

Anti-Fraud and Anti-corruption policy

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1. Introduction

Corruption has profound adverse effects on social, economic, and political development, disproportionately harms the poor and vulnerable. Corruption poses a direct threat to FSD Kenya by directly undermining its work.

FSD Kenya acknowledges its responsibility to remain accountable to the public, its beneficiaries, donors, and those with whom it deals with and commits to abide by relevant legislation in Kenya such as the Kenya Bribery Act 2016, the Anti-corruption and Economic Crimes Act 2003, the Penal Code and internationally that combat the risk of fraud and corruption.

FSD Kenya endorses UN Global Compact principle number 10 that states that 'Businesses should work against corruption in all its forms, including extortion and bribery.'

2. Policy statement

FSD Kenya does not tolerate fraud and corrupt practices and aims to undertake actions that will mitigate the risk of occurrence, through the institution and enforcement of adequate systems, policies and procedures. FSD Kenya takes all reported suspicions of fraud and corruption seriously and commits to responding to them adequately, promptly and effectively. FSD Kenya may consider a breach of the provisions of this policy to be a disciplinary matter.

FSD Kenya is committed to acting professionally, ethically, fairly and with integrity in all dealings with public or private persons.

3. Purpose

The purpose of this policy is to communicate FSD Kenya's stance and framework to mitigate the risk of fraud and corruption. This policy lays out FSD Kenya's expectation on its employees and those associated with it with regards to the risk of fraud and corruption.

4. Scope

This policy applies to all employees of FSD Kenya and those associated with it such as members of the Programme Investment Committee (PIC), Trustees, implementing partners, vendors, contractors and any other third party. The term 'FSD Kenya staff' will be used throughout this policy to refer to those within scope.

FSD Kenya considers fraud and corruption within the remit of this policy to comprise acts consistent with fraud, bribery, nepotism, money laundering, terrorism financing, theft, and some cases of undeclared conflict of interest.

5. Definitions¹

Corruption is the abuse of power for private gain. Corrupt activities are broad and encompass acts such as fraud, theft, bribery, nepotism or favouritism.

Fraud is an intentional act or omission intended to deceive another party that may cause the party to obtain an advantage improperly, avoid an obligation or cause loss to another

¹ Definition partly obtained from OECD

party. Examples of fraudulent acts include deliberately giving false information in a resume or report, forgery, fabrication of documents or acting under false pretences.

Theft is where one dishonestly takes or uses property belonging to another, without consent and with the intention of permanently depriving the other of it. An example could be deliberate refusal to return FSD Kenya's assets after leaving.

Bribery is the offering, promising, giving, accepting, or soliciting of an advantage as an inducement to do something which is illegal or a breach of trust. The purpose of the bribe is to 'induce a person to perform a relevant function or activity improperly or to 'reward a person for the improper performance of such a function or activity. Bribery includes facilitation payments, favours and kickbacks.

Extortion is obtaining a benefit through coercion (for example threats of future physical injury, property damage or exposure to criminal charges or public humiliation) or an implicit or explicit threat to give the payer a worse than fair treatment.

Suspicion is a reasonably held belief or feeling that something is likely or has happened.

6. Bribery

FSD Kenya and its associated parties are prohibited from offering, promising, giving, accepting or soliciting a bribe. FSD Kenya's associated parties include anyone working or doing business on behalf of FSD Kenya in any capacity.

Forms of bribery

Bribes may come in many forms such as favours, facilitation payments, kickbacks donations, gifts or hospitality.

Facilitation payments are typically small, unofficial payments made to secure or expedite a routine administrative task.

Kickbacks are typically payments made in return for a business favour or advantage. FSD Kenya staff are prohibited from making facilitation payments and kickbacks.

Donations

FSD Kenya does not make contributions or donations of any kind to political parties. No charitable or other donations will be made for the purpose of gaining any advantage.

Payments under duress

It is permissible for a payment to be made in the rare and exceptional circumstances where it is believed necessary to protect against loss of life, limb or liberty (except in the case of lawful detention). If possible, the circumstances and proposed payment should be discussed in advance with a line manager. In all such cases, an incident report must be submitted to FSD Kenya.

Payments made under coercion may be considered consistent with extortion and ought to be reported to FSD Kenya.

7. Gifts and hospitality

Gifts may be construed to be bribery where they are given with an intention to induce or influence a person to act in a particular way. Any gift(s) constituting an attempt to exert

undue influence; or create a sense of obligation or compromise professional judgement is strictly prohibited.

Gifts and hospitality should typically not be accepted. However, reasonable, small tokens (e.g., inexpensive promotional items or seasonal gifts), from an organisation or individual may be accepted provided they do not give rise to the risk of influencing the judgement of the intended recipient of the gift; place the intended recipient under any obligation, or a reasonable perception of the gift representing **bribery** or other corrupt practice or giving rise to a **Conflict of interest** on the part of the intended recipient. If there is any doubt, the gift **must** be refused. Further guidance on gifts is provided under the conflict of interest and gift policy. (To insert link)

The providing or accepting of hospitality or entertainment of a reasonable amount is allowed, as long as:

- a) It is not done with the intention of influencing the behaviour of the recipient.
- b) It is done openly.
- c) It is within reasonable limits. Refer to the conflict of interest policy.
- d) It complies with local law.

8. Preventing fraud and corruption

FSD Kenya is committed to preventing and identifying fraud and corruption in their programmes, through raising awareness of fraud risks, implementing controls aimed at preventing and detecting fraud and corruption, and enforcing this policy. FSD Kenya, therefore, implements the following pillars of prevention.

Top-level commitment – The PIC and Trustees of FSD Kenya commit to oversee this zero-tolerance policy and the implementation of adequate controls to safeguard FSD Kenya's assets, stocks and funds from abuse.

Risk assessment – FSD Kenya will adopt a risk-based approach to tackling fraud and corruption in the programmes. The risk of fraud and corruption in programmes will be identified communicated to relevant stakeholders together with an assessment of the extent to which the risks can be mitigated. The risk of fraud and corruption will be considered during the design of programmes. It will be monitored and reported as part of FSD Kenya's risk management framework.

Effective anti-fraud and corruption policies and procedures. FSD Kenya will put in place procedures that are effective and proportionate to the risks identified, circumstances and culture. These procedures will include those designed to prevent and those designed to detect the risk of fraud.

Due diligence and procedures for third parties – FSD Kenya shall employ a fair and proportionate due diligence process for third parties before entering contracts. The level of due diligence will be based on risk and will be done in line with FSD Kenya's due diligence policy.

Communication and training – FSD Kenya will employ a robust continuous system of building awareness and understanding of its anti-fraud and anti-corruption procedures and systems. New staff will be inducted into the policy. Third parties informed of the expectations laid out in this policy, which will also form part of the contractual conditions.

The communication and awareness programme shall cover employees, the PIC, trustees, and other relevant stakeholders. Training for associated third parties will be conducted by FSD Kenya on a case-by-case basis in line with the risks identified and capacity assessment outputs.

Monitoring and evaluation – FSD Kenya shall monitor the effectiveness of the procedures set to combat fraud and corruption. The PIC shall review the outcomes and guide improvements.

9. Reporting fraud and corruption

It is mandatory for all FSD Kenya staff to report suspicions of fraud or corruption immediately. Suspicions must be reasonably held but do not require any proof before making a report.

FSD Kenya staff who have a suspicion may first report it to their line manager. Third parties associated with FSD Kenya may first report suspicions to the manager who holds their contracts. Should the staff feel, the line manager might be involved or will not take the suspicion seriously, they should report it directly to the Chief Operating Officer (or delegate).

Once a manager receives a fraud suspicion, they will be required to report it to the Chief Operating Officer (or delegate) not later than 48 hours. They may, however, report it to the Chief Executive Officer (CEO) should the Chief Operating Officer be involved. If the CEO is involved, then the report must be made to the Chair of the PIC.

FSD Kenya staff and any third party may also report suspicions directly to the Chief Operating Officer (or delegate) by sending an email to:

Transparency@fsdkenya.org

Or confidentially through the whistleblowing hotline by:

Sending an email to fsd.whistleblower@bdo-ea.com

The whistleblowing hotline is available 24/7 and provides for anonymous reporting. See Whistleblowing Policy.

All suspicions received will be taken seriously, treated confidentially and follow through FSD Kenya's fraud and corruption response procedure.

10. Responding to suspicions of fraud and corruption

Once a suspicion has been received the Operations manager (or delegate), will send an acknowledgement within 48 hours to the person who made a report.

The suspicion will be assessed to determine credibility. A reasonably held and credible suspicion will proceed to be investigated. Once credibility has been determined, external reports will be made in line with regulations and contractual obligations.

After the completion of an investigation, the Operations Manager will communicate outcomes to the reporter only when it will not represent an additional risk to FSD Kenya.

Investigation reports may recommend actions to be taken, which may include disciplinary hearings and rectification of control environment.

It is the responsibility of the project lead or unit manager to ensure that controls where breached are adequately remediated to avoid further exposure and vulnerabilities.

11. Investigations

When a suspicion has reached the threshold for investigating, FSD Kenya will employ a competent in-house or external investigator to investigate the suspicion. FSD Kenya conducts its investigations whilst embracing the principles of confidentiality, proportionality, timeliness, evidence-led, objectivity, fairness and transparency. Depending on the nature of the suspicion, FSD Kenya might choose to conduct a forensic audit or an investigative review.

FSD Kenya staff may be called upon to give evidence during an investigation. Staff will typically not be accompanied during an investigation interview. It is mandatory for all FSD Kenya staff to support an investigation process when required to do so.

All records supporting an investigation will be maintained in line with FSD Kenya data protection policy.

12. Malicious reporting

No person will suffer any detriment as a result of raising genuine concerns about bribery, fraud and/or corruption even if they turn out to be mistaken.

However, disciplinary action may be taken where there is evidence that allegations were not made in good faith but have been deliberately made maliciously or frivolously to the detriment of another or for personal gain.

13. External reporting

FSD Kenya is subject to laws and regulations; external reporting will be made in line with applicable laws and regulations as well as contractual requirements of agreements signed with donors.

Where evidence has been obtained that a bribery offence has been committed or is likely to have been committed, FSD Kenya will make a report to the Ethics and Anti-Corruption Commission in line with the requirements of the Kenya bribery act – FSD Kenya to insert link.

14. Fraud in grantees or partners

Grantees or partners must have proportionate procedures to mitigate the risk of fraud or corruption in the programmes funded by FSD Kenya. This means the procedures instituted should take into account the fraud and bribery risk faced by the grantee or partner. FSD Kenya will make an assessment of these risks during the due diligence process.

Where a grantee or a partner suspects that an act of fraud or corruption has occurred, which relates to the funds of FSD Kenya or persons working on FSD Kenya projects, then they **must** report it within 48 hours to FSD Kenya.

The grantee or partner will be required to respond to the suspicion while upholding FSD Kenya's principles. Should a grantee be unable to conduct an investigation, a decision will be made by FSD Kenya management on the next course of action which may include a decision on the level of support needed. Outcomes of the investigation report must always be shared with FSD Kenya. The report will be held with the utmost confidentiality. The report will be in the custody of the COO and only shared on a need to know basis in line with FSD Kenya's data protection policy.

The requirement to comply with this policy will form part of FSD Kenya and its grantees' contractual obligations.

15. Maintaining appropriate records

FSD Kenya will maintain a register of all reported fraud and corruption suspicions. The register shall include outcomes of the response to the suspicions. The Trustees and PIC will receive anonymised reports of suspicions quarterly.

A gift and hospitality register shall be maintained and reviewed annually.

All managers in FSD Kenya must ensure that the following records are adequately maintained:

- a) Financial records and documentation supporting expenditure
- b) Audit trail of decision making such as the decision to procure, to recruit or to take on board a grantee
- c) Records of gifts and hospitality given out

16. Roles and responsibilities

All staff

All staff must:

- a) Read, understand, and comply with the contents of this policy.
- b) Report suspicions of fraud and corruption promptly.
- c) Exercise their duty to prevent and detect fraud and corruption.

All project leads and managers

FSD Kenya managers must

- a) Ensure staff and third parties they work with are aware of the contents of this policy.
- b) Vigilantly monitor and regularly review and where necessary, updated controls and procedures to safeguard FSD Kenya's assets, funds, and stocks.
- c) Frequently check that these are procedures are being fully observed and implemented.

Chief Executive Officer

The Chief Executive Officer of FSD Kenya is ultimately responsible for ensuring the effective implementation of this policy and associated procedures and ensuring that everyone associated with FSD Kenya is equipped and supported to meet their responsibilities.

Trustees

The trustees of FSD Kenya must:

- a) Always demonstrate commitment and the right tone
- b) Ensure that FSD Kenya has a properly functioning internal control and risk management system and expects that all instances of fraud/corruption are brought to its attention by management.
- c) Institute mechanisms to obtain independent assurance over the effectiveness of the systems instituted to combat fraud and corruption

FSD Kenya PIC

The FSD Kenya PIC has the responsibility to provide governance oversight over the implementation of this policy.

17. Independent assurance

The effectiveness of FSD Kenya's fraud and corruption policy and procedures is subject to the regular internal audit reviews where necessary FSD Kenya may call an external review to assure the integrity and effectiveness of whistleblowing processes and procedures.

18. Data retention and protection

FSD Kenya respects confidentiality and has a responsibility to protect sensitive personal data. Information will only be shared on a 'need to know' basis that means, access to data must be necessary for the conduct of one's official duties. Only individuals who have legitimate reasons to access information can receive it. See Data Protection Policy.

19. Review of this policy

The Chief Operating Officer is responsible for ensuring that this policy is reviewed on a timely basis. This policy will be reviewed after every two years.

20. Related policies

This policy should be read in conjunction with:

- a) Code of conduct
- b) Safeguarding and prevention of sexual harassment exploitation and abuse policy
- c) Whistleblowing policy
- d) Counterterrorism and anti-money laundering policy
- e) Anti-bullying and harassment policy
- f) Data protection policy
- g) Disciplinary and grievance policy and procedures
- h) Conflict of interest and gifts policy
- i) Finance policy and manual