

## SUBSIDIARY LEGISLATION

to the Gazette of the United Republic of Tanzania No. 44 Vol. 87 dated 3<sup>rd</sup> November, 2006  
Printed by the Government Printer, Dar es Salaam, by Order of Government

GOVERNMENT NOTICE No. 154 published on 3/11/2006

### THE ATTORNEY GENERAL (DISCHARGE OF DUTIES) REGULATIONS, 2006

#### TABLE OF CONTENTS:

#### PART I

##### PRELIMINARY PROVISIONS

<i>Regulation</i>	<i>Title</i>
1.	Citation.
2.	Application.
3.	Interpretation.

#### PART II

##### RECRUITMENT OF LAW OFFICERS, STATE ATTORNEYS AND LEGAL OFFICERS

4.	Discharge of duties of the Attorney General.
5.	Conduct for the discharge of duties.
6.	Duties, rights and privileges.
7.	Conflicts of interest.
8.	Promotion of Public confidence.

#### PART III

##### REGISTRATION OF LAW OFFICERS, STATE ATTORNEYS AND LEGAL OFFICERS

9.	Registration of Law officers, State Attorneys and Legal Officers.
10.	Submission of Particulars of Legal Officer.
11.	Correction of errors in the Register.
12.	De-registration.

PART IV

DELIVERY OF ADVICE AND OPINION

13. Provisions relating to delivery of advice.

PART V

COURT BRIEFS AND DRAFTING INSTRUCTIONS

*(a) Provisions relating to civil matters*

14. Filing of suits in the court.
15. Compromise of matter in Court.

*(b) Provision relating to criminal matters*

16. Exercise of power to file a certificate of Nolle Prosequi.
17. Withdrawal of appeal.
18. Prudential practice.

*(c) Provisions relating to Drafting instructions.*

19. Drafting of legal instruments.
20. Accepting drafting instruction.
21. Duty of instructing Ministry and Ministry Department.
22. Contravention of Regulations.
23. Revocation of appointment.

—————  
SCHEDULE  
—————

THE OFFICE OF THE ATTORNEY GENERAL  
(DISCHARGE OF DUTIES) ACT, 2005

(No. 4 of 2005)

**REGULATIONS**

*(Made under section 29)*

THE ATTORNEY GENERAL (DISCHARGE OF DUTIES) REGULATIONS, 2006

PART I

PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Attorney General (Discharge of Duties) Regulations, 2006. Citation
  
2. These Regulations shall apply in respect of persons who perform or discharge legal functions in the Office of the Attorney General and other offices in the public service who, by virtue or nature of their job description, are required to seek or consult for legal advice from the Office of the Attorney General. Application
  
3. In these Regulations, unless the context otherwise requires— Interpre-  
"Act" means the Office of the Attorney General (Discharge of Duties) tation  
Act, 2005; Act No. 4  
"Code of Ethics" means the Code of Ethics for Law Officers, State of 2005  
Attorneys and Legal Officers in the public service;  
"Court" means a court of law and includes a tribunal;  
"internship" means practical training undertaken by a law student who  
has completed tutorial training at an institute of higher learning;  
"Law Officer" has the meaning ascribed to it under the Interpretation of Cap. I  
Laws Act;

"legal officer" means a holder of duly recognized degree in law by whatever title employed in the public service, other than the Office of the Attorney General and includes a solicitor;

"State Attorney" means a person appointed as such under sections 24 or 25 of the Act.

PART II

RECRUITMENT OF LAW OFFICERS, STATE ATTORNEYS AND LEGAL OFFICERS

Discharge of duties of the Attorney General

4.-(1) A person shall be qualified for appointment as a Law Officer, a State Attorney or a Legal Officer who has a degree in law from the University or an institute of higher learning duly recognized by the Government and has completed internship or has attended training in advocacy at an institute recognized by the Attorney General.

(2) A person shall not practise as a Law Officer or a State Attorney unless that person has been appointed by the Attorney General to practise as such.

(3) A Legal Officer may practise as Law Officer or State Attorney in relation to the discharge of the duties of the Office of the Attorney General if such Legal Officer has been appointed to perform the functions of a Law Officer or a State Attorney pursuant to subsection (1) of section 25 of the Act.

Conduct for the discharge of duties

5.-(1) In the discharge of the duties of the Office of the Attorney General in relation to matters of the criminal, civil, constitutional nature or in drafting legislative instruments, Law Officers, State Attorneys and Legal Officers shall be guided by the requirements of Part III of the Act.

(2) In the performance of their functions, the Law Officers, State Attorneys and Legal Officers shall adhere to the requirement to seek directions of the heads of respective Directorates Department, Agency, Ministerial Department or Ministry.

(3) Without prejudice to sub-regulation (2), a Law Officer, a State Attorney or a Legal Officer shall be required to seek specific directions from the head of the Directorate, the Department or the Agency of which the subject relates.

(4) The Law Officer, State Attorney and Legal Officer shall at all the time discharge the duties of the Office of the Attorney General fairly and dispassionately and shall, in that respect, not compromise personal interest to the Government and generally the public interest or interest of the client.

6.-(1) Every Law Officer, State Attorney and Legal Officer shall have the duty and obligation to maintain respect to the legal profession and to observe the Code of Ethics.

Duties,  
rights and  
privileges

(2) With a view to maintaining respect to the legal profession, the Law Officer, State Attorney and Legal Officer shall, while appearing in the Court or Tribunal for purposes of the conduct of proceedings, be neat and dressed in court attire in accordance with the norms of the legal profession.

(3) It shall be the right of a Law Officer, a State Attorney and a Legal Officer to enjoy all privileges attached to advocates save for charging and receiving reward in a form of fees and to the extent prohibited or restricted by the Act and laws governing employment in the public service.

(4) The Law Officer, State Attorney or Legal Officer who contravenes the provisions of this Regulation shall be liable to disciplinary actions including but not limited to de-registration, dismissal, termination and reprimand.

7.-(1) The Law Officer, a State Attorney or a Legal Officer who has interest in any matter to which he is assigned shall be required to declare that interest.

Conflicts  
of interest

(2) Interest shall be assumed to exist where the matter involves a spouse, a child, a father or a mother, a relative, a friend or an employer other than the Attorney General.

8.-(1) The Law Officer, a State Attorney and a Legal Officer shall desist from engaging in a matter that is most likely to adversely affect the public confidence in the Office of Attorney General.

Promotion  
of public  
confidence

*Attorney General (Discharge of Duties)*

*G.N. No. 154 (Contd.)*

(2) The Law Officer, a State Attorney or a Legal Officer shall not become a practicing advocate and the Law Officer, a State Attorney or a Legal Officer who accepts a court brief on a matter in which the Government is concerned or is adversely or may be adversely affected shall be deemed to be engaged in a matter that adversely affect the public confidence and jeopardize the credit and integrity of the legal profession and the public service.

(3) The Law Officer, a State Attorney or a Legal Officer who conduct himself contrary to Regulation 6 or 7 shall be deemed to have breached the Code of Ethics and shall be liable for deregistration from the Register.

PART III

REGISTRATION OF LAW OFFICERS, STATE ATTORNEYS AND LEGAL OFFICERS

Registra-  
tion of  
Law  
Officers,  
State  
Attorneys  
and Legal  
Officers

9.-(1) The Deputy Attorney General shall enter into the Register particulars of the Law Officers, State Attorneys and Legal Officers.

(2) The Register shall be in such form and manner and shall be styled as Form AG-1 specified in the Schedule to these Regulations.

(3) The particulars referred to under sub-regulations (1) shall include:

- (a) name and address;
- (b) title and designation;
- (c) professional qualifications;
- (d) date of appointment; and
- (e) any other relevant additional qualification or information.

(4) Without prejudice to the preceding provisions of this Regulation, the Law Officers and the State Attorneys employed prior to the 1<sup>st</sup> day of July, 2005 shall, and without further requirement, be deemed to have been registered as such and shall be issued with an instrument of appointment in accordance with the provisions of section 24 of the Act.

(5) An instrument of appointment for a Law Officer and a State Attorney shall be made in Form AG -2 specified in the Schedule to these Regulations.

10.—(1) Subject to the provisions of section 25 of the Act, the Permanent Secretary, and the Chief Executive Officer of the Independent Department or Agency who employs a Legal Officer shall furnish the Deputy Attorney General with particulars of that person.

Submission of particulars of a legal officer

(2) The particulars required for purposes of sub-regulation (1) shall include:

- (a) name and address;
- (b) title and designation;
- (c) professional qualifications;
- (d) date of appointment; and
- (e) any other relevant qualification or information which may be necessary in the circumstance.

(3) The employer shall further be required to submit to the Deputy Attorney General any change of particulars where there is such change, in order to allow the update of particulars of the Legal Officer concerned in the Register

(4) An instrument of appointment of a Legal Officer to discharge the functions of Attorney General shall be made in Form AG -3 specified in the Schedule to these Regulations.

11.—(1) The Deputy Attorney General shall make change of particulars of the Law Officers, the State Attorneys and the Legal Officers in the Register when circumstances requires to do so.

Correction of errors in the Register

(2) Where there is an error in the Register, the Deputy Attorney General shall correct the error and keep the record update.

12.—(1) The Law Officer, a State Attorney or a Legal Officer who is deregistered shall not be entitled to discharge the duties of the Office of Attorney General or enjoy any right or privilege attached with the discharge of the duties of the Attorney General.

De-regi-  
stration

(2) In the case of de-registration of a Legal Officer, that Legal Officer shall also be disqualified from further discharging duties of a legal nature within the public service.

(3) Upon deregistration of a Law Officer, a State Attorney or a Legal Officer, as the case may be, such Officer shall be required to surrender the instrument of appointment to the Deputy Attorney General.

(4) Where, following de-registration, a Law Officer, a State Attorney or a Legal Officer fails to surrender an instrument of appointment that instrument shall, in any case, cease to have effect and, in case of continued use of such instrument, a Law Officer, a State Attorney or a Legal Officer concerned shall be deemed to have contravened these Regulations and the regulations governing the use of official documents.

(5) A person who is aggrieved by the decision to de-register his name from the Register may petition the Attorney General for review of the decision.

PART IV

DELIVERY OF ADVICE AND OPINION

Provisions relating to delivery of advice

13.-(1) An advice or an opinion from the Office of the Attorney General shall be given in writing and shall, in no way, be communicated verbally.

(2) Any person being a public officer shall seek the advice or an opinion of the Office of the Attorney General in writing and shall, in relation to the advice or an opinion sought:

- (a) ensure that the full facts of the subject matter are given to the Attorney General and draw attention to any previous legal opinions which have a bearing on the matter;
- (b) set out in a separate paragraph the specific question or questions of law on which the advice or opinion is desired;
- (c) in the case where it is necessary for a legal advice or an opinion to be sought by a personal approach, an appointment shall be made with a Law Officer or a State Attorney from whom the advice is sought and advance notice of the questions upon which a legal advice or opinion is desired to be given; and
- (d) except for routine matters such as scrutinizing of minor documents, requests for legal advice shall be made by a public officer of or above the rank of a Director or an Assistant Director.



(3) The Office of the Attorney General shall always be consulted before:

- (a) any payment of compensation is made or is refused, or in a matter in which proceedings are likely to be taken in the court;
- (b) a Government official produces official documents in court in a civil case in which the State is not a party; or
- (c) criminal proceedings are instituted since the final decision whether or not such proceedings shall be taken or shall proceed rests with the Director of Public Prosecutions.

(4) If a communication to a member of the public entails the decision being based upon a legal opinion expressed by the Office of the Attorney General, the legal advice should not be quoted, nor should the communication indicate that the decision is based upon the opinion of the Attorney General.

## PART V

### COURT BRIEFS AND DRAFTING INSTRUCTIONS

#### *(a) Provisions relating to civil matters*

14.-(1) All documents that are required to be filed in the court to which the Attorney General is a party shall be made under the title of the Attorney General.

Filing of  
suits in  
the court

(2) The provisions of this Part shall apply to the Legal Officers subject to compliance with the provisions of sub-regulation (3) of Regulation 4.

(3) Documents shall be filed after approval being given by and under the supervision of—

- (a) in the case of the Zonal or Regional Office, the State Attorney in-charge; and
- (b) in the case of Headquarters, the Director or the Assistant Director of the Directorate concerned.

*Attorney General (Discharge of Duties)*

*G.N. No. 154 (Contd.)*

Compromise of matter in court

15.-(1) Compromise of the matter which is the subject of proceedings in the court that involves the Government shall not be made without first informing the Attorney General or the Deputy Attorney General and the Permanent Secretary of the Ministry, the Chief Executive Officer, Ministry Department or Agency the conduct of whose office gave rise to the proceedings in the court.

(2) Where, pursuant to sub-regulation (1), it is difficult to consult the Attorney General or the Deputy Attorney General without defeating the logical end of the compromise sought due to the distance, means of communication or other good cause, the Law Officer, State Attorney or a Legal Officer shall seek the direction of the head of the Directorate concerned or, the State Attorney in-charge of the Zone or Region to whose geographical area jurisdiction the matter was filed.

*(b) Provision relating to criminal matters*

Exercise of power to file a certificate of *Nolle Prosequi* Caps 20 and 11

16.-(1) No State Attorney or a Legal Officer shall file a certificate of *Nolle Prosequi* pursuant to the provisions of the Criminal Procedure Act, the Magistrates Courts' Act or any other relevant law without obtaining prior consent of the Director of Public Prosecutions or a person authorized by him.

(2) A State Attorney or a Legal Officer who contravenes sub-regulation (1) shall be liable to disciplinary action.

(3) Where in the course of trial circumstances requires the Republic to accept a plea of guilty to a lesser offence, then the State Attorney concerned shall consult the Director of Public Prosecutions indicating the reasons for accepting the plea.

(4) The provisions of sub-regulation (3) shall not be used at the expense of abuse of court process and the discharge of duty with conscience, diligence and efficiency manner.

Withdrawal of appeal

17.-(1) The Law Officer, State Attorney or a Legal Officer shall not withdraw an appeal filed by or on behalf of the Director of Public Prosecutions.

(2) Where circumstances dictates that—

- (a) ends of justice would be defeated by continuing with an appeal;
- (b) ends of public interest would not be met;
- (c) control of criminal prosecutions is made;
- (d) abuse of court process be avoided,

the State Attorney or a Legal Officer shall first consult the Director of Public Prosecutions or a person authorized by him.

(3) The provision of this Regulation shall apply *mutatis mutandis* to the compromise of a civil suit or a civil appeal.

18.—(1) The Law Officer, a State Attorney in-charge or a Legal Officer in-charge shall ensure that assignment of work is given under circumstances that the assignee undertakes the assignment without inordinate delay, in any case the assignment should not be given to a Law Officer, a State Attorney or a Legal Officer who is not able to undertake the assignment immediately for reason of excuse of duty or is discharging other duties away from the duty station.

Prudential  
practice

(2) The provisions of sub-regulation (1) shall not relate to an assignment the performance of which may be done at a future time without interference with a chain of routine in the discharge of duties of the Office of the Attorney General and in accordance with the Clients' Service Charter.

(3) Where a Law Officer, State Attorney or a Legal Officer is required to travel outside the duty station, such officer shall inform the immediate superior with a view to re-assigning court briefs or office files to another Law Officer, State Attorney or Legal Officer.

(4) For purpose of upholding objectivity and avoiding possible compromise of quality of service, a Law Officer, a State Attorney and a

*Attorney General (Discharge of Duties)*

G. N. No. 154 (contd.)

(6) The provisions of this Regulation shall be complimentary to the Practice Note stipulated in Form AG-4 specified in the Schedule to these Regulations.

*(c) Provisions Relating to Drafting Instructions*

Drafting  
of legal  
instruments

19.-(1) All legislative instruments other than appointments of a routine nature issued under the authority of a law, shall be drafted or scrutinized by Parliamentary Drafters in the Office of the Attorney General.

(2) All Government Bills and subsidiary legislation, other than common form subsidiary legislation and by-laws, shall be drafted by the Chief Parliamentary Draftsman.

(3) Common form subsidiary legislation may be drafted by the appropriate Ministry and sent to the Chief Parliamentary Draftsman for scrutiny.

(4) Except in relation to purely routine subsidiary legislation, a request for the drafting of legislation shall be made by an officer not below the rank of Permanent Secretary, Head of Ministry Department or Regional Administrative Secretary.

Accepting  
drafting  
instruction

20.-(1) Before the Chief Parliamentary Draftsman is requested to draft any principal legislation involving a question of principle, the approval of the Cabinet to the principles must first be obtained.

(2) Instructions for the drafting of lengthy or complex subsidiary legislation shall not be accepted until, in the case of subsidiary legislation to be made by the President, the Minister concerned has agreed in principle to putting the matter to the Cabinet, and, in other cases, until the person or body having the power to make the subsidiary legislation has agreed in principle to make it.

(3) Request for the drafting or scrutiny of subsidiary legislation of a minor or routine nature may be made by a minute addressed to the Chief Parliamentary Draftsman in the appropriate Ministerial file.

(4) Requests for the drafting of legislation of other kinds shall be made to the Chief Parliamentary Draftsman in a self-contained paper accompanied by the appropriate Ministerial file.

(5) Where the legislation in question is a Bill and instructions are in minute form, the minute shall provide adequate drafting instructions, save that there is no objection to references to folios in files containing more details to which the drafter may refer as drafting instructions given to him.

(6) Without prejudice to the preceding provisions of the Regulation, instructions for the drafting of legislation shall in all cases include a note stating:

- (a) why the legislation is required; and
- (b) what should the Bill provide for.

(7) Where the drafter is asked to draft a Bill under which it is likely that a substantial quantity of subsidiary legislation may be made the drafter shall ensure that:

- (a) in forwarding instructions for the Bill an outline of proposed subsidiary legislation so that the drafter may decide whether the proposed subsidiary legislation will be intra vires; and
- (b) if it is desired to bring a Bill, after enactment into operation on a certain date, allow for the time needed for the drafting and enactment not only of the Bill but also for the drafting of such subsidiary legislation required for the operation of the measure.

(8) Where copies of legislation of other countries on the same subject or drafts are submitted, they should not be regarded as substitute for, or as obviating the necessity for giving full instructions.

(9) Priority for the presentation of Bills to the National Assembly shall be decided by the Leader of Government Business in the National Assembly in consultation with the Attorney General and the Legislation Committee of the Cabinet.

21 -(1) Instructing Ministry shall be responsible for seeing that other Ministries, Independent Departments, Agencies and other authorities are, where necessary or desirable, consulted before the completion of drafting of any legislation which seeks to regulate the conduct of some matters that concern those Ministries and authorities.

Duty of  
instructing  
Ministry  
and  
Ministry  
Department

(2) It is a duty of the instructing Ministry, Independent Department or Agency to scrutinize all drafts sent from the Chief Parliamentary Draftsman to ensure that they meet all questions of principle.

Contrave-  
nion of  
Regulations 22. A Law Officer, a State Attorney or a Legal Officer who contravenes any of the provisions of Part V commits a disciplinary offence and shall be liable to the following actions either taken jointly or singly:

- (a) de-registration from the Register;
- (b) dismissal from service;
- (c) termination;
- (d) suspension;
- (e) criminal charges; and
- (f) any other action permissible by law to which an act complained of relates.

Revocation  
of  
appoint-  
ment 23.-(1) The Attorney General shall revoke appointment of Law Officer, a State Attorney or Legal Officer who-

- (a) has been de-register from the Register,
- (b) lost qualification for appointment such; or
- (c) has been found guilty of disciplinary offence referred to under Regulation 22.

(2) Revocation of appointment should be made in Form AG-5 specified in the schedule of these Regulations.

-----  
SCHEDULE  
-----



FORM AG - 1

THE UNITED REPUBLIC OF TANZANIA

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES)  
ACT, 2005

THE REGISTER OF LAW OFFICERS, STATE ATTORNEYS AND LEGAL  
OFFICERS

(Made under Regulation 9(2))

A: LAW OFFICERS AND STATE ATTORNEYS

<i>S/N</i>	<i>Name and Address</i>	<i>Title</i>	<i>Designation</i>	<i>Professional Qualifications</i>	<i>Date of Appointment</i>	<i>Additional Qualification</i>	<i>Change of Particulars</i>







FORM AG - 2

THE UNITED REPUBLIC OF TANZANIA

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES)  
ACT, 2005

APPOINTMENT AS A LAW OFFICER/ STATE ATTORNEY

(Made under Regulation 9(5))

I, ....., ATTORNEY GENERAL of the United Republic of Tanzania, in exercise of powers vested in me under section 24(3) of the Office of the Attorney General (Discharge of Duties) Act, 2005, DO HEREBY APPOINT ..... to be a Law Officer/State Attorney.

By VIRTUE of this Appointment, you will discharge the duties of the Office of Attorney General under section 8 of the Office of Attorney General (Discharge of Duties) Act, 2005, shall observe the Code of Ethics and comply with any direction that may be given on that behalf.

Dated at Dar es Salaam this ..... day of ..... 20.....

.....  
*Attorney General*

*Attorney General (Discharge of Duties)*

G. N. No. 154 (contd.)



FORM AG - 3

THE UNITED REPUBLIC OF TANZANIA

**THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES)  
ACT, 2005**

*(Made under Regulation 10(4))*

INTRUMENT OF APPOINTMENT

I, ....., ATTORNEY GENERAL of the United Republic of Tanzania, in exercise of powers vested in me under Section 25(1) of the Office of the Attorney General (Discharge of Duties) Act, 2005. DO HEREBY APPOINT ....., a Legal Officer, to discharge the duties of the Office of Attorney General under section 8 of the Office of Attorney General (Discharge of Duties) Act, 2005.

BY VIRTUE of this Appointment you shall be required to observe the Code of Ethics and comply with any direction that may be given on that behalf.

Dated at Dar es Salaam this ..... day of ..... 20.....

.....  
*Attorney General*



FORM AG-4

THE UNITED REPUBLIC OF TANZANIA

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES)  
ACT, 2005

PRACTICE NOTE

(Made under Regulation 18(6))

CRITERIA FOR APPOINTMENT OF A LEGAL OFFICER TO DISCHARGE  
DUTIES OF THE ATTORNEY GENERAL

1. This Practice Note is intended to provide guidance, subject to which a Legal Officer shall discharge duties of the Attorney General.
2. The Legal Officer assigned to deal with specific matters related to his employment shall demonstrate capacity to deal with those assignments properly, efficiently and to produce the best quality of work.
3. In matters to which litigation is involved the Legal Officer shall demonstrate capacity to conduct such litigation properly and efficiently.
4. The Legal Officer shall be a person able to demonstrate possession of experience and expertise to discharge duties to which the appointment is made.
5. A Legal Officer shall be a person able to determine and demonstrate as to whether or not the matter before him requires the attention of the Attorney General.
6. A Legal Officer who has been enrolled as an Advocate shall not be eligible for appointment as a Law Officer or a State Attorney.

.....  
Attorney General

Attorney General (Discharge of Duties)

G. N. No. 154 (contd.)



FORM AG-5

THE UNITED REPUBLIC OF TANZANIA

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES)  
ACT, 2005

REVOCATION OF APPOINTMENT

(Made under Regulation 23(2))

I, ....., DEPUTY ATTORNEY  
GENERAL of the United Republic of Tanzania, in the exercise of powers vested in me  
under section 24(3) of the Office of the Attorney General (Discharge of duties) Act,  
2005, hereby declare that the appointment of ..... as a  
Law Officer/State Attorney/Legal Officer, is hereby revoked.

CONSEQUENT UPON revocation, the said....., shall not be  
entitled to enjoy any right or privilege attached with or to the discharge any of the  
duties of the Office of the Attorney General specifies under section 8 of the Act.

AND FURTHER that any instrument that was issued in respect of the registration of  
the said..... is hereby cancelled.

Dated at Dar es Salaam, this 18<sup>th</sup> day of .....2006.

.....  
Attorney General

Dar es Salaam,  
18<sup>th</sup> August, 2006

MARY M. NAGU,  
Minister for Justice and  
Constitutional Affairs