

REPUBLIC OF SOUTH AFRICA

JUSTICE ADMINISTERED FUND BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 39289 of 14 October 2015)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 26—2015]

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BILL

To provide for the establishment of a Justice Administered Fund; to provide for the management, control, investment and utilisation of money in the Fund; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa, enacts as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**accounting officer**” means the person accountable for the Fund as contemplated in section 4; 5
 - “**Department**” means the Department of Justice and Constitutional Development;
 - “**Director-General**” means the Director-General of the Department;
 - “**financial year**” means a year starting on 1 April and ending on 31 March, of each year; 10
 - “**Fund**” means the Justice Administered Fund established by section 2;
 - “**Minister**” means the cabinet member responsible for the administration of justice;
 - “**National Revenue Fund**” means the National Revenue Fund mentioned in section 213 of the Constitution; 15
 - “**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act;
 - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “**reserve account**” means the reserve account established by section 5; and 20
 - “**this Act**” includes the regulations.

Establishment of Justice Administered Fund

2. There is hereby established a Fund to be known as the Justice Administered Fund.

Finances of Fund

3. The following monies on behalf of third parties must be administered through the Fund: 25
 - (a) Money received in terms of maintenance orders made in terms of the Maintenance Act, 1998 (Act No. 99 of 1998);
 - (b) money received as bail, payable in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other Act of Parliament; 30
 - (c) money paid to court in terms of any Rule of Court or any other law, of which the intended beneficiary is a third party;
 - (d) money received which cannot immediately be allocated into any of the categories listed in paragraphs (a) to (c); and
 - (e) interest earned, or bank charges raised on money paid into or retained by the Fund. 35

Management, control and administration of Fund

4. For the purposes of the Public Finance Management Act, the Director-General is accountable for the Fund.

Bank accounts and reserve account

5. (1) The accounting officer must, within the Fund, open and maintain bank accounts as he or she deems fit and assign to each such bank account a name that clearly identifies the account, one of which must be a separate account to be known as the reserve account. 5

(2) Section 7 of the Public Finance Management Act applies with the necessary changes to the accounts contemplated in subsection (1).

(3) The Minister, in consultation with the Minister of Finance, may, by notice in the *Gazette*, determine a limit on the maximum credit balance permitted in the reserve account. 10

(4) (a) Any—

(i) unclaimed money; and

(ii) money which cannot immediately be allocated into any of the categories listed in section 3(a) to (c), 15

due to beneficiaries, must within 30 days, after receipt thereof, be paid into the reserve account.

(b) If—

(i) a beneficiary claims an amount of money that has been paid into the reserve account in terms of paragraph (a)(i); or 20

(ii) the allocation of money that has been paid into the reserve account in terms of paragraph (a)(ii) becomes known,

within 10 years after it has been paid into the reserve account, the reserve account will be debited and the money will be paid to the beneficiary or be allocated correctly. 25

(5) The funding for any deficit not covered by the reserve account is to be negotiated with the National Treasury within the budgetary framework prescribed by the National Treasury, subject to an appropriation by Parliament. 25

Utilisation of money in Fund

6. (1) The money in the Fund referred to in section 3(a) to (d)— 30

(a) may only be used for the purposes for which it has been paid into the Fund; and

(b) must be paid directly from the Fund to the party entitled to the payment in question.

(2) (a) The bank costs relating to bank accounts opened and maintained in respect of the Fund must be defrayed against the interest earned in respect of those accounts, and any net balance of interest earned on those accounts must be paid into the reserve account. 35

(b) If the bank costs referred to in paragraph (a) exceed the amount of interest earned, the net balance of the bank costs must be defrayed from the reserve account. 40

(3) The money in the reserve account may only be used—

(a) for the purposes referred to in subsection (2)(b); and

(b) to cover any deficit in the Fund.

(4) The accounting officer must ensure that any amount in excess of the amount in the reserve account contemplated in section 5(3) is paid over to the National Revenue Fund. 45

Investment of money not immediately required

7. (1) Any money in the Fund which is not required for immediate use, may be invested with a financial institution approved by the Minister of Finance, and may be withdrawn when required.

(2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit of the Fund to the next succeeding financial year. 50

(3) Any interest which may accrue to money invested as contemplated in subsection (1) must, on a monthly basis, be paid into the reserve account.

Regulations

- 8.** (1) The Minister may make regulations, in consultation with the Minister of Finance, regarding—
- (a) the manner in which money—
 - (i) is received by the Department and paid into the Fund; 5
 - (ii) in the Fund is accounted for;
 - (iii) in the Fund is paid to parties entitled to that payment; and
 - (iv) in the Fund is to be paid to the National Treasury;
 - (b) the writing-off of losses against the reserve account; and
 - (c) generally, all matters which are reasonably necessary or expedient to be 10 prescribed in order to achieve the objects of this Act.
- (2) A regulation made under this section may provide that any person who contravenes, or fails to comply with, a provision thereof is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months.

Financial instructions 15

- 9.** The accounting officer may, in consultation with National Treasury, issue financial instructions which are not in conflict with this Act, the Public Finance Management Act or regulations made, or instructions issued, in terms of section 76 of the Public Finance Management Act, prescribing further procedures to be followed in respect of the management, control and administration of the Fund. 20

Short title and commencement

- 10.** This Act is called the Justice Administered Fund Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE JUSTICE ADMINISTERED FUND BILL, 2015

1. PURPOSE OF BILL

The primary aim of the Justice Administered Fund Bill, 2015 (the Bill) is to provide for the establishment of a Justice Administered Fund (the Fund), to provide for the management, control, investment and utilisation of money in the Fund; and to provide for matters connected therewith.

2. OBJECTS OF BILL

2.1 The provisions of the Bill can be summarised as follows:

2.1.1 **Ad clause 1:**

Clause 1 defines various expressions that are necessary to be defined for the purposes of the Bill.

2.1.2 **Ad clause 2:**

Clause 2 provides for the establishment of the Fund within the Department.

2.1.3 **Ad clause 3:**

Clause 3 deals with the finances of the Fund. Provision is made that the Fund will administer the following monies on behalf of third parties:

- (a) Money received in terms of maintenance orders made in terms of the Maintenance Act, 1998 (Act No. 99 of 1998);
- (b) money received as bail payable in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other Act of Parliament;
- (c) money paid to court in terms of any Rule of Court or any other law, of which the intended beneficiary is a third party;
- (d) money received which cannot immediately be allocated into any of the categories listed in paragraphs (a) to (c); and
- (e) interest earned, or bank charges raised on money paid into or retained by the Fund.

2.1.4 **Ad clause 4:**

Clause 4 deals with the management, control and administration of the Fund. Provision is made that for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA), the Director-General of Justice and Constitutional Development is accountable for the Fund.

2.1.5 **Ad clause 5:**

Clause 5 deals with the bank accounts within the Fund including a separate reserve account. Provision is made that—

- (a) the accounting officer must, within the Fund, open and maintain bank accounts as he or she deems fit and assign to each such bank account a name that clearly identifies the account, one of which must be a separate account to be known as the reserve account (subclause (1));
- (b) the provisions of section 7 of the PMFA, apply with the necessary changes to the said bank accounts (subclause (2));
- (c) the Minister (meaning the cabinet member responsible for the administration of justice), in consultation with the Minister of Finance, may, by notice in the *Gazette*, determine a limit on the maximum credit balance permitted in the reserve account (subclause (3));
- (d) any unclaimed money and money which cannot immediately be allocated into any of the categories listed in clause 3(a) to (c), due to beneficiaries, must within 30 days, after receipt thereof, be paid into the reserve account. If a beneficiary claims an amount of

money that has been paid into the reserve account, or the allocation of money that has been paid into the reserve account becomes known, within 10 years after it has been paid into the reserve account, the reserve account will be debited and the money will be paid to the beneficiary or be allocated correctly (subclause (4)); and

- (e) the funding for any deficit, not covered by the reserve account, is to be negotiated with the National Treasury within the budgetary framework prescribed by the National Treasury, subject to an appropriation by Parliament (subclause (5)).

2.1.6 **Ad clause 6:**

Clause 6 deals with the utilisation of money in the Fund. Provision is made that—

- (a) the money in the Fund referred to in clause 3(a) to (d) may only be used for the purposes for which it has been paid into the Fund, and must be paid directly from the Fund to the party who or that is entitled to the payment in question (subclause (1));
- (b) the bank costs relating to bank accounts, opened and maintained in respect of the Fund, must be defrayed against the interest earned in respect of those accounts and any net balance of interest earned on those accounts must be paid into the reserve account. If the said bank costs exceed the amount of interest earned, the net balance of the bank costs must be defrayed from the reserve account (subclause (2));
- (c) the money in the reserve account may only be used for the purposes referred to in subclause (2)(b) and to cover any deficit in the Fund (subclause (3)); and
- (d) the accounting officer must ensure that any amount in excess of the amount in the reserve account contemplated in clause 5(3), is paid over to the National Revenue Fund (subclause (4)).

2.1.7 **Ad clause 7:**

Clause 7 deals with the investment of money in the Fund that is not immediately required. Provision is made that—

- (a) any money in the Fund which is not required for immediate use, may be invested with a financial institution approved by the Minister of Finance and may be withdrawn when required (subclause (1));
- (b) any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit of the Fund to the next succeeding financial year (subclause (2)); and
- (c) any interest which may accrue to money invested must on a monthly basis be paid into the reserve account (subclause (3)).

2.1.8 **Ad clause 8:**

Clause 8 deals with the making of regulations. Provision is made that—

- (a) the Minister, in consultation with the Minister of Finance, may make regulations, regarding the manner in which money—
 - (i) is received by the Department and paid into the Fund;
 - (ii) in the Fund is accounted for;
 - (iii) in the Fund is paid to parties entitled to that payment; and
 - (iv) in the Fund is to be paid to the National Treasury.
 Regulations may also be made regarding the writing-off of losses against the reserve account and generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of the Bill (subclause (1)); and
- (b) a regulation made under this clause may provide that any person who contravenes, or fails to comply with, a provision thereof, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months (subclause (2)).

2.1.9 Ad clause 9:

Clause 9 deals with financial instructions. Provision is made that the accounting officer may, in consultation with National Treasury, issue financial instructions, which are not in conflict with this Bill, the PFMA or regulations made, or instructions issued, in terms of section 76 of the Public Finance Management Act, prescribing further procedures to be followed in respect of the management, control and administration of the Fund.

2.1.10 Ad clause 10:

Clause 10 contains the short title and date of commencement of the Bill.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was prepared in close conjunction with the National Treasury, being the main role-player.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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