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Ireferensi Ref No: Verwysings	CIRCULAR NO. 12 OF 2020/21: CONFLICT OF INTEREST	Ifaxi Facsimile Faksimile:	040 101 0706
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**TO ALL: ACCOUNTING OFFICERS
CHIEF FINANCIAL OFFICERS
HEADS: SUPPLY CHAIN MANAGEMENT UNITS
HEADS: HUMAN RESOURCE MANAGEMENT UNITS
HEADS: DIGITO
BAS/LOGIS/PERSAL SYSTEM CONTROLLERS**

CIRCULAR NO 12 OF 2020/21

CONFLICT OF INTEREST – GOVERNMENT EMPLOYEES CONDUCTING BUSINESS WITH ORGANS OF STATE

PURPOSE

1. The purpose of this Circular is to draw to the attention of Accounting Officers the legislative provisions relating to Conflict of Interest in respect of government employees conducting business with Organs of State and the management thereof.

BACKGROUND

2. On 1 August 2016, the Minister of Public Service and Administration approved the Public Service Regulations, 2016 (PSR, 2016). Regulation 13 (c) of the PSR, 2016, prohibits public service employees from conducting business with an Organ of State. Subsequently, in January 2017, the Minister of Public Service and Administration issued Circular No. EIM 1/2016 on Conducting Business with an Organ of State. Section 5.1.1 of the said Circular clearly highlights the fact that government employees are prohibited from doing business with the State.



LEGISLATIVE FRAMEWORK

3. In terms of Sections 8 and 9 of the Public Administration and Management Act, 2014 (Act No.11 Of 2014) (PAMA), “employee” includes persons contemplated in Section 12A (Special Advisors) of the Public Service Act and a person performing similar functions in a municipality.
4. In terms of Section 8 (1) of PAMA, an employee is prohibited from conducting business with the State or be a director of a public or private company conducting business with the State.
5. In terms of Section 8 (2) of PAMA, a contravention of subsection (1) 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 constitutes serious misconduct which may result in the termination of employment by the employer.
6. On 19 August 2019, the Office of the Premier issued a directive to all Heads of Departments based on a letter received from the Department of Public Service and Administration dated 11 July 2019, pertaining to Section 8 of PAMA. The contravention of the PAMA has thus become a statutory offence as the Act strengthens the provisions of the Public Service Regulations of 2016. Section 8 of the Act provides as follows:

- **Conducting business with the State**

- (1) In this section and in Section 9, “employee” includes persons contemplated in Section 12a (Special Advisors) of the Public Service Act and a person performing similar functions in a municipality.
- (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.
- (3) 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) constitutes serious misconduct which may result in the termination of employment by the employer.

7. Furthermore, the current prescribed application for employment form (Z83) has been amended. The amended Z83 as per the directive of the Minister for the Public Service and Administration takes effect from 01 January 2021 and makes it compulsory for, amongst others, applicants to disclose their business and financial interests.

DISCUSSION

CONTROL MEASURES TO BE TAKEN

8. Departments are advised to perform the screening on PERSAL as follows:
- 8.1. The PERSAL function (#4.1.7) has been identified as the function that can be utilized to ensure that public servants do not conduct business with the State;
 - 8.2. This function is able to access all six (6) PERSAL mainframes across the country i.e. this function has sight of all employees at both National and Provincial Government level; and
 - 8.3. Accounting Officers must assign the responsibility of checking directors of companies before a tender is awarded. These employees must have successfully completed the PERSAL introductory course offered by Provincial Treasury prior to them being registered as PERSAL Users.
9. Departments are reminded that at any given time, a CSD Registration Report can be drawn which clearly identifies whether any of the owners/directors of a particular company are government employees. These companies should be disqualified from any procurement processes, unless they are exempted in terms of Annexure A of DPSA Circular EIM 1/2016 of 2016.
10. In terms of National Treasury Instruction Note 4A of 2016/17, when sourcing price quotations from prospective suppliers, departments must verify key information on the CSD in line with the PFMA and other regulatory requirements. The following information, amongst others, must be verified:
- Business registration, including details of directorship and membership;
 - Whether the owners/ directors are employees of the State; and
 - Identity number.

11. Accounting Officers must ensure that with effect from 01 January 2021, the new Z83 application form is utilized when undertaking recruitment. Furthermore, the declaration relating to conducting business with the State is verified and in instances where the recommended candidate is a director/owner of a company conducting business with the State, enforce the requirement that the recommended candidate relinquishes such business interest prior to assumption of duty.

CONSEQUENCE MANAGEMENT AND MEASURES TO BE TAKEN

12. As Section 8 of the PAMA became applicable from 01 April 2019, departments are thus required to institute criminal charges against all employees who have benefited from trading with government as per Provincial Treasury lists of such employees derived from the Central Supplier Database (CSD) from 01 April 2019. Reports on actions arising from this must be shared with the DG's office and failure to take the required action will be regarded in a serious manner.
13. In addition to the criminal action being taken, departments are further required to institute disciplinary action against all conflicted employees within the Eastern Cape departments and ensure that there is no recurrence of such in future.
14. Departments must ensure that there is recovery of any undue benefit that has accrued to an employee of government through the unlawful trading with government.
15. Departments must implement consequence management against the Supply Chain Management practitioners in the departments who issued/processed the orders to companies where the owners/directors are government employees. Furthermore, when a recommendation of award is submitted for signoff, SCM practitioners must confirm in the submission that the preferred supplier is not a conflicted employee.
16. Departments must continue with the process of instructing employees who are owners or directors of companies that are registered on CSD to deregister themselves within a period of 30 days, failing which, the Departments must institute disciplinary action against the affected employees. The outcome of the disciplinary processes must be reported to the Office of the Premier and Provincial Treasury. Failure to implement consequence management and report thereon will be reported to the Executive Council.

17. In light of Paragraph 6 above, Departments must make it part of the conditions of service, that an employee with directorship or ownership or shareholding in companies are required to resign as a director of such company in line with Section 8 of PAMA and must remove themselves from the CSD or resign as employees of government.
18. Departments must begin instituting the process of applying to NT to have the companies with Departmental employees having ownership, added to the database of restricted suppliers.
19. Departments must report all known contraventions, which have financial implications in terms of the regulations and the PFMA and report on actions taken (consequence management) to the Office of the Director-General and Provincial Treasury on a monthly basis.

ADVOCACY PROGRAMMES

20. The following must be done in order to assist employees in departments:
 - 20.1. Ethics Officers in departments must develop vigorous awareness programmes on the provisions of Section 8 of the Act and the criminal implications for the contravention thereof, e.g. during Induction Programmes, Departmental scheduled meetings etc;
 - 20.2. Departments should include a prohibition of trade clause in the letters of newly appointed employees; and
 - 20.3. Provincial Treasury will assist employees (potentially conflicted) to remove themselves from the CSD.

AUTHORITY

21. This Circular is issued in terms of Section 18 (2) (a) of the PFMA.

APPLICABILITY

22. This Circular applies to all provincial departments.

EFFECTIVE DATE

23. The provisions of this Provincial Treasury Circular will be effective from date of signature until this correspondence has been amended or withdrawn.

DISSEMINATION OF INFORMATION

- 24. Kindly ensure that all relevant officials receive copies of this Circular.

- 25. Should there be any enquiries regarding the contents of this Circular please contact:

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MR D. MAJEKE
HEAD OF DEPARTMENT
EASTERN CAPE PROVINCIAL TREASURY

13/12/2020

DATE