



TERMS OF REFERENCE FOR INQUIRY INTO ESKOM, TRANSNET AND DENEL

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A. BACKGROUND

1. Eskom is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Companies Act and was incorporated in accordance with the Enabling Legislation to carry business of providing energy/electricity and related services, including the generation, transmission, distribution and retail thereof, it being recorded that the Company is also subject to the provisions of PFMA.
2. The Government is a sole Shareholder of the Shares in the Company and the rights attached to the Shares are exercised by the Minister. Eskom has adopted a Memorandum of Incorporation in order to bring its constitution in line with the Companies Act.
3. Section 13.1.4 of the Memorandum of Incorporation states that the Shareholder have the right to appoint a Director to the Board, who may be a Government official, whenever the Shareholder deems it necessary, subject always to the Companies Act and this MOI.
4. All SOCs registered in terms of the Companies Act and listed in schedule 2 of the PFMA must comply with the provisions of the Companies Act. In terms of section 71 of the Companies Act, a director may be removed either by an ordinary resolution at shareholders meeting (s71(1) and (2) or by other board members (s71(3)).

B. RULES OF THE NATIONAL ASSEMBLY

1. National Assembly Rule 227(1)(b)(iv) states that a portfolio committee must maintain oversight of, *inter alia*, any other body or institution in respect of which oversight is assigned to it.
2. Assembly Rule 227(1)(c) further states that a portfolio committee, may, *inter alia*: "monitor, investigate, enquire into and make recommendations concerning any such executive organ of state (falling within its mandate) including the legislative

programme, budget, rationalization, restructuring, functioning, organization, structure, staff and policies of such organ of state. In this regard the rules empower the Portfolio Committee on Public Enterprises to initiate an enquiry into the Eskom.

C. THE INQUIRY

1. The Portfolio Committee on Public Enterprises held a meeting with the Eskom Board on 23 May 2017 to receive a briefing on the following:
 - a) the process followed in the reappointment of former Group Chief Executive Officer;
 - b) the determination of retirement package by the Board to the GCEO;
2. The Committee agreed that there are serious challenges with the current Board that need urgent intervention. The Committee consequently unanimously resolved to institute an inquiry in line with the mandate of Parliament as articulated in section 56 of the Constitution and rule 167 of the National Assembly.

D. TERMS OF REFERENCE

1. The terms of reference of such an inquiry could be to assess, amongst others, the Board's –
 - (a) ability to discharge its fiduciary duties, including:
 - i. looking into financial status and sustainability of Eskom,
 - ii. Failure to comply with procurement prescripts,
 - iii. Governance related issues,
 - i. appointment of board members and executive management,
 - ii. the response by the Eskom to the Public Protector Report: *State of Capture* findings into the conduct of the former GCEO,
 - iii. the reappointment of the former GCEO,
 - iv. determination of the retirement package to the GCEO,

Other Related Matters

- iv. Governance, procurement and financial sustainability in Transnet and Denel, and
 - v. Any "other related matter".
- (b) The findings and recommendations of the Committee inquiry must address and set out mechanism that can be employed to-
- i. Guarantee fiscal stability;
 - ii. Address governance and ethics challenges;
 - iii. Market-related remuneration levels;
 - iv. Ensure suitable job classification linked to remuneration;
 - v. Determination of executive appointments and remuneration.
2. The Committee inquiry must assess compliance into the following legislation-
- a. Public Finance Management Act, 2002
 - b. Eskom Conversion Act, 2012
 - c. Companies Act, 2008
 - d. Pension Funds Act
 - e. Any appropriate Act applicable to the inquiry
3. The terms of reference may be amended at any time with the Committee members.

E. PROCEDURE

1. Before proceeding with the inquiry, the Committee should firstly agree on, amongst others –
- (a) the terms of reference for the inquiry;
 - (b) the form the inquiry should take;
 - (c) whether the Committee will call witnesses, if so, which witnesses;

(d) the form which representations by the Board and any other person should take in order to comply with the principle of natural justice.

2. After deliberating on the issues, but before the Committee report on its findings is published, the affected persons could be given a further opportunity to make representations on the Committee's findings. The Committee would then consider the representations and adopt a report on the inquiry for consideration by the House.
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