CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

CEE
LEGAL MATTERS

www.ceelegalmatters.com

Impressum:

CEE Legal Matters Kft.
Szechenyi utca 10,
1054 Budapest, Hungary
+36 1 796 5194

The Editors:

Radu Cotarcea: radu.cotarcea@ceelm.com
Teona Gelashvili: teona.gelashvili@ceelm.com
Andrija Djonovic: andrija.djonovic@ceelm.com

Letters to the Editors:

If you like what you read in these pages (or even if you don't), we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at: press@ceelm.com

TABLE OF CONTENTS

CHAPTER CONTENTS

schönherr

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

AUSTRIA

Oliver Michael Loksa
Counsel
ol.loksa@schoenherr.eu
+43 1 534 37 66100

Carina Fuernkranz
Associate
ca.fuernkranz@schoenherr.eu
+43 1 534 37 50353

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

The main provisions of criminal law regarding corruption are outlined in Sections 302 et seq of the Austrian Criminal Code (Strafgesetzbuch), which addresses criminal offenses involving public officials, corruption, and related crimes. Additionally, Section 153a penalizes the abuse of power upon acceptance of gifts by agents and Section 265a addresses the "purchase of a mandate" (Mandatskauf), i.e., the offering of payment to party functionaries to secure a mandate in the national council, regional parliaments or the European Parliament for a person.

Furthermore, the Austrian Financial Crime Act (Finanzstrafgesetz), the Austrian Foreign Trade and Payments Act (Außenwirtschaftsgesetz), and the Austrian Federal Act against Unfair Competition (Bundesgesetz gegen den unlauteren Wettbewerb) all contain elements aimed at fighting corruption. The Austrian Corporate Liability Act (Verbandsverantwortlichkeitsgesetz) defines the responsibilities of legal entities and registered partnerships. Disciplinary measures for public officials are outlined in other legal provisions.

Lastly, the Austrian Whistleblower Protection Act (HSchG) came into force on 25 February 2023.

1.2. Which international anti-corruption conventions apply?

Austria has been actively involved in international efforts to combat corruption, having signed and ratified several key conventions. Since December 1, 2006, Austria has been a member of the Council of Europe's Group of States against Corruption (GRECO). The country ratified the United Nations Convention against Corruption (UNCAC) dated October 31, 2003. Additionally, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was ratified by Federal Law Gazette III 176/1999.

Austria also ratified the Council of Europe's 1999 Civil Law Convention on Corruption on August 30, 2006, and the Criminal Law Convention on Corruption dated January 27, 1999. The Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of the Member States of the European Union, dated May 26, 1997, was also ratified, as was the Convention on the Protection of the European Communities' Financial Interests dated July 26, 1995, along with its related protocols.

1.3. What is the definition of bribery?

The details of the respective provisions are complex and difficult to untangle. They can, however, be summarized as follows:

Austrian criminal law covers corruption and bribery offenses regarding public officials in Sections 304 to 308. These provisions include active and passive bribery, giving and accepting undue advantage, accepting benefits, and giving undue benefits for the purpose of interference and unlawful intervention. Active and passive bribery (Sections 304 and 307) require an unlawful execution or omission of official duties. Conversely, in case of a lawful execution or omission of official duties, the advantage given and accepted must be undue (Sections 305 and 307a). Accepting benefits or giving undue benefits for the purpose of interference, i.e., "grooming", is penalized under Sections 306, 307b, and 308. The main aspect or difference is that it does not aim at a certain or specified act or omission. Since September 2023, a new offense, "purchase of mandate" (Section 265a) was added to the Austrian Criminal Code. Moreover, the offenses under Sections 304 and 306 used to be applicable to public officials only. However, from September 2023 on, these offenses also include future public officials, i.e., candidates for public office.

The advantage can be either material or immaterial. A material advantage is anything that from an economic point of view objectively increases the public official's assets in a measurable way, i.e., in monetary terms. An immaterial advantage can consist of social or professional advantages, such as the promotion of a career, support for an election campaign, the awarding of honors or sexual favors.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

The relevant legislation includes Sections 309 and 153a of the Austrian Criminal Code.

Section 309 of the Austrian Criminal Code intends to prevent corruption in the private sector and thus relates to such conduct in the private economic sector. Accordingly, an employee or agent of a business undertaking who, in the context of business dealings, demands, accepts, or accepts the promise of an advantage from another person for themselves or a third party in return for the exercise or omission of a legal act in violation of their duties commits the offense of "private bribery." The same applies, of course, to anyone who offers, promises, or grants such an advantage for these reasons.

Section 153a addresses the acceptance of gifts by agents holding a position of power. Under this provision, a person is liable if they have accepted a pecuniary advantage (Vermögensvorteil) that is not merely insignificant, in return for exercising their power to manage third-party assets or to impose obligations on others. Another requirement is that the person does not remit the pecuniary advantage in violation of their duties. For the advantage to be considered "significant," the assumption is that its value must exceed EUR 100.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

The definition of a public official under Austrian law can be found in Section 74(1)(4) of the Austrian Criminal Code:

A public official includes legislative, administrative, or judicial officers as well as persons who have otherwise been entrusted with official duties. It covers all persons who undertake legislative, administrative, or judicial duties for any public body or another state or for an international organization, be it as an executive officer or employee. It also covers those who are authorized to execute official acts on behalf of a public body. In addition, public officials are also deemed to be persons who act as executive officers or employees of a government-related organization.

In addition, since 2013, bodies or employees of state-owned or state-controlled companies have also been considered public officials. A company is considered state-owned or state-controlled if it is at least 50% owned (directly or indirectly) by the state or is de facto controlled by domestic or foreign entities. Similarly, bodies or employees of companies subject to audit by the Court of Audit are considered public officials.

Persons exercising legislative, administrative, or judicial duties for another state (i.e., not Austria) or for an international organization as its organ or employee also qualify as public officials under Austrian corruption rules. Hence, persons who are active in the jurisdiction, sovereign or private sector administration and legislation of a foreign state or who exercise a comparable function for an international organization are deemed to be equivalent to an Austrian public official. So-called Unionsbeamte, i.e., members of the institutions, bodies, offices, and agencies of the European Union established under the Treaty on the Functioning of the European Union or the Treaty on the European Union, and the staff of these bodies, are also explicitly covered.

Statistics Austria (Statistik Austria), responsible for the vast majority of European and federal statistics produced within Austria, publishes all units assigned to the public sector once a year. These are all institutional units located in the economy that are subject to government control. The list can be downloaded on the website of Statistics Austria: https://www.statistik.at/statistiken/volkswirtschaft-und-oeffentliche-finanzen/oeffentliche-finanzen/oeffentliche-finanzen/oeffentlicher-sektor

1.6. Are there any regulations on political donations?

Political donations to parties in Austria are permitted under specific conditions as stipulated in Section 6 of the Austrian Parties Act (Parteiengesetz).

Parties may accept a maximum of EUR 7,500 per donor per year and a total of EUR 750,000 per calendar year.

Parties must disclose the name of the donor for donations of EUR 500 or more per year and donor and for membership fees of EUR 5,000 or more per calendar year. Contributions from organizations and committees of persons affiliated with the party must also be published, stating the name of the supporter.

Additionally, political parties are prohibited from accepting contributions from companies that are at least 10 % state-owned (directly or indirectly). Furthermore, Section 6(6)(8) and (9) of the Austrian Parties Act governs the prohibition of anonymous contributions exceeding EUR 150, as well as contributions exceeding EUR 500 when paid in cash.

1.7. Are there any defenses available?

Some of the provisions provide for specific exemptions. For example, in the case of a public official demanding, accepting, or accepting the promise of an advantage, or a person offering, promising, or granting a public official an advantage in return for the due exercise or omission of the due exercise of an official act, the advantage must be significant for it to constitute a criminal offense. Minor-value tokens of appreciation that are customary in the locality or region, with a maximum value of EUR 100 (provided they are not given regularly), are not considered significant.

Similarly, Section 308 (Prohibited Intervention) penalizes the demand, acceptance, or being promised an advantage, as well as the offer, promise or granting of an advantage, with the intention of having the recipient of the advantage exert undue influence on the decision-making of a public official. Influence is deemed to be undue if it aims to affect the exercise or omission of an official act in violation of duties or is associated with the offer, promise, or granting of an undue advantage.

Furthermore, if future public officials demand an advantage or allow themselves to be promised such an advantage they are only liable if they have actually obtained the position as a public official.

Other than that, the usual defenses under Austrian criminal law apply. Practically, most defenses are based on the argument of a lack of intent and a lack of reciprocity between advantage and act/omission.

1.8. Is there an exemption for facilitation payments?

In Austria, there is no distinct legal provision designed explicitly to address facilitation payments, apart from the examples mentioned above regarding "undue" advantages.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

The consequences of bribery in Austria are severe and vary based on the specific provisions a perpetrator was deemed to be in breach of as well as the roles of individuals or entities involved. The highest possible penalty is for active/passive bribery if the value of the advantage exceeds EUR 300,000. In such cases, the perpetrator will be punished with a prison sentence of one to 15 years. For legal entities or associations, the maximum penalty is EUR 4,650,000 (cf. Section 4.4).

In addition to these sanctions, perpetrators (including associations) can be subject to civil claims. Such claims can already be filed within the criminal proceedings (Privatbeteiligtenanspruch). It is noteworthy that, even if a claim is not accepted by the criminal court and the victim proceeds with litigation, the civil courts are bound by the criminal court's guilty verdict. This binding effect (Bindungswirkung) means that the conviction cannot be reviewed in subsequent civil proceedings. The convicted person cannot successfully argue in civil proceedings that the conviction was incorrect.

Additionally, a public client must exclude a contractor from participating in a procurement procedure if it is aware of a final conviction of the contractor for corruption-related offenses (or comparable criminal offenses in the country where the contractor is based).

1.10. Does the national bribery and corruption law apply beyond national boundaries?

Austrian criminal laws apply in any event to all offenses committed within Austria (Handlungsort) and if the "success" of the offense occurred in Austria (Ort des Erfolgseintritts) or if the offense or success should have occurred in Austria. Furthermore, Austrian criminal laws apply to criminal offenses committed abroad by an Austrian civil servant or public official. The same is true if the perpetrator was an Austrian national at the time of the offense or if the offense was committed in favor of an Austrian public official.

1.11. What are the limitation periods for bribery offenses?

The statute of limitations for prosecuting corruption offenses is primarily determined by the highest possible sentencing. It is important to note that certain periods, particularly those during preliminary criminal investigations, are not included in the statute of limitations.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

Significant amendments were implemented in September 2023 by the Corruption Penal Law Amendment Act 2023 (KorrStrAG 2023).

Currently, there do not appear to be any specific bribery- or corruption-related amendments or developments planned. In addition, further changes cannot be ruled out, given that corruption proceedings and related legal issues remain a hot topic in Austria.

There will be, however, changes to the Austrian Code of Criminal Procedure, which often affect white-collar crime proceedings. In particular, the Austrian lawmaker will have to revise the law on the seizure and evaluation of mobile devices and data. In December 2023, the Austrian Constitutional Court ruled that it was unconstitutional that such seizure and evaluation could have been done merely on the basis of a warrant by the Public Prosecutor's Office, i.e., not even a decision by the court prior to the investigative measure was needed. A draft bill has already been published but has led to a widespread justice system, given that the processing of the data was supposed to be done exclusively by the Criminal Investigation Department (instead of by the Public Prosecutor's Office – which, however, in practice often engaged the CID with such task). It remains to be seen how this will develop.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

The Austrian Criminal Code generally and universally prohibits the provision of advantages to public officials, regardless of their value.

However, as described in Section 1.7, certain offenses require the advantage to be undue, meaning advantages granted i) in the context of events for which there is an officially or reasonably justified interest, ii) for charitable purposes, whereas the public official must not have control over how the advantage is being utilized, and iii) for advantages that constitute customary local or regional tokens of appreciation of minimal value. It is generally accepted that such advantages valued at less than EUR 100 are not undue.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Cf. Section 2.1 above There is a general acceptance regarding the value of certain advantages if the specific offense requires an undue advantage.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

Cf. Sections 2.1 and 2.2.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

Cf. Sections 2.1 and 2.2.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

Austrian criminal law does not provide for an explicit obligation to maintain a bribe-targeting compliance program.

However, the absence of such a program is crucial under the Austrian Corporate Liability Act (VbVG). A legal entity or partnership can be held responsible for a criminal offense committed by an employee if the offense was made possible or was significantly facilitated due to the failure of decision-makers to exercise necessary and reasonable care under the circumstances. This includes the omission of significant technical, organizational, or personnel measures to prevent such offenses. Consequently, it is often considered a duty of management to implement such systems.

When considering general corporate law requirements for diligent management, sanctions for regulatory violations, and the obligation to establish an internal control system, a range of duties for a company's management emerges. These duties indicate the practical necessity of implementing a general compliance system, and failure to do so can lead to management liability.

Furthermore, specific statutory regulations provide for the mandatory implementation of compliance systems, such as the Austrian Banking Act with regard to credit institutions of significant importance.

3.2. Is there any official guidance on anti-corruption compliance?

The Austrian Criminal Code lacks provisions explicitly defining compliance programs or specifying required compliance models.

On 15 June 2023, the Austrian Federal Competition Authority (BWB) and the Austrian Federal Economic Chamber (WKO) jointly presented an information folder dedicated to cartel law and compliance. The folder includes information on how to implement an effective compliance management system. In addition, some guidance can be found in ONR 192050, a compliance management system standard issued by Austrian Standards in 2013.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

In Austria, the EU Directive on Whistleblowing was implemented through the Austrian Whistleblower Protection Act (HSchG).

3.3.1. What can be reported?

The Act applies to the provision of information regarding (suspected) breaches of regulations in the areas of public procurement, financial services, product safety, traffic safety, environmental protection, food safety, animal welfare, public health, consumer protection, data protection, and corruption, among others (= material scope). The Austrian legislator has included corruption offenses (Sections 302 to 309 of the Criminal Code) within the material scope of the HSchG. However, other property offenses that are broadly considered part of corruption law are not covered by the HSchG. Therefore, for instance, a whistleblower reporting a suspicion of embezzlement or fraud is not protected under the HSchG.

3.3.2. Who is protected?

The Act protects natural persons who have acquired information on breaches in the course of their ongoing or previous professional activity and report these. This includes employees, temporary contracted workers, applicants, trainees, volunteers, the self-employed, members of management bodies (e.g. administrative board or the supervisory board), contractors from (sub)enterprises or suppliers. Protection is not limited to whistleblowers but also extends to individuals who assist in the whistleblowing process, such as works council members or colleagues, and those who may suffer adverse consequences or retaliatory actions related to the whistleblower, like close relatives.

3.3.3. What are the conditions for protection?

Whistleblowers are entitled to use the reporting procedures and to receive protection from the time of the report to a reporting channel, provided they have reasonable grounds to believe, based on the facts and information available to them, that the information they are reporting is true and falls within the scope of the HSchG.

3.3.4. What companies does the relevant legislation apply to?

The HSchG obligates legal entities in the private and public sectors with at least 50 employees to establish an internal reporting channel. Legal entities in the private sector include public limited companies, private limited companies, open

partnerships, limited partnerships, and associations. Civil law partnerships and sole proprietorships, however, are not included.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Cf. also Section 3.1.

The Austrian Corporate Liability Act sets out the conditions under which legal entities, registered partnerships, and European Economic Interest Groupings (associations) can be held liable for criminal offenses (without limitation to certain offenses). An association may be held liable for a criminal offense if the offense was committed to benefit the association or in breach of its specific obligations.

In addition, one of the two following conditions must be met:

- a decision-maker must have committed a wrongful and culpable act; or

- an employee must have carried out conduct corresponding to a statutory offense and the conduct of the crime was facilitated or significantly eased because decision-makers failed to exercise the care required under the circumstances (including the omission of significant technical, organizational, or personnel measures to prevent such conduct, thereby implying the absence or insufficiency of an organizational and control system).

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

The association could be held liable if its decision-maker or employee contributed to the criminal offense committed by the direct perpetrator (and the other prerequisites as mentioned in Section 4.1 are fulfilled).

In addition, in connection with a merger or takeover, the legal successor can also be held liable for criminal offenses committed by the target company prior to this merger or takeover. The same applies to fines imposed prior to the merger or takeover (Section 10).

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

The answer to that question depends essentially on two aspects: i) Did the agent engage in criminal activities, i.e., did they bribe a public official (or was there an attempt to do so), and ii) if so, whether such activity was covered by the company's intent (or by the intent acting for the company).

Regarding an employee who has committed such an act, the company could point to a functioning compliance system, training, and the lack of involvement of the decision-maker. As highlighted in Sections 3.1 and 4.1, technical, organizational, or personnel measures to prevent such conduct are a requirement for the company's liability if the conduct was undertaken by an employee.

In this regard, it is noteworthy that, according to case law by the Austrian Supreme Court, bribery does not necessarily constitute embezzlement or abuse of power to the detriment of the company. The argument is that bribery can sometimes be economically advantageous for the company.

4.4. What are the sanctions for the corporate criminal entity?

Corporations are subject to fines measured in per diem units, which are based on the amount of the prison sentence for the specific offense committed. Regarding corruption-related crimes, the highest possible sentence is 15 years for bribery, if the value of the advantage exceeds EUR 300,000. As the highest possible per diem unit amounts to EUR 30,000, the highest possible penalty for a corruption-related crime amounts to EUR 4,650,000.

It is noteworthy that the penalties associated with corruption offenses have increased since the Corruption Penal Law Amendment Act 2023 (KorrStraeG 2023) came into effect on September 1, 2023. Cases where the value of the advantage exceeds EUR 300,000 have been raised to be punishable by imprisonment for one to 15 years. Under the Corporate Liability Act (VbVG), the maximum daily rate has been raised from EUR 10,000 to EUR 30,000.

5. Criminal Proceedings for Bribery and Corruption Cases

5.1. What authorities can prosecute corruption crimes?

In Austria, the prosecuting bodies responsible for handling corruption offenses are primarily the Public Prosecutor's Office for Economic Crime and Corruption (WKStA) and the Federal Bureau of Anti-Corruption (BAK). The latter is an institution under the Ministry of the Interior responsible for nationwide efforts to prevent, preempt, and combat corruption. It collaborates closely with the WKStA and assumes a central role in security and criminal police cooperation with foreign and international anti-corruption entities.

In essence, the WKStA is competent to investigate corruption offenses (except for abuse of office), white-collar criminal cases with damages exceeding EUR 5 million, and so-called "accounting fraud offenses" at larger companies. Since September 1, 2012, the WKStA has also been responsible for criminal financial offenses with damages exceeding EUR 5 million. It is the only prosecutor's office with nationwide jurisdiction for economic and corruption offenses.

In the absence of such cases, the "normal" Public Prosecutor's Offices are responsible for investigating and prosecuting corruption crimes.

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

There is no general legal obligation for individuals or businesses to report breaches of anti-bribery and anti-corruption regulations.

A managing director who is aware of a planned or ongoing criminal offense and fails to take action, despite having the ability to do so, could be considered complicit in the offense due to their inaction (Section 2).

If an authority becomes aware of a suspected criminal offense within its sphere of action (Wirkungsbereich), it is required to report the matter to the criminal prosecution authorities.

5.3. Is there any civil or administrative enforcement against corruption crimes?

Victims can pursue civil claims for damages resulting from such offenses both within the criminal proceedings as well as within litigation.

Public-sector employees (particularly civil servants) must additionally anticipate disciplinary action.

Administrative law is enforced by various administrative authorities, often entrusted with specific tasks and thus with specific competence. For example, the Financial Market Authority (FMA) oversees banks, insurance companies, and enterprises listed on the Vienna Stock Exchange, and the Federal Competition Authority (BWB) conducts investigations into possible violations of national and European competition law.

On January 1, 2013, the Austrian Lobbying and Interest Representation Transparency Act came into force. The purpose of this Act is to create clear conditions for activities intended to influence government decision-making processes. It provides for administrative penalties of up to EUR 20,000 (up to EUR 60,000 for repeated offenses) and other legal sanctions, such as deletion from the list or nullity of contracts.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

The Public Prosecutor's Office oversees the preliminary investigations. It can conduct these investigations itself or, as is usually the case, delegate certain steps to the criminal police. The Austrian Code of Criminal Procedure allows for various investigative measures such as house searches, the seizure of documents and data, the monitoring of telephone conversations, the interrogation of testimonies, etc. Pursuant to Section 78, the Public Prosecutor's Office is entitled to make direct use of the assistance of all federal, provincial, and municipal authorities and public agencies as well as other bodies and institutions under public law (Amtshilfe). Such requests must be complied with as soon as possible.

Essentially, such steps can be challenged by suspects by various means. However, the Austrian Code of Criminal Procedure does not provide for a doctrine similar to the fruit of the poisonous tree doctrine. Moreover, under Austrian law, the violation of a prohibition on obtaining evidence (Beweisgewinnungsverbot) does not always or automatically entail a prohibition on the use of the evidence thus obtained (Beweisverwertungsverbot).

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

Under Austrian law, the Code of Criminal Procedure offers protection for crown witnesses (Kronzeuge). Section 209a provides leniency for perpetrators who remorsefully confess to the offense and disclose knowledge or evidence that either contributes to the clarification of the offense beyond their own level of participation or helps to uncover another person involved in the offense. To avail themselves of these protections, the perpetrator must voluntarily contact the prosecution authorities.

To benefit from the leniency program, it is crucial to self-report before the criminal prosecution becomes aware of the alleged misconduct. The disclosure should include all companies and individuals who are to benefit from the leniency program.

This provision expressly applies to corporations as well (Section 19 of the Austrian Corporate Liability Act).

In practice, the program is hindered by issues of unforeseeability and delays in decision-making. In certain white-collar crime or corruption cases, requests to obtain the status of a crown witness have been left unresolved for months or even years.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

No system of plea bargains exists in Austria.

For various criminal offenses against property (e.g., breach of trust, money laundering), the perpetrator's punishability can be precluded if, before the criminal prosecution authorities have learned of their culpability, they voluntarily make full restitution of the loss caused by their actions, or contractually undertake to indemnify the injured party for the loss suffered within a particular period, and actually do so (Taetige Reue).

Under certain circumstances, the Public Prosecutor's Office or the court can withdraw from the prosecution (Diversion). The perpetrator must meet certain conditions, such as making full restitution of losses, paying a monetary amount, or making charitable contributions. Also, the facts of the case must have been established. While a formal confession is not required and Diversion is not considered a guilty plea, requesting it implies an acceptance of responsibility for the act committed. Additionally, the perpetrator's guilt must not be deemed serious, and the offense must not be punishable by a custodial sentence of more than five years.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

ESTONIA

Lembit Tedder
Partner
lembit.tedder@cobalt.legal
+372 665 1888

Anette Jaani
Junior Associate
anette.jaani@cobalt.legal
+372 665 1888

Jaanus Randma
Junior Associate
jaanus.randma@cobalt.legal
+372 665 1888

Rachel Sermat
Assistant Lawyer
rachel.sermat@cobalt.legal
+372 665 1888

Robert Soidla
Assistant Lawyer
robert.soidla@cobalt.legal
+372 665 1888

CEE LEGAL MATTERS

www.ceelegalmatters.com

1 Legal Framework

1.1 What is the legal framework for bribery and corruption in your jurisdiction?

In Estonia, the legal framework for corruption and bribery is primarily regulated by the following acts:

• the Anti-corruption Act;

• the Penal Code;

• the Code of Criminal Procedure.

In addition, there is the Code of Ethics for Public Officials, which sets higher ethical standards for public officials and assumes that public officials are held to a higher standard and must not only act but also appear to act in an ethical and corruption-free manner.

1.2 Which international anti-corruption conventions apply?

Estonia is a member to several international anti-corruption conventions. The conventions that apply to Estonia include:

• the United Nations Convention Against Corruption (UNCAC);

• the Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union;

• the Council of Europe's Civil Law Convention on Corruption;

• the Council of Europe's Criminal Law Convention on Corruption;

• the Additional Protocol to the Criminal Law Convention on Corruption;

• the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;

• the Agreement establishing the Group of States against Corruption (GRECO);

• the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

1.3 What is the definition of bribery?

The definition of bribery is set out in article 294 section (1) of the Penal Code, according to which a bribe is a payment (or promise) of property or any other benefit given to a public official in return for the fact that the public official, in the exercise of his or her official position, has committed, or there are grounds to believe that he or she will commit in the future, an act prohibited by law, or has unlawfully failed to commit, or there are grounds to believe that he or she will fail to commit in the future, an act prohibited by law.

1.4 Is private sector bribery covered by law? If yes, what is the relevant legislation?

Bribery in the private sector is regulated as a separate offense in the Penal Code. According to article 4023 section (1) of the Penal Code, requesting, consenting to promising, or accepting of property or other advantage by a person competent to engage in economic activities in the interests of a person in private law, and an arbitrator to himself or herself or third person, in exchange for abuse of his or her competence is punishable by a pecuniary punishment or up to five years' imprisonment. Pursuant to article 4024 section (1) of the Penal Code, promising or giving a bribe in the private sector is punishable by a pecuniary punishment or up to five years' imprisonment. Both acts are also punishable if committed by a legal person.

1.5 What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

An official according to article 288 section (1) of the Penal Code (also in article 2 section (1) of the Anti-Corruption Act) is a natural person who holds an official position for the performance of public duties regardless of whether he or she performs the duties imposed on him or her permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by appointment or election.

A foreign official according to article 288 section (3) of the Penal Code is an elected or appointed person who performs the functions of the legislative, executive, or judicial power in a foreign state or an administrative unit of any level thereof, or who performs public law functions for a foreign state, its administrative unit, public institution or public undertaking, as well as a public servant or representative of an international organization in public law, including a member of an international representative body or court.

Two factors are important for defining a public official:

1) Official position. The official position is defined as a legal definition in article 2 section (2) of the Anti-corruption Act, according to which an official position means the rights and obligations arising from the legislation, transactions, or work

organization of an agency upon the performance of public duties.

2) Performing a public task. A public task is an undefined legal concept. Although the performance of a public task presupposes action in the public interest, the mere fact that it is in the public interest is not sufficient for an individual task to be considered public. Above all, the tasks entrusted by or under the law to the State, a local authority, or any other legal person governed by public law must be regarded as public tasks. A public task includes the functions of a public authority, irrespective of whether, and if so, how, the performance of those functions affects third parties outside the administration. Similarly, the performance of a public task includes the performance of a public service, whether in the form of a public-law relationship of trust and confidence (article 5 subsection 1) of the Civil Service Act) or a private-law employment relationship (article 5 subsection 2) of the Civil Service Act), since in both cases it is directly connected with the exercise of official authority or an activity in support thereof. Employment in a legal person governed by public law may also be regarded as the performance of a public task, in so far as the creation of such a legal person is motivated by the public interest (article 25 section (2) of the Act on the General Part of the Civil Code). Secondly, a public task may also be performed by a private person outside the aforementioned institutions if the exercise of public authority has been delegated to that person. The performance of a public task is also implied where a competent authority has conferred on a private person, by legislative act or by contract, the power or the obligation to provide a service in the public interest for the operation of which the State or another legal person governed by public law is ultimately responsible for under the law.

There is no official binding list of public officials in Estonia, each official's actions must be assessed on a case-by-case basis.

1.6 Are there any regulations on political donations?

The provisions on political donations are set out in the Political Parties Act as follows.

According to article 123 section (1), 'donation' means a financially assessable benefit, including a service, but not voluntary work, voluntarily given by a natural person who is a citizen of the Republic of Estonia or has the permanent right of residence or the status of a long-term resident in Estonia out of their assets to a political party or a member thereof for the purpose of supporting the activities of the political party.

According to section (11) of the same provision, the board of a political party adopts a procedure for accepting donations. The procedure for accepting donations will be published on the website of the political party.

According to section (2) of the same provision, a donation that does not comply with the terms and conditions laid down in section (1) of this article is prohibited. Above all, the following is prohibited:

1) anonymous donations;

2) donations by legal persons;

3) the transfer or the granting of use of goods, services, or proprietary rights to a political party on conditions not available to other persons;

4) release from ordinary binding duties or obligations;

5) waiver of claims against a political party;

6) payment of the expenses of a political party by third parties for the political party or making concessions to the political party, unless the payment of such expenses or the making of such concessions is also available to other persons in ordinary economic activities;

7) donation made via a natural person and at the expense of the assets of a third party;

8) donations by aliens, except for donations by persons holding the permanent right of residence or the status of a long-term resident in Estonia.

According to section (3) of the same provision, a political party is allowed to accept cash donations from a natural person to the extent of up to EUR 1,200 per financial year. Cash donations are to be immediately registered by a political party as revenue.

According to section (4) of the same provision, the usual value of the object or right serves as the basis for the evaluation of a non-monetary donation. If there are generally acknowledged experts for the evaluation of an object, the object of a non-monetary donation will be evaluated by them. If a non-monetary donation has been evaluated below its actual value, the difference between the values will be deemed a prohibited donation.

According to section (5) of the same provision, upon submission of the annual report specified in article 129 of the Political Parties Act, the evaluation of the value of a non-monetary donation must be audited by an auditor who will submit an opinion regarding whether the non-monetary donation was evaluated in accordance with the law. Among other things, the opinion must contain a description of the non-monetary donation and indicate which method was used for the evaluation of the non-monetary donation.

1.7 Are there any defenses available?

Estonian law does not provide special defenses for bribery offenses. Remorse and other mitigating factors may be taken into account, but no special remedy exists.

Generally speaking, there are three possible consequences of accepting a prohibited donation. First, the political party must return the prohibited donation (article 124 of the Political Parties Act). In the case of services, this means that the political party must reimburse the prohibited donation to the person who made it. Secondly, the political party funding supervision committee may issue an order to the political party to return the prohibited donation and, in the event of non-compliance, impose a penalty payment or reduce the party's contribution from the national budget. Thirdly, the making and receiving of a prohibited donation may be punishable by either a misdemeanor or a criminal offense, depending on the size of the prohibited donation (article 1218 of the Political Parties Act and article 4021 of the Penal Code).

1.8 Is there an exemption for facilitation payments?

Facilitation payments are not exempt from anti-bribery laws in Estonia. Engaging in such practices can result in significant legal consequences, incl. criminal.

1.9 What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

The offenses of accepting, giving, or procuring bribes are punishable by a pecuniary punishment or up to five years' imprisonment. Where a natural person has taken a bribe at least twice, has solicited a bribe, or has done so in a group or on a large scale, the natural person can be punished by imprisonment of between one and ten years. If the natural person has been bribed for at least the second time or the act has been committed by a group or on a large scale, the natural person can also be punished by imprisonment for a term of between one and ten years. A legal person can be criminally liable for a pecuniary punishment for the same offenses. Current Estonian law does not provide for civil or administrative penalties for bribery offenses. That said, there are misdemeanor provisions e.g., in the Anti-corruption Act for lesser offences.

1.10 Does the national bribery and corruption law apply beyond national boundaries?

The Penal Code applies to grant, acceptance, or arranging receipt of bribes, or influence peddling committed outside the territory of Estonia, or to crimes which damage the financial interests of the European Union, if such act was committed by an Estonian citizen, Estonian official or a legal person registered in Estonia, or an alien who has been detained in Estonia and who is not extradited, or if such person participated therein (article 7 section (2) subsection 2) of the Penal Code).

1.11 What are the limitation periods for bribery offenses?

As a starting point, bribery offenses are second-degree offenses under Estonian law, i.e., a natural person is punished with a pecuniary punishment or imprisonment for up to five years, and a legal person is punished with a pecuniary punishment. According to article 81 section (1) subsection 2) of the Penal Code, second-degree offenses expire five years after the completion of the offense.

That said, if the crime of accepting or giving a bribe is committed at least twice, by a group (2+), by requesting a bribe (sic!), or on a large-scale basis (KEUR 40+), the offense is considered a first-degree offense which has a more severe punishment and it expires ten years after the completion of the offense (subsection 1) of the aforementioned article).

1.12 Are there any planned amendments or developments to the national bribery and corruption law?

A draft law amending the Anti-Corruption Act is currently pending in the Estonian parliament. According to the draft, the regulation on the violation of the restriction on the acts of public officials will be modernized and clarified, in particular, the list of persons related to a public official will be clarified. Related persons will be defined as persons close to the official. In addition to kinship and descent, the content of the close relationship must consider the real social and emotional bond between people, such as sharing of responsibilities, mutual reliance, and trust. Decisions and actions in relation to these persons are prohibited and are subject to a restriction of acts. It is specified that, if a public official is a connected person in a legal person to which he or she has been appointed during his or her duties, a public official may not act or take decisions in relation to himself or herself as a natural person, for example in matters relating to his or her own remuneration and benefits.

Further, a healthcare professional will no longer be required to impose a restraint on a connected person if the provision of healthcare does not create a substantial undue advantage for him or her or his or her connected person. In addition, the draft law introduces an obligation to declare investments in crypto assets and participation in and claims against crowdfunding projects. In the case of crypto-assets, the declaration must indicate the type and value of the crypto-asset, and in the case of an investment or claim in a crowdfunding project, the crowdfunding service provider, and the value of the holding.

Additionally, the person making the declaration of interest is also required to indicate in the declaration if she or he is a beneficial owner within the meaning of the Money Laundering and Terrorist Financing Prevention Act.

2 Gifts and Hospitality

2.1 How are gifts and hospitality treated?

In Estonia, gifts and hospitality are defined as "benefits" in the Anti-Corruption Act. Benefits can be material or non-material and non-corruptive or corruptive. If corruptive, benefits are defined as "income derived from corrupt practices". According to article 4 section (1) of the Anti-Corruption Act, income derived from corrupt practices is the proprietary or other benefits offered to the official or any third person due to his or her official duties or demanded by the official, and benefits received by violation of the obligations of the official. Benefits, which cannot be associated with official duties, or which are unambiguously understood as common courtesy, shall not be deemed to be corruptive.

2.2 Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Estonian law gives some general guidance on gifts and hospitality in the public sector. However, the law does not give any specific guidance for gifts and hospitality in the private sector.

An official can only accept such gifts and hospitality, which are unambiguously understood as common courtesy, or which cannot in any way be associated with his or her official duties. For example, officials are generally permitted to accept flowers, boxes of chocolates, souvenirs, and books, but there is no specific monetary threshold. Therefore, disputes can and do emerge should the value of such gifts be outside the scope of "normal".

According to article 3 section (1) subsection 1) of the Anti-Corruption Act, an official is prohibited from demanding, intermediating, and receiving income derived from corrupt practices.

If an official has received benefits, that can be associated with official duties, he or she must immediately give notification to his or her agency or the person or body who has the right to appoint him or her to accept these benefits. It is also stipulated that an official must refuse to accept any benefits, which are defined as income derived from corrupt practices or, if this is impossible, deliver the benefit immediately to his or her agency or the person or body who has the right to appoint him or her. If delivery of the benefit is impossible, the official must pay the market value of the benefit instead of this. The delivered benefit or the value thereof in money shall be transferred into state ownership or returned if so provided by law (article 4 section (2) of the Anti-Corruption Act). Violation of the requirement to notify the receipt of income derived from corrupt practices and transfer thereof is punishable by a fine (misdemeanor) according to article 18 of the Anti-Corruption Act.

2.3 Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

There is no specific threshold. See above for explanations.

2.4 Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

Since there are no specific limitations (see above), there are no defenses or exceptions to the limitations, and the above-explained rules apply.

That said, and broadening the question slightly, there are multiple exceptions to the procedural restrictions that have been established for officials. As for the procedural restrictions, according to article 11 section (1) of the Anti-corruption Act, an official is generally prohibited from performing an act of making a decision, if at least one of the following circumstances exists: 1) the decision is made or the act is performed with respect to the official or a person connected to him or her; 2) the official is aware of an economic or other interest of that official or a person connected to him or her and which may have an impact on the act or decision; 3) the official is aware of a risk of corruption.

In a previously described case, an official is also prohibited from assigning the task of performing the act or making the decision to his or her subordinates. Instead, an official shall immediately inform his or her immediate superior or the person or body who has the right to appoint the official of the circumstances previously described, and the latter shall perform the act or make the decision or assign this task to another official (article 11 section (2) of the Anti-corruption Act).

In regard to the exceptions from these procedural restrictions, pursuant to article 11 section (3) of the Anti-corruption Act, there are multiple cases where the procedural restrictions do not apply. The restrictions on activities shall not be applied: 1) to adoption of legislative acts and participation in the adoption or preparation thereof, considering the budget of state and local governments shall be deemed to be a legislative act; 2) to a trustee in bankruptcy conducting bankruptcy proceedings, for use of the services of the office through which he or she operates; 3) if necessary and in the case of acts which cannot be postponed if there is a threat of major damage;

4) if replacement of the official is impossible due to lack of qualified personnel; 5) in the case of acts or decisions by which an agency performing public duties ensures the organization of its work, except for service-related decisions; 6) if there is no risk of corruption because of routine making of a decision or performing of an act, including if an official makes a disposition or performs an act without having an opportunity to determine the circumstances thereof; 7) in rural municipality or city agencies, if the application of restrictions on activities would be unreasonable from the point of view of public interest, taking account of the specific character of the local government unit; 8) in the case of elections inside bodies.

These procedural restrictions and the exceptions thereof are important to acknowledge as a knowing violation of a procedural restriction or the terms and conditions of a procedural restriction is a misdemeanor (article 19 of the Anti-corruption Act). Furthermore, a knowing violation of a procedural restriction can also amount to a crime if it is committed to a large extent (article 300-1 of the Penal Code).

3 Anti-Corruption Compliance

3.1 Are companies required to have anti-corruption compliance procedures in place?

Estonia has numerous laws and regulations aimed at preventing corruption, e.g., the Anti-Corruption Act and the Penal Code. Additionally, Estonia has also committed to international anti-corruption agreements, like the OECD Anti-Bribery Convention. That said, there are no specific provisions in Estonian national law that require companies to have anti-corruption compliance procedures in place. Generally speaking, Estonian legislation criminalizes corruption but does not impose specific obligations to establish and maintain measures to prevent corruption in companies. This is not to say that companies do not have and/or are not advised to have such internal measures in place. In criminal proceedings, as a starting point, the supervising authorities will typically determine whether something was in compliance with internal rules or not. If compliant with appropriate internal rules, charges most likely won't be brought against the person under investigation due to lack of guilt.

3.2 Is there any official guidance on anti-corruption compliance?

The Anti-corruption Act outlines the obligations for public officials and entities to prevent corruption, including requirements for reporting and managing conflicts of interest. The Penal Code includes provisions for criminal offenses related to corruption, e.g., bribery.

Setting the above aside, the Ministry of Justice is the authority coordinating anti-corruption activities which have included companies in their "Anti-corruption agenda 2021-2025". It emphasizes that 1) companies' awareness of corruption is low and so often different forms of corruption go unnoticed, 2) the government's role in the prevention of corruption can primarily be raising awareness and motivating honest business practices, 3) it is also important to raise awareness of financial auditors since they can notice cases of corruption in the course of their work, but due to the confidentiality terms, they often do not report the crime to the police, assuming the client himself will do it, 4) to increase transparency, the government intends to also enhance its supervision and "nudge" companies to submit public fiscal year reports correctly and on time – every year around 60% of companies submit their fiscal year reports on time, 20% submit it late and 20% fail to submit it.

3.3 Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

The EU Directive on Whistleblowing was implemented in Estonia on 15 May 2024 when the Estonian Parliament passed the Act on the Protection of Whistleblowers of Work-Related Violations of European Union Law (referred to as the Whistleblower Protection Act). The Whistleblower Protection Act will come into effect on 1 September 2024.

Since both bribery and corruption are considered violations of EU law, and the law protects whistleblowers who report these violations, the Whistleblower Protection Act provides protection for such reporting.

3.3.1 What can be reported?

According to article 2 section 1 (1) of the Whistleblower Protection Act, whistleblowers are protected when they report to their employer any violation of EU law in the following areas: 1) public procurement; 2) financial services, products and markets, and the prevention of money laundering and terrorist financing; 3) product safety and compliance; 4) transport safety; 5) environmental protection; 6) radiation protection and nuclear safety; 7) food and feed safety, animal health and welfare; 8) public health; 9) consumer protection; 10) protection of privacy and personal data, and security of network and information systems; 11) violations affecting the financial interests of the Union as referred to in article 325 of the TFEU and as further specified in relevant Union measures; 12) violations relating to the internal market, as referred to in article 26 section (2) of the TFEU, including breaches of Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of

the applicable corporate tax law.

3.3.2 Who is protected?

According to article 3 section 1 of the Whistleblower Protection Act, the following persons, who have reported a violation of European Union law, which was discovered during employment activities, will receive protection: 1) a person working under an employment contract or other contract according to the law of obligations; 2) civil servant; 3) sole proprietor; 4) a member of the management or controlling body of a private company, non-profit organization, foundation or state-owned profit-making organization; 5) shareholder and partner of a private company; 6) a person acting as a volunteer; 7) an intern at an institution or private company or sole proprietor; 8) a person engaged in pre-contractual negotiations or a person otherwise preparing a contract or a person whose employment status has ended; 9) a person receiving an athlete grant; 10) a person working at a contractual partner of an institution or a legal entity in a form specified in the same act.

3.3.3 What are the conditions for protection?

According to article 13 subsections 1) and 2) of the Whistleblower Protection Act, the reporting person receives protection under the Act if: 1) at the time of reporting of the violation, the reporting person had reasonable grounds to believe that the violation has directly started or has been completed and that the violation falls within the scope of the Whistleblower Protection Act, and 2) the report of the violation was internal, external or public disclosure in accordance with the provisions of the Whistleblower Protection Act.

3.3.4 What companies does the relevant legislation apply to?

By September 1, 2024, the legislation applies to the following companies:

1) companies with 250 or more employees;

1) entities under national financial supervision;

2) certain state and municipal authorities and their subordinate institutions.

Starting from January 1, 2025, the legislation also applies to companies with 50 to 249 employees. Companies with fewer than 50 employees, will not be subject to the legislation.

4 Corporate Criminal Liability

4.1 Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Yes, criminal offenses listed under the so-called corruption chapter of the Penal Code provide a basis for holding companies criminally liable for such actions, incl. for bribery.

According to article 14 section (1) of the Penal Code, a legal person is liable for an act committed in the interest of the legal person or in breach of its legal obligations by: 1) its body, a member, senior official, or competent representative; or 2) any person on the instructions of a body or a person specified above, or due to insufficient work organization or supervision of the legal person.

If found criminally liable, corporate entities can punished primarily with a pecuniary punishment. The maximum amount is MEUR 40, or a % of its annual turnover.

4.2 Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

Estonian law does not provide such automatic liability of a parent company for the bribery offenses committed by one of its subsidiaries. However, the liability of the parent company can arise under certain conditions. Parent companies may be found liable if there is evidence of control, influence, or direct benefit of the crime committed by the subsidiary (i.e., the conditions of article 14 of the Penal Code are met).

In order to avoid liability in these situations, parent companies can take different measures, for example establishing compliance programs, conducting due diligence, monitoring and auditing the actions of the subsidiary, keeping detailed records, and creating reporting mechanisms. None of these measures guarantee that the parent company will not be held liable, but all of them may be considered as mitigating factors in determining whether to file a suspicion or accusation.

4.3 Can a company be liable for the corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

A company can be liable for the corrupt actions of a third-party agent if it is identified that the third-party agent acted in accordance with article 14 of the Penal Code (see above, question 4.1). When working with third-party agents it is thus

also important to establish clear rules for the co-operation and be proactive against all illegal activity and inactivity, in order to not be liable for the actions or inactions of a third-party agent. Aside from that, there are no specific measures to mitigate this liability besides what is noted above in 4.2. This is not to say that in such and other corporate criminal liability cases it is not possible for the company to argue and demonstrate that the person actually acted for their own (not the companies') benefit, that the act was unavoidable for the company and thus the company should not be held criminally liable.

4.4 What are the sanctions for the corporate criminal entity?

The sanctions for corporate entity liability include fines (misdemeanors), pecuniary punishments (crimes), confiscation of assets, and extended confiscation of assets.

The maximum amount of misdemeanor fines varies (typically EUR 400,000 nowadays), but the maximum pecuniary punishment is EUR 40 million, or a % of its annual turnover.

5 Criminal Proceedings for Bribery and Corruption Cases

5.1 What authorities can prosecute corruption crimes?

Only the Estonian Prosecutor's Office has the authority to prosecute crimes. In corruption cases, typically the State Prosecutor's Office is in charge.

At the out-of-court investigation stage, i.e., before taking the matter to court, the prosecution is aided by various subordinate authorities such as the police (incl. the Estonian Internal Security Service, especially in cases of corruption).

5.2 Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

According to article 6 section (1) of the Anti-Corruption Act, an official is not permitted to conceal violations of the prohibitions specified in section (1) of article 3 of the Anti-Corruption Act or any other incidents of corruption known to the official (see above, question 2.2). Therefore, Estonian law stipulates the obligation to report bribery and corruption cases for public officials.

For private persons (both natural and legal), it is only punishable to not report criminal offenses in the first degree (article 307 section (1) of the Penal Code). A criminal offense in the first degree is an offense the maximum punishment prescribed for which in the Penal Code for a natural person is imprisonment for a term of more than five years or life imprisonment (article 4 section (2) of the Penal Code). Therefore, private persons are obligated to report accepting bribes and giving bribes, if committed at least twice, by a group, by requesting a bribe, or on a large-scale basis (articles 294 section (2) and 298 section (2) accordingly). Failure to report a crime is punishable by a pecuniary punishment or up to three years imprisonment for natural persons and by a pecuniary punishment for legal persons.

5.3 Is there any civil or administrative enforcement against corruption crimes?

Consequences against corruption crimes can involve administrative and civil issues, including claims for damages. For example, if corruption has led to a breach of contract or financial loss, the victim can file a claim for damages in a civil court. Administrative proceedings are used when there is a violation of public law obligations. For example, a government agency may initiate an administrative procedure to investigate and sanction an official involved in corrupt activities. Such proceedings can lead to disciplinary actions, incl. termination from office.

5.4 What powers do the authorities have generally to gather information when investigating corruption crimes?

If criminal proceedings have been initiated, the authorities have vast options for gathering information: requesting documents and data from all parties, conducting interrogations, requesting court approvals, and on that basis conducting searches, monitoring communication, seizing and confiscating property, etc.

5.5 Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

There is no specific remedy for bribery or corruption crimes.

That said, in connection with the release of liability, according to article 205 section (1) of the Code of Criminal Procedure, the Prosecutor's Office may terminate criminal proceedings in respect of the suspect or accused – subject to their consent – if they have provided significant assistance towards ascertaining the facts comprising the subject-matter of evidence in relation to a criminal offense pursuing which is important for public interest reasons and if, without such assistance, detection of the offense and collection of evidence concerning it would not have been possible or would have had to overcome serious difficulties.

Separately, in connection with the reduction of liability,

according to article 57 section (1) subsection 3) of the Penal Code, mitigating circumstances are, inter alia, appearance for voluntary confession, sincere remorse, or active assistance in the detection of the offense. The maximum rate of a mitigated punishment shall not exceed two-thirds of the maximum rate of the punishment provided by law and the minimum rate of a mitigated punishment shall be the minimum rate of the corresponding type of punishment provided for in the General Part of the Penal Code.

5.6 Can a person plea bargain in corruption cases? If so, how is such a process conducted?

In Estonia, it is possible to engage in plea bargaining in criminal cases, including corruption offenses. Plea bargaining allows the defendant and the prosecutor to reach an agreement on the punishment, which is then approved by the court.

Plea bargaining is possible if the circumstances relating to the subject matter of the corruption case and the evidence are clear and the accused agrees to it (article 239 section (2) subsection 1 of the Code of Criminal Procedure).

Typically, plea agreement negotiations are initiated out-of-court prior to the Prosecutors' Office taking the matter to court. The agreement is done in written format after the terms have been negotiated between the parties. The agreement is signed by the accused, the defense counsel, and the prosecutor. After the conclusion of the agreement, the prosecutor sends the materials of the criminal case together with the agreement to the court for approval. If the agreement meets the statutory criteria, the court will approve the agreement. A (public) court hearing will take place prior to the court approving the agreement to ensure that all parties understand the content of the agreement.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

HUNGARY

David Kohegyi
Partner
david.kohegyi@dlapiper.com
+36 1 510 1100

Krisztina Varkonyi
Associate
Krisztina.varkonyi@dlapiper.com
+36 1 510 1100

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

Bribery and corruption are considered criminal offenses in Hungary, their various forms being regulated by Hungarian Act No. C of 2012 on the Criminal Code (Criminal Code) in nine articles under the Crimes of Corruption chapter:

- Active Corruption (Section 290);
- Passive Corruption (Section 291);
- Active Corruption of Public Officials (Section 293);
- Passive Corruption of Public Officials (Section 294);
- Active Corruption in Court or Regulatory Proceedings (Section 295);
- Passive Corruption in Court or Regulatory Proceedings (Section 296);
- Indirect Corruption (Section 298);
- Abuse of a Function (Section 299) and
- Failure to Report Crimes of Corruption (Section 300).

1.2. Which international anti-corruption conventions apply?

Hungary takes part in the anti-corruption efforts of the OECD, the UNCAC PWG, IACA, GRECO, as well as the EPAC/EACN.

1.3. What is the definition of bribery?

Bribery is a felony committed by a person who gives or promises an unlawful advantage to a person working for or on behalf of an economic operator, or to another person on account of such employee, to induce him to breach his duties (active corruption) or a felony committed by a person who requests or receives an unlawful advantage in connection with their activities performed for or on behalf of an economic operator, or accepts a promise of such an advantage, for himself or for a third party, or is in league with the person requesting or accepting the advantage requested by or given for a third party on their behest (passive corruption). Further forms of the offense include additional circumstances that aggravate the crime, such as when committed by/concerning a public official, or in the course of judicial or administrative proceedings.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Yes. As elaborated in Section 1.3., bribery in the private sector is considered a criminal offense (Sections 290 and 291 of the Criminal Code).

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

Section 459(1)(11) in the Definitions chapter of the Criminal Code expressly sets out the list of persons considered to be public officials and foreign public officials.

Hungarian public officials are:

a) the President of the Republic;

b) Members of Parliament, spokesmen for the national minorities, and Members of the European Parliament elected in Hungary;

c) judges of the Constitutional Court;

d) the Prime Minister, other ministers, state secretaries, state secretaries for public administration and deputy state secretaries, chief prefects;

e) judges, public prosecutors, and arbitrators;

f) the Commissioner of Fundamental Rights and his deputies;

g) public notaries and assistant public notaries;

h) independent court bailiffs, independent bailiff substitutes, and assistant bailiffs authorized to serve the process;

i) members or councils of representatives of municipal governments and representatives of national minorities' self-governments;

j) commanding officers of the Hungarian Armed Forces, and commanders of watercraft or aircraft, if vested with authority to enforce the regulations pertaining to investigating authorities;

k) members of the staff of the Alkotmanybirosag (Constitutional Court), the Sandor Palace (Office of the President of the Republic, the Orszaggyules Hivatala (Office of Parliament), the Alapveto Jogok Biztosanak Hivatala (Office of the Commissioner of Fundamental Rights), Magyar Nemzeti Bank (National Bank of Hungary), the Allami Szamvevoszek (State Audit Office), the courts, prosecutors' offices, central government agencies, the Orszaggyulesi Orseg (Parliament Guard), Budapest and greater county government agencies, and persons exercising executive powers or serving at public bodies, whose activity forms part of the proper functioning of the agency in question; and

l) members of the election committee.

Foreign public officials are:

a) a person serving in the legislature, judicial, administrative, or law enforcement body of a foreign state, and/or persons exer-

cising executive powers or serving in foreign states, including persons exercising executive powers or serving in public bodies or in state or municipal government-owned companies;

b) a person serving in an international organization created under an international treaty ratified by an act of Parliament, whose activities form part of the organization's activities;

c) a person elected to serve in the general assembly or body of an international organization created under an international treaty ratified by an act of Parliament, including members of the European Parliament elected abroad; or

d) a member of an international court that is vested with jurisdiction over the territory or over the citizens of Hungary, and any person serving in such international court, whose activities form part of the court's activities.

1.6. Are there any regulations on political donations?

Yes. The Hungarian Act No. XXXIII of 1989 on the Operation and Financial Management of Political Parties regulates in detail the legality and conditions of political donations.

1.7. Are there any defenses available?

Bribery and corruption offenses are investigated by authorities (police, public prosecutors) and judged by a criminal court. During the proceedings, the defendant is entitled to procedural guarantees, such as the right of defense, the right to remedies, the prohibition of self-incrimination, or the presumption of innocence, in accordance with Hungarian Act No. XC of 2017 on Criminal Proceedings.

In addition, under special circumstances set out in the Criminal Code, a penalty may be reduced without limitation – or dismissed in cases deserving special consideration – against the perpetrator of a criminal offense of corruption, if he confesses the act to the authorities firsthand, before they gained knowledge thereof, unveils the circumstances of the criminal act, and, in the case of passive corruption, surrenders the obtained unlawful financial advantage in any form to the authorities.

1.8. Is there an exemption for facilitation payments?

No. The promise or giving of a facilitation payment (as an undue advantage) is considered a bribe. In fact, in the case of bribery, the benefit from the criminal offense is subject to confiscation, with the burden of proof reversed onto the defendant to prove that the property in question did not result from a crime.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

The least serious form of bribery is punishable by three-month imprisonment, while the most serious offense (committed by a public official) is punishable by ten years in prison. In less severe cases, Hungarian law allows for the imposition of other penalties (e.g., community service, fine) instead of imprisonment, while in some cases an additional penalty (e.g., fine or disqualification from a profession) may be imposed in addition to imprisonment.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

The provisions of the Criminal Code (including its sections on bribery and corruption) apply to all persons, regardless of nationality, in the territory of Hungary. They apply to Hungarian citizens outside of Hungary as well.

1.11. What are the limitation periods for bribery offenses?

The statute of limitations for crimes of corruption under the Criminal Code is 12 years.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

We are not aware of any planned amendments or developments to the Hungarian bribery and corruption regime.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Hungarian law does not set a threshold for the promise or giving of a benefit to constitute a bribe. According to judicial practice/case law, a benefit, no matter how small in value, may constitute a bribe if it is unlawful (i.e., promised or given to induce another person to breach an obligation). Therefore, it is necessary to consider all the circumstances of a case to determine whether a gift or hospitality may constitute a bribe in a particular situation.

Industry standards may provide guidance as to the level or value of benefits in a particular sector/profession that are presumed not to constitute bribery, but they should not undermine the above legal rules and judicial practice that even the smallest benefit can constitute bribery.

An exception is applicable to healthcare workers, who may, once after the provision of the service, accept as a gift from the patient or another person in respect of the patient, an object, the value of which does not exceed 5% of the monthly amount of minimum wage. However, a healthcare worker cannot accept any additional benefits above this amount.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

As mentioned above, healthcare workers who may, once after the provision of the service, accept as a gift from the patient or another person in respect of the patient an object, the value of which does not exceed 5% of the monthly amount of minimum wage. However, a healthcare worker cannot accept any additional benefits above this amount.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

Giving gifts of protocol is generally an accepted practice, but there is no explicit exception to these in Hungarian law: these are rather to be found in codes of professional ethics, such as those set out by the Hungarian Government Officials Corps. These typically lay down strict rules on, for example, accepting gifts of gratuity, gifts of attention, or hospitality. However, as explained above, these rules are not for the purposes of derogating from the above legal rules and judicial practice that even the smallest benefit can constitute bribery.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

See Sections 2.1.-2.3.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

In general, there is no requirement for companies to have anti-corruption procedures or policies in place. However, for certain companies covered by sectoral legislation (e.g., financial institutions) or for more complex companies or groups of companies, the need to have such policies and procedures in place may be inherent in their operation. In addition, the recently adopted Hungarian Act No. XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications (Whistleblowing Act) puts pressure on companies as well to take more effective action against corruption.

3.2. Is there any official guidance on anti-corruption compliance?

Regarding bodies of public administration, the Hungarian Government adopts the National Anti-Corruption Strategy from time to time, the current one being laid down by Government Decision No. 1025/2024. (II. 14.) for the years 2024 and 2025.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

Yes. The Whistleblowing Act implemented the EU Directive on Whistleblowing.

3.3.1. What can be reported?

The scope of the Whistleblowing Act is very broad, going well beyond the scope of the EU Directive, not limited to certain sectors, and allowing the reporting of any kind of complaint or abuse in a very general way.

The Whistleblowing Act contains rules both on complaints to public bodies and on the whistleblowing system to be established within publicly-owned and private companies.

With respect to public bodies, complaints, and public disclosures may be made. A complaint means a request made for eliminating any breach of personal right or interest, and its handling does not fall under the scope of other, in particular judicial or administrative, procedures. A complaint may also contain a proposal. A public interest disclosure obtains to draw attention to a situation that should be remedied or eliminated in the interest of the community or society as a whole. A public interest disclosure may also contain a proposal.

With respect to publicly-owned or private companies, the internal fraud reporting system may be used to report information relating to illegal or suspected illegal acts or omissions, including other instances of fraud, and even to report any breach of a code of conduct in place at an employer, without limitation as to subject matter.

3.3.2. Who is protected?

In the case of a complaint or public disclosure to public bodies, anyone who makes such a complaint or disclosure may enjoy protection. In the case of an internal fraud reporting system, however, notwithstanding the broad scope of the Whistleblowing Act, a reporting person may qualify for protection only if:

a) the reported information regarding the circumstances affected by the report falls under the scope of the European Union legislation or the legislation adopted for the implementation of or compliance with such European Union legislation; or

b) the reporting person had reasonable grounds to believe that the circumstances under point a) apply.

3.3.3. What are the conditions for protection?

See Section 3.3.2.

3.3.4. What companies does the relevant legislation apply to?

It applies to companies that employ at least 50 persons under contract for some form of employment.

In addition, regardless of the number of employees, it applies to companies where:

a) the employer falls under the Hungarian anti-money laundering legislation;

b) the employer is registered in Hungary and engaged in offshore oil and gas activities as the holder of authorization or operator outside the borders of the European Union;

c) the employer falls under civil aviation legislation; and

d) the employer is the operator of an active floating installation operating in the territory of Hungary under the Hungarian or a non-Hungarian flag.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Only natural persons can be held criminally liable, but certain criminal sanctions can be imposed on legal entities involved (e.g., used for or benefiting from the activity) as a result of the criminal activity of natural persons, as set out in Hungarian Act No. CIV of 2001 on Criminal Measures Against Legal Persons:

If the offense was committed with the purpose or effect of obtaining an advantage for the benefit of the legal entity, or was committed using the legal entity, and:

a) The offense was committed by the manager of or a member authorized to represent the legal entity, its employee or officer, its manager or a member of its supervisory board or their delegates, in the course of the legal entity's business; or

b) the member or employee committed the offense in the course of the legal entity's business and the fulfillment of the duties of management or control by the manager, the company director or the supervisory board could have prevented the offense.

In addition to the cases provided for above, the sanctions may also be applied if the offense resulted in the acquisition of an advantage for the benefit of the legal entity or the offense was committed using the legal entity and the managing director or member, employee or officer, company director or member of the supervisory board of the legal entity who was authorized to represent the legal entity knew of the commission of the offense.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

Criminal offenses may be committed only by a natural person whose acts then may have an effect on the legal consequences applicable to the legal entity. For this reason, in relation to companies owned or controlled, Section 4.1. applies.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

As described in Section 4.1., it cannot be excluded that as a result of an offense committed by a third party outside the legal entity (e.g., the offense was committed using the legal entity and the managing director or member, employee or officer, company director or member of the supervisory board of the legal entity who was authorized to represent the legal entity knew of the commission of the offense), legal consequences may be applied against the legal entity. In such cases, the risk does not arise where the legal entity's representatives are not aware of the third party's actions.

4.4. What are the sanctions for the corporate criminal entity?

Sanctions against the legal entity may be:

a) the dissolution of the legal entity;

b) limitation of the activities of the legal entity; or

c) a fine. The maximum fine that may be imposed on a legal entity may be three times the value of the pecuniary advantage achieved or intended to be achieved by the criminal offense, but shall not be less than HUF 650,000 (approximately EUR 1,650).

5. Criminal Proceedings for Bribery and Corruption Cases

5.1. What authorities can prosecute corruption crimes?

The Prosecution Service of Hungary and the prosecutors are those who have the power to prosecute corruption crimes.

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

Yes. There is an obligation for public officials to report bribery and corruption cases. Any public official who has knowledge of an act of active or passive corruption yet to be detected, active or passive corruption of public officials, active or passive corruption in court or regulatory proceedings, indirect bribery or abuse of a function, and fails to promptly report that to the authorities at the earliest possibility, is guilty of a felony punishable by imprisonment exceeding to a maximum of three years.

5.3. Is there any civil or administrative enforcement against corruption crimes?

If the act of corruption has caused damage or injury to a person, that person may bring a claim before a civil court. Administrative enforcement is not applicable in corruption cases.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

The authorities have a wide range of tools at their disposal during an investigation. Some of these can be used without any authorization from a judge or prosecutor, others are subject to authorization from a prosecutor (e.g., monitoring payment transactions) and others can only be used with a judge's authorization (e.g., wiretapping, secret searches). Their use is subject to compliance with procedural rules by the authorities.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

Yes. As described in Section 1.7., subject to criteria laid down in the Criminal Code, under special circumstances, a penalty may be reduced without limitation – or dismissed in cases deserving special consideration – against the perpetrator of a criminal offense of corruption, if he confesses the act to the authorities first hand, before they gained knowledge thereof, unveils the circumstances of the criminal act, and, in the case of passive corruption, surrenders the obtained unlawful financial advantage in any form to the authorities.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

The prosecution and the defendant may enter into a plea bargain on the admission of guilt and the consequences thereof in respect of the offense committed by the defendant before the filing of the indictment. The conclusion of a plea bargain may be initiated by the defendant, the defense and the prosecution as well.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

MONTENEGRO

Andjela Todorovic
Attorney At Law
andjela.todorovic@doklestic.law
+381114143360

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

The legal framework for bribery and corruption is primarily defined by: (i) The Criminal Code of Montenegro (CCM), (ii) The Law on the Prevention of Corruption (LPC), (iii) The Law on Financing of Political Entities and Election Campaigns, (iv) The Law on Criminal Liability of Legal Entities, (v) The Law on Lobbying, (vi) The Law on Public Procurement, (vii) The Law on the Prevention of Money Laundering and Terrorism Financing, (viii) The Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity.

1.2. Which international anti-corruption conventions apply?

The key international anti-corruption conventions that apply to Montenegro are (i) the United Nations Convention against Corruption (UNCAC), (ii) the Council of Europe's Criminal Law Convention on Corruption, and (iii) the Council of Europe's Civil Law Convention on Corruption. Montenegro is also a member of the Council of Europe's Group of States against Corruption (GRECO), which monitors member states' compliance with the Council of Europe's anti-corruption standards.

1.3. What is the definition of bribery?

CCM first defines the term "bribe" in its section on definitions. In this context, a bribe is a gift or other unlawful property or non-property benefit, regardless of its value.

Passive bribery occurs when a public official directly or indirectly solicits or receives a bribe or accepts a promise of a bribe for himself/herself or for another for agreeing to perform an official or another act which they must not perform, or for agreeing not to perform an official or another act which they must perform.

Active bribery is defined as directly or indirectly giving, offering, or promising a bribe to a public official, for himself/herself or for another person, for agreeing to perform an official or other act he/she must not perform or for agreeing not to perform an official or other act which he/she must perform, or whoever intercedes in bribing a public official in the manner described above.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Private sector bribery is also covered by the CCM in sections 276a (Passive Bribery in Commercial Activities) and 276b (Active Bribery in Commercial Activities).

Passive bribery exists when a responsible or another person who works for or in a business organization or other entity engaged in commercial activity, for himself/herself or for another person, directly or indirectly, solicits or receives a bribe or accepts the promise of a bribe in return for concluding a contract, or reaching a business agreement or providing a service or refraining from such acts to the detriment or in favor of the business organization for which or in which he works or of in favor of another person.

Active bribery is defined as the act of giving, offering, or promising a bribe to a responsible officer or any other person working for or within a business organization or other entity engaged in commercial activity, with the intent to conclude a contract, reach a business agreement, or provide a service either to the detriment or benefit of the business organization for which the person works, or for the benefit of another entity. It also includes acting as an intermediary in the act of giving such a bribe.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

A public official, within the meaning of LPC, is an elected, appointed, or assigned person in a state body authority, a state administration body, a judicial authority, local self-government body, local government body, an independent body, a regulatory body, a public institution, a public enterprise, or another economic entity, or a legal entity that exercises public authority or activities of public interest, or is state-owned, as well as the person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the term of the office and remuneration. Notaries, public enforcement officers, and bankruptcy trustees are also considered public officials.

The definition of a foreign public official is provided in Article 142 (3) (5a) CCM and it is defined as a person performing in a foreign state legislative, executive, judicial, or another public office for a foreign state, a person who performs official duties in a foreign state in accordance with laws, other regulations, contract or arbitration agreement, a person performing official duty in an international public organization and a person performing judicial, prosecutorial or another office in an international tribunal.

CCM differentiates the prescribed sanctions primarily between the acceptance of bribes and the giving of bribes, with more severe sanctions prescribed for the acceptance of bribes. Additionally, there is a distinction in the prescribed penalties between the private and public sectors. Specifically, for employees in the public sector, the prescribed sentences are more severe.

State ownership is any participation in an economic entity in

which the state, a municipality, or the city holds at least 33% of the capital.

The Agency for the Prevention of Corruption (the "Agency") keeps a Register of public officials as well as a list of public functions at the local level, while the establishment of a list of functions at the state level is anticipated. The Ministry of Finance keeps a Register of State Bodies and Institutions, while the Register of Local Self-Government Units and Institutions is expected to be established.

1.6. Are there any regulations on political donations?

Under the LPC donation means the transfer without charge or unencumbered transfer of particular material or non-material goods, movable or immovable property to authorities. A public official may not conclude a sponsorship agreement or receive donations on behalf of the authority in which he/she performs a public function, which affects or could affect the legality, objectivity, and impartiality of the work of the authority. The Agency keeps the Register of Donations and controls the receipt of donations.

1.7. Are there any defenses available?

The offender who has reported the active bribery before its detection, or before he/she became aware that it had been uncovered, may be exempted from punishment.

Also, an offender who gave a bribe in commercial activities, who gave a bribe at the request of a responsible person or another person working for or in a business organization or another entity engaged in commercial activity, and who has reported the offense before learning that it was discovered, may be released from punishment.

1.8. Is there an exemption for facilitation payments?

No. Facilitation payments are not allowed and may constitute a punishable offense.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

CCM stipulates imprisonment as a primary punishment for bribery offenses. The duration of the sentence depends on the severity and circumstances of the crime. CCM prescribes a prison sentence ranging from 2 to 12 years for accepting a bribe in the public sector. A sentence in the range from 6 months to 8 years is prescribed for giving a bribe in the public sector. A prescribed prison sentence for giving bribes in the private sector is, on average, one-third less.

Companies may be held criminally liable under the Law on Criminal Liability of Legal Entities. The sanctions that are imposed are (i) punishments that can be fines and termination of the legal entity (ii) suspended sentences and (iii) security measures such as confiscation of objects and prohibition of certain activities. Criminal acts for which legal entities are liable are subject to the following fines: (i) for receiving bribe in business operations, the maximum fine ranges between fifteen to twenty times the amount of the obtained illegal property benefit or from fifty to one hundred thousand euros (ii) for bribery in business operations, the maximum fine ranges between ten to fifteen times the amount of the damage done or from twenty to fifty thousand euros.

The criminal offense of bribery and corruption may result in a property claim that can refer to compensation of damage, restitution of things, or cancellation of a particular legal transaction. Such a request can be made in civil proceedings or in criminal proceedings. In the case of corruption or bribery, the person who received the bribe and the person who provided it can be considered civilly liable for any damage caused by their misconduct to third parties. In the case of corruption or bribery, the person who received the bribe and the person who gave it can be considered civilly liable for any damage caused by their misconduct to third parties.

Entities that violate anti-corruption laws, such as failing to disclose conflicts of interest or mishandling whistleblower reports, can be subject to administrative fines ranging from one thousand euros to twenty thousand euros. Responsible individuals within these entities can be fined between five hundred euros and two thousand euros for similar violations.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

Montenegro primarily applies its bribery and corruption laws within its own territory, but some provisions allow for extraterritorial jurisdiction in certain circumstances, particularly involving Montenegrin nationals. Criminal legislation of Montenegro shall also apply to a person who is not a national of Montenegro who, outside the territory of Montenegro, commits a criminal offense against Montenegro or against a national of Montenegro, which is related to receiving or giving a bribe, in the execution of which a Montenegrin citizen is involved in any way, if he/she finds himself/herself on the territory of Montenegro or is extradited to it.

1.11. What are the limitation periods for bribery offenses?

Criminal prosecution and enforcement of the sentence do not become statute-barred for crimes related to bribery and corruption.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

The Agency has filed an Initiative to the President of the Parliament of Montenegro, regarding the necessity of amending

Draft Law on Prevention of Corruption No. 23-2/24-5, submitted by the Government of Montenegro to the Parliament of Montenegro on May 30, 2024.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Under the LPC gift includes an item, right, or service acquired or performed without consideration and any other benefit provided to a public official or a person related to a public official in connection with the exercise of a public function. A public official, in connection with the performance of a public function, may not accept gifts, except protocol and appropriate gifts. A protocol gift is considered a gift from a representative of another country, or an international organization given during a visit, hospitality, or on other occasions, as well as other gifts given on similar occasions. A gift worth up to EUR 50 is considered an appropriate gift. The Agency for the Prevention of Corruption is responsible for overseeing the receipt of gifts.

2.2. Does the law provide any specific guidance on gifts and hospitality in the public and private sectors?

In addition to the LPC, there are specific regulations that further govern the matter of giving gifts in the public sector. These regulations include (i) Rulebook on the manner of handling gifts of public officials (ii) Rulebook on the manner of maintaining the register of sponsorships and donations and content of the report on received sponsorships and donations.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

A public official, in connection with the performance of public functions, must not accept gifts, except protocol and appropriate gifts. A protocol gift is considered a gift from a representative of another country, or an international organization given during a visit, hospitality, or on other occasions, as well as other gifts given on similar occasions. A gift worth up to EUR 50 is considered an appropriate gift.

If a public official receives multiple occasional gifts from the same donor in one year, the total value of these gifts must not exceed 50 euros. If the public official receives occasional gifts from multiple donors during that time, the total value of these gifts must not exceed EUR 100.

This prohibition, or limitation, also applies to the persons related to a public official who are the relatives of a public official in a straight line and to the second degree in a lateral line, a relative by marriage to the first degree, married and common-law spouse, adoptive parent or adopted child, member of a household, another natural or legal person with which the public official establishes or has established a business relationship if the receipt of gifts is in connection with the public official, or the exercise of public function

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

No.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

In Montenegro, companies are required to establish compliance procedures with anti-corruption measures in the situations prescribed by the LPC. For example, in order to carry out the procedure following a whistleblower report, an employer with at least 20 employees is obliged to designate an impartial person or organizational unit for receiving and handling the report, while an employer with less than twenty employees can designate an impartial person or organizational unit for receiving and application processing.

The employer is obliged to make the data on the designation of the person, and/or the organizational unit, easily available in the work environment and by publishing it on its website. The person, and/or the organizational unit, carries out the procedure to verify the veracity of the allegations in the application and proposes measures if it determines the existence of irregularities.

3.2. Is there any official guidance on anti-corruption compliance?

Yes, there are official guidelines on compliance with anti-corruption measures. These guidelines come from relevant regulatory bodies or ministries, such as the Agency or the Ministry of Justice. They provide detailed instructions and recommendations on how companies should establish and implement anti-corruption measures in accordance with Montenegrin legislation.

Based on estimates of the susceptibility of certain jobs and work processes to the emergence and development of corruption and other forms of biased conduct of public officials and employees of authority, the authority shall adopt an Integrity Plan containing measures to prevent and eliminate opportunities for the emergence and development of corruption and providing confidence of citizens in their work (Integrity Plan). The Integrity Plan shall be adopted in accordance with the rules for the preparation and implementation of the Integrity Plan adopted by the Agency. The Integrity Plan may be adopted by another legal person as well, and the Agency may, upon the proposal of this legal person, assess the integrity and propose recommendations for improving it.

The Agency may, on its initiative or at the request of an authority, company, legal person, entrepreneur, or natural person, give an opinion to improve the prevention of corruption, reduce the risk of corruption, and enhance ethics and integrity in authorities and other legal persons, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and corruption prevention.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

The LPC protects individuals who report allegations of bribery and corruption. Authorities in Montenegro, companies, other legal entities, and entrepreneurs, including the Agency, are obliged to act in accordance with laws regulating the confidentiality of information. A whistleblower exercises the right to protection if he/she has a justified reason to believe that the reported information about irregularities is true when submitting the report to the employer, to the Agency, or at the time of public disclosure of the information. In court proceedings related to a whistleblower's report, including proceedings for copyright infringement, breach of data confidentiality, breach of data protection rules, disclosure of trade secrets, or claims for compensation from employment, the whistleblower is not liable for filing the report. It is forbidden by direct or indirect action, omission, or failure to act in the working environment to cause damage to the whistleblower by putting him/her in a disadvantageous position in connection with the submission of a report, and/or public disclosure of information. The whistleblower is entitled to compensation for damage caused due to the submission of the whistleblower's report and the public disclosure of information, in accordance with the law governing contracts and torts.

3.3.1. What can be reported?

An individual who has reasonable grounds to suspect endangerment of public interest indicating the existence of corruption may file a report. Public interest, in terms of the LPC, is a material and immaterial interest in the well-being and prosperity of all citizens under equal conditions.

3.3.2. Who is protected?

The whistleblower exercises the right to protection if he/she had a justified reason to believe that the reported information about irregularities is true at the time of submitting the report to the employer or the Agency, or at the time of public disclosure of the information.

3.3.3. What are the conditions for protection?

The whistleblower exercises the right to protection if he/she had a justified reason to believe that the reported information about irregularities is true when submitting the report to the employer, to the Agency, or at the time of public disclosure of the information. In court proceedings related to a whistleblower's report, including proceedings for copyright infringement, breach of data confidentiality, breach of data protection rules, disclosure of trade secrets, or claims for compensation from employment, the whistleblower is not liable for filing the report. It is forbidden by direct or indirect action, omission, or failure to act in the working environment to cause damage to the whistleblower by putting him/her in a disadvantageous position in connection with the submission of a report, i.e., public disclosure of information. The whistleblower is entitled to compensation for damage caused due to the submission of the whistleblower's report and the public disclosure of information, in accordance with the law governing contractual relationships.

3.3.4. What companies does the relevant legislation apply to?

The relevant legislation in Montenegro that protects whistleblowers' reports applies broadly to all types of companies and organizations. The legislation applies to the authority, business company, other legal entity, or entrepreneur where the whistleblower is employed or has been employed or should become employed soon.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Corporate entities can be held criminally liable for bribery and corruption under the Law on Criminal Liability of Legal Entities. Corporate entities can be criminally liable for offenses committed by their responsible person if the offense was committed for the benefit of the corporate entities or on its behalf, or if it occurred due to a lack of adequate internal controls and procedures to prevent such conduct. The sanctions that are imposed are (i) punishments that can be fines and termination of the legal entity (ii) suspended sentences and (iii) security measures such as confiscation of objects and prohibition of certain activities. Corporate entities shall not be allowed to retain any material gain obtained by a criminal offense. Also, the corporate entity is responsible for misdemeanors, in accordance with the Law on Prevention of Corruption.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

The Law on the Liability of Legal Entities for Criminal Offenses provides for the liability of a company only in the situation where the criminal offense was committed by a shareholder, a natural person, so in this regard, there is no liability of the company for a criminal offense which was carried out by a legal entity owned or controlled by him.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

Companies can be held liable for the corrupt actions of third-party agents engaged to help them obtain or retain business advantages, such as government approvals. Specifically, if an agent acting on behalf of a company commits bribery to secure a business deal or advantage, whether to the benefit or detriment of the company, the company itself can be held responsible. This responsibility arises if the agent's actions were within their authorized scope, intended to benefit the company, or even if they were contrary to the company's official policies or directives. A company will be responsible for a criminal offense committed in the manner described above, even when the responsible person who committed the criminal offense has not been convicted of that criminal offense.

4.4. What are the sanctions for the corporate criminal entity?

Sanctions are specified in items 1.9 and 4.1 above. For criminal acts for which legal entities are liable, fines are as follows: (i) for receiving bribes in business operations, the maximum amount of the fine is in the range of fifteen to twenty times the amount of the obtained illegal property benefit or from fifty to one hundred thousand euros (ii) for bribery in business operations, the maximum amount of the fine ranges from ten to fifteen times the amount of the damage done or from twenty to fifty thousand euros. In addition to criminal responsibility, a company can also be held liable for misdemeanor, in which case fines range from one thousand to twenty thousand euros.

5. Criminal Proceedings for Bribery and Corruption Cases

5.1. What authorities can prosecute corruption crimes?

Several authorities have the mandate to prosecute and address corruption crimes: (i) Special State Prosecutor's Office (SSPO) which is primarily responsible for investigating and prosecuting high-profile corruption, (ii) Regular Public Prosecutor's Offices which handles general criminal cases, including corruption offenses that do not fall under the jurisdiction of the SSPO, (iii) the Agency which does not have prosecutorial powers, but plays a crucial role in preventing corruption, conducting investigations, and forwarding cases to the relevant prosecutorial authorities when there is a reasonable suspicion that a criminal offense prosecutable ex officio has been committed

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

The obligation to report bribery and corruption cases exists for (i) a person who knows that someone has committed a criminal offense for which a long-term prison sentence can be imposed by law (ii) a person who knows that such an offense has been committed and does not report it before the offense is committed or the perpetrator discovered (iii) an official or responsible person who knowingly fails to report a criminal offense learned in the performance of his duty if that offense can be sentenced by law to five years in prison or a heavier penalty. The prescribed punishment is imprisonment for up to two years. The agency is obliged to forward cases to the relevant prosecutorial authorities when there is a reasonable suspicion that a criminal offense prosecutable ex officio has been committed.

5.3. Is there any civil or administrative enforcement against corruption crimes?

There are civil and administrative enforcement mechanisms against corruption crimes in Montenegro. These mechanisms are in addition to the criminal sanctions outlined in the criminal code.

Civil enforcement includes confiscation of any bribes or illegal gains received as a result of corrupt activities. The commission of the criminal offense of bribery and corruption may result in a property claim that can refer to compensation of damage, restitution of things, or cancellation of a certain legal transaction. Such a claim can be filed in civil proceedings or in criminal proceedings. In the case of corruption or bribery, the person who received the bribe and the person who provided it can be considered civilly liable for any damage caused by their misconduct to third parties.

The Agency for Prevention of Corruption plays a crucial role in the administrative enforcement of anti-corruption laws. It has an autonomous and independent role in preventing corruption, monitoring compliance, and ensuring the implementation of integrity plans and conflict of interest regulations.

Entities that violate anti-corruption laws, such as failing to

disclose conflicts of interest or mishandling whistleblower reports, can face administrative fines ranging from EUR 1,000 to EUR 20,000. Responsible individuals within these entities can be fined between EUR 500 and EUR 2,000 for similar violations.

The Misdemeanor Court is responsible for ruling on applications to initiate misdemeanor proceedings related to corruption and for performing other duties as prescribed by law. This includes adjudicating administrative penalties and fines imposed for corruption-related offenses.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

Generally, the authorities can (i) search premises, vehicles, and individuals, and seize relevant evidence such as documents and electronic devices, (ii) conduct surveillance and wiretap communications, with judicial approval, (iii) access financial records, track transactions, and examine bank accounts, (iv) summon and question witnesses, suspects, and other relevant individuals, (v) work with national and international bodies, including financial intelligence units and INTERPOL, (vi) issue subpoenas for documents and testimony, and obtain court orders for specific investigative actions, (vii) employ informants and conduct undercover operations to gather information.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

As before mentioned, there are provisions for leniency in cases of bribery and corruption. These provisions allow individuals involved in such crimes to voluntarily confess in exchange for a reduction of the penalty or even a release from liability. Here are the specific cases in the CCM: (i) Giving Bribes in Business Transactions (Article 276b): if the person who gave the bribe reports the act before it is discovered, they can be exempt from punishment, (ii) Bribery in Bankruptcy Proceedings (Article 276c): if the bribe giver reports the act before it is discovered, they can be exempt from punishment, (iii) Inducement to Unlawful Influence (Article 422a): if the person who gave the bribe reports the act before it is discovered, they can be exempt from punishment (iv) Giving Bribes (Article 424): if the person who gave the bribe reports the act before it is discovered, they can be exempt from punishment.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

While there are no specific plea bargain provisions exclusively for cases of corruption, Montenegro's Criminal Procedure Code allows for plea bargaining in criminal cases, which can include corruption cases. This process is known as the "agreement on the admission of guilt". A prosecutor can make a plea bargain to the suspect or defendant, or the suspect, defendant, and their defense attorney can make one to the prosecutor, after which the parties negotiate the conditions of the guilty plea for the crime(s) charged. The agreement must be in written form and signed by all parties, including the defense attorney. It can be filed no later than the first hearing before the first-instance court. If submitted before an indictment, it is forwarded to the president of the trial council. If after, it is submitted to the president of the council together with the indictment.

The agreement includes the defendant fully admitting to the crime(s) charged. The agreement specifies the penalty and other criminal sanctions, the costs of the criminal procedure, and any restitution. The defendant waives the right to appeal the court's decision if the agreement is fully accepted by the court.

The court decides whether to reject, deny, or accept the plea agreement. If the agreement is submitted before an indictment, the president of the council decides; if after, the court decides. The court reviews the agreement at a hearing with the prosecutor, defendant, defense attorney, and the victim or their legal representative. The court will approve the agreement if it meets all legal requirements: the defendant's admission is voluntary, the agreement complies with the law, the defendant understands the consequences, the victim's rights are not violated, and the agreement is fair and just. If any of these conditions are not met, the court rejects the agreement, and the defendant's admission cannot be used as evidence.

Once the court's decision to accept the plea agreement is final, the court issues a verdict within three days, declaring the defendant guilty in accordance with the agreement. Appeals are only allowed if the verdict does not align with the agreed terms.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

NORTH MACEDONIA

Emil Miftari
Attorney at Law
miftari@miftarilaw.com.mk
+389 2 6133 646

Elena Nikodinovska Miftari
Attorney at Law
nikodinovska@miftarilaw.com.mk
+389 2 6133 646

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. Bribery and corruption

The primary legal framework regulating bribery and corruption in the Republic of North Macedonia is contained in the Criminal Code (Official Gazette of the Republic of North Macedonia No. 37/1996 and its subsequent amendments); the Law on Prevention of Corruption and Conflict of Interests (Official Gazette of the Republic of North Macedonia No. 12/2019) and the Criminal Procedural Law (Official Gazette of the Republic of North Macedonia No. 150/2010 and its subsequent amendments). With the enactment of these laws, companies and individuals in the Republic of North Macedonia are criminally liable for corrupt practices.

Additionally, the Republic of North Macedonia adopted the Law on the Protection of Whistleblowers (Official Gazette of the Republic of North Macedonia No. 196/2015 and its subsequent amendments) as one of the strongest laws in the region. It provides protection for private, and also public employees to report misconduct confidentially and protects them from criminal prosecution and other types of liability.

The Law on Lobbying (Official Gazette of the Republic of North Macedonia No. 122/2021) is also adopted in order to prevent illegitimate influence on public policies and processes and possible corruptive effects. The law regulates the conditions for acquiring the status of a lobbyist and lobbying organization, their registration, and obligations. The Registry of Lobbyists is publicly available on the website of the State Commission for Prevention of Corruption.

At the same time, North Macedonia has strengthened its institutional and administrative capacity for preventing, investigating, and prosecuting corruption. Important measures were included since the first State Program for Prevention and Repression of Corruption was adopted in 2002 by the State Commission for Prevention of Corruption (SCPC). The SCPC was created as an independent governmental body with wide-ranging authority in the field of corruption prevention and prosecution. Also, the SCPC has a legal obligation to adopt every five years a five-year National strategy to prevent corruption and conflict of interests. The latest strategy that has been prepared by SCPC for 2021-2025, which has been adopted by the Assembly of the Republic of North Macedonia in April 2021. The first document in this field against corruption is adopted at the highest level, i.e. by the Assembly of the Republic of North Macedonia.

1.2. International anti-corruption conventions

The fight against corruption as an international issue is still ongoing because corruption itself with its phenomena and forms is a major obstacle to the realization of the principles, such as the rule of law. In the last decade, awareness of corruption has increased in the Republic of North Macedonia and key steps have been taken for reducing corruption.

With the ratification of two Council of Europe conventions, the Civil Law Convention against Corruption (2002) and the Criminal Law Convention against Corruption (1999) the legislative framework was upgraded with some important instruments for the fight against corruption.

In 2000, North Macedonia accessioned The Group of States against Corruption (GRECO) whose objective is, by using the dynamics of collective expertise and peer pressure, to accomplish the action by individual governments that will build barriers against corruption and bring justice to those who misuse their position for personal gain to the detriment of society as a whole. Also, the activities of GRECO are concentrated on monitoring compliance with Resolution (97) 24 on guiding principles in the fight against corruption.

The Fifth Round Compliance Report on North Macedonia preventing corruption and promoting integrity in central governments (top exclusive functions) and law enforcement agencies has been adopted by GRECO in March 2021 as its latest report.

Furthermore, North Macedonia ratified the United Nations Convention against Corruption (UNCAC) in April 2007, as the most comprehensive anti-corruption convention, entering into force on December 14, 2005. This convention covers a wide range of corruption offenses, including domestic and foreign bribery, embezzlement, trading in influence, and money laundering. The UNCAC provisions obligate State Parties to take anti-corruption measures in the public and private sectors. This convention is extremely important because it unites all countries, regions, and continents in the fight against corruption. Also, countries agree to cooperate with one another in every aspect of the fight against corruption and are required to give mutual legal assistance in gathering information for use in court.

In addition, North Macedonia has signed the New York Convention of 1958 and is a party to the International Center for the Settlement of Investment Disputes (ICSID).

1.3. Definition of bribery

Bribery is a typical corruption crime and in the Criminal Code of the Republic of North Macedonia, it occurs in two forms: receiving and giving a bribe. The Criminal Code also defines the consequences of these two acts.

Receiving a bribe is defined as (an) official person who directly or indirectly requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of their own official authorization which they should not per-

form, or not to perform an official act which they otherwise must do or they must perform, or not perform an official act which they otherwise should not perform.

Giving a bribe is defined as (a) a person who, directly or indirectly, gives or promises an official person a present or other benefit, so that they would perform an official act within the framework of their official authorization which they should not perform, or not to perform an official act which they should perform or they must perform, or not perform an official act which they should not perform.

The received or given present or acquired property gains shall be confiscated.

1.4. Private sector bribery

For the private sector, the primary legal framework for bribery and corruption in the Republic of North Macedonia are some of the laws and regulations listed in Section 1.1., such as the Criminal Code, the Law on Prevention of Corruption and Conflict of Interests, and the Law on Criminal Procedure.

The Law on Prevention of Corruption and Conflict of Interest prescribes rules for the prevention of corruption in trade companies.

Namely, pursuant to the Law on Prevention of Corruption and Conflict of Interest a responsible person in a company or other legal entity must not use his/her position, receive a reward, or any other benefit or promise for it, for himself/herself or for another, for the sake of creating a monopoly position on the market, discrimination of other trade companies or other legal entities, causing market disorder and causing damage to another natural person or legal entity that is not a result of loyal competition on the market. The agreements and other legal acts that result from corruption of the responsible person, as well as the agreements resulting from corruption, i.e. achieving unlawful benefits for the legal entity, are null and void. The occurrence of the stated consequences constitutes the basis for filing a lawsuit from the damaged party for compensation of damage (real damage and lost profits).

In addition, pursuant to the Law on Prevention of Corruption and Conflict of Interest in cases where there is a reasonable suspicion of the veracity of the annual final account submitted by the legal entity or other business books and financial documents, at the request of the State Commission, the Public Revenue Office shall carry out control of the material and financial operations. Also, if there is a reasonable doubt about the authenticity of the data on the financial and material performance of the company or other legal entity, upon request of the State Commission, the competent authorities shall control the material and financial operations of that legal entity.

If, after the conducted control irregularities are determined, the Public Revenue Office shall initiate a procedure for examination of the property status of the responsible person in the company and other legal entities or members of the managing body of the legal entity.

Additionally, the Law on Public Procurement (Official Gazette of the Republic of North Macedonia No. 24/19 and its subsequent amendments); the Company Law (Official Gazette of the Republic of North Macedonia No. 28/04 and its subsequent amendments); the Law on Whistleblowers Protection (Official Gazette of the Republic of North Macedonia No. 196/15 and its subsequent amendments), and other rulebooks and conventions according to which companies criminally are liable for corrupt activities.

Also, the Republic of North Macedonia has ratified several international anti-corruption conventions that deal with bribery in the private sector.

The most important international legal document related to corruption is the UN Convention against Corruption from 2003, Resolution No. 58/4, which has been in force since 2005 and the Republic of North Macedonia has ratified through the Law on Ratification of the UN Convention against Corruption (Official Gazette of the Republic of North Macedonia No. 37/2007 and its subsequent amendments).

Furthermore, the Council of Europe Convention on Criminal Law on Corruption was signed by North Macedonia in 1999 and entered force in 2002. As an ambitious instrument aiming at the coordinated criminalization of a large number of corruption practices. It also provides for complementary criminal law measures and for improved international cooperation in the prosecution of corruption offenses.

1.5. Definitions of a public official and foreign public official. Are the employees at state-owned and state-controlled enterprises treated differently, and their official lists

According to the Criminal Code, an official person, when marked as a perpetrator of a crime, is considered to be: the President of the Republic of Macedonia, appointed representatives and Ambassadors of the Republic of Macedonia abroad and appointed persons by the President of the Republic, an elected or appointed officer in the Parliament of the Republic of Macedonia, in the Government of the Republic of Macedonia, in the state administration bodies, in the courts, Public Prosecution, the Court council of the Republic of Macedonia, the Public Prosecutors' Council of the Republic of Macedonia and other bodies and organizations which perform certain professional, administration or other matters within the framework of the rights and duties of the Republic, in the local self-government, as well as persons who permanently or periodically perform an official duty in these bodies and organ-

izations; a civil servant who performs expert, legal, executive, administrative-supervising, and administrative work according to the Constitution and the law; an authorized person in a legal entity which by law or by some other regulation adopted based on the law is entrusted with performing public authority, when they perform the duty within the framework of that authority, as well as a person authorized to represent the associations, foundations, unions and organizational forms of foreign organizations, sports associations, and other legal entities in the field of sport; a person performing certain official duties, based on the authorization given by law or by some other regulations adopted based on the law; a military person, when considering crimes in which an official person is pointed out as perpetrator; and a representative of a foreign country or an international organization in the Republic of Macedonia.

In addition, according to the Criminal Code, a foreign official person, when pointed out as a perpetrator of a criminal activity, is considered to be a person who, in a foreign country, international organization, or a public institution performs as: the President of the Republic of Macedonia, appointed representatives and Ambassadors of the Republic of Macedonia abroad and appointed persons by the President of the Republic, an elected or appointed officer in the Parliament of the Republic of Macedonia, in the Government of the Republic of Macedonia, in the state administration bodies, in the courts, Public Prosecution, the Court council of the Republic of Macedonia, the Public Prosecutors' Council of the Republic of Macedonia and other bodies and organizations which perform certain professional, administration or other matters within the framework of the rights and duties of the Republic, in the local self-government, as well as persons who permanently or periodically perform an official duty in these bodies and organizations; a civil servant who performs expert, legal, executive, administrative-supervising, and administrative work according to the Constitution and the law; an authorized person in a legal entity which by law or by some other regulation adopted based on the law is entrusted with performing public authority, when they perform the duty within the framework of that authority, as well as a person authorized to represent the associations, foundations, unions, and organizational forms of foreign organizations, sports associations, and other legal entities in the field of sport; a person performing certain official duties, based on the authorization given by law or by some other regulations adopted based on the law; a military person, when considering crimes in which an official person is pointed out as perpetrator in a foreign country.

Employees at state-owned or state-controlled enterprises are not treated differently.

The State Commission for Preventing Corruption keeps a register of elected and appointed persons, responsible persons in public enterprises, public institutions, or other legal entities disposing of the state capital, notaries, enforcement agents, and administrative officers of category A determined by law or a person employed in the president's cabinet of the President of the Republic of Macedonia, the President of the Assembly of the Republic of Macedonia, the Vice-Presidents of the Assembly of the Republic of Macedonia, the President of the Government of the Republic of Macedonia, the Deputy Prime Ministers of the Government of the Republic of Macedonia, the Minister and the Secretary General of the Government of the Republic of Macedonia for the performance of tasks of a special adviser, who are obliged to submit a declaration of assets and interests.

1.6. Regulations on political donations

Political donations such as money, material assets, and services or non-monetary donations are regulated in the Law on Financing of Political Parties (Official Gazette of the Republic of North Macedonia No. 76/24 and its subsequent amendments). Political parties are obligated to keep a register for donations and also to report all the donations they have received in their annual report for the donations for the previous year. Political parties are obligated to submit their annual reports in front of the State Audit Office and the Public Revenue Office, which publish such reports on their websites.

1.7. Defences available

The defenses for bribery and corruption are regulated in the Criminal Code. Namely, according to the Criminal Code, the person who gave or promised a bribe upon the request from the official person, and who reports this before they find out that the crime was discovered, may be acquitted of the offense of giving or receiving a bribe. No other specific statutory defenses are prescribed.

1.8. Exemption for facilitation payments

According to the Criminal Code, no exemptions for facilitation payments are prescribed.

See also Section 2.3.

1.9. Criminal sanctions for bribery

When it comes to the sanctions for bribery, they depend on whether the official person receives or gives a bribe.

Thus, for receiving a bribe for performing an official act within the framework of their own official authorization which they should not perform, or not perform an official act which they otherwise must do, an official person shall be punished with imprisonment of four to ten years. Or if an official person in order to perform an official act within the framework of their own official authorization which they must perform, or not perform an official act which they otherwise should not perform, the official person shall be punished with imprison-

ment of six months to five years. If an official person who, after the official act listed above, is committed or not committed, requests or receives a present or some other benefit in connection with this, shall be punished with imprisonment of three months to three years. Also, depending on the property gain, the perpetrator shall be punished with imprisonment of at least four or five years.

A person who gives a bribe, directly or indirectly, to an official person, so that they would perform an official act within the framework of their own official authorization which they should not perform, or not to perform an official act which they should perform, or a person who mediates for this, shall be punished with imprisonment of six months to five years. If the bribe is for an official person to perform an official act within the framework of their official authorization which they must perform, or not perform an official act which they should not perform, or a person who mediates for this, shall be punished with a fine, or with imprisonment of one up to three years.

If the act is carried out by a legal entity, it shall be punished with a fine.

In relation to civil or administrative sanctions related to these kinds of cases see Section 1.4 and Section 5.3.

1.10. National bribery and corruption law

The national bribery and corruption laws adopted by the Republic of North Macedonia do apply beyond its national boundaries. Namely, according to the Criminal Code, criminal legislation applies to anyone committing acts of giving or receiving bribery abroad.

1.11. Limitation periods for bribery offenses

The limitation period for bribery offenses depends on the duration of the punishment for the type of bribery at issue and the period that has passed since the act has been done. This matter is regulated by the Criminal Code.

1.12. Developments to the national bribery and corruption law

At the current moment, there are no ongoing procedures for amendments to the national bribery and corruption laws. However, in the past few years, some measures have been implemented such as active transparency, delivery of new bylaws and new ethic codes, the realization of the system e-investigator, amendments of the Law on Public Enterprises, and the introduction of a system for following cases, and others.

2. Gifts and Hospitality

2.1 Treatment

Gifts and hospitality are treated by multiple regulations, decrees, and instructions such as the Criminal Code, and the Law on the public sector employees for promoting transparency and responsibility in public administration and to minimize risks such as injustice, bias, and illegal actions.

Gifts and hospitality are regulated by the: Law on public employees; Law on Administrative Servants; regulation on the criteria, the manner of giving and receiving gifts, reporting gifts, the manner of valuing gifts, the manner of surcharge for personal gifts, as well as the use, storage, and recording of items that have become state property through gift; Decree on the manner of management of the received gifts; Code of Ethics for the Members of Parliament in the Republic of North Macedonia; Code of Ethics for members of the Government and holders of public office appointed by the Government; Code of Ethics of local officials in the Republic of North Macedonia; Code of Administrative Servants.

2.2. Gifts and Hospitality in the public and private sectors

Specific guidance on gifts and hospitality in the public sector is regulated in the Law on the public sector employees (Official Gazette of the Republic of North Macedonia No. 27/14 and its subsequent amendments), in which there is a prohibition on receiving gifts associated with their work, with the exception of protocol, and occasional gifts of lower value. Gifts received by officials or international organizations that are made during tours, visits, or other similar circumstances are considered protocol gifts.

Multiple codes of ethics are adopted by the Republic of North Macedonia, and the most significant are the Code for Administrative Servants (Official Gazette of the Republic of North Macedonia No. 183/2014); the Code of Ethics for Members of Government and Holders of executive functions appointed by the Government (Official Gazette of the Republic of North Macedonia No. 253/2020), and the Code of Ethics for Members of Parliament (Official Gazette of the Republic of North Macedonia No. 109/2018).

Additionally, in the Criminal Code, there is a section for crimes against official duty, misuse of official position, and authorization in which an official person who, by using their official position or authorization, by exceeding the limits of their official authorization, or by not performing their official duty, acquire for themselves or for another some kind of benefit, or cause damage to another, shall be punished with imprisonment of six months to three years.

As for the private sector see Section 1.4.

2.3. Limitations on the value of benefits (gifts and hospitality) given to a government/public official

There is a certain limitation that refers to gifts given to a public official. The gifts should not exceed the value of MKD 1.000, or if the gifts are from the same person the total value should not exceed MKD 3.000 in a given year and these types of gifts are considered gifts of lower value. This limitation shall also apply to the spouse of the employee, the person living with the employee in an extramarital union, their children, parents, and other persons living in the same household.

2.4. Defences or exceptions to the limitations

There are no exceptions for the above (see Section 2.3.) But, if the gifts exceed the values listed above, public sector employees are required to warn the givers. In case the giver insists that the gift is received, the employee, or the persons listed in Section 2.3. shall be obligated to deliver the gift to the employer.

3. Anti-Corruption Compliance

3.1. Anti-corruption compliance procedures in companies

At the moment there are no rules that generally oblige companies in the private sector to have an anti-corruption compliance procedure in place. However, there is an initiative in cooperation with commerce chambers, some programs, and integrity rules to be introduced in order to protect the integrity of private companies.

However, often companies in the Republic of North Macedonia in order to build trust and security for customers and employees and also to fulfill the business strategy bring their own internal Procedures, Guides, and Codes of Business Ethics that are mandatory for the company. It is required that these procedures comply with the laws, regulations, and internal provisions in order to prevent corruption and bribery, protection of the property of the company, protection of personal data, management of confidential information, etc., and by encouraging employees to report illegal behavior. At the same time, these procedures indicate that the relevant laws on criminal liability as well as the disciplinary liability of the employee will be applied for violation of the procedures.

3.2. Official guidance on anti-corruption compliance

Article 5 of the UNCAC provides that each state party to the convention, in accordance with the fundamental principles of its legal system, shall prepare, implement, and pursue coordinated policies for the effective prevention of corruption in full compliance with the principles of the rule of law, integrity, transparency, accountability, and responsibility.

Each country should create preventive anti-corruption strategic documents. Pursuant to the Law on Prevention of Corruption, the competent body in the Republic of North Macedonia for preparation and adoption of the State Programs for Prevention and Repression of Corruption and Conflict of Interest with the Action Plan as a comprehensive anti-corruption strategy is the SCPC, which is also responsible for monitoring the implementation of the measures and activities of the action plan.

3.3. Protection for whistleblowers reporting bribery and anti-corruption allegations

The protection of whistleblowers reporting these kinds of crimes is regulated in the Law on whistleblowers' protection. There are three kinds of protected whistleblowing: internal, external, and public. It is forbidden to reveal or to allow the identity of the whistleblower to be revealed without his/her consent unless it is required by a court decision in cases where it is necessary to conduct a procedure before a competent body. Also, the authorized person for the receipt of reports from whistleblowers shall be obliged to protect the data of the whistleblower, that is, the data on the basis of which the identity of the whistleblower can be revealed unless the whistleblower agrees such data to be revealed, and it is made in accordance with the law regulating personal data protection. The whistleblower has the right to court protection before a competent court in accordance with the law.

Moreover, there is a provision of protection for the whistleblower in which the whistleblower and his/her close person shall be provided protection against any kind of violation of a right, during the determination of liability, sanction, termination of employment, suspension, reassignment to another job which is less favorable, discrimination or harmful activity or danger of causing harmful activities because of the protected internal and external whistleblowing or protected public whistleblowing. This kind of protection is provided by the institution, that is, the legal entity where the whistleblowing has been made by taking activity to prevent the violation of rights under employment or of any right, and by refraining from taking activities that violate or jeopardize any right of the whistleblower because of the whistleblowing.

4. Corporate Criminal Liability

4.1. Corporate entities' liability for bribery and corruption

The Criminal Code prescribes liability for the crime of giving a bribe not only to natural persons but also to legal entities. However, this does not exclude the criminal liability of the natural person as a perpetrator of the criminal act. According to the Criminal Code, the legal entity conducting acts of bribery shall be punished with a fine.

4.2. Liability of the company for a bribery offense committed by an entity controlled or owned by it

There are no special provisions in the Criminal Code prescribing liability of the company for a bribery offense committed by an entity controlled or owned by it.

4.3. Liability of the company for corruption actions of a third-party agent engaged to help it obtain or retain business or a business advantage. Measures to mitigate this liability.

According to the Criminal code, the acts of giving a bribe may be performed directly or indirectly. Thus, if the company acted indirectly through the agent, then the company may be found liable. In such a case, it should be proven that the company knew about the agent's acts and consented to them.

4.4. Sanctions for the corporate criminal entity

For criminal acts perpetrated by legal entities, a fine shall be imposed as primary punishment: the fine shall be pronounced in an amount that cannot be less than MKD 100,000 and higher than MKD 30 million. And for criminal acts perpetrated for their own benefit, as well as criminal acts resulting in benefit or causing high-scale damages, a fine doubling the amount of the maximum of this punishment or proportional to the amount of the caused damages may be imposed, i.e. the realized benefit, but at most to their amount increased ten times.

If a legal entity, directly or indirectly pledges, offers, or gives a gift to another or a pledge for such benefit, to, in the performance of the economy, finance, trade, service, or another economic activity, neglect the interests of the legal or natural entity upon conclusion or extension of an agreement or undertaking of another action or to realize unjustified benefit or to cause damage of a greater value for the legal or natural entity or a third party, shall be punished with a fine.

The court can decide that the pronouncement of one or several auxiliary punishments corresponding to the gravity of the perpetrated criminal act and that it can prevent the legal entity from perpetrating such acts in the future, the court can pronounce some of the following punishments: prohibition to obtain a permit, license, concession, authorization, or another right determined by a separate law; prohibition to participate in public call procedures, public procurement agreement awards, and public-private partnership agreements; prohibition to found new legal entities; prohibition to use subventions and other favorable funding, etc., regulated by the Criminal Code.

When giving out a punishment, the court shall consider the balance statement and the successful balance of the legal entity in question, the type of business, and the nature and gravity of the crime committed.

In addition, if a legal entity gains property from the crime of the perpetrator, this gain shall be confiscated.

5. Criminal proceedings

5.1. Authorities for prosecuting corruption crimes

In 2007, The Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption grew into a special prosecutor's office for dealing with cases related to organized crime and corruption in the whole territory of the Republic of North Macedonia. The headquarters of the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption are in Skopje (the capital city). And it is held accountable for its work by the Public Prosecutor of the Republic of North Macedonia, who oversees the work of this public prosecutor's office, as well as to the Council of Public Prosecutors. The Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption derives its competence from the Law on Public Prosecution, which enumerates the criminal acts for which the prosecution acts.

5.2. Legal obligation for reporting bribery and corruption cases

Everyone has the right to report suspicion or cognizance of corruption and to be protected pursuant to the law. This is a principle named the "Principle of protection and liability" in the Law on Prevention of Corruption and Conflict of Interests. But, only an official person is obligated to report any criminal offense related to corruption, as well as any violation of the provisions of this law, which he/she has learned in the performance of his/her duties. Also, if an official person is offered a bribe, the person is obliged to take measures to identify the briber and to report him/her to the competent authority. Additionally, every employee in a bank, savings house, exchange office, insurance company, stock exchange, or other financial organization is immediately obligated to report a suspicious transaction related to corruption. The report shall be submitted to the responsible person in that legal entity and the bodies designated by law, as well as to the State Commission. The organizer of a stock exchange is obliged to keep a record and register all transactions executed on the stock exchange.

5.3. Civil or administrative enforcement against corruption crimes

The State Commission for Preventing Corruption acts by official duty, but also upon a received complaint. The State Commission also acts upon anonymous complaints. Against some of the decisions of the State Commission, a lawsuit in front of a competent court is allowed.

Namely, against the decisions of the State Commission regarding cases of unlawful financing of an election campaign and cases of violation of the provisions of the Election Code prohibiting the use of budget, a lawsuit in front of the Ad-

ministrative Court is allowed. Pursuant to the Law on Administrative disputes, against the decision of the Administrative court, the complaint can be submitted in front of the Higher Administrative Court.

In addition, in cases of violation such as the impact on selection, appointment, and dismissal of managerial positions, the person who is dismissed contrary to a law under the pressure of a political party, as well as a candidate for election or appointment that is damaged by appointment or the appointment is made under such pressure, may request an annulment of the act for election, appointment, i.e., dismissal by submitting a lawsuit. Such a lawsuit should be filed within 30 days after the adoption of the act for election, appointment, or dismissal, i.e., from the moment when it is learned that this was done under the pressure of a political party, contrary to the law, but not after the expiration of one year from the day of the enactment of the act. The procedure before the competent court is urgent.

Furthermore, pursuant to the Law on Prevention of Corruption and Conflict of Interest, all legal acts that result from corruption or conflict of interest or are adopted i.e. concluded for corruption or situation of conflict of interest are null and void, and therefore anyone who has a legal interest may request annulment of such legal acts by submitting as evidence an effective court decision or decision of a competent authority determining the existence of corruption or conflict of interest.

Furthermore, the Law on prevention of Corruption and Conflict of Interest Law on prevention of Corruption and Conflict of Interest prescribes the possibility of filing a lawsuit from the damaged party for compensation of damage suffered as a result of the violation of the provisions for the prevention of corruption in trade companies. (Please see 1.4).

Also, there is a general principle regulated by the Law on the Prevention of Corruption and Conflict of Interest pursuant to which everyone who had been damaged by an act of corruption, has the right to require compensation for the damage and lost profit, according to the principles of joint liability by the person that has committed the corruption, as well as by the legal entity where the perpetrator of the corruption act has been holding an office or has been performing a duty at the time of committing the act.

5.4. Power of the authorities for gathering information when investigating corruption crimes

The entire pre-investigation and investigation procedure is entrusted to the public prosecutors who have the right and duty to direct the actions of the bodies competent for detection and reporting criminal acts and their perpetrators, to find, propose, and also to provide evidence, to issue an order to undertake special investigative measures, for conducting an investigative procedure, as well as temporary measures.

During the investigation, in accordance with the law, the public prosecutor may undertake the following investigative actions: search; temporary safeguarding and seizure of objects or property; examination of the suspect; examination of witnesses; commissioning expert reports; crime scene investigation and reconstruction; and special investigative measures. Investigative actions may be taken even before the initiation of the investigation procedure if there is a danger of procrastination, under conditions and in a procedure as provided for in this law.

The public prosecutor is obliged, in a convenient manner, to inform the defense counsel, the injured party, and the suspect about the time and location of the investigative actions that they may be present, except if there is a danger of procrastination. If the suspect has a defense counsel, as of a rule, the public prosecutor shall inform the defense counsel only. If the person who has been informed about the investigative action is not present, the action may be performed in his/her absence. Any persons, present during the investigative actions may suggest to the entity conducting the procedure to ask the suspect and the expert certain questions that might clarify the issues, and if approved by the entity conducting the procedure, they may also ask them direct questions. These individuals shall also have the right to ask for their remarks regarding the performance of certain actions to be put on the record.

Also, for the necessity of the criminal procedure, for the region covered by one or more public prosecution offices, investigation centers of the public prosecution shall be established. The investigation centers are established with a decision by the Chief Public Prosecutor of the Republic of North Macedonia.

In order to clarify certain technical and other professional issues that pose themselves with regard to any evidence collected or during the performance of certain investigative actions, the public prosecutor may ask any competent person or an appropriate institution to provide him or her with the necessary explanations on those issues. The public prosecutor shall compile a record of the professional explanations received, which may be used during the procedure.

At the end of an investigation, the public prosecutor shall terminate the investigation procedure when he/she believes that the case has been sufficiently clarified so as to raise an indictment or terminate the investigation procedure.

Further, the Judicial Police, ex officio or upon order by the public prosecutor shall take measures and activities in order to detect and criminally investigate crimes, prevent any further consequences of the crimes, apprehend and report the perpetrators, secure the evidence, and other measures and activities that might be useful for an unobstructed criminal procedure.

5.5. Voluntarily confession to the bribery or corruption crime in exchange for a release from liability or reduction of the penalty

Pursuant to the Criminal Code, the court may release from a penalty a person who gave or promised a bribe upon the request of the official person, and who reported this before he/she finds out that the crime was discovered. The possibility of releasing from penalty is prescribed only for the crime of giving a bribe and not for receiving a bribe.

5.6. Plea bargain in corruption cases

A person can plea bargain in corruption cases. Namely, before raising the indictment, the public prosecutor and the suspect may submit a draft plea agreement requesting from the preliminary procedure judge to impose a criminal sanction determined by type and duration within the legally prescribed limits for the specific criminal offense, however, not lower than the limits for mitigation of the sentence as defined by the Criminal Code.

After the submission of the draft plea agreement, the judge of the preliminary procedure schedules a hearing for assessment of the draft plea agreement within three days from the receipt of the draft plea agreement. The judge summons at the hearing the persons who filed the draft plea agreement and is obliged to examine if it has been submitted voluntarily, whether the suspect is aware of the legal consequences from its acceptance, any consequences related to any legal or property claims, and the costs for the criminal procedure. Throughout the hearing, the public prosecutor, the suspect, and his/her defense counsel must not put forward a motion for a criminal sanction that is different from the criminal sanction contained in the draft plea agreement. If the public prosecutor or the suspect and his/her counsel put such a motion, they shall be considered to have desisted from the draft plea agreement and the judge of the preliminary procedure shall issue a ruling. The preliminary procedure judge advises the public prosecutor, the suspect, and his/her defense counsel of their right to withdraw from the draft plea agreement before the ruling is made. The preliminary procedure judge advises the public prosecutor, the suspect, and his/her defense counsel that the acceptance of the draft plea agreement shall be considered as waiving the right of appeal against any judgment reached on the basis of the draft plea agreement.

If the preliminary procedure judge finds that the collected evidence regarding the facts relevant for selecting and determining the criminal sanction do not justify the pronouncing of the proposed criminal sanction, i.e. that the public prosecutor, the suspect, and his/her defense counsel filed a motion during the hearing for a criminal sanction that is different than the one contained in the draft plea agreement, he/she shall enact a decision rejecting the draft plea agreement and submit the case files to the public prosecutor.

If the preliminary procedure judge accepts the draft plea agreement, he/she shall pronounce a judgment where he/she must not pronounce a criminal sanction different from the criminal sanction contained in the draft plea agreement.

A person can plea also after raising the indictment. Namely, if the judge or the indictment review chamber accepts the guilty plea, upon a motion by the suspect and his/her defense counsel or upon a motion by the public prosecutor, it shall be possible to ask for a postponement of the hearing in order to conduct a plea bargaining procedure and file a plea bargaining agreement. In the event of such a motion, the judge or the indictment review chamber shall postpone the hearing for a period of 15 days and set the date for the next hearing. If the judge or the indictment review chamber does not accept the guilty plea, the judge or the chamber shall note that in the record, inform the present parties accordingly and the indictment review hearing shall continue.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

POLAND

Marcin Cieminski
Partner
marcin.cieminski@cliffordchance.com
+48 22429 9515

Monika Diehl
Counsel
monika.diehl@cliffordchance.com
+48 22429 9476

Michal Magdziak
Senior Associate
michal.magdziak@cliffordchance.com
+48 22429 9554

Lukasz Piergies
Senior Associate
lukasz.piergies@cliffordchance.com
+48 22429 9433

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

The majority of criminal offenses regarding corruption are penalized under the Polish Criminal Code. They include, in particular, accepting and offering benefits in connection with the performance of a public function (also in a foreign state or an international organization), influence peddling, exceeding of authority by a public official, and commercial bribery.

Corruption-related criminal offenses are also provided for in, for example, the Act on the Reimbursement of Medications, which prohibits accepting and offering benefits in exchange for activities influencing the level of sales of medications or medical devices subject to reimbursement from public funds as well as in the Act on Sports, which penalizes bribery related to sports competitions.

Legal entities might be liable for corruption under the Act on the Criminal Liability of Collective Entities for Punishable Offenses.

1.2. Which international anti-corruption conventions apply?

Poland is a party to, and a member of, the following international anti-corruption conventions and organizations:

• The United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 of October 31, 2003, signed by Poland on December 10, 2003;

• The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force on November 7, 2000;

• The Council of Europe Civil Law Convention on Corruption, adopted on November 4, 1999, which entered into force on November 1, 2003;

• The Council of Europe Criminal Law Convention on Corruption, adopted on January 27, 1999, which entered into force on April 1, 2003;

• The Additional Protocol to the Criminal Law Convention on Corruption, adopted on May 15, 2003, in force in Poland since August 1, 2014;

1.3. What is the definition of bribery?

Bribery can be either active or passive. Active bribery involves giving or promising to give a material or personal benefit to a person in relation to that person's performing a public function. Passive bribery, on the other hand, consists of accepting a material or personal benefit, or a promise thereof, in connection with performing a public function.

A bribe is a material or personal benefit. There is no minimal value set to determine when such a benefit should be considered a bribe. Polish criminal law does not provide for a strict definition of a material or personal benefit. The definition provided for under the Polish Criminal Code stipulates only that a material or personal benefit is a benefit received for both oneself and for another person (not necessarily a relative). The most obvious form of giving a financial benefit is the handing over of money (in cash). However, this might also refer to any increase in assets or decrease in liabilities. There are also views that winning a tender could be considered as being a material benefit. A personal benefit may have any non-material form that satisfies a specific personal need (e.g., a promotion or providing an attractive trip abroad). The distinction between material and personal benefits is uncertain and dependent on the specific circumstances of a given case.

Accepting or offering a bribe is punishable, providing that it is connected with performing a public function by a person who accepts or is being offered a bribe. There has to be a link between the bribe and the performance of the duties by a person performing a public function. For example, a payment in return for a favorable decision may be considered a bribe. Such connection can be established also if: (i) an official is rewarded for his/her previous conduct that was not related to the bribe or (ii) there is no specific conduct of a person performing a public function, but it turns out (from the facts of a given case) that a personal or material benefit was offered/given in relation to the performing public function by the recipient of a bribe. The recipient of a bribe does not have to be the person actually authorized to issue a decision or perform an action. It is sufficient if he/she can influence the decision in any way.

Bribery is a punishable offense regardless of the motivation of the perpetrator and the material value of the benefit. However, it may be committed only intentionally.

Undertaking to assist in dealing with a matter in exchange for a financial benefit by:

• invoking influence in the government or local government institution, in an international or national institution, in a foreign organizational unit having public funds at its disposal, or in a state-owned enterprise or a company in which the Polish State Treasury, local government, or a state entity holds a stake; or by

• giving another person the impression of such influence or confirming the belief of that person in such influence (passive paid patronage) is subject to a penalty.

It is also an offense to grant or promise to grant a benefit in exchange for intermediation in the above-mentioned institutions, with the intention of illegally influencing a decision or causing a person performing a public function to act or omit

to act, in connection with the holding of that office.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

The Polish Criminal Code also provides for criminal liability in the case of corrupt conduct in business relations.

Accordingly, anyone who, while in a managerial position in an organizational unit conducting business activity, or in an employment relationship, a service contract, or a contract for the performance of a specific task, demands or accepts a financial or personal benefit or the promise thereof, in return for (i) abusing the authority granted to him/her, or for (ii) failing to perform an obligation, could inflict material damage to the unit, or which could constitute an act of unfair competition or an unacceptable act of preference for the buyer or recipient of goods, services or benefits, is liable to imprisonment.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

For the purpose of the anti-corruption regulations, the Polish Criminal Code uses the term "a person performing a public function," which includes mainly persons holding public functions, such as:

1. "Public Officials," that is:

• the President of the Republic of Poland;

• a member of the lower (Sejm) or upper chamber (Senate) of the Polish Parliament or of a local government agency;

• a Member of the European Parliament;

• a judge, lay judge, public prosecutor, an official of a financial authority responsible for conducting tax criminal investigations or of an agency superior to such financial authority, a notary, a court enforcement officer (bailiff), an official receiver, an insolvency administrator and/or trustee, a member of a disciplinary panel adjudicating on specific matters on the basis of a statute;

• an employee of a government agency, other state agency, or local government agency, unless such person only performs auxiliary functions, as well as any other person to the extent that person is authorized to issue decisions in the administrative procedures;

• an employee of a state or local government inspection authority, unless such person only performs auxiliary functions;

• a holder of a managerial position in a government institution (other than mentioned above);

• an officer of an agency designated for the protection of public security or a prison officer;

• a person doing active military service; or

• an employee of an international criminal court unless such person only performs auxiliary functions;

• an officer of Water Inspection.

2. persons holding a position with a foreign government or a supra-national organization;

3. members of local government administration bodies;

4. other persons whose competencies or duties concerning public activity are specified by Polish law (e.g., members of arbitral tribunals).

The term "a person performing a public function" also covers persons who are not public officials but are employed by organizational units with public funds at their disposal (except when the person performs only auxiliary functions) (e.g., members of tender committees in public procurement procedures).

For the purpose of the applicable anti-corruption provisions officers of state-owned or state-controlled enterprises are not specifically listed as persons performing a public function. Such officers may be treated as persons holding a public function when their specific actions directly involve public funds, or they can otherwise be seen as holding a public function. This is generally confirmed by the prevailing case law. However, there are some divergent views, e.g., that the head of the credit department or a deputy director of a branch of a commercial bank in which the State Treasury is a majority shareholder is considered a person performing a public function owing to the fact that the bank's lending activities involve public funds.

1.6. Are there any regulations on political donations?

The financing of political parties in Poland is regulated by the Act on Political Parties. The sources of financing of political parties are transparent and open to public scrutiny.

A political party may receive funds only from individuals, meaning that it cannot accept contributions from other entities, including corporate entities. Moreover, a political party can accept funds only from Polish citizens. There is also a limit on the contributions that can be made by one person. The total sum of political contributions cannot exceed 15 times the national minimum wage in a given year.

1.7. Are there any defenses available?

In the case of individuals, in some situations, custom may constitute a defense against criminal liability for bribery in the public sector (see Section 2.4).

There is also a quasi-defense with respect to active bribery (offering a bribe), active corruption in the private sector, and peddling influence in exchange for a benefit. The person offering a

bribe will not be subject to criminal prosecution provided that: (i) the bribe was accepted, (ii) it was reported to the authorities before they learned about it, and (iii) the offender disclosed all the relevant circumstances of the offense. The form in which the offender reports the offense to the authorities is of no importance.

In the case of corporate entities, although Polish law does not expressly provide for a compliance defense, such defense may be inferred from the corporate criminal liability regulations (including liability for bribery). The liability based on the current Act on Criminal Liability of Collective Entities for Punishable Offenses is dependent on fault, which is either fault in selection or organizational fault (see Section 4.1.). In practice, having an effective anti-bribery compliance program in place may enable the corporate entity to argue that organizational fault cannot be attributed to it. In such a case, the criminal liability of the corporate entity would be excluded. However, the use of this potential compliance defense remains largely untested.

1.8. Is there an exemption for facilitation payments?

Polish law does not regulate facilitation payments. There is no exemption in Poland regarding facilitation payments, and such payments are likely to fall under the statutory definition of an offense of bribery.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

In the case of individuals, the criminal consequences of bribery may include the following penalties: a limitation of liberty for a period from one month to two years, the deprivation of liberty for a period from six months to 20 years, and a fine of up to PLN 1.08 million.

Additionally, the court may also impose penal measures such as deprivation of public rights, prohibition from occupying a specific professional position (including in public bodies and state-owned or state-controlled entities), practicing a specific profession, conducting a specific business activity, and publication of the judgment in a particular manner if this is appropriate due to the social impact of the judgment.

When imposing a penalty, the court considers the circumstances as well as the type and the extent of the consequences of the offense. The penalty will be higher if the bribe was of substantial value or was accepted in exchange for unlawful behavior.

There are no civil or administrative sanctions against crimes of corruption, however, corruption can result in civil liability for damages, employee responsibility, or disciplinary responsibility of public officials.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

Yes. The national bribery and corruption law applies to Polish citizens even if they committed an offense beyond the national boundaries. It also applies to foreigners involved in bribery and corruption related to Polish interests or involving Polish public officials.

1.11. What are the limitation periods for bribery offenses?

The criminal liability for bribery offenses basically expires after 15 years from the time they were committed (the limitation period is extended to 20 years in the case the value of a bribe exceeds PLN 1 million). If within this timeframe criminal proceedings are initiated, the term is extended by an additional 10 years.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

Over the last few years, there has been ongoing discussion around significant amendments to the provisions regarding corporate criminal liability vastly enlarging the scope of the liability of companies. Although a few draft bills were published, there is no indication of when the legislative process will be renewed.

The legislative changes in Poland may also depend on the timeframe in which the planned European Anti-corruption Directive (see proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council) will be enacted and how much time will the EU Member States have to implement that directive into the national legal system.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

There is no clear boundary in the provisions of law, case law, or views of legal scholars between a small socially acceptable gift and active bribery.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Generally, there is no specific guidance in this respect.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

The prescribed limitations on the value of benefits (such as

hospitality, travel, and entertainment) that may be given to persons performing public functions are only included in the Polish Pharmaceutical Law, which allows giving or accepting items with a value of up to PLN 100 and relevant to the practice of medicine or pharmacy, bearing a mark advertising a given firm or medicinal product. Other than the above situations, there are no generally prescribed limitations on the value of benefits (such as hospitality, gifts, travel, and entertainment) that may be given to public officials.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

According to legal scholars and case law, in some situations, custom may constitute a defense against criminal liability for an offense of corruption in the public sector. Therefore, small customary gifts for public officials may be considered permitted. Essentially, this may be the case when the giving of such gifts/hospitality is: (i) customary and socially accepted as a gesture of courtesy; (ii) of small value; and (iii) provided as an expression of gratitude, i.e., after a given service/transaction with a person performing a public function has been completed and assuming that such gift/entertainment was not promised, suggested, or expected in relation to the service/transaction in question.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

Polish law does not require companies to have internal anti-bribery controls in place.

Given that a corporate entity is not liable under the Act on the Liability of Collective Entities for Punishable Acts if it has exercised due diligence in preventing the relevant offense and in hiring or supervising the given person (as set out in Section 4.1), it has been suggested that internal controls under which such due diligence has been undertaken would provide a defense in those circumstances. However, the use of this compliance defense is largely untested.

The above-mentioned legal landscape may change once the planned European Anti-corruption Directive (see Section 1.12.) comes into force and will be implemented in Poland. The proposal for the directive stipulates that implementation of effective internal control, ethics awareness, and compliance programs to prevent corruption prior to or after the commission of the offense may be an important mitigating factor to be taken into account when deciding about an appropriate penalty for a specific offense.

3.2. Is there any official guidance on anti-corruption compliance?

The Central Anti-Corruption Bureau (CBA) regularly publishes Anti-Corruption Guidelines for entrepreneurs, which provide suggestions on how to effectively manage the risk of bribery. These guidelines are, however, of a very general nature and are not binding.

Based on the CBA's most recent guidelines, a corporate entity should have a code of ethics in place and make sure that its employees are acquainted with it. Furthermore, companies are recommended to implement policies on giving or receiving any gifts, conflicts of interest, lobbying, sponsoring, and political contributions. Corporate entities should also train their employees and provide them with the possibility to report all irregularities, while whistle-blowers should be protected against the negative consequences of having reported irregularities. The guidelines also state that specific persons should be designated within an organization to monitor the enforcement of the compliance mechanisms.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations?

On June 14, 2024, the Polish Parliament enacted a Whistleblowers Protection Act which cme into force on September 24, 2024.

The Whistleblowers Protection Act implements the Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (the EU Whistleblower Directive) and protects also whistleblowers reporting bribery and corruption allegations.

The Whistleblowers Protection Act stipulates that any individual who reports internally or externally information about the violation of law in a work-related context may be considered a whistleblower. The act provides for a prohibition of any retaliatory measures (as well as any attempts or threats that such measures may be adopted) against whistleblowers. It also obliges employers (including both individuals and corporate entities) employing at least 50 persons (irrespective of the legal basis of employment) to implement relevant internal procedures aimed at handling irregularities reported by whistleblowers.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Polish law provides for the liability of corporate entities involved in criminal conduct.

The liability of corporate entities for criminal offenses is regu-

lated by the Act on Criminal Liability of Collective Entities for Punishable Offenses. In general, under the said act, a corporate entity may be held liable if:

• an offense mentioned in the act is committed by a specific individual and that individual's conduct has resulted or may have resulted in a benefit for the corporate entity; and

• such individual:

o acted on behalf of a corporate entity or in its interest within the scope of their power or duty to represent it, make decisions on its behalf or exercise internal control, or

o represented the corporate entity by exceeding his/her powers or failure to perform his/her duties;

o was a sole trader involved in a business relationship with the corporate entity.

However, the liability of the corporate entity is secondary to the liability of the direct perpetrator (an individual), i.e., the entity can be held criminally liable only after the direct perpetrator has been sentenced with a final and binding judgment.

The corporate entity will face liability for the actions of the above-mentioned individuals only if (i) its bodies or representatives failed to exercise due diligence in preventing the commission of the given offense or (ii) it has failed to exercise due diligence in hiring or supervising a person given permission to represent it.

The lack of criminal liability of a corporate entity does not exclude the possibility of the corporate entity incurring civil liability for the damage caused or the administrative liability of the entity.

The current Act on the Liability of Collective Entities for Punishable Acts is commonly recognized as inefficient and is very rarely applied in practice.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

Polish criminal law does not provide that a parent company is liable for the actions of its subsidiaries (unless the corporate criminal liability mentioned in Section 4.1 applies).

4.3. Can a company be liable for the corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

A company can be held liable for the corrupt actions of an intermediary insofar as such actions might have brought it some benefit, where the conditions for corporate criminal liability (set out in Section 4.1) are met.

4.4. What are the sanctions for the corporate criminal entity?

In the case of corporate entities, the criminal consequences of bribery may include a fine ranging from PLN 1,000 to PLN 5 million. The fine may not exceed 3% of the corporate entity's revenue earned in the financial year in which the offense was committed.

The court may also order:

• the forfeiture of any object or benefit which was derived from the offense;

• prohibition of the corporate entity from carrying out promotions and advertising, benefiting from grants, subsidies, or assistance from international organizations, or bidding for public contracts;

• to make the judgment public.

All the above-mentioned prohibitions may be imposed for a period from one to five years.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Crimes of corruption are investigated and prosecuted by public prosecutors, who are supervised by the General Public Prosecutor. The police also have the authority to conduct criminal investigations.

The investigation of certain types of offenses may also be conducted by public agencies, e.g., the CBA and the Internal Security Agency (ABW).

Law enforcement agencies, such as the Police, CBA, or ABW always act under the supervision of a public prosecutor.

The CBA acts as a special service dedicated to combating corruption in public and economic life, particularly in public and local government institutions. It is responsible for identifying, preventing, and detecting crimes and offenses, prosecuting the perpetrators as well as controlling, analytical and preventive

activities.

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

Generally, under Polish law, there is no legal obligation to report bribery and corruption cases to the law enforcement authorities (i.e., to self-incriminate).

Polish law provides for specific rules under which an individual or an entity, having knowledge about the misconduct of others, is obliged to report it to law enforcement authorities. The Polish Criminal Code provides that failure to notify the law enforcement authorities about specific criminal offenses (against the State, life and health, personal freedom, or of a terrorist nature) is a criminal offense in itself. On a related note, the provisions of law concerning cybersecurity issues, data protection, money laundering, or taxes also include obligations to report certain incidents or transactions that are not necessarily misconduct per se.

5.3. Is there any civil or administrative enforcement against corruption crimes?

There is no particular civil or administrative enforcement against corruption crimes, however, corruption can result in civil liability for damages, employee responsibility, or disciplinary responsibility of public officials.

5.4. What powers do the authorities generally have to gather information when investigating corruption crimes?

When investigating corruption crimes the law enforcement authorities benefit from the typical police powers granted by law (they are allowed to, for example, search people and premises, carry out personal searches, as well as inspect the contents of luggage). The authorities may also demand the necessary assistance from public institutions and ask for the necessary help from entrepreneurs, organizational units, and social organizations.

Moreover, the CBA (see Section 5.1.) has far-reaching powers regarding criminal offenses of corruption. It may, upon the court's consent, order an operational investigation (invigilation) including, among other things, wiretapping, bugging, and correspondence browsing. It may also request information containing bank secrecy from banks.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

Yes, however, it only applies to individuals who gave a benefit (active bribery) and not to individuals performing a public function who accepted the benefit (passive bribery).

The leniency law applies only if: (i) the bribe is accepted by a public official, (ii) the offender has reported this to a law enforcement authority, disclosing all the relevant circumstances of the offense, and (iii) the offender has reported this fact before the authority concerned has learned about the same.

If the foregoing prerequisites are met, the prosecution of active bribery is prohibited, and the offender cannot be held criminally liable. This is prohibited by the operation of law and no separate decision by a public prosecutor is required.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

In cases other than those described in Section 5.5., only general rules concerning plea bargaining apply. The person accused of a criminal offense can plead guilty before a public prosecutor in return for the agreed penalty. In such a case, the public prosecutor files an appropriate motion with the court. The court cannot modify the penalty (but may suggest that it is inappropriate and invite the parties to further negotiations in this respect). It may accept it or refuse to accept the penalty proposed by the public prosecutor. If the proposal is rejected, the court conducts a hearing on general terms.

POPESCU & ASOCIATII
attorneys at law

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

ROMANIA

Adrian Chirvase
Partner
adrian.chirvase@popescu-asociatii.ro
+40215897353

Bogdan Dobre
Managing Associate
bogdan.dobre@popescu-asociatii.ro
+40215897353

CEE
LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

Corruption represents a deviation from normalcy and is an integral part of criminal phenomena in any society, manifesting as a widespread deviant and harmful behavior among officials and elected representatives.

Socially, corruption is defined as the systematic and unsanctioned violation of organizational or institutional norms by members who, by virtue of their authority, misuse resources for purposes other than those intended by the organization.

Due to its consequences, implications, and negative effects on the community as a whole, corruption represents a state of normative and moral imbalance in that community, severely affecting social relationships both at an institutional and interpersonal level.

In the public sphere, corruption is generally understood to mean any deviation from morality, honesty, and duty that harms an individual's or the public interest in favor of another well-defined entity, typically a private one.

The Romanian Criminal Code incriminates corruption crimes in Title V, Chapter I, including four different forms of incrimination: taking a bribe, giving a bribe, influence peddling, and buying influence.

Additionally, the Romanian Criminal Code incriminates acts of corruption committed by members of arbitration panels or in connection with these members, as well as by foreign officials or in connection with them.

The Criminal Code also maps out in its content corruption offenses committed by so-called private officials, who are explicitly defined by Romanian criminal law.

Furthermore, the Romanian Criminal Code incriminates acts of corruption committed by private officials, explicitly defined by Romanian criminal law.

Lastly, Law No. 78/2000 on the prevention, discovery, and sanctioning of corruption offenses specifically regulates the legal treatment of corruption offenses committed by public officials.

1.2. Which international anti-corruption conventions apply?

In Romania, the following anti-corruption conventions are applicable:

1. The United Nations Convention against Corruption (New York, October 31, 2003) ratified by Law No. 365 from September 15, 2004.

2. The Criminal Law Convention on Corruption (Strasbourg, January 27, 1999) ratified by Law No. 27 from January 16, 2002.

3. The Civil Law Convention on Corruption (Strasbourg, November 4, 1999) ratified by Law No. 147 from April 1, 2002.

4. The Convention on the Fight Against Corruption involving officials of the European Communities or officials of the Member States of the European Union (May 26, 1997), effective September 28, 2005, through an EU Council decision.

1.3. What is the definition of bribery?

Bribery offenses are considered serious as they undermine fundamental principles of integrity, impartiality, and equality before the law.

Under the provisions of Article 289 of the Criminal Code, taking a bribe is defined as a public official who, directly or indirectly, for himself or another, demands or receives money or other benefits that are not due, or accepts the promise of such benefits in connection with the performance, non-performance, speeding up, or delaying of an act within their official duties or in connection with performing an act contrary to these duties.

Giving a bribe is the crime committed by an individual or legal entity of promising, offering, or giving, directly or indirectly, money or other benefits to a public official in exchange for performing, delaying, expediting, or not performing acts that fall within the public official's duties.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Corruption crimes committed by private sector officials are also regulated by criminal law.

Article 308 of the Criminal Code refers to corruption offenses within the same regulation, specifying which private officials can be active subjects of corruption offenses.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

A public official is defined by Article 175 of the Criminal Code as a person who, permanently or temporarily, with or without remuneration:

a) Exercises duties and responsibilities established by law to implement legislative, executive, or judicial power.

b) Holds a public office or public dignitary or position of any kind.

c) Exercises, alone or with others, duties related to the realiza-

tion of the activities of an autonomous regie or other economic operator or legal entity with full or majority state capital.

Additionally, a person who performs a public service for which they have been appointed by public authorities or who is subject to the control or supervision of these authorities with regard to the fulfillment of that public service is also considered a public official in the sense of criminal law.

Foreign public officials are individuals holding similar positions in public authorities or institutions but within a public authority or institution in another country. The definition and regulations regarding foreign public officials are often included in international legislation and anti-corruption conventions.

In the context of the OECD Convention on Combating Bribery of Foreign Public Officials in international business transactions and other international legal instruments, a foreign public official is defined in several ways, including any person holding a legislative, executive, administrative, or judicial mandate in a foreign country, any person exercising a public function for a foreign country, and any official or agent of a public international organization such as the United Nations or the European Union.

From the perspective of criminal law, employees at state-owned or state-controlled enterprises are not treated differently from other public officials who can be active subjects of corruption offenses.

In Romania, there are official lists of public officials, institutions, and state-owned or state-controlled enterprises. These lists are compiled and managed by competent public institutions in accordance with the national legislation on transparency and access to public information.

For example, there are public registers and records that include information about public officials from various branches of central and local public administration, as well as about state-owned or state-controlled structures and economic entities

These registers are important for ensuring transparency and accountability in the management of public resources and interactions with the business environment. They facilitate the monitoring and evaluation of the activities of institutions and their employees, thus contributing to the prevention and combating of corruption in public administration and the state sector.

1.6. Are there any regulations on political donations?

In Romania, there are strict regulations regarding political donations, aimed at ensuring transparency and preventing detrimental influences in political life. According to electoral legislation and rules on political party financing, it is mandatory for political parties and candidates to declare and publish the sources and amounts of donations received during and outside election campaigns.

There are also limits on the amounts of money that political parties and candidates can receive from donations, and certain categories of donors, such as foreign legal entities or companies with public sector contracts, may be prohibited from making political donations.

Competent authorities closely monitor these donations to ensure compliance with the law and to prevent any illegal practices or money laundering. These measures are fundamental for promoting transparency and integrity in the democratic process in Romania and, of course, to avoid as much as possible the incidence of corruption crimes.

Parties are legally required to report annually the income from membership fees, donations, and other loans, with the report then published in the Official Gazette of Romania.

1.7. Are there any defenses available?

Corruption crimes and their sanctions are expressly statutory in the Criminal Code, however, there are several legal instruments that can be used in the defense of the perpetrator to be exonerated from criminal liability.

Firstly, for these crimes to meet the conditions of typicity, it is essential that the acts are committed intentionally. If the act is committed negligently, it can no longer be considered a criminal offense.

Additionally, in cases of bribery and influence peddling, the briber/perpetrator is not punished if they report the act before the criminal investigation body has been notified about it.

Secondly, the perpetrator can invoke the existence of justifiable or excusable causes, or even contest the existence of the facts as described in the indictment/notification, or argue that the evidence presented is insufficient to prove their guilt beyond any reasonable doubt.

Justifiable and excusable causes can only be applied after a concrete evaluation of the facts by judicial bodies in each case, to determine whether the acts were justified by a solid and statutory reason or if the act cannot be attributed to the person according to the provisions of the law.

Thirdly, there are specific defenses for corruption offenses, which can be developed depending on the nature and object of the offenses, referring to the existence or lack of concrete evidence regarding the existence of the act, the criminal intent of the perpetrator, or other conditions of typicity of the acts.

1.8. Is there an exemption for facilitation payments?

In the legislation of certain countries, a facilitation payment is a payment made to ensure that officials perform their duties correctly. In their view, this practice does not lead to prefer-

ential treatment where the payment is made in addition to the duties owed.

Therefore, a facilitation payment is distinguished from a bribe in that it is made to ensure that an official performs their duties correctly, while a bribe is a payment made to ensure that the official acts according to the briber's interests (whether performing duties incorrectly or not at all, with delay, or with speed).

In Romania, the concept of facilitation payments is not regulated and therefore does not benefit from a specific legal exemption regarding criminal liability for corruption. These payments are considered illegal under anti-corruption legislation and are treated the same as any other type of bribe or corrupt act.

The Romanian Criminal Code and other relevant regulations strictly prohibit any form of bribery, whether involving large or small amounts. Thus, facilitation payments, often perceived as necessary to expedite administrative processes or obtain immediate benefits, are considered crimes and are subject to legal sanctions.

In practice, the legal consequences of involvement in facilitation payments can include criminal criminalities and severe damage to the reputation of the individual or company involved. Therefore, strict adherence to ethical and legal standards is essential for all those involved in the business environment in Romania.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

In Romania, the legal system places a strong emphasis on combating corruption by applying severe sanctions for bribery offenses. These actions are considered serious and are treated with utmost seriousness in criminal legislation.

The criminality for the standard form of the offense of accepting bribes, as provided by Article 289 of the Criminal Code, is imprisonment from three to 10 years and the prohibition of exercising the right to hold a public function or to exercise the profession or activity in which the offense was committed.

The crime also has a counterpart in Law No. 78/2000, which constitutes the aggravated version of it and is punishable by imprisonment from four to 13 years and four months, along with the prohibition of exercising the right to hold a public function or to exercise the profession or activity in which the offense was committed.

Additionally, the money, valuables, or any other goods effectively given are subject to confiscation, and if these cannot be found, confiscation by equivalent is ordered. Romanian legislation distinguishes between special confiscation, which applies exclusively to the convicted person, and extended confiscation, which can also apply to goods transferred to third parties or transferred by the convicted person or a third party to a family member or a legal entity controlled by the convicted person.

Regarding the standard form of giving a bribe, the sanction is imprisonment from two to seven years. If the bribery involves a private official, the criminality is imprisonment from one year and four months to four years and eight months.

It is noteworthy that the perpetrator may not be punished if they report the act of giving a bribe before the criminal investigation body has been notified about it.

In terms of confiscation, only the special form of confiscation of the money, goods, or valuables offered or given is possible. If these cannot be found, the same rules as for special confiscation in the case of accepting bribes will apply, and confiscation by equivalent will be ordered.

On the other hand, administrative sanctions can include temporary or permanent prohibitions from accessing European funds or participating in public procurements, or asset confiscation.

Competent administrative authorities, such as the National Integrity Agency or other control and supervision institutions, have the role of making proposals regarding the application of such sanctions in accordance with current legislation to discourage and punish corruption in all its forms.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

In Romania, national laws on bribery and corruption generally apply within the country's territory and to its citizens. These laws are designed to combat acts of corruption within national borders and to ensure the integrity of the country's judicial and administrative systems.

Regarding extraterritorial aspects, Romania can exercise jurisdiction in cases where corruption involves its national resources or interests, even in situations where the crimes were committed outside the country, by applying the principles of reality, universality, and personality of criminal law, as provided by the Criminal Code.

Additionally, as part of the European Union, Romanian judicial bodies have access to modern judicial tools that enable direct cooperation with competent authorities from other member states, at least when it comes to blocking assets or funds or conducting urgent investigative activities.

Furthermore, Romania is part of various international anti-corruption conventions, which facilitate international cooperation in the investigation and prosecution of cross-border

corruption crimes.

Moreover, the provisions of Article 294 of the Criminal Code incriminate corruption offenses committed by foreign officials or in connection with them, who do not have the status of a public official under the criminal law, namely:

a) Officials or persons working based on a contract of employment or others exercising similar duties within a public international organization of which Romania is part;

b) Members of parliamentary assemblies of international organizations to which Romania is part of;

c) Officials or persons working based on a contract of employment or others exercising similar duties within the European Union;

d) Persons exercising judicial functions within international courts whose jurisdiction is accepted by Romania, as well as officials from the registries of these courts;

e) Officials of a foreign state;

f) Members of parliamentary or administrative assemblies of a foreign state;

g) Jurors within foreign courts.

In conclusion, Romania's anti-corruption legislation primarily applies within its national borders, but there is also the possibility of exercising jurisdiction in certain extraterritorial cases, depending on specific circumstances and applicable legal provisions.

1.11. What are the limitation periods for bribery offenses?

In Romanian criminal law, the statute of limitations for criminal liability is fundamental in determining the period during which a person can be held accountable for committing crimes. These are regulated in accordance with Article 154 of the Criminal Code and vary depending on the severity of the committed crime.

For the crimes of taking and giving a bribe committed by or in connection with a public official, the statute of limitations is eight years.

For the crime of taking a bribe committed by a private official, the statute of limitations is eight years, while for the crime of giving a bribe in connection with a private official, the statute of limitations is five years.

In the case of the aggravated form provided by Law No. 78/2000, the statute of limitations is 10 years.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

The prevention and combating of corruption have been strengthened in both the public and private sectors through the introduction of measures to increase transparency in public acquisitions, public administration, and economic activities.

Additionally, Romania continues to be subject to monitoring and evaluations by international bodies such as the European Commission and GRECO, which have made recommendations to strengthen the fight against corruption and improve governance and transparency.

These initiatives reflect Romania's ongoing commitment to combating corruption and strengthening the rule of law, aligning with international requirements and standards. They also represent constant efforts to address new challenges and improve the perception and effectiveness in combating this occurrence.

Regarding future legislative amendments in Romania related to combating corruption and improving the rule of law, it is important to note that these initiatives may vary depending on the political, and social context, and developments in the justice system. Generally, the Romanian government and parliament are engaged in a continuous process of reviewing and improving legislation to address new challenges and respond to international recommendations.

Potential directions for legislative amendments may could include strengthening the independence of the judicial system by continuing reforms to protect the independence of the judicial system and magistrates, including through legislative changes to strengthen the role and authority of the Superior Council of Magistracy (CSM), transparency, and integrity in public administration, adopting additional measures to increase transparency in public procurement, the decision-making process of public institutions, and the activities of local and central administration, as well as measures to combat money laundering and terrorism financing.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

As a general principle, any good, sum of money (regardless of amount), or service, whether quantifiable in money or not, offered to a public official in connection with their duties to perform an act, expedite it, or not perform a certain act can be the subject of a corruption crime (bribery).

The same treatment applies to a person who solicits or receives sums of money, goods, or services of any kind when they traffic their influence or imply that they will traffic their influence with public officials, being prohibited both under criminal law and other regulations in our country.

In this regard, Law No. 78/2000 for the prevention, discovery, and sanctioning of corruption crimes requires individuals who hold a public function, regardless of how they were appointed,

within public authorities or institutions or who hold a control function, to declare, within 30 days of receipt, any direct or indirect donation or manual gifts received in connection with the exercise of their functions or duties, except those with symbolic value.

Thus, the Romanian legislator has instituted the obligation for public officials to declare any good, sum of money, or service received in connection with the performance, expedition, or non-performance of an act that falls within their duties, precisely to ensure an adequate level of transparency and to allow for appropriate checks that may be carried out later.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Law No. 251/2004 regarding certain measures towards goods received free of charge during protocol activities in the exercise of the mandate or function imposes an additional obligation on categories of public officials who hold leadership and control functions or who are required to declare their assets. Specifically, they must declare and present to the head of the institution, within 30 days of receipt, the goods they have received free of charge during protocol activities in the exercise of their mandate or function.

This legal provision aims to provide additional guarantees against the occurrence of corruption, especially applicable when a specific aid provided by the public official within the scope of their duties is not identified concretely, or a long period of time elapses between a donation and an act that falls within the official duties of the public official who received the donation.

In such a scenario, the law provides an alternative procedure to "sanction" the public official who still receives a good or service with a value greater than EUR 200. In this regard, a committee appointed by the head of the public authority or institution, consisting of three members, is established to evaluate and inventory the good/goods received by the public official.

If the value of the respective good or service exceeds EUR 200, the public official can pay the difference from EUR 200 to the full value of the good.

Otherwise, the good will be donated free of charge to another institution or authority that can benefit from the donation, or an auction can be organized for the purchase of the respective good. If the goods are valued at up to EUR 200, the public official may keep it.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

In the case of corruption crimes, the law does not establish a minimum threshold for incriminating the crimes of taking/giving a bribe, influence peddling/buying, or other corruption crimes.

Any good or service, regardless of whether it has material or non-material value, except for symbolic ones, can be considered the material object of corruption crimes.

The difficulty arises when a symbolic item also has a considerable value, as Romanian legislation does not establish clear criteria for evaluating goods or methods for determining the nature of the goods.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

Subject to a specific analysis of each case, defenses can certainly be formulated regarding the nature or purpose of the good or service received by the public official who benefited from it.

Law No. 251/2004 regarding certain measures related to goods received free of charge on the occasion of protocol actions regulates the categories of goods that can be donated to public officials, with the procedure for receiving these goods being expressly regulated. In this sense, classifying a donation as made under the conditions of Law No. 251/2004 can constitute a genuine defense in cases of corruption offenses.

Also, the most common defenses from the perspective of the received good can be those where it is not demonstrated that the public official conditioned the performance, speed up, or non-performance of an act within their official duties on receiving that benefit.

Moreover, given the nature of the evidence usually administered for corruption offenses, which generally includes results from technical surveillance measures, analysis, and, implicitly, a defense regarding the conduct of the public official both before and after the act can be carried out from the outset.

Thus, if the public official does not condition the performance, non-performance, or speed up of an act within their official duties on one of the activities circumscribed to the offense of accepting bribes, such as soliciting, receiving money, or other benefits they are not entitled to, or accepting the promise of such benefits, the offense of accepting bribes cannot be established. This approach to the case can be used as a defense in corruption offenses.

On the other hand, it should not be excluded that the defense may argue that the good was not given as a result of soliciting, using, or receiving a benefit, but rather that the public official received that good or service as a "reward" for their activity.

This "reward" can be considered a donation that must be declared by the public official, as long as its value is minimal. In

case of non-declaration, the official would be sanctioned only with an administrative/disciplinary or pecuniary measure, and not as a criminal offense.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

It is not mandatory for companies to have an anti-corruption policy or procedures. However, there is a growing trend for each company to implement internal procedures to inform about potential activities that could be incriminated as acts of corruption in the private sector.

Adopting anti-corruption policies or internal procedures can be a useful method for preventing the criminal liability of the legal entity.

3.2. Is there any official guidance on anti-corruption compliance?

The Romanian state constantly updates its anti-corruption strategy, with preventive policies promoted through the strategy covering a wide range of aspects aimed at fostering a culture of integrity as a commitment against so-called white-collar crime.

In this context, the National Anti-Corruption Strategy for the period 2021-2025 was developed and promoted, approved by Government Decision No. 1269/2021.

The National Anti-Corruption Strategy aims to strengthen the national system for preventing and combating corruption by enhancing mechanisms for identifying and managing the risks, threats, and vulnerabilities associated with this phenomenon, in order to guarantee professionalism and efficiency in the public sector, the safety of citizens, and to support a developed social and economic environment.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

The law protects whistleblowers who report acts of corruption. In addition to specific provisions in the Code of Criminal Procedure, which protect whistleblowers who report an offense even if they are also participants in committing the offense, there are special provisions for the statements that a witness in a criminal case regarding acts of corruption can give.

In this regard, the whistleblower (who has the status of informer or witness) may be subjected to protection measures, which can include:

- Surveillance and guarding of the witness's home or providing temporary housing;

- Escorting and protecting the witness or their family members during travel;

- Non-public court sessions during the witness's testimony;

- Hearing the witness without them being present in the courtroom, through audiovisual means, with distorted voice and image, when other measures are not sufficient;

- Protecting the witness's identity and assigning a pseudonym under which they will testify.

Additionally, Romania has implemented EU Directive 2019/1937 of the European Parliament and Council of October 23, 2019, on the protection of persons who report breaches of Union law, through Law No. 361/2022 on the protection of whistleblowers in the public interest. Although this law is not a criminal law per se, it can overlap with certain situations where offenses may be identified.

3.3.1. What can be reported?

Any act of corruption known to the whistleblower can be reported, even if they are a participant in the commission of the offense.

In the area of corruption crimes provided for in Title V, Chapter I of the Criminal Code, only in the case of the offenses of giving a bribe (Article 290 of the Criminal Code) and buying influence (Article 292 of the Criminal Code), the legislator has provided for causes of impunity, meaning that the perpetrators are not punished if they adopt certain conduct, specifically reporting the acts of corruption before the criminal investigation bodies have been notified about them.

3.3.2. Who is protected?

The protection provided by the law benefits only the person who reports the act of corruption, as it is a personal measure.

The wherefore behind the legislator's establishment of the cause of impunity, which perpetrators can benefit from in cases of giving bribes and buying influence, can be viewed from a dual perspective. Firstly, through the act of reporting, the briber and the buyer of influence present a reduced danger to public order, making it unnecessary to allocate resources for their punishment.

The initiative to report acts of corruption, despite the uncomfortable position it puts whistleblowers in, seems sufficient in the legislator's view to ensure their impunity. Secondly, the establishment of the cause of impunity plays a prophylactic role in the matter of corruption.

Although the law requires bribers and buyers of influence to only report their own acts (self-reporting) to benefit from impunity, the reports made by these individuals practically

target not only their own acts but also the corrupt acts of the officials involved in these illicit activities.

Consequently, the risk of being reported should serve as a deterrent for officials tempted to engage in criminal activities by committing acts of corruption.

In this context, removing corrupt or potentially corrupt elements from the public sector is a priority for society compared to punishing individuals who have occasionally found themselves in the unfortunate position of bribers or buyers of influence.

3.3.3. What are the conditions for protection?

The conditions for granting protection are met when there is a reasonable suspicion that the life, physical integrity, freedom, property, or professional activity of the witness or a family member could be endangered because of the information provided to the judicial authorities or their statements.

3.3.4. What companies does the relevant legislation apply to?

The relevant legislation can be applied to any company and even to individuals who engage in independent lucrative activities or in a commercial organizational form.

Although such a scenario is rarely encountered in practice, the law does not distinguish between a whistleblower being a natural person or a legal entity in the sense of criminal law, leading to the conclusion that any provision of the relevant criminal legislation is applicable to any person.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Corporate entities can be held liable for the crimes of taking/giving a bribe and corruption, as the Criminal Code regulates the criminal liability of legal entities without distinguishing between the crimes for which this liability can be attracted.

It is worth noting that not all legal entities are subject to criminal liability. For criminal liability to be engaged, the entity must not belong to the category expressly exempted by law, namely the state, public authorities, and institutions only for offenses that cannot be subject to the private sector.

Regarding the engagement of criminal liability, the requirement for the existence of legal personality has been maintained as a premise for engaging the criminal liability of collective entities.

The criminal liability of a legal entity can move in for any crime as the principle of general criminal liability has been established, meaning that legal entities have a criminal capacity similar to that of natural persons.

The fine is the only principal sanction that can be applied to a legal entity and consists of the amount of money the legal entity is condemned to pay to the state. The general limits of the fine for legal entities range between RON 3,000 and RON 3 million, and the specific limits of the fine are determined by reference to the criminality provided for the crime in question.

Additionally, there are several complementary criminalities applicable to legal entities, such as the suspension of activity, closure of certain work points, prohibition from participating in public procurement procedures, placement under judicial supervision, public display of the conviction decision, or dissolution of the legal entity.

In conclusion, the general rule is that corporate entities can be held liable for any offense, including the corruption offenses provided by law.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

As we suggested earlier, criminal liability is personal, therefore, a company cannot be held liable for the crimes committed by another entity under its control unless it participated in the illicit act as a co-author, instigator, or accomplice.

To avoid liability in such situations, the parent company must demonstrate that it was unaware of the illicit activities of the entity it controls or owns and that it did not participate in them. It is essential for the parent company to implement effective compliance and internal control measures to prevent and detect potential acts of corruption.

In other words, to be exonerated from responsibility, the parent company must show that it took all reasonable measures to prevent corruption offenses by its affiliated entities. These measures can include anti-corruption policies and procedures, employee training, internal audits, and continuous monitoring of the activities carried out by the controlled or owned entities.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

If the management was aware in any form of the agent's or employee's involvement in committing acts of corruption, which were carried out in or for the benefit of the legal entity, there is a possibility that the entity could be accused of the same acts of corruption as its agent or employee.

In these situations, the company's liability can be engaged if it is proven that the company's management knew that the agent

was going to commit the offense and either accepted this fact or actively pursued it. In this case, depending on the circumstances, the company's liability can be engaged under all forms of criminal participation.

Regarding the limitation of the legal entity's liability, Romanian criminal law does not distinguish between individuals and legal persons, so the company can benefit from the same causes for limiting or exonerating criminal liability, such as reporting the offense before the criminal investigation bodies are notified or mitigating circumstances of the offense.

4.4. What are the sanctions for the corporate criminal entity?

A corporate criminal entity can be sanctioned with any of the criminalities applicable to a legal entity, as detailed in Subsection 4.1.

A legal entity that has been sentenced to a fine (established according to Article 137 of the Criminal Code) is forced to pay the fine in full within three months from the finalization of the conviction and if it is unable to pay, the payment can be staggered.

The individualization of the fine criminality in the form of fine days considers the turnover of the legal entity as well as other obligations.

Regarding complementary sanctions, which can also be applied cumulatively, these are imposed when it is determined that, given the nature and severity of the offense, as well as the circumstances of the case, they are necessary.

5. Criminal Proceedings for Bribery and Corruption Cases

5.1. What authorities can prosecute corruption crimes?

In Romania, the entity that can pursue and investigate corruption offenses is the National Anticorruption Directorate (DNA), which is the main authority in Romania responsible for the criminal prosecution of corruption offenses and those assimilated to them.

Successive legislative changes caused by the high number of reported cases have aimed to focus this specialized structure only on combating high- and medium-level corruption.

It operates as a specialized structure within the Prosecutor's Office attached to the High Court of Cassation and Justice, with operational and administrative autonomy.

Additionally, the prosecutor's offices attached to tribunals, courts of appeal, or the Prosecutor's Office attached to the High Court of Cassation and Justice, depending on the case, can handle criminal prosecution in cases that are not within the competence of the DNA.

While the DNA handles cases that fall within its legal competence, prosecutor's offices with general competence in investigating offenses handle cases involving what is known as petty corruption, which refers to that sector of corruption that does not affect the interests of the majority of a state's individuals.

This category may include corruption involving a medical professional, a public official, etc., who, through their decisions, favor an individual or a group of individuals to the detriment of others, but this kind of injustice is limited in time and space.

Lastly, the General Anticorruption Directorate (DGA) is a structure within the Ministry of Internal Affairs of Romania, that specializes in combating and preventing corruption within the ministry. The DGA was established with the aim of focusing strictly on preventing and combating corruption within the Ministry of Administration and Internal Affairs.

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

In Romania, there is a legal obligation to report corruption offenses, which applies to a relatively narrow spectrum of individuals, namely public officials or employees of public or private institutions who can be considered assimilated public officials.

The Criminal Code defines as a crime the act of a public official who, upon becoming aware of the commission of an act provided for by criminal law in connection with the service in which they perform their duties, fails to immediately report it to the criminal investigation authorities.

Additionally, the provisions of Article 23 of Law No. 78/2000 require persons with control duties to inform the criminal investigation body or, as the case may be, the body empowered by law to ascertain the commission of offenses, of any data indicating that an operation or illicit act has been carried out that may attract criminal liability according to the aforementioned law.

5.3. Is there any civil or administrative enforcement against corruption crimes?

In Romania, there are civil and administrative measures that complement the main sanctions but are taken within the criminal process, not designed as separate sanctions from the criminal process.

However, the nature of these secondary sanctions is administrative or civil, such as the confiscation of goods, fines, demotion, suspension or removal from office, exclusion from

participation in public tenders, and so on.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

The criminal investigation authorities have a series of methods, provided by law, to fulfill the purpose of the criminal investigation and, implicitly, to hold accountable those who have committed corruption offenses.

Generally, during the criminal investigation, the authorized bodies can use special surveillance or investigative methods such as intercepting communications or any type of remote communication, accessing an information system, video surveillance, audio recording, or photographing, locating or tracking by technical means, obtaining data on a person's financial transactions, seizing, delivering, or searching postal items, using undercover investigators and collaborators, authorized participation in certain activities, supervised delivery, obtaining traffic and location data processed by public electronic communications network providers or publicly available electronic communications service providers.

Additionally, the criminal investigation authorities can cooperate with other law enforcement authorities from other countries through international mutual legal assistance treaties for the exchange of information and evidence.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the criminality?

The Criminal Code provides in the very texts of the law for the crimes of giving a bribe (Article 290) and buying influence (Article 292) that the briber/offender is not punished if they report the act before the criminal investigation body has been notified about it.

Additionally, there is the possibility of reducing the sentencing guidelines by one-third if, under certain conditions, the accused person acknowledges the commission of the acts or if legal or judicial mitigating circumstances are found, according to the law.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

Romanian criminal law regulates the guilty plea as a form of judicial negotiation between the prosecutor and the defendant when the accused person admits the facts and the legal classification and agrees with the prosecutor on a method of individualizing the criminality.

The guilty plea can be concluded for corruption crimes, with the criminality limits being below the maximum threshold for which this agreement can be concluded, namely 15 years.

Under these conditions, the accused person benefits from a one-third reduction in the criminality limits for imprisonment or a one-quarter reduction in the case of a fine, this benefit is the maximum the accused can obtain under this agreement.

Additionally, the accused person can admit to the acts of corruption during the trial stage in the first procedural cycle. This procedure is based on the evidence given during the criminal investigation, which was previously considered by the judge to have been legally and fairly administered and is not contested by the accused person.

This procedure follows the continental law models for regulating the trial in the hypothesis of admitting the accusation, where the abbreviation concerns the stage of judicial inquiry, which will be limited only to the administration of documentary evidence.

To benefit from this, the defendant must not be accused of committing a crime punishable by life imprisonment, must request the procedure personally or through an authentic document, and must personally, explicitly, and unequivocally declare before the start of the judicial inquiry that they admit the facts described in the indictment or in the preliminary chamber judge's order.

As in the case of the agreement concluded with the prosecutor, the substantial legal effect in the case of trial according to the abbreviated procedure is a one-third reduction in the criminality limits provided by law, both for the special minimum and the special maximum.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

SERBIA

Nenad Stankovic
Senior Partner
nenad.stankovic@nstlaw.rs
+381 11 334 96 02

Mitar Simonovic
Senior Associate
mitar.simonovic@nstlaw.rs
+381 60 334 9612

Luka Marosiuk
Senior Associate
luka.marosiuk@nstlaw.rs
+381 60 34 9605

Filip Grdinic
Junior Associate
filip.grdinic@nstlaw.rs
+381 60 334 96 20

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

As a civil law country, Serbia's legal framework for bribery and anti-corruption consists of ratified international conventions, as well as domestic regulations. The norms that regulate these matters are predominantly prescribed by laws and codes but are also spread across other general legal acts, such as by-laws of the Government and governmental bodies as sources of law. Serbia's anti-corruption legislation is extensive, as the rules regulating bribery and corruption are disbursed into a number of acts constituting sources of law. To list the main sources of law, Inter alia, these are the UN Convention against Corruption, the Criminal Law Convention on Corruption (and the additional protocol), the Civil Law Convention on Corruption, the Constitution of Serbia, the Law on Prevention of Corruption, the Law on Financing of Political Activities, the Law on Lobbying, the Criminal Code, Law on Liability of Legal Entities for Criminal Offenses, the Criminal Procedure Code, the Law on Organization and Jurisdiction of State Bodies in the Prevention of Organized Crime, Terrorism, and Corruption, the Law on Prevention of Money-Laundering and Terrorism Financing, the Law on Protection of Whistle-blowers, the Law on General Administrative Procedure, the Law on Misdemeanours, the Law on Determination of Origin of Asset and Special Tax, the Law on Confiscation of Property obtained from a Criminal Offense, and others.

1.2. Which international anti-corruption conventions apply?

Serbia is a member of the Council of Europe and is in negotiations for accession to the European Union (EU), as one of the nine current EU candidate countries. As such, it is a party to the main sources of international law, which have been ratified to represent a part of national legislation. However, it is still not a member of the European Union, thus the legislation of the European Union does not apply. According to the Constitution of the Republic of Serbia, ratified international treaties (just as generally accepted rules of international laws) constitute an integral part of the law of the Republic of Serbia and are directly applicable (with the condition that the confirmed international treaties must be in accordance with the constitution). International anti-corruption conventions that apply in Serbia (as ratified international treaties) are the UN Convention against Corruption, the Criminal Law Convention on Corruption (and the additional protocol), the Civil Law Convention on Corruption, the Agreement on the Establishment of the International Anti-corruption Academy as an International Organization, and the Memorandum of Understanding Concerning Cooperation in Fighting Corruption Through the South Eastern European Anti-Corruption Initiative.

1.3. What is the definition of bribery?

There is no direct and universal definition of bribery in Serbian law. The legislature provides for an indirectly derived definition of a "bribe," through the elements of the two primary anti-bribery and anti-corruption crimes prescribed by the Criminal Code, entitled "Taking of Bribe" and "Receiving a Bribe." Based on the contents of the legal norm that prescribes these crimes, a bribe is a gift, other benefits, or promise of gift or other benefits for oneself or another which is directly or indirectly requested or received by an official to perform, within its official authorities or in connection with its official authorities an official action which it should not have performed or to not perform an action which it had to perform.

The Law on Prevention of Corruption offers a more explicit definition of the term "corruption." In this piece of legislation, corruption is a relationship that is established by the use of an official or social position or influence for the purposes of acquiring unallowed benefits for oneself or another.

It is important to note that there are some sources of law that provide different definitions of corruption. For example, the Law on Health Protection defines corruption as a relationship that is established by the abuse of performance of healthcare activity, that is, affairs of healthcare, for the purpose of acquiring personal gain or gain for another.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Considering that all of the anti-bribery and anti-corruption sources of law regulating these matters (see Section 1.1.) pertain predominantly to the relations between the private and the public sector, private sector bribery is covered by law in the Serbian legal system. Serbian laws contain a wide range of established conflict-of-interest prevention and sanction norms for both private and public stakeholders.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

It is important to note that the different laws contain different definitions of the persons they apply to, depending on both their application rationae personae and the used term for the purposes of that law. Also, the scope of the specific terms for a public officer (in the broadest sense of that term) used throughout the legal framework differs (the terms are qualitatively and/or quantitatively broader or narrower).

The Law on Prevention of Corruption offers one of the broader definitions of a public official (or functionary) (in

Serbian: javni funkcioner), where that is "a public official is any elected, placed, or named person in the public authority body, except for persons which are representatives of private capital in management bodies of a company which is a public authority body." After some time passed since this law was introduced, the National Assembly of Serbia provided a binding authentic interpretation of this specific definition-containing provision. Thus, this provision was to be understood so that it applied to all persons who were directly elected by the citizens and persons who are elected, placed, or named by the National Assembly, the President of the Republic, the Supreme Cassation Court, the High Judiciary Council, State Council of Prosecutors, Government of the Republic of Serbia, assembly of the autonomous province, the government of an autonomous province and bodies of local self-governmental units. In turn, a public authority body (in Serbian: organ javne vlasti) in the sense of the same law, is a body of the Republic of Serbia, autonomous province, local self-governmental unit and city municipality, institutions, public enterprises, and other legal entities founded by or whose member is the Republic of Serbia, autonomous province, local self-governmental unit, and city municipality.

The definition of a foreign official person (in Serbian: strano sluzbeno lice) is determined by our Criminal Code. A foreign official person is any person who is a member, an official, or a public servant of a legislative or an executive body of a foreign state, a person who is a judge, juror, member, official, or a public servant of a foreign state court or an international court, a person who is a member, official, or a public servant of an international organization and its bodies, as well as a person who is an arbitrator in a foreign or international arbitration.

Employees at state-owned or state-controlled enterprises are not treated differently, but the definition of the subject of norms (as stated above) varies because persons who are representatives of private capital in management bodies of a company that is a public authority body are explicitly excluded from the definition.

1.6. Are there any regulations on political donations?

Yes, political donations are regulated in detail by a special piece of legislation – the Law on Financing of Political Activities, which regulates the sources of financing of political subjects.

According to the mentioned law, a contribution (in Serbian: prilog) is a monetary amount, besides membership fees, which a natural or a legal person voluntarily gives to a political subject, a gift, as well as services provided without compensation or under conditions which differ from market conditions.

1.7. Are there any defenses available?

There are no explicit and institutionalized defenses in particular proceedings. It goes along the standard line of having to lead parallel litigation and criminal proceedings if corruption is or was present. However, the laws provide legal remedies in criminal, civil, and administrative proceedings, and if corruption is doubted or proven, one of the options is the request for a retrial.

1.8. Is there an exemption for facilitation payments?

If considered stricto sensu, facilitation payments are not allowed. However, if taking into consideration protocolary (in Serbian: protokolarni) and conveniency (in Serbian: prigodan) gifts, these are explicitly allowed.

According to the Law on Prevention of Corruption, a protocolary gift is a gift that any public official (or functionary) or a member of the family has received from the representative of a foreign state, international organization, or a foreign natural or legal person during an official visit or other similar occasions. On the other hand, a conveniency gift is a gift that is received on occasions when it is traditional to exchange gifts, which become public property. However, exceptionally, the public official (functionary) can keep the gifts, if the value of these gifts does not exceed 10% of monthly earnings without taxes and contributions in the Republic of Serbia, so as that the gross value of all gifts that are kept does not exceed the amount of one average monthly earning during a calendar year.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

The solutions for criminal sanctions in cases of bribery are provided in the Criminal Code. As mentioned, giving and taking bribes are considered to be two individual and separate criminal offenses. The basic forms of both crimes are sanctioned by a prison sentence, but legally defined periods of time for the sanctions differ. The basic forms of giving and receiving a bribe are sanctioned by a minimum of two and a maximum of 12 years of imprisonment, that is, eight years imprisonment. As for the qualified form of the crime, the maximum sentence would be 15 years.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

The national bribery and corruption laws do not, as a rule, apply beyond national boundaries.

However, the Criminal Code, as the primary law regulating substantive criminal law in the Republic of Serbia, defines the majority of crimes, including giving and taking bribes. It stipulates that, under certain circumstances, the criminal legislation of the Republic of Serbia applies to the citizens of Serbia outside of the territory of Serbia who commit a crime, as well as to foreigners who commit a crime against Serbia or its citizens

outside of the territory of Serbia, both under the condition that this person is either found or extradited to Serbia.

Also, according to the Criminal Code, the criminal legislature of Serbia applies to foreigners who commit a crime outside of the territory of Serbia. This will apply if the crime is performed against a foreign country or against a foreigner under the laws of the country in which the crime is committed. An additional condition is that the prescribed sanction for the committed crime is imprisonment for the duration of five years or if a more grievous sanction than that can be adjudged, under the additional condition that the foreigner is found on the territory of Serbia and not extradited to the foreign country. As for the sentence, unless otherwise prescribed, the Serbian court deciding in this matter shall not adjudge a more grievous sanction than the sanction prescribed by the laws of the country in which the crime had been committed.

1.11. What are the limitation periods for bribery offenses?

The rules pertaining to the statute of limitations for bribery offenses do not differ from the regular legal regime for the statute of limitations prescribed for all other crimes and misdemeanors. However, the periods of time of the statute of limitations for bribery offenses differ and depend upon the prescribed sentence.

Serbian legislation recognizes two types of limitation periods: (a) limitations period for prosecution and limitation of execution of criminal sanctions; and (b) relative and absolute limitations period.

The statute of limitations for criminal prosecution implies that criminal proceedings can no longer be initiated after the expiration of the deadlines determined by law, i.e. that the proceedings cannot be continued (if already started) and it runs from the day the crime had been committed.

The statute of limitations for the execution of criminal sanctions implies that the imposed criminal sanctions cannot be executed, after the expiration of the legally prescribed deadlines, which runs from the day the judgments by which they were pronounced became final.

Both limitation periods are dependent upon the prescribed sentence (20 years – imprisonment over 15 years; 15 years – imprisonment over 10 years; 10 years – imprisonment over five years; five years – imprisonment over three years; three years – imprisonment over one year; two years – imprisonment under one year or monetary penalty). These constitute a relative limitation period.

The absolute limitation period expires in any case if double the amount of time of the relative limitation period expires.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

Serbia is in the process of harmonization of its legislation with the European Union. One of the primary goals of all the previous governments from 2010 until the present was the battle against corruption. The governments have proclaimed "zero tolerance" to all forms of corruption, especially systemic corruption. Serbia has previously enacted two main strategic documents: the National Strategy for Battle Against Corruption in the Republic of Serbia and the Action Plan for Implementation of the National Strategy for the Battle Against Corruption in the Republic of Serbia for the Period from 2013 until 2018, which was revised. Currently, Serbia is in the process of enaction the National Strategy for the Battle Against Corruption in the Republic of Serbia for the Period from 2023 until 2028. A working group for the drafting of the National Strategy for the Battle Against Corruption in the Republic of Serbia for the Period from 2023 until 2028 and its accompanying Action Plan was constituted by the decision of the Ministry of Justice of February 21, 2023. In August 2023, the Government of the Republic of Serbia published the official draft of the National Strategy for the Battle Against Corruption in the Republic of Serbia for the Period from 2023 until 2028, while the public debate took place in September 2023. At this moment, Serbia awaits the adoption of the new main strategic document. The administrative body founded by the referenced law – the Agency for Prevention of Corruption, has enacted the strategic plan for 2019-023, as well as a new strategic plan for 2023-2027 The most recent strategic document that was enacted on July 22, 2020, as part of the harmonization process and opening of Chapter 23 of EU Accession Negotiations, relates to the development of the judiciary system for the period of 2020-2025. The Law on Prevention of Corruption was enacted in 2019 and has been amended three times, with an authentic interpretation of the legislator, so no new major amendments or developments are expected.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Gifts that are protocolary and conveniency are allowed (see Section 1.8.).

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Yes, according to the Law on Prevention of Corruption, a protocolary gift is a gift that any public official (or functionary) or a member of the family receives from the representative of a foreign state, international organization, or a foreign natural or legal person during an official visit or other similar occasions, while a conveniency gift is a gift which is received in occasions in which it is traditional to exchange gifts, which become

public property.

The exception, inter alia, is the Law on Health Protection, which prescribes that the expressing of gratitude in the form of a gift of lesser value, that is promotional material and samples, which is not expressed in monies or securities and whose individual value does not exceed 5%, and gross value does not exceed the amount of one average monthly salary without taxes and contributions in the Republic of Serbia, is not considered corruption, conflict of interest, private interest, in accordance with the law.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

Public officials are allowed to receive gifts if the value of these gifts does not exceed 10% of monthly earnings without taxes and contributions in the Republic of Serbia, so as that the gross value of all gifts that are kept does not exceed the amount of one average monthly earnings during a calendar year. The value of a gift represents the market price of the gift on the day when it is offered or received. The basis for these limitations is the norms in the Law on Prevention of Corruption. The gifts have to be protocolary and/or conveniency gifts.

However, some laws provide for different and specific limitations on the value of gifts.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

In case of a possible trial for either a misdemeanor or criminal offense, an accused person can use all available approaches, which include denying actual giving, denying it is a misdemeanor/criminal deed, error in fact, error in law, etc.

There are no exceptions to the limitations. The only exception is that a public official and members of his/her family are entitled to keep a protocolary or conveniency gift, where the value does not exceed 10% of the average monthly salary without taxes and contributions in the Republic of Serbia, but so that the total value of retained gifts in one calendar year does not exceed average monthly salary without taxes and contributions in the Republic of Serbia (see Sections 1.8. and 2.2.).

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

There is no such obligation for companies under Serbian legislation.

3.2. Is there any official guidance on anti-corruption compliance?

There is no official guidance on anti-corruption compliance. For Serbia's legal framework on bribery and corruption please see Sections 1.1. and 1.2.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations? If an EU member, was the EU Directive on Whistleblowing implemented in your jurisdiction?

Whistleblowers reporting bribery and corruption are protected by the Law on Protection of Whistleblowers. Protection is specifically provided in the cases of any other disclosure of information on violations of regulations, violations of human rights, the exercise of public authority contrary to the purpose for which it was entrusted, danger to life, public health, safety, environment, as well as to prevent large-scale damage.

3.3.1. What can be reported?

Whistleblowers can disclose any information on violation of the above-listed regulations governing the matter of bribery and corruption,

3.3.2. Who is protected?

The protection provided by the Law on Protection of Whistleblowers encompasses whistleblowers, related persons, individuals that have been mistakenly considered as a whistleblower or related person, officials performing their duties providing information, as well as individuals seeking data related to information.

3.3.3. What are the conditions for protection?

Whistleblowers are entitled to protection under the Law on Protection of Whistleblowers if they conduct whistleblowing by their employer, an authorized body, or to the public in a legally prescribed manner. They must disclose the relevant information within one year of finding out about the conducted act which is the subject of whistleblowing, but no later than ten years from the date of the act. At the time of the disclosure, the information should be such that a person with average knowledge and experience, like the whistleblower, would have believed it to be true based on the available data.

Related persons are also entitled to protection if they can reasonably demonstrate that they have been subjected to detrimental actions due to their affiliation with the whistleblower. This ensures that those connected to whistleblowers are not unfairly penalized.

Additionally, individuals are protected if they can reasonably demonstrate that they have been subjected to detrimental actions because the perpetrator of the detrimental action, mistakenly believed it was a whistleblower or a related person.

This norm protects those who might be wrongly targeted due to a misidentification.

Officials performing their duties are entitled to protection if they provide information and can reasonably demonstrate that they have been subjected to detrimental actions as a result.

Individuals seeking data related to the disclosed information are protected if they can reasonably demonstrate that they have been subjected to detrimental actions due to their request for such data.

3.3.4.What companies does the relevant legislation apply to?

All legal entities are subject to the Law on Protection of Whistleblowers. The law defines the term employer (in Serbian: poslodavac) as a body of the Republic of Serbia, territorial autonomy or local self-government unit, a holder of public authorities or public service, a legal entity or entrepreneur who employs one or more persons.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Pursuant to the Law on Liability of Legal Entities for Criminal Offenses, a legal entity may be liable for criminal offenses from a special part of the Criminal Code and other laws, if the conditions for liability of a legal entity provided by this law are met. A legal entity is liable for a criminal offense committed by the responsible person within the scope of its activities or authorizations in order to obtain a benefit for the legal entity.

Liability of a legal entity also exists if, due to the lack of supervision or control by the responsible person, it is possible to commit a crime in favor of the legal entity by a natural person acting under the supervision and control of the responsible person.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

The Law on Liability of Legal Entities for Criminal Offenses prescribes the limitations of liability of a legal entity, stating that the responsibility of a legal entity depends on the guild of the responsible person. The law defines the responsible person as a natural person who is legally or de facto entrusted with a certain range of activities in a legal entity, as well as a person who is authorized, or who can be considered authorized to act on behalf of the legal entity.

4.3. Can a company be liable for the corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

Yes. Depending on the role of the company, that is, the role of the responsible person of the company, it could be the co-perpetrator, the instigator, or the accessory to the crime. The general regime applies.

4.4. What are the sanctions for the corporate criminal entity?

According to the Law on Liability of Legal Entities for Criminal Offenses, there are three types of sanctions: punishment, suspended sentence, and security measures. Penalties that may be imposed on a legal entity include a fine and the termination of the legal entity. The following security measures may be imposed for criminal offenses for which legal entities are responsible: prohibition to perform certain registered activities or jobs; confiscation of items; and public announcement of the judgment.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Based on the type, these offenses could be considered crimes or misdemeanors. Competent authorities vary based on these types. It is important to note that Serbia has a special department of the Higher Public Prosecutor's Office, which specializes in the suppression of corruption. For the most serious and organized crimes, there is a special prosecutor for organized crime a court dealing solely with these cases, and a special department of the Higher Court in Belgrade. This prosecutor and department of court have jurisdiction in a case when a defendant, i.e. the person to whom the bribe is given, is an official or responsible person performing a public function based on the appointment by the National Assembly, the President of the Republic, the Government, a general session of the Supreme Court of Cassation, the High Judicial Council, or the State Prosecutorial Council and so-called grievous corruption, referring to criminal acts involving corruption where the value of the acquired property benefits exceeds RSD 200 million (approximately EUR 1.7 million).

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

There is an obligation for public officials to inform the public authority in writing about any gift they have received in connection with the performance of a public function, within 10 days from the day the gift is received. Failure to act in accordance with this obligation represents a misdemeanor. In case a public official does not report the crime or a person who committed the crime of giving bribes during the elections, that will constitute a criminal offense.

5.3. Is there any civil or administrative enforcement against corruption crimes?

There are both civil and administrative bodies. The Anti-Corruption Council is an expert advisory body of the Government of Serbia, while there is also an administrative body Anti-Corruption Agency (APC). The APC has preventive, control, and oversight competencies, i.e. verification of assets of public officials, control of financing of political activities, resolving conflict of interest and incompatibility of public offices, monitoring of the implementation of the national anti-corruption strategic documents, corruption risk assessment in legislation, monitoring of adoption and implementation of the integrity plans, conducting ethics and integrity training, cooperation with all relevant international anti-corruption stakeholders, cooperation with national stakeholders, including civil society organizations, etc.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

Authorities have the right to gather information by standard evidence-gathering techniques, such as interviews with perpetrators and witnesses, on-site investigation, expertise, etc. The Criminal Procedure Code especially states that in the case of bribery (as well as for some other designated crimes that the legislator finds especially dangerous and important), the authorities have special powers to collect evidence, notably: secret surveillance of communication, secret recording, simulated acts, undercover investigations.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

There is an option to come forward, i.e. leniency, but only prior to the discovery of bribery by an official. The perpetrator of the bribery, who reported the crime before he/she realized that it was discovered, may be released from punishment.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

A person can plea bargain in a corruption case. The plea bargain may be concluded by the public prosecutor and the defendants and it has to be approved by a judge. In the case of a plea bargain, a person must be represented by a lawyer. A plea bargain must have elements specified in the Criminal Procedure Code, as well as optional elements. The pre-trial judge decides on the plea agreement at a hearing closed off to the public, and if the plea agreement is submitted to the court after the indictment is confirmed, the presiding judge. The pre-trial/presiding judge can dismiss, uphold, or reject the proposed plea bargain.

ŠELIH & PARTNERJI

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

SLOVENIA

Alen Savic
Partner
alen.savic@selih.si
+386 40 643 025

Eva Novak
Associate
eva.novak@selih.si
+386 51 367 457

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

The main legal framework governing bribery and corruption in Slovenia consists of the following laws:

- the Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia, no. 69/11; as amended) (ZIntPK) which, in order to strengthen the functioning of the rule of law, determines measures and methods for strengthening integrity and transparency, for preventing corruption and preventing and eliminating conflicts of interest;

- the Criminal Code (Official Gazette of the Republic of Slovenia, no. 50/12; as amended) (KZ-1) which provides for criminal liability for criminal offenses, including bribery, corruption, and other corruption-related criminal offenses. It codifies eight corruption-related criminal offenses, of which some are related to specific circumstances, namely:

  o the criminal offense of unauthorized acceptance of gifts (Art. 241);

  o the criminal offense of unauthorized giving of gifts (Art. 242);

  o the criminal offense of acceptance of a bribe (Art. 261);

  o the criminal offense of giving a bribe (Art. 262);

  o the criminal offense of accepting benefits for illegal intervention (Art. 263);

  o the criminal offense of giving gifts for illegal intervention (Art. 264);

  o the criminal offense of acceptance of bribe during the election/ballot (Art. 157);

  o the criminal offense of obstruction of the voter's freedom of choice (Art. 151).

- the Liability of Legal Persons for Criminal Offenses Act (Official Gazette of the Republic of Slovenia, no. 98/04; as amended) ("ZOPOKD") which determines the conditions for criminal liability of legal entities, penalties, warning sanctions or safety measures, and the legal consequences of conviction of legal entities;

- the Rules on restrictions and duties of officials as regards acceptance of gifts (Official Gazette of the Republic of Slovenia, no. 106/21; as amended) which regulates the manner of disposal of gifts, the value of gifts, management, and the content of the list of gifts received by public officials or their family members in connection with the performance of a function, work, or public service, or in connection with their position, as well as other implementation issues related to prohibitions, restrictions, and duties of public officials in accepting gifts;

- the Resolution on the prevention of corruption in the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 85/04) of which purpose is to create a reasonably high level of anti-corruption culture on a personal and general social level;

- the Guidelines for the development, establishment and implementation of integrity plans of which purpose is aimed at strengthening the integrity of the public sector and the rule of law.

1.2. Which international anti-corruption conventions apply?

In Slovenia, the following international anti-corruption conventions (as ratified international instruments) apply:

- the United Nations Convention against Corruption (UNCAC);

- the Criminal Law Convention on Corruption (CETS 173) with the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191);

- the Civil Law Convention on Corruption (CETS 174);

- the Convention against Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention);

- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;

- the Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.

Furthermore, Slovenia is also bound by obligations regarding bribery and corruption arising from its membership in the United Nations, European Union, Council of Europe (and GRECO), and OECD.

1.3. What is the definition of bribery?

In the Slovenian legal system, bribery is not defined in any of the abovementioned legal instruments. When describing the criminal offenses of bribery and bribery-related criminal offenses (Articles 241, 242, 261, and 262 of the KZ-1), the KZ-1 specifies this term in more detail as "gratuity, gift or other benefit or promise".

However, the ZIntPK defines corruption as a broader concept and includes other legal areas in addition to the scope of criminal law. The ZIntPK defines corruption as "any violation of the duty of official and responsible persons in the public or private sector, as well as the conduct of persons who are

the initiators of violations, or persons who can benefit from the violation, due to directly or indirectly promised, offered, requested, accepted or expected benefits for oneself or another." The concept of corruption is limited only to actions that constitute a (successful) attempt to impermissibly influence the decision-maker. In this respect, corruption is mostly equated with bribery. The essential element of acts of corruption is accepting and giving a bribe for future (illegal) conduct. Corruption leads to decisions being made under the influence of circumstances that do not arise from the actual situation or from applicable law but are dictated in particular by the promise of direct or indirect material or immaterial benefits.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Yes. The main law governing bribery in the private sector is the KZ-1, namely Articles 241 (unauthorized acceptance of gifts) and 242 (unauthorized giving of gifts):

- Paragraph one of Article 241 (unauthorized acceptance of gifts) stipulates that "Whoever, in the course of carrying out a commercial activity, requests or accepts for himself/herself (hereinafter referred to as himself) or for another an unauthorized gratuity, gift or other benefit, or a promise or offer of such a benefit, so as to neglect the interests of, or cause damage to, his organization or another natural person, for the purpose of obtaining or retaining business or any other unauthorized benefit, shall be liable to imprisonment for a term of between six months and six years and to a pecuniary fine." Paragraph two of Article 241 stipulates that "The perpetrator of a criminal offense referred to in the preceding paragraph who requests or accepts an unauthorized gratuity, gift or other benefits, or a promise or offer of such a benefit, for himself or for another, as a quid pro quo for the purpose of obtaining or retaining a business or other benefit, shall be liable to imprisonment for a term of between three months and five years and to a pecuniary fine," whereby paragraph three of said article further stipulates that "The perpetrator who, after concluding a transaction or performing a service or obtaining any other unauthorized benefit, requests or accepts for himself or for another an unauthorized gratuity, gift or any other benefit, shall be liable to imprisonment for a term not exceeding four years and to a pecuniary fine."

- Paragraph one of Article 242 (unauthorized giving of gifts) stipulates that "Whoever promises, offers or gives an unauthorized gratuity, gift or other benefit to a person carrying on a commercial activity for the purpose of obtaining for himself or for another any undue advantage in obtaining or retaining business or any other unlawful advantage referred to in paragraph one of Article 241, shall be punished by imprisonment for a term of between six months and six years and a pecuniary fine." Paragraph two of Article 242 stipulates that "Whoever promises, offers or gives to a person carrying on a commercial activity an unauthorized gratuity, gift or other benefit for him or for someone else in return for obtaining or retaining a business or other benefit, shall be punished by imprisonment for a term not exceeding four years and a pecuniary fine."

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

Slovenian criminal law doctrine distinguishes between domestic and foreign public officials. Both are defined in Article 99 of the KZ-1. The distinction depends on whether the person has a position or performs tasks in the Republic of Slovenia (a domestic public official) or in a foreign country or international organization (a foreign public official).

A domestic public official is broadly defined as:

(1) a member of the National Assembly (drzavni zbor), a member of the National Council (drzavni svet), or a member of a local or provincial representative body;

(2) a judge, juror, public prosecutor, or state attorney;

(3) a person who performs official duties or holds an official position with managerial powers and responsibilities in a state authority or self-governing local authority or other public law body;

(4) a person who performs individual official duties on the basis of the powers granted by law, by regulations issued on the basis of the law (public authority), or by arbitration agreement concluded on the basis of the law;

(5) a military person, who is defined as such by special regulations, but when it comes to special criminal offenses in which an official person is mentioned, whereby they are not defined as criminal offenses against military duty.

A foreign public official is defined as:

(1) a person who, at any level, performs a legislative, executive, or judicial function or other official duty in a foreign country and in terms of content fulfills the conditions from points 1, 2, or 3 of the definition of a domestic public official;

(2) a person recognized as an official within an international public organization;

(3) a person who performs a judicial, prosecutorial, or other official function or duty with an international court.

Employees at state-owned or state-controlled enterprises are not considered to be public officials as they do not meet the criteria for public officials. In terms of criminal law, such

persons are not treated any differently than employees in the private sector when it comes to bribery and anti-corruption.

In addition to public officials, KZ-1 also uses the term "public employee." However, "public employee" is defined in the Public Employees Act (Official Gazette of the Republic of Slovenia, no. 63/07; as amended) and covers "individuals who enter into an employment agreement in the public sector." The Public Employees Act explicitly excludes from the definition of a public employee "public undertakings and companies in which the State or a local authority holds a majority share or has a dominant influence," as these are not part of the public sector.

There are no official lists of public officials, however, whether a person is a public official could potentially be checked by reviewing the publicly available data of the body/authority in question (e.g., by reviewing the website of the National Assembly, of the courts, etc.).

Furthermore, the Slovenian Commission for the Prevention of Corruption (KPK) operates the Erar application/website, which, by publicly displaying the flow of money between the public and private sectors, contributes to more accountable actions by public officials to ensure the efficient and effective use of public funds, allows for a reasoned debate on the investments adopted and planned, and reduces the risks of mismanagement, abuse of power and, above all, systemic corruption, unfair competition, and clientelism.

Further to the above, the Slovenian State Holding (SDH) as the manager of Slovenia's capital investments regularly updates the list of direct investments (companies owned by the Republic of Slovenia or SDH) on its website.

1.6. Are there any regulations on political donations?

Political donations are regulated in the Political Parties Act (Official Gazette of the Republic of Slovenia, no. 100/05; as amended). In this respect, Article 21 provides that a political party acquires funds, among other things, also through donations/contributions from natural persons. A political party may raise funds from contributions from citizens of Member States of the EU who have permanent or temporary residence in the Republic of Slovenia and other foreigners who are recognized by law in the Republic of Slovenia as having the right to vote in local elections, under the conditions and in the manner applicable to domestic natural persons under this act.

According to the law, a donation/contribution to a party is, in addition to a monetary contribution, also any gift or other non-monetary contribution, free service for the party, acceptance of the party's obligations, or the provision of services for the party, or the sale of goods to the party under conditions that put the party in a more favorable position than other service users or other buyers of these goods. The contributions of each natural person may not exceed, in the aggregate amount for the year for which the annual report of the party is made, 10 times the average gross monthly salary per worker in the Republic of Slovenia.

Political parties are obliged to provide information on natural persons in their annual reports when they make donations totaling more than the average gross monthly salary.

The Court of Audit (Racunsko sodisce) is responsible for monitoring the implementation of these provisions. The fines for infringements range from EUR 2,100 to EUR 10,500 for political parties, from EUR 600 to EUR 1,200 for natural persons, from EUR 450 to EUR 900 for the responsible person of a party, from EUR 3,000 to EUR 15,000 for a legal person making a contribution to a party, and from EUR 1,500 to EUR 4,000 for the responsible person of a legal person. In the event of serious infringements, the funding of a party may also be suspended for a period of one year.

1.7. Are there any defenses available?

For corruption-related criminal offenses, Slovenian law does not provide for any special defenses, except those that are in general available in criminal proceedings for all suspected or accused persons. Certain leniencies are, however, allowed in Slovenian criminal law – for more details please see Sections 5.5. and 5.6.

1.8. Is there an exemption for facilitation payments?

As a general rule, all forms of bribery/corruption, including facilitation payments, are prohibited in Slovenia. According to Slovenian criminal law, a bribe is any benefit to which the recipient of the benefit has no legal claim and which objectively improves his or her economic, legal, or even just personal position. Material benefits in the sense of a bribe include any material improvement in the position of the recipient of the benefit. In addition to money and valuable objects, material benefits include giving objects for use, granting of rebates, and other benefits, granting of loans, forgiveness, deferral, reduction, or non-payment of debts, the provision of services or execution of works, etc. In addition to material benefits, immaterial benefits are also prohibited (e.g., invitations to lectures, receptions, etc., which can then also be intertwined with material benefits).

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

According to the KZ-1, the penalty for individuals depends on the sanction prescribed for each individual criminal offense. The prison sentence for corruption-related criminal offenses is prescribed in the range of up to eight years (it may vary depending on the type of criminal offense) while the amount

of pecuniary fine is not determined in advance but is calculated on the basis of the perpetrator's income, the value of his property, the average costs of his living, and obligations to his family. In any event, an award, a gift, or any other benefit given or received is always forfeited. There are several other sanctions that could be imposed on the perpetrator (in addition to or instead of, depending on the sanction and the crime): deportation, court warning, prohibition from practicing a profession, house arrest, and community service.

Furthermore, monetary fines for violations of the ZIntPK can amount to up to EUR 1,200 (for an individual) or up to EUR 4,000 (for a responsible person), depending on the type of violation.

In the field of civil law:

- ZIntPK expressly stipulates that a contract in which a promise, offer, or an unauthorized advantage is made, in the name of or on behalf of another party to the contract, to a representative or agent of a public sector body or organization, for (i) obtaining a business, (ii) concluding a deal under more favorable conditions, (iii) failing to supervise the performance of contractual obligations, or (iv) other conduct or omission that causes damage to a body or organization from the public sector or makes it possible to obtain an unauthorized benefit (anti-corruption clause), shall be null and void. Public sector bodies and organizations shall be obliged to include the anti-corruption clause as a compulsory component of contracts with a value exceeding EUR 10,000 (excluding VAT) concluded with tenderers, sellers of goods, services, or contractors of works, taking into account the specific case. This provision shall also apply to the conclusion of contracts with suppliers, vendors, or contractors of works or services outside the territory of the Republic of Slovenia.

- The Slovenian Obligations Code (Official Gazette of the Republic of Slovenia, no. 97/07; as amended) (OZ) regulates liability and compensation for damages. Such damage may also be caused by acts of corruption or bribery. In addition to that, OZ also regulates the employer's liability for damage caused by an employee at work or in connection with work to a third party, and the right to claim compensation directly from the employee if the employee caused the damage intentionally. This could be relevant in the case of corrupt practices. Furthermore, the Slovenian Criminal Procedure Act (Official Gazette of the Republic of Slovenia – no. 176/21, as amended) (ZKP) also enables the injured party to file their claim for compensation during the criminal proceedings. The claim can thus be made either in criminal proceedings or in a separate civil procedure before the competent civil court.

- According to the ZIntPK, whistleblowers have the right to compensation in the event of a report of corrupt behavior and subsequent retaliatory measures are taken by the employer. For more details, please see Section 3.3.

Further to the above, one of the reasons for termination of the employment agreement is also if the employee violates a contractual or other obligation from the employment relationship and the violation constitutes a criminal offense. This could also be relevant in the case of corrupt practices.

1.10. Does the national bribery and corruption law apply beyond national boundaries?

Yes. The KZ-1 applies (i) to anyone who commits a criminal offense on the territory of the Republic of Slovenia, (ii) to a foreigner who commits a criminal offense outside the Republic of Slovenia against the Republic of Slovenia or against a national of the Republic of Slovenia, (iii) to a foreigner who commits a criminal offense against a foreign state or against a foreigner abroad, if they are caught on the territory of the Republic of Slovenia but are not extradited to a foreign state, and (iv) to anyone who commits any criminal offense abroad which, under international treaties or under general principles of law recognized by the international community, is prosecutable in all countries, irrespective of where it was committed (provided that permission to prosecute is given by the Slovenian Minister of Justice).

1.11. What are the limitation periods for bribery offenses?

The KZ-1 provides for two types of limitation, namely (i) the limitation of criminal prosecution (which extinguishes the right of the state to prosecute an individual or to enforce criminal liability against an individual) and (ii) the limitation of enforcement of a criminal sanction (which extinguishes the right of the state to enforce a criminal sanction that has been finally imposed on an individual). The limitation period is generally determined by the upper limit of the penalty of imprisonment for the criminal offense. The limitation periods for bribery offenses vary from six to 20 years, depending on the criminal offense.

For legal entities, the enforcement of a criminal sanction shall be time-barred within a certain period of time after the judgment imposing the sentence has become final, namely:

- three years in the case of the enforcement of a pecuniary fine;

- five years in the case of execution of confiscation of property, liquidation of the company, or prohibition of disposal of securities.

In civil law, if the damage was caused by an act that was influenced directly or indirectly by offering, giving, accepting, or demanding a bribe or any other benefit or the promise thereof, or by failing to act to prevent an act of corruption, or by another act that according to the law or an international

treaty means corruption, the claim shall be time-barred to five years from the time when the injured party became aware of the damage and of the person who caused it, but in any event within 15 years from the time when the act was committed.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

One of the last major changes to corruption legislation was in October 2020, when the Act Amending the Integrity and Prevention of Corruption Act (ZIntPK-C; Official Gazette of the Republic of Slovenia, no. 158/20) was adopted. The latter was however amended in February 2023, when the new legislation on whistleblowers, Reporting Persons Protection Act (Official Gazette of the Republic of Slovenia, no. 16/23) (ZZPri) was adopted. To our knowledge, there are no planned amendments or developments to the national bribery and corruption laws in the foreseeable future. However, since financial crimes are considered a threat to society and given that there is a noticeable trend in the prosecution of criminal offenses in the field of finance in recent years, it is expected that special focus will be put on bribery and corruption-related criminal offenses in the future, both prosecution-wise and legislative-wise.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

As a general rule, the ZIntPK provides that public officials (or their family members) may not accept gifts or other benefits in connection with the performance of their function or public service, or in connection with their position. The ZIntPK provides an exception to when accepting a gift is permitted in the case of:

(i) "protocol gifts" – i.e., gifts given by foreign or domestic legal or natural persons at work events, which, regardless of their value, become the property of the employer of this official person;

(ii) "occasional gifts of lesser value" – i.e., gifts that are traditionally or usually given at certain events (cultural, celebratory, completion of education, training, holidays, etc.) or when performing diplomatic activities and whose value must not exceed EUR 100 (regardless of the form of the gift and the number of donors of a single gift).

If the gift does not represent a gift under (i) or (ii), a public official (or their family member) is obliged to warn the donor of the prohibition on accepting gifts and to refuse the gift offered. If the donor insists on the gift, the public official or their family member shall be obliged to hand over the gift to the public official's employer.

Furthermore, the ZIntPK expressly stipulates that under no circumstances a public official or a member of their family may accept a gift:

- if the delivery or acceptance of such a gift would constitute a criminal offense;

- if this is prohibited by another law or regulations issued on its basis;

- if money, securities, gift certificates, and precious metals are given as a gift;

- if the acceptance of the gift would affect or create the appearance of having an effect on the impartial and objective performance of the public official's duties.

Gifts exceeding 50 EUR in value shall be entered in the list of gifts. For this purpose, the KPK operates the Erar application/website and maintains a list of received gifts, which contains information on the type of the gift and its estimated value, the donor, and other circumstances of the gift. Supervision over reporting is carried out by the KPK which may also issue fines in case of violations.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

As for the public sector, please see Section 2.1.

As for the private sector, there is no such guidance.

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases?

Yes, these limitations are expressly defined in the ZintPK and the Rules on restrictions and duties of officials as regards acceptance of gifts – for more details please see Section 2.1.

2.4. Are there any defenses or exceptions to the limitations (e.g., reasonable promotional expenses)?

Provided that the legal framework outlined above (please see Section 2.1.) and the circumstances of the individual case are taken into account, such a defense is possible. Namely, the Rules on restrictions and duties of officials as regards acceptance of gifts expressly stipulate that:

- A gift of symbolic meaning, which is traditionally given at certain events (plaques, badges, flags, promotional material, and other items of a similar nature) is not considered a gift in connection with the performance of work;

- when the predominant purpose of the gift is its commemorative, historical, or suitable symbolic value (e.g., medals or commemorative and collector coins issued by the central bank or other similar institutions), taking into account the legal prohibitions and restrictions for prohibited gifts in the form of money, securities, or precious coins, such a gift is not considered a gift.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

There are no specific provisions in national law that oblige companies in the private sector to have anti-corruption compliance procedures in place. However, the implementation of a compliance program to prevent bribery could be useful as one element of defense and the court may consider it as a mitigating circumstance when determining the sanction (within the statutory limits).

As regards the public sector, according to the ZintPK, only state authorities, self-governing local communities, public agencies, public institutions, and public funds must formulate and adopt an integrity plan and inform the KPK thereof. The integrity plan is a strategic, development, and operational process that assesses exposure to integrity violations and corruption risks, identifies risk factors for corrupt and other illegal and unethical practices, and defines measures to manage these risks. It contains (i) an assessment of the institution's corruption exposure, (ii) personal names and positions of persons responsible for the integrity plan, (iii) a description of the areas and method of decision-making with an assessment of exposure to the risk of corruption and suggestions for improving integrity, (iv) measures for the timely detection, prevention and elimination of corruption risks, and (v) other parts of the plan, as defined in the guidelines of the ZintPK.

3.2. Is there any official guidance on anti-corruption compliance?

Yes, namely Guidelines for the development, establishment and implementation of integrity. These guidelines determine the creation and implementation of an integrity plan and a system for monitoring the implementation of the integrity plan and its evaluation.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations?

Yes. According to Article 23 of the ZintPK, anyone may report to the KPK or any other competent authority a corrupt practice in a state authority, local authority, holder of the public authority, or other legal person governed by public or private law, or the conduct of a natural person which they believe to be indicative of corruption. Without a court decision, the identity of a person who has reported a corrupt practice in good faith, or who has reasonable grounds for believing that the information provided in connection with their report is true, may not be established or disclosed.

Furthermore, if the conditions for the protection of the whistleblower or their family members under the Witness Protection Act (Official Gazette of the Republic of Slovenia, no. 81/06; as amended) are fulfilled in relation to a corruption report, the KPK may submit to the Commission for the Protection of Persons at Risk a proposal for the inclusion of the whistleblower in the protection program or an initiative to the Supreme State Prosecutor for the implementation of urgent protection measures.

At the EU level, Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of whistleblowers was adopted on October 23, 2019, requiring EU Member States to adopt an appropriate legislative framework by December 2021 to ensure that all organizations with more than 250 employees and all municipalities with more than 10,000 inhabitants have appropriate reporting mechanisms in place. Such requirements would later also apply to all companies with more than 50 employees.

At the national level, ZZPri, which transposes Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of whistleblowers into the Slovenian legal order, entered into force on February 22, 2023. In order to protect the public interest, ZZPri establishes the methods and procedures for reporting and dealing with breaches of legislation/regulations that come to the attention of individuals in the workplace, and for protecting individuals who report or publicly disclose information about such breaches. ZZPri also sets out the powers of the KPK and the safeguards and support measures to prevent or eliminate retaliation.

To encourage whistleblowing under ZZPri, a key measure is to protect the whistleblower's identity. This ensures they are not exposed to retaliation. ZZPri establishes the conditions under which a whistleblower is entitled to protection. Under ZZPri, a whistleblower is entitled to protection if they had reasonable grounds to believe that the information they reported about a breach was true at the time of the report. Additionally, the whistleblower must have made an internal or external report, or publicly disclosed information about the breach, in accordance with ZZPri guidelines. In such an event, no one may disclose the identity of the whistleblower to anyone other than the Confidant and the External Reporting Body without the whistleblower's express consent. The same applies to any other information that could directly or indirectly reveal the identity of the whistleblower. However, the identity of the whistleblower and other information may be disclosed when requested to do so by a public prosecutor, if strictly necessary for the investigation of criminal offenses, or by a court, if necessary for legal proceedings, including legal proceedings for the protection of the right of the person concerned by the report.

ZZPri requires organizations to establish an internal reporting channel for infringements. All private and public sector entities with 50 or more employees are obliged to set up an internal reporting channel. However, public and private sector entities

carrying out activities in the field of environment and health with 10 or more employees are also subject to the obligation. Among the obliged entities, there is also a set of public authorities that are obliged to set up an internal reporting channel, regardless of the number of employees. Establishing a whistleblowing channel within the organization includes appointing a confidant, defining the address for the receipt of the report, and adopting an internal act describing the specifics of the handling of the report so that the identity of the whistleblower is not. The internal whistleblowing channel in the organization must be organized in such a way that no one other than the confidant is aware of the identity of the whistleblower.

In addition, ZZPri sets up an external reporting channel. If the internal reporting channel is not in place, is ineffective or if the whistleblower considers that there is a risk of retaliation in case of an internal report, the whistleblower shall report the infringement directly using the external reporting channel. ZZPri enumerates 24 authorities to which an external report may be submitted.

ZZPri provides for a range of protective measures. Besides prohibiting the disclosure of the whistleblower's identity and confidentiality, the whistleblower has the possibility to invoke judicial protection. ZZPri also envisages psychological support to the applicant within a mental health center or other appropriate clinic. The whistleblower also has access to KPK, which can assist them with various measures or provide advice.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Yes, a legal entity may be subject to criminal liability for bribery and corruption. ZOPOKD explicitly defines a list of criminal offenses for which a legal entity can be held criminally liable. Criminal offenses of bribery and corruption are included on this list.

According to the ZOPOKD, a legal person may be held criminally liable for a criminal offense if the perpetrator acted on behalf of, for the account of, or for the benefit of a legal person and:

- the committed criminal offense means the execution of an unlawful resolution, order, or approval of the management or supervisory bodies;

- the management or a supervisory body influenced the perpetrator or enabled them to commit the criminal offense;

- the legal entity acquired unlawful material gain or the objects created through the criminal offense; or

- the management or supervisory body failed to duly supervise the legality of the conduct of its subordinate employees.

The criminal liability of legal entities for criminal offenses is partially accessory, meaning that a legal entity is criminally liable for its contribution to a criminal offense, whereby for its criminal liability, it is not necessary for the perpetrator to also be found guilty. It is sufficient that the perpetrator has objectively fulfilled the legal elements of a criminal offense with their conduct.

Domestic and foreign legal entities are criminally liable for (i) criminal offenses committed on the territory of the Republic of Slovenia and (ii) criminal offenses committed abroad, if the legal entity has its seat on the territory of the Republic of Slovenia or carries out its activity there, and the criminal offense was committed against the Republic of Slovenia, its citizens, or a domestic legal entity.

Furthermore, in certain cases, a domestic legal entity may also be criminally liable for a criminal offense committed abroad against a foreign country, a foreign citizen, or a foreign legal entity.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

There are no provisions in the Slovenian criminal law prescribing the liability of the company for a bribery offense committed by an entity controlled or owned by it.

4.3. Can a company be liable for the corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

Yes. A legal entity can be criminally liable for a criminal offense regardless of the legal relationship between the perpetrator and the legal entity, provided that all criteria for the criminal liability of this legal entity are established (for more details on the criteria please see Section 4.1.). This means that a legal entity can also be criminally liable for the corrupt actions of a third-party agent.

There are no specific provisions in national law that would mitigate this criminal liability of a legal person. However, implementation of a compliance program to prevent bribery could be useful as one element of defense (in assessing whether the management or supervisory bodies of the legal entity have exercised due supervision of the actions of employees and third-party agents) and the court may consider it as a mitigating circumstance when determining the sanction (within the statutory limits).

4.4. What are the sanctions for the corporate criminal entity?

Sanctions for legal entities are stipulated in the ZOPOKD and depend on the prescribed prison sentence for the individual perpetrator according to the KZ-1. For corruption-related criminal offenses, the following sanctions may be imposed on a legal entity:

- for criminal offenses for which a penalty of up to three years of imprisonment is prescribed for the perpetrator, a pecuniary fine of up to EUR 500,000, or up to a maximum of 100 times the amount of damage caused or unlawful material gain obtained through the criminal offense;

- for criminal offenses for which a penalty of over three years of imprisonment is prescribed for the perpetrator, a pecuniary fine of a minimum EUR 50,000, or up to a maximum of 200 times the amount of damage caused or unlawful material gain obtained through the criminal offense;

- for criminal offenses for which a penalty of five years imprisonment (or more) is prescribed for the perpetrator, confiscation of property may be imposed instead of a pecuniary fine.

In general, a pecuniary fine may not be lower than EUR 10,000 and not higher than EUR 1 million. If the criminal offense caused damage to a third party or if a legal entity obtained unlawful material gain, a pecuniary fine may amount to a maximum of 200 times such damages or material gain. The imposed pecuniary fine also depends on the economic power of the legal entity.

If special conditions from the ZOPOKD are met, the court may also impose the liquidation of the respective legal entity, forfeiture, and/or prohibition of disposal of the securities that it holds. The court may also impose a security measure prohibiting a legal entity from performing a business activity.

Furthermore, if a legal entity is found criminally liable, sanctions under the Public Procurement Act (Official Gazette of the Republic of Slovenia, no. 91/15, as amended) (ZJN-3) could also be imposed upon such a legal entity. Namely, in accordance with the ZJN-3, the contracting authority shall exclude a legal entity from participation in the public procurement procedure for a period of five years if it finds that a final judgment that has elements of bribery or corruption-related criminal offenses has been rendered upon such a legal entity. However, a legal entity may provide evidence to the contracting authority that it has taken sufficient measures to demonstrate its reliability despite the existence of grounds for exclusion. Upon demonstration of the measures, the contracting authority may decide whether to exclude the company from the public procurement procedure or not.

Companies convicted of bribery offenses may also face exclusion from public procurement procedures under Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Corruption crimes may be investigated by the police and/or the National Bureau of Investigation (Nacionalni preiskovalni urad) (NPU) as part of the criminal police and as a specialized criminal investigation unit at the national level for the detection and investigation of serious criminal offenses, especially economic and financial crime, and corruption.

Corruption crimes may then be prosecuted by the state prosecutor's office. However, a Specialized State Prosecutor's Office (SDT) was established to prosecute the most complex crimes which require special organization and capacity of prosecutors and the highest level of efficiency. Among other criminal offenses, the SDT is responsible for prosecuting perpetrators of corruption-related criminal offenses.

Furthermore, in individual cases of complex criminal offenses, in particular in the fields of, inter alia, corruption which require prolonged, targeted action of several bodies and institutions from the field of prevention of corruption, the head of the competent public prosecutor's office may, ex officio or on a written initiative of the police, establish a specialized investigation team with the heads of the individual bodies and institutions from the field of prevention of corruption (KPK). The specialized investigation team shall be headed and directed by the competent public prosecutor and its members shall be appointed by the heads of the authorities and institutions from the field of prevention of corruption (KPK). Upon an order or with the prior consent of the public prosecutor, a member of the specialized investigation team may be present or may advise the public prosecutor in the performance of particular investigative acts.

In cases where the prosecution does not initiate (or does not intend to continue) criminal prosecution (for various reasons), instead of the state prosecutor, the prosecution may be initiated (or continued) by the injured party as a prosecutor (i.e., subsidiary prosecutor).

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

According to Article 146 of the ZKP, all state authorities and organizations shall be obliged to report criminal offenses for which the perpetrator is being prosecuted ex officio if they are informed of them or if they otherwise become aware of them. By failing to fulfill this duty, an official may, in the case of a criminal offense punishable by law by a term of imprisonment exceeding three years, commit the criminal offense of failing to report the criminal offense or the offender (Article 281 of the KZ-1).

Furthermore, the law specifically obliges state authorities and public authority holders to provide known evidence and to protect the traces and objects of the crime. However, this provision (as well as the provision demanding state authorities to report criminal offenses punishable by law by a term of imprisonment of up to three years, provided that the perpetrator may be prosecuted ex officio) is lex imperfecta as there is no sanction for non-compliance with it unless it is such a deliberate act by a public official which could constitute the criminal offense of aiding the perpetrator after the commission of a crime (Article 282 of the KZ-1) or the criminal offense of preventing the taking of evidence (Article 285 of the KZ-1).

Private legal and natural persons are obliged to report a criminal offense only if the sentence prescribed for the particular criminal offense is a minimum of 15 years. Therefore, given that the sentences prescribed for bribery and corruption cases are lower than 15 years, such legal obligation for bribery and corruption-related criminal offenses is only prescribed for public officials.

Namely, a public official who knowingly omits to report a criminal offense of which they become aware in the course of their duties, where the law prescribes a sentence of three or more years of imprisonment and the perpetrator is prosecuted ex officio, shall be liable to a term of imprisonment of up to three years for the criminal offense of omitting to report the criminal offense.

The perpetrator, however, is not obliged to report the crime they committed or to uncover any facts or give any evidence, as such an obligation would be contrary to the privilege against self-incrimination.

5.3. Is there any civil or administrative enforcement against corruption crimes?

Under Slovenian law, there is no special civil or administrative enforcement against corruption crimes. However, it can result in civil liability for damages, employee responsibility, or disciplinary responsibility. For more details on this please see Section 1.9.

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

The police and the state prosecutor's office work together to detect criminal offenses and their perpetrators. In general, if there are grounds for suspecting that a criminal offense has been committed for which the perpetrator is being prosecuted ex officio, the police must take all necessary steps to trace the perpetrator of the criminal offense, to ensure that the perpetrator or the person involved does not hide or escape, to discover and secure traces of the criminal offense and objects that may constitute evidence, and to gather any information that may be useful for the successful conduct of the criminal proceedings. For this purpose, the police may request the necessary information from persons; make the necessary searches of means of transport, passengers, and luggage; restrict movement in a particular area for a necessary period of time; take the necessary measures in connection with establishing the identity of persons and objects; issue a search warrant for the person and things sought; inspect, in the presence of the person in charge, certain premises and buildings of undertakings and other legal persons and examine certain of their documents; take a photograph of the person suspected of having committed a crime and publish the photograph, take fingerprints and a mouth swab, and do and perform other such acts and acts as necessary. The police may also summon individuals and collect information and data from them or question them. If a person is summoned for the purpose of gathering information, the police may forcibly bring them in, provided that the summons is in writing, and if the written summons contains an instruction that if the person fails to attend, they may be brought in forcibly. Furthermore, police officers have the right to refer persons found at the scene of a crime or persons residing abroad to the investigating judge or to detain them until their arrival if they are able to provide important information for the criminal proceedings.

The police can also interrogate the suspect if the suspect hires a lawyer. Such an interrogation has full evidentiary value in criminal proceedings. Otherwise, if the suspect does not wish to hire a lawyer, the police draw up an official note, which is considered only "semi-proof" and cannot replace a confession (hearing). The state prosecutor may also be present at the hearing.

Furthermore, police officers can take someone into custody if there are grounds for arrest and bring them before an investigating judge without delay. As an exception, they may arrest and detain a person if there are reasonable grounds to suspect that the person has committed a criminal offense for which the perpetrator is being prosecuted ex officio, if one of the

grounds for detention is met, and if the detention is necessary for the purposes of establishing identity, verifying the alibi, collecting information and evidence. Such detention may last for a maximum of 48 hours, after which the offender must either be brought before an investigating judge or be released.

The police or the public prosecutor's office may also carry out (on the basis of an order from the public prosecutor's office or the investigating judge, depending on the type of measure and other conditions) undercover investigative measures for the purpose of investigating criminal offenses: (i) covert tracking and observation, (ii) obtaining data on traffic in an electronic communications network, (iii) obtaining subscription data on the owner/user, (iv) wiretapping and monitoring, (v) signal monitoring, (vi) wiretapping and observation in foreign premises by technical means and hidden entry, (vii) fictitious redemption, (viii) undercover operations, (ix) obtaining information on deposits, balance, and turnover of a transaction account, (x) monitoring of financial transactions and (xi) obtaining information on the holder or the nominee of a transaction account or safe deposit box.

After the collection of information, the police send the state prosecutor a criminal complaint or a report on the actions taken.

Furthermore, during the investigation (or, exceptionally, prior to the investigation) the following investigative acts may also be carried out in the course of the investigation: searches of the house and the person, seizure of objects, questioning of the accused and witnesses, inspection of the place, and appointment of an expert witness.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

As a general rule, the criminal court should sentence the perpetrator within the limits prescribed by law for the particular criminal offense, taking into account the seriousness of the offense and the perpetrator's culpability. In doing so, the court shall take into account all the circumstances which have a bearing on whether the sentence should be reduced or increased (mitigating and aggravating circumstances). In principle, the court shall take into account a plea of guilty as a mitigating circumstance. However, based on established court practice of the Slovenian criminal courts, if the defendant confesses to the criminal offense towards the end of the criminal proceedings or shortly before the end of the criminal proceedings (e.g., at the last hearing), such a confession does not constitute a mitigating circumstance. Furthermore, cooperation with the enforcement authorities may also present a reason for the determination of a less severe sanction or mitigation of sentence.

Further to the above, in the case of three corruption-related criminal offenses (Articles 242, 262, and 264 – for details please see Section 1.1.) which comprise the act of giving a bribe or a gift, the KZ-1 provides that a perpetrator may be relieved of a sanction if they report the act before it was discovered or before they found out it was discovered, provided that this does not conflict with the rules of international law.

As regards legal entities, Article 11 of the ZOPOKD prescribes that:

- in certain cases, if, after the commission of a criminal offense, the management or supervisory body voluntarily notifies the perpetrator to law enforcement, before the criminal offense has been detected, the legal person may be punished more leniently;

- if, in addition to notifying the perpetrator to law enforcement, a legal person also immediately orders the return of unlawful material gain or remedies the harmful consequences caused or communicates information on the grounds of liability for other legal entities, the sentence may be waived for the legal entity.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

Under Slovenian criminal law, it is possible to enter into a plea agreement for corruption cases. Article 1 of the General instructions on negotiations and on the proposal of sanctions in the event of a guilty plea and a plea agreement to the state prosecutors (General Instructions) expressly stipulates that the prosecutor's office must be in favor of negotiations.

The defendant, their defense lawyer, and/or the public prosecutor may propose the conclusion of a plea agreement to the other party. If the defendant does not have a defense counsel, the president of the court shall appoint a defense counsel ex officio for the negotiation procedure. The guilty plea may in no case be initiated by the court. The plea agreement shall be in writing and signed by the parties and the defense counsel. In the plea agreement, the defendant and the public prosecutor may agree on (i) the sentence or cautionary sanction and the manner in which the sentence is to be carried out, provided that the agreed sentence is within the limits of the prescribed sentence, (ii) the public prosecutor's waiver of prosecution for the defendant's criminal offenses not covered by the plea agreement, (iii) the costs of the criminal proceedings, and (iv) the performance of any other task. However, the following cannot be the subject of the plea agreement: (i) the legal definition of the criminal offense, (ii) precautionary measures when their imposition is obliged, and (iii) the forfeiture of the unlawful material gain. The General Instructions instruct state prosecutors that the proposed criminal sanction must be in accordance with the sanctions realistically imposed by the

courts and with the objective and subjective circumstances of the criminal offense. The proposed sentence should not be less than two-thirds of the sentence that the court would impose in a similar case. However, only as an exception and after careful consideration of the circumstances of the criminal offense and the consequences of concluding such a plea agreement, it should be reasonable to propose half of such a sentence.

The plea agreement must be approved by the court before which the criminal proceedings are conducted. Namely, the judge determines whether the plea agreement is in accordance with the ZKP, whether the defendant understood the nature and consequences of the plea, and whether the plea is voluntary, clear and complete, and supported by the evidence in the court file. If any of the conditions are not met, the judge shall reject the plea agreement, disqualify themselves from the case, and another judge shall take over the case (trial).

Another form of a guilty plea is to plead guilty before a judge at a pre-trial hearing (or later in criminal proceedings).

In Slovenia, approximately one-third of criminal cases end with one of the forms of guilty pleas (plea agreement or pleading guilty before a judge).

ARZINGER

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: BRIBERY AND CORRUPTION 2025

UKRAINE

Kateryna Gupalo
Partner, Head of White Collar Crime
kateryna.gupalo@arzinger.ua
+380 44 390 55 33

Lana Sinichkina
Partner, Head of Anti-Corruption Compliance and Business Ethics
lana.sinichkina@arzinger.ua
+380 44 390 55 33

CEE
LEGAL MATTERS

www.ceelegalmatters.com

1. Legal Framework

1.1. What is the legal framework for bribery and corruption in your jurisdiction?

The legal framework for bribery and corruption consists of:

• the Criminal Code of Ukraine (Chapter XVII);

• the Law of Ukraine No. 1700-VII On Corruption Prevention dated October 14, 2014;

• the Criminal Procedural Code of Ukraine (general criminal procedures, including those applying to corruption offenses and a whistleblower's status in criminal proceedings);

• the Code of Administrative Offences of Ukraine (establishing administrative liability for some corruption-related offenses);

• The Labor Code of Ukraine (a whistleblower's status as an employee and corresponding guarantees);

• Law of Ukraine No. 3606-IX On Lobbying dated February 23, 2024;

• the Law of Ukraine No. 922-VII On Public Procurement dated December 25, 2015 (compliance requirements for the bidders);

• guidelines of the National Agency on Corruption Prevention (detailed explanations and clarifications of the anti-corruption legislation of Ukraine, ranging from the anti-corruption strategy and state anti-corruption policy to providing recommendations to the private sector).

1.2. Which international anti-corruption conventions apply?

• the United Nations Convention against Corruption, ratified by Ukraine on December 2, 2009;

• the United Nations Convention against Transnational Organized Crime, ratified by Ukraine on February 4, 2004.

1.3. What is the definition of bribery?

Money or other property, advantages, privileges, services, intangibles, or any other intangible or non-monetary benefits that are promised, offered, given, or received without any legal justification.

1.4. Is private sector bribery covered by law? If yes, what is the relevant legislation?

Private sector bribery is covered by the Criminal Code of Ukraine, which establishes criminal liability for abuse of powers by officials of legal entities of private law (Article 364-1) bribing officials of legal entities of private law (Article 368-3). Therefore, even if neither the bribing person nor the bribed person belongs to the public sector, this bribery is covered by the Criminal Code of Ukraine.

1.5. What is the definition of a public official and a foreign public official? Are employees at state-owned or state-controlled enterprises treated differently? Are there official lists of public officials, offices, or state-owned or state-controlled enterprises?

There is no unified definition of a public official. At the same time, the Law of Ukraine No. 1700-VII On Corruption Prevention dated October 14, 2014, defines the list of persons subject to this Law. Those subjects are:

1) persons authorized to perform the functions of the state or local government:

a) the President of Ukraine, the Chairman of the Parliament of Ukraine, his First Deputy and Deputy, the Prime Minister of Ukraine, the First Deputy Prime Minister of Ukraine, the Vice Prime Ministers of Ukraine, ministers, other heads of central executive authorities who are not members of the Cabinet of Ministers of Ukraine and their deputies, the Head of the Security Service of Ukraine, the Prosecutor General, the Head of the National Bank of Ukraine, his First Deputy and Deputy, the Head and other members of the Accounting Chamber, the Ukrainian Parliament Commissioner for Human Rights, the Commissioner for the Protection of the State Language, the Chairman of the Parliament of the Autonomous Republic of Crimea, the Chairman of the Council of Ministers of the Autonomous Republic of Crimea;

b) the Members of the Parliament of Ukraine, the Members of the Parliament of the Autonomous Republic of Crimea, councilors of local councils, village, settlement, town, and city mayors;

c) civil servants, officials of local self-government;

d) military officials of the Armed Forces of Ukraine, the State Service for Special Communication and Information Protection of Ukraine, and other military units established by law, except for military conscripts, cadets of higher military education institutions, cadets of higher education institutions which have in their structure military institutes, cadets of departments, sub-departments, and divisions of military training, staff members of the military-medical commissions;

e) judges, judges of the Constitutional Court of Ukraine, the Head, Deputy Head, members and disciplinary inspectors of the High Council of Justice, the head and deputy head of the Office of Disciplinary Inspectors of the High Council of Justice, officials of the Secretariat of the High Council of Justice, the Head, Deputy Head, members, inspectors of the High Qualifications Commission of Judges of Ukraine, officials of the Secretariat of this Commission, officials of the State Judicial Administration of Ukraine, jurors (in the course

of performing their duties in court);

f) rank and file and commanding officers of the State Penitentiary Service, the Tax Police, commanding officers of Civil Defense Authorities and Units, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine;

g) officers and public officials of the Prosecution Service Authorities, the Security Service of Ukraine, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, the Diplomatic Service, the State Forest Protection, the State Protection of the Nature Reserve Fund, the central executive authority implementing the state tax policy and state customs policy;

h) the Chairman, the Deputy Chairman of the National Agency on Corruption Prevention;

i) members of the Central Election Commission;

j) police officers;

k) officers and public officials of other state authorities, government authorities of the Autonomous Republic of Crimea;

l) members of collegial state authorities, including those authorized to consider complaints about violations of public procurement law;

m) Head of the Office of the President of Ukraine, his First Deputy, and Deputies, Commissioners, Press Secretary of the President of Ukraine;

n) Secretary of the National Security and Defense Council of Ukraine, his/her assistants and advisers, assistants, and advisers to the President of Ukraine (except for persons holding positions of patronage service and persons performing duties on a voluntary basis);

o) members of the Management Board of the Social Insurance Fund of Ukraine, the Compulsory State Unemployment Insurance Fund of Ukraine, the Pension Fund, and the Supervisory Board of the Pension Fund;

p) employees of the National Securities and Stock Market Commission.

2) persons who, for the purposes of the Law, are equated to persons authorized to perform the functions of state or local government:

a) officials of legal entities of public law not mentioned above, members of the Council of the National Bank of Ukraine (except for the Head of the National Bank of Ukraine), persons who are members of the Supervisory Board of a state bank, for-profit state-owned enterprise or organization, an economic company in which the state owns more than 50% of authorized capital shares, Chairman, Deputy Chairmen, other members of the National Agency for Quality Assurance in Higher Education, except for those elected from among higher education students and representatives of all-Ukrainian associations of employers' organizations, as well as officials of the secretariat of the National Agency for Quality Assurance in Higher Education;

b) persons who are not civil servants or local self-government officials but those who render public services (auditors, notaries, private executors, appraisers and experts, trustees in bankruptcy, independent brokers, members of labor arbitration, arbitrators in the exercise of their functions, other persons stipulated by law);

c) representatives of public associations, scientific institutions, educational institutions, experts with the relevant qualification, and other persons who are members of the Competition Commissions or Disciplinary Commissions set up under the Law of Ukraine On Civil Service, the Law of Ukraine On the Service in Local Self-Government Bodies, other laws (except for non-resident foreigners who are part of such commissions), the Public Integrity Council established under the Law of Ukraine On the Judicial System and Status of Judges, and are not the persons mentioned above;

d) persons recognized as having significant economic and political weight in public life (oligarchs) in accordance with the Law of Ukraine On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic or Political Weight in Public Life (Oligarchs);

e) chairmen and members of medical and social expert commissions, as well as chairmen, their deputies, members, and secretaries of freelance permanent military medical and flight commissions, who are not persons referred to in paragraph 1) above;

3) persons permanently or temporarily holding positions related to the implementation of organizational administrative or administrative-economic duties or specially authorized to perform such duties in legal entities of private law, regardless of the legal form and form of incorporation, and other persons who are not officers but who work or provide services under contract with enterprise, institution or organization (in some instances stipulated by law);

4) candidates for the President of Ukraine and candidates for Members of Parliament of Ukraine registered under the procedure established by law.

The definition of a foreign public official and the unified list of public officials, offices, and state-owned and state-controlled enterprises are absent. Nevertheless, a definition of a foreign public official may, inter alia, refer to the following persons:

- a person who acts in an official capacity for a legislative,

administrative, or judicial body in a foreign country;

• an official of an international public organization and members of international parliamentary assemblies and international institutions; and

• a judge of an international commercial arbitration tribunal.

Employees of state-owned enterprises fall under Section 2.a. They are equated to public officials for the purposes of the Law On Corruption Prevention, so they are not treated differently.

The above-cited list of persons subject to the Law On Corruption Prevention is an official list, there are no other ones.

1.6. Are there any regulations on political donations?

Financing the political parties is governed by the Law of Ukraine No. 2365-III On Political Parties dated April 5, 2001.

The contribution to support the political party is money; other property; advantages; privileges; services; loans; intangible assets; any other benefits of an intangible or non-monetary nature, including membership fees of members of the political party; third party sponsorship of events or other activities in support of the party; goods, works, services provided or received free of charge or on preferential terms (at a price lower than the market value of identical or similar jobs, goods, and services in the relevant market) received by the political party or its local organization.

Making contributions to political parties is not allowed for:

• foreigners and stateless persons;

• anonymous persons or persons under a pseudonym;

• Ukrainian citizens under the age of 18 or who, by the procedure established by law, are declared incapable;

• individuals who are parties to the contracts on the purchase of works, goods, or services for the needs of the state or territorial (municipal) community for the total amount of more than 50 subsistence minimums for able-bodied persons established on January 1 of the year in which the contribution is made, during the term of such contract and a year after its termination.

• the state authorities and local self-government bodies;

• state and municipal enterprises, institutions, and organizations;

• legal entities with at least 10% of the authorized capital or voting rights directly or indirectly belonging to the state and local self-government bodies;

• legal entities whose ultimate beneficial owners (controllers) are the persons mentioned in subparagraphs a., c. - i. of paragraph 1 of article 3 and in subparagraph a. of paragraph 2 of article 3 of the Law of Ukraine On Prevention of Corruption (these provisions are described in Section 1.5.);

• foreign states, foreign legal entities, legal entities with at least 10% of the authorized capital or voting rights directly or indirectly belonging to non-residents, as well as legal entities whose ultimate beneficial owners (controllers) are foreigners or stateless persons;

• unregistered public associations, charitable or religious organizations, and other political parties.

1.7. Are there any defenses available?

Ukrainian law does not provide for any special defenses for bribery offenses.

1.8. Is there an exemption for facilitation payments?

Ukrainian legislation does not recognize facilitation payments. Any payment made with the intention or purpose of influencing a public official's actions is illegal. Payments to public officials are very likely to be considered an unlawful benefit, even if they fall within the permitted value of gifts.

1.9. What are the criminal sanctions for bribery? Are there any civil and administrative sanctions related to bribery cases?

The following criminal sanctions may be applied for committing corruption and corruption-related offenses:

• probationary supervision (up to three years)

• fine (UAH 4,250 – 102,000) (approximately USD 100 – 2,400);

• corrective labor (up to two years)

• community service (up to 240 hours):

• arrest (up to six months);

• restriction of liberty (up to five years);

• imprisonment (up to 12 years);

• deprivation of the right to occupy certain positions or engage in certain activities (up to 10 years);

• confiscation of property.

Administrative sanctions for corruption-related offenses under the Code of Administrative Offences of Ukraine are the following:

• fine (UAH 850 – 42,500) (approximately USD 30 – 1,500)

• confiscation of the profit derived;

• confiscation of the gift received;

• deprivation of the right to occupy certain positions or engage in certain activities (up to one year).

1.10. Does the national bribery and corruption law apply beyond national boundaries?

Ukrainian anti-corruption legislation is not extraterritorial. However, Ukrainian citizens and stateless persons permanently residing in Ukraine are liable under the Criminal Code of Ukraine for committing corruption offenses abroad.

Foreigners and stateless persons who do not permanently reside in Ukraine may be prosecuted in Ukraine if any of the following conditions are met:

(a) corruption offense is committed abroad in collaboration with public officials who are Ukrainian citizens;

(b) unlawful benefits were offered, promised, or provided to public officials who are Ukrainian citizens; or

(c) they accepted an offer or promise of unlawful benefits or received such benefits from public officials who are Ukrainian citizens.

Foreign companies could be found liable for corruption offenses committed in Ukraine. In the meantime, in the context of Ukraine's OECD accession plan, amendments are being prepared to revamp the criminal liability of legal persons for corruption and corruption-related offenses in line with the OECD standards.

1.11. What are the limitation periods for bribery offenses?

The statute of limitations for corruption offenses is, in most instances, three or five years. In some cases, the limitation period may exceed 10 years.

1.12. Are there any planned amendments or developments to the national bribery and corruption law?

In 2023 the State Anticorruption Program was adopted by the Cabinet of Ministers of Ukraine. The Program aims to address the problems outlined in the Anticorruption Strategy for 2021-2025 adopted by the Parliament in 2022. For that purpose, the Program provides for a wide range of measures at various levels targeting the system of prevention of and fight against corruption as such, specified priority areas (judiciary, prosecutors, customs and tax authorities, etc.), and sanctions for breaches.

In addition, an ambitious set of amendments to the Criminal Code, Code of Criminal Procedure, Law of Ukraine On Corruption Prevention and other laws is being prepared to revamp the criminal liability of legal persons for corruption and corruption-related offenses in line with the OECD standards. The amendments aim to make such liability of a legal person autonomous of criminal liability of an individual (compare the current legal framework, as outlined in Section 4.1 below), diversify applicable sanctions, etc.

Meanwhile, on July 23, 2024, a draft Code of Ukraine on Administrative Offenses was submitted to the Parliament for review and adoption. It contains provisions on, inter alia, administrative liability of legal entities. We assume that the draft Code of Ukraine on Administrative Offenses is yet another aspect of a larger initiative on the liability of a legal person in addition to the criminal limb mentioned above.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

A gift is defined as money or other property, benefits, privileges, services, or intangible assets that are provided/received free of charge or at a price below the minimum market level.

Providing gifts is regulated only for the persons specified in paragraphs 1. and 2. of Section 1.5.

Depending on their character and the circumstances of their providing, gifts, and hospitality can be prohibited, limitedly permitted, or permitted.

1. Prohibited Gifts

The persons are prohibited to demand, request, receive gifts for themselves or for their relatives from legal entities or individuals directly or through other persons:

a) in connection with the performance by such persons of activities related to the performance of the functions of the state or local self-government;

b) if the person giving a gift is subordinate to the person.

2. Limitedly Permitted Gifts

The persons may accept gifts that comply with generally accepted notions of hospitality, except the prohibited ones if the value of such gifts does not exceed the threshold (see Section 2.3.).

3. Permitted Gifts

The threshold value does not extend to gifts that:

a) are given by close relatives;

b) are received as publicly available discounts on goods, services, publicly available gains, prizes, awards, and bonuses.

2.2. Does the law give any specific guidance on gifts and hospitality in the public and private sectors?

Gifts and hospitality are generally governed only in the public sector, however, its definition is quite broad (includes persons specified in paragraphs 1. and 2. of Section 1.5.)

2.3. Are there limitations on the value of benefits (gifts and hospitality) and/or any other benefit) that may be given to a government/public official? If so, please describe those limitations and their bases.

Yes, there are such limitations (see Section 2.1.). The value of such gifts should not exceed two subsistence minimum for able-bodied persons, set on the day of acceptance of the gift, (for a single acceptance), and the total value of such gifts received from a single person or group of persons during the year should not exceed four subsistence minimums for able-bodied persons, set on January 1 of the year in which the gifts are accepted. As of January 1, 2024, one subsistence minimum for able-bodied persons is UAH 3,028 (approximately USD 72).

2.4. Are there any defenses or exceptions to the limitations (e.g. reasonable promotional expenses)?

See Section 2.1.

3. Anti-Corruption Compliance

3.1. Are companies required to have anti-corruption compliance procedures in place?

Taking measures with respect to preventing and countering corruption is largely voluntary for companies, although some companies are required to adopt anti-corruption programs:

• state, municipal enterprises, companies (in which the state or municipal share exceeds 50%), where the average number of employees for the reporting (financial) year exceeds 50 people, and the gross income from the sales of products (works, services) for this period exceeds UAH 70 million (approximately USD 1.7 million);

• legal entities that are participants of the public procurement procedure, if the cost of procurement of goods, services, and works is equal to or exceeds UAH 20 million (approximately USD 485,000).

It is also binding for these companies to appoint a person responsible for the implementation of the anti-corruption program.

3.2. Is there any official guidance on anti-corruption compliance?

The National Agency on Corruption Prevention publishes guidance on anti-corruption legislation, including anti-corruption compliance, on its website. In particular, it has developed a Model Anti-Corruption Program.

3.3. Does the law protect whistleblowers reporting bribery and corruption allegations?

Yes, it does. A whistleblower has the following rights and guarantees:

• to receive information about the status and results of the report;

• to submit evidence;

• to give explanations, testify, or refuse to do either of these;

• to get free legal aid in connection with the protection of the rights as a whistleblower;

• to have the costs related to the protection of the rights as a whistleblower, attorney's fees, and court fees reimbursed;

• confidentiality and anonymity;

• security in case of threat to life, property, and housing;

• to a reward;

• psychological help;

• to be exempted from legal liability in certain cases;

• employment guarantees, such as not to be dismissed or denied being hired, not to be brought to disciplinary liability, not to be subjected to any negative measures by the employer;

• compensation in case of employment guarantees violated

A whistleblower's rights and guarantees in most cases extend to his/her close relatives.

4. Corporate Criminal Liability

4.1. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

Legal entities are subject to measures of a criminal law nature, which, in fact, is a quasi-criminal liability. Such measures may be applied for certain offenses (including bribery of various officials or undue influence) committed by the legal entity's officials or representatives or for their failure to take measures to prevent the corruption, which resulted in the commitment of the same offenses by its employees (not officials).

In the above instances, the penalty is a fine (double the amount of the undue advantage unlawfully received by such an entity). If the undue advantage was not obtained or its amount cannot be calculated, the court applies a fine, depending on the gravity of the criminal offense.

Measures of a criminal law nature must be imposed within the investigation of the criminal offense conducted by the legal entity's official, representative, or employee. Thus, those measures are secondary to the primary criminal offense and

may not be applied independently. Consequently, a legal entity is not an autonomous subject of criminal liability. Yet, as described in Section 1.12 above, amendments are being developed to make the criminal liability of a legal person autonomous from the criminal liability of an individual.

4.2. Can a company be liable for a bribery offense committed by an entity controlled or owned by it? Are there requirements for the parent to avoid liability in these situations?

A legal entity may be subject to measures of a criminal law nature only if its official, representative, or employee commits a corruption offense on behalf and/or in the interests of this company. Consequently, Ukrainian legislation does not entail criminal liability for parent companies for corruption offenses committed by their subsidiaries.

4.3. Can a company be liable for the corrupt actions of a third-party agent engaged to help it obtain or retain business or business advantage (such as government or regulatory actions or approvals)? If so, are there measures recognized in law, enforcement, or regulatory guidance to mitigate this liability?

A legal entity may be subject to measures of a criminal law nature only if its official, representative, or employee committed a criminal corruption offense. If during the investigation of a criminal offense, it is discovered that the third-party agent acted in conspiracy with the legal entity's official (representative/employee), and this official is also brought to liability as a co-principal offender, the legal entity may be subject to the measures of a criminal law nature. However, if a third-party agent is brought to criminal liability, and a legal entity's official/representative/employee is not, the company may not be subject to the measures of a criminal law nature. The amendments mentioned in Section 1.12 above aim to resolve this problem.

4.4. What are the sanctions for the corporate criminal entity?

The following measures of a criminal law nature may be applied to legal entities:

1) fine;

2) confiscation of property;

3) liquidation.

The amendments mentioned in Section 1.12 above aim to add other sanctions (e.g. debarment, license suspension).

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Depending on the nature of the crime and offender, it can be the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, the National Bureau of Investigation of Ukraine, and the Bureau of Economic Security of Ukraine.

5.2. Is there a legal obligation to report bribery and corruption cases? If so, to whom does it apply and what are the sanctions for failing to meet such an obligation?

No, there is not. However, there are sanctions for the concealment of bribery and corruption cases.

5.3. Is there any civil or administrative enforcement against corruption crimes?

Civil enforcement is possible if the victim brings a claim for compensation for material or moral damage inflicted by a corruption crime.

Within the civil enforcement framework, the Code of Civil Procedure also provides for civil confiscation. This mechanism applies to persons authorized to perform the functions of the state or local self-government, including persons specified in the Law of Ukraine "On Prevention of Corruption". According to this mechanism, assets owned by the aforesaid persons may be recognized as unjustified if the court has not found that the assets in question were acquired from a legitimate source of income. In such a case, these assets are collected from the state's budget.

Some minor corruption-related offenses are prosecuted under the Code of Administrative Offences of Ukraine. These, inter alia, include:

- violation of restrictions on having multiple jobs and combining a job with other activities;
- violation of statutory restrictions on the receipt of gifts;
- violation of financial control requirements;
- violation of the requirements for the prevention and settlement of conflicts of interest;
- illegal use of information made known to a person in connection with the performance of official or other statutory powers;
- failure to take measures to counter corruption;

5.4. What powers do the authorities have generally to gather information when investigating corruption crimes?

The powers of the authorities to gather information with respect to corruption crimes are the same as with respect to any other crimes. They include interrogations, searching, requests for obtaining information and documents, temporary access to belongings and documents, wiretapping, control over the commission of a crime, examinations, and so forth.

5.5. Is there any form of leniency law in your jurisdiction, allowing a party to a bribery or corruption crime to voluntarily confess to the crime in exchange for a release from liability or reduction of the penalty?

There is a general rule applicable to all crimes stating that confessing to a crime is a factor mitigating punishment.

5.6. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

Yes, he/she can, under general conditions of plea bargaining.

The prosecutor and the suspect or the accused can enter into a guilty plea agreement. This agreement may be entered into in criminal investigations if the crime:

• is a criminal misdemeanor, medium grave, or grave crime;

• is a crime of severe gravity investigated by the National Anti-Corruption Bureau of Ukraine, if the suspect or accused reports commitment of the crime investigated by the National Anti-Corruption Bureau of Ukraine by another person, and such information is confirmed by evidence;

• is a crime of severe gravity, committed with a prior conspiracy of a group of persons, organized group, criminal organization, or terrorist group, provided that a suspect who is not an organizer of such a group or organization reports criminal acts of other members of the group or organization, and such information is confirmed by evidence.

The level of gravity of the crime is determined depending on the maximum amount of fine or term of imprisonment provided in the Criminal Code of Ukraine.

The plea-bargaining agreement may be initiated by the prosecutor as well as by the suspect or the accused at any time from the notification of suspicion to the court entering into the deliberation room.

If the plea-bargaining agreement is concluded, the suspect or accused cannot appeal his/her verdict, he/she cannot keep silent during the trial, interrogate witnesses for the prosecution, call witnesses for the defense, or give evidence in his/her favor.

The court checks if there are any grounds for refusing to approve the plea-bargaining agreement. If there are not, the court gives a verdict by which it approves the agreement and imposes a penalty as agreed by the parties.

Similar to plea-bargaining in criminal proceedings against an individual, as outlined above, the amendments mentioned in Section 1.12 aim to introduce such an option in criminal proceedings involving a legal entity.

CEE
Legal Matters

www.ceelegalmatters.com