**REPUBLIC OF SOUTH AFRICA**

**IKAMVA DIGITAL SKILLS INSTITUTE BILL**

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*(As introduced in the National Assembly (proposed section 75…); explanatory summary of Bill published in Government Gazette No. of ) (The English text is the official text of the Bill)*

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**(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)**

**[B — 2018]**

**080118lt**

**BILL**

**To provide for the promotion of the development and meaningful use of digital skills ; to provide for the establishment of the iKamva Digital-Skills Institute; to provide for the objects and functions of the Institute; to provide for the establishment and functions of Collaborative Laboratories for digital skills knowledge production and coordination and ; to provide for the governance and management arrangements of the Institute; and to provide for matters connected therewith.**

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

**TABLE OF CONTENTS**

*Sections*

1. Definitions

2. Establishment of Institute

3. Objects of Institute

4. Functions of Institute

5 Establishment and functions of CoLabs

6. GoverningBoard

7. Term of office and conditions of service of non-executive members of Board

8. Disqualification of aMember of the Board and removal from office

9. Disclosure of interest and fiduciary duties

10. Board committees

11. Meetings of Board

12. Dissolution of Board

13. Appointment and conditions of service of chief executive officer and chief financial officer

14. Functions of chief executive officer

15. Functions of chief financial officer

16. Termination of employment of chief executive officer and chief financial officer

17. Acting chief executive officer and chief financial officer

18. Staff of Institute

19. Funding of Institute

20. Regulations

.

21. Transitional provisions

224. Short title and commencement

**Definitions**

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

# "Board" means the Governing Board contemplated in section 6(1);

**"chairperson"** means the chairperson of the Board appointed in terms of section 6(3)*(a)*;

**"chief executive officer"** means the chief executive officer of the Institute appointed in terms of section 13(1);

**"chief financial officer"** means the chief financial officer of the Institute appointed in terms of section 13(1);

**“CoLab**" means a digital skills knowledge and production collaborative laboratory established in terms of section 5;

**"digital skills"** means the ability to use and develop ICTs within the context of an emerging South African information society and global knowledge economy, and associated competencies that enable individuals to actively participate in a world in which ICT is a requirement for advancement in Government, business and education;”

**“e-SI”** means the e-Skills Instiute;

**"ICT"** means information and communications technology;

**"Institute"** means the iKamva Digital Skills Institute established in terms of section 2;

**“ISSA”** means the Institute for Satellite and Software Applications;

**"Minister"** means the Cabinet member responsible for telecommunication and postal services;

**“NEMISA”** means the National Electronic Media Institute of South Africa;

**"Post-School Education and Training Institutions"** means any public college as defined in the Further Education and Training Act, 2006 (Act No. 10 of 2006), and any higher education institutions as defined in the Higher Education Act, 1997 (Act No. 101 of 1997);

**"prescribe"** means prescribe by regulation;

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

**"regulation"** means a regulation made under this Act; and

**"this Act"** includes any regulation made under this Act.

**Establishment of Institute**

 **2.** (1)The Institute is hereby established as a juristic person.

 (2) The Institute is an integration of the National Electronic Media Institute of South Africa, the e-Skills Institute and the Institute for Satellite and Software Applications.

 (3) The Institute operates as a national public entity and is subject to the provisions of the Public Finance Management Act.

# Objects of Institute

**3.** The objects of the Institute are to—

*(a)* act as national catalytic collaborator, and change agent for digital skills development and organisational capacity towards systemic change across all sectors for inclusion and competitiveness in the digital economy;

*(b)* collaborate with relevant Post-School Education and Training Institutions who are offering or intend offering digital skills training to maximise the use of existing infrastructure and resources and to work towards a pro-active response to the demand for digital skills ; and

*(c)* encourage and promote an innovative research network focusing on the promotion and development of digital skills locally and internationally*.*

**Functions of Institute**

 **4.** (1)The Institute must—

*(a)* promote and guide the development, training, learning, research and innovation in the field of digital skills ;

*(b)* identify the digital skills demands and supply needs in the country in collaboration with Government, business, education and training;

*(c)* regularly perform monitoring and evaluation of digital skills literacy levels and development of digital skills and advise Government, business and relevant bodiesaccordingly*;*

*(d)* engage with relevant Government departments, institutions, entities, organisations and business to ensure that they respond to the demands and needs for digital skills development in the country;

*(e)* raise awareness and promote the meaningful and responsible use and knowledge of ICT;

*(f)* support initiatives that promote the increased use and knowledge of ICT;

*(g)* collaborate with relevant institutions, organisations and entities offering digital skills training programmes to avoid duplication, filling gaps and maximise the use of resources;

*(h)* facilitate research and innovative networks focusing on digital skills with links to public or private university on research and development networks locally and internationally;

*(i)* monitor and evaluate the development and level of digital skills capabilities in the country;

*(j)* develop and promote a framework for the development of digital skills including a model for digital skills training and development; and

*(k)* collaborate with local and international stakeholders to enhance employment and enterprise development opportunities of digital skills trainees.

 (2) In performing its functions contemplated in subsection (1) the Institute must—

 ;

*(a)* comply withthe National Qualification Framework Act, 2008 (Act No. 67 of 2008), Higher Education Act, 1997 (Act No. 101 of 1997); Continuing Education and Training Act, 2006 (Act No. 16 of 2006); and Skills Development Act, 1998 (Act No. 97 of 1998); and

*(b)* interact and foster collaboration with the Minister responsible for higher education and training and the Minister responsible for basic education.

# (3) The Minister may, afterconsultation with the Board, authorise the Institute to perform any additional functions not inconsistent with this Act.

(4) The authorisation contemplated in subsection (3) must be in writing and must detail the funding arrangements and terms and conditions relating to the additional functions.

# Establishment and functions of CoLabs

#  5. (1) The Institute may, subject to subsection (2) jointly establish CoLabs with relevant Post-School Education and Training Institutions.

#  (2) The Institute must enter into a written agreement with the Post-School Education and Training Institution setting out the terms and conditions for the establishment of the CoLab which written agreement must include ―

# *(a)* a requirement that the Post-School Education and Training Institute will implement effective, efficient and transparent financial management and internal controls for the duration of the agreement;

# *(b)* provision for compliance and financial audits to be undertaken at any time by the Institute;

*(c)* details as to what resources the Post-School Education and Training Institute will provide;

*(d)* payment and delivery milestones;

*(e)* ownership of assets;

*(f)* the manner in which unspent, surplus and misappropriated funds must be returned to the Institute; and

*(g)* performance monitoring measures including reporting requirements.

#  (3) The CoLabs must―

*(a)* be accessible to all stakeholders;

*(b)* provide feedback to the Institute to assist in developing digital skills policy;

*(c)* promote and undertake research and innovation;

*(d)* provide research capacity to post graduate students;

*(e)* initiate and implement projects; and

*(f)* establish digital skills networks with other Post-School Education and Training Institutions, Government organisations,civil society and business.

#  (4) Subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), CoLabs may, in accordance with the agreement contemplated in subsection (2) and in collaboration with the appropriate Quality Council and the South African Qualification Authority develop accredited short courses to facilitate digital skills training.

# Governing Board

 **6.** (1) The Board of the Institute is hereby established.

 (2) The Board is responsible for governing the Institute in accordance with best practice guidelines for good governance of public entities.

 (3) The Board consists of the following members—

*(a)* not less than eight and not more than 10 non-executive members;

*(b)* the chief executive officer as an executive member; and

*(c)* the chief financial officer as an executive member.

 (4) The Chairperson and Deputy Chairperson of the Board must be appointed by the Minister from the non-executive members of the Board.

(5) The Board may designate any other non-executive member to act as chairperson if both the Chairperson and Deputy Chairperson are absent or unable to perform any function.

(6) The Board must be constituted in a manner that is broadly representative of the demographics of the Republic of South Africa.

#  (7) Before appointing the members of the Board referred to in subsection (3)*(a)*, the Minister must—

# *(a)* publish a notice in the *Gazette* and at least one national newspaper, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon members of the public to nominate persons contemplated in subsection (3)*(a)*; and

# *(b)* appoint an independent nomination committee which must compile a shortlist of not more than 20 persons from the nominees referred to in paragraph *(a)*.

#

#  (8) If the Minister receives no nominations or an insufficient number of suitable nominations, the Minister may, in consultation with the nomination committee, appoint the required number of Board members in a transparent manner.

# (9) The nomination committee must consider

#  the proven skills, knowledge and experience of a candidate in areas of-

# (*a*) ICT academia;

# (*b*) ICT research;

# (*c*)ICT innovation or practice;

# (*d*)ICT management;

# (*e*) digital skills

# (*f*) law;

# (*g*) intellectual property and commercialisation thereof; and

# (*h*) business skills

# which, when considered collectively, should enable the Board to achieve the objects of the Institute.

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**Term of office and conditions of service of non –executive members of Board**

 **7.** (1)A non-executive member of the Board-

(a) holds office for a period not exceeding five years;

(b) may be re-appointed but may not serve for more than two consecutive terms;

(c) is appointed on a part-time basis according to the terms and conditions determined by the Minister; and

(d) must be paid from the monies appropriated to the Institute such remuneration and allowances as determined by the Minister responsible for finance.

(2) Despite subsection (1), the Minister may, after consultation with the Board, 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.

**Disqualification of amember ofBoard and removal from office**

 **8.** (1)A person may not be appointed or continue as a member of the Board if such person—

*(a)* is declared mentally illin terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002);

*(b)* has been or is convicted, in the Republic or elsewhere, of any offence and sentenced to imprisonment without the option of a fine, or if convicted of an offence involving dishonesty with or without the option of a fine;

*(c)* is elected as a member of National Assembly, a provincial legislature or the council of a municipality, or is appointed as a delegate to the National Council of Provinces by a provincial legislature;

*(d)* is not a South African citizen or ceases to be a South African citizen;

*(e)* has been, or is, removed from an office of trust on account of misconduct or in respect of the misappropriation of money ;

*(f)* is an unrehabilitated insolvent;

(g) is otherwise disqualified from serving as a member of a Board as provided for in section 69 of the Companies Act, 2008 (Act No. 71 of 2008);

(h) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Board; or

(i) is an office-bearer or employee of any party, movement or organisation of a party-political nature.

 (2) The Minister may, after consultation with the Board, remove a member of the Board 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 leave of the Board, except on good cause shown; or

*(d)* any other reasonable ground.

 (3) If a member of the Board ceases to hold office or is removed from office in terms of subsection (2), the Minister may, after consideration of the shortlist compiled by the nomination committee referred to in section 6(7)*(b)* or in any other transparent manner, appoint a person who meets the criteria contemplated in section 6(9) in that member’s place for the remaining part of the term of office.

 (4) A member of the Board ceases to hold office if—

*(a)* he or she is disqualified in terms of subsection (1); or

*(b)* he or she tenders his or her resignation to the Minister on two months written notice or such lesser period as the Minister may approve.

**Disclosure of interest and fiduciary duties**

 **9.** (1)A member of the Board must upon appointment and thereafter annually, provide the Minister and the Board, with a written statement in which it is declared whether or not that Member has any direct or indirect financial interest which could reasonably compromise the Board in the performance of its functions.

 (2) A member of the Board may not be present, participate in or vote on any matter before the Board in which that member or his or her family member, spouse, partner, business partner or associate may have a direct or indirect financial interest.

(3) If a member of the Board acquires a financial interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the Minister and the Board.

(4) A member of the Board must at all times diligently perform his or her functions of office and exercise the utmost good faith, honesty and integrity and care in the performance of his or her function, and in furtherance of this duty, without limiting its scope, must-

*(a)* take reasonable steps to inform himself or herself about the Institute, its business and activities and the circumstances in which it operates;

*(b)* take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;

*(c)* regularly attend all meetings;

*(d)* exercise an active and independent discretion with respect to all matters to be decided by the Board;

*(e)* exercise due diligence in relation to the business of, and necessary preparation for and attendance at meetings of, the Board and any committee to which the Board member is appointed;

*(f)* comply with any internal code of conduct that the Institute may establish for members of the Board;

*(g)* not engage in any activity that may undermine the integrity of the Institute;

 *(h)* not make improper use of their position as a member or of information acquired by virtue of his or her position as a member; and

*(i)* treat any confidential matters relating to the Institute, obtained in the capacity as a member of the Board, as strictly confidential and not divulge them to anyone without the authority of the Institute or as required as part of that person's official functions as a member of the Board.

(5) This section must be interpreted as adding to, and not deviating from, any applicable law relating to the criminal or civil liability of a member of a governing body, and criminal or civil proceedings that may be instituted in respect of such a liability.

(6) A member of the Board who contravenes or fails to comply with these provisions is guilty of misconduct.

(7) A member of the Board who contravenes or fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

**Board committees**

 **10. (1)** The Board may from time to time appoint one or more committees. (2) The Board must –

 (a) assign members of the Board to serve on a committee, based on their knowledge and skills;

(b) determine the –

(i) terms of reference of a committee;

(ii) composition of a committee;

(iii) tenure of members on a committee;

(iv) reporting mechanisms of a committee; and

 (v) method and reasons for removal of a member from a committee.

(3) Non-executive members of the Board must make up the majority of the members of a committee.

 (4) The Board may appoint specialists to a committee for their technical support.

(5) Unless specially delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.

(6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.

(7) Each committee must be chaired by a non-executive member of the Board.

**Meetings of Board**

 **11.** (1)The chairperson must preside at a meeting of the Board.

 (2) If the chairperson and the deputy chairperson are not present at the meeting of the Board, the members of the Board present at that meeting must elect from amongst themselves a member to preside at such a meeting.

 (3) The Board must meet at least four times a year at such time and place as the Board may determine.

 (4) The Board may determine the procedure for its meetings.

 (5) The chairperson—

*(a)* may convene a special meeting of the Board; and

*(b)* must, within 14 days of receipt of a written request signed by at least two thirds of the members of the Board to convene a special meeting, convene such a special meeting.

 (6) A quorum for a meeting of the Board is two thirds of the members eligible to vote at that meeting.

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

**Dissolution of Board**

 **12.** (1)The Minister may dissolve the Board if—

*(a)* the Board is unable to perform its duties in terms of this Act or on the grounds of mismanagement; or

 *(b)* there is a breakdown in the relationship amongst the members of the Board, which renders the continued effective functioning of the Board impossible.

 (2) In exercising his or her powers in terms of this section, the Minister must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

 (3) Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board, consisting of a minimum of three persons, to assume the responsibilities of the Board, until a new Board is constituted in accordance with the procedure contemplated in section 6.

 (4) A new Board must be constituted within 180 days of the dissolution of the previous Board.

 (5) Any person who was a member of the Board that was dissolved in terms of this section may be reappointed to a new Board.

 (6) The Minister must, within 30 days of the dissolution of the Board, submit a report to the National Assembly, setting out the reasons for the dissolution of the Board.

**Appointment and conditions of service of chief executive officer and chief financial officer**

 **13.** (1)The Board must, with the approval of the Minister, appoint a chief executive officer and chief financial officer to ensure that the Institute meets its objectives.

 (2) The chief executive officer and chief financial officer are appointed for a term not exceeding five years and may be reappointed for one additional consecutive term not exceeding five years.

(3) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in the media.

 (4) A person appointed as chief executive officer or chief financial officer must—

*(a)* have the qualifications or experience relevant to the functions of the Institute including experience in the public finance management; and

*(b)* not be disqualified as contemplated in section 8.

(5)The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance contract with the Board.

(6)The terms and conditions of employment of the chief executive officer and chief financial officer, including remuneration, allowances, pension and other employment benefits are determined by the Minister, after consultation with the Minister responsible for finance.

**Functions of chief executive officer**

**14.** (1) The chief executive officer is head of the Institute's administration.

(2) Subject to directives from the Board, the functions of the chief executive officer are to –

 *(a)* implement the strategies and policies and decisions of the Board;

*(b)* manage and recruit employees; and

 *(c)* develop and maintain efficient, transparent and cost-effective administrative systems.

**Functions of chief financial officer**

**15.** The functions of the chief financial officer include –

(*a*) risk management of the Institute’s projects;

(*b*) assisting the Board with regard to compliance with its duties in terms of the Public Finance Management Act;

 (*c)* ensuring that there is adequate control over the assets acquired, managed or controlled by the Institute;

(*d*) ensuring that the liabilities incurred on behalf of the Institute are properly authorised;

(e) ensuring efficiency and economy of operations and avoidance of fruitless and wasteful expenditure;

 (*f*) ensuring that the financial system is in line with best practice and procedures;

(*g*) ensuring an adequate budgeting and financial system; and

 (*h*) to provide sound financial control systems for the Institute.

**Termination of employment of chief executive officer and chief financial officer**

 **16.** (1)The Board must, with the approval of the Minister and subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the chief executive officer and chief financial officer—

*(a)* for misconduct;

*(b)* forfailing to perform the duties connected with that office diligently;or

(c) if the chief executive officer or chief financial officer becomes subject to any disqualification in terms of section 8.

 (2) The Board may, after consultation with the Minister, suspend the services of the chief executive officer or chief financial officer pending the finding of any proceedings against him or her undertaking in terms of this section, during which period the chief executive officer or chief financial officer is also suspended as an executive member of the Board.

**Acting chief executive officer and chief financial officer**

 **17.** (1) The Board, after consultation with the Minister, may in writing appoint any senior employee of the Institute to act as 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;

*(b)* has been suspended from office; or

*(c)* has vacated or has been removed from that office and a new chief executive officer or chief financial officer, as the case may be, has not yet been appointed.

 (2) If no suitable candidate as contemplated in subsection (1) is identified, the Board, after consultation with the Minister, may in writing appoint any other suitable person to act as chief executive officer or chief financial officer in a transparent manner.

(3) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be.

**Staff of Institute**

 **18.** (1)The chief executive officer must, on such terms and conditions as the Board may determine, appoint employees of the Institute or receive on secondment such persons as are necessary to enable the Institute to perform its functions.

 (2) The Institute must pay its employees such remuneration, allowances, subsidies and other benefits as are consistent with that paid in the public sector.

 (3) The chief executive officer is responsible for the administrative control, organisation and discipline of the employees of the Institute and for ensuring compliance with applicable labour legislation.

(4) The chief executive officer must develop and supply each employee with a copy of the code of conduct, as approved by the Board, applicable to all members of staff of the Institute and justiciable for purposes of disciplinary proceedings, to ensure –

(a) compliance with applicable law;

(b) the effective, efficient and economical use of the Institute’s resources; and

 (c) the promotion and maintenance of a high standard of professional ethics.

**Funding of Institute**

 **19.** (1)The funds of the Institute consist of—

*(a)* money appropriated by Parliament;

*(b)* revenue, including interest derived from its investments; and

*(c)* donations and contributions.

 (2) Subject to this section, all income and property and all the proceeds of the Institute must be applied exclusively to the promotion of the objects of the Institute.

 (3) The Institute may, subject to the approval of the Minister and in terms of the Public Finance Management Act, invest any of its funds not immediately required.

**Regulations**

 **20.** The Minister may make regulations with regard to—

*(a)* any matter that may or must be prescribed in terms of this Act; and

*(b)* any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

**Transitional arrangements**

 **21.** (1)The functions and concomitant resources from NEMISA, e-SI and ISSA will be transferred to the Instituteimmediately after the commencement of this Act and in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour.

 (2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

 (3) A person transferred to the Institute in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

 (4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

 (5) For the 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 Institute.

 (6) A person who was appointed as the chief executive officer or the chief financial officer of NEMISA immediately before this Act comes into operation is, a chief executive officer or the chief financial officer, for a term expiring on the date that such appointment would have expired had this Act not come into operation.

 (7) Any member of the NEMISA Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed members of the Board of the Institute for the remainder of the period for which each member was appointed as a member of the Board under the NEMISA.

 (8) All policies, procedures and processes governing NEMISA prior to the commencement of this Act, are deemed to have been prescribed in terms of this Act and are binding on the Institute until amended or substituted in terms of this Act.

**Short title and commencement**

 **22.** This Act is called the iKamva Digital Skills Institute Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.