



JUDICIARY

OF THE REPUBLIC OF SOUTH AFRICA



EXPLANATORY NOTES ON THE ESTABLISHMENT OF
A REGISTER OF JUDGES' REGISTRABLE INTERESTS



TABLE OF CONTENTS

1. BACKGROUND AND INTRODUCTION.....	Page 01
2. THE REGULATIONS.....	Page 02
3. APPOINTMENT OF THE REGISTRAR.....	Page 04
4. INTERESTS TO BE DISCLOSED BY JUDGES IN ACTIVE SERVICE.....	Page 05
5. INTERESTS TO BE DISCLOSED BY JUDGES DISCHARGED FROM ACTIVE SERVICE WHO ARE REQUIRED TO BE AVAILABLE TO PERFORM SERVICE IN TERMS OF SECTION 7(1) (a)(i) OF THE JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT ACT, 2001 (ACT NO.47 OF 2001).....	Page 06
6. INTERESTS OF IMMEDIATE FAMILY MEMBERS TO BE DECLARED BY JUDGES IN ACTIVE SERVICE IF APPLICABLE.....	Page 06
7. COMPLIANCE ISSUES.....	Page 08
8. WHEN TO DISCLOSE REGISTRABLE INTERESTS.....	Page 09


1. BACKGROUND AND INTRODUCTION

- 1.1. The Commonwealth Principles on the Three Branches of Government (Latimer House Principles) require Judicial officers in each jurisdiction to adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interests, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence (Latimer House Principles).
- 1.2. It is further provided that a Code of Ethics and Conduct be developed and adopted by each Judiciary as a means of ensuring the accountability of judges (Latimer House Principles).
- 1.3. The Judicial Service Commission Act, 1994 as amended (the Act); mandates the Chief Justice, acting in consultation with the Minister of Justice and Constitutional Development to compile a Code of Judicial Conduct which must be approved by Parliament (section 12 of the Act).

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- 1.4. The Code of Judicial Conduct adopted in terms of section 12 was gazetted on 18 October 2013, and it requires a Judge in his/her professional and private life to behave in a manner that enhances public trust and respect in the judicial system. A Judge must avoid impropriety and the appearance of impropriety in all the Judges' activities.
- 1.5. The Judicial Service Commission Act 9 of 1994 (the Act) for its part, requires Judges to register their registrable interests in a manner prescribed by the Regulations.
- 1.6. Section 13 of the Act mandates the Minister of Justice and Constitutional Development (the Minister), acting in consultation with the Chief Justice to appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests.

2. THE REGULATIONS

- 2.1. Section 13 (5) of the Act empowers the Minister, acting in consultation with the Chief Justice to make regulations regarding the content



and management of the Register. The regulations may determine different criteria for Judges in active service and Judges who have been discharged from active service.

- 2.2. In June 2013, Parliament approved the regulations and subsequently issued a proclamation dated 20 January 2014 fixing 29 January 2014 as the date on which the period of 60 days referred to in Section 13 (4) of the Act commences for Judges to disclose their registrable interests.
- 2.3. According to the Regulations, the interests of Judges who are in active service and those of their dependent children are registrable (section 2 of the Regulations). The interests of Judges' other family members (besides dependent children) are only registrable if the Judge in active service, wishes to disclose interests; and the immediate family member concerned consents to such disclosure.
- 2.4. The interests of Judges who have been discharged from active service, who are required to be available to perform service in terms of section 7(1)(a)(i) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), are registrable.

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- 2.5. The interests of a Judge who has been discharged from active service and who is not required to be available to perform service in terms of section 7(1)(a) of the Judges' Remuneration and Conditions of Service Act, 2001, are not registrable.

3. APPOINTMENT OF THE REGISTRAR

- 3.1. The Judicial Service Commission Act 9 of 1994 as amended (the Act) mandates the Minister of Justice and Constitutional Development (the Minister), acting in consultation with the Chief Justice, to appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests. The Act outlines the functions of the Registrar as the following:

- Open and keep a register called the Register of Judges' Registrable Interests;
- Record in the Register particulars of Judges' registrable interests;
- Amend any entries in the register when necessary;
- Perform the other duties in connection with the Register as required in terms of the Act.

- 3.2. In February the Minister acting in consultation with the Chief Justice appointed the Registrar of Judges' Registrable Interests.

4. INTERESTS TO BE DISCLOSED BY JUDGES IN ACTIVE SERVICE


- 4.1. Immovable property, including immovable property outside South Africa (the physical address and value of the property are to be disclosed in the confidential part of the Register).
- 4.2. Shares and other financial interests in companies and other corporate entities (public part of the Register).
- 4.3. Directorships, business or financial interests in any business enterprise or any legal entity (public part of the Register).
- 4.4. Any royalties derived from the application of section 11 of the Act.
- 4.5. Gifts, other than a gift received from an immediate family member, with a value of more than R 1500 or gifts received from a single source with a cumulative value of more than R 1500 in a calendar year, and including hospitality intended as such (public part of the Register).
- 4.6. Any other financial income not derived from the holding of judicial office (public part of the Register).

**5. INTERESTS TO BE DISCLOSED BY JUDGES
DISCHARGED FROM ACTIVE SERVICE WHO ARE
REQUIRED TO BE AVAILABLE TO PERFORM SERVICE
IN TERMS OF SECTION 7(1) (a)(i) OF THE JUDGES'
REMUNERATION AND CONDITIONS OF
EMPLOYMENT ACT, 2001(ACT NO.47 OF 2001)**

- 5.1. Shares and other financial interests in companies and other corporate entities (public part of the Register).
- 5.2. Directorships, business or financial interests in any business enterprise or any legal entity (public part of the Register).
- 5.3. Any royalties, income or other benefits derived from the application of section 11 of the Act (public part of the Register).
- 5.4. Any other financial income not derived from the holding of judicial office (public part of the Register).

**6. INTERESTS OF IMMEDIATE FAMILY MEMBERS TO
BE DECLARED BY JUDGES IN ACTIVE SERVICE IF
APPLICABLE**

- A.** In respect of the dependent children of the Judge, the following interests, in the confidential part of the Register:

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- 6.1. Immovable property, including immovable property outside South Africa.
 - 6.2. Shares and other financial interests in companies and other corporate entities.
 - 6.3. Directorships, business or financial interests in any business enterprise or any legal entity (public part of the Register).
 - 6.4. Sponsorships, including financial assistance, from any source other than an immediate family member.
 - 6.5. Gifts, other than a gift received from an immediate family member, with a value of more than R1500 or gifts received from a single source with a cumulative value of more than R1500 in a calendar year, and including hospitality intended as such, unless the judge concerned has been discharged from active service.

B. In respect of immediate family members, other than dependent children of the Judge, any one or more of the interests listed in A above, that the Judge may, with the consent of the family member, wish to declare in the confidential part of the Register.

7. COMPLIANCE ISSUES

- 7.1. If the Registrar becomes aware at any time of any information relating to the interests of a Judge in active service, that may require material changes to the disclosures made by that Judge, the Registrar must in writing inform the Head of Court of the Judge of that information.
- 7.2. If the Registrar has reason to believe that any Judge-
- (a) has failed or is failing to comply with a provision of these regulations; or
 - (b) may have disclosed incorrect or misleading information, the Registrar must without delay invite that Judge in writing to comply with the provision in question or to correct any information so disclosed.
- 7.3. If, after a period of 30 days has lapsed after a judge received a written invitation in terms of sub regulation (6), the Registrar still has reason to believe that the Judge-
- (a) has failed or is failing to comply with a provision of these regulations; or
 - (b) may have disclosed incorrect or misleading information, the Registrar must without delay lodge a complaint against that Judge in the manner contemplated in section 14(3) of the Act.

8. WHEN TO DISCLOSE REGISTRABLE INTERESTS

- 8.1. The first disclosure must be within 60 days of a date fixed by the President by proclamation. The President has fixed a date of 29 January 2014.
- 8.2. Thereafter, the disclosure must be done annually.
- 8.3. For newly appointed Judges, the first disclosure must be made within 30 days of appointment.
- 8.4. A Judge may at any time make disclosures to the Registrar including making a request for amendments of previously disclosed information.
- 8.5. In the month of March every year, Judges must inform the Registrar in writing whether the entries in the Register are an accurate reflection of those Judges' registrable interests.



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