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IT is hereby notified that the Minister of Finance and Economic Development, in terms of section 45 of the Public Entities Corporate Governance Act [*Chapter 10:31*], has made the following regulations:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the Public Entities Corporate Governance (General) Regulations, 2018.

Interpretation

2. In these regulations—

“accounting officer” means a person who is an accounting officer in terms of section 10 of the Public Finance Management Act [*Chapter 22:19*];

“board” means the board of a public entity;

“board member” means a member of a board;

“compliance officer” means a person appointed or designated as an entity’s compliance officer in terms of section 10;

“database” means a register or directory of potential candidates for appointment to the board of one or more public entities;

“declaration of assets” means the written declaration which board members and senior staff members are required by section 37 of the Act to provide to the Office of the President and Cabinet.

Meaning of senior staff member

3. (1) In addition to the chief executive officer, the following employees of a public entity shall constitute the entity’s senior staff members for the purposes of the Act—

- (a) the deputy to the chief executive officer; and
- (b) the head of every administrative department of the entity; and
- (c) every employee of the entity who is of a grade immediately below the head of an administrative department; and
- (d) the entity’s compliance officer; and
- (e) every employee whose grade and additionally, or alternatively, remuneration is equivalent to that of an employee specified in paragraph (a), (b), (c) or (d); and
- (f) every employee who is acting in a position specified in paragraph (a), (b), (c), (d) or (e) and has done so continuously for three months or more.

(2) Subsection (1) shall not be construed as limiting the power of the Unit to specify any other person as a senior staff member in terms of the definition of that term in section 2(1) of the Act.

PART II

BOARDS OF PUBLIC ENTITIES

Databases of potential candidates for appointment to boards

4. (1) The Unit may establish a separate database for each public entity or a single database for all public entities or any class of public entities, as the Head of the Unit may decide.

(2) A database may be in written or electronic form.

(3) The Unit shall advertise on its website the establishment of every database, specifying—

- (a) the public entities for which the database is established; and
- (b) the qualifications and experience required of candidates for appointment to the board of those public entities; and
- (c) the manner in which potential candidates may get their names and other particulars entered on the database; and
- (d) the manner in which entries on the database may be altered or removed.

(4) Where a person has applied in the advertised manner to have his or her name and particulars entered on a database, the Unit shall not refuse to do so unless it is apparent that the applicant is not qualified for appointment to the board of any public entity for which the database has been established.

(5) Whenever the Unit refuses to enter an applicant's name and particulars on a database, the Head of the Unit shall ensure that he or she is notified without delay of the refusal and of the reasons for it.

(6) The Unit shall not levy a fee or charge for entering the particulars of any person on a database or for altering those particulars or for removing an entry from a database.

Remuneration of State employees who are board members or attached to boards

5. (1) A person in the full-time employment of the State who is appointed as a board member shall be entitled to the same remuneration, including sitting allowances and other payments and benefits, as are paid or accorded to the other members of the same board:

Provided that the person shall ensure that the accounting officer of his or her Ministry, Department or service is informed, without delay and in detail, of all such remuneration received by him or her.

(2) A person in the full-time employment of the State who is assigned to attend meetings of the board of a public entity, otherwise than as a board member, shall not be entitled to any remuneration or allowance payable from the funds of the public entity in respect of his or her attendance.

Notification of dismissal of board members

6. The line Minister shall cause notification of the dismissal of a board member, including a board chairperson, to be published without delay in the *Gazette*.

Board development programmes

7. (1) In this section—

“board development programme” means a training programme to prepare board members for their role on the board or to enhance their efficiency or effectiveness as board members.

(2) The Unit may at any time require the board of a public entity—

- (a) to notify the Unit of any board development programme the entity is or will be conducting;
- (b) to develop and additionally, or alternatively, to conduct one or more board development programmes within such period and in accordance with such general directions as the Unit may specify;
- (c) to attend a board development programme referred to in subsection (3).

(3) The Unit, by itself or in co-operation with any other person, may develop and conduct board development programmes and may impose reasonable fees or charges for attendance at such programmes.

PART III

SENIOR STAFF MEMBERS OF PUBLIC ENTITIES

Appointment of senior staff members

8. (1) Subject to section 17(4) of the Act, boards shall take reasonable steps to fill vacancies amongst the entities' senior staff within three months of the vacancies occurring.

(2) Before appointing a person to a position as senior staff member of a public entity, the entity's board shall cause the vacant position to be advertised—

- (a) at least once a week for two consecutive weeks in one or more newspapers circulating in the area in which the entity carries on its activities; and
- (b) for at least two weeks on the public entity's website, if any.

(3) Advertisements in terms of subsection (2) shall specify—

- (a) the position to be filled; and
- (b) the qualifications and experience, if any, required for the position; and
- (c) the manner in which and deadline by which applications to fill the position are to be submitted, which deadline shall allow all potential applicants a reasonable time within which to submit their applications.

(4) A board that publishes an advertisement in terms of subsection (2) shall ensure that—

- (a) all persons who submit applications in response to the advertisement, and whose applications indicate they are qualified to fill the advertised position, are considered for inclusion on a shortlist of candidates to be interviewed, where the board prepares such a shortlist; and

- (b) all candidates on a shortlist referred to in paragraph (a) or, where the board does not prepare such a shortlist, all persons whose applications indicate that they are qualified to fill the advertised position, are given a reasonable opportunity to attend an interview for their suitability to be assessed:

Provided that an inadvertent failure to invite any such person or candidate to attend an interview shall not invalidate the board's subsequent appointment of a person to fill the advertised position.

(5) The board shall cause every person who attends an interview referred to in subsection (4) to be informed without delay and in writing whether or not he or she has been selected to fill the position concerned.

Evaluation of performance of senior staff members

9. Every performance contract entered into by a board with a senior staff member other than its chief executive officer shall require the member's performance to be evaluated by the board at least once every year.

Compliance officer

10. (1) Subject to subsection (2), every public entity shall appoint a member of its staff to be a compliance officer with responsibility for ensuring that the entity and its board members and staff comply with the relevant provisions of the Act and these regulations and any manuals, codes or instructions made or issued in terms of the Act.

(2) A board may designate its entity's chief executive officer or a board member to be the entity's compliance officer.

(3) Once a year the compliance officer of a public entity shall ensure that every member of the entity's board and senior staff—

- (a) is given an opportunity to read the Act, these regulations and the entity's board charter and code of ethics; and
- (b) signs a statement to the effect that he or she has performed his or her duties in full compliance with the enactments and documents referred to in paragraph (a).

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(4) A board member or senior staff member who, without just cause, fails or refuses to sign a statement referred to in subsection (3) (b) shall be liable to dismissal.

Dismissal of chief executive officers

11. (1) No board of a public entity shall dismiss its chief executive officer except on the same grounds, and in accordance with the same procedures, as are applicable to the dismissal of board members, and section 16 (“Dismissal of board members of public entities”) of the Act shall apply, with any necessary changes, in any such case:

Provided that the board shall not dismiss its chief executive officer unless, in addition to following these procedures, it has secured the prior endorsement of the President for the dismissal.

(2) A board that has dismissed its entity’s chief executive officer shall without delay cause notice of the dismissal to be published in the *Gazette*.

PART IV

DECLARATION OF ASSETS BY BOARD AND SENIOR STAFF MEMBERS

Form of declaration of assets

12. A declaration of assets shall be substantially in the form set out in the Schedule:

Provided that a declaration of assets shall not be rejected or regarded as invalid on the ground that it is in some other form, so long as it lists the member’s assets in sufficient detail to comply with the Act.

Transmission of declarations of assets to Office of the President and Cabinet

13. Upon completing a declaration of assets, a board member or senior staff member shall hand it to the chief executive officer of the public entity concerned, who shall make a copy of it for the public entity’s records and without delay send the original in a sealed envelope to the Office of the President and Cabinet.

Confidentiality of declarations of assets

14. (1) Subject to this section, every person who, in the course of his or her duties, has custody of a declaration of assets or a copy thereof or has occasion to read such a declaration or copy—

- (a) shall not disclose its contents to any other person; and
- (b) shall take all reasonable precautions to ensure that no unauthorised person reads it; and
- (c) shall not make use of any information contained in it for personal gain or to benefit any other person improperly.

(2) Persons employed in the Office of the President and Cabinet may read a declaration of assets and may disclose its contents to other such persons for the purpose of—

- (a) ascertaining whether or not there has been a conflict of interests in any decision taken or thing done by the person who made the declaration; or
- (b) comparing the declaration with any previous declaration made by the same person.

(3) A copy of a declaration of assets kept in the records of a public entity may be disclosed to board members of the entity for the purpose of—

- (a) ensuring that there is no conflict of interests in any decision taken or about to be taken or thing done or about to be done by the person who made the declaration; or
- (b) comparing the declaration with any previous declaration made by the same person.

(4) The contents of a declaration of assets or a copy of it may be disclosed—

- (a) in compliance with an order of court; or
- (b) for the purpose of a criminal prosecution.

(5) Any person who contravenes—

- (a) paragraph (a) or (b) of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;

- (b) paragraph (c) of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) The institution of criminal proceedings shall not preclude disciplinary action being taken against a person who contravenes subsection (1).

PART V

COMMITTEES

Finance committee

15. (1) The board of—

- (a) every public commercial entity; and
- (b) every other public entity which, in any of its preceding five financial years, received funds—
 - (i) from the public, whether by way of fees, charges or otherwise, in excess of fifty thousand dollars; or
 - (ii) from the State or another public entity, in excess of one hundred thousand dollars;

shall establish a finance committee in accordance with this section.

(2) The membership of a finance committee shall include at least one board member and one senior staff member, and may include persons who are not board members or employees of the public entity concerned:

Provided that at least one member of the committee shall have qualifications or experience in accounting or finance.

(3) The functions of a finance committee shall be—

- (a) to formulate the public entity's annual budget; and
- (b) to supervise the preparation of the public entity's financial statements and reports; and
- (c) to exercise any other functions relating to finance that the board may assign to the committee.

Audit committee

16. (1) The board of—

- (a) every public commercial entity; and
- (b) every other public entity which, in any of its preceding five financial years, received funds—
 - (i) from the public, whether by way of fees, charges or otherwise, in excess of twenty thousand dollars; or
 - (ii) from the State or another public entity, in excess of fifty thousand dollars;

shall establish an audit committee in accordance with this section.

(2) An audit committee shall consist of at least two non-executive board members, other than the chairperson of the board, together with one or more other persons who are neither board members nor staff members of the public entity but who are experienced in business or accounting.

(3) The functions of an audit committee shall be—

- (a) to establish appropriate accounting procedures and controls in respect of the public entity's business and activities, and to ensure compliance with them; and
- (b) to supervise the entity's internal auditor and its systems for internal audit; and
- (c) to introduce such measures as, in the committee's opinion, may enhance the objectivity and accuracy of the entity's financial statements and reports;

and to advise the board in relation to those matters.

(4) The board may assign additional functions to its audit committee, so long as they do not limit the committee's ability to exercise independently the functions listed in subsection (3).

Risk management committee

17. (1) The board of every public commercial entity shall establish a risk management committee of at least three persons comprising—

- (a) board members; and
 - (b) senior staff members responsible for various aspects of risk management.
- (2) The functions of a risk management committee shall be—
- (a) to assess the risks to which the public entity is or will be subject and the opportunities open to it; and
 - (b) to develop strategies for combating or mitigating the risks and taking advantage of the opportunities; and
 - (c) to develop arrangements for the public entity to operate under conditions of volatility and to recover from acute shocks;

and to advise the board accordingly.

(3) The board may assign its risk management committee additional functions, consistent with those listed in subsection (2).

Remuneration or human resources management committee

18. (1) The board of a public entity which has more than 20 employees who are not in the full-time employment of the State shall appoint a remuneration committee or a human resources management committee consisting of the chairperson of the board and at least two non-executive board members and, in the case of a human resources management committee, at least one senior staff member.

(2) The chairperson of the board shall not be chairperson of a remuneration committee or a human resources management committee.

- (3) The functions of a remuneration committee shall be—
- (a) to fix remuneration for executive board members and senior staff members of the public entity; and
 - (b) to establish and administer remuneration policies for all board members and employees of the public entity.

(4) Where a board establishes a human resources management committee, its functions shall be—

- (a) to exercise the functions of a remuneration committee set out in subsection (3); and

- (b) to establish and administer policies for the appointment and retention of staff; and
- (c) to make recommendations to the board as to the conditions of service of staff; and
- (d) to exercise any other functions relating to human resources that the board may assign to the committee.

(5) In the exercise of their functions, a remuneration and a human resources management committee shall observe any applicable—

- (a) standards of remuneration formulated in terms of section 12 of the Act; and
- (b) model conditions of service formulated in terms of section 13 or 19 of the Act; and
- (c) restrictions specified in terms of section 14, 20 or 21 of the Act.

Power of boards to appoint other committees

19. This Part shall not be construed as limiting the power of boards of public entities to appoint other committees in terms of their enabling instruments.

PART VI

GENERAL

Annual general meetings of public entities

20. (1) The board of a public entity shall invite the following persons to the entity's annual general meetings, in addition to the persons specified in section 33(3) of the Act—

- (a) one or more representatives of the Office of the President and Cabinet, chosen by the Chief Secretary of that Office; and
- (b) one or more representatives of the Ministry responsible for finance, chosen by the Secretary of that Ministry; and

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- (c) one or more representatives of the entity known as the State Enterprises Restructuring Agency, chosen by the head of that Agency; and
- (e) the chairperson of the Parliamentary Portfolio Committee responsible for overseeing the entity's line Ministry, or his or her representative.

(2) In addition to the persons specified in subsection (1) and section 33(3) of the Act, the board of a public entity may, and if so required by the Unit shall, invite other interested persons to its annual general meetings.

(3) An inadvertent failure to invite a person specified in subsection (1) or (2) or in section 33(3) of the Act shall not invalidate a public entity's annual general meeting.

Information to be submitted to line Ministers by public entities with annual reports

21. Together with the annual report referred to in section 24(3) or (4) of the Act, the board of every public entity shall submit, in writing, to its line Minister the following information—

- (a) the full names, contact details and qualifications of the persons who are currently board members, and the dates of their first appointment to the board; and
- (b) any changes in the board membership during that year; and
- (c) the current membership of each of the committees of the board; and
- (d) the remuneration, including allowances, terminal benefits and other benefits received by each person who is or was board member and committee member during that year; and
- (e) the persons who are currently senior staff members, and any changes in that membership during that year; and
- (f) the remuneration, including allowances, terminal benefits and other benefits, received by each person who is or was a senior staff member during that year; and

- (g) where terminal benefits have been paid to any board or senior staff members during that year, proof that they have been approved in terms of section 21 of the Act; and
- (h) the entity's policy on remuneration, including incentives, for board members and staff members; and
- (i) a copy of the public entity's audited financial statements; and
- (j) in the case of a public commercial entity, the entity's monthly borrowings.

Amendment of strategic plans by public entities

22. (1) If, following a review of its strategic plan in terms of section 24 of the Act, the board of a public entity considers it necessary or appropriate to amend the plan, the board shall without delay make the amendments to the plan.

(2) Sections 22 and 24 of the Act shall apply, with any necessary changes, to the amendment of a strategic plan in terms of subsection (1).

Obedience to questionable instructions

23. (1) In this section—

“questionable activity” means—

- (a) ordering or committing a payment which cannot lawfully or properly be made; or
- (b) not collecting any money or recovering any property which should be collected or recovered on behalf of a public entity; or
- (c) dealing with a public entity's money or property in a manner which is unlawful or improper; or
- (d) doing or omitting to do anything else the doing or omission of which is unlawful or improper in relation to a public entity or its money or property.

(2) If the board of a public entity, or a board member, is instructed by the entity's line Minister, or by a person acting or

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purporting to act on behalf of its line Minister, to do or omit to do anything which the board or member, as the case may be, believes is a questionable activity, the board or member shall submit to the line Minister, in writing, whatever objections the board or member has to the instruction and the reasons for those objections.

(3) If, after receiving objections and reasons under subsection (2), the line Minister instructs the board or member, in writing, to do or omit to do anything which the board or member believes is a questionable activity, the board or member shall comply with the instruction and shall immediately submit a written report on it to—

- (a) the Unit; and
- (b) the Chief Secretary to the President and Cabinet;

together with a copy of the instruction.

(4) If an employee of a public entity is instructed by the entity's line Minister, or by a person acting or purporting to act on behalf of its line Minister, to do or omit to do anything which the employee believes is a questionable activity, the employee shall submit to the entity's board, in writing, whatever objections he or she has to the instruction and the reasons for those objections.

(5) The board shall without delay consider any objections and reasons submitted to it in terms of subsection (4) and—

- (a) if it considers that the employee's objections are not valid, it shall—
 - (i) pass a resolution to that effect and ensure that the resolution is fully recorded in the minutes of its meeting; and
 - (ii) instruct the employee, in writing, to comply with the Minister's instruction;

and the employee shall comply with the board's instruction;

- (b) if it considers that the employee's objections are valid, it shall submit to the line Minister, in writing, the objections it has to the instruction and the reasons for those objections.

(6) If, after receiving objections and reasons under subsection (5), the line Minister instructs the board or employee to do or omit to do anything which the board believes is a questionable activity, the board or employee, as the case may be, shall comply with the instruction and the board shall immediately submit a written report on it to—

- (a) the Unit; and
- (b) the Chief Secretary to the President and Cabinet;

together with a copy of the instruction.

(7) If an employee of a public entity is instructed by the entity's board or a board member or another employee of the entity to do or omit to do anything which the employee believes is a questionable activity, the employee shall submit to the board, in writing, whatever objections he or she has to the instruction and the reasons for those objections.

(8) The board shall without delay consider any objections and reasons submitted to it in terms of subsection (7) and—

- (a) if it considers that the employee's objections are not valid, it shall—
 - (i) pass a resolution to that effect and ensure that the resolution is fully recorded in the minutes of its meeting; and
 - (ii) instruct the employee, in writing, to comply with the instruction;and the employee shall comply with the board's instruction;

- (b) if it considers that the employee's objections are valid, it shall revoke the instruction.

(9) If an employee who has been instructed in terms of subsection (8)(a) to comply with an instruction considers that the instruction obliges him or her to engage in a questionable activity, the employee shall without delay submit a written report on it to—

- (a) the Unit; and
- (b) the Chief Secretary to the President and Cabinet;

together with a copy of the instruction.

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(10) A board member or employee of a public entity who, in good faith, submits objections to or a report on an instruction in accordance with this section shall not be liable to—

- (a) dismissal or termination of appointment or employment; or
- (b) any measure or sanction of a disciplinary nature;

on account of those objections.

(11) The requirements of this section shall be construed as additional to those of section 14 of the Public Finance Management Act [*Chapter 22:19*].

Exemptions from provisions of Act

24. (1) Where a line Minister or the board of a public entity seeks the Minister's exemption in terms of section 44 of the Act—

- (a) the line Minister; or
- (b) the board, through the line Minister;

as the case may be, shall send a written application to the Unit setting out the nature of the exemption sought and the reasons for it.

(2) The Head of the Unit shall without delay submit every application sent in terms of subsection (1) to a committee convened by the Chief Secretary to the President and Cabinet and consisting of one or more representatives from each of the following—

- (a) the Unit;
- (b) the Ministry of Finance and Economic Development; and
- (c) the entity known as the State Enterprises Restructuring Agency;

and the committee shall without delay consider the application and report on it to the Minister.

(3) When considering whether or not to grant an application for exemption in terms of section 44 of the Act, the Minister shall pay due regard to any recommendations or comments made by the committee referred to in subsection (2).

SCHEDULE (Section 12)

FORM OF DECLARATION OF ASSETS

PUBLIC ENTITIES CORPORATE GOVERNANCE ACT [CHAPTER 10:31]

DECLARATION OF ASSETS

Important: *Please read the following notes carefully before you complete this form.*

1. This form must be completed by board members and senior staff members of public entities:
 - as soon as possible after they are appointed or re-appointed, and in any event within three months after their appointment or re-appointment;
 - on each anniversary of their appointment or re-appointment; and
 - within two months after they cease to be members of the board or staff of the entities concerned.

2. The term “public entity” is defined in the Public Entities Corporate Governance Act [Chapter 10:31] and covers:
 - statutory bodies, i.e. Constitutional Commissions and parastatals;
 - companies and other commercial entities owned or controlled by the State or by a statutory body;
 - joint venture partnerships between the State and other persons.

For greater detail, please read the Act.

3. You must complete this form accurately and truthfully. If you do not, you will automatically cease to be a member of the board or a staff member, as the case may be, and you will be disqualified from re-engagement.
4. The word “associate” in this form means:
 - your spouse, son, daughter, parent, brother or sister;
 - your partner;
 - a trust of which you are a beneficiary,;
 - a beneficiary of a trust of which you are a trustee; and
 - a company which is controlled by you, either alone or together with one or more other associates.

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5. Immovable property means land or buildings. Movable property comprises all other property, including motor vehicles, furniture, cash, bank balances and company shares.
6. Completing this form does not absolve you from your duty to disclose conflicts of interest that may arise in connection with your membership of the board or employment as a senior staff member, as the case may be.
7. Having completed this form, you must give it to the chief executive officer of your public entity for transmission to the Office of the President and Cabinet. If you wish you may enclose it in a sealed envelope before giving it to the chief executive officer.
8. If you need clarification on any point regarding this form, please contact the Head of the Corporate Governance Unit at the Office of the President and Cabinet.

PARTICULARS OF PUBLIC ENTITY

Name of public entity:

Address of public entity:

.....

PARTICULARS OF MEMBER

Full names of member:

Address of member:

.....

Are you a board member of your public entity? (*insert X in appropriate box*)

Yes No

If yes:

When were you first appointed to the Board?

Are you an executive or non-executive member?

Are you a staff member of your public entity? (*insert X in appropriate box*)

Yes No

If yes:

What is your position?.....

When were you first appointed?.....

DETAILS OF ASSETS

A. Immovable Property

(List all immovable property which you or an associate own or lease or in which you or an associate have any other interest. When listing urban property, specify the stand number or its address. When listing a farm, specify its address and its size in hectares. In the case of all property, specify whether it is you or an associate that owns or leases it or has an interest in it; if you and an associate jointly own or lease it or have an interest in it, state that fact. Specify the name of every such associate. If the space below is insufficient, list the property on a separate sheet which you must attach to this form.)

.....
.....
.....

B. Movable Property

(List all items of movable property worth more than \$100 000 which you or an associate own or lease or in which you or an associate have any other interest. When listing the items, specify their value. Specify whether it is you or an associate that owns or leases any item or has an interest in it; if you and an associate jointly own or lease it or have an interest in it, state that fact. Specify the name of every such associate. If the space below is insufficient, list the items on a separate sheet which you must attach to this form.)

.....
.....
.....

C. Businesses

(List all businesses in which you or an associate have an interest or which you or an associate play any part in running. Specify whether it is you or an associate that has an interest in or runs the businesses; if you and an associate are jointly interested in or run them, state that fact. Specify the name of any such associate. If the space below is insufficient, list the businesses on a separate sheet which you must attach to this form.)

.....
.....
.....

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DECLARATION BY MEMBER

I certify that the statements in this form regarding my property and businesses are correct to the best of my knowledge and belief, and that I have no other property, businesses or interests which I am required to declare in terms of the Public Entities Corporate Governance Act [*Chapter 10:31*]. I understand the requirements of that Act and the consequences of making a false declaration or of omitting any property or interest from this declaration.

Member's name and signature:

Date: