

- (l) approves the appointment of senior executive employees of the Authority; and  
 (m) gives effect to the Government's national commercial ports policy.

(3) Nothing in subsection (1) precludes the Board from performing any function reasonably necessary for the effective and economic management, planning, operation and control of ports and which is not in conflict with this Act. 5

(4) Under no circumstances should land within ports owned by the Authority be sold.

### Persons disqualified from membership of Board

17. A person may not be appointed or remain a member of the Board if such a person—

- (a) is not a citizen of South Africa; 10  
 (b) is an unrehabilitated insolvent;  
 (c) has been declared by a court to be mentally ill;  
 (d) has been convicted of an offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 15  
 (e) has been convicted—  
 (i) whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty; or  
 (ii) has been convicted of an offence under this Act; 20  
 (f) has any financial interest in the business of any port;  
 (g) is otherwise disqualified from serving as director in terms of the Companies Act.

### Terms of office of members of Board

18. (1) The chairperson and the other members of the Board hold office for a period determined by the Shareholding Minister, but not exceeding three years. 25

(2) (a) The chairperson may be reappointed for further periods not exceeding three years each.

(b) The other members of the Board may be reappointed to ensure continuity, but may not serve for more than six consecutive years. 30

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

- (a) for failing to perform his or her functions diligently;  
 (b) for failing to comply with section 19(1), (2) or (3);  
 (c) for being absent without good reason from three consecutive meetings of the Board without the permission of the chairperson; or 35  
 (d) for misconduct.

(4) A member of the Board may resign by giving one month's written notice to the Shareholding Minister.

(5) A member of the Board is appointed on such terms and conditions and is entitled to such remuneration as the Shareholding Minister may, with the concurrence of the Minister of Finance, stipulate in that member's letter of appointment. 40

(6) The Shareholding Minister may extend the terms of office of members of the Board upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board.

### Disclosure of interest by members of Board 45

19. (1) A member of the Board must, upon appointment, submit to the Shareholding Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions.

(2) A member of the Board may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest. 50

(3) If any member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he ~~or~~ she must immediately in writing declare that fact to the Shareholding Minister and the Board.

(4) If an organisation or enterprise in which a member of the Board has an interest contemplated in section (2) is requested to offer its services to the Authority, the organisation or enterprise must immediately, in writing, declare the member's interest to the Shareholding Minister and the Board. 5

### Meetings of Board

20. (1) (a) The first meeting of the Board must be held at a time and place determined by the Shareholding Minister and thereafter Board meetings must be held at such times and places as the Board may determine. 10

(b) The Board must meet at least once every three months.

(2) The chairperson—

(a) may convene a special meeting of the Board; and

(b) must convene a special meeting of the Board within 14 days of the receipt of a written request to convene such a meeting signed by not less than one quarter of the members of the Board. 15

(3) Whenever the chairperson is not available, the deputy chairperson exercises the powers of the chairperson, subject to such directions as the chairperson may give.

(4) A quorum for any meeting of the Board is a majority of all members of the Board. 20

(5) All decisions of the majority of the members of the Board present at a meeting are binding on the Board and the Authority.

(6) In the case of an equality of votes at any meeting of the Board, the chairperson has a casting vote in addition to a deliberative vote.

### Delegation and assignment of functions by Board

25

21. (1) The Board may, by a resolution passed by 75 per cent of its members—

(a) delegate any of its powers and assign any of its duties conferred or imposed by ~~or~~ under this Act and the memorandum and articles of association of the Authority, to any member of the Board, the chief executive officer or any employee of the Authority; and 30

(b) amend or revoke such delegation or assignment.

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

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

(i) may be made subject to such conditions as the Board may determine; 35

(ii) may include the power to subdelegate or reassign subject to the conditions contemplated in subparagraph (i);

(iii) must be communicated to the delegatee or assignee in writing.

(b) The written communication contemplated in paragraph (a)(iii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed. 40

### Appointment of chief executive officer

22. (1) The Board must, with the approval of the Shareholding Minister, appoint a chief executive officer within three months of the incorporation date, or such longer period as the Shareholding Minister may determine. 45

(2) The Board must invite applications for the post of chief executive officer by publishing an advertisement in the media.

(3) A person appointed as chief executive officer must—

(a) have qualifications or experience relevant to the functions of the Authority;

(b) have extensive knowledge of port affairs; and 50

(c) not be disqualified as contemplated in section 17(a) to (f).

(4) The appointment of the chief executive officer is subject to the conclusion of a performance contract with the Authority.

(5) A chief executive officer—

- (a) is appointed for the period specified in his or her letter of appointment; and 5  
(b) may be reappointed.

(6) The person who fulfils the function of the chief executive officer of National Ports Authority (Pty) Ltd immediately prior to the incorporation date serves as the chief executive officer until the Board appoints a chief executive officer in terms of this section. 10

#### Functions of chief executive officer

23. (1) The chief executive officer is responsible for—

- (a) the execution of the policy and directives of the Board;  
(b) the implementation of the Authority's functions;  
(c) the organisation, control and management of the day-to-day business of the Authority; and 15  
(d) ensuring that the Authority achieves its goals.

(2) The chief executive officer may in writing delegate any of his or her powers or assign any of his or her duties to a senior employee of the Authority, but must advise the Board from time to time of any such delegation or assignment. 20

#### Vacating of and removal from office of chief executive officer

24. (1) The Board must, subject to applicable labour legislation, remove the chief executive officer from office—

- (a) for misconduct;  
(b) for failing to perform the duties connected with that office diligently; 25  
(c) if the chief executive officer becomes subject to any disqualification contemplated in section 17(a) to (f).

(2) (a) The chief executive officer may resign on two months' written notice to the Board.

(b) If the Board is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Board and must be regarded as having been received by the Board on the date on which it is handed to the chairperson. 30

#### Acting chief executive officer

25. (1) The Board may in writing appoint any senior employee of the Authority to act as chief executive officer when the holder of that office— 35

- (a) is temporarily unable to perform the duties connected with that office; or  
(b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) The chief executive officer may in writing appoint any senior employee of the Authority to act as chief executive officer for any period that the chief executive officer is absent from the Republic. 40

(3) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer.

#### Appointment and transfer of staff of Authority

26. (1) The chief executive officer may appoint such persons as he or she deems fit for the proper discharge of the functions of the Authority. 45

(2) All persons who immediately prior to the date on which National Ports Authority (Pty) Ltd is incorporated, were in the employ of National Ports Authority of South Africa are deemed to have been transferred to the service of National Ports Authority (Pty) Ltd

on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer.

(3) All persons who immediately prior to the date determined in terms of section 27(1) were in the employ of National Ports Authority (Pty) Ltd are deemed to have been transferred to the service of the Authority on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer. 5

(4) For the purpose of the application of the Income Tax Act, 1962 (Act No. 58 of 1962), to the transfer of employees contemplated in subsections (2) and (3), it is deemed that the Authority, National Ports Authority (Pty) Ltd and National Ports Authority of South Africa are the same employer. 10

### **Transfer of ports, land and other rights and obligations**

**27.** (1) (a) On a date after the commencement of this Act, determined by the Shareholding Minister by notice in the *Gazette*, National Ports Authority (Pty) Ltd becomes the successor to National Ports Authority of South Africa. 15

(b) The date contemplated in paragraph (a) must be determined after consultation with the Minister and with the concurrence of the Minister of Finance.

(2) On the date determined in terms of subsection (1), Transnet must transfer to National Ports Authority (Pty) Ltd the business of the National Ports Authority of South Africa and— 20

(a) all land and immovable property relating to the business of National Ports Authority of South Africa and owned by Transnet will vest in the National Ports Authority (Pty) Ltd; and

(b) all movable property and all liabilities, rights and obligations of Transnet relating to the National Ports Authority of South Africa as determined by the Shareholding Minister will vest in National Ports Authority (Pty) Ltd. 25

(3) Upon the vesting contemplated in subsection (2), the Board of National Ports Authority (Pty) Ltd must inform the National Treasury in the manner contemplated in section 54(2) of the PFMA.

(4) On the date contemplated in subsection (1) and arising out of the vesting in terms of subsection (2), and without derogating from the generality of that subsection, National Ports Authority (Pty) Ltd— 30

(a) becomes the owner of all land and immovable property situated within ports;

(b) becomes the owner of all lighthouses and other navigational aids;

(c) is substituted as the litigating party for Transnet in all pending litigation relating to the business of the National Ports Authority, including arbitration and mediation, as if it had been the litigant from the beginning; and 35

(d) is substituted as the contracting party for Transnet in all contracts relating to the business of the National Ports Authority as if the Authority had been the contracting party from the beginning. 40

(5) Subsections (2) and (4) are not to be interpreted as conferring on National Ports Authority (Pty) Ltd a right of ownership in—

(a) movable or immovable property which, before the date determined in terms of subsection (1), was vested in a person other than Transnet Limited or any of its Divisions; 45

(b) telecommunication facilities or petroleum pipelines of Transnet Limited or any of its Divisions.

(6) Despite section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar of deeds referred to in section 102 of the latter Act must, on submission of a certificate by the Shareholding Minister that land has vested under this section, make such entries and endorsements free of charge as the registrar considers necessary in any appropriate register in order to register the transfer of such land in the name of the Authority. 5

(7) A registrar of deeds must, on submission of a certificate by the Shareholding Minister that a servitude, other real right or lease has vested under this section, make such entries and endorsements as the registrar considers necessary in or on any appropriate register in order to register such vesting in the name of the Authority. 10

(8) (a) Despite any provision in any other law to the contrary, and with the concurrence of the Minister of Finance, Transnet, National Ports Authority (Pty) Ltd and the Authority are exempt from—

- (i) any tax, value-added tax, capital gains tax, stamp duties, transfer duties or registration fees payable in terms of any law in relation to the transfer of assets or rights; 15
- (ii) any fee or charge required in terms of the Companies Act; and
- (iii) any fee or charge required in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(b) The exemption referred to in paragraph (a) applies to the processes contemplated in sections 3, 4 and 27. 20

### State guarantees

28. Subject to section 66 of the PFMA, the Authority may borrow money or issue a guarantee, indemnity or security, or enter into any other transaction contemplated in that section. 25

## CHAPTER 5

### PORTS REGULATOR

#### Establishment of Regulator

29. There is hereby established an independent ports regulatory body, vested with legal personality, to be known as the Ports Regulator. 30

#### Functions of Regulator

30. (1) The main functions of the Regulator are to—

- (a) exercise economic regulation of the ports system in line with government's strategic objectives;
- (b) promote equity of access to ports and to facilities and services provided in ports; 35
- (c) monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act.

(2) The Regulator must—

- (a) hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48; 40
- (b) negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; 45
- (c) advise and receive advice from any other regulatory authority;
- (d) consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner;

- (e) promote regulated competition;
  - (f) regulate the provision of adequate, affordable and efficient port services and facilities.
- (3) The Regulator may, with the concurrence of the Minister, and by notice in the *Gazette*, issue directives not in conflict with this Act for matters relating to the proper performance of the functions of the Regulator, including — 5
- (a) forms to be used when complaints or appeals are submitted to the Regulator;
  - (b) time periods within which complaints or appeals must be submitted;
  - (c) information to be supplied when a complaint or appeal is submitted;
  - (d) filing fees for the lodging of complaints or appeals with the Regulator; 10
  - (e) access by the Regulator to confidential information of the Authority;
  - (f) manner and form of participation in proceedings of the Regulator;
  - (g) procedures regarding the running of the business of the Regulator;
  - (h) the filing of prices charged by the provider of any port service other than the Authority. 15
- (4) The Regulator may enter into an agreement with any other statutory body in order to co-ordinate and harmonise the performance of functions similar or related to those of the Regulator.
- (5) Whenever necessary or required by the Minister, the Regulator must report to the Minister on any matter relating to the application or purposes of this Act. 20
- (6) The Regulator must, as soon as practicable after 31 March of each year but not later than 30 June of each year, submit to the Minister a report giving particulars regarding the activities of the Regulator during the year which ended on the first-mentioned date.
- (7) The Minister must table in Parliament any report— 25
- (a) contemplated in subsection (5), if such report deals with a substantial matter relating to the application or purposes of this Act; and
  - (b) contemplated in subsection (6).
- (8) Any report referred to in subsection (7) must be tabled— 30
- (a) within 10 business days after receiving the report from the Regulator; or
  - (b) if Parliament is not then sitting, within 10 business days after the commencement of the next session.

### **Nomination and appointment of members of Regulator**

- 31.** (1) (a) The Regulator consists of a chairperson and a minimum of six and a maximum of 12 other members appointed by the Minister for a period of up to five years at a time. 35
- (b) The members of the Regulator may be re-appointed.
- (2) The Minister must call for nominations of members to the Regulator in the national media and appoint the members from the persons so nominated.
- (3) Notwithstanding subsection (2), the Minister may appoint persons other than those nominated. 40
- (4) The members of the Regulator must, when viewed collectively, comprise sufficient persons with suitable qualifications or experience in economics, the law, commerce, ports, the shipping industry and public affairs.
- (5) Each member of the Regulator must— 45
- (a) be a citizen of the Republic, who is ordinarily resident therein;
  - (b) be committed to the purposes and principles enunciated in this Act; and
  - (c) be available to fulfil his or her role as a member.
- (6) A person may not be a member of the Regulator if that person— 50
- (a) is an unrehabilitated insolvent;
  - (b) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
  - (c) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 55

- (d) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act; or
- (f) has any financial interest in the business of any port.

(7) A member of the Regulator who is not an officer in the public service must be paid such allowance for his or her services as the Minister with the concurrence of the Minister of Finance may determine. 5

(8) The Minister may extend the terms of office of members of the Regulator upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board. 10

#### **Disclosure of interests and certain prohibitions**

**32.** (1) A member of the Regulator must, upon appointment, submit to the Minister a written statement in which it is declared whether or not that member has any direct or indirect interest which could compromise the Regulator in the performance of its duties. 15

(2) A member of the Regulator may not—

- (a) engage in any activity that may undermine the integrity of the Regulator;
- (b) participate in any investigation, hearing or decision of the Regulator concerning a matter in respect of which that person or a family member or a business partner or associate of that member has a direct financial interest or any other personal interest; or 20
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

#### **Vacation of office of members of Regulator**

**33.** (1) The Minister must remove a member of the Regulator from office—

- (a) for being absent without good reason from three consecutive meetings of the Regulator without the permission of the chairperson; 25
- (b) for failing to perform his or her functions diligently;
- (c) for ceasing or failing to comply with any requirement referred to in sections 31(5) or 32(1) or (2); or
- (d) for misconduct. 30

(2) A member of the Regulator may resign by giving one month's written notice to the Minister.

(3) If a member of the Regulator for any reason ceases to hold office, the Minister may appoint another person in his or her stead for the remainder of the term of office of the member. 35

#### **Appointment of Regulator's chief executive officer**

**34.** (1) (a) The Minister must, after advertising in the media and after consultation with the Regulator, appoint a person as chief executive officer of the Regulator.

(b) Sections 31(5) and (6) and 32(1) and (2) apply to the chief executive officer with the changes required by the context. 40

(2) Subject to the directions of the Regulator, the chief executive officer is responsible for—

- (a) the management of the day-to-day affairs of the Regulator;
- (b) the administrative control over the resources of the Regulator and members of staff appointed in terms of section 37. 45

(3) The chief executive officer is ex officio a member of the Regulator.

### **Vacating of and removal from office of Regulator's chief executive officer**

**35.** (1) The Regulator must, after consultation with the Minister, remove the chief executive officer from office —

- (a) for misconduct;
- (b) for failing to perform the duties connected with that office diligently; **5**
- (c) if the chief executive officer ceases or fails to comply with any requirement referred to in section 31(5) or 32(1) or (2).

(2) (a) The chief executive officer may resign on two months' written notice to the Regulator.

(b) If the Regulator is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Regulator and must be regarded as having been received by the Regulator on the date on which it is handed to the chairperson. **10**

### **Regulator's acting chief executive officer**

**36.** (1) The Minister may in writing appoint any senior employee of the Regulator to act as chief executive officer when the holder of that office — **15**

- (a) is temporarily unable to perform the duties connected with that office for any reason whatsoever; or
- (b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer. **20**

### **Secretariat of Regulator**

**37.** (1) The chief executive officer must —

- (a) on such conditions as the Regulator, with the approval of the Minister, may determine, appoint such employees as may be required to perform the work connected with the functions of the Regulator; and **25**
- (b) pay its employees such remuneration, allowances, subsidies and other benefits as the Regulator may determine in accordance with a remuneration structure approved by the Minister with the concurrence of the Minister of Finance.

(2) A member of the secretariat of the Regulator may not — **30**

- (a) engage in any activity that may undermine the integrity of the Regulator or the Authority;
- (b) participate in any investigation, hearing or decision of the Regulator or of the Authority concerning a matter in respect of which that person or a family member of that member has a direct financial interest or any other personal interest; **35**
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

### **Services of non-employees**

**38.** (1) The Regulator may, with the approval of the Minister, in the performance of its functions in terms of this Act, for specific projects — **40**

- (a) enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Regulator; and
- (b) determine the remuneration, including reimbursement for traveling, subsistence and other expenses of such persons. **45**

(2) Section 37(2) applies to a person appointed under subsection (1) with the changes required by the context.

### **Meetings of Regulator**

**39.** (1) The Regulator must meet as often as may be required for the proper performance of its functions. **50**



(2) The Minister must designate a member of the Regulator as the chairperson.

(3) In the absence of the chairperson from a meeting of the Regulator, the members present at that meeting must elect one of their number to preside at that meeting.

(4) The chairperson must, upon a written request of at least two members, convene a special meeting to be held as soon as possible but not later than one week after the date of receipt of such request. 5

(5) The quorum for any meeting of the Regulator is a simple majority of its members.

(6) The chairperson must determine the procedure to be followed at meetings.

(7) The meetings of the Regulator are open to the public.

### Minutes of meetings 10

40. (1) The Regulator must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members and the Minister.

(2) The minutes, when signed by the chairperson, are in the absence of proof of any error—

(a) regarded as a true and correct record of the proceedings; 15

(b) evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

### Decisions of Regulator

41. (1) Any decision of the Regulator must—

(a) be taken within a procedurally fair process in which the affected persons have the opportunity to submit their views; 20

(b) be in writing;

(c) include reasons for the decision.

(2) The decision of the majority of members present at a meeting constitutes a decision of the Regulator. 25

(3) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(4) Any person directly affected by a decision of the Regulator must be furnished with a copy of the decision and the reasons therefor.

### Funding of Regulator 30

42. (1) The funds of the Regulator consist of—

(a) money appropriated by Parliament;

(b) interest on investments;

(c) fees charged for the filing of complaints or appeals with the Regulator.

(2) The Regulator must utilise its funds to defray expenses in connection with the performance of its functions in terms of this Act. 35

### Accounting and accountability

43. (1) The Regulator must exercise its fiscal, accounting and reporting duties in accordance with the provisions of the PFMA.

(2) The Regulator's chief executive officer is the accounting officer of the Regulator and must— 40

(a) open an account in the name of the Regulator with a financial institution and deposit therein all moneys received in terms of section 42(1);

(b) cause proper records to be kept of all financial transactions, assets and liabilities of the Regulator; 45

(c) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the Regulator for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) The records, statement and balance sheet referred to in subsection (2) must be audited by the Auditor-General.

(4) The financial year of the Regulator ends on 31 March in each year.

(5) The Regulator must in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance. 5

### Annual report

44. The annual report contemplated in section 30(6) must include—

- (a) an audited balance sheet and statement of income and expenditure; 10
- (b) a report on the audit contemplated in section 43(3);
- (c) an account of the execution of the business plan of the Regulator;
- (d) the business plan and statement of the Regulator's estimated income and expenditure for the following financial year;
- (e) the envisaged strategies of the Regulator; 15
- (f) such matters as the Regulator may wish to report on;
- (g) such other information as the Minister may require.

### Delegation of powers

45. (1) The Regulator may by resolution and with the approval of the Minister delegate in writing any power vested in it by this Act to the chief executive officer or any member of the Regulator. 20

(2) A delegation under subsection (1) does not prevent the Regulator from exercising the power itself.

(3) The Regulator may by resolution, and the Minister may by written notice to the Regulator, at any time amend or cancel a delegation made under subsection (1). 25

### Appeals

46. (1) Any port user or licensed operator whose rights are adversely affected by a decision of the Authority may appeal against that decision to the Regulator in the manner directed under section 30(3).

- (2) After considering the appeal the Regulator must— 30
- (a) confirm, set aside or vary the decision; or
  - (b) substitute the decision of the Authority for its own.

### Complaint against Authority

47. (1) Any complaint against the Authority must be lodged with the Regulator in the manner directed under section 30(3). 35

(2) A complaint against the Authority may be based on any ground provided for by the Regulator by direction under section 30(3) or on the ground that—

- (a) access to ports and port facilities are not provided in a non-discriminatory, fair and transparent manner;
- (b) small and medium-sized enterprises owned by historically disadvantaged groups do not have an equitable opportunity to participate in the operation of facilities in the ports environment; 40
- (c) Transnet is treated more favourably and that it derives an unfair advantage over other transport companies.

### Investigation of complaint 45

48. (1) The Regulator may investigate any complaint against the Authority and must conclude the investigation as speedily as possible.

(2) A complaint against the Authority must be conducted in the manner directed under section 30(3).

### Hearings before Regulator

**49. (1)** The Regulator may conduct a hearing into any matter referred to it, but must conduct a hearing in respect of a matter referred to it in terms of section 46. 5

(2) Hearings before the Regulator must be conducted in the manner directed under section 30(3).

### Right to participate in hearing

**50.** The following persons may participate in a hearing in person or through a representative and may put questions to witnesses and inspect any book, document or item presented at the hearing: 10

- (a) Any person appointed by the Regulator;
- (b) the complainant;
- (c) the Authority;
- (d) any other person who has a material interest in the hearing, unless the presiding member of the Regulator rules that another participant adequately represents that interest. 15

### Taking of evidence at hearing

**51. (1)** The Regulator may, by direction under section 30(3), determine the rules of procedure for the taking of evidence before the Regulator. 20

(2) A person questioned by the Regulator must answer each question truthfully and to the best of that person's knowledge, but a person is not obliged to answer any question if the answer is self-incriminating.

(3) No self-incriminating answer given or statement made during the course of a hearing of the Regulator is admissible as evidence in criminal proceedings against the person concerned, except in criminal proceedings in which that person is tried for an offence relating to— 25

- (a) the administering or taking of an oath or the administering or making of an affirmation;
- (b) the giving of false evidence; 30
- (c) the making of a false statement; or
- (d) a failure to answer lawful questions fully or satisfactorily.

### Rules of procedure

**52.** Subject to such rules of procedure as the Regulator may make, the member of the Regulator presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case. 35

### Interim relief

**53.** The Regulator may, if so requested by a person who lodged a complaint with the Regulator, make such interim order as it may deem necessary in the circumstances.

### Orders of Regulator 40

**54. (1)** In addition to its other powers in terms of this Act, the Regulator may—

- (a) make an appropriate order in relation to any complaint, including—
  - (i) interdicting any conduct or action;
  - (ii) declaring the whole or any part of an agreement to be void;
- (b) condone any breach of its rules and procedures on good cause shown. 45

(2) (a) The Regulator may at any time adjourn a hearing for a reasonable period of time, if there is need to do so.

(b) If the Regulator adjourns a hearing in terms of paragraph (a) it may, on application, make such interim order as it deems fit.

**Winding up and dissolution of Regulator**

**55.** (1) The Minister may by notice in the *Gazette* determine the date on which the Regulator will cease to operate.

(2) Upon the winding-up of the Regulator's activities, the Minister must—

- (a) subject to applicable labour laws, determine the future of the Regulator's employees; and **5**
- (b) with the concurrence of the Minister of Finance, determine how the Regulator's assets and liabilities must be dealt with.

**CHAPTER 6****PROVISION OF PORT SERVICES AND PORT FACILITIES AND USE OF LAND **10******Agreements in port operations and services**

**56.** (1) The Authority may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to— **15**

- (a) design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto;
- (b) provide any other service within a port designated by the Authority for this purpose;
- (c) perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or **20**
- (d) perform any combination of the functions referred to in paragraphs (a), (b) and (c).

(2) An agreement concluded in terms of this section must provide for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement. **25**

(3) The services authorised under the agreement contemplated in subsection (1) may include stevedoring on board a vessel.

(4) Notwithstanding any other provision of this Act, the Authority may enter into agreements in terms of which it contracts out any service which the Authority is required to provide in terms of this Act. **30**

(5) An agreement contemplated in subsection (1) or (4) may only be entered into by the Authority in accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective. **35**

**Licence regarding port services and facilities**

**57.** (1) Unless an agreement contemplated in section 56 has been concluded, no person other than the Authority may provide a port service or operate a port facility otherwise than in terms of a licence issued under this section.

(2) Any person may, subject to the provisions of this Act, apply to the Authority for a licence. **40**

(3) Any application for a licence must be lodged in the prescribed manner and in accordance with an invitation issued by the Authority by notice in the *Gazette*.

(4) The Authority must, in an invitation contemplated in subsection (3), specify—

- (a) the kind of service in respect of which applications are invited; **45**
- (b) the form in which applications must be submitted, including any fee payable upon submission of an application;
- (c) the manner in which it is contemplated that the service must be provided;
- (d) the place where and times when any application form or relevant document may be obtained from the Authority; and **50**
- (e) the period within which such applications must be lodged.