

The SABC has in recent times been delegated the function of managing the broadcasting services frequency bands. Therefore, the Postmaster General is not at present, in a real sense, managing the broadcasting services frequency bands.

It is the unanimous view of the technical committee that the IBA cannot fulfill its role as the independent broadcasting regulator if it is simply a licensing department which is beholden to the frequency planning of the Postmaster General, who, as a state official, is not regarded as sufficiently independent from the State to continue to perform powers, functions and duties in relation to broadcasting.

The IBA's frequency planning responsibilities, as contained in this Bill, are fundamental to the proper and orderly regulation of broadcasting services. Without the power to draft a frequency plan in accordance with the provisions of the proposed IBA Bill, the IBA cannot make either informed or expeditious decisions with regard to the licensing of public, private and community broadcasting services.

The provisions of the Radio Act concerning the regulation by the Postmaster General of broadcasting are, in any event, outdated and are not adequate to deal with a new, independent and transparent regulatory environment.

The technical committee must therefore continue to liaise with a representative of the Postmaster General concerning amendment of the Radio Act in order to effectively transfer certain powers from the Postmaster General to the IBA. Section 29(1) of the IBA Bill is the first attempt by the technical committee to deal with this eventuality. However, it is not inconceivable that this section may be further amended in the light of amendments still to be made to the Radio Act.

Section 30: Broadcasting Technical Committee

The IBA Bill now spells out in more detail the responsibilities of the Broadcasting Technical Committee. Section 30(g) is one of the more important provisions in that it takes into account the reality that, once that IBA Bill becomes law, there will be two bodies responsible for frequency regulation, namely the Postmaster General (telecommunications frequencies other than those used by broadcasting services) and the IBA (broadcasting services frequency bands).

In terms of section 30(g), the Broadcasting Technical Committee will liaise "with the Postmaster General or any person or body being the telecommunications regulator, with a view to preventing harmful interference with the services of licensees by other users of the frequency spectrum."

Another important new provision is section 30(i) of the IBA Bill. This provision makes the Broadcasting Technical Committee responsible for "liaison and negotiations with the relevant administrations responsible for the management of the broadcasting services frequency bands in neighbouring countries".

The technical committee has been led to believe that certain persons may attempt to bypass the provisions of the IBA Bill by setting up, in neighbouring countries, broadcasting services whose primary target audience will be sections of the South African public.

Section 30(i) is therefore intended to enable the IBA to assist the Interim Government of National Unity in negotiating bilateral or multilateral agreements with Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe with a view to regulating cross-border broadcasting.

In this regard, the technical committee notes that such an agreement already exists between the South African and Bophuthatswana governments.

Chapter 6 (Sections 32-38): Broadcasting Signal Distribution Licences

This chapter, dealing with broadcasting signal distribution licences, has been substantially reworked. Provision has been made for three categories of broadcasting signal distribution licences and for the 'grandparenting' of persons who presently provide broadcasting signal distribution.

Sections 41-44: Procedures for the application and renewal of broadcasting licences

The procedures for the application and renewal for broadcasting licences have been redrafted.

Section 45(3) and (4); and section 46(2) and (3): 'Grandparenting' Provisions

The technical committee draws the Negotiating Council's attention to the 'grandparenting' provisions contained in section 45(3) and (4) and section 46(2) and (3). It should be noted that the vested economic rights of existing broadcasting services will be preserved, with the proviso that licence conditions, insofar as they are inconsistent with the provisions of this Bill, may be excised.

Sections 48, 49, 50; and Schedule 4: Limitations on the control of broadcasting services

These sections have been reworked and must be read with Schedule 4 which contains guidelines as to what is understood by "control".

Section 49(6):

Amendment of limitations on control of private broadcasting services

The limitations on the control of private broadcasting services will be critically important for the regulatory aim of diversity of ownership and control. However, there is one view in the technical committee that the procedure for amending the limitations, as provided for in section 49(6) of the Bill, is too cumbersome and inflexible in that it involves the making of recommendations to the Minister who must then table such recommendations in Parliament. This view would prefer the IBA to be able to depart from the limitations either by regulation or following an inquiry, if such departure is necessitated by developments in broadcasting technology and for the purposes of advancing the objects and principles as enunciated in section 2. The technical committee has not yet been able to formulate a clause that would give effect to this view without, at the same time, completely derogating from the limitations contained in the preceding subsections.

Section 51:

Prohibition on the granting of broadcasting licences to political party

This section has been amended following the Negotiating Council debate on the fifth draft and in the light of the new definition of political party.

Section 56(2):

Code of Conduct and exemptions

The technical committee has incorporated the proposal by certain members of the *ad hoc* committee that not only the Code of Conduct of the self-regulatory body but also its disciplinary mechanisms should be acceptable to the IBA.

Section 58:

Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

The Negotiating Council debate on the tenth draft of the Independent Media Commission Bill, held on 18 August, refers.

The SABC and M-Net submissions have since been made available to the Negotiating Council.

The technical committee has taken note of the SABC's suggestion that if political advertising is disallowed on television, party election broadcasts could only be catered for (on a limited basis) on TV1 and CCV-TV if the SABC was compensated by the State (or the TEC).

Unfortunately, there seems to be no way of quantifying the pecuniary loss to the SABC if it carried such party election broadcasts free of charge. Furthermore, any losses suffered by the SABC could, by its own admission, also be as a result of a "loss of normal advertising income as a result of commercial advertisers being uncomfortable with advertising their products in proximity to election broadcasts and related material".

The remaining possibility is that the SABC could only carry party election broadcasts on TSS. The SABC states that "TSS can carry a full hour or more of daily material ranging from voter education to Party Election Broadcasts - and do so in prime time". This channel carries no advertising and therefore the loss of advertising revenue is not a relevant factor. However, the technical committee wishes to point out that while TSS reaches "53,3% of the total population and 70% of all households with television sets", no reliable viewership figures seem to be available.

If both party election broadcasts and political advertising are allowed on television, the SABC has suggested that the former could be funded by revenue generated by the latter.

The document appended to the SABC submission, entitled "Political Advertising Campaigns: An Overview of Media Type Effectiveness" concludes that "television is a cost effective medium in terms of audience delivery. In fact it is more cost effective than print media (newspapers and magazines). There is sufficient motivation to use TV in the media mix for political advertising irrespective of the budget".

Whilst the technical committee does not dispute the figures submitted by the SABC, the issue is not the **cost effectiveness** of political advertising on television in comparison to radio advertising and print media advertising, or the cost effectiveness of television advertising **per se**. Rather, the main issue is the **total cost** to the political parties of funding political advertising. By adding television costs to radio and print media costs, certain parties will clearly be disadvantaged.

The technical committee remains of the view that political advertising should not be allowed on television.

If party election broadcasts are to be allowed on television without any form of compensation by the State (TEC), then it must be borne in mind that the SABC will only be able to carry party election broadcasts on TSS, the viewership limitations of which have already been pointed out.

In conclusion, the technical committee wishes to stress that whatever decision is taken by the Negotiating Council on party election broadcasts or political advertising on television, such decision should **mutatis mutandis** apply to BOP-TV (the only other public television broadcasting service).

Sections 59, 60 and 61:

Provisions on party election broadcasts, political advertisements and equitable treatment of political parties

The Negotiating Council debate on the 10th draft of the Independent Media Commission Bill, held on 18 August, refers.

Chapter 9 (Sections 62-67):

Enforcement

This entire has been substantially reworked.

Certification of Bill

This draft has progressed substantially towards certification by the State Law Adviser. However, sections of the Radio Act, 1952 (Act No.3 of 1952), the Broadcasting Act, 1976 (Act No.73 of 1976) and the Post Office Act, 1958 (Act No.44 of 1958) must still be amended or repealed in order to give effect to the provisions of this Bill.

SIXTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

A... Clauses unchanged and approved

1(1) (elaborate); 2(1), (2), (3), (4), (5)(b) and (c), (7), (8), (9), (10), (11), (15), (16), (17), (18); 3(1), (2); 4(1); 5(1)(b), (c), (e), (h), (i) and (k); 6(1), (2), (3), (4); 9(1)(a) and (b); 9(2); 10(1), (2), (3), (4), (5); 11(2); 12; 14(1), (2), (3); 15(1); 21(1); 22(1); 23(2), (3); 24; 25; 27(2), (3), (4); 28(1), (2), (3), (6); 32; 33(3); 39; 46(1); 47(a), (c) and (d); 48(1)(a), (2); 49(1), (2), (3), (4), (5); 50(1); 55; 58; 59(3), (5), (7); 60(4), (6); 69(3); 70(1); 71; 75; 80; 81; 82.

B... Clauses reworded for reasons of drafting only (including new clauses)

1(1)(elaborate); 2(6), (12), (13), (14), (19), (20), (21); 4(2); 5(1)(a); 6(5); 7; 8; 9(1)(c); 11(1), (3); 13; 14(4); 15(2), (3); 21(2); 23(1), (4); 27(1); 28(7), (8); 34; 35; 38; 40; 43; 44; 45(1), (2); 47(2); 49(6); 50(2); 53; 54; 56(1); 57(1), (2), (3); 59(2), (4), (6); 60(1), (3), (5), (7); 61(1), (2), (3); 62; 69(1), (2); 70(2), (3); 72; 73; 74; 76; 77.

C... Clauses which have been substantially changed

1(1)(elaborate); 2(5)(a); 3(3); 5(1)(d), (f), (g) and (j); 5(2), (3); 10(6); 16; 17; 18; 19; 20; 22(2), (3); 28(4), (5); 29; 31; 33(1), (2), (4); 40; 41; 42; 45(3), (4); 46(2), (3); 47(b); 48(1)(b); 51; 52; 56(2); 57(4); 59(1), (8); 60(2); 61(4); 66; 67; 69(4).

D... Clauses of substance introduced by the Technical Committee

26; 30; 35; 37; 63; 64; 65; 68; 78; 79.

**EMBARGOED UNTIL DELIVERY/TABLING
IN THE NEGOTIATING COUNCIL**

INDEPENDENT BROADCASTING AUTHORITY BILL

(WORKING DRAFT 6)

***Prepared for discussion by the Technical Committee on the Independent Media Commission
and the Independent Telecommunications Authority, Multi-Party Negotiation Process***

20 August 1993

INDEPENDENT BROADCASTING AUTHORITY BILL

To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish the Independent Broadcasting Authority; to define its powers, functions and duties; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

ARRANGEMENT OF ACT

Chapters, Subject

Sections

Schedules,

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Section 1 Definitions

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- Section 5** *Persons disqualified from being or remaining councillors*
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- Section 13** *General or ancillary powers of Authority*
- Section 14** *Staff of Authority*
- Section 15** *Financing of Authority*
- Section 16** *Raising of loans by Authority*
- Section 17** *Banking account*
- Section 18** *Investment of surplus moneys of Authority*
- Section 19** *Accounting and auditing*
- Section 20** *Annual report*

Chapter 4 COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

- Section 21** *Establishment and appointment of standing committees of Council*
- Section 22** *Constitution of standing committees*
- Section 23** *Establishment, appointment and constitution of special committees of Council*
- Section 24** *Powers, functions and duties of committees*
- Section 25** *Meetings of Committees*
- Section 26** *Remuneration and allowances of committee members*
- Section 27** *Appointment of experts*
- Section 28** *Inquiries by Authority*

Chapter 5 BROADCASTING FREQUENCY SPECTRUM MANAGEMENT

- Section 29** *Authority vested with exclusive powers in relation to administration, management and planning of broadcasting services frequency bands*
- Section 30** *Broadcasting Technical Committee*

Section 31 *Frequency plan*

Chapter 6 **BROADCASTING SIGNAL DISTRIBUTION LICENCES**

Section 32 *Prohibition on the provision of broadcasting signal distribution without a licence*

Section 33 *Granting of broadcasting signal distribution licences*

Section 34 *Procedures for granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences*

Section 35 *Transmitters and transmission characteristics to be approved by Authority*

Section 36 *General obligations of broadcasting signal distribution licensees*

Section 37 *Obligations of common carrier regarding provision of broadcasting signal distribution*

Section 38 *Term of broadcasting signal distribution licence*

Chapter 7 **BROADCASTING LICENCES**

Section 39 *Prohibition on provision of a broadcasting service without a broadcasting licence*

Section 40 *Categories of broadcasting licences*

Section 41 *Application procedure for broadcasting licences*

Section 42 *Hearings in relation to applications for broadcasting licences*

Section 43 *Conditions pertaining to broadcasting licences*

Section 44 *Renewal of broadcasting licences*

Section 45 *Public broadcasting licences*

Section 46 *Private broadcasting licences*

Section 47 *Community broadcasting licences*

Section 48 *Limitations on foreign control of private broadcasting services*

Section 49 *Limitations on control of private broadcasting services*

Section 50 *Limitation on cross-media control of private broadcasting services*

Section 51 *Prohibition on granting of broadcasting licences to political parties*

Section 52 *Amendment of broadcasting licences*

Section 53 *Specific broadcasting licence conditions on local television content and South African music*

- Section 54** *Term of broadcasting licences*
- Section 55** *Record of programmes broadcast by broadcasting licensee*

Chapter 8 BROADCASTING PROGRAMMES

- Section 56** *Code of Conduct and exemptions*
- Section 57** *Control of advertisements*
- Section 58** *Prohibition on party election broadcasts and political advertisements except in certain circumstances*
- Section 59** *Party election broadcasts on public sound broadcasting services during an election period*
- Section 60** *Political advertising on sound broadcasting services during an election period*
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Chapter 9 ENFORCEMENT

- Section 62** *Broadcasting Monitoring and Complaints Committee*
- Section 63** *Hearings held by Broadcasting Monitoring and Complaints Committee*
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- Section 68** *Minutes of Council and its committees*
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SCHEDULES

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- Schedule 2 Pension rights of officers and employees***
- Schedule 3 Code of Conduct for South African broadcasters***
- Schedule 4 Control of private broadcasting licences and
 newspapers and ownership of company interests***
- Schedule 5 Amendment of laws***

CHAPTER 1

INTERPRETATION

1. Definitions

(1) In this Act, unless the context otherwise indicates -

"apparatus" means any apparatus or equipment that is used or intended to be used in connection with broadcasting;

"appointing body" means the body charged with the appointment of councillors in terms of section 4;

"authorised person" in relation to any power, function or duty to be exercised or performed for or on behalf of the Authority in terms of this Act, means any councillor or member of a committee of the Council or any staff member of the Authority duly authorised in terms of this Act to act on behalf of the Authority;

"Authority" means the Independent Broadcasting Authority established by section 3;

"broadcasting" means a form of unidirectional telecommunication intended for the public or sections of the public having appropriate receiving facilities, whether carried out by means of radio, cable, optical fibre, satellite or any other means, or any combination of the foregoing;

"broadcasting licence" means a licence granted by the Authority in terms of this Act or deemed by this Act to have been so granted to a person for the purpose of providing a defined category of broadcasting service;

"broadcasting licensee" means the holder of a broadcasting licence;

"Broadcasting Monitoring and Complaints Committee" means the standing committee referred to in section 21(1)(b);

"broadcasting service" means a single, defined service which broadcasts television, sound or text material to the public or sections of the public;

"broadcasting services frequency bands" means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), as agreed to or adopted by the Republic, and any other additional part of the electromagnetic radio frequency spectrum determined nationally for the use of broadcasting services;

"broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed by means of a telecommunications process to any geographical target area;

"broadcasting signal distribution licence" means a licence granted by the Authority in terms of this Act or deemed by this Act to have been so granted, to a person for the purpose of providing signal distribution;

"broadcasting signal distribution licensee" means the holder of a broadcasting signal distribution licence;

"Broadcasting Technical Committee" means the standing committee referred to in section 21(1)(a);

"chairperson" means the chairperson of the Council, referred to in section 4(1)(a), and includes any councillor acting in the stead of such person in accordance with the provisions of section 10(2);

"community broadcasting service" means a broadcasting service which -

- (a) is fully controlled by a non-profit entity;
- (b) caters for particular community interests;
- (c) encourages members of the community served by it to participate in the operations of the licensee in providing the service and in the selection and provision of programmes under the broadcasting licence; and
- (d) may be funded by donations, grants, sponsorships, advertising or membership fees, or by any combination of the aforementioned;

"company" means any company or external company as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1975), and includes any close corporation as defined in section 1 of the Close Corporation Act, 1984 (Act No. 69 of 1984);

"Council" means the council of the Authority referred to in section 3 (2), as constituted in terms of section 4(1) and, in relation to the exercise or performance of any power, function or duty conferred upon the Council by this Act, includes any committee of the Council or any officer of the Authority acting under a delegation or authorisation in terms of section 69;

"councillor" means any member of the Council referred to in section 4 (1);

"election" means any election held for the purposes of electing the members of any legislative body established by the law of the Constitution;

"election period" means the period commencing on the date on which an election is proclaimed and ending on the last polling date of that election;

"financial year" means the financial year of the Authority commencing on the first day of April in any year and ending on the thirty-first day of March, first following, both days inclusive: Provided that the first financial year shall commence on the date of the commencement of this Act;

"foreign person" means -

- (a) a natural person who is not a South African citizen;
- (b) a company, wherever incorporated, where the natural persons who in effect control the company, whether directly or indirectly, are not South African citizens; or
- (c) a company, wherever incorporated, where -
 - (i) a company referred to in paragraph (b); or
 - (ii) a natural person who is not a South African citizen and a company referred to in paragraph (b),control the company, whether directly or indirectly;

"licence area" means the geographical target area of a broadcasting service as specified in a broadcasting licence;

"licensee" means the holder of any licence issued under this Act;

"Minister" means the Minister responsible for the administration of this Act;

"party election broadcast" means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party;

"political advertisement" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, any money or other consideration;

"political party" means any party, movement or organisation which is registered as a political party in terms of the Electoral Act, 1993;

"prescribed" means prescribed by regulation in terms of section 77;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a private person;

"public broadcasting service" means -

- (a) a broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of Broadcasting Act, 1976 (Act No. 73 of 1976);
- (b) a broadcasting service provided by any other statutory body; or
- (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State;

and shall include a commercially-operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

"radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz;

"Republic" means the Republic of South Africa;

"sound broadcasting service" means a broadcasting service to be received by a sound radio set;

"sound radio set" means a device capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals;

"television broadcasting service" means a broadcasting service to be received by a television set;

"television set" means a device which is capable of receiving, by radio, transmissions broadcast by a broadcasting service and reproducing them in the form of images or other visible signals, whether with or without accompanying sounds; and

"this Act" includes the Schedules to this Act and any regulations made from time to time under section 77.

CHAPTER 2

PRIMARY OBJECTS OF ACT

2. Primary objects of Act

The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest through the Independent Broadcasting Authority established by section 3, and for that purpose to -

- (1) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- (2) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
- (3) ensure that broadcasting services, viewed collectively -
 - (a) develop and protect a national identity, culture and character;
 - (b) provide for regular -
 - (i) news services;
 - (ii) actuality programmes on matters of public interest;
 - (iii) programmes on political issues of public interest; and
 - (iv) programmes on matters of international, national, regional and

local significance;

- (4) protect the integrity and viability of public broadcasting services;
- (5) ensure that, in the provision of public broadcasting services -
 - (a) the needs of language, cultural and religious groups;
 - (b) the needs of SPRs and local communities; and
 - (c) the need for educational programmes,are duly taken into account;
- (6) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- (7) encourage equal opportunity employment practices by all licensees;
- (8) ensure that broadcasting services are not controlled by foreign persons;
- (9) ensure that private and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (10) impose limitations on cross-media control of private broadcasting services;
- (11) promote the most efficient use of the broadcasting frequency spectrum;
- (12) ensure that public and private broadcasting licensees and signal distribution licensees comply with internationally-accepted technical standards;

- (13) ensure that broadcasting signal distribution facilities are made available in respect of all licensed broadcasting services;
- (14) refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;
- (15) ensure fair competition between broadcasting licensees;
- (16) promote and conduct research into broadcasting policy and technology;
- (17) encourage investment in the broadcasting industry;
- (18) promote the stability of the broadcasting industry;
- (19) ensure equitable treatment of political parties by all broadcasting licensees during an election period;
- (20) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Independent Broadcasting Authority; and
- (21) encourage the provision of appropriate means for addressing complaints in relation to broadcasting services and broadcasting signal distribution.

CHAPTER 3

INDEPENDENT BROADCASTING AUTHORITY

3. Establishment of Independent Broadcasting Authority

- (1) There is hereby established a juristic person to be known as the Independent Broadcasting Authority which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act or by or in terms of any other law.
- (2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such council shall be the acts of the Authority.
- (3) The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the State, the government and its administration, any political party or any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.

4. Constitution of Council

- (1) The membership of the Council shall consist of -

- (a) a chairperson; and
- (b) six other councillors,

appointed in accordance with the provisions of Schedule 1.

(2) Councillors shall -

- (a) when viewed collectively, be persons who are suited to serve on the Council by virtue of their qualifications, expertise and experience in the fields of, *inter alia*, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office;
- (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles as enunciated in section 2.

5. Persons disqualified from being or remaining councillors

- (1) A person shall not be appointed or remain a councillor if such person -
 - (a) is not a citizen of and not permanently resident in the Republic;
 - (b) holds an office of profit under the State, subject to the provisions of section 22(3)(a);
 - (c) is a member of Parliament or any SPR legislature which derives its authority from the law of the Constitution at the relevant time, or is a member of any local authority;
 - (d) is, or during the preceding twelve months was, an office-bearer or

employee of any political party;

- (e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
- (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
- (g) is an unrehabilitated insolvent;
- (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (i) has, after the commencement of this Act, been convicted, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
- (j) has at any time been convicted -
 - (i) in the Republic, of theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958); or
 - (ii) elsewhere, of any offence corresponding essentially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or

(k) is or has been convicted of an offence under this Act.

(2) Notwithstanding the provisions of paragraph (b), (e) or (f) of subsection (1), a person shall be eligible for appointment to the Council if such person divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

(3) For the purposes of this section, "spouse" includes a **de facto** spouse.

6. Terms of office of councillors

(1) The chairperson shall hold office for a period of five years as from the date of his or her appointment.

(2) (a) Subject to the provisions of paragraph (c) of this subsection, the additional councillors shall hold office for a period of four years as from the date of their appointment.

(b) One half of the total number of additional councillors shall vacate their offices every two years.

(c) For the purposes of paragraph (b), such three of the six additional councillors appointed to the first Council constituted after the commencement of this Act as shall be designated by the appointing body for that purpose, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three councillors remaining at that stage, shall vacate their offices on a date two years later.

(3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office.

- (4) A councillor shall upon expiration of his or her term of office be eligible for re-appointment.
- (5) For the purposes of this section, "additional councillors" means the members of the Council referred to in section 4(1)(b).

7. Remuneration and allowances of councillors

Councillors shall, from the funds of the Authority, be paid such remuneration and allowances and be entitled to such perquisites, as the Minister, in consultation with the Minister of State Expenditure, may determine.

8. Removal from office

- (1) Notwithstanding the provisions of section 6(1) and (2), a councillor may be removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office, or by reason of his or her absence from three consecutive meetings of the Council without the prior permission of the chairperson or otherwise without good cause shown.
- (2) A councillor shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision of the appointing body taken in accordance with the provisions of Schedule 1.

9. Vacancies in Council

- (1) There shall be a vacancy in the Council -
 - (a) if a councillor becomes subject to a disqualification referred to in section 5;
 - (b) when a councillor's written resignation in terms of section 6(3) takes

effect; or

(c) if a councillor is removed from office in terms of section 8.

- (2) A vacancy in the Council shall be filled by the appointment of another councillor by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

10. Meetings of Council

- (1) The meetings of the Council shall be held at such times and places as may be determined by resolution of the Council whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) In the absence of the chairperson, the remaining councillors shall from their number elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.
- (3) The chairperson may at any time in his or her discretion convene a special meeting of the Council which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall, upon having been presented with a requisition for that purpose signed by at least two councillors, call for a special meeting, and if the chairperson fails to convene a special meeting within seven days as from such presentation, such two councillors may, upon the expiration of such seven days, convene the special meeting.
- (4) The quorum for any meeting of the Council shall be a majority of the total number of councillors.

- (5) A decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council and, in the event of an equality of votes regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (6) The Council may, in its discretion, allow members of the public to attend any meeting of the Council.

11. Disclosure of conflicting interests

- (1) Subject to the provisions of subsection (2), a councillor shall not vote nor in any other 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 councillor in a fair, unbiased and proper manner.
- (2) If at any stage during the course of any proceedings before the Council it appears that any councillor has or may have an interest which may cause such conflict of interest to arise on his or her part -
 - (a) such councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining councillors to discuss the matter and determine whether such councillor is precluded from participating in such meeting by reason of a conflict of interest; and
 - (b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the meeting in question.

- (3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the proceedings of the Council shall be null and void.

12. Proceedings of Council not invalid in certain circumstances

Subject to the provisions of section 11, a decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a councillor or a vacancy in the Council or the fact that any person not entitled to sit as a councillor sat as such at the time when such decision was taken, provided such decision was taken by a majority of councillors present at the time and entitled to so sit.

13. General or ancillary powers of Authority

The Authority, in exercising its powers and performing its functions, shall have the capacity to -

- (a) enter into agreements with any person or, with the approval of the Minister, with any government or administration, upon such conditions as the Authority and that person, government or administration may agree;
- (b) hire, purchase, possess or otherwise acquire movable and immovable property and encumber such property;
- (c) let, sell or otherwise dispose of movable or immovable property;
- (d) acquire or alienate rights in incorporeal things or otherwise dispose thereof;

- (e) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (f) borrow, lend or invest money with the written approval of the Minister, granted with the concurrence of the Minister of State Expenditure; and
- (g) make donations.

14. Staff of Authority

- (1) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purposes of assisting the Council, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the implementation of this Act.
- (2) The Council shall appoint such other staff for the Authority as it deems necessary with a view to assisting the Authority with all such work as may arise through the exercise and performance of its powers, functions and duties in terms of this Act.
- (3) The Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pensions and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market.
- (4) The pension rights of staff members shall be in accordance with the provisions as set out in Schedule 2 of the Act.

15. Financing of Authority

- (1) The Authority shall be financed and provided with operational capital from -
- (a) such moneys as may from public funds be allocated on the commencement of this Act to the Authority by the Minister, in concurrence with the Minister of State Expenditure, which the Minister so acting is hereby empowered to do;
 - (b) such moneys as are from time to time appropriated to the Authority by Parliament;
 - (c) fees and other moneys payable to the Authority in terms of this Act in respect of licences;
 - (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 18;
 - (e) loans raised by the Authority in terms of section 16;
 - (f) fines and penalties payable in terms of this Act on account of the breach of licence conditions or on account of any contraventions of this Act; and
 - (g) the proceeds derived from the sale by the Authority of anything forfeited to it in terms of section 67(3)(b).
- (2) The moneys, which, in terms of subsection (1) constitute the funds of the Authority, shall in accordance with the statement of estimated income and expenditures referred to in subsection (3) as approved in terms of that subsection, be utilised for defraying expenses incurred in connection with or arising from the exercise and performance of its powers, functions and duties

in terms of this Act: Provided that any amount or portion of an amount which, by the said statement of estimated income and expenditure, is required to be so utilised for a particular purpose in connection with a specified matter, may be so utilised by the Authority for any other purpose in connection with that matter.

- (3) (a) The Council shall in each financial year at a time determined by the Minister for that purpose, submit a statement of the Authority's estimated income and expenditure in respect of the next ensuing financial year to the Minister for his or her approval, to be granted with the concurrence of the Minister of State Expenditure.
- (b) The statement referred to in paragraph (a) shall specify as a separate item of estimated income the amount which, in respect of the financial year to which such statements relates, is to be appropriated to the Authority by Parliament within the contemplation of subsection (1)(b).

16. Raising of loans by Authority

- (1) The Authority may, with the written consent of the Minister acting with the concurrence of the Minister of Finance, raise loans to finance expenditure to be incurred by the Authority for the purposes of its functions and operations in terms of this Act, in such maximum amounts and subject to such terms and conditions as may be specified by the Minister so acting.
- (2) The Minister of Finance may, on behalf of the government of the Republic and upon such terms and conditions as he deems fit, guarantee the repayment of any loan raised by the Authority in accordance with the provisions of subsection (1), as well as the interest and any other charges payable in connection with such loan.

- (3) Any agreement entered into or guarantee furnished by virtue of the provisions of subsection (2), may be signed on behalf of the Government of the Republic by the Minister of Finance or any person authorised thereto in writing by the said Minister.

17. Banking account

- (1) The Council shall, in the name of the Authority, open and maintain with a bank registered as such in the Republic or with any other financial institution duly so registered and approved by the Minister of Finance, an account in which there shall be deposited, subject to the provisions of section 18, the moneys received by the Authority as contemplated in section 15 and from which payments by or on its behalf shall be made.
- (2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any two of the officers from time to time authorised for that purpose by special resolution of the Council.

18. Investment of surplus moneys of Authority

The moneys of the Authority which are not immediately required for contingencies or to meet current expenditure may, upon a special resolution of the Council having been adopted for that purpose -

- (a) be invested on call or short-term fixed deposit with any bank or financial institution satisfying the requirements of section 17 (which requirements shall *mutatis mutandis* apply for the purposes of this paragraph);
- (b) be deposited with the Corporation for Public Deposits in an investment account in such manner and for such periods as the Minister acting with the concurrence of the Minister of Finance may in writing approve.

19. Accounting and auditing

- (1) The chief administrative officer referred to in section 14(1) shall be the accounting officer of the Authority charged with the responsibility to ensure that all moneys received by and payments made on behalf of the Authority are duly and properly accounted for.
- (2) The accounting officer shall in respect of each financial year cause such records of account to be kept, in accordance with established accounting practices, principles and procedures, as are necessary to fairly, sufficiently and clearly reflect the revenue, expenditure and transactions of the Authority during such year and the state of its assets, liabilities, financial position and affairs at the end of such year, and to sufficiently explain such revenue, expenditure, transactions, state of affairs and financial position.
- (3) (a) As soon as may be reasonably practicable after the end of each financial year, the accounting officer shall, in conformity with established accounting practices, principles and procedures, prepare financial statements comprising a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Authority in respect of the financial year having ended and a balance sheet showing the state of its assets, liabilities and financial position as at the end of such financial year.

(b) The financial statements referred to in paragraph (a), shall -

 - (i) fairly reflect the transactions, state of affairs and financial position of the Authority and the results thereof; and
 - (ii) refer to any relevant matter not specifically prescribed by this Act or in any regulation under section 77, which materially affects or is likely to so affect the affairs of the Authority,