

Ad Hoc Committee on the Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests

Briefing note on Code and Regulations

1. Both the Code and the regulations emanate from the **Judicial Service Commission Act, 1994 (Act 9 of 1994)**. (The Act)
2. The Act was amended by the **Judicial Service Commission Amendment Act, 2008 (Act 20 of 2008)**, in order to-
 - a) Align the provisions of the Act with the (new) Constitution;
 - b) Create a procedure for dealing with complaints against judges;
 - c) Provide for a Code of Judicial Conduct; and
 - d) Provide for the declaration of judges' registrable interests.
3. Judges' remuneration and conditions of employment are determined in terms of the **Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001)**. An important feature of the latter Act is that Judges, unless they resign from the office of a judge, do not retire on pension. Although they retire from active service after having performed service for a certain number of years, they continue to receive the salary of a judge for life. (This is pertinently referred to in section 11(3)(a)(iii) of the Act, which governs the consent that a "discharged judge" must obtain in order to perform "extra-judicial" remunerative work.)
4. **The Code:**
 - a) Section 12 of the Act makes provision for the Code of Judicial Conduct.
 - b) The Code must be compiled by the Chief Justice, acting in consultation with the Minister, and must be tabled in Parliament for approval. (Section 12(1))ⁱ
 - c) Parliament may, after obtaining public input, approve the Code with-or without any changes thereto.
5. **Regulations**
 - 5.1 The Act makes provision for two kinds of regulations: Firstly, regulations regarding the disclosure of judges' registrable interests must be made by the Minister in consultation with the Chief Justice and must be approved by Parliament, in the same manner that the Code must be dealt with. (Section 13(7) and (8)).ⁱⁱ
 - 5.2 In terms of section 23, regulations need to be made in order to maintain a list of persons who are not judicial officers and who are suitable to serve on a Judicial Conduct Tribunal.ⁱⁱⁱ
 - 5.3 Other regulations may be made in terms of section 35.^{iv} Regulations made under this section (including regulations referred to in section 23), must be tabled in Parliament before publication in the *Gazette*, but does not require the approval of Parliament.

ⁱ Code of Judicial Conduct

12. (1) The Chief Justice, acting in consultation with the Minister, must compile a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval.

(2) The Minister must table the first Code under this section in Parliament within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (1) both versions of the Code must be tabled in Parliament within the said period.

(3) When the Code or any amendment thereto is tabled in Parliament in terms of subsection (1) or (2), Parliament may, after obtaining and considering public comment thereon, approve the Code or such amendment —

- (a) without any changes thereto; or
- (b) with such changes thereto as may be effected by Parliament.

(4) The Code must be reviewed at least once in every three years by the Chief Justice, acting in consultation with the Minister, and the result of such review, including any proposed amendment to the Code, must be tabled in Parliament, for approval, as contemplated in subsection (3).

(5) The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the *Gazette*.

ⁱⁱ Disclosure of registrable interests

13. (1) The Minister, acting in consultation with the Chief Justice, must appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests.

(2) The Registrar must open and keep a register, called the Register of Judges' Registrable Interests, and must—

- (a) record in the Register particulars of Judges' registrable interests;
- (b) amend any entries in the Register when necessary; and
- (c) perform the other duties in connection with the Register as required in terms of this Act.

(3) Every judge must disclose to the Registrar, in the prescribed form, particulars of all his or her registrable interests and those of his or her immediate family members.

(4) The first disclosure in terms of subsection (3) must be within 60 days of a date fixed by the President by proclamation, and thereafter annually and in such instances as prescribed.

(5) The Minister, acting in consultation with the Chief Justice, must make regulations regarding the content and management of the Register referred to in subsection (2), which regulations must at least prescribe—

- (a) the format of the Register;
- (b) the kinds of interests of judges and their immediate family members that are regarded as registrable interests;
- (c) the manner and the instances in which, and the time limits within which, registrable interests must be disclosed to the Registrar;

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- (d) a confidential and a public part of the Register and the interests to be recorded in those parts respectively;
 - (e) the recording, in the public part of the register, of all registrable interests derived from the application of section 11;
 - (f) a procedure providing for public access to the public part of the Register and a procedure for providing access to, and maintaining confidentiality of, the confidential part of the Register; and
 - (g) the lodging of a complaint in terms of section 14(1) by the Registrar, in the event of—
 - (i) failure to register any registrable interest by any judge, including any failure to register any such interest within a prescribed time limit; or
 - (ii) disclosure of false or misleading information by any judge.
- (6) The regulations may determine different criteria for judges in active service and judges who had been discharged from active service or judges in an acting capacity, including in respect of matters referred to in subsection (5)(d).
- (7) The Minister must table the first regulations under this section in Parliament, for approval, within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (5) both versions of the regulations must be tabled in Parliament within the said period.
- (8) When the regulations or any amendment thereto is tabled in Parliament, Parliament may, after obtaining and considering public comment thereon, approve the regulations or such amendment —
- (a) without any changes thereto; or
 - (b) with such changes thereto as may be effected by Parliament.

iii Non-judicial members of tribunals

23. (1) The Executive Secretary must, in the prescribed manner and form, establish and maintain a list of persons who are not judicial officers and who have been approved by the Chief Justice, acting with the concurrence of the Minister, as being suitable to serve on Tribunals in terms of section 22(1)(b).

(2) The Minister, in consultation with the Cabinet member responsible for finance, may by notice in the *Gazette* prescribe a tariff of allowances to be paid for service as a member of a Tribunal to a person appointed in terms of section 22(1)(b).

iv Regulations

35. (1) The Minister—

- (a) must make the regulations required to be made in terms sections 13 of this Act; and
 - (b) may make regulations regarding any matter that may be necessary or expedient to prescribe regarding—
 - (i) the finances and financial management and accountability of the Commission and Office of the Registrar of Judges Registrable Interests;
 - (ii) the manner in which a judge may apply for written consent of the Minister as contemplated in section 11 (1) and (2); and
 - (ii) the administration and functioning of the Commission or Conduct Committee, the Secretariat of the Commission, or any other aspect.
- (2) Any regulation made under this section must be tabled in Parliament before publication thereof in the *Gazette*.