



Guidelines for Appointment of Council of Governors Representatives to Boards, Task Forces and Committees



COUNCIL OF GOVERNORS

Contents

1.	Introduction	4
1.1	Background	4
1.2	Objective	4
1.3	Scope and Application	4
1.4	Review	5
2.	Duties and Responsibilities of Representatives	6
2.1	Categorisation of Representatives	6
2.2	Fiduciary Responsibilities	6
3.	Qualifying Principles	7
3.1	Express Requirements in legislations – Disqualifications	7
3.2	County public officers and COG Secretarial Staff	7
3.3	Limiting multiple memberships	8
3.4	Remuneration and Reimbursements	8
4.	Appointment Process	9
4.1	Key Roles and Responsibilities	9
4.2	Appointment principles	9
4.3	COG’s databases and succession management	10
4.4	Generic role descriptions and position profile	10
4.5	Appointment process	10
4.5.1	Identifying a vacancy	10
4.5.2	Developing a timeline of the agreed procedure	11
4.6	Developing a tailored role description	11
4.6.1	Legislative requirements	11
4.6.2	Consultation on the role description	12
4.7	Identifying candidates	13
4.8	Framework for disclosing interests	13
4.9	Short-listing candidates	13
4.9.1	Outcome of serving representatives evaluation	14
4.9.2	Suitability checks	14
4.10	Interviewing and selection	15
4.10.1	Selection committee	15
4.10.2	Consultation	15
4.11	Appointment	15
4.11.1	Formal action	15
4.11.2	Induction	16

4.11.3	Periodic Engagement	16
4.11.4	Reappointment	16
4.11.5	Disqualification	16
5.	Implementation and Conclusion	18
5.1	Implementation	18
5.2	Conclusion	18
6.	Appendices	19

Foreword

Acknowledgement

Definitions

- Board
- Advisory Board
- Task Force
- Technical Working Group

1. Introduction

1.1 Background

The Council of Governors (CoG) is established under section 19 of the Intergovernmental Relations Act (IGRA) and comprises the forty-seven (47) County Governors. The CoG is a platform for, among others: a) consultation amongst County Governments; b) sharing of information on the performance of the Counties in the execution of their functions with the objective of learning and promoting best practices and where necessary, initiating preventive or corrective action; c) considering matters of common interest to County Governments; d) dispute resolution between Counties; and e) facilitating capacity building for Governors. The CoG plays a facilitative and coordinating role for County Governments.

To enable coordinated and efficient delivery of its statutory mandate under Section 20 of the IGRA, the CoG has established leadership structures comprising an Executive team made up of the Chairperson, Vice-chairperson, and Whip; as well as Committees, comprising Governors, with specific terms of reference in line with the mandate. The CoG has a technical arm (the secretariat) that facilitates and coordinate implementation of the CoG statutory mandate; the implementation of the decisions of the Council; and the activities of the Committees.

In the delivery of its mandate and pursuit of successful implementation of devolved governance system as well as effective intergovernmental relations, the CoG is expected to appoint representatives to various structures including boards of government agencies, task forces, technical working groups and committees. Such representative positions arise from new policies, new legislations, regulations, executive orders, coordination framework for addressing emerging issues, resolutions made at intergovernmental forum.

1.2 Objective

The overarching and complementary objectives of these guidelines for appointment of COG representatives to boards, task forces and committees are to:

- ❖ Increase access and widen the pool from which potential COG representatives to state boards, taskforces and committees.
- ❖ Strengthen delivery of COG mandate and devolution by enhancing the calibre and quality of appointments.
- ❖ Secure a high degree of transparency in the selection of nominees for appointment by COG.
- ❖ Strengthen COG's contribution in state agencies and thus delivery of state agencies goals and objectives

1.3 Scope and Application

These Guidelines outline the processes and principles for appointing and managing representatives of the CoG in boards of national government agencies, intergovernmental task forces and committees. The guidelines may also apply to appointments regardless of whether the COG is undertaking the recruitment process.

Positions under these guidelines include the following: a) membership in boards of agencies, authorities, committees and councils established by or under legislation, executive orders by President or Cabinet Secretaries b) membership on behalf of counties in task forces established to undertake specific public functions c) membership on behalf of counties in inter agency coordination committees and technical working groups

These Guidelines do not apply to recruitment of public sector staff and to representatives of individual county governments in entities. The guidelines are also not intended to substitute charters and guidelines governing the entire boards, task forces and committees, for which the representatives of the COG are members, but rather to guide the COG in making such appointments and ensuring that the members provide feedback to the CoG. Although certain representation positions may be exempted from these guidelines, the representatives may be required to complete specific forms included in these guidelines to the satisfaction of the CoG. All in all, appointment of representatives will observe guidelines and principles set out in the Constitution of Kenya, 2010; Principles and Values of Public Service Act particularly with respect to merit based selection process, completion of probity checks, declaration of private interests and diversity and inclusion criteria.

Where these guidelines are inconsistent with legislative requirements or specifications, legislative requirements or specifications will take precedence over the guidelines. The COG is responsible for implementation of these Guidelines.

1.4 Review

These guidelines will be reviewed every two years upon commencement, to assess whether they have led to strengthened calibre and quality of representation of COG in state agencies; ensured open and transparent processes. The review will also assess the workload implications for COG and County government representatives in state boards, task forces and committees.

Any queries regarding these guidelines should be directed to info@cog.go.ke

2. Duties and Responsibilities of Representatives

2.1 Categorisation of Representatives

Representation in various entities is classified into one of the four categories elaborated in the table that follow. The classification determines the approval processes. Some appointments and nominations require Full Council Approval while others will require approval at COG Committee level. The COG will continuously review the classification to ensure that it fits for purpose.

Classification of representation positions

Categorisation	Representation type	Description
	I Boards of Directors or Management in entities of national significance as determined by the COG	<ul style="list-style-type: none"> ❖ Include Semi-Autonomous State Agencies, State Authorities, State Commissions established under legislation, including but not limited to, State Corporations Act, Specific Legislations establishing entities ❖ Management boards of entities undertaking one or more functions or providing a strategically important service to several counties .
	II Significant Advisory Bodies	<ul style="list-style-type: none"> ❖ Advisory Committees and boards advising government on strategic matters or matters of significance to all counties ❖ Quasi-judicial bodies/tribunals where there is no other framework governing appointment ❖ Government bodies undertaking significant statutory functions, developing policies, strategies and guidelines in a broad and important area of operation, and/or providing specialist advice to a Cabinet Secretary
	III Advisory committees	<ul style="list-style-type: none"> ❖ Scientific, technical and legal advisory bodies. ❖ Disciplinary boards and boards of appeal ❖ regulatory and licensing bodies. ❖ Sectoral advisory boards and consultative committees on specific issues confined to a portfolio or several counties
	IV Task forces and ad-hoc expert panels, multiagency Technical Working Groups and Inter agency Coordination Committees	<ul style="list-style-type: none"> ❖ Task forces required to submit a comprehensive report within a specified timeframe. ❖ Ad-hoc expert panels established for limited time periods to undertake a specific (often technical) task. ❖ Inter-agency coordination committees on specific sectoral issues ❖ Multi agency Technical Working Groups(TWGs) and Committees

2.2 Fiduciary Responsibilities

The COG is expected to exercise its role of appointing the representatives to the expected entities. The authority of COG in the entities where it has representation will vary based on level of ownership and control, the instruments assigning fiduciary duties, principles of corporate governance as articulated in Mwongozo Code, mandate and goals of the entities; legislative and policy provisions on the appointments and termination of the representation. Close collaboration is required between the COG and the entities in defining the areas of cooperation, managing the

relationships at intergovernmental level, reporting, and ensuring alignment with the COG directives and positions, county government policies and goals.

The Mwongozo Code requires that representatives take into account in their decision making, the impact of organisation operations on the community and environment. It is expected that decisions made the boards, task forces and entities impact counties and citizens living in counties. Further, the code requires compliance with Constitution and that policies, institutional frameworks and administrative procedures support the implementation of the Constitution. It's crucial that the principles and objects of devolution are observed in this regard.

Understandably, representatives at board level, are expected to exercise independent judgement and take decisions in accordance with the best interest of the entities that they provide oversight on. The representatives' fiduciary duty implies that they should avoid conflicts of interests, always act in good faith in dealings with or on behalf of the entity; exercise the level of skill and care required in the positions COG appoints them too; devote their full attention to the roles that they are assigned; and uphold due confidentiality.

Representatives should appreciate the extent of independence they bear in decision making and to what extent liabilities arising from their decisions may extend to the COG. This is especially so in the case of the representatives who serve as public service officials of county government or staff.

3. Qualifying Principles

This section outlines the principles guiding who qualifies are representatives of COG. The principles are guide by, amongst others, express provision in legislations, minimising conflicts of interest, concurrence, limiting multiple memberships for effectiveness and remuneration.

3.1 Express Requirements in legislations – Disqualifications

When legislations expressly specify who is to represent COG and county governments, then COG will be guided by the legislative provisions. It is expected that the process of formulating the national legislations will have adequately involved county governments and the COG as key stakeholders. Generally, good practice excludes the following officers in serving in boards of state agencies:

- Governors
- Members of county assembly
- Members of county executive committees
- Advisors to the Governors

Provisions in enabling legislation establishing the institution at times expressly disqualify certain members. However, the overriding guidance is that appointments should not create conflict of interests in fulfilment of the oversight role by members or conflict with powers and functions set out in the Constitution of Kenya.

3.2 County public officers and COG Secretarial Staff

Advisors to Governors may be appointed specifically to advise on development of policies that promote COG and county government's objectives. In exception cases,

County chief officers and county directors may be appointed in exceptional cases for specific terms with a view to advance county government objectives, advise on complex and diverse issues.

Public service staff may only in the boards with approval of their county government. They may also participate in task forces, committees with approval. In circumstances, where it is advisable to have the public officer as a representative in board, especially where there is potential risk of not achieving the board's goals or properly carrying out the board's basic functions without direct input from a particular official.

When a public officer serving on a board as a representative of COG is transferred, promoted, seconded to another entity, the COG may appoint another official as replacement, or retain the official as its representative after consultations with the responsible minister.

3.3 Limiting multiple memberships

The COG will limit multiple membership, especially in boards, so as to ensure that representatives pay due attention to the assigned responsibilities and broaden participation in public sector governance. As such a representative may not serve in more than two boards at any time. The COG will also limit representation by individuals serving in boards of regulatory entities so that they do not serve in boards of entities that are regulated by the particular regulating entity. The COG's selection committee will determine the capacity, availability and competences of nominees to ensure that they meaningfully deliver assigned roles.

3.4 Remuneration and Reimbursements

Remuneration of the representatives, include reimbursement of expenses incurred on duty, will be guided by the enabling legislations as well as regulations issued by the Public Service Commission.

4. Appointment Process

4.1 Key Roles and Responsibilities

This section briefly highlights the main roles of those involved in the appointment process.

- The Council approves the nomination of persons to boards of state agencies in line with applicable legislation. Ordinarily, appointments are done by national government ministers responsible for line ministries
- All significant positions must be approved by the Council. Significant appointments refer to i) all representative positions anchored on legislation and Executive Orders ii) representation to committees and task forces of a multi-sectoral nature iii) all representatives to institutions that predominantly perform functions of a regulatory or tribunal nature iv) representatives to task forces and committees dealing with high impact government programs
- The Council may delegate some appointments/nominations to the Committees and Secretariat.
- Committees will nominate representatives for the positions falling under their portfolio. The committees will ensure that the representatives fully understand COG's expectations, liaise with the entities to ensure that they are adequately oriented into their roles
- The COG Secretariat will maintain an updated database of all COG representatives to boards, task forces and committees; implement the mechanism for disclosure of interests for existing and newly appointed representatives; undertake suitability checks before appointments; provide periodic progress report on appointments of representatives; manage the appointment process; ensure that the guidelines are followed for continuity and transparency.
- The entities to which representatives are sent will be expected to arrange for induction and orientation of the representatives.
- Candidates applying for nomination by COG are expected to provide relevant personal information and disclose interests to those involved in the appointment process. The information includes but may not be limited to the following: competences, qualifications, availability, and possible conflicts of interest. On the other hand, the candidate is provided with relevant information including on expectations and commitment required before the position is finalised.
- The COG Secretariat will maintain a database of all representatives for effective stakeholder and succession management

4.2 Appointment principles

COG will apply the following principles in selecting its representatives to boards, task forces and committees:

- Selection will be based on merit, through undertaking objective assessment of the fit between competencies and qualifications of the prospective candidates and the needs of the entities in which COG is represented
- Appointment process will be standardised, objective, clear, understandable, and transparent
- Appointment process will appropriately take into consideration regional balance, gender and disability
- Appointment process will be consistent

- Appointees/Representatives must be committed to the values and principles of public service and uphold integrity

4.3 COG's databases and succession management

COG will maintain a comprehensive database on all requests for nomination and appointment of representatives to boards, task forces and committees. The database will contain the following information:

- ❖ the title of the board, task force, committee
- ❖ basis of establishment and provisions on composition (including legislation, executive order, resolutions, interagency agreements)
- ❖ the current membership *and county of residence*
- ❖ the percentage of each gender on the board, task force or committee
- ❖ the terms of appointment of the current members

COG will use this information to pick up upcoming vacancies before they are due. Further, the database will also be updated with new information regarding new positions arising from legislations, executive orders and other sources.

4.4 Generic role descriptions and position profile

Information from the COG database and requests for nominations will be used to develop a generic role description for representatives at various levels. This will facilitate candidates to obtain an understanding of COG and what the role requires before application or acceptance; will also provide a framework for assessing the candidates and facilitate effective matching of requirements and candidates; and also reinforcing the appointment principles.

4.4.1 Role description

Role description contains information specific to the individual role/position. This includes the required competences – skills, expertise, experience and knowledge – qualifications and expectations for the role. Role description will include the required competencies for various categories of representatives including leadership, governance, risk management, strategy as well as core competencies such as integrity. The role description will be appropriately modified each time vacancies arise or when policy changes necessitates alignment. The role description will be approved by the relevant committees or the council depending on level and category of positions.

For board positions, the role description will be guided by the statutory instrument governing appointment to the board. It is expected that this will include the role of the board, roles of leadership, role of executive and non –executive members, role of committees of the boards, relationship with line ministries and COG and other stakeholders.

4.5 Appointment process

COG Committees will adapt the appointment process detailed in the sections that follow to suit the positions, functions and sectors requirements.

4.5.1 Identifying a vacancy

COG will proactively ensure that all positions in boards, task forces and committees requiring COG representation are filled, and that impending vacancies are identified in time. COG Secretariat will provide update on vacancies and recommended appointment process, provide generic role description and legislative and administrative requirements applicable. The Council

will direct on the processes to follow in line with the guidelines on its level of involvement. The notification to the Council should be clear in terms of requirements, timeline including that for consultation with relevant stakeholders.

4.5.2 Developing a timeline of the agreed procedure

A timeline will be developed for the appointment process incorporating sufficient time for all aspects. In cases where there is need to seek expressions of interests or utilise outsourced firms for selection process, timelines should be carefully considered to ensure that timelines are met and adequate consultations are made. Timeline should factor the following milestones: when representatives are expected to take up positions, when the terms of current occupants expires, when the nominations are to be transmitted to appointing authorities, closing date for applications, specific requirements in enabling legislations where applicable.

4.6 Developing a tailored role description

Once the specific requirements of a role have been identified, a position description should be prepared for every role. When developing the role/position description, input from the requesting entity should be sought to understand the board, task force and committee's operating environment and current and emerging priorities of the same. This helps to ensure that the role description best captures the personal qualities, knowledge, skills and experience that are required for effective contribution. The role description should include:

- duties and responsibilities of the position;
- competencies required to demonstrate successful performance in the role
- skills required for the position;
- reporting relationships
- mandatory and desirable selection criteria; and
- the terms and conditions of appointment.

Where a generic role description already exists, it will be tailored to the specific requirements of the position.

4.6.1 Legislative requirements

Where the position is established through legislation it is critical to be clear about the provisions that may affect the way in which the representative (s) is appointed. Where legislation requires nomination from a particular group or organisation, the procedure in the legislation must be followed. In cases where a nomination is desired but not prescribed by legislation, the COG may also present nominees to appointing authorities for consideration. It may be desirable for the COG nominations committee to provide more than one nominee for each position so that the appointing authority can exercise choice. In these cases, the Council should be provided with any selection criteria that have been developed to ensure the nominated candidates have the necessary personal qualities, character and reputation, knowledge, skills and specialist expertise required to undertake the position. If the legislation requires nomination from a particular group, there is no requirement for advertising or interviewing other candidates for the position. It is recommended that referee checks be undertaken for these nominated candidates.

Illustrations

Sections 30 and 46 of the Health Act, 2017 that establish the Kenya Health Human Resource Advisory Council (KHHRAC) and the Kenya Health Professions Oversight Authority (KHPOA) respectively are explicit in terms of representation from COG and counties as follows

- ❖ KHHRAC
 - One person, not being a governor, nominated by the COG
 - One person nominated by the County Directors of Health
 - One person nominated by the County Public Service Boards
- ❖ KHPOA
 - Two representatives nominated by the Council of Governors

National Health Insurance Act (NHIF Amendment Act No.1 of 2022)

- ❖ Section 4 (1 g) two persons, not being Governors, nominated by the Council of County Governors.
- ❖ The persons nominated or appointed shall have knowledge and experience in matters relating to finance, insurance, information, communication and technology, law, management, audit, economics or any other relevant field.

The Kenya Medical Supplies Authority Act, 2013 (No. 20 of 2013) – amended through The Health Laws (Amendment) Act, 2019

- ❖ KEMSA Board Composition - Section 5(1)(e)- one person recruited by the Council of Governors and appointed by the Cabinet Secretary from among persons who- (i) have at least a university degree in a relevant discipline; (ii) have at least ten years' experience in management or in the health sector; and (iii) satisfy the requirements of Chapter Six of the Constitution."

Mental Health (Amendment) Act No. 27 of 2022

- ❖ Mental Health Board under Section 4 (1)
 - f) Two persons, not being Governors, and having knowledge and experience in matters related to mental health nominated by the Council of County Governors; and
 - g) One county director of health nominated from amongst the 47 county directors of health by the Council of Governors

The Radiographers Act No. 28 of 2022

- ❖ Radiographers Board of Kenya Section 6 (1) on composition includes (g) three radiographers competitively and transparently nominated by the Society of Radiography in Kenya, who shall include-(ii) one radiographer working in the county governments

The Physiotherapist Act, 2014 No.20 of 2014

- ❖ Section 6 (1) on composition of the Physiotherapy Council of Kenya under (e) four physiotherapists competitively and transparently nominated by the Kenya Society of Physiotherapists from sectors including (e.b) physiotherapists working in the county governments

4.6.2 Consultation on the role description

COG appreciates that consultations will be necessary with the requesting entity on the positions so as to have a clear understanding of the role and considerations regarding aspects such as inclusion and diversity. For replacements, the COG will also undertake consultations with chairpersons of the boards, task forces and committees on the roles.

In some cases, legislation requires consultation with certain groups, for example the county directors of health in determining nominees. COG will take into consideration current composition of such committees, merit and need to have balanced boards, task forces and committees in terms of gender and regions.

4.7 Identifying candidates

COG will identify its nominees from a range of sources, including but not limited to:

- COG database
- Advertisement in media to seek expressions of interest
- Head hunting
- Referrals
- Selection/recruitment firms/agencies
- Using nominations provided by county governments
- Using nominations provided by the public
- Consulting with clusters of county leadership teams including sectoral caucuses
- Consultations with line ministries
- Consultations with interested parties, sectoral groups and other stakeholders
- Using nomination committee (established as an ad-hoc committee of COG)

The choice of method will be based on time available as well as the category of position and roles. COG will ensure that legal requirements governing privacy of information are adhered to for all the methods applied. The profiles and tailored role descriptions developed will be utilised in sharing information with prospective candidates.

4.8 Framework for disclosing interests

COG will require potential nominees to disclose any impediments that may preclude them from serving in the proposed positions. The disclosure should include any interests or potential conflicts of interest. Current representatives and candidates will be encouraged to disclose any financial, professional or personal interest that might cause conflict if they are appointed as representatives of COG to boards, task forces and committees. **Annex XX provides a framework for review of interests.**

COG will consider information provided by candidates and seek additional information where necessary in determining whether there are conflicts. In case conflicts are identified, COG will assess whether it is fundamental and as such disqualifies the candidate, or whether the conflict is manageable and that the candidate agrees to the proposed arrangement for managing the conflict identified. COG will seek legal advice as it deems fit in this process.

4.9 Short-listing candidates

COG may appoint a nomination committee for short listing candidates for appointment as representatives of COG. The Council is not obliged to appoint candidate(s) proposed by the nomination committee. The Council may delegate the task of setting up and administration of nomination committee to COG Committees. The role of the nomination committee is to recommend the most suitable persons for filling in positions of representatives.

The nomination committee will determine the nomination criteria that should include but not be limited to: knowledge or information required to fill in the position; capacity of individuals to influence desired outcomes; extent of availability of individual to make meaningful contribution.

Where the COG opts to utilise external agencies to assist with the selection and nomination process, then COG procurement policies will be applied in addition to these guidelines.

COG will benchmark the candidates profile against the role profile, analyse information provided regarding potential conflicts of interest, and may also undertake additional probity checks depending on position under consideration.

4.9.1 Outcome of serving representatives evaluation

The Council may consider the outcome of a serving representative evaluation when making reappointments. Such feedback should be obtained from the relevant entities or line ministries. Representatives to time bound and task specific committees will ensure that COG obtains final products/outputs from the committee's work.

4.9.2 Suitability checks

Suitability or probity checks are used before providing a brief to the relevant Committee or the Council, to determine whether a short-listed or preferred candidate: is or has been insolvent; has a criminal record; has been convicted of an indictable offence; has been convicted of fraud; or has been disqualified from acting as a board member or serving in public institutions. Probity checks provide both the COG and the public with confidence that appointees have a history of personal integrity, and a demonstrated capacity to manage their financial and business affairs.

Suitability checks must be undertaken for all appointments, including reappointments, co-opted members, and proxies appointed by COG. The mandatory completion of a statutory declaration by a nominees attesting to their integrity does not provide sufficient assurance of an appointee's integrity or their capacity to serve in the proposed position.

COG will undertake the following mandatory probity checks for appointments, subject to any applicable waivers or exceptions: Good conduct check and professional bodies status.

Declaration of private interests will be made by all nominees before appointments and reviewed annually during the term of the appointment; or if there is a material change in the appointee's interests. Individuals appointed to more than one position must complete a separate declaration for each appointment. This is because each appointment may give rise to unique conflicts of interest.

Probity checks and a declaration of private interest may not be required if a public sector employee is appointed to an entity in an *ex-officio* capacity. *Ex-officio* members are appointed as a requirement of holding another office or substantive position.

Where declaration is not completed, the nominees must confirm in writing to the COG that he or she is not aware of any matter that would give rise to a conflict of interest in being appointed to the position concerned.

Similarly, the checks may not be required for representation in bodies without formal decision-making responsibilities over policy, service delivery or public funds. Generally, the brief with recommendation for appointment should provide reasons why probity checks need not been undertaken. Appointments may be made conditional on the subsequent completion of satisfactory probity checks.

Where expediting of appointments is required say owing to resignations or removal of appointees; establishment of a taskforce, or expert panel to complete a specific task within constrained timelines. Some suitability checks that may take some time to process, and may not be available

when the appointment proceeds to the approval stage. In these circumstances, the appointment may be conditionally approved on completion of satisfactory probity checks.

If considered by Council, the appointment submission should note that the appointment is time-sensitive and should seek conditional approval for the appointment pending completion of satisfactory probity checks.

4.10 Interviewing and selection

4.10.1 Selection committee

The COG's nomination committee may serve as the nomination and also selection committee. In some cases, the COG may establish a selection committee that is separate from the nomination committee to make recommendations on suitability of candidates. The COG is not obliged to appoint a candidate recommended by selection committee. The selection committee should include members with relevant sector knowledge. It will establish the selection criteria putting into consideration the enabling legislation.

Interview will be held after identification of suitable candidates to gauge the candidates understanding of the roles and also address any concerns regarding issues arising from suitability checks.

The selection committee will make recommendations having considered scores obtained based on an objective criterion for selection, balancing requirements, availability

The council may request the selection committee to recommend another candidate. The Council makes the final determination. From the onset, the process the Council will have clarified on whether the selection committee should present one candidate or more candidates.

COG will seek authorisation from candidates who are unsuccessful for them to be included in the COG's database of potential representatives.

4.10.2 Consultation

Once the prospective representative has been identified, the COG will make the appointment. However, the COG may still undertake further consultations with the requesting entity's person responsible for final appointment.

In instances where the COG makes a nomination without a candidate's knowledge, any decisions made in these circumstances will be considered provisional until the candidate is informed, availability determined, and assessment for conflicts of interest and probity checks undertaken as appropriate and completed.

4.11 Appointment

4.11.1 Formal action

Upon carrying out all necessary consultations, COG will make the appointments.

The COG Secretariat and relevant committees will prepare letters of appointments, and obtain relevant signatures

COG's decision on appointments may in some cases be subject to further review where enabling legislations authorise specific persons such as Cabinet Secretary to make formal appointments for instance through Gazette Notices

Appointment letters will include the following: provisions of enabling legislation under which the appointment is made; terms of the engagement; starting date; requirements to disclose interests; confidentiality requirements; relevant information amongst others.

4.11.2 Induction

COG will supply relevant induction material to representatives. This will include package of information supplemental to information given with the appointment letter

Representatives will also get briefings with relevant COG Committee and the secretariat

The COG will convey its expectations to the representatives as part of the induction process

Representatives will be sensitised on their role and responsibilities, COG's expectations, relationship with relevant organs of the COG including the sector caucuses

4.11.3 Periodic Engagement

COG will convene periodic progress review meetings with its representatives. Such meetings may be undertaken with the Council, Committees or Secretariat depending on the category and nature of representation and emerging issues.

Representatives are encouraged to be proactive in engaging COG towards fulfilment of expected outcomes in the roles assigned.

4.11.4 Reappointment

Nominees considered for reappointment should preferably undergo the same open and competitive selection as fresh candidates. However, in circumstances where it is more appropriate to reappoint a member without an open and competitive selection process, a performance review of the member must be undertaken. The most suitable form of review will be applied taking into consideration the prevailing circumstances. Performance reviews will take into consideration, amongst others the following: How the representative has contributed to the objectives of the entity, and feedback from the chairperson on the member's participation and performance. For chairs, reviews will consider effectiveness in managing key relationships; compliance with legislations and obligations; feedback and contribution to COG's strategic goals and mandate.

In considering reappointments, the brief to the Council should include details of this performance review, including any feedback from the entity, and the member's meeting attendance over the course of their previous period of appointment. Consideration must also be given to the skills mix and requirements of the position, and the need for changes/ turnover to bring new ideas.

4.11.5 Disqualification

Disqualification or removal of representatives appointed on the basis of enabling legislations, will be guided by the specific provisions of these enabling legislations. COG will apply the most appropriate disqualification criteria and also seek to ensure that such criteria is included in the enabling legislations.

Disqualification will also arise when representatives tender resignation in writing, become insolvent, are declared mentally incapacitated by a competent court, or are convicted of an offence, convicted of fraud, theft, forgery, bribery, corruption or other offences involving dishonesty and are sentenced to imprisonment without option of a fine.

Disqualification will also arise from representative's failure to attend meetings without reasons

Disqualification will also arise from representatives taking up new responsibilities that present conflicts, ceases to be citizens or permanent residents of Kenya, are removed from positions of public trust by a court of law owing to improper conduct

Disqualification will also happen when representatives fail to disclose interests

For COG's representatives to boards established as body corporates, disqualification will happen if representatives are disqualified from holding board positions

5. Implementation and Conclusion

5.1 Implementation

COG will facilitate the implementation of these guidelines for harmony in appointment of its representatives to boards, taskforces and committees. COG will engage relevant agencies for review of enabling legislations to be aligned to the guidelines and support devolved governance. The COG will monitor implementation of and compliance with the guidelines through updating database of representatives, providing feedback in development and on implementation of legislations that provide for COG representation; aligning the guidelines with emerging legislation and governance guidelines.

5.2 Conclusion

This guideline will be updated to reflect emerging best and promising practices.

6. Appendices

Appendix 1 Flow chart /checklist for determination for COG nomination for representation

Appendix II – Overview of appointment process]

Appendix III - Appointment Checklist

Appendix IV – Declaration for Conflicts of Interests

Appendix V – Suitability Checklist

Appendix VI – Appointment Letter

Appendix= VII – List of establishment positions and current representatives

Appendix VIII- Database Template

Appendix II - Overview of the Appointment process

	Assess vacancy		Position classification		Consultation	Recruitment		
	1. COG Secretariat identifies vacancy	2. COG secretariat receives TORs, competency and skills requirements from the entity responsible for appointments. COG develops profile and position in consultation with the entity responsible for appointment	3. COG secretariat confirms whether COG Full Council Approval is required. Approval is required for: <ul style="list-style-type: none">all Board Positions in national agencies and authoritiesChairpersons of Task Forces and Technical Working GroupsFull time appointments		4. As part of planning the recruitment process, the COG consults: <ul style="list-style-type: none">	5. COG develops recruitment process, appoints selection panel	6. COG briefs Chair on recruitment and selection process and required skills.	7. COG undertakes recruitment.
Planning								
Selection	Selection							
	8. COG secretariat assesses candidates against competencies/ skills required and for conflicts of interest etc. Process documented and a shortlist agreed with selection panel.		9. COG secretariat briefs COG Chairperson on shortlist	10. Selection panel interviews candidates and contacts referees.	11. COG Secretariat undertakes probity checks.			12. Candidate completes a Declaration of Private Interests form to the satisfaction of the COG.
Approval	Committee approval		Full Council approval					
	13. COG Secretariat briefs COG Committee Chairperson on appointment recommendation and provides consultation letters from relevant Committees	14. If Council approval is not required, the COG CEO finalises the process by signing the letter of appointment	15. If Council approval is required, Committees should register the proposed appointment for a Council meeting with adequate notice	16. The COG Chairperson must be consulted for all appointments that go to Cabinet Secretaries, Parliament and Independent Commissions as	17. If full council approval is required, COG Council briefs must be submitted at least one week before the Council meeting. Council submissions must include: <ul style="list-style-type: none">draft letter of appointment;Curriculum Vitae for each proposed appointee;description of the recruitment and selection processdetails of consultation with relevant offices including committees			18. Council considers appointment.

			before the position expiry.	well as any appointments considered important or sensitive.	<ul style="list-style-type: none"> ▪ effect the appointment will have on the gender balance of the board, task force and committees; ▪ justification for reappointment; ▪ justification for appointment of a public sector employee or COG staff ▪ any deviation from the Guidelines 		
--	--	--	-----------------------------	---	--	--	--

Appendix III- Appointment Checklist

S. 1 Scope and classification	Ref in Guidelines – Section	
Do the Appointment and Remuneration Guidelines apply?		<input type="checkbox"/>
Have you checked the classification of the nature of representation ?		<input type="checkbox"/>
S. 5 Recruitment and selection		
Was the recruitment process open and competitive? If not, explain why an alternative method was chosen in the Council submission or in writing to the Chair, before the appointment is finalised.		<input type="checkbox"/>
Does the nomination/ appointment meet the skills required in the position description and any other specific requirements?		<input type="checkbox"/>
Does the nomination/appointment meet the skills mix required on the board, task force, committee?		<input type="checkbox"/>
Is the gender composition of the board, task force or committee and the portfolio included in the submission or brief?		<input type="checkbox"/>
Were the following consulted when planning the recruitment and selection process: <ul style="list-style-type: none"> • Relevant COG Committee • County Government in case of a representative from a county 		<input type="checkbox"/>
Does the appointee reside in Kenya? If not, provide context (e.g. particularly rare skills or independence required).		<input type="checkbox"/>
Reappointments		
Has the candidate previously served on the board, task force, committee or technical working group?		<input type="checkbox"/>
Has the Chairperson of the board, task force, committee or TWG been consulted regarding the nominee's performance?		<input type="checkbox"/>
Has the rationale for reappointing the candidate been explained in the Council submission or Committee brief?		<input type="checkbox"/>
Is the candidate on two or more boards, task forces and committees?		<input type="checkbox"/>
Can the nominee commit to their obligations (including attending a minimum of 75% of meetings)?		<input type="checkbox"/>
S. 6 Probity, conflict of interest and conflict of role		
Have the relevant integrity checks been completed?		<input type="checkbox"/>
Has a Declaration of Private Interests been completed to the satisfaction of the COG?		<input type="checkbox"/>
Is there a possibility of a conflict of interest (or a perception of such a conflict) between the nominee's private interests and this appointment?		<input type="checkbox"/>
S. 7 Remuneration		
Is the remuneration within the range for this type of board, task force or committee?		<input type="checkbox"/>
Are they a public sector employee? If yes, can they be remunerated?		<input type="checkbox"/>
If the appointee is being paid a daily rate, provide context in the brief or Council submission (e.g. no. of meetings per year).		<input type="checkbox"/>
S. 8 Approval process		
Is the board, task force, committee or TWG created under legislation? Do appointments need to be approved by Council and/or made by the Chairperson of the Council?		<input type="checkbox"/>
Is the letter of appointment and <i>Curriculum Vitae</i> for the nominee/appointee(s) included in the Council submission?		<input type="checkbox"/>

