

REPUBLIC OF SOUTH AFRICA

STATE INFORMATION TECHNOLOGY AGENCY BILL

(As amended by the Portfolio Committee on Public Service and Administration (National Assembly))

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 96B—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE STAATSINLIGTINGS- TEGNOLOGIE-AGENTS-KAP

(Soos gewysig deur die Portefeuljekomitee oor Staatsdiens en Administrasie (Nasionale Vergadering))

(MINISTER VIR DIE STAATSDIENS EN ADMINISTRASIE)

[W 96B—98]

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BILL

To provide for the establishment of a company that will provide information technology, information systems and related services to, or on behalf of, participating departments and in regard to these services, act as an agent of the South African Government; and to provide for matters connected therewith.

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

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CHAPTER 1

STATE INFORMATION TECHNOLOGY AGENCY (PTY) LIMITED:
ESTABLISHMENT, INCORPORATION AND RELATED MATTERS

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Definitions

1. In this Act, unless the context otherwise indicates—
- | | | |
|--------|---|----|
| (i) | “ Agency ” means State Information Technology Agency (Pty) Ltd contemplated in section 2(1); (i) | |
| (ii) | “ Board ” means the Board of Directors of the Agency contemplated in section 8; (xii) | 25 |
| (iii) | “ Companies Act ” means the Companies Act, 1973 (Act No. 61 of 1973); (ix) | |
| (iv) | “ department ” means a national department, provincial administration or organisational component listed in Schedules 1 and 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and for the purpose of this Act, the entity known as Infoplan will be regarded as a department; (iv) | 30 |
| (v) | “ incorporation date ” means the date on which the Agency is incorporated as a company in accordance with section 3; (viii) | 35 |
| (vi) | “ information systems ” means applications and systems to support the business whilst utilising information technology as an enabler or tool; (v) | |
| (vii) | “ information systems security ” means to preserve the availability, integrity and confidentiality of information systems and information according to affordable security practices; (vi) | 40 |
| (viii) | “ information technology ” means all aspects of technology which are used to manage and support the efficient gathering, processing, storing and dissemination of information as a strategic resource; (vii) | |
| (ix) | “ Managing Director ” means the Managing Director of the Agency contemplated in section 13; (ii) | 45 |
| (x) | “ Minister ” means the Minister for the Public Service and Administration or any Minister appointed by the President and assigned the power in terms of sections 91(2) and 92(1) of the Constitution, 1996, to be the shareholder on behalf of the State; (x) | |
| (xi) | “ participating department ” means any department making use of services provided by the Agency; (iii) and | 50 |
| (xii) | “ President ” means the President of the Republic of South Africa. (xi) | |

Establishment of Agency

2. (1) A juristic person to be known as State Information Technology Agency (Pty) Ltd is established.
- (2) The Agency will be incorporated as a private company in accordance with section 3. 5

Incorporation of Agency

3. (1) The Minister must effect the incorporation of the Agency as a private company in terms of the Companies Act.
- (2) Despite the provisions of the Companies Act or any other law, the State will be the sole shareholder of the company. 10
- (3) Despite the provisions of the Companies Act—
- (a) the Minister, on behalf of the State, must sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company; and
 - (b) the Registrar of Companies must— 15
 - (i) register the memorandum of association and articles of association as signed by the Minister;
 - (ii) incorporate the company as a private company under the name “State Information Technology Agency (Pty) Ltd”; and
 - (iii) issue to the company a certificate to commence business with effect from the date of the company’s incorporation. 20
- (4) The Agency will initially comprise of—
- (a) the Central Computer Services of the Department of State Expenditure;
 - (b) Infoplan;
 - (c) the sub-component: Information Systems within the Department of Safety and Security; and 25
 - (d) any other department approved by the Minister.
- (5) Departments must participate in the formation of the Agency, subject to subsection (6).
- (6) Participation will be phased in over a period of time as determined, from time to time, by Cabinet on recommendation of the Minister. 30
- (7) The Agency must, at incorporation, be exempt from the provisions of sections 63 and 172 of the Companies Act.

Application of Companies Act to Agency

4. (1) The provisions of the Companies Act will apply to the Agency, except where otherwise stated in this Act. 35
- (2) The Companies Act will not apply to the Agency where the Minister of Trade and Industry has issued a declaration under section 5 of this Act.

Certain provisions of Companies Act not applicable to Agency

5. (1) The Minister, on the recommendation of the Agency, may, from time to time, request the Minister of Trade and Industry to declare any particular provision of the Companies Act not applicable to the Agency. 40
- (2) (a) The request must be fully motivated, and the necessary particulars about the request and the motivation be made known by the Registrar of Companies by notice in the *Gazette*. 45
- (b) In that notice the Registrar must—
- (i) invite interested persons who may have any objections to such a declaration to submit their objections and representations to a person named in the notice; or
 - (ii) if sent by post, not later than 21 days after the date of the notice, place that person in possession of their objections and representations. 50
- (3) The Minister of Trade and Industry may, by notice in the *Gazette*, after having considered the objections and representations received, if satisfied on reasonable grounds that the non-application of that provision to the Agency will—
- (a) contribute to the efficiency of the Agency or will reduce its operating costs;

- (b) not reduce or limit the accountability of the Agency as a public institution or detract from the requirements of transparency regarding its functioning and operations; and
- (c) not be prejudicial to the rights or interests of employees of the Agency or of any other interested party, or to the claims of the creditors of the Agency, 5
- declare, with effect from the date stated in the notice, the whole or part of a provision of the Companies Act not applicable to the Agency.

Objective of Agency

6. The objective of the Agency is to provide information technology, information systems and related services in a maintained information systems security environment to, or on behalf of, participating departments and organs of state and in regard to these services, act as an agent of the South African Government. 10

Powers and functions of Agency

7. (1) To achieve its objective, the Agency may— 15
- (a) provide data processing services;
- (b) provide information technology and information systems training;
- (c) provide application software development and maintenance services;
- (d) promote the effective utilisation of information technology to enhance the efficiency at all levels of the Public Service;
- (e) provide technical, functional and business advice and support regarding information technology; 20
- (f) provide information technology and information systems management services;
- (g) with regard to any of the above functions act as procurement agency in respect of information technology requirements, in accordance with State procurement policy; and 25
- (h) perform any other function which the Minister may, from time to time, determine to give effect to the objective of the Agency.
- (2) The Agency must in the execution of its functions maintain a comprehensive information systems security environment according to approved policy and standards. 30
- (3) The Agency must in the execution of its functions adhere to the policies on information management and information technology and a framework of norms and standards to give effect to such policies, as well as regulations made in this regard by the Minister in terms of the Public Service Act, 1994 (Act No. 103 of 1994), and this Act.

CHAPTER 2 35

GOVERNANCE OF AGENCY

Board of Directors

8. (1) The Agency will be governed and controlled, in accordance with this Act, by a Board of Directors appointed by the Minister after consultation with Cabinet.
- (2) The business and operational plans of the Agency must be approved by the Board of Directors in consultation with the Minister. 40
- (3) The Board of Directors will represent the Agency.

Roles and responsibilities of Directors

9. A Director of the Agency must carry out his or her duties in accordance with the provisions of this Act and the Companies Act. 45

Composition of Board

- 10.** (1) The Board must consist of not more than ten members appointed by the Minister, consisting of—
- (a) a non-executive Chairperson;
 - (b) not more than three executive Directors, one of whom must be designated as the Managing Director; 5
 - (c) additional non-executive members, consisting of—
 - (i) one member representing the Department of Public Service and Administration;
 - (ii) one member representing the Department of State Expenditure; 10
 - (iii) one member as a legal expert; and
 - (iv) other members on the grounds of their expertise.
- (2) A majority of the appointed Directors forms a quorum.
- (3) The Chairperson has a casting vote in addition to a deliberative vote, and on an equality of votes he or she must exercise the casting vote. 15

Terms of office of members of Board

- 11.** (1) A non-executive member of the Board—
- (a) holds office for a period of three years which can be extended, unless a shorter period is stipulated in the letter of appointment of the member;
 - (b) serves as member on the terms and conditions determined by the Minister and specified in the letter of appointment of the member; and 20
 - (c) may resign by giving one month's written notice to the Minister.
- (2) An executive member of the Board may resign by giving notice as stipulated in his or her employment contract.

Service conditions and remuneration 25

- 12.** A member of the Board, except the executive directors and any appointed member who holds a post or office in a department, or any institution, organisation or body established by or under any other law and funded wholly or partly by the State, will be remunerated, on a daily basis at a rate determined by the Minister, from time to time, with the concurrence of the Minister of Finance. 30

CHAPTER 3

MANAGING DIRECTOR

Functions of Managing Director

- 13.** (1) The organisation of the Agency and its day to day business and operations will be under the charge and general management and control of the Managing Director, subject to the general or special directions and instructions that the Board may, from time to time, issue to the Managing Director. 35
- (2) The Managing Director is accountable to the Board, and is the chief administrative and executive officer of the Agency.

CHAPTER 4 40

STAFFING OF AGENCY

Staff of Agency

- 14.** (1) The Managing Director may appoint staff to perform work for the Agency, subject to any general or special direction of the Board.
- (2) The remuneration, allowances and service benefits of the staff of the Agency must be determined by the Board. 45

(3) The normal rules of non-disclosure of information in the Public Service will apply to personnel of the Agency.

(4) In the making of appointments and the filling of posts, the evaluation of persons must be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve an Agency broadly representative of the South African people, including representation according to race, gender and disability. 5

Staff of participating departments

15. (1) All employees involved in the information technology function of the participating departments contemplated in section 3(4), and practitioners in the information technology function of departments contemplated in section 3(5), will be made an employment offer by the Agency, unless otherwise agreed to between the Agency, an employee and the department concerned. 10

(2) The offer will be subject to the following principles:

(a) The total remuneration package, including the comparable monetary value of the service benefits due to them, offered by the Agency, may not be less than those payable or due to them by the previous employer immediately prior to their transfer to the Agency, but the remuneration package must be reconsidered within six months after the offer was made to employees contemplated in section 3(4); 15

(b) all vested rights accrued to the employee must be acknowledged and transferred from the previous employer and associated funds to the Agency; 20

(c) transfer of Infoplan employees who are members of a pension fund registered in terms of the Pensions Fund Act, 1956 (Act No. 24 of 1956), must be done in terms of section 14 of the said Act;

(d) prior to the transfer of the personnel, an agreement must have been reached among the current employers, the Agency and the Minister, and with the concurrence of the Minister of Finance, where applicable, as to whether— 25

(i) certain benefits such as accrued leave and sick leave should be wholly or partially carried over to the Agency; or

(ii) the monetary value of such benefits should be payable wholly or partially to an employee prior to transfer, 30

and the agreement must furthermore stipulate which portion of the costs of the transferred benefits are carried by the previous employer and which portion by the Agency;

(e) the agreement must also deal with the handling of any contractual obligation between the employer and the employee; 35

(f) the offer will only be made to employees who are in the service of the respective employers at the time of the conclusion of the agreement;

(g) personnel in the service of the State and to whom an offer is made and who accept that offer, will not be entitled to voluntary severance package; 40

(h) an officer who is a member of the Government Employees' Pension Fund and who is employed by the Agency may—

(i) choose to become a dormant member of such Fund, and from the date of exercising such a choice, such an officer must, despite the provisions of any other law, be regarded to be a dormant member of the Fund; or 45

(ii) choose to remain a member of the Fund, in which case the Agency will be responsible for the employer's contribution to the Fund; or

(iii) request to become a member of any other approved pension fund and withdraw from the current Fund in accordance with the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996). 50

(3) (a) The Minister or any other Minister may, at the request of the Agency, second an officer to the Agency in accordance with section 15(3) of the Public Service Act, 1994.

(b) For as long as that officer is seconded to the Agency, the Agency must reimburse the relevant department for the remuneration and allowances paid by the department to that officer, and for any other moneys spent by the department on the officer's other service benefits and any other costs to the department arising from the secondment of that officer to the Agency. 55

CHAPTER 5

FINANCIAL MATTERS

Funding of Agency

16. (1) The Agency is funded from monies received for services rendered that are stipulated in the service level agreements entered into with participating departments and organs of state. 5

(2) The rates used for determining the cost of service will be reasonably market related and periodically approved by the Department of State Expenditure.

(3) The Agency will focus on generating maximum efficiency and cost-effectiveness for the State and the Board will recommend to the Minister on the basis of a strategic plan what excess funds will be retained by the Agency and for which purpose. 10

(4) Funding and capital to start operating the Agency must be obtained from funds agreed to between the Minister and the Minister of Finance, after consultation with the participating departments.

(5) Payment for services provided by the Agency to a department or an organ of state will be made according to the stipulations of the business agreement between the parties. 15

(6) (a) Any special funding required or other special financial arrangement, including any government grants, may be negotiated by the Agency with the Minister, the Minister of Finance and any other interested party.

(b) The subsequent agreement will include all conditions to be met relating to such an arrangement. 20

(7) (a) The Agency may, with the approval of the Minister, accept donations and bequests.

(b) Particulars of each donation or bequest accepted by the Agency must be given in the annual report of the Agency. 25

(8) The Department of Public Service and Administration will be responsible for all transfer payments to the Agency approved by the Department of State Expenditure.

(9) The books and records of accounts and financial statements of the Agency will be audited annually by the Auditor-General.

Shareholding 30

17. The rights attached to the shares of which the State is the holder will be exercised by the Minister on behalf of the State.

Nature of financial interest of State

18. (1) The State will be issued with fully paid-up shares in the Agency as specified in an agreement entered into between the Agency and Minister, with the concurrence of the Minister of Finance, in exchange for the assets and liabilities invested in the Agency valued on a method acceptable to the State, but if the State is issued with shares which are less than the nett value of the assets and liabilities invested in the Agency, the Agency will be indebted to the State for the difference between the nett value of the assets so invested and the value of the shares so issued. 35 40

(2) (a) The debt contemplated in subsection (1) will be regarded as a loan by the State to the Agency, the terms and conditions of such a loan must be set out in the agreement.

(b) The agreement must make provision that the Agency may issue the State with debentures for the whole or part of the amount of the loan.

(3) For the purpose of this section, any reference to the nett value of the assets and liabilities invested in the Agency must be understood to mean the value of all the movable, immovable and other property or assets transferred to the Agency, minus the liabilities. 45

Transfer of assets

- 19.** (1) Where an activity of the Agency was performed by a participating department and an asset was held or used by any of the parties referred to in section 3(4) in connection with the performance of that activity, the relevant Head of Department in consultation with his or her Minister must transfer the asset to the Agency. 5
- (2) The transfer of such assets to the Agency must take place by mutual agreement between the participating department and the Agency in consultation with the Minister of Finance, and in the case of a transfer of assets of Infoplan from Denel (Pty) Ltd, the provisions of the Companies Act will apply.
- (3) Despite subsections (1) and (2), the State may transfer assets to the Agency in order to further the objective, powers and functions of the Agency. 10
- (4) The Agency may sell fixed assets only with the approval of the Board in consultation with the Minister.

CHAPTER 6**SERVICE DELIVERY 15****Business Agreement**

- 20.** (1) A business agreement to regulate the relationship between individual participating departments or organs of state and the Agency must be concluded.
- (2) The business agreement must be supported by service level agreements negotiated between individual participating departments or organs of state and the Agency. 20
- (3) Contracts, rights and obligations existing at the time of transfer of assets from participating departments or organs of state must be ceded to the Agency.

CHAPTER 7**GENERAL AND MISCELLANEOUS PROVISIONS****Intellectual property 25**

- 21.** (1) Despite any provision in any other law, all intellectual property rights, in any product, service, item, method or any other thing of any nature vested in any participating department or organ of state relating to information technology or information systems will vest in the Agency.
- (2) The Board of Directors is empowered to direct how such product, service, item, method or any other thing of any nature is to be utilised by the Agency in the achievement of its objective. 30

Dissolution of Agency

- 22.** The Agency will be dissolved according to the terms and conditions determined by the Minister in consultation with the Cabinet. 35

Regulations

- 23.** The Minister may make regulations regarding— 40
- (a) the functions to be performed by the Agency;
 - (b) the appointment of Directors to the Board;
 - (c) the security requirements of the different departments and organs of state;
 - (d) the security clearance of staff;
 - (e) transitional arrangements with regard to the formation of the Agency; and
 - (f) any other matter which the Minister may consider necessary to prescribe in order to achieve the objects of this Act.

Accountability 45

- 24.** (1) The Agency is accountable to the Minister.

(2) The Agency must compile an annual report and submit it to the Minister, who must table that report in Parliament.

(3) The Agency must comply with the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), as applicable to listed entities.

State bound by this Act

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25. This Act binds the State.

Short title and commencement

26. (1) This Act is called the State Information Technology Agency Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

(3) A reference in this Act to its commencement must be construed as a reference to the applicable dates so fixed.

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MEMORANDUM ON THE OBJECTS OF THE STATE INFORMATION TECHNOLOGY AGENCY BILL, 1998

1. After exhaustive investigation and consultation into the problems surrounding the information technology function in the Public Service, it was decided to create, in terms of the Companies Act, a fully State-owned Information Technology Agency outside the Public Service. The establishment of SITA is prompted by the fact that the information technology function within the Public Service has not been able to adequately address the demands of economic, efficient and effective administration. Government has been unable to recruit and retain appropriately skilled personnel, which has resulted in an inability to manage information technology procurement and the effective utilisation of expensive information technology resources. Two basic business principles are pursued with the establishment of SITA, namely, the opportunities to increase efficiency by pooling resources and the opportunities to reduce costs and improve service delivery to the public.

2. Such an Agency must be regulated by national legislation. Consequently, ways are being proposed in this Bill to—

- (a) incorporate the Agency, including shareholding by the State;
- (b) deal with the structure and appointment of a board of Directors;
- (c) arrange the appointment of a Managing Director;
- (d) provide for the staffing of the Agency and financial matters;
- (e) regulate service delivery; and
- (f) deal with general issues, like accountability to Parliament.

CONSULTATION

3. The following interested parties were consulted:

- All national departments and organisational components.
- All provincial administrations.
- Public service trade unions.
- Office of the Auditor-General.

PARLIAMENTARY PROCEDURE

4. In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996).

