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KOMATI BASIN WATER AUTHORITY



BOARD NOMINATION AND APPOINTMENT POLICY

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Created By	CS	
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Recommended By	THRC Chairperson	
Approved By	KOBWA BOARD CHAIRMAN	<i>[Signature]</i>

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1. INTRODUCTION

THE PURPOSE OF THE BOARD

The purpose of the Board can be reduced to two words i.e., compliance and performance. The Board ensures that the organisation complies with and/or exceeds the Treaty and legal requirements of the two countries through review of reports from in and outside the organization. The Board provides guidance through visions, mission statements, policies, and strategic objectives.

The Board also ensures that the organisation performs, through setting and monitoring strategic plans and objectives. There are two key tasks at the top of any company, the running of the Board and the executive responsibility for the running of the company's business. The former is the responsibility of the Board while the latter is the responsibility of the Chief Executive Officer (CEO).

The Board of Komati Basin Water Authority (KOBWA) acknowledges the need for a nominations policy. This policy sets out the practices in respect of matters such as the nomination, selection, screening, and appointment of members of the Board as set out in the Treaty.

1.1 Purpose of the Policy

The purpose of this Policy is to:


Explain the nomination and appointment process of directors to the board of Komati Basin Water Authority [KOBWA].

Promote board continuity and ensure that the boards comprise individuals who possess the necessary skills, qualities, and experience to collectively contribute to effective board governance.

1.2 Scope of the Policy

This policy is applicable to KOBWA.

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2. POLICY PRINCIPLES

Procedures for the identification, nomination, and appointment of directors should be formal, rigorous, and transparent process, subject to legislative and regulatory requirements, prudential authority, and should be a matter reserved for the Parties (The Government of the Republic of South Africa and The Government of the Kingdom of Eswatini).

Both executive and non-executive directors carry full fiduciary responsibilities and owe a duty of care, skill, and diligence to the Company in terms of the Companies Act.

2.1 Essential Principles

2.1.1 All nominations and appointments shall be made in compliance with all legislative and regulatory requirements.

2.1.2 The Treaty (Article 8(2)(a)) specifies that the Joint Water Commission (JWC) shall set the number of Board members on the condition that it will not be less than two members with each Party to the Treaty equally represented. The Chief Executive is an ex-officio member with no voting rights (article 8(2) (b) and (9)¹.

Currently, the number stands at six non-executive members (3 nominated by each Party).


Any vacancy that arises shall be filled by the relevant Party within a month of the position falling vacant (Article 8(3)).

2.1.3 The Board shall be comprised of individuals, who collectively possess the necessary qualifications commensurate with the size, complexity, and risk profile of the Company and members will be expected to:

- Acquire a working knowledge and an understanding of the Company's business and the laws and regulations and customs (if any) that govern the activities of the Company's business
- Have the ability to make sound business decisions and recommendations;

¹ KOBWA Treaty Article 8(2)

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- Exercise judgment independently; and
- Exercise stewardship at all times and uphold the highest degree of ethics in all forms of conduct.

2.1.4 Members of the Board shall elect one of their non-executive members to be the Chair for a period of two years subject to the fact that he/she may be re-elected with JWC approval (Article 8(8)).

2.2 Composition of the Board

KOBWA has a unitary board, consisting of non-executive directors.

Although there must be an appropriate balance between executive and independent non-executive directors with the view to create objective decisions and internal processes. According to the current Treaty, KOBWA does not have independent non-executive directors, as defined below, since all directors are appointed by and represent the Parties.²

An independent non-executive director is an individual who:




- Is not a representative of a shareowner who has the ability to control or significantly influence management
- Has not been employed by KOBWA in any executive capacity for the preceding three financial years.
- Is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by KOBWA in an executive capacity.
- Is not a professional advisor to KOBWA other than in a director capacity.
- Is not a significant supplier to, or customer of KOBWA.
- Has no significant contractual relationship with KOBWA.
- Is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner and exercise an objective judgment.


An executive director is an individual who³:

- Is involved in the day-to-day management of KOBWA and/or

² KOBWA Board Charter Section 4.2 – the Section also makes reference to shareowner

³ Board Charter Section 4.3

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- Is a full-time salaried employee of KOBWA
- A non-executive director is an individual who⁴:
- Is not involved in the day-to-day management of KOBWA and/or is not a full-time salaried employee of KOBWA

The following factors are considered by the Parties before appointing or nominating a candidate as a director:

- The collective skills, knowledge, and experience required on the Board
- The ethical integrity and reputation of the candidate
- Details of other boards of directors on which the candidate serves or previously served
- The existence of actual or perceived conflicts of interest
- The skills, knowledge, and experience of the candidate
- The capacity of the candidate to dedicate the necessary time to discharge his/her duties as a director
- Any other pertinent matter

2.3 Non-Eligible persons⁵⁶


- Is ineligible or disqualified from acting as or ineligible to become or prohibited from being a director in terms of the South African Companies Act No. 71 of 2008, Kingdom of Eswatini Companies Act of 2009;
- Has, for the time being, been placed under probation by a court in terms of section 162 of the South African Companies Act No. 71 of 2008 and under Section 198 (c) of the Kingdom of Eswatini Companies Act;
- Is an unrehabilitated insolvent;
- Is prohibited in terms of any public regulation to be a director of the Company;
- Has been removed from an office of trust, on the grounds of misconduct involving dishonesty; and
- Has been convicted, in the Republic or elsewhere and imprisoned without the option of a fine, or fined more than the prescribed amount for theft, fraud, forgery, perjury, or an offence :

⁴ Board Charter Section 4.4

⁵ South African Companies Act No. 71 of 2008

⁶ Section 198 of the Companies Act 3 of 2009 of the Kingdom of eSwatini

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- involving fraud, misrepresentation, or dishonesty;
- in connection with the promotion, formation, or management of a company, or in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act; or
- under the Companies Act, Insolvency Act, 1936; Close Corporation Act, 1984; Competition Act, 1998; Financial Intelligence Centre Act, 2001; Securities Services Act, 2004; or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004,

Procedures for appointments to the Board are a matter for the Parties as set out in Article 8(2)(a) of the Treaty.


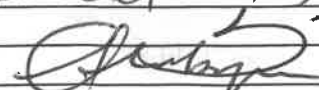
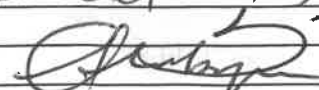
3 BOARD REMUNERATION ARRANGEMENTS⁷


- The Board shall determine the remuneration paid to the members subject to the approval of the JWC.
- Levels and make up of remuneration shall seek to balance the requirements to attract and retain talent and avoiding paying high fees such that these constitute a significant portion of the members' total remuneration.
- Non-executive members shall be paid separate sitting allowances for Board meetings, Board Committee meetings, and special assignments.
- The Board Chairperson shall be paid higher level fees in recognition of her/his office and the additional responsibilities.
- Non-executive Board member fees will be reviewed annually by the Board after taking independent advice.
- Non-executive directors shall be reimbursed for travelling and subsistence expenses based on the rates set by either the Eswatini Revenue Authority or the South African Revenue Services (SARS), whichever is higher.
- The Board shall report to the Parties on remuneration, and this shall be included in the Annual Report of accounts.

4 COMPLIANCE WITH THIS POLICY

All nominations and appointments are to be made in compliance with all legislative and regulatory requirements, internal processes, and procedures, and the spirit of the values of KOBWA and its Board Charter.

⁷ KOBWA Board Charter Section 11

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- Ensure the proper rotation of directors in line with the KOBWA Board Charter, the South African Companies Act, the Kingdom of Eswatini Companies Act and the King IV Code on Corporate Governance.
- Directors have a responsibility to acquaint themselves with their fiduciary duties and responsibilities, as well as with matters pertaining to the operations and business environment of KOBWA so that they can fulfil their obligations.
- To assist newly appointed directors, the board shall ensure that there is an adequate induction programme for new directors, a mentorship programme where appropriate, and ongoing briefings on relevant new laws and changing commercial risks.
- Adhere to all legislative and regulatory requirements, including the requirements of the JSE Debt Listings Requirements (DLR).

This policy applies to all nominations and appointments of board directors.

This policy shall be reviewed in three-year cycles or more often if there is a need to review the policy due to any changed circumstances such as legal requirements, changes in the businesses, the KOBWA Board Charter and Treaty, or the need to reflect current practices or activities.

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