

REPUBLIC OF SOUTH AFRICA

**REPORTING BY PUBLIC ENTITIES
AMENDMENT BILL**

(As amended by the Portfolio Committee on Finance (National Assembly))

(MINISTER OF FINANCE)

[B 39B—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
VERSLAGDOENING DEUR
OPENBARE ENTITEITE**

(Soos gewysig deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering))

(MINISTER VAN FINANSIES)

[W 39B—97]

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Minister or the member of the Executive Council of the province who administers the department of the **[State]** national or provincial government under which that public entity falls, or, in the absence of such Minister or member of the Executive Council of the province, the Minister or the member of the Executive Council of that province designated by the **[State]** President or the Premier of that province;”.

Amendment of section 6 of Act 93 of 1992

2. Section 6 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The annual financial statements mentioned in subsection (1) shall, in conformity with generally accepted accounting practice, fairly present the **[state of affairs of the entity and its business and its financial position]** financial performance and changes in the financial position of the entity during the financial year concerned and the financial position of the entity at the end of the financial year concerned, and shall—

- (a) for that purpose be in accordance with and include at least the matters prescribed by Schedule 4 **[of]** to the Companies Act, 1973, in so far as they are applicable; and
- (b) comply with such other reporting requirements as may be prescribed.”.

Amendment of section 7 of Act 93 of 1992

3. Section 7 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) state the extent to which the entity has achieved its **[set]** predetermined objectives as approved by the board of directors concerned for the financial year concerned;”.

Amendment of section 10 of Act 93 of 1992

4. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An auditor appointed in terms of section 9(1) shall not be discharged before the expiry of his or her term of appointment except by the responsible Minister acting after consultation with the board of directors concerned and with the concurrence of the Auditor-General.”.

Amendment of section 11 of Act 93 of 1992

5. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) An auditor appointed in terms of section 9(1) shall perform his or her duties in terms of the provisions of section 20 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991).

(2) In exercising his or her powers and performing his or her duties an auditor appointed in terms of section 9(1) shall have—

- (a) the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of a listed entity whose accounts are being audited by him or her, and may require from the directors of that entity such information and explanations as he or she thinks necessary for the performance of his or her **[said]** duties; and
- (b) the right to investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management.

- (3) Auditors appointed in terms of section 9(1) may consult the Auditor-General or persons appointed in his or her Office concerning any matter connected with the auditing of listed entities.”; and
- (b) by the substitution for subsection (5) of the following subsection: 5
- “(5) Subsection (2)(b) shall not be construed as entitling the auditor concerned [of a listed entity] to question the merits of the policy objectives of the listed entity in respect of which an audit is carried out.”.

Amendment of section 12 of Act 93 of 1992

6. Section 12 of the principal Act is hereby amended— 10
- (a) by the substitution for subsections (3) and (4) of the following subsections: 10
- “(3) The auditor concerned shall report to the responsible Minister the results of any [audit] investigation carried out under section 11(2)(b).
- (4) The auditor concerned shall, when reporting in terms of subsection (1) or (3), draw attention to any other matters falling within the scope of the auditor’s examination which, in his or her opinion, should in the public interest be brought to the notice of Parliament.”; and 15
- (b) by the addition of the following subsection: 15
- “(5) The person appointed in terms of section 13(3B)(a) shall report to the Auditor-General the results of any investigation and audit carried out in terms of section 13(3A)(c).”.

Amendment of section 13 of Act 93 of 1992

7. Section 13 of the principal Act is hereby amended—
- (a) by insertion after subsection (3) of the following subsections: 25
- “(3A) The Auditor-General may, when he or she considers it to be in the public interest or upon receipt of a complaint—
- (a) require from the board of directors of a listed entity documents, information and explanations with regard to the affairs of the entity; 25
- (b) require documents, information and explanations with regard to the affairs of a listed entity from the auditor of the entity without the auditor being obliged to obtain the approval of the board of directors and chief executive officer of the entity therefor; 30
- (c) investigate and audit a listed entity at the cost of the entity.
- (3B)(a) An investigation and audit contemplated in subsection (3A)(c) shall be carried out by the Auditor-General or a person appointed by the Auditor-General. 35
- (b) The person so appointed shall accept such appointment and be registered in terms of section 15 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), as an accountant and auditor.
- (c) Notwithstanding any other law to the contrary, an auditor of a listed entity shall, when so required, supply documents, information and explanations under subsection (3A)(b).”; and 40
- (b) by the substitution for subsection (5) of the following subsection: 40
- “(5) The Auditor-General shall include in [his] a report, [contemplated in section 6 of the Auditor-General Act, 1989 (Act No. 52 of 1989)] submitted at least annually to Parliament, all representations received in regard to the discharge of auditors under section 10 [of this Act].”.

Amendment of section 15 of Act 93 of 1992

8. Section 15 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The provisions of this Act shall not apply to a public entity which is permanently provided, directly or indirectly, with funds out of an account mentioned in section [6(3)(a)] 4(6) of the Auditor-General Act, [1989 (Act No. 52 of 1989)] 1995 (Act No. 12 of 1995).”.

Amendment of section 16 of Act 93 of 1992

9. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A responsible Minister may in writing and with the concurrence of the Minister delegate to the Director-General of any national department [of State] or the relevant provincial administration, as the case may be, or an officer in such department or administration any of or all the powers conferred upon him or her under this Act.”.

Short title

10. This Act is called the Reporting by Public Entities Amendment Act, 1997.

**MEMORANDUM ON THE OBJECTS OF THE REPORTING BY
PUBLIC ENTITIES AMENDMENT BILL, 1997**

1. Since the State contributes financially to public entities listed in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992—"the Act"), and because of their fundamental role in the South African economy, more stringent financial control over those entities is necessary.
2. The Bill proposes to bring about such more stringent financial control by—
 - (a) extending the requirements regarding the contents of the annual financial statements and the directors' report of listed public entities (clauses 2 and 3); and
 - (b) empowering the Auditor-General to investigate and audit listed public entities, if he or she considers it to be in the public interest or upon receipt of a complaint (clauses 6(b) and 7(a)).
3. Furthermore, the Bill aims to adjust the Act to be in accordance with changes to other legislation and to clarify certain provisions of the Act (clauses 1, 4, 5, 6(a), 7(b), 8 and 9).
4. In the opinion of the State Law Advisers and the Department of State Expenditure the Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
5. Institutions consulted:
 - * Office of the Auditor-General
 - * Office for Public Enterprises
 - * South African Institute of Chartered Accountants
 - * Institute of Directors
 - * Institute of Internal Auditors
 - * University of Pretoria
 - * All listed public entities and the departments under whose auspices they fall.