



Province of the
EASTERN CAPE
OFFICE OF THE PREMIER

OFFICE OF THE DIRECTOR GENERAL

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TO: ALL HEADS OF DEPARTMENT

FROM: DIRECTOR-GENERAL

SUBJECT: SECTION 8 PUBLIC ADMINISTRATION AND MANAGEMENT ACT, 2014 (ACT NO.11 OF 2014)

The attached letter from the Department of Public Service and Administration to Offices of Executive Authorities, dated 11 July 2019 refers.

In terms of Section 8 of the Public Administration and Management Act, 2014 (the Act) officials of government are prohibited from trading with all spheres of government. The Act strengthens the provisions of the Public Service Regulations, 2016 which made trading by officials with government an act of misconduct. The following implications are derived from the provisions of the Act:

IMPLICATIONS OF SECTION 8

The contravention of Section 8 of the Act criminalises trading of officials with government. The contravention of the Act has thus become a statutory offence. 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.



SECTION 8 PUBLIC ADMINISTRATION AND MANAGEMENT ACT, 2014 (ACT NO.11 OF 2014)

(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.

ADVICE ON ACTION TO BE TAKEN

The offices of the Executive Authority and the Heads of Departments are thus advised as follows:

- (a) Verification of the information with the Basic Accounting System (BAS) in order to ensure that officials who are not employed through the PERSAL system are not regarded as trading with government e.g. Sessional Doctors.
- (b) As Section 8 of the Act became applicable from 01 April 2019, Departments are thus urged to institute criminal charges against all officials who have benefitted from trading with government as per Treasury lists of such officials derived from the Central Supplier Database (CSD) from 01 April 2019.
- (c) Parallel to criminal action being taken, Departments are further urged to institute disciplinary action against all implicated officials.
- (d) Departments are to ensure that there is recovery of any undue benefit that has accrued to an official of government through the unlawful trading with government.



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ADVOCACY PROGRAMMES

The following must be done in order to assist officials in Departments

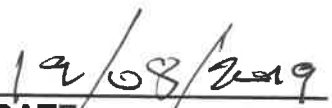
- Ethics Officers in Departments must develop vigorous awareness programmes on the provisions of Section 8 of the Act and the criminal implications for the contravention thereof, e.g. during Induction Programmes, Departmental scheduled meetings etc.
- Departments should include a prohibition of trade clause in the letters of newly appointed officials.

RECOMMENDATION

The above actions must be instituted with immediate effect and where there is non-compliance, the Head of Department should note that he/she will be held to account for failing to act against any official who is found to have contravened the above statutory provisions. In addition, Heads of Department must report all known contraventions which have financial implications in terms of the regulations and the PFMA. Reports on action taken should be submitted to the Office of the Director-General, commencing with effect from 01 April 2019, which is the effective date of the Act, on or before the 31 August 2019 and thereafter on a monthly basis.

Kind Regards


 **MS NTM MBINA-MTHEMBU**
DIRECTOR-GENERAL


DATE

