

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act

**BROADCASTING ACT
NO. 4 OF 1999**

[View Regulation]

[ASSENTED TO 23 APRIL, 1999]
[DATE OF COMMENCEMENT: 30 JUNE, 1999]

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 31999 dated 10 March, 2009.
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as amended by

Independent Communications Authority of South Africa Act, No. 13 of 2000

Broadcasting Amendment Act, No. 64 of 2002

Prevention and Combating of Corrupt Activities Act, No. 12 of 2004

[with effect from 27 April, 2004]

Electronic Communications Act, No. 36 of 2005

Broadcasting Amendment Act, No. 4 of 2009

ACT

To repeal the Broadcasting Act, 1976 (), so as to establish a new broadcasting policy for the Republic; to amend certain provisions of the Independent Broadcasting Authority Act, 1993 (); to clarify the powers of the Minister in regard to policy formulation and the Authority's powers with respect to the regulation and licensing of the broadcasting system; to provide for classes of broadcasting activities in the public interest and for that purpose—

to provide a Charter for the South African Broadcasting Corporation Ltd;

.....

to establish the South African Broadcasting Production Advisory Body; and

to establish a human resource capacity in policy development;

and to provide for matters connected therewith.

[Long title amended by s. 97 of Act No. 36 of 2005.]

Preamble.—NOTING that the South African broadcasting system comprises public, commercial and community elements, and the system makes use of radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of a South African identity, universal access, equality, unity and diversity;

ACKNOWLEDGING that the South African broadcasting services are owned and controlled by South

Africans;

REALISING that the broadcasting system must reflect the identity and diverse nature of South Africa, is controlled and managed by persons or groups of persons from a diverse range of communities, including persons from previously disadvantaged groups, and must reflect the multilingual and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds, religious backgrounds and official languages in the Republic;

ENCOURAGING the development of South African expression by providing a wide range of programming that refers to South African opinions, ideas, values and artistic creativity by displaying South African talent in radio and television programming and by making use of radio frequencies that are public property and that provide a public service necessary for the maintenance of national identity, universal access, equality, unity and diversity; and

RESOLVING to align the broadcasting system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens:

[Preamble amended by s. 1 of Act No. 64 of 2002.]

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CHARTER OF CORPORATION

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CHAPTER I
FUNDAMENTAL PRINCIPLES AND INTERPRETATION

This Chapter sets out the fundamental principles and objects of this Act. Freedom of expression and the journalistic, creative and programming independence of the broadcasters and independence of regulation are identified as guaranteed by the Constitution. These principles recognise that the South African broadcasting system comprises public, commercial and community elements which make use of the radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of South African identity, universal access, equality, unity and diversity.

This Chapter also contains definitions explaining the meaning of certain words for the purpose of the Act and provisions regarding the interpretation of the Act.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/1. Definitions and interpretation.—(1) In this Act, unless the context otherwise indicates, radio, sound broadcasting service and television set have the meaning assigned thereto in the Electronic Communications Act, and—

1. Definitions and interpretation.—(1) In this Act, unless the context otherwise indicates, radio, sound broadcasting service and television set have the meaning assigned thereto in the Electronic Communications Act, and—

“Advisory Body” means the South African Broadcast Production Advisory Body established in terms of section 38 of this Act;

"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 or 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.]

"dealer" means a person who engages in the business of selling television sets;

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

"Department" means the Department of Communications;

"direct to home broadcasting"

[Definition of "direct to home broadcasting" deleted by s. 2 (k) of Act No. 64 of 2002.]

"due diligence report" means the due diligence report to be prepared by the old Corporation in terms of section 8A (12) (a);

[Definition of "due diligence report" inserted by s. 2 (l) of Act No. 64 of 2002.]

"electronic communications" means "electronic communications" as defined in the Electronic Communications Act;

[Definition of "electronic communications" inserted by s. 97 of Act No. 36 of 2005.]

"Electronic Communications Act" means the Electronic Communications Act, 2005;

[Definition of "Electronic Communications Act" inserted by s. 97 of Act No. 36 of 2005.]

"electronic communications service" means electronic communications service as defined in the Electronic Communications Act;

[Definition of "electronic communications service" inserted by s. 97 of Act No. 36 of 2005.]

"electronic communications service licensee" means electronic communications licensee as defined in the Electronic Communications Act;

[Definition of "electronic communications service licensee" inserted by s. 97 of Act No. 36 of 2005.]

"encryption" means a method for changing a broadcasting signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment;

"free-to-air service" means a service which is broadcast and capable of being received without payment of subscription fees;

[Definition of "free-to-air service" substituted by s. 2 (m) of Act No. 64 of 2002.]

"IBA Act"

[Definition of "IBA Act" deleted by s. 97 of Act No. 36 of 2005.]

"incorporation date"

[Definition of "incorporation date" deleted by s. 2 (n) of Act No. 64 of 2002.]

"inventory" means the inventory to be prepared by the old Corporation and submitted to the Minister in accordance with the provisions of section 8A (13) (a);

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

"lessor" means a person who engages in the business of renting out television sets;

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

"licence" means a broadcasting licence or a broadcasting signal distribution licence;

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

"licence area" means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence;

"licensee" means the holder of any licence granted and issued under this Act or the Electronic Communications Act or deemed by this Act or the Electronic Communications Act to have been so granted and so issued;

"local content" has a meaning similar to the meaning set out in section 53 of the Electronic Communications Act;

"local delivery service"

[Definition of "local delivery service" deleted by s. 2 (q) of Act No. 64 of 2002.]

"low power sound broadcasting service" means a community, private or public sound broadcasting service which radiates power not exceeding one watt;

"member" means executive and non-executive members of the Board referred to in sections 12 and 13 of this Act;

"Minister" means the Minister charged with the administration of this Act;

"multi-channel distribution service" means a broadcasting signal distribution service that provides broadcasting signal distribution of more than one channel at the same time on the same signal, and "multi-channel distributor" is construed accordingly;

[Definition of "multi-channel distribution service" substituted by s. 2 (r) of Act No. 64 of 2002.]

"National Revenue Fund" means the Fund established by section 213 of the Constitution;

"old Corporation" means the South African Broadcasting Corporation established in terms of the Broadcasting Act, 1976 ();

"person" has the meaning assigned to it in section 2 of the Interpretation Act 1957 (Act No. 33 of 1957), and includes any department of state or administration in the national, provincial or local spheres of government;

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

"prescribed" means prescribed by regulation;

"President" means the President of the Republic of South Africa;

"public broadcasting service" means—

- (a) any broadcasting service provided by the South African Broadcasting Corporation;

- (b) a broadcasting service provided by any other statutory body; or
- (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State,

and must include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

[Definition of "Public Finance Management Act" inserted by s. 2 (t) of Act No. 64 of 2002.]

"public service division" means the public service division of the Corporation contemplated in section 9 (1) (a);

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

"radio" means radio as defined in the Electronic Communications Act;

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

"record" means the information as prescribed which must be provided by a business or dealer or such information as is reasonably required by an authorised inspector in order to determine whether a business or dealer has complied with this Act;

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

"Registrar" means the Registrar of Companies, as defined in the Companies Act;

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

"regulation" means a regulation made under section 40 but excludes financial regulations made under section 18;

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

"satellite broadcasting service" means a service which is broadcast by transmitters situated on a satellite;

"sound broadcasting service" means a broadcasting service destined to be received by a sound radio set;

"sound radio set" means any apparatus designed or adapted to be capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or other visible signs or signals;

"subscription broadcasting service" means a broadcasting service provided to an end user upon the payment of a fee;

"telecommunications".

[Definition of "telecommunications" deleted by s. 97 of Act No. 36 of 2005.]

"television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

"television licence" means a current and valid written licence issued in terms of this Act for the use of a television set;

[Definition of "television licence" inserted by s. 2 (v) of Act No. 64 of 2002.]

"television licence fee" means a fee prescribed in terms of this Act and payable for the use of a television set;

[Definition of "television licence fee" inserted by s. 2 (v) of Act No. 64 of 2002.]

"terrestrial broadcasting service" means a service that is broadcast from a transmitter situated upon the earth's surface;

"transfer date"

[Definition of "transfer date" deleted by s. 2 (x) of Act No. 64 of 2002.]

"use" means the use or possession of a television set or permitting any other person to use or possess a television set and the words "user" and "used" are construed accordingly;

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

(2) Any interpretation of the provisions of this Act must be construed and applied in a manner which is consistent with freedom of expression and the journalistic, creative and programming independence of the broadcasters guaranteed by the Constitution.

(3)

[S. 1 amended by s. 97 of Act No. 36 of 2005. Sub-s. (3) deleted by s. 2 (y) of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/2. Object of Act.—The object of this Act is to establish and develop a broadcasting policy in the Republic in the public interest and for that purpose to—

2. Object of Act.—The object of this Act is to establish and develop a broadcasting policy in the Republic in the public interest and for that purpose to—

- (a) contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society;
- (b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
- (c) encourage ownership and control of broadcasting services through participation by persons from historically disadvantaged groups;
- (d) ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
- (e) cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;
- (f) encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups;
- (g) encourage investment in the broadcasting sector;
- (h) ensure fair competition in the broadcasting sector;
- (i) ensure efficient use of the broadcasting frequency spectrum;
- (j) provide a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision as well as articulation of long-term and intermediate-term

goals;

- (k) provide for a three tier system of public, commercial and community broadcasting services;
- (l) establish a strong and committed public broadcasting service which will service the needs of all South African society;
- (m) ensure that the commercial and community licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in South Africa;
- (n) ensure that broadcasting services are effectively controlled by South Africans;
- (o) integrate multi-channel distribution systems into the broadcasting framework;
- (p) provide access to signal distribution services for content providers;
- (q) provide access to signal distribution services for broadcast content receivers;
- (r) encourage the development of local programming content.

CHAPTER II SOUTH AFRICAN BROADCASTING SYSTEM

This Chapter is of central significance to the Act, as it lays the basis that the South African broadcasting system is owned and controlled by South Africans. The National Government, acting through the Minister, is responsible for the achievement of this purpose and the constitutional mandate of broadcasting policy development. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfil certain obligations relating to use, protection and access to broadcasting resources.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/3. South African broadcasting system.—(1) The South African broadcasting system—

3. South African broadcasting system.—(1) The South African broadcasting system—

- (a) serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
- (b) operates in the public interest and strengthens the spiritual and moral fibre of society;
- (c) ensures that the broadcasting system is controlled by persons or groups of persons from a diverse range of communities in South Africa and within each element promotes ownership, control and management of broadcasting services by persons from historically disadvantaged groups;
- (d) encourages fair competition in the provision of programmes and services.

(2) Subject to subsection (1), the Minister is ultimately responsible to develop policy that is required from time to time.

(3) Public and commercial broadcasting services must comply with international technical standards and the broadcasting system must be readily adaptable to scientific and technological advances.

(4) The broadcasting system, as a whole, must provide educational programming, and where such programming is provided by a dedicated education service, must be extended throughout the Republic within the financial resources.

(5) The programming provided by the South African broadcasting system must—

- (a) be varied and comprehensive, providing a balance of information, education and entertainment meeting the broadcasting needs of the entire South African population in terms of age, race, gender, religion, interests and backgrounds;

[Para. (a) substituted by s. 3 (a) of Act No. 64 of 2002.]

- (b) be varied and offer a range of South African content and analysis from a South African perspective;
- (c) must be drawn from local, regional, national and international sources;
- (d) provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern;
- (e) provide a significant place for programmes produced by the independent production sector;
- (f) comply with a code of conduct for broadcasting services as prescribed in terms of the Electronic Communications Act.

[Para. (f) substituted by s. 3 (b) of Act No. 64 of 2002 and amended by s. 97 of Act. No. 36 of 2005.]

(6) A range of programming in the Republic's official languages must be extended to all South Africans as circumstances permit.

(7) The human resources development strategy for the broadcasting sector must be viewed holistically in terms of qualification standards, skills development, teaching, inter-relationships with the complementary sectors and the funding of the training system.

CHAPTER III CLASSIFICATION OF BROADCASTING SERVICES

This Chapter emphasises the need to adopt a more comprehensive approach to broadcasting and broadcasting services to be in line with international practices and technological developments.

Part 1: Broadcasting licences

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/4.

4.

[S. 4 substituted by s. 4 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/5. Classes of licences.—(1) Subject to the provisions of this Act, the Authority may, on such conditions as it may determine, issue a sound or television broadcasting service licence for a specified area in the following broadcasting service categ

5. Classes of licences.—(1) Subject to the provisions of this Act, the Authority may, on such conditions as it may determine, issue a sound or television broadcasting service licence for a specified area in the following broadcasting service categories:

- (a) A public broadcasting service;

- (b) a commercial broadcasting service; and
 - (c) a community broadcasting service.
- (2) Subject to this Act, broadcasting licences are categorised as—
- (a) free-to-air broadcasting service;
 - (b) terrestrial subscription broadcasting service;
 - (c) satellite subscription broadcasting service;
 - (d) cable subscription broadcasting service;
 - (e) low power sound broadcasting service; and
 - (f) any other class of licence prescribed by the Authority from time to time.
- [Sub-s. (2) substituted by s. 5 (a) of Act No. 64 of 2002.]

(3) Applications for broadcasting licences must be made in terms of the applicable provisions of the Electronic Communications Act and any regulations prescribed thereunder.

[Sub-s. (3) added by s. 5 (b) of Act No. 64 of 2002 and amended by s. 97 of Act No. 36 of 2005.]

CHAPTER IV PUBLIC BROADCASTING SERVICE AND CHARTER OF CORPORATION

This Chapter provides for the incorporation of the Corporation and for the Charter. The Charter is dealt with by Parliament as part of the broad national policy framework. The Authority monitors and enforces compliance with the provisions of the Charter of the Corporation.

Part 1: Public broadcasting service

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/6. Charter of Corporation.—(1) The Corporation must comply with the Charter as outlined in this part.

6. Charter of Corporation.—(1) The Corporation must comply with the Charter as outlined in this part.

(2) The Authority must monitor and enforce compliance with the Charter by the Corporation.

(3) In terms of this Charter, the Corporation, in pursuit of its objectives and in the exercise of its powers, enjoys freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution.

(4) The Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that—

- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity;
- (b) displays South African talent in education and entertainment programmes;
- (c) offers a plurality of views and a variety of news, information and analysis from a South African point of view;
- (d) advances the national and public interest.

(5) (a) The Board must prepare and submit to the Authority not later than three months after the date of conversion, policies that will ensure compliance with the Authority's Code of Conduct as prescribed and with the Corporation's licence conditions and with the objectives contained in this Act, including:

- (i) News editorial policy;
- (ii) programming policy;
- (iii) local content policy;
- (iv) educational policy;
- (v) universal service and access policy;
- (vi) language policy; and
- (vii) religious policy.

(b) The Corporation must notify the Authority in writing of any amendments to the policies referred to in paragraph (a) as soon as reasonably possible.

(6) The Board must ensure that there is public participation in the development of the policies referred to in subsection (5) by inviting and considering public comment on such draft policies and by other means.

(7) The Corporation must provide suitable means for regular inputs of public opinion on its services and ensure that such public opinion is given due consideration.

(8) The Corporation must develop a Code of Practice that ensures that the services and the personnel comply with—

- (a) the constitutional principle of equality;
- (b) the equitable treatment of all segments of the South African population;
- (c) the constitutional requirement of equitable treatment of all official languages;
- (d) the rights of all South Africans to receive and impart information and ideas;
- (e) the mandate to provide for a wide range of audience interests, beliefs and perspectives; and
- (f) a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest.

[S. 6 substituted by s. 6 of Act No. 64 of 2002.]

CHARTER OF CORPORATION

Part 2: Establishment, incorporation, objectives and organisation of Corporation.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/7.

7.

[S. 7 repealed by s. 7 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/8. Objectives of Corporation.—The objectives of the Corporation are—

8. Objectives of Corporation.—The objectives of the Corporation are—

- (a) to make its services available throughout the Republic;
- (b) to provide sound and television broadcasting services, whether by analogue or digital means, and to provide sound and television programmes of information, education and entertainment funded by advertisements, subscription, sponsorship, licence fees or any other means of finance;
- (c) to acquire from time to time a licence or licences for such period and subject to such regulations, provisions and licence conditions as may be prescribed by the Authority;
- (d) to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;
- (e) to be responsive to audience needs, including the needs of the deaf and the blind and account on how to meet those needs;

[Para. (e) substituted by s. 8 of Act No. 64 of 2002.]

- (f) to provide other services, whether or not broadcasting or programme supply services, such services being ancillary services;
- (g) to provide television and radio programmes and any other material to be transmitted or distributed by the common carrier for free to air reception by the public subject to section 33 of this Act;
- (h) to provide to other bodies by such means and methods as may be convenient, services, programmes and materials to be transmitted or distributed by such bodies and to receive from such other bodies services, programmes and materials to be transmitted by stations of the Corporation for reception as above;
- (i) to commission, compile, prepare, edit, make, print, publish, issue, circulate and distribute, with or without charge, such books, magazines, periodicals, journals, printed matter, records, cassettes, compact disks, video tapes, audio-visual and interactive material, whether analogue or digital and whether on media now known or hereafter invented, as may be conducive to any of the objects of the Corporation;
- (j) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available to the public such libraries and archives with or without charge;
- (k) to organise, present, produce, provide or subsidise concerts, shows, variety performances, revues, musical and other productions and performances and other entertainment whether live or recorded in connection with the broadcasting and programme supply services of the Corporation or for any purpose incidental thereto;
- (l) to collect news and information in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies;
- (m) to carry out research and development work in relation to any technology relevant to the objects of the Corporation and to acquire by operation of law, registration, purchase, assignment, licence or otherwise copyright and designs, trade marks, trade names and any other intellectual, industrial and commercial property rights;
- (n) to nurture South African talent and train people in production skills and carry out research and development for the benefit of audiences;
- (o) to develop, produce, manufacture, purchase, acquire, use, display, sell, rent or dispose of

sound recordings and films and materials and apparatus for use in connection with such sound recordings and films;

- (p) to develop and extend the services of the Corporation beyond the borders of South Africa.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/8A. Conversion.—(1) The old Corporation is, with effect from a date determined by the Minister by notice in the Gazette, which may be a date prior to the commencement of this Act, deemed to be a public company incorporated in terms of the Companies Act

8A. Conversion.—(1) The old Corporation is, with effect from a date determined by the Minister by notice in the *Gazette*, which may be a date prior to the commencement of this Act, deemed to be a public company incorporated in terms of the Companies Act, to be known as the South African Broadcasting Corporation Limited.

(2) The Corporation must have a share capital as contemplated in section 19 of the Companies Act with the State as its sole shareholder with effect from the date of conversion.

(3) The Minister must determine the memorandum and articles of association of the Corporation and must submit these to the Registrar at least a week prior to the date of the notice contemplated in subsection (1).

(4) The Registrar must, on the date of the notice contemplated in subsection (1), register the memorandum and the articles of association of the Corporation in terms of section 63 (1) of the Companies Act and issue a certificate of incorporation and a certificate to commence business to the Corporation, but no fees are payable in respect of such registration or issue.

(5) With effect from the date of conversion the Companies Act applies to the Corporation as if it had been incorporated in terms of the Companies Act on that date, save to the extent stipulated in this Act.

(6) Sections 32, 44, 54 (2), 60, 63 (2), 64, 65, 66, 172, 190 and 344 (b) and (d) of the Companies Act do not apply to the Corporation.

(7) All references in this Act to the conversion of the old Corporation must be construed as references to the conversion of the old Corporation into a public company having a share capital and having been incorporated in terms of the Companies Act as stipulated in subsection (2).

(8) Neither the repeal of the Broadcasting Act, 1976 (), nor the conversion of the old Corporation affects—

- (a) the continued corporate existence of the old Corporation with separate legal personality as from the date of its first establishment;
- (b) any of the rights, assets, liabilities or obligations acquired or incurred by the old Corporation or on behalf of the old Corporation at any time before its conversion;
- (c) the terms and conditions of service and accrued benefits of its employees; or
- (d) the validity of any act lawfully performed by or on behalf of the old Corporation prior to the date of conversion.

(9) With effect from the date of conversion—

- (a) any reference to the old Corporation in any contract, statute, licence or other written instrument is deemed to be a reference to the Corporation;
- (b) (i) any reference to the old Corporation in the patents register, trade marks register, design register, deeds register or any other register in the Republic is, with effect from the date of conversion, deemed to be a reference to the Corporation;
- (ii) the relevant registrar must make such entries or endorsements in any register referred to in paragraph (i) or other documents in the registrar's office or submitted to the registrar as

are necessary to give effect to the conversion;

(iii) no fees or other levies are payable in respect of such entries or endorsements.

(10) Any legal proceedings instituted by or against the old Corporation prior to the date of conversion may, notwithstanding such conversion, be proceeded with by or against the Corporation subject to the law governing the prescription of claims.

(11) (a) The Minister of Finance, after consultation with the Minister, must determine the tax values of the assets owned by the Corporation as at the date of conversion for the purpose of calculating any wear and tear or capital allowance or any deduction as contemplated in the Income Tax Act, 1962 (Act No. 58 of 1962).

(b) The assets contemplated in paragraph (a) are for the purposes of sections 11 (e), 12C and 13 of the Income Tax Act, 1962 (Act No. 58 of 1962), deemed to have been brought into use for the first time at a cost equal to the value determined in terms of paragraph (a).

(12) (a) The old Corporation must before the date of conversion conduct a legal and financial due diligence investigation into the state of its affairs for the purposes of identifying and establishing the status of all its assets, rights, obligations and liabilities.

(b) The old Corporation must submit to the Minister, by not later than three months prior to the date of conversion, a legal and a financial due diligence report containing details of all of such assets, rights, obligations and liabilities and the implications of the contracts concluded by or on behalf of the old Corporation in respect of such assets, rights, obligations and liabilities.

(13) The old Corporation must, after submitting the due diligence report to the Minister and before the date of conversion, submit to the Minister—

- (a) an inventory of all its assets and liabilities;
- (b) details of its financial policies relating to the allocation of such assets and liabilities between the public service division, the commercial service division and the shared group services of the Corporation; and
- (c) details of its financial policies governing internal transfer pricing between the public service division, the commercial service division and the shared group services of the Corporation.

(14) The Minister must submit a copy of the inventory referred to in subsection 13 (a) to the National Treasury and the Auditor-General.

(15) (a) Any use by the public service division or the commercial service division of any asset allocated to another division of the Corporation must be accounted for in the respective financial records of the public service division and commercial service division to ensure that such use took place on an arm's length commercial basis.

(b) Any service rendered by or to the public service division or the commercial service division to or by another division of the Corporation must be accounted for in the respective financial records of the public service division and commercial service division to ensure that such service was rendered on an arm's length commercial basis.

[S. 8A inserted by s. 9 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/9. Organisation.—(1) The Corporation must consist of two separate operational divisions, namely—

9. Organisation.—(1) The Corporation must consist of two separate operational divisions, namely—

- (a) a public service division; and
- (b) a commercial service division.

(2) The public and commercial service divisions must be separately administered and a separate set of financial records and accounts are to be kept in respect of each such division.

[S. 9 substituted by s. 10 of Act No. 64 of 2002.]

Part 3: Public service

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/10. Public service.—(1) The public service provided by the Corporation must—

10. Public service.—(1) The public service provided by the Corporation must—

- (a) make services available to South Africans in all the official languages;
- (b) reflect both the unity and diverse cultural and multilingual nature of South Africa and all of its cultures and regions to audiences;
- (c) strive to be of high quality in all of the languages served;
- (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
- (e) include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity;
[Para. (e) substituted by s. 11 (a) of Act No. 64 of 2002.]
- (f) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
- (g) strive to offer a broad range of services targeting, particularly, children, women, the youth and the disabled;
- (h) include programmes made by the Corporation as well as those commissioned from the independent production sector; and
- (i) include national sports programming as well as developmental and minority sports.

(2) The public service provided by the Corporation may draw revenues from advertising and sponsorships, grants and donations, as well as licence fees levied in respect of the licensing of persons in relation to television sets, and may receive grants from the State.

(3) The old Corporation shall, be no later than three months prior to the date of conversion, submit to the Minister for approval—

- (a) a proposed budget in respect of the public service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
- (b) a three year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the public service of the Corporation and in compliance with the general objectives of this Act covering the public service obligation of the Corporation in respect of the conduct of the business of the public service division for the three financial years following the date of conversion.

[Sub-s. (3) added by s. 11 (b) of Act No. 64 of 2002.]

(4) The Board must—

- (a) keep proper and accurate books and records of the financial affairs of the public service division separately from those of the commercial service division;
- (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the public service division in accordance with generally accepted accounting practice separately from those in respect of the commercial service division; and
- (c) submit to the Minister within four months after the end of the financial year of the Corporation—
 - (i) an annual written report on the activities of the public service division during the financial year of the Corporation preceding the date of the report;
 - (ii) the financial statements of the public 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 public service division for the financial year of the Corporation.

[Sub-s. (4) added by s. 11 (b) of Act No. 64 of 2002.]

Part 4: Commercial services

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/11. Commercial services.—(1) The commercial services provided by the Corporation must—

11. Commercial services.—(1) The commercial services provided by the Corporation must—

- (a) be subject to the same policy and regulatory structures as outlined in this Act for commercial broadcasting services;
- (b) comply with the values of the public broadcasting service in the provision of programmes and service;
- (c) commission a significant amount of their programming from the independent sector;
- (d) subsidise the public services to the extent recommended by the Board and approved by the Minister; and
- (e) be operated in an efficient manner so as to maximise the revenues provided to its shareholder.

(2) The Corporation must, by not later than a date three months prior to the date of conversion, submit to the Minister for approval—

- (a) a proposed budget in respect of the commercial service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
- (b) a three-year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the commercial service of the Corporation and in compliance with the general objectives of this Act covering the commercial service obligation of the Corporation in respect of the conduct of business of the commercial

service division for the three financial years following the date of conversion.

[Sub-s. (2) added by s. 12 of Act No. 64 of 2002.]

(3) The Board must—

- (a) keep proper and accurate books and records of the financial affairs of the commercial service division separately from those of the public service division;
- (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the commercial service division in accordance with generally accepted accounting practice separately from those in respect of the public service division; and
- (c) submit to the Minister within four months after the end of the financial year of the Corporation—
 - (i) an annual written report on the activities of the commercial service division during the financial year of the Corporation preceding the date of the report;
 - (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

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/12. Composition of Board.—The Board consists of—

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 No. 64 of 2002.]

(c)

[Para. (c) deleted by s. 13 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/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.

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, business practice and finance, marketing, journalism, entertainment and education, social and labour issues;

[Para. (a) substituted by s. 1 of Act No. 4 of 2009.]

- (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.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/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.

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.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/15. Removal from office and resignation of member.—(1) The appointing body—

15. Removal from office and resignation of member.—(1) The appointing body—

- (a) may remove a member from office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board; or
- (b) must remove a member from office after a finding to that effect by a committee of the National Assembly and the adoption by the National Assembly of a resolution calling for that member's removal from office in terms of section 15A.

[S. 15 substituted by s. 2 of Act No. 4 of 2009.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/15A. Resolution for removal of member, dissolution of Board and appointment of interim Board.—(1) (a) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the removal of a member from office on account of an

15A. Resolution for removal of member, dissolution of Board and appointment of interim Board.—(1) (a) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the removal of a member from office on account of any or all of the following:

- (i) Misconduct;
- (ii) inability to perform the duties of his or her office efficiently;
- (iii) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown;
- (iv) 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; and
- (v) his or her becoming disqualified as contemplated in section 16.

(b) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the dissolution of the Board if it fails in any or all of the following:

- (i) Discharging its fiduciary duties;
- (ii) adhering to the Charter; and
- (iii) carrying out its duties as contemplated in section 13 (11).

(2) The appointing body—

- (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 act in accordance with a recommendation contemplated in subsection (1) within 30 days;
- (c) must dissolve the Board if the resolution recommends the removal of all the members of the Board.

(3) (a) Upon the dissolution of the Board contemplated in subsection (2) (c), the appointing body must appoint an interim Board consisting of the persons referred to in section 12 (b) and five other persons recommended by the National Assembly.

(b) The interim Board must be appointed within 10 days of receiving such recommendations and is appointed for a period not exceeding six months.

(4) The appointing body, on the recommendation of the National Assembly, must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board.

(5) A quorum for any meeting of the interim Board is six members.

[S. 15A inserted by s. 3 of Act No. 4 of 2009.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/16. Disqualification.—(1) A person will not qualify to be appointed to the Board if such person—

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 Act, 1958 () the Corruption Act, 1992 (), Part to , or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;

[Sub-para. (i) substituted by s. 36 (1) of Act No. 12 of 2004.]

- (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i);

- (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/17. Disclosure of conflict of interests.—(1) A person may not be appointed on the Board, unless the necessary disclosure has been made that such person—

17. Disclosure of conflict of interests.—(1) A person may not be appointed on the Board, unless the necessary disclosure has been made that such person—

- (a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industry;
- (b) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e).

(2) If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part—

- (a) such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member is precluded from participating in such meeting by reason of a conflict of interest; and
- (b) such disclosure and the decision taken by the remaining Board members regarding such determination, must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

Part 6: Financial matters

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/18. Financial regulations.—(1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be managed.

18. Financial regulations.—(1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be managed.

- (2) Such regulations must be approved by the Minister after consultation with the Minister of Finance.
- (3) The Corporation must make such regulations known in a manner it deems fit.
- (4) The Corporation must open and maintain an account with a bank registered as such in the Republic, or with any other financial institution so registered and approved by the Minister of Finance.
- (5) The Corporation may with the approval of the Minister invest any surplus funds of the Corporation.
- (6) The surplus referred to in subsection (5) must at the end of a financial year, be carried over to the next financial year and form part of the budget of the Corporation for that financial year.
- (7) Any dividends received by the State must be paid into the National Revenue Fund.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/19.

19.

[S. 19 repealed by s. 16 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/20. Financial year and annual financial statements.—(1) Subject to the provisions of section 285 of the Companies Act, the financial year of the Corporation commences on 1 April and ends on 31 March of the following year.

20. Financial year and annual financial statements.—(1) Subject to the provisions of section 285 of the Companies Act, the financial year of the Corporation commences on 1 April and ends on 31 March of the following year.

(2) In addition to the annual financial statements to be drawn up in terms of the Companies Act the Minister may direct the Corporation to draw up annual statements in a form determined by him or her.

(3) The annual financial statements must be tabled by the Minister in the National Assembly.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/21. Rights and obligations.—(1) The Corporation may not by virtue of the powers conferred upon it by this Act do anything for which a licence is required in terms of the Electronic Communications Act, unless it has obtained the licence in question

21. Rights and obligations.—(1) The Corporation may not by virtue of the powers conferred upon it by this Act do anything for which a licence is required in terms of the Electronic Communications Act, unless it has obtained the licence in question and complies with the conditions thereof.

[Sub-s. (1) amended by s. 97 of Act No. 36 of 2005.]

(2) Notwithstanding anything to the contrary contained in the Electronic Communications Act, or any other law, the Corporation is entitled, against payment of the annual fees which the Authority may from time to time determine, to be issued with a licence contemplated in subsection (1).

[Sub-s. (2) amended by s. 97 of Act No. 36 of 2005.]

(3) The Corporation must provide the Authority with all necessary and relevant information for the purpose of monitoring compliance with the Charter.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/22. Amendment of broadcasting licences.—(1) The Corporation must, within six months after the date of commencement of the Broadcasting Amendment Act, 2002, or the conversion date, whichever is the later, apply to the Authority for such amendments

22. Amendment of broadcasting licences.—(1) The Corporation must, within six months after the date of commencement of the Broadcasting Amendment Act, 2002, or the conversion date, whichever is the later, apply to the Authority for such amendments to its existing licences as are necessary in order to reflect the reorganisation of the Corporation into the public service division and the commercial service division and its related obligations in terms of this Act and the Electronic Communications Act.

(2) The relevant provisions of the Electronic Communications Act apply with the necessary changes to

the applications referred to in subsection (1) but, irrespective of the contents of the application of the Corporation, the Authority may impose any appropriate licence conditions which are necessary in order to reflect the reorganisation of the Corporation into the public service division and the commercial service division and its related obligations in terms of this Act and the Electronic Communications Act.

[S. 22 substituted by s. 17 of Act No. 64 of 2002 and amended by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/22A. Regional television services.—(1) In the performance of its public service mandate under section 10 (1) (a) and (b), the Corporation must, within nine months of the commencement of the Broadcasting Amendment Act, 2002, apply to the Authority

22A. Regional television services.—(1) In the performance of its public service mandate under section 10 (1) (a) and (b), the Corporation must, within nine months of the commencement of the Broadcasting Amendment Act, 2002, apply to the Authority in terms of section 41 (4) of the IBA Act, read with section 45 (2) of that Act, to license it to provide additional television services which broadcast—

- (a) regionally;
- (b) in such official languages as are appropriate, having regard to language usage within respective regions served by the proposed services;
- (c) so as to ensure that between these regional services, broadcasting in the languages of Sepedi, Sesotho, Setswana, siSwati, TshiVenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu is provided on an equitable basis.

(2) The regional services provided by the Corporation must be funded by money appropriated by Parliament and may draw revenues from grants, donations and sponsorship.

(3) The Authority must determine the extent to which these services may draw revenues from advertising.

(4) The Corporation must draw up proper financial regulations for these services consistent with section 18.

[S. 22A inserted by s. 18 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/23. Borrowing powers.—The Corporation must not borrow money without prior written approval of the Minister and the Minister of Finance.

23. Borrowing powers.—The Corporation must not borrow money without prior written approval of the Minister and the Minister of Finance.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/24. Accounts.—(1) The Corporation must keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.

24. Accounts.—(1) The Corporation must keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.

(2) The Corporation must as soon as practicable after the end of each financial year, prepare statements of accounts and a balance sheet showing in appropriate detail the revenues and expenditure of the Corporation during that financial year, and its assets and liabilities as at the end of each financial year.

(3) The Corporation must in its accounts referred to in subsection (2) reflect separately the accounts of the public and commercial services.

(4) The Board must ensure that the Corporation complies with the Public Finance Management Act in relation to accounting procedures by public entities.

[Sub-s. (4) added by s. 19 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/25. Auditing.—(1) In addition to the annual financial statements to be prepared in terms of the Companies Act and also in terms of the Public Finance Management Act the Corporation must cause its books and accounts to be audited annually by a pers

25. Auditing.—(1) In addition to the annual financial statements to be prepared in terms of the Companies Act and also in terms of the Public Finance Management Act the Corporation must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (), and appointed as auditor of the Corporation.

[Sub-s. (1) substituted by s. 20 of Act No. 64 of 2002.]

(2) The Board must produce and lay before the auditor all books and accounts of the Corporation with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or control.

(3) For the purposes of the audit the auditor may hear and receive evidence upon oath, and may by written notice under his hand require any person to appear before him in person at a time and place stated in such notice, to give information or produce any books or document necessary for the audit.

(4) Any person appearing in terms of such a notice must be paid such witness fees and allowances as he or she would have been entitled to if such person appeared in a magistrate's court as a witness.

(5) The auditor must—

- (a) disallow any payment made without proper authority according to law, and report the disallowance to the Board;
- (b) charge against the person who made or authorised the payment in question, so much of the payment as is not condoned by the Board;
- (c) charge against the person responsible therefor—
 - (i) as much of the amount of any deficiency or loss arising from negligence or misconduct of that person as is not condoned by the Board;
 - (ii) as much of any amount which ought to have been but was not brought into account by that person as is not condoned by the Board, provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person,

and certify in every case that the amount so charged is correct.

(6) Any amount so charged and certified by the auditor must be paid by the person against whom it has been charged to the Corporation within fourteen days after it was so certified, and, if not so paid, may be recovered from that person as a debt by the Corporation.

(7) It must be the duty of the auditor, in addition to his or her ordinary duties as an auditor, to certify not less than once in every year—

- (a) whether or not, in his or her opinion—
 - (i) the accounts of the Corporation are in order;
 - (ii) such accounts present a true and correct view of the financial position of the Corporation and of its transactions;

- (iii) due provision has been made for the redemption and repayment of loans raised by the Corporation;
 - (iv) the value of the assets of the Corporation has been correctly stated; and
 - (b) whether or not all his or her requirements and recommendations as auditor have been complied with and carried out.
- (8) The expenses of or incidental to any audit must be borne by the Corporation.

Part 7: Staffing of Corporation

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/26. Staff of Corporation.—(1) The Corporation may engage such officers and other employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their o

26. Staff of Corporation.—(1) The Corporation may engage such officers and other employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their other conditions of service in general.

- (2) The Corporation may—
 - (a) establish a housing fund or in any other manner provide for housing to its officers and other employees on such terms and conditions as it may determine;
 - (b) establish or support associations or institutions for the promotion of the interests of its officers and other employees of their dependants;
 - (c) establish or support aid funds for the rendering of assistance to its officers and other employees or their dependants under such circumstances as it may approve;
 - (d) establish a bursary fund to finance or assist in financing in the interest of the Corporation the training or further training of existing or prospective officers and other employees of the Corporation; and
 - (e) provide for its officers, other employees and pensioners or their dependants, by means of insurance with an insurance company or by means of a pension or provident fund or in any other manner, pecuniary benefits upon retirement or termination of service or at any other time.

(3) to (7) inclusive

[Sub-ss. (3) to (7) inclusive deleted by s. 21 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/27. Television licences.—(1) (a) No person may use any television set unless such person is in possession of—

27. Television licences.—(1) (a) No person may use any television set unless such person is in possession of—

- (i) a television licence issued by the Corporation against payment of the prescribed fee for each television set so used, unless exempted by regulation; or
- (ii) a written exemption pursuant to the regulations; or
- (iii) written confirmation, issued by the lessor of the television set in question that such person is a

person to whom that television set has been rented, or otherwise made available in accordance with this Act.

(b) No business, dealer or lessor may use any television set unless—

- (i) such business, dealer or lessor is in possession of a television licence issued against payment of a prescribed fee in terms of this Act for each television set so used, unless exempted by regulation;
- (ii) such television set is used in accordance with such licence; and
- (iii) such business, dealer or lessor is able to produce such licence on demand.

(c) A user who is required to be in possession of a television licence must possess all the categories of television licences as prescribed, which pertain to such use.

(2) Subsection (1) does not apply to a person who manufactures or repairs television sets, or who acts in the execution of his or her duties in the service of such a person, in so far as he or she uses any television set manufactured or repaired by him or her, in or on the premises where it was manufactured or repaired or on any other premises approved by the Corporation, for the purposes of testing such a television set.

(3) Any person who contravenes subsection (1) is, in addition to payment of the prescribed licence fee, liable—

- (a) to pay to the Corporation by way of a penalty an amount equal to double the amount of the applicable prescribed licence fee; or
- (b) in the event of a user proving that he or she had used the television set for a period of less than one year, to pay to the Corporation, by way of a penalty, in respect of every month or part of a month during which such a person had failed to take out such television licence, an amount equal to 10% of the applicable prescribed television licence fee: Provided that the total amount of the penalty may not exceed the amount of such television licence fee, unless otherwise prescribed.

(4) A dealer who sells or alienates a television set to a person who is not in possession of a television licence and who is not exempted from the obligation to be in possession of a television licence, is liable to pay a penalty of R3 000 or such higher amount as may be prescribed, but such penalty may not exceed R10 000 in respect of each television set sold or alienated to such person.

(5) Notwithstanding subsections (3) and (4), any person who—

- (a) contravenes or fails to comply with any provision of this section or any regulations pertaining to television licence matters; or
- (b) after an authorised inspector, referred to in subsection (6), has produced his or her written authority to such person fails, without good reason, to comply with any lawful demand made by that authorised inspector,

is guilty of an offence in relation to each television set in respect of which the offence is committed and is liable upon conviction to a fine not exceeding R500 in relation to each such offence or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) (a) The Corporation may appoint any person as an authorised inspector.

(b) An authorised inspector may—

- (i) require a person who is required in terms of subsection (1) to be in possession of a television licence to produce such television licence for inspection;
- (ii) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to produce such television set for examination, in order to determine whether the provisions of this Act have been complied with;

- (iii) require a person who uses a television set to furnish his or her identity document or licence registration number, whichever is applicable;
- (iv) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to furnish such information as may be prescribed or necessary in order to determine whether this Act has been complied with;
- (v) require a business, dealer or lessor to produce records relating to transactions involving television sets for inspection, and make extracts therefrom or copies thereof;
- (vi) enter upon any land, in so far as this may be necessary, in order to exercise a power conferred on him or her by this Act: Provided that entry may not be gained to a residence after dark without a warrant or the occupier's permission.

(7) A television licence is not transferable, save as may be prescribed.

(8) All television licence fees collected by the Corporation must be used by the Corporation solely for the public service to be provided by the Corporation.

(9) To enable the Corporation to establish and maintain a national database register listing all sales of new television sets in the Republic, dealers, lessors and businesses must provide the Corporation with all information prescribed in respect of sales of new television sets.

[S. 27 substituted by s. 22 of Act No. 64 of 2002.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/28. Annual report.—(1) The Board must furnish to the Minister, on or before 30 September in each year, a report on the work of the Corporation of the previous financial year, together with a balance sheet and a complete statement of revenue and ex

28. Annual report.—(1) The Board must furnish to the Minister, on or before 30 September in each year, a report on the work of the Corporation of the previous financial year, together with a balance sheet and a complete statement of revenue and expenditure for that financial year audited by the auditor referred to in section 25, and the report of that auditor, and must give particulars as to—

- (a) the book value of all classes of property owned by the Corporation;
- (b) the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid;
- (c) the position of every fund established in terms of this Act;
- (d) the expenses of management and administration and all other expenses of the Corporation;
- (e) the erection and construction, repair, improvement or alteration of any plant, equipment or building, and the cost thereof;
- (f) the price or rent of any land or any other immovable property acquired or hired;
- (g) any other matters which the Minister may require the Board to deal with.

(2) The Minister must table every report furnished in terms of subsection (1) in Parliament, within seven days after receiving it if Parliament is in session, or, if Parliament is not in session, within seven days after the commencement of its next ensuing session.

(3) The Board must ensure that the Corporation complies with the provisions of the Public Finance Management Act relating to the preparation and submission of annual reports by public entities.

[Sub-s. (3) added by s. 23 of Act No. 64 of 2002.]

CHAPTER V
COMMERCIAL BROADCASTING SERVICES
Part 1: Licence requirements and objectives

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/29.

29.

[S. 29 repealed by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/30.

30.

[S. 30 amended by s. 24 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

Part 2: Subscription broadcasting service

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/31.

31.

[S. 31 amended by s. 25 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

CHAPTER VI
COMMUNITY BROADCASTING SERVICES

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/32.

32.

[S. 32 repealed by s. 97 of Act No. 36 of 2005.]

CHAPTER VII
SIGNAL DISTRIBUTION AND MULTI-CHANNEL DISTRIBUTIONS

Part 1: Signal distribution and objectives

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/33.

33.

[S. 33 amended by s. 26 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/34.

34.

[S. 34 amended by s. 27 of Act No. 64 of 2002 and amended by s. 24 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

Part 2: Multi-channel distributors

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/35.

35.

[S. 35 amended by s. 28 of Act No. 64 of 2002 and repealed by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/36.

36.

[S. 36 repealed by s. 97 of Act No. 36 of 2005.]

CHAPTER VIII
FREQUENCY SPECTRUM DIRECTORATE

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/37.

37.

[S. 37 repealed by s. 97 of Act No. 36 of 2005.]

CHAPTER IX
ADVISORY BODY TO MINISTER

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/38. South African Broadcast Production Advisory Body.—(1) The Minister must establish a South African Broadcast Production Advisory Body to advise him or her on how the development, production and display of local television and radio content can

38. South African Broadcast Production Advisory Body.—(1) The Minister must establish a South African Broadcast Production Advisory Body to advise him or her on how the development, production and display of local television and radio content can be supported.

(2) The terms and conditions of allowances, composition and meetings applicable to the Advisory Body by virtue of its appointment in terms of subsection (1) must be as determined by the Minister in concurrence with the Minister of Finance.

(3) The Advisory Body must advise the Minister on how to encourage, facilitate and offer guidance and advice in respect of any scheme and to promote—

- (a) the production of broadcast materials that meet the cultural needs of South Africans;
- (b) the screening and airplay of South African content in television and radio, respectively;
- (c) awareness of local content in South African and foreign markets;
- (d) distribution and exhibition of local content in foreign markets;
- (e) the correction of imbalances in the local content production industry;
- (f) human resource development to provide skills and training of local content providers;
- (g) co-productions and the concluding of international agreements.

(4) The Advisory Body must, after consultation with the National Film and Video Foundation and the broadcasting industry, make recommendations for the Minister to determine after consultation with the Minister of Arts, Culture, Science and Technology, the Minister of Trade and Industry and the Minister of Finance—

- (a) policy and strategies to give effect to the production and display of local content;
- (b) financing strategies to support the production and display of local content;
- (c) supply-side measures and initiatives to support the production of local content;
- (d) policies to enhance the production of local content for the multi-channel and digital broadcasting environment.

CHAPTER X SKILLS DEVELOPMENT

This Chapter relates to the use of broadcasting as a resource in support of both the formal and informal education. The need for the broadcasting system as a whole to offer programming which is informative and increase the public understanding of development is emphasised.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/39.

39.

[S. 39 repealed by s. 97 of Act No. 36 of 2005.]

CHAPTER XI GENERAL

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/40. Regulations.—(1) The Minister may, by notice in the Gazette, make regulations regarding—

40. Regulations.—(1) The Minister may, by notice in the *Gazette*, make regulations regarding—

(a)

[Para. (a) repealed by s. 97 of Act No. 36 of 2005.]

(b)

[Para. (b) repealed by s. 97 of Act No. 36 of 2005.]

- (c) (i) the television licence fee which is payable for any television licence issued in terms of this Act, including the manner of payment and the collection thereof, penalties and ancillary costs;
- (ii) the period of validity of a television licence;
- (iii) the purpose for which and the place where a television set may be used;
- (iv) different categories of television licences which any user of a television set may be required to possess;
- (v) the duty to keep, maintain and furnish records and information, including a duty to supply the Corporation with such records and information as may be prescribed;
- (vi) exemptions from the obligation to be in possession of a television licence; and
- (vii) the transferability of a television licence.

[Para. (c) added by s. 29 of Act No. 64 of 2002.]

(2)

[Sub-s. 2 repealed by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/41. Repeal and amendment of laws.—(1) The laws specified in Schedule 1 are repealed or amended to the extent indicated in the third column thereof.

41. Repeal and amendment of laws.—(1) The laws specified in Schedule 1 are repealed or amended to the extent indicated in the third column thereof.

(2) Any regulation, license, appointment, designation, determination or other thing which was made, issued or done under a law repealed by this section and which could be made, issued or done, under any provision of this Act, is deemed to have been made, issued or done under the last-mentioned provision and remains in force until repealed or amended.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/42. Application of Act.—(1) The Electronic Communications Act applies in relation to this Act, the ICASA Act, the Sentech Act and any other legislation applicable to broadcasting or electronic communications.

42. Application of Act.—(1) The Electronic Communications Act applies in relation to this Act, the

ICASA Act, the Sentech Act and any other legislation applicable to broadcasting or electronic communications.

(2) In the event of a conflict between the provisions of this Act and any other law relating to broadcasting or electronic communications, the provisions of the Electronic Communications Act prevail.

[S. 42 substituted by s. 97 of Act No. 36 of 2005.]

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/43. Short title and commencement.—(1) This Act is called the Broadcasting Act, 1999, and comes into operation on a date determined by the President by proclamation in the Gazette.

43. Short title and commencement.—(1) This Act is called the Broadcasting Act, 1999, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed for the coming into operation of different sections of this Act by proclamation in the *Gazette*.

Legislation - South Africa - National/Acts and Regulations/B/BROADCASTING ACT NO. 4 OF 1999/The Act/Schedule LAWS AMENDED OR REPEALED

Schedule

LAWS AMENDED OR REPEALED

BROADCASTING ACT, :—

Repeals the Broadcasting Act, .

INDEPENDENT BROADCASTING ACT, :—

In this Act, unless the context otherwise indicates, "broadcasting", "broadcasting signal distribution", "broadcasting service", "encryption", "private broadcasting service", "public broadcasting service", "community", "broadcasting services frequency bands", have the meaning assigned thereto in section 1 of the Broadcasting Act of 1998.

Amends of the Independent Broadcasting Act, , as follows:—paragraph (a) inserts the definition of "low power sound broadcasting service"; paragraph (b) inserts the definition of "National Revenue Fund"; and paragraph (c) inserts the definition of "financial interest".

Amends of the Independent Broadcasting Act, , by substituting the definition of "election period".

Amends of the Independent Broadcasting Act, , by substituting the word "commercial" for the word "private" wherever it appears.

Amends of the Independent Broadcasting Act, , by substituting subsection (4).

Substitutes of the Independent Broadcasting Act, .

Inserts in the Independent Broadcasting Act, .

Amends of the Independent Broadcasting Act, , by substituting subsections (1) and (3).

Amends of the Independent Broadcasting Act, , by substituting subsection (1).

Repeals of the Independent Broadcasting Act, .

Amends of the Independent Broadcasting Act, , by substituting subsection (2).

Substitutes of the Independent Broadcasting Act, .

Repeals of the Independent Broadcasting Act, .

Amends of the Independent Broadcasting Act, , as follows:—paragraph (a) substitutes subsection (6); paragraph (b) substitutes subsection (8); and paragraph (c) inserts subsection (9), the existing subsection (9) becoming subsection (10).

Inserts in the Independent Broadcasting Act, .

Amends of the Independent Broadcasting Act, , as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (3) (c).

Amends of the Independent Broadcasting Act, , by substituting paragraph (b).

Amends , , and of the Independent Broadcasting Act, , by substituting the word "commercial" for the word "private" wherever it appears.

Amends of the Independent Broadcasting Act, , by substituting subsection (2).

Amends of the Independent Broadcasting Act, , as follows:—paragraph (a) substitutes paragraphs (b) and (c); and paragraph (b) inserts paragraph (d).

Amends of the Independent Broadcasting Act, , by substituting subsections (2) and (3).

Amends of the Independent Broadcasting Act, , by substituting subsections (3) and (4).

Amends of the Independent Broadcasting Act, , by substituting subparagraphs (ii) and (iii).

Amends of the Independent Broadcasting Act, , by adding paragraphs (c), (d) and (e).

Repeals of the Independent Broadcasting Act, .