

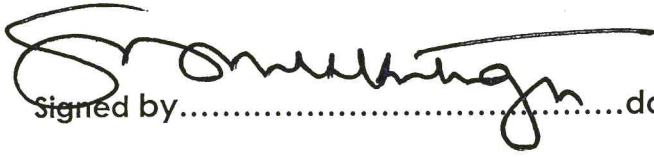


PRIVATIZATION COMMISSION

Enhancing Kenya's Productive Capacity

CONFLICT OF INTEREST POLICY

MAY 2017

 Signed by.....date.....31/08/2017

Solomon Kitungu
Executive Director/CEO

FOREWORD

The Privatization Commission is State Corporation established under the Privatization Act, 2005. The mandate of the Commission is to formulate, manage and implement a Privatizations Programme that meets desired National objectives. In executing its mandate, the Commission interacts extensively with various diverse stakeholders in Government, Parliament, State Corporations, Consultants and the general public. In this respect, the Commission recognizes that in due course of implementing the Programme, there can be areas of conflicting interest for the Commission Members, Staff and the Stakeholders as described in this policy.

The Commission has put in place a strong governance structures that seeks to adequately identify and resolve lapses in governance that may arise from time to time in the normal course of implementing the Privatization Programme. Part of these governance structures includes a regularly updated Commission Charter, Code of Conduct; risk framework, regular Commission meetings, a management Integrity Committee and various other governance policies and procedures.

To further strengthen its governance structures as well as foster compliance with Mwongozo Code of Corporate Governance for State Corporations, the Commission has developed a Conflict of Interest Policy. The policy seeks to provide a framework for efficient and effective identification and addressing of potential areas of conflict of interest in the implementation of the Privatization Programme.



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1. POLICY STATEMENT

Privatization Commission believes that good governance is fundamental to the economic and social development process of the country, and hence is inherently linked to its objectives and mandate of implementing the Privatization Programme. The Commission main mission is to create attractive privatization transactions that will return fair value to the Government on behalf of the people of Kenya. In this regard the Commission seeks to manage conflicting interest that may arise from its Commission Members, staff, consultants and the stakeholders, that may influence the performance of its mandate and the outcome of its work negatively. The Privatization Commission believes that managing conflict of interest enhances good corporate governance.

2. LEGISLATIVE AND ADMINISTRATIVE REQUIREMENTS

This policy shall be read together with other government legislations and internal policies that include:

- I. Constitution of Kenya, 2010;
- II. Ethics and Anti-Corruption Commission Act, 2011;
- III. Leadership and Integrity Act, 2012;
- IV. Public Officer Ethics Act, 2003;
- V. Privatization Act, 2005;
- VI. Mwongozo: Code of Governance for State Corporations;
- VII. Commission Board Charter; and
- VIII. Leadership and Integrity code

3. SCOPE

This policy applies to all the Commission Members, staff, Consultants and all stakeholders of the Commission.

4. DEFINITION

Interest– Under sub-clause 4.10.6 of the Commission's Code of Conduct "personal interest" includes the interest of a spouse, child, business associate or agent or any other matter in which the officer has a direct or indirect pecuniary or non-pecuniary interest.

Conflict of interest according to the Commission Charter may arise where a Member of the Commission or close family member such as a spouse,

child, parent or sibling has private interests that could improperly influence the performance of the Member of the Commission's official duties and responsibilities. Conflict may also arise where a Member of the Commission uses their office for personal gain.

Disclosure Requirement - The Privatization Act, requires the any interest by a person or his immediate family member or his professional or business partners, directly or indirectly in a private or professional capacity in a matter that is the subject of consideration at a Commission meeting or one of its Committees; or interest in any matter relating to the privatization programme be disclosed as soon as is practicable.

5. AREAS OF CONFLICT OF INTEREST

The Commission's Code of, Commission Charter and the Privatization Act of 2005; have identified the following areas of potential conflict of interest:

- (a) Having a direct or indirect interest in a private or professional capacity in a **matter that is the subject of consideration at** a meeting of the Commission or of any committee of the Commission. This applies to the person in attendance or his immediate family member or his professional or business partners.
- (b) Having a direct or indirect interest in a private or professional capacity in **any matter relating to the privatization programme**. This applies to a member of the Commission, an employee of the Commission or a consultant to the Commission or their immediate family member.
- (c) Directorships in public or private companies, whether or not remunerated directly or indirectly;
- (d) Remunerated employment (including office, trade, profession or vocation which is remunerated or which the Officer of PC has any pecuniary interest);
- (e) Securities (shares, bonds, debentures or any other similar holding) in a company or enterprise or undertaking the aggregate nominal or market value of which exceeds a prescribed value while the Officer of PC was in office;
- (f) Contracts for supply of goods and services;

- (g) Plans or expectations for or offers of future employment;
- (h) Public affairs advice and services to clients;
- (i) Shareholdings (amounting or not amounting to a controlling interest).
- (j) Land and property;
- (k) Sponsorship (from companies, trade unions, professional bodies, charities, universities or other organizations or individuals);
- (l) Travel facilities and overseas visits (made by an Officer of PC or the officer's spouse or child substantially catered for by the office of the officer);
- (m) Gifts, benefits and hospitality (to an Officer of PC or the officer's spouse or partner or child or any other material benefit of a prescribed value, from a company, organization or person within Kenya or overseas, which relates substantially to the membership of an Officer of PC to a state office or Parliament or County Assembly);
- (n) Miscellaneous financial interests (not falling within the above categories but which a reasonable member of the public would think might influence the conduct of an officer of the PC in his office);
- (o) Non-financial interests (which may reasonably be thought to affect the way a member discharges the duties in a State Office (such as unremunerated directorships; membership of public bodies such as hospital trusts, governing bodies of universities, colleges or schools, and other spheres of government; trusteeships, etc.);
- (p) Pending civil and criminal cases touching on the Officer of PC or business associate or firm; and
- (q) Possession of dual citizenship or pending applications for dual citizenship and the status of such application.

6. SPECIFIC INTERVENTION MEASURES

Once any potential and actual conflict of interest arises, the following intervention measures have been designed to intervene:

- (i) A disclosure of the interest by an employee or consultant shall be made to the Executive Director who shall take such action as he considers appropriate and submit a report thereon to the Commission.
- (ii) A disclosure of interest by the Executive Director or a member of the Commission or an attendee to the meeting shall be made to the Commission which shall take such action as it considers appropriate.

- (iii) Not to participate in any discussion of any such topic or vote on it unless the Commission or Committee otherwise directs.
- (iv) To provide all relevant information, including information which relates to their immediate family members by blood or marriage which is related to the area of conflict.
- (v) For shares held in companies prior to the commencement of privatization, members will disclose interest.
- (vi) Secretary of the Commission should keep a record of conflicts of interest declared, for accountability purposes.
- (vii) The PC shall maintain a register of conflicts of interest in the prescribed form in which an affected person shall register the particulars of registrable interests, stating the nature and extent of the conflict.

7. EXTERNAL SOURCES OF CONFLICT OF INTEREST

The Commission takes cognizance that conflict of interest may arise from its stakeholders that may interfere or derail the implementation of the Privatization Programme. In this regard, the Commission has put in place the following intervention measures:

- a) Fostering continuous Stakeholder engagements and collaborations;
- b) Seeking Political and Administrative support from relevant Government offices;
- c) Continuous education, awareness and update of the public through the Commission's website, public announcements through the media

8. RESPONSIBILITIES

Commission

It is the responsibility of the Commission to receive and act appropriately on any disclosure of interest by the Executive Director or the members of the Commission.

It is the responsibility of the Commission members (including the ED), in good faith, to disclose to the Commission for recording, any business or interest likely to create a potential conflict of interest.

Executive Director

It is the responsibility of the Executive Director to receive and act appropriately on any disclosure of interest by the Commission staff and consultants.

Commission Secretary

It is the responsibility of the Commission Secretary to keep a record of conflicts of interest declared, for accountability purposes, in the register for conflict of interest and the minutes of the meeting in which disclosure was made.

Staff

It is the responsibility of the staff to disclose to the Executive Director any business or interest likely to create a potential conflict of interest.

9. RISK MANAGEMENT

The Commission's Enterprise Risk Framework has entrenched the identification and mitigation of conflict of interest risk at the Commission. This risk is managed by the Transaction department {risk #7- conflict of interest by staff, commission members and consultants; involved as transaction advisors} and is governed by ISO procedures PC/RC/PR/001-003. Regular reporting the Commission on areas of conflict of interest shall continue as per the tenets of these procedures.

10. ACTION PLANNING

An action plan to implement this policy:

Action	Timelines	Responsibility
Open a conflict of interest register. Regular review and reporting.	Quarterly	RCM
Institute mandatory requirement for disclosure of interest in every Commission meeting. Regular review and reporting.	In place Quarterly	CMLA
Entrench conflict of interest monitoring and reporting in the Commission's risk framework. Regular review and reporting.	In place Quarterly	RCM

Action	Timelines	Responsibility
Institute annual reporting to the EACC on all disclosures of interest made. Regular review and reporting.	Annually	RCM
Create awareness on the provisions of this policy to Staff, Consultants and the Commission.	Annually	CMLA/RCM

11. REVIEW

The Policy shall be reviewed every three (3) years or as need arises to take into account emerging issues and international trends.