

Conflict of Interest Policy

We value
doing things right



(UNCONTROLLED DOCUMENT)

**(THIS CONFLICT OF INTEREST POLICY SHALL COME
INTO FORCE ON 2ND FEBRUARY 2021)**

**FOR GUIDANCE AND ADHERENCE BY EMPLOYEES OF KENYA PORTS AUTHORITY
AND OTHER STAKEHOLDERS AND NOT FOR PUBLICATION**

**MADE PURSUANT TO THE LEADERSHIP AND INTEGRITY ACT 2012 AND
PUBLIC OFFICERS ETHICS ACT 2003, LAWS OF KENYA**

ISO 9001:2015 Certified

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FOREWORD

Kenya Ports Authority is committed to outline sets of standards which informs the way employees are expected to act in a number of situations which may find themselves in.

This conflict of interest policy outlines the standard of behaviour expected of Kenya Ports Authority employees. It is designed to assist employees in understanding their responsibilities and obligations and provides guidance whenever they are faced with an ethical dilemma or conflict of interest. By their employment, employees are in a unique position of trust. They are therefore required to uphold standards of ethical behaviour that reflect stakeholders' expectations.

Conflict of interest which constitutes an unethical behaviour, and corruption, affects functions and operations of the Authority and have the effect of increasing the cost of doing business, occasioning poor service delivery, loss of business and adverse reputation. This negatively impacts on the successful realization of Authority's vision.

The Authority has established key interventions to tackle the vices. These include: the establishment of the Ethics and Integrity Department; appointment and training of Departmental Integrity Assurance Officers with the mandate to create awareness and encourage reporting of the vice; formulation of Anti-Corruption policy, whistle blowing policy and Code of Ethics; encouraging the reporting of corruption incidences through different channels, namely, suggestion boxes and Anti-Corruption email-address (stopcorruption@kpa.co.ke) and automation of processes which in turn minimizes human intervention and increases transparency and accountability.

The entire workforce and Board of Directors are all committed to the full implementation of the conflict of interest policy and supports all measures necessary to ensure that it is enforced. Employees and stakeholders are expected to read and understand this policy, uphold the rules and standards established in it, comply with all applicable provisions ensure that they are aware and understands them.

Failure to adhere to this policy attracts penalties in accordance with the Disciplinary Handbook, Human Resources Manual and relevant laws and regulations in the country.

RASHID K. SALIM IEng.IMar Eng
Ag. MANAGING DIRECTOR

ABBREVIATIONS

COI: Conflict of interest

KPA: Kenya Ports Authority

DEFINITION OF TERMS

Authority

As used in the policy, the term refers to Kenya Ports Authority

Conflict of Interest register

Form(s) used to register registrable interests as prescribed in law.

Board

Members appointed in to the KPA board as directors pursuant to section 4 of the KPA Act.

Employee

Refers to KPA staff, contractors, suppliers, consultants, and other stakeholders working with/for KPA

Conflict of Interest

A situation where an employee or member of the board, is directly or indirectly interested in any contract, proposed contract or other matter in the organisation and is present at any meeting of the organisation at which the contract, proposed contract or other matter is the subject of consideration.

1.0 INTRODUCTION

Kenya Ports Authority (The Authority) is a statutory body under the Ministry of Transport and Infrastructure. It is established under section 3 of the Kenya Ports Authority Act, Cap 391 of the Laws of Kenya.

The Authority is responsible for the construction, operation and management of seaports and inland waterways, Inland Container Depots in Nairobi, Kisumu and Eldoret, and the Liaison office in Kampala, Rwanda and Burundi.

1.1 KEY SERVICES OFFERED BY THE AUTHORITY

Among the main services offered by the Authority are marine services (comprising of Pilotage, Towing, Mooring, Dry-docking, Navigational aids and Maintenance of the tunnel and turning basin), stevedoring and shore handling services (comprising of Cargo handling services for containers, general cargo, dry bulk and bulk liquids) and reception of cruise vessels which entails facilitation of cruise tourism.

1.2 WHO WE ARE

Kenya Ports Authority (KPA) is a statutory body under the Ministry of Transport. It was established by an Act of Parliament on 20th January 1978 with the mandate to maintain, operate, improve, and regulate all scheduled seaports situated along Kenya's coastline.

The Authority is responsible for the operation and management of the Port of Mombasa, other small scheduled ports, Inland Container Depots and liaison offices in Kampala, Kigali and Bujumbura that caters for all transit countries.

1.3 VISION, MISSION AND VALUES

Vision

World Class Ports of Choice

Mission

To provide efficient and competitive port services to facilitate global trade.

1.4 KPA'S MANDATE

To maintain, operate, improve, and regulate all scheduled Ports. To realize its mandate, the Authority strives to conduct its activities with the highest possible ethical standards.

1.5 KPA's Values

Customer focus:

Service excellence is key to our operations and we endeavor to exceed customer expectations.

Integrity:

We uphold fairness, honesty, professionalism and transparency in all our undertakings.

Teamwork:

We embrace team spirit in all that we do

Innovation:

We are innovative and continuously create value to our customers

Care:

We care for our staff, the communities around us and are sensitive to the environment

1.6 TO WHOM THE AUTHORITY IS RESPONSIBLE

A successful business is measured by amongst other things, its relationship with its shareholders, customers, employees, business partners and the community. The Authority aims to tap into the synergy of these relationships and to create a collectively beneficial business environment. Its responsibilities are identified as follows: -

Shareholders

To safeguard shareholders' investment and to create and add economic value.

Customers

To satisfy the unique needs of its customers by offering innovation, flexibility and service that create value for their businesses as their commercial success is, in turn, our success.

Employees

To recognize that employees are the Authority's greatest asset and to ensure that they have a safe and conducive working environment with equitable and competitive terms and conditions of service. The Authority promotes a culture of trust, the development and best use of human talent and resources.

Business Partners

To cultivate meaningful, mutually beneficial, and successful long-term relationship with partners, suppliers and contractors based on trust and understanding.

Community

To be a responsible corporate citizen and conduct business in a manner that promotes sustainable development for both the Authority and the community. This involves full compliance with laws and regulatory authorities, respect for local culture and giving due consideration to social and environmental issues in all commercial decisions.

2.0 THE KPA CONFLICT OF INTEREST POLICY

The Authority appreciates that Conflict of Interest is a contemporary emerging risk affecting business ethics. As a risk, conflict of interest impacts on business etiquette eroding confidence of stakeholders and therefore negatively effecting the organization's bottom-line. This policy is developed to domesticate the various legal and administrative tools in management of conflict of interest in the Authority and as one of the measures undertaken by the Authority to mitigate against the risk of conflict of interest among its employees.

2.1 PURPOSE OF THE CONFLICT OF INTEREST POLICY

This Policy aims to guide and assist all employees, members of the Board and other stakeholders in identifying situations that may present conflict of interest situations and augment mechanisms for disclosure of conflict of interests and its effective management as provided in the Kenyan statutes. The declaration of a conflict of interest does not resolve a conflict, hence the requirement for additional measures to manage the conflict.

2.2 APPLICATION OF THE POLICY

The policy applies to the following: -

- i. All KPA employees who are under obligation to identify and declare conflict of interest situations in the course of discharging their duties.
- ii. All members of the KPA Board and the management who have an important role in ensuring that conflict of interest situations are managed appropriately within the Organization.

3.0 SITUATIONS OF CONFLICT OF INTEREST.

From the definition, COI is given as a situation where an employee or member of the board, is directly or indirectly interested in any contract, proposed contract or other matter in the organisation and is present at any meeting of the organisation at which the contract, proposed contract or other matter is the subject of consideration

Competing personal interests can impair an officer from discharging duties fairly. Even if there is no evidence of improper actions, a conflict of Interest can create an appearance of impropriety that can undermine the confidence in the ability of that person to act properly in the circumstances.

Black's Law dictionary defines conflict of interest as real or seeming incompatibility between one private interest and that of public or fiduciary duties

Having conflict of interest is not in itself evidence to wrongdoing. A conflict of interest can however become a legal matter if an individual fails to disclose, uses, or tries to use the same for the purpose of influencing the outcome of a decision.

A conflict of interest does not necessarily need to lead to financial gain or favour, but the question to ask is, will personal interest interfere with the exercise of duties?

3.1 TYPES OF CONFLICT OF INTERESTS

- i. Real – where a conflict of interest exists
- ii. Perceived or apparent – where conflict of interest is believed or appears to exist
- iii. Potential – where conflict of interest may arise in future.

3.2 WHEN IS AN EMPLOYEE IN A CONFLICT OF INTEREST?

Conflict of interest is contextual and therefore the nature of profession or position as well as the nature of activity objected to must be studied to determine whether a conflict of interest existed. A conflict of interest is found where a party exercising an employment or public duty has an interest that a reasonably informed person would conclude that there was influence in the exercise of the party's duty.

3.2.1 SITUATIONS WHICH LEADS TO COI

Conflict of interest arises when relevant stakeholders (identified in Part 2.2 of this policy) find themselves in situations where: -

- i. They can influence performance of duty. (E.g. Employment decisions, awarding of tenders, staff appraisal etc.) According to their own interest and circumstances.
- ii. In a position where his or her own interest or an interest of those he/she is connected to, conflict with his or her duty as an employee or as an official of the Authority.

3.3 TYPES OF CONFLICT OF INTEREST

The following are listed as the most common types of conflict of interest situations.

a) Self-dealing

Refers to the conduct of a trustee, attorney, corporate officer, or other fiduciary that consists of taking advantage of their position in a transaction and acting in their own interests rather than in the interests of the beneficiaries of the trust, corporate shareholders, or their clients.

Ideally it is a situation where private interest collides with that of the employer for example,

- i. Privately held business interests like staff having control and influence in companies doing business with the Authority or in the port.
- ii. Where an officer creates a procurement need that is in the interest of the supplier rather than the Authority

b) Outside employment

Where interest of one's job contradicts the other. For example, KPA employees privately engaged as a ship agent.

c) Family interest

This refers to situations where a spouse, child or other close relative is employed or applies for employment, in the Authority or applies for a tender for supply of goods and services in the Authority.

d) Gifts from customers /clients

Refers to receipt of gifts from customers and clients who while doing business with the Authority, deals with the employee making decisions as guided by the gift policy.

4.0 LEGAL FRAMEWORK ON CONFLICT OF INTEREST MANAGEMENT

This Policy should be read together with statutes which draws its power from the Constitution of Kenya 2010. The policy mirrors the following legal frameworks which shall be used together with the policy.

- a) The Constitution of Kenya 2010
- b) Anti-Corruption and Economic Crimes Act (2003)
- c) Public Officers Ethics Act (2003)
- d) Leadership and Integrity Act (2012)
- e) Ethics and Anti-Corruption Commission Act (2011)
- f) Public Procurement and Disposal Act (2015)
- g) The public service code of conduct in force
- h) Other Administrative tools and ethics guiding policies of the Authority.

5.0 POLICY GUIDELINES

This policy provides guidance of acceptable conduct by all employees and members of the Board, while transacting business for the Authority and to avoid conflict of interest in the course of discharging their duties.

5.1 POLICY PROVISIONS

This conflict of interest policy provides as follows.

- a) All employees and members of the board shall use best efforts to avoid being in a situation where the officer's personal interest conflict or appear to conflict with the officer's official duties.
- b) An employees and members of the board shall consistently conduct Authority's business without being influenced by considerations of personal advantage or gain.
- c) Employees shall not hold shares or have any other interest in a company, partnership, or a body directly or indirectly if the holding of those shares or having the interest would result in a conflict with his/her duties.
- d) Where an employee or a member of the board is present at a meeting, or other decision making proceedings, and an issue which is likely to result in a conflict of interest is to be discussed, the employee or a member of the board shall declare the interest at the beginning of the meeting or before the issue is deliberated upon and recuse themselves from the proceedings.
- e) A declaration of a conflict of interest under (d) above, shall be recorded in the minutes of that meeting.
- f) An employee or a member of the board is expected to identify, disclose potential conflicts of interest that may arise in the course of their duties and report to the supervisor, chair of any relevant committee and or the Head of Ethics and Integrity in the prescribed format in Appendix (ii) of this policy.
- g) Employees and the board of directors should ensure that any activity that is not work related or personal interest is kept separate from official position at the Authority and does not interfere with their service and working hours or influence decisions made while working at or for the Authority.

- h) An employee or a board member should not in their private capacity participate in a tender for supply of goods or services to the Authority.

- i) An employee or a member of the board shall not award or influence the award of a contract to:
 - i. Themselves
 - ii. Spouse/child /parents or siblings.
 - iii. A business associate or agent.
 - iv. A corporation, private company, partnership, or other body in which the officer has a substantial or controlling interest.

6.0 ROLES AND RESPONSIBILITIES

6.1 BOARD OF DIRECTORS

The Board plays an important role in providing general stewardship in ensuring mainstreaming of principles of good governance in the Authority, and in particular through approval of this policy for operationalization.

6.2 MANAGING DIRECTOR

- i. Provide leadership and support in management of COI among employees
- ii. Recommend the Conflict of interest policy to the board for approval
- iii. Direct on the appropriate actions to be taken by an employee whose declared COI is likely to impair the impartial discharge of his or her duties.

6.3 HEAD OF ETHICS AND INTEGRITY

- i. Develop and review conflict of interest policy in line with relevant statutes and regulations
- ii. Carryout employee awareness and sensitization on the provisions of this policy
- iii. Submit COI declaration data to statutory bodies as and when they fall due or requested.
- iv. Maintain a conflict of interest register in the prescribed form (appendix i) in which an employee shall register the interest, stating the nature and extent of the conflict at departmental, divisional, and corporate level as applicable in schedule of the Leadership and Integrity Act, 2012.
- v. Provide directions to staff on COI management through staff awareness and sensitization programs and circulars.
- vi. Enforce sections for Violations of COI policies and any other provisions

6.4 EMPLOYEES

- i. Adhere to the provisions of this policy
- ii. Comply with any directive issued by management for purposes of managing conflict of interest effect on service delivery and refrain from participating in any deliberations with respect to subject matter.
- iii. Always strive to avoid conflict of interest situations

7.0 FORMS FOR DECLARATIONS OF CONFLICT OF INTEREST

The declarations shall be in the form(s) provided for in the relevant schedule of the Leadership and Integrity Act, 2012 and on page 20 of this Policy.

8.0 BREACH OF THE POLICY PROVISIONS

Breach of the provisions of this policy will constitute a gross misconduct and disciplinary action will be taken against staff as per Human resource manual.

9.0 REGISTRABLE INTERESTS

This part is provided for information and guidance to staff on what is given as registrable interest as per section 9 of the Public Service code of conduct and Ethics 2016, 1st Schedule, as listed in **appendix (iii)** of this policy..

10.0 REVIEW

This policy will be reviewed after a period of 3 years or as and when need arise.

11.0 ADOPTION

This policy has been approved by Board of Directors policy for operationalization with effect from 2nd February 2021.

APPENDIX i-

REGISTER OF CONFLICT OF INTEREST

FORM E (r. 12(1))

REGISTER OF CONFLICT OF INTEREST

Serial No.	Name and address of the officer making the declaration	ID/PP No. of the officer making declaration	Registrable interest	Nature of Conflict	Date of Declaration	Name & signature of person making entry	Remarks or Directions issued	Date	Update of registered interests

APPENDIX ii

DECLARATION OF CONFLICT OF INTEREST FORM FORM D (r.11 (1))

(To be submitted in DUPLICATE to Appointing Authority)

Name of State Officer or Public officer: _____

Designation of the officer _____

Description of the Conflict of Interest

I, _____ the undersigned, holding the position of _____ at _____ ID No _____ being aware of the provisions of 46 (1) (d) and 46 (2) of the Leadership and Integrity Act, 2012 declare the above information to be true to the best of my knowledge.

Signature of the Officer _____

Date _____

Submitted to _____

Designation of the person submitted

to _____

Signature _____

Date _____

APPENDIX iii

List of Registrable interests

1. Directorships in public or private companies, whether or not remunerated directly or indirectly.
2. Remunerated employment, including office, trade, professional, or vocational, or in which the public officer has any pecuniary interest.
3. Securities (shares, bonds, debentures, or other similar holding) in a company, enterprise or undertaking the aggregate, nominal or market of a value which exceed the value prescribed by the public entity.
4. Contracts for supply of goods and services to the public entity. Offers of future employment.
5. Shareholdings in public or private companies amounting to a controlling interest.
6. Landholdings.
7. Gifts, benefits, and hospitality, including to a spouse, child, partner or business associate, or other material benefit of a value prescribed by the public entity from a company, organization or person within or outside Kenya which relates to the public office.
8. Pending civil claims against the public officer.
9. Pending criminal charges against the public officer.
10. Citizenship of another country



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