

South Australia

Public Corporations (Information Industries Development Centre) Regulations 1996

under the *Public Corporations Act 1993*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Public Corporations (Information Industries Development Centre) Regulations 1996*.

2—Commencement

These regulations will come into operation on the day on which they are made.

3—Interpretation

In these regulations, unless the contrary intention appears—

the Act means the *Public Corporations Act 1993*;

the board means the board of directors established as the governing body of the subsidiary under Part 3;

CEO means the Chief Executive Officer of the subsidiary;

director means a person appointed or holding office as a member of the board under Part 3;

EDS means EDS (Australia) Pty Ltd;

IT means information technology;

IT2000 Vision means The Report of the Premier's Task Force on Information Technology Industry Development, June 1994, as amended from time to time;

IT Industry means the business of providing IT products and services and business entities engaged in such activities;

Local IT Business means a business entity engaged in the provision of IT products and services which—

- (a) has significant investment in South Australia (relative to size); and
- (b) has been established in South Australia for a reasonable period; and
- (c) has permanent employees resident in South Australia; and
- (d) undertakes significant value-adding in South Australia; and
- (e) has significant local management autonomy; and
- (f) supports local sub-contractors; and
- (g) is not set up for performance of a single contract for a term of less than five years; and
- (h) does not merely service or maintain products produced elsewhere,

or a business entity engaged in the provision of IT products and services owned and staffed by South Australian residents;

the Minister means the Minister for Information Technology;

the subsidiary means Information Industries Development Centre (IIDC) established under Part 3.

Part 2—Application of Act to Minister

4—Application of Act to Minister

The following provisions of the Act apply to the Minister:

- (a) Part 1 (Preliminary);
- (b) section 24 (Formation of subsidiary by regulation);
- (c) section 25 (Dissolution of subsidiary established by regulation);
- (d) the Schedule (Provisions applicable to subsidiaries).

Part 3—Information Industries Development Centre (IIDC)

Division 1—Establishment and constitution of IIDC

5—Establishment of IIDC (section 24)

- (1) The Information Industries Development Centre is established as a subsidiary of the Minister.
- (2) The subsidiary—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name.

6—Establishment of board

- (1) A board of directors is established as the governing body of the subsidiary.
- (2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

7—Composition of board

- (1) The board is to consist of not more than 12 members appointed by the Minister of whom one must be a member of the Department of Information Industries.
- (2) One director will be appointed by the Minister to chair meetings of the board.
- (3) The Minister may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (4) The CEO is an ex officio member of the board.
- (5) EDS may nominate two persons for appointment to the first board and provided that the nominees are acceptable to the Minister, the Minister will appoint them to the board. If the first nominees are not acceptable, EDS may nominate other nominees until the Minister confirms that the Minister is prepared to appoint two nominees.

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Part 3—Information Industries Development Centre (IIDC)

Division 1—Establishment and constitution of IIDC

- (6) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.
- (7) If the office of a director nominated by EDS becomes vacant during the term of the IIDC contract (or any renewal) referred to in the industry development agreement between the South Australian Government and EDS, EDS may nominate a person to fill the vacancy and provided that the nominee is acceptable to the Minister, the Minister will appoint the nominee to the board. If the nominee is not acceptable, EDS may nominate other nominees until the Minister confirms that the Minister is prepared to appoint a nominee.

8—Conditions of membership

- (1) A director (other than the CEO) will be appointed for a term, not exceeding two years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The office of a director (other than the CEO) becomes vacant if the director—
 - (a) dies; or
 - (b) completed a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence; or
 - (f) is removed from office by the Minister by written notice on any ground that the Minister considers sufficient.

9—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

10—Remuneration

A director is entitled to be paid from the funds of the subsidiary such remuneration, allowances and expenses as may be determined by the Minister.

11—Proceedings

- (1) A quorum of the board consists of one-half the total number of its members (ignoring any fraction resulting from the division) plus one.
- (2) The director appointed to chair the board will preside at meetings of the board at which he or she is present.
- (3) If the director appointed to chair the board is absent from a meeting of the board—
 - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy; or
 - (b) in any other case—a director chosen by the directors present at the meeting, will preside.

- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution becomes a decision of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) A person authorised in writing by the Treasurer may attend (but not participate in) a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.
- (10) If the board considers that a matter dealt with at a meeting attended by a representative of the Treasurer should be treated as confidential, the board may advise the Treasurer of that opinion giving the reason for the opinion and the Treasurer may, subject to subregulation (11), act on that advice as the Treasurer thinks fit.
- (11) If the Treasurer is satisfied on the basis of the board's advice under subregulation (10) that the subsidiary owes a duty of confidence in respect of a matter, the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (12) Subject to these regulations, the board may determine its own procedures.

12—Confidentiality

- (1) Subject to this regulation, a director who, as a member of the Board, acquires information—
 - (a) that the director knows to be of a commercially sensitive nature, or to be provided on a confidential basis; or
 - (b) that the Board classifies as confidential information,must not divulge the information without the approval of the Board.
- (2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Minister or the Treasurer.

13—Notification of disclosure

Where the subsidiary discloses to the Minister or the Treasurer in pursuance of the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.

Division 2—Functions and powers of IIDC

14—Functions of IIDC

- (1) The subsidiary's functions are limited to the following:
 - (a) to contribute to the achievement of the IT2000 vision by enhancing the capability of South Australian information industry companies to develop world class products and services through the provision of business support services, training and infrastructure, and in particular—
 - (i) to provide business support, including business planning, technical consultation, market research, funding assistance, legal advice, marketing and sales support;
 - (ii) to assist local information industry companies to access and develop channels of distribution for their products and services, particularly in the Asia/Pacific region;
 - (iii) to assist companies to improve the overall quality of goods and services produced so as to increase competitiveness in the world markets;
 - (iv) to provide training in both the technical and commercial aspects of software development;
 - (v) to provide facilities which will assist South Australian companies to become the national and regional leaders in the development of information industry products and services;
 - (vi) to foster the growth of the South Australian information industry by encouraging participation in the development of products and services related to emerging, leading edge technologies;
 - (vii) to provide access for local industry to multi-national companies for the purpose of partnering, technology transfer and global relationship formation;
 - (viii) to give local industry forums a voice in the workings of the IIDC and the South Australian Government with regard to the growth and direction of the IT industry;
 - (b) to contribute to the implementation of the industry development agreement between the South Australian Government and EDS;
 - (c) to focus initially on the provision of services to Local IT Businesses and such other businesses as in the reasonable opinion of the board would be of benefit to the IT Industry in South Australia;
 - (d) to carry out other functions conferred on the subsidiary by the Minister.

- (2) The subsidiary must obtain the approval of the Minister before it makes a material change to its policy direction or budget.

15—Charter

- (1) The Minister and the Treasurer must prepare a charter for the subsidiary.
- (2) The charter must address—
 - (a) the nature and scope of the subsidiary's operations;
 - (b) the subsidiary's obligations to report on its operations;
 - (c) the form and contents of the subsidiary's accounts and financial statements;
 - (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
 - (e) the acquisition or disposal of capital or assets.
- (3) The charter may—
 - (a) limit the powers of the subsidiary;
 - (b) deal with any other matter not specifically referred to in subregulation (2).
- (4) The charter must be reviewed by the Minister at the end of each financial year.
- (5) The Minister and the Treasurer may amend the charter at any time.
- (6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).
- (7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

16—Performance statement

- (1) The Minister must, when preparing the charter for the subsidiary, also prepare, after consultation with the subsidiary and the Treasurer, a performance statement setting the various performance targets that the subsidiary is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as the Minister considers appropriate.
- (2) The Minister must, after consultation with the subsidiary and the Treasurer, review the performance statement when reviewing the subsidiary's charter.
- (3) The Minister may, after consultation with the subsidiary and the Treasurer, amend the performance statement at any time.

17—Subsidiary companies

- (1) The subsidiary must not, without the approval of the Treasurer—
 - (a) form a subsidiary company; or
 - (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of the subsidiary.

- (2) The Treasurer may, as a condition of approval under this section, or by direction, require the subsidiary to take steps to include in a subsidiary company's memorandum or articles of association such provisions as the Treasurer considers appropriate—
- (a) imposing limitations on the nature or scope of the company's operations; or
 - (b) imposing other controls or practices,
- consistent with those applicable to the subsidiary.

18—Indirect or joint operations by subsidiary

The subsidiary must not, without the approval of the Treasurer, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

Division 3—The Chief Executive Officer

19—Chief Executive Officer

- (1) There will be a Chief Executive Officer (*CEO*) of the subsidiary.
- (2) The Minister will appoint the first CEO of the subsidiary on terms and conditions determined by the Minister.
- (3) Subject to subregulation (4), each subsequent CEO will be appointed by the board on terms and conditions determined by the board.
- (4) The board must obtain the approval of the Minister before—
 - (a) making an appointment under subregulation (3); or
 - (b) determining or varying the terms and conditions of appointment of a CEO; or
 - (c) removing a person from the position of CEO.

Division 4—Financial and related matters

20—Internal audit

- (1) The subsidiary must establish and maintain effective internal auditing of its operations.
- (2) The subsidiary must, unless exempted by the Treasurer, establish an audit committee.
- (3) The audit committee will comprise—
 - (a) a member of the board of the subsidiary, or such members of the board as the board may from time to time determine; and
 - (b) such other person or persons as the board may from time to time appoint, but may not include the CEO.
- (4) The functions of the audit committee include—
 - (a) reviewing annual financial statements to ensure that they provide a true and fair view of the state of affairs of the subsidiary; and
 - (b) liaising with external auditors; and

- (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

21—Quarterly reports

The subsidiary must report to the Minister on the subsidiary's financial position on a quarterly basis.

22—Loans etc require approval

- (1) The subsidiary must not lend or advance to, or deposit with, any person any money, securities or property without the prior written approval of the Minister.
- (2) The subsidiary must not undertake commercial borrowings without the prior written approval of the Minister.

23—Provision of information

- (1) The subsidiary must, at the request in writing of the Treasurer, furnish the Treasurer with such information or records in the possession or control of the subsidiary as the Treasurer may require in such manner and form as the Treasurer may require.
- (2) If a record in the possession or control of the subsidiary is furnished to the Treasurer under this regulation, the Treasurer may make, retain and deal with copies of the record as the Treasurer thinks fit.
- (3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the Treasurer of that opinion giving the reason for the opinion and the Treasurer may, subject to subregulation (4), act on that advice as the Treasurer thinks fit.
- (4) If the Treasurer is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (5) The subsidiary must notify the Minister if a request is made under this regulation.

24—Dividends

- (1) The subsidiary must, before the end of each financial year, after consultation with the Minister, recommend by writing to the Treasurer that the subsidiary pay a specified dividend, or not pay any dividend, for that financial year, as the subsidiary considers appropriate.
- (2) The Treasurer may, after consultation with the Minister, by notice in writing to the subsidiary—
 - (a) approve a recommendation of the subsidiary under subregulation (1); or
 - (b) determine that a dividend specified by the Treasurer be paid, or that no dividend be paid,

as the Treasurer considers appropriate.

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Part 3—Information Industries Development Centre (IIDC)

Division 4—Financial and related matters

- (3) The subsidiary must, if so required by the Treasurer by notice in writing to the subsidiary at any time during a financial year, after consultation with the Minister, recommend by writing to the Treasurer that a specified interim dividend or specified interim dividends be paid by the subsidiary for that financial year, or that no such dividend or dividends be paid by the subsidiary as the subsidiary considers appropriate.
- (4) The Treasurer may, after consultation with the Minister, by notice in writing to the subsidiary—
 - (a) approve a recommendation of the subsidiary under subregulation (3); or
 - (b) determine that an interim dividend or interim dividends specified by the Treasurer be paid, or that no interim dividend be paid,as the Treasurer considers appropriate.
- (5) If the Treasurer approves a recommendation or determines under this regulation that a dividend or interim dividend or dividends be paid by the subsidiary, the dividend or interim dividend or dividends must be paid at the direction of the Treasurer, in the manner and at the time or times determined by the Treasurer, after consultation with the subsidiary and the Minister.
- (6) A recommendation under this regulation must be made by the board and may not be made by any person or committee pursuant to a delegation.

25—Common seal and execution of documents

- (1) The common seal of the subsidiary must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.
- (2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.
- (3) Without limiting subregulation (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the subsidiary.
- (4) A document is duly executed by the subsidiary if—
 - (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or
 - (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal regulations

Year	No	Reference	Commencement
1996	165	<i>Gazette 4.7.1996 p30</i>	4.7.1996: r 2