



***CHAPTER 9***

## CHAPTER 9

### DISCLOSURE OF FINANCIAL INTEREST

#### 1. INTRODUCTION

1.1 Government is committed to promoting accountability in the Public Service. In terms of Section 196(4)(a) read with Section 195(1)(f) of the Constitution, the Public Service Commission is responsible to promote accountability within the Public Service.

1.2 According to section 196 of the Constitution the public administration is *inter alia* governed by the following principles:

- (1) A high standard of professional ethics must be promoted and maintained;
- (2) Services must be provided impartially, fairly, equitably and without bias; and
- (3) Public administration must be accountable.

The Public Service Commission is tasked with the promotion of these principles throughout the public service (section 196(4)(a) of the Constitution).

#### 2. FRAMEWORK

2.1 The financial disclosure framework is also guided by the following key principles in the Code of Conduct in Chapter 2 of the Public Service Regulations:

- (1) Employees may not use public office for private gain;
- (2) Employees must act impartially and may not give preferential treatment to any private organisation; and
- (3) Employees may not undertake remunerative work outside their employment in the Public Service without prior approval.

2.2 The framework reflects the aim to prevent rather than to punish. The framework further serves not only to guide the relevant officials in making decisions, but also to protect them. Without the framework of disclosure it becomes impossible to prevent and detect conflict of interests where they occur.

- 2.3 The objective of Chapter 3 of the Public Service Regulations is to identify any conflict of interests in order to promote just and fair administrative actions of officials in senior positions and thereby to protect the public service from actions that may be detrimental to its functioning and that may constitute unlawful administrative actions as a result of ulterior motives. In general, it aims to promote open and accountable government and the lawful use of taxpayers' money and therefore the principles and values in section 195(1) of the Constitution. It also assists the SMS member by enabling her/him to disclose her/his financial interests and thereby places a duty on the employer (i.e. executing authority) to indicate if she/he is satisfied that the employee's financial interests will not negatively impact on the execution of her/his function(s). The Public Service Commission, as an independent oversight body has to establish whether a declared interest conflicts or is likely to conflict with the execution of an official duty of the employee in question.
- 2.4 In accordance with the amended Chapter 3 of the Public Service Regulations that became operational with effect from 1 May 2001, all members of the SMS in a national department, organisational component, provincial administration and provincial department are to disclose their financial interests.

### 3. RESPONSIBILITY OF EXECUTING AUTHORITIES

In view of sound management, it is of vital importance for EAs to ensure that all items on the forms are completed/signed. In instances where possible investigation or follow up actions are necessary, it must be brought to the attention of the PSC or further steps be taken to address the matter.

### 4. RESPONSIBILITIES OF SMS MEMBERS

- 4.1 Every designated employee shall not later than 30 April of a year, disclose to the relevant executing authority on the form determined for this purpose by the Commission, particulars of all her/his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question.
- 4.2 Any person who assumes duty as a designated employee after 1 April in a year shall make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding her/his assumption of duty.
- 4.3 The form to be used in this regard is attached as Annexure A and general information as Annexure B (no other forms may be used. An electronic copy of the form is also available on line at: <http://www.gov.za/forms/index.html>. The form must be signed by the

Executing Authority and Commissioner of Oaths/Justice of the Peace after all requested items have been completed.

- 4.4 The original completed form must be submitted to the relevant EA who on her/his turn must submit a copy thereof to the PSC.
- 4.5 Specific measures have been introduced in regulation F of Chapter 3 of the Public Service Regulations to protect the confidentiality of information in question. Access to such information is limited to certain specified functions and unauthorised disclosure of such information constitutes misconduct.

**FINANCIAL DISCLOSURE FORM**

I, the undersigned (surname and initials) \_\_\_\_\_

(Postal address) \_\_\_\_\_

(Residential address) \_\_\_\_\_

(Position held) \_\_\_\_\_

(Name of Department) \_\_\_\_\_

Tel \_\_\_\_\_ Fax \_\_\_\_\_

hereby certify that the following information is complete and correct to the best of my knowledge:

**1. Shares and other financial interests**

See information sheet: note ↘

Number of shares/Extent of financial interests	Nature	Nominal Value	Name of Company/Entity

**2. Directorships and partnerships**

See information sheet: note →

Name of corporate entity or partnership	Type of business	Amount of Remuneration

## CONFIDENTIAL

**3. Remunerated work outside the public service**

Must be sanctioned by your Executing Authority. See information sheet: note ↗

Name of Employer	Type of Work	Amount of remuneration

Name of Executing Authority \_\_\_\_\_ Portfolio \_\_\_\_\_

Signature of Executing Authority \_\_\_\_\_ Date \_\_\_\_\_

**4. Consultancies and retainerships**

See information sheet: note →

Name of client	Nature	Type of business activity	Value of any benefits received

**5. Sponsorships**

See information sheet: note →

Source of assistance/sponsorship	Description of assistance/sponsorship	Value of assistance/sponsorship

CONFIDENTIAL

## CONFIDENTIAL

## 6. Gifts and hospitality from a source other than a family member

See information sheet: note →

Description	Value	Source

## 7. Land and property

See information sheet: note →

Description	Extent	Area	Value

\_\_\_\_\_  
SIGNATURE OF DESIGNATED EMPLOYEE

DATE: \_\_\_\_\_

PLACE: \_\_\_\_\_

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## CONFIDENTIAL

**OATH/AFFIRMATION**

1. I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:
  - (i) Do you know and understand the contents of the declaration?  
Answer \_\_\_\_\_
  - (ii) Do you have any objection to taking the prescribed oath or affirmation?  
Answer \_\_\_\_\_
  - (ii) Do you consider the prescribed oath or affirmation to be binding on your conscience?  
Answer \_\_\_\_\_
  
2. I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/mark of the deponent is affixed to the declaration in my presence.

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**Commissioner of Oath /Justice of the Peace**



Full first names and surname: \_\_\_\_\_  
 \_\_\_\_\_ (Block letters)

Designation (rank) \_\_\_\_\_ Ex Officio Republic of South Africa

Street address of institution \_\_\_\_\_  
 \_\_\_\_\_

Date \_\_\_\_\_ Place \_\_\_\_\_

\_\_\_\_\_  
**CONTENTS NOTED; EXECUTING AUTHORITY**

**DATE:** \_\_\_\_\_

**NOTE:**

Remember that a copy of the completed form must be submitted by the EA to the Commission for purposes of recording it in the Register of Designated Employee's Interests.

Chapter 10 annexure A

**CONFIDENTIAL**

## Annexure B

# FINANCIAL DISCLOSURE FRAMEWORK

### GENERAL INFORMATION

#### *Why the framework*

Designated employees are entrusted with public funds. As such, they need to maintain the highest standards of professional ethics. Their integrity and that of their departments must be beyond question.

This framework is aimed at preventing conflict of interests by requiring of designated employees to disclose their financial interests.

#### *Who must file*

The disclosure framework is applicable to any member of the SMS. For the purpose of this framework, they are referred to as designated employees.

#### *Where must I file the form*

The original completed form must be submitted to your Executing Authority (EA). Your EA must submit a copy thereof to the Public Service Commission (PSC), at the undermentioned address, not later than 31 May of the year in question. In the case of designated employees appointed after 1 April, the form should be submitted to the PSC not later than 30 days after it has been submitted by the designated employee to the EA.

Director-General: Office of the Public Service Commission  
Directorate: Professional Ethics Promotion  
Private Bag X 121  
PRETORIA  
0001

#### *Who will have access to the information*

Under normal circumstances only your EA, the Commission and those acting on their behalf, will have access to the information. They are required to liaise with you if they are concerned about a possible conflict of interest. Only your EA may grant a waiver if a conflict of interest is evident. Such a waiver needs to be attached to the original form.

No person who has access to the information may, except when a court so orders, disclose the information. Any person, other than a person referred to above, may only be given access to the information in terms of section 11 of the *Promotion of Access to Information Act, 2000*.

#### *When must I file*

A designated employee must not later than 30 April of each year, disclose to the relevant EA on the attached form particulars of all her/his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question.

Designated employees who are appointed after 1 April must make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding her/his assumption of duty.

*What happens if I do not disclose my interests*

Any designated employee who fails to disclose her/his interests or wilfully provides incorrect or misleading details can be charged with misconduct.

*Where/how can I obtain a copy of the form*

A hard copy of the form is obtainable from the Directorate: Senior Management Services (see particulars below) while an electronic copy thereof is available on-line at: <http://www.gov.za/forms/index.html>

**INSTRUCTIONS FOR COMPLETING THE FORM**

The form needs to be completed in the person's own handwriting and certified by a Commissioner of Oaths/Justice of the Peace.

By completing the form, the person is not exempted from the statutory requirements of obtaining approval for performing remunerative work outside the public service.

Where insufficient space is provided or if the form does not provide for a certain type of financial interest, the required information should be provided on a separate sheet.

**QUERIES AND DIFFICULTIES**

Queries in regard to this form and Chapter 3 of the Public Service Regulations may be directed to:

Directorate: Senior Management Service  
Department of Public Service and Administration  
Private Bag X 916

**PRETORIA**

0001

Tel: (012) 314 7395

## INFORMATION SHEET

The following notes will guide you in completing the relevant parts of the attached form (Annexure A):

### NOTE ❶

#### *Shares and other financial interests*

Designated employees are required to disclose the following details with regard to shares and other financial interests held in any private or public company or any other corporate entity recognised by law:

- ❖ The number, nature and nominal value of shares of any type;
- ❖ the nature and value of any other financial interests held in any private or public company or any other corporate entity; and
- ❖ the name of that entity.

### NOTE ❷

#### *Directorships and partnerships*

Designated employees are required to disclose the following details with regard to directorships and partnerships:

- ❖ The name, and type of business activity, of the corporate entity or partnership; and
- ❖ the amount of any remuneration received for such directorship or partnership.

**Directorship** includes any occupied position of director or alternate director, or by whatever name the position is designated.

**Partnership** is a legal relationship arising out of a contract between two or more persons with the object of making and sharing profits.

### NOTE ❸

*Remunerated work outside the public service (All remunerated employment must be sanctioned by the official's EA as required by section 30 of the Public Service Act, 1994.)*

Designated employees are required to disclose the following details with regard to remunerated work outside the public service:

- ❖ The type of work;
- ❖ the name, and type of business activity, of the employer; and
- ❖ the amount of the remuneration received for such work.

**Remuneration** means the receipt of benefits in cash or kind.

**Work** means rendering a service for which the person receives remuneration.

**NOTE 4***Consultancies and retainerships*

Designated employees are required to disclose the following details with regard to consultancies and retainerships:

- ❖ The nature of the consultancy or retainership of any kind;
- ❖ the name, and type of business activity, of the client concerned; and
- ❖ the value of any benefits received for such consultancy or retainership.

**NOTE 5***Sponsorships*

Designated employees are required to disclose the following details with regard to sponsorships:

- ❖ The source and description of direct financial sponsorship or assistance; and
- ❖ the value of the sponsorship or assistance.

**NOTE 6***Gifts and hospitality from a source other than a family member*

Designated employees are required to disclose the following details with regard to gifts and hospitality:

- ❖ A description and the value and source of a gift with a value in excess of R350;
- ❖ a description and the value of gifts from a single source which cumulatively exceed the value of R350 in the relevant 12 month period; and
- ❖ hospitality intended as a gift in kind.

Designated employees must disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public.

All personal gifts within the family and hospitality of a traditional or cultural nature need not be disclosed.

**NOTE 7***Land and property*

Designated employees are required to disclose the following details with regard to their ownership and other interests in land and property (residential or otherwise both inside and outside the Republic):

- ❖ A description and extent of the land or property;
- ❖ the area in which it is situated; and
- ❖ the value of the interest.

## RESOLUTION NO. 13 OF 1998

### SENIOR MANAGEMENT

#### 1. Purpose

This agreement sets the framework for senior managers to agree to individual performance agreements that shall determine their annual increments.

#### 2. Definitions

##### 2.1 In this agreement

- (a) a *senior manager* refers to an employee
  - (i) with a salary equivalent to the minimum of level 13 or higher; and
  - (ii) not designated as a professional.
- (b) an Executing Authority refers to the Executing Authority of a senior manager, or the delegate of that Executing Authority.

#### 3. Nature of performance agreements

##### 3.1 A performance agreement aims:

- (a) to assist senior managers to define key responsibilities and priorities, and provide measures for assessing success;
- (b) to encourage improved communication between senior managers and their supervisors; and
- (c) to enable the Executing Authority or superiors of a senior manager to assess the senior manager's work and provide appropriate support.

##### 3.2 A senior manager who is not head of a department shall sign an agreement with her or his Head of Department.

##### 3.3 A performance agreement shall include at least the following parts:

- (a) Definition of a person's work according to her/his key duties and responsibilities;
- (b) Methods for assessing her/his performance in fulfilling those responsibilities;
- (c) Dates for quarterly assessment and, if necessary, revision;

(d) Mechanisms for resolving disputes about the assessment as described in paragraph 5.2; and

(e) Increment date.

3.4 In terms of paragraph 3.3(c), at least on a quarterly basis, the performance agreement shall provide for:

(a) a review of the senior manager's key responsibilities and/or methods of assessment, which may lead to modifications in either responsibilities or methods of assessment;

(b) the progress of and obstacles to the person's work.

3.5 A senior manager who signs a performance agreement shall continue to be subject to relevant collective agreements on benefits and allowances.

3.6 A performance agreement for a senior manager shall be open to public scrutiny and filed with the Senior Management Service of the DPSA.

#### **4. Timeframes of assessment and date of increment**

4.1 A performance agreement generally runs from 1 July to 30 June

4.2 If a senior manager signs a performance agreement after 30 July, she or he shall receive an increment:

(a) on the basis of at least two quarterly assessment reports, and

(b) as of the 1 July nearest to the date of the second assessment.

#### **5. Dispute settlement**

5.1 Disputes about the nature of senior manager's key responsibilities, priorities, methods of assessment and/or salary increment in an agreement

(a) shall be mediated initially by the DG:DPSA and/or his or her delegate, and

(b) if this mediation fails, the dispute-resolution procedures provided for by relevant collective agreements.

5.2 A performance agreement shall specify mechanisms to resolve disputes about the assessment of a senior manager's work, including:

(a) a process using resources from within the public service and agreed upon by all affected parties, and

(b) for the event that the process fails, the dispute-resolution resolution procedures provided for by relevant collective agreements.

**6. Incentive for acceptance and annual increases**

6.1 A senior manager who signs a performance agreement:

- (a) shall receive an increase of 5.5%
  - (i) backdated to 1 July 1998 if she or he signs the agreement by 28 February 1999, and
  - (ii) from the date of signature if she or he signs the agreement after 28 February 1999.

6.2 The increase based on a performance agreement shall provide the only salary increment for a senior manager who signs a performance agreement.



## RESOLUTION NO 9 OF 2000

### SENIOR MANAGEMENT SERVICE

#### 1. Purpose

To extend Resolution No. 13 of 1998 that sets the framework for managers to agree to individual performance agreements. As such this agreement does not seek to diminish any existing rights of senior managers.

#### 2. Definition

- 2.1 A member of the Senior Management Service (SMS) shall refer to an employee on salary level 13 or higher.
- 2.2 Total cost to the employer means a reflection of all existing benefits with direct financial implications into a package for Senior Managers/ Professionals.

#### 3. Scope

This agreement applies to employer and employees who are classified in terms of 2.1 above and who fall within the registered scope of the PSCBC.

#### 4. Noting

The PSCBC note that there is a need to:

- a) Attract and retain high calibre senior managers and professionals.
- b) Improve the training and development of senior managers/professionals.
- c) Develop the career path of senior managers/ professionals.
- d) Develop the employment framework.
- e) Promote high standards of ethical conduct among senior managers/ professionals.

#### 5. Parties to the PSCBC therefore agree that: -

- a) The remuneration packages of senior managers/professionals be translated to a more transparent total cost-to-employer basis (herein referred to as a "clean wage") with effect from 1 January 2001.
- b) The clean wage be based on the principle of flexible remuneration which shall enable individual senior managers/professionals to structure a portion of their income.
- c) All existing benefits of senior managers/professionals with direct financial implications be included in the remuneration packages referred to above.

- d) The Minister for the Public Service and Administration will make annual determinations and provide guidelines on adjustments to the total cost-to-employer packages.
- e) During the process of converting the salary and benefits of members of the SMS to a total cost-to-employer basis, the benefits of members of the SMS will not be negatively affected.
- f) The rules governing the benefits of members of the SMS be included in a handbook and that these rules be based on the provisions of Resolution No 3 of 1999. These rules will not be amended without due process being followed.

## **6. Dispute Resolution**

Disputes about the interpretation or application of this agreement shall be dealt with according to the dispute resolution procedure of the PSCBC.

## **7. Date of implementation**

This agreement shall be implemented on 1 January 2001 and shall amend Resolution No. 13 of 1998 to the extent indicated above.