



Project Scope

Transnet would like to appoint a panel of legal experts for the provision of quality and specialist legal services. The areas of expertise and skills required are the following:

No	Area of work	Scope of Work	Skills required
1.	Labour law	• Provide a Litigation Strategy and advise on prospects of success in respect of all labour law litigation matters; • Conduct litigation for and on behalf of Transnet in all labour law fora (eg: Labour Court Labour Appeal Court, CCMA, the Transnet Bargaining Council etc.); • Provide comprehensive advice and opinions in respect of all areas of employment law, pension law and employee benefits; • Ensure technical, quality adherence to best practice and all relevant labour laws in the advice provided • Provide updates (oral and written legal advice throughout the appointment process); • Management and advise on disciplinary proceedings including S188A proceedings; • Draft, review and provide advice on employment contracts and Transnet policies; • Advise on and conduct investigations, including sexual harassment, bullying and discrimination related matters; • Advise on strikes, collective bargaining, S189 restructuring, s197 transfers, disputes over the interpretation and application of collective agreements; • Conduct HR / employment related due diligence / legal compliance / audits.	• Extensive exposure to and comprehensive knowledge of labour law, pension law and employee benefits; • Comprehensive knowledge and experience of labour law dispute resolution processes • Comprehensive understanding of the labour law regulatory framework • Comprehensive knowledge of dispute resolution in construction law • An understanding of labour law and employment law jurisprudence (<i>inter alia</i> such as the Labour Relations Act, Basic Conditions of Employment Act, the Employment Equity Act, Occupational Health & Safety Act, the Unemployment Insurance Act and all other sectoral codes that may be applicable in an employment law context) for purposes of providing legal opinions; • Knowledge of CCMA and other dispute resolutions; • Extensive experience in litigating matters in the Labour Court; the Labour Appeal Court; the CCMA and the Transnet Bargaining Council; • Experience in the advising and conducting of disciplinary proceedings, with and without counsel.



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2.	Collections, Collection Management and Recovery	• Manage and monitor the collection and recovery process • Avoid prescriptions • Ensure that all processes comply with the Public Finance Management Act (PFMA) • Provide the costing and fee structure for service of each of the following processes in respect of hard collection of arrear rental, associated costs and any other debt owed to Transnet: ➢ Drafting and issuing of a letter of demand, drafting and issuing of summons including the Rent Interdict summons, drafting and monitoring of acknowledgement of debt, lodging of an application for default judgement and summary judgement, issuing of a warrant of execution and execution of same ➢ Declaring the property executable ➢ Section 65A (1) notice to appear in the relevant court ➢ Court Appearance ➢ Emolument Attachment order ➢ Instruction letter to debtors employer; and related processes • Listing of defaults on Credit bureau	• Comprehensive and extensive debt negotiation and debt recovery experience for small and high value debts. • Experience in the Negotiation, drafting and management of acknowledgment of debt agreement • Experienced Debt collection team which includes the debt collection agents, Supervisor, Manager and a debt collection attorney. • Knowledge and experience in using Debt collection system with diary monitoring system • Knowledge and experience in using Debt collection management and system • Positive recovery rate success history record (good to high) • Relevant software not limited to Excalibur debt collection software, access to CIPC, search Works tracing software, Winded, Lexus Nexus etc. • Registration with the Council for Debt Collectors • An understanding and application of the Debt Collection Act 11 of 1998 • Knowledge on the Uniform Rules of the High Court and the Magistrate's Court Rules • Experience in the Negotiation, drafting and management of acknowledgment of debt agreement and costs related to same in respect of the collection of arrear rental and associated costs and client knowledge



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3.	Litigation (Including Dispute Resolution)	• Provide a Litigation Strategy and advise on prospects of success in respect of all new litigation matters (application and action proceedings); • Conduct litigation for and on behalf of Transnet (e.g. drafting & handling of pleadings etc.); • Ensure effective and efficient litigation process is followed in compliance to Procedures and Rules of Court; Provide custody of all pleadings and documents in litigation matters; • Provide updates (oral and written legal advice throughout litigation process); • Avoid prescriptions, barring and default judgments; • Represent and appear at Court on behalf of Transnet; • Advise on out of court settlement of litigious matters where appropriate and draft settlement agreements; • Conduct alternate resolution processes through ADR fora (such as ICC, AFSA, etc) • An understanding of the environment that state owned entities operate in particularly of the applicable legislative prescripts such as the PFMA and the obligations it places on state owned entities in respect of appropriate steps to be taken in instances of non-compliance (from a litigation and consequence management perspective). • Extensive understanding of PIE ACT application • A track record for litigating insolvency law and commercial law matters in the High Court.	• Experience in providing opinions in matters; e- Knowledge of litigation procedures and rules in various fora including but not limited to the Magistrate Court, High Court, SCA and Constitutional Court; • Comprehensive and coherent understanding of all laws and regulations; • Ability to provide information required to finalise the analysis in respect of the legal provision and contingent liability quantum as it relates to legal claims; • Experience in conducting alternative dispute resolution processes; • Cost containment, billing and file arrangement; • Knowledge on the Uniform Rules of the High Court and the Magistrate's Court Rules; • Extensive understanding of PIE ACT application • Comprehensive and extensive experience in commercial evictions, mass evictions, land invasions and residential evictions



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4.	Litigation in the Special Tribunal & civil recovery litigation	• The institution of civil litigation proceedings to bring review applications in the High Court or Special Tribunal, to review and set aside contracts entered into by a state-owned entity where there are grounds for such self- review. The institution of such self-reviews must include • Provide a Litigation Strategy and advise on prospects of success in respect of all civil recovery litigation matters (application and action proceedings); • Conduct litigation for and on behalf of Transnet (e.g. drafting & handling of pleadings etc.) in civil recovery litigation; • Prosecuting all civil litigation in an effective and efficient manner in compliance with Procedures and Rules of Court or the Special Tribunal; • Provide custody of all pleadings and documents in litigation matters; • Provide updates (oral and written legal advice throughout litigation process); • Advise on out of court settlement of litigious matters where appropriate and draft settlement agreements; • Advise on steps to be taken to mitigate damages; • Allegations of State Capture in respect of Transnet;	• Comprehensive knowledge and experience of all laws and regulations impacting state- owned entities, including but not limited to the PFMA, the Companies Act; • Demonstrable experience and knowledge of the Special Investigating Unit and the Special Tribunals Act including the rules and processes applicable to the Special Tribunal; • Knowledge on the Uniform Rules of Court and all practice manuals; • Comprehensive and extensive experience in litigating civil recovery matters for the plaintiff or applicant; • Knowledge and experience in insolvency law and the impact insolvency has on pending litigation, including an understanding of continuation of litigation amidst insolvency processes; • Knowledge of the proclamations and powers of the Special Investigating Unit; Knowledge of and an understanding of the findings and recommendations of the Commission of Inquiry into Allegations of State Capture in respect of Transnet; • An understanding of the law on damages and the circumstances under which these can be claimed, inclusive of mitigating damages; • Experience and a track record that is objectively verifiable of acting for the Plaintiff and Applicant in civil recovery litigation in the High Court or Special Tribunal; • An understanding of the environment that state owned entities operate in particularly of the applicable legislative prescripts such as the PFMA and the obligations it places on state owned entities in respect of appropriate steps to be taken in instances of non-compliance (from a litigation and consequence management perspective).



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5.	Public Policy & Regulatory Law	• Provide legal opinions on public policy matters; • Provide legal opinions on Inter-governmental policy, cooperation and regulatory matters; • Provide interpretation of various applicable legislation.	• Extensive knowledge of public policy matters, in particular with reference to domestic and international laws and regulations associated with transport, logistics and international trade and maritime law; • Analysis of implication of Policy directives on business
6.	Commercial Law & Contract Law	• Advise on projects/ transactions of a corporate law nature • Advise on legal issues arising from asset, risk and debt management; • Reviewing Direct Funding Agreements arising from Project Finance for Port Concessions. • Draft, review and advise on range of complex commercial contracts such as financing agreements, mergers and acquisitions, restrictions, concessions, PSP, siding leases, shunting agreements, interfacing agreements, Safety interfacing agreements, level crossing agreements, Transport Agreements, Standard Conditions of Carriage, E-commerce, Commercial development and residential leases and hold over agreements. Offer to purchase, sale agreements ,acquisitions etc. • Provide legal opinions and advice on a wide range of subject matters pertaining to Transnet and its operating divisions, including: • Proper interpretation of the Companies Act, the Public Finance Management Act and other related legislation; • Mergers & Acquisitions; • Transaction and deal structuring; • Review and negotiate standard agreements relating to loan funding, bond programmes, bond issuances, derivatives. • Corporate governance related matters. • Reviewing Direct Funding Agreements arising from Project Finance for Port Concessions. • Provide legal opinion and advise on Procurement law related matters • Review and provide advise on Development lease agreement	• Experience in working w transactions of a corporate law nature; • Rolling Stock* Expertise (i.e. contracting and advisory on the sale and leasing of rolling stock, cross border rolling stock transactions, maintenance of rolling stock assets, etc) • Rail infrastructure expertise; • Port Concessions as per the requirements of the National Ports Act • Experience in restructuring exercises; • Experience in capital markets transactions for corporate nationally and internationally; • Comprehensive understanding of corporate finance law; • Understanding of International and company laws. • Experience in M&A with reference to the following: ➢ Governance (project structure, lead execution, and control processes, regulatory approvals and processes. ➢ Finance knowledge: financial modelling and deal structuring. ➢ Risk management: Risk management to achieve the transaction's goals and avoid financial loss. ➢ Experience in the working of the related M & A legislation law, regulations and compliance frameworks. • Acquisition of Capital Assets: Experience in the development of procurement specifications, internal governance compliance in line with



			Company procurement process and procedures, the PFMA, PPPFA and other legislative prescripts; drafting and issuing notice of awards, award letters, and award sheets. • Leasing of Capital Assets • Concession of services and infrastructure.
7.	Constitutional & Administrative law	• Provide legal opinions in respect of constitutional and administrative law matters and procedures; • Ensure technical quality, adherence to best practice and consistency with the Constitution and other relevant Statutes and regulations; • Knowledge of cooperative and intergovernmental relation as per the Constitution and Port	• Comprehensive understanding of legal environment relating to constitutional and administrative law and its application within state owned entities; • Comprehensive understanding of the regulatory framework governing Constitutional and administrative dispute resolution; • Experience in providing opinions on constitutional and administrative law matters.
8.	Legal due diligence	• An ability to request for relevant information in conducting a legal due diligence in respect of a proposed project and or transaction such as, <i>inter alia</i>: • List of all immovable properties, and copies of the relevant title deeds and servitudes to be made available as part of the transaction; • Details of the assets that will be handed over to the PSP and or special purpose vehicle; • Who will be responsible for insuring the land, infrastructure, moveable assets and operation in that specific Corridor? • Will there be any intellectual property rights licensed by Transnet to the successful bidder? • What specific breaches by the PSP can lead to suspension / cancellation of the Lease? • The preferred bidder must typically provide the following information: ➢ Valid Memorandum of Incorporation ➢ A Board Resolution providing authority for the company to enter into the transaction ➢ SARS Tax Clearance Certificate ➢ Audited Financial Statements	• A good understanding of TFR operations and projects such that all the pertinent and relevant questions are asked including but not limited to: • Are there statutory, RSR or Transnet maintenance standards or requirements in relation to the perway, Infrastructure or the rolling stock, that must be adhered to, which apply to the specific Corridor and or project? • Are there any particular performance standards / measures that will be applicable to the project? • Provide a schedule of permits, authorisations, licences held by Transnet in relation to the specific Corridor, that will either be assigned to the PSP or that the PSP will need to obtain in its own name in order to operate; • Are there any consents required in order to assign the relevant permits, authorisations, licences to the PSP?



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9.	Project Finance	• In depth knowledge of projects finance on the basis of project finance and experience in: ➢ Conduct due diligence in respect of the shareholders that will form a part of the Special Purpose Vehicle. ➢ The drafting, reviewing, negotiating and vetting of Common Terms Agreements, Preference Share Agreements, Intercreditor Agreements, Security Agreement, Equity Agreements and Loan Agreements among others	• Skills and experience in: ➢ Comprehension of detailed description of commercial and financial terms of a project for purposes of drafting. ➢ An ability to identify all the financial covenants for the debt portion of the project finance; ➢ A basic comprehension of a financial model and a funding plan for the project. ➢ Assessment of the legal risks associated with Project Finance Agreements and Direct Lending Agreements which need to be countersigned by the TNPA / Transnet
10.	Rail Reform	• In depth understanding of rail reform Environment and developments, specifically reformative legislation, policies, frameworks specific to the rail sector and rail industry	• Assess impact and interpretation of impending regulatory provisions in the context of rail reforms and associated legislation for business operating in the rail sector; • Draft commentary or provide specialised advice on bills, policies and frameworks affecting the rail sector and industry
11.	Maritime Law & Marine Insurance Law	• Provide legal opinions on maritime law matters; • Represent Transnet in legal proceedings instituted in the Admiralty Court and other relevant tribunals and fora. • An understanding of marine insurance and Lloyds standard clause forms; • An understanding of Marine Port Authority Liability Policy; • An understanding of vessel emergencies and marine law	• Extensive understanding of maritime law, South African Port Law and marine insurance law; • Experience in representing clients in maritime law related matters. • Experience in Marine Port Authority Liability Policy; • Marine Hull and Equipment Protection and Indemnity; • Experience in vessel emergencies and marine law
12.	Environmental Law	• Provide legal opinions on environmental legislation and regulations.	• Comprehensive understanding of environmental law; and • Environment and Sustainability related legislation



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13.	Insurance Law	• Provide legal opinions on insurance related matters with all insurance classes as well as Alternative Risk Transfer (ART) products such as captive insurance facilities and the likes. • Provide legal opinions and interpretations of Insurance related clauses. • Provide specialised insurance related clause construction in contracts. • Conduct Insurance related litigation for and on behalf of Transnet	• Comprehensive and extensive understanding of insurance matters; • Knowledge of insurance litigation processes with all insurance classes as well as Alternative Risk Transfer (ART) products; • Understanding of pension fund law and the administration of pension funds.
14.	Property & Conveyancing Law	• Provide legal opinion and advice on property law and conveyancing practice including but not limited to: ➢ the transfer and or registration of property; ➢ Attendance to the finances of the property; ➢ Certification and authentication of the documents by notary • Drafting and registration of Notarial bonds, certain contracts pertaining to immovable property, and leases to be registered Provide advice on compliance with the Deeds Registries Act and Regulations; ➢ Evictions (including ADR); ➢ Mining rights (including permits) ➢ Bond Cancellations • Acquisition of property/ land and negotiation with land over	• Comprehensive understanding on Property law, • Conveyancing and Notary. Comprehensive and extensive understanding of the Deeds Registries Act; • Application of necessary care and diligence in the preparation of deeds documents registerable in a Deeds Registry; • Ability to engage ADR in respective areas; • Comprehension and application of the Mineral and Petroleum Resources and Development Act (MPRDA); • Land Claims Court procedure; • Transfer of mining rights and permits • Experience in dealing with bond subsidy • Extensive understanding of PIE ACT application • Comprehensive and extensive experience in commercial evictions, mass evictions, land invasions and residential evictions
15.	Aviation Law	• An understanding of Deductible • Buy Down Policy • An understanding of Liability Hull and War • An understanding of Engine Breakdown	• Experience in Deductible Buy • Down Policy • Experience in Liability Hull and War • Experience in Engine Breakdown



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16.	Competition Law	• Representing Transnet in complaints relating to anti-competitive conduct, including appearances before the Competition Commission and Competition Tribunal in interim relief, intervention, defence and appeal proceedings; • Providing legal opinions on competition law and competition laws implications for business; • Advice and assistance on Dawn Raids, investigations and audits; • Exemption applications; • Providing general advice on compliance with South African and international competition laws; • Provide legal opinions and advice to the TNPA on competition issues within the context of providing access to Port Infrastructure and Port Terminals / Facilities.	• Comprehensive understanding of competition law related matters, including: ➢ Restrictive practices (horizontal and vertical) ➢ Abuse of dominance ➢ Mergers and merger control; ➢ Dawn raids ➢ Investigations and referrals; ➢ General compliance to Competition Law principles and mitigation measures to avoid non-compliance
17.	Copyright and Intellectual Property Law	• Ability to provide swift, efficient and accurate solutions to IP-related issues, dealing with relevant aspects of trademarks, copyright (including audit / accounting and computer software licence matters) domain names and IP in this regard; • Assisting Transnet to strategically manage its IP, risk and control environment; • Experience in providing advice on confidentiality agreements and regimes, negotiation of successful technology contracts (ERP system) and strategic collaboration, co-development / collaboration arrangements, portfolio management and the evaluation thereof	• Comprehensive understanding of Intellectual Property in relation to: ➢ Brands and brand management; ➢ Copyright and related rights; ➢ Patents; ➢ Product design; ➢ Transactional IP; ➢ oTrademarks and trademark registration and management of trademark portfolio



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18.	Construction Law (NEC Contracts)	• Provide legal advisory on construction law related matters • Ability to draft special Conditions of Contract or addenda to Contracts • In-depth understanding of standard form contracts, including but not limited to NEC, FIDIC, JBCC and GCC. • Handle all matters referred to arbitration for and on behalf of Transnet (e.g. Drafting of statements of defence and handling of arbitration papers etc.); • Ensure effective and efficient arbitration process is followed; Provide custody of all papers and documents in arbitration matters.	• Extensive exposure to and comprehensive understanding of construction law; • Comprehensive knowledge of Construction Law claims, claims processes and dispute resolutions processes • NEC Contracts and other forms of construction contracts; • Understanding of the regulatory frameworks and environment governing building and construction law; • Comprehensive knowledge of dispute resolution construction law.
19.	Media Law	• Providing efficient legal opinions on matters related to media law. • Assist in protecting Transnet's reputational interests.	• Extensive understanding of media law; • Comprehensive understanding of principles of media freedom; • Ability to provide legal • Opinions at short notice.
20.	Tax Law, Customs & Excise Duties	• Provide efficient legal advice on all tax related issues.	• Knowledge and understanding of South African tax regime, including but not limited to principles of taxation, forms of taxation and tax reforms; • Cross-Border (SADC) tax regimes and tax implications; • Customs and Duties of Cross Border business activities; • In some cases, understanding specialized areas of tax legislation; • Knowledge of tax specific legislation.
21.	Public & Private International Law	• To advise on public and private international law implications to business activities and transactions specifically treaties, rules, norms and standards between states and United Nations conventions on cross-border transactions and business	• Thorough understanding of public and private principles as it relates to state and private entities; • Compliance requirements as it relates to treaties, rules and principles, conventions; and • Enforcements, actions and penalties.