

Government Gazette

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GENERAL NOTICE

Notice 3963 of 2000

DEPARTMENT OF PUBLIC ENTERPRISES

PUBLICATION OF THE ESKOM CONVERSION BILL

Notice is hereby given that the Minister of Public Enterprises (Mr J. T. Radebe), intends to introduce the Eskom Conversion Bill, proposing to convert Eskom from a Commission to a Public Company, in Parliament as published in the Gazette.

Any person or organisation wishing to comment on this proposed legislation may lodge written comments or representation on or before 13 November 2000 by posting, faxing or handing them at the following addresses:

**Department of Public Enterprises
Attention: Denzel Matjila
1090 Arcadia Street
401 Infotech Building
Hatfield
PRETORIA
0028**

OR

**Private Bag X15
Hatfield
PRETORIA
0028**

OR

Fax (012) 342-7224.

ESKOM CONVERSION BILL, 2000

BILL

To provide for the conversion of Eskom from its existing form into the form of a company as if it had been incorporated in terms of the Companies Act and to provide for matters connected therewith

1. DEFINITIONS

In this Act, unless the context otherwise indicates -

"Companies Act" means the Companies Act, 1973 (Act No 61 of 1973);

"Company" or "Eskom" means the existing entity called Eskom, referred to in the Eskom Act and upon conversion means Eskom Limited;

"Date of Conversion" means the date of conversion as contemplated in section 3;

"Eskom Act" means Eskom Act 1987 (Act No 40 of 1987);

"Income Tax Act" means Income Tax Act 1962 (Act No. 58 of 1962);

"Minister" means the Minister of Public Enterprises;

"Registrar" means the Registrar of Companies in terms of the Companies Act, Registrar of Patent in terms of Patent Act 57 of 1978 as amended, Registrar of Designs in terms of Act 195 of 1993 as amended, Registrar of Trademarks in terms of Trademarks Act 194 of 1993, Registrar of Deeds in terms of Deeds Registry Act 47 of 1937 as amended,

"Security" means any Bill of Exchange, promissory note or instrument issued by Eskom as security for any loan negotiated by it.

2. PURPOSE OF THE ACT

The purpose of this Act is:-

1. to convert Eskom into a public company without interrupting its continued existence as a juristic person, and to effect such conversion by deeming that it is a company having a share capital as contemplated in section 19(1) (a) of the Companies Act with its entire share capital held on the date of such conversion by the State

3. CONVERSION OF ESKOM

From a date determined by the Minister by notice in the Gazette, Eskom shall be deemed to be incorporated as a public company in terms of the Companies Act, known as Eskom Limited, having share capital, as described in section 19 of the Companies Act and with the State as its sole member. **The Registrar shall for the purposes of the conversion dispense with the provisions of sections 32, 54(2), 63(1), 64, 65, 172(1), 172(3)(a), 172(5) and 344(b) of the Companies Act.**

4. EFFECT OF CONVERSION

1. From the date of conversion, the provisions of the Companies Act shall apply to Eskom as if it had been incorporated in terms of the Companies Act on that date, save to the extent expressly provided in this Act.
2. While the State is the sole or majority shareholder in Eskom, sections 60, 66, 190 and 344(d) of the Companies Act shall not apply to the company.
3. All reference in this Act to the "conversion" of Eskom shall be a reference to the change in the structure of Eskom described in section 4(1).
4. The conversion of Eskom shall not affect the continued corporate existence of Eskom as from the date of its initial establishment, nor any of its rights, debts, liabilities, obligations incurred or contracts entered into by, with, or on its behalf at any time nor render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion, may, notwithstanding such conversion, be continued or commenced against the company as converted.
5. As from the date of its conversion, the name of Eskom shall be Eskom Limited. Such change of name shall be deemed not to be a change of name for the purposes section 44(1) of the Companies Act.
6. The Registrar, or other officer, charged with the maintenance of a register under this or any other Act, shall on the date of conversion be deemed to have altered any such registers as are necessary by reason of conversion of Eskom in terms of this Act.
7. Eskom shall continue to have power to enter upon any land for the purpose of making plans and surveys thereof, **provided that at least seven days' notice shall be given to the owner of the land in question of the exercise of such power. In the exercise of such power compensation shall be paid by Eskom**

for any damage done by its officers or employees.

8. The Electricity Council and the Management Board of Eskom shall cease to exist and the terms of office of each of the members thereof shall terminate on the date of conversion and shall be replaced by a Board of Directors on the date of conversion in terms of this Act, notwithstanding the provisions of section 11.

5. **MEMORANDUM AND ARTICLES OF ASSOCIATION OF ESKOM**

On the date of conversion, the Registrar shall register the memorandum and articles of association of Eskom in a form determined by the Minister and notified in the same Gazette as contemplated in section 3.

6. **REGULATIONS**

The Minister may from time to time make regulations for the efficacious implementation of this Act.

7. **BORROWINGS SECURED BY ESKOM'S REVENUE AND ASSETS**

1. All borrowings effected by Eskom and any interest or other costs due or to become due in respect thereof shall unless otherwise agreed between Eskom and the lender be a first charge against all revenues and assets of Eskom and on all moneys recovered or to be recovered by it.
2. If any interest due in respect of any securities remains unpaid for three months after demand therefor in writing has been lodged with Eskom, the holder thereof may apply to a superior court having jurisdiction for the appointment of a receiver of the revenues and assets referred to in subsection (1). The court may make such order and give such directions as in the circumstances it may deem expedient for the raising and payment of the moneys due, and in particular may order that any prices for electricity supplied or to be supplied shall be increased to meet the deficit, and for this purpose the receiver referred to in subsection (2) shall exercise all such powers as Eskom might have exercised under this Act in respect of amending its prices for electricity: Provided that the exercise of such powers shall not require the sanction of any authority.
3. When such default in payment of interest in whole or in part continues for a further period of three months, the holder of the securities may apply to a superior court having jurisdiction for a declaration that the principal sum for the time being outstanding has become due, and the court may make such declaration, together with any consequential order or declaration.
4. In the event of default in payment of the principal sum of any security for one month after the date on which it is repayable, the provision of subsection (2) and (3) shall *mutatis mutandis* apply.

8. **TAXATION OF RECEIPTS AND ACCRUALS OF ESKOM AND SUBSIDIARIES**

1. The provision of section 10(1)(A) of the Income Tax Act shall not apply in respect of the receipts and accruals of:-
 - a. Eskom; and
 - b. Any association, corporation or company contemplated in paragraph (a) of the definition of "company in section 1 of the Income Tax Act, all the shares of which are held by Eskom, if the operations of such association, corporation or company are ancillary or complementary to the objects of Eskom as contained in its Memorandum and Articles of Association as contemplated in section 5.

2. (a). The Minister of Finance, after consultation with the Minister of Public Enterprises and the Minister of Minerals and Energy, shall determine the tax values of the capital assets owned on 1st January 2000 by Eskom and company contemplated in subsection (1)(b) for the purpose of calculating any wear and tear or depreciation allowance as contemplated in the Income Tax Act.

(b) The assets contemplated in subsection (2) (a) shall for the purposes of sections 12C of the Income Tax Act, 1962, be deemed to have been brought into use for the first time at a cost equal to the value determined in terms of subsection (2) (a).

3. When:

- a. Eskom is converted to a company in terms of section 3 or
- b. any asset, liability, right obligation or any business of Eskom has been transferred to any company (hereinafter referred to as the transferee company)

Eskom and the converted company or the transferee company, as the case may be, shall subject to such adjustments as may be necessary, for the purposes of the provisions of the Income Tax Act, 1962 be deemed to be one and the same entity.

4. No tax, duty, or levy shall be payable in respect of the transfer of any asset from Eskom to any company contemplated in subsection 3
5. Notwithstanding the date of promulgation of this Act, section 8 shall be deemed to have come into operation on 1 January 2000.
6. The assets contemplated in subsection (2) shall for the purpose of sections 12C of the Income Tax Act, 1962, be deemed to have been brought into use for the first time at a cost equal to the value determined in terms of subsection (2).
7. When Eskom is converted to a company in terms of section 3, Eskom and Eskom Limited shall, subject to such adjustments as may be necessary, for the purposes of the provisions of the Income Tax Act, be deemed to be one and the same entity.

9. **REPEAL**

Laws repealed

Number and year of Act	Short Title	Extent of Repeal
Act no. 40 of 1987 Act no. 126 of 1998	Eskom Act, 1987 Eskom Amendment Act, 1998	Whole Whole

10. **SAVINGS**

1. Notwithstanding the repeal of the Eskom Act, anything done in terms of the provisions of Eskom Act shall continue to be valid and of force and effect.
2. **'Any reference to Eskom in any legislation shall be read as Eskom as defined in this Act.**

11. **SHORT TITLE AND COMMENCEMENT**

This Act shall be called Eskom Conversion Act, 2000 and shall save as expressly provided for in this Act, come into operation on a date to be determined by the President by proclamation in the Gazette.