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THE PRESIDENCY

No. 5170 2 September 2024

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 34 of 2024: The South African Water Resources Infrastructure Agency Soc Limited Act Act, 2024

UMONGAMELI

No. 5170 2 September 2024

Kwaziswa ukuthi uMongameli uvumile uMthetho olandelayo oshicilelwa lapha ukuze kwaziwe wonke umuntu:—

No 34 Ka 2024: Umthetho wezinhlaka zombuso zengqalasizinda yemithombo yamanzi kazwelonke eningizimu Afrika 2024

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(English text signed by the President)
(Assented to 27 August 2024)

ACT

To provide for the establishment of the South African National Water Resources Infrastructure Agency as a state-owned company and major public entity; to provide for the objects and functions of the Agency; to provide for the governance of the Agency by the appointment of the Board of the Agency; to provide for the appointment of the Chief Executive Officer and Chief Financial Officer of the Agency; to provide for the funds of the Agency, financial reporting and accountability of the Agency; to provide for the transfer of the national water resources infrastructure; to provide for the transfer of the Trans-Caledon Tunnel Authority to the Agency; to provide for the disestablishment of the Trans-Caledon Tunnel Authority; to provide for the powers of the Minister in relation to the Agency; to provide for the making of regulations and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that National Government is responsible for and has authority over the nation's water resources and its use;

ACKNOWLEDGING that it is necessary to ensure that, in relation to water resources development at national level, the required national water resources infrastructure must be developed, operated and maintained efficiently and effectively in a sustainable, equitable and reliable manner in order to make water available to water users, and to water management institutions for further distribution;

ACKNOWLEDGING that the current national water resources infrastructure asset base and associated revenue stream could be better utilised to procure funding for the development, operation and maintenance of national water resources infrastructure required for meeting social and economic needs; and

RECOGNISING that a juristic person wholly owned and controlled by the State to administer, fund, finance, implement, develop, alter, maintain, rehabilitate, refurbish, operate and manage the national water resources infrastructure, to provide advisory services relating to such infrastructure and to do all things necessary to fulfil the functions entrusted to it under this Act, including promoting the State's socio-economic and transformation objectives, must be established to meet the obligations as set out in sections 10, 11, 24, 27(1)*(b)* and 27(2) of the Constitution in relation to water,

(English text signed by the President)
(Assented to 27 August 2024)

UMTHETHO

Ukuhlinzekela ukusungulwa koHlaka LweNgqalasizinda Yemithombo Yamanzi Kazwelonke yaseNingizimu Afrika njengenkampani kahulumeni kanye nohlaka olukhulu lukahulumeni; ukuhlinzekela izinto nemisebenzi yoHlaka; ukuhlinzekela ukubuswa koHlaka ngokuqokwa kweBhodi loHlaka; ukuhlinzekela ukuqokwa Komphathi Omkhulu kanye Nomphathi Omkhulu Wezezimali woHlaka; ukuhlinzekela izimali zoHlaka, ukubika ngezezimali kanye nokuthembeka koHlaka; ukuhlinzekela ukudluliswa kwengqalasizinda yemithombo yamanzi kazwelonke; ukuhlinzekela ukudluliswa kwe*Trans-Caledon Tunnel Authority* **iyiswa oHlakeni; ukuhlinzekela ukususwa esikhundleni kwe*Trans-Caledon Tunnel Authority*; ukuhlinzekela amandla kaNgqongqoshe mayelana noHlaka; ukuhlinzekela ukwenziwa kwemithethonqubo kanye nokuhlinzekela izindaba ezihlobene nalokho.

ISETHULO

NGOKUQAPHELA ukuthi uHulumeni Kazwelonke ubhekele futhi unegunya kwimithombo yamanzi yesizwe kanye nokusetshenziswa kwayo;

NGOKUVUMA ukuthi kuyadingeka ukuqinisekisa ukuthi, mayelana nokuthuthukiswa kwemithombo yamanzi ezingeni likazwelonke, ingqalasizinda yemithombo yamanzi kazwelonke edingekayo kufanele ithuthukiswe, isetshenziswe futhi igcinwe ngendlela efanele nangempumelelo ngendlela eqhubekayo, elinganayo nethembekile ukuze amanzi atholakale kubasebenzisi bawo, kanye nasezikhungweni zokuphatha amanzi ukuze aqhubeke asatshalaliswe;

NGOKUVUMA ukuthi isisekelo samanje sempahla yengqalasizinda yemithombo yamanzi kazwelonke kanye nemithombo yemalingeniso ehambisana nayo ingasetshenziswa kangcono ukuze kutholwe uxhaso lwezimali zokuthuthukisa, ukusebenzisa kanye nokugcinwa kokunakekelwa kwengqalasizinda yemithombo yamanzi kazwelonke edingekayo ukuze kuhlangatshezwane nezidingo zenhlalo nezomnotho; futhi

NGOKUQAPHELA ukuthi igatsha eliphethwe futhi elilawulwa nguHulumeni ngokuphelele ukuthi lilawule, lixhase ngemali, lisebenzise, lithuthukise, liguqule, ligcine, libuyisele, livuselele, lisebenzise futhi liphathe ingqalasizinda yemithombo yamanzi kazwelonke, ukuhlinzeka ngezinsizakalo zokweluleka eziphathelene naleyo ngqalasizinda kanye nokwenza zonke izinto ezidingekayo ukuze kufezwe imisebenzi eliphathiswe yona ngaphansi kwalo Mthetho, okuhlanganisa nokuthuthukisa izinjongo zoMbuso zezenhlalo-mnotho kanye nezoguquko, kufanele kusungulwe ukuze kuhlangatshezwane nezibopho ezibekwe esigabeni se-10, se-11, sama-24, nesama-27(1)*(b)*) kanye nesama-27(2) soMthethosisekelo maqondana namanzi,

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

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8. Iqhaza leBhodi
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10. Ukuqokwa kwamalungu eBhodi angeyona ingxenye yeziphathimandla
11. Usihlalo kanye nosekela sihlalo
12. Imigomo yehhovisi kanye nemibandela yokuqokwa kwamalungu eBhodi angeyona ingxenye yeziphathimandla
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CHAPTER 1

DEFINITIONS AND PURPOSE

Definitions and Interpretation

1. In this Act, unless the context indicates otherwise—

"**Agency**" means the South African National Water Resources Infrastructure Agency SOC Limited established by section 3;

"**Board**" means the Board of the Agency as contemplated in section 7;

"**Chief Executive Officer**" means the Chief Executive Officer appointed in terms of section 23(1);

"**Chief Financial Officer**" means the Chief Financial Officer appointed in terms of section 23(4);

"**Companies Act**" means the Companies Act, 2008 (Act No. 71 of 2008);

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Department**" means the national government department responsible for water resource management;

"**incorporation date**" means the date of incorporation of the Agency as a state-owned company in terms of section 3;

"**LHWP Treaty**" means the Treaty in relation to 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 protocols, annexures, amendments and agreements concluded pursuant thereto;

34. Izitatimende zezimali kanye nombiko wonyaka
35. Ibhodi lizokwazisa uNgqongqoshe ngezehlakalo ezibalulekile

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UKUDLULISWA KWENGQALASIZINDA YEMITHOMBO YAMANZI KAZWELONKE KANYE NOKUSUSWA ESIKHUNDLENI KWE-TCTA

36. Ukudluliswa kwengqalasizinda yemithombo yamanzi kazwelonke
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ISAHLUKO 1

IZINCAZELO KANYE NENHLOSO

Izincazelo kanye nokuhumusha

1. (1) Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile—

"**Uhlaka**" kushiwo uHlaka oluyinkampani kaHulumeni Yengqalasizinda Yemithombo Yamanzi Kazwelonke yaseNingizimu Afrika esungulwe ngokwesigaba sesi-3;

"**IBhodi**" kushiwo iBhodi loHlaka okukhulunywe ngalo esigabeni se-17;

"**uMphathi Omkhulu**" kushiwo uMphathi Omkhulu oqokwe ngokwesigaba sama-23(1);

"**uMphathi Omkhulu Wezezimali**" kushiwo uMphathi Omkhulu Wezezimali oqokwe ngokwesigaba sama-23(4);

"**uMthetho Wezinkampani**" kusho uMthetho Wezinkampani, wezi-2008 (uMthetho 71 wezi-2008);

"**uMthethosisekelo**" kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996;

"**uMnyango**" kushiwo umnyango kahulumeni kazwelonke obhekele ukuphathwa kwemithombo yamanzi;

"**usuku lokubhaliswa**" kushiwo usuku lokubhaliswa koHlaka njengenkampani kahulumeni ngokwesigaba sesi-3;

"**Isivumelwano se-LHWP**" kushiwo iSivumelwano mayelana ne*Lesotho Highlands Water Project* phakathi kukaHulumeni weRiphabhulikhi yaseNingizimu Afrika kanye noHulumeni Wombuso waseLesotho, esasayinwa zingama-24 kuMfumfu we-1986, kubandakanya nanoma yiziphi izivumelwano, izithasiselo, izichibiyelo nezivumelwano ezaphothulwa ngokulandela lokho;

"**ilungu**" kushiwo ilungu lesigungu esiphezulu noma elingelona ilungu lesigungu esiphezulu seBhodi;

"**member**" means an executive or non-executive member of the Board;
"**Minister**" means the Minister responsible for water resource management;
"**National Water Act**" means the National Water Act, 1998 (Act No. 36 of 1998);
"**national water resources infrastructure**" means a government waterwork declared by the Minister as national water resources infrastructure in terms of section 36;
"**non-Treaty functions**" means the non-Treaty functions of the TCTA contemplated in clause 24 of the Notice of Establishment, which relate to—

(a) fulfilling the Republic of South Africa's financial obligations in terms of or resulting from the LHWP Treaty including the raising of money, liability and financial risk management;
(b) receiving all water delivered at the Designated Delivery Point defined in the LHWP Treaty, by the Lesotho Highlands Development Authority and releasing such water at the Designated Outlet Point defined in the LHWP Treaty, to the Department;
(c) performing any additional functions incidental to the release of such water to the Department; and
(d) performing any other functions that the TCTA may be directed by the Minister to perform in terms of section 103(2) of the National Water Act;

"**Notice of Establishment**" means the Notice of Establishment of the TCTA published under Government Notice No. 2631 in Government *Gazette* number 10545, dated 12 December 1986, as amended by Government Notice No. 277 in Government Gazette No 21017, dated 24 March 2000, which constitutes its enabling legislation;
"**prescribed**" means prescribed by regulation under this Act;
"**Public Finance Management Act**" means the Public Finance Management Act,1999 (Act No. 1 of 1999);
"**subsidiary**" means a subsidiary as contemplated in section 3 of the Companies Act;
"**TCTA**" means the Trans-Caledon Tunnel Authority, a major public entity listed in Schedule 2 of the Public Finance Management Act and a body corporate established in terms of the Notice of Establishment, with powers to implement international agreements in terms of section 102 of the National Water Act and perform any additional functions as directed by the Minister in terms of sections 74 and 103(2) of the National Water Act;
"**TCTA's Treaty functions**" means the functions that the TCTA must perform in terms of clauses 21 to 23 of its Notice of Establishment;
"**Water Services Act**" means the Water Services Act, 1997 (Act No. 108 of 1997);
"**Water Treaty**" means any international agreement entered into by the South African Government and a foreign government relating to—

(a) investigating, managing, monitoring and protecting water resources;
(b) regional co-operation on water resources;
(c) acquiring, constructing, altering, operating or maintaining a waterwork; or
(d) the allocation use and supply of water.

"**water user**" means a person or institution authorised to use water in terms of the National Water Act; and
"**waterwork**" means a government waterwork owned or controlled by the Minister and includes any borehole, dam, weir, canal, pipeline, siphon, pump station, reservoir, structure, earthwork or equipment installed or used for or in connection with water use.

(2) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.

(3) Any directive or notice given in terms of this Act must be in writing.

"**uNgqongqoshe**" kushiwo uNgqongqoshe obhekele ukuphathwa kwemithombo yamanzi;

"**uMthetho Wamanzi Kazwelonke**" kushiwo uMthetho Wamanzi Kazwelonke, we-1998 (uMthetho 36 we-1998);

"**ingqalasizinda yemithombo yamanzi kazwelonke**" kushiwo umsebenzi wamanzi kahulumeni omenyezelwe nguNgqongqoshe njengengqalasizinda yemithombo yamanzi kazwelonke ngokwesigaba sama-36;

"**imisebenzi engeyona eyeSivumelwano**" kushiwo imisebenzi engeyona eyeSivumelwano se-TCTA ehlongozwe esigatshaneni sama-24 seSaziso Sokusungulwa, ehlobene—

(a) nokugcwalisa izibopho zezimali zeRiphabhulikhi yaseNingizimu Afrika ngokwe noma ngenxa yeSivumelwano se-LHWP okuhlanganisa ukuqoqwa kwemali, ukulawulwa kwesikweletu kanye nobungozi bezezimali;

(b) nokwemukela wonke amanzi alethwa endaweni eqokiwe yokudiliva echazwe kwiSivumelwano se-LHWP, yi*Lesotho Highlands Development Authority* kanye nokudedela lawo manzi endaweni eqokiwe yokukhipha amanzi echazwe kwiSivumelwano se-LHWP, eMnyangweni;

(c) nokwenza noma yimiphi imisebenzi eyengeziwe ehambisana nokudedelwa kwalawo manzi eMnyangweni; kanye

(d) nokwenza noma yimiphi eminye imisebenzi i-TCTA engayalwa uNgqongqoshe ukuba iyenze ngokwesigaba se-103(2) soMthetho Wamanzi Kazwelonke;

"**Isaziso Sokusungulwa**" kushiwo Isaziso Sokusungulwa kwe-TCTA esishicilelwe ngaphansi kweSaziso Sikahulumeni esinguNo. 2631 kuSomqulu Kahulumeni onguNo. 10545, wamhla ziyi-12 kuZibandlela we-1986, njengoba sichitshiyelwe yiSaziso Sikahulumeni esinguNo. 277 kuSomqulu Kahulumeni onguNo. 21017, wamhla zingama-24 kuNdasa wezi-2000, okuhlanganisa umthetho waso ovumelayo;

"**kunqunyiwe**" kusho ukuthi kunqunywe ngumthethonqubo ngaphansi kwalo Mthetho;

"**Umthetho Wokuphathwa Kwezimali Zikahulumeni**" kushiwo uMthetho Wokuphathwa Kwezimali Zikahulumeni, we-1999 (uMthetho 1 we-1999);

"**inkampani engaphansi kweyinhloko**" kushiwo inkampani engaphansi kweyinhloko njengoba kuhlongozwe esigabeni sesi-3 soMthetho Wezinkampani;

"**I-TCTA**" kushiwo i*Trans-Caledon Tunnel Authority*, okuyinhlangano enkulu kahulumeni esohlwini lweSheduli yesi-2 yoMthetho Wokuphathwa Kwezimali Zikahulumeni kanye nenkampani esungulwe ngokweSaziso Sokusungulwa, enamandla okusebenzisa izivumelwano zomhlaba wonke ngokwesigaba se-102 soMthetho Wamanzi Kazwelonke kanye nokwenza noma yimiphi imisebenzi eyengeziwe njengoba iyalwe uNgqongqoshe ngokwezigaba ese-74 kanye nese-103(2) zoMthetho Wamanzi Kazwelonke;

"**Imisebenzi yeSivumelwano se-TCTA**" kushiwo imisebenzi okumele i-TCTA iyenze ngokwesigaba sama-21 kuya kwesama-23 seSaziso sokusungulwa kwayo;

"**UMthetho Wezinsizakalo Zamanzi**" kusho uMthetho Wezinsizakalo Zamanzi we-1997 (uMthetho 108 we-1997);

"**Isivumelwano Samanzi**" kushiwo noma yisiphi isivumelwano somhlaba wonke okungenwe kuso uHulumeni waseNingizimu Afrika kanye nohulumeni wangaphandle esihlobene—

(a) nokuphenya, ukuphatha, ukuqapha kanye nokuvikela imithombo yamanzi;

(b) nokusebenzisana kwesifunda emithonjeni yamanzi;

(c) nokuthola, ukwakha, ukushintsha, ukusebenzisa noma ukugcina umsebenzi wamanzi; noma

(d) nesabelo sokusetshenziswa nokuhlinzekwa kwamanzi;

"**umsebenzisi wamanzi**" kushiwo umuntu noma isikhungo esigunyazwe ukusebenzisa amanzi ngokoMthetho Wamanzi Kazwelonke; futhi

"**umsebenzi wamanzi**" kushiwo umsebenzi wamanzi kahulumeni ophethwe noma olawulwa uNgqongqoshe futhi kubandakanya noma yiliphi ipitsi, idamu, isikalikugeleza kwamanzi, indlela yamanzi, ipayipi, ishubhu, indawo yokumpompa, ichibi, isakhiwo, ubumba noma impahla efakelwe noma esetshenziselwa noma ehlobene nokusetshenziswa kwamanzi.

(2) Lapho kuhunyushwa imihlinzeko yalo Mthetho, noma yikuphi ukuhunyushwa okuphusile okuhambisana nenhloso yalo Mthetho njengoba kushiwo esigabeni sesi-2, kufanele kukhethwe ngaphezu kwanoma ikuphi ukuhumusha okungahambisani naleyo nhloso.

(3) Noma yimuphi umyalelo noma isaziso esinikezwe ngokwalo Mthetho kufanele sibhalwe phansi.

Purpose of Act

2. The purpose of this Act is—

(a) to establish a juristic person under the full ownership and control of the State in order to acquire, dispose of, fund, provide, maintain, operate, manage and secure funding of national water resources infrastructure in an efficient and cost-effective manner to meet the social and economic developmental needs of current and future water users within the framework of national government policy and in accordance with sections 10, 11, 24, 27(1)*(b)* and 27(2) of the Constitution;

(b) to provide for the continued performance of the Treaty and non-Treaty functions currently being performed by the TCTA; and

(c) to serve and to achieve the development and transformation objectives of government through representation, service delivery and social and economic development.

CHAPTER 2

ESTABLISHMENT OF AGENCY

Establishment of Agency

3. (1) There is hereby established a juristic person to be known as the South African National Water Resources Infrastructure Agency SOC Limited.

(2) Schedule 2 of the Public Finance Management Act will be amended by the Minister responsible for Finance to include the listing of the Agency as a major public entity.

(3) The Minister must take the necessary action for the incorporation of the Agency as a company in terms of the Companies Act.

(4) The State is the sole shareholder of the Agency upon incorporation and at any time thereafter.

(5) The powers and duties of the State as the sole shareholder of the Agency must be exercised and performed by the Minister subject to any limitations provided for in this Act.

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

(7) The relationship between the Minister as representative shareholder, as contemplated in subsection (4) and the Agency, must be defined in a shareholder's compact entered into between the Minister and the Agency in terms of section 15.

(8) The Agency is a water management institution as defined in section 1 of the National Water Act, and is deemed an established body for purposes of section 102 of the National Water Act, with powers to implement international agreements and perform any additional functions as directed by the Minister in terms of sections 74 and 103(2) of the National Water Act.

(9) The Companies Act and the Public Finance Management Act apply to the Agency.

Memorandum of Incorporation of Agency

4. (1) The Memorandum of Incorporation of the Agency must be consistent with this Act.

(2) Notwithstanding the provisions of the Companies Act, an amendment to the Memorandum of Incorporation affecting any provision of this Act does not have any legal force and effect unless and until the relevant provision of this Act has been amended accordingly and has come into effect.

Inhloso yoMthetho

2. Inhloso yalo Mthetho—

(a) ukusungula igatsha ngaphansi kokuphathwa nokulawulwa uhulumeni ngokuphelele ukuze kutholwe, kulahlwe, kuxhaswe, kuhlinzekwe, kunakekelwe, kuqhutshwe, kuphathwe futhi kuvikelwe uxhaso lwezimali lwengqalasizinda yemithombo yamanzi kazwelonke ngendlela ephumelelayo neyongayo ukuze kuhlangatshezwane nezidingo zentuthuko yezenhlalakahle nezomnotho zabasebenzisi bamanzi bamanje nabesikhathi esizayo ngaphakathi kohlaka lwenqubomgomo kahulumeni kazwelonke futhi ngokuhambisana nesigaba se-10, se-11, sama-24, sama-27(1)*(b)* kanye nesama-27(2) soMthethosisekelo;

(b) ukuhlinzekela ukuqhubeka kokusebenza kwemisebenzi yeSivumelwano kanye nemisebenzi engeyona eyeSivumelwano eyenziwa yi-TCTA; kanye

(c) nokusebenza kanye nokufeza izinjongo zikahulumeni zentuthuko nezoguquko ngokumela, ngokuletha izidingo kanye nokuthuthukiswa kwenhlalo nomnotho.

ISAHLUKO 2

UKUSUNGULWA KOHLAKA

Ukusungulwa koHlaka

3. (1) Ngalokhu kusungulwa igatsha elizokwaziwa njengenkampani kaHulumeni yoHlaka Yengqalasizinda Yemithombo Yamanzi Kazwelonke yaseNingizimu Afrika.

(2) Uhlelo 2 loMthetho Wokuphathwa Kwezimali Zikahulumeni luzochitshiyelwa nguNgqongqoshe obhekele ezeZimali ukuze kufakwe ukubalwa koHlaka njengenhlangano enkulu kahulumeni.

(3) UNgqongqoshe kufanele athathe izinyathelo ezifanele zokubhaliswa koHlaka njengenkampani ngokoMthetho Wezinkampani.

(4) Uhulumeni uyena kuphela umnikazi wamasheya oHlaka lapho ifakwa futhi nganoma yisiphi isikhathi ngemva kwalokho.

(5) Amandla nemisebenzi kahulumeni njengomnikazi wamasheya wonke oHlaka kufanele asetshenziswe futhi enziwe uNgqongqoshe kuncike kunoma yimiphi imikhawulo ehlinzekwe kulo Mthetho.

(6) UNgqongqoshe angeke athengise noma akhiphe noma yimaphi amasheya oHlaka, ngaphandle uma kuhlinzekwe eMthethweni wePhalamende.

(7) Ubudlelwano phakathi kukaNgqongqoshe njengomnikazi wamasheya ommele, njengoba kuhlongozwe esigatshaneni sesi-(4) kanye noHlaka kufanele buchazwe kwisivumelwano somninimasheya okungenwe kuso phakathi kukaNgqongqoshe noHlaka ngokwesigaba se-15.

(8) IsiKhungo siyisikhungo sokuphatha amanzi njengoba kuchazwe esigabeni soku-1 soMthetho Wamanzi Kazwelonke, futhi sithathwa njengomgwamanda osunguliwe ngenhloso yesigaba se-102 soMthetho Wamanzi Kazwelonke, onamandla okuqalisa izivumelwano zomhlaba wonke kanye nokwenza noma yimiphi imisebenzi eyengeziwe njengokuqondiswa nguNgqongqoshe ngokwesigaba sama-74 kanye nese-103(2) soMthetho Wamanzi Kazwelonke.

(9) UMthetho Wezinkampani kanye noMthetho Wokuphathwa Kwezimali Zikahulumeni usebenza kuHlaka.

Imemorandamu Yokubhaliswa koHlaka

4. (1) IMemorandamu Yokubhaliswa njengenkampani koHlaka kufanele ihambisane nalo Mthetho.

(2) Naphezu kwemihlinzeko yoMthetho Wezinkampani, ukuchitshiyelwa kweMemorandamu Yokubhaliswa njengenkampani okuthinta noma yimuphi umhlinzeko walo Mthetho akunawo amandla omthetho kanye nokusebenza ngaphandle uma umhlinzeko ofanele walo Mthetho sewuchitshiyelwe ngokufanele futhi usuqalile ukusebenza.

Objects of Agency

5. The objects of the Agency are to develop and manage national water resources infrastructure to—

(a) ensure a sustainable, equitable and reliable supply of water from national water resources infrastructure;

(b) meet obligations set out in sections 10, 11, 24, 27(1)*(b)* and 27(2) of the Constitution and national and regional social and economic objectives of national policy;

(c) utilise its asset base and cash-flow to raise funds to develop national water resources infrastructure for social and economic development purposes;

(d) provide, operate and maintain the national water resources infrastructure and fund the costs thereof;

(e) perform the Treaty and non-Treaty functions currently being performed by the TCTA as more fully set out in the shareholder's compact; and

(f) perform any other functions that the Minister may direct it to perform in terms of section 103(2) of the National Water Act.

Functions of Agency

6. (1) The Agency must, in order to fulfil its objects—

(a) produce every five years a strategic plan which must—

(i) ensure that the Agency provides, operates and maintains the national water resources infrastructure that is sustainable, equitable and reliable;

(ii) be consistent with national water policy including the national water resource strategy produced by the Department in terms of Part 1 of Chapter 2 of the National Water Act; and

(iii) be approved by the Minister, after consultation with the Department, the National Assembly and other key stakeholders;

(b) provide, operate and maintain national water resources infrastructure in a manner that takes account of national development objectives, including the mitigation of climate change and other risks to a reliable water supply;

(c) secure funding and, where necessary, the refinancing of national water resources infrastructure;

(d) collect water use charges due to it in terms of Chapter 5 of the National Water Act and the pricing strategy established by the Minister in terms of section 56 of the National Water Act;

(e) attract, develop and maintain appropriate skills;

(f) achieve and sustain efficient and effective water supply to all water users that it supplies;

(g) create jobs in the national water resources infrastructure development process in compliance with National Development Plan and the New Growth Path Framework;

(h) manage an asset inventory and information system associated with the national water resources infrastructure;

(i) ensure the safety of the dams vested in it, in accordance with the procedure set out in Chapter 12 of the National Water Act;

(j) ensure sustainable, equitable and reliable development of national water resources infrastructure;

(k) establish compliance, fraud and loss prevention mechanisms to ensure that the integrity of the Agency is maintained;

(l) enter into agreements with—

(i) water users; and

(ii) other parties for purposes of maintaining and sustaining reliable national water resources infrastructure;

Izinjongo zoHlaka

5. Izinjongo zoHlaka ukuthuthukisa nokuphatha ingqalasizinda yemithombo yamanzi kazwelonke ukuze—

(a) luqinisekise ukuhlinzekwa kwamanzi okuqhubekayo, ngokulinganayo futhi okuthembekile avela kwingqalasizinda yemithombo yamanzi kazwelonke;

(b) luhlangabezane nezibopho ezibekwe esigabeni se-10, se-11, sama-24, sama-27(1)*(b)* kanye nesama-27(2) zoMthethosisekelo kanye nezinjongo zikazwelonke nezesifunda zezenhlalo nezomnotho zenqubomgomo kazwelonke;

(c) lusebenzise isisekelo sempahla yalo kanye nokuphuma kwemali ukuze luqoqe izimali zokuthuthukisa ingqalasizinda yemithombo yamanzi kazwelonke ngezinhloso zokuthuthukiswa kwenhlalakahle nezomnotho;

(d) luhlinzeke, lusebenzise futhi lugcine ingqalasizinda yemithombo yamanzi kazwelonke futhi luxhase izindleko zayo;

(e) lwenze iSivumelwano kanye nemisebenzi engeyona eyeSivumelwano njengamanje eyenziwa yi-TCTA njengoba kubekwe ngokugcwele kwisivumelwano sabanikazi bamasheya; futhi

(f) lwenze noma yimiphi eminye imisebenzi uNgqongqoshe angayala ukuba luyenze ngokwesigaba se-103(2) soMthetho Wamanzi Kazwelonke.

Imisebenzi yoHlaka

6. (1) UHlaka ukuze lufeze izinjongo zalo, kumele—

(a) njalo eminyakeni emihlanu ikhiphe uhlelo lesu okufanele—

(i) luqinisekise ukuthi isiKhungo sihlinzeka, sisebenza futhi sigcina ingqalasizinda yemithombo yamanzi kazwelonke eqhubekayo, elinganayo futhi ethembekile;

(ii) luhambisane nenqubomgomo kazwelonke yamanzi okuhlanganisa nesu lemithombo yamanzi kazwelonke elikhiqizwe uMnyango ngokweNgxenye yoku-1 yeSahluko sesi-2 soMthetho Wamanzi Kazwelonke; futhi

(iii) lugunyazwe uNgqongqoshe, ngemva kokubonisana noMnyango, iSigungu Sikazwelonke kanye nabanye ababambiqhaza ababalulekile;

(b) luhlinzeke, lusebenzise futhi lugcine ingqalasizinda yemithombo yamanzi kazwelonke ngendlela ebhekelela izinjongo zentuthuko kazwelonke, okuhlanganisa ukudambisa ukuguquguquka kwesimo sezulu nezinye izingozi ekuhlinzekweni kwamanzi okuthembekile;

(c) luthole uxhaso lwezimali futhi lapho kunesidingo, ukuxhaswa ngezimali kabusha kwengqalasizinda yemithombo yamanzi kazwelonke;

(d) luqoqe izimali zokusebenzisa amanzi okumele ikhokhwe ngokweSahluko sesi-5 soMthetho Wamanzi Kazwelonke kanye nesu lentengo elisungulwe uNgqongqoshe ngokwesigaba sama-56 soMthetho Wamanzi Kazwelonke;

(e) luhehe, luthuthukise futhi lugcine amakhono afanele;

(f) luzuze futhi lugcine ukuhlinzekwa kwamanzi ngendlela efanele nenempumelelo kubo bonke abasebenzisi bamanzi ababahlinzekayo;

(g) ukudala amathuba emisebenzi ohlelweni lukazwelonke lokuthuthukiswa kwengqalasizinda yemithombo yamanzi ngokuhambisana noHlelo Lukazwelonke Lokuthuthukisa kanye noHlaka Lwendlela Entsha Yokukhula;

(h) luphathe uhlu lwempahla kanye nohlelo lolwazi oluhlobene nengqalasizinda yemithombo yamanzi kazwelonke;

(i) luqinisekise ukuphepha kwamadamu oluwaphethe, ngokuhambisana nenqubo ebekwe eSahlukweni se-12 soMthetho Wamanzi Kazwelonke;

(j) luqinisekise intuthuko eqhubekayo, elinganayo kanye nokuthuthukiswa okuthembekile kwengqalasizinda yemithombo yamanzi kazwelonke;

(k) lusungule izindlela zokuthobela, zokuvimbela ukukhwabanisa nokulahlekelwa ukuze kuqinisekiswe ukuthi buyagcinwa ubuqotho boHlaka;

(l) lungena ezivumelwaneni—

(i) nabasebenzisi bamanzi; kanye

(ii) nabanye ababambiqhaza ngezinhloso zokugcina ukuthuthukiswa okuthembekile kwengqalasizinda yemithombo yamanzi kazwelonke;

(m) acquire or dispose of, subject to any applicable legislation, any right or title in movable or immovable property as may be necessary for the Agency to fulfil its objects and functions;

(n) perform legal acts, including the instituting or defending of any legal action or debt collection;

(o) obtain by agreement, in writing, the services of any person, including any organ of state for the performance of any specific act, task or assignment for and on behalf of the Agency; and

(p) if it will not prejudice the capacity of the Agency to perform the functions for which it was established, the Agency may, subject to suitable financing arrangements that have been made, perform additional functions which may include, providing water management institutions and water service authorities or water service providers as defined in the National Water Act and the Water Services Act with—

(i) management services;

(ii) financial services;

(iii) training; and

(iv) other support services.

(2) In performing its functions, the Agency must—

(a) be customer-orientated;

(b) ensure compliance with national water policy; and

(c) act according to its social, economic and constitutional responsibilities in terms of the Constitution.

(3) The Agency must perform the TCTA's LHWP Treaty and non-Treaty functions, requirements, financial and other obligations in accordance with the provisions of the Notice of Establishment, the LHWP Treaty and directives given to the TCTA by the Minister.

(4) The Agency must promote the development of projects that meet social needs and must facilitate suitable financial arrangements for the funding thereof.

(5) The Agency may perform any functions inside or outside of the Republic of South Africa to implement any Water Treaty subject to suitable financial arrangements having been made.

hc(6) The Agency may only perform functions and undertake operations in another country that are unrelated to the function of supplying water to the Republic of South Africa if it fully recovers the costs of doing so by—

(a) charging a fee;

(b) claiming costs; and

(c) claiming disbursements, for so performing, from that country.

CHAPTER 3

GOVERNANCE OF AGENCY

Governance and composition of Board

7. (1) The Agency acts through its Board.

(2) The Board—

(a) is the accounting authority of the Agency; and

(b) is responsible for the strategic direction of the affairs of the Agency.

(3) The Board of the Agency consists of—

(a) two executive members appointed in terms of section 23;

(b) not less than nine and not more than 11 non-executive members, which must include—

(i) a member designated by the Minister who is a senior officer of the Department;

(ii) a member designated by the Minister of Finance who is suitably qualified and experienced; and

(iii) the members appointed in terms of section 10.

(m) ngokuncike kunoma yimuphi umthetho osebenzayo, kumele luthole noma lulahle noma yiliphi ilungelo noma itayitela empahleni egudlukayo noma engagudluki ngendlela okungadingeka ngayo ukuze uHlaka lufeze izinhloso nemisebenzi yalo;

(n) lwenze izenzo zomthetho, okuhlanganisa ukusungula noma ukuvikela noma yiziphi izinyathelo zomthetho noma ukuqoqwa kwezikweletu;

(o) luthole ngesivumelwano, ngokubhala, izinsizakalo zanoma yimuphi umuntu, kuhlanganisa nanoma iluphi uhlaka lombuso ngokwenza noma yisiphi isenzo esithile, umsebenzi noma i-asayimenti oHlaka noma esikhundleni soHlaka; futhi

(p) uma kungeke kuphazamise amandla oHlaka ukwenza imisebenzi eyasungulelwa yona, ngokuncike ezinhlelweni ezifanele zezezimali ezenziwe, uHlaka lungenza imisebenzi eyengeziwe engabandakanya, kodwa ingagcini lapho, ukuhlinzeka izikhungo zokuphatha amanzi kanye neziphathimandla zamanzi noma abahlinzeki bezinsizakalo zamanzi njengoba kuchazwe kuMthetho Wamanzi Kazwelonke kanye noMthetho Wezinsizakalo Zamanzi kanye—

(i) nezinsizakalo zokuphatha;

(ii) nezinsizakalo zezezimali;

(iii) ukuqeqeshwa; kanye

(iv) nezinye izinsizakalo zokusekwa.

(2) Ekwenzeni imisebenzi yayo, uHlaka kumele—

(a) lugxile kumakhasimende;

(b) luqinisekise ukuthotshelwa kwenqubomgomo kazwelonke yamanzi; futhi

(c) lusebenze ngokuhambisana nezibopho zalo zezenhlalakahle, ezomnotho kanye nezomthethosisekelo ngokoMthethosisekelo.

(3) UHlaka kumele lwenze imisebenzi yeSivumelwano se-LHWP se-TCTA nemisebenzi engeyona eyesivumelwano, izidingo, izimali kanye nezinye izibopho ngokuhambisana nemihlinzeko yeSaziso sokusungulwa, iSivumelwano se-LHWP kanye neziqondiso ezinikezwe i-TCTA nguNgqongqoshe.

(4) UHlaka kufanele lukhuthaze ukuthuthukiswa kwamaphrojekthi ahlangabezana nezidingo zomphakathi futhi kufanele yenze amalungiselelo ezezimali afanelekile ukuze ithole uxhaso.

(5) UHlaka lungenza noma yimiphi imisebenzi ngaphakathi noma ngaphandle kweRiphabhulikhi yaseNingizimu Afrika ukuze luqalise noma yisiphi iSivumelwano Samanzi kuncike ekutheni kwenziwe izinhlelo ezifanele zezimali.

(6) UHlaka lungenza imisebenzi futhi lwenze imisebenzi kwelinye izwe engahlobene nomsebenzi wokuhlinzeka amanzi kwiRiphabhulikhi yaseNingizimu Afrika uma lubuyisa ngokugcwele izindleko zokwenza lokho—

(a) ngokukhokhisa imali;

(b) ngokubiza izindleko; futhi

(c) ngokubiza izimali ezikhokhwayo, ngokwenza kanjalo, kulelo zwe.

ISAHLUKO 3

UKUBUSA KOHLAKA

Ukubusa kanye nokwakha iBhodi

7. (1) UHlaka lusebenza ngeBhodi layo.

(2) IBhodi—

(a) liyisiphathimandla esinesibopho sokubika soHlaka; futhi

(b) libhekele ukuqondisa okunesu kwezindaba zoHlaka.

(3) IBhodi loHlaka lakhiwe—

(a) amalungu amabili esigungu esiphezulu aqokwe ngokwesigaba sama-23;

(b) amalungu angekho ngaphansi kwesishiyagalolunye futhi angadluli kwayi-11 okungewona awesigungu esiphezulu, okumele ahlanganise—

(i) ilungu eliqokwe uNgqongqoshe oyisikhulu esiphezulu soMnyango;

(ii) ilungu eliqokwe uNgqongqoshe wezeziMali eliqeqeshwe ngokufanele futhi elinolwazi; futhi

(iii) amalungu aqokwe ngokwesigaba se-10.

(4) The Chief Executive Officer and the Chief Financial Officer are executive members of the Board by virtue of their appointment and may not be the chairperson or the deputy chairperson of the Board or of any committee constituted under section 16.

Role of Board

8. The Board must—

(a) retain adequate and effective control over the Agency;

(b) produce the strategic plan;

(c) give consideration to policy and systems of the Agency in order to achieve the objects of the Agency;

(c) monitor and evaluate the implementation of strategy, policy and corporate plans;

(d) implement and monitor performance management systems for employees of the Agency;

(e) ensure a transparent and effective communication and stakeholder engagement policy;

(f) adopt and accept an interim code of conduct for the Board, which is acceptable to the Minister and thereafter, within six months of the appointment of the Board, the Board must develop a code of conduct for itself which must be approved by the Minister;

(g) provide effective and transparent corporate governance;

(h) ensure compliance with all applicable laws, regulations, agreements and codes of best business practice; and

(i) report to the Minister.

Principles to guide Board

9. The Board, as accounting authority of the Agency, is guided by ethical and good governance practices articulated in the legislative prescripts, including the Companies Act and the Public Finance Management Act, as well as the principles in the corporate governance codes of best practice, including the King Reports.

Appointment of non-executive Board members

10. (1) The Minister must, by notice in at least two newspapers that have general circulation throughout the Republic of South Africa and by notice in the *Gazette*, invite nominations for non-executive members of the Board contemplated in section 7(3)(iii).

(2) *(a)* The Minister must establish a nominations committee consisting of no less than 3 and no more than 5 persons, one of which must be the chairperson of the nominations committee.

(b) The nominations committee must make recommendations to the Minister for the appointment of the non-executive members of the Board from the nominations received pursuant to the invitation in terms of subsection (1).

(3) In establishing a nominations committee, the Minister must—

(a) ensure that the nominations committee is constituted with members that are fit and proper, suitably qualified and experienced in the areas referred to in subsection (4)*(a)*(i)-(iii); and

(b) ensure that the nominations committee is broadly representative of race, gender, disability and the geographical spread of the Republic of South Africa.

(4) The nominations committee, in making recommendations to the Minister, must consider—

(a) the proven skills, knowledge, experience and professional registrations of an applicant in areas of—

(i) governance, audit, legal and risk management;

(ii) project finance, treasury management and financial management;

(4) UMphathi Omkhulu kanye noMphathi Omkhulu wezezimali bangamalungu aphezulu eBhodi ngenxa yokuqokwa kwabo futhi angeke babe usihlalo noma isekela likasihlalo weBhodi noma wanoma yiliphi ikomidi elakhiwe ngaphansi kwesigaba se-16.

Iqhaza leBhodi

8. IBhodi kufanele—

(a) ligcine ukuphatha okwanele nokuphumelelayo koHlaka;
(b) likhiphe uhlelo lesu;
(c) licabangele inqubomgomo kanye nezinhlelo zoHlaka ukuze kufezwe izinjongo zoHlaka;
(c) liqaphe futhi ihlole ukuqaliswa kwamasu, inqubomgomo kanye nezinhlelo zebhizinisi;
(d) lisebenzise futhi liqaphe izinhlelo zokuphatha ukusebenza kwabasebenzi boHlaka;
(e) liqinisekise ukuxhumana okusobala nokusebenzayo kanye nenqubomgomo yokubandakanya ababambiqhaza;
(f) lithathe futhi lamukele umgomo wokuziphatha wesikhashana weBhodi, owemukelekayo kuNgqongqoshe futhi emva kwalokho, phakathi nezinyanga eziyisithupha zokuqokwa kweBhodi, iBhodi kumele lakhe imithetho yokuziphatha yalo okumele yamukelwe uNgqongqoshe;
(g) lihlinzeke ngokubusa kwebhizinisi okusebenzayo nokungafihli;
(h) liqinisekise ukuthotshelwa kwayo yonke imithetho esebenzayo, iziqondiso, izivumelwano kanye namakhodi okusebenza kahle kwebhizinisi; futhi
(i) libike kuNgqongqoshe.

Imigomo yokuqondisa iBhodi

9. IBhodi, njengesiphathimandla esinesibopho sokubika soHlaka, liqondiswa izinqubo zokuziphatha kanye nokubusa okuhle ezishiwo emibhalweni yomthetho, okuhlanganisa noMthetho Wezinkampani kanye noMthetho Wokuphathwa Kwezimali Zikahulumeni, kanye nemigomo kumakhodi okusebenza kahle kwebhizinisi, okuhlanganisa kanye nemigomo yebhizinisi amakhodi okuphatha okwenza okungcono kakhulu, okuhlanganisa neMibiko yeNkosi.

Ukuqokwa kwamalungu eBhodi angeyona ingxenye yeziphathimandla

10. (1) UNgqongqoshe ngesaziso okungenani emaphephandabeni amabili asakazwa yonke iRiphabhulikhi yaseNingizimu Afrika nangesaziso kuSomqulu, kufanele ameme ukuphakanyiswa kwamalungu ebhodi angewona amalungu esigungu esiphezulu ahlongozwe esigabeni sesi-7(3)(iii).

(2) *(a)* UNgqongqoshe kufanele asungule ikomidi lezincomo elakhiwe abantu abangekho ngaphansi kwabayi-3 futhi abangeqile kwabayi-5, oyedwa wabo abe usihlalo wekomidi lezincomo.

(b) Ikomidi lokuqoka kumele lenze izincomo kuNgqongqoshe ngokuqokwa kwamalungu angewona amalungu esigungu esiphezulu eziphakamisweni ezitholwe ngokulandela isimemo ngokwemibandela yesigatshana soku-(1).

(3) Ekusunguleni ikomidi leziphakamiso, uNgqongqoshe kufanele—

(a) aqinisekise ukuthi ikomidi lokuphakanyiswa kwamagama lakhiwe ngamalungu afanelekile nanamandla, aqeqeshwe ngokufanele futhi anolwazi-ezintweni okukhulunywe ngazo esigatshaneni sesi-(4)*(a)*(i)-(iii); futhi
(b) liqinisekise ukuthi ikomidi lokuqoka limele ngokubanzi ubuhlanga, ubulili, ukukhubazeka kanye nokusabalala kwendawo yeRiphabhulikhi yaseNingizimu Afrika.

(4) Ikomidi leziphakamiso, lapho lenza izincomo kuNgqongqoshe, kumele licubungule—

(a) amakhono afakazelwe, ulwazi, isipiliyoni kanye nokubhaliswa okuhlelekile komfakisicelo ezindaweni—
(i) zokubusa, zokucwaningwa kwamabhuku, zomthetho kanye nokulawulwa kobungozi;
(ii) zezimali zephrojekthi, zokuphathwa kwamagugu kanye nokuphathwa kwezimali;

(iii) water resources infrastructure development, operations and management;
(iv) social development and poverty eradication;
(v) economic management and development;
(vi) corporate governance compliance;
(vii) operation and maintenance of national water resources infrastructure;
(viii) human resource management; and
(ix) environmental management and compliance,

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

(b) the need for representation of previously disadvantaged persons due to past racial, gender and any other form of discrimination.

(5) The nominations committee, in making its recommendations, must include members with at least 10 years' experience, where each member should be at least one of the following—

(a) a chief financial officer of a listed company;
(b) a senior engineer in a management position in the water sector;
(c) an attorney or advocate of the High Court of South Africa with experience in commercial law and the law governing public entities;
(d) a senior representative of organised business with substantial experience of major water-dependent sectors of the economy; or
(e) an experienced civil society leader with knowledge and skills in the built environment field with experience in water, sanitation and civil engineering.

(6) The nominations committee, in making recommendations to the Minister, must recommend no less than 50 percent more than the prospective number of non-executive Board members required.

(7) The Minister must appoint—

(a) the two non-executive members of the Board, which consists of—
(i) one member designated by the Minister as referred to in section 7(3)*(b)(i);*
(ii) one suitably qualified and experienced member designated by the Minister of Finance as referred to in section 7(3)*(b)*(ii); and
(b) the other non-executive members of the Board from suitable persons recommended by the nominations committee as contemplated in subsection (2)*(b)*.

(8) If insufficient number of suitable persons are recommended in terms of this section, the Minister may appoint those suitable and recommit to the nominations Committee the outstanding number in line with subsection (1), (2), (3), (4) and (5), whilst confirming the appointment of those designated and must be appointed in terms of subsection (7).

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

Chairperson and deputy chairperson

11. (1) The Minister must appoint, from the non-executive members of the Board, a chairperson and a deputy chairperson of the Board.

(2) *(a)* If the chairperson of the Board is absent or unable to perform any function of the chairperson, the deputy chairperson acts in the chairperson's place.

(b) If both the chairperson and deputy chairperson of the Board are absent or unable to perform any function of the chairperson, the Board may designate any other non-executive member of the Board to act as chairperson during such absence or incapacity.

(iii) zokuthuthukiswa kwengqalasizinda yemithombo yamanzi, zokusebenza nokuphathwa;
(iv) zokuthuthukiswa komphakathi kanye nokuqeda ubuphofu;
(v) zokuphathwa nokuthuthukiswa komnotho;
(vi) zokuthobela ukubusa kwebhizinisi;
(vii) zokusebenza nokugcinwa kwengqalasizinda yemithombo yamanzi kazwelonke;
(viii) zokuphathwa kwezabasebenzi; kanye
(ix) nezokuphathwa kwemvelo nokuthobela, okudingekayo ukuze kusetshenziswe amandla eBhodi ngempumelelo nangempumelelo nokwenza imisebenzi yalo; futhi

(b) isidingo sokumelwa kwabantu ababencishwe amathuba phambilini ngenxa yobuhlanga, ubulili kanye nanoma yiluphi olunye uhlobo lokucwasa.

(5) Ikomidi leziphakamiso, lapho lenza izincomo, kumele libandakanye amalungu anolwazi okungenani lweminyaka eyi-10, lapho okungenani ilungu elilodwa kufanele libe nalokhu okulandelayo—

(a) umphathi omkhulu wezezimali wenkampani evulelekile/kahulumeni;
(b) unjiniyela omkhulu osesikhundleni sokuphatha emkhakheni wezamanzi;
(c) ummeli noma ummeli weNkantolo Ephakeme yaseNingizimu Afrika onolwazi ngomthetho wezohwebo kanye nomthetho olawula izinhlaka zikahulumeni;
(d) omele amabhizinisi ahleliwe onolwazi olunzulu lwemikhakha encike emanzini yomnotho; noma
(e) umholi wenhlangano yomphakathi onamava onolwazi kanye namakhono emkhakheni wezemvelo onolwazi kwezamanzi, ezenhlanzeko kanye nobunjiniyela bengqalasizinda.

(6) Ikomidi leziphakamiso, lapho lenza iziphakamiso kuNgqongqoshe, kumele liphakamise okungenani amaphesenti angama-50 ngaphezu kwenani lamalungu eBhodi angeyona ingxenye yesigungu esiphezulu adingekayo.

(7) UNgqongqoshe kufanele aqoke—

(a) amalungu amabili angewona amalungu esigungu esiphezulu, ahlanganisa—
(i) ilungu elilodwa eliqokwe uNgqongqoshe njengoba kukhulunywe ngalo esigabeni sesi-7(3)*(b)*(i);
(ii) ilungu elilodwa eliqeqeshiwe nelinamava eliqokwe uNgqongqoshe Wezezimali njengoba kukhulunywe ngalo esigabeni sesi-7(3)*(b)*(ii); kanye

(b) namanye amalungu angeyona ingxenye yesigungu esiphezulu eBhodi avela kubantu abafanelekile abatuswe yikomidi leziphakamiso njengoba kuhlongozwe esigatshaneni sesi-(2)*(b)*.

(8) Uma ngokwalo Mthetho kuphakanyiswe isibalo esinganele sabantu abafanelekile, uNgqongqoshe angaqoka labo abafanelekile bese ephinda ejuba Ikomidi leziphakamiso ukuthi liphakamise abangagcwalisa izikhala ezisasele, ngokuhambisana nesigatshana soku(1), sesi-(2), sesi-(3), sesi-(4) kanye nesesi-(5), ngenkathi futhi eqinisekisa ukuqashwa kwalabo abaqokiwe futhi kufanele baqokwe ngokwesigatshana sesi-(7).

(9) UNgqongqoshe ngesaziso kuSomqulu futhi zingakapheli izinsuku ezingama-30 ngemuva kokuqokwa kwamalungu eBhodi, kufanele ashicilele amagama amalungu kanye nosuku aqala ngalo ukusebenza.

Usihlalo kanye noSekela Sihlalo

11. (1) UNgqongqoshe kufanele aqoke, emalungwini angewona amalungu eBhodi, usihlalo kanye noSekela Sihlalo weBhodi.

(2) *(a)* Uma usihlalo weBhodi engekho noma engakwazi ukwenza noma yimuphi umsebenzi kasihlalo, isekela likasihlalo lisebenza esikhundleni sikasihlalo.

(b) Uma bobabili usihlalo kanye nesekela likasihlalo weBhodi bengekho noma bengakwazi ukwenza noma yimuphi umsebenzi kasihlalo, iBhodi lingaqoka noma yiliphi elinye ilungu elingelona ilungu lesigungu esiphezulu ukuba libambe njengosihlalo ngaleso sikhathi bengekho noma bengakwazi ukusebenza.

Terms of office and conditions of appointment of non-executive Board members

12. (1) A non-executive member of the Board—

(a) holds office for a term not exceeding five years on a part-time basis;

(b) may be recommended for re-appointment for a further term not exceeding five years to ensure continuity, but may not serve for more than two consecutive terms; and

(c) is appointed on such terms and conditions as the Minister may determine.

(2) A non-executive member of the Board or a member of any committee of the Board who is not in the full-time employment of the State must be paid such remuneration and allowances out of the funds of the Agency as may be determined by the Minister in consultation with the Minister of Finance.

(3) Notwithstanding subsection (1)*(a),* a member of the Board may, with the authority of the Minister, remain in office after completion of his or her term of office until his or her successor takes office.

(4) The extended term of office contemplated in subsection (3) may not exceed six months.

Disqualification and removal of Board member

13. (1) A person is disqualified from being appointed to the Board or from remaining a member if such person is disqualified from serving as a member of a Board in terms of the Companies Act, including if such person—

(a) is convicted of an offence involving dishonesty;

(b) is declared to be of unsound mind by a competent court;

(c) is declared insolvent or is an unrehabilitated insolvent;

(d) is absent from two or more meetings in one calendar year;

(e) has acted inappropriately and such conduct brings the Agency into disrepute;

(f) has been removed from an office or position of trust, on the grounds of misconduct involving dishonesty; or

(g) has failed to disclose personal financial interest in terms of section 18.

(2) A non-executive member of the Board must give 30 days' notice of resignation, in writing, to the Minister and the non-executive member contemplated in section 10(7)*(a)*(ii) must, in addition, notify the Minister of Finance.

(3) The Minister may remove a member of the Board from office—

(a) if there is an irretrievable breakdown of trust or working relationship between the member and the Minister as representative shareholder;

(b) if the member refuses to execute a lawful directive included in the shareholder's compact;

(c) if the member becomes disqualified in terms of subsection (1); or

(d) if the member acts contrary to this Act.

(4) Before removing a member from the Board in terms of subsection (3), the Minister must give the member written notice of such intention and an opportunity to make representations within 14 days from the receipt of such notice.

Vacancies

14. (1) A vacancy on the Board occurs—

(a) when a member's term of office expires;

(b) when a member is disqualified from being appointed to the Board or from remaining a member of the Board as set out in section 13(1);

(c) when a member dies;

(d) when a member's resignation submitted in terms of section 13(2) takes effect; or

(e) when a member is removed by the Minister in terms of section 13(3).

Imigomo yehhovisi kanye nemibandela yokuqokwa kwamalungu eBhodi angeyona ingxenye yeziphathimandla

12. (1) Ilungu leBhodi elingelona ilungu lesigungu esiphezulu—

(a) liba sesikhundleni isikhathi esingeqile eminyakeni emihlanu ngokwetoho;

(b) lingaphakanyiswa ukuba liqokwe kabusha isikhathi esengeziwe esingeqile eminyakeni emihlanu ukuze kuqinisekiswe ukuqhubeka, kodwa akuvumelekile lisebenze isikhathi esingaphezu kwamahlandla amabili elandelana; futhi

(c) liqokwa ngokwaleyo migomo nemibandela enganqunywa uNgqongqoshe.

(2) Ilungu leBhodi elingelona ilungu lesigungu esiphezulu noma ilungu lanoma yiliphi ikomidi leBhodi elingasebenzi ngokugcwele kuHulumeni kufanele likhokhelwe iholo kanye nezibonelelo ngokuthatha ezimalini zoHlaka njengoba kunganqunywa uNgqongqoshe ngokubonisana noNgqongqoshe wezeziMali.

(3) Naphezu kwesigatshana soku-(1)*(a)*, ilungu leBhodi kanye negunya likaNgqongqoshe, lapho seliqede isikhathi salo sokubusa, lingahlala esikhundleni kuze kube lowo ozongena esikhundleni sakhe uthatha izintambo.

(4) Isikhathi esandisiwe sokuba sesikhundleni esihlongozwe esigatshaneni sesi-(3) akufanele seqe izinyanga eziyisithupha.

Ukungafaneleki nokususwa kwelungu leBhodi

13. (1) Umuntu akafaneleki ukuqokwa kwiBhodi noma ukuqhubeka nokuba yilungu uma lowo muntu esengasafanelekile ukusebenza njengelungu leBhodi ngokoMthetho Wezinkampani, kuhlanganisa uma lowo muntu—

(a) elahlwa yicala elibandakanya ukungathembeki;

(b) inkantolo iqinisekisa ukuthi akaphilile engqondweni;

(c) kuthiwa ucwile ezikweletini noma ucwile ezikweletini ngendlela engenakulungiseka;

(d) engabibikho emihlanganweni emibili noma ngaphezulu onyakeni owodwa wekhalenda;

(e) eziphathe ngendlela engafanele futhi lokho kuziphatha kufala isiKhungo ehlazweni;

(f) esusiwe esikhundleni noma esikhundleni sokwethenjwa, ngezizathu zokungaziphathi kahle okuhlanganisa nokungethembeki; noma

(g) ehlulekile ukudalula intshisekelo yakhe yezezimali ngokwesigaba se-18.

(2) Ilungu leBhodi elingelona ilungu lesigungu esiphezulu kumele linikeze isaziso sezinsuku ezingama-30 sokusula, ngokubhaliwe, kuNgqongqoshe kanye nelungu elingelona lesigungu esiphezulu elihlongozwe esigabeni se-10(7)*(a)*(ii) futhi kumele lazise uNgqongqoshe Wezezimali.

(3) UNgqongqoshe angasusa ilungu leBhodi esikhundleni—

(a) uma kukhona ukwehlukana okungenakulungiseka kokuthembana noma ubudlelwano bokusebenzisana phakathi kwelungu noNgqongqoshe njengabanikazi bamasheya abamele;

(b) uma ilungu lenqaba ukusebenzisa isiyalelo esisemthethweni esifakwe esivumelwaneni sabaninimasheya;

(c) uma ilungu lihoxiswa ngokwesigatshana soku-(1); noma

(d) uma amalungu enza okuphambene nalo Mthetho.

(4) Ngaphambi kokukhipha ilungu eBhodini ngokwesigatshana sesi-(3), uNgqongqoshe kufanele anikeze ilungu isaziso esibhaliwe saleyo nhloso kanye nethuba lokwenza izethulo zingakapheli izinsuku eziyishumi nane kusukela ekutholeni leso saziso.

Izikhala

14. (1) Kuvela isikhala eBhodini—

(a) uma isikhathi sokusebenza kwelungu siphela;

(b) uma ilungu lihoxiswa ukuqokwa eBhodini noma ukuqhubeka liyilungu leBhodi njengoba kubekwe esigabeni se-13(1);

(c) uma ilungu lishona;

(d) lapho ukwesula kwelungu okulethwe ngokwesigaba se-13(2) kuqala ukusebenza; noma

(e) uma ilungu lisuswa nguNgqongqoshe ngokwesigaba se-13(3)

(2) If a vacancy occurs on the Board, such vacancy must be filled within six months by the Minister, who must comply with section 10.

(3) A member appointed to fill a vacancy holds office for the unexpired portion of the term of the member who is replaced.

Shareholder's compact

15. (1) The Minister and the Board must conclude the first shareholder's compact within six months of the appointment of the Board and must conclude subsequent shareholder's compacts at least 60 working days before the beginning of any financial year of the Agency.

(2) The shareholder's compact must—

(a) include the operation and performance indicators against which the performance of the Agency must be measured;

(b) give direction with regard to the utilisation of any surplus revenue;

(c) set procedures for reporting to the Minister;

(d) contain such other detail, including directives, as the Minister may require, including matters to be referred to Minister for approval; and

(e) provide for the relationship between the Minister and the Agency.

(3) The Minister must table in Parliament the shareholders compact of the Agency and its subsidiaries—

(a) within 14 days after agreeing to the shareholder's compact, if Parliament is in session; or

(b) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.

Establishment of committees

16. (1) The Board must establish at least the following committees to support the effective functioning of the Board:

(a) Social and Ethics; and

(b) Audit and Risk.

(2) The Board must—

(a) assign members of the Board to serve on a committee, based on their knowledge and skills; and

(b) determine the—

(i) terms of reference of a committee;

(ii) composition of members of a committee;

(iii) tenure of members of a committee;

(iv) reporting mechanisms for a committee to the Board; and

(v) process for the removal of any member appointed to a committee.

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

(4) The composition of members on no two committees may overlap completely.

(5) The Board may procure specialists or advisors for technical support to a committee.

(6) Unless specially delegated by the Board, a committee has no decision-making powers and may only make recommendations for consideration by the Board. If decision-making powers are delegated to a committee, decisions will be made with a 75% majority of the members delegated to each of the committees established by the Board in terms of subsection (1) and assigned in terms of subsection (2).

(7) A committee must meet as often as is necessary to perform its functions and in accordance with such procedure as the committee may decide.

(8) A non-executive member of the Board must be appointed as the chairperson of a committee.

(9) For committee members who are not Board members, including specialists and advisors, remuneration and allowances as set out in section 12(2) apply.

(2) Uma kuvela isikhala eBhodini, leso sikhala kufanele sigcwaliswe zingakapheli izinyanga eziyisithupha nguNgqongqoshe, okumele athobele isigaba se-10.

(3) Ilungu eliqokelwe ukuvala isikhala libamba isikhundla isikhathi esingakapheli sesikhathi selungu elingena esikhundleni selungu.

Isivumelwano sabaninimasheya

15. (1) UNgqongqoshe kanye neBhodi kumele baphothule isivumelwano sokuqala sabaninimasheya zingakapheli izinyanga eziyisithupha kuqokwe iBhodi futhi kumele baphothule isivumelwano sabaninimasheya abalandelayo okungenani ezinsukwini ezingama-60 ngaphambi kokuqala kwanoma yimuphi unyaka wezimali woHlaka.

(2) Isivumelwano sabaninimasheya kufanele—

(a) sibandakanye izinkomba zokusebenza okufanele kukalwe ngazo ukusebenza koHlaka;

(b) sinikeze isiqondiso mayelana nokusetshenziswa kwanoma iyiphi imali enqwabelene;

(c) sibeke izinqubo zokubika kuNgqongqoshe;

(d) siqukathe eminye imininingwane, kuhlanganisa neziqondiso, uNgqongqoshe angase azidinge, okuhlanganisa nezindaba okufanele ziyiswe kuNgqongqoshe ukuze zigunyazwe; futhi

(e) sihlinzekele ubudlelwano phakathi kukaNgqongqoshe noHlaka.

(3) UNgqongqoshe kufanele ethule ePhalamende isivumelwano sabaninimasheya boHlaka kanye nezinkampani ezingaphansi kwayo—

(a) zingakapheli izinsuku eziyi-14 ngemuva kokuvumelana nesivumelwano sabaninimasheya, uma iPhalamende lisebenza; noma

(b) uma iPhalamende lingasebenzi, zingakapheli izinsuku eziyi-14 kuqale umhlangano wePhalamende olandelayo.

Ukusungulwa kwamakomidi

16. (1) IBhodi okungenani kumele lisungule amakomidi alandelayo ukuze leseke ukusebenza ngempumelelo kweBhodi:

(a) Kwezenhlalo Nezimiso Zokuziphatha; kanye

(b) Nakwezokucwaningwa kwamabhuku kanye Nengozi.

(2) IBhodi kufanele—

(a) lijube amalungu eBhodi ukuthi asebenze ekomidini, ngokusekelwe olwazini kanye namakhono awo; futhi

(b) linqume—

(i) imigomo yokusebenza yekomidi;

(ii) ukwakheka kwamalungu ekomidi;

(iii) isikhathi sokuhlala kwamalungu ekomidi;

(iv) izindlela zokubika zekomidi kwiBhodi; kanye

(v) nenqubo yokususwa kwanoma yiliphi ilungu eliqokiwe ekomidini.

(3) Amalungu eBhodi angewona amalungu esigungu esiphezulu kumele kube iwona amaningi kwikomidi.

(4) Ukubunjwa kwamalungu kumakomidi amabili akumele kungene ngokuphelele.

(5) IBhodi lingathengela ikomidi ongoti noma abeluleki ukuze bathole usizo.

(6) Ngaphandle uma lijutshwe ngokukhethekile iBhodi, ikomidi alinawo amandla okuthatha izinqumo futhi lingenza iziphakamiso kuphela ukuze zicutshungulwe yiBhodi. Uma amandla okwenza izinqumo edluliselwa ekomidini, izinqumo zizothathwa ngeningi elingama-75% lamalungu anikezwe amandla kuwo wonke amakomidi asungulwe yiBhodi ngokwesigatshana soku-(1) futhi athunywe ngokwesigatshana sesi-(2).

(7) Ikomidi kumele lihlangane njalo uma kunesidingo ukuze lenze imisebenzi yalo futhi ngokuhambisana nenqubo enganqunywa ikomidi.

(8) Ilungu leBhodi elingelona ilungu lesigungu esiphezulu kufanele liqokwe njengosihlalo wekomidi.

(9) Kumalungu ekomidi angewona amalungu eBhodi, okuhlanganisa ongoti nabeluleki, amaholo kanye nezibonelelo njengoba kubekwe esigabeni se-12(2) iyasebenza.

Fiduciary duties of Board members

17. A Board member must in compliance with the provisions of the Companies Act any other applicable legislation and at all times exercise the utmost duty of care and diligence in performing his or her functions.

Disclosure of interests of Board members

18. (1) A Board member must disclose the member's personal financial and other conflicts of interest in terms of the procedure set out in section 75 of the Companies Act.

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

Recovery of improper profits

19. If a Board member contravenes section 18, the Agency or the Minister may, in addition to laying criminal charges, recover from the Board member, through a competent court or by agreement or consent of persons concerned, an amount, paid to that Board member or any other person, which is equivalent to—

(a) an amount equal to that benefit if a Board member or any other person received a benefit either directly or indirectly as a result of the Board member's actions; or

(b) an amount equal to that loss or damage if the Agency has suffered loss or damage as a result of the contravention of section 18.

Validity of decisions

20. (1) An act or decision of the Board, taken by a majority of the members present and constituting a quorum, is not invalid merely because—

(a) of a defect or irregularity in, or in connection with, the appointment of a Board member;

(b) of a vacancy in the membership of the Board, including a vacancy resulting from the failure to appoint an original Board member; or

(c) a person not entitled to sit as a member sat as such at the time when the decision was taken.

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

(a) an occasion for the person to act had not arisen or had ceased;

(b) there was a defect or irregularity in relation to the appointment; or

(c) the appointment had ceased to have effect.

Delegation of powers and assignment of functions by Board

21. (1) Subject to subsections (2) and (3), the Board may, by special resolution, delegate any power or assign any function entrusted to it under this Act to—

(a) the Chief Executive Officer;

(b) a Board member; or

(c) a committee established under section 16.

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

(3) The Board may not delegate—

(a) any power conferred in terms of section 66(3) of the Public Finance Management Act to borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Agency to any future financial commitment without the authority of the Minister of Finance;

(b) the power to appoint specialists or advisors to advise the committees of the Board;

(c) the power to recommend the Chief Executive Officer;

(d) the power to approve the appointment of the Chief Financial Officer;

Imisebenzi yokuthembeka yamalungu eBhodi

17. Ilungu leBhodi kufanele ngokuhambisana nemihlinzeko yoMthetho Wezinkampani noma yimuphi omunye umthetho osebenzayo futhi ngaso sonke isikhathi lenze umsebenzi omkhulu wokunakekela nokukhuthala ekwenzeni imisebenzi yalo.

Ukudalulwa kwezintshisekelo zamalungu eBhodi

18. (1) Ilungu leBhodi kufanele lidalule izintshisekelo zemali zelungu kanye nokunye nokushayisana kwazo izimali ngokwenqubo ebekwe esigabeni sama-75 soMthetho Wezinkampani.

(2) Noma yikuphi ukudalulwa okwenziwa ngaphansi kwalesi sigaba kumele kubhalwe emaminithini omhlangano ofanele weBhodi.

Ukutholwa kwenzuzo engafanele

19. Uma ilungu leBhodi lephula isigaba se-18, uHlaka noma uNgqongqoshe, ngaphezu kokubeka amacala obugebengu, ngokusebenzisa inkantolo enegunya noma ngemvume noma ngemvume yabantu abathintekayo, ubuyisa inani elikhokhwe kulelo lungu leBhodi noma kunoma yimuphi omunye umuntu, okulingana—

(a) nokuthi uma ilungu leBhodi noma omunye umuntu ethola inzuzo ngokuqondile noma ngokungaqondile ngenxa yezenzo zelungu leBhodi, inani elilingana naleyo nzuzo; noma

(b) nokuthi uma uHlaka lulahlekelwe noma lulimele ngenxa yokwephulwa kwesigaba se-18, inani elilingana nalokho kulahlekelwa noma umonakalo.

Ukuba semthethweni kwezinqumo

20. (1) Isenzo noma isinqumo seBhodi, esithathwe iningi lamalungu akhona futhi akha ikhoramu, asibi ngesingasebenzi ngenxa nje—

(a) yesici noma ukungahambi kahle ekuqokweni kwelungu leBhodi noma mayelana nokuqokwa kwelungu leBhodi;

(b) yesikhala ebulungwini beBhodi, kuhlanganisa nesikhala ngenxa yokwehluleka ukuqoka ilungu leBhodi lokuqala; noma

(c) yokuthi umuntu ongenalo ilungelo lokuhlala njengelungu wahlala njengelungu ngesikhathi kuthathwa isinqumo.

(2) Noma yini eyenziwe noma ephathelene nomuntu ohlose ukuba ngusihlalo noma njengelungu leBhodi ayibi ngengasebenzi ngenxa nje—

(a) yokuthi isikhathi sokuthi umuntu enze besingakaveli noma siphelile;

(b) yokuthi kube khona iphutha noma ukungahambi kahle maqondana nokuqokwa; noma

(c) yokuthi ukuqokwa akusasebenzi.

Ukudluliselwa kwamandla kanye nokwabiwa kwemisebenzi yiBhodi

21. (1) Ngokwesigatshana sesi-(2) nesesi-(3), iBhodi, ngesinqumo esikhethekile, lingadlulisela amandla noma labe noma yimuphi umsebenzi eliwuphathisiwe ngaphansi kwalo Mthetho, labele—

(a) uMphathi Omkhulu;

(b) ilungu leBhodi; noma

(c) ikomidi elisungulwe ngaphansi kwesigaba se-16.

(2) Noma yimaphi amandla adlulisiwe, noma umsebenzi owabiwe kufanele usetshenziswe noma wenziwe uncike kuleyo mibandela iBhodi eliyibona ifanele.

(3) IBhodi angeke lidlulise—

(a) noma yimaphi amandla anikezwe ngokwesigaba sama-66(3) soMthetho Wokuphathwa Kwezimali Zikahulumeni okuboleka imali, noma ukukhipha isiqinisekiso, isinxephezelo noma isibambiso, noma ukungena kunoma yimuphi omunye umsebenzi obophezela noma ongabophezela uHlaka kunoma yikuphi ukuzibophezela kwemali kwesikhathi esizayo ngaphandle kwegunya likaNgqongqoshe Wezezimali;

(b) amandla okuqoka ongoti noma abeluleki abazoluleka amakomidi eBhodi;

(c) amandla okuphakamisa uMphathi Omkhulu;

(d) amandla okugunyaza ukuqokwa koMphathi Omkhulu Wezezimali;

(e) the conclusion of the shareholder's compact; and

(f) the adoption of the Agency's corporate plan.

(4) A delegation by the Board—

(a) must be in writing; and

(b) does not prohibit the Board from exercising the power or performing the duty that is delegated.

Meetings of Board

22. (1) The Board may determine its own operational proceedings for meetings but must hold at least four meetings in any financial year.

(2) A quorum for Board meetings is two-thirds of the members of the Board.

CHAPTER 4

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

Appointment and functions of Chief Executive Officer and Chief Financial Officer

23. (1) *(a)* The Board must recommend no less than two persons for the appointment of Chief Executive Officer.

(b) The Minister must, after considering the recommendations of the Board, appoint a Chief Executive Officer within six months of—

(i) the initial appointment of the Board following the commencement of this section; or

(ii) a vacancy occurring in the office of the Chief Executive Officer,

to ensure that the Agency meets its objects.

(c) The Minister may call for further recommendations from the Board—

(i) if the recruitment process did not meet the requirements set out in subsection (2); or

(ii) if, in the opinion of the Minister, the persons recommended by the Board are not suitable for appointment.

(2) The Chief Executive Officer must—

(a) be appointed after an open and transparent recruitment process;

(b) be a fit and proper person with appropriate qualifications and experience which are relevant to ensure the efficient and effective execution of the functions of the Agency; and

(c) not be disqualified on the grounds contemplated in section 13(1).

(3) The Chief Executive Officer must—

(a) manage the affairs and day-to-day business of the Agency;

(b) implement the policies and strategies and carry out the decisions of the Board;

(c) recruit and manage the employees of the Agency;

(d) develop an efficient and cost-effective administration; and

(e) act subject to the instructions and directives that the Board may issue.

(4) The Chief Executive Officer must, with the approval of the Board, appoint a Chief Financial Officer after an open and transparent recruitment process by inviting applications for the post of Chief Financial Officer.

(5) The Chief Financial Officer must—

(a) ensure that risk management policies and procedures of the Agency are in place;

(b) assist the Board to comply with its responsibilities in terms of the Public Finance Management Act;

(c) ensure that all money payable to the Agency is properly collected;

(d) ensure that all money spent by the Agency is properly spent and authorised;

(e) ensure that there is adequate control over all assets acquired for the purposes of the Agency;

(f) ensure that all liabilities incurred on behalf of the Agency are properly authorised;

(g) ensure the efficiency and economy of operations and avoidance of fruitless and wasteful expenditure;

(e) isiphetho sesivumelwano sabaninimasheya; kanye
(f) nokwamukelwa kohlelo lwebhizinisi loHlaka.

(4) Ukudluliswa kwamandla kweBhodi—
(a) kufanele kubhalwe phansi; futhi
(b) akuvimbeli iBhodi ukusebenzisa amandla noma ukwenza umsebenzi eliwudlulisile.

Imihlangano Yebhodi

22. (1) IBhodi lingazinqumela ngokwalo ukuqhubeka kwemihlangano kodwa kufanele libambe okungenani imihlangano emine kunoma yimuphi unyaka wezimali.

(2) Ikhoramu yemihlangano yeBhodi yizingxenye ezimbili kwezintathu zamalungu eBhodi.

ISAHLUKO 4

UMPHATHI OMKHULU KANYE NOMPHATHI OMKHULU WEZEZIMALI

Ukuqokwa kanye nemisebenzi yoMphathi Omkhulu kanye noMphathi Omkhulu Wezezimali

23. (1) *(a)* IBhodi kumele liphakamise abantu abangekho ngaphansi kwababili ukuze kuqokwe uMphathi Omkhulu.

(b) UNgqongqoshe kufanele, ngemva kokucubungula iziphakamiso zeBhodi, aqoke uMphathi Omkhulu zingakapheli izinyanga eziyisithupha—
(i) zokuqokwa kokuqala kweBhodi ngemuva kokuqala kwalesi sigaba; noma
(ii) zesikhala esivuleka esikhundleni soMphathi Omkhulu,
ukuqinisekisa ukuthi uHlaka lufeza izinjongo zalo.

(c) UNgqongqoshe angacela ezinye iziphakamiso kwiBhodi—
(i) uma inqubo yokuqasha ingahlangabezani nezidingo ezibekwe esigatshaneni sesi-(2); noma
(ii) uma ngokubona kukaNgqongqoshe abantu abaphakanyiswe yiBhodi bengakufanele ukuqokwa.

(2) UMphathi Omkhulu kufanele—
(a) aqokwe ngemva kwenqubo yokuqasha evulelekile nesobala;
(b) abe ngumuntu oqinile futhi ofanele oneziqu nesipiliyoni esifanele ukuze kuqinisekiswe ukwenziwa kahle kwemisebenzi yoHlaka; futhi
(c) angahoxiswa ngezizathu ezihlongozwe esigabeni se-13(1).

(3) UMphathi Omkhulu kufanele—
(a) aphathe izindaba kanye nemisebenzi yansuku zonke yoHlaka;
(b) asebenzise izinqubomgomo namasu kanye nokwenza izinqumo zeBhodi;
(c) aqashe futhi aphathe abasebenzi boHlaka;
(d) akhe ukuphatha okuyimpulelo nokongayo; futhi
(e) enze ngokuthobela imiyalelo neziqondiso ezingakhishwa iBhodi.

(4) UMphathi Omkhulu kumele, ngemvume yeBhodi, aqoke uMphathi Omkhulu Wezezimali ngemuva kwenqubo evulelekile nesobala yokuqasha ngokumema izicelo zesikhundla soMphathi Omkhulu Wezezimali.

(5) UMphathi Omkhulu Wezezimali kumele—
(a) aqinisekise ukuthi izinqubomgomo kanye nezinqubo zoHlaka ziyasebenza;
(b) asize iBhodi ukuthi lithobele izibopho zalo ngokoMthetho Wokuphathwa Kwezimali Zikahulumeni;
(c) aqinisekise ukuthi yonke imali ekhokhelwa uHlaka iqoqwa ngendlela efanele;
(d) aqinisekise ukuthi yonke imali esetshenziswe uHlaka isetshenziswa ngendlela efanele futhi igunyazwe;
(e) aqinisekise ukuthi kunokulawula okwanele kuzo zonke izimpahla ezitholwe ngezinhloso zoHlaka;
(f) aqinisekise ukuthi zonke izikweletu ezenziwe egameni loHlaka zigunyazwe ngendlela efanele;
(g) aqinisekise ukusebenza kahle kanye nomnotho wokusebenza kanye nokugwema ukusetshenziswa kwemali okungenanzuzo nokumoshayo;

(h) ensure that the financial system is in line with generally accepted accounting practices and procedures; and

(i) ensure that an adequate budgeting and financial system is in place.

Terms of office and conditions of appointment of Chief Executive Officer and Chief Financial Officer

24. (1) The Chief Executive Officer and the Chief Financial Officer are appointed on a full-time basis for a term not exceeding five years.

(2) The Chief Executive Officer may be re-appointed for one additional term not exceeding five years, by the Minister, after consultation with the Board.

(3) The Chief Financial Officer may be re-appointed for one additional term not exceeding five years, by the Chief Executive Officer, after consultation with the Board.

(4) *(a)* The Chief Executive Officer holds office on the terms and conditions, including those relating to remuneration and allowances, as the Minister may determine in writing, in consultation with the Minister of Finance and after considering the recommendations of the Board.

(b) The Chief Financial Officer holds office on the terms and conditions, including those relating to remuneration and allowances, as the Minister may determine in writing, in consultation with the Minister of Finance and after considering the recommendations of the Board.

(5) The Board must enter into an annual performance agreement with the Chief Executive Officer and the Chief Financial Officer stipulating measurable objectives relating to the performance of that officer's functions under this Act, that are aligned with the key performance indicators included in the shareholder's compact.

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

(7) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may on recommendation of the Board terminate the services of the Chief Executive Officer—

(a) for any sound and compelling reasons such as—

(i) an irretrievable breakdown of trust or working relationship between the Chief Executive Officer and the Board or the Minister as sole shareholder; and

(ii) refusal to execute lawful instructions issued by the Board or the Minister; and

(b) in terms of his or her contract of employment.

(8) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Chief Executive Officer may on recommendation of the Board, terminate the services of the Chief Financial Officer—

(a) for any sound and compelling reasons such as—

(i) an irretrievable breakdown of trust or working relationship between the Chief Financial Officer and the Board or the Minister as sole shareholder; and

(ii) refusal to execute lawful instructions issued by the Board or the Minister; and

(b) in terms of his or her contract of employment.

Appointment of person to act as Chief Executive Officer or Chief Financial Officer

25. (1) If the Chief Executive Officer is absent or is unable to carry out her or his duties, or if a vacancy in the office of the Chief Executive Officer exists for a period of more than two months, the Board may, with the approval of the Minister, appoint a person, who is a fit and proper person with appropriate qualifications and experience to carry out the functions of Chief Executive Officer and who is preferably an employee of the Agency, to act as Chief Executive Officer until the Chief Executive Officer is able to resume those functions or until the vacant position of Chief Executive Officer is filled.

(2) If the Chief Executive Officer is absent or is unable to carry out his or her duties or if there is a vacancy in the Office of the Chief Executive Officer, for a period of less than two months, the Board may, without the approval of the Minister, appoint a person,

(h) aqinisekise ukuthi uhlelo lwezezimali luyahambisana nezinqubo zokubalwa kwezimali ezamukelekile; futhi

(i) aqinisekise ukuthi kunohlelo olwanele lwesabelomali kanye nezezimali.

Imigomo yehhovisi kanye nemibandela yokuqokwa koMphathi Omkhulu kanye noMphathi Omkhulu Wezezimali

24. (1) UMphathi Omkhulu kanye noMphathi Omkhulu wezezimali baqokwa ngokugcwele isikhathi esingeqile eminyakeni emihlanu.

(2) UMphathi Omkhulu angaphinde aqokwe kabusha ngethemu eyodwa eyengeziwe engeqile eminyakeni emihlanu, nguNgqongqoshe, ngemuva kokubonisana neBhodi.

(3) UMphathi Omkhulu Wezezimali angaphinde aqokwe kabusha ngethemu eyodwa eyengeziwe engeqile eminyakeni emihlanu, nguMphathi Omkhulu, ngemuva kokubonisana neBhodi.

(4) *(a)* UMphathi Omkhulu uhlala esikhundleni ngokwemigomo nemibandela, okuhlanganisa naleyo ephathelene namaholo kanye nezibonelelo, njengoba uNgqongqoshe enganquma ngokubhala, ngokubonisana noNgqongqoshe Wezezimali nangemva kokucubungula iziphakamiso zeBhodi.

(b) UMphathi Omkhulu Wezezimali uhlala esikhundleni ngokwemigomo nemibandela, okuhlanganisa naleyo ephathelene namaholo kanye nezibonelelo, njengoba uNgqongqoshe enganquma ngokubhala, ngokubonisana noNgqongqoshe Wezezimali nangemva kokucubungula iziphakamiso zeBhodi.

(5) IBhodi kufanele lingene esivumelwaneni sokusebenza sonyaka noMphathi Omkhulu kanye noMphathi Omkhulu Wezezimali esibeka izinjongo ezilinganisekayo eziphathelene nokwenziwa kwemisebenzi yaleso sikhulu ngaphansi kwalo Mthetho, ehambisana neziNkomba Zokusebenza Ezibalulekile efakwe kwisivumelwano sabaninimasheya.

(6) UMphathi Omkhulu kanye noMphathi Omkhulu Wezezimali baphethwe iBhodi.

(7) Ngokuya ngoMthetho Wezobudlelwano Babasebenzi, we-1995 (uMthetho 66 we-1995), uNgqongqoshe ngokweziphakamiso zeBhodi anganqamula imisebenzi yoMphathi Omkhulu—

(a) nganoma yiziphi izizathu ezizwakalayo neziqinile njengalokhu—

(i) ukuphuka okungenakulungiseka kokuthembana noma ubudlelwano bokusebenzisana phakathi koMphathi Omkhulu kanye neBhodi noma uNgqongqoshe njengomnikazi wamasheya yedwa; kanye

(ii) nokwenqaba ukusebenzisa imiyalelo esemthethweni ekhishwe iBhodi noma uNgqongqoshe; futhi

(b) ngokwesivumelwano sakhe sokusebenza.

(8) Ngokuya ngoMthetho Wezobudlelwano Babasebenzi, we-1995 (uMthetho 66 we-1995), uMphathi Omkhulu ngokweziphakamiso zeBhodi anganqamula imisebenzi yoMphathi Omkhulu Wezezimali—

(a) nganoma yiziphi izizathu ezizwakalayo neziqinile njengalokhu—

(i) ukuphela okungenakulungiseka kokuthembana noma ubudlelwano bokusebenzisana phakathi koMphathi Omkhulu Wezezimali neBhodi noma uNgqongqoshe njengomnikazi wamasheya yedwa; kanye

(ii) nokwenqaba ukusebenzisa imiyalelo esemthethweni ekhishwe iBhodi noma uNgqongqoshe; futhi

(b) ngokwesivumelwano sakhe sokusebenza.

Ukuqokwa komuntu ukuba abambe njengoMphathi Omkhulu noma njengoMphathi Omkhulu Wezezimali

25. (1) Uma uMphathi Omkhulu engekho noma engakwazi ukwenza umsebenzi wakhe, noma uma kukhona isikhala esikhundleni soMphathi Omkhulu osekuze kwaba isikhathi esingaphezu kwezinyanga ezimbili, iBhodi ngokugunyazwa uNgqongqoshe, lingaqoka umuntu, ongumuntu oqinile futhi ofanele oneziqu zemfundo kanye nesipiliyoni sokwenza imisebenzi yoMphathi Omkhulu futhi ngokukhethekile abe ngumuntu ongumsebenzi we-Ejensi, ukuba abambe njengoMphathi Omkhulu kuze kube uMphathi Omkhulu uyakwazi ukuqhubeka naleyo misebenzi noma kuze kugcwaliswe isikhundla esingenamuntu soMphathi Omkhulu.

(2) Uma uMphathi Omkhulu engekho noma engakwazi ukwenza umsebenzi wakhe, noma uma kukhona isikhala esikhundleni soMphathi Omkhulu isikhathi esingaphansi kwezinyanga ezimbili, iBhodi ngaphandle kokugunyazwa uNgqongqoshe, lingaqoka

who is a fit and proper person with appropriate qualifications and experience to carry out the functions of Chief Executive Officer and who is preferably an employee of the Agency, to act as Chief Executive Officer.

(3) If the Chief Financial Officer is absent for a period of more than two months or is unable to carry out her or his duties or if there is a vacancy in the Office of the Chief Financial Officer, the Chief Executive Officer may, with the approval of the Board, appoint a person, who is a fit and proper person with appropriate qualifications and experience to carry out the functions of Chief Financial Officer and who is preferably an employee of the Agency, to act as Chief Financial Officer until the Chief Financial Officer is able to resume the duties.

(4*)* An acting Chief Executive Officer or 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.

Interim Chief Executive Officer

26. The Minister may appoint an interim Chief Executive Officer for a period of up to two months, within three days of the short-term vacancy of the office of the Chief Executive arising until such appointment as contemplated in section 23(1), sections 25(1) and (2) is executed.

Suspension from Office of Chief Executive Officer and Chief Financial Officer

27. Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may, on the recommendation of the Board, suspend the Chief Executive Officer or the Chief Financial Officer from office during any investigation into misconduct against the Chief Executive Officer or the Chief Financial Officer.

Delegation by Chief Executive Officer

28. (1) The Chief Executive Officer may delegate to an employee of the Agency any function entrusted to the Chief Executive Officer under this Act.

(2) A delegation contemplated in subsection (1)—

(a) must be in writing;

(b) does not prohibit the Chief Executive Officer that made the delegation from performing that function; and

(c) may at any time be withdrawn or amended, in writing.

Appointment of employees

29. (1) Subject to the general or special directions of the Board, the Chief Executive Officer may appoint staff for the Agency to perform the work necessary for or arising from the performance of the Agency's functions in terms of this Act.

(2) An employee is employed subject to the terms and conditions determined by the Chief Executive Officer in accordance with labour legislation and any directions set out in subsection (1).

CHAPTER 5

FINANCIAL MATTERS, REPORTING AND ACCOUNTABILITY

Funds of Agency

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

(a) any funds transferred to the agency at the dates referred to in sections 36(2) and 36(5);

(b) monies appropriated by Parliament;

umuntu, ongumuntu oqinile futhi ofanele oneziqu zemfundo kanye nesipiliyoni sokwenza imisebenzi yoMphathi Omkhulu futhi ngokukhethekile abe ngumuntu ongumsebenzi woHlaka, ukuba abambe njengoMphathi Omkhulu.

(3) Uma uMphathi Omkhulu Wezezimali engekho isikhathi esingaphezu kwezinyanga ezimbili noma engakwazi ukwenza imisebenzi yakhe noma uma kunesikhala esikhundleni soMphathi Omkhulu Wezezimali, uMphathi Omkhulu Wezezimali ngokugunyazwa iBhodi angaqoka umuntu oqinile nofanele oneziqu zemfundo kanye nesipiliyoni sokwenza imisebenzi yoMphathi Omkhulu Wezezimali futhi ngokukhethekile abe ngumuntu ongumsebenzi woHlaka, ukuba abambe njengoMphathi Omkhulu Wezezimali kuze kube uMphathi Omkhulu Wezezimali uyakwazi ukuqhubeka nemisebenzi yakhe.

(4) Ibamba loMphathi Omkhulu Wezezimali noma uMphathi Omkhulu Wezezimali engasebenzisa wonke amandla futhi kufanele enze yonke imisebenzi yoMphathi Omkhulu noma yoMphathi Omkhulu Wezezimali, kuye ngokuthi yikuphi.

Umphathi Omkhulu Wesikhashana

26. UNgqongqoshe angaqoka uMphathi Omkhulu wesikhashana isikhathi esingafinyelela ezinyangeni ezimbili, zingakapheli izinsuku ezintathu sivulekile isikhala sesikhundla soMphathi Omkhulu kuze kube uyaqokwa ozongena esikhundleni njengoba kuhlongoziwe esigabeni sama-23(1) kanye nesigaba sama-25(1) kanye no-(2).

Ukumiswa esikhundleni koMphathi Omkhulu kanye noMphathi Omkhulu Wezezimali

27. Ngokuya ngoMthetho Wezobudlelwano Bezabasebenzi, we-1995 (uMthetho 66 we-1995), uNgqongqoshe, ngokwesiphakamiso seBhodi, angamisa uMphathi Omkhulu noma uMphathi Omkhulu Wezezimali esikhundleni ngesikhathi sanoma yiluphi uphenyo mayelana nokungaziphathi kahle koMphathi Omkhulu noma uMphathi Omkhulu Wezezimali.

Ukuthunywa nguMphathi Omkhulu

28. (1) UMphathi Omkhulu angadlulisela kumsebenzi woHlaka noma yimuphi umsebenzi onikezwe uMphathi Omkhulu ngaphansi kwalo Mthetho.

(2) Ukudluliselwa kwamandla okuhlongozwe esigatshaneni soku-(1)—

(a) kufanele kubhalwe phansi;

(b) akuvimbeli uMphathi Omkhulu odlulise amandla ekwenzeni lowo msebenzi; futhi

(c) ngokubhalwe phansi kungahoxiswa noma kuchitshiyelwe nganoma yisiphi isikhathi.

Ukuqokwa kwabasebenzi

29. (1) Ngokuya ngeziyalezo ezijwayelekile noma eziphuthumayo zeBhodi, uMphathi Omkhulu angaqoka abasebenzi boHlaka, ukuba benze umsebenzi odingekile noma ovela ekwenzeni imisebenzi yoHlaka ngokwalo Mthetho.

(2) Umsebenzi uqashwa ngokulandela imigomo nemibandela enqunywe uMphathi Omkhulu ngokuhambisana nomthetho wezabasebenzi nanoma yimiphi imiyalelo ebekwe esigatshaneni soku-(1).

ISAHLUKO 5

IZINDABA ZEZIMALI, UKUBIKA KANYE NOKUTHEMBEKA

Izimali zoHlaka

30. (1) Izimali zoHlaka zihlanganisa—

(a) noma yiziphi izimali ezidluliselwe oHlakeni ngezinsuku okukhulunywe ngazo esigabeni sama-36(2) nesama-36(5);

(b) izimali ezabiwe yiPhalamende;

(c) revenue from water use charges due to the Agency, as contemplated in Chapter 5 of the National Water Act, and the Pricing Strategy established by the Minister in terms of section 56 of the National Water Act;

(d) loans raised;

(e) income derived by it on investments in terms of subsection (3);

(f) income derived by it in the performance of its functions;

(g) income generated through developing, leasing out or otherwise managing its assets within the scope of this Act;

(h) income earned from the Agency's participation in joint ventures with water services institutions as contemplated by section 19 of the Water Services Act;

(i) proceeds derived from the sale of the Agency's assets;

(j) fines payable by persons as a penalty on their conviction of offences created by this Act;

(k) recovery of improper profits from Board members or persons concerned as contemplated in section 19; and

(l) grants or donations received by the Agency.

(2) The Agency must utilise—

(a) its funds to cover costs in connection with the performance of its functions in terms of this Act, as well as any additional functions that may be assigned or delegated to it by the Minister from time to time;

(b) any donation or contribution in accordance with any conditions that may be imposed, provided it is not inconsistent with the purpose of this Act; and

(c) any money appropriated by Parliament for the purpose for which it was granted.

(3) The Agency may invest any of its funds not immediately required by the Agency, with such directions as the Minister and the Minister of Finance may determine.

(4) The Agency must distribute to other water management institutions such revenues that it may collect on their behalf in terms of any billing and collection agreements, either with the Minister or with other water management institutions, less any fees or commissions that the Agency may charge for these services in terms of these agreements.

Government support to Agency and loans by Agency and subsidiaries

31. (1) Parliament may fund the normal expenditure of the Agency out of money appropriated for the purpose.

(2) A request for financial support must be prepared by the Agency by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the government's expenditure proposal for appropriation purposes.

(3) *(a)* The Agency and its subsidiaries may not borrow money without the prior written approval of the Minister, granted after consultation with the Minister of Finance.

(b) Any decision to borrow money taken without the approval contemplated in paragraph *(a)* is of no force and effect.

Annual budget, long-term financial plan and corporate plan

32. (1) The annual budget, long-term financial plan and corporate plan of the Agency must be submitted to the Minister, as the shareholder representative and executive authority, for approval.

(2) The financial year of the Agency is for the period 1 April to 31 March in the following year, except that the first financial year of the Agency begins on the incorporation date and ends on 31 March.

(c) imali engenayo enkokhelweni yokusetshenziswa kwamanzi okufanele ikhokhelwe uHlaka, njengoba kuhlongozwe eSahlukweni sesi-5 soMthetho Wamanzi Kazwelonke, kanye neSu lokubeka amanani elisungulwe uNgqongqoshe ngokwesigaba sama-56 soMthetho Wamanzi Kazwelonke;

(d) imalimboleko ephakanyisiwe;

(e) imali engenayo etholakala ekutshalweni kwezimali ngokwesigatshana sesi-(3);

(f) imali engenayo etholwa iyona ekwenzeni imisebenzi yayo;

(g) imali engenayo etholakala ngokuyithuthukisa, ngokuyiqashisa noma ngokuphatha impahla yayo ngaphakathi kwendawo yalo Mthetho;

(h) imali ezuzwe ngokubamba iqhaza koHlaka emabhizinisini ahlanganyelwe nezikhungo zezinsiza zamanzi njengoba kuhlongozwe esigabeni se-19 soMthetho Wezinsizakalo Zamanzi;

(i) izimali ezitholakala ngokudayiswa kwempahla yoHlaka;

(j) izinhlawulo ezikhokhwa abantu njengenhlawulo ekugwetshweleni kwabo amacala adalwe yilo Mthetho;

(k) ukutholwa kwenzuzo engafanele kumalungu eBhodi noma kubantu abathintekayo njengoba kuhlongozwe esigabeni se-19; kanye

(l) nezibonelelo noma iminikelo etholwe uHlaka.

(2) UHlaka kumele lusebenzise—

(a) izimali zalo ukubhekana nezindleko zokwenza imisebenzi yalo ngokwalo Mthetho, kanye nanoma yimiphi imisebenzi eyengeziwe engase luyinikezwe noma luyidluliselwe uNgqongqoshe ngezikhathi ezithile;

(b) noma yimuphi umnikelo ngokuhambisana nanoma yimiphi imibandela engase ibekwe, inqobo nje uma ihambisana nenhloso yalo Mthetho; kanye

(c) nanoma iyiphi imali eyabiwe iPhalamende ngenhloso eyagunyazelwa yona.

(3) UHlaka lungatshala noma yiziphi izimali zalo engazidingi ngokushesha, ngemiyalelo enganqunywa uNgqongqoshe kanye noNgqongqoshe Wezezimali.

(4) UHlaka kumele lwabele ezinye izikhungo zokulawulwa kwamanzi leyo mali olungayiqoqa egameni lazo ngokwanoma yiziphi izivumelwano zokukhokhiswa nokuqoqwa kwezikweletu, kungaba noNgqongqoshe noma nezinye izikhungo zokulawulwa kwamanzi, kunciphise noma yiziphi izimali noma amakhomishini oHlaka olungawabizela lezi zinsizakalo ngokwalezi zivumelwano.

Uxhaso lukaHulumeni oHlakeni kanye nemalimboleko yoHlaka nezinkampani ezingaphansi kwalo

31. (1) IPhalamende lingaxhasa izindleko ezijwayelekile zoHlaka ngemali eyabelwe leyo njongo.

(2) Isicelo sokuxhaswa ngezimali kufanele silungiswe uHlaka ngosuku olunqunywe uNgqongqoshe ukuze sifakwe ngaphansi kwenqubo yokuhlaziya ukuze sifakwe ekuhlanganisweni konyaka nasekuvezweni kwesiphakamiso sezindleko zikahulumeni ngezinhloso zokwabiwa.

(3) *(a)* UHlaka kanye nezinkampani ezingaphansi kwalo angeke ziboleke imali ngaphandle kwemvume ebhalwe phansi kwaNgqongqoshe, enikezwe ngemva kokubonisana noNgqongqoshe Wezezimali.

(b) Noma isiphi isinqumo sokuboleka imali esithathwe ngaphandle kwemvume ehlongozwe endimeni *(a)* asinawo amandla futhi asisebenzi.

Isabelomali sonyaka, uhlelo lwezimali lwesikhathi eside kanye nohlelo lwenkampani

32. (1) Isabelomali sonyaka, uhlelo lwezimali lwesikhathi eside kanye nohlelo lwebhizinisi loHlaka kufanele luhanjiswe kuNgqongqoshe, njengommeleli wabanikazi bamasheya kanye nesiphathimandla esikhulu, ukuze kugunyazwe.

(2) Unyaka wezimali woHlaka ngowesikhathi somhlaka-1 kuMbasa kuya zingama-31 kuNdasa onyakeni olandelayo, ngaphandle kokuthi unyaka wezimali wokuqala wesiKhungo uqala ngosuku lokusungulwa kwalo bese uphela zingama-31 kuNdasa.

(3) The corporate plan must, in addition to the matters specified in the Public Finance Management Act, contain—

(a) financial and performance indicators and targets considered by the Board to be appropriate, based on indicators and targets contained in the shareholder's compact;

(b) any other information that the Board considers necessary; and

(c) such information as may be directed by the Minister.

(4) In preparing or revising a financial and performance indicators and targets referred to in subsection (3), the Board must have regard to—

(a) the shareholder's compact entered into with the Minister;

(b) the need to maintain the Agency's financial viability;

(c) the need to maintain reserves, at a level determined by the Minister from time to time, especially to provide for—

(i) the development of national water resources infrastructure as instructed by the Minister;

(ii) any estimated future demand for the services of the Agency; and

(iii) any need to improve the accessibility of, and performance standards for, the services provided by the Agency;

(d) the need to meet the developmental objectives of government and in accordance with sections 27(1)*(b)* and 27(2) of the Constitution; and

(e) any other matter determined by the Minister.

Submission of quarterly reports and corporate plans

33. (1) The Board must submit quarterly reports to the Minister—

(a) at the end of each quarter; and

(b) which must illustrate how the national water policy and plans are complied with.

(2) The Board must revise its corporate plan annually, and must—

(a) take national water policy into consideration; and

(b) at least 30 working days before the beginning of each financial year, make a copy of the corporate plan available to the Minister.

(3) The Minister may—

(a) within 60 working days after receiving a copy of a prepared corporate plan; or

(b) within 30 working days after receiving a copy of a revised corporate plan, make comments on the plan to the Board.

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

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

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

(7) The Board must comply with a directive given under this section, unless adequate financial arrangements cannot be made to fund the implementation of the directive.

(8) The Minister must table in Parliament, the revised corporate plan every year once the initial corporate plan has been determined and approved by the Minister in terms of this section.

Financial statements and annual report

34. (1) The Board must prepare and submit financial statements to the Minister in accordance with established accounting practice, principles and procedures, comprising—

(a) a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Agency during the preceding financial year; and

(3) Uhlelo lwebhizinisi kumele, ngaphezu kwezindaba ezibalulwe eMthethweni Wokuphathwa Kwezimali Zikahulumeni, luqukathe—

(a) izinkomba zezezimali nezokusebenza kanye nezimpokophelo Ibhodi elizibona zifanele, ngokusekelwe kwizinkomba kanye nezinhloso eziqukethwe kwisivumelwano sabaninimasheya;

(b) nanoma yiluphi olunye ulwazi iBhodi elilubona ludingeka; futhi

(c) lolo lwazi njengoba kungayalwa uNgqongqoshe.

(4) Ekulungiseni noma ekubuyekezeni izinkomba zezezimali nezokusebenza kanye nezimpokophelo okukhulunywe ngazo esigatshaneni sesi-(3), iBhodi kufanele libheke—

(a) isivumelwano sabaninimasheya okungenwe kuso noNgqongqoshe;

(b) isidingo sokugcina ukusebenza kwezimali koHlaka;

(c) isidingo sokugcina izimali ezibekiwe, ezingeni elinqunywe uNgqongqoshe ngezikhathi ezithile, ikakhulukazi ukuhlinzekela—

(i) ukuthuthukiswa kwengqalasizinda yemithombo yamanzi kazwelonke njengoba kuyale uNgqongqoshe;

(ii) noma yikuphi ukudingeka kwesikhathi esizayo kwezinsizakalo zoHlaka; futhi

(iii) noma yisiphi isidingo sokuthuthukisa ukufinyeleleka, kanye nemigomo yokusebenza yezinsikalo ezihlinzekwa uHlaka;

(d) isidingo sokuhlangabezana nezinjongo zentuthuko zikahulumeni nangokuhambisana nesigaba sama-27(1)*(b)* kanye nesama-27(2) soMthethosisekelo; kanye

(e) nanoma yiluphi olunye udaba olunqunywe uNgqongqoshe.

Ukulethwa kwemibiko yekota kanye nezinhlelo zenkampani

33. (1) IBhodi kufanele ilethe imibiko yamakota kuNgqongqoshe—

(a) ekupheleni kwekota ngayinye; futhi

(b) okumele ikhombise ukuthi ithotshelwa kanjani inqubomgomo kazwelonke yezamanzi kanye nezinhlelo.

(2) IBhodi kufanele libuyekeze uhlelo lwalo lwebhizinisi minyaka yonke, futhi kufanele—

(a) icabangele inqubomgomo kazwelonke yamanzi; futhi

(b) okungenani ezinsukwini ezingama-30 zokusebenza ngaphambi kokuqala konyaka wezimali ngamunye, inikeze uNgqongqoshe ikhophi yohlelo lwebhizinisi.

(3) UNgqongqoshe—

(a) zingakapheli izinsuku ezingama-60 zokusebenza ngemuva kokuthola ikhophi yohlelo lwebhizinisi elungisiwe; noma

(b) zingakapheli izinsuku ezingama-30 zokusebenza ngemuva kokuthola ikhophi yohlelo lwebhizinisi ebuyekeziwe, angaphawula ngohlelo kwiBhodi.

(4) IBhodi kufanele libonisane ngobuqotho noNgqongqoshe, kulandela ukuxhumana nalo ngemibono kaNgqongqoshe, futhi kumele lenze noma yiziphi izinguquko ohlelweni lwebhizinisi abavumelene ngalo uNgqongqoshe kanye neBhodi.

(5) UNgqongqoshe ngezikhathi ezithile, angayalela iBhodi ukuthi lifake, noma likhiphe ohlelweni lwebhizinisi, nanoma yiluphi udaba, okuhlanganisa nodaba lwezezimali.

(6) Ngaphambi kokunikeza isiyalelo ngaphansi kwalesi sigaba, uNgqongqoshe kufanele abonisane neBhodi mayelana nanoma yiluphi udaba okumele lufakwe noma lweqiwe kulo myalelo.

(7) IBhodi kumele lihambisane nesiyalelo esinikezwe ngaphansi kwalesi sigaba, ngaphandle uma izinhlelo zezezimali ezanele zingeke zikwazi ukwenziwa ukuxhasa ukuqaliswa komyalelo.

(8) UNgqongqoshe kufanele ethule ePhalamende, uhlelo lwebhizinisi olubuyekeziwe njalo ngonyaka uma uhlelo lokuqala lwebhizinisi selunqunyiwe lwagunyazwa nguNgqongqoshe ngokwalesi sigaba.

Izitatimende zezimali kanye nombiko wonyaka

34. (1) IBhodi kufanele lilungise futhi lilethe izitatimende zezimali kuNgqongqoshe ngokuhambisana nenqubo yokubala emisiwe, imigomo nezinqubo, ezihlanganisa—

(a) isitatimende esinemininingwane efanele neyanele, esibonisa imali engenayo kanye nezindleko zoHlaka ngonyaka wezimali owedlule;

(b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.

(2) Within five months after the end of each financial year of the Agency, the Board must prepare and submit to the Minister an annual report and financial statements in the prescribed form.

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

(4) The Agency must publish its annual report and financial statements and make copies available at the offices of the Agency for inspection.

(5) The Minister must table in Parliament the annual report of the Agency, for consideration every year once the Minister has received it in terms of this Act.

Board to notify Minister of significant events

35. If any matter arises that might prevent or materially affect the achievement of the objects of the Agency in terms of the corporate plan or financial and performance indicators and targets contained in the corporate plan, the Board must immediately notify the Minister of the existence of such matter.

CHAPTER 6

TRANSFER OF NATIONAL WATER RESOURCES INFRASTRUCTURE AND DISESTABLISHMENT OF TCTA

Transfer of national water resources infrastructure

36. (1) *(a)* Section 115 of the National Water Act applies, in respect of the transfer of a national water resources infrastructure, to the Agency.

(b) The Minister may declare, by notice in the *Gazette*, which government waterworks are deemed to be national water resources infrastructure and are to be vested in the Agency, and may determine, from time to time, which infrastructure is no longer national water resources infrastructure and to which water management institution it should be transferred.

(2) Subject to subsection (1), the Minister must, within a period of 12 months after the date of incorporation of the Agency and in consultation with the Agency, determine by notice in the *Gazette* a date on which the Minister will transfer to the Agency the national water resources infrastructure, which immediately before that date vested in the Department.

(3) The transfer contemplated in subsections (2) includes—

(a) all assets and associated liabilities;

(b) all water user agreements, contractual and non-contractual rights and obligations, functions, directives and duties associated with the national water resources infrastructure;

(c) all operation and maintenance responsibilities of the national water resources infrastructure;

(d) all financial advisory services, including systems for the billing and collection of revenue payable for water use from the national water resources infrastructure; and

(e) the transfer of employees and officials of the Department associated with the national water resources infrastructure in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) The Minister must, either by way of a written directive or in the shareholder's compact, give direction in respect of the utilisation of any surplus revenue, if any, towards capital improvements or social projects of the national water resources infrastructure being transferred.

(5) The Minister must, by notice in the *Gazette* determine a date within 12 months after the incorporation of the Agency or such extended period determined by the Minister by notice in the *Gazette*, after the incorporation date and subject to subsection (10), on which date the Minister shall transfer to the Agency—

(b) uhlasilinganiso sezimali olutshengisa isitatimende sesimo sezimpahla zayo, izikweletu kanye nesimo sezimali ekupheleni kwalowo nyaka wezimali.

(2) Ezinyangeni ezinhlanu ngemuva kokuphela konyaka wezimali ngamunye woHlaka, iBhodi kufanele lilungise futhi lithumele kuNgqongqoshe umbiko wonyaka kanye nezitatimende zezimali ngendlela enqunyiwe.

(3) Lapho kudingekile, amarekhodi ezezimali kumele akhombise imisebenzi ehlukene noma amaphrojekthi oHlaka.

(4) UHlaka kufanele lushicilele umbiko walo wonyaka kanye nezitatimende zezimali futhi yenze amakhophi atholakale emahhovisi oHlaka ukuze ahlolwe.

(5) UNgqongqoshe kufanele ethule ePhalamende umbiko wonyaka woHlaka, ukuba ucutshungulwe minyaka yonke uma uNgqongqoshe esewutholile ngokwalo Mthetho.

Ibhodi lizokwazisa uNgqongqoshe ngezehlakalo ezibalulekile

35. Uma kuvela noma yiluphi udaba olungase luvimbele noma lube nomthelela omkhulu ekufezweni kwezinjongo zoHlaka ngokohlelo lwebhizinisi noma izinkomba zezezimali nezokusebenza kanye nemigomo equkethwe ohlelweni lwebhizinisi, iBhodi kufanele lazise uNgqongqoshe ngokushesha ngokuba khona kodaba olunjalo.

ISAHLUKO 6

UKUDLULISWA KWENGQALASIZINDA YEMITHOMBO YAMANZI KAZWELONKE KANYE NOKUSUSWA ESIKHUNDLENI KWE-TCTA

Ukudluliswa kwengqalasizinda yemithombo yamanzi kazwelonke

36. (1) *(a)* Isigaba se-115 soMthetho Wamanzi Kazwelonke siyasebenza, mayelana nokudluliswa kwengqalasizinda yemithombo yamanzi kazwelonke, oHlakeni.

(b) UNgqongqoshe angamemezela, ngesaziso kuSomqulu, lapho imisebenzi yamanzi kahulumeni ithathwa njengengqalasizinda yemithombo yamanzi kazwelonke futhi okumele inikezwe uHlaka, futhi inganquma ngezikhathi ezithile ukuthi iyiphi ingqalasizinda engaseyona ingqalasizinda yemithombo yamanzi kazwelonke nokuthi kufanele idluliselwe kusiphi isikhungo sokuphatha amanzi.

(2) Ngokwesigatshana soku-(1), uNgqongqoshe kufanele, phakathi kwesikhathi sezinyanga eziyi-12 ngemuva kosuku lokufakwa njengenkampani koHlaka futhi ngokuxoxisana noHlaka, anqume ngesaziso kuSomqulu usuku uNgqongqoshe azoludlulisela ngalo oHlakeni ingqalasizinda yemithombo yamanzi kazwelonke, ngaphambi kwalolo suku eyayinikezwe uMnyango.

(3) Ukudlulisa okuhlongozwe esigatshaneni sesi-(2) kubandakanya—

(a) zonke izimpahla nezikweletu ezihlobene;

(b) zonke izivumelwano zabasebenzisi bamanzi, amalungelo nezibopho zenkontileka nezingezona ezenkontileka, imisebenzi, iziqondiso kanye nemisebenzi ehlobene nengqalasizinda yemithombo yamanzi kazwelonke;

(c) zonke izibopho zokusebenza kanye nokugcina ingqalasizinda yemithombo yamanzi kazwelonke;

(d) zonke izinsizakalo zokweluleka ngezezimali, okuhlanganisa izinhlelo zokukhokhiswa nokuqoqwa kwemali engenayo ekhokhelwa ukusetshenziswa kwamanzi kusuka kwingqalasizinda yemithombo yamanzi kazwelonke; kanye

(e) nokudluliswa kwabasebenzi kanye nezikhulu zoMnyango ezihlobene nengqalasizinda yemithombo yamanzi kazwelonke ngokwesigaba se-197 soMthetho Wezobudlelwano Babasebenzi, we-1995 (uMthetho 66 we-1995).

(4) UNgqongqoshe ngendlela yesiyalelo esibhaliwe noma ngesivumelwano sabaninimasheya kufanele anikeze isiqondiso maqondana nokusetshenziswa kwanoma iyiphi imali enqwabelene, uma ikhona, ekuthuthukisweni kwezimali noma amaphrojekthi omphakathi engqalasizinda yemithombo yamanzi kazwelonke edluliswayo.

(5) UNgqongqoshe kufanele, ngesaziso kuSomqulu anqume usuku phakathi kwezinyanga eziyi-12 ngemuva kokufakwa koHlaka noma leso sikhathi esinwetshiwe esinqunywe uNgqongqoshe ngesaziso kuSomqulu, ngemva kosuku lokufakwa futhi kuncike esigatshaneni se-(10), ngalolo suku uNgqongqoshe azodlulisela ngalo kuHlaka—

(a) the whole of the commercial enterprise of the TCTA, including all assets, liabilities, rights and obligations of whatsoever nature and howsoever arising, who acquires such enterprise as a going concern;

(b) the TCTA's treaty functions; and

(c) the TCTA's non-Treaty functions.

(6) On the date contemplated in subsection (5), the Agency becomes the owner of all moveable and immoveable property, which immediately prior to the date determined by the Minister in subsection (5)—

(a) was registered in the asset registers of the TCTA;

(b) fell under the control or custody of the TCTA;

(c) was possessed, occupied or used by the TCTA as if it was the owner thereof; and

(d) was registered with any Registrar of Deeds in the name of the TCTA.

(7) On the date contemplated in subsection (5), in all pending litigation, including arbitration, the Agency must be substituted as a litigating party for the TCTA, as if the Agency was a litigant from the commencement thereof.

(8) On the date contemplated in subsection (5), in all contracts to which the TCTA is a party, the Agency must substitute the TCTA as a contracting party, as if the Agency had been a contracting party from the negotiation and conclusion thereof.

(9) On the date contemplated in subsection (5), in all guarantees issued in respect of the financial obligations of the TCTA, including any guarantees issued under sections 66 or 70 of the Public Finance Management Act, the Agency must substitute, and hereby substitutes, the TCTA as a contracting party, as if the Agency had been the entity guaranteed from the beginning.

(10) On the date contemplated in subsection (5), all existing financial instruments of the TCTA must be regarded as having been issued by the Agency.

(11) Despite any law to the contrary, any reference to the TCTA or a representative of the TCTA in any law, contract, register or record created in terms of a statute, contract or other legal document, must, with effect from the date contemplated in subsection (5), be regarded as being a reference to the Agency or a representative thereof.

(12) The Minister may not determine the date contemplated in subsection (5) until such time as—

(a) the Government of Lesotho has been consulted on the transfer of the Treaty functions and non-Treaty functions of the TCTA to the Agency;

(b) an arrangement has been made with the TCTA's primary creditors, to the satisfaction and approval of the Minister of Finance, in compliance with the Public Finance Management Act; and

(c) an arrangement has been made for the transfer of personnel employed by the TCTA to the Agency in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

Disestablishment of TCTA

37. (1) Subject to section 36, the Minister must disestablish the TCTA as a statutory body after the date determined by the Minister in terms of section 36(5) and may take steps to wind up the TCTA.

(2) Disestablishment of the TCTA must be by notice in the *Gazette*, after consultation with the Minister of Finance, the Board of the TCTA and the Board of the Agency.

(3) Clause 30 of Government Notice No. 277, published in *Gazette* No. 21017 of 24 March 2000, is hereby repealed.

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

(5) Any guarantee or indemnity expressed or implied by the State in favour of any contractual obligation or associated liability by the TCTA remains valid, binding and enforceable.

(a) lonke ibhizinisi lezentengiselwano le-TCTA, okuhlanganisa zonke izimpahla, izikweletu, amalungelo kanye nezibopho zanoma yiluphi uhlobo nanoma ngabe zivela kanjani, othola lelo bhizinisi njengento eqhubekayo;

(b) imisebenzi yesivumelwano se-TCTA; kanye

(c) imisebenzi engeyona eyeSivumelwano se-TCTA.

(6) Ngosuku oluhlongozwe esigatshaneni sesi-(5), uHlaka luba umnikazi wayo yonke impahla egudlukayo nengagudluki, okuthi ngaphambi nje kosuku olunqunywe uNgqongqoshe esigatshaneni sesi-(5)—

(a) yayibhaliswe kwirejista yempahla ye-TCTA;

(b) yawela ngaphansi kokulawula noma ekugcinweni yi-TCTA;

(c) yayiphethwe, isetshenziswa yi-TCTA sengathi umnikazi wayo; futhi

(d) wayebhaliswe nanoma yimuphi uMbhalisi wamaTayitela egameni le-TCTA.

(7) Ngosuku oluhlongozwe esigatshaneni sesi-(5), kuzo zonke izimangalo ezisalindile, okuhlanganisa nokwahlulela, uHlaka kufanele lufakwe esikhundleni sohlangothi oluphikisana ne-TCTA, kube sengathi uHlaka belungummangali kusukela ekuqaleni kwalokho.

(8) Ngosuku oluhlongozwe esigatshaneni sesi-(5), kuzo zonke izinkontileka i-TCTA eyingxenye yazo, uHlaka kufanele lushintshe i-TCTA njengenhlangano enenkontileka, kube sengathi uHlaka beluyingxenye yenkontileka ezingxoxweni nasekuphothulweni kwazo.

(9) Ngosuku oluhlongozwe esigatshaneni sesi-(5), kuzo zonke iziqinisekiso ezikhishwe maqondana nezibopho zezimali ze-TCTA, kuhlanganisa nanoma yiziphi iziqinisekiso ezikhishwe ngaphansi kwesigaba sama-66 noma sama-70 soMthetho Wokuphathwa Kwezimali Zikahulumeni, uHlaka kufanele lufake esikhundleni salo i-TCTA, futhi ngalokhu lufaka esikhundleni salo i-TCTA njengenhlangano enenkontileka, njengokungathi uHlaka beluyibhizinisi eliqinisekisiwe kusukela ekuqaleni.

(10) Ngosuku oluhlongozwe esigatshaneni sesi-(5), zonke izinsiza zezezimali ze-TCTA kumele zithathwe njengezikhishwe uHlaka.

(11) Ngaphandle kwanoma yimuphi umthetho ophikisana nalokho, noma yikuphi ukubhekisela ku-TCTA noma ummeleli we-TCTA kunoma yimuphi umthetho, inkontileka, irejista noma irekhodi elidalwe ngokomthetho, inkontileka noma omunye umbhalo wezomthetho, kufanele, kusukela ngosuku oluhlongozwe esigatshaneni sesi-(5), kuthathwe njengokubhekiselwa kwi-Ejensi noma kubammeleli bayo.

(12) UNgqongqoshe angeke anqume usuku oluhlongozwe esigatshaneni sesi-(5) kuze kube yileso sikhathi—

(a) kuxoxiswene noHulumeni waseLesotho mayelana nokudluliselwa kwemisebenzi yeSivumelwano kanye nemisebenzi engeyona eyeSivumelwano se-TCTA oHlakeni;

(b) kwenziwe uhlelo nabakweletwayo abayinhloko be-TCTA, ngendlela egculisayo futhi egunyazwa uNgqongqoshe Wezezimali, ngokuhambisana noMthetho Wokuphathwa Kwezimali Zikahulumeni; futhi

(c) kwenziwe uhlelo lokudluliswa kwabasebenzi abaqashwe yi-TCTA oHlakeni ngokwesigaba se-197 soMthetho Wezobudlelwane Babasebenzi, we-1995 (uMthetho 66 we-1995).

Ukususwa esikhundleni kwe-TCTA

37. (1) Ngokwesigaba sama-36, uNgqongqoshe kufanele asuse esikhundleni i-TCTA njengomgwamanda osemthethweni ngemva kosuku olunqunywe uNgqongqoshe ngokwesigaba sama-36(5) futhi angathatha izinyathelo zokuvala i-TCTA.

(2) Ukususwa esikhundleni kwe-TCTA kumele kwenziwe ngesaziso kuSomqulu, ngemuva kokubonisana noNgqongqoshe Wezezimali, iBhodi le-TCTA kanye neBhodi loHlaka.

(3) Isigaba somthetho sama-30 seSaziso sikaHulumeni ino 277, esakhishwa kuSomqulu ino 21017 wamhla zingama-24 kuNdasa 2000, siyachithwa.

(4) UNgqongqoshe angaqondisa ukudluliswa kwanoma yimuphi umsebenzi noma isevisi ye-TCTA ngaphambi kokususwa kwayo esikhundleni kuHlaka ngomyalelo obhaliwe.

(5) Noma yisiphi isiqinisekiso noma isinxephezelo esivezwe noma esishiwo uMbuso sivuna noma isiphi isibopho senkontileka noma isikweletu esihlobene ne-TCTA sihlala sisebenza, sibophezela futhi singaphoqelelwa.

Registering of real rights

38. The relevant Registrar of Deeds must make the necessary entries, in the register in terms of the Deeds Registration Act, 1937 (Act No. 47 of 1937), of the vesting of any real right of the State in the Agency in terms of this Act.

Transfer of personal servitude

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

(a) the Minister to the Agency; or

(b) a water management institution to the Agency.

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

Disposal and transfer of national water resources infrastructure

40. National water resources infrastructure may not be transferred or disposed of by the Agency without the approval of the Minister if its value exceeds an amount determined from time to time by the Minister by notice in the *Gazette* with the approval of the Minister of Finance.

Acquiring State land

41. Upon request by the Agency, in consultation with the Minister and the Ministers responsible for Public Works or Land Affairs, as the case may be, land may be made available by the State for transfer or registration of a servitude over any State land for the performance of any function by the Agency under this Act.

CHAPTER 7

POWERS OF MINISTER

Delegation by Minister

42. (1) The Minister may, in writing and subject to such conditions as the Minister may consider necessary, delegate a function entrusted to the Minister in terms of this Act to the Director-General of the Department.

(2) The Minister may not delegate the power—

(a) to make regulations;

(b) to appoint a member of the Board;

(c) to determine performance objectives and the strategic direction for the Agency; and

(d) to approve annual reports and financial statements.

(3) A delegation—

(a) does not prohibit or relieve the Minister from performing the function so delegated in terms of subsection (1); and

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

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

(5) The Director-General must give effect to a directive contemplated in subsection (4).

Additional functions

43. (1) *(a)* The Minister may request the Agency, in writing, to plan, design and construct national water resources infrastructure or to maintain or rehabilitate any particular national water resources infrastructure, despite the fact that such a project is not included in the Agency's corporate plan.

Ukubhaliswa kwamalungelo angempela

38. UMbhalisi wamaTayitela ofanele kufanele afake okudingekile, kwirejista ngokoMthetho Wokubhaliswa Kwetayitela, we-1937 (uMthetho 47 we-1937), ngokunikezwa kwanoma yiliphi ilungelo langempela loMbuso kuHlaka ngokwalo Mthetho.

Ukudluliswa kwelungelo lomuntu lokusebenzisa indawo yomunye umuntu

39. (1) Ngaphandle kwanoma yimuphi umthetho ophikisana nalokho, ukudluliswa kwelungelo lomuntu lokusebenzisa indawo yomunye umuntu, kungakhathaliseki ukuthi libhalisiwe noma cha, eliphethwe uNgqongqoshe noma isikhungo sokuphatha amanzi, lingasuswa—

(a) lisuka kuNgqongqoshe woHlaka; noma

(b) isikhungo sokuphathwa kwamanzi oHlakeni.

(2) Umbhalisi ofanele wencwadi yezibopho kufanele abhalise incwadi yezibopho yesivumelwano esenziwa ngokusemthethweni ukuze adlulisele ilungelo lomuntu lokusebenzisa indawo yomunye umuntu elibhalisiwe ngokwesigatshana soku-(1).

Ukuchithwa nokudluliswa kwengqalasizinda yemithombo yamanzi kazwelonke

40. Ingqalasizinda yemithombo yamanzi kazwelonke angeke idluliselwe noma ilahlwe yisiKhungo ngaphandle kwemvume kaNgqongqoshe uma inani layo leqa inani elinqunywe uNgqongqoshe ngezikhathi ezithile ngesaziso kuSomqulu ngemvume kaNgqongqoshe wezeziMali.

Ukuthola umhlaba woMbuso

41. Ngokucela koHlaka, ngokuxoxisana noNgqongqoshe kanye noNgqongqoshe ababhekele ezeMisebenzi yoMphakathi noma ezeMihlaba, kuye ngokuthi yikuphi, uMbuso unganikeza umhlaba ukuze udluliselwe noma ubhalisele ukuba ngaphansi kwanoma yimuphi umhlaba woMbuso, ngokwenziwa kwanoma yimuphi umsebenzi woHlaka ngaphansi kwalo Mthetho.

ISAHLUKO 7

AMANDLA KANGQONGQOSHE

Ukwabiwa komsebenzi uNgqongqoshe

42. (1) UNgqongqoshe, ngokubhala nangokuya ngaleyo mibandela uNgqongqoshe angabona idingeka, angadlulisa umsebenzi ophathiswe uNgqongqoshe ngokwalo Mthetho kuMqondisi-Jikelele woMnyango.

(2) UNgqongqoshe angeke adlulise amandla—

(a) okwenza imithethonqubo;

(b) okuqoka ilungu leBhodi;

(c) okunquma izinjongo zokusebenza kanye nesiqondiso sesu loHlaka; kanye

(d) nawokugunyaza imibiko yonyaka kanye nezitatimende zezimali.

(3) Ukudluliswa komsebenzi—

(a) akuvimbeli noma akumkhululi uNgqongqoshe ekwenzeni umsebenzi awudlulisile ngokwesigatshana soku-(1); futhi

(b) noma ngasiphi isikhathi kungahoxiswa noma kuchitshiyelwe, ngokubhalwe phansi, nguNgqongqoshe.

(4) UNgqongqoshe anganikeza uMqondisi-Jikelele umyalelo maqondana nokudluliswa kwamandla okuhlongozwe esigatshaneni soku-(1).

(5) UMqondisi-Jikelele kufanele enze umyalelo ohlongozwe esigatshaneni sesi-(4).

Imisebenzi eyengeziwe

43. (1) *(a)* UNgqongqoshe angacela uHlaka, ngokubhala phansi, ukuba luhlele, luklame futhi lwakhe ingqalasizinda yemithombo yamanzi kazwelonke noma lugcine noma lulungise noma iyiphi ingqalasizinda yemithombo yamanzi kazwelonke, ngaphezu kweqiniso lokuthi leyo phrojekthi ayifakiwe ohlelweni lwebhizinisi loHlaka.

(b) The Minister must identify the source of the funding of a project referred to in paragraph *(a)*.

(2) The Agency may perform additional functions if—

(a) it does not limit its capacity to perform its functions;

(b) it is not to the financial prejudice of the Agency; or

(c) it is not likely to detrimentally affect or cause financial prejudice to the Agency's customers or stakeholders or another water management institution.

(3) The Minister may, in consultation with the Minister of Finance and after consultation with the Ministers for Public Enterprises and of Trade and Industry, request or authorise the Agency to perform its functions outside of the Republic of South Africa.

Expropriation by Minister

44. (1) Subject to section 25 of the Constitution, the Minister may authorise the Agency to expropriate property, in terms of section 64 of the National Water Act for a public purpose or in the public interest and such property may include—

(a) land that it reasonably requires for national water resources infrastructure or other purposes connected with a national water resources infrastructure;

(b) the right to land that it requires temporarily for any of the purposes which the Minister of Public Works is competent to expropriate land; or

(c) gravel, stone, sand, clay, water or any other material or substance on or in the land required for the construction of national water resources infrastructure or for any waterwork or any other purposes.

(2) Where the Minister expropriates any land for the Agency in terms of paragraph *(a)*, the Agency becomes the owner thereof on the date of such expropriation.

(3) The Expropriation Act, 1975 (Act No. 63 of 1975) applies to any expropriation required in terms of this Act.

Investigation of Agency

45. (1) The Minister may appoint a person to investigate the affairs or financial position of the Agency and compliance by the Agency with this Act, and may recover from the Agency the fees and disbursements paid by the Minister to that person during the investigation.

(2) The Agency or an employee of the Agency must provide the Minister and the person appointed in subsection (1) with such data, information, books, accounts, documents and access to assets of the Agency as the Minister or the person appointed in subsection (1) may require.

Intervention by Minister

46. (1) Subject to subsection (2), the Minister may direct the Agency to take any action specified by the Minister, if the Agency—

(a) has failed to comply with any law or any policy envisaged in this Act;

(b) is in financial difficulty or is being mismanaged;

(c) has failed to perform its functions effectively;

(d) has failed to comply with any directive given by the Minister under this Act or in the shareholder's compact; or

(e) has obstructed the Minister, or a person authorised by the Minister, in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must—

(a) be in writing;

(b) state the nature of the deficiency;

(c) state the steps that must be taken to remedy the situation; and

(d) specify a reasonable period within which those steps must be taken.

(b) UNgqongqoshe kufanele aveze umthombo woxhaso lwezezimali lwephrojekthi okukhulunywe ngayo endimeni *(a)*.

(2) UHlaka lungenza eminye imisebenzi uma lokho—

(a) kungakhawuli amandla ayo okwenza imisebenzi yayo;

(b) kungayikhinyabezi ngokwezezimali uHlaka; noma

(c) kungeke kwenzeke ukuthi kube nomthelela omubi noma kubangele ukubandlululwa kwezimali kumakhasimende oHlaka noma ababambiqhaza noma esinye isikhungo sokuphathwa kwamanzi.

(3) UNgqongqoshe, ngokuxoxisana noNgqongqoshe Wezezimali nangemva kokubonisana noNgqongqoshe BezamaBhizinisi Kahulumeni kanye nowezoHwebo neziMboni, angacela noma agunyaze uHlaka ukuba yenze imisebenzi yayo ngaphandle kweRiphabhulikhi yaseNingizimu Afrika.

Ukudliwa komhlaba nguNgqongqoshe

44. (1) Ngokwesigaba sama-25 soMthethosisekelo, uNgqongqoshe angagunyaza uHlaka ukuthi ludle umhlaba, ngokwesigaba sama-64 soMthetho Wamanzi Kazwelonke ngenhloso yomphakathi noma ngokuzuzisa umphakathi—

(a) umhlaba oluwudinga ngokufanelekile iwudingela ingqalasizinda yemithombo yamanzi kazwelonke noma ezinye izinhloso ezixhumene nengqalasizinda yemithombo yamanzi kazwelonke;

(b) ilungelo kumhlaba eluwudingayo okwesikhashana ngenxa yanoma yiziphi izinhloso uNgqongqoshe Wezemisebenzi Yomphakathi anegunya lokuwudla umhlaba;

(c) amatshe, itshe, isihlabathi, ubumba, amanzi nanoma iyiphi enye into esemhlabeni noma edingekayo ukuze kwakhiwe ingqalasizinda yemithombo yamanzi kazwelonke noma yanoma imuphi umsebenzi wamanzi noma yinanoma yiziphi ezinye izinjongo.

(2) Lapho uNgqongqoshe ethathela uHlaka noma yimuphi umhlaba ngokwendima *(a)*, uHlaka luba umnikazi wawo ngosuku okudliwa ngalo umhlaba.

(3) UMthetho Wokudliwa komhlaba, we-1975 (uMthetho 63 we-1975) usebenza kunoma yikuphi ukudliwa komhlaba okudingekayo ngokwalo Mthetho.

Uphenyo loHlaka

45. (1) UNgqongqoshe angaqoka umuntu ozophenya izindaba noma isimo sezezimali soHlaka kanye nokuhambisana koHlaka nalo Mthetho, futhi angabuyisela oHlakeni izimali ezikhokhwe uNgqongqoshe kulowo muntu ngesikhathi sophenyo.

(2) UHlaka noma umsebenzi woHlaka kumele ahlinzeke uNgqongqoshe kanye nomuntu oqokwe esigatshaneni soku-(1) ngedatha, imininingwane, izincwadi, ama-akhawunti, imibhalo kanye nokufinyelela ezimpahleni zoHlaka njengoba uNgqongqoshe noma umuntu oqokwe esigatshaneni soku-(1) angadinga.

Ukungenelela kukaNgqongqoshe

46. (1) Ngokwesigatshana sesi-(2), uNgqongqoshe angayalela uHlaka ukuba luthathe noma yisiphi isinyathelo esishiwo uNgqongqoshe, uma uHlaka—

(a) luhlulekile ukuhambisana nanoma yimuphi umthetho nanoma iyiphi inqubomgomo ehlongozwe kulo Mthetho;

(b) lusebunzimeni bezezimali noma ayiphathwa ngendlela efanele;

(c) luhlulekile ukwenza imisebenzi yalo ngempumelelo;

(d) luhlulekile ukuthobela noma yimuphi umyalelo onikezwe uNgqongqoshe ngaphansi kwalo Mthetho noma esivumelwaneni sabaninimasheya; noma

(e) luphazamise uNgqongqoshe, noma umuntu ogunyazwe uNgqongqoshe, ekwenzeni umsebenzi ngokwalo Mthetho.

(2) Umyalelo ohlongozwe esigatshaneni soku-(1) kufanele—

(a) ubhalwe phansi;

(b) usho uhlobo lokuntula;

(c) usho izinyathelo okufanele zithathwe ukulungisa isimo; futhi

(d) ubalule isikhathi esifanele okumele kuthathwe ngaso lezo zinyathelo.

(3) If the Agency fails to remedy the situation within the period specified in the directive contemplated in subsection (2), the Minister, with the approval of the Minister of Finance, may appoint an administrator—

(a) after having given the Agency a reasonable opportunity to be heard; and

(b) after having afforded the Agency a hearing on any submissions received.

(4) If the Minister appoints an administrator—

(a) the administrator may do anything that the Agency is authorised or required to do in terms of this Act, to the exclusion of the Agency;

(b) the Board may not, while the administrator performs any function, perform that function;

(c) an employee or a contractor of the Agency must comply with a directive given by the Minister or the administrator; and

(e) the Minister or the administrator may recover from the Agency all reasonable costs incurred that are related to the appointment of and performance of functions by the administrator.

(5) The Minister must—

(a) Regularly review the progress of the administrator in remedying the situation that gave rise to the appointment of the administrator; and

(b) within six months of appointing the administrator, table a report on his or her findings in the National Assembly.

(6) Once the Minister is satisfied that the Agency is able to perform its functions effectively, the Minister, with the approval of the Minister of Finance, must terminate the appointment of the administrator.

(7) *(a)* Despite anything contained in this Act, but subject to paragraph *(b)*, the Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently.

(b) The Minister may dissolve the Board only—

(i) after having given the Board a reasonable opportunity to be heard; and

(ii) after having afforded the Board a hearing on any submissions received from the Board.

(c) If the Minister dissolves the Board, the Minister—

(i) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and

(ii) must, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the same way as the way in which they were appointed.

(8) *(a)* The costs associated with the appointment of an administrator must be for the account of the Agency.

(b) The appointment of the administrator terminates when the Board members have assumed office.

(9) Despite this section, the Minister retains the right at any time to approach a competent court for relief in any matter that he or she considers appropriate in furtherance of the objects of this Act.

Regulations

47. (1) The Minister may make regulations regarding ancillary or incidental administrative or procedural matter in relation to functions of the Agency set out under section 6, that are necessary to prescribe for the proper implementation or administration of this Act.

(2) Any regulation that has financial implications may only be made in consultation with the Minister of Finance.

(3) Uma uHlaka luhluleka ukulungisa isimo esikhathini esibalulwe emyalweni ohlongozwe esigatshaneni sesi-(2), uNgqongqoshe, ngemvume kaNgqongqoshe wezeziMali, angaqoka umlawuli—

(a) ngemuva kokunikeza uHlaka ithuba elanele lokulalelwa; futhi

(b) ngemuva kokunikeza uHlaka ukulalelwa kwanoma yiziphi izethulo ezitholiwe.

(4) Uma uNgqongqoshe eqoka umlawuli—

(a) umlawuli angenza noma yini uHlaka olugunyazwe ukuyenza noma okudingeka luyenze ngokwalo Mthetho, ngaphandle koHlaka;

(b) iBhodi alikwazi ukuthi ngesikhathi esisodwa nomlawuli lenze noma yimuphi umsebenzi owenziwa umlawuli;

(c) umsebenzi noma usonkontileka woHlaka kufanele athobele umyalelo onikezwe uNgqongqoshe noma umlawuli; futhi

(d) uNgqongqoshe noma umlawuli angabuyisela oHlakeni zonke izindleko ezifanele ezidalekile ezihlobene nokuqokwa kanye nokwenza imisebenzi yomlawuli.

(5) UNgqongqoshe kufanele—

(a) njalo abuyekeze inqubekelaphambili yomlawuli ekulungiseni isimo esidale ukuqokwa komlawuli; futhi

(b) zingakapheli izinyanga eziyisithupha eqoke umlawuli, ethule umbiko ngakukutholile esiGungwini sikaZwelonke.

(6) Uma uNgqongqoshe esenelisekile ukuthi uHlaka luyakwazi ukwenza imisebenzi yalo ngempumelelo, uNgqongqoshe ngemvume kaNgqongqoshe wezeziMali kufanele amise ukuqokwa komlawuli.

(7) *(a)* Ngaphezu kwanoma yini equkethwe kulo Mthetho, kodwa ngokuncike endimeni *(b)*, uNgqongqoshe angachitha iBhodi uma uNgqongqoshe, ngesizathu esihle esitshengisiwe, elahlekelwa ithemba ekutheni iBhodi linawo amandla okwenza imisebenzi yalo ngendlela eyimpumelelo futhi eyongayo.

(b) UNgqongqoshe angachitha iBhodi kuphela—

(i) ngemuva kokunikeza iBhodi ithuba elanele lokulalelwa; futhi

(ii) ngemuva kokunikeza iBhodi ukulalelwa kwanoma yiziphi izethulo ezitholwe kwiBhodi.

(c) Uma uNgqongqoshe echitha iBhodi, uNgqongqoshe—

(i) angaqoka umqondisi ukuthi athathe imisebenzi yeBhodi futhi enze noma yini iBhodi elingase linikezwe amandla okuyenza noma okudingeka liyenze ngokwalo Mthetho noma ngaphansi kwalo Mthetho, kuncike kule mibandela njengoba uNgqongqoshe enganquma; futhi

(ii) kumele, ngokushesha uma kungenzeka kodwa kungakedluli izinyanga ezintathu kuchithwe iBhodi, kufakwe esikhundleni samalungu eBhodi ngendlela efanayo naleyo ayeqokwe ngayo.

(8) *(a)* Izindleko ezihambisana nokuqokwa komlawuli kumele zibe ezoku-akhawunta koHlaka.

(b) Ukuqokwa komlawuli kunqanyulwa lapho amalungu eBhodi esethathe izintambo.

(9) Ngaphezu kwalesi sigaba, uNgqongqoshe unelungelo lanoma ingasiphi isikhathi lokuya enkantolo enamandla ukuze athole usizo kunoma yiluphi udaba alubona lufanelekile ekuqhubekiseleni phambili izinjongo zalo Mthetho.

Imithethonqubo

47. (1) UNgqongqoshe angenza imithethonqubo ephathelene nokuphatha okulekelelayo noma okwenzeke ngengozi noma ngezinqubo maqondana nemisebenzi yoHlaka ebekwe ngaphansi kwesigaba sesi-7, edingekayo ukuze kunqunywe ukuthi lo Mthetho usetshenziswe ngendlela efanele.

(2) Noma yimuphi umthethonqubo othinta izimali ungenziwa kuphela ngokubonisana noNgqongqoshe Wezezimali.

CHAPTER 8

MISCELLANEOUS PROVISIONS

Subsidiary company

48. The Agency may only establish a subsidiary company in terms of the Companies Act—

(a) by a special resolution of the Board; and

(b) in consultation with the Minister and the Minister of Finance.

Liquidation

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

Documents relating to litigation against Agency

50. The Agency must provide the Minister with copies of all summonses and applications in its possession relating to any legal proceedings brought against the Agency.

Transitional provisions and savings

51. Anything done under the National Water Act and which is still valid at the commencement of this Act, remains in force—

(a) to the extent that it is consistent with this Act; and

(b) until anything done under this Act overrides it.

Offences and penalties

52. Any person who—

(a) fails to provide access to any book, account, document or asset when required to do so under this Act;

(b) fails to comply with a directive issued under this Act;

(c) fails or refuses to give data or information, or gives false or misleading data or information, when required to give information under this Act;

(d) refuses to perform a duty, or obstructs any person in the performance of any of that person's functions, in terms of this Act;

(e) makes personal gains or accepts any unauthorised fee or reward, either directly or indirectly, as a result of his or her position with the Agency;

(f) fraudulently uses the Agency's name, logo or design without authority to do so; and

(g) unlawfully and intentionally or negligently tamper or interferes with any waterwork or any seal or measuring device attached to a waterwork,

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

Short title and commencement

53. This Act is called the South African National Water Resources Infrastructure Agency SOC Limited Act, 2024, and comes into effect on a date determined by the President by Proclamation in the *Gazette*.

ISAHLUKO 8

IMIHLINZEKO EHLUKILE

Inkampani engaphansi kweyinhloko

48. UHlaka lungasungula inkampani engaphansi kwalo ngokoMthetho Wezinkampani kuphela—

(a) ngesinqumo esikhethekile seBhodi; futhi

(b) ngokubonisana noNgqongqoshe kanye noNgqongqoshe Wezezimali.

Ukudliwa kwempahla yenkampani

49. Ngaphezu kwanoma yimuphi omunye umthetho, uHlaka nanoma iyiphi inkampani engaphansi kwalo, kuye ngokuthi yikuphi, ngeke lubekwe ngaphansi kokuphathwa inkantolo noma ukudliwa kwempahla, ngaphandle uma kungegunya loMthetho wePhalamende elisetshenziselwa leyo nhloso.

Amadokhumenti ahlobene nokumangalelwa koHlaka

50. UHlaka kufanele luhlinzeke uNgqongqoshe amakhophi awo wonke amasamanisi kanye nezicelo ezikulo ezihlobene nanoma yikuphi ukuqhutswa kwecala okulethwe oHlakeni.

Imihlinzeko yesikhashana kanye nokuchithiwe

51. Noma yini eyenziwe ngaphansi koMthetho Wamanzi Kazwelonke futhi esasebenza ngeskhathi sokuqala ukusebenza kwalo Mthetho, iqhubeka nokusebenza—

(a) ngendlela yokuthi ihambisana nalo Mthetho; futhi

(b) kuze kube noma yini eyenziwe ngaphansi kwalo Mthetho iyayichitha.

Amacala nezijeziso

52. Noma yimuphi umuntu—

(a) ohluleka ukunikeza ukufinyelela kunoma iyiphi incwadi, i-akhawunti, umbhalo noma impahla lapho kudingeka ukuba enze kanjalo ngaphansi kwalo Mthetho;

(b) ohluleka ukuthobela umyalelo okhishwe ngaphansi kwalo Mthetho;

(c) ohluleka noma onqaba ukunikeza idatha noma ulwazi, noma onikeza ulwazi olungamanga noma oludukisayo, lapho kudingeka ukuthi anikeze ulwazi ngaphansi kwalo Mthetho;

(d) onqaba ukwenza umsebenzi, noma ovimbela noma yimuphi umuntu ekwenzeni noma yimiphi imisebenzi yalowo muntu, ngokwalo Mthetho;

(e) ozizuzisa yena noma owamukela noma iyiphi imali engagunyaziwe noma umvuzo, ngokuqondile noma ngokungaqondile, ngenxa yesikhundla sakhe oHlakeni;

(f) okhwabanisa ngokusebenzisa igama loHlaka, uphawu noma umklamo ngaphandle kwegunya lokwenza lokho; futhi

(g) othinta noma ophazamisa ngokungemthetho nangenhloso noma ngobudedengu noma yimiphi imisebenzi yamanzi nanoma iyiphi i-seal noma ithuluzi lokulinganisa elinanyathiselwe emsebenzini wamanzi;

unecala futhi lapho elahlwa icala uzokhokhiswa inhlawulo noma agqunywe ejele noma akwenze kokubili, akhokhe inhlawulo futhi agqunywe ejele isikhathi esingeqile eminyakeni emihlanu.

Isihloko esifushane kanye nokuqaliswa ukusebenza

53. Lo Mthetho ubizwa ngokuthi uMthetho weziNhlaka zoMbuso zeNgqalasizinda yeMithombo yaManzi kaZwelonke eNingizimu Afrika, wezi-2024 futhi uqala ukusebenza ngosuku olunqunywe uMongameli ngesimemezelo kuSomqulu.

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