

South Africa

Nonprofit Organisations Act, 1997

## Regulations under the Nonprofit Organisations Act, 1998

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## Regulations under the Nonprofit Organisations Act, 1998

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## South Africa

### Nonprofit Organisations Act, 1997

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### Government Notice R1104 of 1998

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### Chapter 1

#### Application for registration

#### 1.

Whenever an application is contemplated in terms of section 13(1) of the Act, the application must be made—

- (a) in the format set out in Form 1; and
- (b) subject to any conditions listed on that form.

### Chapter 2

#### Appeals against decision not to register or to cancel registration

#### 2. Definitions

In this chapter, unless the context indicates otherwise—

"**consider the appeal**" means considering all documents and representations received, making the decision, and submitting a written notice to the parties to the appeal, stating the decision and the reasons for the decision.

#### 3. Objective of this chapter

The objective of this chapter is to specify the procedure in terms of which appeals may be submitted and considered.

#### 4. Procedure for noting and considering an appeal

- (1) When submitting the notice of appeal as contemplated in sections 14(1) and 22(1) of the Act, the nonprofit organisation—
  - (a) must state the grounds on which the appeal is based; and
  - (b) may request that the appeal be considered by a person from the panel of arbitrators with particular expertise or by more than one person from the panel, in which case the reasons for such request must be specified.

- (2) Within two weeks after receipt of all the documents relevant to noting the appeal, the Directorate for Nonprofit Organisations—
  - (a) must submit the document to the chairperson of the panel of arbitrators; and
  - (b) may—
    - (i) request that the appeal be considered by a person from the panel of arbitrators with particular expertise to or by more than one person from the panel, in which case the reasons for such request must be specified; or
    - (ii) comment on the request made in terms of subregulation (1)(b).
- (3) Upon receipt of the documents referred to in subregulation (2), the chairperson must appoint a presiding officer(s) to constitute the Arbitration Tribunal from among those members of the panel of arbitrators who are available and able to consider the appeal. In making the appointment, the chairperson is not obliged to accede to the request of either party made in terms of subregulation (2). However, in the event that more than one person is appointed to constitute the Arbitration Tribunal, the chairperson must designate one of them as the convening presiding officer.
- (4) Upon being appointed, the presiding officer or convening presiding officer, as the case may be, must send a written notice to the nonprofit organisation and the Directorate for Nonprofit Organisations. The written notice must specify—
  - (a) the date by which written submissions may be made and on which oral representations may be made by the parties to the appeal. This date must be—
    - (i) no later than two weeks before the expiry of the time period contemplated in sections 14(2) and 22(2) of the Act; and
    - (ii) at least one month after sending the written notice;
  - (b) the time and venue at which oral representations will be heard; and
  - (c) the person to whom or place at which written representations must be submitted.
- (5) Subject to subregulation (6), the parties to the appeal are not obliged to make oral representations or submit written representations.
- (6) If the nonprofit organisation fails to appear in person or through a representative to make oral representations, or fails to submit written representations on the date contemplated in subregulation (4)(a), the presiding officer or convening presiding officer, as the case may be, may dismiss the appeal or may make any other appropriate order.
- (7) The Arbitration Tribunal, on good cause shown, may excuse any party from compliance with any procedure specified in this regulation and may give appropriate directions on matters of good practise and procedure that it considers just and expedient.
- (8) Subject to the Act and this regulation, the chairperson of the panel of arbitrators may determine supplementary rules for the proper noting and considering of appeals.

## 5. Costs

The Arbitration Tribunal may make an order for costs if a party to the appeal, or person who represented that party in the appeal,—

- (a) acted in a frivolous, vexatious or unreasonable manner—
  - (i) by proceeding with or opposing the appeal; or
  - (ii) in conducting the appeal; or
- (b) without good cause, fails to attend or remain in attendance during the receipt of oral representations.

### **Chapter 3**

#### **Certificate of registration**

6.

Whenever the issuing of a certificate is contemplated in terms of section 15(1)(a) of the Act, the certificate must be issued in the format set out in Form 2.

### **Chapter 4**

#### **Register of nonprofit organisations**

7.

The register of nonprofit organisations contemplated in section 24(1) of the Act must be kept in the manner set out in Form 4.

### **Chapter 5**

#### **Compiling, submitting and keeping reports, accounting and other records, documents and constitutions**

8.

For purposes of section 18(1)(a) of the Act, the annual narrative report must—

- (a) specify the period under review;
- (b) describe the organisation's major projects, and more particularly—
  - (i) name the projects;
  - (ii) indicate which objectives of the organisation's constitution were met by the projects;
  - (iii) indicate which activities were embarked upon to achieve these objectives;
  - (iv) describe the benefits of the projects;
  - (v) describe the beneficiaries of the projects;
- (c) in respect of administrative matters, set out—
  - (i) how many meetings of the office-bearers were held;
  - (ii) indicate whether all these meetings were quorate;
  - (iii) whether the annual general meeting held and whether it was held timeously, and if not, why not;
  - (iv) whether special general meetings were held, and if so, in respect of what issues; and
  - (v) whether the organisation's constitution, address or composition of office-bearers has changed, and if so, whether the organisation has complied with the provisions of the Act in this regard;
- (d) in respect of financial matters—
  - (i) state the name of the accounting officer appointed as contemplated in [section 17\(2\)](#);
  - (ii) provide details of the organisation's accounting policies; and

- (iii) specify whether the financial statements submitted in terms of [section 18\(1\)\(a\)](#) have been approved by the office-bearers;
  - (iv) specify what percentages of the organisation's budget were spent on administrative costs (salaries, rentals, etc) and on the organisations projects;
- (e) in respect of fundraising, specify—
  - (i) the types of funding the organisation received;
  - (ii) whether the organisation engaged in any major fundraising from the general public and businesses;
  - (iii) whether the organisation was assisted in its fundraising by a staff member, a member of the organisation or a person outside the organisation, and whether this was done on a voluntary basis or for a fee;
- (f) in respect of staff-related matters, briefly describe—
  - (i) the gender, race and skill profile of the organisation; and
  - (ii) any changes in staffing compliment during the period under review.

**9.**

For purposes of section 25(1)(a) and (b) of the Act, the constitutions of all nonprofit organisations that have voluntarily de-registered, have been wound up or dissolved, and all accounting records and reports submitted to the Director of Nonprofit Organisations as contemplated in section 17(3) of the Act, must be kept by the Director for a period of five years in their original or reproduced form.

## **Chapter 6**

### **Compliance notice**

**10.**

Whenever the sending of a compliance notice is contemplated in terms of section 20(1)(a) of the Act, the notice must be issued in the form as set out in Form 3.

## **Chapter 7**

### **Public access to constitutions, reports and documents**

**11.**

Any person may inspect any constitution, report or document submitted to the Directorate of Nonprofit Organisations in terms of the Act, at the office of the Director of Nonprofit Organisations between the hours of 08:30 and 12:00, and 13:30 and 15:30, from Monday to Friday.

## 12.

The Director of Nonprofit Organisations must charge the fees shown in the table below for the services listed.

**Table of service fees**

Column 1	Column 2
Service	Fee
Inspecting a constitution, report or document	R5
Providing a certified copy or certified extract from a document, constitution or report	R1 per page
Providing a certified copy of a certificate of registration	R10

## 13.

All fees referred to in regulation 12 must be paid in advance in revenue stamps.

## Chapter 8

### Terms and conditions of appointment of panel of arbitrators

## 14. Definitions

In this chapter, unless the context indicates otherwise—

"**day**" means a day calculated from midnight to midnight;

"**panellist**" means a member of the panel of arbitration established in terms of Section 9 of the Act.

## 15. Function and responsibilities

In addition to any other function or responsibility conferred in terms of the Act—

- (a) the chairperson is responsible for—
  - (i) administering the affairs of the panel of arbitrators;
  - (ii) ensuring that the burden of considering appeals and arbitrations is distributed equitably among the panellists; and
  - (iii) setting adequate standards of performance for panellists and the maintenance thereof;
- (b) all panellists must perform their functions with due regard to—
  - (i) maintaining and raising the standard of integrity of the panel of arbitrators;
  - (ii) respecting the confidentiality of all parties to an appeal or arbitration;

- (iii) generally accepted standards of professionalism;
- (c) the national department must provide the chairperson and panel of arbitrators with the administrative and human resources reasonably required to enable them to adequately discharge their responsibilities.

## 16. Vacancies and removal of office of panellist

- (1) A vacancy will arise in the Panel of Arbitrators if—
  - (a) pursuant to an inquiry, the Minister decides to remove a panellist from office on the grounds that the panellist—
    - (i) has committed misconduct;
    - (ii) has brought the panel of arbitrators into disrepute;
    - (iii) is incapable or has not capably discharged his or her responsibilities;
    - (iv) is no longer able to discharge his or her responsibilities; or
    - (v) has not been able or been available to discharge his or her responsibilities for a continuous period of six months;
  - (b) a panellist resigns; or
  - (c) a panellist dies.
- (2) A vacancy will be considered to have occurred—
  - (a) upon the minister making the decision to remove a panellist;
  - (b) upon receipt of a written notice of resignation from the panellist; or
  - (c) on the date of the panellist's death.

## 17. Remuneration

Panellists will be remunerated by the national department at a rate determined by the Minister with the concurrence of the Member of Cabinet responsible for finance, for the following functions—

- (a) every appeal or arbitration considered in terms of the Act;
- (b) all awards made in respect of an appeal or arbitration; and
- (d) all administrative work and meetings associated with conducting the affairs of the panel of arbitration, except that panellists will not be remunerated for administrative or preparatory work associated with an appeal or arbitration that they have been appointed to consider.

*[Please note: numbering as in original.]*

## 18. Travel and accommodation

- (1) In circumstances where panellists are required to conduct an appeal or arbitration hearing in a municipal area other than their usual place of business, employment or residence, panellists must obtain prior approval of their itineraries from the chairperson. For journeys to any foreign country, prior approval must be obtained from the Minister.
- (2) The travel and accommodation policy and tariffs of the national department apply to panellists with the changes required by the context.
- (3) The requirements of Treasury Instruction K3.2.1 to K3.12.10 apply to subsistence and relevant expenses incurred by the panel and the panellists with the changes required by the context.



**19. Entertainment and other associated expenses incurred by the panel of arbitrators**

- (1) Expenditure on entertainment and other associated expenses incurred by the panel of arbitrators will be paid for by the national department in terms of Treasury instructions K14.1.
- (2) Entertainment and other associated expenses will be paid only—
  - (a) in respect of expenses reasonably incurred; and
  - (b) upon submitting to the national department the relevant supporting vouchers.

**20. Responsibility for payment of expenditure**

- (1) All expenditure incurred in respect of the business of the panel of arbitrators as set out in the Act and regulations must be met by the vote of the controlling department.
- (2) Subject to the provisions of Treasury Instruction K3.13.1, the salary and personal allowances of any state official providing services to the panel of arbitrators must be met from the vote of the department/provincial administration in which he or she is normally employed.
- (3) The controlling department must maintain separate subsidiary records of all expenditure on the panel of arbitrators so as to ensure that particulars thereof are readily available if required by Parliament or the Auditor-General.

**Schedule****Forms**

*[Editorial note: The forms have not been reproduced.]*