

# CORPORATE & COMMERCIAL ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING  
KIETI LAW LLP, KENYA

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#### The Whistleblower Protection Bill 2021: An attempt to cure the cycle of corruption in Kenya

Corruption in Kenya has been cited as one of the key factors negatively affecting the country's socio-economic development. The Kenya Ethics and Anti-Corruption Commission estimates that a third of the country's annual budget is embezzled in corrupt deals with colossal amounts being paid to private companies owned by corrupt public officials. Worryingly, Kenya is currently ranked 124 out of 180 countries in the Corruption Perception Index, an index developed by Transparency International and regarded globally as the standard gauge for corruption.



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KENYA

## The Whistleblower Protection Bill 2021: An attempt to cure the cycle of corruption in Kenya

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While Kenya has already passed laws to tackle corruption, such as the Anti-Corruption and Economic Crimes Act 2003, the Public Officer Ethics Act 2003 and the Bribery Act 2016, these have not necessarily encouraged reporting or fostered a whistleblowing culture.

To remedy this lacuna, Parliament has introduced the Whistleblower Protection Bill 2021 (Bill) which seeks to consolidate all the provisions relating to whistleblowing and establish a culture of whistleblowing in Kenya.

One of the major challenges of whistleblowing in Kenya has been the absence of a body that oversees the implementation of the various provisions relating to whistleblowing. The Bill acknowledges this and proposes to create the Commission on Administrative of Justice (Commission), which will have the mandate of overseeing the application and implementation of the Bill.

The Bill proposes to grant the Commission the power to develop policies and procedures relating to whistleblowing, investigate all disclosures made concerning

improper conduct, refer protection requests to the Witness Protection Agency, undertake public awareness on the benefits of whistleblowing, and develop programmes that encourage a whistleblowing culture in Kenya.

### WHISTLEBLOWER POLICIES AND PROCEDURES

Further, the Bill proposes to require that every private and public entity establish and maintain written policies and procedures for managing and investigating disclosures made by their employees.

Once this bill comes into force, employers will be required to have a whistleblowing policy that incorporates rules relating to workplace reprisals and the protection of whistleblowing employees. Employers will be prohibited from discharging, demoting, suspending, transferring, or harassing an employee who alerts the Commission about improper conduct.

### WHISTLEBLOWING ACROSS THE GLOBE

Globally, many countries have laws that encourage individuals to report corruption, bribery and other criminal

activities. Countries such as Brazil, Singapore and Argentina have laws that prompt employers to adopt ethics and compliance policies that include whistleblowing channels and protection mechanisms for the whistleblowers. The US has a detailed framework that ensures protection for whistleblowers, which includes monetary benefits.

Whistleblowing laws have borne immense fruit and facilitated a culture of whistleblowing across the globe, thereby reducing corruption. Kenya is moving in the right direction in ensuring criminal activities are adequately reported without any fear of retaliation or reprisal from the culprits.

As best practice, and in anticipation of the passing of this Bill, we encourage employers to draft and implement a whistleblower policy.

**NJERI WAGACHA,  
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### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### PLEASE NOTE

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