



REPUBLIC OF KENYA

LAWS OF KENYA

**GUIDELINES TO ASSIST PUBLIC AND PRIVATE ENTITIES
IN THE PREPARATION OF PROCEDURES FOR THE
PREVENTION OF BRIBERY AND CORRUPTION**

(No. of 2020)

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OF PROCEDURES FOR THE PREVENTION OF BRIBERY AND CORRUPTION**

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GUIDELINES UNDER SECTION 12(1) OF THE BRIBERY ACT

(No. of 2020)

IN EXERCISE of the powers conferred by Section 12 (1) of the Bribery Act, 2016, the Cabinet Secretary in consultation with the Ethics and Anti-Corruption Commission issues the following Guidelines –

GUIDELINES TO ASSIST PUBLIC AND PRIVATE ENTITIES IN THE PREPARATION OF PROCEDURES FOR THE PREVENTION OF BRIBERY AND CORRUPTION

PART I – PRELIMINARIES	
Introduction	<p>1. Section 9(1) of the Bribery Act makes it mandatory for all public and private entities to put in place procedures appropriate to their size, scale and nature of operations, for the prevention of bribery and corruption.</p> <p>Under section 9(2) it is a criminal offence for a private entity not to put in place procedures for prevention of bribery and corruption. An entity or its directors, senior officer or other responsible person shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment to a term not exceeding ten years or to both.</p> <p>Section 12(1) requires the Cabinet Secretary to, in consultation with the Ethics and Anti-Corruption Commission (Commission) to publish Guidelines to assist public and private entities in the preparation of Procedures for the prevention of bribery and corruption.</p> <p>Pursuant to section 12(1) as read with 12(3) of the Act, the Cabinet Secretary, in consultation with the Commission, publishes these Guidelines to assist public and private entities to which the Bribery Act applies establish appropriate procedures as required in the Act.</p>
Objectives and purpose of the Guidelines	<p>2. The purpose of these Guidelines is to assist public and private entities or any other person to prepare procedures for prevention of bribery and corruption. The Guidelines should be read with the Bribery Act, 2016 and the regulations thereto.</p>
Legal framework	<p>3. The Bribery Act, No. 47 of 2016 came into force on 13th January 2017. It is an Act of Parliament that was enacted to provide for the prevention, investigation and punishment of bribery. The Act places obligations on public and private entities to put in place procedures that are appropriate to their size, scale and nature of operations, for prevention of bribery and corruption. It is an offence for an entity to fail to put in place the bribery and corruption prevention procedures as required under the Act. Under section 2 of the Bribery Act corruption has the meaning assigned to it in the Anti-Corruption and Economic Crimes Act, 2003.</p> <p>The Commission is required under the Act to assist public and private entities to develop and implement the procedures for prevention of bribery and corruption. In addition, the Cabinet is required, Secretary in</p>

	<p>consultation with the Commission, to publish guidelines to assist private and public entities in preparation of procedures required under the Act.</p> <p>Every state officer, public officer or a person holding a position of authority in a private entity, is expected to report any knowledge or suspicion of instances of bribery within a period of twenty-four (24) hours, failure to which a person is deemed to have committed an offence.</p> <p>The Act makes provisions for protection of whistle blowers, informants and witnesses from any form of intimidation or harassment arising from providing information to law enforcement or giving evidence in court. A person that demotes, admonishes, dismisses from employment, transfers to unfavourable working areas or otherwise harasses and intimidates a whistle blower or a witness, will be guilty of an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.</p>
<p>PART II – GUIDING PRINCIPLES ON PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION</p>	
<p>Written procedures</p>	<p>4. Procedures developed by entities in compliance with the Act shall be in writing. The procedures shall be in English or Kiswahili language. An entity may translate the procedures to any other language as may be appropriate to its circumstances.</p>
<p>Bribery and corruption risk assessment and management</p>	<p>5. Public and private entities shall assess and map out bribery and corruption risks in all their operational areas and develop a plan to mitigate the identified risks. Corruption risk assessment shall include identification and analysis of the bribery and corruption risks that an entity faces in its operations.</p>
<p>Structure for implementation</p>	<p>6. The procedures for prevention of bribery and corruption shall provide for an implementation structure or arrangement, which should mirror the size, scale and nature of operations of the entity and the risks as identified.</p> <p>The implementation structure or arrangement shall –</p> <ol style="list-style-type: none"> 1. Ensure that there is commitment from the top leadership of the entity; 2. Ensure involvement of employees of all cadres in the entity; 3. Where appropriate, incorporate membership from external stakeholders of the entity; 4. Designate a senior officer or any person acting in such capacity, who shall be responsible for overseeing the implementation of the procedures for the prevention of bribery and corruption in an entity. 5. Ensure that necessary resources for implementation are provided.

Draft Guidelines under section 12(1) of the Bribery Act, No. 47 of 2016

<p>Mechanisms for reporting bribery and corruption</p>	<p>7. The procedures shall provide for sufficient mechanisms that facilitate efficient and effective reporting of bribery and corruption incidences internally within the entity and to the Commission. The mechanisms shall facilitate-</p> <ol style="list-style-type: none"> 1. Timely reporting; 2. Access to reporting channels; 3. Confidentiality; 4. Prompt action; 5. Protection of whistle blowers, informants and witnesses; 6. Feedback.
<p>Management of Reports</p>	<p>8. The Procedures shall provide for; receiving, recording, processing and disseminating reports for appropriate action and feedback. The Procedures shall take into account fair administrative action.</p>
<p>Protection of whistle blowers, informants and witnesses</p>	<p>9. The Procedures shall provide effective measures for protection of whistle blowers, informants and witnesses, including-</p> <ol style="list-style-type: none"> 1. Maintaining confidentiality on; identity, details of the report and source of information; 2. Establishing reporting channels for informants or whistleblowers who have suffered reprisal owing to report or information they provided on bribery or corruption; 3. Taking appropriate action on reports of retribution or victimization of informants, witnesses and whistleblowers; 4. Instituting protection measures under the Witness Protection Act and regulations.
<p>Communication and training</p>	<p>10. The procedures shall provide for effective communication, training, awareness creation and dissemination to internal and external stakeholders on the bribery and corruption prevention measures put in place by the entity.</p>
<p>Enforcement of Procedures</p>	<p>11. The procedures shall designate the person or persons in authority responsible for setting up an enforcement structure. The structure so established shall be proportionate to the scale, size and nature of the operations of the entity.</p> <p>The procedures shall provide for appropriate action for violation of the law, regulations and procedures in relation to prevention of bribery and corruption in the entity.</p>
<p>Monitoring, evaluation and review</p>	<p>12. The procedures shall include appropriate measures for monitoring, evaluating and reviewing the effectiveness of the procedures, identification of emerging risks and making improvements where necessary.</p>

Collaborations and cooperation with other actors or agencies	13. Procedures may provide for collaboration and co-operation with other actors or agencies within the sector or industry. The collaborative framework for entities may be undertaken through:- <ol style="list-style-type: none">1. Joint planning and strategizing2. Sharing of information and best practice3. Mutual consultation4. Peer reviews5. Capacity building
Liability for failure to put in place procedures	14. Under section 9(2) of the Act, it is a criminal offence for a private entity not to put in place procedures for prevention of bribery and corruption. An entity or its directors, senior officer or other responsible person shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment to a term not exceeding ten years or to both.
PART III – ASSISTANCE BY THE COMMISSION	
Advice to Entities	15. The Commission may upon request or on its own motion advice an entity on development and implementation of procedures required under Section 9.
Advisories	16. The Commission may from time to time provide advisories generally on the development and implementation of procedures required under Section 9.
Model Procedures	17. The Commission may develop model procedures for adoption by public and private entities, with necessary modifications.
PART IV – REVIEW OF GUIDELINES	
Review of Guidelines	18. The Commission may review these Guidelines from time to time as circumstances may require.

Made on the 2020

Justice (Rtd.) Paul Kihara Kariuki, CBS
Attorney General