

REPUBLIC OF SOUTH AFRICA

BROADCASTING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill published in Government Gazette No 39413 of 13 November 2015)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 39—2015]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Broadcasting Act, 1999, so as to delete a definition; to reduce the number of non-executive members of the Board of the South African Broadcasting Corporation Limited; to amend the procedure for the appointment and removal of non-executive members of the Board; to provide for the appointment of a nomination committee to make recommendations to the Minister for the appointment of non-executive members of the Board; to reconstitute the executive committee; to amend the procedure for the removal and resignation of non-executive members of the Board; to amend the procedure for the dissolution of the Board and for the appointment of an interim Board; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 4 of 1999, as amended by section 23 of Act 13 of 2000, section 2 of Act 64 of 2002, section 97 of Act 36 of 2005 and section 45 of Act 1 of 2014 5

1. Section 1 of the Broadcasting Act, 1999 (Act No. 4 of 1999) (hereinafter referred to as the principal Act), is hereby amended by the deletion of the definition of “appointing body”.

Amendment of section 12 of Act 4 of 1999, as amended by section 13 of Act 64 of 2002 10

2. Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) **[twelve]** nine non-executive members; and”.

Amendment of section 13 of Act 4 of 1999, as amended by section 14 of Act 64 of 2002 and section 1 of Act 4 of 2009 15

3. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The **[twelve]** nine non-executive members of the Board must be appointed by the President on the advice of the **[National Assembly]** Minister.”; 20

- (b) by the insertion after subsection (2) of the following subsection:
- “(2A) (a) Subject to subsection (2), the Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of non-executive members of the Board contemplated in subsection (1).” 5
- (b) The Minister must—
- (i) ensure that the nomination committee is broadly representative of the demographics of the Republic and that both males and females are represented; and
- (ii) ensure that the nomination committee members have the necessary skills, knowledge, qualifications and experience to serve on the committee.”; 10
- (c) by the insertion after subsection (5) of the following subsection:
- “(5A) For the purposes of continuity, members of the Board may be re-appointed for a further period not exceeding three years.”; 15
- (d) by the substitution for subsection (10) of the following subsection:
- “(10) (a) [Nine] Seven members of the Board, which must include the chairperson or the deputy chairperson, [will constitute] constitute a quorum at any meeting of the Board.
- (b) Decisions of the Board must be taken by a majority of votes, and in the case of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote.” 20

Amendment of section 14 of Act 4 of 1999, as substituted by section 15 of Act 64 of 2002

4. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25
- “(1) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer, [Chief Operating Officer,] Chief Operations Officer and Chief Financial Officer [and no more than 11 other members].”. 30

Substitution of section 15 of Act 4 of 1999, as substituted by section 2 of Act 4 of 2009

5. The following section is hereby substituted for section 15 of the principal Act:

“Removal from office and resignation of member

- 15.** (1) The President may, after due inquiry and on the recommendation of a panel contemplated in subsection (3), remove a member from office on account of— 35
- (a) misconduct;
- (b) inability to perform his or her duties efficiently;
- (c) absence from three consecutive meetings of the Board without the permission of the chairperson, except on good cause shown; 40
- (d) failure to disclose an interest in terms of section 17;
- (e) attendance or participation in proceedings of the Board while having an interest contemplated in section 17; and
- (f) him or her becoming disqualified as contemplated in section 16. 45
- (2) The President may remove a member on the grounds listed in subsection (1)(a) and (b) after a finding to that effect by a panel appointed by the President.
- (3) (a) The President must, in consultation with the Minister, appoint a panel consisting of at least three suitably qualified persons, of which the chairperson must be qualified in law. 50
- (b) Members of a panel, by virtue of their appointment in terms of paragraph (a), must be paid such remuneration and allowances as may be determined by the President, in concurrence with the Minister of Finance.
- (4) The panel must investigate the grounds for removal, compile a report and make recommendations to the President on its findings. 55

(5) The President may suspend a member from office while awaiting the findings of the panel concerning that member.

(6) A non-executive member of the Board may resign by tendering a three months' written notice addressed to the President, provided that the President may on good cause shown allow a shorter period." 5

Substitution of section 15A of Act 4 of 1999, as inserted by section 3 of Act 4 of 2009

6. The following section is hereby substituted for section 15A of the principal Act:

“Dissolution of the Board and appointment of interim Board

15A. (1) The President may, after due inquiry and on the recommendation of a panel contemplated in section 15(3), dissolve the Board if it fails in any or all of the following: 10

- (a) Discharging its fiduciary duties;
- (b) adhering to the Charter referred to in section 6; and
- (c) carrying out its duties as contemplated in section 13(11).

(2) The panel must investigate the grounds for dissolution of the Board, compile a report and make recommendations to the President on its findings. 15

(3) (a) Upon the dissolution of the Board contemplated in subsection (1), the President must appoint an interim Board consisting of the persons referred to in section 12(b) and five other persons. 20

(b) The interim Board must be appointed within 10 days after the dissolution of the Board and is appointed for a period not exceeding six months.

(4) The President must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board. 25

(5) (a) A quorum for any meeting of the interim Board is five members.

(b) Decisions of the interim Board must be taken by a majority of votes, and in the case of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote." 30

Transitional provisions

7. The Board which is in office at the commencement of the Broadcasting Amendment Act, 2015, shall be deemed to have been appointed in terms of sections 12 and 13 of the principal Act for the remainder of its members' original term of office.

Short title and commencement 35

8. This Act is called the Broadcasting Amendment Act, 2015, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL, 2015

1. BACKGROUND

- 1.1 Government recognises the role that the South African Broadcasting Corporation (“the SABC”) plays in society and is therefore committed to the development of a sustainable and relevant public broadcaster, which is accountable to the shareholders, to the public and to Parliament.
- 1.2 Our broadcasting system must reflect the identity and diversity of South Africa, promoting the entire spectrum of culture and religious background, including all official languages. This broadcasting system must therefore be aligned to the democratic values of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), and protect the rights of every citizen. It is against this backdrop, that the Broadcasting Amendment Bill, 2015 (“the Bill”), was introduced, to ensure that this vision is realised.
- 1.3 The instability in the SABC Board (“the Board”) has over the years served as a hindrance for the SABC to fulfil its public broadcasting service mandate. The fulfilment of this mandate is dependent on the ability of the Board to provide strategic direction to the SABC.
- 1.4 This, then, calls for government to develop and implement a stable corporate government model, which will ensure long-term sustainability of the SABC. In this regard, the size of the Board, the process and time with which the Board is appointed and removed are of critical importance.
- 1.5 In view of the aforementioned, it has become necessary to amend the Broadcasting Act, 1999 (Act No. 4 of 1999) (“the Act”), so as to ensure that the SABC has a stable corporate governance model.

2. OBJECTS OF THE BILL

- 2.1 The main objective of the Bill is to amend the principal Act so as to—
 - delete the definition of “appointing authority”;
 - amend the procedure for the appointment and removal of non-executive members of the Board;
 - reduce the number of non-executive directors in the Board;
 - provide for the appointment of a nomination committee to make recommendations to the Minister of Communications (“the Minister”) for the appointment of non-executive members of the Board;
 - reconstitute the executive committee of the SABC;
 - amend the procedure regarding the removal and resignation of non-executive members of the Board; and
 - amend the procedure for the dissolution of the Board, and for the appointment of an interim Board.
- 2.2 These amendments will mainly lead to a reduction in the number of non-executive directors in the Board, from twelve (12) to nine (9), in order to strengthen the Board and also to streamline its operation. These changes are consistent with the outcome and recommendations of the Presidential Review Committee on State-Owned Entities.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 seeks to amend section 1 of the principal Act by deleting the definition of “appointing body”.

3.2 Clause 2

Clause 2 amends section 12 of the Act by reducing the number of the non-executive members of the Board from twelve (12) to nine (9).

3.3 Clause 3

Clause 3 seeks to amend section 13 of the Act by introducing a new procedure for the appointment of Board members, as follows:

- The role of the National Assembly with regard to the appointment of non-executive members of the Board is replaced by the Minister;
- New subsection (2A): provides for the appointment of a nomination committee to make recommendations to the Minister for the appointment of non-executive members of the Board. In appointing the members of the committee, the Minister must ensure that the committee is broadly represented and have the necessary skills, knowledge, qualifications and experience to serve on the committee;
- New subsection (5A): provides for the re-appointment of non-executive members of the Board to maintain institutional stability and continuity. Non-executive members will be eligible for re-appointment to the Board for a further period not exceeding three (3) years; and
- Subsection (10): provides for a new quorum for decision-making purposes and for voting of the chairperson. This is necessary because of changes to the composition of the Board as proposed in clauses 2 and 3.

3.4 Clause 4

Clause 4 seeks to amend section 14 of the Act so as to reconstitute the executive committee of the SABC. This clause provides for the removal of other executive members of the SABC, as part of the executive committee, save for the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer.

3.5 Clause 5

Clause 5 seeks to amend section 15 of the principal Act so as to amend the procedure for the removal and resignation of non-executive Board members.

- The President may, after due enquiry and on the recommendation by a panel, remove a member on account of the grounds listed in section 15(1)(a) to (f). However, with regard to the removal of a member on account of misconduct or inability to perform his or her duties efficiently, the decision for such removal must be based on the findings and on the recommendation to that effect by a panel appointed by the President.
- Section 15(3): provides for the appointment and composition of a panel as well as the determination of remuneration and allowances payable to members of such panel. The panel will be appointed by the President, in consultation with the Minister, and shall consist of at least three suitably qualified persons, and the chairperson shall be qualified in law.

- Section 15(4): provides for the panel to investigate the grounds for removal of a member, compile a report and make recommendations to the President on its findings.
- Section 15(5): provides that the President may suspend a member of the Board while awaiting the findings of the panel concerning that member.
- Section 15(6): deals with the resignation of non-executive member of the Board.

3.6 Clause 6

Clause 6 seeks to amend the Act by substituting section 15A in order to provide a new procedure for the dissolution of the Board and appointment of an interim Board.

- Section 15A(1): provides that the President may, after due enquiry and on the recommendation of the panel contemplated in section 15(3), dissolve the Board if it fails to discharge its fiduciary duties, fails to adhere to the Charter referred to in section 6 or fails to carry out its duties contemplated in section 13(11).
- Section 15A(2): provides for the panel to investigate the grounds for the dissolution of the Board, compile a report of its findings and make recommendations to the President.
- Section 15A(3): requires that upon dissolution of the Board, the President must appoint an interim Board, consisting of persons referred to in section 12(b) of the Act and five other persons, to manage the affairs of the Corporation for a period not exceeding six (6) months.
- Section 15A(4): provides that the President must designate one of the members of the interim Board as the chairperson and the other as the deputy chairperson, both of whom must be non-executive members of the interim Board.
- Section 15A(5): A quorum for any meeting of the interim Board is seven (7) members.

3.7 Clause 7

Clause 7 provides for transitional provisions. In terms of this clause, on commencement of the Broadcasting Amendment Act, 2015, the existing Board shall be deemed to have been appointed in terms of sections 12 and 13 of the Act, as sought to be amended, for the remainder of its members' original term of office.

3.8 Clause 8

Clauses 8 of the Bill provides for the short title and commencement of the Broadcasting Amendment Act, 2015, which will come into operation on a date determined by the President by proclamation in the *Gazette*.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following departments/bodies were consulted regarding the Bill:

- The Department of Justice and Constitutional Development;
- The Presidency; and
- the South African Broadcasting Corporation.

5. FINANCIAL IMPLICATIONS FOR THE STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Communications are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.