

## Presentation to Portfolio Committee on Transport

## Legal Succession to the South African Transport Services Amendment Bill

10-11 June 2008

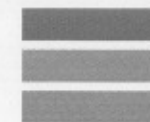
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Chief Director:  
Transport



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## Background



- Cabinet Decision in December 2004 approved the consolidation of passenger rail services into one entity;
- Metrorail transferred to SARCC about two years ago;
  - LSA only required amendments i.r.o. Pension Fund provisions
- Shosholoza Meyl (Main Line Passenger Service) now being transferred i.e. the final piece of the puzzle;
  - However, this requires more substantive amendments to the LSA
- Opportunity is also taken to consolidate long-distance bus services into the combined rail passenger entity to maximise synergies, particularly for FIFA World Cup 2010;
- SARCC and Transnet and the PMC have been working on the transaction and the transfer process for more than a year;
- Amendments to the LSA is a pre-condition for the successful conclusion of the transaction.



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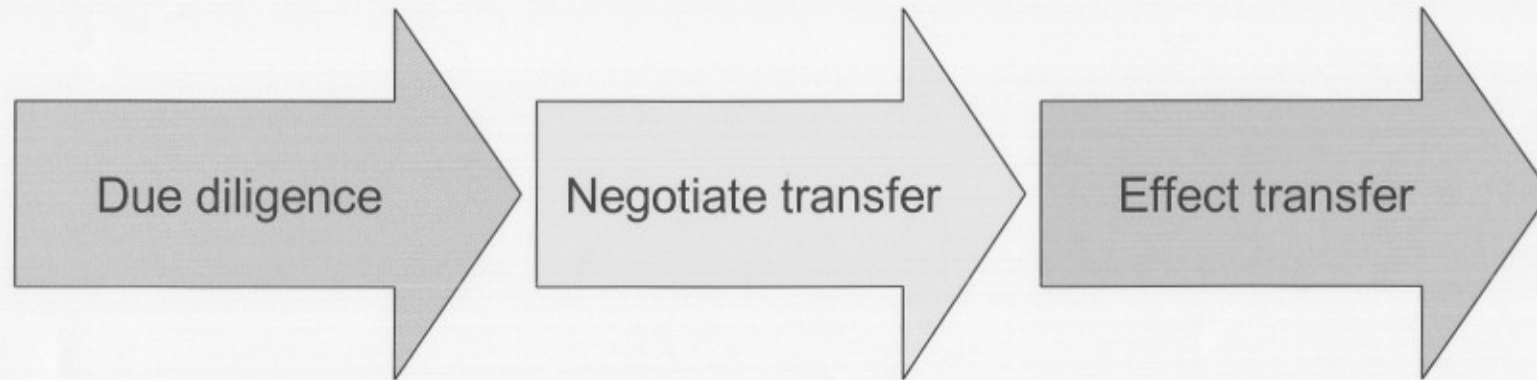


2

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2

## Processes followed on disposals by Transnet



- Identification of assets
- For sale of shares, company info provided
- Includes management presentations
- Used to determine business and funding strategy

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- Terms and conditions of transfer included in sale agreement
- Package equalisation on s197 transfer

- Effect pension election process
- Reimbursement of funding provided by Transnet



3

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3

## Implications for current provisions of the Bill



- DPE and Transnet concur with most of the proposed amendments; However
- The amendments proposed for section 25A (1), (2) and (3) of the (LSA) potentially poses legal and corporate governance problems, as briefly described below:
  - The Amendment Bill provides that the Minister (of Transport), in consultation with the Minister of Public Enterprises, will identify which Shosholozza Meyl and Autopax assets will be transferred from Transnet to SARCC, on a date set by the Minister.
    - Problematic in terms of the Companies Act and Public Finance Management Act
      - fiduciary duties and powers of Board infringed upon;
    - Amounts to expropriation of assets from SOE – which leads to lengthy processes
    - Impacts loan covenants on borrowings raised by Transnet
- SARCC will issue fully paid-up shares to Transnet, and further, that the Minister (of Transport) shall exercise the rights attached to such shares
  - Problematic in terms of corporate governance, tax implications and International Financial Reporting Standards (IFRS);
  - Furthermore, Transnet's focus is now purely on *freight* transport
    - unnecessary management and Board attention to oversee their interest in SARCC



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## Implications for current provisions of the Bill, cont

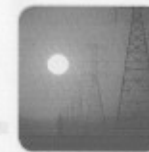


- The amendment Bill also proposes that the Minister of Transport, in consultation with the Minister of Finance, “shall” determine the value of the assets
  - Independent due diligence and valuation exercise has been completed on behalf of DOT and SARCC.
  - legislating the valuation in the proposed way instead of commercial negotiations between Transnet and SARCC being concluded is not quite clear to us
  
- Transfer of immovable property
  - Transnet has identified various passenger related properties which may be transferred to SARCC, and has been discussed between the Parties
    - Situated around the country
    - Various properties may require subdivision prior to transfer
    - Current process of subdivision within Provincial and Municipal Legislature cumbersome and leads to the individual property transfer process being cumbersome



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## Proposed amendments to Bill in relation to transfers



- Commercial negotiations between Transnet and SARCC continue
  - Ministers only involved in dispute resolution mechanism regarding political objectives
- “Sunset” provision be legislated
  - Drives negotiating teams to conclusion of transfers
  - Enhances public transport objectives
- Legislative provisions to recognise that associated liabilities and obligations pertaining to assets and businesses transfer to SARCC
- Propose legislative process of transfer on properties
  - Transnet specifically exempted from applying to each authority for approval of subdivisions, but
    - Informs of relevant authority in writing of intention to subdivide
    - Authority provided with shortened timeframe in which to respond with proposed objections
    - Transnet to consider objections raised



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## Other matters dealt with by Portfolio Committee (Section 5 of LSA)



- Appropriateness of name of new entity
- Inadvertent omission of provision of commuter services under s23



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## Other matters to be dealt with (other than S. 5 of the LSA)



- Relates to matters pertaining to the efficient functioning of Transnet within its particular business environment, but could be of benefit to employees transferring to consolidated entity
  - Medical aid provisions
    - To expand proposed employer base of medical aid fund
    - To deal with regulatory matters pertaining to medical aid industry
- liberalisation of Telecommunications market
  - Bill currently deals only with Transnet and SARCC as licensed operators



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8

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8