



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE ANTI-BRIBERY ACT (GUIDELINES TO ASSIST PUBLIC AND
PRIVATE ENTITIES IN THE PREPARATION OF PROCEDURES
FOR THE PREVENTION OF BRIBERY AND CORRUPTION, 2022**

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Anti-Bribery Act

The Anti-Bribery Act (Guidelines to Assist Public and Private Entities in the Preparation of Procedures for the Prevention of Bribery and Corruption, 2022

Gazette Notice 6022 of 2022

Legislation as at 27 May 2022

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The Anti-Bribery Act (Guidelines to Assist Public and Private Entities in the Preparation of Procedures for the Prevention of Bribery and Corruption, 2022 (Gazette Notice 6022 of 2022))

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ANTI-BRIBERY ACT

THE ANTI-BRIBERY ACT (GUIDELINES TO ASSIST PUBLIC AND PRIVATE ENTITIES IN THE PREPARATION OF PROCEDURES FOR THE PREVENTION OF BRIBERY AND CORRUPTION, 2022 GAZETTE NOTICE 6022 OF 2022

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SCHEDULE

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

Part I — PRELIMINARY

1. Legal Framework

- (1) The Anti-Bribery Act (Cap. 79B), requires public and private entities to establish procedures for the prevention of bribery and corruption. An entity that fails to establish bribery and corruption prevention procedures commits an offence.
- (2) The Commission is required under the Act to assist public and private entities to develop and implement the procedures for the prevention of bribery and corruption.
- (3) The Cabinet Secretary, in consultation with the Commission, is required to publish guidelines to assist private and public entities in preparation of procedures required under the Act.
- (4) Each State officer, public officer or person holding a position of authority in a private entity shall report knowledge or suspicion of an act of bribery or corruption within twenty-four hours thereof.
- (5) A person who fails to report knowledge or suspicion acts of bribery or corruption within the specified period commits an offence.
- (6) The Act provides for the protection of whistle-blowers, informants and witnesses from intimidation or harassment for providing information on bribery or corruption or giving evidence in court.
- (7) Any person who demotes, admonishes, dismisses from employment, transfers to unfavourable working areas or otherwise harasses and intimidates a whistle-blower, informant or witness will commit an offence and is liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

2. Purposes of these Guidelines

- (1) The purpose of these Guidelines is to assist public and private entities or any other person to prepare procedures for the prevention of bribery and corruption.

- (2) These Guidelines should be read together with the bribery Act, 2016 and Regulations made thereunder.

3. Entities Shall Establish bribery and Corruption Prevention Procedures

- (1) Under section 9 (1) of the Anti-Bribery Act (Cap. 79B), all public and private entities shall establish procedures for the prevention of bribery and corruption taking into account the size, scale and nature of operations of the entity.
- (2) Under section 12 (1) of the Act, the Cabinet Secretary shall, in consultation with the Commission, publish guidelines to assist public and private entities in the establishment of bribery and corruption prevention procedures.

4. Liability for Failure to Put in Place Procedures

- (1) Under section 9 (2) of the Act, a private entity commits an offence when it fails to establish bribery and corruption prevention procedures.
- (2) Under section 19 of the Act, an entity or its directors, senior officer 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 to both, for committing an offence under section 9 (2).

Part II - GUIDING PRINCIPLES ON PROCEDURES FOR PREVENTION OF BRIBERY AND CORRUPTION

5. Procedures to be in Writing and Official Languages

- (1) Bribery and corruption prevention procedures developed by entities in compliance with the Act shall be in writing. The procedures shall be in the official languages.
- (2) An entity may translate the bribery and corruption prevention procedures into any other language as may be appropriate in the circumstances.

6. Bribery and Corruption Risk Assessment and Management

During the development of the bribery and corruption prevention procedures, the entity shall assess and map out bribery and corruption risks in its operations and develop a plan to mitigate the risks.

7. Implementation Structure or Arrangement

- (1) The bribery and corruption prevention procedures shall provide for an implementation structure or arrangement, which shall take into account the size, scale and nature of operations of the entity and the identified risks.
- (2) The implementation structure or arrangement shall —
 - (a) ensure that there is commitment from the entity's leadership;
 - (b) ensure involvement of all employees in the entity;
 - (c) where appropriate, incorporate members from external stakeholders of the entity;
 - (d) designate a senior officer or person acting in such capacity to oversee the implementation of the procedures in the entity; and
 - (e) ensure that necessary resources for implementation are provided;

8. Reporting Mechanisms

- (1) The bribery and corruption prevention procedures shall provide for sufficient mechanisms to facilitate efficient and effective reporting of bribery and corruption within the entity and the Commissions.
- (2) The reporting mechanisms shall facilitate –
 - (a) timely reporting;
 - (b) access to reporting channels;
 - (c) confidentiality;
 - (d) prompt action;
 - (e) protection of whistle-blowers, informants and witnesses; and
 - (f) feedback.

9. Reports

The bribery and corruption prevention procedures shall provide for receiving, recording, processing and disseminating reports for appropriate action and feedback and take into account fair administrative action.

10. Protection of Whistle-Blowers, informants and Witnesses

The bribery and corruption prevention procedures shall provide effective measures for the protection of whistle-blowers, informants and witnesses including –

- (a) maintaining the confidentiality of the identity of whistle-blowers, informants and witnesses, details of the bribery or corruption report, and the sources of information relating to the bribery or corruption report;
- (b) establishing reporting channels for whistle-blowers, informants and witnesses who have suffered or reporting acts of bribery or corruption within the entity;
- (c) taking appropriate action on reports of retribution, victimisation or intimidation of informants, witnesses and whistle-blowers; and
- (d) instituting protection measures for whistle-blowers, informants and witnesses within the entity.

11. Communication and Training

The bribery and corruption prevention procedures shall provide for effective communication, training, awareness-creation and dissemination to internal and external stakeholders on the bribery and corruption prevention procedures established by the entity.

12. Enforcement Structure

- (1) The bribery and corruption prevention procedures shall designate a person or persons in authority to set up an enforcement structure.
- (2) The enforcement structure shall take into account the scale, size and nature of the operations of the entity and provide for appropriate action for violation of the law, regulations and bribery and corruption prevention procedures within the entity.

13. Monitoring, Evaluation and Review

The bribery and corruption prevention procedures shall include appropriate measures for monitoring, evaluation and review of the effectiveness of the procedures, identification of emerging risks and making improvements where necessary.

14. Collaboration and Co-operation with other Agencies

The bribery and corruption prevention procedures may provide for collaboration and co-operation with other agencies within the sector or industry. Collaboration or co-operation may be undertaken through –

- (a) joint planning;
- (b) sharing of information and best practice;
- (c) mutual consultation;
- (d) peer review; and
- (e) capacity building.

Part III—ASSISTANCE BY THE COMMISSION

15. Advice to Entities

The Commission may, on an entity's request, advise the entity on the development and implementation of bribery and corruption prevention procedures.

16 Advisories

The Commission may provide advisories generally on the development of bribery and corruption prevention procedures.