



REPUBLIC OF KENYA

LAWS OF KENYA

BRIBERY REGULATIONS, 2020

(No. of 2020)

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BRIBERY REGULATIONS, 2020

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BRIBERY REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 22 of the Bribery Act, the Cabinet Secretary, on the recommendation of the Ethics and Anti-Corruption Commission makes the following Regulations—

THE BRIBERY REGULATIONS, 2020

	PART I - PRELIMINARY
Citation and commencement	1. These Regulations may be cited as the Bribery Regulations, 2020, and will come into effect upon publication in the Kenya Gazette.
Interpretation	2. In these Regulations- “ Act ” means the Bribery Act, No. 47 of 2016; “ Cabinet Secretary ” has the meaning assigned to it under section 2 of the Act; “ Commission ” means the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011); “ Franchisee ” means a body carrying out specified commercial activities under authorization granted by another entity, in these Regulations called the franchisor; “ Parent entity ”- means an entity that owns or controls one or more other subsidiary entities; “ Subsidiary ” means an entity wholly or partly owned or controlled by a parent entity.
Application	3. These Regulations shall apply to the public, public officers, public and private entities as defined in the Act. For avoidance of doubt- (a) Public entity encompasses all state organs and public bodies in the three arms of government; county governments, constitutional commissions and independent offices; a public private partnership arrangement or undertaking under the Public Private Partnerships Act, No. 15 of 2013; and any entity that renders a service to the public as a monopoly; (b) Public officers as referred to in section 4 of the Act includes state officers;

	(c) Private entities shall include virtual businesses that entirely employ electronic means to transact business.
PART II – REQUIREMENTS FOR DEVELOPMENT OF PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION	
Categorization of entities for purposes of section 9 of the Act	<p>4. (1) For purposes of compliance with the requirement under section 9, entities shall put in place procedures for prevention of bribery and corruption relative to-</p> <ul style="list-style-type: none"> (a) The size and scale of business, which includes a reference to the number of employees, gross annual turnover, amount of exchequer allocation; geographical spread of their operations; (b) Nature of business, which may include a reference to the service or production orientation; carrying on business as a monopoly or otherwise; (c) The risk of bribery and corruption inherent in its operations; (d) Whether the entity is a joint venture, or a subsidiary of a local or foreign entity; (e) Whether an entity operates as a franchise or a branch of another entity; (f) The mode of creation or establishment, means of transacting business, and structure of governance and management; (g) Diversity of services and customer reach; (h) Extent or diversity of branch network, including the inter-dependence between the branch networks. <p>(2) An entity that is a subsidiary of a local entity may, for purposes of complying with the requirement under section 9, adopt the procedures established by the parent entity with necessary modifications to suit their nature of operations or other unique circumstances.</p> <p>(3) Where an entity that is a subsidiary of a local entity adopts the procedures of its parent entity, the responsibility for ensuring compliance with and implementation of the procedures shall vest in the subsidiary entity.</p> <p>(4) An entity which is a subsidiary or a branch of a foreign entity shall establish procedures as required under section 9. If the parent entity has such procedures, the subsidiary or a branch may adopt them with necessary modifications and adaptations to satisfy the requirements under section 9 of the Act.</p>

	<p>(5) Where entities operate in a joint venture, each shall be treated as a separate entity for purposes of ensuring compliance with the requirements under section 9 of the Act. Provided that, where the entities in the joint venture incorporate a separate entity, the new entity shall establish its own procedures for purposes of compliance with section 9.</p> <p>(6) A local entity that establishes a branch or branches for purposes of its operations shall be responsible for ensuring compliance with and implementing the requirements under section 9, irrespective of whether the branch or branches operate independently or semi-autonomously.</p> <p>(7) An entity that is a franchisee of another entity, whether local or foreign, shall be responsible for establishing its own procedures under section 9 of the Act irrespective as to whether the franchisor has established its own procedures or for the franchise network. Where the franchisor has put in place such procedures, the franchisee may adopt the procedures of the franchisor with necessary modifications and adaptations to satisfy the requirements under section 9 of the Act.</p> <p>(8) An entity which operates on a virtual platform shall demonstrate compliance with section 9 of the Act on the platform in which it operates.</p>
<p>Procedures to be in writing</p>	<p>5. The procedures envisaged under this Part shall be in writing.</p>
<p>Entities to establish procedures within six months</p>	<p>6. (1) An entity to which these Regulations apply shall put in place procedures for the prevention of bribery and corruption as required under section 9 of the Act within six months from the date of publication of the Guidelines under section 12(2) of the Act.</p> <p>(2) In developing the procedures, an entity shall incorporate the following minimum guiding principles, depending on the nature, scale and size of its operation-</p> <ul style="list-style-type: none"> (a) Bribery and corruption risk assessment and management. (b) Communication and training. (c) Mechanism for reporting bribery. (d) Protection of whistle blowers, informants and witnesses. (e) Compliance, monitoring and review. <p>(3) For the avoidance of doubt, it shall not be a defense for any entity that fails to establish procedures required under section 9, that the Commission has not provided any, or any sufficient; assistance after expiry of six months following the publication of guidelines under section 12(2) of the Act.</p>

PART III – REPORTING BRIBERY	
Reporting bribery	<p>7. (1) Pursuant to section 14 of the Act, a state officer, public officer or any other person holding a position of authority in a public or private entity shall report to the Commission any knowledge or suspicion of instances of bribery involving that private or public entity that comes to his or her knowledge.</p> <p>(2) A report of any knowledge or suspicion of instances of bribery may be made to the Commission-</p> <ul style="list-style-type: none">(a) in person;(b) in writing;(c) by email;(d) by telephone;(e) through the anonymous reporting system established by the Commission;(f) through any other electronic means, to an electronic address maintained by the Commission;(g) through a third party or agent.
Contents of a report of bribery	<p>8. A report of any knowledge or suspicion of instances of bribery may include—</p> <ul style="list-style-type: none">(a) the date and time of the instance of the bribery incident;(b) where there is a complaint, the name of the complainant and his or her contact details;(c) particulars of the allegation;(d) location or place where the bribery instance is alleged to have taken place;(e) names and such other identity details of the parties involved in the bribery incident;(f) value or nature of advantage involved in the bribery instance, including details of how the advantage was transacted;(g) Any other relevant information.
Acknowledgement of a report	<p>9. (1) A person or entity that makes a report to the Commission may, at the time of making the report or any time thereafter, request the Commission to acknowledge the report.</p> <p>(2) Where a person or entity requests for acknowledgement after the report has been made, the person or entity requesting shall indicate when, by whom and how the report was made.</p>

Record of reports	10. The Commission shall maintain a record of all reports made pursuant to section 14 of the Act, and shall in its quarterly and annual report provide the details including action taken.
Confidentiality	11. The Commission shall ensure strict confidentiality when receiving any report of instances of bribery which includes keeping the fact of the disclosure of the bribery and identity of the person reporting confidential.
Entity to provide mechanisms for reporting	12. An entity to which these Regulations apply shall establish mechanisms for internal and external reporting of bribery by employees or persons associated with it.
Protection of whistle blowers, informants and witnesses	13. An entity to which these Regulations apply shall establish measures for appropriate protection of persons who report knowledge of or suspicion of bribery in good faith, against any form of retaliation, reprisal or victimization.

Made on the -----2020

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