

The appointment of and removal of members of the Board of Directors of the Trans-Caledon Tunnel Authority (TCTA) as per the TCTA Notice of Establishment

1. TCTA's Notice of Establishment (Number 277 in Government Gazette Number 21017 of 24 March 2000) governs the appointment of TCTA's Board of Directors.
2. The following is a summary of the relevant provisions in the Notice of Establishment. The provisions of the Notice of Establishment prevail if there are any conflicts between the Notice and this summary.
3. The Notice of Establishment [1]¹ defines a Director as a member of the Board of Directors.
4. Other Terms used in this document bear the same meaning as they do in the TCTA DMTN Programme Memorandum.

5. The Appointment of the Board of Directors

5.1. The Board of Directors consists of:

- a. Persons appointed by the Minister [5(1)(a)], and
- b. The Chief Executive Officer [5(1)(b)], who is a person appointed by the Board of Directors with the concurrence of the Minister [17(1)].

5.2. The Directors appointed by the Minister in terms of clause 5(1)(a) are appointed on a part-time basis [9(2)] and will, from this point on, be referred to as *Non-Executive Directors*.

5.3. The Minister determines the conditions of appointment of Non-Executive Directors [9(1)], taking into account:

- a. the conditions of appointment of members of other statutory institutions [9(1)(a)]; and
- b. any applicable directives from the National Treasury [9(1)(b)].

5.4. This provision does not apply to Non-Executive Directors who are also officials in the public service or are otherwise in public office to whom the conditions of appointment of their permanent position or offices will continue to apply [9(1)].

5.5. The Non-Executive Directors must be paid from the funds of the TCTA [9(3)].

5.6. The Minister determines the number of Non-Executive Directors [5(2)(a)] and may, from time to time, alter the number of Non-Executive Directors, however, any reduction in the number of Non-Executive Directors may only be effected by not filling vacancies when they arise [5(2)(b)].

5.7. The Non-Executive Directors are appointed for a term that shall not exceed three years [8(1)] but there is no limit to the number of terms that a Non-Executive Director may serve [8(3)].

5.8. The Minister must appoint one of the Non-Executive Directors as the Chairperson of the Board of Directors and another as the Deputy Chairperson [7(1)].

5.9. The Chairperson and Deputy Chairperson are appointed for the remaining part of their current terms or such shorter term as the Minister may determine [8(2)].

6. Qualifications of Directors

Only persons who

¹ Numbers in brackets [1] denote the applicable clauses in the Notice of Establishment

- 6.1. have appropriate managerial, technical or financial qualifications and experience [6(1)(a)], and
- 6.2. are otherwise fit and proper persons [6(1)(b)]

May be appointed as Directors.

7. The Appointment of the Chief Executive Officer

- 7.1. The Board of Directors must appoint a Chief Executive Officer with the concurrence of the Minister [17(1)].
- 7.2. The Chief Executive Officer must have the appropriate qualifications and experience for the appointment [17(2)(a)].
- 7.3. The Chief Executive Officer is employed subject to the terms and conditions of employment determined by the Board of Directors [17(2)(b)].

8. Conduct of Directors

A Director must:

- 8.1. perform the functions of the office in good faith and without favour or prejudice [10(1)(a)].
- 8.2. disclose to the Board of Directors any personal or private business interest that that Director or any spouse, partner or close family member may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered unless the Board decides that the Director's interest in the matter is trivial or irrelevant [10(1)(b)].
- 8.3. must comply with the TCTA's code of conduct for directors and staff [10(1)(d)]. A Director who fails to comply with the code of conduct is guilty of misconduct [10(2)].

A Director may not:

- 8.4. use the position or privileges of a director for private gain or to improperly benefit another person [10(1)(c)].
- 8.5. act in any other way that compromises the credibility or integrity of TCTA [10(1)(e)].

9. Grounds for disqualification and termination of a Director

- 9.1. A person who has or acquires a private business interest that conflicts with the interests of TCTA may not become a Director [6(2)].
- 9.2. A Director who has or acquires a private business interest that conflicts with the interests of TCTA may not remain as a Director [6(2)].
- 9.3. The Minister may remove a Non-Executive Director from office on grounds of misconduct, incompetence, incapacity or on any other reasonable ground [11(3)].

10. Termination of Membership of the Board of Directors

A Non-Executive Director ceases to be a Director when:

- 10.1. As per 9.1 and 9.2 above, they are no longer eligible in terms of the grounds for disqualification laid out in clause 6(2) [11(1)(a)].
- 10.2. They resign [11(1)(b)] – A Director may resign by giving at least three months' written notice to the Minister, however, the Minister has the discretion to accept a shorter notice period [11(2)]
- 10.3. As per 9.3 above, they are removed from office by the Minister on grounds of misconduct, incompetence, incapacity or any other reasonable ground [11(3)].

11. Filling of vacancies in the Board of Directors

11.1. The Minister may fill vacancies by:

- a. In the case of the Chairperson or the Deputy Chairperson, by appointing another Non-Executive Director as the Chairperson or Deputy Chairperson as the case may be [12(a)].
- b. In the case of the other Non-Executive Directors, by appointing another person to fill the vacancy in terms of clause 5(1)(a) [12(b)].
- c. The Minister may choose to not fill the vacancy and thereby reduce the number of Non-Executive Directors [5(2)(b)].

11.2. In the case of the Chief Executive Officer, the Board must appoint a person to the vacancy with the concurrence of the Minister in terms of clause 17.

SIGNED at _____ on this _____ day of _____ 2023

For and on behalf of

TRANS-CALEDON TUNNEL AUTHORITY

Ms. P.N. Sibiyi
Chairperson of the Board

Adv. Wilma de Witt
Company Secretary