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THE PRESIDENCY

No. 37

8 January 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 33 of 2007: Broadband Infraco Act, 2007.



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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 21 December 2007.)*

ACT

To provide for the transfer of shares, loan accounts, liabilities and guarantees in Broadband Infraco (Proprietary) Limited from Eskom Holdings Limited to the State; to provide for the main objects and powers of Broadband Infraco (Proprietary) Limited; to provide for the borrowing powers of Broadband Infraco (Proprietary) Limited; to provide for servitudes and additional rights in favour of Broadband Infraco (Proprietary) Limited; to provide for the expropriation of land or any right in land by the Minister for Public Enterprises on behalf of Broadband Infraco (Proprietary) Limited; to provide for the conversion of Broadband Infraco (Proprietary) Limited; into a public company having a share capital incorporated in terms of the Companies Act, 1973; and to provide for matters connected therewith.

PREAMBLE

SINCE the State intends to expand the availability and affordability of access to electronic communications networks and services, including but not limited to underdeveloped and underserved areas;

SINCE the State wants to ensure that the bandwidth requirements for specific projects of national interests are met;

SINCE the State intends to acquire Broadband Infraco (Proprietary) Limited and its electronic communications infrastructure to enable the State to provide affordable access to electronic communications networks and services;

AND SINCE Broadband Infraco (Proprietary) Limited will require access to land and rights in land to maintain and expand its network in order to achieve its objects.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—

“**Broadband Infraco Limited**” means Broadband Infraco Limited, a public company having a share capital incorporated in terms of the Companies Act; 5

“**Broadband Infraco (Proprietary) Limited**” means Broadband Infraco (Proprietary) Limited, a private company duly incorporated in terms of the Companies Act;

“**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973); 10

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

- “**conversion date**” means the date determined by the Minister in terms of section 8(1);
- “**electronic communications**” means electronic communications as defined in section 1 of the Electronic Communications Act;
- “**Electronic Communications Act**” means the Electronic Communications Act, 2005 (Act No. 36 of 2005); 5
- “**electronic communications facility**” means an electronic communications facility as defined in section 1 of the Electronic Communications Act;
- “**electronic communications network**” means an electronic communications network as defined in section 1 of the Electronic Communications Act; 10
- “**electronic communications network service**” means an electronic communications network service as defined in section 1 of the Electronic Communications Act;
- “**electronic communications service**” means an electronic communications service as defined in section 1 of the Electronic Communications Act; 15
- “**Eskom**” means Eskom Holdings Limited, a public company duly incorporated under the Companies Act, and any of its subsidiary companies;
- “**Expropriation Act**” means the Expropriation Act, 1975 (Act No. 63 of 1975);
- “**Infraco**” means Broadband Infraco (Proprietary) Limited and, with effect from the conversion date, Broadband Infraco Limited; 20
- “**Infraco claims**” means all amounts owing by Infraco to Eskom as at midnight on the day immediately before the transfer date;
- “**Infraco interests**” means those Infraco claims and assets, liabilities, rights or obligations determined in terms of section 3(1)(a) or 3(2), as the case may be, to constitute Infraco interests; 25
- “**Infraco shares**” means all the shares in the capital of Infraco of which Eskom is, immediately before the transfer date, the registered and beneficial owner;
- “**Minister**” means the Minister responsible for Public Enterprises;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 30
- “**State**” means the Government of the Republic of South Africa acting through the Minister;
- “**this Act**” includes any regulation made in terms of section 10;
- “**transfer date**” means the date on which the transfer of shares and claims is finalised under an agreement between Eskom and the State; 35
- “**Transnet**” means Transnet Limited, a company duly incorporated in terms of section 2 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), and any of its subsidiary companies.

Objects of Act

2. The objects of this Act are to provide for the— 40
- (a) transfer of Infraco shares and Infraco interests from Eskom to the State;
 - (b) main objects and powers of Infraco;
 - (c) borrowing powers of Infraco;
 - (d) servitudes and additional rights in favour of Infraco;
 - (e) expropriation of land or rights in land by the Minister on behalf of Infraco; and 45
 - (f) conversion of Infraco into a public company with share capital.

Transfer of Infraco shares and Infraco interests

3. (1) The Minister and Eskom, with the concurrence of the Minister of Finance, must determine by agreement— 50
- (a) which Infraco claims and assets, excluding any licences required to operate a private telecommunications network, liabilities, rights or obligations of Eskom in connection with Infraco constitute Infraco interests; and
 - (b) the consideration payable for the transfer of Infraco shares and Infraco interests to the State.
- (2) If the Minister and Eskom cannot agree on any matter referred to in subsection (1), 55 that matter must be finally determined by the Minister with the concurrence of the Minister of Finance.