



REPUBLIC OF SOUTH AFRICA

## **DIRECTIVE ON CONDUCTING BUSINESS WITH AN ORGAN OF STATE**

**ISSUED BY THE MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION**

**DATE: 21 FEBRUARY 2024**

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## **DEFINITIONS**

In this Directive, unless the context indicates otherwise, any word shall have the meaning assigned to it in the Act and the Regulations.

**“Commission”** means the Public Service Commission established in terms of section 196(1) of the Constitution;

**“Conflict of interest”** refers to a conflict between the public duties and private interests of an employee, in which the employee has private interests which could improperly influence him/her, and/or negatively impact on his/her disposable time to work, and/or negatively impact on his/her official obligations or official duties, and/or negatively impact on the public interest;

**“days”** means any days other than Saturdays, Sundays or public holidays as defined in the Public Holidays Act, 1994 (Act 36 of 1994);

**“director”** means a director as defined in the Companies Act, 2008 (Act 71 of 2008) but does not include an employee, who in an official capacity, is a director of a company listed in schedule 2 and 3 of the Public Finance Management Act, 1999;

**“organ of state”** means –

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or Department –

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

**“Regulations”** means the Public Service Regulations, 2016;

**“the Act”** means the Public Service Act, 1994 (promulgated under Proclamation 103 of 1994);

**“the Unit”** means the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit;

**“this Directive”** means this Directive on Conducting Business with an Organ of State; and

## **1. INTRODUCTION**

- 1.1. In terms of section 195 of the Constitution of the Republic of South Africa, 1996, employees in the public service are expected to exercise the highest ethical standards and adhere to the Code of Conduct contained in Chapter 2 of the Public Service Regulations, 2016 (PSR).
- 1.2. Regulation 13(b) of the of the PSR, 2016 requires employees to not engage in any transaction or action that is in conflict with or infringes on the execution of his/her official duties.
- 1.3. Regulation 13 (c) of the PSR, 2016, prohibits an employee from conducting business with an organ of state or be a director of a public or private company unless such an employee is in an official capacity a director of a company listed in Schedules 2 and 3 of the Public Finance Management Act. These regulations contribute towards the enhancement of the value system which guides the professional conduct of employees in the public service.

## **2. PURPOSE**

The purpose of this Directive is to:

- 2.1 promote ethical behaviour among employees in the public service;
- 2.2 eradicate and prevent unethical practices in the public service;
- 2.3 reduce possible, perceived and potential conflicts of interest;
- 2.4 place a reporting obligation on heads of departments;
- 2.5 manage unintended consequences that may arise in the implementation of the PSR, 2016; and
- 2.6 prohibit an employee from registering on the National Treasury Central Supplier Database (CSD) as an individual, owner of a company or director of a public or private company unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.

2.7 This Directive will repeal and replace the Directive on Conducting Business with an Organ of State, issued by the Minister on 27/01/2017.

### **3. AUTHORISATION**

This Directive is issued by the Minister in terms of section 41(3) of the Public Service Act, 1994, read with Regulation 13(c) of the PSR, 2016.

### **4. SCOPE OF APPLICATION**

4.1 This Directive applies to:

- (i) all national and provincial departments and government components and employees appointed in terms of the Act; and
- (ii) members of the services, educators, and members of the Intelligence Services only in so far as the provisions of the Directive are not contrary to the laws governing their employment.

### **5. STATUTORY FRAMEWORK**

Regulation 13(c) of the Public Service Regulations, 2016 provides that an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.

### **6. ACTIVITIES THAT CONSTITUTE CONDUCTING BUSINESS WITH AN ORGAN OF STATE**

6.1 For the purposes of this Directive, business includes any business, trade, occupation, profession, calling, industry or undertaking of any kind, or any activity carried on for gain or profit by any person within the Republic or elsewhere, and

includes all property derived from or used in or for the purpose of carrying on such other activity, and all the rights and liabilities arising from such other activity.

6.2 An employee is regarded as 'conducting business with an organ of state' when an employee or an employee acting as a director of a private or public company-

- (a) concludes, or intends to conclude, a written or oral agreement, irrespective of the process followed with an organ of state;
- (b) such agreement is not associated with that employee's employment with his or her department; and
- (c) through such agreement provides goods or services to any organ of state for any personal benefit, financial or otherwise.

6.3 For the purposes of regulation 13(c) of the Regulations, conducting business with an organ of state does not include the activities determined by the Minister and listed in **Annexure A**.

## **7. POLICY ON CONDUCTING BUSINESS WITH AN ORGAN OF STATE**

7.1 In order to give effect to regulation 13(c) of the Regulations, every head of department must –

- (i) develop, maintain and communicate a policy on conducting business with the department;
- (ii) keep a register of –
  - a) entities that conduct business with the department; and
  - b) persons who are engaged in supply chain management on behalf of the department;

(i) report annually to the executive authority of the department on the following –

- a) the development or amendment of the policy referred to in paragraph 6.1.1, including a copy of the policy or the amendments; and

- b) confirmation that the registers are kept as contemplated in paragraph 6.1.2; and
- (ii) ensure that the department's supply chain management policy requires supply chain officials to check the CSD before concluding any contract with suppliers and does not allow the conducting of business with an employee appointed in the public service, either in his or her personal capacity or through a company or close corporation.

7.2 The policy on conducting business with the department contemplated in paragraph 7 must –

- (i) prohibit its employees from –
  - (a) registering with government's Central Supplier Database;
  - (b) conducting business directly or indirectly with an organ of state (including the department in which the employee is employed);
  - (c) being a director of a company or a member of a close corporation conducting business with an organ of state;
  - (d) determine procedures for informing its employees on the names of the entities that conduct business with the department;
  - (e) include an obligation on its employees to immediately disclose any financial interest in an entity that intends to conduct business with the department; and
  - (f) determine procedures and rules to prevent conflicts of interest in respect of its employees with financial interests in an entity conducting business with the department.

## **8. DUTY TO REPORT CONTRAVENTIONS IN TERMS OF THIS DIRECTIVE AND THE REGULATIONS**

8.1 The head of department must –

8.1.1 report any alleged contravention of regulation 13(c) of the PSR, 2016 and this Directive by any employee within 30 days of becoming aware of the allegation to the –

- (i) South African Police Service if the HOD has reason to believe that an offence has been committed; and
- (ii) Unit;

8.1.2 initiate an investigation into the alleged contravention for the purposes of a disciplinary enquiry; and

8.1.3 The executive authority should submit a composite report, in the form issued by the Minister (**Annexure B**) summarising all relevant information twice a year as follows:

- (i) period covering 01 April – 30 September: 30 November of the financial year in question; and
- (ii) period covering 01 October – 31 March of the financial year in question: 31 May of the next financial year, with effect from 31 May 2024.

## **9. GENERAL**

9.1 An HOD is responsible for ensuring:

- (i) compliance with this Directive; and
- (ii) If the employee was conducting business with an organ of state before being employed, ensure that the relationship is terminated before the employee assumes duty.
- (iii) designate an official responsible for reporting cases to the law enforcement authorities.

9.2 The Department of Public Service and Administration will provide technical assistance on the implementation of this Directive.

9.3 The policy contemplated in paragraph 6 of this Directive must be in place within 12 months of the coming into effect of this Directive.

## **10. INTERVENTION FROM THE PUBLIC ADMINISTRATION ETHICS, INTEGRITY AND DISCIPLINARY TECHNICAL ASSISTANCE UNIT**

10.1 Where the HOD is made aware of the fact that there are employees in his or her department who are contravening this Directive and no action is taken against these employees three months following the notification, the following intervention will be made by the Unit:

- (i) the matter will be escalated to the EA of the department; and
- (ii) the Unit will report the case of conducting business with the State with the South African Police Service, in line with Section 15(5)(a) of the Public Administration Management Act, 2014.

## **11. DATE OF IMPLEMENTATION**

This Directive shall take effect on 01 April 2024.



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**MS NOXOLO KIVIET, MP**  
**MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION**  
**DATE:** 21/02/24



REPUBLIC OF SOUTH AFRICA

## **ANNEXURE A:**

### **ACTIVITIES BY EMPLOYEES NOT CONSTITUTING CONDUCTING BUSINESS WITH AN ORGAN OF STATE**

#### **Activities affecting employees in the public service:**

1. Participation in marking, training, teaching or lecturing at public educational institutions.
2. Official activities undertaken on a part time basis, either temporarily or permanently to a number of Departments in terms of an employee's employment.
3. Employees supporting the Independent Electoral Commission as voting staff during elections.
4. Employees **volunteering** their services to the board of their professional associations through nomination or election by their peers. This should be confirmed by a letter from their association.
5. Appointment to an organ of the state in an official capacity as a director of a company listed in Schedules 2 and 3 of the Public Finance Management Act, where an employee is reimbursed for reasonable expenses.

#### **Activities affecting non-employees in the public service:**

6. Appointment to an audit committee contemplated in section 77 of the Public Finance Management Act, 1999 (Act 1 of 1999).
7. Appointment as a member of the Reserve Police Service in terms of section 48(2) of the South African Police Service Act, 1995 (Act 68 of 1995).
8. Appointment as a member of the Reserve Force in terms of section 53 of the Defence Act, 2002 (Act 42 of 2002).
9. Social assistance assessments performed by health professionals, not employed full time by the State, for the South African Social Security Agency.



REPUBLIC OF SOUTH AFRICA

## Reporting template: Conducting business with an organ of state

<b>Name of the Department</b>	
<b>Name of the Province/National Department</b>	
<b>Name of the reporter</b>	
<b>Designation</b>	
<b>Cell Number</b>	
<b>Tel Number</b>	
<b>Email Address</b>	
<b>Signature:</b>	
<b>Date:</b>	

### **Obligation to report.**

In terms of the Public Administration Management Act (PAMA) 11 of 2014 Section 8 (2) an employee may not (a) conduct business with the State; or (b) be a director of a public or private company conducting business with the State.

The Act further states that a contravention of subsection (2) (a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and (b) constitute[s] serious misconduct which may result in the termination of employment by the employer.

In terms of PAMA, the Minister for the Public Service and Administration is obliged to report to Parliament twice a year on the implementation of the prohibition.

Section 15 (5) of PAMA, 2014 further states that:

- (a) When an institution discovers an act of corruption, such corruption must immediately be reported to the police for investigation in terms of any applicable law, including the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).
- (b) Issues of misconduct emanating from criminal investigations must be reported to the Unit and the relevant head of institution for initiation and institution of disciplinary proceedings.

According to section 15 (6) (b) of PAMA, the head of institution must report to the Unit on steps taken in respect of subsection (5) (b).

## Employees conducting business with the State

**Name of Department:**

No	Name & Surname	Personal No.	ID No.	Salary Level (e.g. 13)	Details of the offence:			Type of business paid for (e.g. Stationery, as per CSD categorization for commodity)	Action taken:							
					Capacity (e.g. Director or private capacity)	Company(ies) involved (Name and registration numbers)	Amounts involved (Per company)		Criminal case opened			Disciplinary action taken		Money recouped		
									Date referred	Case no	Outcome (Update on progress)	Outcome (Sanction); if no sanction, provide the reason why	Date	Amount	Date	
1.																
2.																
3.																
4.																
5.																

**NAME OF EXECUTIVE AUTHORITY:**

**DEPARTMENT:**

**DATE:**