

THE PUBLIC BODIES

MANAGEMENT AND ACCOUNTABILITY
(NOMINATION, SELECTION AND APPOINTMENT
TO BOARDS) REGULATIONS, 2021





The general operation date for the Regulations is four (4) months after publication in the Gazette. This will allow steps to be taken to operationalise certain activities including those relating to the creation of the Database of Prospective Directors. Certain other provisions will be delayed, namely Regulations 10 through to 16, 18 and the Second Schedule. These Regulations primarily address selection and appointment procedures, including fit and proper tests and will come into effect ten (10) months after the date of publication. **(Reg 1(2) &(3))**

The Regulations are not applicable to:

- entities that are not public bodies (as defined by the Public Bodies Management and Accountability Act - PBMAA); and
- ex-officio members of boards (except for procedures in respect of appointments **(Reg. 3)**).

A Database of Prospective Directors is to be established, from which persons which were subject to a due diligence check, will be selected for board appointment. The due diligence check is a procedure to verify the information provided and to determine that the prospective director has the requisite knowledge, skills and experience to be appointed. **(Reg. 4)**

The Database will be a secure and reliable facility for ascertaining, recording, maintaining and preserving information on prospective directors. **(Reg. 5)**

Persons may be nominated or may apply in writing to the Financial Secretary to be included in the Database. **(Reg. 9(1))** Administratively, all will be required to complete an official application form.

The following persons are not eligible for inclusion in the Database: **(Reg.9(2))**

- a member of either of the Houses of Parliament,
- a councillor of a Local Authority as defined by the Local Governance Act,
- a person disqualified from serving as a director pursuant to the Companies Act,
- a bankrupt within the meaning of the Insolvency Act,
- a person with a mental disorder within the meaning of the Mental Health Act,
- a person who does not consent in writing to being subject to a due diligence check.



A prospective director is not eligible for selection for appointment to a board if that person **(Reg 10 (4))** –

- held the position of Chief Executive Officer of that public body within three years immediately preceding the proposed date of appointment,
- is a person with or has connected parties with, an existing legal dispute with that public body,
- is ineligible to be a director based on the enabling Act or constituent documents of the public body,
- is already serving on three public body boards (not including subsidiaries),
- does not satisfy the competency profile for the board,
- becomes incapacitated to the extent that such affects performance as a director.

MAIN ELEMENTS

A fit and proper test shall be conducted in respect of prospective directors for appointment to boards of public bodies which carry out functions: **(Reg. 11)**

- of providing financial services;
- of regulating the financial and gaming sectors; or
- of strategic importance (2nd Schedule - NWC, PAJ, NHT, HEART (NSTA) Trust, Petrojam).

Appointments to boards of public bodies shall be in accordance with the Regulations and shall occur only where prospective directors consent in writing within 14 days of being notified of selection. **(Reg. 13(1))**

The membership of a board of a public body shall consist of a minimum of 30% males and 30% females. **(Reg. 13 (4))**

A person shall not chair simultaneously more than three public body boards (not including boards of subsidiaries). **(Reg. 14)**

A person shall not serve as chairman of a public body for more than two consecutive terms. **(Reg. 15)**

Term limits are determined by enabling laws or constituent documents. Otherwise, the limit is one or more periods consecutively up to a maximum of 10 years **(Reg 16 (3))**

At least one-third or three (whichever is less) of the members of an outgoing board shall be selected for reappointment. **(Reg. 16)**



The Appointing Authority may revoke the appointment of a director **(Reg 17)** :

- where the director is absent from three consecutive meetings without satisfactory reason,
- on incapacitation,
- for misconduct or breach of duty of care.

During the Transition Period, a board shall: **(Reg. 20)**

- not pursue any new and major undertakings including sale or purchase of land and investment properties, without the approval of the relevant Accounting Officer,
- not make new appointment to positions for which board approval is required, unless the appointment was contracted before the transition period began,
- conduct a performance appraisal of the Chief Executive Officer,
- submit the resignation of its members to the Appointing Authority, which shall not take effect until a new board is appointed.



Transition period is **(Reg 1 (a) & (b))**:

- **(a)** that from which the Governor General issues orders that an election be held to the date of appointment of a new board and
 - **(b)** the period from the date on which a Minister is appointed until the date he/she appoints a new board or requests in writing that the existing board continues.
-