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THE PRESIDENCY

No. 1391 7 November 2002

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

No. 38 of 2002: State Information Technology Agency Amendment Act, 2002.



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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 31 October 2002.)*

ACT

To amend the State Information Technology Agency Act, 1998, so as to alter certain definitions, to define other expressions, to delete certain definitions and to substitute obsolete references; to provide for the establishment of subsidiaries by the State Information Technology Agency (Pty) Ltd; to redefine the objects and functions of the Agency; to increase the maximum number of members of the Board of the Agency; to provide for alternate members for non-executive members of the Board; to align provisions regarding the transfer of staff and assets, the business and service level agreements and the regulatory powers with the adjusted functions of the Agency; to amend the method of determining tariffs for the cost of services of the Agency; to provide anew for the shareholding and share capital of the Agency; and to repeal provisions that became obsolete because of the Public Finance Management Act, 1999; to provide for the alteration of the Agency's memorandum of association; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 88 of 1998

1. Section 1 of the State Information Technology Agency Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

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(a) by the insertion after the definition of "Agency" of the following definition:

"authentication products or services" means products or services designed to identify the holder of an electronic signature to other persons;"

(b) by the substitution for the definition of "department" of the following definition: 10

"'department' means a national department, provincial administration, provincial department or organisational component listed in Schedules 1, [and] 2 and 3 [of] to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and for the purpose of this Act, the entity known as Infoplan 15 will be regarded as a department;"

(c) by the insertion after the definition of "department" of the following definitions:

"electronic signature" means an electronic representation of information in any form which is—

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- (a) attached to, incorporated in or logically associated with other electronic representations of information in any form; and
- (b) intended by the user to serve as a signature;
- ‘executing authority’ means executing authority as defined in section 1 of the Public Service Act, 1994;”;
- (d) by the substitution for the definition of “Minister” of the following definition:
- “‘Minister’ means the Minister for the Public Service and Administration or any Minister appointed by the President and assigned the power in terms of sections 91(2) and 92(1) of the Constitution [1996] of the Republic of South Africa, 1996 (Act No. 108 of 1996), to be the shareholder on behalf of the State;”;
- (e) by the insertion after the definition of “Minister” of the following definition:
- “‘public body’ means—
- (a) Parliament or a provincial legislature;
- (b) a constitutional institution or public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (c) a municipality contemplated in section 155(1) of the Constitution;”;
- (f) by the deletion of the definitions of “participating department” and “President”.

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Amendment of section 3 of Act 88 of 1998**2. Section 3 of the principal Act is hereby amended—**

- (a) by the deletion of subsection (2);
- (b) by the insertion after subsection (4) of the following subsection:

“(4A) Despite anything to the contrary in this Act—

- (a) any service of the Agency used immediately before the commencement of the State Information Technology Agency Amendment Act, 2002, by a department in respect of which a component initially constituted the Agency as contemplated in subsection (4), must be continued to be used by that department, unless terminated by agreement between the department and the Agency; and
- (b) any asset of that component transferred to the Agency in terms of section 19(2) remains the asset of the Agency and the responsible department may not require the return of that asset.”;
- (c) by the deletion of subsections (5) and (6).

Insertion of section 3A in Act 88 of 1998**3. The following section is hereby inserted after section 3 of the principal Act:****“Subsidiaries**

3A. (1) For purposes of achieving its objects, the Agency may establish one or more subsidiary companies in terms of the Companies Act.

(2) A subsidiary company may, on behalf of the Agency, perform such functions as the Agency may delegate to it subject to such conditions as the Agency may impose.

(3) (a) The Agency may, with the approval of the Cabinet, transfer to any person the shares of the Agency in a subsidiary company in accordance with the Companies Act.

(b) The Cabinet must approve the number of shares to be transferred, the transferees and the manner and terms of the transfer.”.

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STATE INFORMATION TECHNOLOGY
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4. The following section is hereby substituted for section 6 of the principal Act:

“Objects of Agency**6. The objects of the Agency are—**

- (a) to improve service delivery to the public through the provision of information technology, information systems and related services in a maintained information systems security environment to departments and public bodies; and
- (b) to promote the efficiency of departments and public bodies through the use of information technology.”.

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Substitution of section 7 of Act 88 of 1998

5. The following section is hereby substituted for section 7 of the principal Act:

“Duties and powers of Agency**7. (1) To achieve its objects, the Agency—**

- (a) must, on behalf of a department, and may, on behalf of a public body, which so requests in terms of subsection (4) or (5)—
 - (i) provide or maintain a private telecommunication network or a value-added network service in accordance with the Telecommunications Act, 1996 (Act No. 103 of 1996);
 - (ii) provide or maintain transversal information systems; and
 - (iii) provide data-processing or associated services for transversal information systems; and
- (b) may, on behalf of a department or public body, which so requests in terms of subsection (4) or (5), provide—
 - (i) training in information technology or information systems;
 - (ii) application software development;
 - (iii) maintenance services for information technology software or infrastructure;
 - (iv) data-processing or associated services for departmentally specific information technology applications or systems;
 - (v) technical, functional or business advice or support, or research, regarding information technology; and
 - (vi) management services for information technology or information systems.

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(2) For purposes of the Telecommunications Act, 1996, the provision of a private telecommunication network in terms of subsection (1)(a)(i) by the Agency on behalf of one or more departments or public bodies or one or more departments and public bodies, must be construed as the provision of that network by the State for purposes principally or integrally related to the operations of the State.

(3) Despite any other law to the contrary, every department must, subject to subsection (4), procure all information technology goods or services through the Agency.

(4) A department that wishes to acquire a service contemplated in—

- (a) subsection (1)(a), must—
 - (i) acquire that service from the Agency in accordance with business and service level agreements concluded in terms of section 20; or
 - (ii) procure that service through the Agency in terms of subsection (3) if the Agency indicates in writing that it is unable to provide the service itself;
- (b) subsection (1)(b), must either—
 - (i) acquire that service from the Agency in accordance with business and service level agreements concluded in terms of section 20; or
 - (ii) procure that service through the Agency in terms of subsection (3).

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(5) A public body may—	
(a) acquire a service contemplated in subsection (1)(a) or (b) from the Agency; and	5
(b) procure any information technology goods or services through the Agency.	
(6) The Agency—	
(a) must set standards regarding—	
(i) the interoperability of information systems between departments, subject to the approval of the Minister; and	10
(ii) a comprehensive information systems security environment for departments, subject to the approval of the Minister and the Minister of Intelligence;	
(b) must certify every acquisition of any information technology goods or services by a department for compliance with those standards;	
(c) may—	
(i) despite anything to the contrary in any other law, exclusively subject to subsection (7) sell or provide authentication products or services for all departments;	15
(ii) on request of any public body, sell or provide authentication products or services for that public body; and	
(iii) apply to the relevant authority for the accreditation of such authentication products or services in terms of the Electronic Communications and Transactions Act, 2002 [Act No. 25 of 2002]; and	20
(d) may carry out research regarding the use of information technology to improve the efficiency of the public administration.	25
(7) If the Agency decides not to provide authentication products or services for a department or public body in terms of subsection (6)(c), the department or public body must procure through the Agency those products or services from a preferred authentication service provider referred to in section 28(2) of the Electronic Communications and Transactions Act, 2002.	30
(8) In the performance of its duties and exercise of its powers, the Agency must—	
(a) eliminate unnecessary duplication of information technology goods or services;	35
(b) leverage economies of scale to provide cost-effective service; and	
(c) comply with—	
(i) government policies on information management and information technology and any framework of norms and standards which give effect to any such policies;	40
(ii) any applicable regulations made under this Act or the Public Service Act, 1994 (Proclamation No. 103 of 1994);	
(iii) the standards referred to in subsection (5)(a); and	
(iv) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).	45
(9) For purposes of protecting the security of the Republic, the Minister of Intelligence may exempt any intelligence service established as envisaged in section 209(1) of the Constitution from any provision of this <u>Act.</u> ”.	

Amendment of section 10 of Act 88 of 1998

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6. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsections:

“(1) The Board consists of not more than 14 members appointed in the following capacities:

- (a) A non-executive Chairperson;
- (b) executive members, one of whom must be designated as the Managing Director;
- (c) additional non-executive members, consisting of—

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- (i) one person representing the Department of Public Service and Administration;
 - (ii) one person representing the National Treasury;
 - (iii) one person as a legal expert; and
 - (iv) other persons on the grounds of their expertise.
- (1A) The majority of the members of the Board must be non-executive members.
- (1B) (a) For each non-executive member of the Board, other than the Chairperson, the Minister may appoint an alternate member, who may attend and vote at meetings of the Board on behalf of a member if that member is unable to attend.
- (b) The term of office of an alternate member is the same as that of the non-executive member in respect of whom he or she is appointed and such alternate member vacates office if the relevant non-executive member vacates office.
- (c) The provisions of sections 11 and 12 regarding remuneration and other conditions of appointment applicable to non-executive members of the Board apply with the necessary changes to an alternate member.
- (1C) The Minister must designate one of the non-executive members referred to in subsection (1)(c) as the Deputy Chairperson, who must act in the place of the Chairperson if he or she is unable to perform his or her functions.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) A majority of the [appointed Directors] non-executive members of the Board forms a quorum.”.

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Amendment of section 13 of Act 88 of 1998

7. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Managing Director is accountable to the Board, and is the chief [administrative and] executive officer of the Agency.”.

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Amendment of section 15 of Act 88 of 1998

8. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a department or public body concludes a business agreement for the acquisition of a service contemplated in section 7(1)(a) or (b), the Agency must, on the date stipulated in that agreement, make an employment offer to every practitioner of that department or public body who is responsible for information technology functions in respect of that service, unless the Agency, practitioner and department or public body agree otherwise.”.

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Amendment of section 16 of Act 88 of 1998

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9. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:
 - “(1) The Agency is funded from monies received for services rendered that are stipulated in the service level agreements referred to in section 20.
 - (2) The Minister must—
 - (a) after consultation with all executing authorities; and
 - (b) subject to the approval of the Minister of Finance,
 determine from time to time reasonably market-related rates for establishing the cost of a service or product contemplated in section 7(1) and (5)(c).”;
- (b) by the deletion of subsection (4);
- (c) by the substitution in subsection (5) for the expression “an organ of state” of the expression “public body”;
- (d) by the substitution in subsection (8) for the expression “Department of State Expenditure” of the expression “National Treasury”; and
- (e) by the substitution for subsection (9) of the following subsection:

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"(9) An auditor appointed by the Board in terms of section 58 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must audit annually the accounts, financial statements and financial management of the Agency and each of its subsidiaries."

Substitution of section 17 of Act 88 of 1998

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10. (1) The following section is hereby substituted for section 17 of the principal Act:

"Shareholding

17. (1) Despite the Companies Act or any other law, the State is the sole shareholder of the Agency.

(2) The Agency has a share capital of R1, represented by one ordinary share with a nominal value of R1. 10

(3) The Minister must exercise on behalf of the State the rights attached to the State as shareholder".

(2) The memorandum of association of the Agency must be altered in accordance with section 17(2) of the principal Act, as amended by this Act, and lodged with the Registrar of Companies who must, free of charge, register the memorandum of association so altered. 15

Repeal of section 18 of Act 88 of 1998

11. Section 18 of the principal Act is hereby repealed.

Amendment of section 19 of Act 88 of 1998

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12. Section 19 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsections:

"(2A) If a department or public body before the acquisition from the Agency of a service contemplated in—

(a) section 7(1)(a) partly or fully carried out that service itself, any corporeal or incorporeal asset of that department or public body held or used in connection with that service, must be transferred to the Agency; and 25

(b) section 7(1)(b) partly or fully carried out that service itself, such corporeal and incorporeal assets of that department or public body held or used in connection with that service as agreed on by that department or public body and the Agency, must be transferred to the Agency.

(2B) The transfer of an asset in terms of subsection (2A) must take place in accordance with an agreement between the relevant department or public body and the Agency with the approval of the Minister of Finance or the relevant member of the Executive Council responsible for finance."; and 30

(b) by the substitution for subsection (3) of the following subsections:

"(3) Despite any other provision of this section, the State may transfer assets to the Agency in order to further the objects and enhance the performance of the duties and the exercise of the powers of the Agency. 40

(3A) When an corporeal or incorporeal asset is transferred in terms of this section, all contracts, rights and obligations existing at the time in respect of that asset must be assigned to the Agency.

(3B) No transfer duty, stamp duty, registration fee or any other duty, fee, levy or tax imposed by law are payable in respect of any transfer in terms of this section." 45

Substitution of section 20 of Act 88 of 1998

13. The following section is hereby substituted for section 20 of the principal Act:

“Business and service level agreements

20. (1) (a) Every department must conclude a business agreement with the Agency to regulate their relationship for purposes of—

- (i) the services contemplated in section 7(1)(a); and
- (ii) those services contemplated in section 7(1)(b) that it intends to use.

(b) A public body must conclude a business agreement with the Agency in respect of those services contemplated in section 7(1)(a) and (b) that it intends to use.

(c) The Minister must prescribe the compulsory terms of the business agreement by regulation in terms of section 23.

(2) A department or public body and the Agency must conclude a service level agreement to support the business agreement concluded in terms of subsection (1).

(3) A business agreement or service level agreement concluded in terms of section 20(1) or (2), before its amendment by the State Information Technology Agency Amendment Act, 2002, remains in force until such date as the relevant department or public body and the Agency agree on, which date may not be later than 36 months after that Act takes effect.”.

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Repeal of section 21 of Act 88 of 1998

14. Section 21 of the principal Act is hereby repealed.

Substitution of sections 23 and 24 of Act 88 of 1998

15. The following sections are hereby substituted for sections 23 and 24, respectively, of the principal Act:

“Regulations

23. (1) The Minister, after consultation with all executing authorities—

(a) must make regulations regarding the manner in which procurement in terms of section 7(3) to (7) must take place, subject to the approval of the Minister of Finance; and

(b) may make regulations regarding—

- (i) any matter that must or may be prescribed by regulation in terms of this Act;

- (ii) the imposition of additional duties or conferment of additional powers on the Agency that are necessary to achieve its objects;

- (iii) a procedure to resolve disputes between a department and the Agency;

- (iv) information systems security applicable to all departments, subject to the approval of the Minister of Intelligence; and

- (v) any other matter that is necessary to be prescribed in order to achieve the objects of this Act.

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(2) Without limiting the generality of subsection (1)(a), such regulations—

(a) must provide for representation during the procurement process of the department that requires procurement;

(b) must provide for due consideration of suitable service providers located in the province in which the goods or services are required;

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- (c) may include provision for the circumstances in which procurement through the Agency is not required or procurement through another institution may occur; and
- (d) may include a procedure to resolve disputes regarding the preferred service provider.

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Public Finance Management Act binds Agency

24. The Agency must comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999).".

Substitution of long title of Act 88 of 1998

16. The following long title is hereby substituted for the long title of the principal Act: 10

"ACT

To establish a company responsible for the provision of information technology services to the public administration and to provide for matters connected therewith.".

Short title and commencement

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17. This Act is called the State Information Technology Agency Amendment Act, 2002, and takes effect on a date determined by the President by proclamation in the *Gazette*.