



## **POLICY FOR THE APPOINTMENT OF DBSA NOMINEE DIRECTORS AND PRIVATE EQUITY ADVISORY COMMITTEE MEMBERS**

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## **POLICY FOR THE APPOINTMENT OF DBSA NOMINEE DIRECTORS AND PRIVATE EQUITY ADVISORY COMMITTEE MEMBERS**

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### **1. PURPOSE**

The purpose of this policy is to set out the requirements in respect of nomination, appointment, induction, qualification, tenure and reporting of DBSA nominee directors and PE advisory committee members.

This policy further provides guidelines and procedures for the management and monitoring of DBSA nominee directors ("nominee directors") in direct equity investments and nominee advisory committees members in Private Equity Funds ("PE advisory committee members").

### **2. PREAMBLE**

From time to time, the DBSA makes direct equity investments in various companies and also invest in third-party managed private equity funds ("PE Funds"). These investments contribute to the success of DBSA. In most instances, such equity investments entitle the DBSA to nominate directors to serve on the boards of such companies and also to nominate members to serve in advisory committees of private equity funds.

The DBSA nominates nominee directors and PE advisory committee members to protect its investments, therefore it appoints a nominee director or committee member that possesses the appropriate skill set to make effective and relevant contributions to considerations of the Board as well as to ensure that the nominee director discharges his/her fiduciary duties with due care, skill and diligence.

The objective is not to appoint a nominee director who will merely champion the cause of action beneficial to the DBSA but to ensure good governance and accurate reporting.

The DBSA may be required to appoint a nominee director(s) purely for strategic purposes. This practice is generally followed in most commercial transactions by many other institutions and organisations.

The DBSA is committed to implement the guidelines prescribed by the King III report and also to comply with the requirements contained in the new Companies Act 71 of 2008.

The King III report places extended emphasis on the duties and responsibilities of directors and for the first time those duties and responsibilities are codified in the new Companies Act.

Furthermore, the policy takes into account that in PE Funds DBSA ordinarily gets allocated a seat in the PE Funds' Advisory Boards/ Committees. PE Funds, that are constituted as partnerships do not have a board of directors but an Advisory Board/ Committee is established. An advisory board/ committee may look very similar to the board of directors and may be referred to as an advisory board. This "board" is not synonymous with the type governance and oversight board that constitutes the board of directors. It is rather a

committee created by investors/ shareholders for specific advisory purposes. Accordingly, an advisory board/ committee is not the legal governing body of the PE fund and does not carry the same legal responsibilities and fiduciary duties as the board of directors. For avoidance of doubt these “boards” are referred to as “committees” in this policy.

Advisory committees in private equity funds are often subject to less rules and procedures commonly attached to a board of directors such as terms, term limits, nominations and election procedures, and removal processes. An advisory committee has no authority to act on behalf of or to control the PE Fund.

It is therefore critical for the DBSA to monitor the entire process with regards to the nomination, appointment, induction and removal of its nominee directors and PE advisory committee members.

### **3. GUIDELINES**

The following are factors which should be considered by the Chief Executive when determining a nomination for the position of nominee director or nominee PE advisory committee member:

- Nature and size of the equity investment;
- Nature and size of the business;
- Complexity of instruments and investment guidelines;
- Experience of the fund manager or executives in the portfolio companies;
- Performance of the investment;
- Strategic requirements;
- Required knowledge, expertise, experience and personal skills;
- Apparent integrity of the individual;
- Governance, Risk and Compliance expertise/ experience;
- The skills and capacity required to discharge the duties to the Board;
- Number of directorships and memberships already held by a particular employee;
- Remuneration

The following aspects regarding the appointment of nominee directors and PE advisory committee members should closely be monitored by the Corporate Secretariat:

- The number of DBSA employees that serve as nominee directors or PE advisory committee members.
- The communication regarding the appointments/removals of the nominees to the appropriate person/unit.
- Remuneration of nominees.



- Induction of newly appointed DBSA nominees;
- Reporting of meetings attended by DBSA nominees;
- Rotation of DBSA nominees.

## **4. PROCEDURES**

### **4.1 Nomination of a nominee director and PE advisory committee member**

- (a) **Main board seats**; the Executive Manager responsible for the Division in whose jurisdiction the project falls should nominate to the Chief Executive the person/s to act as a nominee director. In making such a recommendation, the Executive Manager shall consult with the Manager responsible for the project.
- (b) **PE advisory committee seats**; the Unit Manager in consultation with the General Manager responsible for the management and monitoring of the equity investments should nominate to the Group Executive the person/s to act as a DBSA PE advisory committee member.
- (c) The Group Executive may delegate the approval of PE advisory committee nominees to the General Manager.

### **4.2 Eligibility criteria for appointment of Nominee Directors and PE advisory committee members**

A person with the appropriate skills, knowledge and experience in the economic environment of the particular investment should act as Nominee Director or Nominee PE Advisory Committee Member.

The nominated person should also have the apparent integrity and capacity to effectively discharge his duties and should not be a disqualified person in any respect from being a Director of a Company.

It has been the practice, thus far, that either the Executive Manager, Transacting Professional or the Unit Manager responsible for the unit making the investment, is nominated as the DBSA nominee director.

There must be a segregation in duties which precludes a Transacting Professional to act as a nominee director in respect of his/her own project

The DBSA must follow the accepted practice in commerce, namely that where the same company is both a lender and a shareholder, a 'Chinese wall' is created between the lender and a shareholder.

The Executive Manager, General Manager or Unit manager under whose jurisdiction the project was approved can be appointed as a nominee director or PE advisory committee member.

An independent third party must be nominated to act as a director. Such a person must:

- Be a DBSA employee outside the unit responsible for the originating and appraisal of the transaction;
- Have a broad understanding of the business concerned; and
- Have adequate corporate governance skills.

In the further alternative and only where there are no internal skills, expertise or capacity, consideration can also be given to DBSA directors, DBSA alumni and non-DBSA employees provided such person/s have a broad understanding of the business concerned and possess the requisite expertise.

#### **4.3 Duties and responsibilities of nominee directors and PE advisory committee members**

##### **4.3.1. Duties and responsibilities of nominee directors**

King III and the new Companies Act stipulate that each director of a company has:

- A duty to exercise the degree of care, skill and experience that may reasonably be expected of an individual carrying out the same functions as are carried out by a director in relation to the company; and
- The general knowledge, skill and experience of that director; and
- A fiduciary duty to act in good faith and in a manner that the director reasonably believes to be in the best interests of the company.

The DBSA must recognise the fiduciary duties of its nominee directors, particularly their duty to act at all times in the best interests of the company to which they are appointed.

In the case of a conflict between the duties of a DBSA nominee director and the interests of the DBSA, the duties of the director to the company of which he is a director must prevail.

A detailed discussion of the duties and responsibilities prescribed by King III and the new Companies should be provided during induction.

##### **4.3.2. Duties and responsibilities of nominee PE advisory committee members**

The function of the PE Advisory Committee is to advise the Fund Manager on certain matters relating to the Partnership, which mainly include the following:

- review from time to time the Partnership's adherence to the Investment Guidelines and, if it deems fit, authorize any deviation from or modification contained in such Investment Guidelines;
- provide guidance on the Partnership's overall investment strategy;

- make recommendations regarding any changes, trends and developments in any industry presented to it for consideration by the Fund Manager that are relevant to the Partnership's investment objectives;
- provide such advice and counsel as is requested by the Fund Manager from time to time in connection with the Portfolio Investments;
- review and approve or disapprove any valuations in accordance; and
- make a ruling on any apparent or perceived conflict of interest where the Fund Manager intends to enter into a related party transaction or enter into a contract with an affiliated party.

#### **4.4 Disqualification to act as a nominee director or PE advisory committee member**

The appointment of a nominee director is subject to the provisions contained in Section 69 of the Companies Act.

#### **4.5 Limitation on the number of directorships and PE committee memberships**

King III provides that non-executive directors should ensure that they have (and take) the time required to attend properly to their duties. It is expected from them to:

- Attend board and board committee meetings; and
- Acquire and maintain a broad knowledge of the economic environment, industry and business of the company.

In view of the time and dedication required by a director to fulfil his or her duties properly, it is important that non-executive directors do not hold any more directorships than is reasonable for them to exercise due care, skill and diligence. They should, therefore, honestly apply their minds to their workloads and abilities to discharge their duties.

##### **4.5.1 DBSA Employees**

The DBSA applies the following:

- the number of nominee **directorships** held by DBSA employees at any point in time shall be limited to a maximum of **three**; and
- the number of nominee **PE advisory committee memberships** held by DBSA employees at any point in time be limited to a maximum of **three**. However, the number of committee memberships by an employee in the Equities Unit, which is responsible for the day-to-day management and monitoring of the PE Funds, shall be limited to a maximum of **four**.

##### **4.5.2 Non DBSA Employees**

Appointment of a non DBSA employee (External nominee director) to serve as a DBSA nominee directors will not be subject to the limitation of three nominee directorships provided for in paragraph 4.5.1. above.



The performance of an external nominee director shall be evaluated on an annual basis.

The evaluation of a nominated nominee director must consider any other directorships which such a person may already be holding in his or her personal capacity.

## **4.6 Approval of nomination**

### **4.6.1. Approval of nomination for a director position**

The Chief Executive shall approve the appointment of a person as a nominee director.

Once the appointment has been approved by the Chief Executive, the appointment shall be submitted to the Board Human Resources, Remuneration and Nomination Committee (HRNC) for notification. Subsequently, the appointment letter must be forwarded to Corporate Secretariat for filing, updating of the DBSA Nominee Director register and collection of fees payable to DBSA.

### **4.6.2. Approval of nomination for a PE advisory committee position**

The Group Executive responsible for the management and monitoring of equity investments shall approve the appointment of a person as a nominee PE advisory committee member.

Once the appointment has been approved by the Group Executive, the record of appointment shall be submitted to the Company Secretariat for notification and filing, thereof.

The Equities Unit shall ensure that the DBSA PE advisory committee member register is kept up to date and filed with the Company Secretariat

## **4.7 Termination of nominee directorship**

### **4.7.1 Rotation of nominee director and PE advisory committee member**

An individual serving as a nominee director on a particular board or committee member on a particular PE fund shall do so for a maximum period of **three** years, after which DBSA shall appoint a new nominee director to serve on the particular board or PE fund.

Nominee directors and PE advisory committee members shall be eligible for re-appointment for a second term of **three** years. Re-appointment of a nominee director shall be subject to approval by the Chief Executive. Re-appointment of a nominee PE advisory committee member shall be subject to the approval of the Group Executive responsible for management and monitoring of equity investments.

### **4.7.2 Resignation**

When a DBSA nominee director or PE advisory committee member resigns from the DBSA, the Chief Executive or Group Executive, applicable, must at that time, review the appropriateness and desirability of such a person continuing to act as its nominee director or PE advisory committee member.



### **4.7.3 Removal**

The DBSA reserves the right to recommend the removal of a nominee director to the shareholder at its sole discretion.

Removal of a nominee director shall be conducted in line with the requirements set out in Section 71 of the Companies Act 71 of 2008.

Removal of a nominee PE advisory committee member shall be conducted on the recommendation of the General Manager in consultation with the Unit Manager responsible for the Equities Unit. The removal has to be approved by the Group Executive responsible for the Equities Portfolio.

## **4.8 Director and PE advisory committee member liability insurance**

Due to this potential liability arising from negligence, default, breach of trust or duty, it is recommended that the company or Fund, on which DBSA's nominee director or PE advisory committee member serves, should as a matter of course, take out such indemnity insurance in favour of its directors or PE advisory committee members.

The DBSA shall ensure that the appropriate professional indemnity insurance is obtained (if not covered by the existing one already) for its nominee directors and PE advisory committee members.

It is important to note, however, that the taking out of such professional indemnity insurance does not relieve the directors or PE advisory committee members of any of their duties in terms of the law.

The DBSA indemnifies its nominee directors and PE advisory committee members against any legal or civil action, excluding criminal offences, resulting from such nomination.

## **4.9 Induction of nominee directors and PE advisory committee members**

King III provides that the board should establish a formal induction programme to familiarise incoming directors with the company's operations, its business environment, and the sustainability issues relevant to its business. It should also introduce them to members of senior management and their respective duties and responsibilities.

The Equities Unit shall establish a formal induction programme to familiarise incoming PE advisory committee members with the PE Fund's operations, its portfolio companies, its business environment, and the sustainability issues relevant to its business. It should also introduce them to members of senior management and their respective duties and responsibilities.

#### **4.9.1 Company and/ or PE fund induction**

The company or PE fund to which the nominee director or PE advisory committee member is appointed should provide an appropriate induction programme to enable the DBSA nominee director or member.

The induction of directors or members in respect of the company or PE fund structure and strategy should be conducted by the company or PE fund concerned.

It is however the nominee director's or member's own responsibility to familiarise himself/herself with the business operations and working environment of the company or PE fund and its portfolio of companies.

#### **4.9.2 General induction**

In the event the company to whom the director serves has not provided induction, the DBSA Corporate Secretariat together with the Equities Unit shall provide such induction training for all new nominee directors and PE advisory committee members. The objective of such an induction programme should be to familiarize the directors and members with their rights, powers, duties and responsibilities as directors and members in terms of law.

#### **4.10 Reporting to DBSA**

Any DBSA nominee director or PE advisory committee member shall provide regular progress reports or updates on a particular project to the DBSA.

The nominee director's disclosure of information may not compromise the confidentiality or the nominee director's fiduciary duty towards the company.

It is compulsory for nominee directors to provide the following information on DBSA's request:

- S&T trip reports;
- Details of meetings attended;
- Details of remuneration received;
- Information secured in terms of the agreement and/or MOU concluded between the DBSA and the company concerned.

In addition to the above set of information as applicable to directors, the PE advisory committee members shall provide the following to the Equities Unit after each meeting attended:

- Copy of advisory committee meeting packs;
- Copy of minutes of advisory committee meetings; and
- Record of all waivers to the investment guidelines granted by the PE advisory committee members.

It is the nominee's responsibility to ensure that information due to the DBSA is provided to the DBSA accurately and timely.

#### **4.11 Remuneration payable to nominee directors**

Any remuneration and/or fees earned will accrue in favour of the DBSA. If such payments are received by the nominee director in his personal capacity, the nominee director will reimburse the DBSA within 30 days of receipt of such payment.

Any remuneration that has been paid or is due to be paid to any DBSA nominee director, shall be dealt with in terms of the existing DBSA Declaration of Outside Interests Policy which is incorporated herein by reference.

With regard to non-DBSA employees, it is proposed that such remuneration and/or fees, should be for their own account.

It is a Private Equity industry practice that PE advisory committee members are not remunerated for their services or membership.

#### **4.12 Monitoring of the policy**

The DBSA Equities Unit must provide updated information to the DBSA Corporate Secretariat, who in turn must compile, keep custody of, maintain, monitor and update, on a regular basis, a register of all persons acting as nominee directors and PE advisory committee members for the DBSA.

#### **4.13 Review of the policy**

The DBSA Corporate Secretariat shall on an annual basis review the provisions of this policy to align with applicable codes, legislation and best practice.

#### **4.14 Applicability of policy**

Notwithstanding the use of the term 'directors and/or nominee directors' throughout this document, this policy applies to any person acting as a director and/or trustee on behalf of the DBSA.

#### **4.15 Transitional Arrangements**

It is recommended that the appointment of all nominee directors and PE advisory committee members appointed before the commencement of this policy must be reviewed within 30 days of the approval of this policy to ensure compliance with the provisions of this policy. The review must be coordinated by the Corporate Secretariat in consultation with the Equities Unit.

In terms of nominee directors; the first step shall be a thorough review of the *status quo*. Any inconsistencies with this policy shall be reported to the Chief Executive. The Chief Executive shall then notify the appropriate unit manager who shall ensure that the appointment of the nominee director complies with the provisions contained in this policy.

In terms of nominee PE advisory committee members; the first step shall be a thorough review of the *status quo*. Any inconsistencies with this policy shall be reported to the



Group Executive responsible for management of equity investments. The Group Executive shall then notify the appropriate unit manager who shall ensure that the appointment of the nominee PE advisory member complies with the provisions contained in this policy.

The procedure set out herein does not preclude the Chief Executive and Group Executive responsible from ratifying the appointment of any nominee director or PE advisory committee member, respectively, who were appointed before the commencement of this policy.

  
CHAIRMAN OF THE BOARD

24/3/2014  
DATE