

Amendment of section 5 of Act 13 of 2000

7. Section 5 of the principal Act is hereby amended—

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

“(1) [The Council consists of seven councillors appointed by the President on the recommendation of the National Assembly according to the following principles; namely—

(a) participation by the public in the nomination process;

(b) transparency and openness; and

(c) the publication of a shortlist of candidates for appointment, with due regard to subsection (3) and section 6.] The Council consists of a chairperson and eight

other councillors appointed by the President by notice in the Gazette”;

(b) by the insertion after subsection (1) of the following subsections:

“(1A) (a) Whenever it is necessary to appoint a chairperson or other councillor the National Assembly, must after drawing up terms of reference and inviting nominations for panellists, select an independent and impartial selection panel consisting of eleven persons who have an understanding of issues relating to the electronic communications and postal policy or operations, public policy development and electronic engineering.

(b) The selection panel must consist of—

(i) a person with knowledge of and experience in the industry;

- (ii) a person with a legal background and knowledge of the ICT sector and competition related matters;
- (iii) an academic in the field of electronic communications;
- (iv) a representative from the labour sector;
- (v) a representative of consumer interests; and
- (vi) six members of the National Assembly, one of whom must be the chairperson of the selection panel and including one or more members of opposition parties / and including two members of opposition parties.

(c) The names of persons on and the terms of reference of the selection panel must be published by the National Assembly in a newspaper circulating nationally.

(1B) The selection panel contemplated in subsection (1A) must—

- (a) at least 60 days prior to the last day of service of a councillor, invite the public to nominate candidates for appointment to the Council in a newspaper circulating nationally;
- (b) publish a shortlist of candidates for appointment; and
- (c) conduct interviews.

(1C) The selection panel will be automatically dissolved when the appointment is published in the Gazette in terms of subsection (1).";

(c) by the substitution for subsection (2) of the following subsection:

"(2) (a) [The President must appoint one of the councillors as chairperson of the Council.] The chairperson must, in writing, appoint a councillor as acting chairperson to perform the functions of the chairperson in his or her absence.

(b) [In the absence of the chairperson, the remaining councillors must from their number elect an acting chairperson, who, while he or she so acts, may perform all the functions of the chairperson.] Where the chairperson is unable to make an appointment, the remaining councillors must from their number elect an acting chairperson."; and

(d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (3) of the following subparagraph:

"(ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting, **[and telecommunications policy]** electronic communications and postal policy or operations, public policy development, electronic engineering, [technology, frequency band planning,] law, marketing, journalism, entertainment, education, economics, **[business practice and]** finance or any other relevant expertise or qualifications."

## CLAUSE 9

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1. On page 8, in line 25, after "must" to insert:

" in consultation with the National Assembly."

1. On page 8, in line 25, to omit "Minister" and to substitute "National Assembly".

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"National Assembly must, in / after consultation with the Minister."

2. On page 8, after line 41, to insert the following subsection:

"(5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson or a councillor, submit a report to the National Assembly for consideration."

3. On page 8, from line 34, to omit subsections (3) and (4) and to substitute the following:

"(3) As soon as is practicable after the appointment of the chairperson or other councillor a performance agreement must be concluded between the chairperson or other councillor and the Minister / National Assembly."

(4) The evaluation of the performance of the chairperson  
or other councillor must be conducted by the panel constituted by the  
Minister / National Assembly."

**Performance Management System**

6A. (1) The Minister must, in consultation with the National Assembly / National Assembly must / National Assembly must, in consultation with the Minister, establish a performance management system to monitor and evaluate the performance of the chairperson and other councillors.

(2) The performance management system must-

- (a) set appropriate key performance indicators as a yardstick for measuring performance;
- (b) set measurable performance standards; and
- (c) set a procedure to measure and review performance at least once a year.

(3) As soon as is practicable after the appointment of the chairperson or other councillor a performance agreement must be concluded between the chairperson or other councillor and the Minister / National Assembly.

(4) The evaluation of the performance of the chairperson or other councillor must be conducted by a panel constituted by the Minister / National Assembly for that purpose.

(5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson or a councillor, submit a report to the National Assembly for consideration.

**CLAUSE 11**

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1. Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Amendment of section 8 of Act 13 of 2000**

11. Section 8 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) after paragraph (e) of the word "or";
- (b) by the addition in subsection (1) after paragraph (f) of the word "or";
- (c) by the addition in subsection (1) of the following paragraph:

"(g) refusal to sign a performance agreement."; and

(d) by the substitution for subsection (3) of the following Subsection:

"(3) The ~~[President]~~ Minister—

- (a) may suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor;
- (b) must remove a councillor from office upon adoption by the National Assembly of the resolution calling for that councillor's removal;

~~(c) must suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor upon the request of the National Assembly.~~

#### Removal from office

8. (1) Subject to subsection (2), a councillor may be removed from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Council without the permission of the Council, except on good cause shown;
- (d) a contravention of section 7(6);
- (e) failure to disclose an interest in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Council while having an interest contemplated in section 12(1);
- (f) his or her becoming disqualified as contemplated in section 6(1); or
- ~~(g) refusal to sign a performance agreement.~~

(2) A councillor may be removed from office only on—

- (a) a finding to that effect by the National Assembly; and
- (b) the adoption by the National Assembly of a resolution calling for that councillor's removal from office

(3) The ~~President~~ Minister—

- (a) may suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor;
- (b) must remove a councillor from office upon adoption by the National Assembly of the resolution calling for that councillor's removal
- ~~(c) must suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor upon the request of the National Assembly.~~