

**PUBLIC FUNDING OF REPRESENTED POLITICAL PARTIES ACT 103 OF
1997**

[ASSENTED TO 27 NOVEMBER 1997]

[DATE OF COMMENCEMENT: 1 APRIL 1998]

(English text signed by the President)

as amended by

Constitutional Matters Amendment Act 15 of 2005

Regulations under this Act

PUBLIC FUNDING OF REPRESENTED POLITICAL PARTIES REGULATIONS

ACT

To establish the Represented Political Parties' Fund with a view to making provision for the funding of political parties participating in Parliament and provincial legislatures; to provide for the management of that Fund by the Electoral Commission and for accountability regarding that Fund; to regulate the allocation of moneys from that Fund and the purposes for which allocated moneys may be used by political parties; to regulate the repayment to the Electoral Commission of the unspent balances of moneys by political parties under certain circumstances; and to provide for incidental matters.

[Long title substituted by s. 10 of Act 15 of 2005.]

Preamble

WHEREAS the Constitution establishes the basic principle of multi-party democracy;

AND WHEREAS section 236 of the Constitution, in promotion of 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 to be given to section 236 of the Constitution through money made available to those political parties from a fund created by law for that purpose;

AND WHEREAS the money so allocated is to be utilised by parties for purposes arising from their functioning as political parties in a modern democracy;

AND WHEREAS it is necessary to provide for the re-allocation of moneys from the Represented Political Parties' Fund and to regulate the repayment of unspent balances of all moneys allocated to political parties participating in Parliament and provincial legislatures where a member of a legislature becomes a member of another party whilst retaining membership of that legislature or where an existing party merges with another party, subdivides into more than one party or subdivides and any one subdivision merges with another party;

[Preamble amended by s. 9 of Act 15 of 2005.]

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

1 Definitions

In this Act, except if not consistent with the context-

'**Constitution**' means the Constitution of the Republic of South Africa, 1996;

[Definition of 'Constitution' inserted by s. 1 of Act 15 of 2005.]

'**financial year**' means the financial year of the Fund as contemplated in section 4

(3);

'prescribed' means prescribed from time to time by regulation made and in force under section 10;

'the Commission' means the Electoral Commission established by section 3 (1) of the Electoral Commission Act, 1996 (Act 51 of 1996);

'the Fund' means the Represented Political Parties' Fund established by section 2 (1); and

'this Act' includes the regulations made and in force from time to time under section 10.

2 Establishment of Represented Political Parties' Fund

(1) The Represented Political Parties' Fund is hereby established for the purpose of funding, as provided hereafter, political parties that participate in Parliament and provincial legislatures.

(2) The Fund will be credited with-

- (a) moneys appropriated to the Fund by Parliament;
- (b) contributions and donations to the Fund originating from any sources, whether within or outside the Republic;
- (c) interest earned on moneys deposited in terms of section 3 (1) and on moneys invested in terms of section 3 (2), if any;
- (d) moneys accruing to the Fund from any other source.

3 Deposit and investment of moneys of Fund

(1) Except as provided in subsection (2), the moneys standing to the credit of the Fund will be deposited in a separate banking account to be opened by the Commission with a bank registered in the Republic. Payment of all moneys allocated to political parties in terms of section 5 will be made from that account.

(2) The moneys of the Fund that are not required immediately for making allocations to political parties in terms of section 5, may be invested with the Public Investment Commissioners contemplated in the Public Investment Commissioners Act, 1984 (Act 45 of 1984).

4 Management and control of Fund

(1) Subject to the directions of the Commission, the chief electoral officer acting in the capacity of head of the administration of the Commission is responsible for the management and administration of the Fund, and is the accounting officer and chief executive officer of the Fund.

(2) For each financial year the Commission must have records kept, in accordance with generally accepted accounting practice and procedures, of all moneys received by or accruing to the Fund, all allocations and payments made therefrom, and all expenditure arising from the allocation of moneys from the Fund, as well as a current record of the capital and liabilities of the Fund, during that year.

(3) (a) Except as provided in paragraph (b), the financial year of the Fund will run from 1 April in every year to 31 March in the following year, both days included.

(b) The first financial year will run from the day on which this Act comes into operation until 31 March first following, both days included.

5 Allocations from Fund

(1) (a) Subject to this Act, every political party is entitled to be allocated moneys from the Fund for any financial year that it is represented-

- (i) in the National Assembly; or

- (ii) in any provincial legislature; or
- (iii) both in the National Assembly and any provincial legislature.

[Para. (a) amended by s. 2 (a) of Act 15 of 2005.]

(b) Subject to subsection (3), the moneys so allocated to a political party may be used for any purposes compatible with its functioning as a political party in a modern democracy. These purposes include, amongst others-

- (i) the development of the political will of people;
- (ii) bringing the political party's influence to bear on the shaping of public opinion;
- (iii) inspiring and furthering political education;
- (iv) promoting active participation by individual citizens in political life;
- (v) exercising an influence on political trends; and
- (vi) ensuring continuous, vital links between the people and organs of state.

(c) Allocations from the Fund to political parties will be made at the times or intervals and in the instalments that will be prescribed.

(2) (a) Allocations from the Fund must be made and paid to each of the political parties concerned in accordance with a prescribed formula based-

- (i) in part, on the principle of proportionality, taking into account, amongst others-
 - (aa) the relation that the number of such a party's representatives in the National Assembly bears to the membership of the National Assembly; or
 - (bb) the relation that the number of such a party's representatives in any provincial legislature bears to the sum of the memberships of all the provincial legislatures jointly; or
 - (cc) the relation that the number of such a party's representatives in all the legislative bodies contemplated in subsection (1) (a), jointly bears to the sum of the memberships of all those legislative bodies jointly; and
- (ii) in part, on the principle of equity, taking into account, amongst others-
 - (aa) a fixed threshold for a minimum allocation to each of the political parties represented-
 - (aaa) in the National Assembly; or
 - (bbb) in any provincial legislature; or
 - (ccc) both in the National Assembly and any provincial legislature;or
 - (bb) a weighted scale of representation for an allocation to each of the political parties represented-
 - (aaa) in the National Assembly; or
 - (bbb) in any provincial legislature; or
 - (ccc) both in the National Assembly and any provincial legislature.

(b) The information and particulars necessary for applying the prescribed formula to any party, must be ascertained from the relevant facts and circumstances as at the time when the allocation is to be made.

(3) Moneys allocated to a political party from the Fund may not be used-

- (a) for the purpose of directly or indirectly paying any remuneration, fee,

reward, perquisite or other benefit to any person representing the party in the National Assembly, National Council of Provinces, any provincial legislature or any local authority, or who holds any other office of profit under the State, whether on the national, provincial or local sphere of government;

- (b) with a view to financing or contributing to any matter, cause, event or occasion, whether directly or indirectly, in contravention of any code of ethics binding on the members of Parliament or of any provincial legislature, as the case may be;
- (c) directly or indirectly for the purpose of establishing any business or acquiring or maintaining any right or 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 ordinary party-political purposes; and
- (d) for any other purpose that is incompatible with a political party's functioning in a modern democracy, as may be prescribed.

(4) The allocation of moneys from the Fund to a political party will end when the party ceases qualifying therefor in terms of subsection (1) (a). Subject to section 6A, a political party must within 21 days after the date on which it has so ceased to qualify, repay to the Commission the unspent balances, as at that date, of all moneys that had been allocated to it in terms of this section.

[Sub-s. (4) substituted by s. 2 (b) of Act 15 of 2005.]

6 Political parties to account for moneys allocated to them from Fund

(1) Every political party to which moneys are allocated from the Fund, must-

- (a) keep, with a bank registered in the Republic, a separate banking account into which all moneys so allocated to the party must be deposited; and
- (b) appoint an office-bearer or official of that party as its accounting officer with regard to all moneys from time to time allocated to that party from the Fund. The accounting officer's responsibility is to account for the moneys so allocated to that party, and includes, in addition to any other duties imposed by this Act, the duty to ensure the party's compliance with the requirements of this Act, and, in particular, to ensure that those moneys are not paid out for a purpose not authorised by this Act.

(2) That accounting officer must, for each financial year for which moneys have been allocated to the relevant political party from the Fund, keep separate books and records of account, in the prescribed manner, in respect of those moneys and all transactions involving those moneys.

(3) Within two months after the end of a financial year for which moneys have been allocated to any political party from the Fund, that accounting officer must-

- (a) prepare a statement showing all amounts received by the party from the Fund during that financial year and its application of those moneys, as well as the purposes for which the various amounts have been applied; and
- (b) submit that statement and those books and records of account to a public accountant and auditor registered and practising as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), to be audited.

[Sub-s. (3) substituted by s. 3 of Act 15 of 2005.]

(4) An auditor who has performed an audit contemplated in subsection (3) (b), must in the auditor's report express an opinion as to whether or not the allocated moneys were spent for purposes authorised by this Act.

[Sub-s. (4) substituted by s. 3 of Act 15 of 2005.]

(5) The auditor's report and audited statement must be submitted to the Commission by that accounting officer within three months after the end of that financial year.

(6) Despite subsection (3), the Auditor-General may at any time audit any political party's books and records of account and financial statements relating to moneys allocated to the party from the Fund.

(7) (a) Subject to paragraph (b), the Commission-

- (i) may order that the allocation of moneys to a political party from the Fund be suspended if satisfied on reasonable grounds that the party has failed to comply with any requirement of this Act; and
- (ii) must terminate the suspension if satisfied, in the light of the party's subsequent conduct, that the suspension is no longer justified.

(b) The suspension of a political party's allocations may be ordered in terms of paragraph (a) only if the Commission-

- (i) by written notice has informed the party of the proposed suspension and of the reasons therefor; and
- (ii) has called on the party to furnish reasons, within the period specified in the notice (which may not be shorter than 30 days as from the date of the notice), why its allocations from the Fund should not be suspended.

6A Repayment of unspent balances

(1) If a member of a legislature becomes a member contemplated in item 2 (1) of Schedule 6A to the Constitution, the nominating party contemplated in that item does not, subject to subsection (3), have to repay to the Commission the unspent balances of all moneys that had been allocated to it in terms of section 5 in respect of the seat held by the member concerned.

(2) A political party which immediately prior to the period referred to in item 4 (1) (a) or (b) of Schedule 6A to the Constitution qualified for the allocation of moneys from the Fund in terms of section 5 does not have to repay to the Commission the unspent balances of all moneys that had been allocated to it in terms of that section if it subdivides in a manner contemplated in item 3 (1) (b) of Schedule 6A to the Constitution, and any subdivision of that party continues to-

- (a) represent that party in the legislature concerned after the date on which the Speaker of a legislature has published the notice contemplated in item 5 (3) of Schedule 6A to the Constitution; and
- (b) qualify for the allocation of moneys from the Fund in terms of the said section,

whether the subdivision of that party has changed the name of that party or not.

(3) A political party which immediately prior to the period referred to in item 4 (1) (a) or (b) of Schedule 6A to the Constitution qualified for the allocation of moneys from the Fund in terms of section 5 must, in accordance with this section, repay to the Commission the unspent balances of all moneys that had been allocated to it in terms of

that section if it ceases to qualify for the allocation of moneys from the Fund in terms of the said section as a result of its-

- (a) member or members changing party membership contemplated in item 2 (1);
- (b) merger with another political party in terms of item 3 (1) (a); or
- (c) subdivision in a manner contemplated in item 3 (1) (b),

of Schedule 6A to the Constitution.

(4) The person who last held the office of accounting officer contemplated in section 6 (1) (b) of a political party contemplated in subsection (3), or if he or she is not available the leader of that party, must on the last day of September of the financial year in question close the books and records of account of the party kept in terms of section 6 and within one month thereafter-

- (a) prepare a statement showing-
 - (i) all amounts received by the party from the Fund during that financial year and its application of those moneys, as well as the purposes for which the various amounts have been applied;
 - (ii) the unspent balances of the party, if any, as at the date when its books and records of account are so closed, of all moneys that had been allocated to it in terms of section 5; and
 - (iii) all the existing legal financial obligations of the party until the end of the financial year in question; and
- (b) submit that statement and those books and records of account to a public accountant and auditor registered and practising as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), to be audited.

(5) An auditor who has performed an audit contemplated in subsection (4) (b), must in the auditor's report express an opinion-

- (a) as to whether or not the allocated moneys were spent for purposes authorised by this Act; and
- (b) on the correctness of the information referred to in subsection (4) (a) (ii) and (iii).

(6) The auditor's report and audited statement, as well as all statements for the financial year in question of the banking account of the political party kept in terms of section 6 (1) (a) and documents in support of the information referred to in subsection (4) (a) (iii), must be submitted to the Commission by the accounting officer or the leader of the party, as the case may be, within two months after the date on which the books and records of account of the party were closed.

(7) The Commission must within two months after receipt of the auditor's report, audited statement, statements of the banking account of the political party and documents in support of the information referred to in subsection (4) (a) (iii) submitted to it in terms of subsection (6)-

- (a) determine the amount of the unspent balances of all moneys that had been allocated to the political party in terms of section 5 that must be repaid to the Commission, taking into account the information referred to in subsection (4) (a) (iii);
- (b) determine the date on which that amount of unspent balances of moneys

must be repaid to the Commission, which date must be before the last day of the financial year in question; and

(c) inform the accounting officer or the leader of the party, as the case may be, of the amount and date determined in terms of paragraphs (a) and (b).

(8) (a) The Commission may for the purposes of subsection (7) (a)-

(i) direct the accounting officer or the leader of the party, as the case may be, to provide it with such other information as it may deem necessary; and
(ii) appoint a public accountant and auditor registered and practising as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), to-

(aa) verify the auditor's report and audited statement submitted to it in terms of subsection (6); or

(bb) audit the statement referred to in subsection (4) (a) and the books and records of account kept in terms of section 6.

(b) Subsection (5) applies, with the necessary changes, to an auditor who has performed an audit contemplated in paragraph (a) (ii) (bb).

(c) The verification of the auditor's report and audited statement contemplated in paragraph (a) (ii) (aa) or the auditor's report and audited statement contemplated in paragraph (a) (ii) (bb), as the case may be, must be submitted to the Commission by the auditor concerned within one month after the date of his or her appointment by the Commission.

(9) The accounting officer or the leader of the party, as the case may be, must-

(a) within 14 days after the receipt of a direction referred to in subsection (8) (a) (i), comply therewith; and

(b) repay to the Commission the amount of the unspent balances of moneys contemplated in subsection (7) (a) on or before the date determined in terms of subsection (7) (b).

(10) Any unspent balances of moneys repaid in terms of this section during a particular financial year, must be credited to the Fund and carried forward to the next financial year.

(11) The Commission must deal with any circumstances, other than those provided for in this section, that arise during a period referred to in item 4 (1) (a) or (b) of Schedule 6A to the Constitution in the manner it deems appropriate, taking into account the objectives and principles provided for in this Act.

[S. 6A inserted by s. 4 of Act 15 of 2005.]

7 Recovery of allocated moneys irregularly spent by political parties

(1) (a) Where any moneys allocated to a political party in terms of section 5 have not been spent in accordance with the requirements of this Act, the accounting officer of that party contemplated in section 6 (1) (b), will be liable to repay to the Commission the moneys that were irregularly spent.

(b) Any moneys so repaid, will be credited to the Fund.

(2) The Commission, represented by the chief executive officer of the Fund, must recover the moneys irregularly spent, and may do so by-

(a) instituting a civil claim in respect of the amount irregularly spent, against that accounting officer of the political party concerned; or

(b) setting off the amount irregularly spent against any allocation that may be

or may become payable to the political party.

8 Commission to report to Parliament on Fund

(1) As soon as possible after the end of each financial year, the Commission must have-

- (a) a report prepared regarding its management and administration of the Fund during that financial year;
- (b) financial statements prepared in relation to the Fund, showing-
 - (i) the amounts received by and accrued to the Fund, including the amounts of the unspent balances of moneys repaid to the Commission, if applicable, during that financial year;
[Sub-para. (i) substituted by s. 5 of Act 15 of 2005.]
 - (ii) the allocations made from the Fund to the respective political parties during that year;
 - (iii) the amounts spent during that year by each political party in connection with purposes classifiable under the generally descriptive categories as prescribed from time to time; and
 - (iv) the balance of the Fund and any amounts owing to or by the Fund as at the end of that year.

(2) The Commission must submit that report, those statements and the Commission's books and records of account relating to the Fund to the Auditor-General for auditing.

(3) Within 30 days after receipt of the Auditor-General's report, the Commission must submit that report to Parliament together with the audited financial statements of the Fund and the audited Commission's report.

9 Surplus moneys as at end of financial year

(1) Any unspent moneys, as at the end of the financial year, in the special banking account kept by a political party in terms of section 6 (1) (a), will be shown in that party's relevant books and records of account as a credit balance carried forward to the next financial year. However-

- (a) the moneys that may so be carried forward, may be limited to an amount representing a prescribed percentage of the allocations that had been made for that financial year; and
- (b) moneys so carried forward to the next financial year may not be taken into account in determining any allocation to be made to the party concerned during that financial year.

(2) All moneys standing to the credit of the Fund at the end of any financial year will be carried forward to the next financial year as a credit balance.

(3) (a) If Parliament and every provincial legislature are dissolved in terms of the Constitution, every political party that is represented in any or all of those legislative bodies must close its books and records of account kept in terms of section 6 not later than 21 days before the date set for the election of those legislative bodies and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Commission.

[Para. (a) substituted by s. 6 of Act 15 of 2005.]

(b) Not later than the day immediately before the date set for the election, such a political party must repay to the Commission the unspent balances, as at the date when its

books and records of account are so closed, of all the moneys that had been allocated to it in terms of section 5.

(4) (a) If Parliament or any provincial legislature is so dissolved in any other circumstances, every political party represented in the legislative body that dissolves, must close its books and records of account kept in terms of section 6 not later than 21 days before the date set for the election of the dissolving legislative body and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Commission.

(b) (i) The representation of a party mentioned in paragraph (a), in a dissolving legislative body, must be calculated by the Commission as a percentage of the party's representation in all of the legislative bodies contemplated in subsection (3) (a).

(ii) That determined percentage of any unspent balances, as at the date when those books and records of account are closed, of all moneys that had been so allocated to the political party, must be repaid to the Commission not later than the day immediately before the date set for the election.

9A Offences and penalties

Any person who-

(a) contravenes or fails to comply with section 6A (4), (6) or (9) (b); or

(b) fails to comply with a direction in terms of section 6A (9) (a),

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 9A inserted by s. 7 of Act 15 of 2005.]

10 Regulations

(1) The President, acting on the recommendation of a joint committee of the National Assembly and the National Council of Provinces, may by proclamation in the *Gazette* make regulations consistent with this Act-

(a) about any matter which, in terms of this Act, may or must be prescribed;

(b) with a view to determining any purposes which, in the application of section 5 (1), are not compatible with the functioning of a political party in a modern democracy;

(c) prescribing the information and particulars to be furnished to the Commission by political parties with a view to ensuring proper and effective application and administration of and compliance with this Act;

(d) prescribing the procedure according to which and manner in which payments from, and to, the Fund are to be made after any election of Parliament or a provincial legislature or the expiry of the period referred to in item 4 (1) (a) or (b) of Schedule 6A to the Constitution; and

[Para. (d) substituted by s. 8 of Act 15 of 2005.]

(e) prescribing any form that may be required in connection with any matter mentioned in paragraph (c) or (d).

(2) The first regulations made in terms of this section will be regarded and treated as having commenced on the day on which this Act comes into operation.

11 Short title and commencement

(1) This Act is called the Public Funding of Represented Political Parties Act, 1997, and comes into operation on a date that will be determined by the President by proclamation in the *Gazette*.

(2) The President, after consultation with the Minister of Finance, may exercise the power in terms of subsection (1) with retrospective effect to a date not earlier than 1 April 1997.