

**.3...DIRECTION REGARDING THE ESTABLISHMENT OF A BOARD OF DIRECTORS
FOR THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

PREAMBLE

WHEREAS the executive authority of the Republic of South Africa is, by virtue of section 85 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), vested in the President, who exercises such executive authority, together with the other members of the Cabinet by -

- (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
- (b) developing and implementing national policy;
- (c) co-ordinating the functions of state departments and administrations;
- (d) preparing and initiating legislation; and
- (e) performing any other executive function provided for in the Constitution or in national legislation;

AND WHEREAS the President appointed me, Dr PM Maduna, as the member of Cabinet responsible for the administration of justice in terms of section **91(2), (3)(b)** of the Constitution and assigned to me the powers and functions relating to the administration of justice;

AND WHEREAS Ministers, by virtue of section 92 of the Constitution, are responsible for exercising the powers and performing the functions of the executive assigned to them by the President and are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions;

AND WHEREAS I, as the Minister for Justice and Constitutional Development, have, after

consultation with the Deputy Minister, the Chief Executive Officer and the senior management of the Department, identified the need to re-examine the structure and functioning of the Department falling under our responsibility and, on the strength of the re-examination that was commissioned by us, endorse the recommendation that the Department be restructured;

AND WHEREAS we are satisfied that such restructuring, among others, requires the establishment of a Board of Directors to oversee the effective and efficient functioning of the Department;

AND WHEREAS it is necessary to provide for the establishment of such a Board for the Department and to determine its composition, to prescribe its business, functions and duties and to regulate other matters relevant to the functioning and proceedings of the Board;

NOW THEREFORE, we hereby, for purposes of regulating the matters referred to above, direct that the following Founding Statement will apply and be binding on the Board and the management of the Department:

FOUNDING STATEMENT REGARDING THE BOARD OF DIRECTORS FOR THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

1. **ESTABLISHMENT AND SEAT OF BOARD OF DIRECTORS**

1.1 There is hereby established a Board to be known as the Board of Directors of the Department of Justice and Constitutional Development (hereinafter referred to as the Board).

1.2 The seat of the Board is the Head Office of the Department of Justice and Constitutional Development (hereinafter referred to as the Department) in

Pretoria.

2. **OBJECTIVES OF BOARD**

The objectives of the Board are to advise and assist the Department with the management of the affairs of the Department as provided for in this Founding Statement.

3. **DUTIES OF BOARD**

The Board must-

- 3.1 Give guidance to the Department in respect of strategy and structure. In giving guidance in regard to strategy the Board may advise the Department as to the services it should render and the business in which it should be involved;
- 3.2 Ensure that the executive management of the Department implements the Department's strategy as determined from time to time;
- 3.3 Ensure that the Department operates in accordance with prevailing ethics and norms;
- 3.4 Ensure that the Department prepares annual budgets against which its performance can be monitored and measured;
- 3.5 Monitor and evaluate the activities and performance of the executive management committee of the Department against budgets, business plans, Government policy and previous performance;

- 3.6 Provide information on the activities of the Department to those entitled to it;
- 3.7 Evaluate and advise as to the adequacy of funding for the Department;
- 3.8 Address the adequacy of salaries, retirement and health care benefits of officials of the Department;
- 3.9 Ensure that the Department has an **employment equity plan** in place to advance members of disadvantaged communities in the business of the Department;
- 3.10 Ensure that the Department creates proper mentoring mechanisms and training programs to effectively implement its **employment equity plan** and to make the Department more effective and efficient in respect of its service delivery and its role in transforming South African society and redressing the past imbalances;
- 3.11 Provide advice to the Minister, the Deputy Minister and the Chief Executive Officer on any matters referred to the Board concerning the administration of the Department; and
- 3.12 Give advice concerning the formulation of policies, in accordance with decisions taken by the Minister and Cabinet and resolutions of Government, for consideration by the Minister, Cabinet and Government.

4. COMPOSITION OF BOARD

4.1 The Board consists of –

(a) Executive Directors, namely -

- (i) the Minister for Justice and Constitutional Development (hereinafter referred to as the Minister);
- (ii) the Deputy Minister for Justice and Constitutional Development (hereinafter referred to as the Deputy Minister);
- (iii) the Chief Executive Officer: Justice and Constitutional Development (hereinafter referred to as the Chief Executive Officer);
- (iv) the Managing Director: Court Services;
- (v) the Managing Director: Legal Services (**Legislation Draft**);
- (vi) the Managing Director: **Legal Advisory Services**;
- (vii) the Managing Director: Masters of the High Court Services;
- (viii) the Managing Director: Human Resources;
- (ix) the Chief Financial Officer: Financial Administration;

- (x) the Managing Director: Information and Systems Management;
 - (x) the Managing Director: Public Education and Communications;
 - (xii) the National Director of Public Prosecutions;
 - (xiii) the Chief Executive Officer: **National Prosecuting Authority**;
 - (xiv) **the Chairperson of the Legal Aid Board**;
 - (xv) the Chief Executive Officer: Legal Aid Board,
- (b) Non-Executive Directors, namely-
- (i) the Director-General: Department of Public Service and Administration;
 - (ii) the Director-General: Department of Finance;
 - (iii) the Director-General: Government Communication and Information Services; and
 - (iv) persons from the Private Sector, nominated by the Board and appointed by the Minister, by virtue of their particular knowledge, skills or experience and who will render a valuable contribution to the attainment of the objectives of the Board and the performance of its functions (hereinafter referred to as the private sector members); and **(two types of Non-Executive Directors: Private Sector and Public Sector)**

(c) the Chairpersons of the Judicial Service Commission and the Magistrates' Commission, to promote and enhance the interests and functioning of the judiciary.

4.1 A person who for the first time assumes his or her seat on the Board must consent in writing to serve as a member of the Board and must submit his or her consent to the Board.

4.3 The Secretary must enter the details of members of the Board in a register, stating the full names, identity number or date of birth, nationality, occupation, residential address, business address, postal address, telephone numbers and date of appointment.

5. **QUALIFICATIONS OF PRIVATE SECTOR NON-EXECUTIVE DIRECTORS OF THE BOARD**

A person may not be appointed as a Non-Executive Director of the Board if he or she –

- (a) is not permanently resident in the Republic;
- (b) has been disqualified under any law from practicing his or her profession; or
- (c) is an unrehabilitated insolvent.

6. **TERM OF OFFICE OF DIRECTORS OF THE BOARD**

6.1 Private sector **Non-Executive Directors** hold office for a period of **three** years with effect from the date of their appointment.

6.2 Private sector members, at the expiry of their terms of office, are eligible for reappointment for one further term.

7. **VACATION OF OFFICE BY PRIVATE SECTOR NON-EXECUTIVE DIRECTORS**

7.1 A Private Sector Non-Executive Director vacates his or her office if he or she

- (a) has been absent for more than two consecutive ordinary meetings of the Board without prior permission of the Board or without prior written apology;
- (b) is disqualified under any law from practicing his or her profession;
- (c) becomes insolvent;
- (d) submits his or her resignation in writing to the Minister; or
- (e) ceases to be permanently resident in the Republic.

7.2 A private sector non-executive director of the Board vacates his or her office if the Minister terminates his or her membership, on the advice of the Board, for reasons which are just or fair.

7.3 **Public Sector Non-Executive Directors and Executive Directors will vacate his/her office when they cease to be managers in the executive department.**

8. **CHAIRPERSON, DEPUTY-CHAIRPERSON AND ROLE AND DUTIES OF CHAIRPERSON**

8.1 The Minister and Deputy Minister, by virtue of their office, are Chairperson and Deputy Chairperson of the Board, respectively.

8.2 When the chairperson is absent or unable to perform his or her functions, the Deputy Chairperson must act as chairperson.

8.3 If both the Chairperson and Deputy Chairperson are absent from a meeting the Chief Executive Officer must act as Chairperson, and in his or her absence, the members of the Board that are present must elect a person from among themselves to preside at that meeting.

8.4 The primary role of the Chairperson is to ensure the smooth functioning of the Board in the interests of good governance of the affairs of the Board.

8.5 The duties of the Chairperson includes the following:

8.5.1 Ensuring that the **composition** of the Board is balanced in terms of executive and Non-Executive **Directors**.

8.5.2 Ensuring that Executive **Directors** fulfil a management role and also participate fully in the governance of the Department.

8.5.3 Ensuring that Non-Executive **Directors** not only fulfil a role of monitoring the

executive management of the Department, but also contribute to the business decisions taken by the Board.

8.5.4 Ensuring that all **Directors** are as fully informed as possible on any issues on which a decision is to be made.

8.5.5 In appointing directors to the Board the Minister must ensure that the Board comprises of persons who reflect South African society with special attention to race, gender and disability.

9. **DUTIES OF MEMBERS OF BOARD**

9.1 Members of the Board have three main duties, namely, the duty of care, fiduciary duties and a duty to act within their power and authority.

9.2 The effective discharge of the duty of care by members of the Board requires that they–

9.2.1 make sufficient time available to fulfil their role as **Directors** of the Board;

9.2.2 understand the Department's business and familiarise themselves with the legal, professional financial, social and political environment within which the Department operates;

9.2.3 are aware of all issues that may have a material impact on the business and the affairs of the Department and its operations so as to enable them to make informed decisions on matters to be dealt with by the Board;

9.2.4 diligently prepare for Board meetings in advance;

9.2.5 actively solicit information in cases where they do not feel the information provided to them is sufficient for their deliberations and seek clarification where required;

9.2.6 review issues with the Chief Executive Officer or the chairperson and, if necessary, seek independent professional advice in cases where insufficient information is forthcoming or where they think the full picture has not been disclosed; and

9.2.7 attend Board meetings, actively participate in Board deliberations and fully apply their particular knowledge, expertise and experience.

9.3 The effective discharge by members of the Board of their fiduciary duties requires that they –

9.3.1 at all times act in good faith and in the Department's interests;

9.3.2 at all times act impartially and independently, free from any outside interference, fetter, instruction, interests or pressures, whether pecuniary or otherwise;

9.3.3 at all times act without any personal, ulterior or improper purpose, such as their own personal gain;

9.3.4 avoid any conflict between their personal interests and those of the Department and declare such a conflict where it exists before dealing with any matter which may be affected thereby;

9.3.5 diligently execute all actions assigned to them for completion;

9.3.6 maintain confidentiality with respect to all information which may come to their knowledge regarding the Department's operations and affairs in all cases where such information is to be treated as confidential;

9.3.7 at no time misappropriate any information which may come to their knowledge for gain or otherwise; and

9.3.8 at all times act legally, honestly and with integrity in their dealings with the Department on behalf of the Board.

10. **MEETINGS OF BOARD**

10.1 A general meeting of the Board must be convened at least once every quarter on a date and time determined by the Board.

10.2 A special meeting of the Board may be convened-

- (a) in cases of emergency; or
- (b) where the matter has to be dealt with by the Board on an urgent basis and cannot stand over to the next general meeting.

10.3 Such special meeting may be convened by the Minister and must be convened by him or her at the written request of at least seven **Directors** of the Board.

10.4 Reasonable notice of the Board meetings must be given to all **Directors** of the Board.

10.5 Every member present at a Board meeting must sign an attendance register for that meeting.

10.6 A majority of the total number of **Directors** of the Board constitute a quorum for a meeting of the Board. A meeting of the Board may, however, proceed with its business irrespective of the number of **Directors** present, but may not take a decision on any matter when there is no quorum present.

- 10.7 An agenda must be prepared and circulated timeously to the Directors of the Board.
- 10.8 Documents to be considered or used at a meeting of the Board must be distributed timeously to all the **Directors** of the Board prior to any Board meeting.
- 10.9 Resolutions adopted at a Board meeting are binding on all **Directors**.
- 10.10 Minutes of all Board meetings must be kept.
- 10.11 The Board must determine the procedure for calling meetings and the procedures to be followed at meetings.

11. **COMMITTEES OF BOARD**

- 11.1 The Board will have the following standing committees, namely, the Executive Management Committee, the Remuneration Committee and the Audit Committee. The functions of such committees will be to advise the Board on matters falling within its general terms of reference and on such specific matters falling within those general terms as may be referred to it by the Board.
- 11.2 The Board may, from time to time, appoint ad hoc committees to advise the Board on any specific matters referred to it by the Board and specified in their terms of reference.
- 11.3 Committees of the Board may include persons not serving on the Board.
- 11.4 The Board may designate a member of a committee as the chairperson of such committee, and if no member is so designated, the members of such committee may

elect a chairperson from among themselves.

- 11.5 A majority of the total number of members of a committee constitutes a quorum for any meeting of the committee.
- 11.6 The procedure at a meeting of a committee must be determined by the committee.
- 11.7 The Board must determine the membership and terms of reference for each committee, and set out its objectives, responsibilities, the role of its chairperson, the frequency of its meetings and the manner and frequency of reports to the Board.
- 11.8 Any ad hoc committee of the Board may be dissolved by a decision of the Board.

12. **COMPANY SECRETARY**

- 12.1 The Chief Executive Officer must, after consultation with the Board, designate company secretary in terms of the Public Service Act, 1994 (Act No 103 of 1994).
- (a) **The Board agreed that the main purpose of the secretariat would be to provide administrative support to the board and Board Committee and to coordinate its activities. Function should also include the correlation and co-ordination of all Business Unit reports and managing the schedules for the facilitation of board meetings.**
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12.3 The company secretary is responsible to the chairperson of the Board and accountable to the Chief Executive Officer

13. **FINANCES OF THE BOARD**

13.1 **The expenses of the Board and committees of the Board are funded by the Department from appropriated funds.**

Is/board.terms 2