

REPUBLIC OF SOUTH AFRICA

**BROADCASTING
AMENDMENT BILL**

(As introduced in the National Assembly)

(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 8—98]

REPUBLIEK VAN SUID-AFRIKA

UITSAAIWYSIGINGSWETSONTWERP

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWESE)

[W 8—98]

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- “ ‘Independent Broadcasting Authority Act’ means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);
- (f) by the insertion after the definition of “regulation” of the following definition:
 “ ‘Telecommunications Act’ means the Telecommunications Act, 1996 (Act No. 103 of 1996);
- (g) by the insertion after the definition of “television set” of the following definition:
 “ ‘transfer date’ means the date determined by the Minister in terms of section 13(2);”.

Substitution of section 2 of Act 73 of 1976 10

2. The following section is hereby substituted for section 2 of the principal Act:

“Incorporation of successor to South African Broadcasting Corporation

2. (1) On a date preceding the transfer date the Minister shall apply for the incorporation in terms of the Companies Act of a public company having a share capital, to be known as the South African Broadcasting Corporation Limited, as the successor to the South African Broadcasting Corporation established in terms of the Broadcasting Act, 1936 (Act No. 22 of 1936), and shall do all things necessary to ensure the issue to that company of a certificate to commence business. 15
- (2) The application shall be accompanied by the memorandum and articles of association, which shall be— 20
- (a) framed in accordance with the provisions of the Companies Act, but subject to the provisions of this Act; and
- (b) signed by the Minister on behalf of the State. 25
- (3) On receipt of the request and the memorandum and articles so signed, the Registrar of Companies shall—
- (a) register the corporation as a public company having a share capital, as well as the memorandum and articles; and
- (b) issue a certificate of incorporation. 30
- (4) No additional fee referred to in section 63(2) of the Companies Act shall be payable in respect of the registration of the memorandum and articles of association.
- (5) The Registrar of Companies shall issue such directives and authorise such deviations from the regulations in force in terms of the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to this section.”. 35

Substitution of section 3 of Act 73 of 1976, as substituted by section 1 of Act 50 of 1996

3. The following section is hereby substituted for section 3 of the principal Act: 40

“Control of corporation

3. (1) The articles of association of the corporation shall provide that—
- (a) more than one director, one of whom shall be the managing director, shall fulfil executive functions;
- (b) the affairs of the corporation shall be managed by a management board appointed in terms of the articles of association; and
- (c) one of the directors shall be appointed as managing director as well as chairperson of the management board. 45
- (2) The members of the Board of the South African Broadcasting Corporation as constituted on the day immediately preceding the transfer date shall, as from the transfer date, be deemed to be the directors of the corporation until they are replaced as directors in terms of the corporation’s articles of association.”. 50

Substitution of section 4 of Act 73 of 1976, as amended by section 2 of Act 61 of 1982, section 1 of Act 73 of 1993 and section 2 of Act 50 of 1996

4. The following section is hereby substituted for section 4 of the principal Act:

“Shareholding of corporation

4. (1) Notwithstanding section 32 of the Companies Act the corporation may have fewer than seven members. 5
- (2) The total value and number of the shares in the corporation shall be determined by the Minister with the concurrence of the Minister of Finance.
- (3) The powers and duties of the State as member and shareholder of the corporation shall, subject to subsection (4), be exercised and carried out by the Minister. 10
- (4) The rights attached to the shares of the State in the corporation shall be exercised by the Minister.
- (5) Any dividends received by the State in respect of its shares in the corporation shall be paid into the National Revenue Fund. 15
- (6) No amount referred to in section 75(3) of the Companies Act or stamp duty shall be payable in respect of any increase of the share capital or the number of shares in the corporation.”.

Substitution of section 5 of Act 73 of 1976

5. The following section is hereby substituted for section 5 of the principal Act: 20

“Financial year and annual financial statements of corporation

5. (1) Notwithstanding section 285 of the Companies Act, the financial year of the corporation shall commence on 1 April and end on 31 March of the next year.
- (2) In addition to the annual financial statements to be drawn up in terms of the Companies Act, the Minister may direct the corporation to draw up annual financial statements in a form determined by him or her.”. 25

Repeal of sections 6, 7, 8, 9, 10, 11 and 30 of Act 73 of 1976

6. Sections 6, 7, 8, 9, 10, 11 and 30 of the principal Act are hereby repealed as from the transfer date. 30

Substitution of section 12 of Act 73 of 1976, as substituted by section 6 of Act 61 of 1982

7. The following section is hereby substituted for section 12 of the principal Act:

“Rights and obligations of corporation

12. (1) The corporation may not by virtue of the powers conferred upon it by this Act do anything for which a licence is required in terms of [section 7 of the Radio Act or section 78 of the Post Office Act, 1958 (Act No. 44 of 1958),] the Independent Broadcasting Authority Act or the Telecommunications Act, unless it has obtained the licence in question and complies with the conditions thereof. 35 40
- (2) Notwithstanding anything to the contrary contained in the [Radio Act or the Post Office Act, 1958,] Independent Broadcasting Authority Act, or any other law[—
- (a)] the corporation shall be entitled, against payment of the annual fees (if any), which the [Postmaster-General] Director-General: Communications may from time to time determine by agreement with the corporation or which, in default of such agreement, the Minister [of Posts and Telecommunications] may determine [in consultation with the Minister], to the issue to it of any licence contemplated in 45

- subsection (1) [except a licence for the erection or laying of cables or wires for the purpose of section 11(c);
- (b) any condition imposed under section 7(2)(b) of the Radio Act by the Minister upon the corporation as holder of a broadcasting licence, shall be notified in the *Gazette*; 5
- (c) any licence issued to the corporation by virtue of the provisions of this section, shall be issued for an indefinite period and shall not be suspended or withdrawn except with the approval of the Minister.
- (3) The corporation shall frame and carry out its broadcasting programmes with due regard to the interests of English, Afrikaans and Black culture]. 10

Substitution of section 13 of Act 73 of 1976, as amended by section 7 of Act 61 of 1982 and section 3 of Act 59 of 1986

8. The following section is hereby substituted for section 13 of the principal Act:

“Transfer of assets, liabilities, rights and obligations of South African Broadcasting Corporation to corporation and dissolution of South African Broadcasting Corporation 15

13. (1) Before the transfer date the corporation shall apply in terms of sections 41 and 42 of the Independent Broadcasting Authority Act for the transfer to it of the broadcasting licences held by the South African Broadcasting Corporation. 20

(2) On a date determined by the Minister by notice in the *Gazette*—

(a) the broadcasting licences issued to the South African Broadcasting Corporation shall be transferred to the corporation in terms of section 74 of the Independent Broadcasting Authority Act; and 25

(b) all other assets, liabilities, rights and obligations of the South African Broadcasting Corporation, including any claim to copyright, trademarks and patentable inventions shall vest in the corporation.

(3) Notwithstanding any law, no transfer duty, stamp duty or any other duty shall be payable in respect of the transfer of any asset in terms of this section. 30

(4) The South African Broadcasting Corporation established in terms of the Broadcasting Act, 1936 (Act No. 22 of 1936), is hereby dissolved as from the day after the transfer date.”.

Amendment of section 14 of Act 73 of 1976, as amended by section 8 of Act 61 of 1982 35

9. Section 14 of the principal Act is hereby amended by the addition of the following subsections:

“(3) As from the transfer date every employee of the South African Broadcasting Corporation shall, without interrupting his or her service, become an employee in a similar post in the corporation subject to conditions of employment which shall not be less favourable than those applicable to him or her on the day immediately preceding the transfer date. 40

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), employees transferring to the employ of the corporation in terms of subsection (3) shall be deemed not to have changed employers and the position of such employees in respect of the phasing in of any tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall remain unchanged. 45

(5) When an employee of the South African Broadcasting Corporation becomes an employee of the corporation in terms of subsection (3)— 50

(a) he or she shall retain all vacation and sick leave which on the day immediately preceding the transfer date stood to his or her credit, including all monetary benefits attached thereto;

- (b) any inquiry or other action instituted or contemplated in respect of misconduct allegedly committed by such employee prior to his or her employment by the corporation shall be disposed of or instituted by the corporation and the corporation shall take steps against the employee concerned if he or she is found guilty of misconduct, in terms of the laws applicable to him or her before the transfer date.” 5

Substitution of section 16 of Act 73 of 1976, as amended by section 3 of Act 21 of 1980 and section 10 of Act 61 of 1982

10. The following section is hereby substituted for section 16 of the principal Act:

“Borrowing powers of corporation 10

16. [(1) The corporation may [with the approval of the Minister, raise moneys by way of a loan in such amount as the Minister may authorize] not borrow money without the approval of the Minister granted with the concurrence of the Minister of Finance.

[(2) Every such loan to the corporation, and any interest or other charges due or to become due in respect thereof, shall be a first charge on all the revenues and assets of the corporation and on all charges levied or to be levied by it. 15

(5) The corporation may raise short term loans at any time, by way of overdrawing its account with a bank or otherwise, to meet any casual deficits that may arise from time to time.]” 20

Amendment of section 26 of Act 73 of 1976, as amended by section 19 of Act 61 of 1982

11. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) In addition to the annual financial statements to be prepared in terms of the Companies Act, the corporation shall cause its books and accounts to be audited annually by a person registered as a public accountant and auditor under the Public Accountants’ and Auditors’ Act, [1951 (Act No. 51 of 1951)] 1991 (Act No. 80 of 1991), and appointed as auditor of the corporation by the Minister.” 30

Amendment of section 27 of Act 73 of 1976

12. Section 27 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister shall [lay] table every report furnished in terms of subsection (1) [upon the Tables of the Senate and of the House of Assembly] in Parliament within seven days after receiving it, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.” 35

Substitution of long title to Act 73 of 1976

13. The following long title is hereby substituted for the long title to the principal Act: 40
“To consolidate and amend certain laws relating to the South African Broadcasting Corporation; to provide for the succession to the South African Broadcasting Corporation by a State-owned public company; to authorize that public company to issue certain licences; and to repeal certain laws; and to provide for matters connected therewith.” 45

Short title

14. This is the Broadcasting Amendment Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL, 1998

1. The principal object of the Bill is to transform the South African Broadcasting Corporation (SABC) into a public company with the State as sole shareholder. This will contribute to transparency and accountability as the SABC will report to its shareholder in accordance with the provisions of the Companies Act, 1973 (Act No. 61 of 1973).

2. Section 30 of the Broadcasting Act, 1976 (Act No. 73 of 1976), provides that the President may make any provision of the Companies Act, 1973, applicable to the corporation as long as it is not inconsistent with the Broadcasting Act, and provided that the corporation shall not be dissolved except by an Act of Parliament. The Minister for Posts, Telecommunications and Broadcasting is proceeding with the Broadcasting Amendment Bill instead of a section 30 presidential proclamation for the following reasons: Firstly, there will be inconsistencies between the Broadcasting Act and the newly applied provisions of the Companies Act. Secondly, section 32 of the Companies Act provides that a company must have seven or more members. In order to take on a strategic equity partner in the future the corporation should be allowed to have less than seven members. A deviation from the provisions of section 32 of the Companies Act is not possible in terms of a proclamation contemplated in section 30 of the Broadcasting Act. Thirdly, in order to provide for the succession to the South African Broadcasting Corporation by a state-owned public company, the SABC should be dissolved. This may only be done in terms of an Act of Parliament. Since a Broadcasting Amendment Bill would in any event be required to remove inconsistencies between the Broadcasting Act and the Companies Act, to provide that the SABC Limited may have less than seven members and to dissolve the SABC, it is more appropriate to provide for the whole process in the Broadcasting Amendment Bill instead of following the route provided for in section 30 of the Broadcasting Act.

3. The provisions of the Bill therefore seek to amend the Broadcasting Act, 1976, so as to convert the SABC into a public company with the State as sole shareholder at this stage and they contain the necessary incidental provisions to achieve this object.

4. Persons and bodies consulted

The following bodies were consulted in the preparation of the Bill:

Independent Broadcasting Authority
South African Broadcasting Corporation.

5. Parliamentary procedure

The Department of Communications and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.