

**Ex parte**

**ERASA**

**In re**

**SAEF**

**Membership of SAEF**

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**OPINION**

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Provided to

*N Dercksen  
Rufus Dercksen Attorneys  
Stellenbosch*

By

*R G L Stelzner SC  
12 December 2019*

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1. Consultant is the Endurance Riding Association of SA (“ERASA” or the Association”). It is a voluntary association with a constitution and currently a member of SAEF (the South African Equestrian Federation also referred to herein as “the Federation”). SAEF in turn is a member of the South African Sports Confederation and Olympic Committee (SASCOC) and of the International Equestrian Federation (the FEI). SASCOC is a company incorporated not for gain, which seeks to administer South African sport at the level of international participation, in major sporting events such as the Olympic and Commonwealth games.
2. Consultant is a national body, formed specifically for the administration and regulation of endurance horse riding as a sport, affiliated to the SAEF which does the same for horse riding events in general and on a national level. The FEI does so at an international level.
3. ERASA comprises various clubs throughout the country, the clubs in turn all forming part of 9 different geographic unions, each one operating in each of the various provinces of South Africa. Each club offers some 3 rides a year in their area. Each year two national championships are held under the auspices of ERASA, the best known one in the Fauresmith area.
4. Owing to African horse sickness South African endurance riders are unable to participate internationally with their horses and international riders do not participate in South African events with their horses. As a result of the absence of international competition, ERASA is furthermore unable to award national colours to any of its members.
5. I am requested to provide an opinion as to whether ERASA is permitted to “disestablish” itself from the SAEF.
6. The short answer is yes, but as will appear more fully hereafter, such resignation from the SAEF may bring about a whole range of difficulties in the future when ERASA will be compelled to register in order to be recognised and be permitted to operate as the national body for its member clubs in endurance riding as organised sport.

7. Clause 11.1.1 of the SAEF constitution identifies as one of the three categories of members Ordinary Members as indicated in schedule F of its constitution.
8. Schedule F identifies its constituent members and their duties. Consultant is listed as one of these constituent members, three on the Schedule.
9. In terms of the same schedule it is obliged to promote, develop, transform and participate in the equestrian sport as a whole under the guidance and control of the Federation. For as long as it is an ordinary member of the SAEF Consultant is obliged to adhere to its constitution.
10. Clause 18 deals with termination of membership.
11. Clause 18.4 provides that any member of any classification may at any time tender their resignation from the Federation.
12. Such member must give notice by not later than 30 September of each year. Any member so resigning shall continue to be liable for any monies due and owing by such member to the Federation at the date of their resignation.
13. Presumably this means that if a member, such as Consultant, resigns from the SAEF after September of a year, say 2109, it remains liable for membership fees due as at date, presumably until September 2020, if the membership fees are payable annually in advance and September of each year is the anniversary date for such payments.
14. Save for this financial obligation, a member is free to resign at any time and it appears without any prescribed period of notice.
15. The next logical question is what the consequences of such action would be. This is more difficult to answer.
16. For one, it appears that immediately, Consultant and its members / clubs / provincial unions, who would need to approve of the decision to resign from SAEF, will no longer be able to participate in or host international

events under the auspices of the SAEF, the IEF, SASCO or any other similar body.

17. Consultant may for the present continue to assume for itself duties at national level and at provincial level similar to those spelt out in Schedule F, which could include the right and obligation to manage and control all technical aspects and administrative aspects of its specific equestrian discipline, inter alia awarding national shows and international events, but it would not be entitled to do so under the auspices of the SAEF or the IEF.
18. There is however at present no legislative restriction on Consultant forming its own non – affiliated body for the administration of endurance riding as a sport in South Africa for its clubs and provincial unions and operating as such without formal registration. This may however change when the proposed Bill referred to at the end of this opinion is enacted.
19. Sport in South Africa is regulated by the National Sport and Recreation Act 110 of 1998. That Act supplemented the South African Sports Commission Act 109 of 1998, which latter Act has however been repealed by Act 8 of 2005. The South African Sports Commission, before its repeal, was the overall coordinating body for the promotion and development of sport in South Africa, with the exception of the National Olympic Committee of South Africa (‘NOCSA’) which retained recognition in respect of Olympic sport.
20. Clause 4 of the National Sport and Recreation Bill, 2018 seeks to insert subsections (2A), (2B) and (2C) in section 6 of the Act in order to ensure that sport or recreation bodies fulfil the obligations imposed on them by the relevant international controlling body for their respective codes of sport.
21. The Bill seeks to recognise that there is a need in South Africa to create a new dispensation that will govern and regulate the sport and recreation industry in the best interest of all the role-players by clarifying the roles of Sport and Recreation South Africa, the Sports Confederation and the national federations respectively.

22. The Bill seeks to clarify the role and responsibilities of the South African Sports Confederation, Olympic Committee and National Federations as opposed to the current responsibilities of these institutions in terms of the Act. Furthermore, the Bill provides for the regulation of sport or recreation agents in the performance of their responsibilities and their recognition as agents.
23. The Bill has however not been passed and the Act is currently silent on the recognition of sport or recreation bodies. The Act only empowers the Minister to create regulations for such purposes. The lack of empowering provisions in the Act makes it difficult to recognise sports or recreation bodies in terms of the regulations only.
24. There is no prohibition on operating as a national sporting body outside of a national sports federation such as the SAEF. The sanction for doing so appears to be the absence of national colours and potential funding and the inability to participate in or host international events.
25. The concept of national federations was outlined in the South African Sports Commission Act 19 of 1998, which Act was however repealed by Act 8 of 2005.
26. These sporting bodies are generally formed as voluntary associations which in terms of their constitutions must have a legal personality and legal capacity.
27. The various governing bodies in the particular sports is of significance since these bodies regulate the participation of teams within the rubric of their respective codes.
28. The relationship between the governing bodies and its participants is loosely based on contract law which may involve tacit or formal approval.
29. A sportsperson who becomes a member of the sports body consents to the authority of that sports body and therefore to its rules and regulations.

30. This applies not only to the administrative and procedural rules, but also to the rules of this particular sports code and the rules of the competitions which the participants perform in and through the local and national federations make themselves subject to international regulations.
31. Clause 11.2 of the SAEF constitution provides that the rights of each existing and future member or equestrian body to have one or more representative team participate in the various events and championships which are held or staged under the auspices of the Federation is determined by its Exco. If not a member, a body such as ERASA and its members would not be permitted to participate in such an international events. Save for these, and other sacrifices which would need to be made, there is no prohibition on resigning from SAEF in terms of the SAEF constitution.
32. The constitution of ERASA has the following provisions which would need to be considered before deciding to resign, given that ERASA's members / clubs / provincial unions could insist on ERASA recognising and complying with its obligations under the ERASA constitution.
33. In terms of clause 3.7 of its constitution the Association is required to be affiliated to any body to which affiliation is essential to achieve its objectives. If SAEF is not essential to achieve its objectives, it is free to leave in terms of its own constitution.
34. ERASA's stated objectives include those of promoting, managing endurance riding as an amateur sport in South Africa under the auspices of the SAEF and the FEI, where applicable.
35. Clauses 5.3 and 5.4 of the ERASA constitution deal with its objectives in hosting endurance rides, both locally and international rides, once again under the auspices of the SAEF and the FEI, where applicable.
36. The Rules and Codes of Conduct of the FEI (pertaining to endurance sport) would "be (directly) applicable" to international events held by ERASA.

37. Given the SAEF's membership of the FEI, and ERASA membership of SAEF, the Rules and Codes of Conduct of the FEI (pertaining to endurance sport) may also "be (indirectly) applicable" to local events for as long as Consultant is a member of the SAEF and the SAEF requires of its members / affiliates to comply with / subscribe to its rules and regulations, and including those of the FEI.
38. In terms of clause 5.5 ERASA's objective is to select teams for participation against other teams at all levels and to award appropriate colours to these teams according to the rules and regulations of the governing bodies involved.
39. The clause states that 'at both national and provincial levels' teams have to be approved by the SAEF, the South African Sports Confederation and Olympic Committee (SASCOC) and the various provincial sport confederations.
40. Clause 21 deals with the amendment of its constitution, requiring inter alia a two thirds majority at an AGM or an EGM convened for that purpose and 30 days' notice of any meeting at which the proposed amendments will be presented.
41. In my view, should Consultant wish to resign from the SAEF it would be prudent to first obtain a mandate from its members for this to happen and in so doing to convene the necessary meeting at which Consultant's own constitution would need to be amended removing the obligations contained therein for it to be a member of the SAEF.
42. Thereafter it could, in terms of the mandate received from its members, give the requisite notice to the SAEF of its intention to resign.
43. Consultant is also required to ensure, in terms of clause 5.12 of its constitution that its own constitution is not in conflict with the constitutions of the SAEF and SASCOC or the Constitution of South Africa.

44. The SAEF constitution has the following relevant provisions.
45. The SAEF constitution is subordinate to the SASCOG constitution, and to the extent that the constitution of any member of the Federation, which will include consultant, is in conflict with any of the provisions of the constitution of the Federation, the provisions of the Federation's constitution will prevail.
46. In order to avoid the confusion this cross referencing and hierarchy of constitutions provides for, it would be best for Consultant to also amend that clause of its constitution and any other clauses with cross references to the SAEF constitution before resigning from SAEF lest someone takes the point that such a resignation is in conflict with and prohibited by its own constitution.
47. The consequences of such an amendment and resignation are alluded to above.
48. Consultant will no longer have any of the benefits that SAEF membership provides flowing from its position as the recognised national federation for equestrian sport in general in South Africa :
  - 46.1 In terms of clause 6.1 the Federation is a full member of SASCOG ;
  - 46.2 In terms of clause 7.2 it seeks to hold membership of the FEI ;
  - 46.3 In respect of each of the various disciplines as set out in schedule F, one of them being that of endurance riding, it is the recognised national federation and only controlling body for equestrian sport in South Africa ;
  - 46.4 It can administer and enforce the rules and regulations of the FEI for equestrian sport in South Africa in terms of the FEI rules and regulations ;
  - 46.5 Clause 7.3 provides that no member shall be entitled to establish or maintain contact with any international federation without the

approval of the Federation and/or knowledge of the Federation ;

46.6 Clause 8.1 provides that the Federation is the national controlling body of equestrian sport in South Africa governed by the National Council and Exco according to the constitution of the Federation ;

46.7 Equestrian sport is defined with reference to schedule F and includes endurance riding ;

46.8 Clause 8.7 provides that the Federation's athletes / participants shall have freedom of association to belong to any club within the district in which he or she is resident ;

46.9 No club or member may however register an individual without obtaining the federation's membership number ;

46.10 In terms of clause 9.1 it is to operate and function as the autonomous controlling administrative body of equestrian sport within the area of the jurisdiction of the Federation, being South Africa ;

46.11 Clause 9.8 states that a further object of the Federation is to regulate and approve national championships for all athletes irrespective of age, gender or physical ability through the various equestrian bodies ;

46.12 Clause 9.21 provides that a further object is to annually reapply to be a member of SASCOC and to abide by their constitution, rules and regulations, as well as to affiliate to international federation and/or any other national or international sports body as the National Council may decide, in particular as regards the participation of equestrian sports athletes, participants in all multi-code games and events ;

46.13 Clause 9.25 states as an object to recognise and accept the jurisdiction, rules and regulations of SAIDs, as well as the code of

WADA relating to anti-doping and the promotion of drug-free sport.

- 47 The National Sport and Recreation Act 110 of 1998 defines 'national federation' to mean a national governing body of a code of sport or recreational activity in the Republic recognised by the relevant international controlling body as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic.
- 48 By resigning Consultant will to an extent find itself in the international wilderness, unable to compete not only internationally but in accordance with international rules and standards, which in turn may impact on the status and recognition of Consultant both nationally and internationally.
- 49 If at some stage in the future Consultant may wish to (and be able to) re-enter the international arena it may prove difficult to do so.
- 50 Consultant would furthermore need to apply to the Minister of Sport under the Regulations promulgated in terms of section 14 of Act 110 of 1998 should it wish to be recognised as the representative body for endurance riding in South Africa.
- 51 That section provides that the Minister may, after consultation with the Sports Confederation in so far as high performance sport is concerned, make regulations -
- (a) as to any matter which by this Act is required or permitted to be prescribed;
  - (b) ....
  - (jC) as to hosting of and bidding for major international sports events;
  - (jD) as to the awarding of national colours;
  - (jE) as to the recognition of sport or recreation bodies;
  - (k) generally, as to any other matter in respect of which the Minister may deem it necessary or expedient to make regulations in order to achieve the objects of this Act.

52 Regulations 3 sets out some of the criteria for recognition

(1) For a sport or recreation body to be recognised, it must-

- (a) be properly constituted and operate on democratic principles;
  - (b) have a formal written constitution and an acceptable democratically elected committee which operates in a transparent, accountable and responsible manner;
  - (c) demonstrate an agreed level of management and financial accountability and stability;
  - (d) have affiliates or members within five provinces functioning within the principles of good governance;
  - (e) provide a development program[me] and an equity plan; and
  - (f) be recognised by a relevant international controlling body,
- before it will be recognised as a sport or recreation body.

53 Regulation 3(2) furthermore provides that a sport or recreation body must comply with existing anti-doping legislation and act in accordance with the South African Institute for Drug-Free Sport Act, 1997 (Act 14 of 1997).

54 Regulation 3(3) requires participation in any sport or recreation body must be open to all sections of the community and not be restricted for reasons of cost, gender, disability or any other reason that may constitute any form of direct or indirect discrimination.

55 Regulation 3(4) An election of office bearers must be conducted at least every four years by the members or in terms of its constitution. Minutes of meetings and financial statements must be presented for adoption by members on an annual basis.

56 Regulation 3(5) Sport or recreation bodies' affiliates must be recognised within five provincial departments.

57 Regulation 4 deals with applications for recognition

- (1) A sport or recreation body that wishes to apply for recognition must submit its application to the Chief Director-
  - (a) in the prescribed form issued by Sport and Recreation South Africa, contained in Annexure A to these Regulations;
  - (b) with two copies of its constitution;
  - (c) the names and physical, business and residential addresses of its office-bearers within one month after any appointments or elections of its office-bearers, even if their appointments or elections did not result in any changes to its office-bearers;
  - (c)[sic]the physical address in the Republic for the service of documents;
  - (d) with such other information as may be required by the Chief Director in order to assist the Chief Director to determine whether or not such sport or recreation body meets the criteria for recognition as contemplated in regulation 3.
- (2) The Chief Director must, within 14 days after receiving an application which complies fully with subregulation (1)-
  - (a) consider the application and any further information provided by the applicant; and
  - (b) if satisfied that the applicant complies with the criteria for recognition, recognise the applicant by entering the applicant's name in the register contained in Annexure C to these Regulations.
- (3) After recognising the sport or recreation bodies, the Chief Director must-
  - (a) issue a certificate of recognition in the applicant's name on the prescribed form contained in Annexure B to these Regulations which must include a registration number;
  - (b) send a certificate with the date on which the sport or recreation body was entered in the register and a certified copy of the registered constitution to the applicant.
- (4) If, after considering an application, the Chief Director is not satisfied that the application complies with the criteria for recognition, he or she must send a written notice to the applicant-

- (a) informing the applicant of non-compliance;
  - (b) providing reasons for his or her decision within 21 days after the receipt of the application; and
  - (c) allowing the applicant 60 days to comply with the criteria for recognition.
- (5) The period within which compliance must be effected may be extended for not more than 60 days by the Chief Director on good cause shown by the applicant.
  - (6) If an applicant who has received a notice referred to in subregulation (3) complies with the criteria for recognition timeously, the Chief Director must recognise the applicant by entering the applicant's name in the register contained in Annexure C to the regulations.
  - (7) If an applicant who has received a notice referred to in subregulation (2) has not complied timeously with the criteria set out in that notice, the Chief Director must-
    - (a) decline to recognise the applicant; and
    - (b) notify the applicant in writing of the decline and the reasons therefore.

## 5 Effect of recognition

- (1)[sic] The certificate of recognition of a sport or recreation body is sufficient proof that the sport or recreation body-
  - (a) has met all the criteria for recognition; and
  - (b) has been registered in terms of these Regulations.

58 These Regulations are called the Recognition of Sport and Recreation Bodies Regulations, 2011. They identify the various administrative hurdles Consultant will be faced with should it wish to register itself afresh as a separate sport body.

- 59 The proposed Bill has the following provisions which allude to the difficulties Consultant will be faced with in the future once (and if) the Bill becomes legislation.
- 60 Section 1(d) substitutes the definition of “national federation” with the following definition: “ ‘national federation’ means a national governing body of a code of sport [or recreational activity] in the Republic with affiliate members of not less than five provinces recognised by— (a) Sport and Recreation South Africa as the only authority for the administration and control of the relative code of sport in the Republic; and (b) the relevant international controlling body [as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic] for that particular code of sport;”.
- 61 This reveals that in the future such recognition will become compulsory in order for an association such as Consultant to operate as a national governing body for the sport.
- 62 The proposed amendment of section 6 of Act 110 of 1998, as amended by section 7 of Act 18 of 2007 is intended to be the following.
- 63 Section 6 of the principal Act is hereby amended—
- 64 (a) by the substitution for the heading of the following heading: “[National federations] Sport or recreation bodies”;
- (b) by the substitution for subsections (1) and (2) of the following subsections, respectively:
- “(1) [National federations] Sport or recreation bodies must assume full responsibility for the safety [issues] and security of its members, participants, children, spectators who attend sport or recreation events and physical facilities where such events take place within their sport and recreation disciplines.
- (2) [National federations] Sport or recreation bodies must actively participate in and support programmes and services of Sport and

Recreation South Africa and the Sports Confederation[, in so far as] relating to high performance sport [is concerned] and the promotion and development of sport.’’;

- (c) by the insertion after subsection (2) of the following subsections:

“(2A) Sport or recreation bodies must fulfil the obligations imposed on them by the relevant international controlling body for their respective codes of sport.

(2B) Sport or recreation bodies must— (a) ensure that— (i) selected players comply with any national call to participate in a sport; (ii) the selection process for its national team is open and transparent; (iii) any person who fails to comply with the obligations of the international controlling body is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years; (iv) all players, officials or managers selected for a national team must be vetted for any criminal offences; and (v) if a player, official or manager has been convicted of an offence and sentenced to imprisonment without the option of a fine, he or she may not participate in an international sport event; (b) abide by the principles of good governance and ethical practices; (c) notify the Minister of its intention to— (i) lobby for candidates at an international body; (ii) lobby for bidding and hosting of international events; or (iii) seek election to an international body; (iv) vote in any elections of an international body; (v) vote in any matter dealt with by an international body; (d) act after consultation with the Minister and in a manner that does not bring the Republic into disrepute when any action contemplated in paragraph (c) is taken; (e) comply with the procedures and protocol for bidding and hosting of international sport events; and (f) comply with and support the following key government priorities as communicated by Sport and Recreation South Africa: (i) Combating HIV and AIDS; (ii) anti-xenophobia; (iii) anti-crime; (iv) promotion of nation-building and social cohesion; (v) promotion of national symbols and heritage; (vi) disaster

management and environmental protection; (vii) educational promotion on issues of sports; and (viii) health-related messages.

(2C) The Minister must determine and allocate responsibilities to national federations by notice in the Gazette from time to time.’’;

- 65 Although the current status of the Bill is that it has lapsed in terms of National Assembly Rule 333 (2), it will undoubtedly be revived in due course given certain other international obligations South Africa will need to meet for example in respect of Anti – Doping requirements in order for its athletes to be able to participate generally in international sport.
- 66 I advise accordingly.
- 67 Should my instructing attorney have any questions, he is invited to raise them telephonically.

**R G L STELZNER SC**  
**12 December 2019**