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South Africa: broadcasting - creation of Independent Broadcasting Authority

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**Ent. L.R. E117* Under the political dispensation which has obtained in South Africa for several decades control of broadcasting facilities, and indeed the South African Broadcasting Corporation, the national broadcasting service, has vested in the government. It has been widely alleged in the past that the government has used or **Ent. L.R. E118* abused the broadcasting facilities in order to further its own policies and interests. In the new political dispensation which is coming about in South Africa it is thus hardly surprising that control of broadcasting has become a controversial issue. The negotiating process which is formulating a new constitutional order for South Africa in the post-apartheid era has devoted considerable attention to the question of broadcasting and one of the first laws to emerge from the negotiating process is the Independent Broadcasting Authority Act which was passed by Parliament in September 1993. The passing of this Act has brought about significant changes to broadcasting in South Africa.

Prior to the adoption of the Independent Broadcasting Authority Act, broadcasting in South Africa was mainly governed by the Broadcasting Act 1976, and the Radio Act 1952. The Broadcasting Act established the Board of the South African Broadcasting Corporation which was given certain statutory objects. It is clear from this legislation that the Board of the South African Broadcasting Corporation exercises control over broadcasting in South Africa and it is answerable to the Minister of State with responsibility for broadcasting. Under this legislation it is plain that broadcasting has no independence from the government.

The Board of the South African Broadcasting Corporation has, however, under the new Act in regard to broadcasting in general been superseded by a body known as Independent Broadcasting Authority. The Board remains in control of the South African Broadcasting Corporation as an individual broadcaster. The Independent Broadcasting Authority is managed by a Council. The Council of the Authority is appointed by the State President on the advice of the Transitional Executive Council (a form of multi-party interim government), or once this body has been dissolved, by the National Assembly subject to various principles, one of which is that the public shall participate in the nomination process.

The Act requires that the Independent Broadcasting Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the state, the government or its administration or any political party or from any other function or body directly or indirectly representing the interest of the state, the government or any political party. This provision is in marked contrast with the provisions under the Broadcasting Act.

The Independent Broadcasting Authority is empowered to grant licences enabling the operation of broadcasters. Provision is made for three types of licences, public broadcasting licences, private broadcasting licences and community broadcasting licences. The Authority may invite applications for licences or persons wishing of their own volition to apply for licences may do so. No equivalent provisions are to be found in the Broadcasting Act. An application for a broadcasting licence must be considered pursuant to a hearing which is open to the public.

Certain limitations are placed on foreign control of private broadcasting services. One or more foreign persons shall not, whether directly or indirectly, exercise control over a private broadcasting licensee or have financial or voting interest in a private broadcasting licensee exceeding 20 per cent in total. Not more than 20 per cent of the directors of a private broadcasting licensee may be foreign persons. There are other limitations on the control of private broadcasting services. No person is entitled, directly or indirectly, to exercise control over more than one private television broadcasting licence or to be a director of a company which is, or of two or more companies which between them are, in a

position to exercise control over more than one private television broadcasting licence. Similarly no person may exercise control over a private television broadcasting licence and be a director of any company which is in a position to exercise control over any other private television broadcasting licence. Comparable restrictions apply in relation to the control over two or more private FM or AM sound broadcasting licences. It is specifically provided that no broadcasting licence shall be granted to any party, movement, organisation, body or alliance which is of a party political nature. The cumulative effect of the aforementioned provisions totally eradicate any form of monopoly previously enjoyed under the Broadcasting Act.

The Independent Broadcasting Authority may impose specific broadcasting licence conditions regarding local television content and South African music. The main objectives of the provisions in this regard appear to be the promotion of local music and to ensure that foreign music does not overwhelm local music.

A Code of Conduct for Broadcasting Services is set out in a Schedule to the Act. It is obligatory for all broadcasting licensees to adhere to the Code of Conduct. Moreover, it is also provided that broadcasting licensees must adhere to the Code of Advertising Practice administered by the Advertising Standards Authority of South Africa. These provisions are innovations as compared to the position under the Broadcasting Act.

A Broadcasting Monitoring and Complaints Committee is responsible for monitoring and ensuring compliance with the provisions of the Act. In the case of **Ent. L.R. E119* non-compliance with the Act, specific licence conditions or certain codes of conduct, the Authority may suspend or revoke broadcasting licences.

The Independent Broadcasting Authority Act has brought about sweeping and far reaching changes in broadcasting in South Africa. A concerted effort has been made to ensure that broadcasting is in future truly independent. The Act provides a good framework for achieving this but whether the goal will ultimately be realised will only become clear with the passage of time. The omens are, however, favourable.

Ent. L.R. 1993, 4(6), E117-119