

DBSA BOARD OF DIRECTORS CONFLICT OF INTEREST POLICY

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KEY REVIEW AMENDMENTS

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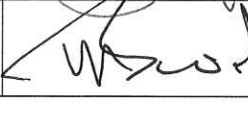
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1. TABLE OF CONTENT

2. GLOSSARY AND ACRONYMS

- 2.1 **Board:** refers to the Board of Directors of the DBSA from time to time.
- 2.2 **Directors:** refers to individuals appointed by the DBSA shareholder in terms of the provisions of section 7 of the DBSA Act, No 13 of 1997 (herewith referred to as the DBSA Act).
- 2.3 **Non-Executive Director:** refers to a board member that is not involved in the daily operations and management of the DBSA and is not in the full time salaried employment of the DBSA.
- 2.4 **Executive Director:** refers to a board member who is involved in the daily operations and management of the DBSA and is a full time salaried employee of the DBSA.
- 2.5 **Family Members:** in relation to any person, means his or her parents, adoptive parents, sister, brother, child, adopted child, spouse and life partner. A spouse includes a person living with that person as if they were married to each other.
- 2.6 **Material Financial Interest:** means a direct and/or potential personal or private business interest which is judged by the Board to be significant in that it might reasonably affect a director's independent judgement. It can be of a financial, monetary or economic nature, or to which a monetary value may be attributed.
- 2.7 **Personal and/or Private Financial Interest:** means any direct or indirect personal or private business material interest of a financial, monetary or economic nature, or to which a monetary value may be attributed that a director or related party may have in any matter before the DBSA.
- 2.8 **Related Person/Party:** in relation to the director, refers to (i) family members as defined, (ii) an individual other than a family member who has a relationship or acquaintance with a director (e.g. friends, business partners or associates, fellow professional associates and fellow board members) who controls a juristic person directly or indirectly, (iii) any company, close corporation or other business entity of which the director, family member or other individual is also a director, member or member of senior management.
- 2.9 **PFMA:** refers to the Public Finance Management Act, 1 of 1999 as amended.

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3. INTRODUCTION

This policy seeks to decisively manage the conflicts of interests which might exist among the DBSA Board directors. It seeks to address the reputational risk and financial loss risk that might be experienced by the DBSA in the absence of such a policy.

4. POLICY OBJECTIVE / PURPOSE

- 4.1 This policy intends to provide guidelines on managing the DBSA director's engagement in interests that may conflict with the DBSA's interests and to further assist them on the process to follow when dealing with actual or perceived conflicts of interest.
- 4.2 The aim of the policy is to protect both the organization and the individuals involved from any appearance of impropriety and to ensure compliance to statutory and best practice requirements.

5 POLICY SCOPE

This policy is applicable to the Directors both executive and non-executive, including any subsidiaries of the DBSA that may be created in due course.

6 POLICY STATEMENT

- 6.1 The PFMA and the Companies Act set out the duties which directors (executive and non-executive) are required to fulfil, namely fiduciary duties to act in good faith, duty of care, skill, diligence, and to act in the best interest of the DBSA. It is in the interest of good governance that directors maintain the highest standard of professional ethics.
- 6.2 The DBSA directors are expected at all times to act with fidelity, honesty, integrity and in the best interest of the DBSA in managing the financial affairs of the DBSA. In so doing, the DBSA directors are expected to conduct themselves in a manner that enhances the reputation of the organisation and shall not put themselves in a position that could lead to possible or perceived conflict of interest between the individual and the organisation.
- 6.3 A DBSA director may not use the position or privileges of, or confidential information, obtained as a DBSA Board member, for personal gain or to improperly benefit another person.
- 6.4 The personal interests of a director or of people closely related or associated with that director should not take precedence over the interests of the organization.

7 POLICY PRINCIPLES

7.1 CONFLICTS OF INTEREST

- 7.1.1 Conflicts are defined in many ways, however the basic elements of any of these definitions are the tensions between multiple competing interests, be they personal or financial. These often manifest in the entanglement of the private and professional interests of an individual. A conflict of interest arises when a director's private interest interferes or is perceived to interfere in any way with the interests of the DBSA. It is therefore perceived to affect or has the potential to affect a directors' objectivity and judgement in making decisions on behalf of the DBSA.
- 7.1.2 The perception of a conflict is influenced by whether an independent observer might question whether the director's professional actions were motivated or influenced by a potential personal financial gain.
- 7.1.3 A personal or private interest of a director maybe actual or potential, direct or indirect interest of a close family member or other associate of the director, in any business entity, undertaking or investor as a shareholder, director, associate, member, advisor/consultant, or in any other capacity.

7.2 TYPES OF CONFLICT OF INTERESTS

Conflicts of interest can arise in various forms and situations. It may be financial or non-financial. It may be direct or indirect. It may be professional or family related. It is therefore impossible to provide an exhaustive list of conflict of interests and a director is best positioned to identify a conflict of interest. If there is any uncertainty, the Director should contact the Chairperson of the Board or the Company Secretary. The following may constitute a conflict of interest:

- 7.2.1 Influencing or attempting to influence any business transactions between the DBSA and another entity in which a director has a direct or indirect financial interest or acts as a director, officer, employee, partner, agent or consultant.
- 7.2.2 Representing another entity, without any personal or private business interest in the matter, which is involved in the same transaction or project as a matter which is before the DBSA (i.e. institutions which may have competing interests to those of the DBSA).
- 7.2.3 Employment (e.g. having private, professional, political, academic or other interests that may conflict with the DBSA's interests).
- 7.2.4 Interests in business enterprises or professional practices (e.g. having an interest in a sector or geographic location that the DBSA is involved in or planning to be involved in).
- 7.2.5 Share ownership (which is significant in businesses that do business with the DBSA).
- 7.2.6 Beneficial interests in trusts.

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- 7.2.7 Professional associations or relationships with other entities.
- 7.2.8 Personal associations with other groups or entities (e.g. directors having affiliations with organisations that receive aid or funding from the DBSA, directors accepting business courtesies from any person or business who has dealings with the DBSA).
- 7.2.9 Family relationships.

7.3 BOARD INVOLVEMENT

- 7.3.1 Board members are invited to participate on the Board by virtue of their knowledge, expertise, and their capacity to network with a wide range of organisations thereby enabling them to tap into a wide network of relevant expertise. It is therefore, acknowledged that Directors will be involved with companies that inadvertently provide services to both the public and the private sector.
- 7.3.2 Directors, however, have a fiduciary duty to act in the best interests of the DBSA and one of the key elements arising out of that responsibility is to manage conflict of interests. The personal interests of a director should not take precedence over those of the DBSA. It is also recognised that an additional burden is placed on the DBSA as a state-owned enterprise; thus requires that Directors are aware that by virtue of their engagement, their conduct is subject to greater scrutiny and results in perceptions of conflict more readily.
- 7.3.3 It is on that basis that that management of conflict should be on an informed basis and implemented appropriately. Certain conflicts of interests are so fundamental that they should be refrained. Other conflicts whether real or perceptive, direct or indirect should be disclosed timeously and in full to the Board. The Board should then exercise its judgement on the substance of every case and apply its mind to the materiality of the conflict prior to the execution of any transaction. The onus of disclosing an interest vests with the individual director, thus making the management of conflict primarily based on self-regulation, self-restraint and good governance.

7.4 DIRECTORS' RESPONSIBILITIES

- 7.4.1 Directors have a fiduciary duty to disclose the nature of their interests at the start of every meeting and recuse themselves when an item in which they have an interest is discussed.
- 7.4.2 A register of declaration of interests shall be kept and updated at every Board and Board Subcommittees meeting. On first appointment and annually, or at any time when circumstances change, all Board members shall in good faith, disclose to the Board for recording any business or other interest that is likely to create a potential conflict of interest, including but not limited to:
 - 7.4.2.1 All business interest, direct or indirect in any other entity, partnership or business venture;
 - 7.4.2.2 Membership to trade, business or other economic activities;
 - 7.4.2.3 Shareholding, shares options and/or other interests;

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- 7.4.2.4 Any direct or indirect interest in any transactions within the DBSA;
- 7.4.2.5 Any gifts, monies, commissions, benefits or other favours extended or received from any party in respect of or in relation to any business dealings with the DBSA.
- 7.4.3 The fact that a conflict of interest has been declared does not mean it has been addressed. Such conflict still has to be managed as set out in section 8 below.
- 7.4.4 Directors (executive and non-executive) and their family members/related party are prohibited from having commercial dealings with the DBSA, namely lending and providing services to the DBSA. No loans shall be provided by the DBSA to directors or their related parties to further their private interests.
- 7.4.5 It is possible for relationships with clients, intermediaries and suppliers to give rise to situations where there might be a conflict of interests. However, the DBSA directors are prohibited from developing business interests with DBSA's clients, intermediaries and suppliers. Where such business interests arise, the director shall recuse himself/herself from activities of the DBSA or of the outside interest.
- 7.4.6 DBSA directors shall not divulge prior information that could benefit their own external interests. This includes information on how to package a proposal for the DBSA's tender or transaction.
- 7.4.7 The DBSA's directors shall refrain from influencing decisions that benefit their own company, a friend or family member's company, or gaining financially by way of normal business profits by decisions taken.
- 7.4.8 Therefore, the director should ensure that s/he is independent and seen as being independent of any business organisation or person with whom the DBSA has a service relationship.

7.5 COOLING-OFF PERIOD / MANAGEMENT OF DBSA DIRECTORS DOING BUSINESS WITH THE DBSA

- 7.5.1 Both executive and non- executive directors are prohibited from using their position and information for personal financial and non-financial gain. All DBSA directors are disqualified from contracting with the DBSA as either a vendor, purchaser, borrower or otherwise.
- 7.5.2 A cooling off period exists to ensure that there is a clear separation period of the former director from the business of the organisation for which they served. There should be a clear cessation of responsibilities and relationships with the DBSA.
- 7.5.3 Executive Directors or any related party of the Executive Director are prohibited within a period of twelve months (1 year) from transacting with the DBSA or conducting any business with the DBSA.
- 7.5.4 Non- Executive Directors may enter into contracts with the DBSA be it on service provision or lending activities immediately upon resignation from the Board. However, they will need to be subjected to an enhanced approval process for a period of twelve months (1 year) following their resignation which will include (but not limited to):

- 7.5.4.1 Referral to the Company Secretary prior any consideration of the matter to consider whether (i) the matter which is tendered for or the lending being requested for was not considered during the tenure of the director, (ii) the director would have been privy to any information relating to the transaction or the tender for provision of services, (iii) the director has inside information on the broad strategic focus of a project that will give them an added advantage over their competitors consequent to their previous position of being a Board director, (iv) there maybe any direct or indirect conflict of interest.
- 7.5.4.2 The matter will then be referred to the Board Credit and Investment Committee (BCIC) in the event it is a project proposal irrespective of the quantum of the transaction (after the internal credit processes have been followed). The BCIC may recommend that it be submitted to the Board for approval. For procurement transactions, they will be referred to the Board for consideration and approval irrespective of the amount.

7.6 COMPENSATION

When a Non-Executive Director is appointed by the DBSA as its Nominee Director in an outside organisation (where the DBSA has an investment/shareholding), any remuneration will accrue to the Non-Executive Director.

8 DECLARATION PROCEDURE

- 8.1 The Company Secretary shall provide directors annually with a declaration of interest form which must be completed as per the guidance indicated in section 7.4 above. The completed form will be returned to the Company Secretary for purposes of maintaining the director's declaration register. All directors must complete and sign the form including a nil return. The director should inform the Company Secretary of any change as soon as it arises to ensure that the amendment of the annual declaration is effected timeously.
- 8.2 Directors must declare all conflicts of interest (direct or indirect, real or perceived, personal or of family members or business partners) as well as the details of the nature of the interest. It is recommended that all personal interests should be declared whether a conflict exists or not.
- 8.3 A DBSA director who is the subject of the conflict of interest and who is in attendance at the meeting shall disclose all facts material to the conflict of interest before consideration by the Board or Committee of the contract or transaction in question. Such disclosure shall be recorded in the minutes of the meeting.
- 8.4 In compliance with the provisions of section 50(3) of the PFMA read with section 75 of the Companies Act, the DBSA director who is the subject of the conflict of interest shall/must:
- 8.4.1 disclose the interest and its general nature before the matter is considered at the meeting;
 - 8.4.2 disclose to the meeting any material information relating to the conflict, and known to the director;
 - 8.4.3 disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;

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- 8.4.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated above;
 - 8.4.5 not take part in the consideration of the matter, except to the extent contemplated in paragraphs 8.3.2 and 8.3.3 above;
 - 8.4.6 while absent from the meeting in terms of these provisions, the director is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constituting the quorum, but is not to be regarded as being present at the meeting for the purpose of voting on the matter;
 - 8.4.7 not execute any document on behalf of the DBSA in relation to the matter unless specifically requested or directed to do so by the Board.
- 8.5** There may be instances however where the financial interest of a director/related party is insignificant e.g. (minority shareholder) or where the Board member sits as a non-executive and has no knowledge of the transaction or the matter being dealt with, to the extent that the director's interest or non-executive membership would not materially affect the deliberations on the matter. In that instance disclosing the interest would suffice and the procedures outlined in section 8.4.5 would not be applied.
- 8.5.1 Materiality of the director's interest will have to be determined from a quantitative and qualitative perspectives as well as materiality from the Board member's and the DBSA's perspective.
 - 8.5.2 An item is presumed to be immaterial if it is equal to or less than 10% of the base amount being discussed. It is presumed to be material (unless there is evidence to the contrary) if is equal to or greater than 10% of the appropriate base amount.
 - 8.5.3 Qualitative factors which may influence whether a relationship is considered material include its strategic importance, the competitive landscape, the nature of the relationship and the contractual or other arrangements governing it and other factors which point to the actual ability of the director in question to shape the direction of the DBSA's loyalty.
- 8.6** Secretariat must record all declarations made under this paragraph and the decision in the minutes of that meeting.

9 POLICY ENFORCEMENT AND SANCTIONS

In terms of the DBSA Act, a director may be removed from office for:

- 9.1** failure to disclose an interest in which the director is a party or is participating in the profits of any contract with the DBSA;
- 9.2** personal liability - breach of director's fiduciary duties including the duty to avoid conflict of interests may result in personal liability of a director (s);
- 9.3** any violation of this policy by directors will be referred to the Chairperson of the Board for consideration and action in line with the DBSA Act.

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10 POLICY MONITORING AND REVIEW

- 10.1 The Corporate Secretariat will monitor the implementation of this policy.
- 10.2 The policy shall be reviewed after every two years, and as and when there is a change that is required in line with the DBSA's policy development framework.
- 10.3 This DBSA Board of Directors' Conflict of Interest Policy was approved by the DBSA Board of Directors on **9 July 2019**.

11 APPENDICES

- 11.1 Declaration of Interests Form.

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