



CORRUPTION RISK MAPPING

IN KENYA'S PRIVATE SECTOR

A REPORT BY THE KENYA PRIVATE SECTOR ALLIANCE | APRIL 2019



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About Kenya Private Sector Alliance

The Kenya Private Sector Alliance (KEPSA) was registered in 2003 as the apex body of the private sector in Kenya. Currently, KEPSA represents over 500,000 direct and indirect members through Business Membership Organizations and Corporates. KEPSA's mandate is to work together with private sector organisations, government and development partners to spur wealth and employment creation in Kenya through private sector development and forging of national and international business relations, partnerships and networks with all like-minded stakeholders.

KEPSA brings value into the Kenyan private sector by rallying and coordinating the private sector to speak in a unified voice on issues affecting the business climate in the country. Through various public-private dialogue (PPD) platforms, KEPSA members are able to drive economic growth through collective effort in order to attain impact on wealth creation and socio-economic development. KEPSA realizes that the private sector is the engine of economic growth, wealth and employment creation. As this is achievable through the implementation of business friendly policies that remove barriers to private sector growth, KEPSA amplifies policy advocacy on critical issues affecting private sector development; one of which is the focus of this publication – corruption.

For more information, please visit the KEPSA website at www.kepsa.or.ke

Disclaimer

This research was commissioned by Kenya Private Sector Alliance (KEPSA) with the support of Centre for International Private Enterprise (CIPE). The content is the sole responsibility of the Author and can in no way be taken to reflect the views of KEPSA or CIPE. The contents of the study are based on data collected from respondents and therefore do not reflect the views of KEPSA or those of the researchers.

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Contents

04	EXECUTIVE SUMMARY
09	CHAPTER 01 INTRODUCTION
13	CHAPTER 02 METHODOLOGY
19	CHAPTER 03 REGULATORY FRAMEWORK
21	CHAPTER 04 FINDINGS AND ANALYSIS
21	PART I: CORRUPTION AND BRIBERY RISKS IN THE PRIVATE SECTOR
36	PART II: COMPLIANCE CHALLENGES
37	CHAPTER 05 CONCLUSION & RECOMMENDATIONS

Executive Summary



This is a report on the Corruption Risk Mapping (CRM) and Anti-Bribery Compliance Assessment conducted in November 2018 in the Private Sector on behalf of the Kenya Private Sector Alliance (KEPSA). The study mapped out the risk of corruption to businesses operating in Kenya and with the purpose of providing useful data to help businesses identify and evaluate their corruption risk. It focused on all sectors and industries including all aspects of business operations. The findings in this report will inform the development of guidelines for complying with the Kenya Bribery Act 2016 outlining the principles for operationalizing corruption risk mitigation procedures in companies and business operations.

The 2017 Corruption Perceptions Index released by Transparency International places Kenya below average in terms of limiting corruption in the public sector showing little progress towards curbing corruption. Kenya is ranked 143 out of 180 countries. In a comparable report, the country continues to rank poorly, Trace International for Bribery Risk Index 2017 ranks Kenya 105 out of 200 countries with an overall risk score of 50 out of 100. In addition, among the countries assessed by the World Bank in 2017, the country comes 92 out of 190 in terms of ease of doing business.

Moreover, a recent Ibrahim Index of African Governance report which measures and monitors governance performance in African countries, ranked Kenya 11 out of 54 countries, with a score of 59.8 out of 100. The goal of efforts to create an enabling environment for business is to improve the operating environment for all businesses, help countries attract foreign investment by drafting regulations that reduce corruption, promote competition and equality. Hence it is indicative that Kenya's CPI ranking and ease of doing business rankings reflect relatively poor performance in terms of achieving these goals.

Unchecked systemic corruption and bribery problems increases the cost of doing business, creates unfair competition and curtails efforts towards efficiency-improvement and innovation that is critical for economic profitability and sustainability. At the same time it erodes trust and confidence of citizens and investors with devastating long-term impact on any sociopolitical developmental gains the country has made. Ethics and Anti-Corruption Commission of Kenya reports that "corruption is the greatest problem to economic and social development". In 2016, it estimated that Kenya was losing a third of its state budget - the equivalent of about USD 6 billion to corruption every year. For example, in 2015, approximately USD 17 million was stolen from the National Youth Service coffers by a network of companies that supplied goods and services at inflated prices.

In addition, in 2018 it was discovered that a shadowy network of dubious service providers embezzled approximately USD 10 million earmarked for the agency¹. PriceWaterhouse Coopers (PWC) estimates that companies lose 12.85% of their annual revenue to fraud and employee related malpractices that hampers company growth. The ripple effect of this is felt throughout the economy in diverse forms including increased unemployment, reduced tax revenues among other things².

Corruption is a broad and complex problem to define. In private sector business operations, it includes bribery, fraud, embezzlement, misappropriation of funds, abuse of office, breach of trust or offences involving tax but is not limited to these misconducts. Bribery involves offering, promising or giving a financial or other advantage to another person who believes that acceptance would constitute an inducement for improper performance of the receiver's function or duty.

The Kenya Bribery Act 2016, which came into force on 13 January 2017, is a powerful new tool for prosecuting bribery offences within and outside Kenya in the public and private sector. The Act strengthens the existing laws prohibiting bribery and corruption in Kenya and importantly, puts new responsibilities on businesses to prevent corruption and bribery in their operations including steep offences and penalties for those who are convicted of such offences.

¹ Former Ethics and Anti-Corruption Commission Chairman Philip Kinisu during an interview with Reuters inside his office in Nairobi, March 8, 2016.

² PwC Report: Fraud: The overlooked competitor 2018 Global Economic Crime and Fraud Survey Kenya

It places obligations on public and private entities to put in place procedures that are appropriate to their size, scale and nature of operations, for prevention of bribery and corruption. Failure to do so is criminalized if it is due to the consent or connivance of a senior officer. The Ethics and Anti-Corruption Commission (EACC) is required by the Act to assist public and private entities to develop and put in place procedures for prevention of bribery. In addition, the Cabinet Secretary in consultation with the EACC is required to publish guidelines to assist private and public entities in preparation of corruption mitigation procedures as required by the Act. It also provides a framework for reporting acts of bribery, protection of whistle blowers and penalties for bribery offences.

While the focus of the recommendations in this report, will be towards the development of guidelines for complying with the Kenya Bribery Act, this Corruption Risk Assessment (CRM) assesses the extent of corruption risk in the private sector without limitation to bribery alone. 85% of respondents reported that there was corruption in various forms in private sector business operations across Kenya. However, the risk was highest among small businesses compared to medium-sized and large businesses with the prevalent forms of corruption being bribery, fraud, tax evasion, embezzlement, extortion, abuse of office, favoritism and procurement related misconducts.

Corruption risk was mainly concentrated in the procurement supply, finance and accounting, sales and marketing and, imports and exports areas of business operations. The main risk activities in these areas included the hiring of new staff based on individual connections, unfair compensation, cash payments, petty cash handling, invoice processing, falsifying financial books, concealing irregularities in the internal control systems, fees and commissions, discounts, provisions of free products, collaborating with suppliers to give abnormal prices.

Across the sectors, 80% of businesses in professional services, 79% of business in finance and insurance, 73% of businesses in hospitality management, 73% in education, health and social work 73% reported higher risks of corruption compared to businesses in the mining and quarrying 21%, energy/electricity supply 39%. Businesses in the sectors that reported higher corruption risk had a higher frequency of transactions including purchase of goods and services.

The main source of knowledge about corruption in private sector business operations is personal experience. 30% percent of the respondents indicated that they had experienced corruption personally. Fraud 57% and bribery 48% was cited as the most prevalent forms of corruption as procurement and supply 65%, finance and accounting 54% was reported as areas of business operations prone to corruption among small and medium-sized companies.

Increase in the cost of doing business cost was reported as the highest consequence of corruption to many businesses across the board, while loss of investors and/or investment opportunity were reported as the least impact of corruption to businesses. 22% of respondents indicated that their businesses suffered significant financial losses between USD 1 million and USD 50 million due to corruption every year. In addition, 71% of all the respondents from small and medium sized businesses indicated that their businesses lost USD 10,000 to USD 15,000 to fraud and bribery per a year.

Awareness of the Bribery Act 2016 was generally low across all sectors. The survey found that about 610 businesses or 44% of all respondents indicated that they were unaware of the new legislation and 45% further indicated that they were unaware of their businesses' obligation to comply with the new legislation and the potential liability for noncompliance. While majority of the large companies reported the lowest level of unawareness of the Bribery Act 2016 and awareness of liability to comply, majority of small and medium sized companies indicated the highest level of unawareness and the highest level of unawareness of their businesses' obligation to comply with the Bribery Act 2016.

Indeed, 54% of respondents from small and medium sized companies reported bribery incidences in their business operations compared to 22% of respondents from large companies. The sector that reported highest

incidences of bribery were professional services at 70%, Finance & Insurance at 65%, Hospitality, Accommodation & Food Services at 58%. While the sectors that reported the lowest incidences of bribery were Mining and Quarrying at 12%, Energy and Electricity Supply at 18%, Environment, Water Supply, Sewage and Waste Management at 23%.

Preventing corruption and bribery requires businesses to implement measures required by the Bribery Act. However, 64% of the businesses are yet to comply with the new legislation and majority face compliance challenges and gaps. Although small and medium sized businesses have fewer resources to counter bribery than larger businesses, the factors that account for the low level of compliance relates to: lack of awareness of bribery risk 57%; lack of policies and procedures for managing important functions such as finance, procurement, and merit based recruitment processes. Many companies reported not having written corporate policies and code of conduct for employees by up to 47% with 44% being unaware of the legislation and poor oversight of business operations by board members with up to 39% of respondents. Therefore, to comply with the Bribery Act requiring businesses to implement measures to mitigate corruption in their operations, the report recommends the following broad guidelines for businesses of all sizes to implement. More detailed guidelines will be proposed to the EACC and relevant authorities by KEPSA.

As corruption is a social and institutional problem, businesses will be effective in mitigating corruption if their corporate compliance approach combines the use of strict clear policies and rules with efforts to shift the business culture towards ethics and integrity. This would require fundamental value system reorientation and a shift in incentive structure for employees in a way that emphasizes the company's zero tolerance for corruption. Therefore, for companies to implement suitable corruption mitigation systems in compliance with the Bribery Act 2016, they should follow these guidelines:



CHAPTER 01

Introduction

About this report



With the introduction of Kenya Bribery Act 2016, companies now have a default responsibility to implement measures that mitigate corruption and bribery in their operations. This report provides insight into the corruption risks of businesses in Kenya, factors impacting compliance measures, and the depts of compliance practice in Kenyan businesses. The report analyzes information collected from 1,202 businesses and was conducted on behalf of the Kenya Private Sector Alliance (KEPSA), financed and peer-reviewed by the Center for International Private Enterprise.

Table 1 sets out definitions of conducts that would be considered corruption within the context of this study.

Table 1: Terms relating to corruption and bribery³

Abuse of office	The act of using office to improperly award personal benefit or award benefit to another person
Embezzlement	When a person holding office in an institution, organisation or company dishonestly and illegally appropriates, uses or traffics the funds and goods they have been entrusted with in the course of managing company /organization /institution's affairs, for personal enrichment or other activities
Extortion	The act of utilizing, either directly or indirectly, one's influence or authority, or access to influence or authority, or access to knowledge to demand unmerited cooperation or compensation as a result of coercive threats.
Facilitation Payments	These are small bribes, also called facilitating, speed or grease payments. They're made to secure or expedite the performance of a routine or necessary action to which the payer actually has legal or other entitlement.
Favoritism	This refers to the inclination to treat acquaintances, friends and family differently from strangers. When public (and private sector) officials demonstrate favoritism by distributing positions and resources without merit to preferred candidates or entities, they are guilty of cronyism or nepotism, depending on their relationship with the person who benefits.
Fraud	The unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another. In more common language, the term 'fraud' usually includes activities such as illegally transferring company money to your own or a friend's bank account, pretending to have qualifications you do not have, pretending to have rendered a service that you have not rendered. Synonyms: Swindle, deceit, double-dealing, cheat, and bluff.
Kickback	A bribe, the return of an undue favor or service rendered, an illegal secret payment made as a return for a favor. The word describes a bribe as seen from the angle of the bribed. For example, person A gives person B a favor and person B gives person A, a kickback in return. The term is used to describe, in a seemingly innocent way, the returns of a corrupt or illegal transaction or the gains from rendering a special service.
Nepotism	A form of favoritism that involves family relationships. It describes situations in which a person exploits his or her power and authority to procure jobs or other favors for relatives, regardless of their suitability for the job.
Tax Evasion	The illegal non-payment or under-payment of taxes, usually by deliberately making a false declaration or no declaration to tax authorities. It could involve the declaration of less income, profits or gains than the amounts actually earned, or the overstatement of deductions.
Procurement-related misconduct	Avoiding or evading process of established procedures to acquire goods and services by any individual, company or organisation, from the initial needs assessment to the contract's award and service delivery.

³ Sources: www.corruptionwatch.org.za/glossary-of-corruption-related-terms

Corruption/bribery risk

The assessment defined risk as the possibility that an event will occur and adversely affect the achievement of business objectives. Corruption/bribery risk is therefore the possibility that corruption/bribery may occur and adversely affect the achievement of business objectives

Local perspective of corruption & bribery

In Kenya, corruption and bribery exist in both the public and private sector in varying degrees. The President of Kenya, H.E Uhuru Kenyatta has been vocal in his desire to fight corruption in the public sector. However, he has also been more direct that the private sector has a big role to play in the fight against corruption because it is the supply-side of corruption when it comes to dealings with government.

“

I wish to state very clearly today that my Government will not tolerate corrupt public officers. I remind all public officers that the authority assigned to them is a public trust...I expect all public officers to abide by the guiding principles of leadership and integrity...

As we do our part as Government, it must not be forgotten that corruption is a multifaceted phenomenon which requires to be addressed by multiple actors... I, therefore, appeal to the private sector... to be actively involved in the fight against corruption...

In particular, I call upon the private sector - which plays a major role in the supply side of corruption - to ensure fair dealings with business partners and especially with public institutions.

Let me emphasize that creating an ethical business culture should not be viewed as a sacrifice. Indeed, it is good business to be open and honest with your stakeholders, to reward employees to be honest and ethical and to be known as a firm that deals [ethically and with integrity] in its business transactions

H.E PRESIDENT UHURU KENYATTA

THE NATIONAL LEADERSHIP AND INTEGRITY CONFERENCE,
12TH JUNE, 2013, AT KENYA SCHOOL OF MONETARY STUDIES.

Consequences of corruption & bribery to private sector and businesses

Corruption epitomises weaknesses in our standards of ethics and integrity. To the economy, it undermines development and public service delivery by diverting development resources to the personal gain for a few individuals, distorting public expenditures, discouraging foreign investors, reducing economic efficiency and slowing down administrative processes thereby making the implementation of government policies ineffective. To businesses, corruption increases the cost of operation, creates unfair playing ground disincentivizing efficiency and innovation that are necessary for sustainable business and economic growth.

Corruption risk mapping & compliance assessment in the private sector

Global initiatives, undertaken by international organizations such as Transparency International and World Bank have promulgated a perspective of corruption from the risk management angle. Most of the work with risk perspectives has been done at the macro level that has identified and prioritized corruption risks at national or sector level. But, country level scan or sector indicators may be misleading at utility or service provider level as corruption involves specific individuals and organizations.

It is a broad and complex problem even within the small, mid-sized and large businesses and can include graft, fraud, bribery, facilitation payments, or other forms of improper business practices. The risks are present in varying degrees in different activities in all the organizations involved in public or private function or business. Therefore, developing sectoral and organizational perspective of corruption risks is an important research agenda.

However, corruption risk mapping and compliance assessment is a means to an end and not an end in itself. Anti-corruption and anti-bribery compliance programme, whilst guided by the risk assessment must also be contextualized. The fuller the understanding of bribery risks a business faces, the more effective its efforts to prevent bribery are likely to be. We may know what corruption is but the risk is always different from one business to another business and from one sub-sector to another sub-sector. To prevent a business's involvement in corruption and bribery, compliance measures need to be positioned in a way that addresses the form corruption and bribery is likely to take or present itself. Corruption happens in all countries but it is important to note that there is regional variation within countries and risks may vary significantly between sectors and business models. Certain sectors are typically associated with higher levels of bribery risk than others. But the acknowledgement that a given sector is associated with higher bribery risk is of limited value in itself, as it says nothing specific about the nature of the risks involved or how they arise. Furthermore, there is a danger that too much focus on sector risk in the abstract will lead those not in sectors considered high risk to think of themselves as low risk without proper analysis of whether that is really true.

No sector is immune from risk. Risk derives not from the industry label but from the concrete activities that businesses operating in that sector undertake. Nevertheless, looking at the sector dimension can provide a useful focus for identifying both risks and risk factors. Looking at a sector level may act as a short cut to the identification of at least some key risk areas, particularly where a relevant sector trade body has already published guidance on the topic. Sectoral risk factors, which may directly or indirectly elevate the level of bribery risk might include high degree of interaction with government; high levels of regulation; prevalence of high value, complex and/or long term contracts; business activities involving multiple business partners, stakeholders and/or complex contractual or corporate structures. However, detailed consideration of concrete business activities is key to considering these risks.

CHAPTER 02

Methodology

Introduction



The assessment was conducted across 17 sub-sectors in the private sector, receiving 1202 responses from businesses and persons who considered themselves “well informed about the organization's business operations”. More than 1200 of these included board members, chief executive officers, managing directors, chief operations officers or members of senior management. The respondents represented registered businesses across the spectrum of the private sector, of varying sizes and business operations, and included some that were listed and trading in the Nairobi Securities Exchange.

Objectives

The objective of the study was primarily to map out corruption risk in the private sector business operations. In specific terms, the study sought to:

01

Identify and evaluate corruption risk in the private sector business operation; and

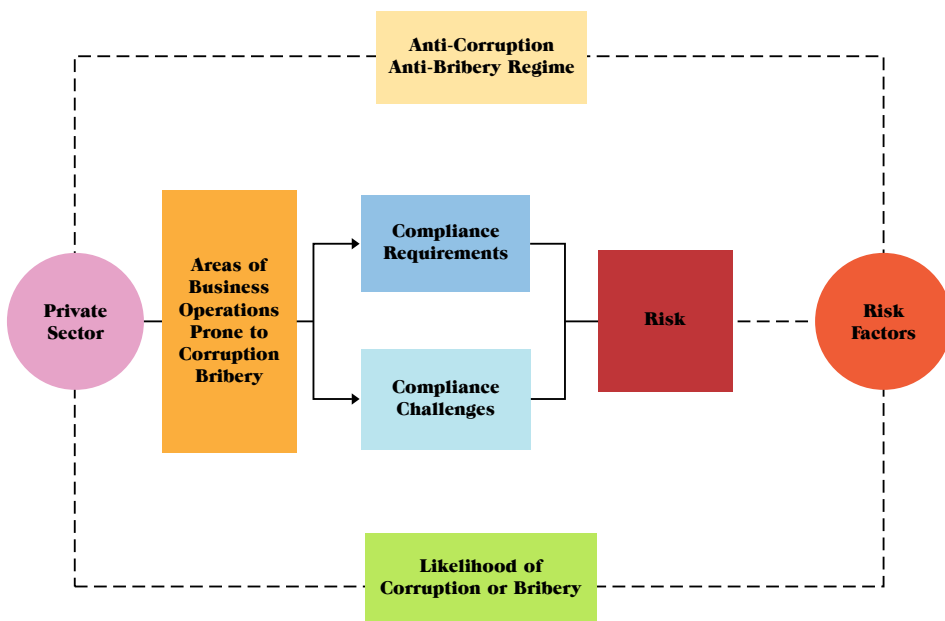
02

Identify compliance challenges with Bribery Act 2016 in the private sector;

Conceptualization

The mapping and assessment was limited to specific areas of the private sector business operation. It entailed a two-step process. The first step identified corruption risk areas in the private sector. The second step assessed these areas and the risks associated.

Figure 1: Conceptual framework of the study

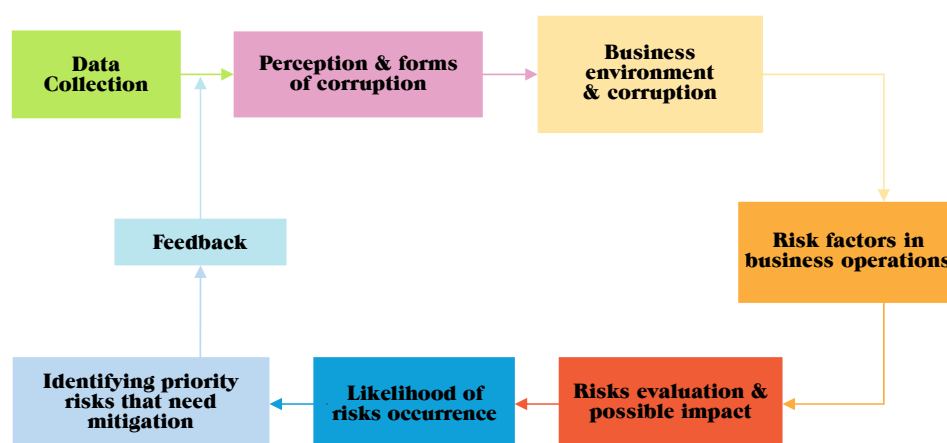


Approach

Corruption risk mapping is a diagnostic (assessment) exercise, which seeks to identify weaknesses within institutions that may present opportunities for corruption or bribery to occur. It focuses on the potential for – rather than the perception, existence or extent of corruption or bribery. The exercise tends to involve some degree of evaluation of the likelihood of corruption or bribery occurring and/or the impact it would have should it occur.

The purpose of corruption risk mapping is usually to supplement evidence of actual or perceived corruption in order to inform anti-corruption strategies and policies or advocacy purposes. Corruption risk mapping exercises usually take an institutional approach i.e. they aim to identify weakness in (the enforcement of) rules and regulations in the private institutions and/or processes, systems under analysis.

Figure 2: Corruption risk mapping approach



Methodology

The process began with desk review of existing literature and mapping of private sector business operations followed by the development and testing of data collection tools (questionnaires) for information gathering. The questionnaires were structured to cater for closed and open-ended questions. Formal and informal interviews were conducted and small focus group discussions were held. The data collection was conducted in November 2018. These results focus on data in Nairobi County only.

Sample Distribution

Where possible, the assessment report includes comparisons across sub-sectors and business sizes. Table 1, Table 2, Figure 3 and Figure 4 below, present sample distribution by business size, sub-sector, management position and length of association with the sub-sector or business operations.

Table 2: Sample Distribution by business size

Business Size	Percentage
Less than 10 employees	22%
Between 10 to 50 employees	28%
Between 51 to 100 employees	18%
More than 100 employees	13%
More than 300 employees	12%
More than 500 employees	7%

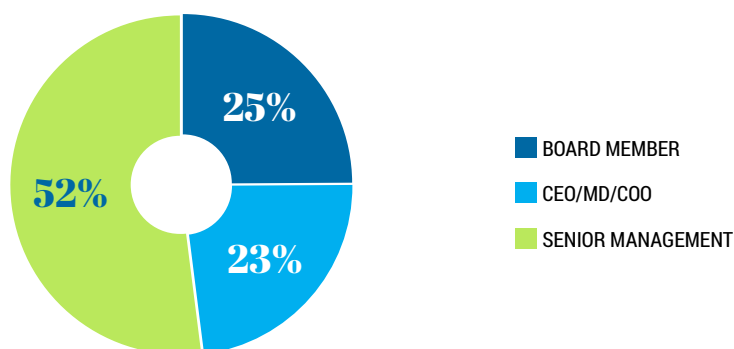
Source: KEPSA CRM Private Sector Survey 2018

Table 3: Sample distribution by sub-sector

Sub-sector	Percentage	Sub-sector	Percentage
Agriculture, Forestry and Fishing	5%	Information and Communication	5%
Arts, Entertainment and Recreation	7%	Manufacturing	6%
Construction	5%	Mining and Quarrying	2%
Education	7%	Private Security	5%
Energy/ Electricity Supply	4%	Professional Services	8%
Environment/Water Supply/Sewage/Waste Management	5%	Real Estate	6%
Finance and Insurance	8%	Transport & Storage	5%
Health and Social Work	7%	Wholesale and Retail Trade	7%
Hospitality, Accommodation & Food Services	8%		

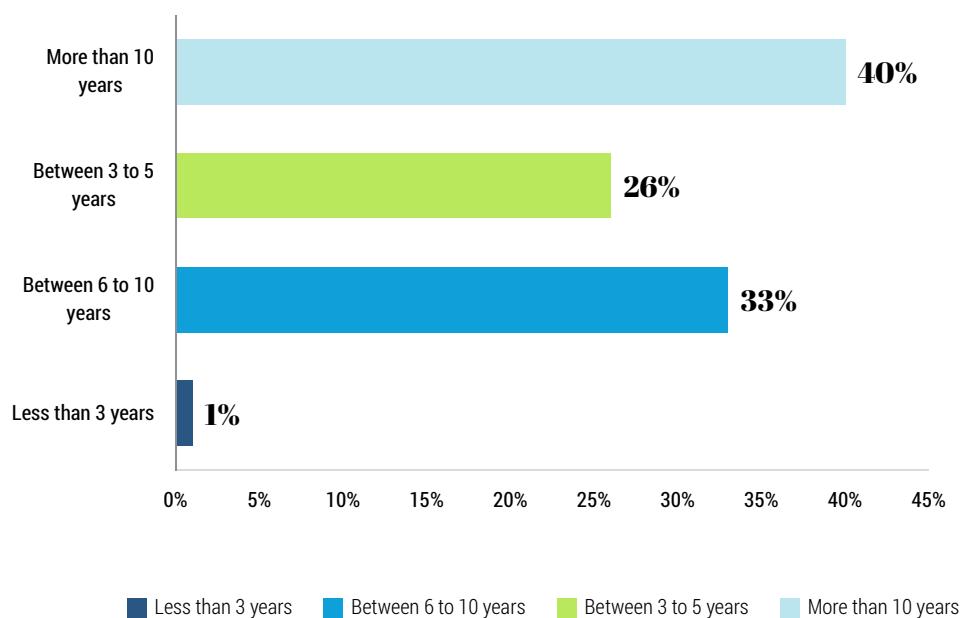
Source: KEPSA CRM Private Sector Survey 2018

Figure 3: Sample distribution by management position



Source: KEPSA CRM Private Sector Survey 2018

Figure 4: Length of association with the private sector or sub-sector



Source: KEPSA CRM Private Sector Survey 2018

Gaps and limitations

Although the assessment yielded key findings, limitations and challenges were experienced:

- 1** The exercise was conducted at a time when war against corruption was a major news agenda in the country. Most respondents were uncomfortable with the questions for fear that it might be used against their businesses or that the survey was a proxy investigation into their business.
- 2** Some respondents did not answer specific questions particularly those that were open ended.
- 3** The survey was based in Nairobi and as a result some sub-sectors had a limited sample size being included in the survey e.g. mining and fishery.
- 4** Design of the study required that only senior management officials would participate. Such people were not easy to come by thus limiting number of responses to 1202.
- 5** Participation of listed companies was based on accessibility of respondents. Many listed companies preferred to use their legal departments to respond to the questionnaires.

CHAPTER 03

Regulatory Framework

Introduction



Kenya is a signatory to the UN Convention Against Corruption, which requires participating countries to put in place anti-corruption and bribery criminal laws. As such it is an offence to engage corruption and/or bribery in both the public sector (under Anti-corruption and Economics Crime Act 2012) and in the private sector (under the Bribery Act 2016).

Anti-corruption and bribery legislations

The Anti-corruption and Economic Crimes Act, 2012 is the primary law targeting corruption in Kenya. It provides for the prevention, investigation and punishment of corruption, economic crimes and related offences. It criminalizes a number of corrupt acts including bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust or dishonesty in connection with tax or elections to public office.

The key elements of the Bribery Act 2016 and implication for businesses

The Bribery Act 2016 contains four main offences: (i) offering, promising or giving a bribe (section 5), (ii) requesting, agreeing to receive or accepting a bribe (section 6), (iii) bribing a foreign public official (section 8), and (iv) failure of private entity to prevent bribery (section 10).

The Act has a very wide territorial scope. The Kenyan courts have jurisdiction in relation to section 5, 6, 8 and 10 offences, against both companies and natural persons, if: (i) any part of the offence was committed in Kenya; or (ii) the acts were committed outside Kenya by a person associated with the company.

The offence of failing to prevent bribery (section 10) creates a strict liability bribery offence. A private company will commit the offence of failing to prevent bribery if a person associated with it bribes another person (anywhere in the world) intending to obtain or retain business (or advantage in the conduct of business) for the company unless the company can show that it put in place “adequate procedures” to prevent bribery.

The penalties for the bribery offences are severe. An individual convicted of bribing another person, being bribed or bribing a foreign public official is liable to imprisonment for a term not exceeding ten years, or to a fine not exceeding five million shillings, or both; and may be liable to an additional mandatory fine. Any other person who commits offences under section 5, 6, 8 or 10 shall be liable on conviction to a fine not exceeding five million shillings.

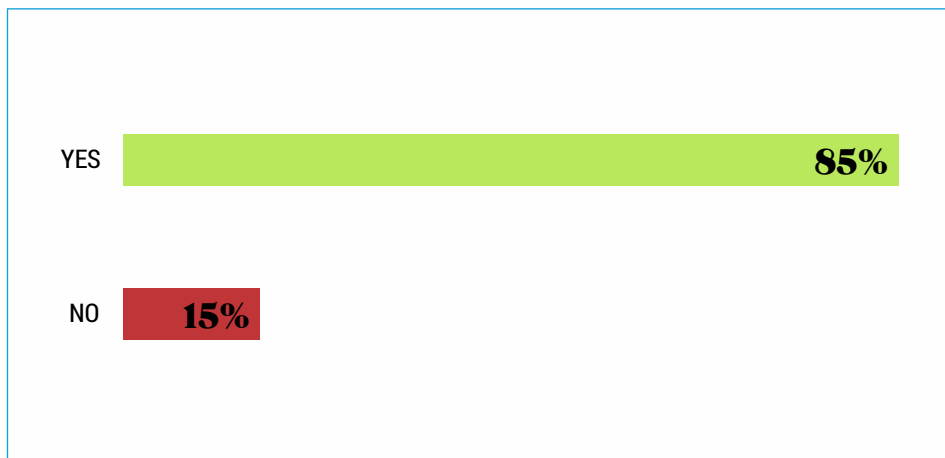
CHAPTER 04

Findings & Analysis

PART I: CORRUPTION AND BRIBERY RISKS IN THE PRIVATE SECTOR

Figure 5: Corruption risk in private sector business operations

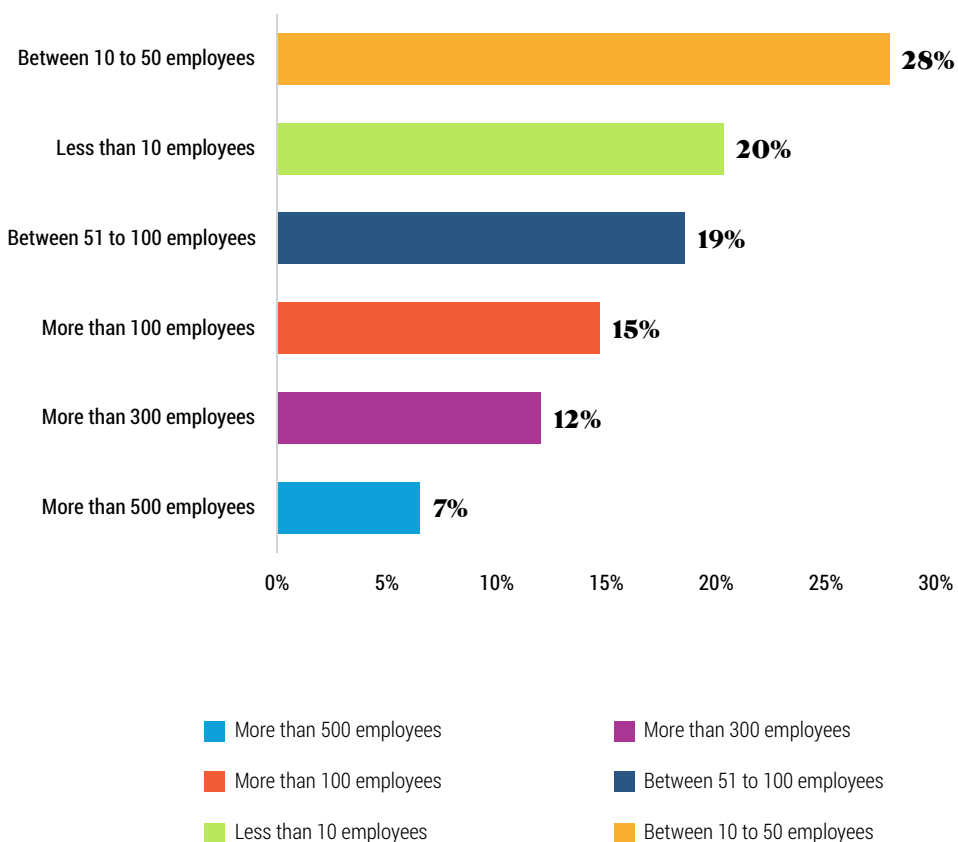
85% of all the respondents indicated that there was corruption risk in the private sector business operations. Figure 5 below shows perception on corruption in the private sector business operations.



Source: KEPSA CRM Private Sector Survey 2018

Figure 6: Perception of corruption risk in private sector business operations by business size

Corruption risk was highest among businesses with 10 to 50 employees and those with less than 10 employees. Corruption risk was lowest among businesses with more than 100 employees because such businesses had well established structures, systems and procedures for prevention of corruption. Figure 6 below shows perception of corruption risk in private sector business operations by business size.



Source: KEPSA CRM Private Sector Survey 2018

Perception of corruption risk in private sector business operations by sub-sector

The assessment looked at perception of corruption risk amongst businesses in the sub-sectors. Respondents from businesses in Professional Services, Finance and Insurance, Hospitality, Education, Health and Social Work and Arts and Entertainment reported a higher level of corruption risk compared to respondents from businesses in Mining and Quarrying, Energy, Environment, Private Security, and Transport sub-sectors as shown in Table 4 below. Businesses in the sub-sectors that reported higher corruption risk had a higher frequency of transactions including purchases of goods and services. Table 4 below shows perception of corruption risk in private sector business operations by sub-sector.

Table 4: Perception of corruption risk in private sector business operations by sub-sector

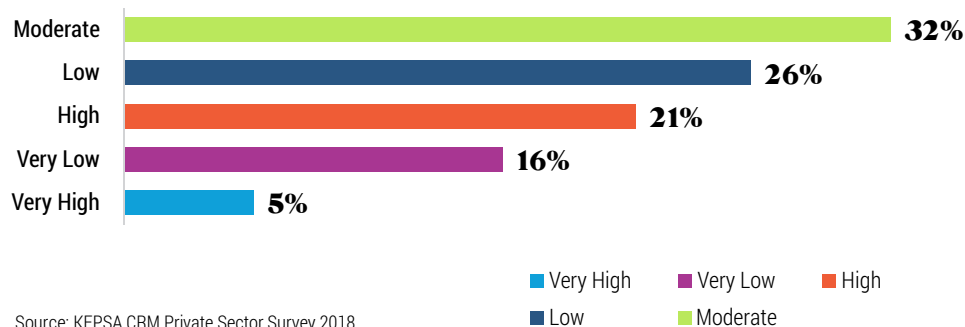
Rank	Sub-sector	%	Rank	Sub-sector	%
1	Mining and Quarrying	20%	10	Real Estate	60%
2	Energy/ Electricity Supply	40%	11	Information & Communication	70%
3	Environment, Water Supply, Sewage and Waste Management	40%	12	Arts, Entertainment & Recreation	70%
4	Private Security	50%	13	Health & Social Work	70%
5	Transport & storage	50%	14	Education	80%
6	Manufacturing	50%	15	Hospitality, Accommodation & Food Services	90%
7	Wholesale & Retail Trade	60%	16	Finance & Insurance	90%
8	Agriculture, Forestry & Fishing	60%	17	Professional Services	90%
9	Construction	60%			

Source: KEPSA CRM Private Sector Survey 2018

Perceived level of corruption risk in private sector business operations

32% and 26% of the respondents indicated moderate and low levels of corruption respectively. 21% and 16% indicated high and very low levels of corruption respectively. Figure 7 below shows perceived level of corruption risk in private sector business operations.

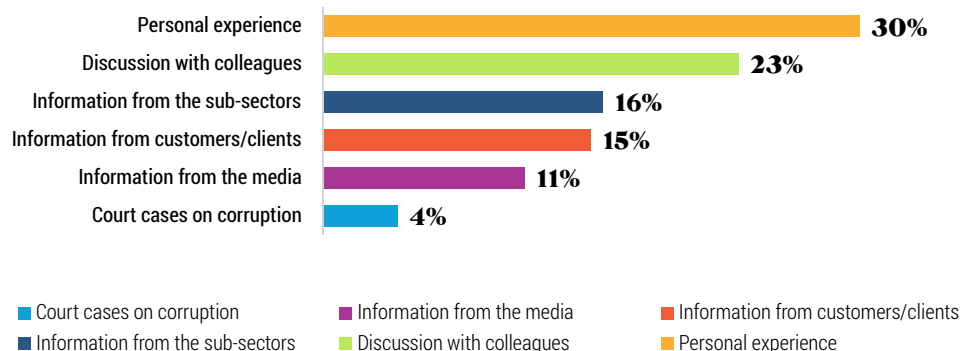
Figure 7: Perceived level of corruption risk in private sector business operations



Sources of knowledge about corruption in private sector business operations

30%, 23%, 16% of the respondents indicated that they had experienced corruption personally, learned about it through discussions with colleagues and/or information from the sub-sectors respectively. 15%, 11% reported that they had knowledge about corruption from information from customers/clients, and information from the media. Only 4 % had knowledge of corruption from court cases on corruption. Majority of the respondents had personal experience of corruption in their business operations. Figure 8 below shows sources of knowledge about corruption in private sector business operations.

Figure 8: Sources of knowledge about corruption in private sector business operations

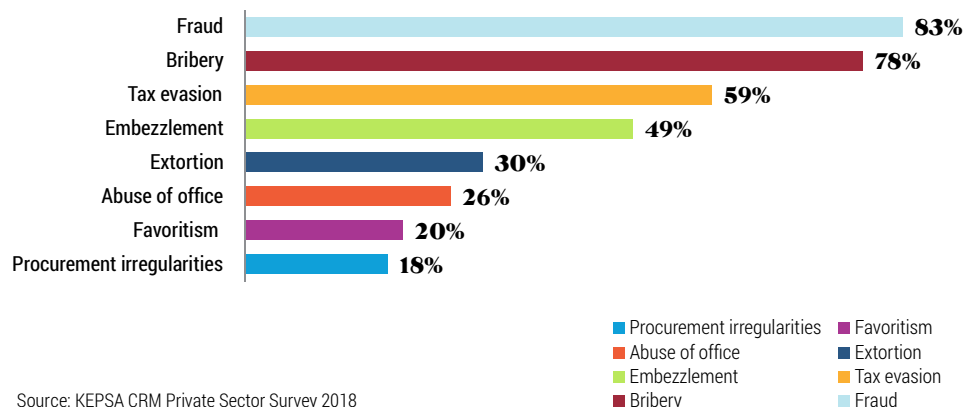


Prevalent forms of corruption in the private sector business operations

Fraud, Bribery and Tax evasion were cited as the most prevalent forms of corruption.

Figure 9 below shows prevalent forms of corruption in the private sector business operations.

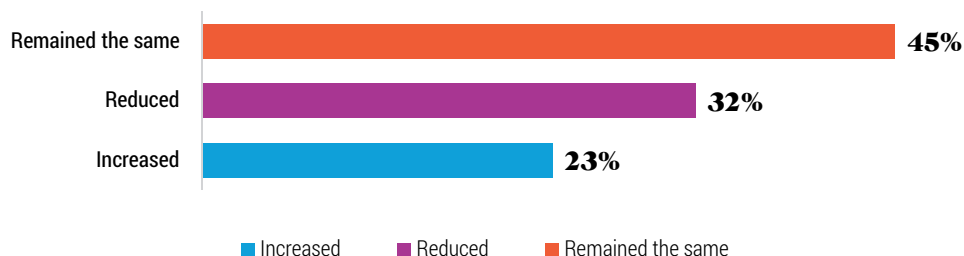
Figure 9: Prevalent forms of corruption in the private sector business operations



Changes to the level of corruption in private sector business operations

45%, 32% and 23% of the respondents indicated that the level of corruption had remained the same, reduced and increased respectively compared to a year ago. The respondents cited that corruption had remained the same because no serious action had been taken to fight it in the private sector and nobody had been arrested or sent to jail for corruption in the private sector. Figure 10 below shows perceived changes to the level of corruption in private sector business operations.

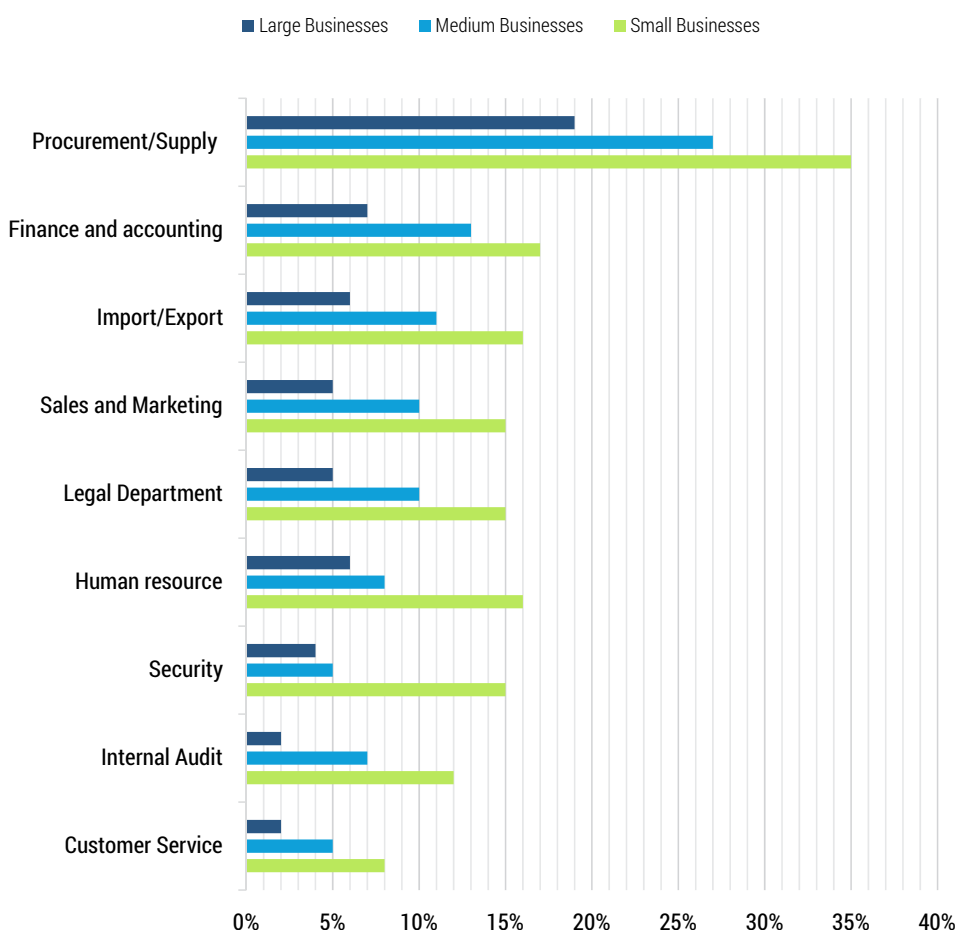
Figure 10: Changes to the level of corruption in private sector business operations



Areas of business operations prone to corruption in the private sector

Procurement and supply, finance and accounting, and import and exports areas of business operations were the most vulnerable to corruption risk across businesses. Security, internal audit and customer service were found to be least vulnerable. Procurement ranked highest in all businesses because of the activities carried out in this area such as the awarding of tenders and contracting. Figure 11 below shows areas of business operation prone to corruption in the private sector.

Figure 11: Areas of business operations prone to corruption in the private sector



Source: KEPSA CRM Private Sector Survey 2018

In particular business functions, the survey identified specific kinds of corruption that were prevalent:



Human resources

Hiring of new staff based on individual or personal connections and unfair compensation between people within the same job category were the main risks.



Internal Audit

Concealing of business irregularities in the internal control systems were observed as the main risks.



Procurement & Supply

Receiving lavish gifts in exchange for contracts, kickbacks, bypassing normal tendering/contractors procedures were observed as the main risks in this function;



Import & export

Pressure exerted for payments to be made urgently or ahead of schedule, importing or exporting sub-standard goods, bypassing restrictions set by companies about importing or exporting were observed as the main risks in this business function.



Finance & accounting

Cash payments, petty cash, invoice processing, and falsifying of financial books were cited as the main risks.



Sales & marketing

Fees, bonuses, commissions, discounts, provisions of free products, collaborating with suppliers to give abnormal prices were observed as the main risks in this function.



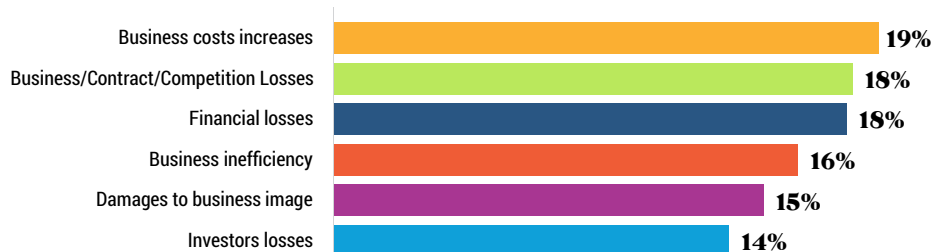
Customer Care & Service

Prioritizing bigger clients at the expense of smaller clients were observed as the main risks under customer care and service.

Consequences of corruption to business

Business cost increases, business/contract losses and financial losses were the main consequences of corruption to businesses. Investor losses and damages to business image were seen as the least of consequences of corruption to businesses. Figure 12 below shows consequences of corruption to business.

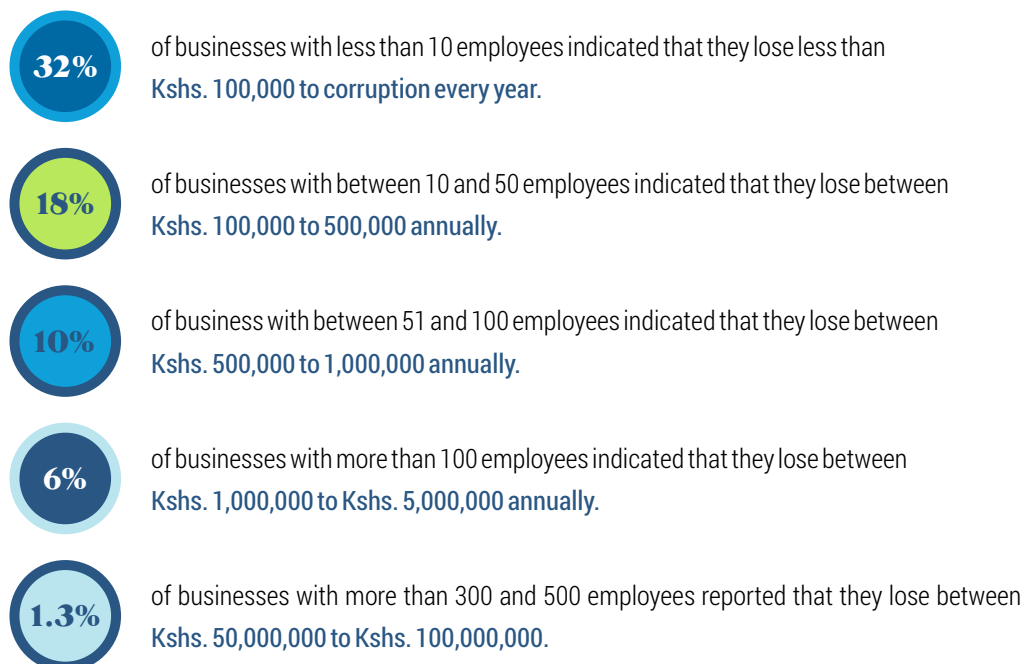
Figure 12: Consequences of corruption to business



Source: KEPSA CRM Private Sector Survey 2018

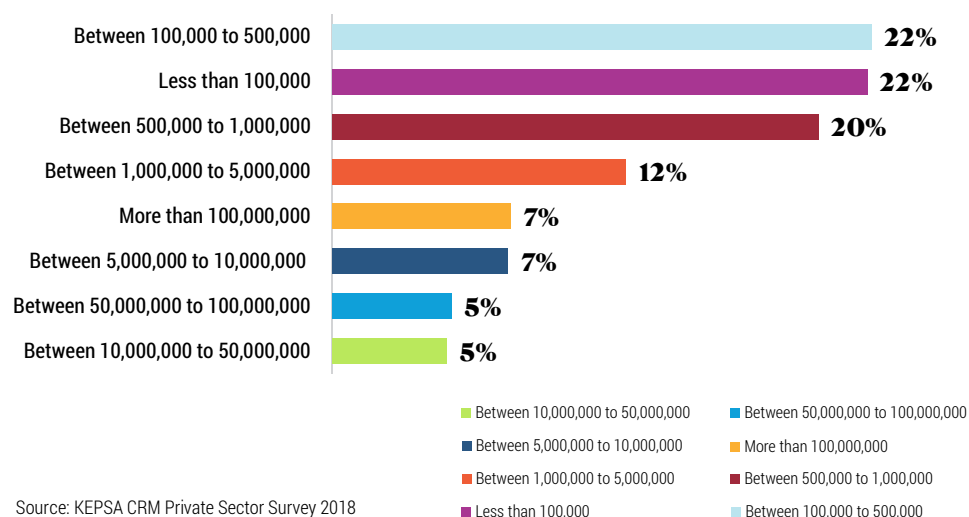
Financial losses to businesses due to corruption every year

Nearly all businesses indicated significant financial losses with majority being small and medium sizes.



The assessment further noted that businesses in Transport and Storage, Constructions and Real Estates indicated a higher financial losses compared to other sub-sectors. Figure 13 below shows estimates of financial losses to business due to corruption per year.

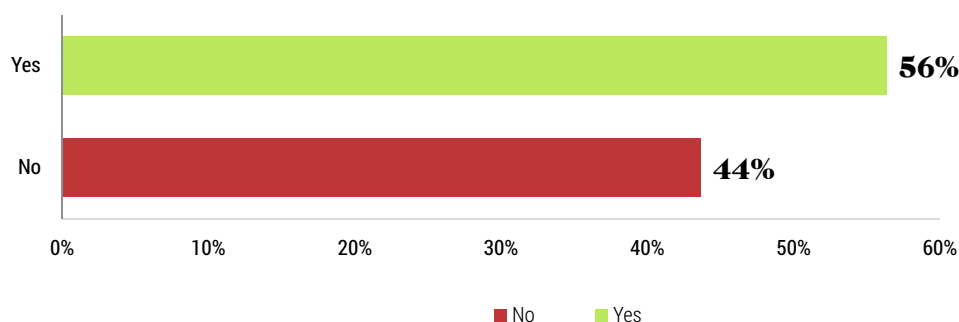
Figure 13: Estimates of financial losses to business due to corruption per year



Awareness of Bribery Act

56% of all the respondents indicated that they were aware of the Act, while 44% indicated that they were not aware. The assessment observed that small and medium size businesses reported the lowest level of awareness compared to large size business. Figure 14 shows awareness of Bribery Act in the private sector.

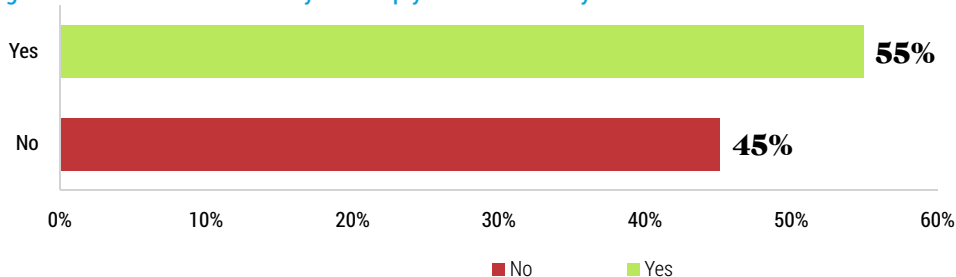
Figure 14: Awareness of Bribery Act in the private sector.



Awareness of liability to comply with the Bribery Act 2016

55 % of the respondents indicated that they were aware of their businesses' liability to comply with the Act, while 45 % indicated they were not aware. Again the assessment observed that small and medium sized businesses reported the lowest level of awareness of liability to comply compared to large size businesses. Figure 15 shows awareness of liability to comply with the Bribery Act in the private sector.

Figure 15: Awareness of liability to comply with the Bribery Act 2016

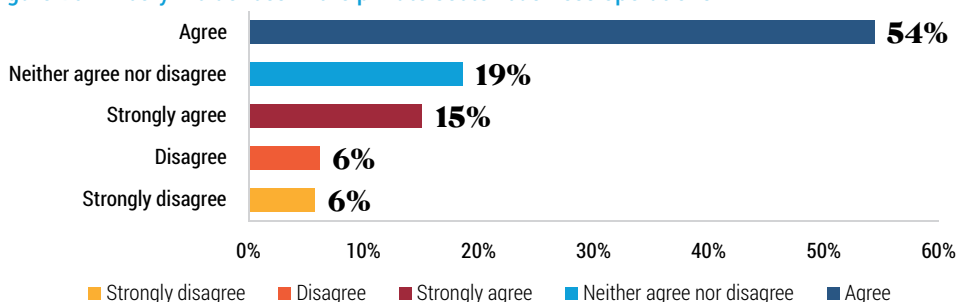


Source: KEPSA CRM Private Sector Survey 2018

Bribery incidences in the private sector business operations

54 % of the respondents agreed that there were incidences of bribery in their business operations. It is interesting to note that 19 % of the respondents neither agreed nor disagreed on whether there were bribery incidences in their sub-sector of businesses. 15 % strongly agreed that there was bribery. The assessment noted that most of the respondents indicated that there were incidences of bribery because they had experienced it. Businesses in Professional Services, Finance and Insurance, Hospitality, Education, Health and Social Work and Arts and Entertainment reported a higher level of corruption risk compared to businesses in Mining and Quarrying, Energy, Environment, Private Security, and Transport sub-sectors. Figure 16 below shows bribery incidences in the private sector business operations.

Figure 16: Bribery incidences in the private sector business operations

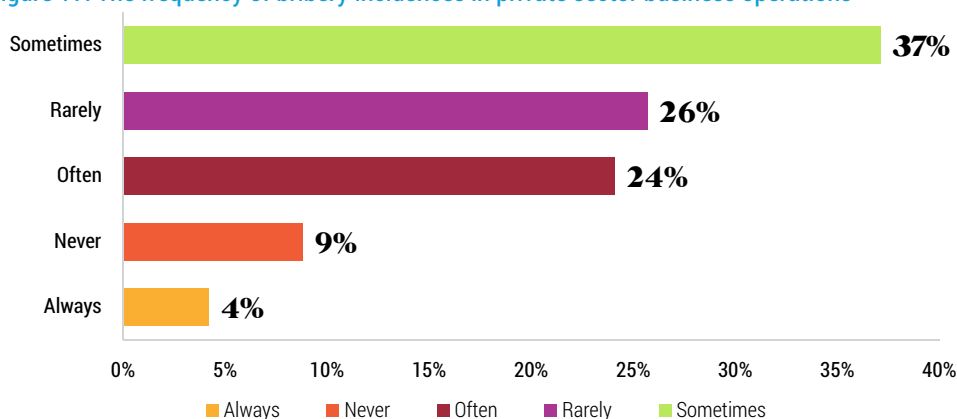


Source: KEPSA CRM Private Sector Survey 2018

The frequency of bribery incidences in private sector business operations

37%, 26 % and 24% of the respondents indicate that bribery occurred sometimes, rarely and often respectively. 9% and 4% indicated that bribery occurred never and always respectively. The survey noted that majority of the respondents indicated that bribery occurred sometimes because bribe had been offered or received during business operations. Figure 17 below shows frequency of bribery incidences in private sector business operations.

Figure 17: The frequency of bribery incidences in private sector business operations

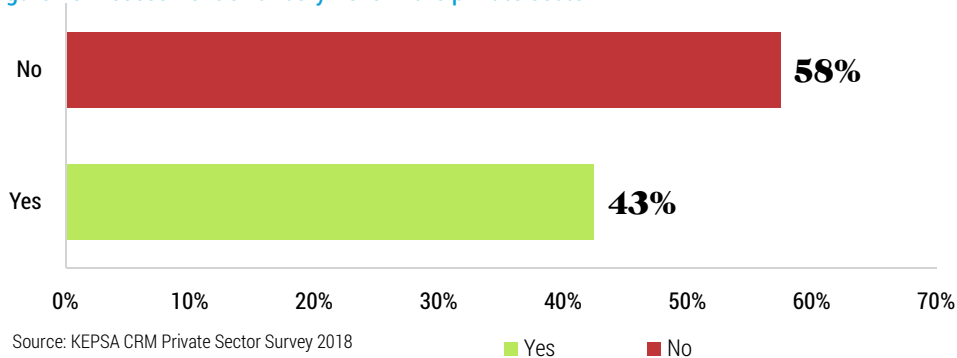


Source: KEPSA CRM Private Sector Survey 2018

Assessment of bribery risk

43 % of the respondents indicated they had conducted internal bribery risk assessment, while 58% indicated that they had not. The survey established that most of the businesses that had not conducted internal bribery assessment were those with less than 50 employees. Figure 18 below shows the assessment of bribery risks in the private sector.

Figure 18: Assessment of bribery risks in the private sector

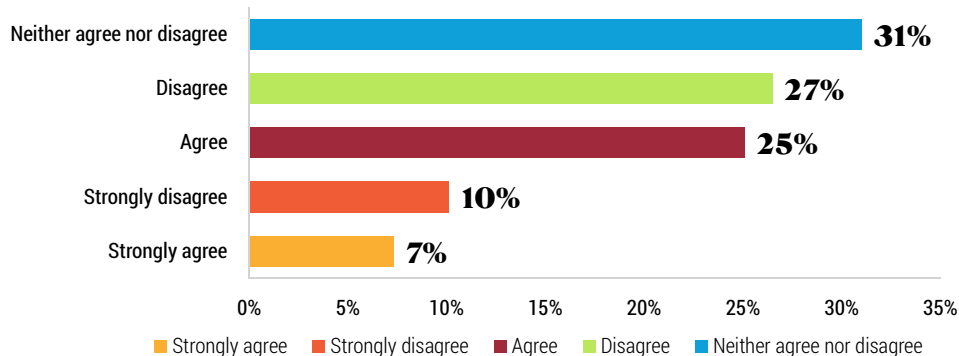


Source: KEPSA CRM Private Sector Survey 2018

Knowledge and understanding of the Bribery Act

Majority of businesses do not understand the existence of the Bribery Act. 31% of the respondents neither agreed nor disagreed that they had knowledge of the Act, 27% disagreed, while 25 % agreed they had knowledge of the Act. The assessment established that the high percentage of undecided respondents was also due to insufficient knowledge of the Act as small and medium sized businesses reported a higher level of respondents with insufficient knowledge of the Act. Figure 19 shows the knowledge and understanding of the Bribery Act 2016.

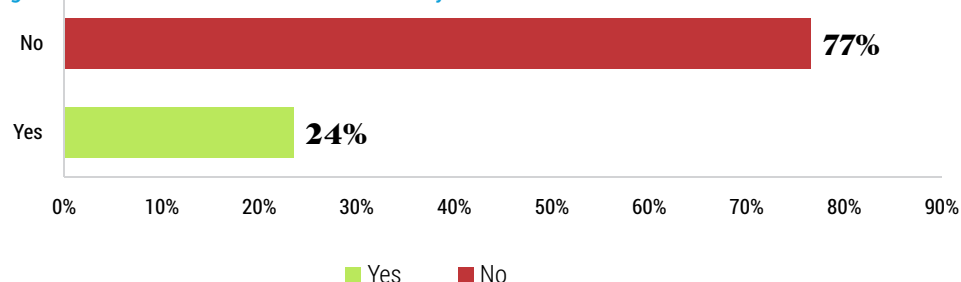
Figure 19: Knowledge and understanding of the Bribery Act 2016



Professional advice about compliance with the Bribery Act

77% of the respondents indicated that they had not sought professional advice about the Bribery Act, while 23 % indicated that they had. The survey established that majority of the respondents that had little knowledge of the Act had also not sought professional advice about the Act. It also established that majority of the large sized businesses had sought professional advice. Figure 20 below shows professional advice about Bribery Act 2016.

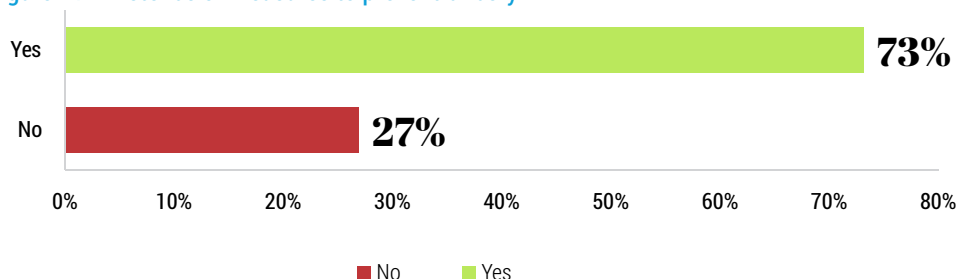
Figure 20: Professional advice about Bribery Act 2016



The existence of measures to prevent bribery

73% of the respondents indicated that their organizations had put in place measures to prevent bribery, while 27% indicated that their organizations had not. The assessment noted that most of the respondents quoted financial control as the main measure they had put in place and this was observed across the board including businesses with less than 50 employees. Figure 21 below shows existence of measures to prevent bribery.

Figure 21: Existence of measures to prevent bribery



Source: KEPSA CRM Private Sector Survey 2018

Bribery prevention measures

The survey found that most businesses had some bribery prevention measures in place. Financial and commercial controls such as adequate bookkeeping, auditing and approval of expenditure were the main measures adopted by many businesses to prevent bribery followed by adoption of code of ethics. Table 5 shows bribery prevention measures implemented in the private sector.

Table 5: Bribery prevention measures implemented by the private sector

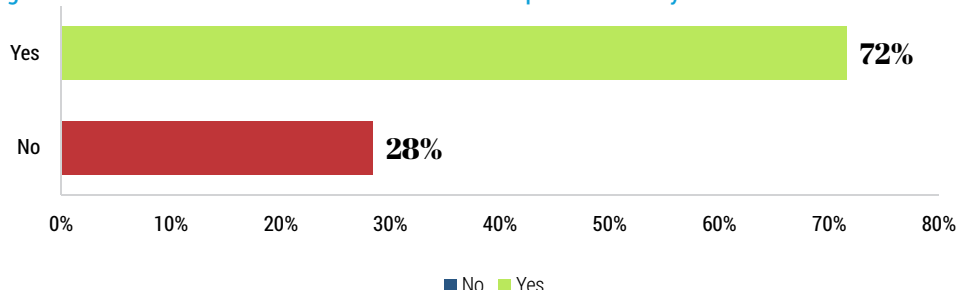
Bribery prevention measures implemented	Percentage	Bribery prevention measures implemented	Percentage
Oral briefing to staff and partners to communicate the need to prevent corruption and bribery	14.3%	Training or awareness raising about the threats posed by bribery in general and in the sector or areas in which the organization operates	7%
Written internal policy documents that cover anti-bribery which are signed by staff and partners	11.4%	A top-level management commitment that the organization does not win business through bribery	6.5%
Financial and commercial controls such as adequate bookkeeping, auditing, and approval of expenditure	17.3%	Discipline processes and sanctions for breaches of the organization's anti-bribery rules	11.8%
The reporting of bribery or suspicions including 'speak up' or 'whistleblowing' procedures	7.8%	Code of Ethics	16.1%
Due diligence of existing or prospective associated persons including HR processes	7.7%		

Source: KEPSA CRM Private Sector Survey 2018

Evidence of measures to prevent bribery

72% of the respondents indicated that they were willing to show measures put in place in their organization to prevent bribery, while 28% were unwilling. Majority of the respondents felt that since they had the measures in place, they would have no problem showing them to anyone who wanted to see them. Figure 22 shows evidence of the existence of measures to prevent bribery.

Figure 22: Evidence of the existence of measures to prevent bribery



Source: KEPSA CRM Private Sector Survey 2018

Measures perceived to be more likely to prevent bribery

Financial controls (25%), Discipline processes and sanctions for breaches of the organization's anti-bribery rules 21% were found to be the most likely to prevent bribery. Table 6 shows measures most likely to prevent bribery.

Table 6: Measures perceived to be more likely to prevent bribery

Bribery Prevention Measures	Percentage
Financial and commercial controls such as adequate bookkeeping, auditing, and approval of expenditure	24.9%
Discipline processes and sanctions for breaches of the organization's anti-bribery rules	21%
Written internal policy documents that cover anti-bribery which are signed by staff and partners	11.4%
Training or awareness raising about the threats posed by bribery in general and in the sector or areas in which the organization operates	9.5%
The reporting of bribery or suspicions including 'speak up' or 'whistleblowing' procedures	9%
A top-level management commitment that the organization does not win business through bribery	8.1%
Due diligence of existing or prospective associated persons including HR processes	7%
Code of Ethics	0.4%

Source: KEPSA CRM Private Sector Survey 2018

Measures perceived to be least likely to prevent bribery

The assessment found that oral briefing to staff and partners to communicate the need to prevent corruption and bribery and the reporting of bribery or suspicions including 'speak up' or 'whistleblowing' procedures were the least likely to prevent bribery. It established that the three ranked highest because oral briefing will have little or no effect in mitigating corrupt activity, whereas reporting, has the risk of inaction accompanied by victimization from management or colleagues. Table 7 below shows measures least likely to prevent bribery.

Table 7: Measures least likely to prevent bribery

Bribery prevention measures	Percentage
Oral briefing to staff and partners to communicate the need to prevent corruption and bribery	35.4%
The reporting of bribery or suspicions including 'speak up' or 'whistleblowing' procedures	19.8%
Due diligence of existing or prospective associated persons including HR processes	9.7%
Written internal policy documents that cover anti-bribery which are signed by staff and partners	9.2%
Discipline processes and sanctions for breaches of the organization's anti-bribery rules	7.1%
Financial and commercial controls such as adequate bookkeeping, auditing, and approval of expenditure	6.9%
A top-level management commitment that the organization does not win business through bribery	6.4%
Training or awareness raising about the threats posed by bribery in general and in the sector or areas in which the organization operates	6%
Code of Ethics	0.4%

Source: KEPSA CRM Private Sector Survey 2018

PART II: COMPLIANCE CHALLENGES

The assessment sought to find out compliance challenges of small, mid-sized and large businesses across all the sub-sectors – it looked for factors that made it hard for businesses to effectively prevent corruption and bribery. It found that small and medium sized businesses faced the most compliance challenges compared to large businesses. It noted that whilst leadership and poor compliance culture was a major factor across the board small and medium sized businesses had limited resources or compliance capacity to prevent corruption while majority of employees were highly unlikely to report unethical behavior for fear of retaliation and/or inaction by management and managers were unaware or did not prioritize their duty to prevent corruption and enforce code of ethics:

Awareness of corruption and bribery risk

Most businesses especially small and medium sized were not aware of corruption and bribery risk in their sub-sector.

Policies & procedures for managing important functions such as finance, procurement and sales

Majority of the respondents especially from businesses with less than 10 employees indicated that they did not have policies and procedures for managing important functions such as finance, procurement, human resources and sales and marketing.

Code of conduct for employees

Majority of small and medium sized businesses indicated that they did not have a code of conduct for employees. Many also indicated that they did not have written internal policy documents that cover anti-bribery which are signed by staff.

Training for employees

Majority of small and medium sized businesses indicated that they did not conduct training or raise awareness about the threats posed by corruption and bribery to their employees.

Oversight

Majority of small and medium sized businesses indicated that they had no oversight mechanisms or dedicated persons to ensure compliance with the Bribery Act.

Awareness of the law

Majority of small and medium sized businesses were not aware of the Bribery Act and liability to comply.

Due diligence of third parties

Some large business indicated that they were not able to conduct due diligence on third parties that they conduct businesses with.

Reporting

Some large business despite having internal system for reporting of corruption and bribery indicated that their staff would not report due to concerns for fear of retaliation.

Challenges

Small and medium sized businesses had limited compliance capacity and/or access to affordable compliance, tools and resources.

Majority of employees were highly unlikely to report unethical behavior for fear of retaliation and/or inaction by management.

Company managers were unaware or did not prioritize their duty to prevent corruption and bribery.

CHAPTER 05

Conclusion & Recommendations



The survey findings established that corruption risk and anti-bribery compliance challenges exist in the private sector business operations with the prevalent forms of corruption being bribery, fraud, tax evasion, embezzlement, extortion, abuse of office, favoritism and procurement irregularities. It also established that corruption risk is mainly concentrated in procurement supply, finance and accounting, sales and marketing and imports and exports areas of business operations, and that small and medium sized businesses were more exposed compared to large companies. The survey draws the following conclusions:

01	Corruption in the private sector business operations is largely based on individual personal experience and higher amongst small and medium sized companies.
02	The main risk areas are hiring new staff based on individual connections, unfair compensation, cash payments, petty cash, invoice processing, falsifying financial books, concealing irregularities in the internal control systems, fees and commissions, discounts, provisions of free products, and collaborating with suppliers to give abnormal prices.
03	Awareness of the Bribery Act and liability to comply is lower amongst small and medium sized companies.
04	The main consequences of bribery and corruption are the increase of business costs, loss of contracts and financial losses.
05	Companies, especially small and medium sized are not seeking professional help on compliance with the Bribery Act.
06	The most common measures used by companies in prevention of corruption and bribery are financial and commercial controls, and code of ethics.
07	Top management commitment to anti-corruption and anti-bribery policies is lower among small and medium size businesses.
08	The measures perceived to be most likely to prevent bribery are financial and commercial controls, discipline processes and sanctions for breaches.
09	Oral briefing of staff and partners, reporting of bribery and suspicion and due diligence are perceived to be least likely to prevent corruption and bribery.
10	The main compliance challenges are lack of awareness of corruption and bribery risk, lack of policies and procedures for managing important functions such as finance, procurement, recruitment processes, lack of code of conduct, lack of training for employees, awareness of legislations and poor oversight of business operations by board members. Others are cost of compliance, third party due diligence, internal communication, reporting of bribery, and training to reinforce policies and regular risk assessment.

From analysis of findings and challenges of compliance with Bribery Act, the study makes the following recommendations:

To small & medium sized businesses

a) Put in place anti-corruption and anti-bribery procedures:

Most small enterprises do not have procedures in place to prevent bribery and corruption. They should put in place measures that suit their business needs so as to detect and prevent corruption and bribery.

b) Avoid or limit cash payments:

Businesses should avoid cash payments where possible as cash payments could be used for improper purposes. They should also develop internal policies and procedures for cash payments where necessary. Large cash payments should be comprehensively recorded, monitored and special internal audit procedures should be conducted.

c) Seek professional advice about compliance with Bribery Act:

Professional advice is a means of retrospective measure to review adherence to policies. It is essential to assist in devising and implementing bribery prevention policies. It can also aid employee training building an ethical culture and access to general information and overview about the Bribery Act.

d) Awareness and sensitization on Bribery Act & liability to comply:

Every business is exposed to fraud and bribery to some degree. All private companies should be cautious to mitigate business operations and their impact to their systems of organization as well as reputation. It is critical that the awareness level of the Bribery Act be increased across the board.

e) Comply with requirements to hold licenses:

Integrity should be upheld by the business in compliance with licensing processes to demonstrate commitment to corruption free environments. Bribes or facilitation fees must not be paid to obtain licenses or regulatory approval, nor prevent negative government action. It is to be understood that both the recipient and giver of the payment are liable.

f) Avoid receiving or giving gifts that might be seen to influence its operations:

Businesses should have a very clear gift policy that clarifies the criteria regarding the giving and receiving of gifts. The most used mechanism is to specify a fiscal value above which gifts may not be acknowledged. In cases where public officials are on the receiving end of such gifts and payments, a dual approval mechanism may be implemented.

g) Compliance training for business top management:

There is need to provide compliance training for a business' top management on anti-corruption and anti-bribery. Such training should include relevant information regarding the Bribery Act.

To Large Businesses

a) Avoid receiving or giving complimentary travel, hospitality and entertainment that might be seen to influence operations:

Control lists that guide hospitality, complimentary and entertainment reception or release should be developed, spelling out the nature of the relationship between the businesses involved and these payments. Documentation of the procedures must be done to ensure accountability. An approval procedure should also be spelled out to reduce the risk of corruption and bribery in this form.

b) Avoid provision of sponsorships that might be seen to influence its operations:

Donations and sponsorships should be availed strategically using a clearly defined policy and criteria to avoid the risk of corrupt dealings. The beneficiary's terms and expectations should be clear and a prior analysis done. The beneficiary's relationship to any one part of the organization should be assessed and approval procedures put in place.

c) Avoid giving donations including political donations that might be seen to influence operations:

Political donations may be abused to conceal corruption or to gain advantage of unfair competition during the process of making political decisions. The intention behind any donation by any individual, organization or entity should be considered. It should be weighed whether the gift is justifiable and proportionate considering all circumstances. A written record of all donations must be maintained and must be in compliance with the business' expense policy.


To Ethics & Anti-Corruption Commission (EACC)

a) Develop guidance notes for businesses on Bribery Act:

This will improve the compliance level and make it more understandable for the businesses.

b) Sensitization and awareness creation: :

There is need for comprehensive induction programmes and enhanced capacity building for businesses to competently and effectively comply with regulations.



CORRUPTION RISK MAPPING

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