



national film and video foundation
SOUTH AFRICA
an agency of the Department of Sport, Arts and Culture

NATIONAL FILM AND VIDEO FOUNDATION

APPEALS PROCEDURE TERMS OF REFERENCE

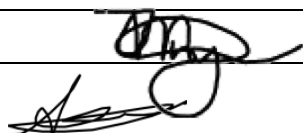
DECEMBER 2023

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Mr Sibongiseni Mkhungo; Mr Maijang Mpherwane; Adv Senzo Ncube; Mr Louis Seeco; Ms Lala Tuku; Ms Chuma Fani;
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DOCUMENT CONTROL

Review Date : August 2022		Signatures
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Acting Chief Executive Officer	Process Owner	
Head of Operations	Process Reviewer	

APPROVAL

The signatories to this document confirm their acceptance of the contents and authorise its adoption.

Signature:



Chairperson of the Council

Date: 6 December 2023

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Preamble

The National Film and Video Foundation ("NFVF") is a statutory body created by the National Film and Video Foundation Act 73 of 1997 to develop and promote the equitable growth of the South African film and audio-visual industry.

1. Introduction

- 1.1 Whilst all decisions taken by the NFVF (whether by Council or management) are guided by the overriding principle of meeting the objectives to grow; promote and develop the audio-visual industry, an applicant or any other affected person may request reasons for any decision taken by the Council or in terms of the NFVF Act in accordance with the procedures set out in the Promotion of Administrative Justice Act No. 3 of 2000 (PAJA).
- 1.2 Section 12(1) of the NFVF Act provides for an appeal against an action or decision taken by Council. The Minister of Sport, Arts and Culture ("the Minister") may appoint one (1) or more independent assessors with knowledge on the film and video industry to assist him/her. The Minister may confirm, amend, or set aside a decision or action made in terms of section 12(1) and subsection (3) of the NFVF Act.
- 1.3 To streamline the process and provide administrative guidelines, the NFVF has set out an appeals procedure to be followed by applicants and appellants who are affected by any decision taken by Council or made in terms of the NFVF Act. The above is done in terms of section 12 (1) of the NFVF Act provisions of the Promotion of Access to Information Act 2 of 2000 (PAIA) and PAJA.
- 1.4 This procedure applies to an appeal by an applicant on any decision or action taken by the Council and/or made in terms of the NFVF Act.
- 1.5 The NFVF shall endeavour to ensure that appeals are reviewed expediently subject to all supporting information furnished timeously during the lodging of an appeal and further request for information from the relevant funding advisory panel by the Chief Executive Officer (CEO) as contemplated in clause 2.6 of these Terms of Reference (ToR's).

2. Appeal Procedure

- 2.1 Aggrieved parties must use the prescribed form H to communicate an appeal to the Council and form I to appeal to the Minister.

2.2 As per section 20 of the NFVF Act, in the interest of ensuring an independent process, the Council shall delegate to the CEO, the authority to receive appeals and manage the Review Committee's process through the Office of the CEO.

2.3 An appeal in the prescribed form must be submitted to the CEO within the 30 days' period referred to in section 12(1) of the Act.

2.4 The Office of the CEO shall keep a registry of all appeals submitted to it and to the Review Committee.

2.5 The CEO shall refer all appeal matters to the Review Committee on receipt of any appeals within 30 days of receipt of an appeal.

2.6 Upon receipt of appeals, the Review Committee shall review the matter and decide on whether to:

- (a) Uphold the matter for Council's ratification via round-robin; or
- (b) Dismiss the matter whereupon the appellant can proceed to submit to the Minister for appeal as per section 12 of the NFVF Act if they so choose.

2.7 For the purpose of clause 2.3 above, the CEO shall request a chairperson presiding over a funding advisory panel that considered and made recommendations on the affected application to provide written reason for why the application was rejected.

2.8 The CEO shall request all supporting documents relating to the appeal from Management and the appellant upon receipt of the appeal.

2.9 The Review Committee's decision shall be final and supersede the initial decision made by the Advisory Panel whereafter the appellant shall be at liberty to submit an appeal to the Minister in terms of the NFVF Act.

2.10 Council can ratify the Review Committee's decision either through one of its mechanisms that will enable the most expedient turn-around – either through round-robin recorded on e-mail or during a special and/or ordinary Council meeting.

2.11 A decision made in terms of this Review Committee's process shall be made in writing and communicated to the appellant within fifteen (15) business days from the date on which the matter was considered by the Review Committee.

3. Composition of the Review Committee

3.1 As voting members, the Review Committee shall comprise of at least three (3) experienced industry practitioners who are not current NFVF Council members, employees or advisory panel members.

3.2 These voting members shall be former NFVF advisory panel members and have the requisite

expertise in the fields pertaining to the NFVF's ordinary and special project funding pillars.

3.3 A member of the NFVF Management team shall be an observing member of the Committee to provide support for queries the Review Committee may have about the application and/or advisory panel meeting wherein the final recommendation regarding the application was recorded for Council's approval.

3.4 The chairperson of the Review Committee shall:

3.4.1 In accordance with section 11(4) of the NFVF Act, be a member of the NFVF Council as elected by the Council.

3.4.2 Not be an existing appointed ordinary and/or special project panel Chairperson.

3.4.3 Not be a voting member of the committee and will only facilitate the decision made by the Review Committee.

3.4.4 Be appointed per funding cycle.

3.4.5 Communicate the outcome of the Review Committee to the Council for ratification.

4. Scope of the Review Committee

4.1 To comply with the legal principles and the NFVF Act, the scope of the Review Committee will be to review the decision made by the Council. Given that the voting members of the Review Committee are not Council members, the members can make a decision after the Council's initial decision not to recommend projects for funding.

4.2 The Review Committee shall focus on disputes of decision where there is clear or perceived miscarriage of justice in determining the recommendations made to the NFVF Council for approval.

4.3 Decisions made by the Review Committee will be referred to the Council for ratification, thereafter an appellant shall be at liberty to appeal the Minister in terms of section 12(1) of the Act should they be dissatisfied with the decision of the Review Committee.

4.4 The Review Committee shall be at liberty to review any and all application documentation in line with clause 2.7 and 2.8.

4.5 Accordingly, the legal principle of being *functus officio* shall not apply to the voting members of the Review Committee given the fact that they are not Council members and as such the voting members are authorized to preside over an appeal made to the NFVF in the prescribed form in relation to the funding decisions of the Council and make a decision thereon.

5. Appeal to the Minister

5.1 An appellant who intends to appeal an action or decision taken by the Council in terms of section 12(1) of the Act, is strongly advised to first exhaust the NFVF's Review Committee process, prior to lodging an appeal to the Minister and give notice to the Council in the prescribed form within fifteen (15) days from the date on which the decision by the Review Committee was received or communicated to the appellant.

5.2 It is also strongly advised and recommended that [a] notice of appeal to the Minister be submitted within the 30-day period referred to in section 12 (1) of the Act counting from the date of receipt of the Review Committee's decision, by completing FORM I.

5.3 The Minister will notify the appellant and the Council in writing of his or her decision on the appeal as contemplated in section 12(3) of the Act.

5.4 The Minister may appoint or constitute an independent panel to advise him on applicants for appeals sent to his office.

6. Financial Implications

6.1 The Office of the CEO, must ensure annual budgetary allocation for the Review Committee's remuneration in accordance with current advisory panel member rates and Council member rates.

6.2 The Office of the CEO in consultation with the Chief Financial Officer (CFO), must ensure annual budgetary allocation for the Review Committee's decisions in accordance with annual budget management.

7. Contact Details

All notices of intention to appeal must be in writing and in the prescribed form, Form H and where applicable Form I and addressed to:

The Chief Executive Officer

National Film and Video Foundation

87 Central Street

Houghton 2198

E mail: appealreviews@nfvf.co.za

The Minister of Sport, Arts and Culture

VWL Building

202 Madiba Street

Pretoria 0001

E mail: appeal-nfvf@dac.gov.za

8. Periodic Review

These Terms of Reference shall be reviewed every three (3) years. The Council shall approve any changes before coming into effect.

