**POLITICAL PARTY FUNDING**

**ADMINISTRATION OF THE REPRESENTED POLITICAL PARTIES’ FUND**

1. **Background**

Section 1(d) of the Constitution of South Africa recognises the universal adult right to vote, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

In terms of s 19(1) of the Constitution ‘every citizen is free to make political choices, which include the right to form a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause’.

Section 236 of the Constitution requires national legislation to provide for funding of political parties participating in national and provincial legislatures on an equitable and proportional basis to enhance multi-party democracy.

It is safe to say that the system of government envisaged in the Constitution is one in which multi-party democracy plays a vital role. These founding provisions in the Constitution thus provided the basis for the passing of the Public Funding of Represented Political Parties Act 103 of 1997 by Parliament.

In terms of section 2(1) of the Public Funding of Represented Political Parties Act 103 of 1997 (the Act), the Represented Political Parties’ Fund (the Fund) which governs funding allocations to political parties represented in Parliament and provincial legislatures was established.

1. **The role of the Electoral Commission in party funding**

In terms of section 4(1) of the Act the Chief Electoral Officer of the Electoral Commission is responsible for the management and administration of the Fund and also is the accounting officer. Section 4(2) requires that records must be kept for the Fund, in accordance with Generally Accepted Accounting Practice (GAAP), for all moneys received by the Fund and payments made therefrom. In effect this means that the Fund is administered by the Electoral Commission, which keeps parties informed of the requirements of the Act.

***2.1 Problem statement***

Despite the provision in section 4(1) regarding the management and administration of the Fund, the Act and its Regulations do not provide for the funding of the resources required to manage and administer the Fund. Since the inception of the Fund it was agreed that the Electoral Commission will be refunded for administrative overheads amounting to about 0.3% of the parliamentary allocation to the Fund. The amount that will be paid in the current financial year amounts to about R475,000, mainly to cover the cost of printing the annual report of the Fund, the Auditor General for auditing the books of the Fund and a portion of the salaries of the manager (20%) and assistant manager (40%) responsible for the administration of the Fund.

The Act requires financial statements to be prepared in accordance with GAAP, accounting principles that are no longer used in South Africa. This creates confusion and complicates audits, not only for the administrators of the Fund but also for political parties.

* 1. ***Possible solutions***

Consideration should be given that the Act provides for the payment of a set management fee to the administrators of the fund, irrespective of whether the Fund is administered by the Electoral Commission or an external body. The management fee could be based on a percentage of the total moneys received by the Fund.

Provision should be made that the accounting principles and practices stated in the Act withstand the test of time to avoid the current situation where GAAP is no longer in use. In this regard, note should be taken of the fact that the smaller political parties in some instances lack internal financial capabilities and cannot afford to contract external capacity in order to do their books. As is, parties have to pay external independent auditors to audit their books each year.

1. **Sources of funding**

Sources of income permissible under the Fund in terms of section 2(2) of the Act are parliamentary appropriations, donations (nationally and internationally), interest receivable and moneys accrued from other sources. The Act thus provides for the receipt of private and foreign donations directly into the Fund. However, in practice the only income of the Fund relates to parliamentary appropriations and interest received from the bank account held in the name of the Fund.

* 1. ***Problem statement***

The Electoral Commission at this stage does not have the staff and resources to deal with the administration of any form of private funding. Capacity challenges might compromise the Electoral Commission in the execution of its mandate should it be required to also administer funding received from donors. It should, however, be noted that the administration of the Fund was never officially been approach by prospective donors in relation to private and foreign donations to the Fund.

It should also be noted that, as the Act currently directs, any donations that may in future be received in the Fund would be distributed to political parties as per the current formula of 90% proportional and 10% equitable. This will not assist with levelling the political playing field as the bigger parties will still receive the biggest share.

* 1. ***Possible solutions***

Should private funding be regulated and section 2(2) of the Act actively promulgated, it may be necessary to change the formula used for the distribution of funds as stated in the Regulations, to benefit smaller represented parties to a greater extend. Alternatively, it might be necessary to establish separate Regulations for the distribution of private funding by the Fund to political parties.

Should private funding be regulated, it might be necessary to establish a separate regulatory body with the mandate to monitor and enforce the (private and public) funding of political parties. Careful consideration should therefore be given to the continued administration of the Electoral Commission of the Fund versus a separate regulatory body with the mandate to monitor and enforce the (private and public) funding of political parties.

1. **Purposes for which allocated public funds may be used**

In terms of Section 5(1)(b) of the Public Funding of Represented Political Parties Act allocations to political parties may be used “for any purposes compatible with [the party’s] functioning as a political party in a modern democracy”. These include:

1. the development of the political will of people (i.e. allowing you to choose);
2. bringing the party’s influence to bear on the shaping of public opinion (i.e. providing you with a choice);
3. inspiring and furthering political education (i.e. keeping you up to date with what is available and who is offering what);
4. promoting active participation by individual citizens in political life (i.e. getting people involved);
5. exercising an influence on political trends; and
6. ensuring continuous, vital links between the people and organs of state (i.e. developing the interface between citizens and public administration).

A party must account for the money allocated to it under these classifications: personnel expenditure, accommodation, travel expenses, arrangement of meetings and rallies, administration, and promotions and publications.

* 1. ***Problem statement***

In South Africa, the larger political parties that are represented in Parliament and provincial legislatures tend to have access to both regulated public funding and private funding, which may be used for election campaigning. Smaller, and especially un-represented, political parties appear not to have sustainable access to funding.

It is safe to say that between 85% and 90% of funds allocated to represented political parties from the Fund are being used for expenses related to administrative overheads such as office rentals, travel expenses, stationery andthe paying of salaries of office staff members who do not receive a salary from other public sources. In other words, allocations to political parties are mainly used to maintain a core administrative structure. Only a small portion of the funds allocated to represented parties is used for election specific activities and election campaigning, despite the fact that the Act provides that moneys from the Fund may be utilised by political parties for election campaigns - section 5(1)(b)(i) for 'the development of the political will of the people' and in 5(1)(b)(ii) for 'bringing the political party's influence to bear on the shaping of public opinion'.

Political parties, big and small, represented and non-represented, are thus largely dependent on other sources of income to support their election related activities and campaigning.

* 1. ***Possible solutions***

This reality strengthens the argument for the provisioning of specific election campaign funding to parties during heightened election campaigning periods. Regulated donor funding may play a vital role in this regard.

1. **Purposes for which allocated public funds may not be used**

In terms of section 5(3) of the Act, a political party may not with the allocated funds:

1. pay any direct or indirect remuneration or other benefit of any kind to any elected representative of the party or to any public servant at any level of government
2. finance or contribute directly or indirectly to any matter, cause, event or occasion if it contravenes any code of ethics binding on members of parliament or any provincial legislature
3. use the money directly or indirectly to start any business or acquire or maintain a right or financial interest in any business
4. use the money directly or indirectly to acquire or maintain a right or financial interest in any immovable property, unless if solely for ordinary party-political purposes
5. use the money for anything else that is incompatible with a political party’s functioning in a modern democracy.

* 1. ***Problem statement***

Although moneys allocated to political parties may not be used to invest in any business, section 3(2) of the Act does provide that ‘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’. This Act has since been replaced by the Public Investment Corporation Act, 2004. Due to the ongoing cash flow needs of represented political parties, the Electoral Commission has never implemented the provisions of section 3(2).

* 1. ***Possible solutions***

Should private funding be regulated, it might be worthwhile to further explore the provisions of section 3(2) in order to find a mechanism which will allow political parties to passively benefit from investment activities embarked on by the Fund without any conflict of interest.

1. **Allocation of public funds to political parties**

Parliamentary appropriations are made to the Fund administered by the Electoral Commission, who in turn makes allocations to political parties based on a formula which is prescribed in the Public Funding of Represented Political Parties Regulations, 1998. The Act is clear that a political party receiving funding must be one already enjoying representation in government at national and / or provincial level. The Act briefly determines allocations as follows:

The amount available for distribution must be gazetted by the Electoral Commission in April of each year. This amount is then distributed to a political party for any financial year that it is represented in the National Assembly, or any provincial legislature, or both in the National Assembly and any provincial legislature. 90% of the available funds is allocated proportionally and 10% on an equitable basis. Proportional allocations are based on the number of seats awarded to a party in the National Assembly and the Provincial Legislatures jointly. Equitable allocations are made to the respective provinces in proportion to the number of members of the respective provincial legislatures. The allocation to a particular province is divided equally among the participating parties in the legislature of that province.

The funds are paid to political parties in four equal payments, the first being made within the first four weeks of the new financial year beginning on 1 April of each year. 50% of total amount received during a financial year may be ***carried*** over to next financial year (plus Interest earned may be carried over).

* 1. ***Problem statement***

Regulated public funding to represented parties is an important source of campaign funding. However, the formula (90% allocated proportionately and 10% equitably) favours the bigger parties at the expense of smaller parties.

The parties not represented in Parliament are not entitled to any allocation from the Fund. It is often argued that the Act fails smaller and non-represented political parties in that these parties do not receive public funding to achieve the purposes set out in section 5 of the Act, with specific reference to sections 5(1)(b)(i) and 5(1)(b)(ii) which provides for election campaigning. The same is true in relations to the other purposes set out in section 5. It is further argued that due to this lack of funding to smaller and non-represented political parties the Act fails to promote the multi-party democracy envisaged in section 1(d) of the Constitution.

* 1. ***Possible solutions***

A review of the existing public funding allocation formula to provide for an increase in the equitable portion allocated to represented political parties is proposed. This funding should continue to be allocated on a quarterly basis to continue to maintain the core administration of parties as outlined in paragraph 4.1. In addition consideration should be given to additionally provide funding for election campaigning as outlined in paragraph 4.2.

It is not advisable that funding be made available on a continuous basis to non-represented parties due to the lessons learned during the floor-crossing period where it was almost impossible to hold small new parties accountable for the funds allocated to them. This was due to the fact that most of these parties discontinued to exist after elections and moneys irregularly spent had to be written off as the Electoral Commission was not able to recover these funds from the accounting officers of the relevant parties.

1. **Accountability for funds allocated**

The responsibilities of each political party receiving an allocation from the Fund include the following:

1. Keep a separate account with a bank in the Republic, into which money allocated from the Fund must be deposited.
2. Appoint an official within the party as accounting officer to take responsibility for the money received in this bank account and ensure that the party complies with the requirements of the Act.
3. The accounting officer must keep separate books and records for this money in the manner prescribed.
4. An income and expenditure statement, showing for what purposes the money has been applied, must be audited annually. The auditor is to express an opinion as to whether or not the allocation has been spent for purposes authorised by the Act.
5. The accounting officer must submit the financial statement and the auditor’s report to the Commission annually.
6. A consolidated set of financial statements is audited by the Auditor General annually and is published in the Annual Report which is tabled annually in Parliament.
   1. ***Problem statement***

Due to a lack of funding, new and / or smaller political parties are often not in a position to appoint financially qualified accountants to do the books for them.. Parties often have to rely on the good will of party members to perform this function. This leads to the missing of deadlines as prescribed by the Act and resultant adverse audit findings by the Auditor General when the Fund is audited. Some parties rely on external auditors for *pro bono* with the audit of their books as required by the Act.

At the beginning of each five-year electoral cycle when new political parties qualify for funding from the Fund, the Electoral Commission has to embark on extensive training activities to assist some parties in understanding the requirement of the Act and the implications of non-adherence.

In view of the above, some parties may not be able to afford the cost attached to transparent, regular and proactive disclosures that may be required should private funding be regularised.

* 1. ***Possible solutions***

In the interest of promoting accountability, consideration could be given to make annual allocations to represented parties for the sole purpose of facilitating the audit of their financial statements in terms of the Act.

There will be an extended need for parties to be continuously trained on financial management and the requirements of all Acts that have an impact on the finances of a party, including the Income Tax Act, should private funding be managed by the Fund. This will however have a huge impact on the human resources and skills required to manage the Fund.

1. **Recovery of funds irregularly spent**

In terms of section 7 of the Act, the Electoral Commission may, if it has reasonable ground to believe that a party has failed to comply with the provisions of the Act, suspend payment to such party. Payments may again be reinstituted should compliance by the party be imminent. Where funds have been expended in violation of the terms of the Act, the accounting officer of such a party is required to repay the amounts concerned to the Fund and a civil claim may be instituted by the Electoral Commission or the sums involved deducted from further payments to the party concerned.

***8.1 Problem statement***

The onus rests solely with the Electoral Commission to establish whether or not a political party complies with section 5 of the Act before it makes an allocation to a party from the Fund. To date the Electoral commission has not instituted any civil claim against a political party for funds irregularly spent. Funds irregularly spent by political parties are recovered from future payments due to defaulting parties, unless a defaulting party ceases to exist.

Experience has shown that, except for the instances which occurred during the floor-crossing period, instances of funds being irregularly spent by parties are minimal. Those instances that do occur are mainly as a result of ignorance of the requirements of the Act.

It should be acknowledged that there is a very fine line between the independence of the Electoral Commission and its duties to discipline defaulting parties in terms of the Act. Careful consideration should therefore be given to the continued role of the Electoral Commission in the management and administration of the Fund, should the Fund be expanded to include private funding.

***8.2 Possible solutions***

In a bid to protect the independence of the Electoral Commission, careful consideration should be given to the continued administration of the Electoral Commission of the Fund versus a separate regulatory body with the mandate to monitor and enforce the (private and public) funding of political parties.