

# **PRESIDENTIAL STATE OWNED ENTERPRISES REVIEW COMMITTEE**

## **TERMS OF REFERENCE**

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### **1. DEFINITIONS**

The following are the pertinent definitions:

- (1) **“Chairperson”** means the chairperson of the Presidential State Owned Enterprises Review Committee;
- (2) **“Deputy Chairperson”** means vice chairperson of the Presidential State Owned Enterprises Review Committee;
- (3) **Joint venture (JV)** means a legal entity formed between two or more parties to undertake an economic activity together. The JV parties agree to create, for a finite time, a new entity and new assets by contributing equity. They then share in the revenues, expenses and assets and "control" of the enterprise. There are other types of companies such as JV limited by guarantee, JVs limited by guarantee with partners holding shares.
- (4) **“Member”** means a member of the Presidential State Owned Enterprises Review Committee;
- (5) **"Minister"** means the Minister in the Presidency responsible for Performance, Monitoring and Evaluation;
- (6) **“Municipal entity”** means—
  - a) a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities;
  - b) any subsidiary of a company that is a municipal entity in terms of paragraph 5(a);or
  - c) a service utility established in terms of section 82(1)(c) of the Municipal Systems Act;
- (7) **“National Government Business Enterprise”** means an entity which:
  - a) Is a juristic person under ownership and control of the national executive
  - b) Has been assigned financial and operational authority to carry on a business activity;
  - c) As its principal business, provides goods or services in accordance with ordinary business principles; and
  - d) Is financed fully or substantially from sources either than –

- i. The National Revenue Fund; or
- ii. By way of a tax, levy or other statutory money;

**(8) “National Public Entity” means**

- a) a national government enterprise; or
- b) a board, committee, company, corporation, fund or other entity (other than a national government enterprise) which is-
  - i. established in terms of national legislation
  - ii. fully or substantially funded either from the National Revenue Fund , or by way of a tax, levy or other money imposed in terms of national legislation; and
  - iii. accountable to parliament;

**(9) “Organ of state” means-**

- a) any department of state or administration in the national, provincial or local sphere of government; or
- b) any other functionary or institution-
  - (i) exercising a power or performing a function in terms of the constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

**(10) “ Ownership and Control” in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:**

- a) to appoint and remove all, or the majority of, members of those entities board of directors or equivalent governing body
- b) to appoint or remove the entities chief executive officer;
- c) to cast all, or the majority of, the votes at meetings of that board of directors or equivalent governing body; or
- d) to control all, or the majority of, the voting rights at a general meeting of that entity;

- (11) **“Partnership”** means a business owned by two or more parties who agree on the method of distribution of profits and/or losses and on the extent to which each will be liable for the debts of one another. A partnership permits pass-through of income and losses directly to the owners.
- (12) **“Presidential State Owned Enterprises Review Committee”** means a committee appointed by the President in terms of Presidents Act No.142 of 2010;
- (13) **“Provincial Public Entity”** means –
- a) A provincial government enterprise; or
  - b) A board, committee, company, corporation, fund or other entity ( other than provincial government business enterprise) which is –
    - i. established in terms of legislation or a provincial constitution
    - ii. fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed in terms of legislation; and
    - iii. accountable to a provincial legislature
- (14) **“Provincial government business enterprise”** means an entity which -
- a) Is a juristic person under the ownership control of a provincial executive
  - b) Has been assigned financial and operational authority to carry on a business activity;
  - c) As its principal business, provides goods or services in accordance with ordinary business principles; and
  - d) Is financed fully or substantially from sources either than
    - i. A Provincial Revenue Fund; or by way of a tax, levy or other statutory money;
- (15) **State owned Enterprises”** means a National Public Entity as defined in the Public Finance Management Act, 1999 (Act No 1 of 1999) ; Department of Public Enterprises, protocols for engagement released in September 2002;
- (16) **“Sub-Committee”** means a sub- committee of the Presidential State Owned Enterprise Review Committee; and

**(17) “Trading entity”** means an entity operating within the administration of a department for the provision or sale of goods or services and established -

a) in the case of a national department, with the approval of the National Treasury;

or

b) in the case of a provincial department, with the approval of the relevant provincial treasury acting within prescribed framework.

**(18) “Trust”** means an arrangement in which a person or institution, called a trustee, is given control over another person’s property for the benefit of a third party called beneficiary. The person granting the trustee title to the property is called a grantor or donor. Assets held in trust are said to be in a trust fund.

## **2. Scope and interpretation**

The review shall cover all entities defined under section 1 of the Terms of Reference.

### **3. Establishment of Presidential State Owned Enterprises Review Committee.**

There is hereby established a committee to be known as the Presidential State Owned Enterprises Review Committee.

### **4. Functions of Presidential State Owned Enterprises Review Committee.**

The Presidential State Owned Enterprises Review Committee must review State Owned Enterprises and make recommendations on the following:

- (1) A common understanding and definition for State Owned Enterprises;
- (2) The place of State Owned Enterprises in a developmental state;
- (3) Strategic importance and value creation of State Owned Enterprises;
- (4) The viability and funding of State Owned Enterprises;
- (5) The existing portfolio of investments by the state in strategic businesses;
- (6) The efficiency and effectiveness of State Owned Enterprises with respect to service delivery;
- (7) Current policy and regulatory framework and the impact thereof on the management of State Owned Enterprises;
- (8) The balance of social, political and economic imperatives in delivering objectives for State Owned Enterprises;
- (9) Harmonisation of performance measurements among State Owned Enterprises;

- (10) Standardisation of accounting and reporting processes for State Owned Enterprises;
- (11) Shareholder oversight and governance of State Owned Enterprises;
- (12) Recruitment, selection and appointment of boards and executive management of State Owned Enterprises;
- (13) Remuneration policies of State Owned Enterprises taking into account wage differential aspects;
- (14) Current restructuring initiatives (privatisation, retrenchments, Public Private Partnerships etc) of State Owned Enterprises, and implications thereof;
- (15) State Owned Enterprises as a platform for sustainable human capital development and a catalyst for scarce skills;
- (16) Establishment of a comprehensive database of State Owned Enterprises across all spheres of government;
- (17) Policy for the establishment and de-establishment of State Owned Enterprises;
- (18) Criteria and framework for identifying and establishing priority State Owned Enterprises, relevant global benchmarking and best practices;
- (19) Alignment, collaboration and cooperation among State Owned Enterprises for the purpose of optimising state resources;
- (20) Relationship and collaboration between Government Ministries to facilitate achievement of State Owned Enterprises objectives; and
- (21) Compliance of State Owned Enterprises with government's development and transformation agenda.

**5. Composition of Presidential State Owned Enterprises Review Committee.**

- (1) The Presidential State Owned Enterprises Review Committee consists of:
  - (a) a Chairperson;
  - (b) a Deputy Chairperson; and
  - (c) 10 ordinary members.
  
- (2) Members of the Presidential State Owned Enterprises Review Committee are appointed by the President on account of expertise, experience and interest in one or more of the key areas of performance, which include the following:
  - (a) Experience in governance and policy;
  - (b) Management and finance expertise;
  - (c) Business operations experience;
  - (d) Legal and regulatory experience;
  - (e) Understanding of socio-economic and development issues;
  - (f) Change management knowledge and experience; and
  - (g) Racial and gender diversity.
  
- (3) The chairperson and the deputy chairperson are designated to perform their functions on a full-time basis for the duration of the review.

## **6. Term of office and removal from office**

- (1) A member of the Presidential State Owned Enterprises Review Committee shall hold office for a period not exceeding 12 months, unless the President extends their term in terms of section 6(2) of the terms of reference.
- (2) The President may, on the recommendation of the Presidential State Owned Enterprises Review Committee, extend the term of office of the Presidential State Owned Enterprises Review Committee for a specific period.
- (3) Where a member of the Presidential State Owned Enterprises Review Committee resigns, dies, is removed from office or is for any reason unable to act as a member, the President shall appoint another person to hold office for the unexpired portion of the member's term of office.

- (4) A member of the Presidential State Owned Enterprises Review Committee may at any time resign his or her office in writing, giving a month's written notice, addressed to the President.
- (5) A member of the Presidential State Owned Enterprises Review Committee who is absent from three consecutive meetings without sufficient cause and apology ceases to be a member.
- (6) A member may be removed by the President only for inability to discharge the functions of the office or misconduct or improper behavior that compromises the integrity or functionality of the State Owned Enterprises Review Committee.

## **7. Secretariat and administration**

- (1) The Presidential State Owned Enterprises Review Committee shall establish a secretariat to support its operational processes.
- (2) The Presidency shall provide the Presidential State Owned Enterprises Review Committee with the necessary administrative and logistical support where relevant and, in consultation with the Minister of Finance, allocate an adequate budget for the Committee's work.

## **8. Seat of the Committee.**

- (1) The seat of the Presidential State Owned Enterprises Review Committee shall be determined by the Presidency.
- (2) The Presidential State Owned Enterprises Review Committee may, in consultation with the Presidency, establish such offices as it may consider necessary to enable it to exercise its duties and functions.

**9. Meetings of Presidential State Owned Enterprises Review Committee.**

- (1) The Presidential State Owned Enterprises Review Committee shall meet at such times and in such places as the Chairperson may determine but shall meet at least once every month.
- (2) The chairperson may convene an extraordinary meeting of the committee at such place and time as the chairperson may determine.
- (3) The quorum at a meeting of the Presidential State Owned Enterprises Review Committee shall be a simple majority.
- (4) A meeting of the Presidential State Owned Enterprises Review Committee shall be presided over by the chairperson, in the absence of the chairperson by the deputy chairperson. In the absence of the chairperson and the deputy chairperson, by a member of the committee elected by the members present from among their number.
- (5) The Presidential State Owned Enterprises Review Committee may co-opt a person to attend its meeting and such a person shall not participate in decision making by the Committee.
- (6) The proceedings of the Presidential State Owned Enterprises Review Committee shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- (7) Subject to this section, the Presidential State Owned Enterprises Review Committee shall determine its own rules and procedures for decision making and the conduct of its business.

**10. Disclosure of interest and register of member's interests**

- (1) A member of the Presidential State Owned Enterprises Review Committee who has interest in any matter under consideration by the committee shall disclose in writing the nature of that interest and is disqualified from participating in any deliberation of the committee in respect of that matter.
- (2) A register of the business interest of all Presidential State Owned Enterprises Review Committee members shall be kept by the Presidency.

#### **11. Technical committees and advisory bodies**

- (1) The Presidential State Owned Enterprises Review Committee may appoint sub-committees consisting of its own members and non-members external to the committee to perform any of its functions.
- (2) A sub-committee shall be chaired by a member of the Presidential State Owned Enterprises Review Committee.
- (3) The Presidential State Owned Enterprises Review Committee may appoint any sub-committees or advisory bodies to contribute to its research programme.
- (4) The Presidential State Owned Enterprises Review Committee shall determine the functions of each sub-committee or advisory body.

#### **12. Remuneration, allowances, benefits and privileges of members**

- (1) Members of the Presidential State Owned Enterprises Review Committee and members of sub- committees shall be remunerated or paid such allowances as may be approved by the President in consultation with the Minister of Finance.
- (2) The remuneration, allowances, benefits or privileges of members of the Presidential State Owned Enterprises Review Committee may differ according to-
  - (a) the different offices held by them in the committee; or

- (b) the different functions performed, whether in a part-time or full-time capacity, by them from time to time.
- (3) In the application of clauses (1) and (2) above the President or the Minister of Finance, as the case may be, may determine that any remuneration, allowance, benefit or privilege, will be remuneration, allowance, benefit or privilege determined from time to time by or under any law in respect of any person or category of persons.

### **13. Confidentiality and code of conduct**

- (1) All Presidential State Owned Enterprises Review Committee members, appointed sub-committee members as well as appointed members of the secretariat have a duty of confidentiality with regard to government information that comes to their attention.
- (2) A Code of Conduct shall regulate the conduct of members.

### **14. Structure and other members of the secretariat**

- (1) The Presidential State Owned Enterprises Review Committee shall organise its administration as it deems fit for effective and efficient performance of its functions.
- (2) The Presidential State Owned Enterprises Review Committee shall have such other officers and staff as may be necessary for the effective discharge of its functions.
- (3) Other public officials may be seconded to the Presidential State Owned Enterprises Review Committee from other organs of state or may otherwise give assistance to it.

- (4) The Presidential State Owned Enterprises Review Committee shall also consider secondments from the private sector for support to its secretariat.
- (5) The Presidential State Owned Enterprises Review Committee may engage the services of consultants and advisors.
- (6) The Presidential State Owned Enterprises Review Committee shall conduct interviews as well as hearings, hold focus groups, research and analyse records, information and incidents, investigate prioritised areas, invite voluntary submissions and shall employ any other methods deemed necessary to perform its function.

## **15. Accounting**

In cooperation with the Presidency, the Presidential State Owned Enterprises Review Committee shall keep proper records as provided for in the Public Finance Management Act, 1999 and shall give a full account of all expenditure.

## **16. Reports of the Committee.**

- (1) The Presidential State Owned Enterprises Review Committee shall provide regular reports to the President in accordance with determined directives.
- (2) The Presidential State Owned Enterprises Review Committee shall submit reports to any other forums as may be determined by the President..
- (3) The Presidential State Owned Enterprises Review Committee must submit the final report on its findings to the President within six months after the completion of the years' review.