

THE FAIR COMPETITION COMMISSION ACT, 2003

(CAP.285)

CODE OF CONDUCT

(Made under section 67)

**CODE OF CONDUCT FOR MEMBERS AND
EMPLOYEES OF THE FAIR COMPETITION COMMISSION**

PART 1

STATEMENT OF INTENT

(1) By establishing this Code of Conduct, the Fair Competition Commission fulfills its legal obligation under the Act and demonstrates its commitment to serve the public. In accordance with its Vision and Mission Statement, the Commission is committed to carry out its mandate with honesty, integrity, accountability, impartiality and professionalism.

(2) This Code of Conduct is intended to ensure that all Members and Employees perform, and from the perspective of the public, are seen to perform, their official duties professionally, impartially and solely and consistently in the public interest. It elaborates both prescribed and proscribed standards of conduct and responsibility.

(3) Every Member and Employee shall have the general obligation to comply with all applicable laws, rules and regulations, both in letter and in spirit while discharging duties, performing functions or exercising powers conferred or vested in the Fair Competition Commission by such laws, rules or regulations.

PART 2

PRELIMINARY PROVISIONS

1. Citation

This Code may be cited as the Code of Conduct for Members and Employees of the Fair Competition Commission, 2010.

2. Application

This Code shall apply to Members and Employees of the Fair Competition Commission during, and in some part after their respective tenures of office. For avoidance of doubt upon the expiration of their respective tenures, each Member or Employee shall continue to observe a conduct that complies with provisions on separation from the Commission provided in this Code of Conduct.

3. Interpretation

In this Code, unless the context requires otherwise:

“Act” means the Fair Competition Act; Cap 285;

“business activity” means the purchase, sale or rental of goods, works, services or real estate, or any interests therein;

“Commission” means the Fair Competition Commission established under section 62 of the Act;

“conflict of interest” means a situation or a circumstance in which a member or employee, has a private or personal interest sufficient to appear to influence the objective and impartial exercise of his or her official duties.

“Director General” means the Director-General appointed under section 62(7) of the Act;

“Employee” means any person employed by the Commission, including the Director General, Divisional Directors, Departmental Heads, other officers and staff members, and consultants on temporary assignment or contract to

the Commission;

“immediate family” means all relatives and other persons residing in the same house hold as the employee;

“Member” means a member of the Commission;

“Minister” means the Minister responsible for the Commission;

“pecuniary interest” means direct or beneficial ownership of any of the

following financial interests: shares, securities, debt obligations, and proprietary or partnership interests; royalties, income, compensation or any other payments or any kind;

“person” means an individual a corporation, a partnership, a trust, an

unincorporated organization, a government or any agency political subdivision thereof;

“primary party of interest” means a person subject to the jurisdiction of the Commission or a person that realizes significant portion of its business activity from making transactions with, or furnishing goods or services to a person subject to the jurisdiction of the Commission;

“relative” means a spouse, parent and children of a member of the Commission or of employee;

“secondary party of interest” means a person other than a primary party of interest, materially affected, directly or indirectly, by a matter that is, or is expected to be, pending before the Commission;

“separation from the Commission” means termination of membership to the Commission by a member or termination by the Commission of an employee or vice versa.

PART 3

GENERAL STANDARDS

4. Internal matters

- (1) A relative of a Member or a relative of an Employee shall not be employed by the Commission save in a situation where the Commission has waived the prohibition upon determining that, in the case of an employee, neither employee would be in a position administratively or managerially subordinate to the other person.
- (2) Where an Employee becomes a relative of another Employee while both are employed by Commission, any of such Employee shall not be administratively or managerially subordinate to the other.

5. Professionalism

Members and Employees shall:

- (a) strive continually to improve their professional competence and their ability to serve the public interest;
- (b) offer professional service to all members of the public and treat all persons making information requests with dignity, respect and with the intent to provide helpful information;
- (c) conduct themselves and their official duties with fairness, objectivity and integrity;
- (d) perform their official duties in a way that enhances public confidence in the Commission;
- (e) not engage in any form of discrimination, bias or harassment either within or outside the Commission;
- (f) refrain from taking part in any public service duty or transaction where they have, or may appear to have, a conflict of interest;
- (g) discharge their duties and serve the public with political neutrality; and

(h) dress in respectable attire and observe office etiquette.

6. Service Quality Standards

Members and Employees shall deliver service that is timely, accessible, efficient, confidential and respectful of all persons involved.

7. Protection of Assets

The Members and Employees shall not misuse, for personal gain or otherwise, the assets of the Commission, including tangible assets such as equipment and machinery, systems, facilities, materials, resources as well as intangible assets such as proprietary information, relationships with primary or secondary party of interest and shall employ them for the purposes of conducting the business for which they are duly authorized.

8. Proscribed activity

No Member or Employee shall:

- (a) engage in fraudulent, wasteful, abusive or corrupt activities or practices;
- (b) use his or her position to obtain unwarranted privileges or personal benefits for which he or she would otherwise be ineligible;
- (c) solicit or accept, directly or indirectly, bribes from any person;
- (d) make any decision based upon any hope or expectation of future employment with any primary or secondary party of interest;
- (e) acquire any direct financial interest, in any primary or secondary party of interest; or
- (f) solicit, request, suggest or recommend, directly or indirectly, to any primary or secondary party of interest the commencement or continuation of a business activity with any person that is subject to jurisdiction of the Commission.

9. Reporting of Unethical Conducts

Members and Employees shall report suspected incidents of

illegal, unethical, or unprofessional conduct through the channels of communication described in this Code.

10. Channels of Communication

- (1) Members and Employees shall employ the following channels of communication when reporting incidents of illegal, unethical or unprofessional conduct as described in paragraph 9.
 - (a) where the incident involves two Members or an Employee and the Director General, communication shall be to the Chairman;
 - (b) where the incident involves a Member and an Employee, communication shall be to the Director General;
 - (c) where the incident involves a Member and the Chairman, communication shall be to the Minister;
 - (d) where the incident involves two Employees communication shall be to the Director General; and
 - (e) Employees shall communicate with their immediate supervisors or the Director General.
- (2) When considering communications related to unethical behavior, the Minister, the Chairman or the Director General as appropriate shall:
 - (a) not assume wrongdoing on the part of any person; and
 - (b) fairly and expeditiously address or investigate all matters brought to its attention.
- (3) Upon receiving the report in paragraph 9, the Minister, the Chairman or the Director General as appropriate shall-
 - (a) investigate the matter;
 - (b) afford an opportunity of being heard to any person

concerned; and

(c) advise the appointing authority to take appropriate action against such person.

(4) In the event that the Commission determines that a matter is more appropriate for resolution by another institution or agency, the Commission's referral to such other institution or agency together with the reason for such referral, shall be clearly communicated in a timely manner.

11. Outside Activities

Members and Employees are free to take part in any outside activity provided that such activity does not-

(a) interfere with the performance of their duties at the Commission;

(b) constitute a competitive advantage accruing to their position at the Commission; or

(c) negatively affect the carrying out of their duties at the Commission.

12. Separation from the Commission

(1) No Member or Employee, during a period of eighteen months after separating from the Commission, shall-

(a) become an Employee of, conduct a business activity with, or acquire a pecuniary interest in any primary party of interest that has or had any matter of, or for determination or review by the Commission within a period of three years before such Member or Employee separated from the Commission; or

(b) disclose any confidential information acquired during membership or employment with the Commission or use such information for personal gain.

(2) At no time after the separation from the Commission, a Member or Employee shall represent any person before the Commission on any matter on which such Member

or Employee-

- (a) participated in decision making;
- (b) worked;
- (c) advised a Member; or
- (d) supervised other members or employees who worked on such matter while serving in the Commission.

PART 4

CONFLICT OF INTEREST

13. Conflict of Interest

- (1) Conflicts of interest while serving as a Member or Employee of the Commission comprise, among others, the following matters:
 - (a) a financial interest in a primary party of interest or secondary party of interest;
 - (b) employment by a primary party of interest or secondary party of interest;
 - (c) the conduct of a business activity with a primary party of interest or secondary party of interest.
- (2) The following standards and prohibitions are hereby adopted:
 - (a) no Employee shall acquire any pecuniary interest that conflicts, or may conflict, with the performance of his or her duties at the Commission;
 - (b) every employee shall declare any conflict of interest regarding any matter which he or she is dealing with at the Commission;
 - (c) an employee who fails to declare a conflict of interest or who knowingly makes a false or misleading declaration regarding a material fact of a conflict of interest, shall be in breach of this Code.
- (3) In the event that an employee identifies a conflict of interest regarding any matter that is before or may come before the Commission, such employee shall disclose it and thereafter refrain from taking part in its consideration or determination.
- (4) Where an employee is required by this Code to report a matter, such employee shall submit a written report to his supervisor or to the Secretary of the Commission

who shall retain a permanent record of the report.

- (5) Upon receipt of the report under sub-paragraph (4), the supervisor or Secretary to the Commission shall refer the matter to the Director General for a resolution.
- (6) When a matter has been referred to the Director General for resolution pursuant to sub-paragraph (5), the Director General shall either-
 - (a) dispose of the matter; or
 - (b) refer the matter to the Commission for resolution where no resolution was reached.
- (7) In the event that the Director General, or upon his or her referral under sub-paragraph (6), the Commission finds that a matter requires remedial action, the Director General or the Commission (as the case may be) may require the employee:
 - (a) to divest the conflicting interest; or
 - (b) to assign those duties that are in conflict to another employee where appropriate, either temporarily or permanently.
- (8) In the event that an employee refuses or is unable to divest the interest identified in sub-paragraph (7), the Commission shall, after determining that no other remedial action will be consistent with the Act and the requirements of this Code, terminate such employee.

14. Register of conflicts of interest

- (1) The Commission shall establish a Register of conflicts of interest to be maintained by the Secretary of the Commission.
- (2) The Register of conflicts of interest shall be comprised of:
 - (a) declarations of conflicts of interest; and
 - (b) acceptances of gifts and hospitalities.

PART 5

CONFIDENTIAL INFORMATION

15. Security of Information

Members and Employees shall ensure the security of printed and electronic information in their possession.

16. Confidential information

(1) Confidential Information is any information in the Commission's possession that:

- (a) has been declared confidential by the Commission;
- (b) is technically or commercially sensitive and not already lawfully in the public domain;
- (c) the disclosure of which might adversely affect the competitive position of any person; or
- (d) is determined to be confidential under any applicable law.

(2) Members and Employees are bound by Section 76 of the Act in respect of confidential information.

(3) Any Member or Employee who discloses confidential information otherwise than authorized under the Act shall be in breach of this Code.

17. Prohibition

No member or employee shall take advantage of or personally benefit from information obtained in the course of his or her official duties and responsibilities that is not generally available to the public.

PART 6

GIFTS AND HOSPITALITY

18. Acceptance of Gifts and Hospitality

- (1) In order to avoid compromising the Commission's corporate values, Members and Employees shall exercise due care in accepting gift, hospitality or other benefit from any party of interest or from contractors or any supplier of any goods or services to the Commission.
- (2) On reaching a decision whether to accept a gift or hospitality the Members and Employees shall consider the following guidelines:
 - (a) event based hospitality that present networking opportunities for the Commission and which might inform or promote the work of the Commission is generally acceptable;
 - (b) work-related hospitality from any party of interest is acceptable where it can be clearly seen to be of value to the Commission's work; or
 - (c) hospitality that benefits the recipient personally should be avoided if it is difficult to justify as being of benefit to the Commission, or if there is a risk of perceived bias or malign comment.
- (3) Where a Member or Employee considers that it would, within the circumstances, be impolite to decline to accept a gift, hospitality or other benefit, that Member or Employee shall:
 - (a) in the case of an Employee other than the Director General, report the matter to the Director General; and
 - (b) in the case of a Member, report the matter to the Commission.

PART 7

PUBLIC INTERFACE

19. Conduct of Investigations

- (1) While discharging their respective duties the Employees shall conduct investigations in such a way that all matters are investigated fairly, honestly and appropriately.
- (2) No Employee shall obtain any information by way of deceit or trickery.
- (3) During the course of investigations, the Commission's officers or appointees shall seek only the amount of information required to make an informed decision regarding the matter in question.

20. Media Relations

- (1) The Commission shall communicate with the public on any issue relating to it through:
 - (a) the Chairman;
 - (b) the Director General; or
 - (c) any person duly authorized by the Director General.
- (2) Members and Employees shall not be held liable by the Commission in respect of any statement made to the media by member or employee, provided that such member or employee acted in good faith and within the scope of his or her duties.

21. Attendance at Conferences and Stakeholder Events

Any invitation to a Member or Employee to attend or speak at a conference or stakeholder event shall be communicated to the Director General who shall:

- (a) notify the respective Member about such attendance or speaking; and
- (b) give the authorization to the respective employee for such attendance or speaking.

Any attendance of, or speaking at any event without the

authorization required under this part shall constitute a breach of the Code.

PART 8

MISCELLANEOUS

22. Compensation on separation from the Commission

For the purposes of paragraph 12, a Member or Employee other than consultant on temporary assignment or contract to the Commission; shall be compensated, for the period of eighteen months, an amount of money to be determined by the Commission from time to time.

23. Annual Report of the Commission

The Annual Report of the Commission shall, *inter alia*, include a report on all instances of any conflict of interest on the part of any Member or Employee of the Commission.

24. Penalties for Violation of the Code

In the event any Member or Employee contravenes the Code and no specific punishment is stated herein, the Commission shall, after determining that no other remedial action is appropriate:

- (a) in respect of an Employee, terminate such Employee; and
- (b) in respect of a Member, require the Member to resign and where such Member refuses or fails to resign advise the appointing authority to terminate such Member.

25. Amendments

The provisions of this Code may be amended and modified by the Commission from time to time and all such amendments and modifications shall take effect from the date stated therein.