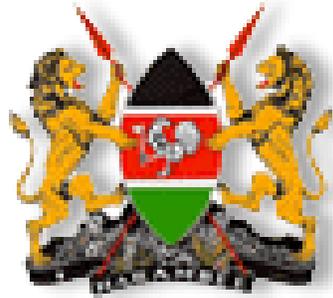


*REPUBLIC OF KENYA*



*MINISTERIAL CODE*

*A CODE OF CONDUCT FOR MINISTERS*

*CABINET OFFICE, 2005*

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## **MINISTERS' CODE OF CONDUCT**

## **BACKGROUND**

In this Code of Conduct the term “Minister” shall include “Assistant Minister”, unless in cases where the context requires otherwise. Ministers aid and advise the President in the day to day running of Government. They derive this responsibility from the Constitution and the general principles of democratic governance. Together with the President, they constitute the Executive Arm of Government. The President as the Chief Executive appoints the Cabinet. Ministers are therefore supposed to conduct their affairs in a manner that accords with the requirements of public integrity and probity. The President consequently issues this Code of Conduct in the expectation that it shall inspire responsible, transparent and ethical behaviour from ministers. The powers to be exercised by the President under this Code do not in any way limit the powers conferred upon the President under the Constitution.

### **1. PREAMBLE**

- 1.1 The privilege to serve as a Minister comes with some personal sacrifice in terms of the time and energy that must be devoted to official duties and some loss of privacy. Ministers are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties and should avoid giving the appearance of using public office for private purposes.
- 1.2 Ministers are personally responsible for deciding how to act and conduct themselves in light of this Code of Conduct and for justifying their actions and conduct in Parliament. They should perform their public duties without fear or favour, that is, without any expectation that they will benefit or suffer as a consequence. In so doing they should uphold the Constitution and the rule of law.
- 1.3 Ministers only remain in office so long as they retain the confidence of the President and it is the particular responsibility of the President to seek to ensure that each Minister complies with this Code of Conduct.
- 1.4 This Code should be read against the backdrop of the duty of Ministers to comply with the law, including international law and treaty obligations, to uphold the administration of justice and to protect the integrity of public life. They are expected to observe The General Code of Conduct and Ethics set out in Part III of the Public Officer Ethics Act

2003 Code of Conduct (see Annex A), all the rules and regulations currently in force affecting the conduct of the affairs of Government and the following principles of Ministerial conduct:

## **2 PRINCIPLES OF MINISTERIAL CONDUCT**

2.1 Ministers are expected to observe the following principles of ministerial conduct:

### **(i) Selflessness**

Ministers should act solely in the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

### **(ii) Integrity**

Ministers should uphold high standards of ethical behaviour. They should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties. They should avoid accepting any gifts or hospitality which might, or might reasonably appear to compromise their judgment or place them under an improper obligation.

### **(iii) Objectivity**

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, Ministers should make choices on merit taking into account the skills, qualifications, experience and any special qualities required of the person to be appointed, without discrimination on the grounds of ethnicity, gender, religion or origin other than when acting in furtherance of objectives laid down in the Constitution.

### **(iv) Accountability**

Ministers are accountable for their decisions and actions to the public and must submit themselves to scrutiny by the Public and Parliament. Ministers have a duty to Parliament to account, and be held to account for the policies, decisions and actions of their Ministries. It is of

paramount importance that Ministers give accurate and truthful information to Parliament, correcting any error or misconception at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the President.

**(v) Transparency**

Ministers should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it. Ministers should be as open as possible with Parliament and the Public, refusing to provide information only when disclosure would not be in the public interest, which should be decided upon in accordance with the Public Officer Ethics Act and any other relevant statutes.

Similarly, Ministers should require that civil servants who give evidence before Parliamentary Committees on their behalf and under their direction be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code of Regulations and the Public Officer Ethics Act.

**(vi) Honesty**

Ministers should at all times act with honesty, whether in public or in private affairs, and uphold the highest ethical standards so that the public confidence and trust in the integrity and impartiality of government are enhanced and preserved.

Ministers have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. They must ensure that no conflict arises or appears to arise between their public duties and private interests, and should not exercise the influence obtained from their public office, or use official information, to obtain any improper benefit for them or another.

**(vii) Prudence**

Ministers are provided with facilities at public expense to assist them in the discharge of public duties. They should utilize government resources in a prudent, efficient, effective, economical, lawful and authorized manner and avoid wastage and extravagance.

### **(viii) Political Impartiality**

In discharging their public duties, Ministers must uphold the political impartiality of the civil service and not ask civil servants to act in any way which would conflict with the Public Officer Ethics Act and the Civil Service Code of Regulations. They must not use government resources for party political purposes.

### **(ix) Collective Responsibility**

Ministers must uphold the principle of collective responsibility. This requires that Ministers should be able to express their views frankly and freely in private while maintaining a united front once decisions have been reached. Ministers should thus not disagree publicly with Cabinet decisions or criticise other Government Organs.

### **(x) Leadership**

Ministers should promote and support the principles contained in this Code of Conduct by leadership and example. They must separate their roles as Ministers and as members of Parliament whether representing their Constituencies or otherwise.

## **3 MINISTERS AND THE CABINET**

### ***Cabinet and Cabinet Committees***

3.1 The business of the Cabinet consist mainly of:

- (a) questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- (b) questions on which there is an unresolved argument between Ministries.
- (c) matters which by law require approval of the Cabinet

3.2 Matters that are clearly wholly within the responsibility of a single minister and which do not significantly engage the collective responsibility as defined above do not need to be brought to the Cabinet or Cabinet Committee unless the Minister wishes to inform his or her colleagues or have their advice. Where such matters are not capable of precise definition and in borderline cases a Minister is advised to seek collective consideration.

3.3 Questions involving more than one department or Ministry should be examined and discussed interdepartmentally or inter-ministerially before they are referred to the Cabinet or Cabinet Committee(s). This is so as to ensure that the decisions required from Cabinet are more clearly defined.

3.4 The Cabinet Committees have two main purposes namely:

- (i) They relieve the pressure from the Cabinet itself by settling as much business as possible at a lower level or, failing that, by clarifying the issues and defining the points of disagreement.
- (ii) they support the principle of collective responsibility by ensuring that policy issues referred to the Cabinet Committees and the oversight on implementation of government projects and programmes are considered in details and decisions are collectively made in accordance with the guidelines on the standing Cabinet Committees.

3.5 When there is a difference between Departments or Ministries, it should not be referred to the Cabinet until all other means of resolving it have been exhausted, including personal correspondence or discussions between the Ministers concerned.

3.6 Appeals to the Cabinet from the decision of a Cabinet Committee should be infrequent. The Chairs of Cabinet Committees should exercise their discretion in advising the President whether to allow an appeal. The only automatic right of appeal is if the Minister

for Finance is unwilling to accept expenditure as a charge on the reserve. Otherwise, the President will only entertain an appeal to the Cabinet after consultation with the Minister who chairs the committee concerned.

- 3.7 Ministers should normally attend in person meetings of committees of which they are members or to which they are invited to attend. They cannot, except where their absence is due to factors beyond their control, expect the President to allow an appeal against an adverse decision taken in their absence.

### ***Cabinet meetings***

- 3.8 Cabinet meetings take precedence over all other business, although it is understood that Ministers may occasionally have to be absent to attend to Parliamentary business. Requests by Ministers for permission to be absent should be made at the earliest opportunity and in writing to the President, copied to the Secretary to the Cabinet. Where the reason for a Minister's absence from a Cabinet meeting is an overseas visit for which the President's approval has already been obtained, a minute of this is not necessary. However, a copy of the letter seeking the President's approval for the overseas visit or absence for any other reason should be sent to the Secretary to the Cabinet.
- 3.9 Ministers should ensure that messages are not sent to them during meetings unless this is absolutely necessary in order not to disturb the proceedings of the Cabinet and Cabinet Committees.

### ***Preparation of Business for Cabinet and Cabinet Committees***

- 3.10 The Secretary to the Cabinet should be given at least seven (7) days' notice of any business that is likely to require substantive policy discussion (including business to be raised orally) which a Minister wishes to bring before the Cabinet or a Cabinet Committee. Memoranda should be circulated in sufficient time to enable Ministers read and digest the contents, and to be properly briefed.

- 3.11 Memoranda for Cabinet and Cabinet Committees should be circulated at least two (2) full working days and a weekend in advance of the meeting at which they are to be discussed. If decisions are urgently required and an interval including a weekend is not possible, memoranda should be circulated as long before the meeting as possible, and at least two (2) full working days before they are to be discussed. Where a Minister wishes to advise the Cabinet of an issue on which no substantive policy discussion is expected, the Minister should alert the Secretary to the Cabinet in the morning of the day before Cabinet is set to meet.
- 3.12 It is the responsibility of the initiating Ministry or department to ensure that proposals have been discussed with other interested Departments and/or Ministries and the results of these discussions reflected in the memorandum submitted to Cabinet or a Cabinet Committee. Proposals involving expenditure or affecting general financial policy should be discussed with Treasury before being submitted to the Cabinet or Cabinet Committee. The result of the discussion together with an estimate of the cost to the Exchequer (or estimates, including the Treasury's estimate, if the department and Treasury disagree) should be included, along with an indication of how the cost would be met.
- 3.13 The estimate of the cost should identify any impact on other departments. The other departments to be consulted will depend on the proposal. Proposals involving legal implications, especially if there is a risk of successful legal challenge, should be cleared by the Attorney General's office. Memoranda should, where applicable include any significant costs or benefits to the environment; any change in local government responsibilities; consequences on international obligations; and presentational aspects including, where appropriate, a draft statement or announcement. If, exceptionally, papers are circulated as minutes addressed to the President, they are subject to the same rules. These rules do not limit the right of Ministers to submit to the Cabinet memoranda setting out their views on general issues of policy.
- 3.14 Memoranda for the Cabinet and Cabinet Committees should be as clear and as brief as possible. They should normally not exceed four (4) pages at most. Memoranda should explain at the outset what the problem is, indicate briefly the relevant considerations and conclude with a precise statement of the decisions sought. Paragraphs should be numbered for ease of reference. Detailed analysis and argument, together with supplementary detail, should be dealt with, where necessary, in annexes.

## **Cabinet Decisions**

- 3.15 The record of Cabinet and Cabinet Committee proceedings should be limited to the decisions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The Secretary to the Cabinet should avoid, as far as it is practicable, recording the opinions expressed by particular Ministers. Matters of special secrecy and political sensitivity may be recorded in a limited circulation annex.
- 3.16 Whereas ordinarily, Cabinet decisions are communicated to Ministers by the Secretary to the Cabinet, Ministers are responsible for instructing their Ministries to give effect to the Cabinet decisions. When immediate action is required to be taken by a Ministry not represented at the meeting for any particular reason, the Secretary to the Cabinet will ensure that the Ministry concerned is notified forthwith.

## ***Collective Responsibility***

- 3.17 Ministers must uphold the principle of collective responsibility. Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. It is a requirement that the privacy of opinions expressed in Cabinet and Cabinet committees is maintained. Ministers should thus not disagree publicly with Cabinet decisions, or suggest that the published minutes are not a fair and accurate record.
- 3.18 The Cabinet operates on the basis of collective responsibility. The internal processes through which a decision has been made should not be disclosed. Decisions reached by the Cabinet are binding on all its members. Ministers are required to abide by them and defend them as necessary. Such decisions are, however, normally announced and explained as the decision of the Minister concerned.

## ***Cabinet Documents***

3.19 Cabinet documents including those relating to the committees of the Cabinet remain the property of the government. Ministers on relinquishing office will return to the Secretary to the Cabinet all such documents. The Secretary to the Cabinet will normally call in all cabinet documents at intervals of six months.

### **The Attorney General**

3.20 The Attorney General must be involved through out in matters or processes being pursued before the Government is committed to critical decisions involving legal considerations. It will normally be appropriate to consult the Attorney General where:

- (a) The legal consequences of action taken by the Government might have important repercussions in the foreign and domestic field;
- (b) The Minister is in doubt concerning:
  - (i) the legality or constitutional propriety of legislation which Government proposes to introduce; or
  - (ii) the *vires* of proposed subordinate legislation; or
  - (iii) the legality of proposed administrative action, particularly where that action might be subjected to challenge in the courts by means of an application for judicial review;
- (c) Ministers or their officials wish to have the advice of the Attorney General on questions involving legal considerations, which are likely to come before the Cabinet or Cabinet Committee;
- (d) There is a particular legal difficulty which may raise political aspects of policy;
- (e) Two or more Ministries disagree on legal questions and wish to seek the view of the Attorney General.

3.21 Written opinions of the Attorney General and other Ministerial Papers are generally made available to succeeding Administrations for custody and posterity.

- 3.22 When advice from the Attorney General is included in correspondence between Ministers or in Papers for the Cabinet or Cabinet Committees, the conclusions may if necessary be summarized but, if this is done, the complete text of the advice should be attached.
- 3.23 The fact and content of opinions or advice given by the Attorney General may not be disclosed outside Government without his authority.

### ***Legal Proceedings involving Ministers***

- 3.24 Ministers may occasionally become involved in legal proceedings primarily in their personal capacities but in circumstances which may have implications for them in their official positions. An example of this is defamation, where proceedings will invariably raise issues for the Minister's official as well as private position. In such cases, the Minister should consult the Attorney General first before consulting his own lawyers, in order to allow the Attorney General to express a view on the handling of the case so far as the public interest is concerned.

### ***Assistant Ministers***

- 3.25 Ministers are alone answerable to Parliament for the exercise of their functions and discharge of their duties and should make every effort to personally attend Parliament and respond to questions relating to their Ministries. They may, however, in exceptional cases delegate to assistant minister's responsibility for Parliamentary work. In delegating Parliamentary duties to assistant ministers, Ministers shall ensure that assistant ministers are fully and properly briefed to satisfactorily respond to Parliamentary queries.
- 3.26 Ministers should, as appropriate, delegate ministerial responsibilities to assistant ministers in their Ministries.

## **4 MINISTERS AND PARLIAMENT**

- **Ministerial Statements and Government announcements**

- 4.1 Ministers are accountable to Parliament in the discharge of their duties and performance of their functions. When Parliament is in session, they should bear in mind the desirability of making the most important government policy announcements in Parliament, in the first instance. Government announcements and Ministerial statements should be accurate and well timed to avoid clashing with other government publications, statements or announcements or with planned Parliamentary business.
- 4.2 The Leader of Government Business should be informed and given sufficient time, to comment on important government announcements. Ministerial statements that touch on particularly sensitive issues should, as far as it is practicable, be made by Written Answer.

## **5. MINISTERS AND THEIR PORTFOLIOS**

- **Changes in Ministerial Responsibilities**

- 5.1 The President is responsible for the overall organization of the Executive and the allocation of duties and functions among Ministers. Where changes are proposed that affect this allocation of duties and ministerial responsibilities, the President's approval must be sought. This applies whether the functions in question are derived from statute or are general administrative responsibilities.
- 5.2 The President's written approval should be sought where it is proposed to transfer functions:
- (a) between Ministers unless the changes are minimal, can be made administratively and do not justify public announcement;
  - (b) within the responsibility of one Minister to a non-ministerial public body, where the change is likely to be politically sensitive or to raise wider issues of policy or organization.
- 5.3 Further, the President's written approval should be sought for proposals to allocate new functions to a particular Minister where such functions do not fall wholly within the field of responsibilities of one Minister, or where there is disagreement over who should be

responsible. The President's approval should also be sought where a proposed transfer is resisted by the receiving Minister.

- 5.4 In giving approval or determining issues in dispute, the President may take advice from the Head of the Civil Service. The responsible Minister should ensure that any proposals for a transfer of functions are brought to the attention of the Head of Civil Service by the Permanent Secretary before they are submitted to the President. The submission to the President should be copied to the Head of the Civil Service.
- 5.5 Responsibility for making a submission to the President shall normally lie with the ceding Minister in the case of a transfer of existing functions, and the principal receiving Minister in the case of allocation of new functions. Unresolved disputed issues concerning the allocation of functions should be referred to the Head of the Civil Service before a submission is made to the President.

#### ***Arrangements during Absence from Nairobi***

- 5.6 Ministers shall inform the Secretary to the Cabinet of their out-of-town engagements, and their weekend and holiday arrangements, so that in the event of an emergency arising, the Secretary can inform the President of which ministers are immediately available.
- 5.7 When a Minister will not be able to be reached for a considerable period of time due to absence or illness, the President shall reassign his functions to another Minister who shall supervise the work of the Ministry. The Minister so assigned shall be careful to avoid exercising powers which are expressed by statute as exercisable only by his absent colleague. He shall also, as far as possible, avoid making significant policy decisions with regard to such a Ministry. In exceptional circumstances requiring a significant policy decision in the absence of the responsible Minister, the Minister so assigned shall consult the Cabinet and shall seek the approval of the President.

## ***Appointments by Ministers***

- 5.8 Ministers shall ensure that public appointments in their Ministries are done on merit bearing in mind the particular requirements of the post, the qualifications essential for a candidate, the extent to which candidates meet these qualifications, and any other relevant information including any conflicts of interest.

## **6. MINISTERS AND CIVIL SERVANTS**

- 6.1 In reaching policy decisions Ministers shall give fair consideration and due weight to informed and impartial advice from civil servants. Ministers have a duty to uphold the political impartiality of the Civil Service, and should not direct civil servants to act in any way which would conflict with the Public Officer Ethics Act and the Civil Service Code of Regulations. They should not ask civil servants to engage in activities likely to call into question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for party political purposes. Ministers have a duty to ensure that all public appointments are made on merit.

### ***The Role of the Accounting Officer***

- 6.2 Permanent Secretaries, Heads of Departments and Chief Executives of public bodies have traditionally been appointed as principal accounting officers. The Government Financial Management Act, 2004 expands the definition of accounting officer to include all public officers who are appointed by Treasury to manage government resources and to whom any issues from the Exchequer are made.
- 6.3 An accounting officer is personally responsible for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient, effective, economical, lawful and authorised use of resources. Accounting officers answer personally on these matters, within the framework of Ministerial accountability to Parliament, for the policies, actions and conduct of their departments.

- 6.4 Accounting officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity; economical administration; prudence, efficiency and effectiveness in the use of resources; and value for money in public procurement. If the Minister is contemplating a course of action that would involve a transaction which the accounting officer considers would breach the requirements of propriety or regularity, the accounting officer is required to set out in writing his or her objection to the proposal and the reasons for the objection. The accounting officer has a duty to inform Treasury should the advice be overruled.
- 6.5 If the Minister decides nonetheless to proceed, the accounting officer shall seek a written instruction to take the action in question. The accounting officer is obliged to comply with the instructions, send relevant papers to the Auditor General, and inform the Treasury of what has occurred. A similar procedure applies where the accounting officer has concerns regarding the value for money of a proposed course of action.

## **7 MINISTERS AND THE COMMUNICATION OF POLICY**

### ***Communication of Policy***

- 7.1 Official facilities financed out of public funds may be used for government publicity and advertising but not for the dissemination of political party material.
- 7.2 In order to announce or explain new policies a Minister may hold a press conference. Press Conferences are on the record and are open to any representative of local and overseas media. Ministers may also give separate radio and television interviews afterwards in order to secure the most effective presentation of their views or announcement.
- 7.3 Ministers should bear in mind the principle of collective responsibility and should ensure that their statements are consistent with collective government policy. They should not anticipate decisions not yet made public and should exercise care in referring to subjects

which are the responsibility of other Ministers. Any Minister who intends to make a speech which deals with, or make observations which have a bearing upon matters which fall within another Minister's responsibilities should consult that Minister. Official machinery should only be used to distribute texts of Ministerial speeches only when such speeches are made on official occasions and deal with government policy.

- 7.4 Ministers should not accept payment for speeches of an official nature or which draw directly on their responsibilities as Ministers, either on their own or their Ministry's account. (Except in accordance with the provisions of the Public Officer Ethics Act).
- 7.5 Ministers may occasionally contribute to a book, journal or newspaper for the purpose of supplementing other means of informing the public about the work of their Ministry provided that publication will not infringe on their Parliamentary obligations and their duty to uphold the principle of collective responsibility. Ministers should not accept payment, either on their own or their Ministry's behalf, for writings that draw on their ministerial experience. Ministers should avoid engaging in controversy in correspondence columns of either local or foreign press. They may, however, correct serious errors or misstatements of fact which lead to false conclusions. Such letters should be brief and confined to the facts of the matter.

### ***Complaints***

- 7.6 Ministers who wish to lodge a complaint with the Media Council should do so with the knowledge and approval of the President.

## **8. MINISTERS' PRIVATE INTERESTS**

- **General Principle**

- 8.1 Ministers must ensure that no conflict arises, has potential to arise, or appears to arise, between their public duties and their private interests. Where a Minister is involved in court proceedings which may have implications for him in his official position, he should consult the Attorney General first before consulting his own lawyers, in order to allow the Attorney General to express a view on the handling of the case so far as the public interest is concerned.

### ***Responsibility for avoiding a conflict***

- 8.2 Ministers should order their affairs so that no conflict arises or is thought to arise between their private interests (financial or otherwise) and their public duties. In particular, a Minister shall not personally or through a company in which he or she is a shareholder or a director do business directly or indirectly with the Ministry or any public body under the general or special oversight by the Ministry of which he or she is the Minister.
- 8.3 It is the personal responsibility of each Minister to decide what action is needed to avoid a conflict or the perception of conflict and to defend that decision, if necessary by accounting for it in Parliament. The role of the Secretary to the Cabinet with regard to Ministers' private interests is to ensure that advice is available when it is sought by a Minister, either by providing it personally, drawing on precedent and if need be other parts of government, or by securing the services of a professional adviser.
- 8.4 Where there is a doubt it will almost always be better to relinquish or dispose of the interest. In cases of serious difficulty or doubt the matter may be referred to the President for a view. However, ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism. The final decision about what action to take to achieve this end lies with the Minister in question.
- 8.5 Where it is proper for a Minister to retain any private interest, it is mandatory that he or she declares that interest to Cabinet colleagues if they have to discuss public business which in any way affects that interest. The Minister involved should remain entirely detached from the consideration of that business. Similar steps may be necessary should the matter under consideration relate in some way to a Minister's previous private interests such that there is or may be thought to be a conflict of interest. Particular care needs to be taken where financial interests are involved.

### ***Procedure***

- 8.6 On appointment to each new office, Ministers are advised to provide the Secretary to the Cabinet with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but also those of a spouse or partner, children who are minors, trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover

all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organizations, and previous relevant employment.

- 8.7 On receipt of the written list the Secretary to the Cabinet will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further information is needed. The Secretary to the Cabinet will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent as necessary, or to arrange for expert or professional advice to be made available to the Minister from inside or outside the Executive. At the end of the exercise, Ministers are advised to record in writing what action has been considered and taken, and to provide the Secretary to the Cabinet with a copy of that record.
- 8.8 The personal information which Ministers disclose to those who advise them is treated in complete confidence and may not be disclosed without their permission. If an allegation is made that a particular Minister has a conflict of interest, it must be for that Minister to explain their position and justify what has been done. In doing so, they may wish to make public the list of their private interests and the steps taken to avoid an actual or perceived conflict. It is open to them if they wish to confirm (if this is the case) that they have consulted the Secretary to the Cabinet in accordance with the Code of Conduct. The Minister should, however, consult the Secretary to the Cabinet about the content of any such statement before making it to ensure that there is agreement about the content, and any disagreement should be referred to the President.

### ***Consideration of Disclosures***

- 8.9 In considering how to deal with a conflict of interest, the President must consider how the conflicting interest will interfere with or affect the performance of the Minister's public duty, if at all and how the public will perceive the propriety of the Minister's continued participation in a matter. Conflicts of interest relating to portfolio matters will generally be dealt with by the President. Conflicts that are very serious or which involve the President or which relate to Cabinet matters will be referred to Cabinet for discussion and determination as to what action should be taken. (See Annex B for the Declaration of Interest by Ministers Form).

8.10 Following the disclosure of a conflict, the President may in his or her discretion take a number of different courses of action, including, for example:

- approving the conduct and allowing the Minister to continue his or her involvement in the matter;
- requiring the Minister to divest him or herself of the relevant private interest;
- asking the Minister to publicly apologise, stand aside or resign. (If a Minister refuses to resign, the President can relieve the Minister of his duties);
- requiring that the Minister not take part in the determinations relating to the conflict. This may involve requiring the Minister to leave the Cabinet room or to delegate certain powers and duties to another Minister.

8.11 The nature of some conflicts may be so serious that Ministers should not wait until the President or Cabinet has considered the matter. In appropriate cases Ministers should immediately relinquish their private interests or offer their resignation.

### ***Consequences of Failure to Disclose a Conflict***

8.12 If a Minister does not disclose a conflict of interest that is later found to exist, the President may, among other things, in his or her discretion:

- require the Minister to apologise publicly;
- require the Minister to stand aside or resign;
- refer the matter to an appropriate authority for investigation and require the Minister to stand down during the investigation;
- discuss the matter with the Minister and then seek the view of Cabinet before making a determination as to how the conduct of the Minister should be dealt with.

### ***Use of Information Obtained in the Course of Official Duties***

8.13 Ministers must not use information obtained in the course of official duties to gain a direct or indirect financial advantage for themselves or any other person. In particular,

Ministers shall scrupulously avoid investments and transactions about which they have obtained confidential information as a Minister that may result in an advantage that is unreasonable or improper.

- 8.14 Some of the information that comes to Ministers may be commercially sensitive or sensitive in some other way. Its wrongful disclosure may have an adverse impact on individuals, private commercial entities, or the State, but its use to benefit Ministers' private interests may place them in an untenable position of conflict. Even the appearance of benefit or of avoidance of loss to a Minister's private interests, without any actual effect, may bring accusations of conflict and bring individual Ministers and the Government into disrepute. Therefore, Ministers must not only maintain strict confidentiality about this information, but must also take care not to use the special knowledge they have gained in such a way as to give even the appearance of benefiting or avoiding loss to their private financial interests.

### ***Financial Interests***

- 8.15 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it.
- 8.16 The Permanent Secretary as principal accounting officer has a personal responsibility for financial propriety and regularity across the Executive's business, and his advice must be given particular weight where such issues arise. Two particular ways in which a conflict of financial interest or the perception of it can arise are as follows:
- (a) From the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
  - (b) From using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.
- 8.17 Apart from the risk to the Minister's reputation, it must be borne in mind that any exercise or non-exercise by a Minister of a legal power or discretion or other influence on

a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly widely.

- 8.18 It is not the intention of the Code of Conduct to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life. In order to avoid the danger of an actual or perceived conflict of interest, Ministers should be guided in relation to their financial interests by the general principle that they should either dispose of any financial interest giving rise to the actual or perceived conflict or take alternative steps to prevent it.

### ***Financial Interests: Alternatives to disposal***

- 8.19 If for any reason a Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary and, where necessary, of external advisers, what alternative measures would sufficiently remove the risk of conflict. Such measures fall into two categories: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

### ***Partnerships***

- 8.20 Ministers who are partners, whether in professional firms (for example advocates, accountants et cetera), or in other businesses, should, on taking up office, cease to practice or to play any part in the day-to-day management of the firm's affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practicing certificate to lapse. Beyond this, it is not possible to lay down precise rules applicable to every case, but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions, as described in the foregoing paragraph. Ministers in doubt about their personal position should consult the President.

### ***Directorships***

- 8.21 Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is honorary. The only exceptions to this rule are that directorships in private companies established in connection with private family estates or in a company

formed for the management of residential property of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and his or her public duty, the Minister should even in those cases resign the directorship. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Executive.

- 8.22 In all cases concerning financial interests and conflict of interest Ministers may wish to consult financial advisers as to the implications for their (or their families') affairs of any action which they are considering to avoid any actual or potential conflict of interest.

### ***Verification of Declaration of Wealth***

- 8.23 Ministers undertake to allow the Kenya Anti-Corruption Commission or any other competent authority to access their declarations of assets and liabilities made under the Public Officer Ethics Act or any other law amending or replacing the same. No other authority (personal or legal) shall be required by the Anti-Corruption Commission or other competent authority to access a Minister's declaration from the responsible Commission and to verify the same. The President may on the advice of the Commission or other competent authority take administrative action against a Minister whose declaration is found to be incomplete, or false or otherwise to raise suspicion on the integrity of the Minister without prejudice to any legal action that may be taken against such minister.

### ***Public Appointments***

- 8.24 When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the President must be consulted.

### ***External Organizations and Groups***

- 8.25 Ministers should take care to ensure that they do not become associated with organizations or groups et cetera whose objectives may in any degree conflict with the Executive's policy and thus give rise to a conflict of interest. Hence, Ministers should not normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organizations dependent in whole or in part on funding from the Executive.

- 8.26 There is normally no objection to a Minister associating himself or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed by the charity (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the President should be consulted before a Minister accepts an association with such a body. Ministers should also exercise care in giving public support for petitions, open letters et cetera.

### ***Trade Unions***

- 8.27 Ministers shall not hold Trade Union Membership during their tenure of office.

### ***Nomination of Prizes and Awards***

- 8.28 From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, for example, the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Executive was itself thereby giving its sponsorship.

### ***Acceptance of Gifts and Services***

- 8.29 A Minister shall not accept or solicit any gifts, rewards, hospitality, benefits or any other valuable present in any form, whether in appreciation for any act done or for any other reason. The same principle applies if gifts et cetera are offered to a member of their family. This is primarily a matter which must be guided by provisions of the Public Officer Ethics Act. Any Minister in doubt or difficulty over this should seek the President's guidance.
- 8.30 The same rules apply to the manner of dealing with gifts from donors with whom a Minister has official dealings in this country as to those from overseas. Any offer of any gift, benefit or remuneration offered to a Minister for doing what they are already paid to do as a Minister, must be reported to the President as soon as possible. The circumstances of the offer will be recorded.
- 8.31 Within the context of the general principle outlined above, the following specific rules apply to the acceptance of gifts from donors with whom a Minister has official dealings:

- (a) Receipt of gifts by a Minister from donors should, in all cases, be reported to the President, and be retained by the Permanent Secretary on behalf of the Ministry;
- (b) If the President judges that it would be of interest, the gift may be displayed or used in a property used by the Executive;
- (c) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained by the Permanent Secretary for this purpose for a period of up to five years; and
- (d) Gifts given to Ministers in their Ministerial capacity become the property of the Executive. Gifts given to Ministers as Members of Parliament or members of a political party are subject to the rules relating to gifts under the general Code of Conduct in the Public Officer Ethics Act.

8.32 While it is clear that no Minister or member of his or her family should accept a gift from anyone, there may be difficulty in refusing a gift from a foreign government (or governmental organization) without the risk of apparent discourtesy. The acceptance of a gift, or the knowledge that one will be offered, may also, in some countries and in some circumstances, entail the offer of a gift in exchange. It may also on occasion be appropriate for Ministers on visits overseas to offer modest and appropriate gifts to representatives of foreign countries, where no return gift is expected. In all such instances, advice should wherever possible be sought from the Ministry of Foreign Affairs and International Co-operation, who maintain guidance on these issues.

8.33 It is not normally appropriate for Ministers traveling overseas to have their accommodation arranged and paid for by the host government. If such accommodation is offered, guidance should be sought from the Ministry of Foreign Affairs and International Co-operation.

### ***Foreign Decorations***

8.34 Ministers should not, while holding office, accept decorations from foreign countries without clearance from the President.

- **Contact with Commercial Companies**

- 8.35 Regardless of their responsibilities, all Ministers will come into contact with private sector businesses from time to time. Invitations to functions and events are common place and are part and parcel of Ministerial life. It is for Ministers themselves to judge whether to accept any invitation extended to them but they should satisfy themselves that doing so does not place them under any real or perceived obligation nor risks the commercial position of the Executive. Ministers need to be sensitive to the risk that private sector interests might occasionally attempt to use occasions to exercise improper influence and lobby the Minister.
- 8.36 Ministers should also avoid promoting an individual company's products or services by association. They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Public Procurement.
- 8.37 Formal invitations which are sent to Ministers will be subject to a process which allows relevant officials in the Ministry's office to brief the Minister on the appropriateness of accepting the invitation, including matters such as company performance, commercial interests the company might have with the Executive et cetera. Informal approaches should be treated with caution and advice sought from the Head of Public Service if the Minister is in any doubt.

### ***Travel by Ministers***

- 8.38 In planning their official travel Ministers should adhere to the guiding principles set out below:

Propriety: Official transport should not normally be used for travel arrangements arising from party or private business, except where this is justified on security grounds.

Efficient Use of Resources: The availability of some services such as official cars has to be limited, and Ministers should bear in mind the need to use them efficiently.

Cost Consciousness: The cost of alternative arrangements should be considered before decisions involving substantial costs are made, especially if, exceptionally, special flights are being considered as an alternative to scheduled services.

Security: Ministers should keep security risks in mind at all times, particularly when traveling by car.

### ***Public Accountability***

- 8.39 Ministers should be satisfied that their travel arrangements can be defended in public.
- 8.40 In using official cars and traveling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. When Ministers travel on official business, their travel expenses should normally be met from public funds. When any expenses are not met in this way, Ministers will ensure that no undue obligation is involved.
- 8.41 Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organizations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organization concerned should be reimbursed from the public purse to the value of a scheduled business class ticket.

### ***Traveling Expenses of Spouses***

- 8.42 The expenses of a Minister's spouse when accompanying the Minister on the latter's official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the President's prior written approval must be obtained on each occasion.

### ***Traveling Expenses of Special Experts and Unpaid Experts***

- 8.43 Ministers might need the direct advice of distinguished experts in their professional fields. If necessary, a Minister may take such special expert on an overseas visit at the public expense provided that it is clearly in the public interest that he or she should accompany the Minister. The President's prior written approval must be obtained on each occasion. Where an expert whose salary is not met from public funds (unpaid expert)

accompanies a Minister on official business — whether overseas or within Kenya — any additional expenditure which may be incurred should not normally fall on public funds.

## **9. MINISTERS' CONSTITUENCY AND PARTY INTERESTS**

9.1 Ministers shall not use Government facilities and resources provided to them for the discharge of their official duties for party or constituency work. This principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their constituents.

9.2 Where Ministers have to take decisions within their Ministries which might impact on their own constituencies, they should take particular care to avoid any possible conflict of interest. Ministers may freely make their views about constituency matters known to fellow Ministers, whose Ministries are responsible for providing services to their constituencies, by correspondence or personal interview. However, they must make it clear that they are acting as their constituents' representatives and not as Ministers.

## **10. MINISTERS TO SIGN CODE OF CONDUCT**

10.1 On taking up office, all Ministers shall be required to sign the Code of Conduct for Ministers and shall at the same time be given a copy for their personal reference.

## **11. ENFORCEMENT OF THE CODE OF CONDUCT**

11.1 If a Minister engages in conduct which prima facie constitutes a breach of this Code of Conduct, or a Minister is charged with an offence, the President shall decide, the course of action that should be taken in accordance with this Code. A Minister may, among other things, be asked to apologize, be reprimanded or be asked to stand aside or resign. Before making a decision, the President may refer the matter to an appropriate independent authority for investigation and/or advice.

## **Annex A**

### **PART III – GENERAL CODE OF CONDUCT AND ETHICS**

### **PART III – GENERAL CODE OF CONDUCT AND ETHICS**

Part sets out general Code.

7. This Part sets out a general Code of Conduct and Ethics for public officers.

Performance of duties, general.

8. A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

Professionalism.

9. A public officer shall:-

(a) carry out his duties in a way that maintains public confidence in the integrity of his office;

(b) treat the public and his fellow public officers with courtesy and respect;

(c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organization;

(d) if a member of a professional body, observe the ethical and professional requirements of that body;

(e) observe official working hours and not be absent without proper authorization or reasonable cause;

(f) maintain an appropriate standard of dress and personal hygiene; and

(g) discharge any professional responsibilities in a professional manner.

Rule of law.

10. (1) A public officer shall carry out his duties in accordance with the law.

(2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the Constitution.

No improper enrichment.

11. (1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not:-

(a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who:-

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

(ii) carries on regulated activities with respect to which the public officer's organization has a role; or

(iii) has a contractual or similar relationship with the public officer's organization;

(b) improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or

(c) For the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

(3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a non-monetary gift that does not exceed the value prescribed by regulations, such a gift shall be deemed to be a gift to the public officer's organization.

(4) Subsection 2(a) does not prevent a public officer from accepting a gift from a relative or friend given on special occasion recognised by custom.

(5) Subsection (2) (c) does not apply to the use of information for educational or literary purposes, research purposes or other similar purposes.

Conflict of interest 12. (1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body; directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall:

(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to-

(a) himself;

(b) a spouse or relative;

(c) a business associate; or

(d) a corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purpose of this section

(6) In this section, “personal interest” includes the interest of a spouse, relative or business associate.

13. (1) A public officer shall not-

Collections and harambees.

(a) Use his office or place of work as a venue for soliciting or collecting *harambees*; or

(b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure.

Cap. 106.

(2) In this section, “collection”, “collector” and

“promoter” have the same meanings as in section 2 of the Public Collections Act.

Acting for  
foreigners.

14.(1) No public officer shall, in a manner that may be detrimental to the security interests of Kenya, be an agent for, or further the interests of, a foreign government, organization or individual.

(2) For the purposes of this section-

(a) an individual is foreign if the individual is not a citizen of Kenya;

(b) an organization is foreign if it is established outside Kenya or if it is owned or controlled by foreign governments, organizations or individuals.

Care of property

15. (1) A public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated.

(2) A person who contravenes sub-section (1) shall be personally liable for losses resulting from the contravention.

Political neutrality.

16. (1) A public officer shall not, in or in connection with the performance of his duties as such -

(a) act as an agent for, or so as to further the interest of, a political party; or

(b) indicate support for or opposition to any political party or candidate in an election.

(2) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.

(3) This section does not apply to a member of the National Assembly or a councilor of a local authority

Nepotism, etc. 17. A public officer shall not practice nepotism or favouritism.

Giving of advice. 18. A public officer who has a duty to give advice shall give honest and impartial advice without fear or favour.

Misleading the public, etc. 19. A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

Conduct of private affairs 20. (1) A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.  
(2) A public officer shall not evade taxes.  
(3) A public officer shall not neglect his financial obligations or neglect to settle them.

Sexual harassment 21. (1) A public officer shall not sexually harass a member of the public or a fellow public officer.

(2) In subsection (1) “sexually harass” includes doing any of the following, if the person doing it knows or ought to know that it is unwelcome:

(a) making a request or exerting pressure for sexual activity or favours;

(b) making intentional or careless physical contact that is sexual in nature; and

(c) making gestures, noise, jokes or comments, including innuendoes, regarding another person's sexuality.

Selection, etc, of public officers.

22. A public officer shall practice and promote the principle that public officers should be:

(a) selected on the basis of integrity, competence and suitability; or

(b) elected in fair elections.

Submitting of declarations, etc.

23. A public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him

Acting through others.

24. (1) A public officer contravenes the Code of Conduct and Ethics if -

(a) he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics; or

(b) he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of Conduct and Ethics.

(2) Subsection (1) (b) does not apply with respect to anything done without the public officer's knowledge or consent if the public officer took reasonable steps to prevent it.

Reporting improper  
orders

25. If a public officer considers that anything required of him is a contravention of the Code of Conduct and Ethics or is otherwise improper or unethical, he shall report the matter to an appropriate authority.

**DECLARATION OF INTEREST BY MINISTERS**

I, [name].....,  
Minister for ... [Ministerial title].....,  
declare the following interest with regard to the Cabinet submission dealing with the matter of ...  
[Purpose of submission: from Cover Sheet].....:

.....  
.....  
.....

Cabinet resolved on this matter that:

.....  
.....

I took the following action:

.....  
.....  
.....

The Agenda item was considered with / without my participation (delete as appropriate).

Signed:

Date:

This submission was Item Number \* of the Cabinet Agenda of \* / \* / 0\*

[\*details to be inserted by the Secretary to the Cabinet and a completed copy filed on the Cabinet Register]

**THIS CODE OF CONDUCT IS ISSUED BY THE PRESIDENT**