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**LEGAL OPINION**  
[Confidential]

**TO:** Hon. V. Smith, MP  
Hon. M. Boroto, MP  
Co-Chairpersons: Interim Joint Committee on  
Scrutiny of Delegated Legislation

**COPY:** Secretary to Parliament

**DATE:** 30 May 2013

**SUBJECT:** Regulations: Supply Chain Management System  
Financial Management of Parliament Act, 10 of 2009

**LEGAL ADVISER:** Adv A Gordon

**REFERENCE NUMBER:** 150/13



## MEMORANDUM

**To:** Hon. V. Smith, MP  
Hon. M. Boroto, MP  
Co-Chairpersons: Interim Joint Standing Committee on Scrutiny of Delegated Legislation

**COPY:** Secretary to Parliament

**From:** Constitutional and Legal Services Office  
Adv A Gordon

**Date:** 30 May 2013

**Subject:** Regulations: Supply Chain Management System  
Financial Management of Parliament Act, 10 of 2009

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1. You requested that the Constitutional and Legal Services Office (CLSO) provide a legal opinion on the draft regulations (the draft regulations) made under section 65(1)(e) as read with chapter 6 of the Financial Management of Parliament Act, 10 of 2009 (the Principal Act).
2. The draft regulations provide a supply chain management system for Parliament.
3. Section 65(6) of the Principal Act prescribes that regulations issued by the Executive Authority [of Parliament] in terms of section 65(1) comes into effect after it has been approved by Parliament. In compliance herewith, the Executive Authority tabled the draft regulations in Parliament on 9 May 2013 [as per the ATC] and the draft regulations were referred to the Standing Committee on Finance, the Select Committee on Finance and the Interim Joint Committee on Scrutiny of Delegated Legislation.

### Scrutiny Criteria

4. It is mandatory that the scrutiny of delegated legislation follow the criteria which are set out in the Interim Rules (the IRs). The IRs provide as follows:
  - “(1) Delegated legislation shall be scrutinized by the Committee in accordance with some or all of the following criteria:
    - (a) Whether they impose levies, taxes or duties not authorized through a money bill passed in accordance with section 77 of the Constitution;

- (b) whether they comply with procedural aspects pertaining to delegated legislation;
- (c) whether they impinge on the jurisdiction of the courts;
- (d) whether they are retrospective in nature and, if so, whether that is permitted in terms of the parent Act;
- (e) whether they conform with the objects of the parent Act;
- (f) whether they appear to make unusual use of powers conferred by the parent Act;
- (g) whether they have been properly drafted;
- (h) whether they trespass on personal rights and liberties, including those set out in the Bill of Rights, in a manner inconsistent with the Constitution; or
- (i) whether they amount to substantive legislation.

#### **Advice**

5. Having considered the draft regulations in the context of the scrutiny criteria, I set out my opinion below.
6. The draft regulations do not contain provisions that impose levies, taxes or duties.
7. The procedural requirements set out in 65(5) of the Principal Act, i.e. that the Executive Authority must ensure that draft regulations that pertain to Chapter 6 of the Principal Act (Supply Chain Management System) is published for public comment, has not been complied with. The draft regulations were also referred to the Standing Committee on Finance and the Select Committee on Finance who may be mandated to give effect to section 65(5) of the Principal Act.
8. The provisions of the draft regulations do not impinge the jurisdiction of the courts.
9. There are no provisions in the draft regulations which have retrospective application. Draft regulation 17 specifically provides that "These Regulations will take effect after publication or on a later date determined by the Executive Authority".
10. The draft regulations conform to the objects of the Principal Act. It also conforms to Schedule 3 of the Principal Act, i.e. Matters that must be covered in Parliament's Supply Chain Management Policy.
11. The draft regulations do not appear to make unusual use of powers conferred by the Principal Act.

12. In terms of section 65(1)(e) of the Principal Act, the Executive Authority may issue regulations in respect of a Supply Chain Management System for Parliament which complies with Chapter 6.
13. The Supply Chain Management Policy must contain the processes and procedures set out in section 40(d)(i) to (vi), i.e. demand management, acquisition management, logistics management, disposal management, risk management and regular assessment of supply chain performance. The Supply Chain Management Policy must also contain the matters set out in Schedule 3 of the Principal Act. These matters are included in the draft regulations.
14. The Accounting Officer must implement the Supply Chain Management Policy. The draft regulations reflect the correct balance of power between the Executive Authority and the Accounting Officer as contemplated in the Principal Act.
15. The draft regulations have not been properly drafted in respect of style, numbering and format and are inconsistent with the drafting style used in legislation and regulations. Also, the definitions are placed in a table which is contrary to normal drafting style. Further, some sub-sections, such as 6.11.3 of the draft regulations have sentences which appear in paragraph style, this is inconsistent with the style of legal drafting and should be redrafted.
16. The draft regulations do not contain any provisions that trespass on personal rights and liberties, including those set out in the Bill of Rights.
17. The draft regulations do not amount to substantive legislation.
18. In conclusion, notwithstanding the content of paragraph 15 above, I am of the opinion that the draft regulations may be given effect to.



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**ADV A J GORDON**  
**LEGAL ADVISER**