

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. R. 2922

6 January 2023

FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS
AMENDED

ENFORCEMENT COMMITTEE RULES, 2022

The Council of the Film and Publication Board, after consultation with the Enforcement Committee, made the rules in the Schedule.

SCHEDULE 1

PART 1

1. **Definitions.** – In this Schedule of these Rules, any word or expression to which a meaning has been assigned by the Act, shall have the meaning so assigned and, unless the context otherwise indicates:

“**Act**” means the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended from time to time;

“**answer**” means a document as described in regulation 15 of Schedule 1 and filed by a respondent;

“**Appeal Tribunal**”, depending on the context, means either:

- (i) the body established by section 3 of the Act;
- (ii) a panel of the Appeal Tribunal convened in terms of section 20 (1) of the Act; or
- (iii) the registrar of the Appeal Tribunal;

“**applicant**” means the FPB;

“**certified copy**” means a copy of a document certified by a Commissioner of Oaths;

“**chairperson**” means the officer of the Enforcement Committee appointed in terms of section 6A (1) of the Act;

“**day**” means any number of days prescribed in these Rules and shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official South African Public Holiday, in which case the last day shall be the next succeeding business day;

“**deliver**” depending on the context, means to serve, or to file, a document;

“**Enforcement Committee**”, depending on the context, means either –

- (a) the body established by section 3 of the Act;
- (b) a panel of the enforcement committee convened in terms of section 6B (1) of the Act; or
- (c) the registrar of the Enforcement Committee;

“**Enforcement Registrar**” means the officer of the Enforcement Committee appointed by the FPB, in consultation with the chairperson, in terms of rule 4 of Schedule 1 and includes any acting or assistant registrar;

“**file**”, when used as a verb, means to deposit with the registrar;

“**FPB**” means the Film and Publication Board, a body established by section 3 of the Act;

“**Government Gazette**” means the Government Gazette of the Republic of South Africa or the relevant Provincial Gazette, according to whether the administration of the law concerned or, as the case may be, the law conferring the power to make or issue such a proclamation, regulation, notice or other document, vests in, or in a functionary of, the national government or a provincial government;

“**member**” means a person appointed to the Enforcement Committee;

“**notice**” means an initiating document as described in rule 9 of Schedule 1;

“**public holiday**” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

“**reply**” means a document as described in rule 16 of Schedule 1 and filed by a respondent;

“**respondent**” means a distributor, exhibitor or any such person to whom the Act applies;

“**rules**” includes any footnote to a rule, and any table included within or referred to in a rule; and

“**serve**” means to deliver a document to a person other than the registrar.

PART 2

ENFORCEMENT COMMITTEE OFFICE FUNCTIONS

2. Functions, office hours and address of Enforcement Committee. – (1) The Enforcement Committee is legislatively empowered to —

- (a) investigate all cases referred to it by the FPB for adjudication in respect of noncompliance with any provision of the Act by a distributor, exhibitor or any other person to whom the Act applies, except persons to whom sections 24A, 24B, 24C and 27A (2),(3) and (4) of the Act apply;
- (b) adjudicate all cases and make appropriate findings, after the FPB and the respondent have been heard or granted a reasonable opportunity to be heard;

- (c) hear evidence under oath or affirmation or evidence by affidavit and come to a finding when it is convinced on a consideration of all the facts before it that such a finding is fair, reasonable and justified;
 - (d) where appropriate –
 - (i) impose a fine;
 - (ii) as prescribed, suspend a registration certificate; or
 - (iii) through the Board, refer a matter to the National Director of Public Prosecutions for prosecution and, in such a case, the Enforcement Committee shall not make a finding; and
 - (e) where a fine is not paid, at the instance of the chief executive officer, apply to a court for the enforcement of such a fine as a civil debt to the FPB.
- (2) The offices of the Enforcement Committee are seated at the Head Office of the FPB and are open to the public every Monday to Friday, excluding public holidays, from 09h00 to 16h00.
- (3) Despite sub-rule 2 (2) of Schedule 1 in exceptional circumstances the Enforcement Committee may accept documents for filing on any day and at any time.
- (4) Subject to rule 5 and 6 of Schedule 1, any communication to the Enforcement Committee, or to a member of the staff of the FPB assigned to assist the Enforcement Committee, may be –
- (a) Delivered by hand at –

**The Film and Publication Board
Eco Glade 2
420 Witch Hazel Street
Eco Park
Centurion
0169**

- (b) Addressed by post to –

**The Film and Publication Board
Private Bag X31
Highveld Park
0169**

- (c) Communicated by telephone on **+27 012 003 1400**;
- (d) Transmitted by Fax on **+27 012 661 0074**; or
- (e) Transmitted by electronic mail to **enforcementregistrar@fpb.org.za**.
- (5) The address for the filing or service of documents at or on the Enforcement Committee (referred to in these Rules as “the Enforcement Committee address for service”) is at the physical address referred to in sub-rule 2 (4)(a) of Schedule 1 or such other address as may be notified on the FPB website from time to time.

- 3. Condonation of time limits.** – (1) On good cause shown, the chairperson may condone late performance of an act in respect of which these Rules and prescribe a time limit, other than a time limit that is binding on the Enforcement Committee itself.

- (2) The chairperson may have regard to the following –
- (a) The nature and extent of the delay;
 - (b) The reason for the failure to act or make a submission timeously;
 - (c) The nature and extent of any prejudice in not granting condonation; and
 - (d) Whether it would be in the public interest that the appeal be allowed.
- 4. Enforcement Registrar.** – (1) The FPB, in consultation with the chairperson, must appoint a suitably qualified person in terms of section 11 of the Act to act as registrar, with the authority to carry out the functions of that office in terms of these Rules.
- (2) The registrar shall act in accordance with the instructions of the chairperson and is, in particular, to be responsible for –
- (a) the establishment and maintenance of a register in which all pleadings and supporting documents and all orders and decisions of the Enforcement Committee are to be registered;
 - (b) the acceptance, transmission, service and custody of documents in accordance with these Rules; and
 - (c) certifying that any order, direction or decision is an order, direction or decision of the Enforcement Committee or the chairperson, as the case may be.

DELIVERY OF DOCUMENTS

- 5. Delivery of Documents.** – (1) A notice or document may be delivered in any manner set out herein in the table below.

Method of Delivery	Date and Time of Deemed delivery
By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
By sending the notice or a copy of the document by registered post to the person's last-known address; or	On the 7 th day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
If the person is a participant in any proceedings of the Enforcement Committee, and is represented by a representative, by delivering the notice, or handing a copy of the document to that representative; or	On the date and at the time recorded on a receipt for the delivery.
By any other means authorised by the Enforcement Committee.	In accordance with the order of the Enforcement Committee.

- (2) Subject to sub-rule 5 (4) of Schedule 1, a document delivered by a method listed in the second column of the Table referred to in sub-rule 5 (1) of Schedule 1 will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the second column of that table.
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these Rules, the person concerned may apply to the Enforcement Committee for an order of substituted service.
- (4) Subject to sub-rule 5 (2) of Schedule 1, if the date and time for the delivery of a document referred to in the table is outside of the office hours of the

Enforcement Committee as set out in sub-rule 2 (1) of Schedule 1, that document will be deemed to have been delivered on the next day.

- (5) A document that is transmitted by electronic mail must accompany a cover message, in either case setting out –
- (a) The name, address, and telephone number of the sender;
 - (b) The name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;
 - (c) The date and time of the transmission;
 - (d) The total number of pages sent, including the cover page; and
 - (e) The name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

6. Filing documents. – (1) The Enforcement Committee must assign distinctive case numbers to each case lodged.

- (2) The Enforcement Committee must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (3) The Enforcement Committee may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.
- (4) Any document to be filed in terms of the Act or these Rules must contain the following information –

- (a) legal name;
 - (b) address for service;
 - (c) telephone number;
 - (d) if available, email address; and
 - (e) if the person is not an individual, the name of the individual authorised to deal with the Enforcement Committee on behalf of the person filing the document.
7. **Fees.** – (1) There shall be no prescribed fee for filing an initiating document.
8. **Access to information.** – (1) Any person, aligned to the applicable provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and upon payment of the prescribed fee, may inspect or copy any Enforcement Committee record –
- (a) if it is not restricted information; or
 - (b) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by –
 - (i) this rule; or
 - (ii) an order of the Enforcement Committee.

PART 3

ENFORCEMENT COMMITTEE PROCEDURES

- 9. Initiating proceedings.** – (1) A case to the Enforcement Committee shall be made by filing a notice within 30 (thirty) days of the date upon which the respondent was notified of its non-compliance with any provision of the Act.
- (2) The Enforcement Committee may not extend the time limit provided under sub-rule 9 (1) of Schedule 1 unless it is satisfied that the circumstances are exceptional.
- (3) The notice shall state –
- (a) the name and address of the applicant;
 - (b) the name and address of the applicant's legal representative, if any;
 - (c) an address for service;
 - (d) the name and address of the respondent to the proceedings; and
 - (e) shall be signed and dated by the applicant, or on its behalf by its duly authorised officer or legal representative.
- (2) The notice shall contain –
- (a) a statement as to whether the case is in respect of the decision by the applicant relating to non-compliance with the applicable provisions of the Act;
 - (b) a concise statement of the relevant facts, identifying, where applicable, any relevant findings in the decision referred to in sub-rule 9 (2)(a);
 - (c) a summary of the non-compliance with the applicable provisions of the Act, identifying in particular –

- (i) under which statutory provisions the case is brought;
 - (ii) to what extent the applicant contends that the Respondent has been non-compliant with any provisions of the Act;
- (d) a succinct presentation of the arguments supporting each of the grounds of non-compliance;
- (e) a concise statement of any contentions of law which are relied on;
- (f) the relief sought by the applicant, including (where applicable) –
- (i) an estimate of the amount claimed, supported by an explanation of how that amount has been calculated;
 - (ii) details of any other claim for a sum of money;
 - (iii) a statement that the claimant is making a claim for an injunction;
and
 - (iv) such other matters as may be specified by practice direction;
- (g) a schedule listing all the documents annexed to the notice; and
- (h) a statement identifying the evidence (whether witness statements or other documents annexed to the notice) the substance of which, so far as the applicant is aware.
- (3) There shall be annexed to the notice –
- (a) a copy of the notice of contravention by the applicant; and

- (c) as far as practicable, a copy of every document (or part of a document) on which the applicant relies, including the written statements of all witnesses of fact and expert witnesses, if any.
- (4) Unless the Enforcement Committee otherwise directs, the signed original of the notice shall be accompanied by four copies of the notice and its annexes certified by the applicant or its legal representative as conforming to the original.
- (5) Upon receipt of a notice contemplated in sub-rule 9 (1) of schedule 1 or a complaint, the Enforcement Committee may publish a notice in a manner it deems fit requesting members of the public to make written inputs and availability in terms of rule 32 of Schedule 1.
- 10. Defective notices.** – (1) If the Enforcement Committee considers that a notice does not comply with rule 9 of Schedule 1, or is materially incomplete, or is unduly prolix or lacking in clarity, the Enforcement Committee may give such directions as may be necessary to ensure that those defects are remedied.
- (2) The Enforcement Committee may, if satisfied that the efficient conduct of the proceedings so requires, instruct the registrar to defer service of the notice on the respondent until after the directions referred to in sub-rule 10 (1) of Schedule 1 have been complied with.
- 11. Power to strike out.** – (1) The Enforcement Committee may, after giving the parties an opportunity to be heard, strike out a case in whole or in part at any stage in the proceedings if –
- (a) it considers that the Enforcement Committee has no jurisdiction to hear or determine the case;
- (i) it considers that the notice, or part of it, discloses no valid ground;
or

- (ii) the applicant fails to comply with any rule, practice direction issued under sub-rule 28 of Schedule 1, or order or direction of the Enforcement Committee.

- (2) When the Enforcement Committee strikes out a case it may make any consequential order it considers appropriate.

12. Amendments to notice. – (1) The applicant may amend the notice only with the permission of the Enforcement Committee.

- (2) Where the Enforcement Committee grants permission under sub-rule 12 (1) of Schedule 1 it may do so on such terms as it thinks fit, and may give any further or consequential directions it considers necessary.

- (3) In deciding whether to grant permission under sub-regulation 12 (1) of Schedule 1, the Enforcement Committee shall take into account all the circumstances including whether the proposed amendment –

- (a) involves a substantial change or addition to the applicant's case;
- (b) is based on matters of law or fact which have come to light since the case was made; or
- (c) for any other reason could not practicably have been included in the notice.

13. Withdrawal. – (1) The applicant may withdraw its case only with the permission of the Enforcement Committee, or if no Enforcement Committee has been constituted, the chairperson.

- (2) Where permission is granted under sub-rule 13 (1) of Schedule 1, the Enforcement Committee or the chairperson (collectively referred to as the “grantor”), as the case may be, may –
- (a) do so on such terms as the grantor thinks fit;
 - (b) instruct the registrar to publish a notice of the withdrawal on the FPB website, which shall appear on the FPB website for at least 5 (five) days, or in such other manner as the grantor may direct; and
 - (c) publish any decision which the grantor would have made had the case not been withdrawn.
- (3) Where a case is withdrawn –
- (a) any interim order of the Enforcement Committee, other than an order made in respect of costs, immediately ceases to have effect; and
 - (b) no fresh case may be brought by the applicant in relation to the decision which was the subject of the case without the permission of the Enforcement Committee.

RESPONSE TO ENFORCEMENT COMMITTEE PROCEEDINGS

14. Acknowledgment and notification. – (1) On receiving a notice the registrar shall –

- (a) send an acknowledgement of its receipt to the applicant;
- (b) subject to sub-rule 10 (2) and rule 11 of Schedule 1, send a copy of the notice to the respondent; and

- (c) Publish the details of the notice on the website of the FPB to inform members of the public of the details of the notice.

15. Answer. – (1) The respondent shall file an answer in the form required by this regulation within 21 (twenty-one) days, or such further time as the Enforcement Committee may allow, of the date on which the respondent received a copy of the notice in accordance with sub-rule 14 (1)(a) of Schedule 1.

(2) The answer shall state –

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's legal representative, if any;
- (c) an address for service and shall be signed and dated by the respondent, or on its behalf by its duly authorised officer or legal representative.

(3) The answer shall contain –

- (a) a succinct presentation of the arguments of fact and law upon which the respondent will rely;
- (b) details of any objection to the admission of evidence put forward by the applicant;
- (c) the relief sought by the respondent and any directions sought under sub-rule 28 of Schedule 1;
- (d) a schedule listing all the documents annexed to the answer; and
- (e) a statement identifying the evidence (whether witness statements or other documents annexed to the answer) the substance of which, so far

as the respondent is aware, was not referred to in the disputed decision or disclosed to the applicant before that decision was made.

- (4) The contents of the answer shall be verified by a statement of truth signed and dated by the respondent or on its behalf by its duly authorised officer or legal representative.
- (5) As far as practicable, there shall be annexed to the answer a copy of every document (or part of a document) upon which the respondent relies including the written statements of all witnesses of fact and expert witnesses, if any, but excluding any document (or part of a document) annexed to the notice.
- (6) The signed original of the answer shall be accompanied by 4 (four) copies of the answer and its annexes certified by the respondent or its duly authorised officer or legal representative as conforming to the original.
- (7) The respondent shall serve a copy of the answer and any accompanying documents on each other party at the same time as it files the answer.

16. Reply to answer. – (1) Within 15 (fifteen) days of receipt of the copy of the answer, the applicant may file a reply to the answer.

- (2) The contents of the reply shall be verified by a statement of truth signed and dated by the applicant or on its behalf by its duly authorised officer or legal representative.
- (3) If the applicant files a reply to the answer, it shall send a copy of the reply and any accompanying documents to each other party at the same time as it files the reply.

17. Further pleadings. – (1) No further pleadings may be filed without the permission of the Enforcement Committee.

ADDITIONAL PARTIES AND ADDITIONAL CASES

- 18. Additional parties.** – (1) The Enforcement Committee may grant permission to remove, add or substitute a party in the proceedings.
- (2) An application for permission under this regulation shall be served on the parties to the proceedings and may be made by –
- (a) an existing party; or
 - (b) a person who wishes to become a party.
- (3) The Enforcement Committee may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.
- (4) The Enforcement Committee may order a person to be added as a new party if –
- (a) it is desirable to add or substitute the new party so that the Enforcement Committee can resolve the matters in dispute in the proceedings; or
 - (b) there is an issue involving the new party and an existing party that is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so as to resolve that issue.
- (5) The Enforcement Committee may order a new party to be substituted for an existing one if –
- (a) the existing party's interest or liability has passed to the new party; and
 - (b) it is desirable to substitute the new party so that the Enforcement Committee can resolve the matters in dispute in the proceedings.

- (6) The Enforcement Committee may add or substitute a party only if the addition or substitution is necessary.
- (7) The addition or substitution of a new party, as the case may be, is necessary for the purpose of sub-regulation 18 (6) of Schedule 1 only if the Enforcement Committee is satisfied that –
 - (a) the new party is to be substituted for a party who was named in the notice form by mistake;
 - (b) the notice cannot properly be carried on by or against the original party unless the new party is added or substituted as applicant or respondent; or
 - (c) the original party's interest or liability has passed to the new party.

19. Additional cases. – (1) In this regulation and rule 20 an “additional case” means –

- (a) a case by a respondent against any person (whether or not already a party) for contribution or indemnity or some other remedy; or
 - (b) where an additional case has been made against a person who is not already a party, any case made by that person against any other person (whether or not already a party).
- (2) An additional case is to be treated as if it were a case for the purpose of these Rules.
- (3) A respondent may make an additional case –
- (a) without the Enforcement Committee's permission, if it files that case with its answer; or

- (b) at any other time, with the permission of the Enforcement Committee.
- (4) A respondent who has filed an acknowledgment of service or an answer, may make an additional case for a contribution or indemnity against an existing party to the proceedings:
 - (a) without the Enforcement Committee's permission, if it files that claim with its answer, or, if the additional case is a claim against a party added to the case later, within 21 (twenty-one) days after that party files its answer; or
 - (b) at any other time, with the permission of the Enforcement Committee.

20. Powers on receipt of an additional case. – (1) The Enforcement Committee may

–

- (a) permit an additional case to be made;
 - (b) dismiss an additional case; and
 - (c) require an additional case to be dealt with separately from the case by the applicant against the respondent.
- (2) The matters to which the Enforcement Committee may have regard in deciding whether to exercise any of its powers under sub-rule 20 (1) of Schedule 1 include –
- (a) the connection between the additional case and the case made by the applicant against the respondent;
 - (b) whether the additional case is seeking substantially the same remedy which some other party is claiming from it; and

- (c) whether the additional applicant wants the Enforcement Committee to decide any question connected with the subject matter of the proceedings –
 - (i) not only between existing parties but also between existing parties and a person not already a party; or
 - (ii) against an existing party not only in a capacity in which it is already a party but also in some further capacity.
- (3) Where the Enforcement Committee exercises any of its powers under sub-rule 20 (1) of Schedule 1, it may make further orders or give further directions as it thinks appropriate.

SUMMARY DISPOSAL

- 21. Default judgment.** – (1) The Enforcement Committee may, of its own initiative or on the application of a party, give default judgment without a hearing of the case where –
- (a) the respondent has not filed an acknowledgment of service; or
 - (b) the respondent has not filed a defence to the claim or any part of the claim.
- (2) A default judgment may not be given if the respondent has made an application –
- (a) disputing the Enforcement Committee's jurisdiction;
 - (b) to have the case struck out under sub-rule 11 of Schedule 1; or

- (c) for summary judgment under sub-rule 22 of Schedule 1, and that application has not been disposed of.
- (3) Where the notice has been served on the respondent in accordance with the directions of the registrar, the applicant may not obtain default judgment unless the applicant has complied with any directions concerning proof of service.
- (4) A default judgment given under this regulation shall be –
 - (a) such judgment as it appears to the Enforcement Committee that the applicant is entitled to on the notice;
 - (b) for an amount to be decided by the Enforcement Committee as to the fine, costs and interest or for such other relief to be decided by the Enforcement Committee in accordance with any directions it may give for the determination of those matters.
- (5) A default judgment may be given against one of two or more respondents and the applicant may proceed against the other respondents.
- (6) The Enforcement Committee may only give a default judgment against one of two or more respondents in accordance with sub-rule 21 (5) of Schedule 1 if it is satisfied that the case against that respondent can be dealt with separately from the case against the other respondents.
- (7) The Enforcement Committee shall set aside a default judgment if the judgment was wrongly entered because any of the conditions set out in sub-rule 21 (1) of Schedule 1 were not satisfied.
- (8) In any other case, the Enforcement Committee may set aside or vary a default judgment (and attach any conditions it may think fit) if –

- (a) the respondent has a real prospect of defending the case; or
 - (b) it appears to the Enforcement Committee that there is some other good reason why –
 - (i) the judgment should be set aside or varied; or
 - (ii) the respondent should be allowed to defend the case;
- (9) In considering whether to set aside or vary a default judgment under sub-rule 21 (8)(b) of Schedule 1, the matters to which the Enforcement Committee shall have regard include whether the person seeking to set aside the judgment made an application to do so promptly.
- (10) Where –
- (a) the applicant claimed a remedy in addition to a fine;
 - (b) the applicant has abandoned its claim for that remedy in order to apply for default judgment; and
 - (c) the default judgment is set aside;

the abandoned claim is restored when the default judgment is set aside.

22. Summary judgment. – (1) The Enforcement Committee may of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, give summary judgment against an applicant or respondent on the whole of a case or on a particular issue if –

- (a) it considers that –

- (i) the applicant has no real prospect of succeeding on the claim or issue; or
 - (ii) the respondent has no real prospect of successfully defending the case or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.
- (2) The Enforcement Committee may give any directions it considers appropriate for dealing with an application under this rule.
- (3) Upon giving summary judgment, the Enforcement Committee may make any consequential order it considers appropriate.

OFFERS TO SETTLE

23. Settlement offers. – (1) For the purposes of this rule and rules 24 and 25 of Schedule 1 –

- (a) A settlement offer means an offer to settle which is made in accordance with this rule; and
- (b) “relevant period” means –
 - (i) in the case of an offer made not less than 21 (twenty-one) days before the main substantive hearing of the claim, the period specified under sub-regulation 23 (3)(c) of Schedule 1 or such longer period as the parties agree; or
 - (ii) in any other case, the period up to the end of the main substantive hearing of the claim.

- (2) A settlement offer may be made at any time, including before the commencement of proceedings.
- (3) A settlement offer shall –
- (a) be in writing;
 - (b) state on its face that it is intended to be a settlement offer under these Rules;
 - (c) except where the settlement offer is made less than 21 (twenty-one) days before the start of the substantive hearing of the claim, specify a period of not less than 21 (twenty-one) days within which the respondent will be liable for the applicant's costs in accordance with regulation 26 of Schedule 1 if the offer is accepted;
 - (d) state whether it relates to the whole of the case, to part of it or to an issue that arises in it and, if so, to which part or issue;
 - (e) state whether it takes into account any counterclaim; and
 - (f) where it is made by some, but not all, of a number of respondents, state whether or not it is made in satisfaction of the case against all respondents.
- (4) A settlement offer which offers to pay or offers to accept a sum of money is to be treated as inclusive of all interest until –
- (a) the date on which the period specified under sub-rule 23 (3)(c) of Schedule 1 expires; or
 - (b) where sub-rule 23 (3)(c) of Schedule 1 does not apply, a date 21 (twenty-one) days after the date the settlement offer was made.

- (5) A respondent's offer that includes an offer to pay all or part of the sum at a date later than 14 (fourteen) days following the date of acceptance is not to be treated as a settlement offer unless the applicant accepts the offer.
- (6) A settlement offer is accepted by serving written notice of acceptance on the offeror.
- (7) A settlement offer may –
- (a) be accepted any time before the substantive hearing of the case, unless it has already been withdrawn;
 - (b) only be accepted after the substantive hearing of the case has started with the permission of the Enforcement Committee.
- (8) The fact that a settlement offer has been made shall not be communicated to the members of the Enforcement Committee deciding the case until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Enforcement Committee.
- (9) Sub-rule 23 (8) of Schedule 1 does not apply where –
- (a) the offeror and offeree agree in writing to that effect; or
 - (b) although the case has not been decided –
 - (i) any part of, or issue in, the case has been decided; and
 - (ii) the settlement offer relates only to parts or issues that have been decided.

- (10) In a case to which sub-rule 23 (9)(b)(i) of Schedule 1 applies, the members of the Enforcement Committee deciding the case may be told whether or not there are settlement offers other than those referred to in sub-rule 23 (9)(b) of Schedule 1, but must not be told the terms of any such other offers unless the offeror and offeree agree in writing to that effect.
- (11) Where the applicant wishes to accept a settlement offer made by one or more, but not all, of a number of respondents –
- (a) if the applicant alleges that the respondents are jointly and severally liable and the settlement offer states that it is in satisfaction of the claim against all respondents, the applicant may accept the settlement offer and the Enforcement Committee shall then direct that the case against the respondents who did not make the settlement offer be discontinued;
 - (b) if the applicant alleges that the respondents are jointly and severally liable and the settlement offer states that it is in satisfaction of the case against those respondents making it, the applicant may –
 - (i) serve notice on the respondents making the settlement offer agreeing not to continue its case against them in return for payment of the sum offered; and
 - (ii) continue with the case against the other respondents;
 - (c) if the applicant alleges that the respondents are severally but not jointly liable, the applicant may –
 - (i) accept the settlement offer; and
 - (ii) continue with its cases against the other respondents;

(d) if the respondents are sued only jointly or in the alternative, the applicant may accept the settlement offer if –

- (i) the applicant discontinues the case against those respondents who have not made the settlement offer; and
- (ii) those respondents give written consent to the acceptance of the settlement offer.

(12) Service of a notice under sub-rule 23 (11)(b)(i) of Schedule 1 is to be treated as acceptance of the settlement offer for the purposes of rule 25 to 27 of Schedule 1 and references in those rules to notice of acceptance are to be construed as including a reference to notice under sub-rule 23 (11)(b)(i).

(13) A settlement offer is to be treated as “without prejudice except as to costs”.

(14) This regulation does not preclude a party from making an offer to settle at any time or by any other means but, if not made in accordance with this rule, it shall not have the consequences specified in rule 26 and 27 of Schedule 1.

24. Clarification of a settlement offer. – (1) The offeree may, within 7 (seven) days of a settlement offer being made, request the offeror to clarify the offer.

(2) If the offeror does not give the clarification requested under sub-rule 24 (1) of Schedule 1 within 7 (seven) days of receiving the request, the offeree may, unless the substantive hearing of the claim has started, apply for an order that the offeror do so.

(3) If the Enforcement Committee makes an order under sub-regulation 24 (2) of Schedule 1, it shall specify the date when the settlement offer is to be treated as having been made.

- 25. Withdrawing or changing a settlement offer.** – (1) A settlement offer may only be withdrawn, or its terms changed, if the offeree has not previously served notice of acceptance.
- (2) The offeror withdraws the offer or changes its terms by serving written notice of the withdrawal or change of terms on the offeree.
- (3) Subject to sub-rule 25 (1) of Schedule 1, after the expiry of the relevant period –
- (a) the offeror may withdraw the settlement offer or change its terms without the permission of the Enforcement Committee; or
 - (b) the settlement offer may be automatically withdrawn in accordance with its terms.
- (4) Where the offeror changes the terms of a settlement offer to make it more advantageous to the offeree, such improved offer is to be treated, not as the withdrawal of the original settlement offer, but as the making of a new settlement offer on improved terms.
- (5) Subject to sub-rules 25 (1) and 25 (6) of Schedule 1, if the offeror serves notice, before the expiry of the relevant period, of withdrawal of the settlement offer or change of its terms to be less advantageous to the offeree, that notice has effect on the expiry of the relevant period.
- (6) If the offeree serves notice of acceptance of the original settlement offer before expiry of the relevant period but after the offeror has served a notice of withdrawal of that offer or change of its terms to be less advantageous to the offeree, that acceptance has effect unless the Enforcement Committee gives permission for the original settlement offer to be withdrawn or its terms changed.

- (7) The offeror shall apply for such permission:
- (a) within 7 (seven) days of the offeree's notice of acceptance; or
 - (b) if earlier, before the first day of the substantive hearing.
- (8) On an application under sub-rule 25 (7) of Schedule 1, the Enforcement Committee may give permission for the original settlement offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original settlement offer and that it is in the interests of justice to give permission.

26. Costs consequences of acceptance of a settlement offer. – (1) Subject to sub-rules 26 (4) and 26 (5) of Schedule 1, where a settlement offer is accepted within the relevant period, the claimant is entitled to the relevant costs of the proceedings up to the date on which notice of acceptance of the settlement offer was served on the offeror.

- (2) Subject to sub-rules 26 (4) of Schedule 1, where a settlement offer is accepted after the expiry of the relevant period, unless the parties have agreed the liability for costs or the Enforcement Committee otherwise directs –
- (a) the applicant is entitled to the relevant costs of the proceedings up to the date on which the relevant period expired; and
 - (b) the offeree is liable for the offeror's relevant costs for the period from the date of expiry of the relevant period to the date on which notice of acceptance was served on the offeror.
- (3) The relevant costs for the purposes of sub-rules 26 (1) and 26 (2) of Schedule 1 are the costs related to the proceedings against the respondents making or accepting the settlement offer, except where sub-rule 23 (11)(a) of Schedule 1 applies when they are the costs of the proceedings against all respondents.

- (4) Where –
- (a) a settlement offer made less than 21 (twenty-one) days before the start of the substantive hearing of the claim is accepted; or
 - (b) subject to sub-rule 26 (5) of Schedule 1, a settlement offer which does not relate to the whole of the claim is accepted at any time, the Enforcement Committee shall make an order as to costs unless the parties have agreed the liability for costs.

- (5) Where –
- (a) a respondent's settlement offer relates to part only of the case; and
 - (b) at the time of serving notice of acceptance within the relevant period the applicant abandons the balance of the claim, the claimant is only entitled to the costs of such part of the claim unless the Enforcement Committee otherwise directs.

27. Costs consequences following judgment. – (1) This regulation applies where a settlement offer is not accepted and upon judgment being handed down –

- (a) an applicant fails to obtain a judgment more advantageous than a respondent's settlement offer; or
 - (b) judgment against the respondent is at least as advantageous to the applicant as the proposals contained in an applicant's settlement offer.
- (2) Where sub-rule 27 (1) of Schedule 1 applies, the Enforcement Committee shall, unless it considers it unjust to do so, order that any respondent who made the settlement offer, either alone or jointly with any other respondent, is entitled to –

- (a) costs from the date on which the relevant period expired; and
 - (b) interest on those costs.
- (3) Where sub-rule 27 (1)(b) of Schedule 1 applies, the Enforcement Committee shall, unless it considers it unjust to do so, order that the applicant is entitled to –
- (a) interest on the whole or part of any sum of money (excluding interest) awarded, at a rate not exceeding 10% (ten percent) above base rate for some or all of the period starting with the date on which the relevant period expired;
 - (b) costs on the indemnity basis from the date on which the relevant period expired; and
 - (c) interest on those costs at a rate not exceeding 10% (ten percent) above base rate.
- (4) In considering whether it would be unjust to make the orders referred to in sub-rules 27 (1) and 27 (2) of Schedule 2, the Enforcement Committee shall take into account all the circumstances of the case including –
- (a) the terms of any settlement offer;
 - (b) the stage in the proceedings when any settlement offer was made, including in particular how long before the substantive hearing of the claim started the offer was made;
 - (i) the information available to the parties to the settlement offer at the time when the settlement offer was made;

- (ii) the conduct of the parties to the settlement offer with regard to the giving or refusal to give information for the purposes of enabling the settlement offer to be made or evaluated; and
 - (iii) whether the offer was a genuine attempt to settle the proceedings.
- (5) Sub-rules 27 (2) and 27 (3) of Schedule 1 do not apply to a settlement offer –
- (a) which has been withdrawn;
 - (b) which has been changed so that its terms are less advantageous to the offeree, where the offeree has beaten the less advantageous offer; or
 - (c) made less than 21 (twenty-one) days before the substantive hearing of the claim, unless the Enforcement Committee has abridged the relevant period.

CASE MANAGEMENT

28. Directions. – (1) The Enforcement Committee may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing conference or otherwise, give such directions as are provided for in sub-rule 28 (2) of Schedule 1 or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.

- (2) The Enforcement Committee may give directions –
- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
 - (b) that the parties file a reply, rejoinder or other additional pleadings or particulars;

- (c) for the preparation and exchange of skeleton arguments;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) requiring clarification of any matter in dispute or additional information in relation to any such matter;
- (f) as to the evidence which may be required or admitted in proceedings before the Enforcement Committee and the extent to which it must be oral or written;
- (g) as to the submission in advance of a hearing of any witness statements or expert reports;
- (h) as to the examination or cross-examination of witnesses;
- (i) for the filing of a list of issues;
- (j) for the production of bundles for any hearing;
- (k) for the creation of a confidentiality ring;
- (l) as to the fixing of time limits with respect to any aspect of the proceedings;
- (m) as to the abridgement or extension of any time limits, whether or not expired;
- (n) that the whole or part of any proceedings or judgment be stayed either generally or until a specified date or event;

- (o) to enable a disputed decision to be referred back in whole or in part to the person by whom it was taken;
 - (p) for the disclosure and the production by a party or third party of documents or classes of documents;
 - (q) for the appointment and instruction of experts, whether by the Enforcement Committee or by the parties and as to the manner in which expert evidence is to be given;
 - (r) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Enforcement Committee thinks fit;
 - (s) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Enforcement Committee;
 - (u) for the hearing of any issues as preliminary issues prior to the main substantive hearing; and
 - (v) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.
- (3) The Enforcement Committee may also, of its own initiative –
- (a) put questions to the parties;
 - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
 - (c) ask the parties or third parties for information or particulars;

- i. ask for documents relating to the case to be produced; and
- ii. summon the parties' representatives or the parties in person to meetings.

(4) A request by a party for directions shall –

- (a) be made in writing as soon as practicable;
- (b) be supported by reasons and indicate whether it is agreed or contested by the other parties;
- (c) be served on any other party who might be affected by such directions; and
- (d) be determined by the Enforcement Committee taking into account the observations of the parties.

29. Case management and pre-hearing conferences. – (1) Where it appears to the Enforcement Committee that any proceedings would be facilitated by holding a case management conference or pre-hearing conference the Enforcement Committee may, on the request of a party or of its own initiative, give directions for such conferences to be held.

(2) Unless the Enforcement Committee otherwise directs, a case management conference is to be held as soon as practicable after the filing of a case, whether or not the time for service of the answer has expired.

(3) The purpose of a case management conference or pre-hearing conference is –

- (a) to ensure the efficient conduct of the proceedings;

- (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
 - (c) to set a timetable up to an oral hearing in the proceedings, and, if appropriate, fix a date for that hearing;
 - (d) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
 - (e) to hear and determine any submissions in relation to the admission of evidence;
 - (f) to determine any issues relating to confidentiality;
 - (g) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded; and
 - (h) to facilitate the settlement of the proceedings.
- (4) The Enforcement Committee may authorise a member to carry out on its behalf a case management conference, pre-hearing conference or any other preparatory measure relating to the organisation or disposal of the proceedings.

30. Evidence. – (1) The Enforcement Committee may give directions as to –

- (a) the provision by the parties of statements of agreed matters;
- (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of particular evidence;
- (c) the nature of the evidence which it requires to decide those issues;

- (d) whether the parties are permitted to provide expert evidence;
 - (e) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally; and
 - (f) the way in which evidence is to be placed before the Enforcement Committee.
- (2) In deciding whether to admit or exclude evidence, the Enforcement Committee shall have regard to whether it would be just and proportionate to admit or exclude the evidence, including by reference to the following factors –
- (a) whether or not the substance of the evidence was available to the respondent before the disputed decision was taken;
 - (b) where the substance of the evidence was not available to the respondent before the disputed decision was taken, the reason why the party seeking to adduce the evidence had not made it available to the respondent at that time;
 - (c) the prejudice that may be suffered by one or more parties if the evidence is admitted or excluded; and
 - (d) whether the evidence is necessary for the Enforcement Committee to determine the case.
- (3) Unless the Enforcement Committee otherwise directs, no witness of fact or expert witness may be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Enforcement Committee.

- (4) The Enforcement Committee may require any witness to give evidence on oath or affirmation or if in writing by way of affidavit.
- (5) The Enforcement Committee may allow a witness to give evidence through a video link or by other means.
- (6) The Enforcement Committee may dispense with the need to call a witness to give oral evidence if a witness statement or expert report has been submitted in respect of that witness.
- (7) The Enforcement Committee may limit cross-examination of witnesses to any extent or in any manner it considers appropriate.

INTERIM ORDERS AND MEASURES

- 31. Power to make interim orders and to take interim measures.** – (1) The Enforcement Committee may make an order on an interim basis –
- (a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it; and
 - (b) granting any remedy which the Enforcement Committee would have the power to grant in its final decision.
- (2) Without prejudice to the generality of sub-rule 31 (1) of Schedule 1, if the Enforcement Committee considers that it is necessary as a matter of urgency for the purpose of –
- (a) preventing significant damage to a particular person or category of person; or
 - (b) protecting the public interest, the Enforcement Committee may give such directions as it considers appropriate for that purpose.

- (3) The Enforcement Committee shall exercise its power under this rule taking into account all the relevant circumstances, including –
- (a) the urgency of the matter;
 - (b) the effect on the party making the request if the relief sought is not granted;
 - (c) the effect on competition if the relief is granted; and
 - (d) the existence and adequacy of any offer of an undertaking as to damages.
- (4) Any order or direction under this regulation is subject to the Enforcement Committee's further order, direction or final decision.
- (5) A party shall apply for an order or a direction under sub-rule 31 (1) or 31 (2) of Schedule 1 by filing a request for interim relief in the form required by sub-rule 31 (6) of Schedule 1.
- (6) The request for interim relief shall state –
- (a) the subject matter of the proceedings;
 - (b) in the case of a request for a direction under sub-rule 31 (2) of Schedule 1, the circumstances giving rise to the urgency;
 - (c) the factual and legal grounds establishing a *prima facie* case for the granting of interim relief by the Enforcement Committee; and
 - (d) the relief sought.

- (7) The request for interim relief shall be verified by a statement of truth, signed and dated by the applicant or on its behalf by its duly authorised officer or legal representative.
- (8) On receiving a request for interim relief the registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Enforcement Committee.
- (9) Subject to sub-rule 31 (10) of Schedule 1, an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.
- (10) If the urgency of the case so requires, the Enforcement Committee may grant the request for interim relief before the observations of the other parties have been submitted or the person referred to in sub-regulation 31 (9) of Schedule 1 has been heard.

PART 4

THE HEARING

- 32. Hearing to be in public.** – (1) Every hearing is to be in public except that a hearing or part of a hearing may be in private if the Enforcement Committee is satisfied that it will be considering information which is, in the opinion of the Enforcement Committee, which may not be disclosed to the public.
 - (2) Where a hearing, or part of it, is to be held in private, the Enforcement Committee may determine who is entitled to attend the hearing or part of it.
- 33. Quorum.** – (1) A quorum for proceedings of the Enforcement Committee shall be the Chairperson plus 2 (two) members.

- (2) If, after the commencement of proceedings, any member is unable to continue, the Chairperson may appoint either of the remaining 2 (two) members for the rest of the proceedings.
- (3) Where at proceedings of the Enforcement Committee votes are equal, the Chairperson shall have a deciding vote.

CONFIDENTIALITY

34. Requests for confidential treatment. – (1) A request for the confidential treatment of any document or part of a document provided in the course of proceedings before the Enforcement Committee shall –

- (a) be made in writing indicating the relevant words, figures or passages for which confidentiality is claimed; and
 - (b) be supported in each case by specific reasons, and, if so directed by the registrar, the person making the request shall supply a non-confidential version of the relevant document.
- (2) In the event of a dispute as to whether confidential treatment should be accorded, the Enforcement Committee shall decide the matter after hearing the parties.
- (3) The Enforcement Committee may direct that documents, or parts of a document, containing confidential information are disclosed within a confidentiality ring.

35. Subsequent use of documents provided in proceedings. – (1) Subject to sub-rules 35 (2) to 35 (4) of Schedule 1, a party to whom a document has been provided in the course of proceedings –

- (a) by the Enforcement Committee; or

- (b) by another party;

shall be restricted from further use of that document or disclosing the information contained in the document or part of a document

- (2) Except where a document or a part of a document has been provided within a confidentiality ring, the restriction in sub-rule 35 (1) of Schedule 1 does not apply to a document if –
 - (a) subject to sub-regulation 35 (5) of Schedule 1, the document has been read to or by the Enforcement Committee, or referred to, at a hearing which has been held in public;
 - (b) the Enforcement Committee gives permission; or
 - (c) the party who produced or disclosed the document and the person to whom the document belongs agree.
- (3) Where a document or part of a document has been provided within a confidentiality ring, the restriction in sub-rule 35 (1) of Schedule 1 applies unless the Enforcement Committee gives permission for further use of that document or the information contained in the document or part of a document.
- (4) The restriction in sub-rule 35 (1) of Schedule 1 does not prevent the applicant, which is the maker of a disputed decision that is remitted to it by the Enforcement Committee, from using such documents for the purposes of determining the remitted issue.
- (5) The Enforcement Committee may, either of its own initiative or on the application of a party under sub-rule 35 (6) of Schedule 1, make an order restricting or prohibiting the use of any document provided in the course of proceedings, even where the document has been read to or by the

Enforcement Committee, or referred to, at a hearing which has been held in public.

- (6) An application for such an order may be made –
- (a) by a party;
 - (b) by any person to whom the document belongs; or
 - (c) by any person who claims that the document contains confidential information relating to them.

DECISION OF THE ENFORCEMENT COMMITTEE

36. Delivery of the decision. – (1) The decision of the Enforcement Committee shall be delivered –

- (a) by handing down the decision in public on a date fixed for that purpose;
 - (b) by publishing the decision on the FPB's website; or
 - (c) in such other manner as may be specified by practice direction.
- (2) The registrar shall send a copy of the document recording the decision to each party and shall enter it on the register.
- (3) The decision of the Enforcement Committee is to be treated as having been notified on the date on which a copy of the document recording it is sent to the parties under sub-rule 36 (2) of Schedule 1.
- (4) The decision of the Enforcement Committee be published in such manner as the chairperson considers appropriate.

- 37. Costs.** – (1) For the purposes of these Rules “costs” means costs and expenses recoverable, as appropriate, and include payments in respect of the representation of a party to proceedings, where the representation by a legal representative was provided free of charge.
- (2) The Enforcement Committee may at its discretion, subject to rules 26 and 27 of Schedule 1, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
- (3) In making an order under sub-rule 37 (2) of Schedule 1 and determining the amount of costs, the Enforcement Committee may take account of –
- (a) the conduct of all parties in relation to the proceedings;
 - (b) any schedule of incurred or estimated costs filed by the parties;
 - (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
 - (d) any admissible offer to settle made by a party which is drawn to the Enforcement Committee’s attention, and which is not a settlement offer to which costs consequences under sub-rule 26 and 27 of Schedule 1 apply;
 - (e) whether costs were proportionately and reasonably incurred; and
 - (f) whether costs are proportionate and reasonable in amount.
- (4) The Enforcement Committee may assess the sum to be paid under any order under sub-rule 37 (2) of Schedule 1 or may direct that it be assessed by the chairperson or the registrar.

(5) The power to award costs under sub-rules 37 (1) to 37 (4) of Schedule 1 includes the power to direct any party to pay to the Enforcement Committee such sum as may be appropriate in reimbursement of any costs incurred by the Enforcement Committee in connection with the instruction of experts on the Enforcement Committee's behalf; and any sum due as a result of such a direction may be recovered by the Enforcement Committee as a civil debt due to the Enforcement Committee.

38. Interest. – (1) If it imposes, confirms or varies any fine, the Enforcement Committee may, in addition, order that interest is to be payable on the amount of any such fine from such date, not being a date earlier than the date of the notice of appeal to the Appeal Tribunal, and at such rate, as the Enforcement Committee considers appropriate.

(2) Interest ordered to be paid under sub-regulation 38.1 of Schedule 1 is to form part of the fine and be recoverable as a civil debt in addition to the amount recoverable.

39. Consent orders. – (1) If all the parties agree the terms of an order, the Enforcement Committee may, if it thinks fit, make the order, in which case it shall be identified as having been made by consent.

40. Quarterly report by the Enforcement Committee. – (1) Within 30 (thirty) days after the end of each quarterly period of each financial period, the Enforcement Committee shall prepare and submit or cause to be prepared and submitted to the Council of the FPB a report on the matters presented before it for the applicable preceding quarter and the status of same.

PART 5

SHORT TITLE AND COMMENCEMENT

41. Short title. – (1) These Rules are called the Enforcement Committee Rules, 2022.

- 42. Commencement.** – (1) These Rules shall take effect within 30 (thirty) days of publication in the Government Gazette.

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