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BUSINESS AGAINST CORRUPTION:

Case studies of Anti-bribery and corruption
practices among Kenyan companies



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Table of Contents

Preface	3
Foreword	4
Acknowledgements	5
ANTI BRIBERY AND CORRUPTION CASE STUDIES	6
Bribery and corruption: An Increasing Concern	6
Defining Bribery and Corruption	6
Bribery and Corruption and Mergers and Acquisitions	7
CASE STUDY SURVEY ON BRIBERY AND CORRUPTION	8
Survey	8
AB&C framework	9
AAR	13
A: Governance	14
B: Bribery and corruption risk assessment	15
C: Policies and Procedures	16
D: Due Diligence	16
E: Communication and training	17
F: Monitoring and review	17
G: Response Strategy and investigative procedures	17
East African Breweries Limited	18
A: Governance	18
B: Bribery and corruption risk assessment	19
C: Policies and Procedures	20

D: Due Diligence	20
E: Communication and training	21
F: Monitoring and review	21
G: Response Strategy and investigative procedures	22
Kapa Oil Refineries Limited	23
A: Governance	23
B: Bribery and corruption risk assessment	24
C: Due Diligence	25
D: Communication and training	26
E: Monitoring and response	27
F: Response Strategy and investigative procedures	27
Safaricom Limited	28
Anti-Bribery and Corruption Program	28
A: Governance	29
B: Bribery and corruption risk assessment	30
C: Policies and Procedures	31
D: Due Diligence	33
E: Communication and training	34
F: Monitoring and review	34
G: Response Strategy and investigative procedures	34
Future plans: Ethics linkages	35
Conclusion	36
References	37



Polycarp Igathe, Chairman

Preface

Bribery and corruption remains a constant threat to public trust and confidence in institutions and companies. In East Africa, bribery and corruption directly threatens growth, development and even the security of our people. Currently, there is a significant initiative from both the private and public sector to combat bribery and corruption. Although organizations do their best to formulate comprehensive and proactive strategies to manage the risk, they still need significant effort and commitment to ensure success in deterring bribery and corruption. Although there is no one size fits all solution, companies can be well served in focusing their efforts on the following:

- Identifying and understanding bribery and corruption risks that can undermine their business objectives
- Evaluating the design and operational effectiveness of Anti-Bribery and Corruption compliance programmes
- Committing fully from the top to the implementation of more comprehensive designs and controls to mitigate the risk of bribery and corruption
- Reducing exposure to corporate liability, sanctions, and litigation that may arise from violations of law or stakeholder expectations
- Achieving high levels of ethics through sound corporate governance, internal control and transparency.

This document provides the elements to a comprehensive Anti-bribery and Corruption (AB&C) framework and actual case studies that will showcase programmes that have been employed by companies to combat bribery and corruption. It also provides insight into the specific AB&C elements and a roadmap to design a programme proportionate to the risk and maturity of the organization.

Polycarp Igathe,
Chairman, Kenya Association of Manufacturers



Dr. Christian Turner, High Commissioner

Foreword

The British High Commission is proud to support this sharing of companies' best practices on Anti-Corruption and Anti-Bribery. The importance of having a business environment free from corruption cannot be overstated. It is critical to allow the private sector to thrive, to attract investment and to ensure that the benefits of economic growth are shared amongst all citizens. Whether you are a Kenyan company, international investor, development partner or the Government of Kenya, our interests are the same: to create an environment which attracts investment creates jobs, and helps implement Vision2030.

The British Government remains steadfast in its commitment to support these efforts. We welcome the strong resolve of the Government of Kenya to tackle corruption, working through the Ethics and Anti-Corruption Commission. We also applaud the continued efforts of private sector partners, including the Kenya Association of Manufacturers (KAM) and the Kenya Private Sector Alliance (KEPSA), who are working to tackle corruption and promote transparency. I would like to congratulate the companies who have offered to share their 'ethical commitment story' in this publication, as pioneers and leaders in this important field. I hope that more companies will follow their lead, speak out, and strengthen their commitment to ethical business, including through increased participation in the UN Global Compact and commitment to the Code of Ethics for Business in Kenya.

We look forward to collaborating further with the business community and the Government of Kenya on this important agenda.

Dr. Christian Turner, C.M.G.
British High Commissioner
Nairobi



Betty Maina, Chief Executive

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I would like to thank KPMG for carrying out the study on Anti-bribery and Corruption and compiling this report. The following members of the Global Compact Network Kenya (GCNK) graciously gave their time and invaluable insights on this topic namely; AAR, East African Breweries Ltd, KAPA Oil Refineries and Safaricom Ltd. We are grateful for their contributions to this publication which would not be possible without their input.

My colleagues at Kenya Association of Manufacturers, Judy Njino, the Global Compact Network Coordinator and Anne Ndung'u, our editor, worked hard so that the report could see light of day. I am thankful to them for that.

Last but not least, I wish to most sincerely thank the British High Commission, Nairobi for their financial support. This publication and the study itself were made possible through their support. We look forward to further collaboration as we aim at improving Kenya's standing in the Ease of Doing Business rankings, hence creating a conducive business environment.

Betty Maina, MBS
Global Compact Network Kenya Representative,
Chief Executive- Kenya Association of Manufacturers

ANTI-BRIBERY AND CORRUPTION CASE STUDIES

Bribery and Corruption: An Increasing Concern

A global AB&C survey carried out by KPMG in 2011 revealed that seven out of ten executives surveyed believed that there are certain areas in the world where business cannot be conducted without bribery and corruption being involved. The survey also indicated that, despite a greater awareness of the business and legal imperatives for well-developed AB&C compliance programmes, many of these compliance programmes lack sufficient depth and breadth to effectively mitigate AB&C risk around the world.

According to the 2012-2013 Global Competitiveness survey by Prof. Klaus Schwab of World Economic Forum and Prof. Xavier Sala-i-Martin of Columbia University, corruption was cited by businesses as the second leading impediment to a thriving commercial environment in Sub-Saharan Africa after access to finance. Other studies have demonstrated that companies with strong ethical culture and principles experience a significant positive impact on the bottom line.

Kenya is ranked 133/174 in the 2012 corruption perception index by Transparency International (TI) implying that the country's bribery and corruption risks are high. A 2013 survey by TI ranks Kenya number four among countries with the highest cases of bribery in the world. The survey shows that seven out of ten Kenyans interviewed have given a bribe in the last 12 months against a worldwide average of 27 percent. Subsequently, bribery and corruption remains a serious obstacle to Kenya's growth and development.

Defining Bribery and Corruption

Bribery and corruption is defined as any activity or transaction, not necessarily financial, that involves the offer, promise or acceptance of a financial advantage or another form of an advantage- whether between a company and a customer, a supplier, their agent or employee, a Public Official or any other associated party - that is intended to encourage the recipient of the benefit to act improperly or unfairly in the award of business or in the execution of their duties.

It is not always immediately apparent whether or not a transaction or activity could be interpreted as involving bribery or corruption, particularly as local customs and behaviours vary from one country to another. It should, however, be possible for a reasonable person to distinguish between what might be a local custom (e.g. a periodic exchange of small gifts) and a deliberate attempt to entice someone to act improperly, to provide an unfair advantage, to act in bad faith or to breach a

position of trust. Transparency and documentation is therefore the key to ensuring that a company has the necessary evidence to counter any allegation of bribery and corruption.

Examples of corrupt activity include:

- Employees accepting inducements, e.g. to retain or obtain business, or otherwise act outside of compliance with their duties and against the best interests of the company
- Employees paying, offering or promising a bribe, or authorising such acts, to induce another to act outside of compliance with their duties and award business to the company
- Exchanging expensive gifts or providing lavish entertainment to individuals with the intention of influencing the award of business to the company
- Making political or charitable donations that are intended to unfairly influence the award of business to the company
- Accepting payments or other inducements from third parties in order to award business to another third party
- Manipulating tender procedures to award a contract to a specific third party in return for some form of payment, benefit or other favour
- Offering payments or other forms of benefit to a tax or customs officials to overlook local taxation or customs' requirements.

Bribery and Corruption and Mergers and Acquisitions

Almost 50 percent of US corruption-related prosecutions in 2007 were connected to mergers and acquisitions (M&A) transactions, according to Transparency International in 2012. This is as a result of wide-ranging global AB&C legislation with extraterritorial reach. In addition, increasing cooperation between regulators is resulting in an increasing number of prosecutions as well as the levying of multi-million dollar fines following the payment of bribes by companies to obtain or retain business

Effective management of the risk of successor liability, as well as, reputational damage and legal disputes arising from bribery and corruption issues identified following mergers and acquisitions, has become of increasing importance.

Inadequate action and controls can allow unlawful conduct and/or the benefit flowing from unlawful conduct to continue, with all the potential attendant damage to a business' profitability and reputation, as well as potential civil and criminal liability, not to mention potentially over-paying for the business acquired.

There are various risk areas to monitor when looking at Bribery and Corruption:



Case study survey on bribery and corruption

Survey

The Kenya Association of Manufacturers (KAM) and the Global Compact Network Kenya (GCNK) commissioned a survey to assess companies that have implemented AB&C programmes. The results of the survey were used as case studies that will showcase programmes that have been employed by four UN Global Compact member companies to combat bribery and corruption as part of their commitment to the tenth principle which states that “Business should work against corruption in all its forms including extortion and bribery”.

The survey employed several data collection methods which included a detailed questionnaire covering seven AB&C pillars, document review and observations. In developing the AB&C questionnaire, the following served as the guiding bases:

- The Kenya Anti-Corruption and Economic Crimes Act (ACECA), 2003 (revised 2009), which provides guidelines as to what is considered as corruption and the persons mandated to have oversight in ensuring that corruption is minimized and/or eliminated

- Best practices gathered from various sectors and bribery surveys such as the KPMG Global Anti-bribery and Corruption Survey
- Also considered were the Foreign Corrupt Practices Act and the UK Anti-bribery Act 2010, Kenyan government performance contracting guidelines for public entities and Transparency International (TI) surveys

The case studies are based on the information provided by the surveyed companies from the interviews conducted, completed questionnaires and/or the documents provided.

AB&C framework

The KPMG AB&C framework provides a comprehensive coverage of the potential areas of risk a company can be exposed to with regard to corruption and related offences.

Companies which apply the framework can use it as a defence to prove that they had put in place “adequate procedures” to prevent persons associated with the company from engaging in unethical conduct.

The framework consists of seven pillars which can assist a company to mitigate bribery and corruption risks. The seven pillars are:

- Governance
- Anti-corruption risk assessment
- Policies and procedures
- Communication and training
- Due diligence procedures
- Monitoring and review and
- Response strategy and investigative procedures.



AB&C framework

Governance – An effective governance structure to manage bribery and corruption is critical for an organisation to effectively reduce the likelihood and impact of AB&C risks crystallising. Instances of bribery and corruption remain a constant threat to public trust and confidence in capital markets. Organisations strive to achieve compliance with an array of AB&C laws and regulations. Governance encompasses the organisation’s AB&C strategy and framework of policies and procedures to prevent detect and respond to bribery and corruption. It also refers to the way in which those charged with oversight meet their obligations.

Bribery and corruption risk assessments – The objective of the assessments is to understand the internal and external bribery and corruption risks that can undermine the company’s business objectives. This can be seen as a significant principle as it forms the basis for the entire framework.

Proportionate policies and procedures – Policies and procedures tied to the bribery risks the company faces, and to the nature, scale and complexity of company’s activities, should also be clear, practical, accessible, effectively implemented and enforced within the company.

Communication and training – The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

Due diligence procedures – The commercial organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

Monitoring and review – The company should monitor and review procedures designed to prevent bribery by persons associated with it and make improvements where necessary.

Response strategy and investigation procedures – Controls or elements designed to take corrective action and remedy the harm caused by bribery and corruption.

General comments of the results of the survey

The companies under the survey had instituted diverse ways of dealing with bribery and corruption which included: development of policies to address bribery and corruption risks, instituting governance mechanisms to combat the risk of bribery and corruption, conducting due diligence procedures on their suppliers, agents and other third parties, conducting risk assessments and taking disciplinary actions on those found not complying with the code of conduct.

We found that the maturity levels of the AB&C programmes vary between organizations. Some of the entities surveyed only just started the journey, while others, mainly international companies, have progressed a long way into the marathon.

Large companies and those companies connected with or affiliated to a multinational entity exhibited a more comprehensive approach in mitigating the risk of bribery and corruption. The multinational entities are heavily influenced by their group compliance departments through minimum policy requirements and group-wide audits to ensure AB&C compliance.

As far as the local medium-sized companies are concerned they have a much less formalized approach and a less comprehensive AB&C framework. We noted that multinational companies embarked on an initiative to provide guidance and to mentor the local entities in the design and implementation of AB&C frameworks. This is an exciting opportunity to learn from the more matured organisations and will have a direct impact on the effectiveness of their compliance programmes.

All companies surveyed showed commitment from the top to establish an AB&C compliance programme.

The companies in the survey have put in place various bribery and corruption mechanisms. For instance, while some companies have whistle blowing mechanisms in place, others embrace an open door policy in reporting corruption and bribery cases. Others have dedicated persons and/or units to deal with bribery and corruption matters, whereas other companies do not have anyone coordinating bribery and corruption initiatives and rather handle it as part of the general risk and human resources procedures. Furthermore, depending on the nature of a company's operations and exposure, the cost of compliance to AB&C varies from company to company.

While companies surveyed highlighted the existence of a code of conduct/ethics, they seemed to lack specific standalone policies dealing with bribery and corruption. In addition, the surveyed companies demonstrated commitment from top level management with the CEO being in the lead with regard to initiatives on tackling bribery and corruption.

Investigations on corrupt behaviour may be carried out within the company structures while, at times, the companies call for external investigative services such as from independent consultants, regulatory bodies or the police.

Local companies have tried to institute structures to handle ethics and integrity in the company but these are still at the infancy stage. Even companies affiliated to a multinational are still developing and/or implementing mechanisms to combat bribery and corruption risks. Overall, bribery and corruption was viewed as an important aspect of risk management.

Overall the companies surveyed brought out a clear theme that 'Anti-bribery and corruption is a marathon and not a sprint'. East African Breweries and Safaricom have covered a significant portion of the marathon but are yet to arrive, whereas Kapa and AAR have just embarked on the first stage of the marathon. An effective AB&C programme is not a 'one time fix' solution but a constant improvement drawing on constant reviews and lessons learnt from past experiences.

AAR

AAR is a private healthcare company with a footprint in the East African region. Having started its operations in 1984 focusing on evacuation of medical and accident casualties, the company has since evolved to provide preventive and curative healthcare services to its clients. The company has over eighteen health centres spread over Kenya, Uganda and Tanzania.

AAR has two strategic business units (SBUs) - that is, the Healthcare SBU, which is headed by the Regional Managing Director Healthcare Holdings and the Insurance SBU, which is currently headed by the Group CEO for the entire East Africa region. The Healthcare business comprises healthcare delivery through a network of clinics in the region, as well as rescue and evacuation. The Insurance business includes both medical and non-medical insurance lines.

As a result of the company's rapid expansion, AAR introduced a Code of Conduct to have a coordinated approach on corporate integrity. At the same time, AAR had to institute tight controls to manage their risk of fraud, bribery and corruption and misconduct. The Code of Conduct was the first step in the marathon of putting in place an element of the AB&C framework.

The Code of Conduct is contained in the AAR Staff Manual. AAR has a separate Human Resource staff manual for each of the countries where it carries out business (i.e. Kenya, Uganda and Tanzania). Ethics-related matters are handled through the Human Resources department. Depending on the gravity of the ethical issue, disciplinary and arbitration matters are handled by a committee. Each AAR employee and manager is expected to apply basic AAR values in their line of duty. AAR has an internal audit department which handles ethics and corruption-related matters. Whereas the internal audit reports to the Audit, Risk and Compliance Committee, AAR has also nominated role models to act as integrity champions who are trained by Human Resources and senior staff members on integrity principles.

AAR's management has demonstrated its commitment to fighting bribery and corruption through termination of those found in violation of the Code of Conduct. AAR employees are trained and re-trained on the values, which encompass timeliness, quality, caring attitude, integrity and teamwork. Recently, the values have changed for both Insurance and Healthcare, with both having their own value set. The values for Healthcare are Nurturing, Excellence, Ethics, Integrity, and Legacy. The values for Insurance are Empowerment, Flexibility, Efficiency, Ethics and Legacy.

AAR has been a member of the United Nations Global Compact (UNGC) since 2008. The UN Global Compact is a strategic policy initiative for businesses that are committed

to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour standards, environment and anti-corruption. AAR has been an active participant of the Global Compact Network Kenya chapter and was instrumental in the development of the Code of Ethics for Business in Kenya- a domestication of the UN Global Compact principles. AAR is also a signatory to the code. Companies that have signed up to the code and are committed to the UN Global Compact principles are required to make public disclosures on their progress to implement the ten principles. AAR advocates for ethical practices, hence its willingness to be associated with the UN Global Compact and the Code of Ethics for Business in Kenya initiatives.



AAR Healthcare Managing Director Mark Achola and Morris Gitonga, Medical Internal Auditor reviewing the Anti-Corruption survey done on the company

A: Governance

At AAR, each head of the two SBUs has overall responsibility for the implementation of the company's anti-corruption guidelines as contained in the Code of Conduct. The responsibility for Healthcare lies with the Managing Director AAR Healthcare Holdings, while the responsibility for the Insurance lies with the Group CEO for the entire region. The implementation begins with the Human Resources department and then is cascaded down through to the Managing Director, General Managers, down the seniority scale to managers and eventually to all employees. AAR's management oversees anti-bribery and corruption compliance through the balanced score card analysis and the quarterly performance appraisals.

Committees are constituted on a need basis to deliberate and determine the actions to be taken regarding ethical cases that arise. Depending on the severity of the issue, external professional assistance is sought to aid the investigations.

At AAR, integrity is one of the key pillars of the company values and awareness of this key value is created through messages on screensavers and powerpoint presentations.

B: Bribery and corruption risk assessment

AAR's corruption risk assessment is addressed by the internal audit department through an annual high level risk assessment. The risk assessment audit plan is based on prior experience of those areas affected by fraud. This appears to be one of the areas in which AAR identified a need to strengthen going forward.

KPMG comments on best practice -AB&C Risk assessment

There are six steps to a comprehensive AB&C risk assessment as illustrated below:



It is important that the entity continually monitors the bribery and corruption risks to which it is exposed and carries out a comprehensive risk assessment annually.

A consistent approach will be adopted for the purposes of performing the risk assessment, which should cover the following:

- The level of governance
- Country risk
- Risks in sales and procurement channels
- Risks associated with the use of Third Parties
- Risks associated with interactions with Public Officials
- The level of anti-bribery and corruption training and communication across the organizations
- Use of gifts and corporate hospitality

- *Maintenance of records (financial, compliance and training), and*
- *The level of monitoring for anti-bribery and corruption compliance (internally and externally).*

C: Policies and Procedures

AAR has an employee Code of Conduct which was developed in 1999. AAR employees are required to sign the Code of Conduct and Conflict of Interest forms on an annual basis. The following important aspects are covered in the Code of Conduct:

- AAR's zero-tolerance approach to bribery and corruption
- The Code prohibits issuance or receipt of any facilitation payments, and
- Extensive guidance on gifts and entertainment with the necessary thresholds and reporting requirements.

Other areas that are clearly covered by relevant policies and procedures include:

- No charitable contributions or donations are permitted
- Facilitation payments are not allowed.

Management designed additional checks and balances to ensure that the process of obtaining all licenses for the various businesses is free of bribery and corruption. AAR has an open door policy and encourages staff to report any unethical issues directly to managers or their immediate supervisors. Depending on the severity, the cases can be escalated accordingly to board level.

D: Due Diligence

About 90 percent of AAR's Insurance business is conducted through agents. Reference checks are carried out on the agents who deal with AAR. Every sales person is required to sign the Code of Conduct to ensure they subscribe to the values of AAR and understand what is expected of them.

AAR has a procurement and disposal committee in charge of pre-qualification and is tasked with selection of preferred medical providers. Random checks are done by a team from AAR to ascertain that quality standards are maintained by the agents. The company also has a medical team which is charged with vetting any claims to identify any malpractice or fraud. Any malpractices in the medical fields are reported to the appropriate medical authority such as the Pharmacy and Poisons Board.

Reference checks are conducted on new employees before joining AAR, with these references being commonly obtained from an employee's previous employer.

Physical visits are carried out on business partners who intend to join the network of service providers at AAR. Compliance requirements such as licenses from the government and professional bodies are required where one wishes to undertake business with AAR.

E: Communication and training

Employees are taken through a three to four day induction process on AAR's Code of Conduct. One of the aspects covered in the induction training and general training is ethics and the company's values: nurturing, excellence, ethics, integrity, and legacy for Health care and empowerment, flexibility, efficiency, ethics and legacy for Insurance.

At AAR, the SBU heads encourage collective responsibility. If there are incidents of fraud, bribery and corruption or misconduct, AAR practically demonstrates how that impacts the performance of that business unit and takes corrective and appropriate measures. With this approach, AAR has seen improvements in integrity and a material reduction in unethical behavior.

F: Monitoring and review

These controls are tested periodically by internal audit functions. The internal audit programme is constantly monitored, updated in all important areas such as anti-corruption. Internal audits are performed throughout the business spectrum on aspects such as conflicts of interest, non-compliance and quality assurance. Any non-compliance is communicated to the appropriate units and addressed accordingly. Corruption is dealt with immediately if detected and this is evidenced by the quarterly reports which are sent to the Audit, Risk and Compliance Committee and it also updates them on initiatives and audits performed.

G: Response and investigative procedures

The response and investigative procedures at AAR depend on the severity of the case. The case is initially investigated internally through the internal audit department. The case is then escalated to the appropriate unit manager and/or any manager and/or senior manager, and if necessary, the Managing Director and/or the General Manager. The Group CEO for Insurance may also be involved. Where relevant, the matters are reported to the police and/or criminal investigations department (CID) for further action. All reported cases are investigated. However, AAR has at times experienced frustration when working with the CID and police upon seeking their help with investigations.

EAST AFRICAN BREWERIES LIMITED

East African Breweries Limited (EABL) is a branded alcohol beverage business with a collection of brands ranging from beer, spirits and adult non alcoholic drinks. With breweries, distilleries, support industries and a distribution network across the region, EABL has implemented a comprehensive AB&C compliance programme. The programme was designed to mitigate the risk of bribery and corruption within the business and across its supply chain. EABL is part of the Diageo Plc. group of companies.

Not only has the company put in place a comprehensive AB&C compliance programme but they actively participate in initiatives across East Africa to eradicate bribery and corruption. In November 2012, EABL led a peer group sharing session with like-minded entities such as Safaricom, Mabati Rolling Mills and Kapa Oil, where they shared insights on their compliance and ethics programme including the risk of bribery and corruption when dealing with internal and third party stakeholders. As part of partnering with companies within Kenya to influence ethical business practices, EABL sponsored the Ethics conference which was held at Strathmore University on 24 October 2013.

The company was also involved in developing the Code of Ethics for Business in Kenya launched by the Kenya Association of Manufacturer (KAM) and the Kenya Private Sector Alliance (KEPSA) in 2012. Furthermore, EABL is committed to the UN Global Compact ten principles and is an active participant in the local network activities.

A: Governance

By virtue of EABL being a subsidiary of a company that is traded in the London Stock Exchange and the New York Stock Exchange, the company is required to adhere to the US Foreign Corrupt Practices Act and the UK Bribery Act which have stringent requirements for companies and their subsidiaries to put in place measures to manage bribery and corruption. This is over and above the requirement to adhere to the Kenyan anti-bribery and corruption laws that are applicable to local companies.

EABL has a clear AB&C strategy which gives details on how to manage the risk of bribery and corruption. The strategy is driven from the top and enforced by the group. At EABL, the Compliance, Controls and Ethics (CCE) department is charged with coordinating the compliance and ethics initiatives which include anti-bribery and corruption programmes. The company updates its Code of Business Conduct (CoBC) and anti-bribery and corruption policies on a regular basis and circulates these to all its employees. EABL has a robust framework that gives guidance on how breaches of the CoBC should be reported, investigated and on any disciplinary procedures.

The company also communicates instances of non-compliance with the CoBC to employees for learning purposes. In addition, the company creates awareness on bribery and corruption through training of employees and contractors, publications and email communications.

B: Bribery and corruption risk assessment

EABL, which conducts compliance risk assessments on a quarterly basis, rolled out a "Know Your Business Partner" (KYBP) review process in June 2013 which includes assessing the company's business partners against the risk of bribery and corruption. The aim is to seek for ways to reduce the exposure to corruption risk for any business partner that is assessed to be high or medium risk.

KPMG comments on third party risk

The Group can be criminally liable if an 'associated' party bribes another party with the intention of obtaining or retaining business or a business advantage for the Group. A party associated with a commercial organisation is defined as one who 'performs a service' for or on behalf of the organisation. Some 'associated parties' are considered to be higher risk from a bribery and corruption perspective than others. Those that are deemed as 'higher risk' include:

- Finders and Introducers
- Intermediaries and Agents
- Distributors
- Consultants and Advisors and
- Joint Ventures and Consortiums.

Key characteristics

The common theme with 'higher risk' associated parties is the nature of the service that they provide (rather than the capacity in which it is done). In particular, the risk of bribery maybe higher where an 'associated party' is being used to win or retain business. This is partly because the company exercises less control over the 'associated party' than an equivalent business unit or employee. Similarly, 'higher risk' associated parties may also act as advisors or consultants in connection with specific opportunities – thereby exerting an influence over the actions of the company.

**Joint ventures and consortiums also pose a higher risk for a similar reason (i.e. the company does not have exclusive control). In these instances the risk can potentially be even greater considering the financial, intellectual, and reputational investment in the venture.*

C: Policies and procedures

EABL operates in accordance with its CoBC which was developed by its parent company, Diageo, and is applied consistently to all subsidiaries of Diageo irrespective of their location. The CoBC is available to all the company's employees and stakeholders through the company's internet webpage. The CoBC contains a summary of the Diageo policies and standards, which guide employees and the company's stakeholders on key areas in its business activities and outlines individual's responsibilities. The CoBC is shared with all employees and its contents are revised periodically by Diageo. The roll out of the CoBC was led by senior management and its latest revision was carried out in July 2012.

All employees are required to sign a certification that they have read and will abide by the CoBC at the point of employment. Non-permanent employees are also required to abide by the CoBC. The anti-corruption policy covers issues dealing with conflicts of interest, bribery, dealings with suppliers, charitable activities, sponsorships, interaction with government officials and gifts and entertainment.

The company does not condone, under any conditions, the offering or receiving of bribes or any other form of improper payments, including what are known as 'facilitation payments'. The company's anti-corruption policy requires each employee to maintain an on-line gift register which is then approved by the line manager for any gifts and entertainment received and/or offered.

Employees are required to obtain written pre-approval from their line managers if, in any financial year, the value of gifts they intend to offer or receive exceeds Ksh. 10,000 to/from one entity and Ksh. 20,000 in total. A nil-return must be filed by employees who have not entertained or given/received a gift. In addition, employees are required to obtain pre-written approval from the legal team before offering, giving or paying for any gifts, entertainment or expenses to a government official on behalf of EABL.

D: Due diligence

EABL conducts background checks on all new employees. Aspects checked include educational background and previous employment history. All new employees are required to certify in writing that they have read, understood and will abide by the CoBC by signing at the point of employment. They are also required to complete CoBC on-line training within one month of commencement of their employment. Supplier due diligence is carried out prior to bringing a new supplier on board with enhanced KYBP checks for suppliers assessed as requiring such checks.

E: Communication and training

EABL normally carries out various communication and training sessions, chief among them the 'Pathway of Pride' seminars which have been offered to employees, contractors and third parties during the last three years. The seminars focus on embedding a compliance culture by discussing various topics ranging from personal and business integrity to sharing real life ethical case studies. The company has also implemented an on-line policy control system which is internet based and employees are required to complete e-learning training on the company's policies.

EABL also runs ethical leadership training sessions for Line Managers where they discuss expectations on leading with integrity. The company also organizes CoBC training and discussion sessions for its key business partners.



Kenya Breweries Limited Managing Director Joe Muganda addressing stakeholders at the pathway of pride events in February 2014.

F: Monitoring and review

EABL's compliance, controls and ethics department conducts spot checks to confirm whether employees have completed on-line training on CoBC and the relevant policies. In addition, all line managers are required to certify whether they have fully complied with the CoBC and policies that are relevant to their functional roles on an annual basis through the annual certification of compliance (ACC) process.

EABL has an active internal audit team which performs independent reviews of controls including assessing whether adequate anti-bribery and corruption initiatives have been implemented.

G: Response strategy and investigative procedures

EABL has a breach management framework which provides guidance on timeframes and process for conducting investigations.

While the company encourages employees to report suspected or actual breaches of the CoBC and company policies to line managers, legal, human resources or compliance, controls and ethics team members, it also has a 'Speak up' whistle blowing help-line which employees and third parties can access anonymously to report allegations. The 'Speak up' line is widely used by both employees and the company's business partners; and investigations are carried out by a dedicated corporate security team.

Any employee who is found to be in breach is referred to the human resource team for a disciplinary hearing, which could result in dismissal in case of a significant breach. For third parties found to have breached the company's CoBC and policies, action is taken against them in line with the contract in place between EABL and the third party.

KAPA OIL REFINERIES LIMITED

Kapa Oil Refineries (hereinafter Kapa) was established in the late 1960s as a salt packaging and baking powder manufacturing company. With its steady growth over the years, the company has since ventured into producing cooking fats and edible oils in addition to home and personal care products. Kapa's products are sold across fourteen countries spread across East, Central, West and Southern Africa.

Kapa was traditionally a tightly controlled family business with specified values. However, the need to formalize and structure the company's approach to ethics and integrity led to the establishment of an office to deal with ethics-related matters in early 2012. Although the company has made significant progress in the last six months, building an effective program to combat Bribery and Corruption is a journey. Kapa does not have a formal and detailed AB&C strategy and framework as implemented by Safaricom and EABL but they decided to commit to a proportionate approach which effectively manages their Bribery and Corruption risk.

Kapa is a signatory to the United Nations Global Compact Network (UNGC) and the Code of Ethics for Business in Kenya. Participating in the activities of the local network has positively influenced the company in its attempts to formalize Bribery and Corruption programmes. As signatories to both initiatives, Kapa has committed to embark on a journey of continuous improvement with regards to integrating the initiatives ten principles in the areas of human rights, labour standards, environment and anti-corruption. To this end, Kapa is making annual disclosures to its stakeholders of its progress to embed the ten principles.

A: Governance

Kapa has established structures to deal with bribery and corruption through promoting an ethical culture within the organization. The company's Chief Executive Officer (CEO) has the ultimate responsibility for the implementation of the company's anti-bribery and corruption compliance programme.

As part of its ethical journey, Kapa's management started out by creating a roadmap and effect its changes by implementing new controls over a period of time. In practice, this was very successful as it ensures total buy-in for all stakeholders a step at a time. The roadmap includes activities to be undertaken by the ethics office with regard to risk assessment, formulation of ethics strategy, governance of ethics and structures, data management, benchmarking, reporting on code of ethics, promotion of ethical leadership and provision of feedback on ethics performance and challenges.

It is noted that prior to 2012, although AB&C was discussed at various forums, there was no one formally appointed to specifically manage AB&C related initiatives at Kapa.



KAPA Ethics officer Charles Rubia training the company's ethics champions

B: Bribery and Corruption Risk Assessment

Although Kapa conducts an annual risk assessment with quarterly reviews, this aspect is still a work in progress. The ethics committee is responsible for conducting the risk assessment exercise. The ethics committee has agreed to include the development of a company risk profile which they have committed to presenting to the board. Further, the ethics committee has agreed to investigate on identified high risks and report to the board the results in terms of risk profiling.

The risk assessments are conducted by employees through completion of an ethics questionnaire. The questionnaire was designed through consultations with all departments at Kapa, which included finance, internal audit, production, human resources and administration, legal, and sales and marketing.

The questionnaire includes aspects of the inherent risks to the specific jurisdiction, government agents, local authorities and industry-related risks. Although the methodology is basic, there are signs of buy-in from all the stakeholders and having a

hands-on knowledge and experience ensures realistic and practical results. The Ethics Officer receives the filled in questionnaires sent to him, analyses them and develops the risk profile. The results of the analysis are forwarded to the ethics committee for further discussion.

C: Due Diligence – Third parties and service providers

Kapa prides itself on the fact that they know their customers, agents and service providers well. At Kapa, due diligence procedures are performed on customers, agents, suppliers and employees. Since the majority of Kapa's customers are regional distributors, all new customers, agents and service providers are undergoing a comprehensive due diligence process. This includes three main stages:

- Information request by Kapa and submission by the third party (for example PIN and VAT certificates)
- Review of the information submitted and validation and
- Follow-up interviews with the third parties (for example, contacting former employers, references and fellow business associates).

Before taking on any customer, background checks are carried out including; contacting references and fellow business associates who have dealt with them before. The results of the background checks are recorded in writing via email or letter and attached to the Customer Data form (which is used to open new customer accounts). Kapa's customers are assessed on a regular basis.

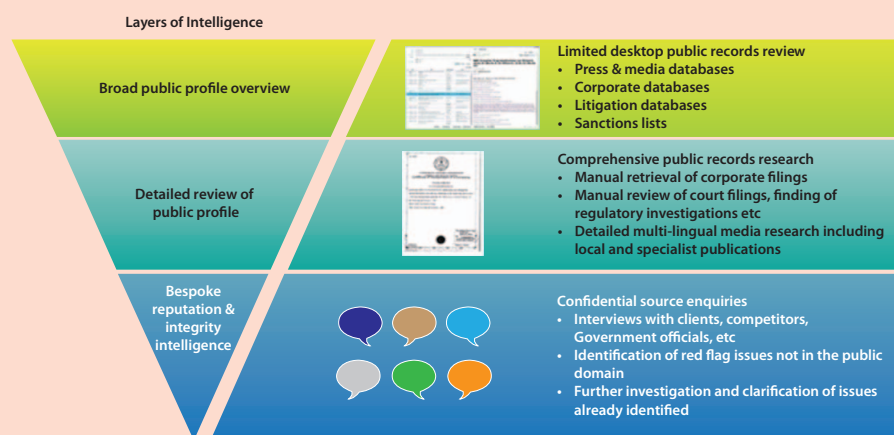
The third party due diligence is performed on an ongoing basis and, where any negative reports or suspicion of fraudulent activities are discovered the relationship with the third party can be terminated or the party can be blacklisted depending on the severity of the offense.

Kapa's suppliers go through a vetting process before being selected. The process includes background checks, checks with referees, obtaining copies of important documents such as PIN and VAT certificates, certificate of incorporation and recommendations from business associates. Suppliers are required to sign a supplier data form which captures all their details. Once contracted, their performance is monitored periodically. Every agent signs an agreement which contains Kapa's Code of Conduct requirements.

Background checks on new employees are conducted through telephone calls and reference forms sent to previous employers aimed at gathering information relating to their integrity and history.

KPMG comments on best practice – Due diligence

It is essential that appropriate due diligence is undertaken once the risk rating has been applied. The level of due diligence will be dependent on the outcome of the risk assessment (and parties classified as medium or high risk may require the use of an external due diligence provider). The below diagram is an illustrative example of varying levels of due diligence.



D: Communication and training

Kapa embraces an open door policy whereby employees are free to report any suspicions relating to bribery and corruption or otherwise to management. The company liaises with other companies that have been recognized to have best practices on ethics for mentorship on ethics and related issues.

Kapa also started a campaign through which the awareness of ethics and AB&C is raised within the organisation; it includes all levels of employees and management. New staff members are made aware of the company's ethical policies through the Kapa employee handbook. The new employees are also trained on ethical policies during induction. During the training, the employees are made aware that fraud, which encompasses bribery and corruption will not be tolerated and are also informed where they can report such incidences.

E: Monitoring and response

It is notable that Kapa's monitoring and review are mainly performed within the business. This means that they are relying on controls like segregation of duties, setting authority levels and IT controls. In addition, internal audit performs tests on the above mentioned controls and further designs tests relating to bribery and corruption.

There are clear indications that when an incident of bribery and corruption is reported to the ethics officer, it is immediately discussed with the ethics committee for further action. This might include the following:

- Further investigation – which will be conducted by the ethics officer with assistance from the internal audit department
- Potential recovery actions
- Evaluation of the relevant control breakdowns and
- Potential disciplinary action.

G: Response and investigative procedures

Employees are encouraged to report any ethics-related allegations to their line manager, who forwards them to the Ethics Officer. The report is then discussed by the ethics committee. Depending on the committee's deliberations, the ethics committee can recommend the matter to be investigated further. From the third line of defence, the Ethics Officer may be assisted by the internal auditor to carry out investigative activities when they arise. Where allegations are levelled against any of the board members, relating with the conduct of business itself, the matter is handled at the board level.

Kapa is committed to reporting any cases of corruption and other forms of dishonesty to the relevant authorities and cooperating with the authorities in facilitating legal actions against those involved.

SAFARICOM LIMITED

Safaricom is one of the leading integrated communications companies in Africa with over twenty million subscribers. Safaricom provides a comprehensive range of services under one roof: mobile and fixed voice as well as data services on a variety of platforms.

Safaricom started off as a state corporation by virtue of the 60 percent shareholding held by the Government of Kenya (GoK). Following the offer and sale of 25 percent of the issued shares in Safaricom held by the GoK to the public in March 2008, the GoK ceased to have a controlling interest in the company under the State Corporations Act and therefore the provisions of the Act no longer applied to it.

Whereas Safaricom ceased being a state corporation, it has duty as a corporate citizen to abide to the Ethics and Anti-corruption Commission Act. In addition, Safaricom interacts with multiple partners e.g. suppliers, national and local governments, dealers and agents. This increases the risk of unethical behavior by employees or by partners. It is due to these challenges that Safaricom developed guiding policies to mitigate these risks. One of these is the AB & C programme.

Anti-Bribery and Corruption Programme

Safaricom has an AB&C programme which complies with both local and international requirements. Some of the factors that informed the need to have a robust AB&C programme include: large value purchases, wide use of third parties who act on behalf of the company and the fact that Kenya has been rated by Transparency International as one of the countries with high corruption incidents. In the past, Safaricom had some corruption cases that led to the realisation of the need to have a proactive AB&C programme. Safaricom has a locally developed AB&C programme that is benchmarked with international best practice AB&C programmes.

Safaricom recognizes that an effective way of dealing with bribery and corruption is by acting responsibly, honestly and with integrity. This is because these values are good for business, individuals and the society. In its sustainability report, Safaricom reiterates its commitment to the highest ethical standards and promotion of a culture that values personal and corporate integrity. Safaricom believes that when one demonstrates (through actions) that the cost associated with bribery and corruption is higher than the benefit accrued, most people will tend to avoid it.

At Safaricom, anti-bribery and corruption is part of its ethics and the framework includes all the elements defined above. The "Safaricom Way" encapsulates Safaricom's ethical standpoint, and includes eight charters which describe Safaricom's commitment to its stakeholders.



Safaricom CEO Bob Collymore addressing fellow business leaders to embrace ethical business

A: Governance

Safaricom has constituted an ethics committee which serves as an oversight body towards driving the ethics and integrity agenda. The ethics committee is chaired by the CEO. Other members include: the Director Risk Management, Chief Finance Officer, Corporate Affairs Director, Human Resources Director, Director of Strategy and Innovation with the Ethics and Compliance Head of Department as the Secretary. The committee meets four times a year and is charged with the following responsibilities:

- Setting the ethics agenda by approving ethics management strategy and plans
- Recommending and approving ethics policies and strategies
- Reviewing performance of ethics management initiatives and
- Making decisions on escalated ethical issues affecting the company.

Safaricom has a decentralised approach to ethics management where thirty six champions have been empowered to act as leaders of ethics in various departments and sections. The management of Safaricom has demonstrated its commitment to ethics and integrity both within Safaricom and corporate Kenya by participating in various AB&C related initiatives. These include:

- The CEO sits in the ethics committee;
- In 2012, Safaricom hosted a breakfast meeting with thirty CEOs from various corporations to discuss ways of dealing with corruption;
- Safaricom took an active role in drafting and signing up to the Code of Ethics for Business in Kenya and is also a signatory to the United Nations Global Compact (UNGC); and
- Safaricom's CEO is also a member of the Global Board of the UNGC.

B: Bribery and corruption risk assessment

At Safaricom, risk management is every employee's responsibility. The management has embraced this practice and carries out periodic risk assessments to monitor the rapidly changing environment. Safaricom conducts three assessments to evaluate the risk of bribery and corruption:

- Enterprise Risk Assessment which highlights strategic, regulatory and operational risks
- Fraud risk assessment which is done twice a year to identify fraud, bribery and corruption risks and
- Ethics survey which is done once every two years to assess the effectiveness of ethics programmes.

These assessments assist in ensuring that the company's responses and controls are aligned to maximize value to the business. Validation is carried out by the respective Director and Executive Committee. Safaricom reviews risk assessments every six months or when significant changes occur.

Safaricom implemented a 'controls self-assessment programme' in 2012 which was carried out by the various process owners. The assessment was spearheaded by the internal audit function and its objective was to assist in developing a central database of all controls and to implement a controls-conscious culture within Safaricom.

C: Policies and procedures

Safaricom has a strong policy framework which incorporates a wide range of policy documents such as:

- Safaricom code of conduct
- Bribery and corruption policy
- Insider trading policy
- Gift policy
- Blacklisting policy
- Supplier and dealer codes of conduct and
- Anti-fraud policy.

Safaricom also has a whistle blowing policy. The whistle blowing line is managed by an independent service provider. Depending on the issues raised through the line, Safaricom investigates them based on the laid out investigative procedures. The status of the whistle blowing reports and actions taken are reported quarterly to the Ethics Committee and the Board Audit Committee. The hotline has the following features:

- Multiple channel reporting: the hotline allows for reporting via email, toll free number, website or post mail
- Availability: the hotline is available twenty four hours a day, seven days a week. It also allows for reporting in English and Swahili;
- Anonymity – the hotline allows for two different levels of anonymity:
 - Where neither the hotline service provider nor Safaricom know who the reporter is.
 - Where the hotline service provider knows the reporter but does not disclose this information to Safaricom.
- Multiple escalation channels: the persons to whom the reports are sent to vary based on who is being mentioned on the report so as to ensure that a reported person does not receive their own report and that a report is not received by a mentioned person's junior.
- Awareness: this includes awareness on the hotline channels through posters, newsletters intranet and in face-to-face awareness sessions.

KPMG comments on best practice – Hot lines

A well-designed hotline typically includes the following features:

- **Anonymity:** The organization's policies allow for the anonymous submission and resolution of calls. For instance, callers who wish to remain anonymous are given a case tracking number that they can later use to provide additional details related to their question or allegation and/or check the status or outcome of their call.
- **Confidentiality:** All matters reported via the hotline are treated confidentially. Hotline operators inform callers that relevant safeguards will protect caller confidentiality, for instance limiting access to personal information (if volunteered). Hotline operators disclose to callers any limitations the organization may have in preserving caller confidentiality (e.g., callers should have no expectation of confidentiality if the call leads to a government investigation).
- **Follow-up on non-retaliation:** The organization's policies prohibit retaliation against employees who in good faith, seek advice or report misconduct. The organization requires a follow-up with employees periodically after the hotline case has been closed (e.g., at one-, three-, and six-month intervals) to ensure that they have not experienced retaliation. The company encourages the employees to report any instances of retaliation and takes swift action against those who do retaliate.
- **Organization-wide availability:** Employees at international locations are able to use the hotline through features such as real-time foreign language translation and toll-free call routing (or alternatively, have access to local hotlines in specific countries or regions).
- **"Real Time" assistance:** The hotline is designed to provide an immediate, "live" call response to facilitate a thorough and consistent treatment of a caller's report of misconduct or to provide immediate guidance (if the hotline offers such assistance). Thus, hotline operators need to be appropriately qualified, trained, and, in some situations, authorized to provide advice.
- **Data management procedures:** The organization uses consistent protocols to gather relevant facts, manage and analyze hotline calls, and report key performance indicators to management and the board. This is often accomplished, for example, by using a computerized, back-end case management system to store, organize, prioritize, and route employees reports.

- **Classification of financial reporting concerns:** The hotline includes protocols whereby qualified individuals (e.g., internal audit, legal, security) can determine whether the nature of an allegation could trigger a financial reporting risk or a regulatory / compliance risk.
- **Audit committee notification:** The hotline includes protocols that specify the nature and timing of allegations that are escalated to the audit committee (particularly important for companies that must comply with the requirements of the U.S. Sarbanes-Oxley Act of 2002).
- **Prominent communications:** The organization publicizes its hotline prominently. Such communications may include, among others: (i) describing the hotline within the code of conduct, in key company publications and training, and at management "town hall" type meetings; (ii) featuring.

In addition to the above policies, Safaricom has amnesty agreements in place. With regard to these agreements, the conditions to be considered include the following:

- Whether the informant provides evidence backing the allegation
- Where the information provided could have otherwise not been obtained
- Where the informant is seen to have been coerced by the co-accused to perform the wrong-doing. This may be considered in cases where the co-accused has considerable influence over the informant
- Where the accused party self-reports and the probability of exposure was low
- Where the accused party undertakes to compensate Safaricom for the wrong doing
- Where adequate corrective action is taken by the reporting party. This is most applicable to business partners and
- The information must be factually verifiable. The plea bargain lapses if the information is found to be false.

D: Due diligence

Safaricom carries out risk-based audits on its suppliers and service providers. A risk-based due diligence approach is applied when carrying out the due diligence. Safaricom performs due diligence on all suppliers and service providers before incorporating them in the company's supply chain. Safaricom's suppliers are audited after every three years, and this process includes site visits and interviews with its suppliers and reviews their performance periodically to ensure that its supplier's activities are consistent with Safaricom's values and expectations. Safaricom also conducts due diligence on its employees prior to employment.

E: Communication and training

Safaricom conducts face to face sessions across the company based on an awareness schedule with additional sessions done on a need basis. The target coverage is 100 percent for high risk staff and 75 percent coverage for the other segments. Some of the topics covered include: conflicts of interest, corruption and fraud trends. A quarterly ethics newsletter is also sent out to all staff, and covers topics such as acceptable gifts, recent frauds and their outcomes and the activities of the ethics committee. The newsletter highlights what has been happening and the actions taken. This serves as a learning tool for the rest of the staff.

F: Monitoring and review

Not only is it important to have the relevant controls and policies in place but it is also imperative to ensure an ethical environment has been set up to monitor and enforce compliance. To ensure this, Safaricom carries out:

- Quarterly reviews on its practices on anti-bribery and corruption. These reviews are carried out by the ethics committee and the Board Audit Committee
- Ethics survey which is carried out every two years by an external party.

Three aspects covered in the quarterly review include (1) what is received through the ethics hotline (2) risk assessments and (3) actions taken on the results of risk assessment.

There are also internal audits to ensure compliance with the various policies and procedures.

G: Response strategy and investigative procedures

When information relating to actual or potential fraud and misconduct is uncovered, Safaricom conducts a comprehensive and objective internal investigation. The purpose of such an investigation is to gather facts leading to an objective and credible assessment of the suspected violation and allow management to decide on action.

Safaricom's forensic team has about fourteen people who deal with both proactive and reactive initiatives. This includes staff members who handle core investigations, awareness and fraud detection. Safaricom also seeks investigative services from other parties such as the police on criminal cases. The team has the right skills and experience to perform investigations and, where necessary, the company will make use of external service providers to provide support.

Safaricom has a consistent and credible disciplinary system in deterring fraud and misconduct. Management uses this to send a strong signal to both internal and external stakeholders that the organization considers managing the risk of bribery and corruption a top priority. Over and above this, Safaricom also reports incidents and actions taken in its publicly available sustainability report.

In 2012, 49 investigations were carried out by Safaricom's internal investigation team, which covered various frauds including asset misappropriation, fraudulent expense claims and corruption cases. The investigations led to disciplinary action against involved staff, blacklisting of involved companies and, in some cases, the frauds were reported to law enforcement agencies for follow up. Safaricom also carries investigations on suppliers and sanctions are instituted for suppliers and dealers found to be engaging in unethical/corrupt practices. Following the investigations, internal control improvements are carried out to ensure that the fraud loopholes identified are sealed. The board has the overall oversight in ensuring that recommendations made from the investigations conducted are implemented.

Future plans: Ethics linkages

Safaricom recognizes that to be effective in promoting the right ethical culture, the company cannot do it alone and needs to partner with other players. Safaricom plans to engage in partnerships on two fronts, namely:

- Collaborating with Safaricom business partners in improving AB&C programmes across the entire Safaricom ecosystem. This would include holding forums to discuss ethical issues and providing mentorship especially to the SMEs and
- Partnering with other like-minded companies in developing and implementing strategies to tackle integrity issues.

Conclusion

Bribery and corruption is now considered one of the major impediments to doing business in Kenya. While companies have put in place various measures and mechanisms at firm level to respond to ethical concerns, there is need for concerted efforts by all sectors to fight the vice. More so, public and private sector collaboration is needed to seal the loop holes that arise as a result of the interaction of the two sectors.

This case study booklet is aimed at sharing best practice examples of what companies are doing to fight corruption at the workplace and in their supply chains. It is hoped that the cases presented here will inspire other companies to embark on the same journey focusing on continuous improvements. Only this way, can commitments translate to meaningful change for Kenya in the fight against bribery and corruption.

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