DIRECTIVE NO. 14.1

GOVERNING FRAMEWORK FOR THE MANAGEMENT OF THE REVOLVING DOOR POLICY FOR PUBLIC EMPLOYEES

Issued on 3rd August 2023 by the Principal Permanent Secretary in terms of the Public Administration Act (Chapter 595 of the Laws of Malta).

1. PURPOSE AND APPLICABILITY OF THIS DIRECTIVE

1.1 This directive repeals and re-issues with amendments the one issued on 18th June 2020. It applies to all Ministries, departments, agencies and entities falling under the Public Administration Act, and other public sector entities/organisations and to all their employees.

1.2 Article 4(5) and (6) of the Public Administration Act provides for the regulation of revolving door employment for public employees holding posts/positions that involve regulatory or inspectorate functions.

Article 4(5) states that public employees holding posts/positions that involve regulatory or inspectorate functions may be designated for the purpose of this article and they will be required to enter into an undertaking under which they shall not, for a period of up to two years following resignation, retirement or termination from public employment, have a relationship of profit with a private enterprise or non-government body with which they have dealt during a period of up to five years prior to leaving public employment. In this regard, "relationship of profit" means any kind of relationship in which the former public employee does work for which remuneration is ordinarily payable notwithstanding the fact whether such remuneration is received, or not.

Article 4(5) also states that the undertaking shall be regarded as a condition of employment of the post to which it applies and shall continue to apply to the incumbent if he takes up a different post in public employment. Such undertaking shall also specify the penalty that applies if its terms are breached, which penalty shall be equivalent to three years' salary.

The designation of posts/positions shall be carried out by the Revolving Door Policy Governance Board established by the Public Administration Act as detailed in Section 3 below. This Board shall also monitor the proper implementation of the revolving door policy and may request information and/or clarifications, as deemed necessary, from the respective Heads of Departments and Heads of public sector entities.

2. GENERAL PRINCIPLES

2.1 The term 'revolving door' refers to the movement of individuals from public office to private companies and non-governmental bodies. Public employees may move to private sector positions, whereby they may use their experience and connections acquired in public employment to unfairly benefit their new employer or may even favour certain companies or sectors in their decisions while they are in office in the hope of landing a job in the private sector.

2.2 This Directive supports a framework of effective mechanisms regulating revolving door employment.

Therefore, the purposes of this Directive are to ensure that:

- Public employees holding regulatory/inspectorate functions do not enter into positions within the private sector which may create a real or perceived conflict of interest;
- The Public Administration has the necessary systems in place to effectively manage the risks associated with revolving door employment;
- The principles of integrity and impartiality are safeguarded, in terms of the Code of Ethics, as delineated in the First Schedule of the Public Administration Act.

3. ESTABLISHMENT OF A REVOLVING DOOR POLICY GOVERNING BOARD

3.1 Article 4(5) of the Public Administration Act provides for the setting up of the Revolving Door Policy Governing Board, hereby referred to as the Board, for the implementation of the provisions of Article 4(5) and (6).

3.2 The Prime Minister, as Minister responsible for Public Administration has appointed the Board, which is composed of a:

- Chairperson,
- Two Members; and
- A Secretary to the Board, who is not a Member of the Board and therefore has no voting rights.

3.3 In line with the provisions of Article 4 of the Act, the principal roles of the Board shall be to:

- Identify posts/positions that involve regulatory or inspectorate functions and compile a list of designated posts/positions. These posts/positions shall be designated for the purposes of Article 4(5) of the Public Administration Act and the list shall be published as an Annex to this Directive;
- Issue rulings in line with the provisions of Article 4(6); and
- Monitor the proper implementation of the provisions of Article 4(5).

3.4 Public employees whose grades/positions are listed in the Annex to this Directive may request a ruling from the Board to determine whether entering into a particular relationship of profit would constitute a breach of the undertaking in terms of Article 4(5) of the Public Administration Act. No penalty shall apply to any breach of the undertaking where the person has acted in conformity with the ruling of the Board.

4. IMPLEMENTATION

4.1 The timeframe within which the Revolving Door Policy applies following resignation, retirement or termination, shall be dependent and proportional to the role and grade held by the public employee, which timeframe shall not exceed two years. Furthermore, the five-year maximum period preceding resignation, retirement or termination to be considered shall also be dependent and proportional to the role and grade held by the public employee.

4.2 Departments and public sector entities may make relevant submissions for designated posts/ positions within the Annex to this Directive with reference to the applicable periods mentioned above. Heads of Departments and public sector entities may therefore make submissions on:

- The relevant undertakings which may be entered into for periods less than but not exceeding two years following resignation, retirement or termination from public employment;
- Periods prior to leaving public employment under consideration may be less than but not exceeding five years.

Such submissions are to be determined by the Head of Department or Head of Entity depending on the nature of the post/position and the extent of its exposure to the private sector while in public employment. Such submissions will be reviewed by the Board which may ask for further explanations/ clarifications before reaching its decision.

Once approved, such timeframes are to be duly communicated and referred to in respective undertakings by each Ministry, department and public sector entity.

4.3 The period of up to two years following resignation, retirement or termination referred to in Article 4(5)(a) of the Public Administration Act shall be reduced to 6 months for employees who, by the time Article 4(5) came into force, i.e. 27 September 2019 (L.N.25 of 2019), already held an appointment to any of the posts/positions listed in the Annex to this Directive. Any appointment after this date shall be governed by Clause 4.1 and 4.2 above.

4.4 The posts/positions listed in the Annex to this Directive may be subsequently updated by the Board, as it deems necessary.

4.5 In line with applicable directives, circulars and any other administrative binding communication, policies or procedures, Heads of Department within the public service and Heads of public sector entities shall, in respect of their remit:

I. Assist the Board, as required, in identifying posts/positions involving regulatory or inspectorate functions and in determining whether these should be designated posts/positions in accordance with the provisions of Article 4(5) of the Act;
II. Ensure that this directive is brought to the attention of employees occupying a post/position listed in the Annex to this Directive;
III. Ensure that internal policies and procedures are developed, maintained and implemented to effectively manage inherent risks of revolving door employment;
IV. Ensure that an employee who is occupying or, is to be appointed to, such a designated post enters into an undertaking in accordance with the provisions of Article 4(5) of the Act;
V. Ensure that any employee who is occupying such a designated post keeps and maintains any records as may, from time to time, be required;
VI. Where a ruling of the Board has been requested in accordance with the provisions of Article 4(6) of the Act, participate in the hearing of the Board, or otherwise make such submissions, as may be requested by the Board;
VII. In respect of an employee who has retired, resigned or otherwise terminated his/her employment from such a designated post, assist the Board with monitoring compliance with the provisions of the agreed undertaking;
VIII. Where non-compliance with the provisions of the agreed undertaking is identified, ensure that legal and other applicable procedures are initiated against the defaulting person;
IX. Support and co-operate with any initiative of the Board aimed at monitoring the proper implementation by the Public Administration of the scope and provisions of Article 4(5) of the Act. This may include submitting regularly updated lists of resignations/ retirements/ terminations of any employee previously occupying a post/position designated in the Annex;
X. Develop, keep and maintain any such records as may be required for the proper application of this Directive and the management of risks associated with revolving door employment. This obligation entails keeping records of any person who held a post/position listed in the Annex to this Directive.

4.6 All public employees who at present occupy any of the posts/positions designated in the Annex are, by virtue of this directive, considered to have been notified of the contents of

this directive and shall have their personal records amended by their respective Heads about the Board's decision and the relative conditions contained in this Directive.

4.7 Failure on the part of an employee to fulfil any obligations s/he may have under this Directive shall constitute grounds for legal action to be taken by the Permanent Secretary of the respective Ministry.

4.8 Any and all communication to the Board may be sent on revolvingdoor@gov.mt.

4.9 This Directive applies indefinitely unless specifically revoked or amended by the Principal Permanent Secretary.

Tony Sultana
Principal Permanent Secretary

Attached: Annex - List of posts/positions that involve regulatory/inspectorate functions