

# **MINISTERS' STAFF COMMERCIAL TRANSACTIONS DIRECTIVE**

**Management Board of Cabinet**

**April 1, 2014**



**Ministry of Government Services**

# Ministers' Staff Commercial Transactions Directive

## PURPOSE

The Government of Ontario engages in a wide variety of important commercial transactions through its ministries, agencies and corporations. These transactions must serve the best interests of Ontario and Ontario taxpayers.

This directive outlines the role of Ministers' staff with respect to these transactions.

## PRINCIPLES

- Commercial transactions optimize the value of government financial and other resources.
- Commercial transactions take place through accountable and rigorous processes. These processes are administered by the Ontario Public Service and/or by a designated organization (see below). These processes allow public servants and designated organizations to bind the Crown or designated organization and establish formal lines of accountability.
- Ministers' staff play an important role and are expected to provide advice and support to the Premier and ministers. This role may include interactions with stakeholders and third parties engaged in a commercial transaction with a ministry or with a designated organization. Interactions could also include those with ministry or designated organization staff.
- In the course of any interactions with a party engaged in a commercial transaction with a ministry and/or designated organization, Ministers' staff respect the processes administered by public servants or a designated organization and do not act to bind the Crown or the designated organization

outside of those processes. The only exception to this occurs in the specific circumstances noted below and under the written authorization of the Minister.

## **APPLICATION AND SCOPE**

This directive applies to all Ministers' staff (those appointed under s. 47 of the *Public Service of Ontario Act, 2006*).

The directive applies to all interactions by Ministers' staff where the result would or could bind the Crown or designated agency in a particular commercial transaction.

A commercial transaction refers to any contract between a ministry, a designated organization and one or more parties in which goods, services or something of value is exchanged for some type of remuneration. Transactions covered by this directive could include sales, purchases, industry stabilization initiatives and any associated litigation and/or negotiation.

More specifically, the directive applies:

- a) whenever there is an existing contract involving the Crown or a designated organization and one or more third parties, or
- b) where there are negotiations to enter into or alter such a contract, including circumstances in which negotiation about the rights and obligations of the parties is underway.

Designated organizations are:

- all classified agencies, and
- the four hydro organizations:
  - Hydro One Inc.

- Independent Electricity System Operator
- Ontario Power Authority
- Ontario Power Generation Inc.
- The rules in this directive complement and do not alter existing procedures and rules already in place for transactions such as procurement, labour relations, public appointments and transfer payments.

## **MANDATORY REQUIREMENTS**

- Ministers' staff shall not bind the Crown or designated organization in any interactions with third parties with respect to commercial transactions, unless expressly authorized to do so by the Minister.
- It is expected that authorization would only be requested in exceptional circumstances.
  - The authorization must be in writing and must set out the individual to whom authority is provided and the specific authority (i.e. what the individual is empowered to do).
  - The Deputy Minister must be copied on the authorization, and if there is a designated organization involved, the Chief Executive Officer (CEO) of the organization must also be copied.
- Where a new or existing contract could be affected, Ministers' staff must communicate their role when meeting with third parties.
  - Specify when not authorized to bind the Crown or designated organization or make commitments that may bind the Crown or designated organization to a particular outcome or course of action, and
  - Specify when there is authorization to bind the Crown or designated organization.

## **RESPONSIBILITIES**

Ministers' staff are responsible for:

- following the principles and rules set out in this directive,
- being aware of the conflict of interest rules,
- being aware of any relevant directives, policies and guidelines.

Ministers are responsible for:

- ensuring the directive's principles and rules are implemented and monitored, including putting in place processes that support the directive,
- ensuring that all persons covered by this directive are aware of their responsibilities under this directive,
- providing express authorization to their staff to bind the Crown or a designated organization in exceptional circumstances.

Deputy Ministers, and CEOs (or Chairs if appropriate) of designated organizations are responsible for:

- taking appropriate steps to advise ministry/organization staff involved in the negotiation and implementation of contracts of the requirements of this directive,
- receiving any authorizations from the Minister and informing appropriate ministry/organization staff.