

# The Kenya Bribery Act, 2016

**Quick Guide**



### **Disclaimer**

The sole purpose of this publication is to provide a broad overview of the Bribery Act 2016. The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

This publication may contain errors and readers are advised to refer to the actual Act and related regulations and guidelines.

## FOREWORD

The Kenya Private Sector Alliance (KEPSA) Foundation was launched on 15th April 2015. It is a legal entity registered under the Trustees Act in Kenya. It is the social arm of KEPSA Industry, which is the apex body of all businesses in Kenya. KEPSA Foundation's mission is to provide a private sector platform for socioeconomic transformation underpinned through Sustainable Development Goals and Principles of Responsible Investment for a robust business environment that is globally competitive.

The Foundation is anchored on 4 key priority areas namely: Governance; Women Empowerment, Leadership and Child care; Climate Change, Resilience and Sustainability; and Community Outreach and Partnerships. It is under the Governance Key priority area that the Bribery Act initiative is established.

Governments worldwide must do more to serve their citizens and ensure transparency and accountability in public and private sectors. Corruption and poor work ethics are the main obstacles to development; they hinder economic and social progress and reduce transparency and the effectiveness of reforms.

Corruption is a vice that has impeded our social and economic development as a Nation. Strengthening the institutions that hold a government and citizens accountable is vital for the development of any country and is a critical component in the principles of governance. Therefore, engaging in a diverse and inclusive partnership model that provides a unified and well-coordinated multi-sectoral approach against corruption is important. Policies and guidelines are vital in ensuring that such a process is backed by law.

KEPSA Foundation, through its partnership with the Center for International Private Enterprise (CIPE), was instrumental in developing and enacting of the Bribery Act of 2016; after which the Bribery Regulations and Guidelines, 2021 were developed and gazetted on 10th December and 22nd October 2021, respectively. The Office of the Attorney General revoked the statutory instruments (Bribery Guidelines and Regulations, 2021), and new ones were published on 27th May 2022 and 3rd June 2022, respectively. The 2022 Bribery Regulations and Guidelines are operational upon which KEPSA Foundation, with CIPE's assistance, has developed the popular version.

This popular version of the Bribery Laws will be critical in capacity building, sensitization, and awareness creation of 1. The Bribery Act, 2016, 2. The Bribery Regulations, 2022 and 3. The Bribery Guidelines, 2022, for the Private Sector and the larger public. This is important now, as we seek to achieve an enhanced knowledge of proper compliance infrastructure with sound corporate governance, management, and integrity frameworks for a highly sensitized private sector.

KEPSA Foundation appreciates CIPE's immense material and technical assistance in pushing its corporate governance agenda.

Sincerely,



**Gloria Ndekei, OGW**  
**Executive Director, KEPSA Foundation**

## FOREWORD

In the ever-evolving landscape of business ethics in Kenya, the Bribery Act of 2016 stands out as a critical milestone, signaling a collective determination to root out corruption and promote ethical practices in the public & private sectors. This Handbook serves as a Quick guide of the Bribery Act 2016 for awareness and ease of compliance.

The Center for International Private Enterprise (CIPE) in its mission of strengthening democracy around the globe through Private Enterprise and Market-oriented reforms is committed to fostering integrity and combating corruption on a global scale. CIPE's unwavering commitment to advancing principles of integrity makes it a driving force in shaping a world where ethical conduct is not just encouraged but ingrained in the fabric of global business.

This guide is a by-product of CIPE's collaboration with KEPSA Foundation as a follow through of a Corruption Risk Mapping (CRM) which was jointly conducted and provided recommendations on corruption prevention mechanisms for SMEs and large businesses, as well as recommendations to the Ethics and Anti-Corruption Commission (EACC) on developing Regulations and procedural Guidelines for implementing the Bribery Act. This partnership gave rise to this guide of the Bribery Act, 2016 to enable and empower individuals and organizations to not only comply with the Bribery Act but to also champion the values it represents.

In these pages, you will discover insights tailored to the specific needs of enterprises operating within Kenya. The Quick guide is not just for compliance but also a strategic companion for businesses seeking to thrive in an environment where ethical principles can be a catalyst for sustainable success. It is our hope that this Quick guide becomes a tool for businesses, empowering them to embrace a culture of integrity that goes beyond compliance.

CIPE also runs other initiatives such as the Africa Business Ethics Conference (ABEC) which provides a platform for dialogue, collaboration, and knowledge-sharing among business leaders, policymakers, and civil society in Africa. This conference serves as a catalyst for driving ethical business practices, ensuring that the private sector plays a pivotal role in promoting transparency and accountability. Furthermore, CIPE's Ethics 1st program underscores its dedication to instilling a culture of ethics within organizations, offering practical tools and resources for businesses to navigate the intricate landscape of ethical decision-making. CIPE's unwavering commitment to advancing principles of integrity makes it a driving force in shaping a world where ethical conduct is not just encouraged but ingrained in the fabric of global business.

May the insights within these pages empower you, fellow leaders, and organizations, to navigate the ethical landscape with confidence, contributing to the emergence of a Kenya where integrity is the cornerstone of business success.

Sincerely,

**Ben Kiragu**

**Country Director, Center for International Private Enterprise (CIPE) – Kenya**

## Acknowledgment

This publication is a combined effort of the Kenya Private Sector Alliance Foundation (KEPSA Foundation) and the Center for International Private Enterprise (CIPE) Kenya spearheaded by the leadership of both Organizations: **Ms. Gloria Ndekei, OGW**, Executive Director, KEPSA Foundation, and **Mr. Ben Kiragu**, Country Director, CIPE Kenya.

KEPSA Foundation acknowledges CIPE's role in advancing Democracy, Integrity, and Ethics in business. It is against this backdrop that the two organizations have partnered on projects that are meant to streamline the vision and objectives of KEPSA Foundation under the Governance Pillar.

We would like to express our sincere gratitude to CIPE for their financial contribution, technical backup, and support towards the Private Sector's operationalization of the Bribery Act, 2016.

We thank the KEPSA Foundation and CIPE staff for their unwavering commitment to ensure this booklet came to fruition.

Sincerely,

A handwritten signature in blue ink, appearing to be 'GN' followed by a flourish.

**KEPSA Foundation.**

## The Bribery Act 2016: Quick Guide

This guide provides an overview of the steps taken in Kenya to tackle bribery and corruption, focusing on the Bribery Act 2016. This document offers a quick guide to the things you need to know to prepare your entity for implementation. The Government has also developed guidelines to assist public and private entities in the preparation of procedures for the prevention of bribery.







### Key Points



The Bribery Act 2016 applies to all public and private entities – private entity means any person or organization, voluntary organization, charitable organization, faith-based organization, religious-based organization, community-based organization, company, partnership, club and any other body or organization while public entity means the Government, including the national or county Government, or any department, State organ or agency service or undertaking of the national or county Government.



The Act is concerned with bribery. Very generally, this involves “giving someone a financial or other advantage to encourage a person to perform their functions or activities improperly or to reward that person for having already done so”. This is broad and goes beyond payment of money and the handing over of “brown envelopes”. It covers a wide range of things, including:

-  Money or any gift, loan, fee, reward, commission, valuable security or other property interest or interest in property of any description, whether movable or immovable;
-  Any office, employment or contract;
-  Any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;
-  Any other service including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty
-  Any offer, undertaking or promise of gratification.
-  Any facilitation payment made to expedite or secure performance by another person.



It is a criminal offence to bribe another person, receive a bribe, bribe a foreign public official or for private entity to fail to prevent bribery and state officer, public officer or any other person holding a position of authority in a public or private entity to fail to report within 24 hours any knowledge or suspicion of instances of bribery. Unlike other anti-corruption laws, the Act applies equally to bribes paid to public official and those paid in the private entities, business to business.

# CONTENTS

<b>1. INTRODUCTION</b>	<b>05</b>
Why was the Bribery Act 2016 (“the Act”) created?	05
What is Bribery?	05
<b>2. OFFENCES &amp; OBLIGATIONS</b>	<b>06</b>
What are the offences and obligations under the Act?	06
<b>3. PENALTIES &amp; CONSEQUENCES</b>	<b>07</b>
What are the consequences of being found guilty of an offence under the Act?	07
<b>4. PREVENTION OF BRIBERY</b>	<b>08</b>
What are the requirements for prevention of bribery?	08
<b>5. REPORTING BRIBERY</b>	<b>09</b>
What are the mechanisms for reporting bribery?	09
<b>6. WHISTLEBLOWERS AND WITNESSES</b>	<b>10</b>
What are the measures to protect whistleblowers and witnesses?	10
<b>7. COMPLIANCE GUIDE FOR PUBLIC &amp; PRIVATE ENTITIES</b>	<b>11</b>
What steps should entities take to comply with the Act?	11

# 1. INTRODUCTION

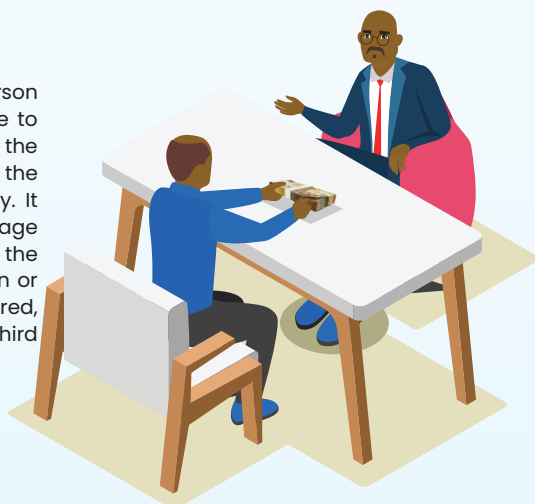


## Why was the Bribery Act 2016 ("the Act") created?

The Kenya Bribery Act, 2016 which came into force on 13th January 2017, is concerned with bribery and extends the fight against bribery to the private sector including requirement for private entities to adopt bribery prevention procedures and duty by state officer, public officer or any other person holding a position of authority in a public or private entity to report any knowledge or suspicion of instances of bribery.

## What is Bribery?

A person commits the offence of giving a bribe if the person offers, promises or gives a financial or other advantage to another person, who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of a relevant function or activity. It does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned, or whether the advantage is offered, promised or given by a person directly or through a third party (section 5).



## What does financial or other advantage mean?

The term financial or other advantage is deliberately and goes beyond payment of money and the handing over of "brown envelopes". It covers a wide range of things, including:

- Money or any gift, loan, fee, reward, commission, valuable security or other property interest or interest in property of any description, whether movable or immovable;
- Any office, employment or contract;
- Any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;
- Any other service including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty
- Any offer, undertaking or promise of gratification.
- Any facilitation payment made to expedite or secure performance by another person.

Unlike other anti-corruption laws, the Act applies equally to bribes paid to public official and those paid in the private entities.

## 2. OFFENCES & OBLIGATIONS



### What are the offences and obligations under the Act?

The Bribery Act has created seven separate offences:

- 01 A general offence of offering, promising or giving a bribe (section 5)
- 02 A general offence of receiving or requesting a bribe (section 6)
- 03 A distinct offence of bribing a foreign public official (section 8)
- 04 A liability offence for failure to prevent bribery by private entity or bribery by a person associated with it (section 10).
- 05 A liability offence for failure to report bribery (section 14)
- 06 A liability offence concerned with intimidation of a whistleblower or witness (section 22)
- 07 A liability offence concerned with disclosure of information of informants and witnesses and a result of which those informants are harassed or intimidated (section 22)

The Kenya Bribery Act, 2016 also includes offences related to agency, vicarious liability and corporate liability. The application of the Act extends to a person who performs services for or on behalf of another person. It also applies to performance of services for the private entity where a person intends to obtain or retain business or advantage in the conduct of business by the private entity.

State and Public Officers or any other person in authority in a public or private entity have an obligation to report any knowledge or suspicion of instances of bribery. The Act also has significant extra-territorial reach for a Kenyan individual in a private entity, or public entity who engages in conduct outside of Kenya that would be an offence under the Act.

### 3. PENALTIES & CONSEQUENCES

#### What are the consequences of being found guilty of an offence under the Act?

The penalties under the Act are severe for both individual person and private entity found guilty of an offence (section 18) – there is a maximum penalty of ten years imprisonment or a maximum fine of five million shillings and additional mandatory fine if the person received a quantifiable benefit or any other person suffered a quantifiable loss.



The mandatory fine shall be equal to five times the amount of the benefit or loss. In cases where the activities resulted in both a benefit and loss the mandatory fine shall be equal to five times the sum of the amount of the benefit and the amount of the loss.

In addition, where a person (including private entity) has been convicted of an offence the court may order the convicted person or private entity, or in appropriate cases, a public body, to pay back the amount or value of any advantage received by him to the Government.



#### There are other possible serious consequences of being found guilty of an offence under the Act, including:

- 01 Confiscation of the entire benefit obtained by the convicted person or private entity.
- 02 State officer or public officer convicted of a bribery offence is likely to be barred from holding public office.
- 03 A director of a company convicted is also likely to be disqualified from holding the position of director in that or other company in Kenya for a period of not more than ten years.
- 04 A partner in a firm convicted is likely to be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years.
- 05 Likely to be disqualified from being elected or appointed to hold a state office or a public office for a period of not more than ten years.
- 06 Likely to be disqualified from transacting business with the national or county government for period of ten years.

## 4. PREVENTION OF BRIBERY



### **What are the requirements for prevention of bribery?**

The Act (section 9) 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. Indeed, 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 are liable on conviction to a fine not exceeding five million shillings or to imprisonment to term not exceeding ten years or both.

The Act (section 12) required the Government to publish guidance to assist private and public entities in the preparation of procedures required to prevent bribery (Guidelines to assist public and private entities in the preparation of procedures for prevention of bribery and corruption), so that entities would have a better understanding of how they could prevent bribery. These Guidelines have been published.

Although the Act only required the Guidelines to cover procedures for the prevention of bribery, the Government has taken the opportunity also to set out guiding principles including written procedures, bribery and corruption risk assessment and management, structure for implementation, mechanisms for reporting bribery and corruption, management of reports, protection of whistleblowers, informants and witnesses, communication and training, enforcement of procedures, monitoring, evaluation and review, collaborations and cooperation with other actors or agencies, and liability for failure to put in place procedures.

## 5. REPORTING BRIBERY

### What are the mechanisms for reporting bribery?



There is statutory requirement (section 14) for every state officer, public officer or any other person holding a position of authority in a public or private entity to report to the Commission within a period of 24 hours any knowledge or suspicion of instances of bribery. In addition, it is offence for state officer, a public officer or any other person who despite being aware of or suspicious of bribery fails to report the act to the Commission within 24 hours.

The regulations under section 14 set out methods for reporting bribery, contents of bribery and corruption reports, the right for person or entity that makes a report to request for acknowledgement of reports by the Commission, maintenance of record of reports, confidentiality of information relating to any person that makes a report of an act of bribery or corruption, reporting mechanisms of entities and protection of whistleblowers and witnesses.



It is important to note that the regulations require the Commission and any private and public entity to maintain a record of all bribery reports made and ensure the confidentiality of information relating to any person that makes a report of an act of bribery. It also requires entities to establish mechanisms for internal and external reporting of acts of bribery by its employees or persons associated with the entity.

## 6. WHISTLEBLOWERS AND WITNESSES



### **What are the measures to protect whistleblowers and witnesses?**

The Act makes provisions for protection of whistleblower, informant or witness (section 21) – from intimidation or harassment arising from providing information to law enforcement agencies or giving testimony in a court of law. A whistleblower or a witness is entitled to protection by the Witness Protection Agency and law enforcement agencies are required to put in place mechanisms to protect the identity of informants and witnesses.

The Act creates two offences concerned with none protection of whistleblowers and witnesses – there is a maximum fine of one million shillings or imprisonment for a term not exceeding one year or both for any person convicted of intimidation, harassment of a whistleblower or witness or knowingly or negligently discloses the information of informants and witnesses and a result of which those informants are harassed or intimidated.

## 7. COMPLIANCE GUIDE FOR PUBLIC & PRIVATE ENTITIES

### What steps should entities take to comply with the Act?

In light of the Act, it is now more urgent than ever that all public and private entities in Kenya review their anti-corruption and prevention of bribery procedures and policies to ensure they will be effective in preventing corruption or bribery from being committed on their behalf. By doing so, entities will be complying with their corporate governance and other obligations by seeking to protect themselves, so far as possible, from potential liability under the Act.

#### The following are steps public and private entities should take to comply with the Act:



Adopt a risk-based approach to managing bribery risks. No policies or procedures are capable of detecting and preventing all forms of bribery. However, adopting a risk-based approach will help entities focus the effort where it is needed and ensure that procedures are appropriate to the risks faced.



Put in place procedures appropriate for the prevention of bribery and corruption. The Guidelines have been published to assist in the preparation of appropriate procedures and seek assistance from the Commission to implement the procedures if needed.



The leadership on preventing bribery must come from the top. Top level management should be at the forefront of fostering a culture in which bribery is never acceptable. Without this top-level commitment, any procedures will be “inadequate”.



It is essential that all entities conduct a properly documented risk assessment. Without this, entity will not be in a position to decide what level of procedures for the prevention of bribery it needs.



Undertake due diligence on persons or associated persons performing services on behalf of the entity. Effective due diligence is necessary in order to ascertain how risky the business relationship or transaction is and ensure the risk is mitigated by putting in place appropriate procedures.



Communicate a zero-tolerance approach to bribery internally and externally. Internal communication should focus on policies and procedures – staff training is a useful way to communicate. External communication should target third parties via ethics statements or codes of conduct.



Put in place monitoring and review mechanisms to ensure compliance with procedures and policies and to identify any issues as they arise.



Stop facilitation payments – these are now illegal under the Act.

While the above steps are welcome, they are not sufficient to build a culture of integrity and accountability which is the most sustainable way to prevent, detect and respond to corruption and bribery. There's need to develop an organizational culture of integrity and accountability and the starting points can be the above mentioned steps.


It is important to note that there is no one-size-fits all organizations. On the same wavelength, to find the right size and approach that is most effective, efficient, and affordable, Ethics 1st for private businesses as a solution CIPE is offering will be vital in helping check and tick all the above boxes, making it affordable effective and efficient.


The ultimate goal of Ethics 1st is to de-risk investment into African economies to increase return on investment and better integrate companies across the continent into global value chains. The Ethics 1st Governance and Corporate Ethics compliance benchmark is based on internationally recognized standards adapted for business operations in emerging markets, making it accessible for African businesses.

Compliance with the Blue Company Project requirements as another resource for businesses and companies to be certified Blue in order to be in a network of like-minded companies will also be important in ensuring compliance with the Act.



### KEPSA Foundation

 4th Floor, Shelter Afrique Building, Mamlaka Rd.

 P.O. Box 3556-00100 Nairobi, Kenya

   Kenya Private Sector Alliance

 @KEPSA\_KENYA

 [www.kepsa.or.ke](http://www.kepsa.or.ke)

### Center for International Private Enterprise (CIPE)

 Methodist Ministries Centre, Block C,  
Oloitoktok Rd, Nairobi, Kenya.

 CIPE Kenya

 @CIPEKenya

 [www.cipe.org](http://www.cipe.org)

