

REPUBLIC OF SOUTH AFRICA

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# **SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 49391 of  
2 October 2023)*  
*(The English text is the official text of the Bill)*

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(MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES)

**[B 32—2023]**

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# BILL

**To repeal the Broadcasting Act, 1999; to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd; to provide for its governance; to amend the Independent Communications Authority of South Africa Act, 2000, and the Electronic Communications Act, 2005; and to provide for matters connected therewith.**

## PREAMBLE

**RECOGNISING** that the Corporation is licensed to provide public broadcasting audio and audiovisual content media services, and is required to reflect the multilingual, identity and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds, political backgrounds, religious backgrounds and official languages in the Republic;

**ACKNOWLEDGING** that the Corporation is a state-owned company, with the South African Government as the sole shareholder and the Minister as the shareholders representative, acting on behalf of the Government to fulfil its obligations relating to use, protection and access to broadcasting resources;

**ENCOURAGING** the Corporation to promote the development of South African expression by providing a wide range of public audio and audiovisual service content that refers to South African opinions, ideas, values and artistic creativity by displaying South African talent in programming and to provide for the maintenance of national identity, universal access, equality, unity and diversity; and

**RESOLVING** that the Corporation must align its public and audiovisual content media services with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1** 20  
**DEFINITIONS, INTREPRETATION AND OBJECT OF ACT**

**Definitions**

**1.** In this Act, unless the context indicates otherwise—

“**audio and audiovisual content media service**” means a service where the principal purpose of the service or a dissociable section thereof is devoted to providing audio or audio-visual programming to inform, entertain and educate the public and is distributed over electronic communications networks under the editorial responsibility of a recognised natural or juristic person; 25

“**appointing body**” means the body charged with the appointment of members of the Board in terms of section 13; 30

“**Authority**” means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

“**Board**” means Board of the Corporation established by section 13;

“**broadcasting**” means the distribution of linear audio or audiovisual content media services over the broadcasting radio services frequency bands or any electronic communications network intended for the public, sections of the public or subscribers to that service having appropriate receiving facilities, ‘broadcast’ is construed accordingly; 35

“**Broadcasting Act**” means the Broadcasting Act, 1999 (Act No. 4 of 1999);

“**broadcasting service**” means a linear audio or audiovisual content media service distributed to the public, sections of the public or subscribers to that service whether conveyed using the broadcasting services radio frequency bands or any electronic communications network; 40

“**Charter**” means the Charter of the Corporation as set out in section 7;

“**commercial audio and audiovisual content media services**” means the commercial audio and audiovisual content media services of the Commercial Company contemplated in section 23; 45

“**Commercial Board**” means the board established by section 26;

“**Commercial Company**” means the company established by section 23;

“**common carrier**” has the meaning assigned to it in section 1 of the Electronic Communications Act; 50

“**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);

“**Constitution**” means the Constitution of the Republic of South Africa Act, 1996;

“**Corporation**” means the South African Broadcasting Corporation SOC Ltd established by section 4; 55

**“editorial responsibility”** means having the ability to control the content and the selection of the programmes and their arrangement either in a chronological broadcasting schedule in the case of radio and television broadcasting services, or in a catalogue in the case of on-demand media services;

**“Electronic Communications Act”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

**“electronic communications network”** has the meaning assigned to it in section 1 of the Electronic Communications Act;

**“free-to-air service”** means a linear audio or audiovisual content media service which is capable of being received without payment of subscription fees;

**“funding model framework”** means the framework referred to in section 5;

**“licence”** means a broadcasting licence or a broadcasting signal distribution licence;

**“licensee”** has the meaning assigned to it in section 1 of the Electronic Communications Act;

**“Minister”** means the Minister charged with the administration of this Act;

**“on demand audiovisual content media service”** means a non-linear audiovisual content media service carried by an electronic communications network for the listening or viewing of programmes at the moment chosen by the user and at the user’s individual request based on the catalogue of programmes selected by the content service provider;

**“person”** has the meaning assigned to it in section 2 of the Interpretation Act 1957 (Act No. 33 of 1957), and includes any department of state or administration in the national, provincial or local spheres of government;

**“prescribe”** means prescribe by regulations;

**“President”** means the President of the Republic of South Africa;

**“public audio and audiovisual content media services”** means any audio and audiovisual content media service provided by the Corporation contemplated in section 10;

**“public broadcasting service”** means public service media provided by the Corporation;

**“public financing”** means funding provided through direct government grants or television licence fees;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“public interest”** means that interest which governments, parliaments and administrators in democratically governed nations at least must accept and reflect in laws, policies, decisions and actions in ensuring peace, order, stability, security of person, property, environment and human rights for the overall welfare of the society and nation who, through constitution and election, allow the individual citizen to renew and reflect their agreement and consent to be governed and administered;

**“SABC policies”** means the policies referred to in section 7(6);

**“South African Programming”** has the meaning assigned to it in section 61 of the Electronic Communications Act;

**“subsidiary company”** means—

- (a) the Commercial Company established in section 23;
- (b) any other company or juristic person which exists when this Act commences, but which is dormant and not deregistered in terms of the Companies Act, and of which the Corporation is the holding company or owner; or
- (c) any other subsidiary of the Corporation established by section 32;

**“television broadcasting”** or **“television licence”** means a linear free-to-air or subscription audiovisual content service provided by a licensee for the simultaneous viewing of programmes by the public or subscribers to that service based on a programme schedule;

**“television broadcasting service”** has the meaning assigned to it in section 1 of the Electronic Communications Act;

**“this Act”** includes the Schedule and regulations made under this Act;

**“user-generated video”** means a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to an audiovisual content service by that service or to a video sharing platform by that user or any other user; and

**“video-sharing platform service”** means a service that meets the following requirements:

- (a) The service consists of the storage of a large amount of programmes or user-generated videos, for which the video sharing platform provider does not have editorial responsibility;
- (b) the organisation of the stored content is determined by the provider of the service, including by automatic means all algorithms, in particular hosting, displaying, tagging and sequencing; 5
- (c) the principle purpose of the service, a dissociable section of that service or an essential functionality of that service, is devoted to providing programmes or user-generated video to the general public, to inform, entertain or educate; and
- (d) the service is made available by electronic communication networks. 10

### **Interpretation of Act**

- 2.** (1) Any interpretation of the provisions of this Act must be construed and applied in a manner which is consistent with freedom of expression and the journalistic, creative and programming independence of the Corporation guaranteed by the Constitution.
- (2) In the event of any conflict between the provisions of this Act and the Companies Act, the provisions of this Act prevail. 15
- (3) In the event of a conflict between the provisions of this Act and the Electronic Communications Act, the provisions of the Electronic Communications Act prevail.
- (4) In the event of a conflict between the provisions of this Act and the Competition Act, 1998 (Act No. 89 of 1998), the provisions of the Competition Act, prevails. 20

### **Object of Act**

- 3.** The object of this Act is to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd to provide public audio and audiovisual content media services in the Republic in the public interest and for that purpose to—
- (a) contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society; 25
  - (b) provide for proper governance of the Corporation and in compliance with the future regulatory framework for broadcasting and on-demand audiovisual media services; 30
  - (c) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
  - (d) ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
  - (e) cater for a broad range of services and specifically for the programming needs in respect of women, children, the youth and persons with disabilities; 35
  - (f) encourage the development of human resources and capacity building within the public broadcasting services amongst historically disadvantaged groups;
  - (g) establish strong and committed public audio and audiovisual content services which will service the needs of all South Africans; 40
  - (h) encourage the development of South African programming content;
  - (i) provide for the allocation of roles and assignment of tasks between the Minister and the Board; and
  - (j) provide public audio and audiovisual content media services.

## **CHAPTER 2** 45

### *Part A*

## **CONTINUED EXISTENCE OF SOUTH AFRICAN BROADCASTING CORPORATION**

### **Continued existence of South African Broadcasting Corporation**

- 4.** (1) The South African Broadcasting Corporation SOC Ltd, continues to exist as a Corporation, notwithstanding the repeal of the Broadcasting Act. 50
- (2) The continued existence of the Corporation referred to in subsection (1) does not affect—
- (a) the shareholding of the State in the Corporation;
  - (b) any rights, assets, liabilities or obligations acquired or incurred by the Corporation before the commencement of this Act; 55

- (c) the validity of any act lawfully performed by or on behalf of the Corporation prior to the repeal referred to in subsection (1);
  - (d) the continued existence of the Board of the Corporation that managed the affairs of the Corporation immediately prior to the commencement of this Act; and 5
  - (e) the terms and conditions of service of staff of the Corporation.
- (3) The powers and duties of the State shall be performed and exercised by the Minister as the shareholder's representative.
- (4) Subject to the Companies Act, the Minister may amend the memorandum of incorporation after consultation with the Board. 10
- (5) Any such amendment—
- (a) may not be in conflict with this Act; and
  - (b) must be aimed at giving effect to the objectives of the Corporation.
- (6) The Minister must sign the amended memorandum of incorporation and the Board must thereafter file it with the Commissioner of the Companies Intellectual Property Commission appointed in terms of section 189 of the Companies Act. 15

### Funding

5. (1) The Corporation is funded from—
- (a) any money paid to the Corporation for advertisement;
  - (b) any money received by way of subscription; 20
  - (c) any money received by way of sponsorships;
  - (d) the collection of licence fees;
  - (e) moneys appropriated for that purpose by Parliament;
  - (f) any money received by way of donation; or
  - (g) any other amounts to which the Corporation is or may become entitled. 25
- (2) The Minister must—
- (a) within three years after the commencement of this Act, develop a funding model framework to ensure that the majority of the Corporation's funding is sourced from the State based funding mechanisms;
  - (b) before establishing the funding model framework referred to in paragraph (a), 30 develop a comprehensive and relevant feasibility study to inform a clear business case for the Corporation's funding model in consultation with the Minister of Finance; and
  - (c) consult with the Authority before the publication of the draft funding model framework for public comments contemplated in subsection (3). 35
- (3) (a) Subject to subsection (2), the Minister must, before submission of the draft funding model framework to Cabinet for approval, publish it by way of notice in the *Gazette* inviting interested persons to furnish him or her with their comments or any representations they may wish to make in regard thereto.
- (b) The Minister must, after consideration of the comments and representations 40 referred to in paragraph (a), submit and recommend the final funding model framework of the Corporation to Cabinet for approval.
- (4) The approved funding model framework replaces the funding model mechanisms contemplated in subsection (1).
- (5) The Minister may, in consultation with the Minister of Finance, review the 45 Corporation's funding model framework once every three years in line with emerging trends and developments, in accordance with the procedure set out in subsections (2), (3) and (4).

### Role of Minister

6. (1) The Minister must exercise or perform the powers, duties, and functions 50 conferred or imposed by this Act in a manner that is consistent with the Charter.
- (2) The Minister may add to the functions of the Corporation if the additional function is consistent with the Charter.
- (3) The Minister may not give a direction to the Corporation or any of its members, subsidiaries, or employees for any reason relating to broadcasting, selecting, commis- 55 sioning, or producing particular content.
- (4) The Minister must not give a direction in respect of—
- (a) any content;
  - (b) any allegation or complaint relating to content; or



- (c) the gathering or presentation of news or the preparation or presentation of any current affairs content.
- (5) The Minister may not remove a member of the Board or any of its subsidiaries for any reason relating to broadcasting, selecting, commissioning, or producing particular content. 5
- (6) The Minister may—
- (a) in compliance with section 63(2) of the Public Finance Management Act and applicable regulations of that Act, appoint a person to investigate the financial position of the Corporation if he or she has reasonable grounds to believe that the funds of the Corporation have been mismanaged; and 10
- (b) after receipt of a report from the investigator as contemplated in paragraph (a), intervene and direct the Corporation to take any action specified by him or her if the Corporation is in financial difficulty.

### **Part B**

## **CHARTER AND OBJECTIVES OF CORPORATION** 15

### **Charter of Corporation**

7. (1) The Corporation must comply with the Charter.
- (2) The Authority must monitor and enforce compliance with the Charter by the Corporation.
- (3) In terms of this Charter, the Corporation, in pursuit of its objectives and in the exercise of its powers, enjoys freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution. 20
- (4) The Corporation is funded in terms of section 5 in order to ensure that—
- (a) the mandated public interest programming and content is funded and produced; and 25
- (b) the Corporation's long-term sustainability and growth is guaranteed in the interests of protecting Republic as a constitutional democracy.
- (5) The Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that—
- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity; 30
- (b) displays South African talent in education and entertainment programmes;
- (c) offers a plurality of views and a variety of news, information and analysis from a South African point of view; and
- (d) advances the national and public interest.
- (6) The Board must prepare and submit to the Authority at least every three years, SABC policies that will ensure compliance with the Authority's Code of Conduct as prescribed, the Corporation's licence conditions and the objectives contained in this Act, including— 35
- (a) news and current affairs editorial policy;
- (b) a programming policy; 40
- (c) a local content policy;
- (d) an educational policy;
- (e) a universal service and access policy;
- (f) a language policy; and
- (g) a religious policy. 45
- (7) The Corporation must prepare the policies referred to in subsection (6) as one comprehensive document to be referred collectively as the "SABC's policies".
- (8) The Corporation must notify the Authority in writing of any amendments to the policies referred to in subsection (6) as soon as reasonably possible.
- (9) The Board must ensure that there is public participation in the development of the policies referred to in subsection (6) by inviting and considering public comment on such draft policies and by other means. 50
- (10) The Corporation must provide suitable means for regular inputs of public opinion on its audio and audiovisual content media services and ensure that such public opinion is given due consideration. 55
- (11) The Corporation must, in the prescribed manner, develop a Code of Practice that ensures that the audio and audiovisual content media services and the personnel comply with—
- (a) the constitutional principle of equality;



- (b) the equitable treatment of all segments of the South African population;
- (c) the constitutional requirement of equitable treatment of all official languages;
- (d) the rights of all South Africans to receive and impart information;
- (e) the mandate to provide for a wide range of audience interests, beliefs and perspectives; and 5
- (f) a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest.

(12) In compliance with section 2(*s*) and (*t*) of the Electronic Communications Act, the Authority must regulate and monitor the Charter and Code of Practice.

## **Objectives of Corporation** 10

8. The objectives of the Corporation are—

- (a) to make audio and audiovisual content media services, sound and television broadcasting services available throughout the Republic;
- (b) to provide audio and audiovisual content media programmes of national identity, information, education, entertainment and reflect the cultural diversity and pluralism of the Republic; 15
- (c) to acquire from time to time a licence or licences for such period and subject to such regulations, provisions and licence conditions as may be prescribed by the Authority;
- (d) to provide, in its public media services, audio and audiovisual programming that informs, educates, entertains and take into account the multicultural character of the Republic; 20
- (e) to be responsive to audience needs, including the needs of people with disabilities and account on how to meet those needs;
- (f) to provide other ancillary services, whether or not audio and audiovisual or programme supply services; 25
- (g) to provide audio and audiovisual programmes and any other material to be transmitted or distributed by the common carrier for free-to-air reception by the public;
- (h) to provide to other bodies, by such means and methods as may be convenient, services, programmes and materials to be transmitted or distributed by such bodies and to receive from such other bodies, services, programmes and materials to be transmitted by stations of the Corporation for reception; 30
- (i) to commission, compile, prepare, edit, make, print, publish, issue, circulate and distribute, with or without charge, such books, magazines, periodicals, journals, printed matter, records, audiovisual and interactive material, whether on media now known or hereafter invented, as may be conducive to any of the objectives of the Corporation; 35
- (j) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available to the public such libraries and archives with or without charge; 40
- (k) to organise, present, produce, provide or subsidise concerts, shows, variety performances, revues, musical and other productions and performances and other entertainment whether live or recorded in connection with the audio and audiovisual content media services of the Corporation or for any purpose incidental thereto; 45
- (l) to collect news and information in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies;
- (m) to carry out research and development work in relation to any technology relevant to the objectives of the Corporation and to acquire by operation of law, registration, purchase, assignment, licence or otherwise copyright and designs, trademarks, trade names and any other intellectual, industrial and commercial property rights; 50
- (n) to nurture South African talent and train people in production skills and carry out research and development for the benefit of audiences; 55
- (o) to develop, produce, manufacture, purchase, acquire, use, display, sell, rent or dispose of audio recordings and audiovisual materials and apparatus for use in connection with such audio recordings and audiovisual materials; and
- (p) to develop and extend the services of the Corporation, including programmes on news, current affairs, entertainment and cultural enrichment beyond the borders of South Africa. 60

**CHAPTER 3**  
**ORGANISATIONAL STRUCTURE OF CORPORATION**

**Organisation**

- 9.** (1) The Corporation must provide two separate operational services, namely:
- (a) Public service audio and audiovisual content media services; and 5
  - (b) public commercial audio and audiovisual content media services.

(2) The public and commercial audio and audiovisual content media services must be separately administered and a separate set of financial records and accounts are to be kept in respect of both services.

**Public audio and audiovisual content media services** 10

**10.** (1) The public audio and audiovisual content media services provided by the Corporation must—

- (a) make services available to South Africans in all the official languages;
- (b) reflect both the unity and diverse cultural and multilingual nature of South Africa to all its audiences; 15
- (c) strive to be of high quality in all of the languages served;
- (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests; 20
- (e) include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity; 25
- (f) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
- (g) strive to offer a broad range of services targeting, particularly women, children, the youth, and people with disabilities;
- (h) include programmes made by the Corporation as well as those commissioned from the independent production sector; and 30
- (i) include national sport events as well as developmental and minority sports.

(2) The public audio and audiovisual content media services provided by the Corporation may draw revenues from advertising and sponsorships, State grants, television licence and donations. 35

(3) The Corporation must on an annual basis submit to the Minister for approval—

- (a) a proposed budget in respect of the public services listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
- (b) a three-year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the public audio and audiovisual content media services of the Corporation and in compliance with the general objectives of this Act covering the public audio and audiovisual content media services obligation of the Corporation in respect of the conduct of the business of the public audio and audiovisual content media services for the three financial years. 40 45

(4) The Board must—

- (a) keep proper and accurate books and records of the financial affairs of the public audio and audiovisual content media services separately from those of the commercial audio and audiovisual content media services; 50
- (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of the Companies Act, audited annual financial statements prepared in respect of the public audio and audiovisual content media services in accordance with generally accepted accounting practice separately from those in respect of the commercial audio and audiovisual content media services; and 55
- (c) submit to the Minister within five months after the end of the financial year of the Corporation—

- (i) an annual written report on the activities of the public audio and audiovisual content media services during the financial year of the Corporation preceding the date of the report;
  - (ii) the financial statements of the public audio and audiovisual content media services for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and 5
  - (iii) the report of the auditors on the financial statements of the public audio and audiovisual content media services for the financial year of the Corporation. 10
- (5) For the purpose of this section—
- (a) “**developmental sports**” means those sporting events which develop future national sporting event participants or which could be become national sporting events in the future;
  - (b) “**minority sports**” means those sporting events which are significant to a particular sector of the population only; and 15
  - (c) “**national sporting events**” means a sporting event which enjoy widespread public popularity and include, but are not limited to, national sporting events. 10

#### **Public commercial audio and audiovisual content media services**

**11.** The Commercial Company established in section 23 is responsible to provide for public commercial audio and audiovisual content media services in accordance with the provisions of section 24. 20

### **CHAPTER 4 BOARD OF CORPORATION**

#### **Composition of Board** 25

- 12.** The Board consists of—
- (a) 11 non-executive members; and
  - (b) the Group Chief Executive Officer, and the Chief Financial Officer or their equivalents, who are executive members of the Board.

#### **Appointment of Board** 30

- 13.** (1) The President must, on the advice of the National Assembly, appoint 11 non-executive members of the Board from a list of 14 persons recommended by the National Assembly.
- (2) The non-executive members must be appointed in a manner ensuring—
- (a) participation by the public in a nomination process; 35
  - (b) transparency and openness;
  - (c) that a security clearance was obtained; and
  - (d) that a shortlist of candidates for appointment is published in the *Gazette* and two local newspapers, taking into account the objects and principles of this Act. 40
- (3) The President must designate one of the members referred to in subsection (1) as the chairperson and another member as a deputy chairperson, both of whom must be non-executive members of the Board.
- (4) The members of the Board must, when viewed collectively—
- (a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, business management and finance, marketing, journalism, entertainment, legal expertise, audio and audiovisual content media service, production and distribution and corporate governance; 45
  - (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; 50
  - (c) 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 the Charter. 55
- (5) The members must hold office for a period of five years.

(6) A member may at the end of his or her term of office be re-appointed for not more than one additional term.

(7) Despite subsection (6), the President may, after consultation with the Minister, extend the period of office of any or all of the members of the Board for a period of not more than six months or until a new Board has been appointed, whichever comes first. 5

(8) The deputy chairperson referred to in subsection (3) acts as chairperson if—

- (a) the chairperson is absent or unable to perform the functions of chairperson; or
- (b) the office of chairperson is vacant,

and when so acting, exercise or perform any function of the chairperson.

(9) Every appointment of a member must be published in the *Gazette*. 10

(10) A member appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed and the procedure contemplated in subsection (2) applies.

(11) Seven members, which must include the chairperson or the deputy chairperson, will constitute a quorum at any meeting of the Board. 15

(12) The Board controls the affairs of the Corporation and is the accounting authority of the Corporation.

### **Removal from office**

**14.** The President—

- (a) may remove a member from office on account of misconduct or inability to perform his or her duties efficiently after recommendation by the Board and after due inquiry and the adoption of a resolution by the National Assembly; 20
- (b) must remove a member from office after a finding to that effect by a committee of the National Assembly and the adoption by the National Assembly of a resolution calling for that member's removal from office; and 25
- (c) may remove a member from office on account of financial misconduct upon recommendation by the Minister after due inquiry and the adoption of a resolution by the National Assembly.

### **Resolution for removal of member, dissolution of Board and appointment of interim Board** 30

**15.** (1) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the removal of a member from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown; 35
- (d) failure to disclose an interest or voting or attendance at, or participation in proceedings of the Board while having an interest; or
- (e) him or her becoming disqualified as contemplated in section 16.

(2) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the dissolution of the Board if it fails in any of the following: 40

- (a) Discharging its fiduciary duties;
- (b) adhering to the Charter; and
- (c) poor financial performance.

(3) The appointing body— 45

- (a) may suspend a member from office at any time after the start of the proceedings of the National Assembly for the removal of that member;
- (b) must act in accordance with a recommendation contemplated in subsection (2) within 30 days; and
- (c) must dissolve the Board if the resolution recommends the removal of all the members of the Board. 50

(4) Upon the dissolution of the Board contemplated in subsection (3)(c), the appointing body must, in consultation with the Minister, appoint an interim Board consisting of persons referred to in section 13(1) and five other persons.

(5) The interim Board must be appointed within 30 days after the dissolution of the Board and is appointed for a period not exceeding six months. 55

(6) The President must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board.

(7) A quorum for any meeting of the interim Board is five members.

### **Disqualification**

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**16.** A person will not qualify to be appointed to the Board if such person—

- (a) is not a citizen of and not permanently resident in the Republic;
- (b) was once removed as a member of a board due to misconduct;
- (c) is subject to an order of a competent court declaring such person to be mentally ill or disordered; 10
- (d) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- (d) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted— 15
  - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt 20 Activities Act, 2004 (Act No.12 of 2004);
  - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i);
  - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or 25
  - (iv) has been convicted of an offence under this Act.

## **CHAPTER 5**

### **EXECUTIVE COMMITTEE OF CORPORATION**

#### **Executive committee**

**17.** (1) The affairs of the Corporation are administered by an executive committee led by the Group Chief Executive Officer. 30

(2) Senior management members of an executive committee must be appointed by the Group Chief Executive Officer and Chief Financial Officer.

(3) The executive committee is accountable to the Board.

(4) The executive committee must perform such functions as may be determined by the Board. 35

#### **Appointment of Group Chief Executive Officer and Chief Financial Officer**

**18.** (1) The Board must invite applications for the posts of Group Chief Executive Officer and Chief Financial Officer by publishing advertisements in the media.

(2) A person appointed as Group Chief Executive Officer shall be the editor-in chief. 40

(3) A person appointed as Group Chief Executive Officer and Chief Financial Officer must—

- (a) have appropriate qualifications or experience relevant to the functions of the Corporation; and
- (b) not be disqualified on the grounds as contemplated in section 16. 45

#### **Conditions of employment of Group Chief Executive Officer and Chief Financial Officer**

**19.** (1) The appointment of the Group Chief Executive Officer and Chief Financial Officer is subject to the conclusion of a performance agreement with the Corporation, which must be assessed annually. 50

(2) The Group Chief Executive Officer and Chief Financial Officer must be appointed by the Board for a term not exceeding five years and may be reappointed for one additional term not exceeding five years.

(3) The Group Chief Executive Officer and Chief Financial Officer hold office on terms and conditions determined by the Board.

(4) The Group Chief Executive Officer and Chief Financial Officer are entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance. 5

(5) The Group Chief Executive Officer and Chief Financial Officer are accountable to the Board.

### **Termination of employment of Group Chief Executive Officer and Chief Financial Officer**

**20.** (1) The Board must, subject to compliance with Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the Group Chief Executive Officer and Chief Financial Officer— 10

(a) for misconduct, which includes any act or failure to act contemplated in section 15; or

(b) for failing to perform the duties connected with that office diligently and poor financial performance of the Corporation. 15

(2) The Board may suspend the services of the Group Chief Executive Officer and Chief Financial Officer pending disciplinary proceedings against him or her, during which period the Group Chief Executive Officer and Chief Financial Officer may not serve as an executive member of the Board. 20

(3) The Group Chief Executive Officer and Chief Financial Officer must be dismissed from the office if he or she becomes disqualified from membership of the Board in terms of section 16.

(4) The Group Chief Executive Officer and Chief Financial Officer may resign by written notice of at least 30 days to the chairperson of the Board. 25

### **Acting Group Chief Executive Officer and Chief Financial Officer**

**21.** (1) The Board may, in writing, appoint any senior employee of the Corporation to act as Group Chief Executive Officer or Chief Financial Officer when the holder of that office—

(a) is temporarily unable to perform the duties connected with that office; 30

(b) has been suspended from office; or

(c) has vacated office or has been removed from that office.

(2) The acting Group Chief Executive Officer or Chief Financial Officer may exercise all the powers and must perform all the duties of the Group Chief Executive Officer or Chief Financial Officer, as the case may be. 35

### **Delegation by Group Chief Executive Officer and Chief Financial Officer**

**22.** (1) Group Chief Executive Officer and Chief Financial Officer may delegate to an employee of the Corporation any of his or her powers and assign any of his or her duties.

(2) Any delegation or assignment contemplated in subsection (1)—

(a) may be made subject to such conditions as the Board may determine; 40

(b) must be communicated to the delegatee or assignee in writing;

(c) may be amended or withdrawn in writing by the Group Chief Executive Officer or Chief Financial Officer, as the case may be; and

(d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty. 45

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), the Group Chief Executive Officer or Chief Financial Officer, as the case may be, is not divested of any power or duty so delegated or assigned.

## **CHAPTER 6**

### **ESTABLISHMENT OF COMMERCIAL COMPANY 50**

#### **Establishment of Commercial Company**

**23.** The Corporation hereby establish a Commercial Company, which is a subsidiary company of the Corporation.



### Functions of Commercial Company

- 24.** (1) The Commercial Company is responsible for public commercial audio and audiovisual content media services.
- (2) The responsibility of the Commercial Company is to ensure that the commercial audio and audiovisual content media services provided on behalf of the Corporation must— 5
- (a) be subject to the same policy and regulatory structures for commercial broadcasting services as outlined in Electronic Communications Act;
  - (b) comply with the values of the public audio and audiovisual content media services in the provision of programmes and services; 10
  - (c) commission a significant amount of their programming from the independent production sector;
  - (d) subsidise the public audio and audiovisual media content services to the extent recommended by the Commercial Board and approved by the Corporation; and 15
  - (e) be operated in an efficient manner so as to maximise the revenues provided to the Corporation.
- (3) The Commercial Company must on annual basis, submit to the Corporation for approval—
- (a) a proposed budget in respect of the commercial audio and audiovisual content media services listing revenue, expenditure, borrowings and appropriation of funds for the financial year; and 20
  - (b) a three-year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the commercial audio and audiovisual content media services of the Commercial Company and in compliance with the general objects of this Act covering the commercial audio and audiovisual content media services obligation of the Corporation in respect of the conduct of business of the commercial audio and audiovisual content media services for the three financial years following the date of incorporation. 25 30

### Functions of Commercial Board

- 25.** (1) The Commercial Board must—
- (a) keep proper and accurate books and records of the financial affairs of the commercial audio and audiovisual content media services;
  - (b) prepare and submit audited annual financial statements in respect of the commercial audio and audiovisual content media services in accordance with generally accepted accounting practice; and 35
  - (c) submit to the Corporation within at least three months after the end of the financial year of the Commercial Company—
    - (i) an annual written report on the activities of the commercial audio and audiovisual content media services during the financial year of the Corporation; 40
    - (ii) the financial statements of the commercial audio and audiovisual content media services for the preceding financial year of the Commercial Company in question after the statements have been audited by the auditors of the Commercial Company; and 45
    - (iii) the report of the auditors on the financial statements of the commercial audio and audiovisual content media services for the financial year of the Commercial Company.
- (2) The Commercial Board must conclude a shareholder's compact with the Corporation in terms of which the performance of the Commercial Company will be measured for the following year. 50
- (3) The Corporation must, within three months of the start of the financial year, provide the Minister with copies of shareholder's compact.
- (4) The Commercial Board must on a quarterly basis submit performance reports to the Corporation. 55
- (5) The Corporation must on a quarterly basis submit a performance report to the Minister, which must include the performance reports contemplated in subsection (2).



(6) The chairperson of the Commercial Board must report to the Corporation at least twice per year on all matters relating to the Commercial Board's duties and responsibilities.

(7) The report contemplated in subsection (6) may include recommendations by the Commercial Board on any area within its remit where action or improvement is needed. 5

### **Appointment of Commercial Board**

**26.** (1) The Commercial Board must be appointed by the Corporation in consultation with the Minister, after following an independent, transparent and competitive process contemplated in this section.

(2) The Corporation must establish an independent selection panel consisting of five persons, who command public respect for their fair-mindedness, wisdom and understanding the digital technological innovation and management, intellectual property and copyrights, audiovisual content media services, business and commercial strategy management, the names of whom must be placed in a notice in the *Gazette*. 10

(3) The independent selection panel are to— 15

(a) invite, receive and assess by way of a transparent and public process nominations for appropriately qualified and experienced persons of high integrity willing to accept appointment to be appointed or fill any vacancy on the Commercial Board;

(b) compile a shortlist of no more than 11 persons; and 20

(c) recommend to the Corporation the names of best qualified candidates suitable for appointment for every vacancy on the Board.

(4) If the Corporation is not satisfied that the recommendations of the independent selection panel, the Corporation may request the panel to review its recommendations and make new ones. 25

(5) The Corporation must, in consultation with the Minister, appoint a chairperson and from among the names recommended by the independent selection panel names.

(6) When a vacancy occurs within 12 months of appointment, the Corporation may fill the vacancy from the shortlist of the independent selection panel.

### **Composition of Commercial Board** 30

**27.** (1) The Commercial Board consists of nine members, namely—

(a) a chairperson;

(b) two non-executive directors from the Board;

(c) four other non-executive directors; and

(d) two executive directors. 35

(2) The members of the Commercial Board contemplated in subsection (1) are appointed by the Corporation, in consultation with the Minister, on the grounds of their knowledge, experience in digital technological innovation and management, intellectual property and copyrights, audiovisual content media services, business and commercial strategy management which, when considered collectively, should enable them to attain the mandate of the Commercial Company. 40

(3) The Commercial Board is accountable to the Corporation.

### **Term of office**

**28.** (1) The members of the Commercial Board are appointed for a term not exceeding five years and are eligible for reappointment when that member's term expires, but cannot serve for more than two consecutive terms. 45

(2) Despite subsection (1), the Corporation may, after consultation with the Commercial Board, extend the period of office of any or all of the members of the Commercial Board for a period of not more than six months or until a new Commercial Board has been appointed, whichever comes first. 50

### **Remuneration of Commercial Board**

**29.** Members of the Commercial Board receive such remuneration and allowances as the Corporation, with the concurrence of the Minister, may determine.

### Removal from Commercial Board

- 30.** (1) The Corporation may, after consultation with the members of the Commercial Board and considering section 71 of the Companies Act, remove a member of the Commercial Board from office on account of—
- (a) misconduct; 5
  - (b) inability to perform the duties of his or her office efficiently; or
  - (c) absence from three consecutive meetings of the Commercial Board without the leave of the Commercial Board, except on good cause shown.
- (2) If a member of the Commercial Board ceases to hold office or is removed from office in terms of subsection (1), the Corporation may appoint a person who meets the criteria contemplated in section 27(2) in that member's place for the remaining part of the term of office. 10
- (3) A member must vacate his or her office if—
- (a) he or she is disqualified in terms of section 69 of the Companies Act; or
  - (b) he or she tenders his or her resignation to the Corporation and the Corporation accepts the resignation. 15
- (4) A member may not be appointed if she or he fails to disclose conflict of interests in terms of section 33 of this Act.

### Persons disqualified from membership of Commercial Board

- 31.** A person may not be appointed or remain a member of the Commercial Board if such a person— 20
- (a) is not a citizen or permanent resident of South Africa;
  - (b) is an unrehabilitated insolvent;
  - (c) has been declared by a court to be mentally ill;
  - (d) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; 25
  - (e) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; 30
  - (f) has at any time been removed from an office of trust on account of misconduct;
  - (g) has any direct or indirect interest in conflict with the business of the Corporation or Commercial Company; or 35
  - (h) otherwise disqualified from serving as director in terms of the Companies Act.

## CHAPTER 7

### SUBSIDIARIES AND ACCOUNTABILITY

#### Subsidiaries and accountability

- 32.** (1) The Corporation may establish subsidiary companies. 40
- (2) The Corporation must, before it establishes a subsidiary or revives a dormant subsidiary, submit a feasibility study and business case of the proposed subsidiary to the Minister for consideration.
- (3) The Minister may, subject to section 51(1)(g) of the Public Finance Management Act, after considering a feasibility study and business case after consultation with the Minister of Finance, approve the establishment of the subsidiary or revival of the dormant subsidiary, as the case may be. 45
- (4) The Minister must, before the approval contemplated in subsection (2), table the feasibility study and business case in the Cabinet for consideration and approval.
- (5) The board of the subsidiary is accountable to the Corporation in respect of performance of its functions. 50
- (6) Sections 30, 31 and 33, apply with the necessary changes required by the context, to any subsidiary company of the Corporation.

## CHAPTER 8 GENERAL PROVISIONS

### Disclosure of conflict of interests

- 33.** (1) A person may not be appointed on the Board, unless the necessary disclosure has been made that such person— 5
- (a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the audio and audiovisual content media service industry; and
  - (b) 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. 10
- (2) If at any stage during the course of any proceedings before the Board it appears that any member has or may have an interest which may cause such conflict of interest to arise on his or her part—
- (a) such member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interest; and 15
  - (b) such disclosure and the decision taken by the remaining members regarding such determination, must be recorded in the minutes of the meeting in question. 20
- (3) If any member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void. 25

### Rights and obligations

- 34.** (1) The Corporation may not by virtue of the powers conferred upon it by this Act do anything for which a licence is required in terms of the Electronic Communications Act, unless it has obtained the licence in question and complies with the conditions thereof. 30
- (2) Notwithstanding anything to the contrary contained in the Electronic Communications Act, or any other law, the Corporation is entitled, against payment of the annual fees which the Authority may from time to time determine, to be issued with a licence contemplated in subsection (1).
- (3) The Corporation must provide the Authority with all necessary and relevant information for the purpose of monitoring compliance with the Charter. 35

### Amendment of Corporation licence

- 35.** (1) For the purposes of this Act and the licensing of services by the Authority, all the public broadcasting services before the commencement of this Act, shall be deemed to be public audio and audiovisual content media services. 40
- (2) The Corporation may, apply to the Authority for such amendments to its existing licences as are necessary in order to continue to provide the public audio and audiovisual content media services and the commercial audio and audiovisual content media services and its related obligations in terms of this Act and the Electronic Communications Act. 45
- (3) The relevant provisions of the Electronic Communications Act apply with the necessary changes to the applications referred to in subsection (2), irrespective of the contents of the application of the Corporation, the Authority may impose any appropriate licence conditions which are necessary in order to reflect the reorganisation of the Corporation to provide public audio and audiovisual content media services and the commercial audio and audiovisual content media services and its related obligations in terms of this Act and the Electronic Communications Act. 50

### Regional audiovisual content media services

- 36.** (1) In the performance of its public audio and audiovisual content media services mandate, the Corporation must apply to the Authority in terms of the Electronic Communications Act, to licence it to provide additional audiovisual content services which broadcast— 5
- (a) provincially;
  - (b) in such official languages as are appropriate, having regard to language usage within respective regions served by the proposed services; and
  - (c) so as to ensure that between these regional services, broadcasting is provided in the official languages of the Republic on an equitable basis. 10
- (2) The regional services provided by the Corporation must be funded by money appropriated by Parliament and may draw revenues from donations and sponsorships.
- (3) The Authority must determine the extent to which these services may draw revenues from advertising.

### Accounts 15

- 37.** (1) The Corporation must keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.
- (2) The Corporation must as soon as practicable after the end of each financial year, prepare statements of accounts and a balance sheet showing in appropriate detail the revenues and expenditure of the Corporation during that financial year, and its assets and liabilities as at the end of each financial year. 20
- (3) The Corporation must in its accounts referred to in subsection (2) reflect separately the accounts of the public audio and audiovisuals content media services and commercial audio and audiovisuals content media services.
- (4) Such information must be submitted to the Authority in order to verify cross-subsidies. 25
- (5) The Board must ensure that the Corporation complies with the Public Finance Management Act, in relation to accounting procedures by public entities.

### Auditing

- 38.** (1) In addition to the annual financial statements to be prepared in terms of the Companies Act and the Public Finance Management Act, the Corporation must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed as auditor of the Corporation. 30
- (2) The Board must produce and lay before the auditor all books and accounts of the Corporation with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or control. 35
- (3) For the purposes of the audit, the auditor may hear and receive evidence upon oath, and may by written notice under his or her hand require any person to appear before him or her in person at a time and place stated in such notice, to give information or produce any books or document necessary for the audit. 40
- (4) Any person appearing in terms of such a notice must be paid such witness fees and allowances as he or she would have been entitled to if such person appeared in a magistrate's court as a witness.
- (5) The auditor must— 45
- (a) disallow any payment made without proper authority according to law, and report the disallowance to the Board;
  - (b) charge against the person who made or authorised the payment in question, so much of the payment as is not condoned by the Board;
  - (c) charge against the person responsible therefore— 50
    - (i) as much of the amount of any deficiency or loss arising from negligence or misconduct of that person as is not condoned by the Board;
    - (ii) as much of any amount which ought to have been but was not brought into account by that person as is not condoned by the Board, provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person, and certify in every case that the amount so charged is correct. 55

(6) Any amount so charged and certified by the auditor must be paid by the person against whom it has been charged to the Corporation within 14 days after it was so certified, and, if not so paid, may be recovered from that person as a debt by the Corporation.

(7) It must be the duty of the auditor, in addition to his or her ordinary duties as an auditor, to certify not less than once in every year— 5

- (a) whether or not, in his or her opinion—
  - (i) the accounts of the Corporation are in order;
  - (ii) such accounts present a true and correct view of the financial position of the Corporation and of its transactions; 10
  - (iii) due provision has been made for the redemption and repayment of loans raised by the Corporation;
  - (iv) the value of the assets of the Corporation has been correctly stated;
  - (v) whether or not all his or her requirements and recommendations as auditor have been complied with and carried out; and 15
  - (vi) the expenses of or incidental to any audit must be borne by the Corporation.

### Television licences

**39.** (1) (a) No person may use any television set unless such person is in possession of— 20

- (i) a television licence issued by the Corporation against payment of the prescribed fee for each television set so used unless exempted by regulation;
- (ii) a written exemption pursuant to the regulations; or
- (iii) written confirmation, issued by the lessor of the television set in question that such person is a person to whom that television set has been rented, or otherwise made available in accordance with this Act. 25

(b) No business, dealer or lessor may use any television set unless—

- (i) such business, dealer or lessor is in possession of a television licence issued against payment of a prescribed fee in terms of this Act for each television set so used, unless exempted by regulation; 30
- (ii) such television set is used in accordance with such licence; and
- (iii) such business, dealer or lessor is able to produce such licence on demand.

(c) A user who is required to be in possession of a television licence must possess all the categories of television licences as prescribed, which pertain to such use.

(2) Subsection (1) does not apply to a person who manufactures or repairs television sets, or who acts in the execution of his or her duties in the service of such a person, in so far as he or she uses any television set manufactured or repaired by him or her, in or on the premises where it was manufactured or repaired or on any other premises approved by the Corporation, for the purposes of testing such a television set. 35

(3) Any person who contravenes subsection (1) is, in addition to payment of the prescribed licence fee, liable— 40

- (a) to pay to the Corporation by way of a penalty an amount equal to double the amount of the applicable prescribed licence fee; or
- (b) in the event of a user proving that he or she had used the television set for a period of less than one year, to pay to the Corporation, by way of a penalty, in respect of every month or part of a month during which such a person had failed to take out such television licence, an amount equal to 10% of the applicable prescribed television licence fee: Provided that the total amount of the penalty may not exceed the amount of such television licence fee, unless otherwise prescribed. 50

(4) A dealer who sells or alienates a television set to a person who is not in possession of a television licence and who is not exempted from the obligation to be in possession of a television licence, is liable to pay a penalty of R3 000.00 or such higher amount as may be prescribed, but such penalty may not exceed R10 000.00 in respect of each television set sold or alienated to such person. 55

(5) Notwithstanding subsections (3) and (4), any person who—

- (a) contravenes or fails to comply with any provision of this section or any regulations pertaining to television licence matters; or
- (b) after an authorised inspector, referred to in subsection (6), has produced his or her written authority to such person fails, without good reason, to comply with any lawful demand made by that authorised inspector, 60

is guilty of an offence in relation to each television set in respect of which the offence is committed and is liable upon conviction to a fine not exceeding R500.00 in relation to each such offence or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) (a) The Corporation may appoint any person as an authorised inspector in the prescribed manner. 5

(b) An authorised inspector may—

- (i) require a person who is required in terms of subsection (1) to be in possession of a television licence to produce such television licence for inspection;
- (ii) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to produce such television set for examination, in order to determine whether the provisions of this Act have been complied with; 10
- (iii) require a person who uses a television set to furnish his or her identity document or licence registration number, whichever is applicable; 15
- (iv) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to furnish such information as may be prescribed or necessary in order to determine whether this Act has been complied with;
- (v) require a business, dealer or lessor to produce records relating to transactions involving television sets for inspection, and make extracts therefrom or copies thereof; and 20
- (vi) enter upon any land, in so far as this may be necessary, in order to exercise a power conferred on him or her by this Act: Provided that entry may not be gained to a residence after dark without a warrant or the occupier's permission. 25

(7) A television licence is not transferable, save as may be prescribed.

(8) All television licence fees collected by the Corporation must be used by the Corporation solely for the public service to be provided by the Corporation.

(9) To enable the Corporation to establish and maintain a national database register listing all sales of new television sets in the Republic, dealers, lessors and businesses must provide the Corporation with all information prescribed in respect of sales of new television sets. 30

### Annual report

40. (1) The financial year of the Corporation commences on 1 April and ends 31 March of the following year. 35

(2) The Board must within five months of the end of the financial year, furnish the Minister with a copy of—

- (a) an annual report on the work of Corporation of the previous financial year;
- (b) the financial statements of the previous financial year after the statements have been audited; and 40
- (c) the report of the auditors on those statements referred to in paragraph (b).

(3) The annual report and financial statement referred to subsection (2)(a) and (b) must contain particulars specified in terms of section 55(2) of Public Finance Management Act.

(4) Subject to subsection (3), the full and proper records of the public and commercial audio and audiovisual content media services must be separated. 45

(5) The Minister must table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and, if Parliament is not in sitting, within 14 days after the next ensuing sitting of Parliament.

### Regulations 50

41. The Minister may, in consultation with the Corporation, make regulations regarding—

- (a) the television licence fee which is payable in terms of this Act, including the registration, manner of payment and the collection thereof, penalties and ancillary costs; 55
- (b) the period of validity of a television licence;
- (c) the purpose for which and the place where a television set may be used;
- (d) different categories of television licences which any user of a television set may be required to possess;



- (e) the duty to keep, maintain and furnish records and information, including a duty to supply the Corporation with such records and information as may be prescribed;
- (f) exemptions from the obligation to be in possession of a television licence;
- (g) the transferability of a television licence; 5
- (h) any matter that may or must be prescribed in terms of this Act; and
- (i) any other ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

#### **Transitional arrangements** 10

**42.** (1) In the event a person employed by the commercial division of the Corporation immediately before the commencement of Chapter 6 of this Act, is transferred to the Commercial Company, such transfer must comply with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) For purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (1) takes up employment at the Commercial Company. 15

(3) All the functions of the commercial service division of the Corporation, before the commencement of Chapter 6 of this Act, shall be transferred to the Commercial Company. 20

#### **Repeal and amendment of laws**

**43.** The laws specified in the Schedule are repealed or amended to the extent indicated in the third column thereof.

#### **Short title and commencement**

**44.** This Act is called the South African Broadcasting Corporation SOC Ltd Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 25



**SCHEDULE**  
**REPEAL AND AMENDMENT OF LAWS**  
**(Section 43)**

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 4 of 1999	Broadcasting Act, 1999	Repealed as a whole
Act No. 13 of 2000	Independent Communications Authority of South Africa Act, 2000	<p><b>Amendment of section 1 of Act 13 of 2000</b></p> <p><b>1.</b> Section 1 of Independent Communications Authority of South Africa Act, 2000, is hereby amended—</p> <p>(a) by the substitution for the words preceding the definition of “Authority” of the following words:            “In this Act, unless the context indicates otherwise, any word or expression defined in the [<b>Broadcasting Act</b>] SABC SOC Ltd Act or the Electronic Communications Act has the meaning assigned to it in the Act in question and—”;</p> <p>(b) by the deletion of the definition of “Broadcasting Act”; and</p> <p>(c) by the substitution for the definition of “underlying statutes” of the following definition:            “<b>underlying statutes</b>” means the [<b>Broadcasting Act</b>] SABC SOC Ltd Act, Postal Services Act and Electronic Communications Act;”.</p>
Act No. 36 of 2005	Electronic Communications Act, 2005	<p><b>Amendment of section 1 of Act 36 of 2005</b></p> <p><b>2.</b> Section 1 of the Electronic Communications Act, 2005, is hereby amended—</p> <p>(a) by the deletion of the definition of “Broadcasting Act”;</p> <p>(b) by the substitution for the definition of “existing licences” of the following definition:            “<b>existing licences</b>” means the licences granted to persons prior to the coming into force of this Act in accordance with the provisions of the Telecommunications Act, the IBA Act or [<b>Broadcasting Act</b>] SABC SOC Ltd Act;”</p> <p>(c) by the substitution for the definition of “public broadcasting service” of the following definition:            “<b>public broadcasting service</b>” means any broadcasting service provided by the South African Broadcasting Corporation SOC Ltd or other public state-owned [<b>enterprise</b>] company;”</p> <p>(d) by the deletion of the definition of “Broadcasting Act”; and</p> <p>(e) by the insertion after the definition of “retail” of the following definition:            “<b>SABC SOC Ltd Act</b>” means the South African Broadcasting SOC LTD Act;”.</p> <p><b>Amendment of section 2 of Act 35 of 2005</b></p> <p><b>3.</b> Section 2 of the Electronic Communications Act, 2005, is hereby amended by insertion after paragraph (j) of the following paragraph:            “(jA) provide for a three-tier system of public, commercial and community broadcasting;”.</p> <p><b>Amendment of section 3 of Act 36 of 2005</b></p> <p><b>4.</b> Section 3 of the Electronic Communications Act, 2005, is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:            “(h) the control, direction and role of state-owned [<b>enterprises</b>] companies, subject to the [<b>Broadcasting Act</b>] SABC SOC Ltd Act and the [<b>Companies Act, 1973 (Act No. 61 of 1973)</b>] Companies Act, 2008 (Act No. 71 of 2008)”.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p><b>Insertion of section 61A in Act 36 of 2005</b></p> <p>5. The following section is hereby inserted after section 61 of the Electronic Communications Act, 2005:</p> <p><b>“South African Broadcast Production Advisory Body</b></p> <p><b>61A.</b> (1) The Minister may establish a South African Broadcast Production Advisory Body to advise him or her on how the development, production and display of local television and radio content can be supported.</p> <p>(2) The terms and conditions of allowances, appointment, composition and meetings applicable to the South African Broadcast Production Advisory Body by virtue of its appointment in terms of subsection (1) must be as determined by the Minister with the concurrence of the Minister of Finance.</p> <p>(3) The South African Broadcast Production Advisory Body must advise the Minister on how to encourage, facilitate and offer guidance and advice in respect of any scheme and to promote—</p> <p>(a) the production of broadcast materials that meet the cultural needs of South Africans;</p> <p>(b) the screening and airplay of South African content in television and radio, respectively;</p> <p>(c) awareness of local content in South African and foreign markets;</p> <p>(d) distribution and exhibition of local content in foreign markets;</p> <p>(e) the correction of imbalances in the local content production industry;</p> <p>(f) human resource development to provide skills and training of local content providers; and</p> <p>(g) co-productions and the concluding of international agreements.</p> <p>(4) The South African Broadcast Production Advisory Body must, after consultation with the National Film and Video Foundation and the broadcasting industry, make recommendations for the Minister to determine after consultation with the Minister of Sports, Arts and Culture, the Competition Commission and the Minister of Finance—</p> <p>(a) policy and strategies to give effect to the production and display of local content;</p> <p>(b) financing strategies to support the production and display of local content;</p> <p>(c) supply-side measures and initiatives to support the production of local content; and</p> <p>(d) policies to enhance the production of local content for the multichannel and digital broadcasting environment.”.</p> <p><b>Amendment of section 92 of Act 36 of 2005</b></p> <p>6. Section 92 of the Electronic Communications Act, 2005 is hereby amended by the substitution for subsections (1), (2) and (5) of the expression Broadcasting Act for SABC SOC Ltd Act where it occurs.”.</p> <p><b>Amendment of Arrangement of Sections in Act 36 of 2005</b></p> <p>7. The Arrangement of Sections after the long title of the Electronic Communications Act, 2005, is hereby amended by the insertion after the expression “61. Preservation of South African programming” of the following:</p> <p>“61A. South African Broadcast Production Advisory Body”.</p>

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD BILL, 2023**

### **1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK**

- 1.1 The Broadcasting Act, 1999 (Act No. 4 of 1999) (“the Broadcasting Act”), was promulgated in 1999 to regulate the whole broadcasting sector in South Africa.
- 1.2 In 2005, the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Electronic Communications Act”), was enacted to converge the regulation of the broadcasting, broadcasting signal distribution and telecommunications sectors.
- 1.3 As a result, the regulation of broadcasting services was incorporated under Chapter 9 of the Electronic Communications Act.
- 1.4 Consequently, the Broadcasting Act was reserved to regulate the South African Broadcasting Corporation (“the Corporation”) even though it was never expressly specified in terms of the legislation.
- 1.5 To this end, certain provisions of the Broadcasting Act such as the Preamble, Object of the Act and Chapters II, III and IX were not amended as a result of an oversight.
- 1.6 In light of the above and other reasons, such as the alignment with legislative developments and giving effect to court judgments, the review of the Broadcasting Act is necessary. This legislative intervention seeks to address the following:
  - (a) Alignment with the provisions of the Companies Act, 2008 (Act No. 71 of 2008);
  - (b) alignment with certain provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (c) to give effect to the recommendation of the Ad Hoc Committee on the SABC Board Inquiry by the National Assembly;
  - (d) to give effect to proposed areas of amendment as recommended by the SABC; and
  - (e) to give effect to the judgments in the following cases:
    - (i) D Mpofo v SABC and Others (2008/18386) [2008] ZAG 413; and
    - (ii) SOS Support Broadcasting Coalition v SABC & Minister of Communications (8/056/14) [2017] ZAGPJHC 289.
- 1.7 In compliance with section 11(3)(c)(iv) of the Companies Act, 2008, the Bill is named the “South African Broadcasting Corporation SOC Ltd Bill” and same will repeal the Broadcasting Act.
- 1.8 It must be noted that section 38 of the Broadcasting Act deals with the South African Broadcast Production Advisory Body and not the Corporation and as a result this section will be inserted under Chapter 9 of the Electronic Communications Act as provided for in the Schedule to the Bill.

### **2. OBJECTS OF THE BILL**

The main object of this Bill is to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd to provide public audio and audiovisual content media services in the Republic in the public interest and for that purpose to—

- contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society;

- provide for proper governance of the Corporation and in compliance with the future regulatory framework for broadcasting and on-demand audiovisual media services;
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
- ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
- cater for a broad range of services and specifically for the programming needs in respect of women, children, the youth and persons with disabilities;
- encourage the development of human resources and capacity building within the public broadcasting services amongst historically disadvantaged groups;
- establish strong and committed public audio and audiovisual content services which will service the needs of all South Africans;
- encourage the development of South African programming content;
- provide for the allocation of roles and assignment of tasks between the Minister and the Board; and
- provide public audio and audiovisual content media services.

### **3. SUMMARY OF CLAUSES**

#### **3.1 Clause 1: Definitions**

Clause 1 of the Bill contains various definitions which are intended to assist in the interpretation of the Bill.

#### **3.2 Clause 2: Interpretation of Act**

Clause 2 of the Bill contains interpretation in respect of the provisions of the Bill.

#### **3.3 Clause 3: Object of Act**

Clause 3 of the Bill provides for the object of the Bill.

#### **3.4 Clause 4: Continued existence of South African Broadcasting Corporation SOC Ltd**

Clause 4 of the Bill deals with the continued existence of the South African Broadcasting Corporation SOC Ltd, including the role of the Minister as the shareholder's representative.

#### **3.5 Clause 5: Funding**

Clause 5 of the Bills set out the funding sources of the Corporation.

#### **3.6 Clause 6: Role of Minister**

Clause 6 of the Bill describes the role of the Minister in respect of the functions of the Corporation.

#### **3.7 Clause 7: Charter of Corporation**

Clause 7 of the Bill deals with the Charter of Corporation.

#### **3.8 Clause 8: Objectives of Corporation**

Clause 8 of the Bill provides for the objectives of the Corporation.

#### **3.9 Clause 9: Organisation**

Clause 9 of the Bill sets out the details of two separate operational services to be provided by the Corporation.

**3.10 Clause 10: Public audio and audiovisual content media services**

Clause 10 of the Bill deals with the public audio and audiovisual content media services provided by the Corporation.

**3.11 Clause 11: Public commercial audio and audiovisual content media services**

Clause 11 of the Bill deals with public commercial audio and audiovisual content media services.

**3.12 Clause 12: Composition of Board**

Clause 12 of the Bill provides for the composition of the Board of the Corporation (“the Board”).

**3.13 Clause 13: Appointment of Board**

Clause 13 of the Bill provides for the procedure for the appointment of the members of the Board.

**3.14 Clause 14: Removal from office**

Clause 14 of the Bill deals with the removal of members of the Board from office.

**3.15 Clause 15: Resolution for removal of member, dissolution of Board and appointment of interim Board**

Clause 15 of the Bill provides for the resolution for removal of Board member, dissolution of the Board and appointment of an interim Board.

**3.16 Clause 16: Disqualification**

Clause 16 of the Bill provides for circumstances under which a person will not qualify to be appointed as a member of the Board.

**3.17 Clause 17: Executive committee**

Clause 17 of the Bill deals with the appointment of the executive committee and its accountability.

**3.18 Clause 18: Appointment of Group Chief Executive Officer and Chief Financial Officer**

Clause 18 of the Bill provides for the appointment of the Group Chief Executive Officer and Chief Financial Officer.

**3.19 Clause 19: Conditions of employment of Group Chief Executive Officer and Chief Financial Officer respectively**

Clause 19 of the Bill provides for the conditions of appointment of the Group Chief Executive Officer and Chief Financial Officer.

**3.20 Clause 20: Termination of employment of Group Chief Executive Officer and Chief Financial Officer**

Clause 20 of the Bill provides for the termination of appointment of the Group Chief Executive Officer and Chief Financial Officer.

**3.21 Clause 21: Acting Group Chief Executive Officer and Chief Financial Officer**

Clause 21 of the Bill provides for the appointment of an acting Group Chief Executive Officer and Chief Financial Officer.

**3.22 Clause 22: Delegation by Group Chief Executive Officer and Chief Financial Officer**

Clause 22 of the Bill provides for delegation of powers and functions of the Group Chief Executive Officer and Chief Financial Officer to another employee of the Corporation.

**3.23 Clause 23: Establishment of Commercial Company**

Clause 23 of the Bill provides for the establishment of the Commercial Company.

**3.24 Clause 24: Functions of Commercial Company**

Clause 24 of the Bill describes the functions of the Commercial Company.

**3.25 Clause 25: Functions of Commercial Board**

Clause 25 of the Bill deals with the functions of the Commercial Board.

**3.26 Clause 26: Appointment of Commercial Board**

Clause 26 of the Bill deals with the procedure for the appointment of members of the Commercial Board.

**3.27 Clause 27: Composition of Commercial Board**

Clause 27 of the Bill provides for the composition of the Commercial Board.

**3.28 Clause 28: Term of office**

Clause 28 of the Bill deals with the term of office for members of the Commercial Board.

**3.29 Clause 29: Remuneration of Commercial Board**

Clause 29 of the Bill deals with the remuneration of the Commercial Board.

**3.30 Clause 30: Removal from Commercial Board**

Clause 30 of the Bill provides for the removal of a member of the Commercial Board from office.

**3.31 Clause 31: Persons disqualified from membership of Commercial Board**

Clause 31 of the Bill provides for circumstances under which a person will not qualify to be appointed to the Commercial Board or remain a member of the the Commercial Board.

**3.32 Clause 32: Subsidiaries and accountability**

Clause 32 of the Bill provides for subsidiary companies and its accountability.

**3.33 Clause 33: Disclosure of conflict of interests**

Clause 33 of the Bill deals with disclosure of conflict of interests.

**3.34 Clause 34: Rights and obligations**

Clause 34 of the Bill set out rights and obligations of the Corporation.

**3.35 Clause 35: Amendment of Corporation licence**

Clause 35 of the Bill provides for the amendment of the Corporation's licence.

**3.36 Clause 36: Regional audiovisual content media services**

Clause 36 of the Bill deals with regional audiovisual content media services.

**3.37 Clause 37: Accounts**

Clause 37 of the Bill deals with the accounts of the Corporation.

**3.38 Clause 38: Auditing**

Clause 38 of the Bill deals with auditing of the Corporation.

**3.39 Clause 39: Television licences**

Clause 39 of the Bill deals with television licences.

**3.40 Clause 40: Annual report**

Clause 40 of the Bill provides for the process and procedure related to the tabling of the Corporation's annual report.

**3.41 Clause 41: Regulations**

Clause 41 of the Bill empowers the Minister, in consultation with the Corporation, to make regulations.

**3.42 Clause 42: Transitional arrangements**

Clause 42 of the Bill provides for transitional arrangements.

**3.43 Clause 43: Repeal and amendment of laws**

Clause 43 of the Bill provides for the repeal and amendment of laws.

**3.44 Clause 44: Short title and commencement**

Clause 44 deals with short title and commencement of the Act.

**3.45 Schedule**

The Schedule to the Bill provides the repeal and amendment of laws.

**4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

Department consulted with National Treasury, the SABC and the public.

**5. FINANCIAL IMPLICATIONS FOR THE STATE**

The budget allocations related to the legislative drafting process have been provided for by the Department.



## 6. PARLIAMENTARY PROCEDURE

- 6.1 The Constitution regulates the manner in which legislation may be enacted by Parliament and prescribes the classification of Bills. The national legislative process regarding Bills is governed by sections 73 to 77 of the Constitution which prescribes the different procedures to be followed when enacting legislation. Four categories of Bills are distinguished: Bills amending the Constitution (section 74); ordinary Bills not affecting provinces (section 75); ordinary Bills affecting provinces (section 76); and money Bills (section 77). A Bill must be correctly tagged otherwise it is constitutionally invalid.
- 6.2 Section 75 of the Constitution sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.3 Section 76 of the Constitution on the other hand provides for a procedure that must be followed for all the Bills referred to in that section.
- 6.4 Section 76(3) of the Constitution provides as follows:
- “76. (3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:*
- (a) Section 65 (2);*
  - (b) section 163;*
  - (c) section 182;*
  - (d) section 195 (3) and (4);*
  - (e) section 196; and*
  - (f) section 197.”.*
- 6.5 In summary, a Bill will be considered a section 76 Bill—
- (a) if it provides for legislation mentioned in paragraphs (a) to (f) of section 76(3); or*
  - (b) if its provisions in substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.*
- 6.6 In *Tongoane v Minister of Agriculture and others CCT 2010 (8) BCLR 741 (CC)* (“*Tongoane judgment*”), the Constitutional Court confirmed and upheld the test for tagging that was formulated in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)* where the Constitutional Court held that—
- “the heading of section 76, namely, ‘Ordinary Bills affecting provinces’ provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.”.
- 6.7 At paragraph 58, the Constitutional Court held that “[w]hat matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in schedule 4”. The Constitutional Court, at paragraphs 70 and 72, further held that “the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence”.
- 6.8 At paragraph 59, the Constitutional Court held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution, and not on whether any of its provisions are incidental to its substance.

- 6.9 It is thus necessary to examine all the provisions of the Bill as a whole to determine the extent to which they substantially affect any of the matters listed in Schedule 4 to the Constitution.
- 6.10 The main purpose of the Bill is to provide for the repeal the Broadcasting Act, 1999; to regulate the continued existence of the Corporation; to provide for its governance; to provide for consequential amendments to the Electronic Communications Act, 2005, and the Independent Communications Authority of South Africa Act, 2000; and to provide for matters connected therewith.
- 6.11 The State Law Advisers and the Department of the view that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.12 The opinion is held that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities and does not pertain to any matter referred to in section 154(2) of the Constitution.

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