

## NATIONAL TREASURY

NO. 5459

25 October 2024

**INVITATION FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO REGULATIONS MADE IN TERMS OF DEVELOPMENT BANK OF SOUTHERN AFRICA ACT, 1997**

1. Proposed amendments, as set out in the Schedule, to the regulations, made under section 17 of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997) and published under Government Notice No. R. 1390 in *Government Gazette* No. 18382 of 19 November 1997, as amended by—
  - (a) Government Notice No. R. 1026, published in *Government Gazette* No. 37178 of 18 December 2013;
  - (b) General Notice No. 643, published in *Government Gazette* No. 40334 of 7 October 2016; and
  - (c) Government Notice No. R. 1587, published in *Government Gazette* No. 42888 of 8 December 2019,are hereby published for public comment.
2. Written comments on the proposed amendments may be submitted to [CommentDraftLegislation@treasury.gov.za](mailto:CommentDraftLegislation@treasury.gov.za) within 30 days from the date of publication of this notice.

**SCHEDULE**

1. The following heading is hereby substituted for the heading before regulation 99 of the regulations made in terms of section 17 of the Development Bank of Southern Africa Act, 1997 (herein called “the Regulations”):

**“APPOINTMENT AND REMOVAL OF DIRECTORS”.**”

2. The following regulations are hereby substituted for regulations 99 to 104 of the Regulations:

**“Appointment of directors**

**99.(1)** The appointment of directors is subject to section 7 of the Act.

(2) The Minister shall, by notice in the *Gazette* and two national newspapers circulating in the Republic, invite interested persons to submit, within the

period and in the manner mentioned in the notice, the names of persons fit to be appointed as directors of the board.

- (3) A director shall be appointed subject to—
- (a) a clear identification, qualification, security, and any other relevant checks or verifications; and
  - (b) an assessment that determines that the director is independent.”.

### **Re-appointment of directors**

**100.** (1) A director is eligible for re-appointment in terms of section 9(1) of the Act, subject to regulation 99(2) and (3), but may not serve as member of the Board for more than three consecutive terms.

(2) A director shall retain office until the appointment of a new director has been completed or until the expiration of six months from the date that he or she was due to retire, whichever is earlier.

(3) A director may only be re-appointed as a director of the board based on the performance and execution of the director's responsibilities in the Board and its committees and attendance of board meetings and board committees' meetings.

### **Removal of directors**

**101.**(1) Subject to section 71(1) and (2) of the Companies Act, a director shall be removed as a director of the Bank, if he or she has been absent from three consecutive meetings of the Board without the leave of the Board and the Board has resolved that his or her office be vacated by reason of such absence.

(2) The Minister shall furnish the Cabinet and the public with reasons for the removal of any director in terms of section 71(1) and (2) of the Companies Act.

### **Vacation of office**

- 102.** A director shall immediately vacate office if he or she—
- (a) is convicted of a criminal offence, whether in the Republic or elsewhere;
  - (b) becomes a public office bearer;
  - (c) becomes an insolvent;
  - (d) has been removed from an office of trust on account of misconduct;
  - (e) is removed as director in terms of regulation 101; or
  - (f) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board.

### **Conditions of employment of chief executive officer**

**103.**(1) The Board shall, with the approval of the Minister, determine the remuneration and other conditions of employment of the chief executive officer, appointed in terms of section 12 of the Act.

(2) The chief executive officer shall, within three months after appointment, enter into a performance agreement with the Board.

### **Conflict of interest and declaration by directors**

**104.** (1) A director shall, on appointment, submit to the Bank a written declaration whether that director's family has any financial or other direct or indirect interest that—

- (a) may constitute a conflict of interest in respect of his or her functions as a director of the Board; or
- (b) could reasonably be expected to compromise the Board in the performance of its functions.

(2) If a director acquires an interest contemplated in sub-regulation (1), he or she shall immediately in writing declare that fact to the Board.

(3) A director may not be present at, or take part in, the discussion of, or the taking of a decision on, any matter before the Board in which that director has an interest contemplated in sub-regulation (1).

(4) A director may not use his or her position or confidential information obtained as a director, for personal gain or to improperly benefit another person.

(5) The Bank shall keep a register of the interests of directors declared in terms of sub-regulations (1) and (2) and shall update that register within five working days after receipt of a declaration.

(6) For purposes of subregulation (1), "family" means an individual related to another individual if they—

- (a) are married, or live together in a relationship similar to a marriage; or
- (b) are separated by no more than two degrees of natural or adopted consanguinity or affinity."

3. The following regulation is hereby inserted after regulation 104 of the Regulations:

**"Directors may not hold other offices**

**104A.** A director may not hold any other office in the Bank except for the chief executive officer, any executive manager or member of the staff of the Bank referred to in section 7(4) of the Act."

4. The following regulation is hereby substituted for regulation 111 of the Regulations:

**"Director's fees and expenses**

**111.** Directors shall be paid directors' fees for attending the meetings of the board and the reimbursement of expenses in connection with travel and subsistence in accordance with the Banks' policies, except for the chief executive officer, any executive manager or member of the staff of the Bank referred to in section 7(4) of the Act."