



## **Business Registration Service**

### **ANTI- CORRUPTION POLICY**

**2022**

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## ACRONYMS

ARA	Asset Recovery Agency
BRS	Business Registration Service
CAJ	Commission on Administrative of Justice
DCI	Directorate of Criminal Investigations
EACC	Ethics & Anti-Corruption Commission
EMU	Efficiency Monitoring Unit
ERM	Enterprise Risk Management
FRC	Financial Reporting Center
OAG	Office of the Auditor General
OAG&DOJ	Office of Attorney General & Department of Justice
ODPP	Office of the Director of Public Prosecutions
WPA	Witness Protection Agency

## DOCUMENT APPROVAL

### DESIGNATION

### SIGN

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Adopted for approval by the Board of Directors at the Corruption Prevention Committee Meeting held on 1<sup>st</sup> SEPTEMBER 2022

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## 1. INTRODUCTION

### 1.1. Mandate

The Business Registration Service (BRS) is a State Corporation established in 2015 under the Business Registration Service Act, 2015. Its mandate is to administer laws relating to incorporation, registration, operation and management of companies, partnerships and firms. In connection with this, BRS is also mandated to implement the laws and policies relating to insolvency, hire purchase and movable property security rights. The specific functions outlined in the Act include:

- i. Carrying out all registrations under the enabling statutes;
- ii. Maintaining registers, data and records on registrations;
- iii. Implementing relevant policies and guidelines and providing necessary information to guide the formulation and amendment of policy;
- iv. Carrying out research and disseminating findings in the fields covered by the Act and recommending improvements to the laws;
- v. Collaborating with other state agencies for the effective discharge of its functions.

### 1.2. Policy background

This policy shall be read in conjunction with all applicable laws and policy guidelines enumerated herein and as may be issued from time to time.

#### 1.2.1. National strategies for corruption prevention and eradication

Corruption prevention and eradication has been on the agenda of government for a long time and dates back to pre-colonial period. The earliest legislation on corruption prevention was the Corruption Prevention Act (Cap 65) of the Laws of Kenya, enacted in 1956. Since then, the government has carried out many reforms geared towards combating corruption in a comprehensive and strategic way. The approach has been three pronged:

#### Legal framework

Key legislation on corruption prevention includes:

- i. Anti-Corruption and Economic Crimes Act, 2003
- ii. The Penal Code (Cap 63) of the Laws of Kenya

- iii. Public Officers Ethics Act of 2003
- iv. Witness Protection Act of 2006
- v. Bribery Act of 2016
- vi. Leadership and Integrity Act of 2012
- vii. Ethics & Anti-Corruption Commission Act of 2011
- viii. Commission on Administrative of Justice Act of 2011
- ix. Public Finance Management Act of 2012
- x. Public Audit Act of 2015
- xi. Public Procurement & Asset Disposal Act of 2015
- xii. Proceeds of Crime and Anti-Money Laundering Act of 2009

### **Policy framework**

The National Ethics and Anti-Corruption Policy was formulated in 2018 and is the overarching framework through which the government coordinates sector-wide anti-corruption efforts in order to maximize impact, value and benefits of the aforementioned legislation.

### **Institutional framework**

The Ethics and Anti-Corruption Commission (EACC), which was established in 2011, is the overall national body which is responsible for combating corruption. Besides EACC, there are other institutions whose roles are connected with the fight against corruption. These include the Office of the Director of Public Prosecutions (ODPP), which prosecutes cases. The Directorate of Criminal Investigation (DCI), which is the investigatory arm of the National Police Service that investigates crimes including corruption, the Office of the Attorney General and Department of Justice (OAG & DOJ), which spearheads policy, legal and institutional reforms necessary for the rule of law, the Judiciary which dispenses justice, the Assets Recovery Agency (ARA), which confiscates proceeds of crime, Financial Reporting Center (FRC), which helps to identify proceeds of crime and money laundering, and the Witness Protection Agency (WPA), which protects witnesses of serious crimes.

## 1.2.2. BRS Internal Policies Relevant for Corruption Prevention

### Human Resource Policy and Procedure Manual

The primary policy governing employee behaviour at BRS is the Human Resource Policy and Procedure Manual formulated by BRS Board in 2017. The Policy comprises standards and procedures of public office that employees should conform to when carrying out their work. In particular, the Policy binds employees to professional etiquette, ethics and integrity (12.7.1) consistent with the expectations of a work environment that is characterized by *zero tolerance to corruption* (Regulation 1.2.3).

BRS employees are also required to comply with all other applicable policies issued by Government and declare their income, assets and liabilities in accordance with the Public Service Commission guidelines (Regulation 12.17.1). Regulation 12.1.1 requires employees to demonstrate loyalty and uphold the dignity of the public office to which they are appointed, Regulation 12.3.1 requires employees to avoid conflict of interest in the performance of their duties and clarifies the situations which may give rise to conflict of interest. Regulation 12.4.1 prohibits employees from receiving valuable gifts or giving valuable gifts in the course of performing their duties and provides guidelines on how gifts exchanged in ceremonial occasions will be handled. The Policy also prohibits undue influence (Regulation 12.5.1), discrimination (Regulation 12.10.1) and violation of any law (12.8.1).

The policy also prohibits employees from engaging in corruption related offences including: (a) receiving or soliciting bribes (b) misappropriation and misuse of funds (c) destruction of public property (d) dishonesty (e) irregular awarding of tenders (f) tampering with tender documents (g) tampering with file records (h) financial embezzlement and (i) fraud.

### Whistle Blowing Policy

BRS Whistle Blowing Policy was adopted by the Board in 2021 as a framework for encouraging employees, members of the public and BRS stakeholders to report corruption. The policy prescribes procedures and mechanisms for reporting corruption related complaints. It also provides safeguards for anonymity and confidentiality and protection of whistle blowers from retaliation and victimization.

The policy prescribes three (3) procedures for reporting corruption. These are:

(i) **Confidential reporting** : incidents of corruption can be reported to: (a) an employee's immediate supervisor (b) a Head of Department (c) Head of Internal Audit (d) the Director General or (e) the Board of Directors.

(ii) **Anonymous reporting** : anonymous reporting of corruption can be made using (a)BRS complaints & integrity desk available through the E-mail - [integrity@brs.go.ke](mailto:integrity@brs.go.ke) (b)anti-corruption boxes at BRS offices (c) BRS telephone hotline and (d) letters.

(iii) **Reporting to EACC** in person, anonymously or by E-mail or telephone. Reports can also be made to the Office of the Auditor General (OAG), Directorate of Criminal Investigation (DCI), or Commission on Administrative Justice (CAJ).

### **Enterprise Risk Management Policy Framework**

BRS Board adopted an enterprise risk management approach in 2020 when it formulated the ERM Policy Framework. The policy re-affirms the Board's commitment to corruption prevention and eradication including fraud prevention, detection, and mitigation. The policy requires all Departments/Divisions/Sections/Units at BRS to identify corruption risks, analyze and assess the risks and put in place appropriate mitigation strategies to reduce the likelihood of occurrence and potential impact. In accordance with the Policy, corruption prevention strategies are monitored and evaluated by the Board every quarter.

#### **1.3. Policy Rationale**

The overall objective this Policy is to strengthen BRS capacity to prevent corruption. Related to this, the policy seeks to:

- 1) promote BRS compliance with EACC guidelines on corruption prevention
- 2) specify appropriate structures and mechanisms for corruption prevention
- 3) promote a culture of ethics, integrity and transparency at BRS

#### **2. POLICY STATEMENT AND INTERVENTIONS**

BRS is committed to preventing corruption in all its forms and shall:

- 2.1. Put in place appropriate measures to address both symptoms and root causes of corruption;
- 2.2. Enforce corruption treatment measures;
- 2.3. Promote ethical standards in service delivery;
- 2.4. Cooperate and collaborate with stakeholders and competent authorities in combating corruption;
- 2.5. Enhance transparency in service delivery;
- 2.6. Increase awareness of employees and stakeholders on corruption prevention; and
- 2.7. Regularly monitor and evaluate corruption prevention initiatives so as to ensure their effectiveness.

### **3. SCOPE OF POLICY APPLICATION**

This policy applies to all levels at BRS including the Board, Management and Staff. The policy also binds other stakeholders in their interactions with BRS.

### **4. AREAS WHERE CORRUPTION CAN OCCUR**

BRS is guided by the basic assumption that:

- corruption can occur anywhere;
- corruption can involve anyone;
- corruption happens in the shadows;
- corruption can adapt to different contexts and changes; and
- some business functions are more prone to corruption than others.

BRS shall continuously undertake corruption risk assessments across all business units in order to identify weaknesses and vulnerabilities which may present opportunities for corruption to occur. Management shall focus its anti-corruption and integrity efforts on areas identified as Medium risk and High risk while regularly monitoring Low risk areas to identify corruption loopholes.

## 5. POLICY IMPLEMENTATION STRUCTURE

**Board of Directors** : provides policy direction and oversight over management of corruption related risks and monitors Management actions for mitigating corruption risks. Also sets the tone on expected standard of ethics in BRS.

**Director General** : provides leadership and resources necessary for successful implementation of corruption prevention initiatives.

**Heads of Departments** : identifies corruption loopholes in their departments, assesses corruption risks and puts in place effective strategies to mitigate the risks.

**Corruption Prevention Committee** : coordinates implementation of corruption prevention initiatives.

**Legal Compliance and Research department** : integrates corruption risks into the broader risk management strategies, links initiatives to existing legal frameworks and coordinates investigations and enforcement.

**Internal Audit** : provides assurance on effectiveness of internal controls and corruption prevention initiatives. Also the focal point for whistle blowing initiatives.

**Integrity Assurance Officers** : supports implementation of the work of CPC and act as champions in promoting a culture of integrity in BRS.

**Individual employees** : implements corruption prevention initiatives and demonstrates ethics and integrity in their interactions with one another, clients and stakeholders.

### 5.1. Corruption Prevention Committee

**BRS Corruption Prevention Committee (CPC) comprises:**

- Director General - Chairman
- HODs
- Head of Finance & Accounts
- Head of HR
- Head of Supply Chain Management
- Head of Internal Audit

- Integrity Assurance Officer - Secretary

#### **Terms of Reference**

- a) Develop corruption prevention plans;
- b) Implement corruption prevention and risk mitigation strategies;
- c) Make recommendations to BRS Board of Directors for the development and review of corruption prevention policies;
- d) Receive and review reports on corruption incidents and request and obtain any documents in connection with matters within its mandate;
- e) Request BRS Staff to provide information and explanations on any matters within the scope of functions of the Committee;
- f) Make recommendations on appropriate action to be taken, regarding reported corruption incidents;
- g) Collaborate with other stakeholders and EACC in particular in strengthening BRS capabilities to mitigate corruption risks;
- h) Sensitize staff and BRS stakeholders on corruption prevention;
- i) Monitor and evaluate the impact of corruption prevention strategies;
- j) Collaborate with risk management function in identifying and assessing corruption risks and developing corruption risk mitigation strategies; and
- k) Prepare and submit quarterly progress performance reports to the Management and other agencies as may be required sanctioned by the Board of Directors.

## 5.2. Corruption Reporting Mechanisms

### In-person reporting channels

- Director General's Office 16<sup>th</sup> Floor, Upper Hill 316 Chambers
- Head of Internal Audit 16<sup>th</sup> Floor, Upper Hill 316 Chambers
- Heads of Departments 16<sup>th</sup> & 17<sup>th</sup> Floor, Upper Hill 316 Chambers

### Reporting by way of E-mail

[integrity@brs.go.ke](mailto:integrity@brs.go.ke)

### Reporting by way of telephone

Telephone hotline

+254 020 222 7461/ +254 020 225 1355, +254 700 072 929/ +254 732 529 995

Reporting by Letter

Business Registration Service

P. O. Box 30404-00100

2<sup>nd</sup> Ngong Avenue, Nairobi, Kenya

### External Reporting to EACC

EACC, Report Center

Ground Floor, Integrity center, Jakaya Kikwete/Valley Road

P.O. Box 61130 00200 Nairobi , Kenya

020 2717468 (Phone - Nairobi) 020 2717473 (Fax - Nairobi)

Email: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke)

## 6. INVESTIGATIONS

The Head of Internal Audit in conjunction with the Legal Office shall conduct investigations into reported incidents of corruption and report on the outcome of investigations to the Director General who shall in turn, report to the Board of Directors.

## 7. COLLABORATION WITH OTHER AGENCIES

BRS shall collaborate with other stakeholders for successful implementation of this policy.

Areas of collaboration include:

- Information sharing

- Awareness campaigns
- Enforcement

Collaboration agencies include:

- 1) Office of the Attorney General & Department of Justice
- 2) Office of the Director of Public Prosecutions
- 3) Office of the Auditor General
- 4) Ethics and Anti-Corruption Commission
- 5) Directorate of Criminal Investigations
- 6) Inspectorate of State Corporations
- 7) National Intelligence Services
- 8) Efficiency Monitoring Unit (EMU)

## **8. ENFORCEMENT**

Where employees are found to have been involved in corruption, BRS shall take prompt remedial action including:

### **8.1 Criminal Prosecution or Referring Cases**

BRS shall in collaboration with enforcement agencies pursue criminal cases to conclusion

### **8.2 Disciplinary Action**

Immediate disciplinary action shall be taken as soon as corruption is discovered. Disciplinary process shall be conducted according to the law and policy and procedures set out in the Human Resource Policy Manual.

### **8.3 Improving Internal Controls**

BRS shall ensure that once corruption has been detected, internal controls and other prevention measures are reviewed to address the root causes of corruption. The recommendations of the investigation report shall be used to improve controls. The Head of Internal Audit shall maintain a Register of all corruption cases and their outcomes.

### **8.4 Recovery of losses**

Losses suffered as a result of corruption shall be recovered from the employee who is found to have been involved in the corruption. BRS shall support other agencies in tracing, freezing and recovering assets of employees found to have engaged in corruption.

#### **9. AWARENESS AND SENSITIZATION**

BRS shall take measures to promote awareness about corruption and the risks associated with corruption. Employees shall be sensitized about ethics and integrity. BRS shall collaborate with EACC in implementing awareness and sensitization programmes. Awareness campaigns targeting members of the Public and relevant stakeholders shall also be conducted regularly.

#### **10. POLICY REVIEW**

This policy shall be reviewed regularly and at least every two years to ensure that it remains relevant in addressing corruption.