

media. Furthermore, the MDDA seeks to encourage ownership and control of, and access to media by historically disadvantaged communities as well as historically diminished indigenous language and cultural groups. As such, ICASA in its formulation of policy imperatives pursuant to section 2(g), (h), (k) and (s) of the ECA 2005, and where appropriate, engages with the MDDA so as to ensure that there exists a synergic implementation of such initiatives.

## **12. Minister of Communications**

The Authority maintains a cooperative and effective relationship with the Minister of Communications on all matters pertaining to policy and implementation. Moreover, section 34 (2) and 34 (11) of the ECA 2005 mandates ICASA to cooperate with the Department of Communications on matters pertaining to the the National Radio Frequency Plan. With regards to matters pertaining to the implementation of policy directions by the Minister of Communications, section 3(4) of the ECA 2005 directs ICASA to consider such policy directions when exercising its powers and performing its duties pursuant to the ECA 2005 and other related statutory instruments. ICASA will continue to effectively engage the Minister of Communications and the ECA 2005 now institutionalises the mechanisms with which to do so. For example, section 3(9) of the ECA provides for the Authority to make recommendations to the Minister on policy matters in accordance with the objects of the Act.

## **13. Parliament of the Republic of South Africa**

In accordance with section 181(5) of the Constitution, ICASA is accountable to the National Assembly and must report on its activities and the performance of its functions to the Assembly at least once a year. So as to give effect to this obligation, ICASA annually presents to the Minister in terms of section 16 of the ICASA Act its Annual Report, its Financial Statements and the Auditor-General's Report on those statements. The Minister tables the Reports to Parliament within 30 days when it is in session or, when it is not in session, within 14 days after the start of the next session of Parliament.

ICASA also attends and participates in all relevant processes affecting legislation and the sector convened by the Parliamentary Portfolio Committee on Communications, including the writing of submissions to that Committee and attending hearings when requested to do so.

## **C. Institutional Governance**

### **1. WHAT ARE THE INSTITUTIONAL GOVERNANCE ARRANGEMENTS?**

#### **Council of the Authority**

The Council of the Authority consists of the Chairperson and 8 Councillors appointed in terms of the ICASA Act. Council is the highest decision making body in all strategic activities of the Authority. Council provides strategic leadership to the institution, including all policy and regulatory matters as determined by the provisions of applicable legislation. Council operates as far as possible on a consensus basis, but where agreement is not attained, resolutions are taken by way of majority vote with a casting vote for the Chairperson where votes are equal. The Chairperson oversees the overall activities of the organisation and manages the activities of Councillors.

Section 14 of the ICASA Act enjoins Council to establish its own administration to assist the Authority in the performance of its functions. The Act provides that the administration of the Authority should be headed by a Chief Executive Officer ("CEO") who is appointed by Council and directly accountable to Council. The CEO is the accounting officer in terms of section 36 of the Public Finance Management Act, 1999 ("PFMA"). The Council must, in the appointment of its staff, provide for the advancement of persons disadvantaged by unfair discrimination, with the aim that its staff, when viewed collectively, represents a broad cross-section of the population of the Republic.

#### **Internal Audit Committee**

Section 38 (1) (a) (ii) of the PFMA provides that the accounting officer must ensure that a Constitutional institution has and maintains a system of internal control under the direction of an audit committee. Internal Audit independently performs the function of examining and evaluating the adequacy and effectiveness of the institution's internal control and the quality of performance in carrying out the assigned responsibility.

Additionally, the audit committee assists Council in fulfilling its oversight responsibilities. The Audit Committee reviews the financial reporting process, systems of internal control and management of financial risks, the audit process, and the institution's process for monitoring compliance with laws and regulations. The Audit Committee meets more than 4 times a year.

### **1.1 Suggestions to improve the institutional governance arrangements.**

The structures are constantly under scrutiny by Council. However, presently, the Council is satisfied with the structures and is in the process of revising internal policies to be brought in line with legislative changes.

### **2. DOES YOUR INSTITUTION HAVE MECHANISMS TO DEAL WITH INTERNAL CONFLICT IN THE INSTITUTION?**

ICASA has various internal policies to regulate the functioning and the conduct of its employees at all levels. Amongst the existing policies, the Human Resource Management policy seeks to create an enabling environment for proactive and fair conflict resolution within the organization. Clause 28 of the ICASA Human Resource Management and Development Policies and Procedure Manual outline procedures to be followed in the filing of complaints and grievances, and conflict resolution processes to be followed.

### **3. WHAT MECHANISMS ARE IN PLACE FOR THE CEO, CHAIRPERSON AND COUNCILLORS TO DISCLOSE A COMMERCIAL/FINANCIAL INTEREST OR INVOLVEMENT?**

The ICASA Council has adopted a Code of Conduct which sets out the standards to promote and ensure highest levels of integrity and conduct by the Chairperson, Councillors and the CEO. The Code of Conduct represents a commitment by ICASA to maintain the highest standards of moral integrity, ethics, leadership and financial management. Included in the Code of Conduct is the declaration of financial interests. The Chairperson, Councillors and the CEO are required to disclose and declare in writing any conflicting financial interest held by the official and or a family member. The CEO records all the registerable interests in the public or confidential part of the Register. Section 12 of the ICASA Act provides that a Councillor may not vote at, attend or in any other manner participate in any meeting or hearing of the Council where he or she or his or her family member is a director, member or business partner or associate or has an interest in the business of an applicant; or in relation to any matter before Council, he or she has any interest which may preclude him or her from performing his or her functions as a councillor in a fair, unbiased and proper manner.

#### **D. Interactions with the public**

##### **17. What was the intended relationship between your institution and the public? To what extent has this relationship been realized?**

As part of its mandate as a regulator, ICASA has to interact with the public in whose interest regulations are made. This relationship is vital in allowing the Authority to measure and understand the diverse interests of the public with regard to regulations, which governs the licensing and the accompanying conditions that govern the practice of operators. Before a final decision on regulations is taken, the public is afforded an opportunity to submit comments. The Authority may also hear oral representations where necessary. ICASA holds public hearings from time to time on licensing, regulation and policy matters, inviting the public and stakeholders to make an input in its licensing and policy development processes.

The following channels of communication are used to reach out to the public, operators and stakeholders informing them about the Authority's regulatory activities:

- Media Releases;
- Media Interviews by Council and Officials;
- Website;
- Corporate brochures

In addition, the Authority receives enquiries from operators through an e-mail system ([info@icasa.org.za](mailto:info@icasa.org.za)) and the enquiries are then referred to respective departments for a response or clarification. An average of 200 enquiries is received every month. The time taken to deal with the complaints differs according to the complexity of the matters. Other enquiries are sent through fax and mail, directed to the office of the Chairperson about regulatory matters and then cascaded into the relevant divisions for attention.

ICASA operates a public library at its Sandton Head Office during normal business hours. Members of the public and industry may make use of the library.

Complaints from the public which fall within the Code of Conduct for Broadcasters are directed to the Complaints and Compliance Committee ("CCC"), formerly to the Broadcasting Monitoring and Complaints Commission ("BMCC"). The CCC holds a session where the parties are afforded a hearing and have a right to employ legal advisers who act on their behalf. Full reasons are provided for rulings of the CCC. Where complaints about content of broadcasts are directed against broadcasters which are members of the National Association of Broadcasters, the complaints are sent to the

Registrar of the Broadcasting Complaints Commission of South Africa ("BCCSA") for processing in terms of that Commission's adjudicating procedure. The BCCSA's website is at <http://www,bccsa.co.za>

**18. Does your institution have mechanisms in place to deal with complaints by the public about the work done by your institution or the failure to attend to issues?**

Although there are no formal mechanisms to deal with such complaints, the public may approach and/or escalate its concerns to the immediate supervisor up to the office of CEO and Chairperson of ICASA. ICASA has a Complaints Handling and Escalation mechanism that provides that should the complainant exhaust all levels of authority within ICASA to have his/her complaints resolved, and still remains dissatisfied, he/she may approach the Office of The Public Protector who will act within the scope the powers granted to that office in terms of the Public Protector Act No. 23 of 1994.

**19. If you deal with public complaints, what mechanisms are in place to deal with such complaints, to follow through on such complaints and to successfully resolve such complaints?**

Section 69 ECA 2005 enjoins ICASA to prescribe regulations setting out a consumer code of conduct for licensees and minimum standards for end-user and subscriber service charters. The public must lodge their complaints with the service providers of the licensees and exhaust all levels of authority within that sphere. Should they not be satisfied with the manner in which their complaints were resolved, they could then lodge their complaints with ICASA. ICASA will then refer the matter to the CCC which will send such complaints to the regulatory affairs department of the licensee for response. The matter may then proceed to a full hearing of the matter before the CCC.

According to section 71 of the ECA 2005, ICASA must establish a consumer advisory panel that will advise it on matters relating to consumer issues in the Republic.

With respect to allegations of unsatisfactory performance by ICASA officials, there are internal human resources policies and procedures that will be implemented in dealing with such complaints. If the complaint relates to ICASA in general, the public can approach Parliament, as ICASA remains accountable to Parliament. We have already referred to the role of the CCC, the BCCSA and ASA in so far as complaints concerning content of broadcasting and advertisement are concerned.

**E. Financial and other resource matters**

**20. Give an indication of budget allocation, additional funding and expenditure over the past five years.**

**Budget allocation, additional funding and expenditure for the past five years:**

| Description                              | 2001/2               | 2002/3               | 2003/4               | 2004/5               | 2005/6               | 2006/7             |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|--------------------|
|  | Rands                | Rands                | Rands                | Rands                | Rands                | Rands              |
| Budget Allocation                        | 107,260,002          | 111,189,710          | 116,376,000          | 140,947,000          | 144,489,000          | 199,738,000        |
| Additional funds received from DOC       | 10,651,000           | 2,957,593            | 14,770,000           | 639,833              | 6,000,000            |                    |
| <b>Total Grant</b>                       | <b>117,911,002</b>   | <b>114,147,303</b>   | <b>131,146,000</b>   | <b>141,586,833</b>   | <b>150,489,000</b>   | <b>199,738,000</b> |
| Deferred Projects                        |                      | (7,949,353)          | (7,191,810)          | (12,953,093)         | 16,733,579           |                    |
| <b>Grant available</b>                   | <b>117,911,002</b>   | <b>106,197,950</b>   | <b>123,954,190</b>   | <b>128,633,740</b>   | <b>167,222,579</b>   |                    |
| <b>Expenditure</b>                       | <b>(101,546,550)</b> | <b>(128,177,214)</b> | <b>(116,949,119)</b> | <b>(153,262,356)</b> | <b>(178,605,557)</b> |                    |
| <b>Net Operating Surplus / (Deficit)</b> | <b>16,364,452</b>    | <b>(21,979,264)</b>  | <b>7,005,071</b>     | <b>(24,628,616)</b>  | <b>(11,382,978)</b>  |                    |
| Movement of Grants from Year to Year     |                      | -3%                  | 15%                  | 8%                   | 6%                   | 33% *              |

\* The 33% increase in the budget allocation from the 2005/6 to 2006/7 financial years accommodated the additional funding requirements for implementation of the Postal Regulator mandate, the two additional Councillors and their respective support structure as per ICASA Amendment Act. There is no allocation for expanded mandate of Electronic Communication Act 36 of 2005.

21. Please provide detailed information of the remuneration packages for Office Bearers and Commissioners.

See attached Annexure A

22. Please illustrate the budget process followed by your institution, including the process of allocation of funds.

#### 22.1 Budget Performance

The Council reviews the budget performance every month. Every quarter the business plan and budget performance will be reviewed by the Council. The variances are followed up and accounted for. During the quarterly reviews, the CEO has authority to shift funds from departments which are under spending to those which require such resources, in consultation with affected General Managers and the Chief Finance Officer. Final approval of the re-prioritised budget rests with Council.

#### 22.2 Roll-over Management

If there is delay of capital project implementation for whatever reason, the management will decide on how to ensure the implementation in the following year. This plan will then be submitted to the Council. If the Council is satisfied with the reasons given it will recommend the roll-over to National Treasury.

The roll-over will not be budgeted for until the approval from National Treasury has been obtained. When the approval has been received, the Council will approve the roll-overs as budget adjustment. Changes will be effected on the budget captured.

#### 22.3 General Budget Management.

Management is responsible for the management of expenditure within the budget and ensures through this, that the strategic plan is achieved.

Management compiles an annual budget, which once agreed to by Council and approved by Parliament is divided into various projects and overhead expenses. This budget is reviewed during the management quarterly budget workshops and monitored by Council on a monthly basis.

**23. Are the current Budgetary and Administrative Arrangements sufficient to ensure autonomy of Chapter 9 institutions?**

With the recent promulgation of the ECA 2005 and its attendant changes for the sector, the budgetary arrangements are clearly insufficient to enable ICASA to effect its mandate in full. It needs to be noted that the ECA creates additional areas of work and responsibility for ICASA. There has been no additional funding allocated for these widened, significant areas of work that have accompanied promulgation of the ECA. ICASA thus still operates on a budget designed for a different legal framework, with different objectives and fewer responsibilities. ICASA collects approximately R1.5 billion in fees from the industry and is responsible for regulating a sector which contributes more than 6% to GDP. It transfers all collected fees to the National Revenue Fund (NRF). Although ICASA collects significant fees from the industry, it is not funded, even in part from those fees. Instead, ICASA is funded completely from government grants.

Government grants are conventionally considered to be the most predictable cash flow solution for regulatory authorities such as ICASA. They provide high financial planning stability once the budget has been approved by government. However, the major drawbacks of this funding arrangement are a lack of financial flexibility in a rapidly changing environment and the danger of insufficient funding right from the outset. Moreover, there is a significant risk of the regulator being caught up in a political debate, which could prevent it from pursuing its mandate independently and thus lead to a substantial loss of credibility.

Funding ICASA completely from regulatory fees removes the challenges associated with government grants. As long as the collected fees cover the regulator's financial needs, they make it possible to achieve independence from political interests while providing the required financial flexibility for coping with a fast-changing sector. Potential disadvantages of this funding option are the possibility of high fluctuations in cash flow and the erection of barriers to market entry due to excessive fees. However, both disadvantages can be addressed in the underlying legislation, e.g., by transparent appeal mechanisms for existing and new market players and audits of the regulator's activities regarding the prudent use of collected funds.

A concern often raised about government-independent funding of ICASA is the accumulation of excess funds by the regulator. Yet several options exist to address the issue of excess funds and are actively used by independent regulators. There is an option of rolling over a portion of excess funds, and transferring excess funds to the National



Treasury. A limited roll-over of excess funds would provide ICASA with the opportunity for smooth funding and allow the regulator the financial flexibility to quickly react to market changes and new regulatory needs. This approach would also prevent a systematic accumulation of excess funds and make best use of available funds for public causes in the communication sector. An agreed mechanism would be required, determining when to roll over excess funds and when to transfer them back to the NRF.

As part of its submission on the ICASA Act Amendment, ICASA recommended that the legal framework provide for the following:

**Recommendation 1**

1. ICASA retains 30% of the collected fees (regulatory and market related).
2. Any unspent funds must be transferred to the National Revenue Fund at the end of the financial year.

**Recommendation 2**

1. ICASA to be funded from a percentage of licence fees collected.
2. The percentage of the licence fees retained to be determined by the Minister of Communications, with the concurrence of the Minister of Finance.
3. ICASA must be consulted in determining the percentage of the licence fees to be retained.
4. The remaining funds must be transferred to the National Revenue Fund at the end of the financial year.

In addition, we propose **Recommendation 3:**

That resources be allocated based on the business plan and identified needs.

In addition, that funding recognise the human resource needs of the organization in a competitive market place.

The alternatives to government funding provide the regulator with a clearly defined funding source that is not dependent on annual budgetary allocations. It will result in more independence and credibility for the regulator relative to the current model.

The increasingly complex ICT sector in South Africa requires a sophisticated and well-funded ICASA to ensure maximum long-term benefits from the sector for

society at large. The funding arrangement must provide ICASA with the necessary resources to fulfill this mandate on a sustainable basis. It must allow the regulator both to effectively address the challenges of a converging communication sector and to create a competitive environment for communication services in South Africa.

Significant in this respect is the following 2006 amendment to section 15 of the ICASA Act, "(1A) The Authority may receive money determined in any other manner as may be agreed between the Minister and the Minister of Finance and approved by Cabinet."

**24. To what extent are the resources allocated to your institution directly spent on meeting its key responsibilities?**

For the 2005/2006 financial year the ICASA spent its resources on the following expenditure:

| EXPENDITURE              |                    |             |
|--------------------------|--------------------|-------------|
| Administrative expenses  | 23 232 865         | 13%         |
| Staff costs              | 88 540 792         | 49,6%       |
| Audit fees               | 944 807            | 0,6%        |
| Project expenses         | 5 218 605          | 2,9%        |
| Other operating expenses | 54 540 475         | 30,5%       |
| Depreciation             | 6 068 509          | 3,4%        |
| Finance costs            | 59 504             | 0%          |
| <b>TOTAL</b>             | <b>178 605 557</b> | <b>100%</b> |

As indicated above, close to 65, 5% of ICASA expenditure, consisting of administrative expenses, staff costs and project expenses are spent on meeting our key responsibilities.

**25. Please tabulate the full staff compliment of your institution, including all executive and non-executive staff. Please separate staff in the head office from regional offices, where applicable.**

See attached Annexure B, for a table of the full staff compliment of ICASA.