

**NOTICE 865 OF 2009**

**THE PUBLIC SERVICE COMMISSION**

**RULES OF THE PUBLIC SERVICE COMMISSION: MANAGING CONFLICTS OF INTEREST IDENTIFIED THROUGH THE FINANCIAL DISCLOSURE FRAMEWORK FOR SENIOR MANAGERS**

It is hereby notified for general information that the Public Service Commission has in terms of the provision of Section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), formulated the rules set out in the Schedule hereto.

**PROF SS SANGWENI**

Chairperson

Public Service Commission

**SCHEDULE 1**

**RULES OF THE PUBLIC SERVICE COMMISSION: MANAGING CONFLICTS OF INTEREST IDENTIFIED THROUGH THE FINANCIAL DISCLOSURE FRAMEWORK FOR SENIOR MANAGERS**

**A. DEFINITIONS**

1. In these rules, unless the context indicates otherwise –

“Commission” means the Public Service Commission established by Section 196 (1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Conflict of interest” means any financial or other private interest or undertaking that could directly or indirectly compromise the performance of a public servant's duties, or the reputation of a public servant's department in its relationship with its stakeholders;

“Designated employee” means a member of the Senior Management Service as defined in the Public Service Regulations, Chapter 3.A;

“Executive Authority” means an authority as defined in Subsection 1(1) of the Public Service Act, 1994 (Act No. 103 of 1994);

“Public Service Regulation” means the Regulations issued in terms of Section 41 of the Public Service Act, 1994 (Act No. 103 of 1994);

“Registrable interest” means the financial interests listed in Chapter 3, Section D of the Public Service Regulations.

A “perceived conflict of interest” is where a public official is in a position that appears to be influenced by his/her private interests when doing his/her job.

A "potential conflict of interest" is where a public official is in a position where he/she may be influenced in the future by his/her private interests when doing his/her job.

An "actual conflict of interest" is where a public official is in a position to be influenced by his/her private interests when doing his/her job.

## **B. PURPOSE AND APPLICATION**

1. The purpose of these rules is to provide for a procedure to identify and manage potential conflicts of interest disclosed through the Financial Disclosure Framework of the senior management service as prescribed in Chapter 3 of the Public Service Regulations, 1999, as amended.
2. The rules are formulated in terms of the provision of Section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), which authorizes the Commission to formulate rules regarding the matters to which Section 196(4) of the Constitution relate.
3. The rules are applicable to all designated employees.
4. Non-compliance to the Financial Disclosure Framework and the Rules on Managing Conflicts of Interest may result in the Commission invoking Section 10 of the Public Service Commission Act, 1997, which provides that the Commission may *"summons any person who may be able to give information of material importance concerning the subject of the inquiry or who has in his or her control any book, document or object which may have a bearing on the subject of the inquiry, to appear before the Commission"*.

## **C. MANAGING CONFLICTS OF INTEREST WITHIN A DEPARTMENT**

1. The primary responsibility for managing conflicts of interest through scrutiny of the contents of financial disclosure forms is that of Executive Authorities. An Executive Authority may designate a person to execute the functions associated with the effective implementation of the provisions of the Financial Disclosure Regulations. The functions may include the following:
  - (a) Establish an internal process to advise the Executive Authority on potential, perceived or actual conflicts of interests of designated employees.
  - (b) Through the established process, identify perceived, potential and actual conflicts of interest of designated employees.
  - (c) Where an activity is identified as having the potential for conflict of interest, discuss the relevant concerns with the designated employee to determine whether the potential conflict of interest can be managed or whether it is an actual conflict of interest that requires immediate intervention.

- (d) Where a designated employee's activities in relation to the potential conflict of interest is seen to serve the interest of the Department and it can be managed in a manner that would withstand the test of reasonable and independent scrutiny, advise the Executive Authority and obtain his/her approval to implement a suitable method of monitoring and managing the conflict before the designated employee is free to proceed with the activity.
- (e) Provide the designated employee with the terms and conditions under which an activity associated with the potential conflict of interest will be conducted and managed, after obtaining the Executive Authority's approval for such terms and conditions.
- (f) In cases where an activity is assessed as having the potential for conflict of interest and the continued performance of the activity by the designated employee involved does not serve the interest of the department or cannot be appropriately managed and therefore will not withstand the test of reasonable and independent scrutiny, or is an actual conflict of interest, inform the Executive Authority and obtain his or her approval not to allow the designated employee to proceed with the activity.
- (g) Inform the employee performing an activity that constitutes a conflict of interest to stop performing the activity, reassign duties attached to the potential or actual conflict of interest.
- (h) Document all related matters and maintain records sufficient to address any audit queries or allegations of conflicts of interest that might arise.
- (i) Keep the Commission informed through six monthly reports, at the end of September and at the end of March of each year, of all instances where potential conflicts of interest of designated employees in his/her department have been identified and how this has been managed.
- (j) To be effective, the general declaration of interests should not only be updated annually, but also when changes occur.

**D. DOCUMENTATION TO ACCOMPANY THE FINANCIAL DISCLOSURE FORM**

1. The Executive Authority shall when submitting a copy of the Financial Disclosure Form, prescribed in Public Service Regulation Chapter 3. Section C.1, provide the following documentation to the Commission:
  - a) Copy of approval to perform remunerated work outside of the Public Service by the Executive Authority or an employee authorized by the said authority, if applicable.
  - b) Where applicable, the Commission may request a copy of the job description of a designated employee (format at Annexure A), in order to verify whether or not a conflict of interest exists.

2. Upon receipt of the financial disclosure form from an Executive Authority, the Commission will –
  - a) Record the date of receipt;
  - b) Acknowledge receipt of the financial disclosure form; and
  - c) Verify that the form is correctly completed.
3. If the financial disclosure form is incomplete, the Commission will inform the Executive Authority of the identified shortcomings within 30 days of receipt of the form.
4. The Executive Authority must ensure that the identified shortcomings are adequately addressed.
5. The completed financial disclosure form and outstanding information must be returned to the Commission within 30 days after receipt of the Commission's request.

**E. VERIFICATION OF INFORMATION REGARDING A REGISTRABLE INTEREST AND IDENTIFICATION OF CONFLICTS OF INTEREST BY THE COMMISSION**

1. If a registrable interest of a designated employee disclosed in terms of Chapter 3, Section C of the Public Service Regulations, conflicts or is likely to conflict with the execution of any official duty of that employee, the following process to verify and consult with the employee on the information regarding that interest will be followed by the Commission:
  - (a) If the Commission is of the opinion that a registrable interest of a designated employee conflicts or is likely to conflict with the execution of any official duty of that employee, it shall verify the information regarding that interest and consult with the employee in question.
  - (b) If, after such verification and consultation, the Commission is of the opinion that there is such conflict or that such conflict is likely to occur, it will inform the Executive Authority in writing of the potential conflict of interest of an employee in his/her employ.
  - (c) The Executive Authority must notify the designated employee of the identified potential conflict of interest and after consultation with the designated employee in assessing the potential conflict of interest, provide a written response to the Commission within thirty (30) days of receipt of the correspondence of the Commission.
  - (d) In its response to the Commission the Executive Authority should state:
    - what steps were taken; and
    - if steps were taken, give a description of those steps or, if no steps were taken, give the reasons therefore.

- (e) Depending on the nature and extent of the potential conflict of interest, the Commission may request supporting documentation. This may include but is not limited to the following:
- A job description as provided for in Rule D.1;
  - Company registration documentation; and
  - Documented proof of approval by Executive Authority or delegated authority to perform work outside of the Public Service (where applicable).
2. If deemed necessary by the Commission, the written correspondence may be followed up with oral consultation. During this consultation with the Commission, the designated employee will be afforded an opportunity to explain:
- (a) whether in his/her opinion the registrable interest could cause a conflict of interest;
  - (b) what steps and actions he/she has or will take to avoid an actual conflict of interest; and
  - (c) the reason for the involvement in an interest which may cause a conflict of interest.
3. When a potential conflict of interest has been identified and the Commission has decided to consult with the relevant designated employee, the consultation will consist of the following role-players:
- (a) One (1) member of the Commission;
  - (b) The designated employee concerned; and
  - (c) A designated official from the OPSC who will act as secretariat.
  - (d) Independent external arbitration may be used where conflicts cannot be solved through this procedure.
4. Within 30 days after the consultation, or where only documentary evidence is used, within 30 days of receipt of such documentation, the Commission will advise the relevant Executive Authority whether or not it is of the opinion that there is a conflict of interest or that a conflict of interest is likely to occur.
5. The Executive Authority will deal with the matter in terms of Chapter 3, Section G. 3 and 4 of the Public Service Regulations.

**ANNEXURE A****JOB DESCRIPTION****A. JOB INFORMATION SUMMARY**

NAME OF POST	
POST LEVEL	
DIRECTORATE	
ORGANOGRAM OF THE DIRECTORATE	

**B.1. PURPOSE OF THE DIRECTORATE** *(What is the main purpose and objectives of the Directorate)*

<b>Main Purpose of Directorate</b>
<b>OBJECTIVES</b>

**B.2 JOB PURPOSE:** *(What is the main purpose and objectives of the job, and how do they relate to the purpose of the Directorate)*

<b>Main Purpose of Job:</b>
<b>Objectives of Job:</b>

**C. KEY PERFORMANCE AREAS** *(What are the main key responsibilities of the post)*

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**D. OUPUT PROFILE**

**D.1 DUTIES** (What are the specific duties related to each of the key responsibilities outlined above)


**D.2 KEY CUSTOMERS** (Who are the key customers / stakeholders both internally and externally with whom the post holder liaises with, and requirements / expectations for each customer / stakeholder)

Customer / Stakeholder	Requirements / Expectations

\_\_\_\_\_  
 POST INCUMBENT  
 DATE: \_\_\_\_\_

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