

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 4109

24 November 2023

NATIONAL PROSECUTING AUTHORITY ACT, 1998 (ACT NO. 32 OF 1998)**REGULATIONS ON ESTABLISHMENT OF OFFICE FOR ETHICS AND
ACCOUNTABILITY**

The Minister of Justice and Correctional Services has, in terms of section 40, read with section 22(5), of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), and in consultation with the Minister of Finance, made the Regulations set out in the Schedule.

SCHEDULE**INDEX****CHAPTER 1****Definitions**

1. Definitions

CHAPTER 2***Part I*****Office for Ethics and Accountability**

2. Establishment of Office for Ethics and Accountability
3. Mandate of Office
4. Structure of Office
5. Composition of Office
6. Determination of organisational structures and posts of Office and Divisions
7. Security vetting and lifestyle audits

Part II**Ethics Management and Advocacy Division**

8. Objects of Ethics Management and Advocacy Division
9. Powers, duties and functions of Ethics Management and Advocacy Division

Part III**Complaints Management and Investigation Division**

10. Objects of Complaints Management and Investigation Division

11. Powers, duties and functions of Complaints Management and Investigation Division
12. Persons who may lodge complaint
13. Complaints and conduct that may be reported
14. Methods to lodge complaint
15. Complaints procedure
16. Handling of complaints
17. Complaints against National Director, Deputy National Director or Director
18. Information required regarding complaint

CHAPTER 3

General provisions

19. Reporting responsibilities
20. Offences and penalties
21. Short title

CHAPTER 1

Definitions

Definitions

1. In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning, and—

"complainant" means any person who has lodged a complaint in terms of these regulations;

"complaint" means any alleged action or omission, improper conduct or any other conduct contemplated in regulation 13 on the part of a member of the prosecuting authority which has resulted in any impropriety or prejudice;

"Complaints Registrar" means the person appointed in the Office under regulation 5(1)(d) and who is responsible for the receipt and registration of every complaint and keeping record regarding the progress of every complaint;

"days" refers to working days;

"employee" means a person who is appointed at or assigned to the Office;

"head of the Office" means a Special Director appointed by the President in terms of section 13(1)(c) of the Act to this position;

"lifestyle audit" means the study of a person's living standards, assets and expenditure to ascertain if it is consistent with his or her reported income, in accordance with legislation governing the public service and its associated guidelines;

"member of the prosecuting authority" includes—

- (a) a member referred to section 4 of the Act;
- (b) a member of the prosecuting authority appointed at or assigned to the Office of the National Director as contemplated in section 5(2)(d) of the Act;
- (c) a member of the administrative staff referred to in section 37 of the Act;
- (d) a person engaged to perform services contemplated in section 38(1) of the Act; and
- (e) a person performing services for the prosecuting authority in terms of a secondment or consultancy agreement;

"Office" means the Office for Ethics and Accountability;

"public service" means the public service contemplated in section 8 of the Public Service Act;

"Public Service Regulations" means the Public Service Regulations, 2016; and

"the Act" means the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

CHAPTER 2

Part I

Office for Ethics and Accountability

Establishment of Office for Ethics and Accountability

2. There is hereby established an office, to be known as the Office for Ethics and Accountability.

Mandate of Office

3. (1) The mandate of the Office is to—
- (a) develop, promote and maintain an inherent culture of ethics, integrity, accountability, compliance and good governance in the prosecuting authority;
 - (b) promote and maintain a high standard of professional ethics in the prosecuting authority;
 - (c) develop, implement and manage a complaints procedure in the prosecuting authority enabling any person to report any complaint;
 - (d) maintain a complaints procedure based on and intended to be guided by the principles of promptness, fairness, consistency and uniformity; and
 - (e) promote efficient service delivery in the prosecuting authority.

(2) The Office does not have the mandate to deal with—

- (a) a complaint of alleged improper conduct or any other conduct where the National Director—
 - (i) intervenes in the prosecution process when policy directives are not complied with; or
 - (ii) reviews a decision to prosecute or not to prosecute an accused person;
- (b) grievances of members of the prosecuting authority that fall within the ambit of the formal grievance procedures in the public service;
- (c) misconduct appeals of a member of the prosecuting authority that fall within the ambit of the disciplinary code and procedures of the public service; or
- (d) a person appointed and employed in or seconded or assigned to an Investigating Directorate in terms of section 7(4) of the Act.

Structure of Office

4. The Office consists of—

- (a) an Ethics Management and Advocacy Division;
- (b) a Complaints Management and Investigation Division; and
- (c) any other structure that may be established in terms of these regulations.

Composition of Office

5. (1) The Office comprises—

- (a) a Special Director, who is the head of the Office;
- (b) a person appointed as the head of the Ethics Management and Advocacy Division;
- (c) a Deputy Director appointed as the head of the Complaints Management and Investigation Division;
- (d) a Complaints Registrar;
- (e) other members of the prosecuting authority appointed in or assigned to the Office; and
- (f) members of the administrative staff of the Office.

(2) The members of the Office referred to in paragraphs (b), (d), (e) and (f) must be appointed on the recommendation of the National Director, or a member of the prosecuting authority designated for that purpose by the National Director, after consultation with the head of the Office.

Determination of organisational structures and posts of Office and Divisions

6. (1) The National Director and the head of the Office must, in consultation with the Director-General: Justice and Constitutional Development—

- (a) determine the organisational structure of the Office; and
- (b) define the posts necessary to perform the relevant functions, which will constitute the approved establishment of the Office.

(2) The organisational structure referred to in subregulation (1) may include—

- (a) members of the—
 - (i) prosecuting authority in the Office,
 - (ii) Ethics Management and Advocacy Division; and
 - (iii) Complaints Management and Investigation Division;
- (b) members of the—
 - (i) Office; and
 - (ii) any of the Divisions, in provincial and regional branches; and
- (c) administrative structures which are linked to the Office.

(3) The head of the Office may, in consultation with the National Director and the Director-General: Justice and Constitutional Development—

- (a) establish an advisory committee to advise him or her on the structuring or restructuring of the Office;
- (b) establish or designate existing administrative structures within the prosecuting authority to assist the Office in the exercise of its duties; or
- (c) establish operational or project teams.

Security vetting and lifestyle audits

7. (1) No person may be appointed in, or assigned to the Office unless—

- (a) the person has been issued with a security clearance following a vetting investigation conducted in terms of section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994); and
- (b) a lifestyle audit has been conducted,

and the head of the Office, after evaluating the gathered information and lifestyle audit, is satisfied that such person may be appointed in or assigned to the Office without the possibility

that such person might be a security risk or that they might act in any way prejudicial to the objectives of the Office.

(2) Lifestyle audits of employees of the Office must be performed in accordance with the Guide to Conduct Lifestyle Audits in the Public Service.

(3) A comparative search may be made into any official database in the South African Police Service in respect of the person whose security vetting or lifestyle audit is being performed.

(3) No person may disclose any information which he or she obtained in the application of the measures for security vetting and lifestyle audits as set out in this regulation, except—

- (a) if such information is disclosed to any other person who of necessity requires it for the performance of his or her functions in terms of these regulations;
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of these regulations;
- (c) if the information is required in terms of any law or as evidence in any court of law or a formal disciplinary process; or
- (d) if the disclosure of the information is authorised by a court of law.

Part II

Ethics Management and Advocacy Division

Objects of Ethics Management and Advocacy Division

8. The objects of the Ethics Management and Advocacy Division are to—

- (a) develop and implement an ethics management strategy that prevents and deters unethical conduct and acts of corruption in the prosecuting authority;
- (b) provide proactive ethics management so as to ensure congruence between the creation of an overall ethical culture and the establishment of a whistle-blowing culture within the prosecuting authority;
- (c) create a strong ethical organisational culture in the prosecuting authority that creates an environment conducive to the disclosure of improper conduct and impropriety;
- (d) manage ethical norms and standards and codes of conduct in the prosecuting authority;
- (e) promote an independent and impartial prosecuting authority; and
- (f) facilitate the eradication and prevention of unethical conduct in the prosecuting authority.

Powers, duties and functions of Ethics Management and Advocacy Division

9. (1) The powers, duties and functions of the Ethics Management and Advocacy Division are to—
- (a) provide advice in respect of integrity and ethics to members of the prosecuting authority;
 - (b) ensure that all relevant institutional policies, policy directives, codes of conduct, circulars and rules and procedures, promote integrity, ethical conduct, and compliance with the relevant laws and prescripts in the prosecuting authority;
 - (c) assist members of the prosecuting authority in dealing with professional ethical challenges and issues that may emerge in the performance of their duties;
 - (d) engage in proactive communications activities with members of the prosecuting authority to ensure that ethics and integrity remain at the centre of all activities of the prosecuting authority;
 - (e) liaise with government institutions to collectively promote a culture of integrity;
 - (f) develop—
 - (i) a code of ethics;
 - (ii) an ethics management plan;
 - (iii) ethics risk assessments; and
 - (iv) an integrity scorecard,for the prosecuting authority;
 - (g) periodically review ethics management tools to ensure they encourage best practices, and address emerging trends in unethical conduct;
 - (h) develop and implement an ethics awareness programme within the prosecuting authority;
 - (i) use appropriate communication platforms to disseminate the ethics management tools widely to ensure that they are accessible to, and understood by, all members of the prosecuting authority;
 - (j) review and update on a regular basis the information and communication platforms to ensure that they are responsive to the emerging ethics developments and trends;
 - (k) develop ethics training manuals that are appropriate for members of the prosecuting authority, which may include specific modules aimed at different staff categories;
 - (l) incorporate ethics into induction programmes and existing training programmes, including the Aspirant Prosecutors Programme;
 - (m) conduct mandatory and regular ethics training to enhance members of the prosecuting authority's ethical understanding and ethics intelligence;
 - (n) keep abreast of ethics developments;
 - (o) conduct an annual assessment of the performance of the prosecuting authority against the integrity scorecard;

- (p) conduct regular ethics surveys among members of the prosecuting authority to monitor the uptake of ethics, the efficacy of the ethics management tools, and the perception and efficacy of ethics management in general;
- (q) conduct regular, localised risk assessments of the offices, business units and processes in the prosecuting authority with a view to identifying integrity vulnerabilities and gaps, and to assist managers of the prosecuting authority to address such vulnerabilities;
- (r) advise the management of the prosecuting authority on the adoption and implementation of systems, processes and mechanisms to detect conflicts of interests;
- (s) receive declarations from members of the prosecuting authority in relation to, among others, donations and conflicts of interest;
- (t) undertake activities to proactively ensure that members of the prosecuting authority understand the links between their behaviour and institutional integrity, including what is required to meet the minimum compliance requirements and to hold themselves to the highest standards of integrity;
- (u) support senior managers in the prosecuting authority to promote a model of integrity;
- (v) ensure that all members of the prosecuting authority are informed of their disclosure and reporting obligations; and
- (w) refer possible cases of non-compliance with disclosure and reporting obligations, as well as any ethical failures, to the Complaints Management and Investigation Division.

(2) Any advice requested, the identity of the person requesting advice and the advice given, as contemplated in subregulation (1)(a), shall not be disclosed unless the person requesting the advice consents to its disclosure.

(3) Any advice requested and given, as contemplated in subregulation (1)(a) shall not be used in any proceedings against the person seeking and receiving the advice.

Part III

Complaints Management and Investigation Division

Objects of Complaints Management and Investigation Division

10. (1) The objects of the Complaints Management and Investigation Division are to—

- (a) develop a formal written procedure for dealing with complaints;
- (b) ensure that the complaints procedure is accessible to all members of the prosecuting authority and the general public;

- (c) enable members of the prosecuting authority to lodge complaints regarding ethics and integrity violations, failures and risks within the prosecuting authority, as well as improper conduct or impropriety by staff or management;
- (d) receive and manage internal and public complaints;
- (e) investigate complaints;
- (f) determine whether complaints fall within the mandate of the Office;
- (g) refer complaints to the relevant and appropriate business unit or authority dealing with such complaints, including complaints regarding—
 - (i) a matter where the National Director may intervene in the prosecution process or review a decision to prosecute or not to prosecute;
 - (ii) a grievance, improper conduct or any act of impropriety on the part of a member of the prosecuting authority to the component responsible for human resources or labour relations;
 - (iii) a misconduct appeal of a member of the prosecuting authority that falls within the ambit of the disciplinary code and procedures of the public service to the component responsible for labour relations; and
 - (iv) an alleged criminal offence, to the South African Police Service or the Directorate for Priority Crime Investigation or the Investigating Directorate established in terms of section 7 of the Act;
- (h) resolve complaints;
- (i) report on the resolution or referral of complaints;
- (j) deal with complaints on a confidential and protected basis;
- (k) increase effective accountability;
- (l) reduce and address improper and abusive behaviour within the prosecuting authority;
- (m) promote or contribute to the protection of victims' rights; and
- (n) improve service delivery by the prosecuting authority.

(2) The identity of a person lodging a complaint must be protected and not disclosed unless the person consents to its disclosure or the disclosure of the identity of the person is necessary for the investigation and resolution of the complaint.

(3) No employer, employers' organisation, or person acting on behalf of an employer or employers' organisation, may refuse to employ or continue to employ a person, threaten dismissal, or otherwise threaten a person, discriminate against a person in regard to employment, or a term or condition of employment or intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that the person may provide information, a document or thing when dealing with a complaint lodged or because the person has made or is about to make a disclosure that may be required in dealing with a complaint

lodged or has participated in or is about to participate in a procedure dealing with a complaint lodged.

Powers, duties and functions of Complaints Management and Investigation Division

11. The powers, duties and functions of the Complaints Management and Investigation Division are to—

- (a) develop a complaints procedure and complaints policy to guide the processing of complaints and determine the different roles to be played in relation to complaints;
- (b) develop and maintain a complaints mechanism that enables complaints to be lodged on a confidential and protected basis;
- (c) develop, implement and maintain an integrated, customised, digital complaints management system that can receive, record and track complaints submitted through multiple reporting channels;
- (d) develop and implement a complaints mechanism awareness programme, targeting both the general public and members of the prosecuting authority;
- (e) utilise appropriate communication platforms to disseminate information regarding complaints procedures and complaints mechanisms to members of the prosecuting authority as well as to the general public;
- (f) develop guidelines and standards for processing and responding to complaints, including for replies to ordinary, early resolution complaints;
- (g) register all complaints received at any office of the prosecuting authority and monitor progress with regard to the investigation and resolution of all such complaints;
- (h) refer complaints to the relevant and appropriate business unit or authority;
- (i) determine the processes to be followed in the investigation of complaints;
- (j) investigate complaints;
- (k) resolve complaints;
- (l) create a feedback mechanism to report progress and the outcome of complaints to complainants;
- (m) develop guidelines for collecting data on complaints, provide institutional feedback and offer policy proposals to the National Director;
- (n) monitor service delivery and perform regular inspection of how services are delivered at offices and service points of the prosecuting authority, and report to the National Director on such service delivery inspections; and
- (o) liaise with other public complaints structures in order to ensure that complaints relating to the prosecuting authority are directed to the Office.

Persons who may lodge complaint

12. A person who may lodge a complaint in accordance with these regulations, includes—

- (a) any person directly affected by any alleged improper conduct or any conduct on the part of a member of the prosecuting authority which has resulted in any impropriety or prejudice;
- (b) any person as defined in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), who proves some substantial and peculiar interest in the matter;
- (c) any person or institution who has a reporting duty in terms of specific legislation;
- (d) an investigating officer of a case or another member of the South African Police Service who serves in a managing capacity in respect of that matter;
- (e) an accused person or a family member of that accused person;
- (f) a legal representative or his or her association or firm;
- (g) any witness in a case or any person having an interest in that case;
- (h) a victim of crime, who is not necessarily a witness, or a family member of the victim;
- (i) a whistle-blower, who is not necessarily a witness;
- (j) a presiding officer of any court referred to in section 166 of the Constitution or the Judicial Service Commission or the Magistrates' Commission;
- (k) any member of the prosecuting authority;
- (l) any institution established in terms of the Constitution; or
- (m) a member of Parliament.

Complaints and conduct that may be reported

13. A complainant may report any complaint, including—

- (a) any dissatisfaction regarding an act or omission within the prosecuting authority which adversely affects, or may adversely affect, that complainant, or may be detrimental to the prosecuting authority;
- (b) dissatisfaction with the service, treatment or information received from a member of the prosecuting authority;
- (c) that his or her rights were not or are not being observed by the prosecuting authority;
- (d) improper conduct or any act of impropriety or unethical conduct on the part of a member of the prosecuting authority;
- (e) actions of maladministration or the commission of an offence by a member of the prosecuting authority;

- (f) dishonesty or improper dealings with regard to public money by a member of the prosecuting authority;
- (g) the behaviour or diligence of members of the prosecuting authority;
- (h) actions of any form of discrimination by a member of the prosecuting authority;
- (i) incidents of unprofessional conduct by a member of the prosecuting authority;
- (j) conduct which is inconsistent with the letter and spirit of the Code of Ethics of the prosecuting authority or the Code of Conduct for members of the prosecuting authority;
- (k) adverse findings or comments made by a presiding officer about the prosecuting authority or a member thereof;
- (l) breaching by a member of the prosecuting authority of a victim's right to be free from intimidation, harassment, fear, tampering, bribery, corruption or abuse;
- (m) engaging in any transaction or action that is in conflict with or infringes on the execution of the member of the prosecuting authority's official duties;
- (n) a member of the prosecuting authority conducting business with any organ of state;
- (o) a member of the prosecuting authority engaging in any official action or decision-making process which may result in improper personal gain;
- (p) a member of the prosecuting authority favouring relatives and friends in work-related activities;
- (q) a member of the prosecuting authority abusing his or her authority or influencing another member of the prosecuting authority, or being influenced to abuse his or her authority;
- (r) using or disclosing by a member of the prosecuting authority of any official information for personal gain or the gain of others;
- (s) a member of the prosecuting authority receiving or accepting any gift from any person in the course and scope of his or her employment, contrary to or not in accordance with the Gifts Policy for the prosecuting authority;
- (t) a member of the prosecuting authority performing outside remunerative work without permission, or performing such work during official work hours, or using official equipment or state resources for such work;
- (u) a member of the prosecuting authority performing party political activities in the workplace;
- (v) non-compliance by a member of the prosecuting authority with a provision of the Public Service Act, the Public Service Regulations, the Code of Conduct for members of the prosecuting authority, the Prosecution Policy of the prosecuting authority, the Code of Conduct for Public Servants or a directive issued by the Minister of Public Service and Administration;
- (w) actions of misconduct by a member of the prosecuting authority emanating from criminal investigations; and

- (x) non-compliance by a member of the prosecuting authority with the information security standards referred to in regulation 94(1) of the Public Service Regulations.

Methods to lodge complaint

14. (1) A complainant may lodge a complaint with the prosecuting authority by—

- (a) completion of a form, as determined by the head of the Office, which form is available—
- (i) online on the website of the prosecuting authority; or
 - (ii) at any office of the prosecuting authority;
- (b) submission of a letter or statement addressed to the head of the Office, which may be posted to the postal, or e-mailed to the e-mail, address provided for such purposes on the website of the national prosecuting authority;
- (c) contacting any office of the prosecuting authority telephonically, in which case the form referred to in paragraph (a) must be completed by the relevant office of the prosecuting authority on behalf of the complainant and the relevant office must immediately submit the complaint to the Complaints Registrar; or
- (d) lodging a complaint verbally in person at any office of the prosecuting authority, in which case the form referred to in paragraph (a) must be completed and signed by the complainant and the relevant office must immediately submit the complaint to the Complaints Registrar.

(2) (a) The Office is obliged to investigate all complaints or where necessary refer the complaint as contemplated in regulation 10(1)(g);

(b) an anonymous complaint must be investigated if such complaint is supported by evidence or corroborating documentation and the identity of the complainant is not material to conducting an investigation.

Complaints procedure

15. (1) A complainant must lodge his or her complaint as provided for in regulation 17(1) within 90 days from the date on which he or she became aware of the issue giving rise to the complaint: Provided that a complaint may be received and dealt with after the specified time on good cause shown why the complaint was lodged late.

(2) A complaint received at any office of the prosecuting authority must be registered and managed by the Complaints Registrar of the Office.

(3) Upon receipt of a complaint, the Complaints Registrar must within three days of receiving the complaint, acknowledge receipt of the complaint.

Handling of complaints

16. (1) The prosecuting authority must deal with complaints sensitively, fairly and confidentially and must inform the complainant of the outcome of the complaint.

(2) If the complaint is upheld, the prosecuting authority must—

- (a) apologise to the complainant or the person who was prejudiced by the issues giving rise to the complaint;
- (b) endeavour, wherever possible, to adequately address the complaint; and
- (c) take steps to ensure that the issues do not occur again.

(3) A member of the Complaints Management and Investigation Division assigned to an investigation by the head of the Division may request and obtain any report, document, information and any evidential material from any member of the prosecuting authority for use in a specific investigation.

(4) Members of the prosecuting authority, including members who are under investigation, must give their full cooperation in the investigation process.

Complaints against National Director, Deputy National Director or Director

17. (1) Any complaint lodged with the Office against a National Director or Deputy National Director or Director must be reported to the Minister for referral to the President.

(2) The President may deal with the matter in accordance with section 12(6) of the Act.

Information required regarding complaint

18. Subject to the provisions of regulation 17(2), in lodging a complaint, the complainant must—

- (a) indicate whether the complaint is lodged personally or on behalf of another person, group or class of persons, association, organisation or organ of state and, if so, provide the following particulars:
 - (i) the particulars set out in paragraph (a) of the person lodging a complaint on behalf of the other person, group or class of persons, association, organisation or organ of state;
 - (ii) name of other person, group or class of persons, association, organisation or organ of state as contemplated in paragraph (b)(i);

- (iii) reason why the complaint is lodged on behalf of another person, group or class of persons, association, organisation or organ of state;
- (iv) information of the other person, group or class of persons, association, organisation or organ of state, on whose behalf the complaint is lodged, as contemplated in paragraph (b)(ii) to (v);
- (b) provide his or her available personal information, including—
 - (i) full names;
 - (ii) physical and postal address;
 - (iii) telephone number, cellular telephone number and facsimile numbers;
 - (iv) e-mail address; and
 - (v) preferred method of communication;
- (c) provide full details of the alleged offending act, omission, or conduct, including, but not limited to—
 - (i) the date and place of occurrence of the alleged offending act, omission or conduct;
 - (ii) the nature of the alleged offending act, omission, or conduct;
 - (iii) if known, the particulars of any member of the prosecuting authority who allegedly committed the offending act, omission or conduct;
 - (iv) the names and contact details of any person who may provide information relevant to the complaint;
 - (v) information regarding other complaint mechanisms which the complainant has employed in an attempt to resolve the complaint, if any;
 - (vi) the particulars of any person who has been involved in an attempt to resolve the complaint, if any;
 - (vii) whether the complaint requires urgent attention and the reasons for the urgency, including the harm, actual or potential, if the complaint is dealt with by the prosecuting authority in the ordinary course of business; and
 - (viii) any other relevant information or supporting documents relevant to the investigation.

CHAPTER 5

General provisions

Reporting responsibilities

19. (1) The head of the Office must submit a monthly report to the National Director on the activities of the Office.

(2) The National Director must include in the annual report to Parliament in terms of section 35(2)(a) of the Act, a report on the activities of the Office, including the managing, investigation and outcome of any complaint contemplated in regulation 17.

Offences and penalties

20. (1) No person shall improperly interfere with, hinder or obstruct the Office or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.

(2) Any contravention of subregulation (1) is an offence and a person is, upon conviction, subject to any sanction that may be imposed in terms of section 41(1) of the Act.

(3) Any false information provided in relation to the security vetting or lifestyle audit, contemplated in regulation 7 is an offence and a person is, upon conviction, subject to any sanction that may be imposed in terms of section 41(3) of the Act.

Short title

21. These regulations are called the Regulations on Establishment of Office for Ethics and Accountability, 2023.

SOUTH AFRICAN REVENUE SERVICE

NO. R. 4110

24 November 2023

GENERAL EXPLANATORY NOTE:

[] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules

_____ Words that are underlined with a solid line, indicate insertions in the existing rules

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES

Under sections 77H and 120 of the Customs and Excise Act, 1964 (Act 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995, are herewith amended to the extent set out in the Schedule hereto.



EDWARD CHRISTIAN KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Amendment of rule 77H.01

1. Rule 77H.01 is hereby amended –
 - (a) by the substitution for the definition of “Customs and Excise Branch Office Appeal Committee” of the following definition:

“**Customs and Excise Branch Office Appeal Committee**” means an appeal committee established in terms of rule 77H.11(1)(a) for a Branch Office or for a number of Offices, irrespective of whether –

- (a) both customs and excise functions are performed by that Branch Office or those Offices;
- (b) only customs functions are performed by that Branch Office or those Offices; or
- (c) only excise functions are performed by that Branch Office or those Offices.”;
- (b) by the insertion after the definition of “eFiling” of the following definition:
“**person responsible for managing internal appeals at Head Office**” means an official at Head Office to whom the management of internal appeals is assigned by the person entrusted with overall responsibility for Customs and Excise appeals.”
- (c) by the insertion after the definition of “person in charge” of the following definitions:
“**person entrusted with overall responsibility for Customs and Excise appeals**” means the SARS official to whom the Commissioner has entrusted such responsibility by specific written authority;
“**Rules for Electronic Communication**” means the rules published in terms of section 255 of the Tax Administration Act, 2011 (Act No. 28 of 2011) by Government Notice No. 644 dated 25 August 2014.”;
- (d) by the insertion of the expression “; and” after the definition of “Tariff, Valuation and Origin Appeal Committee”; and
- (e) by the addition after the definition of “Tariff, Valuation and Origin Appeal Committee” of the following definition:
“**these rules**” means the rules under section 77H.”.

Insertion of rule 77H.01A

2. The following rule is hereby inserted after rule 77H.01:

“**Delivery and receipt of documents or communications** (section 77H)

77H.01A (1) When for purposes of these rules a document or communication, including a decision as contemplated in section 77A, is sent by SARS to a person to whom it is addressed by way of –

- (a) e-mail, rule 3(2)(a) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule;
- (b) eFiling, rule 3(2)(b)(ii) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule; or
- (c) post, to that person's last known postal address, delivery of the document or communication is regarded to occur at the time when it would, in the ordinary course of post, have arrived at that address.

(2) When in terms of these rules a person required or permitted to submit a document to SARS in a prescribed manner, submits the document or communication –

- (a) by way of e-mail, rule 3(2)(a) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule;
- (b) by way of eFiling, rule 3(2)(b)(i) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule; or
- (c) by hand, delivery of the document is regarded to occur when the document is date stamped and signed at the Office indicated in the relevant rule.

(3) A document or communication delivered as contemplated in this rule is for purposes of these rules regarded as having been received by the person to whom it is addressed, unless –

- (a) in the case of a delivery referred to in subrule (1), the Commissioner is satisfied that the document or communication was not received, or was received at another time; or
- (b) a court decides that the document or communication was not received or was received at another time.”.

Amendment of rule 77H.02

3. Rule 77H.02 is hereby amended –
- (a) by the substitution for subrule (4) of the following subrule:
- “(4) A person that requested reasons must **[be notified of such reasons in writing]** within 45 days from the date of acknowledgement of receipt referred to in subrule (3)(a) be notified in writing –
- (a) of such reasons; or
- (b) that any written reasons already provided, are confirmed.”; and
- (b) by the substitution for subrule (5) of the following subrule:
- “(5) If an aggrieved person intends to submit an appeal against a decision in terms of rule 77H.04 and wishes to request reasons for such decision, a request referred to in subrule (1) must be submitted within 30 days from the date **[the aggrieved person became aware of the decision]**the decision was received in terms of rule 77H.01A(3).”.

Amendment of rule 77H.03

4. Rule 77H.03 is hereby amended by the substitution for the heading of the following heading:
- “Application [for Commissioner] to direct suspension of amounts payable to Commissioner (section 77G read with 77H)”.**

Amendment of rule 77H.04

5. Rule 77H.04 is hereby amended by the substitution in subrule (2) for paragraph (a) of the following paragraph:
- “(a) **[The timeframe within which]** An appeal referred to in subrule (1) must be submitted [is–
- (i)]**within 30 days from the date when the appellant **[became aware of] received, [the decision,] as contemplated in rule 77H.01A(3) –**
- (i) the decision; or
- (ii) the reasons for the decision, if reasons were requested for the decision in terms of rule 77H.02], **within 30 days from the date of receipt of the reasons; or**

- (ii) **if the date on which the appellant became aware of the decision is in dispute, within 30 days from the date on which the applicant is reasonably expected to have become aware of that decision].”**

Amendment of rule 77H.05

6. Rule 77H.05 is hereby amended by the substitution for subrule (3) of the following subrule:

- “(3) An application in terms of subrule (2)(a)(ii) and (b) must **[be submitted by making use of the details specified in rule 77H.04(4)(a) or (b)]** –
- (a) if sent through e-mail, be directed to the e-mail address indicated on the SARS website for the Office–
- (i) that communicated the decision to the appellant; or
- (ii) indicated on form SAD 500 as the “office of destination or departure”, in the case of an appeal relating to the declaration process; or
- (b) if delivered by hand, be submitted to the Office referred to in paragraph (a)(i) or (ii), depending on the circumstances.”

Amendment of rule 77H.06

7. Rule 77H.06 is hereby amended by the substitution for subrule (1) of the following subrule:

- “(1) If an appeal submitted in terms of rule 77H.04 does not comply with all the requirements for a complete appeal set out in that rule, the appellant is entitled to be notified in writing of the outstanding requirements within **[20] 30** days after acknowledgement of receipt referred to in rule 77H.04(7) had been conveyed to the appellant.”

Amendment of rule 77H.08

8. Rule 77H.08 is hereby amended by the substitution for subrule (2) of the following subrule:

- “(2) **[(a) The Commissioner may by notice to the appellant extend the period referred to in subrule (1) in circumstances and for a period as contemplated in paragraph (b).]**

[(b)] If the Commissioner is of the opinion that more time is required to decide the appeal due to [–

- (i)] the complexity of the matter, the principle or amount involved, or due to [other] exceptional circumstances [deemed reasonable by the Commissioner], the period referred to in subrule (1) may by notice to the appellant be extended by no more than **[30] 45** days, unless a longer period is agreed upon by the parties]; or
- (ii) **exceptional circumstances, including circumstances where a formal interpretation by the World Customs Organisation or expert opinion was requested, the period referred to in subrule (1) may be extended by more than 30 days, as may be reasonable in such circumstances].**”.

Amendment of rule 77H.10

9. The following rule is hereby substituted for rule 77H.10:

“Decisions to be dealt with by appeal committees (section 77H)

77H.10 An appeal against a decision of an officer or a SARS official or a number of officers or SARS officials acting jointly, must be dealt with by the appropriate appeal committee as set out in rule 77H.11.”.

Amendment of rule 77H.11

10. Rule 77H.11 is hereby amended –

(a) by the substitution in subrule (1) for paragraph (a) of the following paragraph:

“(a) A Customs and Excise Branch Office Appeal Committee –

- (i) **[at] for** any Branch Office as may be approved by the person entrusted with overall responsibility for Customs and Excise appeals [SARS official responsible for managing internal appeals at Head Office]; or
- (ii) for a number of Branch Offices as may be approved by the person entrusted with overall responsibility for Customs and Excise appeals [SARS official responsible for managing internal appeals at Head Office].”;

- (b) by the substitution in subrule (2) for paragraph (a) of the following paragraph:
- “(a) A Customs and Excise Branch Office Appeal Committee must, subject to paragraph (b), consider and decide appeals in respect of any decision taken by an officer or SARS official, other than the person in charge of the Branch, stationed—
- (i)]at the Branch Office or Offices for which that appeal committee was established[; or
- (ii) **in the case of an appeal committee referred to in subrule (1)(a)(ii), at any of the Branch Offices for which that Branch Office Appeal Committee was established].”;**
- (c) by the substitution in subrule (2) for paragraph (b) of the following paragraph:
- “(b) A Customs and Excise Branch Office Appeal Committee may not — consider and decide an appeal—
- (i) if, in the case of an appeal in respect of which it is possible to quantify an amount to which the appeal relates, such amount exceeds **[R10 000 000]** R30 000 000; or
- (ii) in relation to **[any]** a decision involving a determination of the tariff, value or origin of goods:
- Provided that such committee may consider an appeal in relation to a determination referred to in section 47(9)(a)(i)(bb) made after 1 September 2019 at Branch Office level concerning goods **[contemplated in item 670.04 of Schedule No. 6]** in respect of which the amount to which the appeal relates does not exceed **[R20 000 000]** R30 000 000[.],
and provided further that such committee may consider an appeal only involving the quantum of a penalty or interest which does not exceed R30 000 000, levied in relation to a determination of the tariff, valuation or origin of goods made at branch office or head office level, unless the Commissioner directs otherwise.”;
- (d) by the substitution for subrule (3) of the following subrule:
- “(3) The Tariff, Valuation and Origin Appeal Committee must, subject to the proviso in subrule (2)(b), consider and decide appeals in relation to **[all]** decisions involving a determination of the tariff, as contemplated in section 47(9)(a)(i)(aa), valuation or origin of goods,

taken at Branch Office level irrespective of the amount to which the appeal relates.”;

- (e) by the substitution in subrule (4) for paragraph (c) of the following paragraph:
 “(c) a decision taken at Branch Office level–
 (i) by a person in charge of a Branch Office; or
 (ii) in respect of which the amount to which the appeal relates is more than **[R10 000 000]** R30 000 000, in the case of an appeal in respect of which it is possible to quantify an amount; and
 (iii) pursuant to an application referred to in rule 77H.03; and”; and
 (f) by the insertion of the following subrules after subrule (4):

(5) An appeal committee must, when considering an appeal in terms of this rule, also consider a decision incidental to the decision appealed against and consequentially impacted by that decision.

(6) An appeal committee referred to in –

- (a) subrule (1)(a) may, when considering and deciding an appeal relating to a determination referred to in section 47(9)(a)(i)(bb), confirm or amend such determination, or withdraw such determination and make a new determination; and
(b) subrule (1)(b) or (c) may, when considering and deciding an appeal relating to a determination of the tariff, valuation or origin of goods, confirm or amend such determination, or withdraw such determination and make a new determination.”.

Substitution of rule 77H.12

11. Rule 77H.12 is hereby amended –
 (a) by the substitution in subrule (1) for subparagraph (iii) of paragraph (a) of the following subparagraph:
 (iii) the person responsible for managing Tariff, Valuation and Origin at Head Office **[officer or SARS official responsible for managing internal appeals at Head Office]**, in the case of[–
 (aa)] the Tariff, Valuation and Origin Appeal Committee referred to in rule 77H.11(1)(b); and

[(bb) the Customs and Excise National Appeal Committee referred to in rule 77H.11(1)(c); and]”;

- (b) by the insertion in subrule (1) after subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iv) the person responsible for managing internal appeals at Head Office in the case of the Customs and Excise National Appeal Committee referred to in rule 77H.11(1)(c); and”;

and

- (c) by the substitution in subrule (1) for paragraph (b) of the following paragraph:

“(b) at least four additional committee members with the necessary knowledge and skills to consider and deal with an appeal brought before the relevant appeal committee appointed, subject to subrule (2), in accordance with terms of reference referred to in rule 77H.14 approved by the [Chairperson -] person entrusted with overall responsibility for Customs and Excise Appeals.

[(i) from officers or SARS officials—

- (aa) under his or her control, in the case of an appeal committee referred to in paragraph (a)(i); or**
(bb) representing each of the Branch Offices for which the appeal committee is constituted, in the case of an appeal committee referred to in paragraph (a)(ii):

Provided that in the case of an appeal involving an excise matter, members may include officers or SARS officials with the relevant specialised knowledge of excise who do not fall within the categories referred to in item (aa) and (bb); or

- (ii) in the case of an appeal committee referred to in rule 77H.11(1)(b) and (c), from officers or SARS officials, irrespective of whether such officers or officials are under the control of the Chairperson or from other divisions or regions of SARS.]”.**

Amendment of rule 77H.13

- 12.** Rule 77H.13 is hereby amended –

- (a) by numbering the current provision as subrule (1); and
- (b) by the addition of the following subrule after re-numbered subrule (1):
- “(2) Terms of reference referred to in rule 77H.14 may set out powers or duties in addition to those referred to in subrule (1) in relation to the operation of an appeal committee.”.

Substitution of rule 77H.14

13. The following rule is hereby substituted for rule 77H.14

“Procedural matters relating to the operation of appeal committees
(section 77H)

77H.14 The composition and convening of, and procedures at, meetings and administration of an appeal committee established in terms of rule 77H.11 including quorum requirements, as well as any other matter necessary for the proper functioning of the appeal committee, must be in accordance with any applicable terms of reference approved by the person entrusted with the overall responsibility for Customs and Excise appeals, regulating the procedural matters and operational requirements of the relevant appeal committee, issued by SARS and published on the SARS website.”.

Insertion of rule

14. The following rule is herewith inserted after rule 77H.14:

“Decisions of Appeal Committees *(section 77F read with 77H)*

77H.15 The Commissioner’s authority contemplated in section 77F is delegated to the person entrusted with overall responsibility for Customs and Excise appeals.”.

Transitional arrangement

15. (1) For purposes of this item –

“**effective date**” in relation to the amendments set out in this Schedule means the date on which such amendments come into effect; and

“**amended rules**” means the rules under section 77H of the Customs and Excise Act, 1964, in relation to internal appeals, as amended by this Notice.

(2) An appeal submitted in terms of the rules under section 77H of the Customs and Excise Act, 1964, before the effective date must –

- (a) in the case where consideration has not commenced yet, be dealt with in accordance with the amended rules; and
- (b) in the case where consideration has already commenced on the effective date, be completed in accordance with the rules as they existed immediately before the effective date.