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**Procedural Note: Section 75 Legislation**

**Public Participation Proposal**

Justice Administered Fund Bill [B26-2016]-------------------------------------------------------------------------------------------------------

The Constitution distinguishes between four categories of Bills namely bills amending the Constitution (section 74), bills not affecting provinces (section 75), bills affecting provinces (section 76) and money bills (section 77) which the NCOP processes according to the procedures prescribed by the Constitution.

**Parliament classified the Justice Administered Fund Bill as a Section 75 Bill, implying it is a Bill not affecting provinces.**

The NCOP processes these bills in terms of the procedure set out in section 75 of the Constitution.

**LAMOSA Judgment and the public participation process**

The NCOP has developed a practice note to address the shortcomings in the public participation process highlighted in the Lamosa Judgement that dealt with S76 Bills. However, the judgment noted that it is incumbent on each house to facilitate public involvement in legislation referred to it.

 **Public participation proposal:**

1. PC Justice report on the Justice Administered Fund Bill tabled 20 October 2016. The National Assembly has yet to adopt the Bill.
2. The PC Justice advertised the Bill for public participation and received one written submission that did not request a verbal presentation.
3. The Bill is not considered controversial in nature, The Department of Justice and Constitutional Development administers certain funds on behalf of third parties. The Bill seeks to address existing gaps in the governance and administration of Third Party Funds (TPF) by providing for the establishment of a Justice Administered Fund to regulate the management, control, investment and use of money in the Fund.
4. **The public participation proposal is to advertise on radio and electronic platforms requesting written submissions on the Bill.**
5. We do not recommend advertising in print media due to the associated costs and taking into account the Bill only received one submission during the PC Justice advertisements for public comment and the nature of the Bill.
6. The timeframe for advertisements will be one week from referral of the Bill to the NCOP.

**The Legislative Process**

**Joint Tagging Mechanism**

After a Bill has been introduced, the first important step is for the referral of the Bill to the Joint Tagging Mechanism (“JTM”) for classification into one of the above categories. If a Bill does not clearly fit into one category, or if it fits into more than one category, it is usually redrafted or split into more than one Bill.

**Referral to Portfolio Committee**

The next step in the Parliamentary process is for the referral of the Bill to the relevant Portfolio Committee for consideration and report. The members of the relevant Portfolio Committee must consider and debate the Bill to determine whether they are satisfied with the provisions of the Bill. If the Portfolio Committee is not satisfied with the provisions of the Bill, the Portfolio Committee amends the Bill to reflect the version that it prefers. Parliament refers to the amendments made by the Portfolio Committee as an A-list. When the Portfolio Committee incorporates the A-list of amendments into the Bill, it refers to this new Bill as the B-Bill.

**Referral to the Select Committee**

At the conclusion of its work, the Portfolio Committee submits the Bill, together with a report, to the National Assembly for debate (called the second reading debate) and a vote. If the National Assembly passes the Bill, it refers the Bill to the NCOP for concurrence. The NCOP refers the Bill to the relevant Select Committee for consideration and report.

**NCOP Rules on voting on the Section 75 Bill**

When considering Section 75 Bills, delegates vote as individuals (not as a delegation) and each has one vote. The Select Committee requires six members to form a quorum. The Committee agrees to the Bill if the majority of delegates vote in favour of the Bill.

**NCOP Rule 155**

(3) When a question is to be decided in terms of section 75 of the Constitution -

(a) the question may be decided only if a majority of the permanentmembers of the committee is present;

(b) the question is decided by the majority of the votes cast;

(c) if there is an equal number of votes on each side of a question, the chairperson must cast a deciding vote in addition to a vote as an ordinary member.

The Council must pass the Bill, pass the Bill subject to proposed amendments, or reject the Bill. If the Council passes the Bill without proposed amendments, it refers the Bill to the President for assent.

If the NCOP passes a Bill subject to proposed amendments or if the NCOP rejects a Bill, it goes back to the National Assembly. The National Assembly must then reconsider the Bill by taking into account any amendments proposed by the NCOP, and may pass the Bill again (with or without the NCOP proposed amendments) or may decide not to proceed with the Bill. If the Portfolio Committee accepts the NCOP proposed amendments, it produces a C-list of amendments and incorporates this into a D-Bill. The National Assembly, after passing the Bill, refers it to the President for assent[[1]](#footnote-1).

**Conclusion**

In the case of the Justice Administered Fund Bill, the bill has not yet been formally referred to the NCOP as the National Assembly still has to pass the bill. The briefing on the Justice Administered Fund Bill is provisionally scheduled to take place on 8 November 2016, pending approval, the briefing at this stage will only be for information purposes. The Committee will therefore make a final decision on this bill upon its formal referral to the Select Committee from the NCOP for consideration and report.

**Proposed programme:**

1. 8 November 2016: Preliminary briefing on the subject of the Bill.
2. After Bill referred to NCOP: 7-18 November 2016 Bill advertised for public comment.
3. 23 November 2016:
* Public Hearing: verbal comments presented to the Committee on the Bill.
* Reply by the Department of Justice on the public comments both written and verbal.
* Deliberation by Committee on the Bill.
1. 30 November 2016: Consideration and adoption of the Justice Administered Fund Bill.
2. **NCOP Constituency Period: 12 – 15 DECEMBER 2016:**

**ANNEXURE A: NCOP RULES ON COMMITTEE FUNCTION AND REPORTING.**

## Committee’s functions

**210.** (1) The select committee or other Council committee to which the Bill is referred –

(a) must enquire into the subject of the Bill; and

(b) may, or if ordered by the Chairperson of the Council must, consult any other committee that has a direct interest in the substance of the Bill;

(c) may consult the person in charge of the Bill;

(d) may require any suitable person to brief the committee on the objects and substance of the Bill;

(e) may consult the appropriate Assembly portfolio committee or chairperson of that committee;

(f) may recommend that the time limit for the Council’s consideration of the Bill as may have been set in terms of the Joint Rules, be extended;

(g) may consult the **JTM** on whether any amendments to the Bill proposed in the committee -

(i) may affect the classification of the Bill;

(iii) may render the Bill constitutionally or procedurally out of order within the meaning of **joint rule 161**;

(h) may not propose an amendment that may –

(i) change the classification of the Bill;

(iii) render the Bill constitutionally or procedurally out of order within the meaning of **joint rule 161**;

(i) may recommend approval or rejection of the Bill or present an amendment Bill; and

(j) must report to the Council in accordance with rule **211**.

## Committee’s report

**211.** (1) The committee to which a Bill is referred must table in the Council –

(a) its report;

(b) the Bill that has been agreed on by it, or, if it has not agreed on a Bill, the Bill as referred to it; and

(c) the supporting memorandum which was introduced with the Bill.

(2) In its report the committee –

(a) must state whether it recommends approval of the Bill with or without proposed amendments, or rejection of the Bill;

(b) must specify each amendment if an amended Bill was agreed on by it, and each amendment that was considered and, for a reason other than its being out of order, was rejected by it;

(c) must certify that –

 (i) all amendments are constitutionally and procedurally in order within the meaning of **joint rule 161**; and

(ii) no amendment affects the classification of the Bill;

(d) must, if it is not a unanimous report –

(i) specify in which respects there was not consensus; and

(ii) in addition to the majority report, express the views of any minority concerned;

(e) may specify such details or information about its enquiry and any representations or evidence received or taken by it, as it may consider necessary for the purposes of the debate on the Bill;

(f) may recommend to the Council that any matter contained in the report be placed on the Order Paper for separate consideration either before or after the Council considers the Bill.

(3)The report of the committee together with the Bill, any proposed

amendments and the memorandum must be placed on the Order Paper for consideration.

(4) The Bill, subject to proposed amendments where applicable, is passed by the Council if the Bill and any amendments are agreed to by the Council in terms of section 75(2) of the Constitution.

1. http://www.justice.gov.za/legislation/legprocess.htm#sthash.hWMWgy1o.dpuf [↑](#footnote-ref-1)