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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

NO. 4744

17 April 2024

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA****AMENDMENT OF THE NATIONAL AND PROVINCIAL PARTY ELECTIONS  
BROADCASTS AND POLITICAL ADVERTISEMENTS REGULATIONS, 2014**

The Independent Communications Authority of South Africa ("the Authority"), hereby publishes the amendment to the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) read with sections 4(7)(b), 56, 57, 58 and 59 of the Electronic Communications, 2005 (Act No. 36 of 2005), to the extent reflected in the Schedule.

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**CATHERINE MUSHI**  
**ACTING CHAIRPERSON**  
**DATE: 2024/04/16**

## SCHEDULE

### 1. Definitions

In these regulations “**the Regulations**” means the Regulations published under Government Notice No. 101 of 2014 (Government Gazette No. 37350), as amended by Government Notice No. 50204 dated 26 February 2024 (“**2024 First Amendment Regulations**”).

### 2. Amendment of regulation 4 of the Regulations

Regulation 4 of the Regulations is hereby amended as follows -

- 2.1 by the substitution for sub-regulation (2) as contemplated in paragraph 4.1 of the 2024 First Amendment Regulations, with the following sub-regulation:

“(2) A political party or independent candidate that intends to broadcast a PEB must submit same to the BSL at least five (5) working days prior to the broadcast thereof.”;

- 2.2 by the substitution for sub-regulation (7) as contemplated in paragraph 4.4 of the 2024 First Amendment Regulations, with the following sub-regulation:

“(7) A BSL that rejects a PEB submitted by a political party or an independent candidate for broadcast, must within 24 hours of receipt of such PEB:

(a) furnish the political party or independent candidate concerned with written reasons for the rejection; and

(b) afford the political party or independent candidate concerned an opportunity, within two (2) days after receiving the rejected PEB, to alter or edit the PEB and re-submit it to the BSL concerned or confirm in writing that it will not be re-submitting the PEB.”;

- 2.3 by the substitution for sub-regulation (19) as contemplated in paragraph 4.15 of the 2024 First Amendment Regulations, with the following sub-regulation:

“(19) If a political party or an independent candidate fails to deliver the PEB to the BSL before the expiry of five (5) working days prior to the broadcasting thereof then the political party or independent candidate is deemed to have forfeited its allocated airtime.”

#### **4. Short Title and Commencement**

These regulations are called the National and Provincial Party Elections Broadcasts and Political Advertisements Second Amendment Regulations, 2024 and shall come into force upon the publication thereof in the Government Gazette.



**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**Amendment to the National and Provincial Party Elections Broadcasts  
and Political Advertisements Regulations, 2014**

**Reasons Document**

**April 2024**

## 1. INTRODUCTION

- 1.1 The Independent Communications Authority of South Africa (“**the Authority/ICASA**”) is enjoined in terms of section 2(a) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“**ICASA Act**”) to regulate broadcasting in the public interest and to ensure fairness and diversity of views broadly representing South African society, as required by section 192 of the Constitution of the Republic of South Africa, 1996 (“**the Constitution**”).
- 1.2 On 26 February 2024, under Government Gazette No. 50204, the Independent Communications Authority of South Africa (“**the Authority**”) promulgated an amendment (“**the 2024 First Amendment Regulations**”) to the National and Provincial Party Elections Broadcast and Political Advertisements Regulations 2014 (“**the Regulations**”) in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 13 of 2000 read with sections 4(1), 56, 57, 58 and 59 of the Electronic Communications Act, 36 of 2005.
- 1.3 On 19 March 2024, the Democratic Alliance brought an application before the High Court of South Africa, Gauteng Local Division, Johannesburg (“**the Court**”), challenging, amongst others, the constitutionality and validity of the amendment to Regulation 4(2) of the Regulations on the basis that the amended Regulation 4(2) of the 2024 First Amendment Regulations constitutes a limitation of the rights in sections 16(1)(b) and 19(1)(c) and (2) of the Constitution, 1996.
- 1.4 Following an urgent hearing before the Court on 28 March 2024, the Court delivered a judgment on 30 March 2024, in which it upheld the challenge by the Democratic Alliance and set aside the Regulation 4(2) of the of the 2024 First Amendment Regulations, directing that Regulation 4(2) be reinstated in its pre-amendment form (“**the Court Order**”).
- 1.5 Upon consideration of the effect of the Court Order, the Authority has identified the need to effect certain consequential amendments to the 2024 First Amendment Regulations, specifically the amendment of

Regulations 4(7) and 4(19) to align the 2024 First Amendment Regulations with the Court Order. ("**2024 Second Amendment Regulations**").

- 1.6 The purpose of this reasons document is to outline the Authority's reasons regarding its decisions with respect to the 2024 Second Amendment Regulations.

## **2. LEGISLATIVE FRAMEWORK**

- 2.1 In reviewing and amending the the 2024 First Amendment Regulations, the Authority was guided by the provisions of the Constitution, ICASA Act, 13 of 2003 ("**ICASA Act**") and the Electronic Communications Act, No.36 of 2005 ("**ECA**").

### **The Constitution**

- 2.2 Section 192 of the Constitution requires national legislation to establish an independent authority (i.e. ICASA) to regulate broadcasting in the public interest.

### **The ICASA Act**

- 2.3 Section 2(a) of the ICASA Act enjoins the Authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the Constitution.
- 2.4 The Authority is empowered to make regulations on any matter consistent with the objects of the ICASA Act and the underlying statutes or that are incidental or necessary for the performance of the function of the Authority.<sup>1</sup>

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<sup>1</sup> Section 4(3) (j) of the ICASA Act.

## **The ECA**

- 2.5 The Authority is empowered in terms of section 4(7)(b) of the ECA not to follow a public notice and comment procedure contemplated in terms of section 4 when making a regulation which the public interest requires should be made without delay.
- 2.6 Sections 56, 57, 58 and 59 of the ECA govern matters related to party elections broadcasts and political advertisements as well as equitable treatment of political parties by broadcasting service licensees during the election period.

## **3. THE PROCESS**

- 3.1 Section 4 (4) of the ECA requires the Authority to publish, not less than 30 days before a regulation is made, the regulation in the gazette, firstly declaring the Authority's intention to make the regulation and secondly, inviting the interested parties to make written representations on the regulation.
- 3.2 The polling day is the 29<sup>th</sup> May 2024 as promulgated by the President of the Republic in Government Gazette No. 50166 of 23 February 2024. The Authority is required in terms of the ECA and the Constitution to regulate broadcasting sector in the public interest. Should the Authority follow the normal process, the consequential amendments to the 2024 First Amendment Regulations which are necessitated by the Court Order may not be implemented timeously in relation to the impending elections, thereby impacting adversely on the efficacy of the Regulations during the election period. Furthermore, adherence to the notice and consultation process may also have the effect of shortening the election broadcasting period, if it were to be completed before the election day.
- 3.3 In the circumstances, to effect the amendments to the 2024 Second Amendment Regulations as contemplated in paragraph 4 below, the Authority resorted to section 4(7)(b) of the ECA, which empowers the Authority to make any regulations which the public interest requires be

made without delay, without regard to the notice and comment procedure stipulated in section 4(4) of the ECA.

- 3.4 Notwithstanding the position adopted by the Authority as stated in paragraph 3.3 above, on 10 April 2024 the Authority invited the BSLs who indicated their intention to broadcast PEBs to provide written submissions on proposed amendments to regulation 4(7) because the proposed amendment may have a direct and material impact on the processing of PEBs by BSLs. The closing date for submissions by BSLs was stipulated at 12 April 2024, in order to ensure that the process is not delayed.

#### **4. AMENDMENT OF THE REGULATIONS**

- 4.1 The Court Order set aside the amended Regulation 4(2) and reinstated it to its pre-amendment form. Thus, Regulation 4(2) is reinstated in its pre-amendment form in line with the Court Order.
- 4.2 Regulation 4(7) is amended to give 24 hours to a BSL that rejects a PEB submitted by a political party or an independent candidate for broadcast, to furnish the political party or independent candidate concerned with written reasons for the rejection. The 2024 First Amendment Regulations allowed 5 days for a broadcaster to furnish the political party or independent candidates with the reasons for rejection because in terms of the the 2024 First Amendment Regulations “in terms of sub-regulation (2) a BSL receives all PEB submissions by a singular cut-off date<sup>2</sup>”. The new regulation 4(2) as directed by the Court Order no longer requires that the PEBs are submitted by the once cut-off date.
- 4.3 Regulation 4(19) is amended to align with the timelines in the pre-amendment Regulation 4(2), regarding the submission of PEBs.

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<sup>2</sup> Ibid, page 26.

## **5. CONCLUSION**

5.1 The Authority believes that this 2024 Second Amendment Regulations will ensure compliance with the Court Order and that the Regulations serve the public interest of affording voters information in order to make a decision on who to vote for.

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