

SOUTH AFRICA – LEGAL ANNEX

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- **Constitution (1996)**
 - **Joint Rules of Parliament**
 - **Code of Conduct for Assembly and Permanent Council Members (Part of the Joint Rules of Parliament)**
 - **Prevention and Combating of Corrupt Activities Act, 2003 (Law No. 12 of 2004)**
 - **Code of Conduct in Regard to Financial Interests (1996)**
 - **Blank Disclosure Form for the Disclosure of Members' Interests 2006 (Public Component)**
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Constitution 1996

Article 47

(1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except –

(a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than –

(i) the President, Deputy President, Ministers and Deputy Ministers; and

(ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;

(b) permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council;

(c) unrehabilitated insolvents;

(d) anyone declared to be of unsound mind by a court of the Republic; or

(e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

(2) A person who is not eligible to be a member of the National Assembly in terms of subsection (1)(a) or (b) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation.

(3) A person loses membership of the National Assembly if that person -

(a) ceases to be eligible; or

(b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership.

(4) Vacancies in the National Assembly must be filled in terms of national legislation.

Joint Rules of Parliament

Part 11: Joint Committee on Ethics and Members' Interests

Establishment

121. There is a Joint Committee on Ethics and Members' Interests.

Composition

122. (1) The Joint Committee on Ethics and Members' Interests consists of -

- (a) twelve Assembly members; and
- (b) five permanent members of the Council.

(2) The Committee must be composed in such a way that the majority party in the Assembly has one member more than the combined total of members representing all other parties in the Committee.

Chairperson and deputy chairperson

123. (1) The Joint Committee on Ethics and Members' Interests must elect one of its members from the one House as its chairperson and one of its members from the other House as its deputy chairperson.

(2) The chairperson and deputy chairperson are not entitled to remuneration.

Functions

124. (1) The Joint Committee on Ethics and Members' Interests must -

- (a) implement the Code of Conduct for Assembly and permanent Council members set out in the Schedule;
- (b) develop standards of ethical conduct for Assembly and Council members;
- (c) serve as an advisory and consultative body, both generally and to members, concerning the implementation and interpretation of the Code;
- (d) regularly review the Code and make recommendations for its amendment; and
- (e) perform the other functions and exercise the other powers reasonably assigned to the Committee in the Code and in terms of resolutions adopted in both Houses.

(2) The Committee must report to both Houses at least annually on the operation and effectiveness of the Code.

Public access

125. Meetings of the Joint Committee on Ethics and Members' Interests must be held in closed session when the Committee considers a matter affecting a specific Assembly or Council member and the Committee regards that matter to be confidential.

Decisions

126. A question before the Joint Committee on Ethics and Members' Interests is decided when there is agreement on the question among the majority of the members present, provided at least half of its members are present.

Confidentiality

127. (1) Each member and alternate member of the Joint Committee on Ethics and Members' Interests must swear or affirm, before either the Speaker or the Chairperson of the Council, depending on the House of which that person is a member, to comply with the requirements of confidentiality set out in the Code.

(2) The Registrar appointed in terms of the Code and each member of the staff assigned for the work of the Committee must swear or affirm, before either the Speaker or the Chairperson of the Council, to comply with the requirements of confidentiality set out in the Code.

Joint Rules of Parliament: Code of Conduct for Assembly and Permanent Council Members

Article 6:

Disclosure of registrable interests

- (1) Members must disclose to the Registrar, on the form prescribed for this purpose by the Committee, particulars of all their registrable interests.
- (2) The first disclosure must be within 30 days of the opening of Parliament or appointment as a member. If a member has no registrable interests, a “nil” return must be submitted.
- (3) After the first disclosure members must within disclose annually at a time determined by the Committee.

Article 7:

Kind of interests to be disclosed

The following kinds of financial interests are registrable interests:

- (a) shares and other financial interests in companies and other corporate entities
- (b) remunerated employment outside Parliament
- (c) directorships and partnerships
- (d) consultancies
- (e) sponsorships
- (f) gifts and hospitality from a source other than a family member or permanent companion.
- (g) Any other benefit of a material nature
- (h) Foreign travel (other than personal visits paid for by the member, business visits unrelated to the member’s role as a public representative and official and formal visits paid for by the state or the member’s party)
- (i) Ownership and other interests in land and property
- (j) Pensions.

Article 8:

Details of registrable interests to be disclosed

The following details of registrable interests must be disclosed:

- (a) Shares and other financial interests in companies and other corporate entities:
 - I. The number, nature and nominal value of shares of any type in any public or private company.
 - II. The name of that company, and
 - III. The nature and value of any other financial interests held in a private or public company or any other corporate entity
- (b) Remunerated employment outside Parliament
 - I. The type of employment
 - II. The name, and type of business activity, or the employer, and
 - III. The amount of remuneration received for such employment
- (c) Directorships and partnerships
 - I. The name, and type of business activity or the corporate entity or partnership, and
 - II. The amount of any remuneration received for such directorship or partnership
- (d) Consultancies
 - I. The nature of the consultancy or any retainerhip of any kind
 - II. The name, and type of business activity, of the client concerned, and
 - III. The amount of any remuneration or other benefits received for such consultancy or retainerhip
- (e) Sponsorships:
 - I. The source and description of direct financial sponsorship or assistance from non party sources, and
 - II. The value of the sponsorship or assistance
- (f) Gifts and hospitality
 - I. A description and the value and source of a gift with a value in excess of R350
 - II. A description and the value of gifts from a single source which cumulatively exceed the value of R350 in any calendar year, and
 - III. Hospitality intended as a gift in kind
- (g) Benefits:
 - I. The nature and source of any other benefit, or a material nature and

- II. The value of that benefit
- (h) Foreign travel:
 - I. A brief description of the journey abroad and
 - II. Particulars of the sponsor
- (i) Pensions
 - I. The source of the pension, and
 - II. The value of the pension

Article 9

Entries in the Register

- (1) The registrar must record all details of registrable interests in the public part of the Register, except the following which may be recorded in the confidential part:
 - a. The value of financial interests in an entity other than a private or public company
 - b. The amount of any remuneration for any employment outside Parliament
 - c. The amount of any remuneration for any directorship or partnership
 - d. Details of foreign travel when the nature of the visit requires those details to be confidential
 - e. Details of private residences
 - f. The value of any pensions
 - g. Details of all financial interests of a member's spouse, dependent child or permanent companion to the extent that the member is aware of those financial interests.
- (2) Where any doubt exists as to whether any financial interests must be disclosed, the member concerned must act in good faith
- (3) Despite sub item (1) the Committee may on good cause instruct the Registrar to record any details of any of a member's registrable interests in the confidential part of the register.

Article 10

Confidential part of Register

- (1) Only a Committee member, the Registrar and staff assigned to the Committee has access to the confidential part of the Register.

Article 11

Public part of Register

- (1) Any person has access to the public part of the Register on a working day during office hours.
- (2) The Registrar must publish the public part of the Register during April of each year in a manner determined by the Committee.

Article 12

Declaration of private interests to parliamentary committees and forums

A member must

- (a) declare any personal or private financial or business interest that member or any spouse, permanent companion, or business partner of that member may have in a matter before a joint committee, committee or other parliamentary forum of which that member is a member, and
- (b) withdraw from the proceedings of that committee or forum when that matter is considered, unless that committee or forum decides that member's interest is trivial or not relevant.

Article 13

Declaration of private interests when making representations

If a member makes representations as a member to a Cabinet member or any other organ of state with regard to a matter in which that member or any spouse, permanent companion or business partner of that member has a personal or private financial or business interest, that member must declare that interest to that Cabinet member or organ of state.

Article 15

Remunerated employment outside Parliament

A member may only engage in remunerated employment when such employment is:

- (a) sanctioned by the political party to which member belongs
- (b) compatible with that member's function as a public representative.

Article 16

What constitutes a breach

A member breaches this Code if the member –

- (a) contravenes or fails to comply with a provision of this Code
- (b) when disclosing registrable interest, willfully provides the Registrar with incorrect or misleading details

Article 17

Investigations by Committee

- (1) The Committee, acting on its own or on a complaint by any person through the office of the Registrar, may investigate any alleged breach by a member of this Code
- (2) The Committee may determine its own procedure when investigating any alleged breach but must at least hear the complainant and the member against whom the complaint is lodged.
- (3) If the matter concerns a registrable interest recorded in the confidential part of the Register or which is regarded as confidential by the Committee, the proceedings of the Committee may be held in closed session.

Article 18

Findings

- (1) At the conclusion of its investigations, the Committee must make a finding supported by reasons, on the alleged breach of this Code
- (2) The finding and the reasons for the findings must be made public
- (3) If the hearing was in closed session, a summary of the facts must be disclosed.

Article 19

Penalties

The Committee must recommend the imposition of one or more of the following penalties where it has found that a member has breached a provision of this Code:

- (a) a reprimand
- (b) a fine not exceeding a value of 30 days' salary
- (c) a reduction of salary or allowances for period not exceeding 15 days
- (d) the suspension of privileges or a member's right to a seat in Parliamentary debates or committees for a period not exceeding 15 days.

2004 Prevention and Combating of Corrupt Activities Act:

Chapter 1, Article 1 (xxiv)

- (xxiv) “**public officer**” means any person who is a member, an officer, an employee or a servant of a public body, and includes—
- (a) any person in the public service contemplated in section 8(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - (b) any person receiving any remuneration from public funds; or
 - (c) where the public body is a corporation, the person who is incorporated as such,
- but does not include any—
- (a) member of the legislative authority;
 - (b) judicial officer; or
 - (c) member of the prosecuting authority;
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General offence of corruption

3. Any person who, directly or indirectly—

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner—

(i) that amounts to the—

(aa) illegal, dishonest, unauthorized, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to—

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorized or improper inducement to do or not to do anything, is guilty of the offence of corruption.

Offences in respect of corrupt activities relating to members of legislative authority

Article 7.

(1) Any—

(a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner—

(i) that amounts to the—

(aa) illegal, dishonest, unauthorized, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to—

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorized or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to members of the legislative authority.

(2) Without derogating from the generality of section 2(4), “**to act**” in subsection (1) includes—

(a) absenting himself or herself from;

(b) voting at any meeting of;

(c) aiding or assisting in procuring or preventing the passing of any vote in;

(d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or

(e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by, the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority.

**Offence relating to acquisition of private interest in contract, agreement or investment of public body
Article 17.**

(1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.

(2) Subsection (1) does not apply to—

(a) a public officer who acquires or holds such interest as a shareholder of a listed company;

(b) a public officer, whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or

(c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process.

Code of Conduct in Regard to Financial Interests

(as adopted by the Joint Meeting of the Rules Committees on 21 May 1996)

Article 2 APPLICATION

2.1 This Code applies to all persons who are entitled to be present and participate in the proceedings of Parliament.

2.2 This Code applies also to any spouse, permanent companion or dependant child of any Member to whom the Code applies, to the extent that the Member is aware of and entitled to disclose any registrable interest held by such a person, provided that disclosure in regard to such persons must appear in the Confidential Part of the Register.

3 REGISTRATION AND PUBLICATION OF MEMBERS' INTERESTS

A Joint Committee, to be known as the Committee on Members' Interests (hereafter "the Committee") must be established and must meet within twenty days of the approval of this Code.

- 3.1 The majority party in the National Assembly must have one representative more than the combined total of representatives of all other parties on the Committee.
- 3.1.3 The Committee must elect a Chairperson and Deputy Chairperson from among its members at its first meeting, who must fulfill the duties associated with their offices in the manner prescribed for Chairpersons of Committees of the National Assembly, but are not entitled to the normal financial benefits of such office.
- 3.1.4 The Committee is quorate if half its members plus one are present at any meeting, and must meet from time to time, but at least monthly during Parliamentary sessions.
- 3.1.5 The Committee has the following functions:
- 3.1.5.1 the overall supervision of the compilation and publication of the Register of Members' Interests (see para 3.2 below);
 - 3.1.5.2 the determination of any complaints in regard to the disclosure of Members' Interests,
 - 3.1.5.3 the recommendation of any sanctions to be imposed on Members for contravention of any aspect of this Code;
 - 3.1.5.4 the interpretation of and the giving of advice in regard to the operation of this Code either generally or upon request by a Member;
 - 3.1.5.5 the reporting on the operation of this Code to Parliament, as the occasion demands but at least annually; and
 - 3.1.5.6 any other functions reasonably required for the effective administration of this Code.
- 3.1.6 In discharging its functions, the Committee has the power to summon any person to appear or to produce documentary evidence before it and to answer questions put to him or her.
- 3.1.7 The Committee must be served by a senior official on the staff of Parliament, to be known as the Registrar of Members' Interests (hereafter "the Registrar"), appointed by the Presiding

Officers after consultation with all the political parties represented in Parliament.

- 3.2.5 The Public Part of the Register must lie open in the office of the Registrar for inspection by any person during prescribed hours of each normal working day, provided that the Public Part of the Register must be published for general distribution sixty days after the opening of the Register and on 1 April of each year after that.

4 REGISTRABLE INTERESTS

- 4.1 All financial interests of the type stipulated below must be disclosed by every person bound directly by this Code and included in the Register. Such interests are “registrable interests” in terms of this Code.

- 4.2 In addition, whenever a Member has a direct and specific pecuniary interest in a matter being debated or voted on in any Parliamentary forum or is making representations to a Minister of government, governmental department or parastatal organization, he or she must declare such an interest and must not participate in any such debate, vote or representation after such declaration.

- 4.3 The following categories of registrable interest must be disclosed separately

4.3.1 Shares and other Financial Interests: the number, nature, nominal value and company in which held of any type of shares in any public or private company, provided that financial interests held in any other corporate body recognized by law must be disclosed in the Confidential Part of the Register;

4.3.2 Remunerated employment outside Parliament: the employment for remuneration and the name and type of business activity of the employer of any Member outside Parliament, which must be sanctioned by the political party to which the Member concerned belongs and which must not be incompatible with that Member’s function as an elected public representative, provided that the extent of such remuneration must be disclosed in the Confidential Part of the Register;

4.3.3 Directorships and Partnerships: the holding of office of director in any corporate body and the membership of any partnership recognized by law and the name and type of business activity of the corporate body or partnership where the receipt of remuneration is a consequence of or associated with holding such office or being such a member, provided that the extent of such remuneration must be disclosed in the Confidential Part of the Register;

4.3.4 Consultancies: the holding of a consultancy or retainership of any kind, the name and type of business activity of the organization concerned, and the value of any benefits derived as a result;

4.3.5 Sponsorship: the source, description and extent of the provision of financial sponsorships or assistance directly to a Member from non-party sources;

4.3.6 Gifts and Hospitality: the receipt, description, value and source of any gift with a value in excess of R350 or gifts from a single source which cumulatively exceed the value of R350 in any calendar year or hospitality intended as a gift in kind, including such gifts and hospitality from an external source to a spouse, permanent companion or dependant child of a Member, provided that personal gifts within the family and hospitality of a specifically traditional or cultural nature need not be disclosed;

4.3.7 Benefits: the receipt and source of any other benefit of a material nature, provided

that the value of such benefit must be disclosed in the Confidential Part of the Register;

4.3.8 Foreign Travel: the undertaking of all travel abroad (including a brief description of the journey and sponsor), other than personal visits paid for entirely by the Member himself or herself, business visits unrelated to the Member's role as a public representative, or formal visits paid for by the Member's political party, provided that a registrable visit may be entered in the Confidential Part of the Register where its nature so requires.'

4.3.9 Land and Property: any interest in immovable property, wherever situated, including private residences, vacation homes and any other landholding, provided that only the description, area in which situated and extent of the property need be disclosed and that such details in respect of private residences only may be entered in the Confidential Part of the register, and

4.3.10 Pensions: the receipt and source of a pension of any description, whether funded privately or publicly, provided that the value must be disclosed in the Confidential Part of the Register.

- 4.4 Where any doubt or discretion exists in respect of the registrability of a financial interest, the Member concerned must act at all times in good faith.
- 5.2 The Committee may adopt whatever procedures it deems reasonable injustice and fairness (including a consideration of any expenses incurred) in conducting its investigations, but must hear at least the complainant and the Member in respect of whom the complaint is lodged, which hearing must be in closed session unless the Committee decides otherwise.
- 5.3 The Committee must make a full and considered finding supported by reasons on the validity of any complaint at the conclusion of its investigations, which it must make public, together with any sanction to be imposed', and must, if the hearing was in closed session, also supply an adequate summary of the facts.
- 5.4 The Committee must at the same time recommend the imposition of one or more of the following penalties where it has found that a Member has contravened this Code: a reprimand; a fine; a reduction of salary or allowances; the suspension of privileges or a Member's right to take his or her seat in Parliamentary debates or committees, provided that the amount of any such fine or reduction may not exceed the value of thirty days' salary, nor may such period of suspension exceed fifteen days at a time.
- 5.5 The Committee must report its findings and recommendations as to penalties, if any, within 30 days of the lodging of a complaint, to the appropriate House of Parliament, which must confirm or vary any such report preferably by a free vote, or refer the matter back to the Committee for further consideration.
- 5.6 Once the appropriate House has confirmed the Committee's report, the Speaker or the President of the Senate/Chairperson of the National Council of Provinces must act on such decision with due expedition.

2006

PUBLIC DISCLOSURE SECTION

Name of Member _____

Please Print

Signature of Member _____

Date _____

1. Shares and other financial interests
See information sheet **NOTE 1**

NUMBER OF SHARES	NATURE	NOMINAL VALUE	NAME OF COMPANY

2. **Remunerated employment outside Parliament**
Must be sanctioned by your Political Party.
 See information sheet *Note 2*

NAME OF EMPLOYER	TYPE OF BUSINESS

Name of Whip _____ Party _____
 Signature of Whip _____ Date _____

3. **Directorship and partnerships**
 See information sheet *Note 3*

DIRECTORSHIP/PARTNERSHIP IN ANY	TYPE OF BUSINESS ACTIVITY
CORPORATE BODY	

4. **Consultancies or retainership**
 See information sheet *Note 4*

NAME OF ORGANISATION	TYPE OF BUSINESS ACTIVITY	VALUE OF ANY BENEFITS DERIVED

5. Sponsorship
See information sheet *Note 5*

SOURCE OF SPONSORSHIP	DESCRIPTION OF SPONSORSHIP	EXTENT

6. Gifts and hospitality
See information sheet *Note 6*

DESCRIPTION	VALUE	SOURCE

7. Benefits
See information sheet *Note 7*

SOURCE	DESCRIPTION OF BENEFIT

8 Travel
See information sheet **Note 8**

SPONSOR	DESCRIPTION OF JOURNEY

9. Land and property
See information sheet **Note 9**

DESCRIPTION OF PROPERTY	LOCATION-AREA	EXTENT OF THE PROPERTY

10. Pensions
See information sheet **Note 10**

SOURCE	PUBLIC/PRIVATE