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GENERAL NOTICES • ALGEMENE KENNISGEWINGS**GENERAL NOTICE 637 OF 2022****MEC FOR PUBLIC TRANSPORT AND ROAD INFRASTRUCTURE****DEPARTMENT OF ROADS AND TRANSPORT****NATIONAL LAND TRANSPORT ACT, 2009
(ACT NO. 5 OF 2009)****AMENDMENTS TO GAUTENG PUBLIC TRANSPORT REGULATORY ENTITY
REGULATIONS, 2011**

The Member of the Executive Council responsible for public transport and road infrastructure in the Gauteng Province has, in terms of section 10(1) read with section 25(2) of the National Land Transport Act, 2009 (Act No. 5 of 2009), made the regulations in the Schedule.

SCHEDULE**Amendment of regulation 1 of Regulations, 2011**

1. Regulation 1 of the Gauteng Public Transport Regulatory Entity Regulations, 2011 (hereinafter referred to as “the Regulations”), is hereby amended by the insertion of the following definition after the definition of the word “Department”:

““dispute”, includes an alleged dispute in—

- (a) relation to a public transport service operated on a specified route or routes, or where applicable, within a particular area; or
- (b) regard to governance of the affairs of the association of members who are licenced operators of a public transport service, irrespective of whether their operating licences are valid or not.”.

Insertion of heading into Regulations, 2011

2. The following heading is hereby inserted into the Regulations, after regulation 1:

“PART I**GAUTENG PUBLIC TRANSPORT REGULATORY ENTITY”.****Insertion of Part II, III and IV into Regulations, 2011**

3. Part II, III and IV are hereby inserted into the Regulations, after regulation 10, respectively:

“PART II**PURPOSE OF PART III AND IV**

Purpose of Part III and IV

11. The purpose Part III and IV is to—

- (a) introduce alternative dispute resolution mechanism within the public transport service industry in the Province;
- (b) empower any arbitrator engaged in the alternative dispute resolution mechanism to determine the necessary rules specific to it in accordance with the Act, the Arbitration Act and the Rules of Court; and
- (c) mandate the Department to pay for the costs of alternative dispute resolution mechanism, excluding the costs of legal or other representation of the parties to a dispute.

PART III**GUIDING PRINCIPLES AND VALUES****Guiding principles and values**

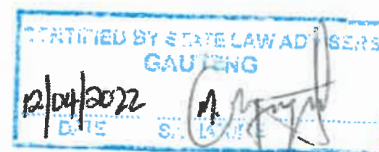
12. (1) Public transport service operators are responsible and accountable for all acts or omissions of their officials, directors, shareholders, employees, drivers, member association or associations, and any person directly or indirectly associated with them and must ensure that all notices addressed to the operators are forthwith and immediately drawn to the attention of the official, director, shareholder, employee, member association or person concerned.

(2) In particular, public transport service operators must—

- (a) conduct themselves and their business affairs with professionalism and with integrity;
- (b) behave with utmost good faith, honesty and respect at all times;
- (c) ensure that their officials, directors, shareholders, employees, member association or associations and any person directly or indirectly associated with them—
 - (i) are fully aware of and comply the applicable rules of law or conditions of their operating licences or permits;
 - (ii) conduct themselves with professionalism and with integrity; and
 - (iii) behave with utmost good faith, honesty respect at all times;
- (d) monitor and enforce compliance with and respect for the rule of law and any condition of their operating licences or permits;
- (e) adopt disciplinary measures for any breach or violation of the rule of law or any condition of their operating licences or permits; and
- (f) resolve differences or disputes between and among one another within the confines of these Regulations.

PART IV**DISPUTE RESOLUTION****Lodging a dispute**

13. (1) Any aggrieved person may refer a dispute in writing to the MEC who must, in consultation with the parties to the dispute and relevant representative body



or bodies, if any, determine an appropriate alternative dispute resolution mechanism to refer the dispute.

(2) The MEC must, within a reasonable time, refer the dispute to the alternative dispute resolution mechanism agreed to by the parties or body or bodies referred to in subsection (1).

Jurisdiction

14. (1) Any alternative dispute resolution mechanism (hereinafter conveniently referred to as an "arbitrator") agreed to by the parties has jurisdiction in respect of disputes that arise between and among the parties.

(2) The arbitrator is an independent arbitration tribunal vested with the authority to adjudicate disputes other than those of a disciplinary nature or which are of contractual nature arising from employment or otherwise.

(3) In the exercise of its jurisdiction, the arbitrator must—

- (a) apply the Act, Arbitration Act and any other relevant law or rules applicable to the referral and resolution of disputes by way of alternation dispute resolution process; and
- (b) take into consideration all developing jurisprudence in respect of alternation forms of dispute resolution in the country as well as in foreign jurisdictions.

Qualifications

15. Any person appointed as an arbitrator must—

- (a) have bachelor's degree in the field of law; and
- (b) have been admitted to practice and have experience for at least 10 years of expertise in an area of alternative forms of dispute resolution.

Independence

16. (1) The arbitrator must—

- (a) act independently and impartiality;
- (b) perform the responsibilities of the arbitrator ethically and in good faith;
- (c) maintain confidentiality and not disclose or discuss any aspect of the dispute with anyone.

(2) The arbitrator must not—

- (a) have any direct or indirect interest to a dispute; or
- (b) perform any other function in respect of the dispute that the arbitrator is engaged in; or
- (c) influence, or seek to influence, any witness or other person involved in the dispute.

(3) In principle, arbitration inquiries or hearings must take place at the seat of, or for practical purposes, venue procured by, the Department for the specific dispute.

(4) The arbitrator must ensure that parties fundamental procedural rights are guaranteed, including but not limited to—

- (a) the right to be heard;
- (b) the right to equal treatment;
- (c) the right to examine the arbitrator's file;
- (d) the right to adduce evidence; and
- (e) the right to a reasoned decision.



Powers**17. An arbitrator—**

- (a) has the power to make any appropriate award including but not limited to—
 - (i) ordering any party to act or refrain from acting, in a specified way;
 - (ii) ordering specific performance;
 - (iii) ordering any party to pay damages or compensation;
 - (iv) issuing declaratory relief; and
 - (v) an award for costs in respect of disbursements incurred by any party or witness: Provided that such disbursements are supported by original vouchers.
- (b) may appoint any person as an assessor to assist the arbitrator in relation to findings of fact or where expert testimony is given save that such an assessor will have no right to deliberate on or decide the outcome.

Procedures

18. (1) A party referring a dispute must serve the written referral document together with the annexures on the other party to the dispute and file the original, including proof of service, on the MEC. The date of referral is the date on which the referral together with the proof of service is served on the MEC.

(2) The referral must contain and include the following information and documentation:

- (a) the name, address and contact details of the referring party;
 - (b) the name, address and contact details of the other party;
 - (c) a sufficient detailed summary of the relevant factual, legal and regulatory considerations;
 - (d) full particulars of the relief sought;
 - (e) any document on which the claim is based or which is relevant to the dispute; and
 - (f) if a party is represented, proof that a representative has authority to conduct the proceedings on behalf of the referring party.
- (3)** Upon referral, the arbitrator—
- (a) (i) must use his or her best endeavours at all times to ensure that proceedings are conducted as expeditiously as possible and in a cost-effective manner; and
 - (ii) may permit hearings to be conducted using, or including the use of, electronic media such as video- or audio-conferencing facilities where these are readily available and convenient.
 - (b) must fix the date for the inquiry or a hearing as well as time periods that are reasonable in the circumstances for the exchange of affidavits, information and documentation. As a general rule, the time limits set by the arbitrator may not be shorter than 10 days. In emergency cases, these time limits may be reduced to 72 hours.

(4) Parties must thereupon serve each other at the addresses set out in their referral or opposing statements and service may be effected by hand, telefax or electronic email.

(5) The arbitrator may require—

- (a) further information or documentation; or



(b) for information or documentation to be verified.

(6) Proceedings must be conducted in the English language save if a party elect to testify in another official language that party—

(a) may do so with the assistance of a sworn translator; and

(b) is responsible for ensuring the availability of that translator at the hearing at his or her own costs.

(7) Proceedings must be private and not open to the public except with the permission of the arbitrator.

(8) In the event that the referring party elected that the dispute be adjudicated—

(a) on papers, all parties must be obliged to make their submissions in the form of a sworn affidavit which is duly commissioned before a commissioner of oaths; or

(b) by oral evidence, the arbitrator must notify all parties to the dispute by hand, telefax or electronic email of the date, time and venue of the inquiry or hearing: Provided that the arbitrator affords parties at least fourteen days before the inquiry or hearing.

Legal representation

19. A party to a dispute is entitled to legal or other representation of their choice at their own costs.

Hearings by application

20. In the event of a dispute to be adjudicated on papers, the arbitrator must—

(a) assess the evidence as the arbitrator sees fit; and

(b) reach a decision the arbitrator deems necessary.

Oral hearings

21. (1) The parties to a dispute set down for oral inquiry or hearing may at any time by written agreement request that the dispute be decided only on the written submissions made by the parties.

(2) All proceedings at oral hearings must be recorded.

(3) Each party is responsible for the procuring of its witnesses

(4) A dispute set down for hearing must only be postponed without the parties appearing before the arbitrator if—

(a) all parties to the dispute agree in writing; and

(b) the written agreement is received by the arbitrator 48 hours before the hearing.

(5) If a party to the dispute fails to attend proceedings before the arbitrator despite receiving proper notice and that party had—

(a) referred the matter; or

(b) had not referred the matter,

the arbitrator must —

(i) dismiss the dispute; or

(ii) continue with the proceedings,

in the absence of that party, save where good cause is shown for the absence, as the case may be.



Role of GPRE

22. The GPRE plays no role in relation to the substance of the dispute or the outcome sought in the dispute upon referral to the arbitrator: Provide that, as and when required by the arbitrator, the GPRE must attend and present evidence to the arbitration on behalf of the Department, including but not limited to the allocation of routes.

Decisions

23. (1) Decisions must be made on a case-by-case basis in the interest of fairness and equity having regard to all relevant factors.

(2) The decision must—

- (a) be in writing and communicated to all parties to the dispute; and
- (b) published in extracts or in full at the website of the Department.

(3) The arbitrator may decide not to communicate the grounds for the decision and instead communicate only the findings of the decision: Provided that the parties to the dispute are informed that they have 10 days from the receipt of the findings of the decision to request, in writing, the grounds for the decision, and that failure to do so will result in—

- (a) the decision becoming final and binding; and
- (b) the parties being deemed to have waived their rights to request grounds for the decision.

(4) The decision is deemed to have been communicated the moment the decision is delivered to the parties, and notification of a representative is regarded as notification to the party.

(5) If a party requests the grounds for the decision—

- (a) the motivated decision must be communicated to the parties in a written form and in full; and
- (b) the grounds must contain at least the following information:
 - (i) the date of the decision;
 - (ii) the names of the parties and representatives, if any;
 - (iii) the names of the arbitrator seized with the dispute;
 - (iv) the claims or motions submitted by the parties;
 - (v) the brief description of the dispute;
 - (vi) the outcome of the evaluation of evidence;
 - (vii) the findings of the decision;
 - (viii) the reasons for the findings;
 - (ix) the signature of the arbitrator; and
 - (x) an indication of any legal recourse available and the applicable time limits.

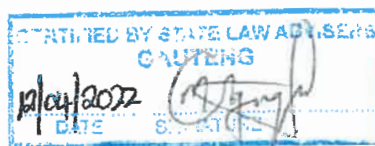
Award final and binding

24. (1) Save for the right of a party to access to a court of competent jurisdiction, after due notice to the other party or parties, for the award to be reviewed and set aside or to be made an order of the court, the award—

- (a) is not subject to appeal; and
- (b) is final and binding in all respects.

(2) Each party to the dispute must abide by and comply with the award in accordance with its terms.

(3) An application in terms of subregulation (1) does not suspend the operation of the award pending the finalisation of the application, unless—



- (a) the application prays for a temporary interdict; and
 - (b) the court grants the interdict in respect of that prayer.
- (4) The Department must be served with a copy of every notice of an application at the time that the application is launched with the court.
- (5) The award must, after being delivered to the parties, be submitted to the Department by the arbitrator.

Power of arbitrator to correct errors in award

25. An arbitrator may, *ex post facto* or on application, correct in any award made by that arbitrator any clerical mistake or any patent error arising from any accidental slip or omission.

Interest on amount awarded

26. Where an award orders the payment of a sum of money, such sum must, unless the award provides otherwise, carry interest as from the date of the award and at the same rate as a judgment debt.

Costs of arbitration

27. (1) The Department is responsible for the costs of the arbitration, including fees payable to the arbitrator and the assessor, if any.
- (2) The arbitrator is not entitled to withhold his or her award pending payment of his or her fees, including any expenses incurred by him or her in connection with the arbitration.”.

Insertion of heading into Regulations, 2011

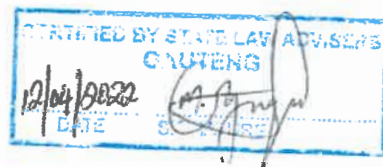
4. The following heading is hereby inserted into the Regulations, after regulation 10:

“PART V**MISCELLANEOUS”.****Substitution of numbers**

5. The Regulations are hereby amended by the substitution for the numbers “11” and “12”, wherever they occur, of the numbers “28” and “29”, respectively.

Short title and commencement

6. These Regulations are called the Gauteng Public Transport Regulatory Entity Amendment Regulations, 2022, and come into operation on the date of publication in the Provincial Gazette.



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