

STATEMENT REGARDING ASA AGM 2013
December 1, 2013
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AthleticsSouth Africa was due to host its Annual General Meeting on 30 November 2013, where its Annual Report and Annual Financial Statements for 2012 were to be presented and a motion to amend the Memorandum of Incorporation to bring it inline with the Companies Act and implement the resolutions of the 2011 SportsIndaba was to be considered.

Prior to the meeting happening, five provincial affiliates launched urgent High Court proceedings against the President of ASA and ASA itself. It goes without saying that resorting to the civil courts instead of following the alternative dispute resolution mechanisms in both ASA and SASCOC's statutes is a serious violation of those statutes. Earlier this year, even when High Court proceedings were instituted pending arbitration, SASCOC saw fit to attempt to place ASA under administration. Even though they are also bound by the ASA and SASCOC statutes, it did not deter the five provincial affiliates from going to the High Court themselves.

After having failed in the Western Cape High Court on Friday afternoon, the five provincial affiliates then approached the South Gauteng High Court with a few minutes notice to the respondents on Friday night. The matter was then set down for reconsideration by the Court at 10:00 on Saturday morning at the same time as the AGM was supposed to start. A notice was sent to all members of ASA advising them of this fact and that the AGM would have to be postponed until the High Court matter was concluded.

Undeterred, and while the High Court matter was being heard, and in the absence of the President and Vice President of ASA who were at the High Court, certain members of ASA, led by the five provincial affiliates who had forced ASA into Court, insisted on the AGM continuing.

More alarmingly, the 'meeting' then chose to not follow the agenda, but instead considered a motion to remove the Board, for which no notice had been given and which was not on the agenda, and in the absence of the President and Vice President. Despite no vote having been taken on the motion, it has been reported in the media that the motion was passed and seven individuals have claimed to be appointed to be an interim board of ASA, again despite no vote having been taken and the matter not even being on the agenda of the meeting.

The following needs to be clarified:

- The High Court matter has been postponed to 4 February 2014 when a final decision will be made. One of the issues which the five provincial affiliates will have to address is whether the individuals claiming to represent them had mandates to do so when they launched the expensive litigation.
- The five provincial affiliates will need to explain to their members who will bear the costs of their failed application in the Western Cape High Court.
- The Annual General Meeting scheduled for 30 November 2013 did not take place, since no item on the agenda was discussed. The Annual Report and the Annual Financial Statements were not tabled nor discussed.
- Members of ASA who had not met the requirements for participation at the AGM because they do not have audited financial statements for 2012, were permitted to participate in the charade on 30 November 2013. In addition, persons who had no right to be in the meeting were admitted to it.
- Athletics South Africa is a non profit company and the Companies Act is clear on the procedure to remove directors. These include:
 - "Before the members of a company may consider a resolution to remove a person as a director —
 - (a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a member is entitled to receive (in ASA terms that means 30 days notice of the agenda of the AGM); and
 - (b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote."

(See s 71(2) of the Companies Act). In the current situation, no notice of the resolution was given to the directors and the Vice President and President were not only not given an opportunity to make a presentation, but were at the High Court contesting a case brought by the same members who tried to have them removed. Given that everyone was made aware as to where they were and who had caused them to be there, any attempt to move for their removal in their absence can only be regarded as fraudulent.
- It is clear that these provisions were not drawn to the attention of the Members of ASA who attended the meeting and that they were intentionally misled.
- The meeting on 30 November 2013, which was held in place of the AGM of ASA was unconstitutional and invalid. Any decision taken at it is likewise invalid.
- Even if the meeting had been valid, no interim committee who appointed themselves there can be recognised. The IAAF Constitution is clear:

Clause 4.2: "In the event of a conflict that brings the activities of a Member to a standstill, an ad hoc committee may be setup, for a defined period, to be in charge of the management of Athletics in the Country or Territory concerned and/or the preparation of a general assembly to be conducted in accordance with the Member's constitution, provided always that such an ad hoc committee has been approved by the IAAF in advance."

No prior approval was given by the IAAF to form such an ad hoc committee. Asking for permission after it has been done does not comply with the clause – the IAAF has made that clear before.

If the so-called interim committee attempts to interfere in any way with the running of the Federation, they will be placing ASA's membership of the IAAF in jeopardy, and harming the interests of the athletes in South Africa.
- However, five of the Board members who attended that meeting indicated that they were removing themselves from the Board and have resigned.
- During the Court proceedings, the Judge asked why the matter could not be mediated. Although the President of ASA, together with the agreement of the Vice President, agreed the five provincial affiliates refused, rather choosing to continue with litigation. They will obviously need to explain to their members why they want to continue to pay legal fees for litigation instead of resolving any dispute by mediation.

Where does that leave Athletics in South Africa:

- Unless the provincial affiliates concerned withdraw their Court action, it will be heard in February. They will have to prove to the Court that they had proper mandates before they decided to launch the Court proceedings and provide reasons why they went to Court instead of arbitration.
- The Board has not been removed, except for those who have resigned and/or removed themselves.
- There is no 'interim committee' or 'interim board'.
- The IAAF is planning to visit South Africa in January 2014 and there is a need for calm and patience until they do arrive. It is hoped that their guidance will convince everyone in the sport to follow due process and the rules and statutes of the IAAF and ASA.
- Although the Board meets the minimum requirements for a non-profit company, it has several vacancies. In terms of the Companies Act, the remaining Board members must call for a members meeting to hold elections to fill the vacancies. This meeting will be called immediately after the visit of the IAAF and will be based on the guidance received from them.
- In the meantime the Office and Board of ASA will do everything within its power to ensure that the sport continues to run and that teams are entered and accepted by the IAAF and the CAA for the Championships in March.

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