

**The Chairperson of the Portfolio Committee on Communications**

**SUBMISSION OF LEGISLATIVE PROPOSAL:**

**MEMORANDUM IN TERMS OF RULE 238 OF THE RULES OF THE NATIONAL  
ASSEMBLY BY THE PORTFOLIO COMMITTEE ON COMMUNICATIONS**

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The Portfolio Committee on Communications hereby requests the permission of the National Assembly, in terms of Rule 230(1) for it to introduce legislation which deals with the following:

**(a) Particulars of proposed legislation.**

The legislation seeks to amend the Broadcasting Act, No 4 of 1999, so as to insert-

- i) a provision for the removal of a member of the South African Broadcasting Corporation (SABC) Board by the appointing body on the recommendation of the National Assembly, and
- ii) a provision for the dissolution of the SABC Board.

**(b) Objects of the proposed legislation.**

- i) The Broadcasting Act does not provide for a mechanism whereby the SABC Board may be dissolved if it is unable to perform its functions;
- ii) The Act only provides for the removal of individual members of the Board upon the recommendation of the Board itself;
- iii) The amendment would ensure that due process is followed when there is a need for the Board as a whole to be dissolved and also provides for the responsibilities of the Board to be executed by an interim Board until the appointment of a new Board.

**(c) Financial implications for the State**

The proposed legislation will not lead to any additional expenditure by the State.

#### **Amendment to section 15 in Act 4 of 1999**

1. The following amendments are hereby effected in the Broadcasting Act, 1999 -
  - (a) After "after" to insert "- (1)"
  - (b) After "Board" to delete [.] and to insert "; or (2) must remove a member from the office after due enquiry and the adoption by the National Assembly of a resolution calling for that member's removal from office in terms of section 15A."

#### **Insertion of section 15A in Act 4 of 1999**

2. The following section is hereby inserted in the Broadcasting Act, 1999, after section 15:

**" 15A** (1)The National Assembly may by the adoption of a resolution recommend the removal of a member or members from office only 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;
- (d) failure to disclose an interest in terms of section 17 or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 17; or
- (e) his or her becoming disqualified as contemplated in section 16.

(2)The President-

- (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 remove a Member from office upon the recommendation of the National Assembly to do so;
  - (c) must dissolve the Board if the resolution recommends the removal of all the Members; and appoint a new Board in accordance with section 13(1).
- (3) Upon the dissolution of the Board the President must appoint an interim Board consisting of the executive members of the Board together with not more than four other persons to perform the functions of the Board until a new Board contemplated in subsection (2)(c) is appointed.
- (4) The President must designate one of the members of the interim Board referred to in subsection (4) as the chairperson and another member as deputy chairperson, both of whom must be non-executive members of the interim Board."

**"appointing body"** means the body charged with the appointment of members of the Board in terms of section 13 of this Act;

**"authorised inspector"** means an authorised inspector appointed by the Corporation in terms of section 27 (6) of this Act;

[Definition of "authorised inspector" inserted by s. 2 (a) of Act No. 64 of 2002.]

**"Authority"** means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;

[Definition of "Authority" substituted by s. 23 of Act No. 13 of 2000.]

**"Board"** means Board of the Corporation;

[Definition of "Board" substituted by s. 2 (b) of Act No. 64 of 2002.]

**"broadcaster"** means any legal or natural person who composes or packages television or radio programme services for reception by the public or sections of the public or subscribers to such a service irrespective of technology used;

[Definition of "broadcaster" substituted by s. 2 (c) of Act No. 64 of 2002.]

**"broadcasting"** means any form of unidirectional electronic communications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio frequency spectrum or any other electronic communications network or any combination of the aforementioned, and "broadcast" is construed accordingly;

[Definition of "broadcasting" amended by s. 97 of Act No. 36 of 2005.]

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

[Definition of "broadcasting licence" substituted by s. 2 (d) of Act No. 64 of 2002.]

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

**"broadcasting service"** means "broadcasting service" as defined in the Electronic Communications Act;

[Definition of "broadcasting service" substituted by s. 97 of Act No. 36 of 2005.]

**"broadcasting services frequency bands"** means that part of the electro-magnetic radio frequency spectrum which is allocated for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such allocation has been agreed to or adopted by the Republic;

**"broadcasting signal distribution"** means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area by means of electronic communications and includes multi-channel distribution;

[Definition of "broadcasting signal distribution" amended by s. 97 of Act No. 36 of 2005.]

**"broadcasting signal distribution licence"** means a electronic communications service licence where the holder of the electronic communications service licence provides a broadcasting signal distribution service;

[Definition of "broadcasting signal distribution licence" substituted by s. 2 (e) of Act No. 64 of 2002 and by s. 97 of Act No. 36 of 2005.]

**"broadcasting signal distribution licensee"** . . . . .

[Definition of "broadcasting signal distribution licensee" deleted by s. 97 of Act No. 36 of 2005.]

**"broadcasting signal distribution service"** means a service whereby broadcasting signal distribution is provided;

[Definition of "broadcasting signal distribution service" inserted by s. 2 (f) of Act No. 64 of 2002.]

**"business"**, for the purposes of the definition of "record" and section 27 means a person who uses a television set—

- (a) in the course of conducting his or her business;
- (b) in the course of engaging in commercial transactions;
- (c) as part of his or her activities for gain; or
- (d) on premises which are occupied for business purposes,

but excludes a dealer and lessor;

[Definition of "business" inserted by s. 2 (f) of Act No. 64 of 2002.]

**"channel"** means a single defined programming service of a licensee other than a video on demand programming service;

[Definition of "channel" substituted by s. 2 (g) of Act No. 64 of 2002.]

**"commercial broadcasting service"** means a broadcasting service operating for profit or as part of a profit entity but excludes any broadcasting service provided by a public broadcasting licensee;

**"commercial service division"** means the commercial service division of the Corporation contemplated in section 9 (1) (b);

[Definition of "commercial service division" inserted by s. 2 (h) of Act No. 64 of 2002.]

**"common carrier"** means a service for broadcasting signal distribution as provided by Sentech Limited, established in terms of the Sentech Act, 1996;

**"community"** includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

**"community broadcasting service"** means a broadcasting service which—

- (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships, advertising or membership fees, or by any combination of the aforementioned;

**"Companies Act"** means the Companies Act, 1973 (Act No. 61 of 1973);

**"Corporation"** means the South African Broadcasting Corporation Limited upon conversion of the old Corporation in terms of section 8A of this Act;

[Definition of "Corporation" substituted by s. 2 (i) of Act No. 64 of 2002.]

**"date of conversion"** means the date determined by the Minister by notice in the *Gazette*, as stipulated in section 8A (1);

[Definition of "date of conversion" inserted by s. 2 (j) of Act No. 64 of 2002.]



- (ii) the financial statements of the commercial service division for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and
- (iii) the report of the auditors on the financial statements of the commercial service division for the financial year of the Corporation.

[Sub-s. (3) added by s. 12 of Act No. 64 of 2002.]

*Part 5: Governance of Corporation*

**12. Composition of Board.**—The Board consists of—

- (a) twelve non-executive members;
- (b) the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer or their equivalents, who are the executive members of the Board.

[Para. (b) substituted by s. 13 of Act of 64 of 2002.]

- (c) .....

[Para. (c) deleted by s. 13 of Act of. 64 of 2002.]

**13. Members of Board.**—(1) The twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly.

(2) The non-executive members of the Board must be appointed in a manner ensuring—

- (a) participation by the public in a nomination process;
- (b) transparency and openness; and
- (c) that a short-list of candidates for appointment is published, taking into account the objects and principles of this Act.

(3) The President must designate one of the members of the Board referred to in subsection (2) 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, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education, social and labour issues;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office;
- (c) represent a broad cross-section of the population of the Republic;
- (d) be persons who are committed to the objects and principles as enunciated in the Charter of the Corporation.

(5) The members of the Board must hold office for such period as the President may determine which period must not exceed five years.

(6) The deputy chairperson referred to in subsection (3) must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson.

(7) Every appointment of a member of the Board must be published in the *Gazette*.

(8) A member of the Board appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed.

(9) The Board of the old Corporation as constituted on the date of conversion constitutes the first Board of the Corporation.

[Sub-s. (9) substituted by s. 14 (a) of Act No. 64 of 2002.]

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

(11) The Board controls the affairs of the Corporation and must protect matters referred to in section 6 (2) of this Act.

(12) The Board—

- (a) must establish a public service subcommittee and a commercial service subcommittee—

- (i) to report to the Board on the extent to which the public service division and the commercial service division have achieved their objectives during the relevant period; and

- (ii) to perform such other functions regarding the organisation of the Corporation into the public service division and the commercial service division, respectively, as may be delegated to them by the Board; and

- (b) may establish such other subcommittees as it deems appropriate from time to time.

[Sub-s. (12) added by s. 14 (b) of Act No. 64 of 2002.]

(13) The Board is the accounting authority of the Corporation.

[Sub-s. (13) added by s. 14 (b) of Act No. 64 of 2002.]

**14. Executive committee.**—(1) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and no more than 11 other members.

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

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

[S. 14 substituted by s. 15 of Act No. 64 of 2002.]

**15. Removal from office.**—The appointing body may remove a member from the office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board.

**16. Disqualification.**—(1) 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) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (c) 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—

- (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption