



07 August 2008

The Secretary to the Parliament of the Republic of South Africa
Attention: Ms MA Williams
P O Box 15
CAPE TOWN
8000

To the Members of the Trade and Industry Portfolio Committee

COMMENTS ON THE PROPOSED COMPANIES BILL

We, the Southern African Music Rights Organisation (SAMRO) Limited (Limited by Guarantee), are pleased that the Companies Bill in its present form has largely accommodated the concerns that we had raised earlier. This notwithstanding, there are a few aspects of the Bill which we believe could be amended in order to provide more clarity. These relate largely to the equation of the non-profit company form with the present Section 21 Company, thus potentially excluding the company limited by guarantee.

SAMRO was incorporated as a company limited by guarantee in terms of the now-repealed 1926 Companies Act and is recognised as an “existing company” under the 1973 Act. A company limited by guarantee, while not a Section 21 company, is essentially a non-profit company. The particular aspects of the Bill that we believe could be amended to provide for greater clarity with regard to the foregoing are the following:

1. At present SAMRO is recognised as a public company, with its designation being SAMRO Ltd (Limited by Guarantee). From the definition of “public company” in the Bill however, it appears that non-profit companies are excluded from this designation. We think that it is important that non-profit companies, as public-benefit organisations, continue to be recognised as public companies.

2. Section 10, which provides modified application of the Bill in respect of non-profit companies, makes reference, in section 10(2)(c), to Section 67((9) and (10), as well as Section 68. There is however in the Bill no Section 67(9) and (10) and it would therefore be necessary to amend this, or make reference to the correct sections.

3. Whereas Section 4(1)(d)(ii) makes provision for an existing company limited by guarantee to become a non-profit company as contemplated in the Bill, Section 4 of the MEMORANDUM ON THE OBJECTS OF THE COMPANIES BILL, 2008 continues to provide that non-profit companies “are the successor to the current Section 21 companies”. We believe that this is an oversight as it goes against the spirit of the Bill elsewhere as well as the undertaking given to us by the DTI during our meeting. We would therefore request that this section be amended to reflect the fact that non-profit companies are both the successor of the current Section 21 companies as well as “existing companies” designated as companies limited by guarantee.”

Non-profit-making • No share capital • Limited by guarantee • Affiliated to the International Confederation of Copyright Societies (CISAC); Reg. No. 1961/002506/09. SAMRO House, 73 Juta Street, Braamfontein, Johannesburg 2001, South Africa; P.O. Box 31609, Braamfontein, 2017; t +27 (11) 489 5000; f +27 (11) 403 1934

Directors: A E Emdon; J S M Khumalo; J Edmond; R I Kallenbach; S C P Mabuse; Y Mhinga; M N Motsatse; G G Trefusis-Paynter (British); C G de Villiers; T S Kekana; J Zaidel-Rudolph; G J Zoghy;
Company Secretary: Adv J J Baloyi

We trust that you shall find our observations above useful, and look forward to clarifying these issues, if so required, during the public hearings.

Yours faithfully,

Adv. J. Joel Baloyi
General Manager: Legal & Governance Services

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