

# **CORPORATE GOVERNANCE GUIDELINES AND CODE OF CONDUCT FOR THE TEA SECTOR IN KENYA**

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**2024**

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# **Proposed Corporate Governance Guidelines**

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The Company shall have an effective Board of Directors. The Board shall be comprised of qualified, dedicated Directors and shall take into account gender, competencies and other diversities of the factory, who are capable of exercising independent judgment on matters of strategy, performance, resources (including key appointments) and standards of business conduct.

Parameter	Guidelines
1.1 <b>Board Responsibility</b>	<ol style="list-style-type: none"><li>1. The Board of directors of the smallholder tea factories shall be responsible for the implementation of these guidelines. They shall oversee and coordinate all activities related to the execution of these guidelines.</li><li>2. A detailed timeline for the implementation of these guidelines shall be established and communicated by the Board of Directors. The timeline shall include key milestones, deliverables, and deadlines for each phase of the implementation process.</li><li>3. Regular monitoring and evaluation of the guideline's implementation shall be conducted to ensure compliance and effectiveness. This includes assessing progress, identifying any issues or bottlenecks, and implementing corrective actions where necessary.</li><li>4. Periodic reports on the implementation status, progress, and outcomes of the guideline shall be submitted to the Tea Board of Kenya. These reports shall include key metrics, achievements, challenges, and recommendations for improvement.</li></ol>
1.2 <b>Nomination &amp; Appointment of Directors</b>	<ol style="list-style-type: none"><li>1. The Board of Directors shall be responsible for developing and implementing comprehensive election guidelines to ensure a transparent and fair process for the nomination and appointment of directors. These guidelines shall outline the procedures and criteria for nomination of qualified candidates to serve in the Board. The election of the Directors of Smallholder Tea Factories shall be done with strict adherence to the Tea Act, and the Regulations made thereof.</li><li>2. There shall be a formal and transparent procedure for nomination of Board members and all persons offering themselves for appointment as directors should disclose any potential area of conflict that may undermine their position or service as director.</li><li>3. The tea factory shall create electoral areas in its catchments to ensure equitable representation of shareholders in board of the company;</li></ol>

<b>1.3</b>	<b>Establishment of an election committee</b>	<ol style="list-style-type: none"> <li>1. The election of directors shall be managed by a Committee in every tea factory to be known as Election Committee;</li> <li>2. The Committee shall comprise the following members: - <ol style="list-style-type: none"> <li>a. A representative from each of the electoral areas elected by tea buying Centre committee members. The refereed tea buying centre members shall comprise the Chairman, Treasurer and Secretary;</li> <li>b. The Company Secretaries of the tea factory shall be the Secretary of the election committee (ex-officio member);</li> <li>c. The Chief Officer in charge of Agriculture in the respective County or a representative appointed by the Chief Officer in writing (ex-officio member);</li> </ol> </li> <li>3. The members of the election committee shall appoint the Chairman of the election committee. Notwithstanding the provisions of No. 3, members in No. 2(b) and (c) shall not participate in the appointment of Chairman of Election Committee.</li> <li>4. The quorum of the conduct of business of the Election Committee shall be half of the members under (a) and the company secretary.</li> <li>5. In performance of its functions, the Election Committee shall regulate its own procedures.</li> </ol>
<b>1.4</b>	<b>Functions of the election committee</b>	<ol style="list-style-type: none"> <li>1. The functions of the committee include: - <ol style="list-style-type: none"> <li>a. Oversee the conduct of elections for directors of the tea factory company limited;</li> <li>b. Facilitate free and fair election;</li> <li>c. Create a conducive environment for carrying out the elections;</li> <li>d. Supervise the distribution of election materials;</li> <li>e. Review and approve the election schedule;</li> <li>f. Make recommendation on improvement of regulation and process;</li> </ol> </li> <li>2. The election committee shall use the election guidelines in conducting elections of directors.</li> </ol>

<b>1.5</b>	<b>Appointment process</b>	<ol style="list-style-type: none"> <li>1. Members are ultimately responsible for appointments to the Board and it is in their best interest to ensure that the Board is properly constituted. Information relating to those nominated for Board positions should be availed to Members in advance for decision making. The Company should ensure the use of a wide variety of communication channels so as to cater for all members of the factory.</li> <li>2. Board appointment procedures shall be transparent, clearly documented and approved by the Board.</li> <li>3. The appointment process should be well managed to ensure that a balanced mix of proficient individuals is attained and that each of those appointed is capable to add value and bring independent judgment to bear in the decision-making process.</li> <li>4. All persons offering themselves for appointment as directors must meet the minimal set criteria and shall disclose any potential areas of conflict that may undermine their position or service as director.</li> <li>5. Board members should receive formal letters of appointment setting out the main terms and conditions relative to their appointment. Such letters of the appointment shall be signed by such person as shall be directed by the Board.</li> </ol>
<b>1.6</b>	<b>Board Size &amp; Composition</b>	<ol style="list-style-type: none"> <li>1. A Smallholder Tea Factory shall have a maximum Board membership as prescribed in the Tea Act, 2020.</li> <li>2. The Board shall be composed of individuals with diverse backgrounds, expertise, and experiences, ensuring a broad range of skills and perspectives to effectively govern and oversee the company's affairs. The directors should possess the necessary qualifications, integrity, independence, and commitment to fulfil their fiduciary duties and responsibilities.</li> <li>3. No one gender shall comprise more than two-thirds of the Board.</li> <li>4. The Independent Directors should not be more than a third of the total number of Directors. Independence shall be determined based on objective criteria, taking into consideration any relationships that may impair a director's impartiality.</li> </ol>

	<ol style="list-style-type: none"> <li>5. The Board shall strive to maintain a balance of skills, knowledge, and expertise among its members, taking into account the strategic direction and needs of the company. The composition of the Board should reflect diversity to promote inclusivity and enhance decision-making.</li> <li>6. The Chairman of the Board shall be elected in accordance with the Articles of Association.</li> <li>7. The Company Secretary shall be an ex-officio member of the Board with no voting rights.</li> <li>8. The composition of the Board shall be periodically reviewed to assess its effectiveness and alignment with the company's evolving needs and best corporate governance practices. Any necessary adjustments or changes to the Board's composition shall be made in a thoughtful and transparent manner, with the ultimate goal of enhancing the Board's overall performance and the long-term success of the company.</li> </ol>
<b>1.7</b>	<b>Eligibility Criteria/ Qualifications</b> <ol style="list-style-type: none"> <li>1. A person shall not be qualified to be elected as a Director of a Smallholder Tea Factory unless the person has attained a minimum of O-level education qualification.</li> <li>2. A person shall not be qualified to be appointed or elected as a Director of a Smallholder Tea Factory unless the person has complied with Chapter Six of the Constitution of Kenya 2010.</li> <li>3. The Board and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the company and its business, to enable them discharge their respective duties and responsibilities effectively.</li> <li>4. Each member shall have a proven track record of integrity, ethics, and professionalism, and shall be in good standing with relevant regulatory bodies.</li> </ol>
<b>1.8</b>	<b>Board Succession &amp; Rotation</b> <p>The Board members to retire at the age of seventy years or has served for a two-term period of three years each whichever comes first.</p>
<b>1.9</b>	<b>Appointment of Independent Directors</b> <ol style="list-style-type: none"> <li>1. The nomination procedure of independent directors shall be undertaken by the election committee and appointed at the general meeting of the members. In performing this function, the election committee shall take due consideration in the requirement of gender rule, skills set, experience in Board and industry matters.</li> </ol>

	<ol style="list-style-type: none"> <li>2. Independent Directors shall be nominated through a competitive, transparent and formal process governed by the overriding principle of merit.</li> <li>3. The election committee shall ensure that independent directors do not have any relationships that may impair the director's ability to exercise independent judgment for the overall benefit of the company.</li> <li>4. Appointment of Independent Directors shall ensure that at least one Board member shall be a financial expert, or accounting or any other field of expertise the Board may require.</li> <li>5. An explanatory statement shall be attached to the notice of the meeting recommending the appointment of independent directors and shall include a statement by the election committee confirming that in their opinion the proposed individual is fit and proper for appointment in accordance with the Company's Articles of Association.</li> <li>6. An independent director shall serve for a term of up to 3 years and shall be eligible for re-election for a second and final term of up to 3 years.</li> <li>7. The appointment of an independent director shall be formalized by a letter of appointment which shall clearly indicate; the term of appointment, the remuneration as well as the directors' duties.</li> </ol>
<b>1.10</b>	<b>Roles and Functions of the Board of Directors</b> <ol style="list-style-type: none"> <li>1. The Board shall discharge both fiduciary and leadership functions.</li> <li>2. The Board shall - <ol style="list-style-type: none"> <li>a. Exercise their role collectively and not individually;</li> <li>b. Provide ethical leadership to the organization;</li> <li>c. Approve the annual calendar and work plan of all Board and Board Committee meetings of the Company at least one month before the beginning of the financial year;</li> <li>d. Ensure that a Code of Conduct is developed and adhered to by all Directors and the management of the Company;</li> <li>e. Develop, adopt and periodically review the Board Charter;</li> <li>f. Determine the company's mission, vision, purpose, core values and ensure implementation;</li> </ol> </li> </ol>

- g. Formulate and implement sound business strategies that are aligned to the Company's long-term goals and the legitimate expectations of its members and stakeholders;
- h. Develop, approve and review regularly all policies of the Company;
- i. Foster a corporate culture that promotes ethical practices and good corporate citizenship;
- j. Ensure that the Company is in compliance with the Constitution, all applicable laws, regulations, national, international standards as well as internal policies.
- k. Approve the Company organizational structure;
- l. Approve the annual budget and procurement plan for the company and ensure adherence;
- m. Ensure availability of adequate resources for the achievement of the Company's objectives;
- n. Approve financial statements, borrowing, major capital expenditures and investments and review corporate performance and strategies at least on a quarterly basis to ensure sustainability;
- o. Attend at least 75% of the meetings in any financial year and to effectively participate in the conduct of the business of the Board of Directors;
- p. Ensure that the Company provides efficient and profitable competitive services in line with sound tea practices, with the ultimate aim of maintaining a positive image within the Tea sub-sector;
- q. Respect, uphold and protect the rights of the members and employees;
- r. Ensure effective and timely communication with the members and other stakeholders;
- s. Monitor and periodically review the corporate governance practices;
- t. Prepare the company's annual report;
- u. Establish Board Committees with specific responsibilities which shall be incorporated in the Board charter;

		<ul style="list-style-type: none"> <li>v. Appointment of the management agent and Company Secretary; and</li> <li>w. Fulfil other such functions that are relevant to the business.</li> </ul>
<b>1.11</b>	<b>Role of the Chairperson</b>	<ul style="list-style-type: none"> <li>1. The Chairperson Shall -</li> <li>a. Provide leadership to the Board Members and lead the Board in oversight of Management;</li> <li>b. Ensure that the annual Calendar and Workplan of all Board and Board Committee meetings of the Company is adhered to by the directors;</li> <li>c. Ensure that the agenda for the meetings for the Board members contain all the relevant issues;</li> <li>d. Conduct meetings professionally and encourage full participation of every Director;</li> <li>e. Provide an opportunity for critical discussion of the issues, ensure the decisions made are sound and well-informed and allow room for dissenting views;</li> <li>f. Promote and protect the image of the Company;</li> <li>g. Ensure effective and timely communication of necessary information to the Board members;</li> <li>h.</li> <li>i. Lead the annual evaluation process for the Board members;</li> <li>j. Ensuring appropriate conduct of board meetings in accordance with the law;</li> <li>k. Ensure the adoption of an effective succession strategy for the Board members; and</li> <li>l. Ensure proper induction, training and continuous development of Board members.</li> </ul>
<b>1.12</b>	<b>Role of the Factory Manager</b>	<ul style="list-style-type: none"> <li>1. The Factory Manager shall -</li> <li>a. Oversee the day-to-day activities of the Company;</li> <li>b. Provide leadership to the employees and senior management;</li> <li>c. Ensure that the Board of Directors' decisions, policies and strategies are implemented;</li> </ul>

	<ul style="list-style-type: none"> <li>d. Develop and recommend to the Board the annual business plans for the Company;</li> <li>e. Design and maintain the necessary internal control systems required by the Company;</li> <li>f. Provide the Board members with regular and effective communication on matters relevant to the Company's operations through comprehensive Board papers and serve as the link between the Board and Management;</li> <li>g. Prepare and recommend to the Board the annual budget and procurement plan for the company;</li> <li>h. Recommend to the Board members competent officers to manage the operations of the company and ensure the Company has effective administrative structures, processes and systems;</li> <li>i. Ensure the Board has an effective management structure including appropriate succession plans for key positions;</li> </ul>
<b>1.13</b>	<p><b>Board of Directors Remuneration</b></p> <ul style="list-style-type: none"> <li>1. The Board shall set up an independent remuneration committee comprising of Independent and Non-Executive Directors who shall come up with a formal and transparent policy on the Board members (and co-opted non-Board members) remuneration which shall be approved by members in an Annual General Meeting.</li> <li>2. The Company shall develop a policy where the remuneration due to Directors shall be based upon the performance of Directors as reflected in the Company's turnover in the preceding financial year.</li> <li>3. The financial statements shall disclose the aggregate remuneration paid to every member of the Board.</li> <li>4. The Board remuneration policies and procedures shall be disclosed in the annual report.</li> </ul>
<b>1.14</b>	<p><b>Board Sitting Allowances and Expenditures</b></p> <ul style="list-style-type: none"> <li>1. The Board shall have quarterly meetings with a maximum of six (6) sittings in any financial year.</li> <li>2. Committees including the operations committee shall hold not more than one meeting per quarter per committee.</li> </ul>

		<p>3. The sitting allowance paid to Board members during sittings of the Board shall be proposed by the Board and approved by shareholders during the AGM and shall not be varied by enhancement in the subsisting financial year.</p>
<b>1.15</b>	<b>Liability of Board Directors</b>	<p>The Directors shall be jointly and severally responsible for the effective supervision of the affairs of the Company. However, Board members shall be held personally liable for any acts or omissions arising from their own negligence, default, or breach of duty or breach of trust.</p>
<b>1.16</b>	<b>Term Limits</b>	<p>The tenure of a Director is limited to two terms of up to three years each.</p>
<b>1.17</b>	<b>Termination of a Director</b>	<p>A person ceases to be a director if the person—</p> <ul style="list-style-type: none"> <li>a. ceases to be a director under the Companies Act, 2015 or the Insolvency Act, 2015, or is prohibited from being a director by law;</li> <li>b. declared not to be fit and proper under Section 39 of the Tea Act, 2020;</li> <li>c. Engages in unethical conduct including breach of the Tea Industry Code of Ethics and Conduct;</li> <li>d. becomes bankrupt or makes any arrangement or composition with the person's creditors generally;</li> <li>e. becomes incapable by reason of physical infinity or mental disorder of exercising his function as a director;</li> <li>f. Attains the age of 70 years;</li> <li>g. resigns the office of director by notice of the resignation;</li> <li>h. is elected or nominated to hold political office;</li> <li>i. is removed from office in accordance with the terms and conditions of his service contract;</li> <li>j. becomes an officer or agent of the factory any company having direct or indirect commercial or competing interest with the factory;</li> <li>k. is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six (6) months;</li> <li>l. dies;</li> </ul>

	<ul style="list-style-type: none"> <li>m. fails without reasonable cause and the consent of the board to attend three consecutive scheduled meetings of the board;</li> <li>n. for more than six (6) months has been absent without the directors' permission from directors' meetings held during that period; or</li> <li>o. is removed from the office of director by an ordinary resolution passed in accordance with Section 139 of the Companies Act, 2015.</li> </ul>
<b>1.18</b>	<p><b>Board Committees</b></p> <ul style="list-style-type: none"> <li>1. The Board shall establish up to four (4) Board committees to assist it in discharging its duties and responsibilities including but not limited to the following three (3) standing committees; <ul style="list-style-type: none"> <li>a. Audit, Risk and Compliance;</li> <li>b. Finance and Human Resource;</li> <li>c. Operations and Technical Services.</li> </ul> </li> <li>2. The board shall remain accountable and responsible for monitoring and oversight of its committees and external service providers.</li> <li>3. There shall be a formal procedure for certain functions of the board to be delegated, describing the extent of such delegation, to enable the board to properly discharge its duties and responsibilities and to effectively execute its decision-making process.</li> <li>4. The Board shall determine the terms of reference, life span, role, function and reporting procedures of the committees with clearly defined written scope of authority.</li> <li>5. As a general principle there shall be transparency and full disclosure from the board committee to the board, except where the committee has been mandated otherwise by the Board.</li> <li>6. Board committees shall be free to take independent professional advice as and when necessary, and to invite Management Agent to provide technical advice when needed.</li> <li>7. The Board may establish Ad-hoc committees to deal with other matters not contemplated by these guidelines.</li> <li>8. The committees shall be comprised of members with the necessary expertise required to effectively carry out the responsibilities of the respective committee.</li> </ul>

**1.19**

**Audit, Risk and  
Compliance  
committee**

9. Where required skills are not available at the Board in respect to any committee, the Board may co-opt non-Board members to a committee. Co-opted non-Board members shall not exceed one in any committee.
10. Save for the Ad hoc committees, the Chairperson shall not be a member of any other committee.
11. The Board of Directors shall appoint the Chairpersons of each committee.
12. The Board of Directors shall evaluate the committees annually to assess their performance, effectiveness and relevance.

1. The chairperson of the audit, risk and compliance committee shall be an independent and non-executive director and at least one of the committee members shall hold a professional qualification in audit or accounting and be in good standing with his or her respective professional body.
2. The Head of the Internal Audit function shall be the Secretary to this Committee.
3. The Board of Directors shall ensure that the audit, risk and compliance committee has adequate resources to discharge its duties.
4. The functions of the committee shall include -
  - a. Review the effectiveness of internal audit processes and make appropriate recommendations to the Board of Directors.
  - b. Review and approve the internal audit annual workplan.
  - c. Receive reports on the internal audit process directly from the internal auditor and review the results of the internal audit process and, where necessary, ensure that appropriate action is taken;
  - d. Recommend to the Board appointment or termination of the internal auditor;
  - e. Ensure that the internal audit function is independent of the activities of the Company and is performed with impartiality, proficiency and due professional care;
  - f. Nominate the external auditor for appointment by the members at the Annual General Meeting;

	<ul style="list-style-type: none"> <li>g. Recommend to the Board for approval the terms of engagement and remuneration for the external auditor;</li> <li>h. Meet with the external auditor at least once in a year to discuss audit findings and recommendations; and</li> <li>i. Review the performance of the external auditor and make recommendations to the Board of Directors.</li> <li>j. Ensure board compliance with company's charter, articles, and by laws and corporate governance guidelines.</li> <li>k. Monitor key business risks in order to safeguard shareholders' investments and the company's assets.</li> <li>l. Recommend to the Board approval and implementation of the risk management policy and risk management framework</li> <li>m. Evaluate the effectiveness of the internal controls and submit a written report to the Board of Directors.</li> </ul>
<b>1.20</b>	<p><b>Finance and Human Resource Committee</b></p> <p>The functions of the Finance and Human Resource committee shall include: -</p> <ul style="list-style-type: none"> <li>a. Review and recommend to the Board the overall business strategy of the company;</li> <li>b. Consider and recommend for approval by the Board the operational and administrative policies and procedures;</li> <li>c. Recommend borrowing and credit facilities to the Board;</li> <li>d. Review and recommend to the Board the Company organization structure, staff establishment and recruitment, performance management, formulation of staff policies, staff remuneration and compliance with existing government guidelines;</li> <li>e. Review and recommend remuneration packages of employees including bonus incentive schemes and increments;</li> <li>f. Set and recommend for approval performance targets, for the Management Agent and company's employees and end-year evaluation reports;</li> <li>g. Review performance of the Management Agent and company's employees and make recommendation to the Board;</li> <li>h. Consider management and financial reports and make recommendations to the Board;</li> </ul>

	<ul style="list-style-type: none"> <li>i. Consider and recommend for approval by the Board annual financial statements, budgets and procurement plans;</li> <li>j. Undertake oversight role relating to staff, finance and general management of the Board.</li> <li>k. Review the status reports on legal matters and make recommendations to the Board;</li> <li>l. Review the list of pre-qualified legal counsels for consideration and appointment by the Board;</li> </ul>
<b>1.21</b>	<p><b>Finance and Human Resource Committee</b></p> <p>The functions of the operations and technical service committee shall include: -</p> <ul style="list-style-type: none"> <li>a. Develop and recommend to the Board policies and strategies to guide the operations of the factory;</li> <li>b. Formulate quality improvement programs and management systems in the factory;</li> <li>c. Review reports on field and factory operations and make recommendations to the Board including but not limited to collection of green leaf, production, transportation, manufacture, processing and sale of tea;</li> <li>d. Review reports on management of tea growers and tea buying canters;</li> <li>e. Review reports on farmers' trainings, farmer's field school, baraza, field days and extension services;</li> <li>f. Review reports on recruitment of tea growers, procurement and distribution of farm inputs;</li> <li>g. Review and recommend to the Board the technical specifications for the proposed tea projects or factory expansion;</li> <li>h. Review and recommend to the Board the annual tea quality improvements programmes;</li> <li>i. Review and recommend to the Board the tea machineries and equipment and building structure for the company;</li> <li>j. Ensure proper functioning of the leaf buying centres, and that the condition of the tea buying centres that meet the required standards as provided for by the Tea Industry Code of Practice, green leaf supply agreements and any other regulations or guidelines;</li> </ul>

- k. Ensure payment are made to tea growers within thirty (30) days of receipt of the proceeds of the sale of tea in accordance with the agreed terms and conditions, and applicable law;
- l. Developing and approving policies to guide the operations of the factory;
- m. Monitor and evaluate the performance of the Management Agent at agreed intervals;
- n. Review and recommend to the Board the manufacturing technologies, product diversifications and value addition projects;
- o. Consider and recommend to the Board market reports based on the broker quality assessment and valuation results;
- p. Consider and recommend to the Board for approval the key performance indicators of the factory;
- q. Recommend to the Board the adoption and certification to management system standards;
- r. Perform any other functions or duties that is proper and lawful for the Board to perform.

## 1.22

### **Board of Directors meetings**

- 1. Meetings shall be held at least quarterly in order to effectively monitor the Company's performance.
- 2. Board members may attend the meetings in person, through video conferencing or such other method as may be permitted by the Board Charter.
- 3. Board papers should be provided to the Board at least 14 days before the meeting.
- 4. The meeting shall be deemed to have proper quorum if 60% of the Board members are present.
- 5. The Chairperson shall chair the meetings, and in their absence, the Vice Chairperson shall preside over the meeting.
- 6. The Company Secretary shall attend all meetings, and in the absence the company shall request the Institute of Certified Secretaries (ICS) to appoint a company secretary to sit in for the meeting provided that the company secretary appointed by the Institute shall not serve for a period exceeding two months.

<p><b>1.23</b></p>	<p><b>Board of Directors meetings</b></p>	<ol style="list-style-type: none"> <li>1. Evaluation of the Board's performance, its committees, individual Directors, the Chairperson, and the Company Secretary shall be undertaken on an annual basis.</li> <li>2. The Board shall determine and agree on its annual evaluation toolkit and engage an independent governance specialist to develop the parameters to be included in the evaluation toolkit.</li> <li>3. The Board shall conduct annual self-evaluation using the approved evaluation tool-kit and submit the evaluation report with recommendations for improvement to the Tea Board of Kenya and subsequently share with the members.</li> <li>4. The Tea Board of Kenya shall review the Board's annual report and where necessary undertake its own evaluation and give feedback to the factory Boards.</li> <li>5. Following an evaluation exercise, the Board shall discuss the evaluation results and implement any recommendations. Development needs of the Board members shall be determined from the results of the evaluation exercise.</li> <li>6. The results of the annual Board's evaluation shall be disclosed in the annual report of the Company.</li> </ol>
<p><b>1.24</b></p>	<p><b>Board of Directors Induction and Continuous Skills Development</b></p>	<ol style="list-style-type: none"> <li>1. The Board shall set up a formal induction program to be administered to new Board members.</li> <li>2. The Chairperson shall regularly review each Board member's development needs. Thereafter, the Chairperson shall ensure that the relevant competence up-skilling programs are made available to its members.</li> <li>3. Board members shall be required to secure at least twelve hours of Board development per year on areas of governance from an accredited body.</li> <li>4. The Board is required to submit to the Tea Board of Kenya a report on the continuous professional development programmes in which the board members participated in together with the Board member's annual evaluation reports.</li> </ol>

<b>1.24</b>	<b>Board of Directors Induction and Continuous Skills Development</b>	<ol style="list-style-type: none"> <li>1. The Board shall set up a formal induction program to be administered to new Board members.</li> <li>2. The Chairperson shall regularly review each Board member's development needs. Thereafter, the Chairperson shall ensure that the relevant competence up-skilling programs are made available to its members.</li> <li>3. Board members shall be required to secure at least twelve hours of Board development per year on areas of governance from an accredited body.</li> <li>4. The Board is required to submit to the Tea Board of Kenya a report on the continuous professional development programmes in which the board members participated in together with the Board member's annual evaluation reports.</li> </ol>
<b>1.25</b>	<b>Multiple Directorship</b>	<ol style="list-style-type: none"> <li>1. A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.</li> <li>2. Board members shall not hold similar positions at any one time in more than one (1) company within the definition of these guidelines.</li> <li>3. For the avoidance of doubt, a Board member of a Company shall not be a director in a Management Agent and/or a company related to the Management Agent.</li> <li>4. The Chairperson shall not hold such position in any other company within the definition of these guidelines, in order to allow him/her to effectively run the affairs of the Company.</li> </ol>
<b>1.26</b>	<b>Governance Audit</b>	<ol style="list-style-type: none"> <li>1. The Board of Directors shall ensure that the Company undergoes a comprehensive governance audit at least annually to evaluate whether the company is in compliance with sound governance practices.</li> <li>2. The governance audit shall be done by a competent and recognized professional accredited for that purpose by the Institute of Certified Secretaries (ICSPK) or any other institute accredited for such services.</li> <li>3. A governance audit report shall be submitted to the Tea Board of Kenya detailing the level of compliance.</li> <li>4. The governance audit shall among other areas cover the company's governance practices in the following parameters:-</li> </ol>

	<ul style="list-style-type: none"> <li>a. leadership and strategic management;</li> <li>b. transparency and disclosure;</li> <li>c. compliance with laws and regulations;</li> <li>d. communication with stakeholders;</li> <li>e. board independence and governance;</li> <li>f. board systems and procedures;</li> <li>g. consistent shareholder and stakeholders' value enhancement; and</li> <li>h. corporate social responsibility and investment</li> </ul>
<b>1.27</b>	<p><b>Company Secretary</b></p> <ol style="list-style-type: none"> <li>1. The Company Secretary shall not be a member of the Board of Directors.</li> <li>2. The Company Secretary shall be a member of the Institute of Certified Secretaries (ICS) Kenya or similar recognized institutes in good standing.</li> <li>3. The Company Secretary shall provide guidance to the Board members on matters of corporate governance.</li> <li>4. The Company Secretary shall ensure the timely preparation and circulation of the Board and Committee minutes and other relevant papers.</li> <li>5. The Company Secretary shall assist the Board members in carrying out induction of new Board members and the annual evaluation exercise.</li> <li>6. The Company Secretary shall coordinate the governance audit process.</li> <li>7. The Company Secretary shall have custody of the company's seal and shall account to the Board for its use and maintain a record of its use.</li> <li>8. The Company Secretary shall develop and maintain the register of the Board members' conflicts of interest.</li> <li>9. The Company Secretary shall facilitate prompt and effective communication between the company and its members.</li> <li>10. The Company Secretary shall not offer secretarial services to a company engaged as a management agent by a tea factory.</li> </ol>

		<p>11. The Company Secretary shall assess and ensure compliance with Kenya's Companies Act, 2015 including preparing and ensuring timely filing of statutory returns with the Registrar of Companies and other relevant bodies where applicable;</p> <p>12. The Company Secretary shall work with management, the Board and its Committees to prepare annual calendar of meetings, work plans and ensure the implementation;</p> <p>13. The Company Secretary shall organize, and convene scheduled board meetings including preparation of the agenda in consultation with the Board Chairman or with instruction from any other director.</p>
<b>1.28</b>	<b>Company Records</b>	<p>1. The Company records shall include records of resolutions and meetings, company bylaws, the minutes of all members and director meetings, as well as the member register.</p> <p>2. The Company Secretary shall be the custodian of the Company Records and shall ensure the records are held in a single, central place or electronically kept where they can be accessed with ease.</p>

## Part 2 | Shareholders

Shareholders are individuals or entities who own shares in a company and have their ownership interest in the organization. They play a crucial role in corporate governance and have specific rights that help protect their investments. Shareholders provide the necessary capital to a company in exchange for ownership shares. This ownership gives them the right to participate in key decisions and influence the direction of the company. The importance of shareholder rights lies in ensuring a balance of power between company management and those who provide the capital. By safeguarding shareholders' interests and providing avenues for

participation and redress, these rights promote accountability, transparency, and long-term value creation within corporations. Therefore, the ability of organizations to raise the funds they require to expand, innovate, diversify, and successfully compete is largely influenced by investor protection and shareholder rights. If the legal and governance framework does not provide such protection, investors may be reluctant to invest unless they become the controlling shareholders. It is critical that the governance framework ensures the equitable treatment of all shareholders, including the minority.

Parameter	Guidelines
2.1 <b>Rights of Shareholders</b>	<p>All shareholders have a right to :-</p> <ul style="list-style-type: none"><li>a. Receive timely and comprehensive information from the Board of Directors and management on the company's performance through the distribution of financial statements, annual audited reports and accounts, as a matter of best practice;</li><li>b. Timely and adequate communication of all relevant information through the use of modern communication techniques including but not limited to, e-mails, videoconferencing, SMS, and company websites, to enable them to make sound decisions</li><li>c. Receive information, including Notice, in respect to an AGM 21 calendar days prior and to participate and vote at the Annual General Meetings, including in absentia and at any other shareholder meetings;</li><li>d. Receive dividends, and other rights for bonus shares, script dividend or rights issue, as applicable and in the proportion of its shareholding in the company;</li><li>e. Have their complaints resolved in a timely and fair manner, through a formal, transparent and effective shareholder dispute resolution mechanism;</li><li>f. A secure method of transfer and registration of ownership of their shares; and</li><li>g. Be informed by the Board of Directors and management of their rights and obligations.</li></ul>

- h. A Company shall ensure its financial statements, annual audited reports and accounts are published on its website as soon as they are available and a copy of the same is provided to a shareholder on request.
- i. Convey or transfer shares according to national standards
- j. Receive the annual reports and audited reports every year.
- k. Participate and vote in annual general/ shareholder meetings, provided only the shareholders who hold shares shall vote.
- l. Appoint their representatives to the Board of Directors according to the eligibility criteria.
- m. To re-plough money generated as revenue into the tea sector in lieu of dividends pay out.
- n. Dismiss directors due to non-performance or other activity sanctioned by law.
- o. To ask questions of the Board and to place items on the agenda at general meetings, subject to reasonable limitations.
- p. Be able to vote in person or in absentia, and equal effect shall be given to votes whether cast in person or in absentia.
- q. Have a board of directors that ensures that the company is properly managed and for the attainment of lawful objectives.

## 2.2

### Duties of Shareholders

The shareholders shall :-

- a. Appoint the Board of Directors through a formal, documented and transparent process;
- b. Monitor the performance of the Board of Directors and senior management;
- c. Attend and participate in the Annual General Meeting (AGM) and all other shareholder meetings;
- d. Approve the remuneration package for individual Directors;
- e. Approve the financial statements, distribution of profits, and all material transactions;
- f. Appoint an external auditor to review and report on the company's financial performance;

- g. Dismiss directors based on poor and/or non-performance of director duties and or material breach of these regulations or other laws;
- h. Ensure that through the stakeholder participation procedure only competent and reliable persons who can add value to the company are elected or appointed to the Board of Directors;
- i. Ensure that competent proxies are appointed for general meeting attendance;
- j. Ensure that the Board of Directors is constantly held accountable and responsible for the efficient and effective governance of the Company;
- k. Change the composition of a Board of Directors that does not perform in accordance with the mandate of the Company.

## Part 3 | Stakeholder Relations

Stakeholder relations refer to the management and interaction between an organization and its stakeholders. Building and maintaining positive stakeholder relations is crucial for the success and sustainability of any organization. Effective stakeholder relations involve understanding the needs, expectations, and concerns of different stakeholders and finding ways to address them in a mutually beneficial manner. Effective stakeholder relations further involve proactive engagement, open communication, and a genuine commitment

to understanding and addressing stakeholder needs. By managing relationships with stakeholders effectively, organizations can foster trust, build goodwill, and create a positive impact on their stakeholders and society at large. It is therefore key that The Corporate Governance framework should recognize the rights of stakeholders and encourage active cooperation between companies and stakeholders in creating wealth, and sustainability of financially sound enterprises.

	<b>Parameter</b>	<b>Guidelines</b>
<b>3.1</b>	<b>Stakeholder Relations Management</b>	<ul style="list-style-type: none"> <li>1. The Board of Directors shall carry out stakeholder mapping to identify all of its stakeholders, and areas of interaction with such stakeholders.</li> <li>2. The Board of Directors shall develop and implement strategies and policies to effectively manage stakeholder relations.</li> <li>3. The Board of Directors shall take into account stakeholder' interests and legitimate expectations when making decisions for the company.</li> </ul>

	<ol style="list-style-type: none"> <li>4. The Board of Directors shall provide the stakeholders with relevant information having regard for the best interests of the company in determining what information is to be shared.</li> <li>5. The Board of Directors shall develop and implement a whistleblowing policy that would encourage stakeholders to bring out information helpful in enforcing good corporate governance practices.</li> </ol>
<b>3.2</b>	<b>Relationship with Governments</b> <ol style="list-style-type: none"> <li>1. The Board of Directors shall take reasonable steps to manage its relationship with the national and county governments.</li> <li>2. The nature of the Company's engagements with the national and county governments should be disclosed in the annual report.</li> <li>3. The Board of Directors shall ensure that the stakeholder' strategies and policies are compliant with Government directives, National Policies and National Development Goals.</li> </ol>
<b>3.3</b>	<b>Relationship with the Community</b> <ol style="list-style-type: none"> <li>1. Tea companies shall actively engage with the local communities in which they operate, fostering positive relationships and contributing to their well-being.</li> <li>2. The Board shall demonstrate social responsibility by investing in community development projects and initiatives that address local needs, such as education, healthcare, infrastructure, and environmental conservation.</li> <li>3. The Board shall actively seek input and collaborate with community stakeholders, including residents, local leaders, NGOs, and other relevant organizations, to understand their concerns, priorities, and aspirations. This engagement should be ongoing and transparent.</li> <li>4. The Board shall strive to provide fair and equitable employment opportunities for community members, promoting diversity, inclusivity, and non-discrimination in their hiring and promotion practices.</li> </ol>
<b>3.4</b>	<b>Relationship with Tea Producers</b> <ol style="list-style-type: none"> <li>1. The Board shall maintain open and honest communication channels with tea producers, ensuring that relevant information is shared promptly. Regular dialogue will be encouraged to discuss challenges, opportunities, and improvement strategies for the mutual benefit of both parties.</li> <li>2. The Board shall establish fair pricing structures that take into account the cost of production, quality, and market conditions. Payment terms shall be discussed and agreed</li> </ol>

		<p>upon in advance, ensuring timely and consistent payments to tea producers.</p> <p>3. The Companies and its Board shall work closely with tea producers to maintain and improve the quality of the tea products. Joint efforts shall be made to ensure adherence to agreed-upon quality standards, including regular quality control checks, feedback mechanisms, and continuous improvement initiatives.</p>
<b>3.5</b>	<b>Relationship with research institutions</b>	<ol style="list-style-type: none"> <li>1. The tea industry recognizes the importance of scientific research and innovation in advancing the tea industry. It aims to foster strong and mutually beneficial relationships with reputable research institutions.</li> <li>2. The Board shall seek to collaborate with research institutions to enhance its understanding of tea production, processing, health benefits, and sustainability practices. Collaboration opportunities may include joint research projects, sharing of scientific data and knowledge, and participation in conferences, seminars, and workshops.</li> <li>3. The tea industry is committed to upholding the highest standards of transparency and ethical conduct in its interactions with research institutions. All collaborations with research institutions shall be based on principles of integrity, honesty, and respect for academic and scientific norms.</li> <li>4. The Board shall ensure that any research conducted or supported by it adheres to applicable ethical guidelines, regulatory requirements, and industry best practices.</li> </ol>
<b>3.6</b>	<b>Relationship with the Media</b>	<ol style="list-style-type: none"> <li>1. The tea industry recognizes the importance of maintaining a transparent and ethical relationship with the media. All interactions with the media shall be conducted with honesty, integrity, and respect for journalistic principles.</li> <li>2. The Board shall appoint a designated spokesperson or communications team to handle media inquiries and coordinate media engagements. The spokesperson or communications team shall ensure that all information provided to the media is accurate, consistent, and aligns with the company's values and brand image.</li> <li>3. The company will proactively engage with the media to share relevant information, updates, and initiatives, ensuring transparency while adhering to legal and regulatory requirements.</li> <li>4. Any financial or sponsorship arrangements with media outlets or journalists should be conducted in a transparent manner, complying with applicable laws and regulations.</li> </ol>

**3.7**

**Dispute Resolution**

1. The Board of Directors shall develop a formal, transparent and effective dispute resolution policy to ensure that disputes with and among stakeholders are resolved in a cost effective, expeditious and efficient manner.
2. The Board of Directors shall take reasonable steps to encourage stakeholders to resolve their disputes through Alternative Dispute Resolution mechanisms.
3. In the event of any dispute arising out of or relating to these Guidelines or any breach thereof, the parties involved shall make every effort to resolve the dispute amicably through good faith negotiations and discussions. If the dispute is not settled within Seven (7) days, the matter can be referred to mediation or arbitration by either party.
4. The parties agree to first attempt to resolve the dispute through mediation. The mediator shall be selected by mutual agreement of the parties, and the costs of mediation shall be borne equally by the parties unless otherwise agreed. The mediation process shall be conducted in accordance with the rules and procedures of a recognized mediation organization.
5. If mediation is unsuccessful or if either party refuses to participate in mediation, the dispute shall be finally settled by arbitration. A single arbitrator is to be appointed by agreement between the parties hereto or in default of any such agreement within Fourteen (14) days of the notification of such dispute by either party to the other party then, upon application by either party to the Chairperson for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the Republic of Kenya ("the Institute") who shall appoint an arbitrator.
6. Such Arbitration shall take place in Nairobi and every award made under this clause shall be subject to and in accordance with the provisions of the Arbitration Act 1995 (Act No.4 of 1995) or any other statutory modification or re-enactment thereof or such other Act or Acts for the time being in force in Kenya in relation to arbitration and the Rules of Arbitration of the Institute;
  - a. To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the parties; and
  - b. Any Arbitration proceeding shall take place in Nairobi.

	<b>Parameter</b>	<b>Guidelines</b>
<b>4.1</b>	<b>Company Mission, Vision, Purpose, and Core Values</b>	The Board of Directors shall include in the annual report, a statement on the company's mission, vision, purpose and core values and how these influences corporate behaviour.
<b>4.2</b>	<b>Report on Governance Structures</b>	<ol style="list-style-type: none"><li>1. The annual report shall include the governance structure of the company including the composition and size of the Board of the Directors, the committees, management and their mandate.</li><li>2. The annual report shall also provide the details of the Directors including their names, qualifications, date of appointments, whether they are Independent, Executive or Non-Executive directors, and additional material information.</li></ol>
<b>4.3</b>	<b>Report on Board of Directors Remuneration Package and Evaluation</b>	<ol style="list-style-type: none"><li>1. The annual report shall include the evaluation results of the Board of Directors as a whole, its Committees, individual Directors, the Chairperson, the Chief Executive Officer and the Company Secretary.</li><li>2. The financial statements shall disclose the aggregate remuneration paid to the members of the Board both individually and collectively</li></ol>
<b>4.4</b>	<b>Financial Reporting</b>	<p>The Board of Directors should disclose the management discussion and analysis. This is a narrative which sets out:</p> <ol style="list-style-type: none"><li>a. management's assessment of the factors that affected the company's financial condition and results of operation over the period covered by the financial statements; and</li><li>b. known trends that are reasonably likely to have a material effect on the Company's financial condition and results of operations in the future.</li><li>c. The Board of Directors shall also disclose if the Company has complied with national and international financial reporting standards</li></ol>
<b>4.5</b>	<b>Procurement Reporting</b>	The Board of Directors shall disclose the Company's policy on procurement and the company's contracts in terms of value in the financial year under review.

<b>4.6</b>	<b>Compliance</b>	<p>The Board of Directors shall disclose :-</p> <ol style="list-style-type: none"> <li>that the Company undertook a legal and compliance audit as required;</li> <li>the level of compliance with applicable laws, regulations, national, international and ethical standards as well as internal policies; and</li> <li>any material departures from required compliance, the causes of non-compliance and the measures to address the non-compliance</li> </ol>
<b>4.7</b>	<b>Governance Audit Reporting</b>	<p>The Board of Directors shall disclose :-</p> <ol style="list-style-type: none"> <li>that the Company undertook a governance audit as required;</li> <li>the level of compliance with sound governance practices; and</li> <li>any material departures from required compliance, the causes of non-compliance and the measures to address the non-compliance</li> </ol>
<b>4.8</b>	<b>Report on key stakeholder groups</b>	<p>The Board of Directors shall disclose :-</p> <ol style="list-style-type: none"> <li>The key stakeholders who may have an influence on the company's performance and the extent of their shareholding; and</li> <li>The nature of its interactions with the key stakeholders.</li> </ol>
<b>4.9</b>	<b>Report on code of ethics and conduct and whistle-blower policy</b>	<ol style="list-style-type: none"> <li>All the members of the Company including the Board, employees and shareholders shall maintain high ethical standards and shall at all times ensure they conduct themselves ethically, transparently and accountably and follow the industry code of conduct.</li> <li>All the members of the Company shall uphold the values of honesty, integrity in relation to the Company.</li> <li>All the members of the Company shall respect applicable laws, regulations, codes and industry standards while upholding human dignity and diversity.</li> <li>The Board shall ensure the Company is sustainably and in the best interest of all stakeholders.</li> </ol>

# Part 5

## Accountability, Risk Management And Internal Controls

	Parameter	Guidelines
5.1	<b>Financial and Business Reporting</b>	<ol style="list-style-type: none"><li>1. The Board of Directors shall ensure that the books of account and the annual report are prepared on a timely basis.</li><li>2. The Board of Directors shall disclose in the annual report its duty to prepare the report and accounts, and there shall be a statement by the external auditor about their reporting duties.</li><li>3. The Board of Directors shall ensure that the financial statements are accurate.</li><li>4. The Board of Directors shall ensure that the auditor conducts an annual audit of the company as required by law in order to verify the financial position of the company.</li><li>5. The audit shall be conducted by a competent and external auditor who is a member of the Institute of Certified Public Accountants of Kenya (ICPAK).</li><li>6. The Board of Directors shall establish a formal and transparent process for the appointment of an external auditor at each Annual General Meeting.</li><li>7. The Board of Directors shall take reasonable steps towards the introduction of integrated reporting.</li></ol>
5.2	<b>Procurement and Disposal Process</b>	<ol style="list-style-type: none"><li>1. The Board of Directors shall establish a procurement function in the Company.</li><li>2. The Board of Directors shall formulate and implement a procurement policy that promotes transparency, sustainability, and high ethical standards.</li></ol>

		<ol style="list-style-type: none"> <li>3. The Board of Directors shall approve and periodically review a procurement plan which should be aligned with the annual budget.</li> </ol>
<b>5.3</b>	<b>Risk Management</b>	<ol style="list-style-type: none"> <li>1. The Board of Directors shall establish a risk management function in the Company to monitor key business risks in order to safeguard shareholders' investments and the company's assets.</li> <li>2. The Board of Directors shall approve and implement the risk management policy and risk management framework.</li> <li>3. The Board of Directors shall regularly review the effectiveness of the risk management policy and risk management framework.</li> <li>4. The Board shall ensure that the committee responsible for risk management has adequate resources to discharge its duties.</li> </ol>
<b>5.4</b>	<b>Internal Controls</b>	<ol style="list-style-type: none"> <li>1. The Board of Directors shall include its responsibility for internal controls in the Board Charter.</li> <li>2. The Board shall delegate to the management the responsibility of designing, implementing and monitoring effectiveness of internal control systems.</li> <li>3. The internal audit function and the external auditor shall conduct an evaluation on the effectiveness of the internal controls and submit a written report to the Board of Directors.</li> <li>4. The Board of Directors shall ensure that weaknesses in the internal controls are rectified.</li> </ol>
<b>5.5</b>	<b>Corporate Social Responsibility</b>	<ol style="list-style-type: none"> <li>1. The Company shall develop a Corporate Social Responsibility Policy which shall provide the manner in which the Company shall manage the social, environmental and economic effects of its operations responsibly and in line with public and stakeholder expectations.</li> <li>2. The Company shall look for opportunities to improve the environment and contribute to the wellbeing of the communities in which it operates and shall identify causes beneficial to the community which it shall support financially and materially.</li> </ol>

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<b>5.6</b>	<b>Offences and Penalties</b>	<ol style="list-style-type: none"><li>1. The offences and relevant penalties for breach of Director duties as provided for in the Companies Act 2015 shall in as far as possible be applicable to these Guidelines.</li><li>2. The penalties provided for offences in the Tea Act shall be applicable to these Guidelines.</li></ol>
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# Proposed Code of Conduct

## Contents:

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**Part One:** Preliminary

**Part Two:** Requirements

**Part Three:** Remedial Measures, Resolution, Enforcement & Administrative Sanctions

**Part Four:** Review

## **1.1. Objectives of the Code**

This Code is intended to set out the standards of ethical behaviour and conduct required from Directors in smallholder tea factories as they carry out their responsibilities. The Code anticipates the ethical challenges that Directors may face and provides a useful guide on how to address those issues. The specific objectives of the Code are to:-

- i. Define guidelines for acceptable conduct and set expectations for members of the smallholder tea factories and establish what behaviour is regarded as appropriate and acceptable, assisting in fostering a supportive and respectful community.
- ii. Prevent misconduct and illegal behaviour by listing actions that are strictly prohibited, such as discrimination, harassment, fraud, or any other illegal activity and encouraging a secure environment by identifying these boundaries in unambiguous terms.
- iii. Safeguard the interests and welfare of all parties connected to the smallholder tea factories by encompassing areas such as data protection, confidentiality, and resource management in a responsible manner.
- iv. Align the roles and responsibilities of Directors in the management of smallholder tea factories.
- v. Aid in creating a supportive organizational culture for the smallholder tea factories by encouraging people to conduct themselves with respect and professionalism.
- vi. Aid in preserving trust and credibility within the sector and society by emphasizing ethical standards and exhorting people to behave honourably, honestly, and fairly in their interactions with others.

## **1.2. Citation**

This Code may be cited as the Code of Conduct for the Smallholder Tea Factories;

## **1.3. Interpretation**

Terms used in the Code are as defined in the Tea Act (No. 23 of 2020). Other terms used shall be taken to have the meaning assigned to them hereunder :-

**“Act”** means the Tea Act 2020;

**“Board of Directors”** means the Directors of a smallholder tea factory.

**“Board Charter”** means a document that describes the specific responsibilities of the Directors in the governance of the company;

**“Code”** means the Code of Conduct for Smallholder Tea Factories;

**“Company”** means a smallholder tea factory limited company;

<b>“Conflict of interest”</b>	means a situation that has the potential to directly or indirectly undermine the objectivity of a person because of an actual or a possible clash of interests between an individual’s personal interests and their professional interests or public interests, and which has the potential of adversely affecting their impartial judgement and professional obligations;
<b>“Corporate governance”</b>	is a system of rules, policies, procedures, practices and structures that control how a company’s Board of directors and management oversee the operations of a company, with the aim of enhancing business prosperity, maximizing the wealth of shareholders while taking account of the interests of other stakeholders in the tea sub-sector;
<b>“Smallholder”</b>	means a Tea Factory Limited Company within the meaning of the Tea Act, 2020.
<b>“Tea value chain”</b>	means a series of activities that create value in tea from growing, harvesting, manufacturing, processing, packaging, labelling, branding, distribution, and tea products for sale and consumption with the participation of all stakeholders.

#### **1.4. Application**

- a. This Code applies to the smallholder tea factory Board of Directors of all companies as they carry out their responsibilities.
- b. Non- adherence of the requirements of this Code shall result in disciplinary action being taken against the defaulter(s).

## **Part 2 | Requirements**

### **2.1. Basic Standard of Conduct**

Board of Directors shall at all times act to and in the best interest of the company and carry out their duties in accordance with the highest standards of ethical conduct. They shall abide by the provisions of the Anti-Corruption and Economic Crimes Act (No. 3 of 2003) and the Public Officer Ethics Act (No.4 of 2003) to ensure adherence to all the obligations and responsibilities stipulated therein.

### **2.2. Fiduciary Duty of Care**

Board of directors shall at all times make decisions in the best interest of the company, in good faith and in a reasonably prudent manner. The directors shall at all times exercise care, skill and diligence in discharging their mandate towards the company.

### **2.3. Transparency**

All duties and obligations shall be carried out in a manner that upholds transparency in service delivery for purposes of accountability.

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## **2.4. Integrity**

- a. Directors shall act with integrity in all official activities by upholding the highest standards of honesty and openness. The directors shall ensure that all company documents and reports contain complete and accurate information. Where a member suspects wrongdoing by another Director or employee, then they shall raise their concerns to the rest of the Board of directors.
- b. Directors shall not belong to any political or social associations or engage in activities which may call into question the integrity or impartiality of the Board of Directors.

## **2.5. Independent Judgement**

Board of directors shall acquaint themselves with the business of the company, form opinions and make decisions based on accurate information and data in order to promote the success of the company. They shall undertake to preserve independence of analysis, judgement, decision and action and to resist any pressure, direct or indirect, whether by fellow directors, suppliers or any third party in the course of undertaking their duties.

## **2.6. Conflict of Interest**

- a. The Board of directors shall avoid all real or apparent conflict between their private interests and those of the company. Where there is such conflict, the following procedure shall be followed;
  - i. The director(s) shall disclose to the Board the circumstances creating or likely to create the conflict of interest which shall be recorded in the Conflict-of-Interest Register.
  - ii. Each Board in the smallholder tea factory shall develop and maintain a register of conflicts of interest for purposes of recording the extent of conflict of interest, if any.
  - iii. The conflicted director will then be required to abstain from partaking in the decision-making process of that particular item.
  - iv. Where necessary, the director may be required to recuse himself/herself when the matter is being tabled.
- b. Other measures that the boards is required to take in order to avoid conflict of interest includes;
  - i. Ensure all relationships with relevant stakeholders are handled in a professional and impartial manner.
  - ii. Restrain from utilizing the factory's property, whether directly or indirectly, for non-official purposes.
  - iii. Ensure proper management of coexisting outside appointments and proper resolution of resulting conflicts in the public's interest.
  - iv. Give details of any contract(s) with external parties which may pose an apparent or probable conflict of interest in relation to one's directorship in the company

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## **2.7. Misuse of Position**

- a. Directors must not use the institution's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Directors and their relatives must also not use their connection with the institution to borrow from or become indebted to customers or prospective customers. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.
- b. Directors must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to extend any favour to stakeholders in the conduct of the business of the institution to which they are entrusted either jointly or individually.
- c. Directors shall not use the institution's facilities and influence for speculating whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and/or prosecution.
- d. A director shall not directly or indirectly use or allow use of any of the company's property for anything other than officially approved activities.
- e. The directors shall be individually and collectively effective and efficient in the administration of the company's policies to ensure proper resource management.

## **2.8. Integrity of Records and Transactions**

- a. The Directors shall cause to be kept complete and accurate accounting records.
- b. Directors should never make entries or allow entries to be made for any account, record or document of the institution that are false and would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions.
- c. All records and computer files or programmes of the institution, including personnel files, financial statements and customer information must be accessed and used only for management purposes for which they were originally intended.

## **2.9. Gifts**

- a. Directors should not accept gifts, favours, employment, work or any other benefits that may have a real, apparent or potential influence on their judgement.
- b. The Board shall develop and maintain a Gift register. A director who receives a gift which exceeds Kenya Shillings Twenty Thousand in value shall declare, record the same in the gift register and surrender the gift to the Board.

## **2.10. Confidentiality and Privacy**

- a. Confidentiality of relations and dealings between the institution and its stakeholders is paramount in maintaining the company's reputation. Thus, Directors must take precaution to protect the confidentiality of customer information and transactions.
- b. Directors shall not divulge any confidential information that is communicated to them in the course of their duties as directors unless authorized to do so by the Board of Directors.

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- c. No Director shall during or upon and after cessation of appointment with the company (except in the proper course of his duty and or with the company's written consent) disclose any secrets, copyright material, or any correspondence, accounts of the company or its customers.
- d. No director of the company shall in any way use confidential information so obtained for financial gain.
- e. Business and financial information about any stakeholder may be used or made available to third parties only with prior written consent of the customer, or when disclosure is required by law.
- f. Matters discussed during board meetings shall remain private unless the Board of directors decide otherwise.

## **2.11. Discrimination**

- a. A director shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- b. A director has a duty to report any instances of discrimination to the rest of the directors.

## **2.12. Impartiality**

- a. A director shall at all times act with impartiality and objectivity.
- b. A director shall not engage in any activities that impair or could be seen to impair their ability to perform their duties in an objective or impartial manner.
- c. A director shall ensure his/her personal relationships, bias or favouritism do not influence his/her decision making or provision of services.

## **2.13. Preservation of Independence**

A director shall undertake to preserve independence of analysis, judgement, decision and action and to resist any pressure, direct or indirect, whether by fellow Directors, stakeholders or more generally, any third party, in the course of undertaking his/her duties.

## **2.14. Workplace Harassment**

- a. A director shall treat other members, management, and staff with courtesy and respect.
- b. A director shall avoid actions or behaviours that are or could be viewed as harassment including sexual harassment, physical abuse or verbal abuse.
- c. A director shall avoid behaviours that although do not constitute harassment, may still create an atmosphere of hostility and intimidation.

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## **2.15. Provide Direction to the Company**

Director(s) shall individually and collectively take part in providing the right direction by ensuring that a sound business strategy is in place, and is understood by each of the directors, the management and employees of the company.

## **2.16. Attendance of Meetings**

Director (s) shall devote such time as is required to prepare in advance, attend and participate in meetings of the Board and committees where they are appointed as members, so as to contribute to the effective governance of the company.

## **2.17. Zero Tolerance of Corruption**

- a. The directors shall not engage in any form of corruption.
- b. Board members shall comply with all statutes, laws and governing policies that relate to corruption.
- c. Where a director discovers any form of corruption or corrupt activity, or any impropriety at the factory, then the director shall immediately report the matter to the Board and if the Board of directors fail to take any action then the director who discovered a corrupt activity should report the matter to the relevant authorities.

## **2.18. Social and Environmental Responsibility**

- a. Directors shall take all reasonable steps to have knowledge of the company's stakeholders and have their best interests at heart in order to fully address their needs and to achieve the company's objectives.
- b. Directors shall ensure that they participate, when called upon, in social welfare activities aimed at bringing about sustainable development to the smallholder tea Sub-Sector.
- c. Directors shall implement company policies that have a positive impact on the environment.

## **2.19. Non-Interference with the Daily Operations of the Company**

The Board of Directors shall not interfere with the day-to-day operations of the Company which shall be left entirely to management.

## **2.20. Compliance with Statutory Requirements and Relevant Regulations**

- a. Directors shall individually and collectively take all reasonable steps to familiarize themselves with all applicable laws, regulations, national, international and ethical standards as well as internal company policies and ensure strict compliance of the same.
- b. Directors shall participate in the development and implementation of systems, rules and procedures for the Board.

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## **2.21. Duty to Inform the Board of Legal Proceedings**

A Director shall notify the rest of the Board members of any summons or other legal issues which may involve them and the company in litigation, charges of fraud, corruption or other matters that may be to the prejudice of the company and bring the company into disrepute and/or loss.

## **2.22. Team Work**

Directors shall collaborate with one another to achieve the company's mission and vision in all undertakings and shall at all times be guided by the board charter, and other governing instruments of the company in carrying out their duties and responsibilities.

## **2.23. Workplace Communication**

- a. The Directors shall have clear communication channels to voice out their opinions.
- b. Directors shall ensure that any communication with employees shall be made through management.
- c. A Director shall not communicate with the public unless the same is authorized by the Board, and the communication shall be made in simple language and avoid ambiguity, obscurity and unnecessary use of complicated jargons.
- d. Official social networks, pages and handles shall not at any time be engaged for personal gain or use.

## **2.24. Dress Code**

Directors shall ensure that they dress in a decent and appropriate manner that honours their positions as Directors.

## **2.25. Relations with Interest Groups**

Directors shall not, knowingly, enter into, or continue any business relationship with any interest group(s) with the knowledge that such relationship prejudices or has the potential of prejudicing their integrity and reputation while carrying out official duties.

## **2.26. Whistle-Blowers' Protection**

- a. Any person who has reason to believe that a director of the company has not acted in accordance with this Code, should bring the matter to the directors, relevant committee or the Tea Board of Kenya.
- b. The directors shall ensure that the information will be handled confidentially and the identity of the source shall not be revealed.
- c. The directors shall ensure that the source will receive due protection throughout the investigation process.

## **2.27. Adherence to the Terms of Reference of the Board Charter**

In addition to the governing laws and statutes, directors shall at all times be guided by the Terms of Reference of the Board charter, and any other decisions of the Board made from time to time, in carrying out their duties and responsibilities as directors.

# **Part 3 | Remedial Measures, Resolution, Enforcement and Administrative Sanctions**

## **3.1. Remedial Measures**

- a. A director of a company that contravenes any of the provisions of this code shall be subject to corrective measures and administrative sanctions set out in this Code.
- b. When a Director is assessed and found to be unfit and not proper to hold office; -
  - i. the directors of the company shall suspend the affected director(s);
  - ii. File a report with Tea Board of Kenya forthwith detailing the rationale behind such decision;
  - iii. Notify members of the company forthwith of the board of directors' decision;
  - iv. Directors shall make a report to the members with recommendations during the general meeting of the company.
  - v. A director who has contravened the provisions of this code, shall indemnify the company against any loss arising in respect of the relevant sections of this Code.
- c. When a director contravenes any of the provisions of this Code or is not in compliance with these guidelines then: -
  - i. The company shall be liable to indemnify itself against any loss arising in respect of the relevant sections of this Code.
  - ii. The Tea Board of Kenya may in the case of violation of this Code recommend the removal of such a director from the Board of Directors of the company.

## **3.2. Dispute Resolution**

- a. Directors shall resolve their disputes in a fair and amicable manner.
- b. Directors shall consider alternative dispute resolution mechanisms such as dialogue, negotiations, mediation, or arbitration.
- c. Directors may also seek advice and support from other appropriate oversight bodies.

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### **3.3. Enforcement of this Code of Conduct**

- a. Upon recruitment or appointment into the Company, directors shall sign and commit to abide by the provisions of the Code.
- b. Breach of this Code amounts to misconduct for which the culpable person shall be subjected to disciplinary proceedings.
- c. Any person may lodge a complaint against any director who has breached the Code to the Company through the stipulated channels or relevant Agency. The complaint must be recorded and the Agency will authorize its officers to make an inquiry into the complaint on its behalf to determine the merits of the complaint and give its feedback on whether the officer has contravened the Code. Based on the feedback of the investigation the Company will take appropriate action including referring the matter for civil or criminal proceeding.
- d. Any person who has lodged a complaint against a director shall be accorded a hearing and is entitled to be informed of any action taken or to be taken in respect to the complaint.

### **3.4. Reporting Violations**

- a. Any individual who believes a violation of this Code of Conduct has occurred has the right and responsibility to immediately report the violation to the appropriate authority.
- b. All reports must contain pertinent information, such as the type of violation, the parties involved, and any accessible supporting paperwork or evidence.

### **3.5. Investigation and Resolution Process**

- a. The relevant authority must initiate an investigation as soon as it receives information of a probable violation.
- b. To the degree permitted by law, the inquiry must be carried out impartially, fairly, and with regard for the privacy and confidentiality of all parties.
- c. The relevant authority may conduct witness interviews, examine pertinent records, and engage in any other necessary actions to acquire information throughout the inquiry.
- d. Taking into account the complexity and importance of the claimed violation, the inquiry must be finished within a reasonable timeline.
- e. Based on the evidence, the relevant authority must decide whether a violation of the Code occurred after the inquiry is complete.

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### **3.6. Protection of the Whistle Blower**

- a. The Tea industry prohibits any form of victimization against individuals who report possible Code violations in good faith or assist with related investigations.
- b. Anyone who believes they have been the victim of reprisal for filing a report or taking part in an investigation should notify the appropriate authority at once.
- c. Victimization concerns shall be reviewed immediately and completely, and appropriate steps will be taken to address them.

### **3.7. Annual Disclosure**

All directors shall issue an annual declaration confirming compliance with this code. The directors report to members of the company shall carry a statement to this effect.

## **Part 4 | Review**

### **4.1. Review of the Code**

This Code of Conduct shall be reviewed by the Tea Board of Kenya on a periodic basis as may be deemed necessary in order to accommodate emerging industry issues.

## CODE OF CONDUCT PLEDGE BY DIRECTORS

I agree and commit to the requirements of the Code of Conduct for smallholder tea factories, which forms part of my appointment as a Director to this company. I have read and understood this Code of Conduct and agree to abide by its provisions.

I understand that any breach of its provisions will render me liable to appropriate disciplinary action.

.....  
**Full Name**

.....  
**Signature**

.....  
**Position**

.....  
**Date**

.....  
**Witness Names**

.....  
**Signature**

## **ACKNOWLEDGEMENT AND PROMISE BY FACTORY STAFF**

I, Mr./Mrs./Ms./Dr/Prof .....  
.....

Staff No..... acknowledge that I have received, carefully read and understood the Code of Conduct. I do promise to live and abide by it in letter and spirit and support its implementation at all times.

Signed .....  
.....

Date .....  
.....

Supervisors Name .....  
.....

**(FORM A)**

**DECLARATION OF CONFLICT OF INTEREST**

**Part A – Declaration (to be completed by declaring staff)**

To: (Approving Authority)

I would like to report the following **real/apparent\*** conflict of interest situation arising during the discharge of my official duties:

*Person/companies with whom /which I have official dealings and/or personal interest*

- 1.
- 2.
- 3.

*Brief description of my duties which involve the persons/companies mentioned above and these are the areas of real/apparent conflict of interest*

- 1.
- 2.
- 3.

Date..... Name and signature of declaring staff.....

..... Title/Department.....

**Part B – Acknowledgment (to be completed by approving authority)**

To: (Declaring Staff)

The information contained in your declaration for ..... is noted. It has been decided that:

You should refrain from performing or getting involved in performing the work as described in Part A, which may give rise to the conflict of interest.

You should continue to handle the work as described in Part A, provided that there is no change in the information declared above.

Other conditions (please specify).....

Date..... Name of approving authority.....

..... Title /Department.....

**\*Please delete as appropriate**

**2024**

**CORPORATE GOVERNANCE  
GUIDELINES AND CODE  
OF CONDUCT FOR THE TEA  
SECTOR IN KENYA**

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