**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]**

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**BILL**

**To provide for the promotion of the development and meaningful use of digital skills; to provide for the establishment of the iKamva DigitalSkills 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, training and coordination; 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:—

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**Definitions**

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

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

**"chairperson"** means the chairperson of the Board appointed in terms of section 6(8);

**"chief executive officer"** means the chief executive officer of the Institute appointed in terms of section 16(1);

**"chief financial officer"** means the chief financial officer of the Institute appointed in terms of section 16(1);

**"CoLab"** means a digital skills knowledge, production, training and coordinationcollaborative laboratory established in terms of section 5;

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

**“Continuing Education and Training Act”** means the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);

**"digital skills"** means the ability to use and develop ICTs;

**"e-SI"** means the e-Skills Institute established as a division in the Department of Telecommunications and Postal Services;

**“Higher Education and Training Act”** means the Higher Education and Training Act, 1997 (Act No. 101 of 1997);

**"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 established as a division in the Department of Telecommunications and Postal Services;

**"Minister"** means the minister responsible for telecommunications; **"NEMISA"** means the National Electronic Media Institute of South Africa, with registration number 1998/014825/08, incorporated as a not for profit company in terms of the Companies Act;

“**National Qualifications Framework Act”** means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

**"Post-School Education and Training Institution"** means any public college as defined in the Continuing Education and Training Act, and any higher education institution as defined in the Higher Education Act;;

**"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 NEMISA, e-SI and ISSA.

(3) The Institute is 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 a national catalytic collaborator for digital skills development;

*(b)* collaborate with relevant Post-School Education and Training Institutions to maximise the use of existing infrastructure and resources and to respond to the demand for digital skills; and

*(c)* encourage, facilitate and promote innovative research networks aimed at promoting and developing digital skills*.*

**Functions of Institute**

**4.** (1)The Institute must—

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

*(b)* identify the digital skills demands and supply needs of the Republic;

*(c)* encourage the development of digital skills in response to the digital skills needs of the Republic;

*(d)* raise awareness and promote the meaningful and responsible use of ICTs;

*(e)*

*(f)* monitor and evaluate the development and level of digital skills capabilities in the Republic and advise Government, business, civil society, education and training institutions accordingly;

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

*(h)* enhance employment and enterprise development opportunities for digital skills trainees.

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

*(a)* comply withthe National Qualification Framework Act; Higher Education Act, ; Continuing Education and Training Act; and the Skills Development Act, 1998 (Act No. 97 of 1998);

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

*(c)* collaborate with Government, business, civil society and education and training institutions; and

*(d)* avoid duplication, fill gaps and maximise the use of resources.

# (3) The Minister may, after consultation with the Board, direct the Institute in writing to perform any additional functions not inconsistent with this Act.

(4) The Institute, in exercising its functions, must consider policy made and policy directions issued by the Minister in terms of this Act or any other applicable law.

# 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)* the duration of the agreement;

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

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

*(d)* details of the resources the Post-School Education and Training Institution will provide;

*(e)* funding and delivery milestones;

*(f)* ownership of assets;

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

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

# (3) The CoLabs must―

*(a)* be accessible to all stakeholders;

*(b)* provide feedback to the Institute to enable the Institute in the development and promotion of digital skills;

*(c)* promote and undertake research;

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

*(e)* initiate and implement projects aimed at the promotion of digital skills; 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, 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 courses to facilitate digital skills training.

# Establishment, composition and functions of Board

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

(2) The Board must govern and provide strategic direction to the Institute.

(3) The Board is the accounting authority of the Institute in terms of the Public Finance Management Act.

(4) The Board has the authority to exercise all the powers and functions of the Institute except to the extent this Act provides otherwise.

(5) Subject to the Public Finance Management Act, the Board may, in writing, delegate any power, function or duty of the Institute in terms of this Act to—

*(a)* any committee of the Board established in terms of section 13; and

*(b)* the chief executive officer.

(6) The Board must consist of the following members—

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

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

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

(7) The chairperson and deputy chairperson of the Board must be appointed by the Minister from the non-executive members of the Board.

(8) 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.

(9) The Minister must establish a performance management system which provides for the conclusion of an annual performance agreement with the Board detailing the key responsibility areas and key performance indicators to measure and review the performance of the Board;

**Appointment of Board**

**7.** (1) The non-executive members of the Board must be appointed by the Minister.

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

# (3) Before appointing the non-executive members of the Board referred to in subsection (1), the Minister must—

# *(a)* publish a notice in the *Gazette* and at least two national newspapers, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon members of the public to nominate suitable persons contemplated in subsection (1); 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)*.

# (4) The nomination committee must consider the proven skills, knowledge and experience of a nominee 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

# *(h)* business skills

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

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

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

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

*(a)* holds office for a period not exceeding three 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 conditions of service as 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, in consultation with 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 a member of Board and removal from office**

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

*(a)* is declared mentally ill in 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;

*(c)* has been or is convicted in the Republic or elsewhere of any offence involving dishonesty with or without the option of a fine;

*(d)* is or becomes a member of the 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;

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

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

*(g)* is an unrehabilitated insolvent;

*(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 political party registered in terms of the Electoral Commission Act, 1996 (Act 51 of 1996)..

(2) The Minister must remove a member of the Board from office if such member becomes disqualified in terms of subsection (1).

(3) 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.

(4) A member of the Board may at any time, upon at least three months’ written notice to the Minister or such shorter period as agreed to by the Minister, resign from office.

**Vacancies**

**10**. (1) A vacancy on the Board occurs if a member of the Board—

*(a)* is removed by the Minister in terms of section 9(2) and (3);

*(b)* tenders his or her resignation as contemplated in section 9(4) and the resignation takes effect; or

*(c)* dies.

(2) *(a)* Where a vacancy has arisen as contemplated in subsection (1), the Minister must, within six months of such vacancy arising, appoint a suitable person as a member of the Board in terms of the process set out in section 7.

*(b)* The Minister may, until the vacancy contemplated in paragraph *(a)* has been filled, appoint a suitable person as a member of the Board from the nominees previously shortlisted by the nomination committee in terms of section 7(3)*(b),* or in any other transparent manner, on a temporary basis.

*(c)* Any member of the Board appointed under paragraph *(a)* holds office for the remainder of the period of the predecessor's term of office, unless the Minister determines that the member of the Board holds office for a longer period which may not exceed three years.

**Conflict of interest**

**11.** (1) A member of the Board must upon appointment, and annually thereafter, disclose in writing to the Minister and the Board if he or she, his or her spouse, family member, business partner or associate has an interest in any matter which may preclude him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.

(2) A member must disclose to the Board at every meeting of the Board if he or she, his or her spouse, family member, business partner or associate has an interest in any matter before the Board which may preclude him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.

(3) A member of the Board may not vote at, attend, or in any other manner participate in any meeting of the Board if the member has an interest as contemplated in subsection (1) and (2).

(4) *(a)* If, during the course of any meeting of the Board, there is reason to believe that a member of the Board has any interest contemplated in subsection (1) or (2), that member must, on the request of the Board, immediately disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether or not that member should be allowed to participate in the meeting.

*(b)* The decision taken by the remaining members of the Board, and the reasons for such decision, must be recorded in the minutes of the meeting in question.

(5) If any member of the Board contravenes subsection (1), (2) (3) or (4), any decision of the Board to which such conflict of interest relates shall be null and void.

(6) A member of the Board is guilty of an offence and liable on conviction to a fine not exceeding R500 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment, if he or she contravenes subsection (1), (2) (3) or (4).

**Code of Ethics**

**12.** (1) Subject to subsection (2), the Board must, in consultation with the Minister, develop and make publicly available on its website, a code of ethics for members of the Board which must be reviewed at least every 5 years.

(2) The code of ethics must be developed by the Board within 120 days from the appointment of the first Board in terms of this Act and must at least provide for the following—

*(a)* fiduciary duties of members of the board including the duty of a member to diligently perform his or her functions of office and exercise the utmost good faith, honesty, integrity and care in the performance of his or her function;

*(b)* the procedure for annual and ad hoc declarations of interest to the Minister; and

*(c)* governance principles in terms of which the Board will carry out its powers and functions.

(3) A member of the Board who contravenes or fails to comply with the code of ethics is guilty of misconduct.

**Board committees**

**13.** (1) The Boardmay from time to time appoint one or more committees as may be required for the Board to fulfil its functions and meet its objectives in terms of this Act or any other law.

(2) The Board must—

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

*(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;

(v) dissolution of a committee and

(vi) 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 any external person with the necessary knowledge, expertise and experience to assist a committee in the performance of its functions.

(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**

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

(2) If the chairperson and deputy chairperson are not present at a 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 or via an Electronic Communication facility, 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**

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

*(a)* the Board has failed or is unable to perform its duties in terms of this Act;;

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

*(c*) on any other reasonable grounds 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 7.

(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 if the Minister, after following the process contemplated in subsection (2), is of the opinion that such person did not contribute to the mismanagement of the Board.

(6) The Minister must, within 60 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**

**16.** (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, which appointment may, with the approval of the Minister, be renewed for further terms not exceeding five years each.

(3) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in at least 2 national newspapers.

(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 public finance management; and

*(b)* not be disqualified as contemplated in section 9.

(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 in accordance with a remuneration framework to be agreed to with the Minister responsible for finance.

**Functions of chief executive officer**

**17.** (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, policies and decisions of the Board;

*(b)* manage and recruit employees as contemplated in section 20;

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

*(d)* perform any such powers or functions as may be delegated by the Board from time to time.

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

**18.** (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 or 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 9.

(2) The Board may, in 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 undertaken 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**

**19.** (1) The Board, in 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, in 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**

**20.** (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 from the public service, 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 the remuneration framework contemplated in section 16 (6).

(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**

**21.** (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 and policy**

**22.** (1)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.

(2) The Minister may make policy and issue policy directions to the Board which are consistent with the objects of this Act.

**Transitional arrangements**

**23.** (1) Upon the commencement of this Act, NEMISA will be dissolved and deregistered in accordance with the Companies Act.

(2) Subject to subsection (9), the board of directors of NEMISA will be dissolved upon the commencement of this Act.

(3)Notwithstanding item 1(4)*(b)* of Schedule 1 of the Companies Act, the functions, personnel and concomitant resources of NEMISA, e-SI and ISSA will be transferred to the Instituteimmediately upon the commencement of this Act in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour.

(4) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (3) 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.

(5) A person transferred to the Institute in terms of subsection (3) 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.

(6) 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.

(7) 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 (3) takes up employment at the Institute.

(8) 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 deemed to be the chief executive officer or the chief financial officer of the Institute for a term expiring on the date that such appointment would have expired had this Act not come into operation.

(9) 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 as members of the Board of the Institute for the remainder of the period for which each member was appointed as a member of the NEMISA Board.

(10) 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**

**24.** 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*.