

Ethics and Anti-Corruption Commission



MODEL PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION

*(To be customized by public and private entities taking into account
size, scale and nature of operations)*

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

July 2024

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 Anti-Bribery Act, 2016 vide gazette notice no. 6022 dated 27th May 2022.

The EACC is required under Section 9(3) of the Anti-Bribery Act 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) of the Anti-Bribery Act stipulates 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.

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 Anti-Bribery Act, 2016 (Anti-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 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 Anti-Bribery Act. They provide the accepted standards in relation to prevention of bribery and corruption.

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

3. SCOPE

These Procedures shall apply to the board of directors, management, key personnel, employees, third parties and stakeholders of the public or private entities.

4. DEFINITIONS

In these procedures, unless the context otherwise requires; -

Advantage - has the meaning assigned to it under section 2 of the Anti-Bribery Act.¹

Bribery - has the meaning assigned to it under section 2 of the Anti-Bribery Act.

Commission – means the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011.

Corruption - has the meaning assigned to it under the Anti-Corruption and Economic

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

Crimes Act, 2003.

Designated Officer – means 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 Anti-Bribery Act and includes the disciplinary function within an 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 Anti-Bribery Act.

Informant - means a person who provides privileged information, or information intended to be confidential, concealed, or secret about a person or entity.

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

Private Entity – has the meaning assigned to it under Section 2 of the Anti-Bribery Act.

Public Entity- has the meaning assigned to it under section 2 of the Anti-Bribery Act.

Receiving a Bribe - has the meaning assigned to it under section 6 of the Anti-Bribery Act.

Senior Officer - has the meaning assigned to it under section 2 of the Anti-Bribery Act.

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

Third Parties – means suppliers, contractors, agents, associates, clients, customers and all other parties who transact with the entity.

Witness – has the meaning assigned to it under section 2 of the Witness Protection Act, 2006².

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

² <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2016%20of%202006>

5. LEGAL FRAMEWORK

These Procedures are developed pursuant to section 9(1) of the Anti-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 other forms of corruption.

5.1. Liability for failure to put in place Procedures

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

Under section 19 of the Anti-Bribery Act, a private entity or its directors, senior officers or other responsible person shall be liable, on conviction, to a fine not exceeding five 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 Anti-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: -

- i) Failure to put in place procedures for the prevention of bribery under section 9 (2);
- 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 unfavourable 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 Anti-Bribery Act.

Section 15 of the Anti-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 Anti-Bribery Act.

5.3 PENALTIES UNDER THE ANTI-BRIBERY 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; and
- 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 person or a private entity found guilty of an offence under section 10 of the Act 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 to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

5.3.5 Section 19 any person who is convicted of an offence under this Act, for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both.

6. RELEVANT POLICIES

These procedures take cognizance of and complement the entity's existing relevant policies which may among others include: -

- 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

During the development of procedures, 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;
- ii) Appropriately resourced in accordance to the scale of operations; and
- iii) Conducted on regular basis, based on the timing and frequency defined by an entity depending on its risk exposure, taking into account the size, scale and nature of the operations.

8. HIGH RISK AREAS

Procedures for the prevention of bribery and other forms of corruption 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.

9. MANAGING THIRD PARTIES

The entity shall identify all its third parties and manage them taking into account the level of risks of bribery and other forms of corruption, nature and value of engagement. The factors to be taken into account include 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 third parties;
- v) Incorporation of declaration of conflict of interest; and
- vi) Ensuring that these Procedures are communicated and understood by third parties.

10. REPORTING MECHANISMS

10.1. Reporting Channels

The entity shall put in place bribery and corruption reporting channels and procedures. Reporting channels may include:-

- i) In-person to a designated person or office;
- ii) By writing to the entity;
- iii) Email address;
- iv) Telephone number;
- v) Appointed third parties or agents;
- vi) Reporting boxes;
- vii) Web-portal;
- viii) Digital/social media platforms; and
- ix) Reporting systems that protects the personal identification details of informants, witnesses and whistle blowers.

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 set out in **Annexure 1**. Entities may provide for additional information that may be given by an informant, witnesses or whistle blower but in any case, shall not diminish the information required in the form.

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

- i) Report to the Commission through the anonymous whistleblower 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 including EACC desk at Huduma Centres
- v) The Commission's digital/social media platforms
- vi) E-mail: report@integrity.go.ke

10.2. 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, recorded in a register and processed.
- ii) The designated senior officer submits the report to both the entity's enforcement structure and the Commission within 24 hours after receiving the report.
- iii) The enforcement structure shall conduct an inquiry and submit the findings with recommendation to the implementation structure within the timelines set by the entity.
- iv) The implementation structure shall consider the recommendations and determine appropriate action by taking administrative measures in accordance with the entity's policies and procedures and communicating the outcome to the Commission within 7 days from the date of determination.

10.3. Feedback

The entity shall provide feedback to the informant and whistle blower (where applicable) on the action taken.

11. PROTECTION OF WHISTLE BLOWERS, INFORMANTS AND WITNESSES

The entity shall provide an efficient and effective mechanisms for protection of whistle blowers, informants and witnesses. The entity shall:-

- i) Maintain confidentiality of the identity of whistle-blowers, informants and witnesses, details and sources of the bribery and corruption reports;
- ii) Establish 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; and
- iii) Take appropriate action on reports of retribution, victimization or intimidation of informants, witnesses and whistleblowers.
- iv) Institute measures for protection of Whistle-Blowers, informants and witnesses including anonymous reporting, Whistle Blower Policy (with non-retaliation clause) and any other mechanism as the entity may deem appropriate.

12. 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 including publishing of the procedures to employees and posting on the entity's website.

The entity shall carry out regular sensitization, awareness creation and disseminate relevant materials on prevention of bribery and corruption, but in any case, at least once a year. All boards of directors, management, employees, members, shall undergo training, including through seminars and workshops, 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.

13. COLLABORATION AND CO-OPERATION WITH OTHER ENTITIES

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

- i) Joint planning;
- ii) Sharing of information and best practice;
- iii) Mutual consultation on the most effective strategies;
- iv) Peer review; and
- v) Capacity building for boards of directors, management, employees, members and third parties.

14. IMPLEMENTATION OF THESE PROCEDURES

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

- i) Fostering a culture in which bribery and other forms of corruption are not acceptable;
- ii) Determining and executing bribery and other forms of corruption prevention strategies;
- iii) Making key decisions relating to management of bribery and corruption risks including decisions on resource allocation, internal policies, appointment of key personnel among others;
- iv) Communicating to internal and external stakeholders the entity's bribery and other forms of corruption prevention policy and commitment to zero tolerance to bribery and other forms of corruption;

- v) Appointing a designated senior officer to be in charge of prevention of bribery and other forms of corruption and to protect whistle blowers, informants and witnesses;
- vi) Designated senior officer consultation with the implementation structure shall set up the enforcement structure.
- vii) Putting in place mechanisms to detect and take appropriate action for violation of the Anti-Bribery Act within the entity such as establishment of corruption prevention/integrity committees.
- viii) Providing necessary resources to ensure that these procedures are adequately implemented; and
- ix) Periodically assessing compliance with the prevention of bribery and other forms of corruption guided by the attached checklist in **Annexure 2**.

15. MONITORING, EVALUATION AND REVIEW

The entity shall put in place a Monitoring and Evaluation (M&E) Framework to ensure compliance and effectiveness of these Procedures, identification and management of emerging risks and making improvements where necessary. The Procedures will be reviewed periodically.

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

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

Name: _____

Designation: _____
(Head of Entity)

Signature: _____

Date: _____

Date of Next Review _____

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 other forms of corruption perpetrated by official(s) of the entity.
- (b) THAT the information in this form will be used by the entity in the inquiry 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/entity:

(a)

(b)

(c)

4. On the grounds of:

- Bribery Corruption suspicion Other (specify).....

5. Please give details 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.

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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, National Police Service 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 the 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.

Signature (where applicable):.....

Date:.....

Email Address (optional):.....

Phone Number (optional):.....

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 other forms of 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 Procedures to prevent bribery and other forms of corruption?
- iv). Has the entity designated a senior officer to be responsible for anti-bribery and anti-corruption compliance?
- v). Has the entity established an enforcement structure to take action on violations of the Anti-Bribery Act?
- vi). Has the top management made a declaration of commitment to implement the Anti-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 mitigation plan reviewed and updated periodically?
- iv) Is the assessment undertaken on a regular basis?
- v) Has the entity accurately documented and maintained information demonstrating that bribery and corruption risk assessment(s) have been conducted?
- vi) Has the entity developed and implemented a risk mitigation plan to address all the identified risks?
- vii) Has the entity managed third party risks and applied a consistent risk-based approach?
- viii) Has the entity undertaken due diligence proportionate to the level of risk?
- ix) Does the entity perform due diligence reviews and vetting on all new third parties?

- x) Has the entity clearly communicated its gift policy internally and externally to control gifts, hospitality, donations, harambees and similar benefits to ensure that they are not for corrupt purpose?
- xi) 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 appropriate?
- xii) Does the entity have a strict reporting policy of all entertainment of foreign officials?
- xiii) 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. Designated officer?
- xiv) 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 programme 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 payments 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 programmes 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 Inquiry

- (i) Are there procedures to report any instance of fraud, bribery, corruption, collusion, obstructive or coercive practices or any other information relating

to any possible violation of the Anti-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 other forms of corruption?
- (iii) Are there procedures which facilitate inquiry of reported cases of bribery and other forms of corruption?
- (iv) Are there procedures which require appropriate action in the event the inquiry reveals that bribery or other forms of corruption occurred?

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 engagements with third parties monitored on an ongoing basis commensurate with their risk profile?