

PROVINCIAL NOTICE

[No. 137 of 2007]

FREE STATE TRADITIONAL LEADERSHIP AND GOVERNANCE REGULATIONS, 2006

Under section 31 of the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005), I, FB Marshoff, Premier of the Free State Province, hereby publish the Regulations as contained in the Schedule.

SCHEDULE

PART I

DEFINITIONS

Definitions

1. In these Regulations any term to which a meaning has been assigned by the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005) (hereinafter referred to as the "Act"), have the meaning so assigned to it and, unless the context otherwise indicates, -
 - "**certificate**" means the certificate of recognition that is issued by the Premier in terms of section 3(6) of the Act;
 - "**Constitution**" means the Constitution of the Republic of South Africa, 1996 (the "Constitution");
 - "**Department**" means the Department of Local Government and Housing;
 - "**formula**" means the method that is used to determine the size and extent of Traditional Council;
 - "**national Act**" means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
 - "**report**" means the report that the Traditional Council must submit to the Department when there is a change in the membership of a Traditional Council;
 - "**status**" means the classification of traditional leadership positions as envisaged in section 18 of the Act; and
 - "**traditional leadership**" means the customary institutions or structures, or customary systems or procedures of governance, recognised, utilised or practised by traditional communities.

PART II

CERTIFICATE OF RECOGNITION OF A TRADITIONAL COMMUNITY

Certificate of recognition of a traditional community

2. (1) The Department must consult with the Provincial House of Traditional Leadership with the purpose of designing a certificate of recognition of a traditional community that is referred to in section 3(6) of the Act.
- (2) The issuance of the certificate of recognition of a traditional community must be published by way of a notice in the *Provincial Gazette*.
- (3) The effect of the recognition means that the traditional community must uphold the principles that are enshrined in the Constitution, the Act, as well as the national Act.
- (4) The certificate of recognition of traditional community remains valid until it is withdrawn in terms of the provisions of section 5 of the Act.

PART III

CERTIFICATE OF RECOGNITION OF TRADITIONAL LEADERSHIP

Certificate of recognition of traditional leadership

3. (1) The Department must consult with the Provincial House of Traditional Leadership with the purpose of designing a certificate of recognition of a traditional leader as contemplated in sections 18, 19 and 21 of the Act.
- (2) The certificate of recognition of a traditional leader must state the category and status or description of traditional leadership position.
- (3) The certificate of recognition of a traditional leader remains valid until it is withdrawn in terms of the provisions of section 22 of the Act.

PART IV

NUMBER OF TRADITIONAL COUNCILS

Number of Traditional Councils

4. (1) The number of Traditional Councils must not be more than thirty (30).
- (2) In addition to the requirements and the procedure for the establishment of Traditional Councils as set out in section 7 of the Act, the following factors must be taken into account:
 - (a) the special needs and features of the traditional community;

- (b) the geographical location of the traditional community;
 - (c) the demographic features of the traditional community; and
 - (d) the size and the administrative needs of the traditional community.
- (3) Morena e Moholo or his or her delegate and the royal family must be invited to a pitso that is convened in terms of section 7(2)(a) of the Act for the establishment of a Traditional Council.
 - (4) Persons who are appointed to the Traditional Council must be resident in the area of jurisdiction where the Traditional Council is established.
 - (5) Persons who are appointed to the Traditional Council must be of a good character, demonstrate knowledge of values and norms, as well as customary practices that are central to the traditional community.
 - (6) The election of members as envisaged in section 7(2)(d) of the Act shall be by popular vote and a nominated candidate shall be requested to address pitso to demonstrate his knowledge of the traditional community's history and practices and give reasons why he or she must be elected.
 - (7) Morena e Moholo, Morena or Kgosi and the members of the traditional community present at the pitso may put questions to the candidate.
 - (8) If the majority of the members attending the pitso supports the election of the candidate, his or her name will be submitted to Morena or Kgosi for approval.
 - (9) The total number of persons who have been elected and their names approved by Morena or Kgosi must be submitted to Morena e Moholo for verification prior to the establishment of a Traditional Council.
 - (10) The names of all members who have been elected and approved must be submitted to the Premier as envisaged in section 7(3)(a) of the Act.

PART V

CATEGORIES AND COMPOSITION OF A TRADITIONAL COUNCIL

Categories and composition of a Traditional Council

5. (1) There shall be three categories of Traditional Councils.
- (2) The small Traditional Council shall consist of not more than twelve (12) members.

- (3) The medium size Traditional Council shall consist of not less than thirteen (13) and a maximum of eighteen (18) members.
- (4) The large Traditional Council shall consist of not less than nineteen (19) and a maximum of thirty (30) members.
- (5) The House of Traditional Leaders must be informed within seven (7) days when a change in the membership occurs in the Traditional Council.
- (6) The filling of vacancies in the Traditional Council must comply with the principles and the procedures that are set out in section 7(2)(b), (c) and (d) of the Act.

PART VI

SUBSISTENCE AND TRAVEL ALLOWANCE OF THE MEMBERS OF THE TRADITIONAL COUNCIL

Subsistence and travel allowance of the members of the Traditional Council

6. (1) Members of the Traditional Councils who are not in full-time employment of the State, shall be paid the following reasonable allowances for executing their functions:
 - (a) subsistence and travelling;
 - (b) costs for using personal facilities; and
 - (c) proven out of pocket expenses.
- (2) The Premier must determine the rates of the applicable allowances after consultation with the Member of the Executive Council responsible for Finance.
- (3) False claims for expenses that are not related to execution of the Traditional Council's activities shall result in a member being charged with misconduct in terms of the Code of Conduct or the Disciplinary Code.

Short title

7. These Regulations are called the Free State Traditional Leadership and Governance Regulations, 2006.