

SELECTION PANEL TO RECOMMEND NEW COMMISSIONER FOR SARS

TERMS OF REFERENCE • PRETORIA • 4 FEBRUARY 2019

1. Background

In terms of section 6 of the SARS Act, 1997 (as amended), the President must appoint a person as the Commissioner for SARS when there is a vacancy. The recent Nugent Commission Report (Second Interim Report of the Commission of Inquiry into Tax Administration and Governance by the SARS of 9 November 2018) recommends the process to be followed by the President for the appointment of the Commissioner of SARS (refer to point [40] on pages 186-187 and point 16.3 on pages 197-198 in the Report).

The Report recommends the appointment of person to a selection panel who “...*should be apolitical and not answerable to any constituency, and should be persons of high standing who are able to inspire confidence across the tax-paying spectrum*”. The criteria against which shortlisted candidates should be evaluated for suitability is also outlined in the Report .

The President has granted approval for the Minister of Finance to oversee the initial steps of the appointment process, including the appointment of the Panel, the shortlisting of names by the Panel for interviewing, and to submit its recommendations to the Minister by an agreed date (13 Feb or 20 Feb?) a list of suitable and competent persons for the consideration of the President to appoint as Commissioner of SARS.

This selection panel is appointed for this purpose, to provide an independent, unbiased and transparent procedure of assessing applicants.

2. Constitution

The Appointment Advisory Panel will consist of—

- (i) Chair of the panel: Mr. Trevor Manuel

- (ii). Ms. Angela Bester
- (iii). Justice Dennis Davis
- (iv). Ms. Sindi Mabaso-Koyana
- (v). Mr. Ismail Momoniat
- (vi). Ms. Thandi Orleyn
- (vii). Mr. Fezekile Tshiqi

3. Decision making process

- 3.1. The Appointment Advisory Panel determines its procedures, but decisions of the Panel must be supported by a majority of its members.
- 3.2. The chairperson must ensure that a written record of decisions and minutes of each meeting of the Panel are kept.
- 3.3. Panel members must disclose any conflicts of interest that may prejudice their decision making to the other panel members. The remaining members of the panel must devise an appropriate remedy.

4. Scope of Work

- 4.1. The Appointment Advisory Panel must—
 - (i) evaluate and scrutinise all applicants against the criteria stated in paragraph 5; and
 - (ii) shortlist and interview at least 5 candidates who satisfy the requirements of paragraph 5;
 - (iii) make motivated non-prescriptive recommendations to the President, recommending at least one person as being suitable for appointment as Commissioner.
- 4.2. If the Appointment Advisory Panel determines that there are not sufficient candidates that are eligible to be shortlisted for interviewing or that there are not sufficient candidates who are suitable to be recommended for appointment, to meet the requirements of paragraph 5, the Panel must without delay advise the Minister accordingly.

5. Appointment Criteria

When determining whether a candidate is suitable to be shortlisted and recommended for appointment as the Commissioner, the Appointment Advisory Panel must assess whether a candidate—

- 5.1. is, and is reputed to be, of unblemished integrity;
- 5.2. has proven experience of managing a large organization at a high level, specifically that the person has at least 10 years' experience in a senior or executive position with—
 - (i) SARS or any other revenue authority
 - (ii) a regulator (preferably a financial sector regulator);
 - (iii) a financial institution or tax practice;
 - (iv) a tax industry body;
 - (v) a government department or agency that is responsible for revenue management;
 - (vi) an international tax body;
 - (vii) an institution that the panel deems as equivalent;
- 5.3. has the skills, knowledge and expertise that would reasonably be expected of a person in the position of Commissioner;
- 5.4. is tax compliant, according to the documentation and information provided by applicants;
- 5.5. is not aligned to any constituency, and if so aligned, should renounce or terminate that alliance upon appointment and is a fit and proper person, in particular—
 - (i) is not involved in a company, legal entity, or activity that may result in a potential conflict of interest with the proper exercise of the functions of the Commissioner;
 - (ii) is not a member of the Cabinet, a member of the Executive Council of a province, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council;
 - (iii) is not an office-bearer of, or is in a remunerated leadership position in, a political party;

- (iv) has not at any time been removed from an office or position of trust;
 - (v) is not or has not been subject to debarment in terms of legislation regulating a profession such as the legal or auditing professions, or acting as a tax practitioner, or the conduct of a financial institution or a company;
 - (vi) is not or has not at any time been sanctioned for contravening a law relating to the regulation or supervision of companies, financial institutions, or taxation, or a corresponding law of a foreign jurisdiction;
 - (vii) is not or has not at any time been convicted of-
 - (aa) theft, fraud, forgery, uttering of a forged document, perjury or an offence involving dishonesty, whether in the Republic or elsewhere;
 - (bb) an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Parts 1 to 4, or section 17, 20 or 21 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence in terms of the law of a foreign country; or
 - (cc) a contravention or an offence in terms of taxation legislation;
 - (viii) is not or has not been convicted of any other offence committed after the Constitution came into effect, where the penalty imposed for the offence is or was imprisonment without the option of a fine;
 - (ix) is not subject to a provisional sequestration order or is an unrehabilitated insolvent;
 - (x) is not disqualified from acting as a member of a governing body of a juristic person in terms of applicable legislation; or
 - (xi) is neither declared by the High Court to be of unsound mind or mentally disordered, nor detained in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002); and
- 5.6. has the capabilities and capacity to effectively perform the responsibilities of Commissioner; and
- 5.7. possesses leadership skills equal to the task of restoring SARS.

6. Process

The Selection Panel is envisaged to schedule and attend two meetings, and conduct a set of interviews over one or two days. The first meeting is to establish the panel and to endorse a shortlist of candidates to be interviewed, which will be prepared by the Ministry of Finance with clerical assistance from National Treasury. After interviews have been concluded, the second meeting is for consideration of the interviews and to formulate recommendation(s).

7. Deliverables

1. List of shortlisted candidates for interviews
2. Interviewing shortlisted candidates
3. Written and motivated recommendation to Minister of Finance, after interviews have been conducted. This report – along with any written comments the Minister of Finance may have - will be published by the President, once the appointment has been made.

8. Timeframes and responsibilities

	<i>Description</i>	<i>Responsibility</i>	<i>Latest date</i>
1.	Applications close	NT HR	18 January 2019
2.	Appoint panel	Minister	4 February 2019
3.	National Treasury conducts first set of eligibility evaluations	NT	2 February 2019
4.	Shortlisting meeting	Panel	4 February 2019
5.	Contact candidates	NT HR	5 - 6 February 2019
6.	Interviews	Panel	9 February 2019 (TBC)
7.	Meeting of panel to finalise recommendation	Panel	9 February 2019 (TBC)