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Enhancing governance through the application of the rule of law.

14 May 2026

Via email DraftTribunalRegulations@treasury.gov.za

National Treasury

Dear Sir/Madam

Draft Public Procurement Tribunal Regulations under the Public Procurement Act 28 of 2024

1. Introduction

1.1. The Institute for Governance and Law (IGL) is a non-profit, public benefit organisation that aims to improve governance through the application of the rule of law. The scope of the IGL's activities include submissions to Parliament on a range of issues, including impending legislation and regulations.

1.2. The Public Procurement Act 28 of 2024 (PPA), including the Tribunal Regulations, is of particular interest to the IGL for the role procurement plays in corruption. Former Chief Justice Raymond Zondo described procurement as the "centrepiece of state capture." As it stands, "The current regulatory framework governing public procurement is highly fragmented and excessively complicated, undermining compliance and effective consequence management."[1]

1.3. There is a concern that these Regulations are premature and unbalanced.

2. There is a concern about the role and status of the Tribunal vis-a-vis the High Court.

[1] Klaaren, J. (2021). Reforming Public Administration in South Africa. Cape Town: Siber Ink.

2.1. The IGL is concerned about the Tribunal and the High Court having apparent equal status as fora of first instance. The applicable forum then becomes the choice of the applicant for a review of a procurement decision. This may create confusion as regards precedent. The High Court, in matters where it has jurisdiction, would no doubt be the favoured forum for procurement disputes if the courts are able to act speedily. The purpose and status of the Tribunal is opaque, and it may be more desirable to create a specialised court following former Chief Justice Raymond Zondo's recommendation. See further, section 166(e) of the Constitution.

2.2. The IGL welcomes that the PPA decisions of the Tribunal are subject to the High Court's power of review.

2.3. The Commission of Enquiry into State Capture proposes the creation of a Public Procurement Anti-Corruption Agency (PPACA), which would include the High Court as the arbiter of procurement disputes.

2.4. The transparency of the public procurement process is an area of concern in the PPA.

3. The IGL also suggests that any decision on the appointment of members to the Tribunal must be subject to substantive consultations with professional bodies in the private sector.

4. The draft regulations on the tribunal are premature.

4.1. The case on the Constitutionality of the PPA will be heard on 18 and 19 May 2026 in the Constitutional Court.

4.2. If the PPA is set aside by the Court, the policy issues alluded to must be considered afresh. From a legal perspective, the role of the courts must remain untouched.

5. Conclusion

5.1. The regulations lean heavily towards the Executive without giving much consideration to private industry or professional bodies.

These regulations are completely premature as there is not yet a ruling on the PPA in the Constitutional Court.

5.2. IGL suggests that the Regulations should be adjusted to include substantive consultations with professional bodies in the private sector for appointments to the Tribunal, should it be created.

5.3. The opportunity for comments on the regulations should be reopened after the ruling on the PPA in the Constitutional Court.

5.4. In addition, the IGL wishes to take this opportunity to draw attention to a recently published IMF paper dealing with the challenges facing business development in South Africa. As the IMF states in its paper:

A costly regulatory burden

Our analysis—based on South African firm level data as well as cross-country data—[suggests that] ... *not only are South African business leaders spending significant time dealing with government regulations, but this extra burden has been increasing over time and is among the highest relative to comparable economies.*

How costly is this burden for firms? We find that firms whose managers devote more time to regulatory compliance experience slower sales growth, weaker employment growth, and lower productivity. For South African firms, these costs are particularly large: a one percentage point increase in management time spent dealing with regulations is associated with a one percent reduction in job growth. Moreover, for small South African firms with fewer than 20 employees, these regulatory burdens have nearly twice the impact on productivity compared to the average firm. These findings indicate that regulatory frictions directly undermine employment creation and especially the ability of small-and-medium sized enterprises to scale up, innovate, and create jobs.

5.5. It is thus self-evident that one of the major problems facing the economy is that of serious over-regulation; this includes ongoing B-BBEE regulatory demands. The challenge facing the South African economy is that there are far too few incentives or an enabling legislative environment to enable growth.

Yours faithfully,

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