

REPUBLIC OF SOUTH AFRICA

AFRICA INSTITUTE OF SOUTH AFRICA BILL

*(As amended by the Portfolio Committee on Arts, Culture, Science and Technology
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 47B—2001]

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BILL

To establish a juristic person to be known as the Africa Institute of South Africa which is to succeed the company known as the Africa Institute of South Africa; to state its objectives; to establish a Council to control, manage and direct the affairs of the Institute; to provide for the composition, management and functions of the Council; to provide for the staff of the Council and ancillary matters; to provide for the deregistration of the Company known as the Africa Institute of South Africa and for transitional matters; and to provide for matters incidental thereto.

PREAMBLE

RECOGNISING THAT—

- the Government of the Republic of South Africa and its people are committed to the revival and development of the African continent in the twenty-first century;
- the transformation of the Africa Institute of South Africa, which has been set in motion by the review process of the Department of Arts, Culture, Science and Technology, continues to remove the legacy of its apartheid past;

NOTING—

- the commitment of the Government of the Republic of South Africa with regard to the establishment of the Africa Union and the implementation of the New Africa Initiative;

AND BEARING IN MIND THAT—

- the Africa Institute of South Africa will provide research and policy development support in its pursuit of programmes which will contribute to the further development of the African continent;
- the Africa Institute of South Africa will conduct research and embark on training programmes which will foster continental patriotism and promote increased awareness and understanding of the African continent among the people of South Africa; and
- the Africa Institute of South Africa will establish, participate in and maintain networks on the African continent which will contribute to the peaceful development and prosperity of the continent,

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

Definitions

1. In this Act, unless inconsistent with the context—
 - “CEO” means the chief executive officer appointed in terms of section 12(1); 5
 - “Council” means the Council of the Institute established by section 4;
 - “Department” means the Department of Arts, Culture, Science and Technology;
 - “executive committee” means the executive committee established in terms of section 9;
 - “financial year” means the period from 1 April in any year to 31 March in the 10 following year;

“Institute” means the statutory body Africa Institute of South Africa established by section 2;

“Minister” means the Minister of Arts, Culture, Science and Technology;

“prescribed” means prescribed by regulation;

“regulation” means a regulation made under this Act;

“this Act” includes the regulations.

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Establishment of Institute

2. A juristic person known as the Africa Institute of South Africa is hereby established.

Objectives of Institute

3. The objectives of the Institute are to— 10

- (a) promote knowledge and understanding of African affairs through leading social scientists acting in concert and across all disciplines and through training and education on African affairs;
- (b) collect, process and disseminate information on African affairs, give effective advice and facilitate appropriate action in relation to the collective needs, opportunities and challenges of all South Africans; and 15
- (c) to promote awareness and consciousness of Africa at grassroots level.

Establishment and composition of Council, tenure of office and filling of vacancies

4. (1) A Council is hereby established which must control, manage and direct the affairs of the Institute. 20

(2) The Council consists of—

- (a) at least seven members, but not more than ten, appointed by the Minister in the prescribed manner;
- (b) a representative of the Department;
- (c) a maximum of two members co-opted by the Council in consultation with the Minister; and 25
- (d) the CEO of the Institute, who is *ex officio* and does not have voting powers.

(3) The composition of the Council must be broadly representative of the gender, language and community composition of the Republic.

(4) The members of the Council contemplated in subsection (2) must be appointed in accordance with the principles of transparency and representativity. 30

(5) At least one of the members appointed to the Council must have experience in financial matters.

(6) A member of the Council—

- (a) is appointed for a period of three years, unless a shorter period is prescribed; and 35
- (b) whose period of office has expired, may be re-appointed.

(7) If a member of the Council dies or vacates the office before the expiration of the period for which the member has been appointed, another person may be appointed by the Minister in the prescribed manner to fill the vacancy for the unexpired portion of the period for which the member was appointed in terms of subsection (2). 40

(8) A member of the Council who is not in the full-time employ of the State may receive out of the funds of the Council, in respect of his or her functions as member, the allowances which the Minister, in consultation with the Minister of Finance, determines.

(9) The Minister shall after consultation with members of the Council appoint a chairperson from among the members of the Council. 45

(10) The Minister may in the prescribed manner dissolve the Council.

Qualifications of members of Council and circumstances under which they vacate office

5. (1) The members of the Council must be persons who have special knowledge of or experience in African affairs or who have specialist skills which are not directly related to African affairs, but which would be beneficial to the Council. 50

(2) No member of the Council may hold office in any political party or political organisation.

(3) No person may be appointed as a member of the Council— 55

- (a) if that person is an unrehabilitated insolvent;
 - (b) if that person has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine, or, in the case of fraud, to a fine or imprisonment or both; or 5
 - (c) unless that person is a South African citizen or permanently resident in the Republic.
- (4) A member of the Council must vacate his or her office if he or she—
- (a) becomes disqualified in terms of subsection (3) from being appointed as a member of the Council; 10
 - (b) is, according to law, detained as a mentally ill person;
 - (c) has, without the leave of the Council, been absent from three consecutive meetings of the Council;
 - (d) materially breaches the code of ethics of the Council;
 - (e) resigns by written notice addressed to the Minister; or 15
 - (f) fails to perform his or her duties efficiently.

Functions of Council

6. (1) In order to achieve the objectives of the Institute, the Council may—
- (a) at the request of any person or on its own initiative, investigate matters of public interest and on the strength of the findings act in an opinion-forming and advisory manner; 20
 - (b) publish scientific reports and other publications;
 - (c) promote outstanding achievements in the different fields of African cultural life and grant recognition for excellence;
 - (d) generally promote interest in social science education; 25
 - (e) establish reciprocal arrangements with organisations with similar objectives, locally and overseas, in order to promote the exchange of information and ideas;
 - (f) acquire rights and privileges which it considers necessary or appropriate;
 - (g) receive or make donations, grants and endowments; 30
 - (h) purchase, take on lease, or in exchange hire or otherwise acquire movable or immovable property, and erect any building;
 - (i) invest funds upon such security as it may from time to time determine;
 - (j) with the prior written approval of the Minister—
 - (i) raise or borrow money in such manner as it deems fit, that is by way of mortgage bonds or by the issue of debentures secured by mortgage bonds upon all or any part of properties held by the Institute, but against no other security than the assets of the Institute; 35
 - (ii) sell, improve, lease, mortgage, dispose of, alienate or otherwise deal with all or any of the immovable property or collections, listed in the accessions register, of the Institute; 40
 - (k) appoint, fix the remuneration of and discharge officers of the Institute; and
 - (l) do all such things as are conducive to the attainment of the objectives of the Institute and, from time to time review its structure, organisation and programmes. 45
- (2) The Council must, in line with its objectives—
- (a) advise the Minister on matters concerning African affairs;
 - (b) submit minutes of all meetings to the Minister for his or her information;
 - (c) publish information on the objectives of the Institute and the functions of the Council; 50
 - (d) perform such duties as the Minister may assign to it; and
 - (e) undertake such investigations and research concerning the objectives of the Institute as the Minister may assign to it.
- (3) The Council may not itself establish, acquire or operate any organisation or institution connected with African affairs, but may initiate projects which it considers necessary in pursuit of the objectives of the Institute: Provided that such projects must be undertaken in partnership with existing organisations or institutions which have the capacity to undertake such projects. 55

Performance of functions outside Republic

7. (1) The Council may, in order to achieve the objectives of the Institute, render such support as may be prescribed, to any person who is a South African citizen in any territory outside the Republic.

(2) This Act must, as far as it can be applied and with the necessary changes, apply in connection with the performance by the Council of its functions under subsection (1), as if the territory in which it so performs those functions, were part of the Republic. 5

Meetings of Council

8. (1) The Council must meet at least three times a year and meetings shall be held at such times and places as the chairperson may determine by notice in writing to the other members. 10

(2) The chairperson may at any time convene a special meeting of the Council, which must be held at such time and place as the chairperson may direct.

(3) A quorum for a meeting of the Council is the simple majority of its members.

(4) Any decision of the Council must be taken by resolution of the simple majority of the members present at any meeting of the Council, and in the event of an equality of votes on any matter, the person presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a member of the Council. 15

(5) A member of the Council may not vote or in any manner participate in the proceedings at any meeting of the Council, nor be present at the venue where such a meeting is held if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner. 20

Executive committee

9. (1) The Council must establish an executive committee which consists of— 25

- (a) the chairperson;
- (b) the vice-chairperson; and
- (c) such other members of the Council, not exceeding five, as the Council may determine.

(2) The executive committee established in terms of subsection (1) must perform the functions delegated to it by the Council. 30

(3) The chairperson of the Council must be the chairperson of the executive committee.

(4) The executive committee must meet at such times and places as the chairperson of that committee may determine and a quorum for a meeting of the executive committee is the simple majority of its members. 35

Committees of Council

10. (1) The Council may establish one or more other committees to which it may delegate any power and assign any duty, conferred or imposed on it by this Act.

(2) A committee referred to in subsection (1) may consist of such number of members of the Council and employees of the Council, if any, as the Council may deem necessary, and the Council may at any time dissolve or reconstitute any such committee. 40

(3) If a committee has more than one Council member, the Council must designate one such member to be the chairperson thereof.

(4) The Council is not divested of any power or relieved of any function it so delegated or assigned to a committee. 45

(5) Such delegation or assignment must be communicated to the delegatee in writing.

(6) The Council shall establish a committee which shall be responsible for promoting the objectives of the Council in terms of section 3(c).

Advisory panels

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11. (1) The Council may establish an advisory panel for every field of social science it deems necessary.

(2) Every advisory panel must consist of no more than five persons who have achieved distinction or have special knowledge of or experience in the field of African affairs in question, and who are not members of the Council.

(3) An advisory panel must advise the Council on any matter relating to the field of African affairs for which it was established.

(4) A member of an advisory panel must be appointed on such conditions, including conditions relating to honoraria and reimbursement of expenses for attending meetings and for services rendered, as the Minister, with the concurrence of the Minister of Finance, may determine.

(5) The Council may on reasonable grounds terminate the membership of a member of an advisory panel.

(6) Members of advisory panels are not eligible for grants from the Council during their tenure.

CEO

12. (1) The Council must, in consultation with the Minister, appoint a full-time CEO for the Council.

(2) The CEO shall be responsible for the management of the affairs of the Council and must report to the Council on those affairs as often as may be required by the Council.

(3) The CEO must be appointed for a maximum period of five years and subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Council may, subject to section 14(1)(b), determine, and may be reappointed for a similar period on the expiry of his or her period of office.

(4) Whenever the CEO is absent for any reason or unable to carry out his or her duties, or whenever there is a vacancy in the office of the CEO, the Council may, subject to such conditions and the payment of such remuneration and allowances as it may determine in the manner contemplated in subsection (3), appoint an employee of the Council to act as CEO during such absence or inability, or until a CEO has been appointed in terms of subsection (1), and that employee shall, whilst so acting, have all the powers and perform all the duties of the CEO.

Accounting officer

13. (1) In addition to the functions entrusted to the CEO by or under this Act, he or she shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof, and also be responsible for the property of the Council.

(2) The accounting officer may—

- (a) delegate to an employee of the Council a power conferred upon the accounting officer by or under this Act; or
- (b) authorise an employee to perform a duty assigned to the accounting officer by or under this Act.

(3) A delegation or authorisation under subsection (2) does not prohibit the exercise of the power or the performance of the duty in question by the accounting officer, nor does it absolve the accounting officer from any responsibility therefor.

Staff and conditions of service

14. The Council—

- (a) may, subject to paragraph (b) and on such conditions as it may determine, appoint such number of employees as it deems necessary to enable the Council to perform its functions;
- (b) must, out of its own funds, pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance; and
- (c) may, on such conditions as it may deem fit and if the employee consents thereto, second an employee, either for a particular task or for a period of time, to the service of a department of state, an organisation or institute in the Republic on condition that the rights, privileges and benefits of such an employee, by virtue of his or her conditions of service as an employee of the Council, are not adversely affected by such secondment.

Financing

15. (1) The funds of the Council consist of—
- (a) money appropriated by Parliament to finance the functions of the Council;
 - (b) money paid to the Council by users of its services;
 - (c) donations or contributions lawfully received from any source; 5
 - (d) interest on investments; and
 - (e) income derived under this Act from any other source.
- (2) The Council must utilise—
- (a) any money contemplated in subsection (1)(a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to subsection (1)(a), the Council may utilise any amount or portion of any amount required to be so utilised for a particular or any other purpose in connection with a specified matter: Provided further that the Council, with the approval of the Minister, may utilise any balance of such money of the Council remaining at the end of the financial year for any expenses in connection with the performance of its functions; and 10 15
 - (b) any donations or contributions contemplated in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned. 20
- (3) The Council must—
- (a) in each financial year, at such time as the Minister may direct, submit a statement of the Council's estimated income and expenditure during the following financial year, and the Council may also during the course of a financial year submit supplementary statements of the Council's estimated expenditure for that financial year to the Minister for approval, to be granted with the concurrence of the Minister of Finance; and 25
 - (b) not incur any expenditure in excess of the total amount approved under paragraph (a).
- (4) The Council may— 30
- (a) in respect of any work completed or service rendered by it under this Act, charge such fees or make such other financial arrangements as it may deem fit;
 - (b) invest any portion of its funds not spent with the Corporation for Public Deposits; and
 - (c) establish such reserve funds and deposit therein such amounts as the Minister may approve with the concurrence of the Minister of Finance. 35

Auditing, annual and financial reports

16. (1) The Auditor-General must audit the accounts and balance sheet of the Council.
- (2) The Council must—
- (a) furnish the Minister with such information as he or she may call for in connection with the activities and financial position of the Council; and 40
 - (b) submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure certified by the Auditor-General and such other particulars as the Minister may require.
- (3) The Minister must table the report referred to in subsection (2)(b) in Parliament within 14 days after receipt thereof if Parliament is in session or, if Parliament is not then in session, within 14 days after the commencement of its next session. 45

Losses and damages

17. (1) If a person who is or was in the employ of the Council caused the Council any loss or damage because he or she is or was responsible for— 50
- (a) the failure to collect money due to the Council;
 - (b) an irregular payment of money of the Council or for payment of such money not supported by a proper voucher;
 - (c) fruitless expenditure of money of the Council owing to failure to carry out his or her duties; 55
 - (d) a deficiency in, the destruction of, or any damage to the Council's money, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other property of the Council;

- (e) a claim against the Council owing to failure to carry out his or her duties efficiently,
the accounting officer must determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the Council, within 30 days from the date of such notice, the whole or any part of the amount so determined: Provided that the accounting officer may not make such an order before the person concerned has been afforded an opportunity to make representations in writing to the accounting officer regarding the loss or damage which the person is alleged to have caused. 5
- (2) If the person contemplated in subsection (1) fails to pay the amount within the period stipulated in the notice in question, the— 10
- (a) amount may, subject to subsections (3) and (4), be deducted from his or her monthly salary: Provided that such deduction may not in any month exceed one fourth of such monthly salary; and
- (b) accounting officer may, subject to subsections (3) and (4), recover the amount from such person by way of legal process. 15
- (3) If, within the period stipulated in the notice in question, the person makes an offer to pay the amount in instalments, the accounting officer may allow payment in such instalments as may be reasonable.
- (4) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of 30 days from the date of the order, appeal in writing against such order to the Council, stating the grounds of appeal, and the Council may, after such investigation as may be necessary, dismiss the appeal or order that the appellant be exempted, either wholly or partly, from the payment of such amount. 20

Delegations

18. (1) The Council may— 25
- (a) delegate to the chairperson, CEO or any other employee of the Council, any power conferred upon the Council by or under this Act, on such conditions as the Council may determine; or
- (b) authorise the chairperson, CEO or any other employee of the Council to perform any duty assigned to the Council by or under this Act. 30
- (2) The CEO may—
- (a) delegate any power conferred upon him or her by or under this Act to an employee of the Council; or
- (b) authorise an employee of the Council to perform any duty assigned to him or her by or under this Act. 35
- (3) A delegation or authorisation under subsection (1) or (2) does not preclude the exercise of the power in question by the Council or the CEO, as the case may be.

Deregistration of Company known as Africa Institute of South Africa

19. (1) At the commencement of this Act—
- (a) the board of directors of the Company known as the Africa Institute of South Africa is deemed to be the first Council, and such board of directors is for all purposes deemed to have been elected and appointed in terms of section 4; 40
- (b) all the assets, rights, liabilities and obligations of the Company pass to the Council; and
- (c) the Registrar of Companies must immediately deregister the Company in terms of the Companies Act, 1973 (Act No. 61 of 1973). 45
- (2) If the Company was the owner of any immovable property which passed to the Council in terms of this section, the Registrar of Deeds concerned must, at the request of the Council, make such entries or endorsements in or on any relevant register, title deed or any other document as he or she may deem necessary for the transfer of the property in terms of this section. 50
- (3) No transfer duty, stamp duty or other taxes or fees of office are payable by the Council in order to give effect to the provisions of this section.

Regulations

20. (1) The Council may, subject to the approval of the Minister, make regulations regarding— 55
- (a) the procedure to be followed at meetings of the Council;

- (b) a code of conduct for members of the Council and advisory panels in order to prevent conflicts of interest and to prevent the Council from being brought into disrepute; and
 - (c) disciplinary action and grievance procedure for staff.
- (2) The Minister may make regulations regarding— 5
- (a) any matter which may be prescribed in terms of this Act; and
 - (b) any other matter which he or she may deem necessary or expedient to prescribe in order to achieve the objectives of this Act.
- (3) The Council or the Minister may only, in consultation with the Minister of Finance, make a regulation relating to state revenue or expenditure. 10

Short title and commencement

21. This Act is called the Africa Institute of South Africa Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE AFRICA INSTITUTE OF SOUTH AFRICA BILL, 2001

BACKGROUND

1. The Bill provides for the establishment, objectives and functions of a juristic person known as the Africa Institute of South Africa ("AISA"). AISA is an autonomous, non-partisan organisation, registered under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), as an association not for gain. The aim of the Bill is to establish AISA as an institution with its own institution-specific Act. The Institute's main functions are to collect, process, interpret and disseminate information, findings and analyses on African and Southern African affairs. By bringing AISA into the family of science and technology (s&t) institutions regulated by institution-specific Acts administered by the Department of Arts, Culture, Science and Technology—

- (a) the necessary interaction promoting multi-disciplinary approaches will be enhanced;
- (b) the allocation of funds according to s&t and national priorities will be promoted;
- (c) the Minister will be able to ensure the appointment of an appropriate Council; and
- (d) the Minister will be able to guide and evaluate the activities of the Institute in collaboration with the Council of AISA.

2. AISA has grown in stature and has established itself as an internationally recognised research and information centre. The Institute's main functions are to collect (through its library and monitoring service), process, interpret (by means of research) and disseminate (through periodicals and other publications, seminars, workshops, conferences and commentary to the mass media) information, findings and analyses on African and especially Southern African affairs. The major portion of its income is derived from a Parliamentary grant, and this is supplemented by self-generated funds from commissioned contract research and other consultancy services, membership fees, modest donations from the corporate sector and income from the sale of publications. As the principal, state-supported and nationally-based organisation for the study of African affairs, the Institute has a public education role, namely to inform South African society at large, including politicians, professionals and laypersons, about trends and events in Africa. The governing Council of AISA is at present composed of six representatives elected by members of the Institute, three representatives from the South African universities, and one representative appointed by the main funding body, the Department of Arts, Culture, Science and Technology ("the Department"). The following considerations underlie the proposal to establish AISA as a statutory institution regulated by its own Act:

- (a) AISA is basically a research organisation focusing on Africa. However, as a section 21 company it is somewhat isolated from the rest of the statutory s&t system. By bringing it into the family of s&t institutions regulated by institution-specific Acts administered by the Department and other departments, the necessary interaction promoting multi-disciplinary approaches will be enhanced.
- (b) By bringing AISA into the system of s&t institutions funded by way of the "Science Vote", the allocation of funds according to s&t and national priorities, including competitive bidding, will be promoted.
- (c) By administering AISA through a specific Act, the Minister will be in a stronger position to guide and evaluate the activities of the Institute in collaboration with the Council of AISA.
- (d) By appointing the chairperson and the majority of the members of the Council of AISA, the Minister will be in a position to ensure the appointment of a competent Council to promote the activities of AISA against the background of South Africa's interaction with the rest of Africa.

OTHER DEPARTMENTS OR BODIES CONSULTED

3. The Heads of Organisations of Research and Technology (COHORT).
The Council of the Africa Institute of South Africa (AISA).
Department of Education (DG level).
Department of Foreign Affairs (DG level).

All other national departments (legal sections).
The National Science and Technology Forum.

FINANCIAL IMPLICATIONS FOR STATE

4. None.

PARLIAMENTARY PROCEDURE

5. The State Law Advisers and the Department of Arts, Culture, Science and Technology are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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