

South Australia

# **Public Corporations (Distribution Lessor Corporation) Regulations 2010**

under the *Public Corporations Act 1993*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Public Corporations (Distribution Lessor Corporation) Regulations 2010*.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Public Corporations Act 1993*;

*board* means the board of directors established as the governing body of the subsidiary under Part 3;

*director* means a person appointed or holding office as a member of the board under Part 3;

*Minister* means the Minister for Finance;

*SAFA* means the South Australian Government Financing Authority established under the *Government Financing Authority Act 1982*;

*the subsidiary* means Distribution Lessor Corporation continued in existence under Part 3;

*Treasurer* means the Treasurer for the State of South Australia.

## Part 2—Application of Act to Minister

### 4—Application of Act to Minister

The following provisions of the Act apply to the Minister:

- (a) Part 1 (Preliminary);
- (b) section 24 (Formation of subsidiary by regulation);
- (c) section 25 (Dissolution of subsidiary established by regulation);
- (d) the Schedule (Provisions applicable to subsidiaries).

## Part 3—Distribution Lessor Corporation

### Division 1—Distribution Lessor Corporation continues as subsidiary of Minister

#### 5—Establishment of subsidiary (section 24)

- (1) Distribution Lessor Corporation continues as a subsidiary of the Minister.
- (2) The subsidiary—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name.

## **6—Establishment of board**

- (1) A board of directors continues as the governing body of the subsidiary.
- (2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

## **7—Composition of board**

- (1) The board consists of 3 members appointed by the Minister.
- (2) One director will be appointed by the Minister to chair meetings of the board.
- (3) The Minister may appoint a director to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (4) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.
- (5) The Minister may appoint a suitable person to be deputy of a member of the board during any period of absence of the member (and any reference to a director in these regulations will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

## **8—Conditions of membership**

- (1) A director will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The Minister may remove a director from office by written notice on any ground that the Minister considers sufficient.
- (3) The office of a director becomes vacant if the director—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (f) is removed from office under subregulation (2).

## **9—Vacancies or defects in appointment of directors**

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

## **10—Remuneration**

A director is entitled to be paid from the funds of the subsidiary such remuneration, allowances and expenses as may be determined by the Minister.

## **11—Proceedings**

- (1) A quorum of the board consists of 2 directors.
- (2) The director appointed to chair meetings of the board will preside at a meeting of the board at which the director is present.
- (3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:
  - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
  - (b) in any other case—a director chosen by the directors present at the meeting will preside at the meeting.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has 1 vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—
  - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
  - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
  - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
  - (b) a majority of the directors express their concurrence in the proposed resolution by letter, fax or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) A representative of the Treasurer authorised in writing by the Treasurer may attend a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.
- (10) If the board considers that a matter dealt with at a meeting attended by a representative of the Treasurer should be treated as confidential, the board may advise the Treasurer of that opinion giving the reason for the opinion and the Treasurer may, subject to subregulation (11), act on that advice as the Treasurer thinks fit.
- (11) If the Treasurer is satisfied on the basis of the board's advice under subregulation (10) that the subsidiary owes a duty of confidence in respect of a matter, the Treasurer must ensure the observance of that duty in respect of that matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

- (12) Subject to these regulations, the board may determine its own procedures.

## 12—Disclosure

- (1) If the subsidiary discloses to the Minister or the Treasurer in pursuance of the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.
- (2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Minister or the Treasurer.

## Division 2—Functions and powers

### 13—Functions of subsidiary

- (1) The subsidiary's functions are limited to the following:
- (a) to be the lessor under a lease granted in respect of prescribed assets by a transfer order or a sale/lease agreement made under the *Electricity Corporations (Restructuring and Disposal) Act 1999*;
  - (b) to be a party to any instrument related to a lease referred to in paragraph (a) or related to property the subject matter of such a lease;
  - (c) to be the operator of prescribed assets on the expiration or sooner termination of such a lease;
  - (d) to hold prescribed assets as owner or lessee for the purposes of a function referred to in a preceding paragraph;
  - (e) to carry out other functions conferred on the subsidiary by the Minister;
  - (f) to do anything necessary or expedient to be done for the purposes of a function referred to in a preceding paragraph.

- (2) In this regulation—

*asset, lease, lessor and lessee* have the same meanings as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

*prescribed assets* means—

- (a) powerlines within the meaning of the *Electricity Act 1996*; or
- (b) substations for converting, transforming or controlling electricity; or
- (c) land on or under which infrastructure referred to in paragraph (a) or (b) is situated; or
- (d) any other assets that are, have been or may be used in connection with the operation of a distribution network.

### 14—Charter

- (1) The subsidiary must continue to have a charter prepared by the Minister and the Treasurer.
- (2) The charter must address—
- (a) the nature and scope of the subsidiary's operations;

- (b) the subsidiary's obligations to report on its operations;
  - (c) the form and contents of the subsidiary's accounts and financial statements;
  - (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
  - (e) the acquisition or disposal of capital or assets or the borrowing or lending of money.
- (3) The charter may—
- (a) limit or otherwise regulate the functions or powers of the subsidiary; and
  - (b) deal with any other matter not specifically referred to in subregulation (2).
- (4) The Minister must, after consultation with the subsidiary, review the charter at the end of each financial year.
- (5) The Minister and the Treasurer may, after consultation with the subsidiary, amend the charter at any time.
- (6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).
- (7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

### **15—Other subsidiary companies**

- (1) The subsidiary must not, without the approval of the Treasurer—
- (a) form a subsidiary company; or
  - (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of the subsidiary.
- (2) The Treasurer may, as a condition of approval under this regulation, or by direction, require the subsidiary to take steps to include in a subsidiary company's constitution such provisions as the Treasurer considers appropriate—
- (a) imposing limitations on the nature or scope of the company's operations; or
  - (b) imposing other controls or practices,
- consistent with those applicable to the subsidiary.

### **16—Guarantee or indemnity for other subsidiary company subject to Treasurer's approval**

The subsidiary must not, without the approval of the Treasurer, give a guarantee or provide an indemnity in respect of liabilities of a company that is a subsidiary of the subsidiary.

## **17—Indirect or joint operations**

The subsidiary must not, without the approval of the Treasurer, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

## **18—Chief executive**

The board must not appoint or remove a person as chief executive of the subsidiary unless it has first consulted the Minister.

## **Division 3—Financial and related matters**

### **19—Internal audit**

- (1) The subsidiary must, unless exempted by the Treasurer, maintain effective internal auditing of its operations.
- (2) The subsidiary must, unless exempted by the Treasurer, have an audit committee.
- (3) The audit committee will comprise—
  - (a) a member of the board of the subsidiary, or such members of the board, as the board may from time to time determine; and
  - (b) such other person or persons as the board may from time to time appoint, but may not include the chief executive (if any) of the subsidiary.
- (4) The functions of the audit committee include—
  - (a) reviewing annual financial statements to ensure that they provide a true and fair view of the state of affairs of the subsidiary; and
  - (b) liaising with external auditors; and
  - (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

### **20—Loans, borrowings etc require approval**

- (1) The subsidiary must not lend or advance to any person any money, securities or property without the approval of the Treasurer.
- (2) The subsidiary must not borrow money or obtain any other form of financial accommodation unless authorised to do so by the Treasurer.
- (3) The subsidiary may only, unless authorised otherwise by the Treasurer, deposit or invest money under its control with the Treasurer or SAFA.

### **21—Provision of information**

- (1) The subsidiary must, at the request in writing of the Minister or the Treasurer, furnish such information or records in the possession or control of the subsidiary as the Minister or the Treasurer may require in such manner and form as the Minister or the Treasurer may require.

- (2) If a record in the possession or control of the subsidiary is furnished to the Minister or the Treasurer under this regulation, the person to whom it is furnished may make, retain and deal with copies of the record as he or she thinks fit.
- (3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the person to whom it is furnished of that opinion giving the reason for the opinion and the Minister or the Treasurer may, subject to subregulation (4), act on that advice as the Minister or the Treasurer thinks fit.
- (4) If the Minister or the Treasurer is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Minister or the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (5) The subsidiary must—
  - (a) notify the Minister if a request is made by the Treasurer under this regulation; and
  - (b) notify the Treasurer if a request is made by the Minister under this regulation.

## **22—Common seal and execution of documents**

- (1) The common seal of the subsidiary must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of 2 directors.
- (2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.
- (3) Without limiting subregulation (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the subsidiary.
- (4) A document is duly executed by the subsidiary if—
  - (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or
  - (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

## **23—Annual report**

- (1) The subsidiary must, within 3 months after the end of each financial year, deliver to the Minister a report on the financial operations of the subsidiary during that financial year.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Public Corporations (Distribution Lessor Corporation) Regulations 2010* revoked the following:

*Public Corporations (Distribution Lessor Corporation) Regulations 1999*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2010	41	<i>Gazette 10.6.2010 p2641</i>	1.7.2010: r 2
<b>2011</b>	<b>281</b>	<b><i>Gazette 15.12.2011 p5080</i></b>	<b>1.1.2012: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>
r 3		
Minister	inserted by 281/2011 r 4	1.1.2012
SAFA	inserted by 281/2011 r 4	1.1.2012
Pt 2		
heading	varied by 281/2011 r 5	1.1.2012
r 4	varied by 281/2011 r 6	1.1.2012
Pt 3		
Pt 3 Div 1		
heading	varied by 281/2011 r 7	1.1.2012
r 5		
r 5(1)	varied by 281/2011 r 8	1.1.2012
r 7		
r 7(1)—(3)	varied by 281/2011 r 9	1.1.2012
r 7(5)	varied by 281/2011 r 9	1.1.2012
r 8		
r 8(2) and (3)	varied by 281/2011 r 10	1.1.2012

r 10	varied by 281/2011 r 11	1.1.2012
r 12		
r 12(1) and (2)	varied by 281/2011 r 12	1.1.2012
Pt 3 Div 2		
r 13		
r 13(1)	varied by 281/2011 r 13	1.1.2012
r 14		
r 14(1)	varied by 281/2011 r 14(1)	1.1.2012
r 14(4)	varied by 281/2011 r 14(2)	1.1.2012
r 14(5)	varied by 281/2011 r 14(1)	1.1.2012
r 14(7)	varied by 281/2011 r 14(2)	1.1.2012
r 18	varied by 281/2011 r 15	1.1.2012
Pt 3 Div 3		
r 20		
r 20(3)	inserted by 281/2011 r 16	1.1.2012
r 21	substituted by 281/2011 r 17	1.1.2012
r 23		
r 23(1) and (2)	varied by 281/2011 r 18	1.1.2012
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>

## **Transitional etc provisions associated with regulations or variations**

### ***Public Corporations (Distribution Lessor Corporation) Variation Regulations 2011 (No 281 of 2011), Sch 1***

#### **1—Transitional provision**

- (1) A charter prepared by the Treasurer under regulation 14 of the principal regulations and in force immediately before the commencement of this clause will, on that commencement, be taken to be the charter prepared by the Minister and the Treasurer under the principal regulations as amended by these regulations.

- (2) In this clause—

***principal regulations*** means the *Public Corporations (Distribution Lessor Corporation) Regulations 2010*.