

REPUBLIC OF SOUTH AFRICA

IKAMVA DIGITAL SKILLS INSTITUTE BILL

*(As presented by the Portfolio Committee on Telecommunications and Postal Services
(National Assembly)) (introduced as the iKamva National e-Skills Institute Bill [B10-2018])
(The English text is the official text of the Bill)*

(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)

[B 10B—2018]

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BILL

To provide for the promotion of the development and meaningful use of digital skills; to provide for the establishment of the iKamva Digital Skills Institute; to provide for the objects and functions of the Institute; to provide for the establishment and functions of collaborative laboratories for digital skills knowledge production, training and coordination; to provide for the governance and management arrangements of the Institute; and to provide for matters connected therewith.

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

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Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Board**” means the Board of the Institute contemplated in section 6(1);
 - “**chairperson**” means the chairperson of the Board appointed in terms of section 6(7);
 - “**chief executive officer**” means the chief executive officer of the Institute appointed in terms of section 16(1);
 - “**chief financial officer**” means the chief financial officer of the Institute appointed in terms of section 16(1);
 - “**CoLab**” means a collaborative laboratory for digital skills knowledge, production, training and coordination established in terms of section 5;
 - “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
 - “**Continuing Education and Training Act**” means the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);
 - “**digital skills**” means the ability to use and develop ICTs;
 - “**electronic communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
 - “**e-SI**” means the e-Skills Institute established within the Department of Telecommunications and Postal Services;
 - “**Higher Education Act**” means the Higher Education Act, 1997 (Act No. 101 of 1997);
 - “**ICT**” means information and communications technology;
 - “**Institute**” means the iKamva Digital Skills Institute established in terms of section 2;
 - “**ISSA**” means the Institute for Satellite and Software Applications established within the Department of Telecommunications and Postal Services;
 - “**Minister**” means the minister responsible for telecommunications;
 - “**National Qualifications Framework Act**” means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);
 - “**NEMISA**” means the National Electronic Media Institute of South Africa, with registration number 1998/014825/08, incorporated as a not for profit company in terms of the Companies Act;
 - “**Post-School Education and Training Institution**” means any public college as defined in the Continuing Education and Training Act, and any public higher education institution as defined in the Higher Education Act;
 - “**prescribe**” means prescribe by regulation;
 - “**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
 - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “**regulation**” means a regulation made under this Act; and
 - “**this Act**” includes any regulation made under this Act.

Establishment of Institute

2. (1) The Institute is hereby established as a juristic person.
- (2) The Institute is an integration of NEMISA, e-SI and ISSA.
- (3) The Institute is a national public entity and is subject to the provisions of the Public Finance Management Act.

Objects of Institute

3. The objects of the Institute are to—
 - (a) act as a national catalytic collaborator for digital skills development;
 - (b) collaborate with relevant Post-School Education and Training Institutions to maximise the use of existing infrastructure and resources and to respond to the demand for digital skills; and
 - (c) encourage, facilitate and promote innovative research networks aimed at promoting and developing digital skills.

Functions of Institute

4. (1) The Institute must—
- (a) promote and guide the development, training, learning, research and innovation of digital skills;
 - (b) identify the digital skills demand and supply needs of the Republic; 5
 - (c) encourage the development of digital skills in response to the digital skills needs of the Republic;
 - (d) raise awareness and promote the meaningful and responsible use of ICTs;
 - (e) monitor and evaluate the development and level of digital skills capabilities in the Republic and advise Government, business, civil society, education and training institutions accordingly; 10
 - (f) develop and promote a digital skills framework which includes a model for training and development; and
 - (g) enhance employment and enterprise development opportunities for digital skills trainees. 15
- (2) In performing the functions contemplated in subsection (1), the Institute must—
- (a) comply with the National Qualifications Framework Act; Higher Education Act; Continuing Education and Training Act; and the Skills Development Act, 1998 (Act No. 97 of 1998);
 - (b) interact and foster collaboration with the minister responsible for higher 20 education and training and the minister responsible for basic education;
 - (c) collaborate with Government, business, civil society and education and training institutions; and
 - (d) maximise the use of public resources.
- (3) The Minister may, after consultation with the Board, direct the Institute in writing 25 to perform any additional functions not inconsistent with this Act.
- (4) The Institute, in exercising its functions, must consider policy made and policy directions issued by the Minister in terms of this Act or any other applicable law.

Establishment and functions of CoLabs

5. (1) The Institute may, subject to subsection (2), jointly establish CoLabs with 30 relevant Post-School Education and Training Institutions.
- (2) The Institute must enter into a written agreement with the Post-School Education and Training Institution setting out the terms and conditions for the establishment and functions of the CoLab within the Post-School Education and Training Institution, 35 which written agreement must include—
- (a) the duration of the agreement;
 - (b) a requirement that the Post-School Education and Training Institution will implement effective, efficient and transparent financial management and internal controls for the duration of the agreement;
 - (c) provision for compliance and financial audits of the CoLab to be undertaken 40 at any time by the Institute;
 - (d) details of the resources the Post-School Education and Training Institution will provide;
 - (e) funding and delivery milestones;
 - (f) ownership of assets acquired by the CoLab; 45
 - (g) the treatment of unspent and surplus funds and the recovery of damages and losses; and
 - (h) performance monitoring measures including reporting requirements.
- (3) The CoLabs must—
- (a) be accessible to all stakeholders; 50
 - (b) provide feedback to the Institute to enable the Institute to develop and promote digital skills;
 - (c) promote and undertake research;
 - (d) provide research support to students;
 - (e) initiate and implement projects aimed at the promotion of digital skills; and 55
 - (f) establish digital skills networks with Government, business, civil society and education and training institutions.
- (4) Subject to the National Qualifications Framework Act, CoLabs may, in accordance with the agreement contemplated in subsection (2) and in collaboration with the appropriate Quality Council and the South African Qualifications Authority, develop 60 accredited courses to facilitate digital skills training.

Establishment, composition and functions of Board

6. (1) The Board of the Institute is hereby established.
- (2) The Board must govern and provide strategic direction to the Institute.
- (3) The Board is the accounting authority of the Institute in terms of the Public Finance Management Act. 5
- (4) The Board has the authority to exercise all the powers and functions of the Institute except to the extent this Act provides otherwise.
- (5) Subject to the Public Finance Management Act, the Board may in writing delegate any power, function or duty of the Institute in terms of this Act to—
- (a) any committee of the Board established in terms of section 13; and 10
- (b) the chief executive officer.
- (6) The Board must consist of the following members—
- (a) not less than five and not more than eight non-executive members;
- (b) the chief executive officer as an executive member; and
- (c) the chief financial officer as an executive member. 15
- (7) The chairperson and deputy chairperson of the Board must be appointed by the Minister from the non-executive members of the Board.
- (8) The Board may designate any other non-executive member to act as chairperson if both the chairperson and deputy chairperson are absent or unable to perform any function. 20
- (9) The Minister must establish a performance management system which provides for the conclusion of an annual performance agreement with the Board, detailing the key responsibility areas and key performance indicators, to measure and review the performance of the Board.

Appointment of Board 25

7. (1) The Minister must appoint the non-executive members of the Board from the list contemplated in terms of subsection (3)(b).
- (2) The Board must be constituted in a manner that is broadly representative of the demographics of the Republic.
- (3) Before appointing the non-executive members of the Board referred to in subsection (1), the Minister must— 30
- (a) publish a notice in the *Gazette* and at least two national newspapers, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon the public to nominate suitable persons contemplated in subsection (1) and (4); and 35
- (b) appoint an independent nomination committee which must compile a shortlist of not more than 20 persons from the persons nominated in terms of paragraph (a).
- (4) The nomination committee, in compiling the shortlist contemplated in subsection (3)(b), must consider the proven skills, knowledge and experience of a nominee in areas of— 40
- (a) ICT academia;
- (b) ICT research;
- (c) ICT innovation or practice;
- (d) ICT management; 45
- (e) digital skills;
- (f) law;
- (g) intellectual property; and
- (h) business skills,
- which, when considered collectively, should enable the Board to achieve the objects of the Institute. 50
- (5) If the Minister receives no nominations, or an insufficient number of suitable nominations, the Minister may, after consultation with the nomination committee, appoint the required number of Board members in a transparent manner.

Term of office and conditions of service of non-executive members of Board 55

8. (1) A non-executive member of the Board—
- (a) holds office for a period not exceeding three years;
- (b) may be re-appointed but may not serve for more than two consecutive terms;

- (c) is appointed on a part-time basis according to the conditions of service as determined by the Minister in terms of this Act; and
- (d) must be paid, from the monies appropriated to the Institute, such remuneration and allowances as determined by the Minister in consultation with the minister responsible for finance. 5

(2) Despite subsection (1)(a) and (b), the Minister may, after consultation with the Board, extend the period of office of any member of the Board for a period of not more than six months after the expiry of that member's term of office or until a new member has been appointed, whichever comes first.

Disqualification of a member of Board and removal from office 10

9. (1) A person may not be appointed or continue as a member of the Board if such person—

- (a) is declared mentally ill in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (b) has been or is convicted, in the Republic or elsewhere, of any offence and sentenced to imprisonment without the option of a fine; 15
- (c) has been or is convicted, in the Republic or elsewhere, of any offence involving dishonesty with or without the option of a fine;
- (d) is or becomes a member of the National Assembly, a provincial legislature or the council of a municipality, or is appointed as a delegate to the National Council of Provinces by a provincial legislature; 20
- (e) is not or ceases to be a South African citizen;
- (f) has been or is removed from an office of trust on account of misconduct or in respect of the misappropriation of money;
- (g) is an unrehabilitated insolvent; 25
- (h) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of the duties of a member of the Board; or
- (i) is an office-bearer of any political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996). 30

(2) The Minister must remove a member of the Board from office if such member becomes disqualified in terms of subsection (1).

(3) The Minister may, after consultation with the Board, remove a member of the Board from office on account of—

- (a) misconduct; 35
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Board without the leave of the Board, except on good cause shown; or
- (d) on any other reasonable ground.

(4) In exercising his or her powers in terms of subsection (3), the Minister must comply with the Promotion of Administrative Justice Act. 40

(5) A member of the Board may at any time, upon at least three months' written notice to the Minister or such shorter period as agreed to by the Minister, resign from office.

Vacancies

10. (1) A vacancy on the Board occurs if a non-executive member— 45

- (a) is removed by the Minister in terms of section 9(2) or (3);
- (b) tenders his or her resignation as contemplated in section 9(5) and the resignation takes effect;
- (c) dies; or
- (d) if the term of office of that non-executive member expires in terms of section 8. 50

(2) (a) Where a vacancy has arisen as contemplated in subsection (1), the Minister must, within six months of such vacancy arising, appoint a suitable person as a member of the Board in terms of the process set out in section 7.

(b) The Minister may, until the vacancy contemplated in paragraph (a) has been filled, appoint a suitable person as a member of the Board from the nominees previously shortlisted by the nomination committee in terms of section 7(3)(b), or in any other transparent manner, on a temporary basis. 55

(c) Any member of the Board appointed to fill a vacancy contemplated in subsection (1)(b) to (d) holds office for the remainder of the period of the predecessor's 60

term of office, unless the Minister determines that the member of the Board holds office for a longer period which may not exceed three years.

Conflict of interest

11. (1) A member of the Board must upon appointment, and annually thereafter, disclose in writing to the Minister and the Board if he or she, his or her spouse, family member, business partner or associate has an interest in any matter which may preclude him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 5

(2) A member of the Board must disclose to the Board at every meeting of the Board if he or she, his or her spouse, family member, business partner or associate has an interest in any matter before the Board which may preclude him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 10

(3) A member of the Board may not vote at, attend, or in any other manner participate in any meeting of the Board if the member has an interest as contemplated in subsection (1) and (2) or is prohibited from participating in a meeting in terms of subsection (4). 15

(4) Subject to subsection (5) and (6), the Board may prohibit a member of the Board from participating in a meeting of the Board, if during the course of a meeting, the Board has reason to believe that such member has any conflict of interest contemplated in subsection (1) or (2).

(5) Prior to making a decision to prohibit a member of the Board from participating in a meeting, the Board must give the affected member an opportunity to provide oral reasons as to why he or she should not be prohibited from participating in the meeting. 20

(6) The decision taken by the Board in terms of subsection (5), and the reasons for such decision, must be recorded in the minutes of the meeting in question.

(7) If any member of the Board contravenes subsection (1), (2) or (3), any decision of the Board to which such conflict of interest relates shall be null and void. 25

(8) A member of the Board is guilty of an offence and liable on conviction to a fine not exceeding R500 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment, if he or she contravenes subsection (1), (2) or (3).

Code of ethics and governance principles 30

12. (1) Subject to subsection (2), the Board must, in consultation with the Minister, develop and make publicly available on its website, a code of ethics and governance principles for members of the Board which must be reviewed at least every five years.

(2) The code of ethics and governance principles must be developed by the Board within 120 days from the appointment of the first Board in terms of this Act and must at least provide for the following— 35

(a) fiduciary duties of members of the Board which must include the duty of a member to diligently perform his or her functions of office and exercise the utmost good faith, honesty, integrity and care in the performance of his or her functions; 40

(b) the procedure for annual and ad hoc declarations of interest to the Minister; and

(c) governance principles in terms of which the Board will carry out its powers and functions.

(3) A member of the Board who contravenes or fails to comply with the code of ethics and governance principles is guilty of misconduct. 45

Board committees

13. (1) The Board may, from time to time, appoint one or more committees as may be required for the Board to fulfil its functions and meet its objectives in terms of this Act or any other law. 50

(2) The Board must—

(a) assign members of the Board to serve on a committee, based on their knowledge, skills and experience; and

(b) determine, amongst others, the— 55

(i) terms of reference of a committee;

(ii) composition of a committee;

(iii) tenure of members of a committee;

- (iv) reporting mechanisms of a committee;
- (v) process for dissolution of a committee; and
- (vi) method and reasons for removal of a member from a committee.

(3) Non-executive members of the Board must make up the majority of the members of a committee. 5

(4) The Board may appoint any external person with the necessary knowledge, expertise and experience to assist a committee in the performance of its functions.

(5) Unless delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.

(6) A committee, with due regard for financial prudence, may meet as often as is necessary in order to carry out its functions and may determine its own procedures. 10

(7) Each committee must be chaired by a non-executive member of the Board.

Meetings of Board

14. (1) The chairperson, and in his or her absence the deputy chairperson, must preside at a meeting of the Board. 15

(2) If the chairperson and deputy chairperson are not present at a meeting of the Board, the members of the Board present at that meeting must elect a non-executive member from amongst themselves to preside at such a meeting.

(3) The Board must meet at least four times a year at such time and place as the Board may determine. 20

(4) A meeting of the Board may be conducted by electronic communication or one or more members of the Board may participate in a meeting via electronic communication: provided that all persons participating in the meeting are able to communicate concurrently with each other without an intermediary and are able to participate effectively. 25

(5) The Board may determine the procedure for its meetings.

(6) The chairperson—

- (a) may convene a special meeting of the Board; and
- (b) must convene a special meeting within 14 days of receipt of a written request for such a meeting signed by at least the majority of the members of the Board. 30

(7) A quorum for a meeting of the Board is two-thirds of the members of the Board.

(8) A decision of the Board must be taken by resolution of the majority of the members present at a meeting of the Board, or via electronic communication, and in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 35

Dissolution of Board

15. (1) The Minister may dissolve the Board—

- (a) if the Board has failed or is unable to perform its functions or duties in terms of this Act;
- (b) if there is a breakdown in the relationship amongst the members of the Board which renders the continued effective functioning of the Board impossible; or 40
- (c) on any other reasonable grounds which renders the continued effective functioning of the Board impossible.

(2) In exercising his or her powers in terms of this section, the Minister must comply with the Promotion of Administrative Justice Act. 45

(3) Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board, consisting of a minimum of three persons, to assume the responsibilities of the Board until a new Board is constituted in accordance with the procedure contemplated in section 7.

(4) A new Board must be constituted within 180 days of the dissolution of the previous Board. 50

(5) Any person who was a member of the Board that was dissolved in terms of this section may be reappointed to a new Board if the Minister, after following the process contemplated in subsection (2), is of the opinion that such person did not contribute to the failure of the Board to perform its functions or duties. 55

(6) The Minister must, within 60 days of the dissolution of the Board, submit a report to the National Assembly, setting out the reasons for the dissolution of the Board.

Appointment and conditions of service of chief executive officer and chief financial officer

16. (1) The Board must, with the approval of the Minister, appoint a chief executive officer and chief financial officer to ensure that the Institute meets its objectives.
- (2) The chief executive officer and chief financial officer are appointed, on a performance-based contract, for a term not exceeding five years, which appointment may, with the approval of the Minister, be renewed for further terms not exceeding five years each. 5
- (3) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in at least two national newspapers. 10
- (4) A person appointed as chief executive officer or chief financial officer must—
- (a) have the qualifications or experience relevant to the functions of the Institute including experience in public finance management; and
 - (b) not be disqualified as contemplated in section 9.
- (5) The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance contract with the Board. 15
- (6) The terms and conditions of employment of the chief executive officer and chief financial officer, including remuneration, allowances, pension and other employment benefits are determined by the Minister in accordance with a remuneration framework to be agreed to with the minister responsible for finance. 20

Functions of chief executive officer

17. (1) The chief executive officer is the head of the Institute's administration.
- (2) Subject to directives from the Board, the functions of the chief executive officer are to—
- (a) implement the strategies, policies and decisions of the Board; 25
 - (b) manage and recruit employees as contemplated in section 20;
 - (c) develop and maintain efficient, transparent and cost-effective administrative systems; and
 - (d) perform any such powers or functions as may be delegated by the Board from time to time. 30

Termination of employment of chief executive officer and chief financial officer

18. (1) The Board must, with the approval of the Minister and subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the chief executive officer or chief financial officer—
- (a) for misconduct; 35
 - (b) for failing to perform the duties connected with that office diligently; or
 - (c) if the chief executive officer or chief financial officer becomes subject to any disqualification in terms of section 9.
- (2) The Board may, in consultation with the Minister, suspend the services of the chief executive officer or chief financial officer pending the finding of any proceedings against him or her undertaken in terms of this section, during which period the chief executive officer or chief financial officer is also suspended as an executive member of the Board. 40

Acting chief executive officer and chief financial officer

19. (1) The Board, in consultation with the Minister, may in writing appoint any senior employee of the Institute to act as chief executive officer or chief financial officer when the holder of that office—
- (a) is temporarily unable to perform the duties connected with that office;
 - (b) has been suspended from office; or
 - (c) has vacated or has been removed from that office and a new chief executive officer or chief financial officer, as the case may be, has not yet been appointed. 50
- (2) If no suitable candidate as contemplated in subsection (1) is identified, the Board, in consultation with the Minister, may in writing appoint any other suitable person to act as chief executive officer or chief financial officer in a transparent manner. 50

(3) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be.

Staff of Institute

20. (1) The chief executive officer must, on such terms and conditions as the Board may determine, appoint employees of the Institute, or receive on secondment from the public service, such persons as are necessary to enable the Institute to perform its functions. 5

(2) The Institute must pay its employees such remuneration, allowances, subsidies and other benefits as are consistent with the remuneration framework contemplated in section 16(6). 10

(3) The chief executive officer is responsible for the administrative control, organisation and discipline of the employees of the Institute and for ensuring compliance with applicable labour legislation.

(4) The chief executive officer must, in consultation with the Board, develop a justiciable code of conduct for employees of the Institute for purposes of disciplinary proceedings, to ensure— 15

- (a) compliance with applicable law;
- (b) the effective, efficient and economical use of the Institute's resources; and
- (c) the promotion and maintenance of a high standard of professional ethics. 20

Funding of Institute

21. (1) The funds of the Institute consist of—

- (a) money appropriated by Parliament;
- (b) revenue, including interest derived from its investments; and
- (c) donations and contributions. 25

(2) Subject to this section, all income and property and all the proceeds of the Institute must be applied exclusively to the promotion of the objects of the Institute.

(3) The Institute may, subject to the approval of the Minister and in terms of the Public Finance Management Act, invest any of its funds not immediately required.

Regulations and policy 30

22. (1) The Minister may make regulations with regard to any matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister may make policy and issue policy directions to the Board, for the Board's consideration, which are consistent with the objects of this Act.

Transitional arrangements 35

23. (1) Upon the commencement of this Act, NEMISA will be dissolved and deregistered in accordance with the Companies Act.

(2) Subject to subsection (9), the board of directors of NEMISA will be dissolved upon the commencement of this Act.

(3) Notwithstanding item 1(4)(b) of Schedule 1 to the Companies Act, the functions, personnel and concomitant resources of NEMISA, e-SI and ISSA will be transferred to the Institute immediately upon the commencement of this Act in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour. 40

(4) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (3) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer. 45

(5) A person transferred to the Institute in terms of subsection (3) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable. 50

(6) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (3) takes up employment at the Institute.

(8) A person who was appointed as the chief executive officer or the chief financial officer of NEMISA, excluding persons acting in such positions, immediately before this Act comes into operation, is deemed to be the chief executive officer or the chief financial officer of the Institute for a term expiring on the date that such appointment would have expired had this Act not come into operation. 5

(9) Any member of the NEMISA Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed as members of the Board of the Institute for the remainder of the period for which each member was appointed as a member of the NEMISA Board. 10

(10) All policies, procedures and processes governing NEMISA prior to the commencement of this Act, are deemed to have been prescribed in terms of this Act and are binding on the Institute until amended or substituted in terms of this Act. 15

Short title and commencement

24. This Act is called the iKamva Digital Skills Institute Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE IKAMVA DIGITAL SKILLS INSTITUTE BILL, 2018

1. BACKGROUND

- 1.1 The South African government recognises that the development of digital skills in the Republic is fundamental to addressing all the major issues it faces and in better positioning itself to be part of the Information Society and Creative Knowledge Economies, commonly named the Knowledge Society. There is widespread acceptance that digital skills (the capacity to use modern information and communications technology (“ICT”) devices and applications for work, education, community and personal needs), affect the capacity of a country to address every substantive issue of inequity communities face. This includes a widespread high-level of e-social astuteness capacity which will enable all levels of civil society to appropriate modern ICT applications into sustainable local benefit.
- 1.2 The 2016 World Economic Forum (WEF), Global IT Report 2014 on e-Readiness, indicates that South Africa dropped in ranking from 47th place in 2007 to the 65th position. Out of 10 components of e-Readiness, the WEF IT Report identified that South Africa lacks in affordability, skills, individual usage, government usage and social impacts when compared to its global counterparts in the medium income group.
- 1.3 The lack of coordination and collaboration within and across government departments and state-owned companies in developing and delivering a programme of capacity building has an impact on increased digital skills shortage that hinders investment, socio-economic development and capacity development in the country. This affects the country’s capacity in accelerating digital skills capacity development in underserved areas in order to make South Africa e-literate by 2030 in line with the National Development Plan.
- 1.4 The National Electronic Media Institute of South Africa (“NEMISA”) came into being as an institution of education and learning specialising in teaching the production and technical skills applicable on television, and broadcasting industries. This was formed as part of a government initiative in 1998 to train previously disadvantaged individuals, particularly women, to equip them with skills relevant to the significant roles in the broadcasting environment.
- 1.5 The e-Skills Institute is a branch within the Department which was established to intervene on e-Skills shortage and harness the potential of ICT across the whole country in order to address the major economic challenges by providing strategic direction for advancement of e-Skills to the graduates and society in order to function effectively within the emerging information society, amongst other things.
- 1.6 In October 2012, the Department of Communications (“Department”) adopted the establishment of the iKamva Digital Skills Institute (“Institute”) as a flagship project in an effort to address the digital skill human capacity challenge and e-readiness of the country in collaboration with government, business, education and civil society.
- 1.7 The Institute is an integration of three ICT skills development related entities, namely, NEMISA; the e-Skills Institute (“e-SI”) and the Institute for Space and Software Applications (“ISSA”) which was officially launched by the Department on 21 February 2014.

2. WHAT THE BILL SEEKS TO ACHIEVE

The main purpose of the iKamva Digital Skills Institute Bill, 2018 (“Bill”) is to provide for the establishment, objects and functions of the Institute; to provide for the promotion of the development and meaningful use of digital skills; to provide for the establishment and functions of collaborative laboratories for digital skills

knowledge production, training and coordination (“CoLabs”); to provide for the governance and management arrangements of the Institute; and to provide for matters connected therewith.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 provides for the definitions of words and terms used in the Bill.

3.2 Clause 2

Clause 2 provides for the establishment of the Institute as a juristic person. It provides further that the Institute is a national public entity and is subject to the Public Finance Management Act, 1999 (Act No.1 of 1999) (“Public Finance Management Act”).

3.3 Clause 3

Clause 3 provides for the objects of the Institute. The objects include, amongst others, the Institute acting as a national catalytic collaborator for digital skills development; collaborating with relevant Post-School Education and Training Institutions (“PSETI”) to maximise the use of existing infrastructure and resources and to respond to the demand for digital skills; and encouraging, facilitating and promoting innovative research networks aimed at promoting and developing digital skills.

3.4 Clause 4

Clause 4 provides for the functions of the Institute which include, amongst others, promoting and guiding the development, training, learning, research and innovation of digital skills; identifying the digital skills demand and supply needs of the Republic; and developing and promoting a digital skills framework which includes a model for training and development.

3.5 Clause 5

Clause 5 provides for the establishment and functions of CoLabs, which the Institute may jointly establish with relevant PSETIs. The Institute must enter into a written agreement with the PSETI, setting out the terms and conditions for the establishment and functions of the CoLab, which written agreement must include, amongst others, the duration of the agreement; a requirement that the PSETI will implement effective, efficient and transparent financial management and internal controls for the duration of the agreement; provision for compliance and financial audits of the CoLab to be undertaken at any time by the Institute; the details of the resources the PSETI will provide; as well as funding and delivery milestones.

3.6 Clause 6

Clause 6 provides for the establishment, composition and functions of the Board of the Institute (“Board”). The Board must govern and provide strategic direction to the Institute and is the accounting authority of the Institute in terms of the Public Finance Management Act. In addition, the Board has the authority to exercise all the powers and functions of the Institute except to the extent that the Bill provides otherwise.

3.7 Clause 7

Clause 7 concerns the appointment of the non-executive members of the Board by the Minister responsible for telecommunications (“Minister”). The clause further provides that the Board must be constituted in a manner that is

broadly representative of the demographics of the Republic and makes provision for the procedure for the nomination of suitable persons.

3.8 Clause 8

Clause 8 provides for the term of office and conditions of service of non-executive members of the Board.

3.9 Clause 9

Clause 9 provides for the disqualification of members of the Board and removal from office. The clause lists the instances in which a person may not be appointed as a member of the Board or continue to serve as a member of the Board. Furthermore, the Minister may, after consultation with the Board, remove a member on account of misconduct, inability to perform the duties of his or her office efficiently, absence from the Board without leave of the Board, or any other reasonable ground. In addition, the clause provides that a Board member may resign from office upon at least three months' written notice.

3.10 Clause 10

Clause 10 lists the instances in which there will be a vacancy on the Board and provides that the Minister must, within six months of such a vacancy arising, appoint a suitable replacement as a member of the Board.

3.11 Clause 11

Clause 11 provides that a member of the Board must upon appointment, and annually thereafter, disclose in writing to the Minister and the Board if he or she, his or her spouse, family member, business partner or associate has an interest in any matter which may preclude him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. The clause provides for further disclosure by a Board member at every Board meeting of any interest he or she, his or her spouse, family member, business partner or associate may have in respect of any matter before the Board. Moreover, the clause provides that a Board member may not vote at, attend, or in any other manner participate in any Board meeting, should any interest, as aforementioned, be revealed or disclosed. Failure to comply constitutes a criminal offence and attracts a fine, imprisonment, or both.

3.12 Clause 12

Clause 12 concerns the code of ethics and governance principles of the Board and provides that the Board must, in consultation with the Minister, develop and make publicly available on its website, a code of ethics and governance principles for members of the Board which must be reviewed at least every five years.

3.13 Clause 13

Clause 13 provides that the Board may, from time to time, appoint one or more committees as may be required for the Board to fulfil its functions and meet its objectives in terms of the envisaged Act or any other law. The Board must assign Board members to serve on the committees based on their knowledge, skills and experience. Furthermore, the Board may appoint any external person to serve on a Board committee with the necessary knowledge, expertise and experience to assist a committee in the performance of its functions.

3.14 Clause 14

Clause 14 provides for the meetings of the Board. The Board must meet at least four times a year and the chairperson may convene a special meeting if required.

3.15 Clause 15

Clause 15 provides for the dissolution of the Board. The Minister may dissolve the Board if the Board has failed or is unable to perform its functions and duties; if there is a breakdown in the relationship amongst the Board members which renders the continued functioning of the Board impossible; or on any other reasonable grounds. The Minister must appoint an interim Board within 21 days of the Board's dissolution and a new Board must be constituted within 180 days of the dissolution of the previous Board.

3.16 Clause 16

Clause 16 provides for the appointment and conditions of service of the chief executive officer ("CEO") and the chief financial officer ("CFO"). The clause provides that the Board must invite applications for the CEO and CFO posts by publishing advertisements. Furthermore, the CEO and the CFO must have the qualifications or experience relevant to the functions of the Institute.

3.17 Clause 17

Clause 17 lists the functions of the CEO which include, amongst others, implementing the strategies, policies and decisions of the Board.

3.18 Clause 18

Clause 18 provides for the termination of employment of the CEO and CFO.

3.19 Clause 19

Clause 19 provides for the appointment of an acting CEO and CFO. The clause provides that the appointment may be made by the Board in consultation with the Minister. An acting CEO or CFO is appointed where the holder of the office is:

- (a) temporarily unable to perform the duties connected with that office;
- (b) has been suspended from office; or
- (c) has vacated or has been removed from that office and a new CEO or CFO, as the case may be, has not yet been appointed.

3.20 Clause 20

Clause 20 provides for the appointment of the employees of the Institute by the CEO who is responsible for the administrative control, organisation and discipline of such employees.

3.21 Clause 21

Clause 21 provides that the funds of the Institute consist of money appropriated by Parliament; revenue, including interest derived from its investments; donations and contributions. Moreover, all income and property, and all the proceeds of the Institute, must be applied exclusively to the promotion of the objects of the Institute.

3.22 Clause 22

Clause 22 provides that the Minister may make regulations with regard to any matter that is necessary to prescribe for the proper implementation of the

envisaged Act. The Minister may further make policy and issue policy directions to the Board which are consistent with the envisaged Act.

3.23 Clause 23

Clause 23 lists the transitional arrangements which includes, amongst others, the transfer of persons who were employed by NEMISA, e-SI and ISSA immediately before the commencement of the envisaged Act to the Institute in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

3.24 Clause 24

Clause 24 provides that the envisaged Act comes into operation on a date determined by the President by proclamation in the *Gazette*.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

Cooperative Governance and Traditional Affairs;
 Department of Health;
 Department of Higher Education and Training;
 Department of Public Service and Administration;
 Department of Trade and Industry;
 Department of Arts and Culture;
 National Treasury;
 Private education institutions;
 South African Local Government Association;
 Technical and Vocational Education and Training Colleges;
 Universal Service and Access Agency of South Africa; and
 Universities.

5. FINANCIAL IMPLICATIONS FOR THE STATE

The funding for digital skills development has been appropriated since the 2016/17 financial year in addition to the operational budget appropriated for NEMISA. The current total allocation for digital skills development is R97.3 million, R102.4 million and R107.8 million for the 2018/19; 2019/20 and 2020/21 financial years, respectively. The foregoing amounts include R6.5 million, R6.5 million and R6.7 million over three years, respectively, which funds are currently appropriated to the Department for digital skills development and will now be classified as transfers to the Institute. There are no operational financial implications for the creation of the Institute.

The current funding allocation is insufficient for the digital skills rollout aspirations as envisioned in the National Development Plan. There is however an opportunity to leverage additional funding through partnerships with various Government departments and the private sector.

6. CONSTITUTIONAL IMPLICATIONS

The Department and the State Law Advisers are of the opinion that the provisions of the Bill are not unconstitutional.

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution of the Republic of South Africa, 1996, regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills.

- 7.2 Section 75 of the Constitution sets out a procedure to be followed when National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.¹
- 7.3. Section 76 of the Constitution on the other hand provides for a procedure that must be followed for all the Bills referred to in this section under subsections (3), (4) and (5).²
- 7.4. In **Tongoane v Minister of Agriculture and others CCT 100/09 [2010] ZACC 10**, the Constitutional Court confirmed and upheld the test for tagging that was formulated in **Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [1999] ZACC 15;2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)**, where the Constitutional Court held that—
- “the heading of section 76, namely, ‘Ordinary Bills affecting provinces’ provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.”.*
- 7.5. At paragraph 58 the Constitutional Court held that “What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in Schedule 4”.
- 7.6. At paragraph 72 the Constitutional Court stated that any Bill whose provisions substantially affect the interest of the provinces must be enacted in accordance with the procedure stipulated in section 76. This also includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)(a) to (f), as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not in substantial measure affect the provinces.
- 7.7. We have carefully considered the Bill and the State Law Advisers are of the view that the Bill can be distinguished from the Tongoane judgment, as the Bill does not deal with any of the matters listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) or Schedule 5 to the Constitution.
- 7.8. Since the Bill does not fall within a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we are of the view that a procedure set out in section 76 of the Constitution cannot be applied and the Bill cannot be tagged as a section 76 Bill.
- 7.9 In the light of the above, we are of the opinion that the Bill is correctly tagged as a section 75 Bill.
- 7.10 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

¹ See section 75(1) of the Constitution.

² See section 76(1) of the Constitution.

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