

REPUBLIC OF SOUTH AFRICA

**STATE INFORMATION
TECHNOLOGY AGENCY
AMENDMENT BILL**

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 23337 of 26 April 2002) (The English text is the official text of the Bill)

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

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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.

BILL

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 and articles 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— 5
- (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 will be regarded as a department;”;
 - (c) by the insertion after the definition of “department” of the following definitions: 15
“‘electronic signature’ means an electronic representation of information in any form which is— 20

- (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:
 “ ‘organ of state’ means—
 (a) a constitutional institution or public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
 (b) a municipality contemplated in section 155(1) of the Constitution;”;
- (f) by the deletion of the definitions of “participating department” and “President”.

Amendment of section 3 of Act 88 of 1998

2. Section 3 of the principal Act is hereby amended by the deletion of subsections (2), (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.”.

Amendment of section 6 of Act 88 of 1998

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 organs of state; and

(b) to promote the efficiency of departments and organs of state through the use of information technology.”.

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, in respect of every department, and may, in respect of an organ of state—
- (i) provide wide area information technology networks;
 - (ii) acquire, build or maintain transversal information systems; and
 - (iii) provide data-processing or associated services for transversal information systems; and
- (b) may, in respect of a department or organ of state, 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.
- (2) Despite any other law to the contrary, every department must, subject to subsection (3), procure all information technology goods or services through the Agency.
- (3) 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 (2) 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 (2).
- (4) An organ of state may—
- (a) acquire a service contemplated in subsection (1)(a) or (b) from the Agency; and
- (b) procure any information technology goods or services through the Agency.
- (5) The Agency—
- (a) must set standards regarding—
- (i) the interoperability of information systems between departments, subject to the approval of the Minister; and
 - (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, despite anything to the contrary in any other law, exclusively—
- (i) sell or provide authentication products or services for all departments and organs of state; and
 - (ii) apply to the relevant authority for the accreditation of such authentication products or services in terms of any law; and
- (d) may carry out research regarding the use of information technology to improve the efficiency of the public administration.
- (6) In the performance of its duties and exercise of its powers, the Agency must—

- (a) eliminate unnecessary duplication of information technology goods or services;
 - (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;
 - (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).
- (7) 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 Act.”

Amendment of section 10 of Act 88 of 1998

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—
 - (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.”; and
 - (b) by the substitution for subsection (2) of the following subsection:
 - “(2) A majority of the **[appointed Directors]** members of the Board forms a quorum.”.

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.”.

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 organ of state 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 organ of state who is responsible for information technology functions in respect of that service, unless the Agency, practitioner and department or organ of state agree otherwise.”.

Amendment of section 16 of Act 88 of 1998

9. Section 16 of the principal Act is hereby amended— 5
- (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 10
- (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 (8) for the expression “Department of State Expenditure” of the expression “National Treasury”; and 15
- (d) by the substitution for subsection (9) of the following subsection:
- “(9) The Auditor-General must audit annually the accounts, financial statements and financial management of the Agency and each of its subsidiaries.”. 20

Substitution of section 17 of Act 88 of 1998

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. 25

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

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

- (2) The memorandum and articles 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. 30

Repeal of section 18 of Act 88 of 1998

11. Section 18 of the principal Act is hereby repealed. 35

Amendment of section 19 of Act 88 of 1998

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 organ of state before the acquisition of a service contemplated in— 40
- (a) section 7(1)(a) partly or fully carried out that service itself, any corporeal or incorporeal asset of that department or organ of state held or used in connection with that service, must be transferred to the Agency; and
- (b) section 7(1)(b) partly or fully carried out that service itself, such 45
- corporeal and incorporeal assets of that department or organ of state held or used in connection with that service as agreed on by that department or organ of state and the Agency, must be transferred to the Agency.
- (2B) The transfer of an asset in terms of subsection (2A) must take place 50
- in accordance with an agreement between the relevant department or organ of state and the Agency with the approval of the Minister of Finance or the relevant member of the Executive Council responsible for finance.”; and

(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.

(3A) When an 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.”.

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) An organ of state 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 organ of state 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 referred to in section 20(1) or (2) which is in force immediately before the State Information Technology Agency Amendment Act, 2002, takes effect, remains in force until such date as the relevant department or organ of state and the Agency agree on, which date may not be later than 36 months after that Act takes effect.”.

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(2) to (5) 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.

- (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;
 - (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.

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 15

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

“ACT

To establish a company responsible for the provision of information technology services to the public administration and to provide for matters connected therewith.” 20

Short title and commencement

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*.

**MEMORANDUM ON THE OBJECTS OF THE
STATE INFORMATION TECHNOLOGY AGENCY AMENDMENT
BILL, 2002**

1. PURPOSE OF BILL

The main purpose of the Bill is to amend the State Information Technology Agency Act, 1998 (“the SITA Act”), in order to—

- effect changes necessitated by a Cabinet decision;
- mandate SITA to perform a number of new functions, based on the findings and recommendations of the Presidential Review Commission; and
- redefine the compulsory services which SITA must render to national and provincial departments.

2. SUMMARY

- 2.1 Cabinet on 4 April 2001 approved a new business model for SITA, which fundamentally changes the way in which SITA must conduct its business. This new model includes the realisation of Government’s “Information Technology House of Value” which focuses on the fundamental principles of information technology (“IT”) security, interoperability, economies of scale and elimination of duplication with the aim of lowering costs, increasing productivity and enhancing service delivery to the public.
- 2.2 In order to realise Government’s “IT House of Value”, SITA must establish an e-Services subsidiary, necessitating changes to the SITA Act, which will—
- certify all IT-related goods and services for interoperability and security standards; and
 - be responsible through its Information Technology Acquisition Centre (ITAC) for the procurement of all certified IT-related goods and services.
- 2.3 The SITA Act (section 18) currently provides that the State must be issued with fully paid-up shares for all assets transferred to SITA. State assets are regularly transferred to SITA whilst at the same time depreciating in accordance with National Treasury guidelines. The baseline of asset value for which shares are to be issued is therefore constantly changing. The Bill accordingly proposes the amendment of the current provisions of the SITA Act on shareholding.
- 2.4 The Bill accordingly proposes—
- material amendments to matters substantially impacting on the functioning of SITA and the provision of IT services to national and provincial departments, which, if not effected, are likely to limit SITA’s ability and performance in respect of service delivery; and
 - technical amendments relating to the substitution of outdated terms and the omission of superfluous references to the same concept, including changes to the definitions in section 1 of the SITA Act (e.g. clauses 1, 9(b) to (d) and 15). These amendments are not discussed in paragraph 3.

3. EXPLANATION OF SUBSTANTIAL AMENDMENTS

- 3.1 **Subsidiaries:** In order to implement SITA’s new business model, the Bill expressly provides for the establishment of subsidiaries as well as the transfer of shares in any subsidiary of SITA to third parties, subject to Cabinet approval (proposed new section 3A in clause 3.)
- 3.2 **Objects of SITA:** The Bill proposes to adjust the objects of SITA to emphasise SITA’s role in using IT to improve service delivery (clause 4).
- 3.3 **Duties and powers of SITA:** The proposed new section 7 in clause 5 defines and regulates the services rendered by SITA:

- The proposed section 7(1)(a) defines the services which SITA is obliged to provide to national and provincial government departments, including government wide transversal systems, e.g. Persal. In terms of the proposed provision, government departments will have to negotiate business agreements with SITA on a minimum of listed compulsory services. Various national government departments and provincial governments currently operate approximately 13 separate wide area networks. To promote cost efficiency and improve security, these multiple networks will gradually have to be reduced to a smaller number. The proposed section 7(1)(a) will enable SITA to take over these services, ensuring the effective management thereof.
- The proposed section 7(1)(b) defines optional services, which SITA may provide to national and provincial departments.
- The National Treasury has agreed to transfer all State Tender Board functions on IT procurement to SITA with effect from 1 April 2002. SITA has accordingly established ITAC to perform this function. The proposed section 7(2) expressly confirms SITA's role as the sole IT goods and services procurement agency for all national and provincial departments.
- The proposed section 7(3) stipulates that departments must utilise the services listed in the proposed section 7(1)(a) as provided by SITA, whilst they have an option also to obtain the services listed in the proposed section 7(1)(b) from SITA. This provision also replaces the existing section 3(5) and (6), which provided for the participation of departments in SITA (see clause 2 which deletes section 3(5) and (6)).
- To achieve the objectives of interoperability and security, the proposed section 7(5)(a) and (b) requires SITA, subject to approval by the Minister for the Public Service and Administration, to develop appropriate standards and to certify all IT acquisition for compliance with these standards. The approval of the Minister of Intelligence will be required for the information systems security standards. The Bill also provides for SITA to be the exclusive authentication service provider for departments and organs of state (proposed section 7(5)(c)).
- SITA must also perform its functions in a manner which eliminates unnecessary duplication of IT goods and services and leverages economies of scales (proposed section 7(6)).
- 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 of the Republic of South Africa, 1996 (Act No. 108 of 1996) (proposed section 7(7)).

- 3.4 Constitution of Board: Clause 6 of the Bill increases the ceiling on the maximum number of SITA Board members from 10 to 14. Provision is also made for the appointment of alternate members for non-executive members, other than the chairperson.
- 3.5 Transfer of staff: Clause 8 of the Bill provides for a new approach to the integration of IT practitioners employed by national and provincial departments into SITA. Accordingly, SITA must offer employment to every IT practitioner associated with a particular service when or if departments use SITA as service provider in terms of the proposed section 7(1)(a) or (b).
- 3.6 Rates for services: The new section 16(2) proposed in clause 9(a) empowers the Minister for the Public Service and Administration to determine rates for services provided. Such rates must be market related and must be—
- determined after consultation with members of the national executive and provincial executives; and
 - approved by the Minister of Finance.
- 3.7 Shareholding in SITA: The current administration of the value of the shares is complex and continuously changes due to assets constantly being acquired and disposed of. The substitution of section 17 and the deletion of section 18

of the SITA Act will greatly simplify the administration of shareholding and share value (clauses 10 and 11, as well as clause 2, which deletes section 3(2)).

- 3.8 Transfer of assets: The SITA Act only provides for the transfer of assets to and from institutions which initially constituted SITA (current section 19(1) read with section 3(4)). Accordingly, the proposed section 19(2A) (see clause 12(a)) provides for the transfer of assets from departments and organs of state in respect of compulsory services listed in the proposed section 7(1)(a). Transfer of assets in respect of the optional services listed in the proposed section 7(1)(b) will only take place if the parties agree thereto. The Bill proposes that these transfers are to be accompanied by the assignment of all rights and obligations attached thereto (section 19(3A) in clause 12(b); section 21, repealed by clause 14, is made superfluous by section 19(3A)).
- 3.9 Business and service level agreements: As a consequence of other amendments, the provisions regulating business and service level agreements are aligned to the proposed amendments on compulsory and optional services rendered by SITA. It is proposed that the compulsory terms of the business agreement be prescribed by regulation. Transitional arrangements are also made for the phasing out of existing business and service level agreements within 3 years (see clause 13, which proposes the substitution of section 20).
- 3.10 Regulations: It is proposed to substitute section 23 for a new section (clause 15), enabling the making of regulations on IT procurement, subject to the approval of the Minister of Finance (proposed section 23(1)(a) and (2)), which *inter alia* requires the involvement of the client departments during procurement and the support of local economies when evaluating tenders. Provision is also made for regulations to provide an exemption from the procurement provisions so that certain IT goods or services may be procured through an institution other than SITA. All regulations are proposed to be made by the Minister for the Public Service and Administration after consultation with members of the national executive and provincial executives in order to ensure that due consideration is given to the needs of the national government as well as those of the respective provincial governments. Regulations regarding information systems security will also be subject to the approval of the Minister of Intelligence.

4. FINANCIAL IMPLICATIONS FOR STATE

The successful implementation of the amendments proposed in the Bill, in particular those pertaining to IT procurement through a dedicated agency, the elimination of unnecessary duplication of IT goods and services and the leverage of economies of scale, will over time lead to cost savings in respect of government spending on IT goods and services.

5. OTHER DEPARTMENTS/ORGANISATIONS CONSULTED

The Department of Public Service and Administration has consulted widely on the Bill. Initially SITA was consulted to prepare a Bill. Thereupon, in December 2001, all national and provincial departments, SITA and the Government Information Technology Officers' Council were invited to comment on the Bill by not later than 31 January 2002. All comments received by 28 February 2002 were considered and appropriate changes addressing concerns raised have been incorporated into the Bill. The National Treasury approved of the Information Technology Acquisition Centre being responsible for the procurement of all certified IT-related goods and services. Below is a list of national and provincial departments that submitted comments on the Bill distributed in December 2001:

NATIONAL DEPARTMENTS

Department of Agriculture
 Department of Arts, Culture, Science and Technology
 Department of Correctional Services

Department of Education
 Department of Health
 Department of Housing
 Department of Labour
 Department of Land Affairs
 Department of Public Enterprises
 Department of Sport and Recreation
 Department of Trade and Industry
 Independent Complaints Directorate
 National Intelligence Agency
 South African Police Service
 Sport and Recreation South Africa

PROVINCIAL DEPARTMENTS

Free State

Department of Public Works, Roads and Transport
 Office of the Director-General

Gauteng

Gauteng Shared Services Centre
 Department of Education
 Department of Health

KwaZulu-Natal

Department of Agriculture and Environmental Affairs
 Department of Education and Culture
 Department of Health Services
 Department of Transport
 Provincial Treasury

Mpumalanga

Department of Safety and Security

Northern Province

Department of Health and Welfare

Western Cape

Department of Finance
 Department of Environmental and Cultural Affairs and Sport
 Provincial Administration

6. PARLIAMENTARY PROCEDURE

The Department of Public Service and Administration and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.