

REPUBLIC OF SOUTH AFRICA

POLITICAL PARTY FUNDING BILL

*(As introduced in the National Assembly (section 75); prior notice of its
introduction published in Government Gazette No. 41125 on 19 September 2017)
(the English text is the official text of the Bill)*

(AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES)

[B 33—2017]

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BILL

To provide for, and regulate, the public and private funding of political parties, in particular: the establishment and management of Funds to fund represented political parties sufficiently; to prohibit certain donations made directly to political parties; to regulate disclosure of donations accepted; to determine the duties of political parties in respect of funding; to provide for powers and duties of the Commission; to provide for administrative fines; to create offences and penalties; to repeal the Public Funding of Represented Political Parties Act, 1997 and provide for transitional matters; and to provide for related matters.

PREAMBLE

WHEREAS the Constitution establishes the foundational values of accountability and openness in a multi-party democracy;

AND WHEREAS it is important to deepen democracy, promote the national interest and to protect the sovereignty of the Republic;

AND WHEREAS the Republic's public international law obligations require it to incorporate the principle of transparency in the funding of political parties;

AND WHEREAS section 236 of the Constitution, in promoting that principle, requires national legislation to provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis to enhance multi-party democracy;

AND WHEREAS effect is given to this section through money made available to those political parties from a fund created by law for that purpose;

AND WHEREAS section 44 of the Constitution affords Parliament legislative authority to pass legislation with regard to any matter, which would include to regulate private funding of political parties;

AND WHEREAS effect is given to this by—

- establishing an additional fund to receive funding from private sources subject to certain restrictions;
- prohibiting certain donations being made directly to political parties; and
- providing for the disclosure of donations,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- ‘**chief executive officer**’ means the person appointed in terms of section 21(2); 5
- ‘**Commission**’ means the Electoral Commission established by section 3(1) of the *Electoral Commission Act*;
- ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996;
- ‘**donation**’—
- (a) includes a donation in kind; but 10
- (b) does not include—
- (i) a membership fee of the political party or any levy imposed by the party on its elected representatives; or
- (ii) any funds provided to the political party by the National Assembly and provincial legislatures respectively in terms of sections 57(2)(c) and 116(2)(c) of the Constitution; 15
- ‘**donation in kind**’—
- (a) includes—
- (i) any money lent to the political party other than on commercial terms;
- (ii) any money paid on behalf of the political party for any expenses incurred directly or indirectly by that political party; 20
- (iii) the provision of assets, services or facilities for the use or benefit of a political party other than on commercial terms; or
- (iv) a sponsorship provided to the political party; but
- (b) does not include services rendered personally by a volunteer; 25
- ‘**Electoral Commission Act**’ means the Electoral Commission Act, 1996 (Act No. 51 of 1996);
- ‘**financial year**’ means an accounting period of a year that ends on 31 March each year;
- ‘**foreign person**’ means any person or entity other than a— 30
- (a) citizen or permanent resident of the Republic;
- (b) company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
- (c) trust registered in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988); 35
- ‘**Funds**’ mean the *Multi-Party Democracy Fund* and the *Represented Political Party Fund*;
- ‘**Multi-Party Democracy Fund**’ means the Multi-Party Democracy Fund established in terms of section 3(1);
- ‘**political party**’ includes any entity that accepts donations principally to support or oppose any registered political party or its candidates, in an election as defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998); 40
- ‘**prescribe**’ means prescribed by regulations made under section 24;
- ‘**represented political party**’ means a political party with representation in the national or provincial legislatures; 45
- ‘**Represented Political Party Fund**’ means the Represented Political Party Fund established in terms of section 2(1); and
- ‘**this Act**’ includes regulations made under section 24.

CHAPTER 2

FUNDS 50

Establishment of Represented Political Party Fund

2. (1) A Represented Political Party Fund is hereby established for the purpose of enhancing multi-party democracy by providing for the funding of represented political parties.
- (2) The Commission must open an account for this Fund with any bank registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990). 55

- (3) The Commission must credit the account contemplated in subsection (2) with—
- (a) money appropriated by an Act of Parliament;
 - (b) any money recovered in terms of section 17; and
 - (c) interest earned on money invested in terms of section 4(1).

Establishment of Multi-Party Democracy Fund

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3. (1) A Multi-Party Democracy Fund is hereby established for the purpose of funding represented political parties from private sources.

(2) The Commission must open an account for this Fund with any bank registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990).

(3) Subject to subsection (4), the Commission must credit the account contemplated in subsection (2) with—

- (a) money received from any private source whether from inside or outside the Republic;
- (b) any money recovered in terms of section 17; and
- (c) interest earned on money deposited or invested in terms of section 4(1).

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(4) The Commission may not accept money received in terms of subsection (3)(a) from any—

- (a) organ of state;
- (b) state owned enterprise; or
- (c) foreign government or foreign government agency.

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(5) Any contributor contemplated in subsection (3)(a) may request the Commission not to disclose their identity or the amount of the contribution.

(6) The Commission may charge a fee to defray the cost of administering and managing this Fund, which may not exceed 5 percent of the money credited to this fund under subsection (3) during the previous financial year.

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Investment of money in Funds

4. (1) Any money in the Funds that is not required immediately for making an allocation to represented political parties in terms of section 6 may be invested with the Public Investment Corporation in terms of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004).

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(2) The Commission may, with the approval of the Minister of Finance, carry forward any money standing to the credit of the Represented Political Party Fund at the end of the financial year to the next financial year as a credit balance.

(3) The Commission must carry forward any money standing to the credit of the Multi-Party Democracy Fund at the end of the financial year to the next financial year as a credit balance.

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Management and administration of Funds

5. (1) The chief executive officer is responsible for the management and administration of the Funds.

(2) For each financial year, the Commission must keep records in accordance with the standards of generally recognised accounting practice in respect of each of the Funds, setting out—

- (a) all money received or accruing to the Funds;
- (b) all allocations and payments made;
- (c) all expenditure arising from the allocation of money from the Funds; and
- (d) the current record of the capital and liabilities of the Funds during that year.

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Allocation and payment of money to represented political party

6. (1) The Commission may allocate money from the Funds to a represented political party only.

(2) Any allocation from the Funds must be made to a represented political party in accordance with the prescribed formula.

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(3) The formula prescribed in subsection (2) must be based on—

- (a) in part, an equitable allocation taking into account a weighted scale of representation for an allocation to a represented political party; and

- (b) in part, a proportional allocation taking into account the relationship that the number of a represented political party's representatives in both the National Assembly and the provincial legislatures bears to the sum of the seats in these legislatures.
- (4) The Commission must apply the formula prescribed in subsection (2) taking into account the number of representatives of each represented political party and the number of seats in the respective legislatures based on the results of the election. 5
- (5) The Commission may not take into account any money carried forward in terms of section 13(1) when it determines the allocation of money to a represented political party. 10
- (6) Any allocation of money from the Funds to a represented political party ends when the party ceases to be a party with representation as contemplated in subsection (1).
- (7) The Commission must pay the allocated amounts to each of the represented political parties at prescribed intervals.

Purposes for which money from Funds may be used 15

7. (1) Subject to subsection (2), the money paid in terms of section 6(7) may be used by that represented political party for any purpose compatible with its functioning as a political party in a modern democracy including—
- (a) the development of the political will of the people;
 - (b) bringing the political party's influence to bear on the shaping of public opinion; 20
 - (c) inspiring and furthering political education;
 - (d) promoting active participation by individual citizens in political life;
 - (e) exercising an influence on political trends;
 - (f) ensuring continuous and vital links between the people and organs of state; 25
 - and
 - (g) complying with the provisions of this Act.
- (2) The money paid in terms of section 6(7) may not be used by that represented political party—
- (a) for the purpose of directly or indirectly paying any remuneration, fee, reward, perquisite or other benefit to any person— 30
 - (i) representing the party in any legislature at national or provincial level, or in a Municipal Council; or
 - (ii) who is appointed by or in the service of the state and receives remuneration for that appointment or service; 35
 - (b) to finance or contribute, whether directly or indirectly, to any matter, cause, event or occasion, in contravention of any code of ethics binding on the members of Parliament or members of a provincial legislature;
 - (c) directly or indirectly for the purpose of establishing any business, or acquiring or maintaining any right of financial interest whatsoever in any business, or in any immovable property, except where the right or interest in the immovable property is to be used by the party solely for party political purposes; 40
 - (d) to defray legal costs relating to internal political party disputes; or
 - (e) for a purpose as may be prescribed.

CHAPTER 3 45

DIRECT FUNDING OF POLITICAL PARTIES

Prohibited donations

8. (1) Political parties may not accept a donation from any of the following sources:
- (a) Foreign governments or foreign government agencies;
 - (b) subject to subsection (4), foreign persons or entities; 50
 - (c) organs of state; or
 - (d) state-owned enterprises.
- (2) A political party may not accept a donation from a person or entity in excess of the prescribed amount within a financial year.
- (3) A political party may not accept a donation that it knows or ought reasonably to have known, or suspected, originates from the proceeds of crime and must report that knowledge or suspicion to the Commission. 55

- (4) Subject to subsection (5), nothing in subsection (1)(b) prevents a political party from accepting donations from foreign entities for the purpose of—
- (a) training or skills development of a member of a political party; or
 - (b) policy development by a political party.
- (5) The total donations contemplated in subsection (4) is limited to a prescribed amount within a financial year. 5

Disclosure of donations to political party

9. (1) A political party must disclose to the Commission all donations received—
- (a) above the prescribed threshold; and
 - (b) in the prescribed form and manner. 10
- (2) A juristic person or entity that makes a donation above the threshold prescribed in terms of subsection (1)(a) must disclose that donation to the Commission in the prescribed form and manner.
- (3) The Commission must publish the donations disclosed to it in terms of subsections (1) and (2)— 15
- (a) on a quarterly basis; and
 - (b) in the prescribed form and manner.
- (4) Nothing in this section detracts from rights given effect to by the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Prohibition on donation to member of political party 20

10. (1) No person or entity may deliver a donation to a member of a political party other than for party political purposes.
- (2) A member of a political party may only receive a donation contemplated in subsection (1) on behalf of the party.
- (3) No person may circumvent subsections (1) or (2), or any of the provisions of this Chapter. 25

CHAPTER 4

DUTIES OF POLITICAL PARTIES

Political party to furnish information to Commission

11. In order for the Commission to monitor compliance with this Act, a political party must, at the prescribed times, furnish the Commission with any information and documentation that is prescribed, or required in terms of a direction issued under section 15. 30

Political party to account for income

12. (1) A political party must— 35
- (a) deposit all donations received by that political party, membership fees and levies imposed by the political party on its representatives into an account with a bank registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990) in that political party's name;
 - (b) keep a separate account with a bank registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990) into which all money allocated to it from the Funds must be deposited; 40
 - (c) appoint an office-bearer or official of that political party as its accounting officer; and
 - (d) appoint an auditor registered and practising as such in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005) to audit its books and financial statements. 45
- (2) The accounting officer contemplated in subsection (1)(c) must—
- (a) account for all income received by the political party;
 - (b) ensure that— 50
 - (i) any money allocated from the Funds is not paid out for a purpose not authorised by this Act; and
 - (ii) the political party complies with this Act;

- (c) keep separate books and records of account, in the prescribed manner, in respect of money allocated from the Funds and all transactions involving that money; and
- (d) within the prescribed period—
 - (i) prepare a statement showing all money received by the represented political party from the Funds during the previous financial year, the application of that money and the purposes for which the money has been applied; 5
 - (ii) prepare a statement showing all donations and membership fees, and any levy imposed by the political party on its elected representatives during that financial year; and 10
 - (iii) submit those statements and the books and records of account to an auditor appointed in terms of subsection (1)(d).
- (3) On receipt of the statements, books and records contemplated in subsection (2)(d)(iii), the auditor must perform an audit of the financial statements and express an opinion on those statements— 15
 - (a) indicating whether the donations received by the political party comply with section 8(1);
 - (b) listing the donations required to be disclosed in terms of section 9(1);
 - (c) listing the donations under the threshold prescribed in section 9(1); 20
 - (d) indicating whether any income was received by the political party other than provided for in terms of this Act;
 - (e) indicating whether the transactions in the financial statements related to the money allocated from the Funds are in accordance with this Act; and
 - (f) indicating whether any money lent to a political party is on commercial terms. 25
- (4) The accounting officer must submit the auditor's opinion and audited financial statements to the Commission within the prescribed period.
- (5) The Auditor-General may at any reasonable time audit any represented political party's books, records of account and financial statements relating to money allocated to the party from the Represented Political Party Fund. 30

Unspent money at end of financial year

- 13.** (1) Any money allocated from the Funds to a represented political party that is unspent at the end of the financial year must be shown as a credit balance carried forward to the next financial year in the—
- (a) account contemplated in section 12(1)(b); and 35
 - (b) books and records of account contemplated in section 12(2)(c).
- (2) If Parliament or a provincial legislature is dissolved in terms of section 50 or section 109 of the Constitution respectively, or when the terms of these legislatures expire, a represented political party to whom money has been allocated from the Funds and that fails to obtain representation in any legislature in the next election must— 40
- (a) within 21 days after that election—
 - (i) close its books and records in respect of those Funds; and
 - (ii) repay to the Commission the unspent balance of the money allocated to that political party; and
 - (b) within three months after that election submit an audited financial statement of the books and records contemplated in paragraph (a)(i) to the Commission. 45

CHAPTER 5

ENFORCEMENT

Commission's monitoring and inspection powers

- 14.** (1) The Commission must monitor compliance by political parties with this Act by, subject to subsection (2), evaluating the information and documentation provided by political parties in terms of this Act. 50
- (2) In order to monitor compliance with this Act or investigate a complaint, the Commission may request any person—
- (a) to disclose any relevant information; 55
 - (b) to produce, in whatever form, any relevant books, records, reports and other documentation;

- (c) for permission to—
 - (i) enter any premises during ordinary working hours to inspect any relevant book, record, report and other document; or
 - (ii) copy or store in any format, any information, books, records, reports or other documentation produced in terms of paragraph (b) or discovered in terms of paragraph (c)(i); or
- (d) to answer a question about any relevant information.

(3) If any person refuses or fails to comply with a request contemplated in subsection (2), the Commission may apply to the Electoral Court for an order to compel compliance with that subsection. 10

(4) If a complaint relating to the income or expenditure of a political party is lodged with the Commission, it must, if the chief executive officer is of the view that there is *prima facie* substance to the complaint, investigate the complaint.

Commission's power to issue directions

15. (1) The Commission may issue a direction to a political party in the prescribed manner in order to avoid imposing a sanction— 15

- (a) after affording that party an opportunity to make representations; and
- (b) if it is of the opinion that the party fails to comply with this Act.

(2) The direction contemplated in subsection (1) must indicate which of the following sanctions that the Commission may impose if the political party fails to comply with that direction: 20

- (a) Suspension of payment of allocated money under section 16;
- (b) the recovery of money irregularly accepted or spent under 17; or
- (c) the imposition of an administrative fine in terms of section 18.

Power to suspend payment of money 25

16. (1) Subject to subsection (2), the Commission—

- (a) may suspend the payment of money to a represented political party envisaged in section 6(7) if it is satisfied on reasonable grounds that the represented political party has failed to comply with this Act; and
- (b) must terminate the suspension contemplated in paragraph (a) if the Commission is satisfied that the suspension is no longer justified in the light of the represented political party's subsequent conduct. 30

(2) The Commission may only suspend payment in terms of subsection (1)(a) if it has issued a direction under section 15.

Power to recover money irregularly accepted or spent 35

17. (1) A political party is liable to pay to the Commission any money that is—

- (a) accepted in contravention of sections 8, 9(1) or 10; or
- (b) spent in contravention of section 7.

(2) The Commission must recover any money contemplated in subsection (1) by— 40

- (a) instituting a civil claim; or
- (b) setting off the liability against any amount to be allocated to a represented political party from the Funds.

(3) Any money paid in terms of subsection (1) or recovered in terms of subsection (2)(a) must be credited to the Funds.

(4) A represented political party contemplated in subsection (1) may not share in any allocation of the paid back or recovered money. 45

Administrative fines

18. (1) The Commission may institute proceedings to request the imposition of an administrative fine in respect of any contravention of this Act.

(2) The Electoral Court may impose an administrative fine in accordance with Schedule 1 in respect of a contravention or a repeated contravention of this Act. 50

Offences and penalties

- 19.** (1) Any person commits an offence who contravenes—
- (a) sections 8, 9(1), 9(2) or 10; or
 - (b) sections 12(1), 12(2), 12(4) or 13(2).
- (2) Any person convicted of any offence referred to in— 5
- (a) subsection (1)(a), may be sentenced to a fine or to imprisonment for a period not exceeding 5 years or both; or
 - (b) subsection (1)(b), may be sentenced to a fine or to imprisonment for a period not exceeding 2 years or both.

Review or appeals 10

- 20.** (1) Any person may review or appeal any decision of the Commission made in terms of this Act.
- (2) Subject to subsection (3), the Electoral Court established in terms of section 18 of the Electoral Commission Act has the exclusive jurisdiction to hear and determine any review or appeal against any decision of the Commission under this Act. 15
- (3) Section 20(2) of the Electoral Commission Act does not apply to reviews or appeals under this Act.

CHAPTER 6**GENERAL PROVISIONS****Administration** 20

- 21.** (1) The Commission may establish a separate unit within the Commission to exercise the powers conferred on, perform the functions granted to and the duties imposed on, the Commission in terms of this Act.
- (2) The Commission must appoint a suitably qualified and experienced person as the chief executive officer of— 25
- (a) the Funds; and
 - (b) the unit contemplated under subsection (1), if established under that subsection.

Report to Parliament

- 22.** (1) The Commission must for each financial year— 30
- (a) prepare a report in relation to the Funds, setting out—
 - (i) the amounts received by and accrued to the Funds;
 - (ii) the allocations made from the Funds to the represented political parties;
 - (iii) the amounts spent by each represented political party in connection with the purpose under the prescribed categories; and 35
 - (iv) the balance in each of the Funds and any amounts owing to the Fund as at the end of that financial year;
 - (b) report on all donations made to political parties in that year; and
 - (c) submit the report and the Commission's books and records of account relating to the Funds to the Auditor-General for auditing. 40
- (2) The Auditor-General must audit and submit an audit report on the Commission's books and records in respect of the Funds to the Commission.
- (3) The Commission must submit its report and the Auditor-General's report together with the Commission's annual report in terms of section 14 of the Electoral Commission Act to the National Assembly. 45

Funding of represented political parties by legislatures

- 23.** (1) Parliament or a provincial legislature may not fund represented political parties other than through sections 57(2) and section 116(2) of the Constitution, section 34 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009) and this Act. 50
- (2) The accounting officer of a legislature as defined in section 1 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009)

must annually in the prescribed form and manner disclose any funding of represented political parties under sections 57(2) and 116(2) of the Constitution respectively, to the Commission.

Regulations

24. (1) The President, acting on a resolution of the National Assembly, may by proclamation in the *Gazette* make regulations in respect of matters contemplated in sections 6(2), 7(2)(e), 8(2), 8(5) and 9(1)(a). 5

(2) Subject to subsections (1) and (3), the Commission may make regulations on any matter that may or must be prescribed by notice in the *Gazette*.

(3) Before making any regulations in terms of subsection (2), the Commission must publish the proposed regulations for public comment. 10

(4) A regulation in terms of this Act must be made by notice in the *Gazette*.

Repeal and transitional provisions

25. (1) Save for as provided in this section, the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997) is hereby repealed. 15

(2) Despite the repeal of the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997) under subsection (1)—

(a) anything done in terms of that Act which may be done under or in terms of this Act continues to be valid and of full force and effect; and

(b) the Represented Political Parties Fund established under that Act is deemed to be the fund established in terms of section 2(1). 20

(3) The regulations made under the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997) are amended by the substitution for those regulations of the regulations contained in Schedule 2.

(4) Despite the definition of financial year in section 1, the first financial year of the Multi-Party Democracy Fund runs from the date on which this Act comes into operation until 31 March of the following year. 25

(5) Despite section 9(3), the first disclosure in terms of paragraph (a) of that section must occur within 6 months from the date on which the Act comes into effect.

Short title and commencement

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26. (1) This Act is called the Political Party Funding Act, 2017 and subject to subsection (2), comes into operation on a date determined by the President by Proclamation in the *Gazette*.

(2) Section 6(7) only comes into effect in respect of the Multi-Party Democracy Fund on a prescribed date. 35

SCHEDULE 1**MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR
CONTRAVENING THIS ACT**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for a contravention of certain provisions of this Act. The income referred to column 3 of this Schedule refers to the political party's income as audited in terms of section 12(3) of this Act

<i>Previous contraventions</i>	<i>Contravention of sections 12(1), 12(2), 12(4) or 13(2)</i>	<i>Contraventions of sections 8,9(1), 9(2) or 10</i>
No previous contravention	R40 000	R500 000 or 10 percent of the income, whichever is the higher
A previous contravention of the same provision within 2 years	R50 000	R600 000 or 15 percent of the income, whichever is the higher
Two previous contraventions of the same provision within 3 years	R75 000	R700 000 or 20 percent of the income, whichever is the higher
Three previous contraventions of the same provision within 3 years	R100 000	R800 000 or 25 percent of the income, whichever is the higher
Four previous contraventions of the same provision within 3 years	R150 000	R1 000 000 or 30 percent of the income, whichever is higher

SCHEDULE 2

REGULATIONS ON POLITICAL PARTY FUNDING, 2017

Definitions

1. In these regulations a word or phrase to which a meaning has been assigned in the Act has that meaning, and, unless the context otherwise indicates—

‘**allocated moneys**’ means moneys allocated from the Funds to a represented political party during a particular financial year;

‘**disclosure threshold**’ means the threshold referred to in section 9(1)(a) of the Act;

‘**equitable allocation**’ means the allocation referred to in regulation 2(2)(b);

‘**proportional allocation**’ means the allocation referred to in regulation 2(2)(a).

Allocation of funding

2. (1) The total amount of funding available for allocations from each of the Funds during a particular financial year must be announced by the Commission by notice in the *Gazette* within two weeks of the beginning of that financial year.

(2) The allocations from the Funds to be made and paid to each of the represented political parties concerned are calculated by—

(a) allocating two thirds of the total amount of funding determined in terms of subregulation (1) in respect of each of the Funds proportionally in accordance with regulation 3; and

(b) allocating one third of the total amount of funding determined in terms of subregulation (1) in respect of each of the Funds equitably in accordance with regulation 4.

Proportional allocation

3. The proportional allocation is determined by dividing each of the amounts contemplated in regulation 2(2)(a) proportionally among the represented political parties in accordance with the number of seats awarded to each party in the National Assembly and the provincial legislatures jointly.

Equitable allocation

4. The equitable allocation is determined in the following manner:

(a) The amounts contemplated in regulation 2(2)(b) must be allocated to the national and each of the provincial legislatures in proportion to the number of members of each of those legislatures; and

(b) the allocation to a particular legislature in terms of paragraph (a) must be divided equally among the represented political parties in each of those legislatures.

Times, Intervals and instalments of payments

5. (1) All allocations to which a represented political party is entitled as determined in terms of regulations 3 and 4, must be paid to the represented political party in question in four equal instalments, each within three months of the previous payment. The first instalment must be paid within four weeks of the beginning of the financial year in question.

(2) In the event of an election being called in terms of section 49(2) or 108(2) of the Constitution in respect of a particular legislature, any outstanding instalments still to be paid in terms of subregulation (1) to the represented political parties in that legislature during the period of 21 days referred to in section 13(2)(a) of the Act, must be suspended. The instalments so suspended must be distributed within two weeks after the date of election to the political parties that gain representation in the legislature concerned as a result of the election in accordance with the provisions of regulations 3 and 4, as the case may be.

(3) The date contemplated in section 26(2) will be the day when the money in the Multi-Party Democracy Fund reaches a total of one million rand.

Manner of payments

6. (1) A represented political party must provide the Commission with particulars of the represented political party's banking account contemplated in section 12(1)(b) of the Act, within two weeks of such a banking account being opened.

(2) Any payments to be made to a represented political party in terms of these regulations must be paid into the represented political party's banking account contemplated to in section 12(1)(b) of the Act.

Upper limit of donations

7. The amount contemplated in section 8(2) of the Act is fifteen million rand within a financial year.

Limit on donations from foreign entity

8. The amount contemplated in section 8(5) of the Act is five million rand within a financial year.

Disclosure limit

9. The threshold referred to in section 9(1)(a) of the Act is R100 000,00 within a financial year.

Separate books and records of account

10. The separate books and records of account required by section 12(2)(c) of the Act must be kept according to generally recognised accepted accounting practices, and must include the following:

- (a) Records showing all transactions involving allocated moneys;
- (b) records showing all assets acquired with allocated moneys;
- (c) records showing commitments entered into in respect of allocated moneys;
- (d) a balance sheet;
- (e) an income and expenditure statement; and
- (f) a cash flow statement.

Generally descriptive categories of purposes in connection with which amounts are spent

11. (1) Financial statements prepared in relation to the Funds must show the amounts spent during a financial year in question by each represented political party that received allocations in accordance with these regulations in connection with purposes classifiable under the following descriptive categories:

- (a) Personnel expenditure;
- (b) accommodation;
- (c) travel expenses;
- (d) arrangement of meetings and rallies;
- (e) administration;
- (f) promotions and publications; and
- (g) legal expenses incurred in the public interest.

(2) The information required for the purposes of subregulation (1) must be furnished to the Commission by the accounting officer referred to in section 12(1)(c) of the Act within three months after the end of the financial year in question.

Short title

12. These regulations are called the Regulations on Political Party Funding, 2017.

MEMORANDUM ON THE OBJECTS OF THE POLITICAL PARTY FUNDING BILL, 2017

1. OBJECTS OF THE BILL

Public funding for political parties represented in national and provincial legislatures is provided through the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997) (“the Funding Act”).

On 6 May 2017 the National Assembly resolved to establish an *ad hoc* committee, in terms of National Assembly Rule 253 (1)(a), to:

“enquire into and make recommendations on funding of political parties represented in national and provincial legislatures in South Africa with a view to introducing amending legislation if necessary and, in so doing, consider—

- the model of public and private funding for political parties; and
- the need for, and possible means of, regulating private funding in all its forms as well as investment entities owned by political parties[;]”.

2. DISCUSSION OF THE BILL

2.1. The Preamble of the Political Party Funding Bill, 2017 (“the Bill”) reflects the need to give effect to the constitutional obligation imposed in terms of section 236 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). It further seeks to reflect Parliament’s plenary legislative authority in terms of section 44 to pass legislation concerning any matter, including the regulation of private funding of political parties.

2.2. Clause 1 of the Bill contains the definitions.

2.3. Clause 2 of the Bill seeks to establish the Represented Political Party Fund for the purpose of enhancing multi-party democracy. This fund provides funding for political parties that participate in Parliament and provincial legislatures. It is credited with money appropriated by Parliament, money recovered in terms of clause 17 and interest earned on money deposited or invested in terms of clause 4(3).

This fund is deemed the existing fund established under Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997). See clause 25 in this regard.

2.4. In clause 3 of the Bill it is proposed that a Multi-Party Democracy Fund be established to provide for private sources of funding for political parties that participate in Parliament and provincial legislatures. This clause further prohibits funding from organs of state, state owned enterprises and foreign governments or foreign government agencies.

2.5. Clause 4 of the Bill proposes amongst other things that the Commission must deposit all money standing to the credit of each fund in separate bank accounts and may invest the money that is not immediately required for allocations to political parties with the Public Investment Corporation.

2.6. Clause 5 of the Bill deals with the management of the two Funds.

2.7. Clause 6 of the Bill, amongst other things, proposes to regulate the allocation and payment of money to political parties. This clause further provides that the allocation must be done in terms of a prescribed formula that is based:

- (a) in part, on an equitable allocation taking in account a weighted scale of representation for an allocation to represented political parties; and

- (b) in part, a proportional allocation taking into account the relationship that the number of a represented political party's representatives in both the National Assembly or the provincial legislatures bears to the sum of the seats in these legislatures.

The clause further proposes that the Commission must pay allocated money at prescribed intervals.

- 2.8. Clause 7 of the Bill sets out the purposes for which money from the Funds may be used. The clause also sets out what the money may not be used for.
- 2.9. Clause 8 of the Bill seeks to prohibit donations made directly to political parties from certain sources. It further provides for an upper limit of donations that a political party may accept in a financial year.
- 2.10. Clauses 9 of the Bill seeks to regulate the disclosure of donations made directly to a political party. It provides for the disclosure of all donations above a prescribed threshold in a prescribed form and manner. It further provides for when the Commission must disclose that information.
- 2.11. Clause 10 of the Bill prohibits the direct funding of members of any political party.
- 2.12. Clauses 11 of the Bill deals with the requirement on political parties to furnish the Commission with certain prescribed information and documentation.
- 2.13. Clause 12 of the Bill seeks to regulate how represented political parties must account for the money paid to them from the Funds.
- 2.14. Clause 13 of the Bill provides for how unspent money allocated from the Funds at the end of the financial year must be reflected in the books and records of account of a represented political party. The clause also provides for how unspent funds must be dealt with in the event that Parliament or a provincial legislature is dissolved.
- 2.15. Clause 14 of the Bill deals with the Commission's monitoring and inspection powers.
- 2.16. Clause 15 of the Bill grants the Commission the power to issue a direction to a political party in order to avoid imposing a sanction.
- 2.17. Clause 16 of the Bill grants the Commission the power to suspend the payment of money under certain circumstances.
- 2.18. Clause 17 of the Bill grants the Commission the power to recover money irregularly accepted or spent by political parties.
- 2.19. Clause 18 of the Bill seeks to grant the Electoral Court the power to impose administrative fines in respect of a contravention or repeated contravention.
- 2.20. Clause 19 provides for the establishment of offences and penalties.
- 2.21. Clause 20 deals with the rights of any person to review or appeal any decision of the Commission made in terms of the Bill. It further seeks establish the Electoral Court as the court having exclusive jurisdiction to hear and determine any review or appeal against any decision of the Commission.
- 2.22. Clause 21 provides for the Commission may establish a separate unit and appoint a chief executive officer.
- 2.23. Clause 22 of the Bill provides for the reporting of the Commission to the Parliament.

- 2.24. Clause 23 of the Bill provides that legislatures may only fund represented political parties in terms of sections 57(2) and 116(2) of the Constitution, respectively, section 34 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009) and this Act. This clause also provides that the accounting officer of a legislature must annually disclose any funding of represented political parties under sections 57(2) and 116(2), to the Commission.
- 2.25. Clause 24 of the Bill provides that in respect of certain matters the President may make regulations acting on a resolution of the National Assembly. It further provides that the Commission may make regulations on other matters, subject to certain conditions.
- 2.26. Clause 25 of the Bill provides for the repeal of the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997), save as provided in the transitional provisions set out in this clause. The clause further provides that the regulations made under the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997) are amended by the substitution for those regulations of the regulations contained in Schedule 2.
- 2.27. Clause 26 of the Bill contains the short title and commencement.
- 2.28. Schedule 1 of the Bill sets out the maximum administrative fines that may be imposed for contraventions of the proposed Act.
- 2.29. Schedule 2 of the Bill contains the substituted set of Regulations.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Black First Land First Movement
- South African Local Government Association
- Information Regulator
- University of South Africa (Department of Political Science)
- Organisation Undoing Tax Abuse
- South African Editor's Forum and amaBhungane Centre for Investigative Journalism
- Dr. G. Ash
- Mr. R. Bryant
- Mr. N. Murray
- My Vote Counts
- Southern African Catholics Bishops Conference
- Council for the Advancement of the South African Constitution
- Right2Know
- South African History Archive
- Helen Suzman Foundation
- Corruption Watch

- Business Leadership South Africa
- Independent Electoral Commission
- Public Affairs Research Institute;
- Commission for Gender Equality
- South African Human Rights Commission; and
- Mr K Gottschalk

4. FINANCIAL IMPLICATIONS FOR THE STATE

The financial implications are limited to the resources the Commission would require to manage the additional fund and to monitor the prohibition and disclosure of donations to political parties.

5. PARLIAMENTARY PROCEDURE

- 5.1. The Committee is of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, 1996 since it contains no provisions to which the procedures set out in section 74, 76 or 77 of the Constitution apply.
- 5.2. The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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