

MODEL PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION

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(Developed pursuant to section 9 of the Bribery Act, 2016)

Ethics and Anti-Corruption Commission

PREAMBLE

The Attorney General in consultation with the Ethics and Anti- Corruption Commission (EACC) published Guidelines to Assist Public and Private Entities in the preparation of Procedures for Prevention of Bribery and Corruption, in accordance with section 12(1) of the Bribery Act, 2016 vide gazette notice 6022 dated on 27th May 2022.

The EACC is required under Section 9 (3) to assist public entities, private entities and any interested person, to develop and put in place procedures for prevention of bribery and corruption. Further, Section 12(3) provides that EACC may provide assistance as may be necessary to any private or public entity or any other person in implementation of the procedures.

The EACC in consultation with stakeholders has developed these Model Procedures for prevention of Bribery and corruption to be customized by public and private entities taking into account their size, scale and nature of operations.

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MODEL PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION

1. COMMITMENT

The entity is committed to implement prevention of bribery and corruption measures in adherence to the Bribery Act, 2016 (Bribery Act), the Bribery Regulations, 2022 (the Regulations), Guidelines to Assist Public and Private Entities in the Preparation of Procedures for Prevention of Bribery and Corruption, 2022 (the Guidelines) and these Procedures.

The entity maintains a zero-tolerance policy towards bribery and corruption and is committed to the prevention, detection, deterrence, reporting and taking appropriate action against acts of bribery and corruption.

2. OBJECTIVE

These Procedures will serve as a practical tool for the prevention of bribery and corruption as required under the Bribery Act. They provide the accepted standards in relation to prevention of bribery and corruption.

These Procedures supplement the Bribery Act, the Regulations and the Guidelines. In particular, these Procedures clarify the measures for the prevention of bribery and corruption.

3. SCOPE

The Procedures shall apply to board of directors, management, employees, third parties and stakeholders of the entity.

4. DEFINITIONS

In these procedures, unless the context otherwise requires;-

Advantage - Has the meaning assigned to it under section 2 of the Bribery Act.[1]

Bribery- Has the meaning assigned to it under section 2 of the Bribery Act.[2]

Cabinet Secretary- means the Cabinet Secretary for the time being responsible for matters relating to Justice.

[1] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016

[2] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016

Commission – means the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011, (No. 22 of 2011).

Corruption - Has the meaning assigned to it under the Anti-Corruption and Economic Crimes Act, 2003.

Designated Officer- A person or an institution authorized to receive a report.

Enforcement structure –means a system put in place to provide for appropriate action for violation of the Bribery Act within the entity.

Facilitation payment – means an illegal or unofficial payment made in return for services which the payer is legally entitled to receive without making such payment

Giving a Bribe - Has the meaning assigned to it under Section 5 of the Bribery Act.[1]

Informant - means a person who makes a report to the entity, Commission or law enforcement agencies on acts of bribery or other forms of corruption.

Implementation structure- means the system put in place by the entity to oversee the implementation of the Bribery Act within the entity.

Private Entity – Has the meaning assigned to it under Section 2 of the Bribery Act, 2016.[2]

Public Entity- Has the meaning assigned to it under section 2 of the Bribery Act, 2016. [3]

Receiving a Bribe - Has the meaning assigned to it under Section 6 of the Bribery Act.[4]

Report - Account of events observed, heard or suspected, regarding bribery or corruption within the entity and communicated through the available channels for action.

Senior Officer - Has the meaning assigned to it under section 2 of the Bribery Act, 2016.[5]

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[1] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016
[2] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016
[3] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016
[4] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016
[5] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2047%20of%202016

Stakeholder – means a person with vested interest or concern in the business of the entity.

Third Parties – Shall include Suppliers, Contractors, Agents, Associates, Clients, Customers and all other parties who deal with and/or are associated with the entity.

Witness – Has the meaning assigned to it under Section 2 of the Witness Protection Act, 2006. [1]

Whistle-Blower – means a person who makes a report to the Commission or the law enforcement agencies on acts of bribery or other forms of bribery.

5. LEGAL FRAMEWORK

These Procedures are developed pursuant to section 9(1) of the Bribery Act which provides that public and private entities shall put in place procedures appropriate to their size, scale and nature of their operations for the prevention of bribery and corruption.

5.1 Liability for failure to put in place Procedures

Under section 9 (2) of the Bribery Act, a private entity commits an offence when it fails to establish bribery and corruption prevention procedures.

Under section 19 of the Bribery Act, a private entity or its directors, senior officers or other responsible person shall be liable, on conviction, to a fine not exceeding one million shillings or imprisonment for a term not exceeding ten years, or both, for committing an offence under section 9(2).

5.2. Bribery Offences

5.2.1. The offences under the Bribery Act are: -

i) Giving a bribe under Section 5;
ii) Receiving a bribe under Section 6; and
iii) Bribery of a foreign public official under Section 8.

5.2.2 Other Related Offences are: -

[1] http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2016%20of%202006

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i) Failure to put in place procedures for the prevention of bribery under Section 9;
ii) Failure of a private entity to prevent bribery under Section 10;
iii) Engaging in activities intended to enable bribery under Section 13;
iv) Failure to report bribery under section 14;
v) To demote, admonish, dismiss from employment, transfer to unfavorable working area, harass or intimidate a whistle-blower or a witness under section 21(2);and
vi) Knowingly or negligently disclosing information of informants and witnesses under Section 21(5).

5.2.3 Extra territorial application of the Bribery Act

Section 15 of the Bribery Act provides that conduct by a citizen of Kenya or by a private or public entity, which takes place outside Kenya, shall constitute an offence if the conduct would constitute an offence under the Bribery Act.

5.3 PENALTIES UNDER THE ACT

5.3.1 Under section 18 and 19, of the Act, an individual found guilty of an offence under section 5, 6, or 13 -

i) on conviction shall be liable to imprisonment for a maximum term of ten years, or a maximum fine of five million shillings, or both;
ii) may be liable to an additional mandatory fine equal to five times the amount of the quantifiable benefit or quantifiable loss

5.3.2 A private entity found guilty of an offence under section 10 is liable on conviction to a fine.

5.3.3 Section 21 (2), A person who demotes, admonishes, dismisses from employment transfers to unfavourable working areas or otherwise harasses intimidates a whistle blower or witness is 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.

5.3.4 Section 21 (5) any person who knowingly or negligently discloses the information of informants and witnesses and as a result of which those informants are harassed or intimidated commits an offence and shall be liable upon conviction

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to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

5.3.5 Additional penalties for persons convicted for offences under sections 5, 6, 10 and 13 include:-

6. RELEVANT POLICIES

These Procedures take cognizance of and complement the entity's existing relevant policies which may include but not limited to:-

i) Anti-bribery and corruption/ethics policy;
ii) Codes of Conduct and Ethics for employees and third parties that prohibit bribery and corruption in any form;
iii) Whistleblower Protection Policy;
iv) Conflict of Interest Policy;
v) Hospitality and Gifts Policy;
vi) Donations, collections and Harambees policy;
vii) Anti-fraud Policy; and
viii) Anti-Money laundering and Counter Terrorism Financing policy.

7. BRIBERY AND CORRUPTION RISK ASSESSMENT AND MANAGEMENT

The entity shall conduct a bribery and corruption risk assessment and develop a mitigation plan.

In conducting the bribery and corruption risk assessment and developing a mitigation plan, an entity shall: -

i) Identify, assess and map out the potential bribery and corruption risks in its operations;
ii) Design and implement systems and controls (intervention measures) to mitigate those risks;
iii) Monitor, evaluate and review systems and controls; and
iv) Document and keep a record of the bribery and corruption risk assessment and mitigation process.

The bribery and corruption risk assessment and management shall be: -

i) Overseen by top-level management;

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ii) Appropriately resourced in accordance to the scale of operations; and
iii) Conducted periodically based on the risk exposure of the entity.

8. HIGH RISK AREAS

Bribery and corruption prevention procedures may cover a wide range of issues which depend on the entity's bribery and corruption risk assessment.

These areas may include: -

i) Gifts and hospitality;
ii) Conflicts of Interest;
iii) Human Resource Management;
iv) Donations including political donations, collections and harambees;
v) Sponsorships and grants;
vi) Facilitation payments;
vii) Agents and intermediaries;
viii) Joint ventures and acquisitions;
ix) Entertainment of officials; and
x) Procurement and Financial management procedures.

11. MANAGING THIRD PARTIES

The entity shall identify all its third parties and manage them taking into account the level of bribery risks, the transaction amount and the nature of engagement. Such factors include but are not limited to the following: -

i) Incorporation of anti-bribery and anti-corruption provisions in contract documents;
ii) Preparation of questionnaires for third parties to make such disclosure as may be required;
iii) Declaration by third parties that they shall refrain from bribery and other forms of corruption;
iv) Conducting due diligence on the third parties; and
v) Ensure that these Procedures are communicated and understood by the third parties.

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12. REPORTING MECHANISMS

12.1 Reporting Channels

The entity shall put in place bribery and corruption reporting channels and procedures. These channels shall include but not be limited to:-

i) In-person to a designated person or office;
ii) By writing to the entity;
iii) Email;
iv) Telephone;
v) Anonymous reporting systems;
vi) Appointed third parties or agents;
vii) Reporting boxes;
viii) Web-portal and
ix) Digital/social media platforms.

The entity shall ensure that the reporting channels are secure, efficient and effective and that the reports are handled promptly with utmost confidentiality. The reports may be in the format shown in **Annexure 1**. *(Entities may review the form to enhance but not to reduce the level of information required).*

Bribery and corruption reports to the Commission can be made through the following channels: -

i) Report to the Commission through the Anonymous whistleblower's system on the website.
ii) By Phone- 020 2717468, 0715 00 77 00, 0783 77 77 00
iii) Toll free: 1551
iv) In person to any Commission office
v) Digital/social media platforms
vi) E-mail : report@integrity.go.ke

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12.2 **Processing of Reports**

Depending on the size, scale and nature of operations, the entity shall process reports using the following steps:

i) The report shall be received, acknowledged and recorded in a designated register.
ii) The report shall be processed and submitted to a designated officer.
iii) The designated officer reviews the report and submits to the entity's enforcement structure and the Commission within 24 hours.
iv) The entity shall conduct an inquiry and submit the findings with recommendation to the implementation structure within 14 days.
v) The implementation structure shall consider the recommendation and determine appropriate action by taking administrative measures in accordance with the entity's policies and procedures or by referring the matter to the Commission within 7 days from the date of determination.

12.3 **Feedback**

The entity shall provide feedback to the informant and whistle blower (where applicable) on the action taken within a period of **fourteen (14) days** in the first instance and periodically until the matter is finalized.

13. PROTECTION OF WHISTLE BLOWERS, INFORMANTS AND WITNESSES

The entity shall provide an elaborate and effective mechanism for protection of whistle blowers, informants and witnesses. This includes -

i) Maintaining confidentiality of the identity of whistle-blowers, informants and witnesses, details and sources of the bribery and corruption reports;
ii) Establishing reporting channels for whistleblowers, informants and witnesses on acts of retribution, victimization and intimidation against them for reporting acts of bribery or corruption within the entity;
iii) Taking appropriate action on reports of retribution, victimization or intimidation of informants, witnesses and whistleblowers;

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14. COMMUNICATION AND TRAINING

The entity shall ensure that these Procedures are embedded and understood throughout the entity and amongst third parties and stakeholders. The entity shall put in place efficient and effective channels of communication.

The entity shall carry out regular sensitization, awareness creation and disseminate relevant materials on prevention of bribery and corruption. All boards of directors, management, employees, members, shall undergo training on prevention of bribery and corruption from time to time which shall focus on understanding the relevant laws, rules, policies and other measures put in place.

15. COLLABORATION AND CO-OPERATION WITH OTHER AGENCIES

The entity may explore opportunities for collaboration and co-operation in prevention of bribery and corruption with other entities within the sector or industry. These partnerships will be for purposes of: -

i) Joint planning;
ii) Sharing of information and best practice in the industry;
iii) Mutual consultation on the most effective strategies;
iv) Peer review;
v) Capacity building for boards of directors, management, employees, members, and third parties in the industry; and
vi) Collective engagement with other actors such as government, civil societies, media, etc

16. IMPLEMENTATION OF THESE PROCEDURES

In implementing these Procedures, top level management shall be committed to preventing bribery and corruption by: -

i) Fostering a culture in which bribery and corruption are not acceptable;
ii) Determining and executing bribery and corruption prevention strategies;
iii) Making key decisions relating to management of bribery and corruption risks;
iv) Communicating internally and externally the entity's bribery and corruption prevention policy and commitment to zero tolerance to bribery and corruption;
v) Appointing a designated officer to be in charge of prevention of bribery and corruption;

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vi) Putting in place mechanisms to detect and take appropriate action for violation of the Bribery Act within the entities such as establishment of corruption prevention committees;

vii) Providing necessary resources to ensure that these procedures are adequately implemented; and

viii) Periodically assessing compliance with the prevention of bribery and corruption guided by the attached checklist in **Annexure 2.**

17. MONITORING, EVALUATION AND REVIEW

The entity shall put in place a Monitoring and Evaluation (M&E) Framework to ensure compliance and effectiveness of the procedures, identification and management of emerging risks and making improvements where necessary.

The procedures will be reviewed periodically and, in any event, not less than once in every year.

DECLARATION OF COMMITMENT TO IMPLEMENT THE REQUIREMENTS OF THE ACT, REGULATIONS, GUIDELINES AND THESE PROCEDURES

(Name of entity) is committed to implement these Procedures on prevention of bribery and corruption developed pursuant to section 9 of the Bribery Act, 2016.

Name: _____

Designation: _____
(Head of Entity)

Signature: _____

Date: _____

Date of Next Review _____

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ANNEX I

BRIBERY AND CORRUPTION REPORTING FORM

1. Please Note:

(a) THAT this form may be filled by anyone who wishes to report a case of bribery or corruption perpetrated by office or official(s) of the entity**.**

(b) THAT the information in this form will be used by the entity in the investigation and determination of the matter.

2. I / We (name/s) (Optional)

(a) ……

(b) ……

(c) ……

(Tick appropriately)

☐ Staff ☐ Stakeholder ☐ Third Party ☐ Other (specify)……

3. Wish to make a complaint against the following person(s)/entity:

(a) ……

(b) ……

(c) ……

4. On the grounds of:

☐ Bribery ☐ Corruption ☐ Suspicion

☐ Other (specify) _____

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5. **Please give details of bribery/corruption/concern** (include as much details as possible e.g., date(s), time(s), location(s), amount of money involved, nature of advantage, circumstances of bribery etc.) Attach separate sheet if space is not sufficient.

……

……

……

……..

6. **Witnesses/person(s) who may be interviewed or person(s) with knowledge of matter being complained of:** (where possible explain why such person(s) should be contacted and their contacts) **(Optional)**

(a) ……

(b) ……

(c) ……

7. **Have you filed this report elsewhere?** (Either internally or externally – the EACC, DCI etc)

……..

8. **Any other relevant information**……

I certify that:

(a) The information provided is true and correct to the best of my knowledge and belief;

(b) I have the right to expect highest level of confidentiality as relates to this report; and

(c) Entity may take disciplinary action against me should the reporting be proven to be malicious or frivolous.

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Signature (where applicable):……

Date:……

Email Address (optional):……

Phone Number (optional):……

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ANNEX 2

PREVENTION OF BRIBERY AND CORRUPTION COMPLIANCE CHECKLIST

1. **Commitment**

i). Does the entity have a written and accessible statement of commitment on prevention of bribery and corruption from the top-level management?

ii). Have the staff members committed to uphold all relevant policies and code of conduct?

iii). Has the entity made it mandatory to all individuals and parties at all levels to comply with and adhere to bribery and corruption prevention procedures?

iv). Has the entity appointed a senior officer responsible for anti-bribery and anti-corruption compliance?

v). Has the entity established an enforcement structure to take action on violations of the Bribery Act?

vi). Has the top management made a declaration of commitment to implement the Bribery Act?

2. Bribery and Corruption Risk Assessment and Management

i) Has the entity conducted bribery and corruption risk assessment(s)?

ii) Does the entity have a clear understanding of all bribery and corruption risks?

iii) Is the assessment undertaken on a regular basis?

iv) Has the entity maintained accurate documented information demonstrating that bribery and corruption risk assessment(s) have been conducted?

v) Has the entity developed and implemented a risk mitigation plan to address all the identified risks?

vi) Has the entity managed third party risks and applied a consistent risk-based approach?

vii) Has the entity undertaken due diligence proportionate to the level of risk?

viii) Does the entity perform due diligence reviews and vetting on all new third parties?

ix) Has the entity clearly communicated gift policy internally and externally to control gifts, hospitality, donations, harambees and similar benefits to ensure that they are not for corrupt purpose?

x) Has the entity established controls and procedures covering payments to third parties, including gifts, hospitality, entertainment, travel, charitable contributions, sponsorships and other expenses to ensure that they are

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appropriate?

xi) Does the entity have strict reporting policy of all entertainment of foreign officials?

xii) Has the entity ensured that situations that might give rise to a conflict of interest are disclosed to the entity and managed appropriately by an independent person e.g. Compliance Officer?

xiii) Do the staff understand that all relationships with third parties must be documented fully and that all payments made to third parties must be appropriate, justifiable and accurately documented?

3. Communication and Training

(i) Has the entity effectively disseminated its code of conduct to all employees and third parties in a way that is easily accessible?

(ii) Is there a requirement for all employees and third parties to certify that they have read and complied with the code of conduct?

(iii) Has the entity clearly communicated its anti-bribery and anti-corruption program as well as policies in place and ensured that it is understood across all levels of the entity and within its business networks?

(iv) Has the entity sensitized staff on facilitation payment in relation to bribery?

(v) Does the entity have a regular formal training programme for all staff, members, board of directors, management and third parties that specifically addresses anti-bribery and anti-corruption and ensure that anti-bribery and anti-corruption program and policies are understood and adhered to?

(vi) Does the entity carry out interactive anti-bribery and corruption prevention training for high-risk employees?

4. Reporting and Investigations

(i) Are there procedures to report any instance of fraud, bribery, corruption, collusion, obstructive or coercive practice or any other information relating to any possible violation of the Bribery Act?

(ii) Does the entity have a whistleblower policy and effective channels for employees and third parties to report knowledge or suspicion of instances of bribery and corruption?

(iii) Are there procedures which facilitate investigation of reported cases of bribery and corruption?

(iv) Are there procedures which require appropriate action in the event the investigation reveals that bribery or corruption offence was committed?

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5. Monitoring, Evaluation and Review

(i) Are the bribery and corruption prevention policies and procedures reviewed periodically and compliance controls tested regularly?

(ii) Are review methods and results of anti-bribery performance documented and retained as evidence?

(iii) Are third parties monitored on an ongoing basis commensurate with their risk profile?

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