



education

Department:
Education

PROVINCE OF KWAZULU-NATAL

POLICY ON CONDUCTING BUSINESS WITH THE STATE

KZN DOE POLICY ON CONDUCTING BUSINESS WITH THE STATE

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1. DEFINITIONS

For the purpose of this policy, unless the context indicates otherwise, the following definitions are set out for the terms indicated:

“Department” means The Kwa-Zulu-Natal Office of the Premier

“Employee” means an official employed by the Office of the Premier

“PSR 2016” means Public Service Regulations 2016

“Senior Management” means any employee who is on salary level 13 and higher in the Department.

“Organ of the 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.

2. INTRODUCTION

- 2.1. In order to give effect to regulation 13(c) of the PSR 2016, the Director General must develop, maintain and communicate a policy on conducting business with the department.
- 2.2. Chapter 2 of the PSR 2016 prohibits an employee from conducting 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.
- 2.3. In terms of DPSA Directive Circular No. EIM 1/2016 dealing with transitional arrangements, an employee who at the time of the coming into effect of PSR 2016, was conducting business with an organ of state or was a director of a company which conducted business with an organ of state, other than an employee who was in his or her official capacity a director of a company listed in schedule 2 or 3 of the Public Finance Management Act, had
 - (a) within one month to disclose that the employee was conducting business with an organ of state or was a director of company that was conducting business with the organ of state;
 - (b) within six months to:
 - (i) cease conducting business with the organ of state or resign as an employee;
 - (ii) resign as director of a company that conducts business with the organ of state or resign as an employee.
- 2.4. If the employee did not resign within six months period, the employee had to submit proof that the employee had ceased conducting business or had resigned as a director of a company conducting business with an organ of the state within a month of doing so.

2.5. In terms of both the PSR, 2016 (Regulation 13(c) and the Public Administration Management Act, Act 11 of 2014 (Chapter 3, section 8, subsection (2), national-provincial- and local government employees, including Special Advisors, are prohibited from conducting business with the State. Conducting business with the State is not only prohibited, but in terms of the Public Administration Management Act, it is also a criminal offence that carries a maximum sentence of five (5) years imprisonment and / or a fine. It also constitutes a serious misconduct which may result in the termination of employment by the employer.

3. PURPOSE

- 3.1. The purpose of this policy is to eradicate and prevent unethical behaviour among employees in the department.
- 3.2. The policy is intended at reducing possible, perceived and potential conflict of interest which may result from employees doing business with any organ of state.

4. AUTHORISATION

- 4.1. Constitution of the Republic of South Africa, Act 108 of 1996.
- 4.2. Public Service Amendment Act of 2007.
- 4.3. Prevention and Combating of Corrupt Activities Act, Act 12 of 2004.
- 4.4. The Public Service Code of Conduct as amended by PSR 2016.
- 4.5. Public Finance Management Act, Act 1 of 1999.
- 4.6. The KwaZulu – Natal Anti-Fraud and Anti–Corruption Strategy.
- 4.7. Public Service Regulations 2016.
- 4.8. The Public Administration Management Act, No 11 of 2014
- 4.9. The PSCBC Resolutions No. 2 of 1999 and the Disciplinary Code and Procedures for the Public Service.
- 4.10. Directives from DPSA

5. THE SCOPE OF APPLICABILITY OF THIS POLICY

This policy applies to all employees of the department and relates to issues of conflict of interest which emanates from employees doing business with organs of state.

6. OBJECTIVES OF THE POLICY

The key objective of this policy is to ensure that the department puts measures in place to detect and to circumvent employees from doing business with any organ of state.

7. POLICY PROVISIONS

7.1. This policy prohibits employees from;

- (a) Conducting business directly or indirectly with an organ of state.
- (b) Being directors of companies or members of close corporation conducting business with the organ of state.

7.2. This policy requires employees to immediately disclose any financial interest in an entity that intends to conduct business with the department.

8. WHAT CONSTITUTES CONDUCTING BUSINESS WITH AN ORGAN OF STATE

8.1. In terms of the DPSA Directive on doing business with an organ of state issued in January 2017, 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.

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- 8.2. 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, 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 employees employment with his or her department; and
 - (c) Through such agreement provides goods or services to any organ of state for any benefit, financial or otherwise.

9. ACTIVITIES BY EMPLOYEES NOT CONSTITUTING CONDUCTING BUSINESS WITH THE ORGAN OF STATE

- 9.1. Participating in making, training, teaching or lecturing at public educational institutions.
- 9.2. Appointment to an audit committee contemplated in section 77 of the Public Finance Management Act, 2003 (Act 56 of 2003).
- 9.3. 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 1995).
- 9.4. Appointment as a member of the Reserve Force in terms of section 53 of the Defence Act 2002 (Act of 2002)
- 9.5. Activities undertaken as part of continued professional development.
- 9.6. Official activities undertaken on a part time basis, either temporarily, or permanently to a number of Departments in terms of an employee's employment.
- 9.7. Employees supporting the Independent Electoral Commission as voting staff during elections.
- 9.8. Appointment as a member of a school governing body, museum board, university board, or any other State controlled institution that has a public function.
- 9.9. The use of an employee's property or facility for functions by Government (for example farm schools).

10. ROLES AND RESPONSIBILITIES

10.1. Accounting Officer

The Accounting Officer is responsible for ensuring that this policy is implemented and adhered to by all employees in the department.

10.2. Responsibility Managers

Responsibility Managers are responsible for ensuring compliance with the contents of this policy within their business units. It is the responsibility of all managers to ensure that all employees are made aware of and receive appropriate training and education with regard to this policy.

11. FINANCIAL IMPLICATIONS

The Accounting Officer must ensure that adequate capacity is created for effective implementation of this policy.

12. MONITORING, EVALUATION AND REVIEW

- 12.1. The custodian of this policy is the Accounting Officer who is supported in its implementation by the Ethics Committee and all Senior Managers within the department.
- 12.2. The Ethics Committee, supported by the Accounting Officer and all Managers employed by the department, is responsible for overseeing the effective implementation, monitoring and evaluation of this policy.
- 12.3. This policy will be reviewed annually, and appropriate changes made as and when required.

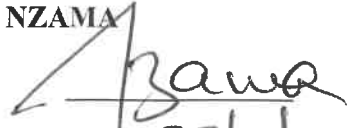
13. IMPLEMENTATION DATE

The policy on conducting business with the department will be implemented with effect from the date of approval by the Director General.

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APPROVED BY THE HOD: DR EV NZAMA

Signature:



Date:

27/11/2020
