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No. 17558

PRESIDENT'S OFFICE

No. 1809.

8 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 63 of 1996: Sentech Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1809.

8 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 63 van 1996: Wet op Sentech, 1996.

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.

(Afrikaans text signed by the President.)
(Assented to 30 October 1996.)

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) "broadcasting licensee" means a broadcasting licensee as defined in section 1(1) of the Independent Broadcasting Authority Act; (vii) 5
 - (ii) "broadcasting signal distribution" means broadcasting signal distribution as defined in section 1(1) of the Independent Broadcasting Authority Act; (viii)
 - (iii) "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) 10
 - (iv) "Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973); (iii)
 - (v) "Company" means the public company, Sentech Limited, contemplated in section 4; (ii)
 - (vi) "Independent Broadcasting Authority Act" means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (ix) 15
 - (vii) "Minister" means the Minister charged with the administration of this Act; (iv)
 - (viii) "SABC" the South African Broadcasting Corporation mentioned in section 2 of the Broadcasting Act, 1976 (Act No. 73 of 1976); (v) 20
 - (ix) "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. 25
- (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. 30 35
- (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. 5

(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. 10

(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. 15

(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. 20

(2) The request shall be accompanied by the memorandum of association and articles of association of the intended public company which shall be— 25

(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— 30

(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. 35

(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. 40

(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. 45

(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

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5. The main object and the main business of the Company shall be to provide, as a common carrier, broadcasting signal distribution for broadcasting licensees in accordance with the provisions of the Independent Broadcasting Authority Act.

Shareholding of Company

6. (1) Notwithstanding section 32 of the Companies Act, the State shall be the only member and shareholder of the Company. 55

(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

(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. 10

Control of Company

7. (1) The articles of association of the Company shall provide that—

(a) the directors, other than the managing director, shall fulfil a non-executive function; 15

(b) the affairs of the Company shall be managed by a management board appointed in terms of the articles of association; and

(c) one of the directors shall be appointed as managing director as well as chairperson of the management board.

(2) The Company shall borrow money only with the approval of the Minister granted with the concurrence of the Minister of Finance. 20

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. 25

Expropriation powers of Company

9. (1) The Company may, with the written approval of the Minister and subject to this section, expropriate any land or real right in or over land for the purpose of providing, as a common carrier, broadcasting signal distribution for broadcasting licensees in accordance with the provisions of the Independent Broadcasting Authority Act. 30

(2) If the Company intends to expropriate any land or real right in terms of subsection (1), the management board referred to in section 7(1)(b) shall submit to the Minister a report explaining the intended expropriation. 35

(3) The Minister shall grant approval for the expropriation of any land or real right in terms of subsection (1) only if he or she is satisfied after considering the report referred to in subsection (2), that the Company—

(a) requires the land or real right for the purpose mentioned in subsection (1); and

(b) is unable to purchase the land or real right on reasonable terms. 40

(4) Sections 1, 7 to 15 and 18 to 22 of the Expropriation Act, 1975 (Act No. 63 of 1975), shall apply, with the necessary modifications, in respect of the expropriation of any land or real right in terms of subsection (1), and any reference in any of those sections—

(a) to "Minister" and "State" shall be construed as a reference to the Company; 45

(b) to "section 2", shall be construed as a reference to this section; and

(c) to "this Act" shall be construed as a reference to this Act,

unless the context otherwise indicates.

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*. 50