

### **Functions of IEMO**

6. (1) In relation to planning, IEMO must—
- (a) model scenarios at regular intervals for the purpose of developing the integrated resource plan and provide the results of the modelling to the Minister for the purpose of developing the integrated resource plan and any other activity incidental thereto; and 15
  - (b) provide the necessary input for the development of the expansion plan by the transmitter in accordance with anticipated electricity demand as per the integrated resource plan whose input must be duly considered by the transmitter. 20
- (2) In relation to system operation IEMO must—
- (a) take full ownership of and manage the electricity grid of the Republic of South Africa, including planning, maintenance, transmission and allocation;
  - (b) operate the integrated power system in a safe, secure, efficient and sustainable manner; 25
  - (c) control the system voltages and system frequency within safe and sustainable limits;
  - (d) optimise real and reactive power flows to reduce losses whilst maintaining system security; 30
  - (e) coordinate transmission and generation outage and maintenance plans in accordance with the Grid Code requirements;
  - (f) prepare short-term load forecasts and dispatch schedules in accordance with Grid Code requirements;
  - (g) dispatch available generation in accordance with the dispatch rules in the Grid Code as far as practically possible; 35
  - (h) maintain and operate a national control centre to control the integrated power system and related systems;
  - (i) direct the functioning of transmission operating centres located throughout the Republic and ensure that their operation is coordinated with the overall operations of the integrated power system; 40
  - (j) serve as the operating interface to the operators of other transmission power systems and distribution power systems for planning and the real time operation of combined electrical systems;
  - (k) maintain the real time balance of generation and electricity demand within the Republic and coordinate operation with adjacent control areas; 45
  - (l) develop the short-term operation plans and dispatch schedules using the resources that are procured or otherwise arranged for by the market operator;
  - (m) coordinate with generation licensees with regard to the planning of maintenance in accordance with the Grid Code and international best practice to ensure that there is always sufficient capacity available to meet the demand; 50
  - (n) coordinate with transmission operators and distribution operators with regard to the planning of maintenance in accordance with the Grid Code to ensure that there is always sufficient capacity available to deliver the required power safely and securely as far as is reasonably possible; 55
  - (o) coordinate the start-up, shut-down and dispatch generation under its jurisdiction;
  - (p) manage adequate operating reserves in accordance with the Grid Code as part of the dispatch activities;

- (q) implement system emergency plans and procedures as required to maintain an acceptable level of reliability;
  - (r) perform contingency studies in real time using live data from the control system state estimator or as required and react in due time to mitigate any possible risk for the integrated power system; 5
  - (s) perform a short-term, day to day, week to week, load forecast as an input into a short-term energy and capacity planning function;
  - (t) verify and record the generators' actual dispatch loading and the corresponding transmission load losses and conduct an assessment of the actual generation loading against the dispatch schedule; 10
  - (u) keep a complete and accurate record of all the transmission systems loadings and associated dispatch on a half-hourly basis together with the dispatch rules and costing;
  - (v) order the interruption of supply to preserve the system integrity in times of power shortage; and 15
  - (w) administer and deliver housing electrification objectives as set out by national Government.
- (3) In relation to market operation, IEMO must—
- (a) buy electricity from a generator or external trader in line with Government policy; 20
  - (b) conclude and enter into transaction agreements as may be necessary for the procurement of electricity, including sufficient capacity and energy supply;
  - (c) conclude transaction agreements as may be necessary for the procurement of ancillary services, interruptible load, load shifting or other demand-side options necessary for efficient and secure operation of the system; 25
  - (d) procure electricity on such terms and conditions as may be agreed upon by the parties—
    - (i) from licensees with the exception of licensees exempted from selling electricity to IEMO in terms of the Electricity Regulation Act; and
    - (ii) consistent with the integrated resource plan and in terms of procurement processes contained in the Electricity Regulation Act; 30
  - (e) in line with the Republic's international obligations, agreements and undertakings—
    - (i) conclude electricity import agreements that ensure a reliable and stable supply of electricity for customers within the Republic; and 35
    - (ii) conclude electricity export agreements, having regard to the interests of the Republic over the long term;
  - (f) procure sufficient energy and capacity to be able to meet the projected load on the transmission power system and to serve its contractual commitments in accordance with the Electricity Regulation Act; 40
  - (g) procure sufficient flexible resources to support IEMO's real time function of balancing load to generation, including sufficient ramping capability (MegaWatt range and ramp rate) and automatic generation control capability (AGC) to meet the projected hour to hour and minute to minute system balancing requirements; 45
  - (h) maintain sufficient black start capability (number of units, and location on the transmission power system) under contract in order to be able to restart the system after a partial or total blackout, and ensure that this capability is functional through periodic performance testing;
  - (i) enter into power sale agreements with IEMO Customers; 50
  - (j) ensure that metering points are established and maintained to allow billing quality metering of all electricity sales and purchases;
  - (k) develop processes to manage the efficient implementation of agreements concluded with IEMO Customers with regard to the trading of electricity;
  - (l) develop a risk management policy and associated implementing procedures to ensure that risks associated with the purchase and sale of energy, capacity or other products are addressed, including currency exchange and price risk; 55
  - (m) develop and implement energy supply tariffs for all sales to IEMO Customers, but such energy supply tariffs must be developed and implemented subject to the approval of NERSA; 60
  - (n) develop accounting procedures to reconcile the energy accounts and the monetary accounts related to the market and system operation;

- (o) maintain a complete and accurate set of accounts for all the power system transactions; and
  - (p) develop a framework and operating procedure for assimilating future IPP renewable projects, gas projects and other energy projects onto the grid including from Eskom itself. 5
- (4) IEMO may, with the concurrence of the Minister, perform such other functions as may be necessary to give effect to or are ancillary to its functions as set out in subsections (1) to (3).

### **Memorandum of Incorporation**

7. (1) The Memorandum of Incorporation of IEMO must be drawn up in such a manner that the contents thereof are consistent with this Act. 10

(2) Despite the Companies Act, an amendment of the Memorandum of Incorporation affecting an arrangement made by 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 that amendment has come into effect. 15

(3) The Memorandum of Incorporation may vest IEMO with such powers as are typically required for the operation of a company, having regard to the provisions of subsection (1).

### **Subsidiaries and accountability**

8. (1) IEMO may establish subsidiary companies. 20

(2) (a) IEMO must, before it establishes a subsidiary or revives a dormant subsidiary, submit a feasibility study and business plan of the proposed subsidiary to the Minister for consideration.

(b) The Minister must table the feasibility study and business plan in the National Assembly for consideration. 25

(3) The board of any subsidiary is accountable to IEMO in respect of the performance of the functions of such subsidiary.

### **Application of Companies Act**

9. (1) The provisions of the Companies Act which are not in conflict with this Act apply to IEMO, subject to subsection (2). 30

(2) A provision of the Companies Act will not apply to IEMO in circumstances where—

(a) any contrary arrangement is provided for in this Act; or

(b) the Minister of Trade and Industry has issued an exemption under section 11.

### **Request for exemption from application of provision of Companies Act** 35

10. (1) (a) The Minister may on the recommendation of IEMO request the Minister of Trade and Industry to exempt IEMO from the whole or part of a provision of the Companies Act, as contemplated in section 9 of that Act.

(b) The request referred to in paragraph (a) must be fully motivated.

(2) The Commission must publish particulars of the request and motivation contemplated in subsection (1) by notice in the *Gazette*. 40

(3) The Minister of Trade and Industry, having considered the request contemplated in subsection (1) and if satisfied on reasonable grounds that the non-application of the provision of the Companies Act to IEMO will—

(a) contribute to the efficiency of IEMO and reduce its operating costs; 45

(b) not reduce or limit the accountability of IEMO as a public institution or detract from the requirements of transparency regarding its functioning and operations; and

(c) not be detrimental to the interests of the State, employees of IEMO or claims of creditors of IEMO, 50

may, by notice in the *Gazette*, declare, with effect from the date stated in the notice, the whole or part of a provision of the Companies Act not applicable to IEMO.

## CHAPTER 3

### MANAGEMENT OF IEMO

#### Management of IEMO by Board

11. The Board is responsible for managing the business and affairs of IEMO.

#### Functions of Board 5

12. The Board—
- (a) must give effect to the corporate plan of IEMO in order to achieve the objectives of IEMO;
  - (b) is the accounting authority of IEMO;
  - (c) takes decisions on behalf of IEMO and gives effect to those decisions; 10
  - (d) provides guidance and gives instructions to the chief executive officer concerning the exercise of the functions of IEMO;
  - (e) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objectives or financial targets of IEMO; and 15
  - (f) must generally refer to the Minister any matter that may adversely affect the functioning of IEMO.

#### Board of directors

13. (1) IEMO shall be managed by a board of ten directors, consisting of—
- (a) a Chairperson, a Deputy Chairperson, a chief financial officer and two other directors, which Chairperson, Deputy Chairperson, chief financial officer and directors shall be appointed by the Minister; and
  - (b) five directors elected by the shareholders.
- (2) Of the directors elected by the shareholders—
- (a) one shall be a person who is or has been actively and primarily engaged in electrical engineering; 25
  - (b) one shall be a person who is or has been so engaged in financial management;
  - (c) one shall be a person who is or has been so engaged in economics;
  - (d) one shall be a person who is or has been so engaged in law; and
  - (e) one shall be a person who is or has been so engaged in environmental affairs. 30

#### Tenure and conditions of office of directors

14. (1) The Chairperson and the Deputy Chairperson shall hold office for a period of five years, and the directors who are Government representatives shall hold office for a period of three years.
- (2) The directors who are shareholders' representatives shall hold office for a period commencing on the first day after the date of their election as such at an ordinary general meeting of the shareholders held during a specific calendar year, and terminating on the first day after the date of the ordinary general meeting of the shareholders held during the third calendar year after the calendar year first-mentioned in this subsection. 35
- (3) A director shall be eligible for re-appointment or re-election, as the case may be, after the expiration of his term of office. 40
- (4) Directors (including the Chairperson and Deputy Chairperson) shall hold office upon such conditions as to remuneration (including allowances) as may be determined by the Board, and upon such other conditions as may be prescribed by regulation.
- (5) The Chairperson and the Deputy Chairperson shall devote the whole of their time to the business of IEMO: Provided that the provisions of this subsection shall not be construed as prohibiting the Chairperson or Deputy Chairperson from accepting or holding any office to which he may be appointed by or with the approval of the President or the Minister. 45

### Casual vacancies

- 15.** (1) A casual vacancy on the Board shall be filled—
- (a) in the case of the Chairperson or a Deputy Chairperson or of a Government representative, by appointment by the Minister; and
  - (b) in the case of a shareholders' representative, by the election by the shareholders of a person who would be qualified to be elected in the place of the director whose office has become vacant, or by the appointment by the Board, subject to confirmation at the next ordinary general meeting of the shareholders, of a person so qualified.
- (2) Any person appointed or elected under subsection (1) shall hold office, in the case of the Chairperson or Deputy Chairperson, for a period of five years, and in the case of any other director, for the unexpired portion of the period for which the director whose office has become vacant, was appointed or elected.

### Resignation, removal from office and vacancies of Board

- 16.** (1) A non-executive member may resign by giving to the Minister—
- (a) one month's written notice; or
  - (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, after having afforded the member concerned a reasonable opportunity to be heard, remove the member from office if that member—
- (a) acted in conflict with this Act or the Memorandum of Incorporation of IEMO;
  - (b) refused or failed to make a disclosure or declaration contemplated in section 13;
  - (c) after having been appointed, acquired any direct or indirect interest contemplated in section 17(3)(b)(ii), read with section 17(1)(g);
  - (d) refused or failed to divest himself or herself of the interest contemplated in section 17(3)(b);
  - (e) neglected to properly perform the functions of his or her office; or
  - (f) was absent from two consecutive Board meetings without prior leave of the Chairperson.
- (3) Any member must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 17.

### Disqualification from membership of Board and disclosure

- 17.** (1) A person must not be appointed as a member or remain a member if he or she—
- (a) is a member of Parliament, any provincial legislature or any municipal council;
  - (b) is an unrehabilitated insolvent;
  - (c) has been declared by a court of law to be mentally ill or disordered;
  - (d) has at any time been convicted, whether in the Republic or elsewhere, of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
    - (ii) an offence under this Act;
  - (e) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of one year or more without the option of a fine;
  - (f) has at any time been removed from an office of trust on account of misconduct;
  - (g) is a director, officer or employee of an energy generator; or
  - (h) has any direct or indirect interest in conflict with the business of IEMO.
- (2) A person who is subject to a disqualification contemplated in subsection (1)(a), (b), (g) or (h) may be nominated for appointment as a member but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.
- (3) (a) A person nominated for appointment as a member must, before appointment and upon a request from the Minister, submit to the Minister a written statement containing—
- (i) a full disclosure of all his or her financial interests; and

- (ii) a declaration that he or she has no direct or indirect interests that are in conflict with the business of IEMO as contemplated in subsection (1)(h).
- (b) If, after appointment, a member of the Board acquires any—
  - (i) further financial interest contemplated in paragraph (a)(i), the member must immediately in writing disclose that fact to the Minister and the Board; or 5
  - (ii) direct or indirect interest contemplated in subsection (1)(h) the member must immediately declare that fact to the Minister and the Board.

### **Fiduciary duties of Board members**

- 18.** In addition to any other applicable legislation, the following applies to members:
- (a) A member may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest. 10
  - (b) A member or his or her family member, business partner or associate, or an organisation or enterprise in which a member or his or her family member, business partner or associate has a direct or indirect interest, may not— 15
    - (i) offer goods or services to IEMO or conclude any business with IEMO; or
    - (ii) make improper use, in any manner whatsoever, of the position of a member or of any information acquired by a member by virtue of his or her position as a member. 20
  - (c) A member must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
    - (i) take reasonable steps to inform himself or herself about IEMO, its business and activities and the circumstances in which it operates; 25
    - (ii) 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; 30
    - (iii) regularly attend Board meetings;
    - (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
    - (v) exercise due diligence in the performance of his or her functions as a member; 35
    - (vi) comply with any internal code of conduct that IEMO may establish for Board members;
    - (vii) not engage in any activity that may undermine the integrity of IEMO;
    - (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member; and 40
    - (ix) treat any confidential matters relating to IEMO, obtained in his or her capacity as a member, as strictly confidential, and may not divulge them to anyone without the authority of IEMO or as required as part of that person's official functions as a member.

### **Procedure and quorum** 45

- 19.** (1) The Chairperson shall preside at the meetings of the Board, and in his absence from any meeting, the Deputy Chairperson shall preside: Provided that the Minister may designate any other director to act as chairperson of the Board during the Minister's pleasure and that such director shall in that capacity preside at such meetings as he may be present at. 50
- (2) If the other director who is by virtue of the proviso to subsection (1) required to preside at a meeting of the Board is absent from that meeting, the Chairperson or, in his or her absence, a Deputy Chairperson designated by him, shall preside at that meeting, and if the said other director as well as the Chairperson and the said designated Deputy Chairperson are absent from that meeting, the directors who are present may elect one of their number to preside at that meeting. 55
- (3) The quorum for a meeting of the Board shall be five.
- (4) The decision of the majority of directors present at any meeting shall constitute the decision of the Board.

(5) The person presiding at any meeting shall have a deliberative vote and, in addition, in the event of an equality of votes, a casting vote.

### Votes

**20.** (1) Subject to the provisions of subsection (2), a shareholder shall, at a meeting of shareholders, be entitled to one vote in respect of every 200 shares of which he or she has been the registered holder for not less than six months prior to the date of the meeting. 5

(2) No shareholder referred to in subsections (1) and (2) of section 5 shall either directly or indirectly exercise any vote as a shareholder in respect of the number of shares in IEMO held by him or her in excess of 10 000, and no group of companies with interlocking directorates shall either directly or indirectly exercise any vote as shareholders in respect of the total number of shares in IEMO held by those companies in excess of 10 000. 10

### Committees of Board

**21.** (1) The Board may appoint one or more committees but must appoint the following committees: 15

- (a) Remuneration and Performance Committee;
- (b) Human Resources Committee;
- (c) Audit Committee; and
- (d) Risk Committee.

(2) The Board must— 20

- (a) assign members to serve on a committee, based on their knowledge and skills;
- (b) determine the—
  - (i) terms of reference of a committee;
  - (ii) composition of a committee;
  - (iii) tenure of members of a committee; 25
  - (iv) reporting mechanisms of a committee; and
  - (v) method and reasons for removal of a member from a committee.

(3) Non-executive members must make up the majority of the members of a committee.

(4) Unless specially delegated by the Board, a committee has no decision-making powers, and can only make recommendations to the Board. 30

(5) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.

(6) Each committee must be chaired by a non-executive member.

### Delegation of functions by Board 35

**22.** (1) The Board may, by resolution passed by two thirds of its members—

- (a) subject to subsection (4), delegate any of its powers and assign any of its duties to any member of the Board or any committee established in terms of section 16, the chief executive officer, the chief financial officer or any employee of IEMO; and 40
- (b) amend or revoke such delegation or assignment.

(2) Notwithstanding a delegation or assignment contemplated in subsection (1), the Board is not divested of any power or duty so delegated or assigned.

(3) (a) Any delegation or assignment contemplated in subsection (1)—

- (i) may be made subject to such conditions as the Board may determine; and 45
- (ii) must be communicated to the delegate or assignee in writing.

(b) The written communication contemplated in paragraph (a)(ii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed.

(4) The Board may not delegate its role in deciding on— 50

- (a) the appointment of the chief executive officer or the chief financial officer; and
- (b) the mandate and strategic plan of IEMO.

## **Rules by Board**

**23.** The Board may make rules, not inconsistent with the provisions of this Act or of the regulations made under section 45, for the good government of IEMO and the conduct of its business, and the appointment and conditions of service (including remuneration and gratuities or other pension benefits) of officers and employees. 5

## **Regulations relating to Board**

- 24.** The Minister may make regulations relating to—
- (a) the election of directors by shareholders;
  - (b) the conditions (other than those relating to remuneration) of appointment of directors, and the circumstances in which a director shall vacate his office; 10
  - (c) meetings of the Board and the procedure thereat, including the minutes to be kept thereof;
  - (d) meetings of shareholders, the matters to be dealt with thereat and the procedure thereat, including the quorum necessary therefor and the minutes to be kept thereof; 15
  - (e) any matter which is required or permitted to be prescribed by regulation under this Act; and
  - (f) generally, all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

## **CHAPTER 4** 20

### **IEMO STAFF**

#### **Appointment of chief executive officer and chief financial officer**

- 25.** (1) The Board must appoint a chief executive officer and a chief financial officer to ensure that IEMO meets its objects.
- (2) The Board must invite applications for the posts of chief executive officer and chief financial officers by publishing advertisements in the media and consider applications received. 25
- (3) Any person appointed as chief executive officer or chief financial officer must—
- (a) have the qualifications or experience relevant to the functions of IEMO; and
  - (b) not be disqualified on the grounds contemplated in section 17. 30

#### **Conditions of appointment of chief executive officer and chief financial officer**

- 26.** (1) The appointment of the chief executive officer and the chief financial officer is subject to the conclusion of an annual performance agreement with IEMO.
- (2) The chief executive officer—
- (a) is appointed for a term not exceeding five years; and 35
  - (b) may be reappointed by the Board with the concurrence of the Minister, but only for one such additional term not exceeding five years.
- (3) The chief executive officer and the chief financial officer hold office on terms and conditions determined by the Board, with the concurrence of the Minister.
- (4) The chief executive officer and the chief financial officer are not members of the Board by virtue of their office. 40
- (5) The chief executive officer and the chief financial officer are accountable to the Board.
- (6) The chief executive officer and the chief financial officer are entitled to a remuneration package determined by the Board in line with the remuneration guidelines for state-owned companies as approved by Cabinet. 45

#### **Termination of employment of chief executive officer or chief financial officer**

- 27.** (1) The Board must, with the concurrence of the Minister in the case of a chief executive officer and subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the chief executive officer or the chief financial officer— 50

(a) for misconduct, which includes any act or failure to act contemplated in section 12(2); or

(b) for failing to perform the duties connected with that office diligently.

(2) The Board may suspend the services of the chief executive officer or the chief financial officer pending the finding of any misconduct proceedings against him or her, during which period the chief executive officer or the chief financial officer is also suspended as an executive member. 5

(3) The chief executive officer or the chief financial officer must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 17.

(4) The chief executive officer or the chief financial officer may resign by written notice of at least 30 days to the Chairperson of the Board. 10

#### **Acting chief executive officer or chief financial officer**

**28.** (1) The Board may in writing appoint any senior employee of IEMO to act as chief executive officer or chief financial officer for a period not exceeding six months when the holder of that office— 15

(a) is for any reason temporarily unable to perform the duties connected with that office;

(b) has been suspended from office; or

(c) has vacated or has been removed from that office and a new chief executive officer or chief financial officer, as the case may be, has not yet been appointed. 20

(2) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be.

(3) The Minister may extend the period referred to in subsection (1) for a further period not exceeding six months if the Minister is satisfied that such an extension is justified. 25

#### **Delegation by chief executive officer and chief financial officer**

**29.** (1) The chief executive officer and the chief financial officer may delegate to an employee of IEMO any of his or her powers and assign any of his or her duties. 30

(2) Any delegation or assignment contemplated in subsection (1)—

(a) may be made subject to such conditions as the Board may determine;

(b) must be communicated to the delegatee or assignee in writing;

(c) may be amended or withdrawn in writing by the chief executive officer or chief financial officer, as the case may be; and 35

(d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief executive officer or the chief financial officer, as the case may be, is not divested of any power or duty so delegated or assigned. 40

#### **Functions of chief executive officer**

**30.** (1) The chief executive officer must, subject to the policy and directives of the Board—

(a) assume responsibility for the management of IEMO;

(b) ensure that IEMO achieves its goals; 45

(c) liaise with and report to the Board with regard to the management of IEMO; and

(d) ensure that all information required for Board meetings has been made available to the Board in appropriate time for such meetings.

(2) The Board must, in accordance with and subject to the applicable laws, delegate and assign to the chief financial officer such of his or her powers and duties as may be necessary to enable the management of IEMO based on a delegation policy and framework pre-approved by the Board. 50

**Appointment of staff**

**31.** (1) The chief executive officer may, in accordance with a human resource, remuneration and service benefit structure approved by the Board, enter into employment or other agreements with persons for the performance of specific duties or the provision of specific services as may be necessary for the proper discharge of IEMO's functions. 5

(2) All employees of Eskom Holdings employed in the fulfilment of the functions contemplated in this Act, including support staff, must be transferred to IEMO in accordance with the provisions of section 45.

**Personnel of IEMO** 10

**32.** (1) The Board must determine the structure or organogram of IEMO and the conditions of service, remuneration and service benefits of the personnel of IEMO after consultation with the chief executive officer and with the concurrence of the Minister and the Minister of Finance.

(2) The work relating to the functions of IEMO is performed by such persons as the chief executive officer may appoint. 15

(3) The chief executive officer must determine and supply each employee with a copy of the code of conduct, applicable to all members of staff of IEMO and justiciable for purposes of disciplinary proceedings, to ensure—

- (a) compliance with applicable laws; 20
- (b) the effective, efficient and economical use of IEMO's resources; and
- (c) the promotion and maintenance of a high standard of professional ethics.

(4) Personnel may be transferred or seconded to IEMO from the public service subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

**CHAPTER 5** 25**FUNDING AND FINANCIAL ACCOUNTABILITY****Loans and Government guarantees for loans**

**33.** (1) The State, represented by the Minister, may grant loans to IEMO from monies made available by Parliament for that purpose.

(2) IEMO will pay interest on such a loan at a rate determined by the Minister acting with the concurrence of the Minister of Finance and must repay the loan in line with the arrangements agreed with the Minister. 30

**Business and financial plan and strategic plans**

**34.** (1) (a) Not later than 30 days before the end of each financial year IEMO must submit its business and financial plan for the following financial year to the Minister for approval. 35

(b) Notwithstanding paragraph (a), the business and financial plan for IEMO's first financial year must be submitted to the Minister for approval within 90 days after the incorporation date.

(2) A business and financial plan must set out and explain IEMO's proposed operations, projects, activities and other objectives for the following financial year, as well as— 40

- (a) the cost of those operations, projects, activities and other objectives;
- (b) the manner in which it is proposed to finance them;
- (c) the planned performance indicators applicable to them; 45
- (d) a statement of IEMO's estimated income and expenditure for that financial year;
- (e) any other information and particulars that may be prescribed; and
- (f) any additional relevant information that may be requested by the Minister in writing. 50

(3) (a) IEMO must submit to the Minister for approval, not later than 30 days before the end of its financial year and of every financial year thereafter, a strategic plan covering the period of five years commencing on the first day of the ensuing financial year.

(b) A strategic plan must be annexed to IEMO's business and financial plan for any financial year which is also the first year of the five-year period to be covered by the strategic plan.

### **Liquidation**

**35.** (1) IEMO shall not be placed in liquidation except by an Act of Parliament. 5

(2) In the event of liquidation, the reserve fund and surplus assets (if any) of IEMO shall, subject to the provisions of subsection (3), be divided between Government and shareholders in the proportion of sixty per cent and forty per cent, respectively.

(3) If the amount payable to a shareholder in terms of subsection (2) exceeds the average market price of his holdings of shares in IEMO over the period of 12 months preceding a day three months prior to the date upon which a Bill providing for such liquidation is introduced in Parliament, so much of that amount as exceeds the said average shall be paid to Government. 10

(4) No writ of execution or attachment or process in the nature thereof shall be issued or proceeded with against IEMO if the Minister has certified that he has introduced or that it is his intention to introduce in Parliament a Bill placing IEMO in liquidation, and has not withdrawn the certificate. 15

### **Funds and assets**

**36.** (1) The funds and assets of IEMO consist of—

- (a) the assets and rights transferred to IEMO as contemplated in section 39; 20
- (b) funds, assets and rights acquired by IEMO in the performance of its functions;
- (c) shareholder contributions approved by the Minister of Finance; and
- (d) such other funds and assets as may be approved by the Minister after consultation with the Minister of Finance.

(2) The funds and assets of IEMO may only be used for the performance of its functions and activities related thereto. 25

(3) IEMO may not dispose of the majority of its assets or such part of its assets as would have a significant impact on the ability to perform its functions without the prior approval of the Minister in consultation with the Minister of Finance.

### **IEMO tariffs, fees and charges** 30

**37.** (1) All of IEMO's normal costs must be recovered from tariffs, fees and charges to IEMO Customers, provided that IEMO must not be allowed to recover a tariff, fee or charge to the extent that it is prohibited by legislation or regulation from levying such tariff or service charge.

(2) Only IEMO is permitted to receive tariffs from IEMO Customers in respect of electricity services being provided to them. 35

(3) IEMO's tariff applications must be made to NERSA in line its regulations and procedures.

(4) IEMO is permitted to enter into special tariff arrangements with high-end users, provided that a register of these high-end users is kept by IEMO and tabled in Parliament annually together with its annual report. 40

(5) IEMO is responsible for identifying high-end users for the purpose of subsection (4).

(6) In the event that an IEMO Customer does not pay any tariff or service charge due, and notwithstanding IEMO's remedies in law, IEMO may, notwithstanding any provision to the contrary in any law, refuse to provide part or all of any services to such customer until all outstanding arrears, including administration fees, collection costs and legal fees, have been paid by such customer. 45

(7) Notwithstanding subsection (1) and subject to section 23 and the limitations and conditions as may be prescribed in the Memorandum of Incorporation and the Companies Act, IEMO may— 50

- (a) borrow money or arrange for facilities to be made available to it to meet its capital and operational requirements;
- (b) raise capital by issuing bonds or making use of other financial instruments; and 55
- (c) provide security for money thus borrowed or raised.

**Borrowings secured by IEMO assets and revenue**

**38.** (1) All borrowings effected by IEMO and any interest or other costs due or to become due in respect thereof, unless otherwise agreed between IEMO and the lender, must be a first charge against all revenues and assets of IEMO and on all monies recovered or to be recovered by it. 5

(2) (a) If any interest due in respect of any securities remains unpaid for three months after demand therefor in writing has been lodged with IEMO, the holder thereof may apply to a High Court having jurisdiction for the appointment of a receiver of the revenues and assets referred to in subsection (1).

(b) The court may— 10

(i) make such order and give such directions as in the circumstances it may deem necessary for the raising and payment of the monies due; and

(ii) in particular, order that prices of electricity supplied or to be supplied be increased to meet the deficit, and the exercise of such order does not require the sanction of any authority. 15

(3) If such default in payment of interest in whole or in part continues for a further period of three months, the holder of the securities may apply to a High Court having jurisdiction for a declaration that the outstanding principal sum for the time being has become due, and the court may make such declaration, together with any consequential order or declaration. 20

(4) In the event of default in payment of the principal sum of any security for one month after the date on which it is repayable, the provisions of subsections (2) and (3) apply with the necessary changes.

**Allocation of surplus**

**39.** Of the surplus (if any) remaining at the end of a financial year of the IEMO after provision has been made for— 25

(a) bad and doubtful debts;

(b) depreciation in assets;

(c) gratuities or other pension benefits for its officers and employees; and

(d) the payment to the shareholders, out of net profits, of a dividend at the rate of ten per cent per annum on the paid-up share capital of IEMO, one tenth shall be allocated to the reserve fund of IEMO and nine-tenths shall be paid to Government. 30

**CHAPTER 6****GENERAL PROVISIONS 35****Non-application to metropolitan municipalities**

**40.** (1) Notwithstanding any provision to the contrary, a metropolitan municipality will be authorised to purchase electricity directly from a generator, subject to—

(a) that metropolitan municipality showing competency, proficiency and innovation in the management and maintenance of its electricity reticulation; 40

(b) that metropolitan municipality has received a clean audit report for the preceding financial year; and

(c) such procurement of electricity being—

(i) conducted in an open and transparent manner; and

(ii) the result of a competitive bidding process. 45

(2) Where the execution of a direct agreement between a metropolitan municipality and a generator for the provision of electricity as envisaged in subsection (1) will require the use of infrastructure under the control of IEMO, IEMO may charge a reasonable and fair fee for the use of such infrastructure as part of the conclusion of such agreement.

**Powers of entry and inspection 50**

**41.** (1) In addition to the powers, duties and functions of IEMO contained in the Memorandum of Incorporation and set out in this Act, any person authorised for this purpose by IEMO—

- (a) may enter upon any land for the purpose of carrying out surveying, tests and such other forms of investigations in relation to design or construction of new generation capacity;
- (b) may at all reasonable times enter any premises to which electricity is or has been supplied by IEMO, in order to inspect any lines, meters, fittings, works and apparatus belonging to IEMO, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where IEMO may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to IEMO. 5
- (2) Any person wishing to enter any premises in terms of subsection (1) must— 10
- (a) if possible, make the necessary arrangements with the legal occupant or owner of the premises before entering such premises and must adhere to all reasonable security measures, if any, of the occupant or owner of the premises; and
- (b) exhibit his or her authorisation at the request of any person materially affected by his or her activities. 15
- (3) If any person fails to comply with the provisions of this section, IEMO may—
- (a) disconnect the electricity of such a person until such time as access to the premises is granted; or
- (b) in an area where there is no electricity connection, apply to a High Court for a court order authorising entry to the premises. 20
- (4) IEMO must, before disconnecting the electricity of a person in terms of subsection (3), notify the property owner or legal occupant of the premises in writing of the intention to disconnect the electricity supply.
- (5) If any person fails to grant entry onto any premises for the purpose contemplated in this section, IEMO may apply to a judge of a High Court for a court order authorising such entry to the premises. 25
- (6) Damage caused by such entry, inspection or removal must be repaired or compensated for by IEMO.

### **Investigation of IEMO** 30

**42.** (1) The Minister may appoint a person to investigate the affairs or financial position of IEMO and compliance by IEMO with this Act and may recover from IEMO the fees and disbursements incurred by that person during the investigation.

(2) IEMO or an employee of IEMO must, for the purposes of subsection (1), provide the Minister or a person authorised by the Minister with such data, information, books, accounts, documents and assets of IEMO as the Minister or the authorised person may require. 35

### **Offences and penalties**

- 43.** (1) A person commits an offence if he or she—
- (a) fails to provide access to any books, accounts, documents or assets when required to do so in terms of this Act or when required by the Minister as contemplated in section 35; 40
- (b) fails to give data or information, or gives false or misleading data or information when required to do so in terms of section 35;
- (c) intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of a duty in terms of this Act; 45
- (d) accepts any unauthorised fees or reward, either directly or indirectly, as a result of his or her position with IEMO;
- (e) refuses to grant IEMO access to land or property for electricity-related inspection; or 50
- (f) impedes, interferes with or attempts to frustrate IEMO in its attempt to gain access to the land or property.

(2) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 55

(3) Where a person is again convicted for an offence contemplated in subsection (1), he or she is liable to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

## Regulations and policy

44. (1) The Minister may make regulations regarding—
- (a) criteria to be used by the Minister in determining customers to whom IEMO may sell electricity, or who may purchase electricity directly from generators, including technical criteria, financial criteria and criteria of national importance or from a security of supply perspective; 5
  - (b) the transfer of customers and related rights and obligations from Eskom Holdings or other suppliers to IEMO, including the compulsory transfer of customer contracts, the handling of existing long-term contracts, the splitting of contracts between energy and wheeling, and matters associated therewith; 10
  - (c) the transfer of assets, rights, obligations and staff, excluding transmission;
  - (d) the transfer of functions, including the timelines within which IEMO must assume the execution thereof;
  - (e) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 15
- (2) The Minister, after consultation with the Board, may make policies on matters of national policy applicable to IEMO, consistent with the objects of this Act, and may at any time thereafter amend any such policies made.
- (3) When making or amending the regulations contemplated in subsection (1), the Minister must— 20
- (a) invite public comment and duly consider comments prior to finalising the regulations; and
  - (b) table the regulations in Parliament before publishing the final version in the *Gazette*. 25

## CHAPTER 7

### TRANSITIONAL PROVISIONS AND SHORT TITLE AND COMMENCEMENT

#### Transfer of assets, rights, liabilities and obligations

45. (1) (a) Eskom Holdings must, within the time determined by the Minister by notice in the *Gazette*— 30
- (i) compile a list of all the fixed property and other real rights in fixed property, movable assets, intellectual property and all liabilities, rights and obligations, including the values applicable to each asset, right, liability and obligation, arising from or relating to or attributable to the functions performed by Eskom Holdings immediately prior to the commencement of this Act, which can legally be transferred, ceded or assigned to IEMO in order that it can perform its functions as set out in terms of this Act; and 35
  - (ii) submit such list to the Board for its consideration.
- (b) The Board must consider the list provided in terms of paragraph (a) and may consult and negotiate with Eskom Holdings thereon with a view of obtaining a comprehensive list of all assets, rights, liabilities and obligations arising from or relating or attributable to the functions that will be the responsibility of IEMO in terms of this Act, with a view of determining their associated values, and with a view of determining whether such assets, rights, liabilities and obligations can be transferred, ceded or assigned to IEMO. 45
- (c) Upon agreement between the Board and Eskom Holdings as to the contents of the list and the values as contemplated in subsection (1), the Minister may determine by notice in the *Gazette* that the fixed property, servitudes and other real rights in fixed property, movable assets, intellectual property and all liabilities, rights and obligations set out in such list, with effect from a date specified in such notice, be transferred, ceded or assigned to IEMO from another organ of state, after consultation with such organ of state: Provided that— 50
- (i) in the event that no agreement is reached between the Board and Eskom Holdings within a reasonable time, the Minister must finally determine the fixed property, servitudes and other real rights in fixed property, movable assets, intellectual property and all liabilities, rights and obligations and corresponding values to be transferred, ceded or assigned to IEMO; and 55

- (ii) different vesting dates can be determined by the Minister for different assets, rights, liabilities and obligations to facilitate the phasing in of functions of IEMO contemplated in this Act.
- (2) (a) Any reference to an organ of state in the patents register, trademarks register, designs register, deeds register or any other register is with effect from a vesting date contemplated in subsection (1)(c) deemed to be a reference to IEMO. 5
- (b) Notwithstanding section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar of deeds referred to in section 102 of the latter Act must, on submission of a certificate by the Minister that land, servitudes, real rights in land or leases have vested in IEMO under this section, make such entries and endorsements free of charge as the registrar considers necessary in any appropriate register in order to register the transfer thereof in the name of IEMO. 10
- (3) Notwithstanding any provision to the contrary in any other law, IEMO and an organ of state contemplated in subsection (2)(a) must be exempt from any value-added tax, donations tax, capital gains tax, provincial or municipal fees or taxes, stamp duties, transfer duties or registration fees payable in terms of any law in relation to the transfer of anything specified on the list. 15
- (4) At least one month prior to the transfer date the chief executive officer of Eskom Holdings must inform any employee of Eskom Holdings performing functions pertaining to IEMO to make an election provided for in subsection (5). 20
- (5) An employee who—
- (a) elects in writing addressed to the chief executive officer of Eskom Holdings prior to the transfer date to become an employee of IEMO, becomes, without any interruption of service, from the transfer date, an employee in a similar post in IEMO, subject to conditions of employment which may not be less favourable than those applicable to him or her on the date immediately preceding the applicable transfer date; and 25
- (b) does not in terms of paragraph (a) elect to become an employee of IEMO and is seconded to IEMO, to perform services in a post similar to the post occupied by him or her at Eskom Holdings, remains, while he or she is so seconded, subject to the laws governing officers and employees of Eskom Holdings. 30
- (6) If, for the purposes of subsection (5), the question arises whether any person performs functions pertaining to IEMO, such question must, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), be decided by the chief executive officer of Eskom Holdings. 35
- (7) If any person seconded in terms of subsection (5)(b) elects to become an employee of IEMO, he or she becomes, without interruption of service, from a date determined by the chief executive officer, an employee of IEMO in a post similar to the post occupied by him or her while so seconded, subject to the conditions of service of IEMO: Provided that where such election is made more than one year after the applicable transfer date, IEMO may not be obliged to employ such employee and he or she may remain seconded to IEMO. 40
- (8) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), it is deemed that no change of employer took place when employment is taken up at IEMO by employees in terms of subsection (5) or (7) and that the position of officers and employees in respect of the phasing in of any tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, remained unchanged. 45
- (9) When an employee of Eskom Holdings becomes an employee of IEMO in terms of subsection (5) or (7), section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), applies. 50

#### **Transfer of functions and deemed validity of licences**

- 46.** (1) From the effective date, IEMO is responsible for the functions listed in section 4: Provided that the execution thereof by IEMO may be assumed in a phased manner, as determined by the Minister by notice in the *Gazette*. 55
- (2) Subject to subsection (1), IEMO must enter into a contractual arrangement with Eskom Holdings for the execution of such of its functions contemplated in section 4.
- (3) The contract contemplated in subsection (2) must be finalised within three months from the date of incorporation of IEMO as a state-owned company. 60

(4) The Minister may, in consultation with Cabinet, determine by notice in the *Gazette* the date for the transfer of the functions to IEMO as referred to in subsection (2).

(5) The notice referred to in subsection (4) must provide a detailed plan and measures for the transfer of such functions in order to ensure continuity of electricity supply.

(6) IEMO must, within six months after publication of the notice referred to in subsection (4), obtain the required licence as prescribed in the Electricity Regulation Act. 5

(7) The Minister may, by notice in the *Gazette*, extend the period within which to apply for a licence as contemplated in subsection (6).

(8) IEMO must, after the transfer of any functions in accordance with this Act, honour 10 the contracts transferred with those functions.

#### **Short title and commencement**

47. This Act is called the Independent Electricity Management Operator Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 15

## **MEMORANDUM ON OBJECTS OF THE INDEPENDENT ELECTRICITY MANAGEMENT OPERATOR BILL, 2019**

### **1. INTRODUCTION**

It cannot be denied that Eskom has effectively become a zombie enterprise that is both overinflated and riddled with corruption. It currently serves as both the main generator and the central purchaser and distributor of electricity. It marginalises independent power producers (IPPs) to maintain the stranglehold that it has over energy production at the expense of end-users, who have to endure hours of load-shedding as a result. It has become an archaic entity suffering from institutionalised maladministration so severe that it threatens every aspect of South African life.

### **2. OBJECTS OF THE BILL**

2.1. The objects of the Bill are to provide for the establishment of the Independent Electricity Management Operator (IEMO) as a public-private partnership entity which will provide an independent system operation to ensure safe, secure and efficient operation of the integrated power system and the trading of electricity at wholesale level, and to allow metropolitan municipalities to purchase electricity directly from IPPs, as well as to provide for matters connected therewith. The necessary provisions will be included to ensure that IEMO is incorporated as a private company that:

- is financially viable;
- will manage the systems entrusted to it in an efficient manner;
- will act as a trader of electricity in line with the policies of national government;
- will prepare appropriate and guiding input for the planning of electricity supply and its transmission;
- is responsible and achieves the establishment, practice and maintenance of an integrated power system; and
- will ensure both efficient and effective dispatch within this integrated system.

### **3. CONTENTS OF THE BILL**

3.1. Chapter 1 of the Bill provides for applicable definitions and the objects of the Bill.

3.2. Chapter 2 regulates the establishment of IEMO as a juristic person. IEMO will be the entity responsible for system operation and the purchase of electricity from electricity generators. IEMO will function as electricity wholesaler, selling electricity to distributors and large customers at a wholesale tariff. This Bill will further eliminate Eskom's effective monopoly on the production of electricity by splitting the entity into two parts: Eskom, which will continue to function as an electricity generator, and IEMO, which will take ownership and control over the national electricity grid and serve as the central buyer and distributor of electricity from all electricity generators.

3.3. To avoid conflict of interest, IEMO will be independent of activities related to electricity generation, to ensure equal treatment of all generators. To further entrench its independence, IEMO will function as a public-private partnership and will not simply be another state-owned company. The entity will be governed by a Board, consisting of members appointed by both the Minister and shareholders. The Board will be required to represent a sufficient spread of skills, knowledge, expertise and experience to enable IEMO to function efficiently and effectively.

- 3.4. IEMO will have amongst others the following core functions and capabilities:
- IEMO will be required to purchase power from the generators, including IPPs, through power purchase agreements. IEMO will then sell this power to distributors and large customers at a wholesale tariff.
  - IEMO will be expected to include in the wholesale tariff its operational cost in accordance with the approval of the Regulator. The Regulator will regulate the wholesale tariff in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) (ERA). Wholesale trading refers to the buying of power from generators at different prices and selling it to large customers and distributors at a wholesale tariff.
  - IEMO will also be responsible for the system operation function through dispatch. IEMO will dispatch all the generation plants, except self-dispatched plants, into the national grid, including but not limited to, wind- and solar plants.
- 3.5. Chapter 3 provides for the manner in which IEMO is to be managed. IEMO will be managed by a board of ten directors, half of which must have the specific expertise or skills prescribed. Half of the board will be elected by the shareholders, while the other half will be appointed by the Minister, which will ensure that there is an impetus for the public and private sectors to govern IEMO cooperatively.
- 3.6. Chapter 4 regulates the appointment of staff to IEMO. The Board must appoint a chief executive officer to ensure that IEMO meets its objects, subject to the individuals signing performance agreements with IEMO. The chief executive officer may, in accordance with a human resource, remuneration and service benefit structure approved by the Board, enter into employment agreements with persons for the performance of specific duties or the provision of specific services as may be necessary for the proper discharge of IEMO's functions. All employees of Eskom Holdings employed in the fulfilment of the functions contemplated in the Bill, including support staff, must be transferred to IEMO.
- 3.7. Chapter 5 deals with the funding and financial accountability of IEMO. The State will be allowed to grant loans to IEMO. IEMO will be required to submit its business and financial plan to the Minister for approval annually. All of IEMO's normal costs must be recovered from tariffs, fees and charges to IEMO Customers, provided that IEMO must not be allowed to recover a tariff, fee or charge to the extent that it is prohibited by legislation or regulation from levying such tariff or service charge.
- 3.8. Chapter 6 provides for a series of general provisions. It also seeks to allow metropolitan municipalities to purchase electricity directly from IPPs in certain circumstances. The Bill acknowledges that planning for new generating capacity is the responsibility of the national Government. However, IEMO will be required from time to time to assist with certain planning activities as requested by the Minister. Some of the listed activities will require a licence to be issued under the ERA, and to this end, IEMO will be required to acquire such licences within six months of its operation.
- 3.9. Metropolitan municipalities that have shown a track record of good governance in their finances and the management of their electricity reticulation will be allowed to enter into agreements with electricity generators directly, without having to go through IEMO as wholesale middleman. IEMO will not only ensure that the monopoly that Eskom currently enjoys is broken down, but that the market is opened up to all power producers, with the end-user ultimately enjoying the greatest benefit.
- 3.10. Chapter 7 provides for transitional provisions and for the short title and commencement date. It also deals specifically with the manner in which certain assets, infrastructure and staff belonging to Eskom Holdings, are to be dealt with, particularly with the objective of transferring so identified assets, infrastructure and staff from Eskom Holdings to IEMO.

**4. FINANCIAL IMPLICATIONS FOR THE STATE**

- 4.1. IEMO is to be constituted and governed as a privately owned entity and will not require funding by the State.

**5. PARTIES CONSULTED**

- 5.1. No formal consultation has yet been undertaken in respect of this Bill, but it will be suggested that it be submitted to a thorough public participation process upon introduction.

**6. PARLIAMENTARY PROCEDURE**

- 6.1. The Member proposes that the Bill be dealt with in accordance with the procedure established by section 76 of the Constitution since it in a substantial manner falls within the functional area of “trade” listed in Schedule 4 of the Constitution.
- 6.2. The Member is further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.