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THE BRIBERY BILL, 2016

Introduction

The Bribery Bill, 2016 was approved and adopted by the Cabinet and is set to be tabled before Parliament for debate and possible adoption. It proposes a raft of measures that would greatly affect how persons and, in particular, the private sector conduct business in Kenya.

Bribery defined

The term 'bribery' has not been defined in the Bribery Bill, however, the term can be generally construed from the Bribery Bill to mean an offer or request, promise or agreement to receive or the giving or receiving of a financial or other advantage to a person whether directly or indirectly through third parties who know or believe such acceptance or giving would constitute the improper performance of a function or activity.

The objectives of the Bribery Bill include:

- Extension of the fight against bribery to the private sector;
- Provision of specific requirements for private entities to adopt bribery prevention procedures;
- Imposition of a reporting obligation on any person who becomes aware or suspects an instance of bribery has occurred; and
- Provision of an effective coordination and accountability framework for the prevention, investigation and prosecution of acts of bribery.

Offences and Obligations

Apart from criminalising the giving and receiving of bribes, the Bribery Bill imposes a duty on every person to report to the Ethics and Anti-Corruption Commission any instance of bribery within twenty four hours of becoming aware or suspecting an instance of bribery.

It should be noted that a person may be found guilty of an offence under the Bribery Bill for assenting, acquiescing or promising the improper performance of a function or activity.

Additionally, private entities may be found to be strictly liable where persons associated with them bribe other persons so as to obtain or retain business or any other advantage for the private entity.

Penalties

The proposed penalties prescribed for various offences under the Bribery Bill are severe and include:

- imprisonment for a term not exceeding ten years or a fine not exceeding KES 1 million or both;
- Five times the amount of any quantifiable benefit gained by the person or the quantifiable loss suffered by another person or both;
- A minimum of a ten year disqualification from holding the position of director in any company in Kenya where the convicted person is a director of a company;
- A minimum of a ten years disqualification from serving as a partner in any firm in Kenya where the convicted person is a partner in a firm; and
- A ten year ban for non-natural persons from transacting business with the national or county government.

Additionally, the Court is encouraged to impose any other deterrent sentence that it may deem necessary in the circumstances of the case.

Should you have any queries or questions on the above provisions of the law and how to effect the notification, please do not hesitate to contact Aisha Abdallah or Faith Macharia-Okaalo.



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