

Sentech Act No. 63 of 1996

[ASSENTED TO 30 OCTOBER, 1996]
[DATE OF COMMENCEMENT: 14 NOVEMBER 1997]

(Afrikaans text signed by the President.)

As amended by

Sentech Amendment Act, No. 44 of 1999

Telecommunications Amendment Act No. 64 of 2001

Electronic Communications Act No. 36 of 2005

ACT

To Provide for the transfer of all the shares of the South African Broadcasting Corporation in Sentech (PTY.) Ltd. to the State; for the conversion of Sentech (Pty.) Ltd. from a private to a public company, Sentech Ltd; for the control of Sentech Ltd.; and for matters connected therewith

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

Definitions

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

“**Broadcasting Act**” means the Broadcasting Act, 1999 (Act 4 of 1999);

[Description “**Broadcasting Act**” inserted by Section 97 of Act No. 63 of 1996]

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

[Description “**broadcasting service licensee**” substituted by Section 97 of Act No. 63 of 1996]

“**broadcasting signal distribution**” means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point from where such signal is made available in its final content format, from where it is conveyed, to any broadcasting target area, by means of an electronic communications process and multi-channel distribution;

[Description “**broadcasting signal distribution**” substituted by Section 97 of Act No. 63 of 1996]

“**common carrier**” means the holder of a broadcasting signal distribution licence contemplated in section 33(1)(a)(i) of the Independent Broadcasting Authority Act; (i)

“**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973); (iii)

“Company” means the public company, Sentech Limited, contemplated in section 4; (ii)

“Electronic Communications Act” means the Electronic Communications Act, 2005;

[Description **“Electronic Communications Act”** inserted by Section 97 of Act No. 63 of 1996]

“ICASA Act” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

[Description **“ICASA Act”** inserted by Section 97 of Act No. 63 of 1996]

“Independent Broadcasting Authority Act” ...

[Description **“Independent Broadcasting Authority Act”** deleted by Section 97 of Act No. 63 of 1996]

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

“related legislation” means the Broadcasting Act, Electronic Communications Act and the ICASA Act;

[Description **“related legislation”** inserted by Section 97 of Act No. 63 of 1996]

“SABC” the South African Broadcasting Corporation mentioned in section of the Broadcasting Act, 1976 (Act No. 73 of 1976); (v)

“Sentech (Pty.) Ltd.” means Sentech (Proprietary) Limited, a private company having a share capital which is registered as such in terms of the Companies Act and which is a wholly owned subsidiary of the SABC. (vi)

Transfer of shareholding in Sentech (Pty.) Ltd. to State

2. (1) The SABC shall transfer all its shares in Sentech (Pty.) Ltd. to the State in accordance with the provisions of the Companies Act.
- (2) No stamp duty shall be payable in respect of the transfer of shares in terms of subsection (1).

Transfer of assets and liabilities regarding signal distribution

3. (1)(a) Before or as soon as possible after the transfer of the shares in Sentech (Pty.) Ltd. to the State in terms of section 2(1), such assets, liabilities, rights and obligations (including any claim to copyright, trademarks and patentable inventions) of the SABC which relate to or are connected with broadcasting signal distribution as the SABC and the Minister may agree upon, shall be transferred to Sentech (Pty.) Ltd. or, if it has been already converted into a public company as contemplated in section 4, to that company.
- (b) In the absence of such an agreement between the SABC and the Minister, the assets, liabilities, rights and obligations to be so transferred shall be determined by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (2) In order to effect the transfer of any land or real right contemplated in subsection (1), the Registrar of Deeds who exercises jurisdiction over the area in which the land involved is situated, shall effect the entries, notes and

endorsements that he or she considers necessary in or on any relevant register, title deed or other document in his or her office or submitted to him or her.

(3) The Minister may on behalf of the State apply for the registration of any registerable right relating to intellectual property, including the registration as patents of patentable inventions, transferred in terms of subsection (1).

(4) In order to give effect to the transfer of any trade mark referred to in subsection (1), the Registrar of Trade Marks shall make the entries, notes and endorsements that he or she considers necessary in or on any relevant register, certificate or other document in his or her office or submitted to him or her.

(5) The Registrar of Deeds concerned or the Registrar of Trade Marks may request the Minister to produce or submit to him or her the information or document that he or she considers necessary for the purpose of subsection (2) or (4), as the case may be.

(6) No transfer duty, stamp duty, registration fee or any other tax, levy or fee imposed by law shall be payable in respect of the transfer of any asset or right in terms of this section.

Conversion of Sentech (Pty.) Ltd. into public company

4. (1) As soon as possible after the transfer of the shares in Sentech (Pty.) Ltd. to the State in terms of section 2(1), the Minister shall on behalf of the State request the Registrar of Companies in writing to convert Sentech (Pty.) Ltd. into a public company having a share capital in accordance with the provisions of the Companies Act.
- (2) The request shall be accompanied by the memorandum of association and articles of association of the intended public company which shall be-
 - (a) framed in accordance with the provisions of the Companies Act, but subject to the provisions of this Act; and
 - (b) signed by the Minister on behalf of the State.
- (3) On receipt of the request and the memorandum and articles so signed the Registrar of Companies shall-
 - (a) register the conversion of Sentech (Pty.) Ltd. into a public company having a share capital, as well as the memorandum and articles; and
 - (b) issue an amended certificate of incorporation.
- (4) The name of the public company referred to in subsection (3)(a) shall be Sentech Limited.
- (5) No additional fee referred to in section 63(2) of the Companies Act shall be payable in respect of the registration of the memorandum and articles referred to in subsection (3)(a).
- (6) The Registrar of Companies shall issue such directives and authorise such deviations from the regulations in force in terms of the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to this section.
- (7) The rights which, in terms of section 29(1) of the Companies Act, are not affected by the conversion of Sentech (Pty.) Ltd. into a public company, shall, without limiting the generality of that section, include the broadcasting signal distribution licence granted to Sentech (Pty.) Ltd. in terms of section 33(1)(a)(i) of the Independent Broadcasting Authority Act.
- (8) Sections 66, 190 and 344(d) of the Companies Act shall not apply to the public company referred to in subsection (3)(a).

Main object and business of Company

5. The main object and business of the Company shall be to provide electronic communications services and electronic communications network services in accordance with the Electronic Communications Act.

[Section 5 substituted by section 35 of Act No.64 of 2001]

[Section 5 substituted by Section 97 of Act No. 63 of 1996]

Shareholding of Company

6. (1) Notwithstanding section 32 of the Companies Act, but subject to subsection (1A), the State shall be the only member and shareholder of the Company.

[Subsection (1) substituted by section 1(a) of Act No.44 of 1999]

(1A) Notwithstanding any provision of law to the contrary, the Minister may transfer so much of the states shares in the Company as the Cabinet approves, for the purpose of achieving any applicable object of the Broadcasting Act, 1999 (Act No.4 of 1999), referred to in section 2 of that Act, to such transferees in such manner and on such terms and conditions as the Cabinet approves.

[Subsection (1A) inserted by section 1(b) of Act No. 44 of 1999]

(1B) The proceeds of any transfer, in terms of subsection (1A) shall be used wholly or partially for the purpose referred to in that subsection, in such manner and amounts as the Cabinet approves, but all proceeds not so used within the period determined by the Minister shall be paid into the National Reserve Fund.”

[Subsection (1B) inserted by section 1(b) of Act No.44 of 1999]

- (2) The total value and number of the shares of the Company shall be determined by the Minister with the concurrence of the Minister of Finance.
- (3) The powers and duties of the State as member and shareholder of the Company shall, subject to subsection (4), be exercised by the Minister.
- (4) The rights attached to the shares of the State in the Company shall be exercised by the Minister with the concurrence of the Minister of Finance.
- (5) Any dividends received by the State in respect of its shares in the Company shall be paid into the National Revenue Fund.
- (6) No amount referred to in section 75(3) of the Companies Act or stamp duty shall be payable in respect of the increase of the share capital or the number of shares of the Company.

Control of Company

7. (1) The articles of association of the Company shall provide that-
- (a) the board of directors shall consist of,
 - (i) three executive directors; and
 - (ii) at least four non-executive directors;
 - (b) the three executive directors of the board shall be the persons performing the functions of a chief executive officer, chief operations officer and chief financial officer;
 - (c) the Minister shall appoint a non-executive director as chairperson of the board;

- (d) the affairs of the Company shall be managed by an executive committee consisting of the executive directors of the board; and
- (e) the executive committee shall be accountable to the board and shall perform such functions as the board determines.

[Subsection (1) substituted by section 2 of Act No.44 of 1999]

- (2) The Company shall borrow money only with the approval of the Minister granted with the concurrence of the Minister of Finance.

Financial year and annual financial statements of Company

- 8. (1) Notwithstanding section 285 of the Companies Act, the financial year of the Company shall be the year ending on 30 September.
- (2) In addition to the annual financial statements to be drawn up in terms of the Companies Act, the Minister may direct the Company to draw up annual financial statements in a form determined by him or her.

Application of Electronic Communications Act

- 8A. (1) The Electronic Communications Act shall apply in relation to this Act, the Broadcasting Act and the ICASA Act and any other legislation applicable to broadcasting or electronic communications.
- (2) In the event of any conflict between the provisions of the Electronic Communications Act or any other law relating to the regulation of broadcasting or electronic communications the provisions of the Electronic Communications Act shall prevail.

[Section 8A inserted by Section 97 of Act No. 63 of 1996]

Expropriation powers of Company

- 9. ...

[Section 9 repealed by Section 97 of Act No. 63 of 1996]

Short title and commencement

- 10. This Act shall be called the Sentech Act, 1996, and shall come into operation on a date determined by the President by proclamation in the Gazette.