

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

**ENFORCEMENT COMMITTEE RULES, 2023**

**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 rule 15 of Schedule 1 and filed by a respondent;

“**Appeal Tribunal**” means the Appeal Tribunal established by section 3 of the Act;

“**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 calendar day excluding Saturdays, Sundays and public holidays;

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

**“Enforcement Committee”** means the body established by section 3 of the Act;

**“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 Enforcement 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 by the Council of the FPB to the Enforcement Committee in terms of section 4A (1)(h) of the Act;

**“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 Enforcement 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**

- (a) Addressed by post to –

**The Film and Publication Board  
Private Bag X31  
Highveld Park  
0169**
- (c) Communicated by telephone on **+27 012 003 1400**; 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 of the Enforcement Committee may condone late performance of an act in respect of these Rules and prescribe a time limit, other than a time limit that is binding on the Enforcement Committee itself.
- (2) The chairperson of the Enforcement Committee 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;
  - (d) Whether it would be in the public interest that the appeal be allowed;  
and
  - (e) Any other element which the Enforcement Committee may deem relevant.
- 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 Enforcement Registrar, with the authority to carry out the functions of that office in terms of these Rules.
- (2) The Enforcement 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 findings 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 referred to in this rule may be delivered in any manner set out herein in the table below.

<b>Method of Delivery</b>	<b>Date and Time of Deemed delivery</b>
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 <sup>th</sup> 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,	On the date and at the time recorded on a receipt for the delivery.

or handing a copy of the document to that representative; or	
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 notice or 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 notice or 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 notice or document will be deemed to have been delivered on the next day.
- (5) A notice or 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; and
  - (c) The total number of pages sent, including the cover page.

- 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, 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) The FPB shall refer all cases of non-compliance contemplated in terms of section 6B (1) of the Act to the Enforcement Committee by filing a notice within 60 (sixty) days after the date upon which the respondent was notified of its non-compliance with any provision of the Act and afforded a period of at least 30 (days) to rectify such non-compliance.
- (2) The notice shall state –
- (a) the name and address of the FPB;
  - (b) the name and address of the FPB'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 FPB, or on its behalf by its duly authorised officer or legal representative.
- (3) The notice shall contain –
- (a) a statement that the case is in respect of a decision made by the FPB relating to non-compliance with the Act;

- (b) a concise statement of the relevant facts;
  - (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 FPB contends that the respondent has been non-compliant with any provisions of the Act;
  - (d) a detailed statement of the relevant facts, identifying, where applicable, any relevant findings made by the FPB in making the decision to refer the case to the Enforcement Committee;
  - (e) a succinct presentation of the arguments supporting each of the grounds of non-compliance;
  - (f) a concise statement of any contentions of law which are relied on;
  - (g) the relief sought by the FPB, including (where applicable) –
    - (i) a statement that the FPB is making a claim for an interdict; and
    - (ii) such other matters as may be specified by practice direction;
  - (h) a schedule listing all the documents annexed to the notice; and
  - (i) a statement identifying the evidence (whether witness statements or other documents annexed to the notice) the substance of which, so far as the FPB is aware.
- (4) There shall be annexed to the notice –

- (a) a copy of the notice of contravention by the FPB; and
  - (b) as far as practicable, a copy of every document (or part of a document) on which the FPB relies, including the written statements of all witnesses of fact and expert witnesses, if any.
- (5) Unless the Enforcement Committee otherwise directs, the signed original of the notice shall be accompanied by four copies of the notice and its annexures signed by the FPB or its legal representative as conforming to the original.
- 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 Enforcement 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 dismiss.** – (1) The Enforcement Committee may, after giving the parties an opportunity to be heard, dismiss the case in whole or in part 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 FPB fails to comply with any rule, practice direction issued under sub-rule 22 of Schedule 1, or order or direction of the Enforcement Committee.

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

**12. Amendments to notice.** – (1) The FPB 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-rule 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 FPB'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 FPB may withdraw its case only with the permission of the Enforcement Committee, or if no Enforcement Committee has been constituted, the chairperson, which permission shall not be unreasonably withheld.

- (2) Where permission is granted under sub-rule 13 (1) of Schedule 1, the Enforcement Committee, as the case may be, may –

- (a) do so on such terms as the Enforcement Committee thinks fit; and
- (b) instruct the Enforcement 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 Enforcement Committee may direct;  
and

- (3) Where a case is withdrawn no fresh case may be brought by the FPB 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 Enforcement Registrar shall –

- (a) send an acknowledgement of its receipt to the FPB within 2 (two) days of receipt of the notification;
- (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 rule within 30 (thirty) 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 FPB;
  - (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 FPB before that decision was made.
- (4) The contents of the answer shall be verified by evidence under oath or affirmation or evidence by affidavit by the respondent.
- (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 FPB may file a reply to the answer.

(2) The contents of the reply shall be verified by evidence under oath or affirmation or evidence by affidavit by the FPB.

(3) If the FPB files a reply to the answer, it shall send a copy of the reply and any accompanying documents to each 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 rule 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 a legitimate basis has been established for that person not to be a party to the proceedings.

- (4) The Enforcement Committee may order a person to be added as a new party if –
- (a) a legitimate basis has been established for that new party to be added or substituted 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 a legitimate basis has been established 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) a legitimate basis has been established 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-rule 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 FPB or respondent; or
- (c) the original party's interest or liability has passed to the new party.

**19. Additional cases.** – (1) In this rule 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 FPB 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 FPB 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 findings or give further directions as it thinks appropriate.

## **SUMMARY DISPOSAL**

**21. Default finding.** – (1) The Enforcement Committee may, of its own initiative or on the application of the FPB, give default finding 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 finding may not be given if the respondent has made an application –
- (a) disputing the Enforcement Committee's jurisdiction; or
  - (b) to have the case struck out under sub-rule 11 of Schedule 1.
- (3) Where the notice has been served on the respondent in accordance with the directions of the Enforcement Registrar, the FPB may not obtain default finding unless the FPB has complied with any directions concerning proof of service.
- (4) A default finding given under this rule shall be –
- (a) such finding as it appears to the Enforcement Committee that the FPB is entitled to on the notice; and

- (b) for an amount to be decided by the Enforcement Committee as to the fine to be decided by the Enforcement Committee in accordance with the Act.
- (5) A default finding may be given against one of two or more respondents and the FPB may proceed against the other respondents.
- (6) The Enforcement Committee may only give a default finding 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 finding if the finding 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 finding (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 finding 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 finding 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 finding made an application to do so promptly.
- (10) Where –

- (a) the FPB claimed a remedy in addition to a fine;
- (b) the FPB has abandoned its claim for that remedy in order to apply for default finding; and
- (c) the default finding is set aside;

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

## CASE MANAGEMENT

**22. 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 22 (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 findings 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 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;

- (q) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Enforcement Committee thinks fit;
  - (r) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Enforcement Committee;
  - (s) for the hearing of any issues as preliminary issues prior to the main substantive hearing; and
  - (t) 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.

**23. 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.
- (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.

**24. 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.

## PART 4

### THE HEARING

- 25. 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, 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.
- 26. 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

- 27. 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.

#### **DECISION OF THE ENFORCEMENT COMMITTEE**

**28. Delivery of the decision.** – (1) The decision and reasons for the decision of the Enforcement Committee shall be delivered –

- (a) by handing down the decision and reasons for the decision in public on a date fixed for that purpose;
  - (b) by publishing the decision and reasons for the decision on the FPB's website; or
  - (c) in such other manner as may be specified by practice direction.
- (2) The Enforcement Registrar shall send a copy of the document recording the decision and reasons for the decision to each party and shall enter it on the register.
  - (3) The decision and reasons for 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 28 (2) of Schedule 1.

- (4) The decision and reasons for the decision of the Enforcement Committee be published in such manner as the chairperson considers appropriate.
- (5) The parties to proceedings have the right to request reasons for the decision should the decision of the Enforcement Committee not provide any in compliance with section 3 (2)(b)(v) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

**29. 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 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 29 (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) whether costs were proportionately and reasonably incurred; and
  - (e) 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 29 (2) of Schedule 1 or may direct that it be assessed by the chairperson or the Enforcement Registrar.

- (5) The power to award costs under sub-rules 29 (1) to 29 (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.
- 30. 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 at such rate as the Enforcement Committee considers appropriate.
- (2) Interest ordered to be paid under sub-rule 30 (1) of Schedule 1 is to form part of the fine and be recoverable as a civil debt in addition to the amount recoverable.
- 31. 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

- 32. Short title.** – (1) These Rules are called the Enforcement Committee Rules, 2023.
- 33. Commencement.** – (1) These Rules shall take effect on the date of publication in the Government Gazette.