

REPUBLIC OF SOUTH AFRICA

SENTECH AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Gazette No. 20550 of 13 October 1999) (The English text is the official text of the Bill)

(MINISTER OF COMMUNICATIONS)

[B 52—99]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP SENTECH

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20550 van 13 Oktober 1999 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VAN KOMMUNIKASIE)

[W 52—99]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Sentech Act, 1996, so as to provide for the possibility to transfer the State's shares in Sentech Limited; for the use of the proceeds of such transfer; for the appointment of a specific number of executive and non-executive directors to serve on its board of directors; for the appointment of the chairperson of that board; for an executive committee to manage the affairs of Sentech Limited; and for connected matters.

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

Amendment of section 6 of Act 63 of 1996

1. Section 6 of the Sentech Act, 1996 (in this Act referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Notwithstanding section 32 of the Companies Act but subject to subsection (1A), the State shall be the only member and shareholder of the Company.”; and
- (b) by the insertion after subsection (1) of the following subsections: 10
- “(1A) Notwithstanding any provision of law to the contrary, the Minister may transfer so much of the State's shares in the Company as the Cabinet approves, for the purpose of achieving any applicable object of the Broadcasting Act, 1999 (Act No. 4 of 1999), referred to in section 2 of that Act, to such transferees in such manner and on such terms and conditions as the Cabinet approves. 15
- (1B) The proceeds of any transfer, in terms of subsection (1A), shall be used wholly or partially for the purpose referred to in that subsection, in such manner and amounts as the Cabinet approves, but all proceeds not so used within the period determined by the Minister shall be paid into the National Revenue Fund.”. 20

Amendment of section 7 of Act 63 of 1996

2. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The articles of association of the Company shall provide that— 25
- (a) the board of directors shall consist of—
- (i) three executive directors; and

- (ii) at least four non-executive directors;
- (b) the three executive directors of the board shall be the persons performing the functions of a chief executive officer, chief operations officer and chief financial officer;
- (c) the Minister shall appoint a non-executive director as chairperson of the board;
- (d) the affairs of the Company shall be managed by an executive committee consisting of the executive directors of the board; and
- (e) the executive committee shall be accountable to the board and shall perform such functions as the board determines.”.

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Amendment of section 9 of Act 63 of 1996

3. Section 9 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the Company intends to expropriate any land or real right in terms of subsection (1), the **[management board]** executive committee referred to in section **[7(1)(b)]** 7(1)(d) shall submit to the Minister a report explaining the intended expropriation.”.

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Short title

4. This Act is called the Sentech Amendment Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE SENTECH AMENDMENT BILL, 1999

1. Content of Bill

Section 6 of the Sentech Act, 1996 (Act No. 63 of 1996), deals with the shareholding in the company, Sentech, after its conversion into a public company having a share capital (to be known as Sentech Limited). Section 6(1) stipulates that the State shall be the only shareholder. The new proposed section 6(1A) and (1B) provides for the possibility to transfer the State's shares in Sentech Limited in order to introduce a strategic equity partner and for the use of the proceeds of any such transfer, respectively. These provisions are similar to the provisions of section 130 of the Telecommunications Act, 1996 (Act No. 103 of 1996), which allows for the transfer of shares in Telkom to a strategic equity partner.

Section 7 of the Sentech Act, 1996, makes provision for the control of Sentech Limited. That section *inter alia* provides that the articles of association of Sentech Limited must provide that the directors, other than the managing director, must fulfil a non-executive function and that the affairs of Sentech Limited must be managed by a management board. In order to provide for the control of Sentech Limited in a manner similar to the control which is provided for in the Broadcasting Act, 1998 (Act No. 4 of 1998), in respect of the South African Broadcasting Corporation, section 7 of the Sentech Act, 1996, should be amended. The Bill proposes that section 7 be amended to provide that the board of directors consist of the persons performing the functions of a chief executive officer, chief operations officer and chief financial officer, all as executive directors, and at least four non-executive directors. It is also required that the Minister of Communications appoints a non-executive director as chairperson of the board of directors. Furthermore, provision is made for an executive committee, responsible for managing the affairs of Sentech Limited, to replace the management board.

2. Financial implications for the State

The Bill has no financial implications for the State.

3. Bodies consulted

- * Sentech (Pty.) Ltd.
- * Independent Broadcasting Authority

4. Parliamentary procedure

The Department of Communications and the State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution apply.