

THE BRIBERY REGULATIONS

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THE BRIBERY REGULATIONS

[Legal Notice 88 of 2022]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Bribery Regulations, 2022.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Commission" means the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act (Cap. 7H);

"franchisee" means an entity carrying out specified commercial activities under authorisation granted by another entity;

"franchisor" means an entity that authorises another entity to carry on commercial activities on its behalf;

"parent entity" means an entity that owns or controls one or more subsidiary entities; and

"subsidiary" means an entity wholly or partly owned or controlled by a parent entity.

3. Application

(1) These Regulations shall apply to State officers, public officers, public entities and private entities.

(2) For the purposes of paragraph (1)—

- (a) "public entity" includes all State organs and public bodies of the national government, county governments, constitutional commissions, independent offices, public-private partnership arrangements or undertakings, and any entity that renders a service to the public as a monopoly;
- (b) public officers referred to under section 4 of the Act include State officers; and
- (c) "private entity" includes a virtual business that employs electronic means to conduct business.

PART II – ESTABLISHMENT OF PROCEDURES UNDER SECTION 9

4. Categorisation of entities

(1) For the purposes of section 9, entities shall establish procedures for the prevention of bribery and corruption.

(2) The procedures established under paragraph (1) shall take into account the following matters—

- (a) the size and scale of the entity's business including the number of employees, gross annual turnover, geographical spread of the entity's operation and, in the case of a public entity, State officer or public officer, the amount of exchequer allocation;
- (b) the nature of the entity's business including the entity's service or production orientation, and whether or not the entity carries on business as a monopoly or otherwise;
- (c) the risk of bribery and corruption in the entity's operations;
- (d) whether or not the entity is a joint venture or a subsidiary of a local or foreign entity;
- (e) whether or not the entity operates as a franchise or branch of another entity;
- (f) the entity's mode of establishment, means of transacting business, and governance and management structure;

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- (g) the diversity of the entity's services and customer reach; and
- (h) the extent or diversity of the entity's branch network including interdependence between the entity's branch networks.

5. Subsidiary may adopt parent entity's procedures

(1) A subsidiary of a local entity may, for the purpose of complying with section 9, adopt the procedures established by its parent entity with the necessary modifications to suit its nature of operations or other unique circumstances.

(2) Where a subsidiary of a local entity adopts the procedures of its parent entity, the responsibility for ensuring compliance with, and implementation of, the procedures shall vest in the subsidiary entity.

6. Subsidiary of foreign parent entity shall establish procedures

(1) An entity which is a subsidiary or branch of a foreign entity shall establish bribery and corruption prevention procedures as required under section 9.

(2) Where the foreign parent entity has bribery and corruption prevention procedures, the subsidiary may adopt those procedures with necessary modifications:

Provided that the procedures shall comply with the provisions of section 9.

7. Entities in a joint venture shall develop own procedures

Where entities operate in a joint venture, each entity in the joint venture shall be treated as a separate entity for the purposes of complying with the requirements under section 9:

Provided that where the entities in the joint venture incorporate a separate entity, the new entity shall establish its own procedures for the purposes of complying with section 9.

8. Local entity to be responsible for its branches' procedures

A local entity that establishes a branch or branches for the purposes of its operations shall be responsible for ensuring that its branch or branches comply with and implement the procedures established under section 9 whether or not the branch or branches operate independently or semi-autonomously.

9. Franchisee to establish own procedures

(1) An entity that is a franchisee of another entity, whether local or foreign, shall be responsible for establishing its own procedures under section 9 whether or not the franchisor has established procedures for itself or for the franchise network.

(2) Where the franchisor has established procedures in accordance with section 9, the franchisee may adopt the procedures of the franchisor:

Provided that the procedures shall comply with the provisions of section 9.

10. Virtual entities

An entity which solely operates on a virtual platform shall establish bribery and corruption prevention procedures that shall be applicable to its operations on that platform.

11. Statutory or administrative public entities to establish procedures

A public entity that is established in accordance with or under any written law or administratively which undertakes a function that is distinct from the entity under which it is established or operates shall develop bribery and corruption prevention procedures under section 9.

12. Procedures to be in writing

The bribery or corruption prevention procedures made under section 9 shall be in writing.

13. Entities' procedures to be established within six months

(1) Any entity to which these Regulations apply shall establish the procedures required under section 9 within six months from the date of the publication of the Guidelines under section 12(2) of the Act.

(2) In developing the bribery and corruption prevention procedures, an entity shall incorporate the following guiding principles—

- (a) bribery and corruption risk assessment and management of the entity;
- (b) the entity's communication and training processes;
- (c) the entity's internal mechanisms for reporting acts of bribery and corruption;
- (d) the entity's mechanisms for the protection of whistle-blowers, informants and witnesses; and
- (e) the entity's compliance, monitoring and review mechanisms.

PART III – REPORTING BRIBERY AND CORRUPTION**14. Reporting bribery**

(1) Pursuant to section 14 of the Act, a State officer, public officer or any other person holding a position of authority in a public or private entity shall report to the Commission any knowledge or suspicion of acts of bribery or corruption involving that private or public entity that comes to that officer's or person's knowledge.

(2) The report under paragraph (1) may be made to the Commission—

- (a) in person;
- (b) in writing;
- (c) by email;
- (d) by telephone;
- (e) through any anonymous reporting system as may be established by the Commission; or
- (f) through a third party or agent.

15. Contents of bribery and corruption reports

A report of any knowledge or suspicion of an act of bribery or corruption may include—

- (a) the date and time of the act of bribery or corruption;
- (b) the name and contact details of the complainant:
Provided that the name and contact information of the complainant may be omitted from the report where the complainant requests anonymity;
- (c) the name and contact details of the whistle-blower, informant or witness:
Provided that the name and contact information of the whistle-blower, informant or witness may be omitted from the report where the whistle-blower, informant or witness requests anonymity;
- (d) particulars of the act of bribery or corruption;
- (e) location or place where the act of bribery or corruption is alleged to have occurred;
- (f) the names and other relevant details of the parties involved in the act of bribery or corruption;
- (g) the value or nature of advantage involved in the act of bribery or corruption including details of how the advantage was conferred; and
- (h) any other relevant information.

[Subsidiary]

16. Acknowledgment of reports by the Commission

(1) A person or entity that reports an act of bribery or corruption to the Commission under these Regulations may, at the time of the making of the report or any time thereafter, request the Commission to acknowledge the report.

(2) A request under paragraph (1) shall indicate when, by whom and how the report of the act of bribery or corruption was made if the request is not made at the time of the making of the report.

17. Record of reports

(1) The Commission and any entity to which these Regulations apply shall maintain a record of all reports made in accordance with section 14.

(2) The Commission shall, at least once in every three months and at the end of its financial year, provide the details of all the reports it has received and the action it has taken.

18. Confidentiality

The Commission and any entity to which these Regulations apply shall ensure the confidentiality of information relating to any person that makes a report of an act of bribery or corruption including the disclosure of the act of bribery or corruption and the identity of the person making the report.

19. Reporting mechanisms of entities

An entity to which these Regulations apply shall establish mechanisms for internal and external reporting of acts of bribery or corruption by its employees or persons associated with the entity.

20. Protection of whistle-blowers, informants and witnesses

An entity to which these Regulations apply shall establish appropriate measures for the protection from retaliation, reprisal or victimisation of any person who reports, in good faith, any knowledge or suspicion of an act of bribery or corruption.

21. Revocation.

The Bribery Regulations, 2021 (L.N. 237/2021) are revoked.
