

## **CODE OF ETHICS FOR BOARD MEMBERS/EXECUTIVE OFFICERS OF PUBLIC BODIES (PBS)**

In accordance with Principle 19 of the Corporate Governance Framework for Public Bodies, each Board should observe the Code of Ethics developed by the Ministry of Finance & the Public Service as part of its Corporate Governance regime. However, each Board may adapt aspects of this Code where necessary, based on the needs of its particular operations.

### **A. MANAGING CONFLICT OF INTEREST**

#### **A1. Definition**

- a. A conflict of interest (COI) is deemed to be:
  - i. A situation in which:
    - a. the concerns or aims of two different parties are incompatible; or
    - b. A person is in a position to derive personal benefit from actions or decisions made in their official capacity.
  - ii. Something financial, familial or personal that could give rise to conflict/bias or the appearance of conflict/bias in their decision-making and by consequence, the work of the body.
- b. Accordingly, in respect of public bodies, COI involves a conflict between the public duty and private interests of board directors and public officials, in which the private-capacity interests of board members and public officials could improperly influence the performance of their official duties and responsibilities<sup>1</sup>. A COI can be actual, perceived or potential. Ideally, the aim is to be able to minimise the occurrence of actual or perceived conflicts of interest by identifying and managing them while they remain a potential conflict. The following are highlighted:
  - i. **Actual COI**: This is a direct conflict between the portfolio responsibilities and current private interests of board members and public officials.
  - ii. **Perceived COI**: This is an appearance that a director's or public official's private interests could improperly influence the performance of their duties, whether this is the case or not. The perception may create a risk for the organisation with regard to reputation or financial assets.
  - iii. **Potential COI**: This exists where a director or public official has private interests that could conflict with their public duties in the future.
  - iv. **Private Interest**: Those interests that can bring benefit or disadvantage to the director or public official or to those whom the director or public official may wish to benefit or disadvantage. Private interests can be pecuniary or non-pecuniary.
  - v. **Pecuniary/Financial Interest**: A material personal interest usually involving actual or potential financial gain or loss. These interests include owning property, owning shares, having a position in a company bidding for government work or receiving gifts such as concessions, discounts, gifts or hospitality.

---

<sup>1</sup> OECD Guidelines, 2003, para 10.

- vi. Non-Pecuniary Interests: Not having a financial component. This may include personal or familial relationships, sports, cultural or social activities having regard to any tendency toward favouring or prejudicial outcomes resulting from friendship, animosity or other personal involvement with people or groups.
- vii. Related Party: An immediate family member or an entity/business partner with which a Director or Executive Officer (EO) or his/her immediate family member is closely associated. An immediate family member is one's spouse, children, parents and siblings.
- viii. Public Official: For the purposes of this Circular, a public official is one who performs public functions or duties on behalf of the State, a government, or a government organisation, where the exercise of lawful power is involved.
- ix. Chief Executive Officer – (CEO, by whatever name called). The CEO is the senior executive officer responsible to the organisation's Board for ensuring that decisions of the Board are implemented and that the organisation functions effectively and efficiently.

## **A2. Disclosure**

- i. Each Director and CEO must disclose to the Board, any conflict or any appearance of a conflict of interest on his or her part.
- ii. Each Director and CEO shall have a continuing obligation to disclose promptly and fully, any actual, potential or perceived conflicts of interest of which he or she is aware;
- iii. Each Director and CEO shall complete and sign, at least on an annual basis, a Conflict of Interest Disclosure Statement (Appendix 1), fully and completely disclosing the material facts about any actual or potential COI of which he or she is aware;
- iv. Each Director or CEO will promptly notify the Board of Directors in writing:
  - a. if at any time following the submission of the Disclosure Statement, the Director or CEO becomes aware of any actual or potential conflicts of interest or
  - b. if the information provided becomes inaccurate or incomplete.
- i. Request for disclosure by directors, the CEO and invitees should be a part of the agenda of every Board and Committee meeting of the PB;
- v. Directors and CEOs with an interest should undertake the following:
  - a. Notify the Chairman immediately upon becoming aware of a possible conflict and provide details regarding the interest (including how it may conflict with board role).
  - b. When the matter is raised formally during a board/committee meeting, declare interest to the Board and be recused from any discussion related to the matter (unless clarification is required); and
  - c. Seek legal advice if necessary regarding how to handle the conflict;
- vi. The end result of the process of disclosure, discussion and consultation shall be either:
  - a. non-objection to certain relationships or transactions on the ground that, despite appearances, they are not harmful/pose a threat to the Public Body or
  - b. avoidance or termination if the board finds that they are harmful/pose a threat to the Public Body.

## **A3. Avoidance**

- i. Every director and CEO has a duty to avoid business, financial or other direct or indirect interests or relationships which conflict, could potentially conflict or is perceived as conflicting with the interests of the Public Body or which divides his or her loyalty to the Public Body.
- ii. Any activity which appears to present a conflict must be avoided or terminated unless, after such disclosure to the Board (in accordance with S.A2), it is determined that the activity is

not harmful to the Public Body/interested person or otherwise in accordance with the standards established for/by the public body.

- iii. An interested person is one who declared an interest (actual, perceived or potential – whether directly or indirectly) to the Board or was otherwise found to have an interest in a matter.
- iv. The PB should use this Code as a guide in developing guidelines for and educating employees below the level of the Chief Executive Officer.

#### ***A4. Determining the Type and Implication of a Conflict of Interest***

- i. After the interested person leaves the room, the Chairman of the Board/Committee should facilitate a discussion of, and a vote on the matter of whether an actual, perceived or potential COI exists. The interested person/s may be requested to answer questions or provide material factual information about the situation under consideration.
- ii. Board committees shall report all COI matters to the Board for further action as necessary
- iii. The Board (excluding the interested person/s) shall also examine whether there is: no COI; a COI that is not prohibited under this Circular or other applicable laws, regulations or rules; or a COI that is prohibited.

##### ***a. No COI***

If the Board/committee determines that no Conflict of Interest exists, it shall inform the interested person(s) involved of its determination and properly document its decision.

##### ***b. COI (Not Prohibited)***

- i. COI is not prohibited if it is not deemed to be detrimental to the integrity of the organisation or interested person/s. Proper protocols/processes are to be implemented to facilitate management of such. Policies should outline conflicts of interest not prohibited which may include:
  - 1. the directors/CEO having shareholdings in Companies with which the PB does business
  - 2. a situation where the organisation does business with an organisation where the related party of a director/CEO has decision making responsibilities
- ii. If the Board concludes that a COI (not prohibited) exists, the Board shall inform the interested person/s involved in the situation of its determination and take any other action it deems prudent to address the conflict. This includes exclusion of the interested person/s from deliberations and decision making on that matter;
- iii. Where a COI is not prohibited and involves a proposed Transaction between the public body and a Director/Executive Officer or Related Party, the Board shall gather and review appropriate data to determine whether the terms of the transaction are fair and reasonable and are in the best interest of the public body;
- iv. If after consideration of the comparability data and any other relevant factors (including, where appropriate, information on alternatives to the transaction), the Board/committee determines that, all factors being considered, the transaction is fair and reasonable and in the best interests of the public body, it may approve the transaction.
- v. In the event that the proposed transaction involves procurement of goods or services, the Government of Jamaica's Public Procurement Laws shall be followed.

c. *Prohibited Conflict of Interest*

These include matters which would impact, the integrity of the PB or interested person/s. If the Board determines that a prohibited COI exists or that a proposed transaction would result in a prohibited COI, the Board shall decide to (among other actions): (i) decline to enter into the proposed transaction, if applicable; (ii) discuss with the interested person/s how the conflict could be eliminated or (iii) recommend to the appointing authority the necessary course of action in respect of the membership of the interested person/s on the Board.

d. *Voting and Quorum*

The Board/Committee shall act on COI situations by affirmative vote of a majority of Members at a meeting at which a quorum is present. This is provided that the interested person/s with respect to the matter shall not be counted for purposes of determining whether a quorum is present, or for purposes of determining what constitutes a majority vote of Members in attendance. Matters include any proposed transaction between the public body and a Board Member or Related Party.

e. *Management Plan for Conflict of Interest*

Upon determination of the type and implication of a conflict (or even whether one exists), the Board could develop a Plan to manage, reduce or eliminate the conflict. The Board may well seek input from the interested person/s as necessary. The Plan should cover information on the conflict and expectations from the interested person/s. The Board should weigh the interests of the organisation, the individual, and the public when determining the most appropriate solution to resolve or manage the conflict of interest. Actions could include what the interested person/s must do or refrain from doing, retrospective cancellation of affected decisions and tainted contracts (subject to legal opinions), recommendations to the appointing authority for action (e.g. suspension or revocation of appointment).

f. *Violation of the COI Policy/Circular*

If the public body board has reason to believe that a Director or CEO has failed to disclose a COI or otherwise violated its COI Policy, it should inform the Director/Executive Officer of the basis for this belief and afford him or her an opportunity to explain the alleged failure or violation. If, after hearing the response of the interested person/s and making such further investigation as may be warranted in the circumstances, the Board determines that the Director/Executive Officer has in fact failed to disclose an actual potential or perceived COI or otherwise violated its Policy, it shall pursue appropriate disciplinary and corrective action, which may include recommending to the appointing authority the suspension or removal of the interested person/s from the Board.

g. *Communicating on COI*

- i. The perception that a conflict of interest is not being managed properly can be very damaging – regardless of how well it is in fact being managed. Accordingly, PBs should communicate commitment to their policies and procedures for managing conflicts of interest to all their stakeholders, including the general public.

- ii. The Corporate Secretary, as the central source of guidance on good corporate governance, should maintain a Register of Interest (Appendix 2) which should be available upon request for inspection in accordance with the ATI Act.
- iii. Information from the completed disclosure forms should be used to update the Register of Interest.
- iv. The Corporate Secretary should update the Register as necessary (but at least annually) to disclose the conflicts as they are declared.

The Conflict of Interest Register is a record/summary all disclosures of interest by directors, including declaration of “no interest”. The Register is expected to allow public bodies to monitor directors’ conflicts and whether correct statutory declarations have been made. The Register will also facilitate maintenance of a record of actions necessary.

h. Documentation of COI Decisions by the Board/Committee

- i. The minutes of the board and/or Committee shall contain:
  - 1. The names of the persons who disclosed or otherwise were found to have an interest in a COI matter, the nature of such interest and any action taken to determine whether a conflict of interest was present,
  - 2. The names of the persons who were present for discussions, the content of the discussion (including any alternatives to a proposed transaction or arrangement), and votes relating to the matter
  - 3. Board/committee’s decision regarding the conflict of interest.
  - 4. Discussions on matters of interest should be redacted from the related Board Minutes which are dispatched to the interested person/s. However, such person/s may be apprised of a decision related to the matter.

A5. Annual Statements on COI

- i. Each director and CEO shall annually sign a statement that affirms such person:
  - 1. Has received a copy of the conflict-of-interest policy that governs the public body;
  - 2. Has read and understands the policy; and
  - 3. Has agreed to comply with the policy.
  - 4. Has completed the Disclosure of Interest Form.

**B. CONDUCT OF BUSINESS AND FAIR DEALING**

**B1. No Director or Chief Executive Officer shall:**

- a) Compete with the public body by providing service to a competitor as an employee, officer, or director or in a similar capacity;
- b) Profit, or assist others to profit, from confidential information or business opportunities that are available because of service to the public body;
- c) Improperly influence or attempt to influence any business transaction between the public body and another entity in which a Director or Executive Officer has a direct or indirect financial interest (including shareholding) or acts as an employee, officer, or director in a similar capacity;
- d) Take unfair advantage of any customer, supplier, competitor, or other person through manipulation, concealment, misrepresentation of material facts or other unfair-dealing practice.
- e) Treat any stakeholder with disrespect, indignity, and discourtesy

## **B2. Gifts / Hospitality/ Personal Gains / Benefits**

- a) No Director or CEO should solicit or accept payments, loans, services or any form of compensation from employees as well as suppliers, customers, competitors or others seeking to do business with the Public Body. This does not apply where transactions are undertaken at arms-length.
- b) Directors and CEOs should not give or accept gifts or hospitality (in relation to the Public Body) that may conflict with the provisions of this Policy. For clarity, the following must occur in instances where applicable:
  - a. The gift or hospitality should not be given or accepted with the intention or expectation of influencing a party to obtain or retain business or a business advantage, or as a reward for the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits;
  - b. The gift or hospitality is customary to the industry or the culture of a foreign country;
  - c. The gift or hospitality should not violate any law or any internal policy of the public body;
  - d. Any gift or hospitality given by the entity (including the Board) is provided in the name of the Company and not in the name of the individual;
  - e. The gift or hospitality should not include stocks and bonds;
  - f. The gift or hospitality between the PB and another entity should not be monetary unless conforming to Social Responsibility standards.
  - g. The gift or hospitality is of a type/value and given or accepted at an appropriate time, taking into account the business relationship with the counterparty, any pending action expected of the counterparty and the reason for the gifts/hospitality;
  - h. A disinterested, reasonable third party would not likely infer that the gift or hospitality has affected or will affect the judgment of a Director or CEO; and
  - i. The gift or hospitality should be given or accepted openly and not secretly. Accordingly, an unrelated third party must have knowledge of the gift or hospitality.

The policy to be developed for staff below the level of the CEO must incorporate adequate monitoring arrangements with respect to the acceptance of gifts, hospitality, personal gains and benefits, particularly for vulnerable areas/divisions within the public body, (eg. procurement. Monitoring of the Board members and the CEO should be the responsibility of the Chairman or Board (preferably the Governance or Audit Committee).

## **B3. Compliance with Laws and Regulations**

- a) Each Director and Chief Executive Officer shall comply with all applicable laws and shall use all reasonable efforts to oversee compliance by employees, other Directors, and other Executive Officers with all applicable laws.

## **B4. Use of Information held in the Public Body and Disclosure of such Information**

- a) Directors and Chief Executive Officers shall maintain the confidentiality of any non-public information obtained in the performance of their duties on behalf of the Public Body, except when disclosure is authorized or legally mandated.

- b) The Protected Disclosures Act, Access to Information Act and any other relevant enactment shall be used as a guide on whether and how disclosures ought to be made and how such disclosures ought to be dealt with.

**B5. Use of Public Body Funds, Assets, and Information**

- a) Each Director and Executive Officer shall protect the Public Body's funds, assets and information and shall not use the Public Body funds, assets, or information to pursue personal opportunities or gain.
- b) No Public Body funds, assets or information shall be used for any unlawful purpose. No undisclosed or unrecorded fund or asset shall be established for any purpose.
- c) No false or artificial entries shall be made in the books and records of the Public Body for any reason, and no Director or Chief Executive Officer shall engage in any arrangement that results in such prohibited acts.

## CONFLICT OF INTEREST DISCLOSURE STATEMENT

This Conflict of Interest Disclosure Statement should be completed as required (but at least annually) by members of the Board of Public Bodies and the Chief Executive Officers (by whatever name called). The form may be adjusted to capture more but not less information.

I, \_\_\_\_\_, as

Director/<Chief Executive Officer> (underline the applicable title) of \_\_\_\_\_ (Public Body) have set out below my interests in accordance with the Organisation's Conflict of Interest Policy.

### Date of Appointment:

Category	<i>Please give details of the interest and whether it applies to yourself or, where appropriate, a member of your immediate family, connected persons or some other close personal connection.</i>
Current employment and any previous employment in which you continue to have a financial interest	
Appointments (voluntary or otherwise), e.g. trusteeships, directorships, local authority membership, tribunals, etc.	
Membership of any professional bodies, special interest groups or mutual support organisations.	
Investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests (whether local or international).	
Investments in listed companies, partnerships and other forms of business, major shareholdings and beneficial interests (whether local or international)	
Gifts of social amenities/hospitality offered to you by external bodies and whether this was declined or accepted in the last twelve months.	
Any contractual relationship with the company or its subsidiary.	
Any other interest not covered by the above which could give rise to a conflict of interest.	



I declare that I have disclosed to the best of my knowledge, material facts about any actual or potential COI of which I am aware and that the above information is complete and correct. I undertake to update as required (but at least annually) and give my consent for the information to be used for the purposes described in the conflicts of interest policy and for no other purpose.

*Signed:*

---

*Position:*

---

*Date:*

---

Ministry of Finance and the Public Service  
February 25, 2022

**SPECIMEN - CONFLICT OF INTEREST REGISTER**

<b>Name of Director</b>	<b>Interest</b>	<b>Name/Relationship of Persons to whom Interest Relates (If self please indicate "Director")</b>	<b>State if Interest Is Current and Necessary Actions</b>
<b>Ms Jane Doe</b>	Director of XYZ Limited which does business with the PB	Director	Current – conflict being managed
<b>Mr Pier Dole</b>	Major Shareholder and Director of Private Co X in which PB owns shares	Ms Mary Dole – Daughter	Current – conflict being managed
<b>Mrs Kim Pak</b>	Councillor	Director	Current -Director to submit Resignation
<b>Mr John Y</b>	None Declared		