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DEPARTMENT OF TRANSPORT

NATIONAL PORTS REGULATIONS, 2007

I, Jeffrey Thamsanqa Radebe, Minister of Transport, acting in terms of section 80(1)(a), (c), (d), (f) and (g) of the National Ports Act, 2005 (Act No. 12 of 2005) make the regulations in the schedule.

These Regulations are published for General information and Compliance and will come into operation on the date of publication.

J.T. RADEBE, MP
MINISTER OF TRANSPORT

DEPARTMENT OF TRANSPORT

NATIONAL PORTS ACT, 2005 (Act No. 12 of 2005)

REGULATIONS IN TERMS OF SECTIONS 80(1)

The Minister of Transport under sections 80(1)(a), (c), (d) and (g) of the National Ports Act, 2005 (Act No. 12 of 2005) makes the regulations set out in the Schedule. These Regulations commence on the date of publication of this Notice.

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 - (5) Port of Port Elizabeth
 - (6) Port of Mossel Bay
 - (7) Port of Cape Town
 - (8) Port of Saldanha
 - (9) Port of Port Nolloth

Subsequent to the meeting that the Chief Directorate had with the Service Provider a decision was made to remove entirely the chapter on the Port Limits. Currently a submission has been prepared by the Directorate requesting approval from the Minister for the redesigning of South African Port Limits and the Minister has approved. Due to the fact that this process will be a capital intensive one, a submission has been completed requesting funding from the National Treasury.

1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned unless the context indicates otherwise.

"the Act" means the National Ports Act, 2005 (Act No. 12 of 2005);

"the BEE Act" means the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;

"black people" has the meaning given to that term in the BEE Act;

"the economic review" means the review of the present economic participation in ports operations and services by public entities, private entities and public-private partnerships and the optimal economic structure for future participation in ports operations and services by public entities, private entities and public-private partnerships to be conducted by the Regulator pursuant to Regulation 5(1); and

"Sector Code" means a sector code for the maritime transport & service sector published in terms of section 9 of the BEE Act.

CHAPTER 1
ECONOMIC PARTICIPATION AND EMPOWERMENT OF HISTORICALLY
DISADVANTAGED GROUPS IN PORT OPERATIONS
(Section 80(1)(a) of the Act read with sections 56 and 57)

2. Authority to incorporate black economic empowerment into decision-making

The Authority must take into account and apply as far as is reasonably possible any relevant Code of Good Practice or issued in terms of section 9 of the BEE Act or Sector Code if any, in—

- (1) determining qualification criteria for entering into any agreement in terms of section 56 of the Act;
- (2) determining qualification criteria for the issuing of any licence in terms of section 57 of the Act;
- (3) granting any other concession or authorisation in terms of the Act;
- (4) developing and implementing a preferential procurement policy;
- (5) determining qualification criteria for the sale or lease of any property owned by the Authority within a port; and
- (6) developing criteria for entering into partnerships with the private sector.

3. Specific BEE targets to be applied by the Authority

- (1) In the second, third and fourth years following the commencement of these Regulations at least twenty-five percent per year of all:
 - (a) agreements entered into in terms of section 56 of the Act by the Authority;
 - (b) licences issued in terms of section 57 of the Act by the Authority;
 - (c) other concessions or authorisations granted in terms of the Act by the Authority;
 - (d) sales or leases of any property owned by the Authority within a port; and
 - (e) any partnerships with the private sector and the Authority,

shall be entered into, issued or granted to persons or entities who have attained the Broad-based Black Economic Empowerment Status at least a Level Four Contributor measured in terms of the Codes of Good Practice issued in terms of section 9 of the BEE Act or an equivalent rating in terms of the Sector Code if any.
- (2) From the fifth year following the commencement of these Regulations at least seventy-five percent per year of all:
 - (a) agreements entered into in terms of section 56 of the Act by the Authority;
 - (b) licences issued in terms of section 57 of the Act by the Authority;
 - (c) other concessions or authorisations granted in terms of the Act by the Authority;
 - (d) sales or leases of any property owned by the Authority within a port; and
 - (e) any partnerships with the private sector and the Authority,

shall be entered into, issued or granted to persons or entities who have attained the Broad-based Black Economic Empowerment Status of at least a Level Four Contributor measured in terms of the Codes of Good Practice issued in terms of section 9 of the BEE Act or an equivalent rating in terms of the Sector Code if any.

4. Monitoring by the Regulator of the measures taken by the Authority pursuant to Regulation 2 and 3

- (1) The Authority must submit a report to the Regulator, on or before each anniversary of the commencement of the Act, in which it sets out in detail the measures taken pursuant to Regulations 2 and 3 and the manner in which the measures taken have enhanced access to and participation in ports services and port facilities by black people.
- (2) The Regulator may take such other steps as it may deem necessary from time to time to monitor and enforce compliance by the Authority with the requirements of Regulations 2 and 3, including conduct a hearing regarding the performance of the Authority in fulfilling the requirements set out in Regulations 2 and 3.

CHAPTER 2
ECONOMIC PARTICIPATION IN PORT OPERATIONS
(Section 80(1)(f) of the Act read with sections 56 and 57)

5. Economic Review by the Regulator

- (1) One of the main functions of the Regulator is to exercise economic regulation in the ports system in line with government's strategic objectives: as soon as reasonably possible following the appointment of the Regulator, the Regulator shall conduct a comprehensive economic review of the present economic participation in ports operations and services by public entities, private entities and public-private partnerships and the optimal economic structure for future participation in ports operations and services by public entities, private entities and public-private partnerships.
- (2) The Regulator must conduct a public participation process as part of the economic review in each of the ports, including conduct one or more public hearings in the manner set out in the Directives issued by the Regulator in terms of the Act.
- (3) For the purposes of the economic review, the Regulator may request access to all relevant information held by the Authority in the manner set out in the Directives issued by the Regulator in terms of the Act.
- (4) The economic review shall be completed within twelve months of the date of promulgation of these regulations and shall contain recommendations to the Minister regarding a future economic framework for participation in ports operations and services by public entities, private entities and public-private partnerships and the manner in which this shall be implemented.

6. Interim economic regulation of ports operations and services

- (1) Pending the finalisation of the economic review the Regulator shall regulate the participation in ports operations and services of all those wishing to participate through the economic regulation it exercises pursuant to the Act and the Directives issued by the Regulator in terms of the Act, including through:
 - (a) the complaints and appeals procedures established by the Act and conducted in accordance with the Directives issued by the Regulator in terms of the Act;

- (b) its assessment and regulation of prices filed by providers of port services other than the Authority, in the manner set out in the Directives issued by the Regulator in terms of the Act; and
- (c) the consideration and approval or rejection of tariffs charged by the Authority, in the manner set out in the Directives issued by the Regulator in terms of the Act.

CHAPTER 3
RULES OF PROCEDURE FOR PORT CONSULTATIVE COMMITTEES
(Sections 80(1)(c), 80(l)(g) read with section 81 of the Act)

7. Meetings of a Port Consultative Committee

- (1) Each Port Consultative Committee shall meet at least quarterly and the chairperson shall annually determine and distribute a schedule for the year's meetings.
- (2) The chairperson of a Port Consultative Committee may at any time convene an *ad hoc* meeting of the Committee, provided at least ten days' notice is given to all members of the committee of the date, time and venue of the meeting.
- (3) A representative of the Ports Regulator may attend any meeting of any Ports Consultative Committee in an observer capacity, may contribute to such meetings if requested to do so, but shall not be permitted to participate in any voting or raise any objections to any action, decision, or advice proposed to be taken or given by the Committee.

8. Chairperson and Secretariat of a Port Consultative Committee

- (1) The chairperson of each Port Consultative Committee shall be an official appointed by the Department of Transport.
- (2) The South African Maritime Safety Authority shall provide all Secretariat functions in relation to each Port Consultative Committee, including preparation and circulation of minutes, preparation and circulation of agendas and other related functions.

9. Quorum

- (1) Notwithstanding the remaining provisions of this regulation, meetings of the Port Consultative Committee may proceed without a quorum, but no advice to the Minister and no submission in terms of Regulation 15 shall be considered at any non-quorate meeting of the committee.
- (2) A quorum for a meeting of a Port Consultative Committee is eight persons, comprising at least the following persons—
 - (a) the Harbour Master;
 - (b) one person representing the Authority, other than the Harbour Master;
 - (c) two persons representing port users;
 - (d) one person representing provincial government;

- (e) one person representing local government;
 - (f) one person representing organised labour;
 - (g) one person representing the South African Maritime Safety Authority; and
 - (h) the chairperson of the Port Consultative Committee.
- (3) If a quorum is present at a meeting of a Port Consultative Committee for which a quorum is required in terms of subsection (1), the committee may exercise any or all of the powers for the time being vested in or exercisable generally by the committee in terms of the Act or these Regulations.
- (4) If within half an hour after the time appointed for a meeting a quorum is not present, the meeting shall stand adjourned to a date not earlier than seven days and not later than 21 days after the date of the meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum for that adjourned general meeting, provided the Chairperson and a representative of the Authority are present at the adjourned meeting.

10. Voting at meetings

- (1) A Port Consultative Committee shall endeavour to resolve all matters by consensus and to avoid voting, particularly on matters to do with the views, recommendations and advice to be given by the committee.
- (2) If consensus is not possible, any issue at a meeting of a Port Consultative Committee relating only to advice to be provided to the Minister or responses to a submission made in terms of Regulation 15 shall be decided by a majority of the votes cast on it. Voting shall be by way of a show of hands.
- (3) In the event of a deadlock on any question mentioned in subsection (2) at a meeting of a Port Consultative Committee, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (4) In providing advice to the Minister the Port Consultative Committee shall present in detail both the majority and all minority views of the members of the committee.

11. Minutes of meetings

- (1) Proper minutes shall be kept of all meetings of a Port Consultative Committee.
- (2) The minutes of a meeting of a Port Consultative Committee shall be circulated to all members and confirmed by resolution at the first subsequent meeting of the Port Consultative Committee, and the chairperson of that meeting shall sign the minutes so confirmed.
- (3) A representative of the Ports Regulator may attend any meeting of any Ports Consultative committee in an observer capacity, may contribute to such meetings if requested to do so, but shall not be permitted to participate in any voting or raise any objections to any action, decision, or advice proposed to be taken or given by the committee.

12. Agenda and participation in meetings

- (1) The agenda of a meeting of a Port Consultative Committee shall be circulated to all members of the Port Consultative Committee not less than ten days prior to the date on which the meeting is to be held.
- (2) All members present at a meeting of a Port Consultative Committee are entitled to participate in the meeting and raise objections to any action, decision or advice proposed to be taken or given by the committee.

13. Subcommittees and working groups

- (1) A Port Consultative Committee may establish *ad hoc* and permanent subcommittees to assist the committee in the performance of its functions, and such subcommittees may include persons who are not members of the Port Consultative Committee, provided such persons constitute a minority of the members of the subcommittee.
- (2) A Port Consultative Committee may establish *ad hoc* working groups to assist a subcommittee in the performance of its functions, and such working groups may include persons who are not members of the Port Consultative Committee, provided such persons constitute a minority of the members of the working group.
- (3) Every subcommittee established in terms of subregulation (1) must appoint a chairperson who is a member of the Port Consultative Committee and the chairperson must report at each meeting of the Port Consultative Committee on the activities of the subcommittee, as well as those of any working groups established in terms of subregulation (2) to assist the subcommittee.

14. Consultations with parties interested in any matter concerning the relevant port

- (1) A Port Consultative Committee may from time to time invite parties interested in any matter concerning the relevant port to make written or oral submissions to the committee, in the manner directed by the chairperson of that committee, regarding any matter which comes before the committee, to this end the committee may hold public meetings and carry out other information gathering exercises regarding any matter affecting the relevant port.
- (2) The Secretariat of the Port Consultative Committee shall make the minutes of all meetings of the Port Consultative Committee available to members of the public during reasonable office hours and the Port Consultative Committee shall from time to time discuss and implement other means of keeping members of the public informed of the content and outcome of the deliberations of the Port Consultative Committee.

15. Authority required to consult with Port Consultative Committees

- (1) The Authority may not commence with any major scheme relating to the expansion or development of a particular port before it has submitted details of the proposed scheme to the relevant Port Consultative Committee and consulted with that committee regarding the scheme.
- (2) The Authority must provide the Port Consultative Committee with such information as it may require to consider the proposed scheme properly and must make itself available to answer questions and discuss the scheme with the Port Consultative Committee and any forum which the committee convenes to discuss the proposal.

- (3) If a Port Consultative Committee fails to furnish its suggestions or comments on a matter which the Authority refers to it in terms of subregulation (1) within three months of the submission, or within such further period as the parties may agree, the Authority may proceed to act on the proposal on the assumption that the Port Consultative Committee has no suggestions or comments to make regarding the proposed development.

CHAPTER 4

ACCESS BY THE REGULATOR TO CONFIDENTIAL INFORMATION OF THE AUTHORITY

(Section 80(1)(g), read with section 10 of the Act)

16. Access by the Regulator to confidential information of the Authority

- (1) As set out in the section 30(3)(e) of the Act, the Regulator shall with the concurrence of the Minister and by notice in the *Government Gazette* issue directives not in conflict with the Act for access by the Regulator to confidential information of the Authority.
- (2) Subject to the provisions of such directives, the Authority is required, on written request by the Regulator, to make available to the Regulator, during office hours, any specified or generally described information which the Authority has in its possession which relates to the matters over which the Regulator has jurisdiction in terms of sections 30(1) and (2) of the Act.
- (3) If the Authority fails to provide any information requested by the Regulator in the manner and within the time periods set out in such directive, the Regulator may apply to any division of the High Court for an order directing the Authority to provide the requested information to the Regulator.

CHAPTER 5

PORT LIMITS

(Section 80(1)(d), read with section 10 of the Act)

[Chapter 5 Repealed by GNR 11, GG 32873, 22/1/2010]