

SunSpace Public Submission to the Select Committee on Education and Recreation in the National Council of Provinces on the SOUTH AFRICAN NATIONAL SPACE AGENCY (SANSA) BILL (No B20B-2008) dated 26 June 2008

1. Introduction

Sun Space and Information Systems (Pty) Ltd, hereinafter referred to as “SunSpace”, wishes to thank the Select Committee on Education and Recreation in the National Council of Provinces for the opportunity to submit its comments on the SOUTH AFRICAN NATIONAL SPACE AGENCY (SANSA) BILL (No B20B-2008) as published by the Minister of Science and Technology.

2. Purpose of Submission

This submission, made in response to the invitation for public comment by the Select Committee on Education and Recreation, sets out to:

- a. Applaud the Minister of Science and Technology, the Director-General of the Department of Science and Technology (DST) and his officials on the progress of this unique capstone legislation in space affairs in this country.
- b. Indicate, without fear of contradiction, that SunSpace and Information Systems (Pty) Ltd supports the passage of the SANSA BILL (No B20B-2008), save for subsections 5.(2)(c)(i) and (ii).
- c. Request that the Select Committee on Education and Recreation exercise its mandate by recommending that the National Council on Provinces vote to pass the SANSA Bill with the amendment that the two subsections of the SANSA Bill [Subsections 5.(2)(c)(i) and (ii)] be excised from the Bill on the basis that:
 - (i) there is no evidence that the functions of the Space Agency will be impaired by the requested deletion.
 - (ii) there is strong evidence to indicate, if the disputed subsections are not removed, that the Space Agency may use the provisions to compete unfairly with existing space industry.

3. Applause and support

SunSpace is part of a chorus of public officials, space scientists, engineers, technologists, managers, activists and enthusiasts that believes in the swift passage of the SANSA Bill, sans the two disputed provisions, through the democratic legislative process to the President.

4. **Brief background to SunSpace (www.sunspace.co.za)**

SunSpace and Information Systems (Pty) Ltd is a black empowered spin-off engineering company from the Stellenbosch University operating out of premises in Tegnopark outside Stellenbosch and the former Denel space facilities near Grabouw. SunSpace is privately owned and has a commercial focus.

SunSpace is the only company on the African continent that designs and manufactures satellites for earth observation from space.

SunSpace has built three satellites of which two were launched and of which one is still in operation; the third satellite is Sumbandila satellite which was built for the South African government and which is awaiting a suitable launch opportunity.

SunSpace has been informed by Government in writing that the Ministers of Science & Technology, Defence and Public Enterprises regard SunSpace as of strategic importance to South Africa and DST have commissioned the CSIR to make an equity investment in SunSpace on behalf of the three Departments.

The CSIR has completed the required due diligence investigation and their recommendations have been considered by the three Departments.

5. **Motivation for removal of the disputed provisions of the SANSA Bill.**

The disputed provisions in the SANSA Bill read as follows:

“Functions of Agency

5. ...

(2) *The Agency may, in order to perform any duty contemplated in subsection (1) and in order to achieve its objects—*

(c) *for the purposes of developing or exploiting any invention or technological space expertise—*

- (i) *establish a company contemplated in the Companies Act, 1973 (Act No. 61 of 1973), or in collaboration with any other person establish such a company; and*
- (ii) *acquire an interest in any company or other juristic person undertaking the development or exploitation of an invention or technological space innovation;”*

In this portion SunSpace will provide the honourable committee members with incontrovertible reasons why there is a strong case that the removal of two disputed subsections of the SANSA Bill be recommended without delay.

- a. No evidence of impairment of the functions of the Space Agency

The DST stated at recent Portfolio Committee on Science and Technology (National Assembly) hearings that the removal of subsections 5.(2)(c)(i) and (ii) will impair the function of the Space Agency without providing evidence of the impairment and without being challenged on the lack of evidence by that Committee.

SunSpace is of the opinion that the 'impairment of functions' argument made by the DST should be critically reviewed.

SunSpace further wishes to indicate that critical review of the 'impairment' argument of the DST was not challenged during the hearings and, as such, a fundamental part of the democratic process was not adhered to.

The basis for critical review rests in the fact that the upcoming TIA legislation clearly provides for exactly the same functions as that reserved for the Space Agency as follows:

The functions and powers of TIA are defined as follows in the Draft TIA Bill:

4. (1) The Agency may—

(a) on such conditions as the Board may determine—

(i) provide financial and any other assistance to any person, for the purpose of enabling that person to develop any technological innovation;

(ii) establish a company contemplated in the Companies Act, 1973 (Act No. 61 of 1973), or in collaboration with any person, establish such a company for the purpose of developing or exploiting any technological innovation;

(iii) acquire any interest in any person undertaking the development or exploitation of any technological innovation supported by the Agency;

(iv) draw together and integrate the management of different technological innovations, incubation and diffusion initiatives in South Africa;

(v) develop the national capacity and infrastructure to protect and exploit intellectual property derived from research financed by the Agency; and

(vi) acquire rights in or to any technological innovation supported by the Agency from any person, or assign any person any right in or to such technological innovation;

We conclude from studying these functions and powers that TIA is adequately mandated and empowered to facilitate their stated object of “*stimulating and intensifying technological innovation in order to improve economic growth and the quality of life of all South Africans by developing and exploiting technological innovations*” (in all fields of endeavor, **including space** related technology and innovation).

b. Unfair competition from DST/Space Agency

SunSpace has been marginalized by the DST for a number of years with the singular objective of bringing the company to its knees financially and then taking it over at no cost to the State. SunSpace is in possession of evidence to substantiate this claim – this will be made available upon request.

This position of SunSpace is also informed by a quote from an unreferenced letter dated 25 June 2008 and received from the Minister of Science and Technology:

“

The second option, as recommended by the CSIR, is to absorb the personnel into an existing government funded programme or entity. This option will mean that no equity investment is done.

Taking the above inputs into account, I regret to inform you that DST has decided not to invest in acquiring equity in Sunspace through advancing a convertible loan to the company. In the interest of retaining the competence in the country, we would however consider the second option should Sunspace be interested.

”

The SunSpace view is further informed by what it regards as complete misrepresentation of the state of the space industry and technology in South Africa. The complete transcript together with SunSpace comments (in red) is attached as Appendix 1.

A careful examination of the statements of the DST to Parliament (Appendix 1) and the written indication from the Honourable Minister of Science and Technology, should inform the unbiased reviewer that the SunSpace fear of unfair competition from the State is well-grounded.

6. Requests

SunSpace formally requests that the Select Committee on Education and Recreation exercise its mandate and recommend that the National Council on Provinces vote to pass the SANSA Bill with the amendment that the two subsections of the SANSA Bill [Subsections 5.(2)(c)(i) and (ii)] be excised from the Bill on the basis of the evidence provided.

7. Further information is available upon request from Bart Cilliers, Managing Director, SunSpace at bart.cilliers@sunspace.co.za or on a landline (021) 880 81 00 and/or Themba Vilakazi, Executive Chairman, SunSpace at tvilakazi@sunspace.co.za or on a land line at (011) 442 88 00.
8. SunSpace again thanks the Select Committee on Education and Recreation for granting it the privilege to exercise its democratic rights as enshrined in the globally exemplary Constitution of our country.

Themba Vilakazi

Executive Chairman

Sun Space and Information Systems (Pty) Ltd

5 September 2008