



**Oral Submission on the Draft Regulations of the Political Party Funding Act**

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# 1. General Comments

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# 2. Comments on Regulations

**Regulation 4:** “Establishment of Multi-Party Democracy Fund, Donations made and Request for Nondisclosure by Contributor - Sections 3(4) and 3(5) of the Act”

## Comments:

- Insert regulations for the IEC to disclose the following pertaining to non-disclosure:
  - Number of requests made
  - Number of requests accepted by the IEC
  - Number of requests rejected by the IEC
  - Cumulative monetary value of all accepted requests
  - Reasons donors have indicated for non-disclosure
  - Reasons non-disclosure accepted/rejected

# 3. Comments on Regulations

## Regulation 4(3):

- (3) The Commission shall make a final determination in respect of such request, after taking into consideration the following– (a) The reason for the request; (b) The amount Donated; (c) Confirmation from a recognised financial institution of the Contributor's bank account; (d) The source of the monies for the Donation and all supporting documents; (e) Assessment of political exposure of the Contributor, if applicable;
- (4) Within 30 (thirty) days of receipt of the Written request as contemplated in Sub-Regulation

## Comments:

- Clarity is needed on what grounds will donations be accepted or rejected
- Donors who make such requests should disclose of any donations, under a R 100 000 or less/more made to any political party



# 4. Comments on Regulations

**Regulation 4(1):** The **right to return donations** from the proceeds of crime, an organ of state, state owned enterprises, foreign government or foreign agency

## Comments:

- Change “right” to “obligated”
- Include regulation to encourage truthful disclosures

# 5. Comments on the Regulations

**Regulation 4 (2):** “A Contributor as contemplated in Section 3(3)(a) of the Act who makes a request to the Commission as contemplated in Section 3(5) of the Act, not to disclose the **Contributor’s identity and/or the amount of the Donation**, must do so in Writing in a prescribed form substantially similar to **PPR1.**”

**PPR1:** “Please take note that the undermentioned contributor hereby requests the commission in terms of section 3(5) of the political party funding act, 6 of 2018 **not to disclose any details of the name / identity of the contributor nor the amount** of the donation made by the contributor.”

**Section 3(5) of the Political Party Funding Act:** “Any contributor contemplated in subsection (3)(a) may request the Commission **not to disclose their identity or the amount of the contribution.**”

## Comments:

- The Regulations must be reflective of the Act and provide the option to request non-disclosure the non-disclosure of either the donor identity or the amount

# 6. Comments on Regulations

**Regulation 4(4):** the Contributor must be notified of the Commission's decision, which notification Within 30 (thirty) days of receipt of the Written request as contemplated in Sub-Regulation 4(2) above, the Contributor must be notified of the Commission's decision, which notification must be in a prescribed form substantially similar to **PPR2**.

**PPR1:** The Form shall be accompanied by the following documentation : [...] ii) Proof of Donation made

## Comments:

- The form implies that a non-disclosure request is made after a donation is made and if so this must be clearly stated in the regulations
- In the event that a non-disclosure request is rejected, will the IEC return the donation or accept it and disclose it?



# 7. Comments on Regulations

**Regulation 4 (5):** The Commission must decline any request made for non-disclosure: (a) if there is reason to believe that any provision of the Act or any other legislation has been contravened by the Contributor; or (b) the Contributor failed, without reason, to provide any of the information required in terms of Sub-Regulation 4(3)(a), (b), (c) and (d) above.

## Comments:

- In a scenario where a non-disclosure request is denied based on reasons stated in Regulation 4(5), there should be an explicit onus on the IEC to report this to law enforcement or the relevant authority
- It may be worth considering adding text to this effect to the *Proposed Regulations* as to further encourage truthful disclosures

## 8. Comments on Regulations

**Regulation 8(5):** “A record of all disclosures made as provided for in this Regulation 8 shall be kept by the Commission and shall be available for inspection by any Person during normal business hours at the office of the Commission.”

### Comments:

- Given that the IEC has a limited number of physical offices, which will be inaccessible for many people due to distance and cost of travel, provisions must be made for the record to be electronically accessible on a website.
- electronic records will need to be searchable to make them worthwhile. We anticipate that there will be volumes of data and unless it is searchable, for example, by name of contributor, date of contribution, amount of contribution etc., it will undermine the entire process.
- Given that disclosures will be continuously submitted to the IEC, the IEC needs to stipulate after what period of time a disclosure will form part of the record and be available for inspection.

# 9. Comments on Regulations

**Regulation 13 (e):** Within 30 days of each Financial Year, the auditor's opinion, as contemplated in Section 12(4) of the Act in a prescribed form substantially similar to **PPR14**; and

**Comment(s):**

The auditor's opinion should be accessible to the public

**Regulation 14:** The Commission must issue a directive as contemplated in Section 15 of the Act in [...]

**Comment(s):**

The IEC should publish a list of directives issued and the political party to whom it was directed.

# 10. Comments on Regulations

**Form PPR6**, 'Disclosure of Donations by a Juristic Person':

## **Comments:**

Allowing the amount donated to be an 'estimate value' will provide the opportunity for misinformation and a specific amount should be stipulated. In the case that it is not possible to provide an exact amount, the IEC needs to request that the estimate is justified with further documentation or explanation.

# 11. Comments on Regulations

**Definitions:** Foreign government entity

**Section 3(4) of the Act:** “The Commission may not accept money received in terms of subsection (3)(a) from any— (a) organ of state; (b) state owned enterprise; or (c) foreign government or foreign government agency”

**Comments:**

- The Act bans foreign government agencies from donating to the Multi-Party Democracy Fund (MPDF), but neither the Act nor the Regulations contains a definition of “foreign government agency”
- The Regulations defines “foreign government entity,” but should include a definition of “foreign government agency”
- “Entity” has a broader meaning than “agency”



# 12. Comments on Regulations

**Section 8(4) of the Act:** Subject to subsection (5), nothing in subsection (1)(b) prevents a political party from accepting donations from foreign entities for the purpose of—(a) training or skills development of a member of a political party; or (b) policy development by a political party. (5) The total donations contemplated in subsection (4) is limited to a prescribed amount within a financial year.

## **Comments:**

There needs to be greater guidance as to what constitutes training, skills development and policy development. Perhaps there could be an application process made to the IEC by the foreign entity and/or the political party to provide clear detail of what the funds will be spent on. The IEC needs to have the ability to vet such donations and monitor the actual training, skills development and policy development.

# Thank You!

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