

REPUBLIC OF SOUTH AFRICA

NATIONAL DEVELOPMENT AGENCY BILL

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

(MINISTER OF FINANCE)

[B 91B—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE NASIONALE ONTWIKKELINGSAGENTSskap

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

(MINISTER VAN FINANSIES)

[W 91B—98]

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BILL

To establish a National Development Agency aimed at promoting an appropriate and sustainable partnership between the Government and civil society organisations to eradicate poverty and its causes; to determine the objects and functions of the Agency; to determine the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for connected matters.

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

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Definitions

1. In this Act, unless the context indicates otherwise—
- (i) **“Board”** means the board of the NDA referred to in section 5(1); (vii) 20
 - (ii) **“chief executive officer”** means the chief executive officer appointed in terms of section 9(1); (iv)
 - (iii) **“civil society organisation”** means a trust, company or voluntary association established for a public purpose, but does not include an organ of state; (ii)
 - (iv) **“financial year”** means the period from 1 April in any year to 31 March in the next year; (i) 25
 - (v) **“Minister”** means the Minister of Finance; (v)
 - (vi) **“NDA”** means the National Development Agency, established by section 2; (vi)
 - (vii) **“this Act”** includes any regulation made and in force in terms of section 13. 30
(iii)

Establishment of National Development Agency

2. A juristic person to be known as the National Development Agency is hereby established.

Objects of NDA

3. (1) The primary object of the NDA is to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations for the purposes of—
- (a) carrying out projects or programmes aimed at meeting development needs of poor communities; and 5
 - (b) strengthening the institutional capacity of other civil society organisations involved in direct service provision to poor communities.
- (2) The secondary objects of the NDA are—
- (a) to promote— 10
 - (i) consultation, dialogue and sharing of development experience between civil society organisations and relevant organs of state; and
 - (ii) debate on development policy; and
 - (b) to undertake research and publication aimed at providing the basis for development policy. 15

Duties and powers of NDA

4. (1) The NDA must—
- (a) act as a key conduit for funding from the Government of the Republic, foreign governments and other national and international donors for development work to be carried out by civil society organisations; 20
 - (b) develop, conduct and co-ordinate policy relevant to its objects referred to in section 3;
 - (c) contribute towards building the capacity of civil society organisations to enable them to carry out development work effectively; and
 - (d) create and maintain a database on civil society organisations, including, but not limited to, the scope and subject matter of their work and their geographical distribution, and share the information in that database with relevant organs of state and other stakeholders. 25
- (2) The NDA may—
- (a) grant money from its funds— 30
 - (i) in accordance with such criteria and procedures as the NDA determines; and
 - (ii) with due regard to the NDA's primary object referred to in section 3(1), to any civil society organisation for any project or programme that organisation intends to undertake or is undertaking; 35
 - (b) make recommendations with regard to legislation and policies directly or indirectly constraining effective development in the Republic;
 - (c) exercise any power conferred by any other provision of this Act; and
 - (d) generally, do everything which is necessary to achieve its objects referred to in section 3. 40
- (3) Any grant in terms of subsection (2)(a) to any civil society organisation may not be distributed to its members or office bearers except as reasonable compensation for services rendered.
- (4) Any civil society organisation to which a grant is made in terms of subsection (2)(a) must submit to the NDA— 45
- (a) audited financial statements regarding the use of that grant at the intervals and in the form prescribed by regulation in terms of section 13; and
 - (b) in respect of each financial year of the organisation, a comprehensive, narrative report containing—
 - (i) an analysis of every project or programme in respect of which that grant is made and a description of all other activities of the organisation; and 50
 - (ii) an audited financial report, not later than the date prescribed by regulation in terms of section 13.

(5) Any grant in terms of subsection (2)(a) must be sufficient to defray the expenses which the civil society organisation in question will have to incur in order to comply with subsection (4).

Composition of NDA's Board, filling of vacancies and remuneration

5. (1) The NDA acts through a board consisting of— 5
- (a) six members to represent the Government appointed by the Minister of Finance after consultation with the Ministers of Education, Health, Housing, Public Works, Trade and Industry, Welfare and Population Development, and Water Affairs and Forestry and such other Ministers as the Minister of Finance considers necessary to consult; and 10
- (b) nine members to represent civil society organisations appointed by the Minister after an open and transparent process of considering a short list of candidates presented to the Minister by a panel, comprising an equal number of representatives from State Departments and of experts in the development field, established by the Minister for that purpose. 15
- (2) For the purpose of the appointment of the members of the Board referred to in subsection (1)(b), the Minister must through the media and by notice in the *Gazette* invite nominations of persons as candidates for such appointment.
- (3) At least two members of the Board must have proven knowledge or experience of financial management. 20
- (4) When the members of the Board are appointed, the need for the Board to reflect broadly the race, gender and geographic composition of the Republic must be considered.
- (5) (a) The first meeting of the Board must be held at such time and place and chaired by such member as the Minister determines. 25
- (b) At that meeting the members of the Board must elect—
- (i) a chairperson from among the members referred to in subsection (1)(b); and
- (ii) a deputy chairperson from among the members referred to in subsection (1)(a) and (b).
- (6) Any vacancy on the Board must be filled in the same manner in which the member who vacates the office was appointed. 30
- (7) If the office of chairperson or deputy chairperson of the Board becomes vacant, a chairperson or deputy chairperson, as the case may be, must be elected in accordance with subsection (5).
- (8) If both the chairperson and deputy chairperson of the Board are absent or unable to perform any function of the chairperson, the Minister may designate any other member to act as chairperson during such absence or incapacity. 35
- (9) No vacancy in the office of the chief executive officer or a deficiency in the number of members of the Board affects or impairs the corporate existence of the NDA or any rights, duties or powers conferred or imposed by this Act upon the NDA or the Board. 40
- (10) No decision of the Board is valid unless passed at a meeting—
- (a) at which the quorum required by section 7(3) was present; and
- (b) held in accordance with the other provisions of section 7.
- (11) A member of the Board who is not in the full-time employment of the State is paid such remuneration and allowances as the Minister determines. 45

Term of office, and disqualifications, of members of Board

6. (1) The Board must be reconstituted every three years in accordance with section 5(1) to (4).
- (2) A member of the Board is eligible for reappointment but may not serve as member of the Board for more than two consecutive terms. 50
- (3) A person who has been appointed to fill a vacancy on the Board is regarded as having served the full term of three years for which the Board was constituted.
- (4) A member of the Board must vacate office if—
- (a) the Minister, on the recommendation of the Board, terminates the member's office for reasons which are just and fair; 55

- (b) the member is convicted of an offence of which dishonesty is an element;
- (c) the member is absent from two or more meetings in one calendar year without the chairperson's permission;
- (d) the member resigns after giving at least 30 days notice in writing of the resignation to the chairperson.

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Meetings of Board

7. (1) The Board must meet at least four times a year at such times and places as the Board determines.

(2) The chairperson, or in the absence of the chairperson, the deputy chairperson—

- (a) may convene a special meeting of the Board; 10
- (b) must convene such meeting within 14 days of the receipt of a written request signed by at least five members of the Board to convene such meeting.

(3) The quorum for a meeting of the Board is at least eight members of the Board.

(4) The Board determines the procedure at its meetings.

(5) The chief executive officer may attend and take part, but may not vote, in a meeting of the Board. 15

(6) A decision of the Board must be taken by resolution of the majority of members present at any meeting of the Board and, in the event of equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

(7) A member of the Board must, as such member, act impartially and in good faith and without fear, favour or prejudice and subject only to the Constitution and other applicable law. 20

(8) If a member of the Board has, in relation to any matter to be considered at a meeting of the Board, any interest which precludes that member from acting in a fair, unbiased and proper manner in respect of his or her membership of the Board, the member may not— 25

- (a) vote or in any other manner participate in that meeting of the Board;
- (b) be present at the venue where the meeting is held.

Management committee

8. (1) At its first meeting or as soon as possible thereafter, the Board must establish a management committee consisting of— 30

- (a) the chairperson and deputy chairperson of the Board;
- (b) two members of the Board referred to in section 5(1)(a), appointed by the Board; and
- (c) two members of the Board referred to in section 5(1)(b), appointed by the Board. 35

(2) At least one member of the management committee must have proven knowledge or experience of financial management.

(3) The chairperson and deputy chairperson of the Board are the chairperson and deputy chairperson, respectively, of the management committee. 40

(4) The management committee must perform such duties and may exercise such powers of the Board as it delegates to that committee in terms of section 12(2).

(5) The management committee must meet as often as is necessary to perform and exercise its duties and powers at such times and places, and in accordance with such procedure, as that committee determines. 45

(6) The chief executive officer may attend and take part in, but may not vote at, a meeting of the management committee.

Chief executive officer and other staff

9. (1) The Board must appoint a chief executive officer for the NDA, who is also the accounting officer of the NDA. 50

(2) The chief executive officer—

- (a) must manage the affairs of the NDA and report on those affairs to the Board as often as the Board requires;

- (b) must as accounting officer, account for all money received by the NDA, the utilisation of such money and the assets of the NDA; and
- (c) must perform such duties and may exercise such powers of the Board as it delegates to the chief executive officer in terms of section 12(2).
- (3) The chief executive officer may do everything which is necessary to perform his or her duties in terms of this Act. 5
- (4) The NDA must enter into a written performance contract, stipulating measurable objectives, with the chief executive officer relating to the performance of that officer's functions in terms of this Act.
- (5) The NDA and the chief executive officer may in writing amend the performance contract from time to time. 10
- (6) The chief executive officer is appointed—
- (a) for such period, but not exceeding five years, as the Board determines; and
- (b) subject to such conditions as the Board, subject to subsection (8), determines.
- (7) On such conditions as the Board, subject to subsection (8), determines, the chief executive officer may appoint such employees as are necessary to enable the NDA to perform its duties and exercise its powers. 15
- (8) The NDA must pay to its chief executive officer and employees out of its funds such remuneration, allowances, subsidies and other benefits as the Minister determines.

Financing 20

- 10.** (1) The funds of the NDA consist of—
- (a) money appropriated by Parliament;
- (b) donations and contributions lawfully received by the NDA from any source;
- (c) interest on investments of the NDA; and
- (d) income lawfully derived from any other source. 25
- (2) The NDA must utilise—
- (a) its funds to cover costs in connection with the performance and exercise of its duties and powers in terms of this Act;
- (b) any money contemplated in subsection (1)(a) in accordance with the statement referred to in subsection (3);
- (c) any donation or contribution contemplated in subsection (1)(b) in accordance with the conditions imposed by the donor or contributor in question. 30
- (3) The NDA must, in each financial year at such time as the Minister determines, submit to the Minister for approval—
- (a) a business plan for the NDA, containing measurable objectives and the other information contemplated in section 11(3)(b) and (c) and such further information as the Minister determines; and
- (b) a statement of the NDA's estimated income and expenditure, 35
- in respect of the following three financial years or such longer or shorter period as the Minister determines. 40
- (4) In any financial year the NDA may submit to the Minister for approval supplementary statements of the NDA's estimated income and expenditure for that financial year.
- (5) The NDA may not enter into any financial commitment beyond its approved budget and its accumulated reserves. 45
- (6) The NDA may—
- (a) invest any unexpended portion of its funds with the Corporation for Public Deposits; or
- (b) with the approval of the Minister, dispose of that portion in any other manner.
- (7) The NDA may establish such reserve funds, and deposit therein such amounts, as the Minister approves. 50

Audit and annual report

- 11.** (1) The Auditor-General must audit the financial statements of the NDA.
- (2) The NDA must table a report on its activities during a financial year in Parliament within three months after the end of that financial year. 55
- (3) The report must—

- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;
- (b) state the extent to which the NDA has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan during the financial year concerned; and
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

Delegation

- 12.** (1) The Minister may delegate to the Director-General: Finance—
- (a) any power conferred on the Minister by this Act, except the power, in terms of section 13, to make regulations;
 - (b) any duty imposed on the Minister by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5 and 6(4)(a).
- (2) The Board may delegate to the management committee referred to in section 8(1) or the chief executive officer any power or duty conferred or imposed on the Board by this Act, except the power to grant money as contemplated in section 4(2)(a).
- (3) The chief executive officer may delegate to any employee of the NDA any power or duty conferred or imposed on that officer by this Act, except any duty as accounting officer of the NDA.
- (4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.
- (5) Any delegation in terms of subsection (1), (2) or (3)—
- (a) must be in writing;
 - (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty;
 - (c) may at any time be withdrawn or amended in writing by that person or body.

Regulations

- 13.** The Minister may, after consultation with the Board and by notice in the *Gazette*, make regulations which—
- (a) may or must be prescribed in terms of this Act;
 - (b) are necessary for the effective administration of this Act.

Short title and commencement

- 14.** This Act is called the National Development Agency Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL DEVELOPMENT AGENCY BILL, 1998

Purpose of Bill

1.1 The purpose of the Bill is to establish a National Development Agency (“NDA”) aimed at promoting an appropriate and sustainable partnership between the Government and civil society organisations to eradicate poverty and its causes.

1.2 The objects of the NDA are—

- (a) to grant funds to civil society organisations to carry out programmes aimed at meeting development needs of poor communities and at strengthening the institutional capacity of other civil society organisations involved in direct service provision to those communities;
- (b) to promote consultation, dialogue and sharing of development experience between civil society organisations and relevant organs of state and to promote debate on development policy; and
- (c) to undertake research aimed at providing the basis for development policy (see clause 3 of the Bill).

Content of Bill

2.1 The Bill proposes that the NDA acts through a board consisting of six government representatives, appointed by the Minister of Finance after consultation with relevant Ministers, and of nine members representing civil society organisations, appointed by the Minister of Finance (see clause 5(1)). The duties and powers of the NDA are set out in clause 4. The Board of the NDA must be reconstituted every three years (see clause 6(1)). The Bill also deals with the appointment of a chairperson and deputy chairperson for the Board, with the filling of vacancies, remuneration and disqualification of members of the Board as well as with meetings of the Board (see clauses 5, 6 and 7).

2.2 Furthermore, the Bill provides for the establishment of a management committee and the appointment of a chief executive officer and other personnel to ensure the effective functioning of the NDA (see clauses 8 and 9).

2.3 Clauses 10 and 11 regulates the financial affairs, and auditing by the Auditor-General, of the NDA as well as annual reporting to Parliament by the NDA.

2.4 Provision is also made for the Minister of Finance, the Board and the chief executive officer to delegate certain of their respective powers and duties (see clause 12).

2.5 The Minister of Finance is enabled to make regulations which are necessary for the effective administration of the provisions of the Bill, if it becomes law (see clause 13).

Consultation

3.1 In April 1996, Cabinet appointed an Advisory Committee to investigate a structural relationship between the Government and civil society organisations. Cabinet accepted a recommendation of that Committee, made in 1997, that a National Development Agency be established to disburse government funding to civil society organisations and to provide a forum for interaction and policy co-ordination between the Government and civil society organisations. A Ministerial Implementation Committee was set up with the mandate to establish the National Development Agency. The Implementation Committee has, through a consultative process and specialist input, developed the Bill.

3.2 Departments/bodies consulted:

Government:

- * Department of Land Affairs
- * Department of Agriculture
- * Department of Education
- * Department of Finance
- * Department of Home Affairs
- * Department of Public Works
- * Department of Water Affairs and Forestry
- * Department of Welfare and Population Development
- * Department of Health

Civil society organisations:

- * NGO Coalition
- * CBO Network
- * The Women's Coalition
- * NEDLAC Development Chamber
- * South African Council of Churches
- * South African National Civic Organisation
- * Transitional National Development Trust

Parliamentary procedure

4. The State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.

