

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD BILL,
2021**

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(Minister of Communications and Digital Technologies)

[B -2021]

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BILL

To repeal the Broadcasting Act, 1999 (Act No. 4 of 1999); to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd; to provide for its governance and staff; and to provide for matters connected therewith.

Preamble

NOTING that the Corporation is licensed to provide public broadcasting services, and is required to reflect the multilingual, identity and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds, political backgrounds, religious backgrounds and official languages in the Republic;

ACKNOWLEDGING that the Corporation is a state-owned company, with the South African Government as the sole shareholder and the Minister as shareholder representative, acting on behalf of the Government to fulfil its obligations relating to use, protection and access to broadcasting resources;

ENCOURAGING the Corporation to promote 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 to provide for the maintenance of national identity, universal access, equality, unity and diversity; and

RESOLVING that the Corporation must align its broadcasting services with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens”.

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Interpretation of Act
3. Object of Act
4. Continued existence of South African Broadcasting Corporation
5. Powers and duties of Minister
6. Charter of Corporation
7. Objectives of Corporation
8. Organisation
9. Public services
10. Commercial services
11. Composition of Board
12. Executive committee
13. Removal from office
14. Resolution for removal of member, dissolution of Board and appointment of interim Board
15. Disqualification
16. Disclosure of conflict of interest
17. Appointment of Group Chief Executive Officer and Chief Financial Officer
18. Conditions for appointment of Group Chief Executive Officer and Chief Financial Officer
19. Termination of appointment of Group Chief Executive Officer and Chief Financial Officer
20. Acting Group Chief Executive Officer and Chief Financial Officer

21. Delegation by Group Chief Executive Officer and Chief Financial Officer
22. Rights and obligations
23. Amendment of Corporation licence
24. Regional television services
25. Accounts
26. Auditing
27. Staff of Corporation
28. Television licences
29. Annual report
30. Regulations
31. Repeal of laws
32. Short title and commencement

Schedule

Definitions

1. In this Act, unless the context indicates otherwise—

“appointing body” means the body charged with the appointment of members of the Board in terms of section 11 (2);

“authorised inspector” means an authorised inspector appointed by the Corporation in terms of section 28;

“Authority” means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

“Board” means Board of the Corporation established in section 11;

“broadcasting” means “broadcasting” as defined in section 1 of the Electronic Communications Act;

“Broadcasting Act” means the Broadcasting Act, 1999 (Act No.4 of 1999);

“broadcasting licence” means a licence granted and issued by the Authority in terms of Chapters 3 and 5 of the Electronic Communications Act;

“broadcasting service” means “broadcasting service” as defined in section 1 of the Electronic Communications Act;

“business”, for the purposes of the definition of “record” and section 28 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;

“commercial services” means the commercial services of the Corporation contemplated in section 8 (1)(b);

“common carrier” has the meaning assigned to it in section 1 of the Electronic Communications Act;

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008);

“Corporation” means the South African Broadcasting Corporation SOC Ltd established by section 4;

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

“Electronic Communications Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“free-to-air” means broadcast without payment by the end user to the broadcaster;

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

“licence” means a broadcasting licence issued to provide services in terms of Chapter 3 or to use the radio frequency spectrum in terms of Chapter 5 of Electronic Communications Act;

“local content” has the meaning assigned to it in section 61 of the Electronic Communications Act;

“member” means a member of the Board;

“Minister” means the Minister charged with the administration of this Act;

“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;

“President” means the President of the Republic of South Africa;

“public broadcasting service” means any broadcasting service provided by the

Corporation or any other state-owned company;

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

“public services” means the public services of the Corporation contemplated in section 8 (1) (a);

“radio” means radio as defined in the Electronic Communications Act;

“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;

“Registrar” means the Registrar of Companies as defined in the Companies Act;

“regulation” means a regulation made under section 40;

“sound broadcasting service” means sound broadcasting service as defined in the Electronic Communications Act;

“television broadcasting service” means television broadcasting services as defined in the Electronic Communications Act;

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

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

“this Act” includes the Schedule and the regulations; and

“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.

Interpretation of Act

2. (1) 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 Corporation guaranteed by the Constitution.

(2) In the event of any conflict between the provisions of this Act and the Companies Act, the provisions of this Act prevail.

(3) In the event of a conflict between the provisions of this Act and the Electronic Communications Act, the provisions of the Electronic Communications Act prevail.

Object of Act

3. The object of this Act is to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd to provide public broadcasting services 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) ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;

- (d) cater for a broad range of services and specifically for the programming needs in respect of women, children, the youth and persons with disabilities;
- (e) encourage the development of human resources and capacity building within the public broadcasting services amongst historically disadvantaged groups;
- (f) establish strong and committed public broadcasting services which will service the needs of all South African;
- (g) encourage the development of local programming content;
- (h) provide for the allocation of roles and assignment of tasks between the Minister and the Board;
- (i) provide public broadcasting services; and
- (j) provide for the governance of the Corporation.

Continued existence of South African Broadcasting Corporation

4. (1) The South African Broadcasting Corporation SOC Ltd, continues to exist as a Corporation, notwithstanding the repeal of the Broadcasting Act;

(2) The continued existence of the Corporation referred to in subsection (1) does not affect—

- (a) the shareholding of the State in the Corporation;
- (b) any rights, assets, liabilities or obligations acquired or incurred by the Corporation before the commencement of this Act;
- (c) the validity of any act lawfully performed by or on behalf of the Corporation prior to the repeal referred to in subsection (1);
- (d) the continued existence of the Board of the Corporation that managed the affairs of the Corporation immediately prior to the commencement of this Act;

and

(e) the terms and conditions of service of staff of the Corporation.

(3) The powers and duties of the State shall be performed and exercised by the Minister as the shareholder representative.

(4) Subject to the Companies Act, the Minister may amend the memorandum of incorporation after consultation with the Board.

(5) Any such amendment—

(a) may not be in conflict with this Act; and

(b) must be aimed at giving effect to the objectives of the Corporation.

(6) The Minister must sign the amended memorandum of incorporation and the Board must thereafter file it with the Registrar of Companies.

Powers and duties of Minister

5. The Minister, in addition to any other powers and duties set out in this Act —

(a) may, in compliance with section 63(2) of Public Finance Management Act and applicable regulations of that Act, appoint a person to investigate the financial position of the Corporation if there are any reasonable grounds to believe that the funds of the Corporation have been mismanaged; and

(b) may, after receipt of a report from the investigator as contemplated in paragraph (a), intervene and direct the Corporation to take any action specified by him or her if the Corporation is in financial difficulty.

Charter of Corporation

6. (1) The Corporation must comply with the Charter.

(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; and
- (d) advances the national and public interest.

(5) The Board must prepare and submit to the Authority at least every three years, 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:

- (a) News editorial policy;
- (b) programming policy;
- (c) local content policy;
- (d) educational policy;

- (e) universal service and access policy;
- (f) language policy; and
- (g) religious policy.

(6) The Corporation must notify the Authority in writing of any amendments to the policies referred to in subsection (5) as soon as reasonably possible.

(7) 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.

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

(9) The Corporation must develop a Code of Practice that ensures that the broadcasting 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.

(10) In compliance with section 2(s) and (t) of the Electronic Communications Act, the Authority must regulate and monitor the Charter and Code of Practice.

Objectives of Corporation

7. The objectives of the Corporation are—

- (a) to make sound and television broadcasting services available throughout the Republic;
- (b) to provide sound and television programmes of national identity, information, education, entertainment and reflect the cultural diversity of the Republic 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, entertains and take into account the multicultural character of the Republic;
- (e) to be responsive to audience needs, including the needs of people with disabilities and account on how to meet those needs;
- (f) to provide other ancillary services, whether or not broadcasting or programme supply 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;
- (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;
- (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, audiovisual and interactive material, 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, trademarks, 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; and
- (p) to develop and extend the services of the Corporation, including broadcasting programmes, news, current affairs, entertainment and cultural enrichment beyond the borders of South Africa.

Organisation

8. (1) The Corporation must provide two separate operational services, namely—

- (a) public services; and
- (b) commercial services.

(2) The public and commercial services must be separately administered and a separate set of financial records and accounts are to be kept in respect of both services.

Public services

9. (1) The public services 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;
- (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 women, children, the youth, and people with disabilities;
- (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 services 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 Corporation shall on annual basis submit to the Minister for approval—

- (a) a proposed budget in respect of the public services 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 services of the Corporation and in compliance with the general objectives of this Act covering the public services obligation of the Corporation in respect of the conduct of the business of the public services for the three financial years.

(4) The Board must—

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

Commercial services

- 10.** (1) The commercial services provided by the Corporation must—
- (a) be subject to the same terms and conditions of the commercial broadcasting services regulated by the Authority;
 - (b) comply with the values of the public broadcasting services in the provision of programmes and services;
 - (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 on annual basis, submit to the Minister for approval—
- (a) a proposed budget in respect of the commercial services listing revenue, expenditure, borrowings and appropriation of funds for the financial year; 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 services of the Corporation and in compliance with the general objects of this Act covering the commercial services obligation of the Corporation in respect of the conduct of business of the commercial services for the three financial years following the date of conversion.
 - (c) the Board must—
 - (i) keep proper and accurate books and records of the financial affairs of

- the commercial services separately from those of the public services;
- (ii) procure in addition to the annual financial statements of the Corporation drawn up in terms of Companies Act, audited annual financial statements prepared in respect of the commercial services in accordance with generally accepted accounting practice separately from those in respect of the public services; and
- (iii) submit to the Minister within five months after the end of the financial year of the Corporation—
- (aa) an annual written report on the activities of the commercial services during the financial year of the Corporation;
- (bb) the financial statements of the commercial services for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and
- (cc) the report of the auditors on the financial statements of the commercial services for the financial year of the Corporation.

Composition of Board

- 11.** (1) The Board consists of—
- (a) nine non-executive members; and
- (b) the Group Chief Executive Officer and the Chief Financial Officer or their equivalents, who are executive members of the Board.
- (2) The nine non-executive members Board must be appointed by the President on the advice of the National Assembly.
- (3) The non-executive members must be appointed in a manner

ensuring—

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

(4) The President must designate one of the members 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.

(5) The members of the Board must, when viewed collectively—

- (a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education, social and labour issues;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office;
- (c) represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles as enunciated in the Charter of the Corporation.

(6) The members must hold office for a period of five years.

(7) A member may at the end of his or her term of office be re-appointed for not more than one additional term.

(8) The deputy chairperson referred to in subsection (4) 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.

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

(10) A member appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed and the procedure contemplated in 11(2) and (3) applies.

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

(12) The Board controls the affairs of the Corporation.

Executive committee

12. (1) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer and 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.

Removal from office

13. 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;

- (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; and
- (c) may remove a member from office on the finding contemplated in section 5(a) including serious contravention of memorandum of incorporation after due inquiry and upon recommendation by the Minister.

Resolution for removal of member, dissolution of Board and appointment of interim Board

14. (1) 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 of the following—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown;
- (d) failure to disclose an interest or voting or attendance at, or participation in proceedings of the Board while having an interest; and
- (e) him or her becoming disqualified as contemplated in section 15.

(2) 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 of the following:

- (a) Discharging its fiduciary duties; and
- (b) adhering to the Charter.

- (3) 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 (2) within 30 days; and
 - (c) must dissolve the Board if the resolution recommends the removal of all the members of the Board.

(4) Upon the dissolution of the Board contemplated in subsection (3) (c), the appointing body must appoint an interim Board consisting of persons referred to in section 12(1) and five other persons recommended by the National Assembly.

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

(6) 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.

(7) A quorum for any meeting of the interim Board is five members.

Disqualification

- 15.** 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 (Act No. 6 of 1958) the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, 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;
 - (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; or
 - (iv) has been convicted of an offence under this Act.

Disclosure of conflict of interests

16. (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.

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

- (a) such 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 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 members regarding such determination, must be recorded in the minutes of the meeting in question.

(3) If any 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.

Appointment of Group Chief Executive Officer and Chief Financial Officer

17. (1) The Board must invite applications for the posts of Group Chief Executive Officer and Chief Financial Officer by publishing advertisements in the media.

(2) A person appointed as Group Chief Executive Officer and Chief Financial Officer must—

- (a) have the qualifications or experience relevant to the functions of the Corporation; and
- (b) not be disqualified on the grounds as contemplated in section 15.

Conditions of appointment of Group Chief Executive Officer and Chief Financial Officer

18. (1) The appointment of the Group Chief Executive Officer and Chief Financial Officer is subject to the conclusion of an annual performance agreement with the Corporation.

(2) The Group Chief Executive Officer and Chief Financial Officer must be appointed by the Board for a term not exceeding five years and may be reappointed for one additional term not exceeding five years.

(3) The Group Chief Executive Officer and Chief Financial Officer hold office on terms and conditions determined by the Board.

(4) The Group Chief Executive Officer and Chief Financial Officer are members of the Board by virtue of their office.

(5) The Group Chief Executive Officer and Chief Financial Officer are entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance.

(6) The Group Chief Executive Officer and Chief Financial Officer are accountable to the Board.

Termination of employment of Group Chief Executive Officer and Chief Financial Officer

19. (1) The Board must, subject to compliance with Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the Group Chief Executive Officer and Chief Financial Officer—

- (a) for misconduct, which includes any act or failure to act contemplated in section 16; or
- (b) for failing to perform the duties connected with that office diligently.

(2) The Board may suspend the services of the Group Chief Executive Officer and Chief Financial Officer pending disciplinary proceedings against him or her, during which period the Group Chief Executive Officer and Chief Financial Officer may not serve as an executive member of the Board.

(3) The Group Chief Executive Officer and Chief Financial Officer must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 15.

(4) The Group Chief Executive Officer and Chief Financial Officer may resign by written notice of at least 30 days to the chairperson of the Board.

Acting Group Chief Executive Officer and Chief Financial Officer

20. (1) The Board may in writing appoint any senior employee of the Corporation to act as Group 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 office or has been removed from that office.

(2) The acting Group Chief Executive Officer or Chief Financial Officer may exercise all the powers and must perform all the duties of the Group Chief Executive Officer or Chief Financial Officer, as the case may be.

Delegation by Group Chief Executive Officer and Chief Financial Officer

21. (1) Group Chief Executive Officer and Chief Financial Officer may delegate to an employee of the Corporation any of his or her powers and assign any of his or her duties.

- (2) Any delegation or assignment contemplated in subsection (1)—
- (a) may be made subject to such conditions as the Board may determine;
 - (b) must be communicated to the delegatee or assignee in writing;
 - (c) may be amended or withdrawn in writing by the Group Chief Executive Officer or Chief Financial Officer, as the case may be; and
 - (d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), Group Chief Executive Officer or Chief Financial Officer, as the case may be, is not divested of any power or duty so delegated or assigned.

Rights and obligations

22. (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.

(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).

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

Amendment of Corporation licence

23. (1) The Corporation must, apply to the Authority for such amendments to its existing licences as are necessary in order to continue to provide the public services and the commercial services 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), 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 reorganization of the Corporation to provide public services and the commercial services and its related obligations in terms of this Act and the Electronic Communications Act.

Regional television services

24. (1) In the performance of its public services mandate, the Corporation must apply to the Authority in terms of the Electronic Communications 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; and
- (c) so as to ensure that between these regional services, broadcasting is provided in the languages of Sepedi, Sesotho, Setswana, siSwati, TshiVenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu 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.

Accounts

25. (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 services and commercial services.

(4) Such information must be submitted to the Authority in order to verify cross-subsidies.

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

Auditing

26. (1) In addition to the annual financial statements to be prepared in terms of the Companies Act and 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 Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed as auditor of the Corporation.

(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 therefore—
 - (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.

Staff of Corporation

27. 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.

Television licences

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

(7) An authorised inspector may—

- (a) 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;
- (b) 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;

- (c) require a person who uses a television set to furnish his or her identity document or licence registration number, whichever is applicable;
- (d) 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;
- (e) require a business, dealer or lessor to produce records relating to transactions involving television sets for inspection, and make extracts therefrom or copies thereof;
- (f) 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.

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

(9) 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.

(10) 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.

(11) Such information contemplated in subsection (10), must be kept in accordance with the provisions of the Protection of Personal Information Act.

Annual report

29. (1) The financial year of the Corporation commences on 1 April and ends 31 March of the following year.

(2) The Board must within five months of the end of the financial year, furnish the Minister with a copy—

- (a) an annual report on the work of Corporation of the previous financial year;
- (b) the financial statements of the previous financial year after the statements have been audited; and
- (c) the report of the auditors on those statements referred to in paragraph (b).

(3) The annual report and financial statement referred to subsection (2)(a) and (b) must contain particulars specified in terms of section 55(2) of Public Finance Management Act.

(4) Subject to subsection (3), the full and proper records of the public and commercial services must be separated.

(5) The Minister must table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and, if Parliament is not in sitting, within 14 days after the next ensuing sitting of Parliament.

Regulations

30. The Authority, in consultation with the Corporation and the Minister, may by notice in the *Gazette*, make regulation regarding—

- (a) 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;

- (b) the period of validity of a television licence;
- (c) the manner of determining fees of a television licence;
- (d) the purpose for which and the place where a television set may be used;
- (e) different categories of television licences which any user of a television set may be required to possess;
- (f) 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;
- (g) exemptions from the obligation to be in possession of a television licence; and
- (h) the transferability of a television licence.

Repeal of laws

31. The laws mentioned in the second column of the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

Short title and commencement

32. This Act is called the South African Broadcasting Corporation SOC Ltd Act, 2021, and shall come into operation on a date determined by the President in the *Gazette*.

SCHEDULE

Number and year of Act	Short title	Extent of repeal or amendment
Act No. 4 of 1999	Broadcasting Act, 1999	Repealed as a whole
Act No. 36 of 2005	Electronic Communications Act, 2005	<p>Amendment of section 1 of Electronic Communications Act</p> <p>1. Section 1 of the Electronic Communications Act is hereby amended by the substitution of the definition of “public broadcasting service” for the following definition:</p> <p>“public broadcasting service” means any broadcasting service provided by the South African Broadcasting Corporation <u>SOC Ltd</u> or other public state-owned [enterprise] company;</p> <p>Insertion of section 61A in Electronic Communications Act</p> <p>2. The following section is hereby inserted after section 61 of the Electronic Communications Act:</p> <p>“South African Broadcast Production Advisory Body</p> <p>61A. (1) <u>The Minister may 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.</u></p> <p>(2) <u>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 with the concurrence of the Minister of Finance.</u></p> <p>(3) <u>The Advisory Body must advise the Minister on how to encourage, facilitate and offer</u></p>

Number and year of Act	Short title	Extent of repeal or amendment
		<p><u>guidance and advice in respect of any scheme and to promote—</u></p> <p>(a) <u>the production of broadcast materials that meet the cultural needs of South Africans;</u></p> <p>(b) <u>the screening and airplay of South African content in television and radio, respectively;</u></p> <p>(c) <u>awareness of local content in South African and foreign markets;</u></p> <p>(d) <u>distribution and exhibition of local content in foreign markets;</u></p> <p>(e) <u>the correction of imbalances in the local content production industry;</u></p> <p>(f) <u>human resource development to provide skills and training of local content providers;</u></p> <p>(g) <u>co-productions and the concluding of international agreements.</u></p> <p><u>(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 Sports, Arts and Culture, the Competition Commission and the Minister of Finance—</u></p> <p>(a) <u>policy and strategies to give effect to the production and display of local content;</u></p> <p>(b) <u>financing strategies to support the production and display of local content;;</u></p> <p>(c) <u>supply-side measures and initiatives to support the production of local content;</u></p> <p>(d) <u>policies to enhance the production of local content for the multichannel and Digital broadcasting environment.”.</u></p>

Number and year of Act	Short title	Extent of repeal or amendment
		<p>Amendment of Arrangement of Sections in Act Electronic Communications Act</p> <p>3. The Arrangement of Sections after the long title of the Electronic Communications Act is hereby amended by the insertion after the expression “61. Preservation of South African programming” of the following: “61A. South African Broadcast Production Advisory Body”.</p>

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD BILL, 2021

1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

1.1. The Broadcasting Act, 1999 (Act No. 4 of 1999) was promulgated in 1999 to regulate the whole broadcasting sector in South Africa.

1.2. In 2005, the Electronic Communications Act, 2005 (Act No. 36 of 2005) was assented to by the President of the Republic to converge the regulation of the broadcasting, broadcasting signal distribution and telecommunications sectors.

1.3. As a result, the regulation of broadcasting services was incorporated under Chapter 9 of the Electronic Communications Act.

1.4. Consequently, the Broadcasting Act was reserved to regulate the South African Broadcasting Corporation (SABC) even though it was never expressly specified in terms of the legislation.

1.5. To this end, certain provisions of the Broadcasting Act such as the Preamble, Object of the Act and Chapters II, III and IX were not amended as a result of an oversight.

1.6. In light of the above and other reasons, such as the alignment with legislative developments and giving effect to court judgments, the review of the Broadcasting

Act is necessary. This legislative intervention seeks to address the following:

- (a) Alignment with the provisions of the new Companies Act, 2008 (Act No. 71 of 2008);
- (b) Alignment with the certain provisions of Public Finance Management Act of 1999;
- (c) Give effect to the recommendation of the Ad Hoc Committee on the SABC Board Inquiry by the National Assembly;
- (d) Proposed areas of amendment as recommended by the SABC; and
- (e) To give effect to the judgments in the following cases:
 - (i) Dali Mpofu v SABC and Others
 - (ii) Mashangu Ronny Lubisi v SABC; and
 - (iii) SOS Support Broadcasting Coalition v SABC & Minister of Communications.

1.7. In compliance with section 11(3)(c)(iv) of the Companies Act, 2008, the Bill is named the “South African Broadcasting Corporation SOC Ltd Bill” and same will repeal the Broadcasting Act.

1.8. It must be noted that section 38 of the Broadcasting Act deals with the South African Broadcast Production Advisory Body and not the SABC and as a result this section will be inserted under Chapter 9 of the Electronic Communications Act.

2. OBJECTS OF THE BILL

The objects of the Bill are to repeal the Broadcasting Act, 1999 as amended, so as to regulate the South African Broadcasting Corporation to ensure the continued

existence of the South African Broadcasting Corporation SOC Ltd in order to provide public broadcasting services in the Republic in the public interest; to provide for its governance and staff; and to provide for matters connected therewith.

3. SUMMARY OF THE BILL

The draft South African Broadcasting Corporation SOC Ltd Bill, 2021, amongst others covers the following:

- Preamble;
- Definitions;
- Interpretation;
- Objects of the Act;
- Continued existence of South African Broadcasting Corporation;
- Duties and powers of the Minister;
- Charter of Corporation;
- Objectives of Corporation;
- Organisation;
- Public services;
- Commercial services;
- Composition of Board;
- Executive committee;
- Removal from office;
- Resolution for removal of member, dissolution of Board and appointment of Interim Board;
- Disqualification;
- Disclosure of conflict of interests;

- Appointment of Group Chief Executive Officer and Chief Financial Officer;
- Conditions of appointment of Group Chief Executive Officer and Chief Financial Officer;
- Termination of employment of Group Chief Executive Officer and Chief Financial Officer;
- Acting Group Chief Executive Officer and Chief Financial Officer;
- Delegation by Group Chief Executive Officer and Chief Financial Officer;
- Rights and obligations;
- Amendment of broadcasting licences;
- Regional television services;
- Accounts;
- Auditing;
- Staff of Corporation;
- Television licences;
- Annual report;
- Regulations;
- Repeal of laws;
- Short title and commencement.

3.1. **Preamble**

This Bill seeks to encourage the recognition of the constitutional rights of the citizens of this country and the maintenance of the identity of the country.

3.2. **Definitions and interpretation**

The Bill provides for definitions and interpretation.

3.3. **Objects of the Act**

The Bill seeks to regulate the Corporation in the public interest and to provide for its governance.

3.4. **Continued existence of South African Broadcasting Corporation**

The Corporation shall be lawfully recognized as SABC SOC Ltd together with its assets and liabilities.

3.5. **Duties and Powers of the Minister**

The Bill seeks to clarify the duties and powers of the Minister.

3.6. **Charter of Corporation**

The Bill indicates that the Charter of Corporation has been designated to regulate the SABC and to ensure that such Charter shall be monitored by ICASA.

3.7. **Objectives of the Corporation**

The Bill seeks to provide a clear mandate of the Corporation.

3.8. **Organisation**

The Bill indicates that the Corporation shall provide public services and commercial services.

3.9. Composition of the Board

The Bill provides for the size, the process and procedure for the appointment of the members of the Board.

3.10. Executive committee

The Bill provides for the size of the executive committee and that the executive committee is accountable to the Board.

3.11. Removal of the Board from Office, disqualification, dissolution of Board and Appointment of Interim Board

The Bill provides the grounds for removal of Board members from the office and how the interim Board can be appointed.

3.12. Disclose of conflict of interests

The Bill seeks to encourage the members of the Board to disclose their personal interests and conflict.

3.13. Appointment of Group Chief Executive Officer and Chief Financial Officer

The Bill provides for the appointment of the Group Chief Executive Officer and Chief Financial Officer.

3.14. Conditions of employment of Group Chief Executive Officer and Chief Financial Officer

The Bill provides for the conditions of appointment of the Group Chief Executive Officer and Chief Financial Officer.

3.15. Termination of employment of Group Chief Executive Officer and Chief Financial Officer

The Bill provides for the termination of appointment of the Group Chief Executive Officer and Chief Financial Officer.

3.16. Acting Group Chief Executive Officer and Chief Financial Officer

The Bill provides for the appointment of an Acting Group Chief Executive Officer and Chief Financial Officer.

3.17. Delegation by Group Chief Executive Officer and Chief Financial Officer

The Bill provides for delegation of powers and functions of the Group Chief Executive Officer and Chief Financial Officer to another employee of the Corporation.

3.18. Rights and obligations

This Bill empowers the Corporation to utilize the licence, issued against payment of annual fees and requires the Corporation to provide the Authority with information for monitoring purposes.

3.19. Amendment of corporate licences and regional television services

The Bill authorizes the licence of the Corporation to reflect public and commercial services. The Corporation is further mandated to apply for regional television service.

3.20. Accounts; Auditing and staff of Corporation

The Bill provides that the Corporation must have its own account and that the financial statements of the Corporation must be audited. The Bill further provides for the staff by the Corporation.

3.21. Television licences

This Bill determines the process and procedures related to the television licences.

3.22. Annual report

This Bill provides for the process and procedure related to the tabling of the annual report.

3.23. Regulations

This Bill grants powers to the Regulator to develop the television licence fees regulations to determine the price and other terms and conditions.

4. CONSULTED PARTIES

- (a) Office of the Chief State Law Adviser;
- (b) Office of the State Attorney;
- (c) South African Broadcasting Corporation SOC Ltd;
- (d) National Treasury; and
- (e) Department of Monitoring and Evaluation.

5. FINANCIAL IMPLICATIONS FOR STATE

5.1. The draft Bill is expected to save the SABC almost R1-million in Board fees and related costs.

5.2. The costs to be incurred by the Department comprise of gazetting and limited travel during the provincial consultation process.

5.3. The estimated cost amounts to R250 000.00 and has been budgeted for.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution prescribes the procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

6.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule i.e. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010] ZACC*

10. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

6.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

6.5 The Bill seeks to repeal the Broadcasting Act, 1999 (Act No. 4 of 1999), to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd, to provide for its governance and staff and to provide for matters connected therewith.

6.6 In terms of the Bill the South African Broadcasting Corporation SOC Ltd, continues to exist as a Corporation, notwithstanding the repeal. The Bill also provides further that the continued existence of the Corporation does not affect—

- (a) the shareholding of the State in the Corporation;
- (b) any rights, assets, liabilities or obligations acquired or incurred by the Corporation before the commencement of this Act;
- (c) the validity of any act lawfully performed by or on behalf of the Corporation prior to the repeal;

- (d) the continued existence of the Board of the Corporation that managed the affairs of the Corporation immediately prior to the commencement of this Act; and
- (e) the terms and conditions of service of staff of the Corporation.

6.7 The proposed repeal and amendment of legislation is listed in the Schedule to the Bill to ensure that consequential amendments are addressed.

6.8 The provisions of the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.9 In our view the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

6.10 We are therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

6.11 The Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), has been repealed by section 65 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) (“the Traditional and Khoi-San Leadership Act”), which commenced on 1 April 2021. There are a few differences between the

existing law and the Traditional and Khoi-San Leadership Act as far as it concerns the referral of Parliamentary Bills to the National House. In terms of section 18 of the current Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), which Act has been repealed by the Traditional and Khoi-San Leadership Act, the Secretary to Parliament has to refer all Bills pertaining to customary law or customs of traditional communities to the National House for comments before it is passed by the house of Parliament where it was introduced. The National House of Traditional Leaders had 30 days from the date of such referral, to submit any comments to Parliament.

6.12 Section 39(1) of the Traditional and Khoi-San Leadership Act which applies from 1 April 2021, still refers to Bills pertaining to customary law or customs of traditional communities, but extends it to include Khoi-San communities and also Bills dealing with local government matters. Furthermore, the National House will in future have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it. There is however also an obligation on the National House to respond to the Secretary to Parliament, even if the House does not have any comments on a Bill.

6.13 Section 39(1) of the Traditional and Khoi-San Leadership Act reads as follows:

“Referral of Bills to National House

- 39. (1) (a) Any Parliamentary Bill—**
- (i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or**
 - (ii) pertaining to any matter referred to in section 154(2) of the**

Constitution,
must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.

(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.”

6.14. Taking into account the above, we are of the opinion that there is no need for a referral of the Bill to the National House of Traditional Leaders as it contains no provisions pertaining to customary law or the customs of traditional communities as envisaged in section 39(1) of the Traditional and Khoi-San Leadership Act.

