CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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FOREWORD

By Monika Diehl, Senior Associate, Clifford Chance

According to the 2021 Transparency International report, corruption is growing in the CEE region. Eastern Europe's score in the Corruption Perceptions Index is the second-lowest. It seems that the trend of decline in democracy indexes in the region is also contributing to these higher corruption levels.

The purpose of this guide is to offer basic guidance on the legal framework regarding bribery and corruption in the CEE region. The guide allows us to compare how bribery is defined in each of the CEE jurisdictions, if there is criminal liability for corporate entities, what are the sanctions and limitation periods, are there any defenses, and what is the role of anti-corruption compliance. It also refers to the planned developments of national laws in respect of bribery and corruption.

It is visible that the legal framework in the CEE jurisdictions is quite similar and, in a majority of them, it provides for corporate criminal liability for bribery and corruption. Also, although the general requirement for compliance programs in corporate entities is rather not present in regulations (apart from those concerning financial institutions and the like), it is more and more expected in larger organizations, partially due to the whistleblowing laws following the EU Directive on Whistleblower Protection. As there is generally a lack of official guidance on anti-corruption compliance, in most cases, entities may rely on unofficial updates or materials produced by anti-corruption enforcement authorities.

Enjoy the very first issue of the CEELM Comparative Guide on Bribery & Corruption Laws and Regulations in the CEE. ■

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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

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While reading the below please keep in mind that we had to take into consideration that Bosnia and Herzegovina consist of two separate legal entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska, and additionally the Brcko District. Different legal regimes apply to these entities to the extent that, in principle, a small number of laws of Bosnia and Herzegovina applies to both entities and district. However, the legal framework is similar, so in cases where there are differences, in preparing the below, we have taken into consideration the regulations of the Federation of Bosnia and Herzegovina, Republic of Srpska, and the Brcko District.

1. Legal Framework

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

In Bosnia and Herzegovina, the following laws are adopted that contain provisions related to bribery and corruption:

i. The *Law on the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption* primarily defines the concept of corruption and governs the manner and forms of corruption prevention in Bosnia and Herzegovina. The law also regulates the legal status, competencies, and methods of the agency.

ii. The *Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina* regulates the status of persons reporting corruption within institutions of Bosnia and Herzegovina, legal entities established by Bosnian and Herzegovinian institutions, procedures for reporting corruption, mandatory actions which must be undertaken by institutions to which corrupt acts are reported, as well as protection measures for persons who report acts of corruption.

iii. The *Criminal Law* prescribes criminal offenses of corruption as well as criminal offenses against officials and other responsible duties.

For the prevention and fight against corruption, it is also important to emphasize the following laws:

The *Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina*, *Law on Criminal Procedure*, the *Law on Civil Service in the Institutions of Bosnia and Herzegovina, Law on Freedom of Information*, the *Law on Political Party Financing*, the *Law on Administration*, the *Law on Court of Bosnia And Herzegovina*, the *Law on Ministries and other Bodies of Administration of Bosnia And Herzegovina*, the *Law on The High Judicial and Prosecutorial Council*, the *Law on Public Procurement for Bosnia and Herzegovina*, the *Law on the Prevention of Money Laundering and Financing of Terrorist Activities*, and the *Election Law*.

It is important to note that besides the above-stated laws at the level of Bosnia and Herzegovina, there are also laws of the entities (Federation of Bosnia and Herzegovina and the Republic of Srpska), Brcko district, and cantons that regulate the prevention of, and fight against, corruption.

1.2. Which international anti-corruption conventions apply?

International anti-corruption conventions that apply in Bosnia and Herzegovina are:

i. The *United Nations Convention against Corruption* (UNCAC) - the most important universal instrument in the fight against corruption, was signed by Bosnia and Herzegovina on October 26, 2006.

ii. The *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*

iii. The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*

iv. The *Civil Law Convention on Corruption*

v. The *Criminal Law Convention on Corruption*, with an *Additional Protocol to the Criminal Law Convention on Corruption*

1.3. What is the definition of bribery?

When it comes to defining the concept of bribery in Bosnia and Herzegovina, it retains no independent meaning, but it is closely correlated to the concept of corruption.

Given the number of laws that apply to the subject and the complexity of this phenomenon, these terms have many definitions.

The *Law on the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption* defines corruption as any abuse of power entrusted to a public servant or a person holding a political position at a state, entity, or cantonal level and the level of the Brcko District of Bosnia and Herzegovina, as well as city or municipal levels, which may result in a private gain.

Corruption may, in particular, include:

i. Direct or indirect solicitation,

ii. Offering, giving, or accepting bribes or any other undue advantage or possibility which impairs the performance of any duty or conduct expected of the recipient of the bribe.

In terms of the *Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina*, corruption is an abuse of power entrusted to assigned duties, leading to private gain.

It is important to note that the area of criminal legislation does not prescribe a specific definition of corruption. Still, the *Criminal Law* does prescribe individual acts that have the characteristics of corruption.

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

The legal framework covers bribery and corruption in the private sector as well.

As the *United Nations Convention against Corruption* (UNCAC) in Article 12. prescribed the obligation to each state party to take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector, and, where appropriate, provide effective, proportionate, and dissuasive civil, administrative, or criminal penalties for failure to comply with such measures.

Accordingly, the *Law on the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption* was adopted in Bosnia and Herzegovina, which determines the responsibility of the agency for preventive anti-corruption work and for coordinating the fight against corruption in public institutions as well as the private sector.

The law prescribes the obligation of the agency to prevent corruption in relation to the members of management, authorized and other persons in corporate entities, public enterprises, public institutions and private enterprises, the members of bodies and other authorized persons in political parties, cultural and sports institutions, foundations, associations and non-governmental organizations.

Also, Articles 21. and 22. of the *United Nations Convention against Corruption* (UNCAC) deal with bribery and embezzlement of property in the private sector and require each state party to consider adopting legal and other measures that may be necessary to establish it as a criminal offense when committed intentionally in the course of economic, financial, or commercial activities. Although the *Criminal Law* of Bosnia and Herzegovina prescribes acts of bribery and embezzlement, they cover only the official or responsible person, while bribery and embezzlement in the private sector are still not covered.

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 according to the *Law on the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption* is:

i. any person holding a legislative, executive, administrative, prosecutorial, or judicial office, whether appointed or elected, whether the office is permanent or temporary, remunerated or non-remunerated, regardless of the person's rank,

ii. any person holding a public office, including an office in a public authority or a public company or performing public service,

iii. any other person defined within the legal system of Bosnia and Herzegovina as a public office holder, public servant, or civil servant;

According to the *Criminal Law*, a foreign official person means a member of a legislative, executive, administrative, or judicial body of a foreign state, a public official person of an international organization or of its bodies, a judge or other official person of an international court, serving in Bosnia and Herzegovina.

Bosnia and Herzegovina has a *Register of Public Office* holders, which contains information on the mandates of elected and appointed officials at all levels of government. The register also contains data on government institutions, institutions, administrations and administrative organizations, state-owned and state-controlled enterprises, as well as data on political parties and coalitions in Bosnia and Herzegovina.

There are no differences in how employees of state-owned or state-controlled enterprises.

1.6. Are there any regulations on political donations?

In Bosnia and Herzegovina, the financing of political parties is regulated by the *Law on Financing of Political Parties of Bosnia and Herzegovina*, *Law on Financing of Political Parties of Brcko District*, *Law on Political Party Financing from the Budget of the Republic, City, and Municipality of the Republic of Srpska*, *Election Law*, the *Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina*, as well as acts adopted by the Central Election Commission of Bosnia and Herzegovina.

These regulations established funding sources and the use of such funds and restrictions on the total amount of contributions donated to political parties. The laws also set the obligation to report donations to ensure transparency in receiving those donations.

The *Law on Financing of Political Parties of Bosnia and Herzegovina* which largely regulates political donations has established restrictions on natural and legal entities making voluntary donations to political parties. Therefore, the total amount of voluntary contributions of a natural entity to one political party cannot exceed the amount of BAM 10,000 (approximately EUR 5,000 EUR) during one calendar year, while for legal entities, the limit is established at BAM 50,000 (approximately EUR 25,000) during one calendar year. A political party member cannot pay an amount higher than BAM 15,000 (approximately EUR 7,500) during one calendar year, which also includes membership fees.

Any form of donation by unnamed, anonymous donors or intermediaries is prohibited.

The law also prohibits the financing of political parties by administrative bodies of Bosnia and Herzegovina, entities, cantons, and municipal and local community bodies. Financing is also prohibited by public institutions, public companies, humanitarian and religious organizations, trade unions, associations, and other non-profit organizations financed by public funds, legal entities in which the public capital is at least 25%, other states, foreign political parties, and foreign legal entities except for funding programs intended for education to promote democratic principles.

Political parties must keep books and submit financial reports to the Central Election Commission of Bosnia and Herzegovina. Such reports must include all benefits derived from activities related to or under the political party's control.

1.7. Are there any defenses available?

Applicable regulations are not regulating any available defenses.

1.8. Is there an exemption for facilitation payments?

All forms of bribery including facilitation payments are prohibited. Elected officials, executive officeholders, and advisors must not receive money regardless of the amount.

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

When it comes to criminal sanctions for bribery and corruption in Bosnia and Herzegovina, they are different in the Federation of Bosnia and Herzegovina and the Brcko District from those prescribed in the Republic of Srpska. Each entity has adopted its own laws on this topic.

It is important to note that sanctions are imposed on a case-by-case basis, depending on the nature of the act, manner of execution, and person who committed it.

The criminal laws of the Federation of Bosnia and Herzegovina and the Brcko District prescribed the same penalties for bribery and corruption crimes. Therefore, for criminal offenses of bribery and offenses against official or other responsible duty, the following sanctions can be imposed:

For the criminal offense of accepting gifts and other forms of benefits, the court may impose prison sentences ranging from six months to 10 years depending on the severity of the criminal offense.

For the criminal offense of giving gifts and other forms of benefits, the court may impose a prison sentence ranging from six months to up to three years, depending on the severity of the criminal offense.

In addition, for the criminal offense of receiving a gift or other benefit for illegal interceding, the law prescribed a prison sentence of six months to eight years. In addition, the perpetrator of this criminal offense who requests, receives, or accepts a gift or any other benefit may be punished by imprisonment for between one and ten years.

Giving a gift or other benefit for illegal interceding, the law prescribes a penalty ranging from six months to five years.

The *Criminal Law* of the Republic of Srpska prescribes slightly different sanctions, so the crime of accepting a bribe is punishable by imprisonment from two to eight years depending on the severity of the criminal offense.

Giving a bribe can be punishable by imprisonment from six months to three years depending on the severity of the criminal offense.

Illegal interceding in the Republic of Srpska is punishable by imprisonment from one to twelve years, depending on the nature of the act and the perpetrator.

The law established sanctions for certain corruption violations regarding civil and administrative sanctions relating to bribery charges. The rest of the civil and administrative sanctions are specific to the criminal liability of corporate entities, so in addition to fines, property seizures, corporate entity dissolution, and a prohibition on engaging in a specific economic activity may be imposed.

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

Applicable laws do not regulate the possibility of applying them beyond national boundaries.

1.11. What are the limitation periods for bribery offenses?

The limitation periods are prescribed according to the length of the sentence imposed, so in the Federation of Bosnia and Herzegovina and the Brcko District, it is determined that criminal prosecution is statute-barred for:

i. 20 years for a criminal offense punishable by imprisonment for a term exceeding 10 years,

ii. 15 years for a criminal offense punishable by imprisonment for a term exceeding five years,

iii. 10 years for a criminal offense punishable by imprisonment for a term exceeding three years,

iv. Five years for a criminal offense punishable by imprisonment for a term exceeding one year, and

v. Three years for an offense punishable by imprisonment for a term not exceeding one year or a fine.

According to the law of the Republic of Srpska, criminal prosecution is statute-barred for:

i. 25 years for a criminal offense punishable by imprisonment of more than 10 years,

ii. 20 years for a criminal offense punishable by imprisonment of more than five years,

iii. 15 years for a criminal offense punishable by imprisonment of more than three years,

iv. 10 years for a criminal offense punishable by imprisonment of more than one year, and

v. Five years for a criminal offense punishable by imprisonment of up to one year or a fine.

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

Currently, proposals have been made to amend the *Law on the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption* and the *Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina*, which should contribute to more effective work of the agency. However, until today, amendments to these laws have not been adopted.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Gifts of small value given in some business relationships that may be deemed to foster a business connection, express gratitude, and are not meant to breach legal requirements, may be considered appropriate. However, gifts or hospitality whose nature or value can be regarded as a request for the fulfillment or non-fulfillment of any obligations or duties are strictly forbidden and considered bribery.

Any gift or hospitality may not be given or received if it implies an obligation on the part of the recipient to do or not do any of their duties and obligations.

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

When it comes to the public sector, the *Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina* as well as the *Code of Civil Servants in the Institutions of Bosnia and Herzegovina* regulates receiving gifts regarding the performance of public functions. Also, on the basis of current laws, state institutions have adopted their own regulations governing the rules on receiving gifts and hospitality.

For the private sector, it is common practice to adopt internal acts such as rulebooks, codes of ethics, etc., which will regulate the rules of receiving gifts and hospitality by employees.

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?

According to the laws on conflict of interest, elected officials, executive officeholders, and advisors may keep a gift not exceeding the value of BAM 200 (approximately EUR 100) in the Federation of Bosnia and Herzegovina and Brcko District and BAM 300 KM (approximately EUR150) in the Republic of Srpska, and they do not have to report it.

Gifts in excess of the stated amount must be reported and turned over to the authority that elected or appointed the recipient. These individuals may not receive money, a check, or any other form of security, regardless of the amount.

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

Please see Section 2.3.

3. Anti-corruption compliance

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

The law does not prescribe an obligation for companies to adopt anti-corruption compliance procedures in the Federation of Bosnia and Herzegovina. Still, the practice of companies is to regulate the field of corruption with internal acts, which aim to improve and strengthen measures for more effective prevention and fight against corruption within companies. One of the standard practices of companies is to educate employees about the rules for corruption through various courses, seminars, etc.

In the Republic of Srpska, the *Law on Protection of Persons Reporting Corruption of the Republic of Srpska* prescribes the obligation for companies that employ more than fifteen employees, to adopt an instruction on handling corruption reporting and ensuring the protection of persons reporting corruption. The main goal of this instruction is to regulate the manner of submission and obtaining internal reports of corruption, dealing with reports, protecting the rights of whistleblowers, obligations of the responsible person in the company, and other issues relevant to reporting.

In the Brcko District, the *Law on the Office for Corruption prevention and coordination of anti-corruption activities* prescribes the obligation for public administrative bodies, institutions, public companies, public institutions, and other legal entities established by the Brcko District are obliged to determine the person in charge of communication and cooperation with the office. Other legal entities that are not established by the Brcko District shall assess the person for communication and collaboration with the office, only when the office acts according to a specific case relating to that entity.

Additionally, the *Company law of the Federation of Bosnia and Herzegovina, Republic of Srpska, and Brcko District* prescribes an obligation to all boards of directors and supervisory board members to act with the care and diligence of a prudent businessman. These laws also state that responsible bodies must avoid conflicts of interest, implying that corrupt behavior is prohibited. The law also requires companies that are victims of corruption to report it to the appropriate authorities.

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

See section 1.1. and section 3.1.

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

Whistleblowers revealing bribery and corruption charges are protected by Bosnia and Herzegovina's *Law on Protection of Persons Reporting Corruption in Institutions of Bosnia and Herzegovina*. Accordingly, the Agency for the Prevention of Corruption and the Coordination of Fight against Corruption shall decide whether to grant an employee a whistleblower status within 30 days following their request made to the agency, regardless of whether the employee claims that detrimental actions have been taken or only suspects that they could be taken. Suppose a person has information or physical evidence proving the existence of corruption, protected reporting/disclosure begins on the day the person reports a suspected act of corruption or circumstances of prospective corruption to the competent authorities.

If a whistleblower reports an act of corruption to the competent authority, they are not subject to material, criminal, or disciplinary liability for disclosing an official secret.

Suppose it is determined that some harmful actions were committed against the whistleblower, which is related to the reporting of corruption, the agency shall issue instructions to the head of the institution to eliminate the consequences caused by such harmful actions. The institution director shall be required to take corrective action to remove the detrimental action within three days following the receipt of the instruction from the agency.

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 bribery and corruption. A corporate entity is responsible when:

i. The meaning of the act arises from the conclusion, order, or approval of the governing and supervisory bodies of the corporate entity,

ii. The governing or supervisory bodies of the corporate entity influenced the perpetrator or enabled him to commit a criminal offense,

iii. A corporate entity disposes of illegally obtained property or uses objects created by a criminal offense, or

iv. The governing or supervisory bodies of the corporate entity failed to supervise the legality of the employee's work.

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 proceedings on a corporate entity are initiated and conducted simultaneously with proceedings against the perpetrator for the same criminal offense. As stated in Section 4.1, among other mentioned reasons, the corporate entity is liable if its governing or supervisory bodies issued a conclusion, order, or approval for the commission of a specific act, as well as if they had any influence on the perpetrator for the act or enabled him to commit it.

As a result, if the governing or supervisory body commits the acts listed in Section 4.1, the company's liability does not exempt natural or responsible persons from criminal liability. Therefore, both the legal entity and the perpetrator of the criminal offense are responsible for the offense (governing body or supervisory body, depending on who committed the offense).

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?

In the context of engaging a third party to help the company to obtain or retain business or a business advantage, the company may be liable only in case when the third party performed

such conduct on the order or approval of the company, as well as when the company influenced the third-party or enabled him in any way to commit such corrupt acts.

To mitigate the liability of any criminal act performed by the company, the *Criminal Law* provides less severe punishment for the company when its governing or supervisory body voluntarily reports the perpetrator after the crime has been committed. Also, suppose a company returns an illegally obtained benefit after the committed criminal offense, eliminates harmful consequences, or announces the merits of the liability of other legal entities, may be released from punishment.

The company's liability does not exclude the criminal liability of natural or responsible persons for a committed criminal offense.

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

Sanctions for corporate criminal entities can be:

i. Fines,

ii. Confiscation of property, and

iii. Termination of the corporate entity.

When it comes to fines, the *Criminal Law* stipulates that the fine imposed on a legal entity may not be less than BAM 5,000 (approximately EUR 2,500,00) or more than BAM 5 million (approximately EUR 2.5 million).

The penalty of confiscation of property is essentially imposed for those acts for which a sentence of imprisonment of five years or a heavier punishment may be charged. Legal entities may be deprived of at least half of the property, most of the property, or the entire property.

The penalty of termination of a legal entity shall be imposed if the legal entity's activity is used in its entirety or predominantly for the commission of a criminal offense.

Also, a penalty of confiscation of property may be imposed.

In addition, security measures are envisaged for the corporate entity, such as publication of a verdict and bans on conducting economic activity.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

The anti-corruption bodies in Bosnia and Herzegovina are:

i. The Prosecutor offices of Bosnia and Herzegovina, as well as the two entity-level Prosecutor's Offices of the Federation of Bosnia and Herzegovina and of the Republic of Srpska, and the Public Prosecutor's Office of the Brcko District – each being competent and supreme within their own area of jurisdiction.

ii. The High Judicial and Prosecutorial Council,

iii. The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption,

iv. The Central Election Commission,

v. The State Investigation and Protection Agency (SIPA),

vi. The competent courts in Bosnia and Herzegovina.

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?

All officials and responsible persons in government bodies, public companies, and institutions, as well as all other individuals, are required to report bribery and corruption cases.

i. If the above-mentioned individuals fail to disclose the preparation of a criminal offense punishable by imprisonment for three years or more in the Federation of Bosnia and Herzegovina and the Brcko District, they may be sentenced to up to one year in prison.

ii. If the above-mentioned individuals fail to disclose the preparation of a criminal offense punishable by imprisonment for five years in the Republic of Srpska, they may be sentenced to up to one year in prison. Imposing a fine is an additional sanction.

iii. An official or responsible person who fails to report a criminal offense punishable by five years in prison or a more severe penalty, which comes to knowledge in the discharge of the duty, shall be punished by a fine or imprisonment for a term not exceeding three years.

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

Applicable laws do not regulate the possibility of civil or administrative enforcement against corruption crimes.

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

When investigating corruption crimes in Bosnia and Herzegovina, the prosecutor or other authorized bodies conducting the investigation may take all investigative actions, including the running of necessary expertise, questioning the suspect, examining witnesses, and taking necessary measures to ensure the safety of all persons in the proceedings.

The prosecutor is competent to give orders to other authorized persons to collect information and evidence in a manner permitted by law during the investigation procedure.

When conducting an investigation, it is essential to exercise the protection of the fundamental human rights and freedoms of the suspect and make the investigation course as objective as possible.

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?

In Bosnia and Herzegovina, there is an institute of *Plea Agreements*, which allows the prosecutor and the accused person to negotiate the terms of a plea agreement until a verdict is pronounced. If a plea agreement is signed, it will include a guilty plea, in exchange for the prosecutor offering the court a range of sentences agreed upon by the parties, which may be less than the statutory minimum for the offense.

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

A person can make a plea bargain in corruption cases. The process begins with negotiations on the conditions under which the suspect/accused would plead guilty.

If the suspect/accused agrees to plead guilty, the prosecutor may offer:

i. A sentence below the legal minimum, by applying mitigation provisions,

ii. A milder type of punishment or a different type of criminal sanction.

When making such proposals, the prosecutor must compile the general rules for sentencing and mitigations, respecting the limits of mitigation prescribed by the *Criminal Law*.

After the plea agreement is signed, it is submitted to the court. The court may accordingly adopt or reject the agreement.

If the agreement is adopted, a hearing is scheduled for the imposition of the sentence. If the court rejects the agreement, the main trial is scheduled, and the court proceedings continue.

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1. Legal Framework

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

- The *Croatian Criminal Act* (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21);
- The *Public Officials Act* (Official Gazette 92/05, 140/05, 142/06, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 01/15, 138/15, 61/17, 70/19, 98/19);
- The *Act on the Prevention of Conflict of Interest* (Official Gazette 143/21) – applicable to a wide range of key public officials ranging from the president of the Republic of Croatia, ministers, parliament representatives, ombudsman, directors, and deputy directors of state institutions and others;
- The *Act on Financing Political Activities and Election Campaigns* (Official Gazette 29/19, 98/19);
- The *Regulation on Gifts Received by Government Officials* (Official Gazette 141/04);
- The *Act on the Protection of the Reporters of Irregularities* (Official Gazette 46/22).

1.2. Which international anti-corruption conventions apply?

- The *Criminal Law Convention on Corruption*; and
- The *Civil Law Convention Against Corruption*.

1.3. What is the definition of bribery?

Pursuant to the *Croatian Criminal Act*, a bribe is any undue reward, gift, or other material or non-material gain regardless of value.

The *Croatian Criminal Act* distinguishes bribery in economic transactions, bribery in bankruptcy proceedings, bribery in the public sector, bribery in trading in influence, and bribery connected to the elections.

Bribery in economic transactions relates to demanding a bribe, accepting a bribe, or an offer/promise of a bribe, for oneself or another person, as well as offering, promising, or giving a bribe for the purpose of favoring someone, or as a counter favor, or to take advantage to oneself or to another person in concluding or performing a business or providing services and on that way causing damage to the person for which person receiving a bribe works for or represents. Mediating in the above is also considered bribery.

Bribery in bankruptcy proceedings relates to demanding a bribe, accepting a bribe, or an offer/promise of a bribe by a liquidator, creditor, or a member of a creditor's committee or offering, promising, or giving a bribe to a liquidator, creditor or a member of a creditor's committee for the purpose of voting in a certain way or to miss a vote or otherwise acts to harm at least one creditor.

Bribery in the public sector relates to demanding a bribe, accepting a bribe, or an offer/promise of a bribe by a public official or a responsible person, for oneself or another person, before or after performance/non-performance of the activities below, as well as offering, promising or giving a bribe to a public official or a responsible person, for oneself or another person, to perform or not to perform, within or outside the limits of public officials authority, an official or other action which should or should not be performed. Mediating in bribing a public official or a responsible person is also considered bribery.

Bribery in trading in influence relates to demanding a bribe, accepting a bribe, or an offer of a bribe, as well as offering, promising, or giving a bribe, for oneself or another person, to use official or social position or influence to mediate in the performance or nonperformance of an official or other action that should or should not be performed. Mediating in the above is also considered bribery.

Bribery in elections relates to demanding a bribe, accepting a bribe, or an offer or a promise of a bribe, as well as offering, promising, or giving a bribe to a member of the Croatian Parliament, the European Parliament, or a counselor in the representative body of a local and regional self-government unit for voting in a certain way.

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

Yes. Private sector bribery is regulated by the *Croatian Criminal Act* as bribery in bankruptcy proceedings, bribery in conducting economic transactions, and bribery in trading in influence (detailed description in Section 1.3.).

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?

Public officials are persons who, in national authorities, as a regular occupation:

- perform tasks within the scope of these authorities determined by the Constitution, law, or other regulations adopted on the basis of the Constitution and the law; and

■ carry out IT tasks, general and administrative tasks, planning, material-financial and accounting tasks, and similar tasks.

Croatian legislation does not define the term "foreign public official." Employees at state-owned enterprises are not considered to be public officials and are not covered by the laws governing the rights and obligations of public officials.

With respect to official lists, the following registers are available: the Register of public sector employees, the Register of key officials appointed by the Government of the Republic of Croatia, and the Register of state-owned companies.

1.6. Are there any regulations on political donations?

Yes, the *Act on Financing Political Activities, Election Campaigns and Referendums* (Official Gazette 29/19, 98/19).

1.7. Are there any defenses available?

Yes, in certain cases provided by the law, if the perpetrator reports that he/she has been given a bribe before its discovery or before learning that the crime was already discovered, the perpetrator may be released from punishment.

1.8. Is there an exemption for facilitation payments?

No, facilitation payments are not allowed in Croatia.

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

The criminal sanction for bribery is imprisonment variating in length and can go as high as up to ten years, depending on the type of bribery described in Section 1.3. The most severe sanction of up to ten years is imposed on public officials and when bribery is connected to the trading in influence.

Administrative sanctions are prescribed for public officials which may be imposed with sanctions we outlined in Section 5.3.

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

Yes. The *Croatian Criminal Act* extends the application of Croatian criminal law to persons of Croatian nationality or residing in Croatia who commit an offense abroad if that offense is also punishable under the law of the country where it was committed. In addition, the *Croatian Criminal Act* extends the application of Croatian criminal law to foreigners who commit offenses against persons of Croatian nationality or residing in Croatia abroad under the requirement that the offense is also punishable under the law of the country where it was committed.

1.11. What are the limitation periods for bribery offenses?

Limitation periods depend on the maximum penalty imposed for different types of bribery and can go as high as up to 20 years. The shortest limitation period of six years relates the bribery for which the maximum prescribed duration of imprisonment is one year (e.g., bribery in the public sector, when a public official or a responsible person demands or accepts a bribe, after performance/non-performance of the activities described in Section 1.3.). The limitation period of up to 20 years relates to the bribery for which the maximum prescribed duration of imprisonment is 10 years (e.g., bribery in trading in influence related to demanding a bribe, accepting a bribe, or an offer/promise of a bribe to perform activities described in Section 1.3.).

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

The current *Criminal Act* has been in force since July 2021, and no amendments have been announced.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Gifts in the public sector are prohibited, except for the instances described in Section 2.3. The laws do not prohibit gifts in the private sector, except in the case when the gifts can be considered a bribe.

Pursuant to the *Croatian Act on the Prevention of Conflict of Interest*, a gift is considered to be money, things regardless of their value, rights, and services given free of charge that bring or can bring the persons to whom this act applies into a relationship of dependence or create an obligation to the donor. Gifts between family members, relatives, and friends, as well as national and international recognitions, decorations, and awards are not prohibited.

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

Pursuant to the *Public Officials Act*, a public official is prohibited from requesting or receiving gifts for personal benefit, for the benefit of his family or an organization, or for the purpose of a favorable settlement of administrative or other proceedings. In addition, a public official may not offer or give gifts or other benefits to another public official or to a relative or spouse or extramarital partner of another public official, for the purpose of achieving their own benefit.

Pursuant to the *Act on the Prevention of Conflict of Interest*, persons to whom this act applies, may receive gifts in accordance

with Section 2.3. Gifts of a protocol nature exceeding the amount of HRK 500 (approximately EUR 67) and other gifts that they do not keep when they have the right to keep them are considered to be the property of the Republic of Croatia.

The law does not regulate gifts in the private sector, except if they can be considered bribery.

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, pursuant to the *Act on the Prevention of Conflict of Interest*, persons to whom this act applies may only keep a gift of a symbolic value, up to a maximum of HRK 500 (approximately EUR 67). A gift of money, security, or precious metals cannot be accepted irrespective of the value. Numismatic money, commemorative coins packaged in commemorative packaging, or numismatic kits are not considered gifts of money, securities, and precious metals.

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

The law does not provide exceptions to the limitations.

3. Anti-corruption compliance

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

Yes, pursuant to the *Act on the Protection of Whistleblowers*, companies employing more than 50 employees are required to set up an anti-corruption procedure. Some of the main responsibilities of companies are to enact an internal act that would govern the procedure of internal reporting of irregularities and appoint a confidential person and a deputy who would receive reports of whistleblowers.

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

There is no official guidance on anti-corruption compliance. However, the document *Anti-Corruption Strategy for the Period from 2021 to 2030* sets out an anti-corruption framework and goals for the upcoming period and analyzes the state of corruption at the time of adoption of the strategy as of 2021.

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

Yes, various acts protect whistleblowers. Firstly, the *Croatian Act on the Protection of Whistleblowers*. The *Croatian Criminal Act* prescribes the imprisonment of up to threee years for a person who has terminated the employment agreement with an employee, who has in good faith because of a justified suspicion of corruption, addressed or reported the corruption to the competent persons or state authorities. In addition, the *Public Officials Act* protects public officials who report their suspicions of corruption.

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, the liability of a corporate entity is based on the liability of the responsible person in the entity. A corporate entity may be sanctioned if it has realized or should have realized an illegal material gain for itself or another.

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 does not provide for liability in such a case.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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, under the assumption that a responsible person in a legal entity was anyhow included in third-party corrupt actions, the company can be held liable for such actions. The law does not recognize measures to mitigate such liability.

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

A corporate entity may be sanctioned with a monetary fine or a penalty of termination of a corporate entity (a monetary fine may also be imposed along with terminating the corporate entity). A monetary fine may be imposed on a legal entity under the conditions from Section 4.1., ranging from HRK 15,000 up to 12 million (approximately EUR 2,000 up to 1.6 million). The penalty of termination of a corporate entity may be imposed if a corporate entity was established for the purpose of committing criminal offenses or has used its activities predominantly to commit criminal offenses.

In addition to the above sanctions, the court may impose one or more of the following security measures on the corporate entity: a ban on the performance of certain business activities, a ban on obtaining permits, authorizations, concessions, or subsidies, a ban on the performance of business with users of

state and local budgets and the confiscation of items.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Office for the Suppression of Corruption and Organized Crime is a state attorneys' office organized for the prosecution of corruption and organized crime and covers the territory of the Republic of Croatia. In addition, special court departments at the Zagreb, Split, Rijeka, and Osijek County Courts have been established to deal with corruption and organized crime cases.

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?

An obligation to report that bribery or corruption is being prepared concerns most of the bribery and corruption cases. Namely, under the *Croatian Criminal Act*, a person who does not report that a crime is being prepared, for which a punishment of five years' imprisonment or more is prescribed, and fails to report this while it is still possible to stop the crime from happening, may be punished with imprisonment of up to one year. However, with respect to already committed crimes, Croatian law provides a criminal liability only for not reporting a crime for which imprisonment of ten years or more is prescribed, which relates to only a minority of bribery crimes.

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

Yes. Pursuant to the *Act on the Prevention of Conflict of Interest*, persons to whom this act applies, may be punished with a warning or a monetary fine if they receive a gift contrary to the conditions from Section 2.2 or commit a corruption crime.

A public official that has been involved in corrupt acts will be imposed a penalty of termination of civil service and may be imposed with a monetary fine.

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

Under the *Croatian Code of Criminal Procedure*, authorities can take actions such as search (of person, property, belongings), inspection, on-sight visit, examination of the defendants and witnesses, temporary seizure of items, identification, taking fingerprints and prints of other body parts, and under certain conditions prescribed by the law, authorities may take special evidentiary actions like recording conversations, covert surveillance, interception, collection, and recording of computer data.

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, under the *Croatian Criminal Act*, the court may impose a milder penalty than the one prescribed by law if the state attorney and the defendant have agreed upon such a penalty. The prerequisite is a statement of the defendant on the admission of guilt for the criminal offense.

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

Yes, a person can plea bargain in corruption cases. During the negotiations between the state attorney and a defendant, a defendant must be represented by an attorney. If the parties would reach an agreement, they would have to sign a statement based on which the court would issue a judgment. The court would not accept the statement if, given the circumstances, its acceptance would not be in accordance with the sanctions prescribed by the law, or the statement would be found unlawful. The State Attorney General is obliged to issue instructions on the procedure of negotiation with the defendant on the conditions of the plea and sanctions.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

The *Czech Act No. 40/2009* Coll., the *Criminal Code*, as amended (Criminal Code) and the *Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against Them* (Corporate Criminal Liability Act), as amended, are the main pieces of Czech legislation governing bribery and corruption.

1.2. Which international anti-corruption conventions apply?

The following anti-corruption conventions apply to the Czech Republic:

UNCAC – The Czech Republic is part of the *United Nations Convention against Corruption*. The Convention was promulgated on December 23, 2013, in the Collection of International Treaties, volume 57, number 105/2013 Coll.

OECD – The Organisation for Economic Co-operation and Development also deals with the fight against corruption. The Czech Republic signed its *Convention against Bribery of Foreign Public Officials in International Business Transactions* on December 17, 1997, in Paris.

GRECO – The Group of States against Corruption was established in 1999 by the Council of Europe to monitor states' compliance with their anti-corruption standards. The Czech Republic became a member in 2002.

The Czech Republic is also part of the International Anti-Corruption Academy (IACA) and the European Partners Against Corruption (EPAC), an informal network of 61 national police and anti-corruption watchdogs from EU Member States and the Council of Europe.

1.3. What is the definition of bribery?

Under the *Criminal Code*, a bribe shall be understood as an unauthorized advantage consisting in direct asset enrichment or another profit that is to be given to the bribed person or with their consent to another person and to which they are not entitled.

The principal offenses under this legal framework are:

Accepting a bribe

Whoever themself or through another person accepts a bribe or a promise of a bribe for themself or for another (Section 331 of the *Criminal Code*).

Bribery

Whoever provides, offers, or promises a bribe for another person (Section 332 of the *Criminal Code*).

Indirect bribery

Whoever requests or accepts a bribe for that they will use their influence or influence of another to affect the exercise of powers of a public official, i.e. indirect bribery (Section 333 of the *Criminal Code*).

To constitute a criminal offence, the corruption call must furthermore be related to the procurement of a matter of general interest or conducting business. (Section 334 Common Provisions of the *Criminal Code*).

Furthermore, corporate entities can also be found liable for bribery-related criminal activity, under conditions described in Section 4.1.

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

The same provisions of the Czech criminal law apply for bribery and corruption in public and private sector. This means the criminal liability itself (criminal liability of natural persons as well as of corporate entities) as well as the charges as a consequence thereof are governed by the same provisions.

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 *Criminal Code* defines a public official through a list of public functions such as a judge, public prosecutor, certain political functions such as members of parliament, the cabinet or the president, a member of the city council or a responsible official of a territorial body, state administration body or other public authority, members of public security forces, etc., but only at the time when they perform the tasks of the state or society and only at the time when they use the powers delegated onto them to perform those tasks.

An official of a foreign state or international organization is deemed to be an official under the Czech *Criminal Code*, if so provided by an international agreement or if it operates in its territory with the consent of the Czech authorities. This consent is not required if it is an official of an international criminal court, an international criminal tribunal, or a similar international judicial body who meets at least one of the conditions specified in the *Act on International Judicial Cooperation in Criminal Matters*.

For a bribe to be committed, as defined in Section 1.3, an involvement of a public official is not necessary (if however a bribe is committed by a public official, a higher imprisonment penalty applies). For an action to be considered a bribe in the sense of the Czech *Criminal Code*, the corruption call must be related to the procurement of a matter of general interest or to conducting business.

Employees at state-owned or partially state-owned or municipal enterprises are not treated any differently than employees in the private sector when it comes to bribery and anti-corruption in the sense of criminal law. However, public or partially public enterprises are further regulated by various means to prevent corruption, such as the duty to disclose various information to the general public upon a formal request, the duty to automatically disclose all contracts in a publicly accessible register of contracts, the duty to comply with public procurement regulation when seeking a supplier or subcontractor, etc. These means of regulation may also apply to private companies in a specific situation, typically if a private company interferes with public funds through public subsidies, supplying goods or services to a public body or company, etc. All of these measures serve as a prevention to bribery and corruption. Nevertheless, if a bribe is committed, criminal law applies.

A state-owned enterprise can have various forms. It could either have a legal form of a "state enterprise" (*statni podnik*) or a legal form of a commercial entity, where the stakeholder is (entirely or partially) the Czech Republic. Furthermore, Local Self-Government Units (municipalities (*obce*) or counties (*kraje*) may and often do have major stakes or are the only stakeholder to certain legal entities that may have a legal form of a commercial entity, but are, due to its stakeholder, subject to certain regulations private entities are not required to comply with.

1.6. Are there any regulations on political donations?

A political donation could be considered a bribe if it meets the criteria set out in this note. In relation to civil servants (public officials) the Czech *Act. No. 234/2014 Coll., on Civil Service*, stipulates that a value limit of gifts or other benefits provided to a civil servant amounts to CZK 300 (approximately EUR 12), however, the Supreme Court adjudicated in its recent jurisprudence that even a gift below this limit may constitute a bribery offense in certain situations.

Furthermore, according to the *Act on Associations in Political Parties and Movements*, political entities may not accept a donation or other gratuitous performance exceeding CZK 3 million per year from a single natural or legal person. Should this amount be exceeded, it must be returned to the donor or transferred to the state budget.

Financial (monetary) donations to a political party, if they exceed CZK 1,000, must be supported by a donation contract. Parties may not accept donations from municipalities, state enterprises, trust funds, or foreign persons (natural or legal).

Parties are obliged to keep two transparent accounts: an election account, purely for campaign expenses, and an account for donations and state contributions, showing three years' history of such receipts. They must also publish a full list of donors three days before the election.

1.7. Are there any defenses available?

For natural persons, there are no specific statutory defenses to charges related to bribery. In general however, confession to a crime is usually an extenuating circumstance, together with cooperation with the investigation with police and other authorities, such as prosecutors and judges.

A legal entity can try to discharge itself from criminal liability if it has implemented all necessary measures that could be reasonably required to prevent the crime (the "compliance defense"), pursuant Section 8 (5) of the Corporate Criminal Liability Act. However, the only related guidance on this matter is the Supreme Public Prosecutor's Office Guidance, while the view of the courts and the Ministry of Justice remains unclear. Generally, to be used as a compliance defense, the respective legal entity needs not only to implement a compliance system introducing internal rules and processes to prevent and detect corruption, but also needs to ensure (and eventually prove in a criminal proceeding) that all of the relevant employees, suppliers, the management, etc. have been duly and regularly trained for the compliance system to prove functional and effective.

1.8. Is there an exemption for facilitation payments?

The Czech Republic prohibits facilitation payments and any gift given with the intent to illegally influence decision-making. Therefore, facilitation payments may be considered a bribe, provided they meet the criteria described above. Furthermore, facilitation payments may be considered bribes no matter how small the amount is.

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

Individuals face up to 12 years' imprisonment, forfeiture of property, monetary penalties, house arrest, community service, prohibition of entry to sporting, cultural and other social events, deportation, and prohibition of residence.

The Corporate Criminal Liability Act recognizes a broader scale of sanctions for companies. The act provides for: forfeiture of property; monetary penalties (up to CZK 1.46 billion (approximately EUR 56 million)); forfeiture or seizure of

assets; prohibition of certain activities; prohibition from taking part in public procurement, punishment by disqualification from participating in public tenders; prohibition from receiving grants or subsidies; and publication of the judgment. If held liable, the company may also be dissolved (in extreme cases).

Companies convicted of bribery offenses may also face debarment from public procurement contracts under the *EU Public Procurement Directive*.

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

General territorial provisions of the *Criminal Code* and of the Corporate Criminal Liability Act apply. Regarding individuals, general criminal law jurisdictional principles apply, i.e. the territorial principle and the personality principle.

- The territorial principle means that Czech criminal law applies to criminal offenses committed in the territory of the Czech Republic.

- The personality principle means that Czech criminal law applies to Czech citizens no matter where the respective criminal offense has been committed.

Regarding companies, the Corporate Criminal Liability Act applies to corporations that have their registered office in the Czech Republic, have a business or branch in the Czech Republic, carry out activities in the Czech Republic, or have assets in the Czech Republic.

1.11. What are the limitation periods for bribery offenses?

The statute of limitations for bribery offences varies from three to 15 years, depending on the gravity and nature of the specific offence. The limitation period is generally determined by the upper limit of the penalty of imprisonment for the offence.

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

No change in terms of amendment to the current legislation is planned in the foreseeable future.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

Hospitality expenses or gifts are not subject to any quantitative or qualitative restrictions in the *Criminal Code*, as the *Criminal Code* makes no express provisions with regard to corporate hospitality and any financial or other advantage.

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

The relevant legislation does not provide for specific guidance on gifts and hospitality in the private sector so the general provisions described in Section 1 apply.

In the public sector, further guidance is provided on giving gifts to public officials, as described in Section 2.3.

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?

Limitations for giving and receiving of gifts and hospitality in the public sector are rather difficult to be generalized but for the sake of simplicity, it can be concluded that public officials either **(i)** cannot accept gifts at all; or **(ii)** can only accept gifts which do not exceed CZK 300 in value as specified below. Which of these is the case depends on the regime under which the individual public official is employed and this usually cannot be assessed in standard situations. A general recommendation therefore is not to give gifts to any individuals who are perceived as government or public officials. A more detailed explanation of the underlying legal regulations and categorization of the groups of public officials is as follows.

A. Employees within public security forces

Employees serving as members of public security forces (military, state or municipal police, customs office, etc.) may not accept any gifts.

B. Public officials under the Civil Service Act

In the civil (public) service, an employee must not accept gifts or other benefits for themself or for anyone else in the course of or in connection with their decision-making.

Gifts that do not affect the proper performance of their duties may be accepted by a public official only if their value does not exceed CZK 300 (in the case of repeated offers of small gifts in the near future, whose individual value does not exceed CZK 300, the individual values must be added together at the moment when these gifts are repeatedly offered by one or more donors in close temporal proximity, but in the same matter). This threshold applies per gift for each public official.

By way of an example, officials under the *Civil Service Act* would typically include officials at the Cadastral Office, Tax Office, etc.

C. Public Officials under the Act on Officials of Local Self-Government Units

Act No. 312/2002 Coll., on Officials of Local Self-Government Units stipulates that the basic duties of a civil servant include

not accepting gifts or other benefits in connection with the performance of their employment, except for gifts or benefits provided by the local authority with which they are employed or on the basis of legislation and collective agreements.

By way of an example, officials under the *Act on Officials of Local Self-Government Units* would typically include employees of a local Self-Government Unit, such as a municipality, assigned to governmental administrative agenda such as vehicle register, vital records, etc.

D. Employees under the Labour Code within the public sector

Pursuant the *Labor Code* (*Act No. 262/2006 Coll.*), employees in the public sector may not accept gifts in connection with the performance of their employment, except for gifts provided by the respective Office where they are employed or pursuant to legal provisions.

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

No specific defenses or exceptions apply and it needs to be assessed in every situation, whether a gift can constitute bribery as a criminal offense as defined in Section 1.3.

3. Anti-corruption compliance

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

Companies are not required to have anti-corruption compliance procedures in place. A company may however discharge itself from criminal liability if it has implemented such compliance procedures, as described in Section 1.7.

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

The only related guidance on this matter is the Supreme Public Prosecutor's Office Guidance. This guidance provides brief information about the standard compliance measures, such as an anti-corruption program, regular training of staff, and internal guidelines. It also provides guidance as to how prosecutors will assess such compliance programs, with a focus on the firm's culture and employee engagement in practice. However, both the courts' and the Ministry of Justice's view remains unclear.

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

Within the area of public service, whistleblowing is regulated in the *Governmental Regulation No. 145/2015 Coll.*, on measures related to the reporting of suspected infringements in a public office (Regulation). The Regulation requires all public offices to create a position for an employee who will be in charge of receiving such whistleblowing reports on breaches or suspected breaches of law and will be responsible for follow-up internal investigation based on these reports. Furthermore, the Regulation requires the identity of the whistleblower, if known at all, to be kept secret and the whistleblower must not, under any circumstances, face pressure or any kind of harm.

In the private sector, the legislation in the Czech Republic currently does not provide for regulation of whistleblowing. As of May 2022, the Draft *Act on Whistleblowing* based on the *EU Whistleblowing Directive* is still in the legislative procedure.

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, corporate entities can be held liable for bribery and corruption (see also Section 1.9.).

A legal person is liable for the actions of:

- the statutory body, a member of the statutory body, or another person authorized to act on behalf of the legal person;
- a person in a leading position who performs supervisory or controlling activities in the legal person, a person who exercises decisive influence on the management of the legal person; or
- an employee in the performance of their work tasks; either on the basis of the approval or instructions of the senior persons referred to earlier or if these senior persons have not taken measures that can be fairly required of them to prevent such actions by the employee (internal codes of ethics and compliance programs).

Moreover, such actions must occur within the framework of the activities of the legal entity or in its interest.

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 liability of legal entities, including corporations, is governed by the Corporate Criminal Liability Act. In general, a parent company cannot be liable for its subsidiary's involvement in bribery, since the parent company and the subsidiary are two separate legal entities.

However, the parent company (i.e. the controlling entity) should reimburse the controlled entity if there is any damage arising from such control.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

In general, a company cannot be liable for its third-party agent's involvement in bribery, since the company and the third-party agent are two separate legal entities. It would, however, require a deeper assessment, before any criminal liability of the company can be excluded.

A duly implemented and functioning compliance program may help to reduce the risk of criminal liability of the company in such a case, as described in Section 3.

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

The Corporate Criminal Liability Act provides for: forfeiture of property; monetary penalties (up to CZK 1.46 billion (approximately EUR 56 million)); forfeiture or seizure of assets; prohibition of certain activities; prohibition from taking part in public procurement, punishment by disqualification from participating in public tenders; prohibition from receiving grants or subsidies; and publication of the judgment. If held liable, the company may also be dissolved (in extreme cases).

Companies convicted of bribery offenses may also face debarment from public procurement contracts under the EU Public Procurement Directive.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Currently, there is no specialized prosecution branch focused on corruption-related crimes, therefore general public prosecutors are responsible for the prosecution of both individuals and corporates, in front of general criminal courts.

Nonetheless, a police branch dedicated to investigating organized and financial crime has been established. It is called the National Centre Against Organized Crime and it was created by merging two special police offices: the Anti-Corruption Office and the Office for Fighting Organized Crime.

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 offences of accepting bribes and bribery are subject to the general reporting duty under the *Criminal Code*.

Thus, whoever learns in a credible manner that another has committed a criminal offence of accepting bribes and bribery and fails to report the offence without delay to the public prosecutor or police authority will be punished by imprisonment for up to three years.

The reporting duty does not apply if reporting would mean putting oneself or a close person at risk of death, bodily harm, other serious harm or criminal prosecution.

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

Should a certain action or series of actions constitute a bribe as defined in Section 1.3, provisions of criminal law, including the criminal procedure apply, being superior to civil or administrative means of enforcement. This does, however, not exclude the possibility for harmed individuals to claim damages within the criminal proceeding. If these damages claims are not resolved within the criminal proceeding itself, usually if the court decides more evidence is needed, the court separates these damages claims into a civil dispute.

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

The authorities may use any relevant powers and instruments set out in the *Criminal Procedure Code* to investigate corruption offences. Such powers include, for example, search of home and person, search of other premises and land, entry into dwellings, other premises and land, seizure and opening of packages, substitution and surveillance, interception and recording of telecommunication traffic, etc.

Some of the instruments stated above, typically any large interference into one´s privacy such as search of premises or monitoring of communication, require authorization by the court and cannot be carried out by the investigating bodies themselves.

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?

In general, confession to a crime is an extenuating circumstance, together with cooperation with police and other authorities of the criminal trial, such as the prosecutors and judges. This applies particularly if the accused party plays a substantial role in the conviction of other parties involved in the criminal activity.

Furthermore, if agreed between the accused party and the prosecutor and approved by the court, a special type of settlement may be executed as an alternative to a regular trial before the criminal court. This procedural institute that would become an option in such a situation is further described in Section 5.6 below.

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

In most cases, it is at least formally possible to reach a settlement agreement (called an "Agreement on Liability and Sentence," (*Dohoda o vine a trestu*)) under the conditions set out by the *Criminal Procedure Code* (*Act No. 141/1961 Coll.*). This is an agreement between the perpetrator and the State Prosecutor, while the victim is partially involved in the settlement process as well. The perpetrator must admit their criminal liability for the criminal activity committed and agree with the proposed sentence and damages to the victim. The settlement agreement must be confirmed by the court or by the state prosecutor (at the pre-trial phase). All the mandatory conditions must be satisfied together with the court's or state prosecutor's consideration that the settlement is sufficient with regard to the crime. In such a case, no further trial regarding this perpetrator is held.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

Chapter XXVII of the *Criminal Code Act C of 2012 on the Criminal Code* (Criminal Code) regulates crimes of corruption, which include:

- Active Corruption (Section 290 of the Criminal Code),
- Passive Corruption (Section 291 of the Criminal Code),
- Active and Passive Corruption of Public Officials (Sections 293 - 294 of the Criminal Code).
- Active and Passive Corruption in Court or Regulatory Proceedings (Section 295 – 296 of the Criminal Code),
- Indirect Corruption (Section 298 of the Criminal Code),
- Abuse of Function (Section 299 of the Criminal Code), and
- Failure to Report Corruption Felonies (Section 300 of the Criminal Code).

1.2. Which international anti-corruption conventions apply?

By joining the international anti-corruption conventions and recognizing their binding force, Hungary has undertaken to transform its national legal system to comply with the requirements of anti-corruption conventions. This commitment is monitored by international organizations such as the GRECO, OECD, and UNODC.

1.3. What is the definition of bribery?

Subsection (1) of Section 290 of the Criminal Code defines bribery, which is a felony committed by any person who gives or promises unlawful advantage to a person working for or on behalf of an economic operator, or to another person to induce him/her to breach their official duties.

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

Based on the relevant legislation, a distinction can be made between active and passive corruption in the private sector (Sections 290-291 of the Criminal Code), active corruption in the public office (Section 293 of the Criminal Code) but also in the course of judicial and regulatory proceedings (Sections 295-299 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?

The interpretative provisions of the Criminal Code define precisely who classifies as a public official or as a foreign official.

Point 11. of subsection (1) of Section 459 of the Criminal Code defines public officials such as:

a) the President of the Republic,

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

c) constitutional court judges,

d) the Prime Minister, other ministers, state secretaries, state secretaries for public administration and deputy state secretaries, government commissioners,

e) judges, public prosecutors, and arbitrators,

f) the commissioner of fundamental rights and his/her deputy(ies),

g) public notaries and assistant public notaries,

h) independent court bailiffs, independent bailiff substitutes, and assistant bailiffs authorized to act as process servers,

i) members or councils of representatives of municipal governments and representatives of nationality self-governments,

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

k) members of the staff of the *Alkotmanybirosag* (Constitutional Court), the *Koztarsasagi Elnok Hivatala* (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 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.

Point 13. of Subsection (1) of Section 459 of the Criminal Code defines foreign public officials as:

a) a person serving in the legislative, judicial, administrative, or law enforcement body of a foreign state, and/or persons exercising 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,

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?

Act XXXIII of 1989 on the Operation and Financial Management of Political Parties

1.7. Are there any defenses available?

Yes, possible defenses are based on the general principles of *Act XC of 2017 on Criminal Procedure* such as the prosecution, the rights of the defense, defense *in absentia*, and the prohibition of self-incrimination.

1.8. Is there an exemption for facilitation payments?

No, there is no exemption for corruption offenses. Property obtained by criminal means is subject to confiscation of property based on Section 74 of the Criminal Code.

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

The basic offense of Active Corruption is up to three years of imprisonment and in aggravated cases, it can be up to eight years based on Section 290 of the Criminal Code.

(1) Any 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 them to breach their duties is guilty of a felony punishable by imprisonment not exceeding three years.

(2) The penalty shall be imprisonment between one to five years if the felony described in Subsection (1) is committed in connection with a person working for or on behalf of an economic operator who is authorized to act in its name and on its behalf independently.

(3) The penalty shall be:

a) imprisonment between one to five years in case of Subsection (1);

b) imprisonment between two to eight years in the case of Subsection (2).

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

Hungarian criminal law applies to any act committed by a Hungarian citizen beyond national boundaries (abroad), which is a criminal offense under Hungarian law.

1.11. What are the limitation periods for bribery offenses?

Pursuant to Subsection 2 of Section 26 of the Criminal Code, the limitation period for the criminal offenses defined in Chapter XXVII (bribery) 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 pending or planned amendments.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

According to court practice, any small gift can be seen as corruption if it is given in an official function (and with the intent to influence an official).

Industry Codes of Ethics play a key role to ensure organizational integrity and reduce corruption risks within the organization, in the fight against corruption.

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

There are specifics – for example in the case of medical professionals who are employed by the state or government-owned hospitals or clinics. For them the smallest gifts are considered bribery and can be prosecuted and punished as bribery since March 1, 2021, following the issuance of the *Medical Professionals Status Act C of 2020 on Healthcare Services Relationship*.

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 acceptance of an advantage is only allowed if there is a legal basis for it. So-called protocol gifts are not permissible if they are likely to affect in the slightest degree the impartial and fair functioning of a public office or officer.

■ The same rules apply to non-officials in the public sector if they are employees who have the right to take independent

actions.

■ A non-official person (for example, an employee or member of a budgetary body, an economic body, or an association) commits an offense if, in connection with their activities, the person seeks an undue advantage or accepts such an advantage or a promise of such an advantage in return for a breach of duty or acts in consent with the person seeking or accepting the undue advantage.

■ An official who, in their official capacity, obtains credible knowledge that an undetected corruption has been committed and fails to report it to the authorities as soon as they are able to do so, shall be also prosecuted for the felony of corruption.

2.4. Are there any defenses or exceptions to the limitations (e.g. Reasonable Promotional Expenses)?

See Section 2.3., Rules on gift acceptance in public bodies and the public sector.

3. Anti-corruption compliance

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

Companies are required to prepare their internal anti-corruption procedures as part of their internal compliance programs. It is governed by an internal *Code of Ethics*, based on the *OECD Integrity Management Framework* model, which was first prepared in 2008 taking into account the best corporate compliance models; it is the equivalent of the *Integrity Infrastructure model*. According to the model being recommended for implementation in developed countries, an important element in preventing corruption is the organization, which can be made resilient by applying integrity management tools, thus reducing corruption risks.

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

According to Subsection d) of Section 4 of *Government Decision No. 1336/2015* (May 27) *on the adoption of the National Anti-Corruption Program*, the internal control system and internal measures for the prevention of corruption must be harmonized within the public administration bodies in the whole of the organizational operation, including real and management processes and the necessary legislation must be developed.

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

Directive 2019/1937/EU on the protection of persons who report breaches of European Union law was adopted by the Council of the European Union and the European Parliament in 2019 but has not yet been transposed into Hungarian law. Currently, *Act CLXV of 2013 on Complaints and Whistleblowing of Public Interest* provides for the protection of the confidentiality of whistleblowing and provides for the protection of 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?

Yes, corporate entities may be held liable for bribery and corruption given a certain limited scope outlined in *Act CIV of 2001 on criminal measures against legal persons*, the specifics of which you can find below.

Pursuant to Subsection 1 of Section 2 of the act, measures may be taken against a legal person for the intentional commission of an offense if the offense was committed with the purpose or effect of obtaining an advantage for the benefit of the legal person, or if the offense was committed using the legal person and the offense was committed by

(a) a director or a member authorized to represent the legal person, an employee or an officer, a company secretary or a member of the supervisory board or their delegates, in the course of the legal person's activity, or

(b) a member or employee in the course of the legal person's activities, and the fulfillment of the duties of management or control by the manager, the company secretary, or the supervisory board could have prevented 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?

Parent companies can be found liable for the corruption of their subsidiaries if the corruption was committed with their knowledge, at their instructions, or served the financial or other economic interest of the parent company. Preparation of *Compliance Codes* (internal SOPs) and their regular and consistent enforcements as well as internal courses to educate people on bribery and strict adherence are keys to prevention.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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 situation and the answer are similar to Section 4.2. If the third-party agent with the knowledge, at the instruction, or for

the financial or other economic interest of the company, the company, as a legal person can be held liable. Liability can be mitigated if the third-party agent acted on their own behalf without the knowledge of the company which contracted them.

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

According to *Act CIV of 2001 on criminal measures against legal persons* Subsection 1 of Section 3, measures that may be taken against a legal person regulates that if the court imposes a criminal sentence, a reprimand or probation, confiscation or forfeiture of property on the perpetrator of an offense specified in Section 2, it may apply the following measures against the legal person:

(a) dissolution of the legal person,

(b) restriction/limitation of the activities of the legal person, and/or

(c) fine.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

In Hungary, the Office of the Prosecution is the entity charged with prosecuting criminal offenses (including bribery cases).

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 legal obligation to report cases of corruption, but as stated above, persons who are aware of or have knowledge of the commission of bribery can be prosecuted as an accomplice. Corruption offenses are difficult to detect and prove because there is no natural person victim and both parties i.e., those who give and those who accept the bribery benefit from the offense. Bribery is an act that requires two parties and their close and, in most cases secret, cooperation and conspiracy. The possibilities for tangible evidence are limited – those who are parties to bribery try not to leave any external traces, are secretive, and try to hide their actions from third parties.

Cases of whistleblowing include anonymous reporting, whistleblowing by persons who identify themselves, whistleblowing as a possible means of tackling corruption, i.e., whistleblowing (mainly widespread in Anglo-Saxon countries. In English, it is often translated as "ringing the alarm bell." The term covers the process of sharing some confidential and specific information with the authorities to expose some covert and illegal activity)

See Section 1.1.

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

In case harm is caused in connection with acts of corruption, there is a possibility to enforce claims in civil proceedings, but there are no administrative redress or enforcement proceedings.

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

In relation to the abuse of function and corruption, it is important to emphasize that in many cases investigative authorities are successful in using the means of secret information without a judicial warrant and collection of secret data with judicial authorization. However, the use of data obtained by secret methods can also give rise to a number of issues, including their legitimate nature and use in subsequent phases of criminal prosecution. At the same time, open investigations and data collection may jeopardize the success of the bribery investigation.

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?

The law allows for the unlimited reduction or waiver of punishment for corruption offenders who cooperate with the authorities in the investigation of the corruption offenses. The institution for the ground for decriminalization was introduced to address this situation. On April 1, 2002, Article 255/A of the Criminal Code entered into force, which provided for the non-criminalization of both passive and active bribery, whether it was official or economic bribery. *Act CL of 2011* changed this regulation and allowed for the unlimited reduction or waiver of punishment instead of grounds for non-criminalization (see *Act C of 2012 on the Criminal Code*, Chapter XXVII on corruption offenses). Under this rule, an offender who, before the offense has come to the attention of the authority, reports it to the authority, discloses the circumstances of the offense, or, in the case of passive corruption, hands over to the authority the illicit financial advantage received or its countervalue, is not punishable.

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

The *Criminal Procedure Act* (*Act XC of 2017*) currently in force allows for plea bargaining between the prosecution and the defendant in every case, for every offense including bribery. According to the law, "the prosecution and the defendant may, for the purposes of the plea bargaining procedure, enter into a plea bargain before the indictment on the admission of guilt and the consequences thereof in relation to the offense committed by the defendant. The conclusion of a plea bargain may be initiated by the defendant, the defense, and the prosecution. The prosecution may also communicate its initiative during the questioning of the accused." However, a plea bargain is only possible until the indictment – the law is intended to motivate the accused to confess at the earliest possibility and therefore expedite the proceedings.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

The legal framework for bribery and corruption in Latvia is based on both international conventions, laws, and regulations, as well as national laws and regulations. At the national level, anti-corruption and anti-bribery related provisions are included in several laws, some of which include:

- The *Law On Corruption Prevention and Combating Bureau*
- The *Law On Remuneration of Officials and Employees of State and Local Government Authorities*
- The *Criminal Law of the Republic of Latvia*
- The *Law On Prevention of Conflict of Interest in Activities of Public Officials*
- The *Law On the Prevention of Money Laundering and Terrorism Financing*
- The *Operational Activities Law*
- The *Administrative Procedure Law*
- The *Criminal Procedure Law*
- The *Law On Official Secrets*
- The *Law On Prevention of Squandering of the Financial Resources & Property of the State & Local Governments*
- The *Public Procurement Law*
- The *Law On Public-Private Partnership*

1.2. Which international anti-corruption conventions apply?

- The *United Nations Convention Against Corruption*;
- The *Convention Against Corruption Involving Officials*;
- The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*;
- The *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*
- The *Council of Europe The Criminal Law Convention on Corruption*;
- The *Additional Protocol to the Criminal Law Convention on Corruption*;
- The *Council of Europe Civil Law Convention on Corruption*;
- The *Agreement establishing the Group of States against Corruption (GRECO)*;
- The *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*
- The *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*

1.3. What is the definition of bribery?

Article 323 of the *Criminal Law* defines bribery as handing over or offering of material value, properties, or benefits of another nature, or promising a bribe upon requesting it, in person or through intermediaries in order that the public official, using his position, performs or fails to perform some act in the interests of the giver or person offering or promising the bribe, or in the interests of other persons, irrespective of whether the bribe handed over, offered, or promised is for this public official or for any other person.

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

Yes. Article 199 of the *Criminal Law* addresses commercial bribery if the bribe is given so that the private person or the company would act in the interests of the briber. Commercial Bribery is defined as offering or handing over, personally or through an intermediary, material goods, property, or benefits of any other nature to an employee of an undertaking (company) or organization or to a person authorized by law or legal transaction to manage another person's affairs, or to a responsible employee of an undertaking (company) or organization or to a person authorized by the undertaking (company) or organization, or a person authorized by law or by a legal transaction to settle disputes, to act in the exercise of their authority, whether or not material goods, property or other benefits are intended for that person or for any other 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?

Public officials are defined in Article 316 of the *Criminal Law* as representatives of the state administration, as well as any person, who permanently or temporarily holds an office in the state administration or local government, including a state-owned or municipal capital company, and who has a right to pass decisions binding on other persons, or who has a right to carry out supervisory, control, investigation or penal functions, or dispose of the property or financial assets of the public person or its capital company.

The State President, members of the Parliament (Saeima), Prime Minister, members of the Cabinet of Ministers, as well as officials of public authorities elected, appointed, or approved officials by Saeima and the Cabinet of Ministers, heads of the local governments, their deputies and executive directors have deemed public officials holding accountable position.

Officials of the international organizations, international parliamentary assemblies, and international courts, and persons authorized by such agencies, as well as any person holding a position of legislative, executive, or judicial power in a foreign state, or any administrative unit thereof, irrespective of whether such a person is elected or appointed to such position, as well as any person who performs a public function abroad, including in the interests of its administrative unit, government agency or state enterprise.

There are no official lists of all public officials available. Most public officials are obliged to file annual disclosure of income, part of which is publicly available. Most of the public officials' names and surnames are available on the particular authorities or state or municipality-owned company's website.

1.6. Are there any regulations on political donations?

Yes, regulations about political donations are covered by the *Law On Financing Political Organizations* (parties), the *Pre-election Campaign Law*, the *Criminal Law*, the *Law On Prevention of Conflict of Interests in Activities of Public Officials*, and general laws and regulations applicable to bribery and anti-corruption.

The *Law On the Prevention of Conflicts of Interest in the Activities of Public Officials* defines donations as the giving of advantages for the benefit of the whole public institution, which are given either based on a public agreement or are provided in compliance with the procedure laid down in Cabinet Regulations. No specific provisions exist with respect to charitable or political donations to government officials, public servants, and the private sector. Given the definition of donations in the *Law On the Prevention of Conflicts of Interest in the Activities of Public Officials*, other individual charitable or political donations to government officials / public servants shall be deemed as gifts and subject to the statutory acceptance restrictions. Specific law, which limits charitable and political donations to political parties, is in effect.

Article 2 of the *Law On Financing Political Organizations* provides that political parties may receive donations from natural persons only. Pursuant to Article 3 the maximum amount allowed as a donation from natural persons is in the amount of 50 minimal monthly salaries (minimum monthly salary in 2022 is EUR 500) (for one political party in the period of one year). The Corruption Prevention and Combating Bureau is entitled to request the donor and/or payer of membership fees information regarding their income, origin of the donation/membership fee payment, savings, and liabilities.

In case the political party receives state budget financing different rules apply. State budget financing is provided to any political organization (party) for which more than 2% of voters have voted in the last elections of the parliament.

In case of receipt of the state budget financing, natural persons are allowed to make gifts (donations), and pay membership fees and joining fees from their income, however, the total amount of such gifts (donations), membership fees, and joining fees to all political parties which receive the state budget financing, and which are represented in the parliament may not exceed five minimum monthly salaries.

In case of receipt of the state budget financing, natural persons are allowed to make gifts (donations), pay membership fees and joining fees from their income, however, the total amount of such gifts (donations), membership fees, and joining fees to all political parties which receive the state budget financing and for which more than 2% but not more than 5% of voters have voted in the last elections of the Saeima may not exceed 12 minimum monthly salaries.

If the state budget financing is received by an association of political organizations (parties) or a political organization (party) that joins an association of political organizations (parties) that does not receive the state budget financing, the above-indicated restriction shall apply to the total amount of the gifts (donations) made and membership fees and joining fees paid by one natural person to the association of political organizations (parties) and all political organizations (parties) forming the association of political organizations (parties).

1.7. Are there any defenses available?

There are no limitations to the available defense mechanisms provided by national laws and regulations on bribery. Defenses available depend on the particular conduct and can be different. Please see below with respect to bribery and commercial bribery. Also, it must be noted that the *Criminal Law* provides circumstances that aggravate or mitigate liability.

1.8. Is there an exemption for facilitation payments?

There are no general exemptions for facilitation payments under the *Criminal Law of the Republic of Latvia*. However, the prosecutor may exercise its discretion whether to prosecute a facilitation payment, particularly if made under duress.

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

Criminal sanctions vary from a criminal fine (from EUR 5,000 to EUR 1 million) to community service, probation supervision, or imprisonment of up to 10 years. The applicable sanctions depend on the criminal conduct and its related circumstances. Supplementary sanctions can include confiscations of assets, restrictions to take a particular position for up to five years, and probation supervision.

There are no general civil and administrative sanctions for bribery. However, criminal conduct does not limit the right to bring civil claims for damages against the perpetrator. Also, for breach of statutory provisions on gifts and hospitality, public officials may be subject to administrative fines.

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

Yes. Foreign individuals or companies can be prosecuted for bribery if the offense took place within the Latvian jurisdiction pursuant to Article 2 of the *Criminal Law*. Article 4 of the *Criminal Law* provides that a person can be prosecuted in Latvia if the offense took place outside Latvian jurisdiction and:

- the person concerned committed bribery against the Republic of Latvia or its population's interests; or
- the offense was committed under international treaties and the person has not been found guilty of the offense or been tried for that offense in another jurisdiction.

1.11. What are the limitation periods for bribery offenses?

Limitation periods in the *Criminal Law* depend on the gravity of the crime. Bribery and its related offenses are defined as serious crimes or gravely serious crimes, depending on the circumstances of the conduct. Limitation periods for bribery offenses, depending on the particular circumstances can be either 10 years (serious crime) or 15 years (gravely serious crime).

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

At the moment, there are not any significant planned amendments or developments to the national bribery and corruption laws. The Corruption Prevention and Combating Bureau is regularly preparing plans for combatting corruption-related crimes and invites public and private authorities in contributing to legislative initiatives.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

The Law On the Prevention of Conflicts of Interest in the Activities of Public Officials provides that public officials are not allowed to accept any gifts and hospitality with the specific exceptions provided in the law. Public officials are allowed to accept souvenirs, diplomatic gifts, and gifts by foreign officials or officials of an international organization. However, such gifts do not become the property of the receiving public official, but the government institution, which the public official represents.

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

General bribery provisions in the *Criminal Law* regulate the prohibition of giving gifts or hospitality to government officials and/or public servants with a corrupt intent. The object of a bribe/illegal giving of goods under the provisions is referred to as material value, properties, or benefits of other nature.

General bribery provisions in the *Criminal Law* regulate the prohibition of giving gifts or hospitality to persons in the private sector with a corrupt intent. The object of a bribe under the provisions is referred to as material value, property, or benefits of other nature.

While on duty, public officials are permitted to accept flowers, souvenirs, books, representative articles, and other values (not exceeding one minimum monthly salary in value) provided that the goods are given without corrupt intent. Such goods are not deemed as gifts within the *Law On the Prevention of Conflicts of Interest in the Activities of Public Officials*.

There is no specific restriction on the acceptance of gifts while off duty, insofar as the conflict-of-interest rules are complied with. Public officials are forbidden to receive gifts from individuals or entities, in relation to which the public official has participated in decision making or entering into a contract on behalf of a public entity for a period of two years before the gift is received. Also, officials are forbidden to participate in decision-making and signing of contracts with individuals and entities from whom they have received gifts, while off-duty, for two years after receipt of such gift.

There are no specific limits or restrictions for gifts in the private sector, but such gifts should be provided without corrupt intent and not expecting anything in return.

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 are no specific limitation values for benefits and gifts provided in the law. With respect to souvenirs, books, and representative articles, which are not deemed as gifts under laws, the overall value within one year period cannot exceed one minimum monthly salary.

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

Yes, it is possible to provide reasonable hospitality/promotional expenses. All such expenses should be coordinated in advance and should not be provided with corrupt intent and with the particular public institution and must be official and traceable.

3. Anti-corruption compliance

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

No, there are no specific provisions in national law that oblige companies to generally have anti-corruption compliance procedures in place. Companies, their representatives, and employees must comply with laws and regulations that govern corruption. The existence of such a policy can be deemed as a mitigating factor when criminal liability is imposed for crimes related to corruption but will not release from liability.

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

There is no official guidance on anti-corruption compliance that would generally apply to companies. At the same time, the Corruption Prevention and Combating Bureau provides public materials, teaching aids, information, news, updates, guidance, and tests on anti-corruption compliance. Such materials are available publicly and there is specific guidance for compliances that can be used by companies and entrepreneurs.

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

Whistleblower protection is ensured pursuant to a special *Whistleblowing Law*. Whistleblower protection became effective in 2018 when national law to protect whistleblowers was adopted. In 2022, a new draft law was passed, due to the implementation of the *EU Directive 2019/1937*. The Whistleblowing law provides that it is strongly encouraged to report bribery and corruption allegations in the interests of the society. Such whistleblowers are provided protection as provided in the law.

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 cannot be prosecuted in Latvia. The subject of criminal liability is a natural person only. In accordance with the *Criminal Law*, it is possible to apply coercive measures against corporate entities, such as **1)** liquidation, **2)** limitation of rights, **3)** confiscation of assets, **4)** cash collection.

Article 70 (1) of the *Criminal Law* provides the grounds for applying coercive measures against a corporate entity and does not differentiate, whether the natural person is a regular employee or a senior employee (executive) of this corporate entity. The main criteria to impose coercive measures against the corporate entity is that the criminal offense is committed:

- in the interests of the legal entity;
- the legal entity has benefited from the crime; or
- the offense is committed as a result of insufficient supervision or control of the employee by a legal entity.

The criminal offense can be committed individually or as part of a collegial authority of the corporate entity:

- on the basis of the right to represent the corporate entity or to act on behalf of it;
- on the basis of the right to take a decision on behalf of the corporate entity; or
- by exercising control as part of the operation of the corporate 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?

The *Criminal Law* does not provide such liability, however, there is a risk that individuals in the company which own or control the company subject to coercive measures could be subject to criminal liability.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

Please see Section 4.1. There is a risk that the company may be held liable if the criteria established in Article 70 (1) of the *Criminal Law* are triggered.

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

The coercive measures that can be applied against corporate entities are **(1)** liquidation; **(2)** limitation of rights; **(3)** confiscation of assets; and/or **(4)** cash collection. Different coercive measures can be applied against the corporate entity simultaneously, except for the liquidation.

Liquidation: Liquidation is applied only, if the corporate entity was founded for the sole purpose to commit crimes or if serious crimes or gravely serious crimes have been committed. Serious crimes are criminal offenses, for which imprisonment from three to eight years can be imposed and include bribery. A gravely serious crime is defined as a criminal offense, for which imprisonment for more than eight years can be imposed, which includes bribery committed in an organized group. If the liquidation is imposed, all property and assets of the corporate entity are expropriated in favor of the state.

Limitation of rights: The limitation of rights means annulment of rights or permissions of the corporate entity and applying restrictions against the corporate entity prohibiting the corporate entity from participating in tenders, receiving state aid or benefits; or restricting engaging in other activities as imposed by the court from one to ten years.

Confiscation of assets: If the confiscation of assets is applied against the corporate entity, the property and assets of the corporate entity are expropriated in favor of the state. The assets, which are to be expropriated, are determined by the court. The respective assets/to be expropriated shall be explicitly provided in the decision. It is possible to confiscate assets of the corporate entity delivered to other natural persons or corporate entities if the owner is not lost. When confiscation of all assets and property is applied, the assets required to fulfill obligations against the employees, state, and creditors are retained.

Cash collection: Cash collection is a coercive measure against a corporate entity imposing an obligation to pay established amounts of cash to the state in 30 days' time. Depending on the severity of the criminal offense, the corporate entity may be ordered to pay:

- for a serious crime (where imprisonment from three years to eight years can be applied against a natural person) – from EUR 10,000 to EUR 37.5 million; and
- for a gravely serious crime (where imprisonment exceeding eight years can be applied against a natural person) – from EUR 15,000 to EUR 50 million.

If the cash collection is applied, the payment can be made only from the assets of the particular corporate entity. If the cash is not paid within the 30 days term, the decision is enforced by a bailiff.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Pursuant to Articles 386 and 387 of the *Criminal Procedure Law*, the Corruption Prevention and Combating Bureau is the investigating authority in cases related to corruption crimes of public officials. In the case of bribery and corruption cases in the private sector, the investigating authority is the State Police. The authority to prosecute in both cases is the Prosecutor's office pursuant to Article 2 of the *Public Prosecutor's Office Law*.

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?

Article 315 of the *Criminal Law* provides for criminal liability if a person has not reported a serious crime (a crime for which sanction provides for imprisonment from three to eight years) or gravely serious crime (a crime for which sanction provides for imprisonment for more than eight years). Irrespective of the obligation to self-report, Article 324 of the *Criminal Law* provides that the briber or intermediary of bribery can be released from liability if they report the bribery and aid the investigation proceedings.

Article 33 of the *Audit Service Law* provides that an external auditor is obliged to report indications of suspected bribery to the Corruption Prevention and Combatting Bureau within three working days after the fact is established.

Articles 3, 30, 38, and 40 of *The Law On the Prevention of Money Laundering and Terrorism Financing* provide that the following are obliged to abide by the provisions of money laundering prevention rules:

(1) financial institutions, **(2)** credit institutions, **(3)** notaries, attorneys, and other independent providers of legal services when they, acting on behalf and for their customer, assist in

the planning or execution of transactions, participate therein or carry out other professional activities related to the transactions for their customer concerning the following: **a)** buying and selling of immovable property, shares of a commercial company capital; **b)** managing the customer's money, financial instruments, and other funds; **c)** opening or managing all kinds of accounts in credit institutions or financial institutions; **d)** establishment, management, or provision of operation of legal persons or legal arrangements, as well as in relation to the making of contributions necessary for the establishment, operation, or management of a legal person or a legal arrangement, **(4)** outsourced accountants, auditors, tax consultants, other persons undertaking to provide assistance in tax issues or acting as an intermediary in the provision of such assistance regardless of the frequency of its provision and existence of remuneration, **(5)** providers of services relating to the creation and maintenance of the operation of legal entities, **(6)** persons acting as real estate agents or intermediaries in real estate transactions (including in cases when they are acting as intermediaries of real estate lease in relation to transactions for which the monthly lease payment is EUR 10,000 or more), **(7)** organizers of lotteries and gambling, **(8)** persons providing encashment services,**(9)** other legal or natural persons trading in means of transport, cultural monuments, precious metals, precious stones, articles thereof or trading other goods, as well as acting as intermediaries in the abovementioned transactions or engaged in providing other services, (where payment is carried out in cash, whether in euros or another currency, and on the day of the transaction is equivalent to or exceeds EUR 10,000), **(10)** debt recovery service providers, **(11)** virtual currency service providers, **(12)** administrators of insolvency procedures, **(13)** persons operating in handling of art and antique articles by importing them into or exporting them from the Republic of Latvia, storing or trading in them, including such persons who carry out these actions in antique shops, auction houses, or ports, if the total amount of the transaction or seemingly linked transactions is EUR 10,000 or more,

These entities/persons are under an obligation to pay extra attention to and exercise due care in respect to circumstances that may refer to potential money laundering or terrorism financing, including complex transactions with a high value and unusual nature that do not appear to have any justified financial purpose, which would also include cases of bribery and corruption. This obligation may not apply when the attorney or lawyer is defending or representing a client in a litigation matter or criminal proceedings or advising on the commencement of a trial or litigation or avoidance of a trial or litigation.

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

Consequences against corruption crimes may involve administrative and civil issues, including claims for damages. In case of breach of gift and hospitality limitations provided in the laws governing conflicts of interest, administrative fines may be imposed on public officials.

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

Article 10 of the *Corruption Prevention and Combatting Bureau Law* provides that, when investigating corruption crimes, the bureau has the legal right to request and receive documents, information, and other material regardless of their secrecy regime free of charge from state administration and municipal institutions, enterprises (companies), organizations, officials, and other persons. The bureau and State Police also have all the rights provided in the *Criminal Procedure Law* to request information, documents, and materials as investigating authorities in the criminal proceedings. Rights to receive information are also provided in special laws, e.g. Article 62 of the *Credit Institutions' Law* and others.

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?

Article 324 of the *Criminal Law* provides that the person who gave the bribe may be exempt from criminal liability if the bribe was extorted or if, after the bribe was given, he or she voluntarily reports and actively contributes to the investigation of the offense. A person who has promised or offered a bribe may be exempt from criminal liability if he or she voluntarily discloses the conduct and actively contributes to the detection and investigation of the offense.

Article 199 (1) of the *Criminal Law* provides that disclosure to law enforcement institutions of committing an illegal offer of goods in the private sector may serve as grounds for avoiding liability in the event the reporting person actively participated in the investigation and contributed to solving the case.

For corporate entities, leniency can be partially reached by an agreement between the prosecutor and the corporate entity on coercive measures. Such an agreement is possible, if:

- the circumstances regarding the subject matter of the proof are clarified.
- the corporate entity acknowledges the fact that there was a criminal offense/crime committed.

- the corporate entity agrees to the qualification and the assessment of the harm/damages caused.

- the corporate entity agrees to conclude the agreement to apply coercive measures.

It is possible to mitigate the liability of a corporate entity by agreement since the corporate entity can propose the type and scope of the coercive measure, provide its explanations, and receive legal aid. If an agreement is reached, the prosecutor submits it for approval to the court.

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

Plea bargaining is possible if the circumstances relating to the subject matter of the corruption case and the evidence have been clarified and the accused agrees to the scope of the offenses charged, the qualification, the assessment of the damage caused, and the application of the plea bargain procedure.

The plea-bargaining procedure may not be applied where there are multiple accused in one criminal proceeding and the plea bargain and sentence cannot be applied to all of the accused. If the public prosecutor considers a plea bargain in the proceedings, it shall be explained to the accused about the possibility of settling the case by concluding an agreement, its consequences, and the rights of the accused in the agreement proceedings.

Upon receipt of the consent of the accused, the public prosecutor prepares a draft agreement and enters into discussions with the accused and their defense counsel. If the accused agrees to the charges brought and issued, the qualification of the offense, and the assessment of the damage caused, negotiations are held on the type and measure of the sentence that the public prosecutor will ask the court to impose.

The agreement shall include: **1)** the place and date of the agreement; **2)** the position, name, and surname of the person who carried out the procedural action; **3)** identification data of the accused, as well as the name, surname, and place of practice of the defense counsel; **4)** the place, time, and a brief description of the offense; **5)** the qualification of the offense; **6)** the amount of the damage caused by the offense and the agreement on compensation; **7)** mitigating and aggravating circumstances; **8)** particulars of the person of the accused; **9)** the sentence which the prosecutor asks the court to impose, **10)** information on the counting of the custodial measure imposed on the accused, as well as the period of detention, against the term of the sentence.

The agreement is signed by the accused, the defense counsel, and the public prosecutor and a copy is served on the accused or their representative. After the conclusion of an agreement, the public prosecutor sends the materials of the criminal case together with the agreement to the court, proposing that the court approve the agreement concluded.

The hearing of the case in the court is scheduled no later than 21 days after receipt of the agreement and case materials. If there are no procedural issues and the agreement is upheld the court can render a judgment to impose criminal liability based on the agreement.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

In the Lithuanian legal system, the core law regulating bribery and corruption is the *Law on Prevention of Corruption*.

The *Law on Prevention of Corruption* establishes **(i)** the main principles, goals, and objectives of the prevention of corruption and strengthening of national security by reducing the threats posed by corruption in the public and private sectors, **(ii)** measures for the creation of corruption-resistant environment and their legal bases, **(iii)** entities for the prevention of corruption and their rights and duties in the field of corruption prevention, and **(iv)** defines the basic concepts of bribery, corruption, and criminal acts of a corrupt nature.

The concept of corruption and corrupt activities are regulated not only by the *Law on Prevention of Corruption* but also by the *Law of the Special Investigation Service of the Republic of Lithuania*, however, it basically echoes the same definitions of corruption and corruption-related criminal acts.

The *Criminal Code of the Republic of Lithuania* (Chapter XXXIII of the Criminal Code) provides for criminal liability for bribery, corruption, influence peddling, and other corruption-related criminal acts.

1.2. Which international anti-corruption conventions apply?

Lithuania is a signatory to several international conventions on bribery and corruption, including:

- the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*,
- the *United Nations Convention against Corruption*,
- the Convention based on 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 Criminal Law Convention on Corruption*, and
- the *Council of Europe's Civil Law Convention on Corruption*.

1.3. What is the definition of bribery?

The *Criminal Code of the Republic of Lithuania* distinguishes two main forms of bribery:

- passive bribery (acceptance by public officials of an improper benefit or advantage of any nature for himself or herself or for a third party); and
- active bribery (an offer, promise from a private person to reward a public official).

In the case of passive bribery, a public official or a person treated as such (e. g. head of the company, doctor, teacher) promises or agrees to accept a bribe, demands, or provokes or accepts a bribe. At least one of these acts is sufficient to entail criminal liability. A bribe may be accepted not only for a specific act by or omission of a public official but also for an exceptional situation or favor in the future.

In active bribery, as in the case of passive bribery, a bribe may be linked both to a specific desired act by or omission of a public official or a person treated as such and to an exceptional situation or favor.

Bribery also includes situations where a public official accepts a bribe indirectly (acting through an intermediary). The most severe sanctions are imposed on persons who have accepted a bribe amounting to more than EUR 12,500. Such persons are punished by imprisonment from two to eight years.

Under the *Criminal Code of the Republic of Lithuania*, a bribe is an unlawful or unjustified remuneration expressed in the form of any property or other personal benefit for him/herself or another person (tangible or intangible, having economic value in the market or having no such value) for the desired lawful or unlawful act or omission of a public official or a person treated as such in the exercise of his/her powers.

The material and legal forms of this remuneration may be varied, including alleged or actual civil contracts with the recipient of the bribe.

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

The *Law on Prevention of Corruption* establishes the main principles, goals, and objectives of the prevention of corruption in both the public and private sectors (see Section 1.1.).

In the broadest sense, corruption in the private sector can be attributed to practically every case of corruption, when a representative of the private sector gives a bribe to a public official or a person treated as such.

However, the *Criminal Code of the Republic of Lithuania* does not criminalize cases as bribery where public officials are not involved in acts of corruptive nature. A representative of the private sector may be prosecuted for bribery only if the significance of his/her criminal acts and damage that has been caused to the civil service and public interests are established.

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?

According to Article 230(1) of the *Criminal Code of the Republic of Lithuania*, public officials are defined as state politicians, civil servants, and other persons who perform their duties while working in the state or municipal institutions or have administrative powers.

Employees at state-owned or state-controlled enterprises and foreign public officials are treated as public officials if they perform public authority functions, including judicial and administrative powers. They are also treated as such if they otherwise pursue a public interest while working in a foreign state or a European Union institution or body, international public organization, or judicial body, or in a legal person or other organization controlled by a foreign state.

According to Lithuanian case law, persons acting privately/engaged in private activities, i.e., bailiffs, notaries, bankruptcy administrators, attorneys-at-law are also treated as public officials. In some cases, heads of private schools, lobbyists, and/or heads of private associations might be treated in the same way as public officials (civil servants).

1.6. Are there any regulations on political donations?

Legal instruments governing political-financial activities can be classified as follows:

- Legislation on financing sources of political parties and election campaigns,
- Legislation on expenditure relating to the political activities,
- Legislation on financial transparency, and
- Sanctions.

The *Law on Funding of Political Campaigns and Control of Funding* regulates the legal liability of political parties. Article 30(1) of the law stipulates that if a political party is found to have committed a serious violation of the law, the political party shall not be awarded a six-month state budget grant by the decision of the Central Electoral Commission.

Article 30(2) establishes that persons are liable for violations of the law in accordance with the procedure of the Law on Funding of Political Campaigns and Control of Funding, the *Criminal Code of the Republic of Lithuania*, and the *Code of Administrative Offenses*. Moreover, political parties may also be held liable on the grounds of civil liability for the improper activities of political party members if they accept and use monetary donations (Article 22(4)-(8) of the *Law on Funding of Political Campaigns and Control of Funding*).

On January 1, 2020, the amendment of the *Criminal Code of the Republic of Lithuania* entered into force. The amendment introduced criminal liability for illegal funding of political parties and political campaigns.

According to Article 175 (1) of the Criminal Code of the Republic of Lithuania, a person who illegally provided funds or other donations in the amount exceeding EUR 25,000 to directly or indirectly finance a political party/campaign, or a person illegally accepted or used these funds/donations in the activities of a political party/campaign shall be punished by a fine or imprisonment of up to four years. A legal person may also be held liable for the acts provided for in this article.

1.7. Are there any defenses available?

Under the Criminal Code of the Republic of Lithuania, a person may be released from criminal liability for influence peddling and/or bribery if a bribe has been demanded from him/her or the person has been provoked to give a bribe, and that person voluntarily reported the crime to the law enforcement authorities immediately but not later than such a person being recognized as a suspect.

A perpetrator may also be exempted from criminal liability for both influence peddling and bribery if a bribe was offered/promised/given within the knowledge of law enforcement authorities (see Section 5.5).

1.8. Is there an exemption for facilitation payments?

The Lithuanian legal framework for bribery and corruption does not provide any exemption for facilitation payments.

However, small bribes of less than EUR 50 are not qualified as crimes but as misdemeanors.

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

Under Lithuanian law, cases of corruption and bribery are subject to criminal liability. There are no civil and/or administrative sanctions related to bribery cases.

According to Article 225 of the *Criminal Code of the Republic of Lithuania*, the main sanctions for bribery offenses are a fine or imprisonment.

The most severe sanctions are imposed on persons who have accepted a bribe exceeding the amount of EUR 12,500. Convicted persons are punished by imprisonment for two to eight

years.

The amount of the fine is determined by the severity of the bribery committed. A person can be punished for bribery with a fine in the amount of EUR 750 to EUR 200,000.

As a legal entity can also be held liable for bribery, it can be punished by a fine in the amount of EUR 10,000 to EUR 5 million.

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

According to Article 4 of the *Criminal Code of the Republic of Lithuania*, persons who have committed criminal offenses in the territory of Lithuania or on ships or aircraft flying the flag of the state of Lithuania shall be liable in accordance with the *Criminal Code of the Republic of Lithuania*.

Crimes committed abroad include crimes committed by citizens of the Republic of Lithuania and other persons permanently residing in Lithuania. Such persons are also held liable in accordance with the Criminal Code of the Republic of Lithuania.

Article 7 of the *Criminal Code of the Republic of Lithuania* enshrines the principle of universal jurisdiction. According to Article 7, persons shall be held liable under the *Criminal Code of the Republic of Lithuania* regardless of their citizenship and place of residence or place of committing a crime in cases where bribery and corruption crimes are subject to liability under international treaties.

1.11. What are the limitation periods for bribery offenses?

Different limitation periods are provided in Article 95 of the *Criminal Code of the Republic of Lithuania*. Depending on the severity and nature of the criminal offense, limitation periods vary from three years (in case of a misdemeanor) to 30 years (in case of a very serious crime).

Depending on whether the bribe is aimed at the legal or illegal act or omission of a public official, or a person treated as such, corruption offenses may be classified as less serious or serious crimes.

In the case of a less serious crime, the limitation period is 12 years, whereas the limitation period for a serious crime is 15 years.

However, if the corruption offense involves a bribe of less than EUR 50, it is defined as a misdemeanor. In this case, the limitation period is three years.

The limitation period starts from the moment of the commission of a criminal act. In case of a continuing criminal offense, the limitation period begins to run the day the last criminal act is committed.

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

There are no planned amendments or developments.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

The terms "gift" or "hospitality" are not used in the articles of the *Criminal Code of the Republic of Lithuania*. Articles 225 and 227 use only one term: "bribe."

According to Lithuanian case law, a bribe differs in principle from a gift as a bribe is the result of an agreement between two parties to perform certain actions. Whereas a gift is given in the absence of an agreement on whether the public official (civil servant or a person treated as such) tends to perform certain actions. However, common to a bribe and a gift is that both are given or received (taken) for a reason – in return for the behavior of a public official (civil servant or a person treated as such) desired by the bribe or gift giver, which may take the form of a lawful or unlawful act or omission in the exercise of powers.

Thus, criminal liability for bribery is not determined by the presence or absence of an agreement between the perpetrators, but by the motives for committing the act, i.e., for what material goods or money a bribe is given or taken. An agreement is not a necessary element of these offenses. That means that it is not the existence of an agreement that determines the criminal liability, but the motive for bribery – the act or omission of the public official that is desirable for the bribe-giver.

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

There is no specific guidance on gifts and hospitality under Lithuanian law.

If the existence of the desired or agreed behavior of the gift giver is established, it may mean that it was not the gift, but the bribe transfer. Therefore, in each case, all specific circumstances must be assessed.

First, the gift giver and the recipient are usually in a close relationship, i. e. they are relatives or friends. Secondly, as mentioned above, the gift agreement is gratuitous, the gift giver does not expect to receive any benefit in return. The gift or hospitality is simply an expression of such feelings as close connection, gratitude, appreciation. Thirdly, gifts are usually

given on a certain occasion. Finally, usually giving or receiving a bribe is hidden, when the gift is not, it can be declared.

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?

No additional benefits can be accepted for the duties performed or to be performed, as these are remunerated. Otherwise, such benefits may constitute a bribe. Article 13(1) of the *Law on the Adjustment of Public and Private Interests of the Republic of Lithuania* also prohibits the acceptance of gifts, if they are related to the declarant's official position or duties. Gifts can only be accepted under the four exceptions provided for in Article 13(2) of the *Law on the Adjustment of Public and Private Interests of the Republic of Lithuania*:

- International protocol,
- Traditions,
- Acceptance of representation gifts, and
- When services are used for official purposes (e.g., catering, transport services during official events).

If the value of such a gift exceeds EUR 150, it must be registered in the institution's register of gifts and becomes the property of the state. The *Law on the Adjustment of Public and Private Interests* does not provide a limit on the value of a gift, i.e., it can be worth EUR 50, 160, 1,000, or more.

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

N/A

3. Anti-corruption compliance

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

According to Article 22 of the *Law on the Prevention of Corruption*, the participation of private sector entities in the creation of a corruption-resistant environment is based on the voluntary nature of the private sector and cooperation with the public sector. The state promotes the awareness of the private sector to act transparently and honestly, not tolerate corruption or other unfair treatment, and report violations of the law of a corrupt nature.

Private sector entities have the right **(i)** to submit proposals to state or municipal institutions or agencies on the issues of creation of a corruption-resistant environment, **(ii)** to establish measures to ensure the anti-corruption environment, **(iii)** to obtain methodological information on the issues related anti-corruption compliance.

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

In order to achieve higher standards of transparency, businesses confirm anti-corruption policies, gift policies, conflict of interest avoidance policies, and codes of ethics. It becomes an integral part of the internal rules of procedure of business organizations, which contributes to improving the business climate, helps to maintain good relations with other business market participants (partners, suppliers, customers, etc.), forms clear criteria for risk management, ethics, and social responsibility.

Companies that seek to assure an anti-corruption environment act without any official guidance.

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

In 2018, the Whistle-blower Protection Act entered into force. The competent authority which examines or transmits reports of violations to other authorities and coordinates the whistle-blower protection process is the Public Prosecutor's Office.

The main measures that must be implemented by companies to protect and assist whistle-blowers are:

- ensuring secure channels for providing information on violations,
- ensuring the confidentiality of a person (data of such a person, which allows establishing his/her identity, may be provided only to the person or institution which is investigating the information about the violation),
- prohibition on adversely affecting the person who provided the information about the violation (e.g., it is prohibited to dismiss a person from work or service, transfer a person to a lower position, harass, discriminate, or reduce wages) and, furthermore, it is prohibited to adversely affect the family of such a person,
- the right to receive compensation,
- the right to receive free legal assistance,
- release from liability – a whistle-blower who has participated in the infringement and notified the competent authority thereof following the procedure established by law may be released from liability for participation in such infringement (Article 39(2) of the *Criminal Code of the Republic of Lithuania*).

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?

Lithuanian criminal law recognizes a legal entity as subject to criminal liability in such cases. The criminal liability of a legal entity derives from the liability of a natural person. Thus, the corporate entity, as a legal person, can be held liable for bribery and corruption offenses.

A legal person may be held liable for a criminal offense committed by a natural person only if the natural person acted **(i)** for the benefit of or **(ii)** in the interest of the legal person. A natural person may act either individually or on behalf of a legal person, but he/she must have the right to:

- represent a legal person, or
- make decisions on behalf of a legal person, or
- control the activities of a legal person.

To prosecute a legal entity, fault and intention to commit a crime must be established. Although the fault of a legal person is closely linked to the fault of a natural person, they are not identical and cannot be transferred from one to another.

Criminal liability of a legal person does not exclude criminal liability of a natural person who has committed, organized, or facilitated the commission of a criminal offense and vice versa.

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?

Generally, a company cannot be liable for a bribery offense committed by an entity controlled or owned by it, but there is little case law on this issue.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

This should be decided on the basis of general principles of criminal liability – there must be a fault, illegal act or omission, and causation.

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

Sanctions that may be imposed on a legal entity are set out in Article 43 of the *Criminal Code of the Republic of Lithuania*. For an offense, a legal entity can be punished by **(i)** a fine, **(ii)** restriction of its activities, and **(iii)** liquidation.

The list of sanctions for a legal person is exhaustive, regardless of the offense committed. A legal person may be sentenced to only one penalty per offense.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

The prosecutor is the main authority that has the power of prosecution and enforcement for corruption offenses. The prosecutor organizes and directs the pre-trial investigation and represents the prosecution on behalf of the state in court.

In cases concerning corruption offenses, pre-trial investigations are usually organized and directed by prosecutors of the Organized Crime and Corruption Investigation Divisions of the regional prosecutor's offices. High-profile cases of this nature are conducted by prosecutors of the Organized Crime and Corruption Investigation Department of the Prosecutor General's Office.

Pre-trial investigations of corruption crimes are carried out by the investigators of the Special Investigation Service while investigations of corruption offenses committed by the police officers are conducted by the Immunity Board of the Police Department. In all cases, the activities of investigation officers are supervised and controlled by the prosecutor who may initiate the pre-trial investigation and carry out all or part of the investigation actions him/herself.

In courts, corruption cases are examined by the judges of the division of the criminal cases of the courts of general jurisdiction.

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?

A public official or a person treated as such shall notify the Special Investigation Service, the Prosecutor General's Office, or another pre-trial investigation institution of a criminal offense of a corruption nature known to him/her. This obligation is established by Article 9 *Law on Prevention of Corruption* as of January 1, 2019.

A report by a public official or a person treated as such to the authorities must be submitted within the shortest possible time from the moment of becoming aware of a criminal act of corruption.

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

Under Lithuanian law, there is no civil or administrative enforcement against corruption crimes (except for non-criminal violations of political donations; see Section 1.6.).

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

Persons committing corruption crimes are usually highly qualified, have sufficient legal knowledge that allow them to hide the true nature of the criminal activity for a considerable period of time, and use various methods in order to avoid liability when their criminal act becomes apparent. Most corruption-related offenses are committed by organized groups. Often the relationship between criminal group members forms even before the commissioning of a criminal act.

Illegal actions of offenders in most cases involve a certain turnover of documents: drawing up documents (certificates, permits, licenses, etc.), signing, approval, registration, etc. Therefore, documents are often falsified. In addition, the documents may reflect the contacts of corrupt persons and the performance or non-performance of an official or official actions. Hidden contacts are contacts with persons with whom corrupt relations are maintained. Attempts are made to meet without seeing other persons, not to communicate by any means. The bribe is often attempted to be transmitted through other persons without direct contact with the person to whom it is given.

This makes it more difficult to uncover and investigate such crimes, forcing the subjects of the investigation to have a sufficiently high level of qualification.

Investigative authorities have broad rights to gather information, documents, and other evidence related to corruption crimes.

Measures of criminal intelligence. Investigations of corruption offenses are usually initiated already having information about the person who may have committed a corruption crime, i. e. information is collected even before the start of pre-trial investigation on the basis of the *Law on Criminal Intelligence*.

Under a warrant sanctioned by a court, law authorities have the power to use technical means, record conversations of alleged suspects, trace other communication, and use other criminal intelligence methods such as ambush, surveillance, covert operation, and imitation of a criminal act. During the use of these means, after receiving information about the criminal act being prepared or committed, investigators carry out tactical actions (operations) in order to detain suspects with evidence. Such operations are also carried out when persons who are forced to give a bribe turn to law enforcement authorities and report it.

Investigators use technical means to properly record the transfer of the bribe. In preparation for the operation of detention with evidence, a lot of attention is paid to the subject matter of the bribe that should be marked.

In accordance with the procedure laid down by the *Law on Criminal Intelligence*, prosecutors control the legality of actions of criminal intelligence by sanctioning actions of criminal intelligence (imitation of a criminal act, surveillance, control of information, etc.) Prosecutors also coordinate criminal intelligence actions of the Special Investigation Service investigators.

Criminal operations. When evidence is gathered through criminal intelligence or information on corruption crime is obtained in another way, law authorities carry out criminal operations.

During criminal operations, the law authorities detain suspects, carry out an examination of the crime scene and the subject matter of the bribe, record traces, and gather personal evidence to prove that suspects had contact with the subject matter of the bribe. Investigators may also involve experts.

Search and/or seizure of evidence. Investigative authorities may carry out a search of persons' private premises or workplaces. If the investigators know exactly the whereabouts of documents related to the investigation, they also may enter private premises to carry out a seizure. Search and/or seizure warrants are issued by the judge of the pre-trial investigation.

Under urgent circumstances where a potential suspect of a corruption crime must be caught unexpectedly, the search or seizure may be carried out on the grounds of a prosecutor's or investigation officer's decision. However, within three days, an order of a pre-trial investigation judge confirming the legitimacy of such decisions must be obtained.

Witness testimony. All witnesses related to the crime under investigation may be summoned for questioning. A person who may be aware of any circumstances relevant to the investigation is obliged to testify unless the non-self-incrimination rule applies.

Expert evidence and other use of special knowledge. Law authorities may assign tasks to experts in various fields. The most common tasks used in corruption cases are examination and

analysis of documents, handwriting, financial and economic records, hand traces, information technology, phonoscopic, fibrous materials, trasological, etc.

Seizure of assets. Law authorities have the power to investigate and assess the suspects' private assets and seize them for further confiscation.

So, under the Law of Criminal Intelligence and the Criminal Proceedings Code of the Republic of Lithuania, law authorities have wide powers to gather information when investigating corruption crimes.

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?

The *Criminal Code of the Republic of Lithuania* provides a special condition for the exemption from criminal liability in cases of corruption offenses as follows:

- A person may be exempted from criminal liability for influence peddling and/or bribery if a bribe has been demanded from the person or the person has been provoked to give a bribe. In such cases, the person who directly or indirectly or who has offered/promised/given a bribe through an intermediary must voluntarily notify law enforcement authorities as soon as possible. It is important that this action be done before such a person is recognized as a suspect (Article 226(6)-227(6) of the *Criminal Code of the Republic of Lithuania*).

- A person may be exempted from criminal liability for both influence peddling and bribery if a bribe was offered/promised/given within the knowledge of law enforcement authorities (Articles 226(6)-227(6) of the *Criminal Code of the Republic of Lithuania*).

Within the meaning of the law and Lithuanian case law, the above-mentioned grounds for exemption from criminal liability are unconditional. This means that a person who meets the above-mentioned conditions cannot be prosecuted. In such cases, the prosecutor does not record the suspicion and the person concerned has the status of a witness in the criminal proceedings.

It should be noted that the above exemptions do not apply when a person directly or indirectly has offered/promised/given a bribe through an intermediary to a person who:

- performs governmental functions (including judicial),
- has administrative powers, or
- otherwise ensures the implementation of the public interest while working in a foreign institution or body of the EU, in an international public organization, in an international or EU judicial body, or in a legal entity that is controlled by a foreign state (Article 230(2) of the *Criminal Code of the Republic of Lithuania*).

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

Plea bargains are not available under Lithuanian criminal law.

However, pleading guilty opens possibilities for the defendant to complete criminal proceedings more quickly, with more lenient consequences, or even without going on a trial.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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CEE
LEGAL MATTERS

1. Legal Framework

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

The main normative acts governing the bribery and corruption in the Republic of Moldova are

- *Criminal Code no. 985* of April 18. 2002, (Criminal Code);
- *Criminal Procedure Code of the Republic of Moldova no. 122* of March 14, 2003, (Criminal Procedure Code);
- *Contravention Code of the Republic of Moldova no. 218* of October 24, 2008 (Contravention Code);
- *Law no.325* of December 23, 2013, on institutional integrity assessment (*Law 325/2013*);
- *Law no.82* of May 25, 2017, on integrity (Law 82/2017);
- *Law no.122* of July 12, 2018, on integrity whistleblowers (*Law 122/2018*);
- *Parliament Decision no. 56* of March 30, 2017, on the adoption of the *National Integrity and Anticorruption Strategy for 2017-2023* years (National and Integrity and Anticorruption Strategy).

1.2. Which international anti-corruption conventions apply?

The Republic of Moldova ratified the following anti-corruption conventions:

- The *United Nations Convention against Corruption* (UNCAC), ratified by the Republic of Moldova by *Law no. 158* of July 6, 2007;
- The *Criminal Law Convention on Corruption*, ratified by the Republic of Moldova through *Law no.428-XV* of October 30, 2003;
- The *Civil Convention on Corruption*, ratified by the Republic of Moldova by *Law no. 542-XV* of December 19, 2003.

1.3. What is the definition of bribery?

Generally, the *Criminal Code* does not define "bribery" per se. The term bribery is defined in the context of criminal offenses of "taking bribes" and "giving bribes."

Bribe, within the meaning of Art. 333 and 334 of the *Criminal Code*, means illicit remuneration, which should not belong to the bribed person, given to perform or not to perform, to delay or expedite the performance of an action in the performance of its function or against it either in a sporting event or at a betting event. According to Art. 333 of the *Criminal Code* (taking bribe) illicit remuneration is expressed by "goods, services, privileges, or advantages in any form, […], offers, or promises." According to Art. 334 of the *Criminal Code* (giving bribe), the illicit remuneration refers to "goods, services, privileges, or advantages in any form." In the nutshell, these criminal offenses have the object of illicit remuneration expressed in goods, services, privileges, or advantages in any form, which should not belong to the bribed person.

The decision of the Plenum of the Supreme Court of Justice regarding the application of the legislation regarding the criminal liability for corruption offenses no. 11 as of December 22, 2014, defines each of the terms mentioned above. In particular:

- Illegal remuneration in the form of goods is to be interpreted in accordance with the *Civil Code* (the version in force before March 1, 2019). Thus, goods are all things susceptible to an individual or collective rapprochement and patrimonial rights. Things are tangible objects in relation to which may be civil rights and obligations. Therefore, the term good also refers to objects, as well as to patrimonial rights.
- Illegal remuneration in the form of services involves activities other than those which create products, performed in order to meet the needs of the corrupted person or a person close to him. The category of services as illicit remuneration refers to transport, tourism, insurance, communication, training, legal services, medical assistance, advertising, etc.
- Illegal remuneration in the form of privileges implies an exemption from obligations (to the state) or, as the case may be, the offering of rights or social distinctions that are granted in special situations.
- Illegal remuneration in the form of advantages is a benefit, a favor having a patrimonial or non-patrimonial nature, which improperly improves the situation compared to which the corrupt person had had before committing the crime. Undue benefits can be materialized or immaterialized, consisting of prizes, vacations, interest-free loans, accelerated treatment of a patient, better career prospects, etc.
- Illegal remuneration in the form of offers lies in the proposal of goods, services, privileges, or advantages, in any form.
- Illegal remuneration in the form of promises represents the undertaking of the obligation to give goods, to offer services, privileges, or advantages, in any form.

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

Regulations on preventing and combating corruption in the private sector can be found in Arts. 334 and 335 of the *Criminal Code*.

According to Art. 44 of the *Law no. 82/2017*, the acts of corruption in the private sector are: giving the bribery; taking the bribery; receiving an illicit remuneration for conducting the works related to serving the population; handling an event; arranged bets; illegal financing of political parties or electoral campaigns, violation of the management of the financial means of political parties or electoral funds; embezzlement of funds from external funds; misuse of funds from internal loans or external funds; the use of undeclared, non-compliant or foreign funds to finance political parties. These acts form the content of the phenomenon of corruption in the private sector. Also, it is important to point out that the offenses provided in Art. 333 and Art. 334 of the *Criminal Code* constitute acts of corruption in the private sector.

However, some of the facts listed above may also form the content of the phenomenon of corruption in the public sector. This is the case where the subject of the act of corruption uses the function within the public entity, contrary to the law, in private interest. Such ambivalence of the act of corruption is possible in the case of receiving illicit remuneration for the performance of work-related to serving the population; handling an event; arranged bets; illegal financing of political parties or election campaigns; embezzlement of funds from external sources; use against funds intended for internal loans or external funds.

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?

According to Art. 123 of the *Criminal Code*, a public person/official, is a civil/public servant, including a civil servant with special status (collaborator of the diplomatic service, customs, defense, national security and public order, another person holding special or military ranks); an employee of autonomous or regulatory public authorities, of the state or municipal enterprises, or of other legal persons of public law; an employee in the office of persons with positions of public dignity; a person authorized or invested by the state to provide public services on its behalf or to carry out activities of public interest.

According to Art. 2 of *Law 158/2008* on the civil service and the status of the civil servant, a civil servant is a natural person appointed to a public office. The unique classifier of public positions was approved by *Law 155/2011* for the approval of the Single Classifier of public positions. Therefore, the term civil/public servant forms part of the term public person/official, mentioned in Art. 324 (1) of the *Criminal Code*.

A foreign public person/official means any person, appointed or elected, who holds a legislative, executive, administrative, or judicial mandate of a foreign state; a person holding a public office for a foreign state, including a public body or a foreign public enterprise; a person exercising the function of juror within the judicial system of a foreign state.

According to Art. 123 (1) of the Criminal Code, an international official means an official of an international or supranational public organization or any person authorized by such an organization to act on its behalf; a member of a parliamentary assembly of an international or supranational organization; any person exercising judicial functions in an international court, including a person with powers of the registry.

An employee of state enterprises has the status of a public person, according to Art. 123 of the Criminal Code, and not of a civil servant. This category does not fall under the incidence of Law 158/2008 regarding the civil service and the status of the civil servant.

1.6. Are there any regulations on political donations?

According to Art. 26 of *Law 294/2007* on political parties, donations made to political parties can be both in cash and in the form of property, goods, free services, or on more favorable terms than the commercial (market) value, payment of goods or services used by the political party.

Donations made by a natural person to one or more political parties throughout a year may not exceed the sum of six average monthly salaries per economy for that year. In the case of Moldovan citizens with income earned abroad, the amount of donations may not exceed three average monthly salaries per economy for that year. In the case of citizens of the Republic of Moldova with the status of persons with public dignity, civil servants, including special status, or employees of public organizations within the meaning of the *Law no. 133/2016* on the declaration of wealth and personal interests, the amount of donations may not exceed 10% of their annual income, and, at the same time, may not exceed six average monthly salaries per economy for that year.

Donations made by a legal entity to one or more political parties throughout a year may not exceed the sum of 12 average monthly salaries per economy established for that year.

At the same time, Art. 26(6) of Law 294/2007 on political parties provides that certain categories of persons cannot finance, provide services free of charge, or material support in any form, directly or indirectly to political parties. These are:

- citizens of the Republic of Moldova under the age of 18, in respect of whom there is a measure of judicial protection in the form of guardianship;

- foreign nationals, stateless persons, anonymous persons, or those who donate on behalf of third parties;
- public authorities, organizations, enterprises, public institutions, and other legal entities financed from the public budget or with state capital, unless the provision of services or material support is expressly provided and allowed by law;
- legal entities that, at the date of making the donation, have outstanding debts older than 60 days to the state budget, the state social insurance budget, or the compulsory health insurance fund;
- legal entities that, in the last three years, have concluded public procurement contracts for works, goods, or services within the meaning of Law no. 131/2015 on public procurement;
- legal entities with foreign or mixed capital, legal entities from abroad;
- other states and international organizations, including international political organizations; and
- non-profit, trade union, charitable, or religious organizations.

1.7. Are there any defenses available?

Generally, all procedural defenses available in criminal procedures for all suspected or accused persons, are available for those suspected or accused of bribery or corruption offenses as well. There are a number of procedural tools available to suspected or accused persons throughout the criminal procedure, including at the phase of criminal investigation, trial, and post-trial phase.

With respect to particular aspects related to corruption or bribery offenses, please see Sections 5.5. and 5.6.

1.8. Is there an exemption for facilitation payments?

There is no exemption for facilitation payments and they are treated as bribes.

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

For certain criminal offenses the law provides fines expressed in conventional units. According to Art. 64 of the Criminal Code, one conventional unit is 50 MDL.

The sanctions for the passive corruption, provided by Art. 324 of the Criminal Code, are imprisonment (up to 15 years), fine (up to 10,000 conventional units) and deprivation of the right to hold certain public positions or to exercise a certain activity (for a term of up to 15 years). Actions committed in proportions not exceeding 100 conventional units, shall be punished by a fine in the amount of 1,000 to 2,000 conventional units and by deprivation of the right to hold certain public positions or to exercise a certain activity for a term of up to five years.

The sanctions for active corruption, provided by Art. 325 of the Criminal Code are imprisonment (up to 12 years) and fine (up to 8,000 conventional units), and for legal entities – fine (up to 18,000 conventional units) and deprivation of the right to exercise a certain activity or its liquidation.

The sanctions for taking a bribe, provided by Art. 333 of the Criminal Code, are a fine (up to 6,350 conventional units) or imprisonment (up to 10 years), in both cases with deprivation of the right to hold certain positions or to exercise a certain activity (for a term of up to seven years); for the crime of giving a bribe, provided by Art. 334 of the Criminal Code, the sanctions are a fine (up to 8,350 conventional units) or imprisonment (up to seven years), and for legal entities – a fine (up to 15,000 conventional units), with deprivation of the right to exercise a certain activity or its liquidation.

From a civil liability perspective, the taken decisions, concluded contracts, other actions, or any clause of a contract of which the object constitutes an act of corruption or an act connected with acts of corruption is null and void.

Any party to the contract whose consent has been vitiated by an act of corruption or an act connected with acts of corruption may claim, in the manner established by law, the nullity of the contract, without prejudice to its right to compensation.

In accordance with Art. 47 of *Law 82/2017*, the person who has suffered damage as a result of an act of corruption or an act connected with acts of corruption has the right to compensation for such damage in accordance with the provisions of criminal, contravention or, as the case may be, civil law. Also, the person who suffered a damage resulting from an act provided in Arts. 256, 324–335 of the *Criminal Code* has the right, within the criminal process, to request reparation of damages in accordance with the provisions of the *Code of Criminal Procedure*. If the person did not request the initiation of civil action in the criminal proceedings, the reparation of the damage takes place according to the provisions of the *Civil Code*.

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

Moldovan bribery and corruption law applies only to the territory of the Republic of Moldova. In accordance with Art. 11 of the *Criminal Code*, the citizens of the Republic of Moldova and stateless persons permanently resident in the territory of the Republic of Moldova who have committed crimes outside

the territory of the country may be liable in accordance with the provisions of the *Criminal Code*.

Foreign citizens and stateless persons who do not permanently reside in the territory of the Republic of Moldova and have committed crimes outside the territory of the country are criminally liable according to the Criminal Code and are prosecuted in the territory of the Republic of Moldova. the rights and freedoms of the citizen of the Republic of Moldova, against the peace and security of mankind or constitute war crimes, as well as for the crimes provided by the international treaties to which the Republic of Moldova is a party if they have not been convicted in a foreign state.

A person who has committed a crime on a sea vessel or airplane, registered in a port or airport of the Republic of Moldova and outside the maritime zone or airspace of the Republic of Moldova, may be subject to criminal liability in accordance with the Criminal Code if in international treaties to which the Republic of Moldova is a party is not otherwise provided.

Persons who have committed crimes on board a sea military vessel or air military plane belonging to the Republic of Moldova, regardless of their location, are subject to criminal liability in accordance with the provisions of the Criminal Code.

1.11. What are the limitation periods for bribery offenses?

The following limitation periods for bribery offenses are five, 15, and 20 years depending on the gravity of the accusations:

- five years for offenses provided in Art. 333, para. (1), 334, para. (1), (2) of the Criminal Code
- 15 years for offenses provided in Art. 324, para. (1) and (2), Art. 325, para. (1), (2), (3), Art. 333, para. (2) and (3), Art. 334, para. (3) of the Criminal Code
- 20 years for the offenses provided in Art. 324, para. (3) of the Criminal Code

The statute of limitations for criminal prosecution is reduced by half for persons who were minors at the time of committing the crime.

The prescription will be interrupted if, until the expiration of the terms provided above, the person will commit an offense for which, according to the Criminal Code, the penalty of imprisonment for a term of more than two years can be applied. The calculation of the prescription, in this case, starts from the moment of committing a new crime.

In accordance with Art. 60 of the Criminal Code, the prescription is suspended if the person who committed the crime evades the criminal investigation or the trial. In these cases, the prescription is resumed from the moment the person is detained or from the moment of self-denunciation.

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

Currently, the Moldovan President proposed the adjustment of the legal framework regarding the extensive confiscation of the assets gained through corruption. The initiative was sent to the Parliament on February 1, 2022. One of the proposals refers to the modification of Art. 106 (1) of the Criminal Code, which refers to extended confiscation, to be supplemented by two new paragraphs. One of them provides that extended confiscation may be ordered even if the person accused or suspected of committing an offense died or in the case of trial in the absence of the defendant when he hides from appearing in court. The second paragraph provides extended confiscation may also be ordered on the assets transferred to third parties if they knew or should have known that the purpose of the transfer was to avoid confiscation.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

The legal regime of gifts is regulated by the *Integrity Law no. 82* of May 25, 2017, *Law no. 25* of February 22, 2008, on the *Code of Conduct* of the civil servant, and the *Government Decision no. 116* of February 26, 2020, regarding the legal regime of gifts.

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

A civil servant is prohibited from soliciting or accepting gifts, services, favors, invitations, or any other advantage intended for his/her staff or family if their offering or giving is directly or indirectly related to the performance of his/her duties.

According to Art. 11 of *Law 25/2008*, if a public servant is offered a gift, service, favor, invitation, or any other undue advantage, he/she must immediately notify his superior and take the necessary measures to ensure his protection, including:

a) to refuse the gift, service, favor, invitation, or any other undue advantage;

b) to immediately report this attempt to the competent authorities;

c) to perform his/her activity properly, especially the one for which the gift, service, favor, invitation, or any other undue advantage was offered to him

Also, Art. 16 of *Law no. 82/2017* stipulates that the heads of

public entities and public agents are prohibited from requesting or accepting gifts (goods, services, favors, invitations, or any other advantage) that are intended for them personally or their family if their offering or giving is directly or indirectly related to their professional activity. These gifts are inadmissible gifts.

If a public servant is offered an inadmissible gift under the conditions mentioned above, he/she has the following obligations:

a) to refuse the gift;

b) to provide witnesses, including colleagues, if possible;

c) immediately report this attempt to the responsible anti-corruption authority;

d) to announce the head of the public entity;

e) to send the gift to the head of the public entity in case of offering the gift without his knowledge (left in the office, in the anteroom, etc.);

f) to exercise his professional activity properly, especially the one for which the gift was offered to him or to her.

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?

According to Art.11 of *Law 25/2008* and Art. 16 of *Law 82/2017*, the prohibitions set out in Section 2.2., do not apply to gifts given out of politeness or received on the occasion of protocol actions. These are admissible gifts. According to point 2 of the *Governmental Decision 116/2020*, the total admitted value of the gifts offered out of politeness or on the occasion protocol actions amount to a maximum of MDL 1,000 (approximately EUR 50), during a calendar year. Money in circulation, in national or foreign currency, with the exception of jubilee and commemorative coins, financial instruments, and other means of payment are not considered eligible gifts.

According to Art. 16 of Law 82/2017, all admissible gifts are declared and entered in a public register, kept by each public entity. Admissible gifts whose value do not exceed the limits set by the Government may be kept by the person who received them or may be transmitted to the management of the public entity, in both cases, after the declaration. Admissible gifts whose value exceeds the established limit are sent to the management of the public entity after they have been declared. If the person announces his intention to keep the admissible gift whose value exceeds the set limit, he/she is entitled to redeem it, paying in the budget of the public entity the difference between the value of the gift and the established limit.

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

The provisions of the regulation on the legal regime of gifts approved by the *Governmental Decision no. 116/2020* do not apply to:

1) medals, decorations, badges, orders, scarves, necklaces and the like received in the exercise of office;

2) office supplies and stationery (data storage products, cloth bags, diaries, notepads, notebooks and notebooks in various forms, folders, pencils, pens, markers, and other similar objects) received by public agencies on the occasion of their participation in training seminars, conferences, round tables, and other similar events;

3) perishable products;

4) gifts received by public agencies in the form of benefits or discounts on the purchase of goods and services provided to a wide range of people, the general public, or an entire clientele;

5) expenses paid by a local or foreign non-profit organization, a foreign or local public entity for attending a conference, study visit, research mission, or any other meeting in the interest of the service.

3. Anti-corruption compliance

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

According to Art. 37(1) d) of *Law 82/2017*, one of the ways to ensure a climate of integrity in the business environment is achieved by respecting the rules of business ethics.
According to Art. 39 of the same law, the codes of ethics in the private sector establish the principles and rules that govern the managerial processes and the correct conduct in business. Business ethics presupposes the respect of the interests of the commercial organization, as well as of the partners, consumers, and society as a whole, being forbidden to provoke the damages of the competitors, which do not fall within the limits of the competition legislation. The codes of ethics are adopted at the level of professional associations of the business environment, being taken over and developed at the level of the commercial organization in accordance with the provisions of the legislation of the Republic of Moldova and the principles of international business, established by the international codes of business ethics.

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

Chapter V of *Law 82/2017* regulates the aspects related to the implementation of integrity in the private sector. In addition, a number of state institutions and private entities have adopted internal anti-corruption regulations and guides.

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

■ The *Law no. 122* of July 12, 2018, on integrity whistleblowers (*Law 122/2018*)

■ *Governmental Decision no. 23* of January 22, 2020, for the approval of the Regulation on the procedures for examination and internal reporting of disclosures of illegal practices (*GD 23/2020*)

According to Art. 3 of *Law 122/2018*, an integrity whistleblower is an employee who discloses in good faith an illegal practice that constitutes a threat or an injury brought to the public interest. The manifestation of corruption forms part of such illegal practice. According to Art. 14 of *Law 122/2018*, a whistleblower benefits from the following guarantees:

a) his/her transfer or that of the person who undertakes revenge actions, during the examination of the application for granting protection, in another subdivision of the public or private entity in which he/she operates, maintaining the specificity of activity, and in its absence – in a subdivision that carries out a related activity, in order to exclude or limit the influence of the person who took revenge in connection with the integrity warning or the disclosure of illegal practices;

b) the sanctioning of the person who took revenge in connection with the warning of integrity or the disclosure of illegal practices or, as the case may be, of the head of the public or private entity for not ensuring the protection measures;

c) the annulment of the disciplinary sanction, ascertained by the employer or, as the case may be, by the administrative contentious court, which was applied to the employee as a result of a disclosure in the public interest made in good faith; and

d) compensation for material and moral damages suffered as a result of revenge.

The whistleblower subject to retaliation is entitled to submit a written request to the protection authorities to request the application of the above guarantees.

In order to fall under the protection regime, an employee must meet the following conditions:

a) to be recognized as an integrity warning under the conditions of Art. 11 of Law 122/2018 or have made a public disclosure of illegal practices;

b) to be subject to revenge; and

c) there is a causal link between the disclosure of the illegal practices and the alleged revenge.

In accordance with Art. 15 of Law 122/2018, the protection authority shall, as a matter of priority, examine, within 15 days at the latest, the request for the protection of the whistleblower, after which it shall inform the whistleblower of the satisfaction of his request or of the reasons for the refusal.

The whistleblower protection authorities are the employer (in case of internal disclosures of illegal practices) and the People's Advocate (in case of external and public disclosures of illegal practices).

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 may be subject to the criminal offenses of active corruption (Art. 325 of the *Criminal Code*), and bribery (Art. 334 of the *Criminal Code*).

According to Art. 21, para. (3) of the *Criminal Code*, a legal entity, with the exception of public authorities, is criminally liable for an act provided by the criminal law if it has not fulfilled or improperly fulfilled the direct provisions of the law which establish duties or prohibitions regarding the performance of a certain activity, and at least one of the following circumstances is found:

a) the act was committed in the interest of the respective legal person by a natural person empowered with management functions, who acted independently or as part of a body of the legal person;

b) the act was admitted or authorized, or approved, or used by the person empowered with management functions;

c) the act was committed due to the lack of supervision and control on the part of the person empowered with management functions.

Generally, bribery offenses are often committed in the interests of legal persons. The complex structure of corporate governance and the process of collective decision-making within legal entities complicate the discovery and prosecution of these crimes. People who commit and incite to commit such crimes can hide behind a "corporate veil" and avoid liability. In addition, the individual liability of officials of a legal person is

not an effective means of preventing corporate offenses. From these reflections, it can be deduced that, in the case of bribery, criminal liability of the legal person is justified.

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

If the requirements provided in Art. 21 of the *Criminal Code* are met then the company can be liable.

In particular, a legal person, with the exception of public authorities, is liable to criminal liability for an act provided by the criminal law if it has not complied or has not properly complied with the direct provisions of the law establishing duties or prohibitions at least one of the following circumstances:

a) the act was committed in the interest of the respective legal person by a natural person empowered with management functions, who acted independently or as part of a body of the legal person;

b) the deed was admitted or authorized, or approved, or used by the person empowered with management functions;

c) the deed was committed due to the lack of supervision and control on the part of the person empowered with management functions.

A natural person is considered to be empowered with management functions if he has at least one of the following functions:

a) representation of the legal person;

b) making decisions on behalf of the legal entity; or

c) to exercise control within the legal person.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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 until the crime is realized the agent promised the result for a remuneration, then the company can be liable as an accomplice to the crime. If, after the agent accomplishes the result, the agent is remunerated, then this would not be qualified as a corrupt action.

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

For active corruption, Art. 325 of the *Criminal Code* provides, for the legal entity, a sanction in the form of a fine from 6,000 to 18,000 conventional units, with deprivation of the right to exercise a certain activity or with its liquidation.

For bribery, Art. 334 of the *Criminal Code* provides, for the legal entity, a sanction in the form of a fine from 5,000 to 15,000 conventional units, with deprivation of the right to exercise a certain activity or with its liquidation.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

In accordance with Art. 43 of Law 83/2017, the responsibility for ascertaining and examining the manifestations of corruption rests with the Anticorruption Prosecutor's Office, the National Anticorruption Center, the National Integrity Authority, and the bodies of the Ministry of Internal Affairs in accordance with the provisions of the Code of Criminal Procedure and the Contravention Code.

In accordance with Art. 270 (1) (2) of the Code of Criminal Procedure, the Anticorruption Prosecutor's Office conducts the criminal investigation in the cases in which the criminal investigation is carried out by the criminal investigation body of the National Anticorruption Center.

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 Art. 5 of *Law 122/2018*, employees have the right to submit disclosures of illegal practices, to be recognized as whistleblowers of integrity, and to benefit from protection under the conditions provided by this law. By way of derogation from this provision, employees who have the quality of public agents, in case of inappropriate influences exerted on them, as well as other attempts to involve them in manifestations of corruption within the meaning of *Integrity Law no. 82/2017* and *Law no. 325/2013* on the assessment of institutional integrity, are obliged to report them. If they are not involved as witnesses and/or injured parties in criminal proceedings, public officials who have reported undue influence or other attempts to involve them in corruption may be recognized as whistleblowers and may be protected under the conditions of the law.

Also, according to Art. 16 of *Law no. 82/2017*, if a public

agent is offered an inadmissible gift, he/she has the obligation to immediately report this attempt to the responsible anti-corruption authority.

According to Art. 11 of *Law no. 25/2008*, if a civil servant is offered a gift, service, favor, invitation, or any other undue advantage, he/she must immediately notify his/her superior of this fact and take the necessary measures to ensure his protection, including immediately reporting this attempt to the competent authorities. Violation of this provision constitutes a disciplinary violation to which the provisions of the legislation on the civil service and the status of the civil servant apply.

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

Please see Section 1.9.

A person who suffered a damage resulting from an act provided in Arts. 256, 324–335 (1) of the *Criminal Code* has the right, within the process, to repair the material and/or moral damage in accordance with the provisions of the *Code of Criminal Procedure*. If the person did not request the initiation of civil action in the criminal proceedings, the reparation of the damage takes place according to the provisions of the *Civil Code*. If the person has suffered a damage resulting from a deed provided in Art. 312–330 (1) of the *Contravention Code*, the competent authority is entitled, at the request of the victim, to order the reparation of the damage caused by the contravention in case there are no differences in its scope.

After repairing the damage from the respective budget, the defendant is obliged to file a recourse action against the guilty person in the amount of the compensation paid. A person who has suffered damage as a result of an act of corruption or an act connected with acts of corruption, committed by public bodies, electoral participants, and their trusted persons, is entitled to claim compensation from the public entity whose public agent committed the act of corruption or the related act.

The Ministry of Justice or, as the case may be, the prosecutor will file a recourse action against the person who committed the act of corruption or the act related to the acts of corruption if the compensating authorities have not fulfilled their obligations.

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

In accordance with Art. 49 of *Law no. 82/2017*, the responsible anti-corruption authorities are vested, according to the established competencies, with the following attributions for investigating acts of corruption and their related acts:

- carrying out special investigative measures;
- carrying out the criminal investigation;
- application of procedural measures of coercion, security, and other security measures;
- ensuring confidentiality in criminal proceedings;
- the application of state protection measures to ensure the security of the participants in the process and of other persons, including those who bring to the attention of the competent bodies or superiors the possible commission of acts of corruption, their related acts, or corrupt acts;
- the application of the measures to remove the conditions that contributed to the commission of the crimes and other violations of the legislation, the undertaking of the actions for reparation of the damage;
- exercising international legal assistance.

The attributions provided above are exercised insofar as they comply with the Constitution, the *Code of Criminal Procedure*, the legislation on the special activity of investigations, and the special laws governing the activity of the responsible anti-corruption authorities.

For particular categories of public officials (e.g. members of the parliament), lifting of immunity is needed in order to perform the criminal investigation against them. The same applies when the suspected person is an attorney at law.

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?

According to Art. 325 (4) of the *Criminal Code*, a person who promised, offered, or gave goods or services listed in Art. 324 is released from criminal liability if: a) they were extorted or b) if the person has denounced himself/herself, not knowing that the criminal investigation bodies are aware of the crime he/she has committed.

According to Art. 334 para. (4) of the *Criminal Code*, a person who gave a bribe is released from criminal liability if 1) the bribe was extorted; 2) the bribe-taker denounced himself not knowing that the criminal investigation bodies are aware of the crime committed by him/her.

For self-denunciation, in order to operate the provision from Art. 325 para. (4) or from Art. 334, para. (4) CP, it is necessary to meet the conditions established in Art. 264 of the *Code*

of Criminal Procedure. According to this article, self-denunciation is the voluntary notification made by a natural or legal person about the commission of a crime in case the criminal prosecution bodies are not aware of this fact. The declaration of self-denunciation is made in writing or orally. If the self-denunciation is made orally, a report on it shall be drawn up under the conditions of Art. 263 para. (5) of the *Code of Criminal Procedure*, with the audio or video recording of the self-denunciation declaration.

In accordance with Art. 264 of the *Code of Criminal Procedure*, to the person who makes a self-denunciation statement, before doing so, is explained the right not to say anything and not to incriminate himself, as well as that in case of self-slander, which prevents the ascertainment of the truth, he will not have the right to reparation. the conditions of the law and this is mentioned in the report on self-denunciation or in the content of the self-denunciation declaration.

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

The procedure regarding a plea agreement is regulated in Art. 504 of the *Code of Criminal Procedure*. The conclusion of a plea agreement is possible in the case of corruption offenses. According to Art. 504 (2) of the Code of Criminal Procedure, a plea agreement shall be drawn up in writing, with the obligatory participation of the defense counsel, the accused, or the defendant in case of all offenses provided in the Special Part of the *Criminal Code*, except for the offenses provided in Art. 135 and 135 (1) of the *Criminal Code*.

The court is obliged to ascertain whether the plea agreement was concluded in accordance with the law, voluntarily, with the participation of the defense counsel, and whether there is sufficient evidence to confirm the conviction. Depending on these circumstances, the court may or may not accept the plea agreement.

A plea agreement may be initiated by both the prosecutor and the accused, the defendant, and his/her defense counsel and may be concluded at any time after the indictment until the commencement of the judicial investigation.

If the court is convinced of the truthfulness of the defendant's answers at the hearing and concludes that the defendant's guilt is made freely, voluntarily, consciously, without pressure or fear, it accepts the plea agreement and admits the factual basis of the crime in connection with which the defendant pleads guilty. Otherwise, the decision on the refusal to accept the plea agreement may be challenged by the parties who signed the plea agreement within 24 hours, of which they make a statement as soon as the decision is made.

In accordance with Art. 509 of the Code of Criminal Procedure, when establishing the punishment in case of accepting the plea agreement, its individualization is carried out based on the punishment limits provided by the criminal law for the respective crime, reduced (by one-third of the maximum punishment) under the conditions of Art. 80 of the Criminal Code, applicable to the provisions of Arts. 75-79 of the Criminal Code.

Also, in case the suspected person pleas bargain in a corruption case, a simplified trial procedure may be applied, in accordance with Art. 364 (1).of the Code of Criminal Procedure.

Under this procedure, until the beginning of the judicial investigation, the defendant may declare, personally in an authentic document, that he/she acknowledges the commission of the facts indicated in the indictment and requests that the trial be conducted on the basis of evidence administered in the criminal investigation phase. The trial may not take place on the basis of the evidence administered in the criminal investigation phase unless the defendant declares that he/she fully acknowledges the facts indicated in the indictment and does not request the administration of new evidence. During the preliminary hearing or before the beginning of the judicial investigation, the court asks the defendant if he/she requests that the trial take place on the basis of the evidence administered in the criminal investigation phase, which he/she knows and on which he has no objections.

The court admits, by a judgment, the request if from the administered evidence results that the facts of the defendant are established and if there are sufficient data.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

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. 15/97* and its subsequent amendments). With the enactment of these laws, companies and individuals in North Macedonia are criminally liable for corrupt practices.

Additionally, 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. 106/08* and its subsequent amendments) 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 is pending adoption by Parliament. 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. Which international anti-corruption conventions apply?

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 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 to justice 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 has 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. What is the 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 perform, 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) 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. Is private sector bribery covered by law? If yes, what is the relevant legislation?

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.

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.

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. 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?

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 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; 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 rep-

resentatives 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 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. Are there any 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.

1.7. Are there any defenses 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. Is there an exemption for facilitation payments?

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

See also Section 2.3.

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

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 imprisonment 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.

There are no civil or administrative sanctions related to these kinds of cases.

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

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. What are the 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. Are there any planned amendments or 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. How are gifts and hospitality treated?

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 the risk 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. Does the law give any specific guidance on 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. 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 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. Are there any defenses or exceptions to the limitations (e.g. reasonable promotional expenses)?

There are no exceptions for the above (see Section 2.3.) But, if the gifts exceed the values listed above, public sector employ-

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

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. Is there any 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. Does the law protect whistleblowers reporting bribery and 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 the cases where it is necessary for conducting 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. Can corporate entities be held liable for bribery and corruption? If so, what is the nature and scope of such liability?

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. 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 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. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

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. What are the 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 is corresponding to the gravity of the perpetrated criminal act and that it can prevent the legal entity to perpetrate 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 the 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. What authorities can prosecute 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. 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?

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

There is no civil or administrative enforcement against corruption crimes.

5.4. What powers do the authorities have generally to gather 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 benefit 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 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. 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?

Pursuant to the *Criminal Code*, the court may release from a penalty a person who gave or promised a bribe upon the request from 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. Can a person plea bargain in corruption cases? If so, how is such a process conducted?

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 and 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/hers 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.

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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;
- The *Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, adopted on December 17, 1997, in force in Poland since November 7, 2000.

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 holding a public office. Passive bribery, on the other hand, consists in 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 definition of a material or personal benefit and limits itself in this scope to the statement 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.

Accepting or offering a bribe is punishable, providing that it is connected with holding a public office. There has to be a link between the bribe and the performance of the duties of a public official, for example, payment in return for a favorable decision. Such connection can be established also if an official is rewarded for his/her previous conduct that was not related to the 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.

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, or in a foreign organizational unit having public funds at its disposal 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 mediation in the above-mentioned institutions, with the intention of illegally influencing a decision, or causing a person holding a public office 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 abusing the authority granted to him/her, or for 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 preparatory proceedings 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 course of procedure;
- 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 different government institution;
- 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.

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 service-type work) (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 holding 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 holding 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 giving or offering a bribe will not be subject to criminal prosecution provided that: **(i)** the bribe or its promise 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 12 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, 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 consequences of the offense. The penalty will be higher if the bribe was of a substantial value or was accepted in exchange for unlawful behavior.

There are no civil or administrative sanctions against regarding 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 penal responsibility for bribery offenses expires after 15 years from the time they were committed. 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?

The Polish government is considering significant amendments to the provisions regarding corporate criminal liability vastly enlarging the scope of the liability of companies. The legislative process is on hold with no indication of when it will be renewed.

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 under 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 (eg. 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 holding a public office 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.

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?

At present, Polish law does not include any provisions regarding the protection of whistleblowers for, or incentives to, whistleblowers.

Nevertheless, some regulations are expected to come into force soon, as Poland is obliged to implement *Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law* (the *EU Whistleblower Directive*). The Polish government is currently working on the bill implementing the provisions thereof. In general, the reiterates the provisions of the EU Directive. However, in some instances, the government has chosen to extend the scope of protection. For example, whistleblowers will be protected not only in the event of reporting breaches of specific acts of EU law but also in Polish law. However, bribery and corruption allegations are not expressly covered by this 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?

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

The liability of corporate entities for criminal offenses is regulated 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 person and that person's conduct has resulted or may have resulted in a benefit for the corporate entity. A corporate entity may be held liable for the conduct of a person acting on its or in its interest within the scope of the given person's power or duty to represent it, make decisions on its behalf or exercise internal control, or exceeding the person's powers or failing to perform the person's duties, or a person being "an entrepreneur" (a sole trader) who is involved in a business relationship with the corporate entity. However, the liability of the corporate entity is secondary to the liability of the person who committed the offense, i.e. the entity can be held criminally liable only after the person who committed the offense has been found guilty and sentenced by a court of law. The corporate entity will face liability for the actions of the above-mentioned persons only if its bodies or representatives failed to exercise due diligence in preventing the commission of the given offense or 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 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. The court may also prohibit the corporate entity from carrying out promotions and advertising, benefiting from grants, subsidies, or assistance from international organizations, or bidding for public contracts. The court may also decide 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 has 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).

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 control, 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 the 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 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. 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.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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CEE
Legal Matters

1. Legal Framework

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

Corruption is a current and real social and legal phenomenon that threatens with all weapons the individual integrity of the public or private agent. As follows from the texts of the *Council of Europe Criminal Law Convention on Corruption*, a distinction is made between active and passive corruption. The first of these, according to Article 2 of the convention, involves the intentional commission of an act whereby a person directly or indirectly proposes, offers, or gives any undue advantage to a public official, for himself or for another person, with a view to performing or refraining from performing an act in the exercise of his functions. Article 3 of the convention defines passive corruption as the intentional commission of an act by a public official to solicit or receive, directly or indirectly, any undue advantage, for himself or for another person, or to accept an offer or promise with a view to performing or refraining from performing an act in the exercise of his functions.

At the heart of corruption offenses are public officials, civil servants, and private officials, who are defined by the law.

In Romanian criminal law, corruption is a concept that includes, in a strictly legal sense, corruption offenses [taking bribes, giving bribes, influence peddling, and buying influence, the legal framework of which is constituted by the provisions of Articles 289-292 of the *Criminal Code*], offenses assimilated to corruption [Articles 10-13 of *Law no. 78/2000*], offenses directly related to corruption offenses [Art. 17 of *Law No. 78/2000*] and offenses against the financial interests of the European Communities [Art. 18/1 - 18/5 of *Law No. 78/2000*].

Acts of corruption are provided for by the *Criminal Code* - Special Part (Title V - Crimes of corruption and occupational crimes, Chapter I – Crimes of corruption) and by *Law No. 78/2000* for preventing, ascertaining, and punishing acts of corruption (Chapter III - Felonies).

The provisions of the *Criminal Code* on the felony of taking a bribe (Article 289) are meant to cover all the cases where a person, directly or indirectly, for oneself or for another person, claims or receives money or other undue benefits, or accepts the promise of such benefits, in relation to the fulfillment, non-fulfillment, expediting, or protracting the fulfillment of any act concerning his professional duties, or in relation to the fulfillment of any act which is contrary to such duties.

The felony of giving a bribe (Article 290) refers to promising, offering, or giving money or other benefits under the conditions described by the provisions on taking a bribe.

The felony of influence peddling (Article 291) consists in claiming, receiving, or accepting promises of money or other benefits, directly or indirectly, for oneself or for another person, committed by a person having influence, or pretending to have an influence on an official and who promises to determine such official to perform, not to perform or defer the performance of an act concerning his professional duties or to perform an act which is contrary to such duties.

Buying influence (Article 292) is the correlative felony for influence peddling. Such buying of influence is no longer punished only in the special cases provided by *Anticorruption Law No. 78/2000* (the former Article 61, currently repealed). This covers a legislative gap that has often been highlighted by legal scholars.

For all the corruption offenses referred to in Articles 289 to 292 of the *Criminal Code*, a reduction of the limits of punishment by one third applies (as per Article 308) whenever the acts are committed by persons assimilated to civil servants, namely persons fulfilling, permanently or temporarily, with or without pay, a task of any kind on behalf of an individual who performs a service of public interest for which such individual was vested by the public authorities or who is subject to the public authorities' control or supervision as regards the fulfillment of such public service or within any legal entity (private sector).

At the same time, Article 7 of *Law No. 78/2000* stipulates that acts of giving a bribe or influence peddling committed by a person exercising a public dignity function, by a judge or a prosecutor, by a criminal investigative body or a person who has been authorized to take notice and sanction misdemeanors committed by one of the persons referred to in Article 293 of the *Criminal Code*, shall be sanctioned with the penalty provided for in Article 289 or Article 291 of the *Criminal Code*, the limits of which are increased by one third.

The *Anti-corruption Law No. 78/2000* provides for a set of felonies that are also considered acts of corruption, such as: setting a smaller value for the assets owned by public authorities or institutions or undertakings in which the State or an authority of the local public administration is a shareholder, granting illegal subsidies, using subsidies for other purposes than the purpose for which they were granted and acts of corruption perpetrated by the persons in charge with the supervision of undertakings.

Other offenses assimilated to those of corruption are: **(i)** the act of a person who, having the task of overseeing, controlling, reorganizing, or liquidating a private economic operator, carries out any task, intermediates or facilitates the conduct of commercial or financial operations, or participates with capital in such an economic operator, if the act has the

nature of directly or indirectly creating an undue advantage; **(ii)** performing financial transactions as acts of commerce, incompatible with the duties of a person, or the conclusion of financial transactions, using the information obtained by virtue of his or her duties, if the purpose is to obtain for himself or another money, goods or other undue benefits; or **(iii)** the use, in any way, directly or indirectly, of information not intended to be advertised, or of permitting unauthorized persons access to such information if the purpose is to obtain for himself or for another money, goods or other undue advantages.

The act of the person who performs a managerial role in a party, in a trade union or owners' association, or legal person without patrimonial purpose (such as a foundation), to use his/her influence or authority for the purpose of obtaining for themselves or for another money, goods, or other undue benefits also constitutes a felony under *Law No. 78/2000*.

Special emphasis is put on the crimes of corruption against the financial interests of the European Union seeking to undeservedly obtain funds from the EU general budget. Thus, the *Criminal Code* provides that offering false or inaccurate information in view of unfairly obtaining funds from the EU budget and illegally changing the purpose of such funds constitute crimes of corruption.

1.2. Which international anti-corruption conventions apply?

In Romania the following international anti-corruption conventions apply:

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 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* (May 26, 1997), entered into force on September 28, 2005, through an EU Council decision by which Romania is accepted to adhere to the European Union.

1.3. What is the definition of bribery?

See Section 1.1. – definition for taking and giving a bribe, Articles 289 and 290 of the *Romanian Criminal Code*.

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

Romanian legislation also covers corruption offenses committed in the private sector. See Section 1.1. – application of Article 308 of the *Romanian 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?

A public official is defined in Article 175 of the *Romanian Criminal Code* as a person who, on a permanent or temporary basis, with or without remuneration:

a) exercises the duties and responsibilities, set under the law, to implement the prerogatives of the legislative, executive, or judiciary branches;

b) exercises a function of public dignity or a public office irrespective of its nature;

c) exercises, alone or jointly with other persons, within a public utility company, or another economic operator or a legal entity owned by the state alone or whose majority shareholder the state is, responsibilities needed to carry out the activity of the entity; or

d) supplies a public-interest service, which they have been vested with by the public authorities or who shall be subject to the latter's control or supervision with respect to carrying out such public service.

A definition for a foreign official can be found in Article 1(b) of 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*.

Certain employees at state-owned or state-controlled enterprises who are in a management position are obliged to declare their assets according to Article 3(1) of *Law No. 78/2000* and to declare the receiving of certain protocol gifts according to Article 1 of *Law No. 251/2004*.

Also, see Section 1.10.

1.6. Are there any regulations on political donations?

As a general rule, any goods, amounts of money, or other such pecuniary or non-pecuniary benefits constitute undue benefits which fall under criminal provisions for giving a bribe, taking a bribe, influence peddling, or buying of influence when the benefits are given for the purpose of determining a public of-

ficial to unlawfully act or not act according to his or her public duties.

Article No. 4 of *Law No. 78/2000* for the prevention, discovery, and sanction of acts of corruption also provides for the public official's obligation to declare any direct or indirect donation or gifts received in connection to their public duties, barring those with a symbolic value, within 30 days of reception.

From an administrative law perspective, Article No. 440 of the *Government Emergency Ordinance No. 57/2019 regarding the Administrative Code* forbids public officials to directly or indirectly accept gifts or other benefits for executing their public duties. However, certain goods that are given for protocol services are exempt from this rule and are permitted within certain legal conditions.

Law No. 251/2004 provides for measures regarding goods freely given to public officials during protocol services. Article 1 para. (1) mandates that any official who receives a gift during their activity shall be declared within 30 days of reception to the head of the public institution they work in.

There are no pieces of legislation that require that the person or persons giving the gift keep a list of these items.

On the other hand, regarding the receiving of certain gifts by the public officials, according to Article No. 2 para. (1) of *Law No. 251/2004*, the head of the public institution which employs the official who received the gift shall constitute a three-member commission tasked with evaluating and organizing an inventory of the received gifts.

At the end of each calendar year, the public authorities shall publish on the institution's web page or in the Romanian Official Gazette a list containing all goods given as gifts, as well as their intended purpose.

Even if criminal law does not specifically provide exceptions for goods that can be given to public officials, or goods that public officials can receive, after cross-referencing both criminal and administrative provisions we can surmise that it is possible to give gifts to public officials during protocol activities, gifts which they shall declare according to the applicable law.

Regarding the persons who offer gifts to public officials, Romanian law does not explicitly regulate the goods that can be offered or the conditions in which these gifts can be given. The only applicable provisions are those found in the *Romanian Fiscal Code* (Article No. 25) which require that protocol activity expenses are to be registered in the company's logs for the purpose of tax deduction.

1.7. Are there any defenses available?

There are numerous defense arguments available. The most often invoked are:

1. the evidence usually consists of denunciations of persons who are not always credible, especially as Romanian legislation regulates a cause of non-punishment of persons who are guilty of active corruption if they denounce before the referral to the prosecution authorities, but this last moment can be chosen arbitrarily by the judicial bodies. The idea of *flagrante delicto* has been abandoned and this type of evidence is constantly used – forcing the person to make a denunciation in other cases;

2. the benefits obtained may be due, but the Romanian legislation does not condition, for example, the offense of influence peddling, on the undue nature or type of benefits;

3. abuse of office is an offense assimilated to corruption offenses, and the national regulation is very unclear, in the sense that any violation of the law, regardless of the seriousness of the violation, may lead to criminal charges against public officials, or even private officials, for that offense;

4. there is the practice of holding several offenses for the same material facts, i.e. both the offenses of bribery/trafficking in influence and the offenses of abuse of office if the bribery/trafficking in influence was followed by the improper performance of an act by the official, in violation of the *ne bis in idem* principle;

5. the differences between the incriminations contained in the successive criminal codes are frequently ignored, the tendency being to choose the more comprehensive incrimination, regardless of the date of the facts;

6. the more lenient provisions of the new *Criminal Code* on justifiable causes, such as error of law, are not used in the case of civil servants accused of abuse of office, or the fulfillment of an obligation laid down by law;

7. other defenses relating to the individualization of the penalty, lack of guilt, also valid for other offenses.

1.8. Is there an exemption for facilitation payments?

N/A

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

Giving a bribe (Article 290 of the *Romanian Criminal Code*) is punishable by imprisonment between two and seven years if committed in relation to a public official. The penalty is re-

duced by one-third if the bribe was given to a person working in the private sector. The person who gave the bribe is not sanctioned if they notify the criminal investigation bodies prior to them being notified of the act by any other means.

As an additional measure, the money given as a bribe is confiscated, if the person giving it was not forced to do so, or the judicial bodies were not notified prior to the commencement of the investigation.

There are additional sanctions that can be imposed during and for a period of one to five years after the execution of the prison sentence (complementary/ancillary sanctions), such as forbidding the exercise of certain rights, i.e. to vote or be elected, to occupy the public office held when the bribe was received, to hold a management position in a publicly owned company, etc.

All of these sanctions are criminal in nature.

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

The principle of the personality of criminal law (Article 9 of the *Romanian Criminal Code*) provides that Romanian criminal law applies to the felonies committed by Romanian citizens outside the country's borders if the penalty provided by Romanian law is imprisonment for more than 10 years, or if the country in which the felony was committed also incriminates the acts committed.

As giving a bribe is largely incriminated by most countries' legal systems, the principle is generally applicable in all cases when a Romanian citizen has given a bribe to a foreign national.

Furthermore, Article 294 of the *Romanian Criminal Code* incriminates acts committed by foreign officials or related to them, providing that the corruption felonies also apply to the following persons, unless the international agreements that Romania is a party to provide otherwise:

a) officials or persons who carry out their activity based on a labor agreement or other persons with similar duties in an international public organization that Romania is a party to;

b) members of parliamentary assemblies of international organizations that Romania is a party to;

c) officials or persons who carry out their activities based on a labor agreement or other persons with similar duties within the European Union;

d) persons who exercise judicial functions within the international courts whose jurisdiction is accepted by Romania, as well as officials working for the registrar's office of such courts;

e) officials of a foreign state;

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

g) jurors within foreign courts.

1.11. What are the limitation periods for bribery offenses?

The general statute of limitations period for bribery offenses are:

1. Taking a bribe: eight years for both public officials and the private sector. 10 years if the perpetrator is one of the categories of officials provided for by Article 7 of Law No. 78/2000;

2. Giving a bribe: eight years for public officials, five years for the private sector;

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

There is a draft for modifying certain provisions of the Romanian Criminal Code and *Law No. 78/2000* (*PL-x No. 406/2018* currently pending before the Senate) with the following relevant content:

1. the benefit of not applying a punishment to the person who gives a bribe will only be applicable if said person notifies the judicial bodies within a year from the time of giving the bribe;

2. the felony of influence-peddling requires that the promise to determine a public official to act according to or against their job duties is actually followed through;

3. the same one-year time limit for notifying the judicial bodies by the person who has bought influence was instated for the benefit of being exempt from punishment;

4. if the corruption felonies have caused material damages to one or more persons and/or the state, the limits of the punishment provided for by law are halved if at least one participant (author, accomplice, instigator) covers said damages before the court gives its final judgment in the appeal stage.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

See Section 1.6.

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

See Section 1.6.

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?

Romanian legislation does not provide a limit for the value of goods or other benefits offered to public officials. The only applicable provisions establish the procedures for declaring and registering the received goods at the public institution which employs the official

Thus, according to Article No. 2 para. (3) of *Law No. 251/2004*, if the value of the gift exceeds EUR 200, the official receiving the gift can request that they keep it after paying the difference in value.

If the value of the gift exceeds EUR 200 and the public official does not request to keep it, the public institution which employs the official may choose to become the owner of the gift, auction it off, or send it to another public institution whose scope of activity fits the nature of the gift.

That being said, there is no upper limit for the value of gifts offered to public officials. This value can be reasonably determined. Any good which exceeds the notion of a symbolic gift, a polite gesture, or a gift given during protocol activities can be classified as an undue benefit, as provided for by criminal law.

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

See Section 1.7.

3. Anti-corruption compliance

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

N/A

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

There is a *National Anticorruption Strategy* for the 2021-2025 period approved by *Government Decision No. 1269/2021*. The provisions are only applicable to public authorities, institutions, or publicly run enterprises.

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

The person who gives a bribe or buys influence is exempt from punishment if he/she notifies the judicial bodies regarding the felony prior to their notification by any other means. Afterward, if the whistleblowing is done during the criminal investigation stage, the whistleblower has their punishment limits halved.

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?

The *Criminal Code* (Articles 135 to 151) provides for the possibility of directly indicting the legal entity, which may be held liable for the actions of any of its bodies or representatives acting during its business, in its interest, and/or on its behalf.

The *Criminal Code* also requires that collective entities have a legal personality at the time of the crime in order to be liable under criminal law. In this view, the High Court of Cassation and Justice, Criminal Law Division, decided that an individual enterprise that is not a legal entity cannot be held liable under Article 135 of the *Criminal Code* (*Decision No. 1/2016*).

The State and public authorities do not fall within the category of persons that can be held liable under criminal law. However, public institutions are not generally exempt from criminal liability. The scope of the exemption from criminal liability of these subjects is solely in relation to actions performed during an activity pertaining to the public domain, which cannot be equally carried out by private law entities.

The criminal liability of the legal entity may be cumulated with the that of the individual who perpetrated the crime. However, these two types of liability are not wholly interdependent.

Criminal fines are the only main penalty that can be applied to legal entities, based on the fine-days system. The amount corresponding to one fine-day, varying between RON 100 and RON 5,000, is multiplied by the number of days subject to the fine (between 30 and 600 days) – the general limits of the penalty will range between RON 3,000 and RON 3 million.

The law provides for progressive penalties for legal persons depending on the severity of the prison sentence given to individuals. Thus, the special limits of the days subject to a fine range between:

- 60 and 180 days, when the law stipulates only a penalty by fine for that offense;
- 120 and 240 days, where the law provides for a term of imprisonment of no more than five years, as such or as an alternative to the fine;

- 180 and 300 days, where the law provides for a term of imprisonment of no more than 10 years;
- 240 and 420 days, where the law provides for a term of imprisonment of no more than 20 years; and
- 360 and 510 days, where the law provides for a term of imprisonment exceeding 20 years or life imprisonment.

It should be mentioned that when the offense committed by a legal entity was intended to create a monetary benefit, the special limits of the fine-days provided for by the law for the committed offense may be increased by one-third, without exceeding the general maximum of 600 fine-days. When determining the fine, the value of the monetary benefit obtained or sought shall be considered.

The *Criminal Code* also provides for a complementary penalty for the legal entity: judicial supervision (Article 144), where the convicted legal entity's operations are to be carried out under the supervision of a judicial proxy for a period of one to three years.

The other complementary penalties applicable to the legal entity are dissolution, suspension of activity or of one of the activities of the legal entity for a period of three months to three years, closing of secondary offices for a period of three months to three years, prohibition to participate in public procurement procedures for a period of one to three years, publication of the conviction decision.

The general rule is that companies can be liable for any felony, including the corruption offenses provided for 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?

Criminal liability is personal, therefore one company cannot be held responsible for the felonies committed by another enterprise, even one under its control if it did not participate in the illicit act as a co-author, instigator, or accomplice.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

Giving or taking a bribe are felonies that can be committed through intent, meaning that the perpetrator foresaw that their actions have the result of giving or taking said bribe for the provided benefits, and the result was pursued or accepted.

On the other hand, influence peddling or buying of influence can only be committed through direct intent, meaning that the result of the illicit acts must have been pursued.

The company can only be criminally liable for the corruption offenses committed by an external agent on its behalf if its governing bodies were aware that the agent was going to commit the felony and accepted this fact, or actively pursued it. In these situations, the conduct of the legal entity can be construed as complicity or instigation. Otherwise, if the company was directly involved in the bribing or peddling of influence, it will be liable as an author.

The provisions to mitigate the liability are the same as for the persons who notify the judicial bodies prior to the commencement of the investigation regarding the notified facts, or during the investigation, if participants in other corruption felonies are being denounced.

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

See Section 4.1. for the general limits of the fine sanction.

Specifically, for corruption offenses, the special limits of the fine vary between RON 12,000 (approximately EUR 2,400) and RON 2.1 million (approximately EUR 425,000).

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Corruption crimes are prosecuted by the National Anticorruption Directorate (DNA), which is a specialized independent branch of the Prosecutor's Office by the High Court of Cassation and Justice. It has territorial bureaus which carry out the procedures in the investigation stage and refer the cases to court.

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 acts of corruption belongs solely to the public officials. Article 267 of the *Romanian Criminal Code* incriminates the act of the public official who, becoming aware of the commission of an act provided by the criminal law in connection with their professional duties, fails to immediately notify the criminal investigation bodies (imprisonment from three months to three years or a fine). When the deed is committed by negligence, the punishment shall be imprisonment from three months to one year or a fine.

Furthermore, Article 291 of the *Criminal Procedure Code* establishes an obligation for any person with a leadership position in a public authority to denounce any felony for which criminal investigations are initiated *ex officio*, such as corruption offenses.

Finally, the offenses provided by Art. 25 para. (4) and (5) of *Law no. 78/2000* are the assimilated versions of the failure to report (Article 266 of the *Criminal Code*), which sanctions the non-fulfillment, in bad faith or by fault, of the obligations stipulated by Art. 23 and 24 of the same law. These texts require that **(i)** persons with control duties notify the criminal investigating authorities or, as the case may be, the law enforcement agency of any data indicating that an illicit operation or act has been committed and may entail criminal liability under this law, and **(ii)** persons referred to in Art. 1 lit. e) of *Law no. 78/2000[1]*, which are aware of operations that involve the movement of capital or other activities related to amounts of money, goods, or other values alleged to derive from corruption offenses or assimilated to them or other related offenses, to notify the investigating bodies, or, as the case may be, the law enforcement bodies.

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

N/A

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

The criminal investigation bodies (prosecutor, police) and the courts have general access to all relevant public and private information that is relevant to solving the case regarding the corruption offenses. The banking and professional confidentiality guarantees do not apply to the relevant authorities in these situations, with the sole exception of the lawyer-client privilege.

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?

See Sections 3.3. and 5.6.

If the perpetrator/s is/are sent to court, he/she/they can admit the facts within the indictment act and choose to carry out the procedure solely based on the evidence administered during the criminal investigation stage. If approved by the judge or panel of judges, the case is ruled upon in this abbreviated procedure, which results in the reduction of the imprisonment limits by one-third and the fine intervals by one-fourth.

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

Article 478 and the following of the *Romanian Criminal Procedure Code* provide for the possibility of a plea bargain struck between the defendant/s and the prosecutor which can be initiated by either of these two parties. The plea bargain can be signed in writing with any or all of the defendants in the case and if both the signatories (defendant/s and prosecutor) agree. The defendant/s has/have to admit that they have committed the incriminated acts and the corresponding legal qualification established through the indictment act. The plea bargain establishes the type (fine, imprisonment, postponement/renouncing of the application of punishment) and amount of punishment, even the accessory/complementary sanctions provided for in the *Criminal Code* if so decided (e.g. banning the participation in public auctions). The signatory defendants are then sent to court, and, if the plea bargain is considered lawful and the type/amount of punishment (if any) is considered proportionate, the judge/s admit it and are bound to impose the sanctions that the prosecutor and defendant/s agreed upon. If a plea bargain is struck and accepted by the court, imprisonment is reduced limits by one third and the fine intervals by one fourth.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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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*, *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*, and others.

1.2. Which international anti-corruption conventions apply?

Serbia is a member of the Council of Europe and is in negotiations for the accession to the European Union (EU), as one of the five 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 benefit 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, the private sector bribery is covered by law in the Serbian legal system. Serbian laws contain a wide arrange 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) are 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 which were directly elected by the citizens and persons which are elected, placed, or named by the National Assembly, 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 which 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 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 the 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, a 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 stipu-

lates that, under certain circumstances, the criminal legislation of the Republic of Serbia applies to the citizens of Serbia outside of the territory of Serbia that commit a crime, as well as to foreigners that 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 plaintiff 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 of 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 of 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. The administrative body founded by the referenced law – the Agency for Prevention of Corruption, has enacted the strategic plan for 2019-023. 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 family is 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, 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?

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.

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 corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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; 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 and 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.

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 a crime of giving bribery 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.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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1. Legal Framework

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

The essential legal framework for bribery and corruption in the Slovak Republic is *Act No. 300/2005 Coll.* (Slovak Criminal Code).

In the Slovak Republic, criminal offenses associated with corruption are incorporated in chapter 8 "Criminal Offenses Against Public Order," in the third part named "Corruption" of the Slovak Criminal Code. The Slovak Criminal Code contains a total of six criminal offenses described in Sections 328 to 336d regulating corruption and bribery.

The criminal offense of "receiving a bribe" is regulated in Sections 328 – 330 of the Slovak Criminal Code. The criminal offense of "bribery" is regulated in Sections 332 – 334 of the Slovak Criminal Code. Section 336 regulates "indirect corruption," Section 336a regulates "election corruption," Section 336b governs "sports corruption," and Sections 336c and 336d of the Slovak Criminal Code regulate "receiving and granting an undue advantage."

1.2. Which international anti-corruption conventions apply?

The Slovak Republic is a party to all the main international instruments adopted in the area of the fight against corruption.

The Slovak Republic ratified and implemented into Slovak legislation the following treaties and conventions (non-exhaustive list):

i. The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* adopted by the Negotiating Conference on November 21, 1997, in Paris,

ii. The *Criminal Law Convention on Corruption* adopted on January 27, 1999, in Strasburg,

iii. The *Additional Protocol to the Criminal Law Convention on Corruption* adopted on May 15, 2003, in Strasburg,

iv. The *Civil Law Convention on Corruption* adopted on November 4, 1999, in Strasburg,

v. The *United Nations Convention Against Corruption* adopted on October 31, 2003, in New York,

vi. 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* adopted on May 26, 1997, in Brussels,

vii. The protocol drawn up on the basis of Article K.3 of the *Treaty on European Union to the Convention on the protection of the European Communities´ financial interests* adopted on September 27, 1996, in Brussels,

viii. The *Council Framework Decision 2003/568/JHA* of July 22, 2003, on combating corruption in the private sector.

The Slovak Republic is bound by obligations arising from its membership in the European Union, Council of Europe (e.g. the *Criminal Law Convention on Corruption*), United Nations, and OECD.

1.3. What is the definition of bribery?

"Bribe" is an essential term when it comes to anti-corruption legislation in the Slovak Republic. "Bribe" is defined in Section 131 (3) of the Slovak Criminal Code as a thing or any other performance of pecuniary or non-pecuniary nature to which a person has no legal entitlement. The judicial practice further defines a bribe as an unjustified advantage that the bribed person receives or that a third person receives with the consent of the bribed one. An "unjustified advantage" consists of direct property benefit, e.g. financial or material. Bribe may also be an advantage of another kind, e.g. reciprocal service. The Slovak Criminal Code does not set any minimum value limit for a bribe. However, the value of a bribe needs to be assessed in relation to imposing heavier penalties.

Section 131 (4) of the Slovak Criminal Code defines "undue advantage" as a benefit of a pecuniary or non-pecuniary nature capable of influencing a public official, to which there is no legal entitlement and the value of which exceeds EUR 200, or an unjustified advantage granted to a public official or a person close to him/her which is not measurable in money. An undue advantage is not a benefit or advantage the receipt of which, having regard to an official or materially legitimate interest, is customary in connection with the position or function of a public official or which is recorded in the published Register of Gifts. This definition is relevant only to the crime of receiving and granting an undue advantage under Sections 336c and 336d of the Slovak Criminal Code.

The criminal offense of bribery is regulated in Section 332 (1) of the Slovak Criminal Code. Criminally liable is the perpetrator who directly or using another person (indirectly) promises, offers, or gives a bribe to another person to act or omit to act in a way that he or she violates his/her duties arising from his/her employment, occupation, status or function, or for this reason directly or using another person promises, offers, or gives a bribe to the third person.

The criminal offense of bribery has its special provision related to the procurement of matters of general interest. The

term "matter of general interest" means an interest that goes beyond the individual rights and interests of an individual and which is important for the interests of society. Under Section 333 (1) of the Slovak Criminal Code, criminally liable is a perpetrator who, in connection to the procurement of matters of general interest, directly or using another person promises, offers, or gives a bribe to another person or for this reason promises, offers, or gives a bribe to the third person.

One of the qualified facts of Section 333 (2) of the Slovak Criminal Code which leads to heavier penalties is committing this crime against a public official.

Section 334 (1) of the Slovak Criminal Code refers to a foreign public official. Under Section 334 (1) of the Slovak Criminal Code, criminally liable is a perpetrator who directly or using another person promises, offers, or gives a bribe to a foreign public official or another person in connection with the execution of official duties or his/her function as a foreign public official with intent to gain or maintain an unlawful benefit.

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

The Slovak Criminal Code regulates bribery in both the private and public sectors.

The Slovak Criminal Code imposes heavier penalties if bribery occurs in the public sector. See Section 1.3. above.

For example, the penalty for bribery under Section 332 (1) of the Slovak Criminal Code (bribery connected to the violation of duties arising from employment, occupation, status, or function) is up to three years of imprisonment. However, if bribery is committed in connection with the execution of the function of a foreign public official, the penalty increases to two to five years of imprisonment (Section 334 (1) of the Slovak Criminal Code). If bribery is committed in connection with the procurement of a matter of general interest, the court may impose a penalty from six months to three years of imprisonment (Section 333 (1) of the Slovak 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?

The definition of a public official is regulated in Section 128 (1) of the Slovak Criminal Code. The definition of a foreign public official is regulated in Section 128 (2) of the Slovak Criminal Code. These sections state an exhaustive list of public officials and foreign public officials.

For instance, public officials are the president, member of the National Council of the Slovak Republic, member of the European Parliament, member of the Government, judge of the Constitutional Court of the Slovak Republic, judge, prosecutor, notary public, mayor, etc.

According to Section 128 (2) of the Slovak Criminal Code, a foreign public official is for example a person who holds an office in the legislative body, executive body, judicial body, arbitration body, or other public authority of a foreign state, including the head of state.

In connection to the criminal offense of receiving and granting an undue advantage under Sections 336c and 336d of the Slovak Criminal Code, a public official is also a person who, by virtue of his/her position or function, has the right to decide or participates in deciding on the disposition with property, property rights and funds, the management of which is subject to control by the Supreme Audit Office of the Slovak Republic.

Yes, employees at state-owned or state-controlled enterprises are treated differently, they are not considered public officials.

Yes, there is a list of state-owned or state-controlled enterprises available on the website of each ministry. Specific ministries administer property interests (shares) in specific state-owned companies, and each ministry has a list of companies in which it administers shares, published on its website.

There is an official list of some public officials available on the website of the National Council of the Slovak Republic. The list of prosecutors is published on the website of the General Prosecutors Office of the Slovak Republic. The list of judges is available on the website of the Ministry of Justice of the Slovak Republic, etc.

1.6. Are there any regulations on political donations?

Political donations are regulated by *Act No. 85/2005 Coll. on Political parties and Political movements*, Sections 23 and 24.

Pursuant to Section 23 (1), a political party may accept a donation only if the value of donations from one donor does not exceed EUR 300,000 in a calendar year. If the value of the donation from one donor exceeds EUR 1,000 in a calendar year, the donation must be made in written form (essentials of such a contract are stipulated in Section 23 (2) (3)). A written form of the donation is not required if the value of the donation is quantified on the document on the basis of which the party received the donation.

Pursuant to Section 24 (2), a political party may accept a monetary donation only if it has been remitted by transfer from another bank account. If it is not proven from the account statement who is the donor, the political party must return this

donation to the bank account from which it was provided. If such a bank account does not exist, the political party must remit this donation to the national budget.

Furthermore, Section 24 (1) stipulates a list of subjects from which the donation cannot be accepted (public institutions, civil associations, foundations, non-profit organizations providing services of general interest, non-investment funds, persons who do not have a permanent residence in the territory of the Slovak Republic, etc.)

1.7. Are there any defenses available?

Defense against the criminal liability for corruption offenses is for example regulated in Section 86 (1) (f) of the Slovak Criminal Code, Section 131 (4) of the Slovak Criminal Code, or Article 4 (2) (b) of the *Constitutional Act No. 357/2004 Coll.* See Sections 1.3., 2.2., 2.3., and 5.5.

1.8. Is there an exemption for facilitation payments?

No, there is not. Any kind of facilitation payments are illegal according to the Slovak Criminal Code. According to the Slovak Criminal Code, any type of bribery is illegal. Even small so-called "grease payments" are illegal because they meet the substance of the crime in accordance with the provisions of the Slovak Criminal Code defining the term bribe.

Section 131 (4) of the Slovak Criminal Code can be considered an exemption (see Section 1.3.). The same applies to Article 4 (2) (b) of the *Constitutional Act No. 357/2004 Coll.* (see Section 2.2.).

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

Sanctions for corruption crimes according to Slovak Criminal Code vary depending on the circumstances of the case. The penalty of imprisonment ranges from several months to 15 years. The severity of sanctions depends on the amount of the bribe, the type of illegal conduct (e.g. giving or receiving the bribe), etc.

Apart from imprisonment, other sanctions may come into consideration. For instance, property forfeiture or a monetary penalty may be imposed on the perpetrator found guilty of committing a crime of corruption. The severity of the sanctions depends on the scale of corruptive activities. The court must impose a penalty of property forfeiture on the perpetrator found guilty under Sections 328 (3), 329 (3), and 334 (2) of the Slovak Criminal Code.

Regarding civil law, Section 442 (2) of *Act No. 40/1964 Coll.* (Civil Code) regulates the right of the damaged party to claim damages from the perpetrator of the crime of corruption in civil court. A person who suffered damage due to any crime of corruption, can demand compensation for actual damage, loss of earnings, and non-pecuniary damage from the perpetrator.

Section 44 (2) (e) of *Act No. 513/1991 Coll.* (Commercial Code) states that bribery is also considered a form of unfair competition. Unfair competition is conduct in the competition which is contrary to the good morals of competition and is likely to cause injury to other competitors or consumers. Unfair competition is prohibited. Bribery for purposes of the Commercial Code is defined in Section 49 of the Commercial Code.

Under Section 53 of the Commercial Code, persons whose rights have been infringed or endangered by unfair competition may seek an injunction against the infringer to **(i)** refrain from action, and **(ii)** remedy the defective status. They may also **(iii)** claim adequate compensation, which may also be awarded in money, **(iv)** claim damages, and **(v)** request a return of unjust enrichment.

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

Yes.

The Slovak Criminal Code (Section 3 (2) a), b)) applies to crimes committed in the territory of the Slovak Republic. A crime is deemed to have been committed in the territory of the Slovak Republic even if the offender **(i)** has committed the act at least in part within the territory of the Slovak Republic if the violation or threat to the interest protected by Slovak Criminal Code occurred or was intended to occur wholly or in part outside the territory of the Slovak Republic, or **(ii)** has committed an act outside the territory of the Slovak Republic if the violation or threat to an interest protected by Slovak Criminal Code should have occurred, at least in part, in the territory of the Slovak Republic.

The Slovak Criminal Code (Section 3 (3) of Slovak Criminal Code) applies to acts committed outside the territory of the Slovak Republic on board a ship sailing under the flag of the Slovak Republic or on board an aircraft listed in the register of aircrafts of the Slovak Republic.

The Slovak Criminal Code (Section 4 of the Slovak Criminal Code) applies to acts committed outside the territory of the Slovak Republic by a Slovak citizen or a foreigner who has permanent residence in the territory of the Slovak Republic.

The Slovak Criminal Code (Section 5 of the Slovak Criminal Code) also applies if the act (particularly serious crime) was committed outside the territory of the Slovak Republic against

a citizen of the Slovak Republic and, at the place of the act, the act is punishable or if the place of the act is not subject to any criminal jurisdiction.

The Slovak Criminal Code (Section 6 of the Slovak Criminal Code) also applies to acts committed outside the territory of the Slovak Republic by a foreigner who does not have permanent residence in the territory of the Slovak Republic if cumulative conditions (set in Section 6) are met.

1.11. What are the limitation periods for bribery offenses?

Section 87 of the Slovak Criminal Code regulates limitation periods for crimes. The length of a limitation period depends on the penalty for the specific crime set in the Slovak Criminal Code. The limitation period varies from three to 30 years. In the case of corruption crimes, it varies from three to 20 years.

The limitation period is 20 years, if, under the Slovak Criminal Code, the court may impose a sentence of imprisonment with the upper limit of at least 10 years. Examples are corruption crimes falling under Sections 328 (3), 329 (2 or 3), 330 (2), and 332 (3) of the Slovak Criminal Code.

The limitation period is 10 years, if, under the Slovak Criminal Code, the court may impose a sentence of imprisonment with the upper limit of more than five years and less than 10 years.

The limitation period is five years, if, under the Slovak Criminal Code, the court may impose a sentence of imprisonment with the upper limit of at least three years. Examples are corruption crimes falling under Sections 328 (1), 332 (1 or 2), and 333 (1 or 2) of the Slovak Criminal Code.

The limitation period is three years for other (less severe) offenses. Examples are corruption crimes falling under Sections 336a (1 or 2) of the Slovak Criminal Code.

Additionally, according to Section 106 (3) of the Civil Code, the right to compensation for damages caused by crimes of corruption shall be statute-barred three years from the date of the legal validity of the judgment on a conviction (for committing a crime of corruption), but not later than 10 years from the date of commission of the crime.

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

N/A

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

In general, gifts and hospitality are permitted. However, in some situations, it is difficult to distinguish between gifts and bribes. One of the important requirements to distinguish a gift from a bribe is transparency. Therefore, legal entities often accept monetary donations only through transparent bank accounts. In the context of the public sector, the legislation sets out specific requirements for the provision of gifts and hospitality.

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

The *Constitutional Act No. 357/2004 Coll. on the Protection of the Public Interest in the Exercise of the Functions of Public Officials* regulates providing gifts and hospitality in the public sector.

Under Article 4 (2) (b) of the *Constitutional Act No. 357/2004 Coll.*, public officials are not permitted to ask for, accept, or induce another to give gifts or obtain other benefits in connection with the performance of his/her duties, except for gifts normally provided within the exercise of public office or gifts provided under the law.

Providing gifts or hospitality can under some circumstances lead to criminal offenses under Sections 328 – 336d of the Slovak Criminal Code (receiving a bribe, bribery, electoral corruption, indirect corruption, election corruption, sports corruption, receiving and granting of an undue advantage). These provisions of the Slovak Criminal Code are relevant for both the public and private sectors.

Under Article 7 (1) (f) of the *Constitutional Act No. 357/2004 Coll.*, a public official is required to give annual written notice stating a description of the gift or other benefits received in the previous calendar year if the value of gifts or other benefits from one donor or value of single donation exceeds 10 times the minimum wage (currently EUR 6,460), including a specification of the type of gift and the date of its acceptance.

We are not aware of any other guidance for gifts and hospitality in the private sector.

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 general, there is no limitation on the value of benefits (gifts and hospitality) that may be given to a government/public official.

Public officials cannot ask for, accept, or induce another to give them gifts or obtain other benefits in connection with the performance of their duties, except for gifts normally provided within the exercise of public office or gifts provided under the law. (Article 4 (2) (b) of the *Constitutional Act No. 357/2004 Coll.*).

Public officials cannot accept, request, or accept a promise to be given an undue advantage (see Section 1.3.) for themselves or for another person in connection with their position or function (Section 131 (4) in connection with Section 336c of the Slovak Criminal Code), also no one can grant, offer, or promise to a public official or another person an undue advantage in connection with the position or function of a public official (Section 131 (4) in connection with Section 336d of the Slovak Criminal Code).

According to Section 131 (3) of the Slovak Criminal Code, anything (regardless of value) can be considered a bribe if a person has no legal entitlement to that thing or performance. Simply, giving or receiving a bribe can constitute a crime when the bribe is given or received in exchange for something (Sections 328 – 336b of the Slovak Criminal Code).

See Sections 1.3. and 2.2.

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

See Sections 1.3., 2.2., and 2.3.

3. Anti-corruption compliance

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

No, privately-owned companies are not required to have an anti-corruption compliance procedure in place. In respect of the public sector, the Government has adopted resolution *No. 585/2018*, which lays down the basis for the anti-corruption policy in the public sector for the years 2019-2023. It sets out principles guiding the anti-corruption policy and basic objectives for four years.

However, according to Section 10 (1) of *Act No. 54/2019 Coll. on the Protection of Whistleblowers* (Slovak Whistleblowing Act), a private company employing more than 50 employees must appoint a person designated to receive notifications of illegal conduct (or suspicions thereof). Under Section 2 (d) of the Slovak Whistleblowing Act, such illegal conduct are corruption offenses under Sections 328 – 336b of the Slovak Criminal Code. Such employers (private companies) must also have an internal document in which they inform their employees on the internal system for the verification of such notifications, confidentiality connected with the notification process, and the protection of the whistleblower´s personal data.

The employer mentioned above is also obliged to accept and verify each notification. Furthermore, the employer is obliged to inform the notifier (employee) of the result of the verification of the notification and the employer has to maintain confidentiality about the identity of the notifying employee.

At the same time, *Government Resolution No. 426/2019 on the National Anti-Corruption Programme* states the importance of anti-corruption compliance in the private sector. The Slovak Ministry of Economy shall come up with proposals to eliminate corruption in the private sector until the end of 2022. As of right now, there are no official guidelines for the private sector in relation to the elimination of corruption.

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

As mentioned in Section 3.1., there are guidelines adopted by the Government of the Slovak Republic that provide guidance to the public sector. No such guidelines have been adopted in respect of the private sector.

As stated in Section 3.1., only the Slovak Whistleblowing Act partially regulates anti-corruption compliance in the private sector (protection of whistleblowers reporting serious offenses).

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

Yes, the protection of whistleblowers is mainly regulated by the Slovak Whistleblowing Act and *Act No. 365/2004 on Equal Treatment and the Protection against Discrimination* (Slovak Antidiscrimination Act). The Slovak Antidiscrimination Act provides protection to whistleblowers that have been dismissed in connection with them reporting serious offenses.

In other words, a person notifying the respective authorities of a crime of corruption is protected under the Slovak Whistleblowing Act. This protection can take various forms, for instance, the protection against unfair dismissal by suspending the effect of the employment act (Section 12 of the Slovak Whistleblowing Act). Once the effect of the employment act (such as dismissal) has been suspended, the dismissed whistleblower can file an anti-discrimination lawsuit. Pursuant to Section 9 (2) (3) of the Slovak Antidiscrimination Act, the whistleblower may seek adequate satisfaction during such proceedings and may even claim non-pecuniary damage. The court may also declare the employment act invalid.

On top of that, pursuant to Sections 3 and 4 of the Slovak Antidiscrimination Act, whistleblowers are also protected during the criminal proceedings if criminal proceedings are in-

itiated based on the information provided by the whistleblower and the whistleblower asks for the protection to be provided.

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?

Criminal liability of legal entities is regulated by *Act No. 91/2016 Coll. on Criminal Liability of Legal Entities*. Specifically, Section 3 refers to crimes for which legal entities can be held criminally liable.

Under Section 3 legal entities can be held liable for the following corruption criminal offenses:

i. Receiving a bribe (Sections 328 – 330 of the Slovak Criminal Code),

ii. Bribery (Sections 332 – 334 of the Slovak Criminal Code),

iii. Indirect corruption (Sections 336 of the Slovak Criminal Code),

iv. Receiving and granting of an undue advantage (Sections 336c and 336d of the Criminal Code).

Under Section 4 (1) of *Act No. 91/2016 Coll.*, a legal entity is criminally liable if a criminal offense is committed in its favor, on its behalf, in course of its activities, or through this entity, if the action was taken by:

i. statutory body or a member of the statutory body, or

ii. person who carries out control or supervision within a legal entity, or

iii. another person, who is authorized to represent the legal entity or to make decisions on its behalf.

The legal entity can also be held criminally liable if some of the aforementioned persons, by insufficient supervision or control which was his/her duty, even negligently, enabled the commission of the offense by a person who acted within the limits of powers entrusted to him/her by the legal entity (Section 4 (2), *Act No. 91/2016 Coll.*).

Legal entities excluded from criminal liability are state authorities and other legal entities of public nature (Section 5 of *Act No. 91/2016 Coll.*).

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?

In general, a parent company is not liable for bribery or corruption offenses committed by an entity controlled or owned by it. However, any company may be liable for a criminal offense as a participant in a criminal offense. Pursuant to Section 6 (3) of *Act No. 91/2016 Coll.*, a participant in a criminal offense is a legal entity that has used another legal entity or natural person to commit a crime. For example, if a parent company used its subsidiary company to commit bribery, the parent company may be held liable as a participant in this criminal conduct.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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?

Under Section 4 (1) (c) of *Act No. 91/2016 Coll.*, a legal entity is criminally liable for corrupt actions of a third party (third-party agent) if **(i)** the third-party agent is authorized to represent the legal entity or to make decisions on its behalf and **(ii)** the criminal offense is committed in the company's favor, on its behalf, in course of its activities, or through this entity.

Under Section 8 (2) of *Act No. 91/2016 Coll.*, a company cannot refer to the regulation of so-called "effective remorse," as this does not apply to corruption crimes. Therefore, there are no measures recognized in law, enforcement, or regulatory guidance to mitigate this liability. However, in terms of sentencing, when deciding on the type of sentence the court shall consider in the case of co-perpetrators, the extent to which the conduct of each of them contributed to the commission of the offense (Section 34 (5) (a) of Slovak Criminal Code).

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

For criminal offenses committed pursuant to Section 3 of *Act No. 91/2016 Coll.* a court may impose on a legal entity the following penalties (Section 10 of *Act No. 91/2016 Coll.*):

a) a penalty of dissolution of a legal entity,

b) property forfeiture,

c) forfeiture of items,

d) monetary penalty,

e) prohibition of a certain activity,

f) prohibition to receive donations and subsidies,

g) prohibition to receive aid and support from European Union funds,

h) prohibition of participation in public procurement,

i) publication of a conviction.

The court may also impose on a legal entity the protective measure of confiscation of part of the property.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

The police and prosecutor. The court only decides on the guilt and punishment or when the fundamental rights of the accused are at stake.

According to *Act No. 301/2005 Coll.* (Criminal Procedure Code) and *Act No. 171/1993 Coll. on the Police Force*, a police investigator has a right to investigate criminal offenses of natural persons and legal persons. However, only the prosecutor can file an indictment against the accused.

A police investigator is procedurally independent. Investigators search for and secure evidence. Police investigators are obliged to take into consideration evidence whether it is in favor of or against the accused.

Prosecutors are "guardians of the investigation," so-called "*dominus litis*." Prosecutors supervise the observance of legality prior to the initiation of criminal prosecution and in the preparatory proceedings. In exercising this supervision, prosecutors are entitled to give binding instructions to police officers, request files from police officers, annul unlawful or unjustified decisions of police officers, participate in the investigation, issue a decision on any matter, etc. (Sections 230 et seq. of Criminal Procedure Code).

General competencies of prosecutors are also stated in Sections 17 et seq. of *Act No. 153/2001 on the Prosecutor's Office*. Prosecutors also decide in the preparatory proceedings and make proposals to the judge for the preparatory proceedings, conclude plea agreements with the accused and submit proposals of plea agreements to the court for its approval, file an indictment against the accused, etc.

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. The obligation to report corruption is regulated in two sections of the Slovak Criminal Code. Section 340 of the Slovak Criminal Code regulates the crime of failure to report a crime. This section explicitly provides that anyone who did in a credible way find out that another person committed a corruption crime and did not report it without undue delay to law enforcement authorities has committed a crime of failure to report a crime. For this crime, the sanctions can be up to three years of imprisonment. However, the perpetrator is exempted from criminal liability if he/she could not report the corruption without endangering himself/herself or a close person or if he/she would violate the legal duty of secrecy or confessional secrecy by reporting the corruption (Section 340 (2) (3) of Slovak Criminal Code).

Section 341 of the Slovak Criminal Code regulates the crime of failure to prevent a crime. The factual nature of this crime is the same as in the case of failure to report a crime, with the difference that, in this case, the crime has not yet been completed and the perpetrator is still preparing or committing the crime. The exemptions from criminal liability are also narrower. When it comes to the legal duty of secrecy, the person is only exempted if the legal duty of secrecy that he/she would violate by reporting the corruption is confessional secrecy.

Closely connected to corruption reporting is the Slovak Whistleblowing Act, which provides protection to those who report corruption. The protection is provided in criminal proceedings and employment relationships. The Slovak Whistleblowing Act also creates a legal basis for providing a monetary reward for reporting corruption. For further details, please see Section 3.

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

Civil enforcement against corruption crimes consists of a general obligation to reimburse damage (specifically actual damage, lost profit, and non-pecuniary damage) and/or return unjust enrichment. The Civil Code, as a general regulation of private law, regulates general liability for damages (everyone is liable for damage caused by a breach of a legal obligation) and some cases of special liability for damages.

The Commercial Code provides for protection in cases of corruption as a form of unfair competition. The injured party may claim against the perpetrator to refrain from action, remedy the defective status, and provide adequate compensation, which may also be awarded in money, payment of damages, or return of unjust enrichment.

For further details, please see Section 1.9.

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

Authorities have broad powers when it comes to investigating corruption crimes. Authorities' powers are stated in Sections 89 et seq. of the Criminal Procedure Code.

Authorities can **(i)** seizure an item that is relevant to criminal proceedings for the purposes of evidence, **(ii)** seizure funds, where facts indicate that the funds are means or proceeds of crime, **(iii)** seizure of property, **(iv)** conduct house and body searches, searches of other premises and land, **(v)** track people and things, **(vi)** make video, audio, or video-audio recordings, **(vii)** intercept and record telecommunications traffic, **(viii)** use agents, etc.

Hereby we will elaborate few means used to gather information on corruption crimes.

Tracking people and things may be carried out only in criminal proceedings on an intentional criminal offense and only if it is reasonable to assume that it will provide facts relevant to the criminal proceedings. Tracking is provided by the relevant body of the police force for a maximum period of six months, which may be extended.

Video, audio, or video-audio recordings may be carried out only if it is reasonable to assume that they will provide facts relevant to the criminal proceedings. The justification of such recordings must be constantly re-evaluated whether the reasons for their execution last.

Interception and recording of telecommunications traffic may be carried out only if it is reasonable to assume that it will provide facts relevant to the criminal proceedings and if the intended purpose cannot be achieved otherwise or would otherwise be substantially impeded.

Regarding the use of an agent, there is a difference between an agent and a so-called "agent-provocateur." An agent may not incite someone to commit a criminal offense. This does not apply to an agent-provocateur, who is an active participant. An agent-provocateur may be used only in the case of corruption of a public official or a foreign public official and if the findings indicate that the offender would have committed such a criminal offense even if the agent would not be used (Section 117 (2), Criminal Procedure Code).

It is important to keep in mind, that use of the abovementioned means cannot interfere with attorney-client privilege (mainly in the case of interception and recording of telecommunications traffic).

Also, authorities may gather information by interrogating the accused or witness. Interrogations are carried out by police, the prosecutor, or a court in order to obtain essential facts relevant to the criminal proceedings. A person cannot be coerced in any way to testify or confess. For confirmation and verification of testimonies, the law provides further means. When testimony discrepancies occur in accordance with Section 125 of the Criminal Procedure Code, the confrontation of the accused/witnesses face-to-face may be used.

Furthermore, authorities may inspect the place (crime scene). An inspection of the place may be executed if the facts relevant to the criminal proceedings shall be clarified by direct observation at the crime scene.

To clarify complex facts the law enforcement authorities shall bring in an expert to give an expert opinion.

Law enforcement authorities shall also use reconstruction and recognition. Reconstruction serves to simulate the situation and circumstances under which the crime was committed. Recognition, on the other hand, takes place if the identity of a person or thing shall be established. The accused or witness must at first describe the given person/thing. Afterward, a person or thing is shown to the accused or witness among several persons of a similar appearance or things of the same kind, and the accused or witness must identify the person/thing. Authorities have many other means available 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?

There are two ways to reduce penalties in cases of corruption crimes.

First, Section 39 (2) (e) of the Slovak Criminal Code states that the court may reduce the sentence below the lower limit of the statutory penalty if it convicts the offender who has made a particularly significant contribution **(i)** to the clarification of a corruption offense or **(ii)** to the detection or conviction of its perpetrator, by providing evidence of such an offense in criminal proceedings if, in view of the nature and gravity of the offense committed by him/her, the court considers that the purpose of the sentence can be achieved by shorter sentence. The sentence of imprisonment may not be reduced below the lower limit for the organizer, instigator, or commissioner of the offense.

Second, Section 36 (l) of the Slovak Criminal Code states that a confession and honest regret of the offense are mitigating circumstances. In determining the type of sentence and its

length, the court must take into consideration the proportion of mitigating circumstances and aggravating circumstances. If the ratio of mitigating circumstances prevails, the upper limit of the statutory penalty shall be reduced by one-third (Section 38 (2, 3) of the Slovak Criminal Code).

A voluntary confession to the crime can lead to release from criminal liability under Section 86 of the Slovak Criminal Code.

Section 86 (1) (f) of the Slovak Criminal Code (so-called "effective remorse") states that the criminality of the offense is extinguished if the perpetrator of the offense of bribery under Section 332 or 333, indirect corruption under Section 336 (2), or receiving and granting an undue advantage under Section 336d gave or promised a bribe or undue advantage only because he/she has been asked to do so and voluntarily reported it without delay to a law enforcement authority or to the police force.

The prosecutor can terminate the prosecution (Section 215 (3) of the Criminal Procedure Code) against an accused who has significantly contributed **(i)** to the clarification of a corruption offense or **(ii)** to the detection or conviction of its perpetrator and the interest of society in clarifying such an offense outweighs the interest to prosecute the accused of this or any other offense. The prosecution cannot be terminated against the organizer, instigator, or commissioner of the offense.

The prosecutor can conditionally terminate the prosecution (Section 218 (1) of the Criminal Procedure Code) against an accused under the same conditions as stated in Section 215 (3) of the Criminal Procedure Code. In this case, however, the accused is placed on probation for a period of two to ten years. During the probation period, the accused must fulfill conditions under Section 218 (1) of the Criminal Procedure Code (contribute to the clarification of a corruption offense or to the detection or conviction of its perpetrator).

The investigator with the prior consent of the prosecutor according to Section 228 (3) of the Criminal Procedure Code can suspend the prosecution under similar conditions as stated in Section 215 (3) of the Criminal Procedure Code.

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

Yes, a person can plea bargain in corruption cases.

The conditions for negotiating and concluding an agreement on guilt and punishment and the process of its approval by the court are regulated in Sections 232 et seq. and 331 et seq. of the Criminal Procedure Code.

If the results of the investigation sufficiently lead to the conclusion that a criminal offense was committed by an accused who confessed to the criminal offense, pleaded guilty, and the evidence suggests that his/her confession is true, the prosecutor can initiate proceedings for a guilt and punishment agreement (at the initiative of the accused or without such an initiative). During plea bargaining, the prosecutor is required to take into consideration the victim's interest (compensation for damages).

If a guilt and punishment agreement has been reached, the prosecutor shall apply to the court for its approval. The prosecutor files the motion for the approval of the guilt and punishment agreement.

If the accused fully admits his/her guilt for committing the prosecuted act, but no agreement on punishment is reached, the prosecutor files an indictment and asks the court to conduct the main hearing and decide on the punishment (Section 232 (5) Criminal Procedure Code). If the accused admits guilt only partially, the prosecutor files an indictment and asks the court to conduct the main hearing to the extent that the accused has not pleaded guilty and to the extent the accused pleaded guilty and to decide on guilt and punishment (Section 232 (5) Criminal Procedure Code).

The court examines the motion for the approval of the guilt and punishment agreement and either sets a date for a public hearing to decide or rejects the motion. The court rejects the motion if there is a serious breach of procedural rules (mainly violation of the rights of the defense) or regards the agreement as disproportionate (Section 331 (1) Criminal Procedure Code).

If the court rejects the guilt and punishment agreement, the confession of the defendant in the guilt and punishment proceedings cannot be used as evidence in further proceedings.

If the court has not refused the motion, at the public hearing, the proposal for an agreement on guilt and punishment will be presented by the prosecutor. Subsequently, the court will, among other things, ask the accused the questions stated in Section 333 (3) of the Criminal Procedure Code. The answer to all questions must be "yes," otherwise an agreement on guilt and punishment is not concluded.

If the injured party does not agree with the agreement on guilt and punishment, the court may recommend the injured party to claim for damages in civil proceedings or other proceedings (Section 232 (4) Criminal Procedure Code).

If the court does not approve the agreement, the case will be returned to the prosecutor to preparatory proceedings (Section 334 (3) Criminal Procedure Code). If the court approves the agreement, the court confirms the decision by a judgment against which no appeal is admissible (Section 334 (4) Criminal Procedure Code).

ŠELIH & PARTNERJI

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022

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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:
  - the criminal offense of unauthorized acceptance of gifts (Art. 241);
  - the criminal offense of unauthorized giving of gifts (Art. 242);
  - the criminal offense of acceptance of a bribe (Art. 261);
  - the criminal offense of giving a bribe (Art. 262);
  - the criminal offense of accepting benefits for illegal intervention (Art. 263);
  - the criminal offense of giving gifts for illegal intervention (Art. 264);
  - the criminal offense of acceptance of bribe during the election/ballot (Art. 157);
  - 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 corrup-

tion 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 benefit, 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 (*državni zbor*), a member of the National Council (*državni 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 and in terms of content fulfills the conditions from points 1, 2, or 3 of the definition of a domestic public official;

(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. Donations to political parties and campaign funding by legal entities, both public and private, are thus completely banned. The main purpose of this ban is to prevent corruption, intertwining of parties and companies and the perception of a debt owed by a political party to the company that made the donation.

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 4,200 to EUR 21,000 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 6,000 to EUR 30,000 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 (anticorruption clause), shall be null and void. Public sector bodies and organizations shall be obliged to include the anticorruption 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?

The last major change 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. 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 anticorruption 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.

In addition to the above, if whistleblowers are subjected to retaliation as a result of the report of corruption practices and suffer adverse consequences, they have the right to claim compensation from their employer for the damage caused. In this respect, the KPK may assist whistleblowers in establishing a causal link between the adverse consequences and retaliatory measures. Where a causal link is established between the report and the retaliatory measures, the KPK shall require the employer to ensure that the conduct in question (retaliation) ceases immediately. In the case of public employees, if the retaliatory measures continue despite the request of the KPK and it is impossible for the whistleblower to continue working in their post, they may request a transfer to another equivalent post from their employer.

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. The Ministry of Justice drafted a *Whistleblower Protection Act* in December 2021, however, it has not been adopted yet.

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 corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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 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 offense 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 selfincrimination.

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).

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1. Legal Framework

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

The *Turkish Penal Code no. 5237* is the primary source regarding bribery and corruption. In addition to provisions of the *Turkish Penal Code* on bribery and corruption, some other legislations such as the *Capital Markets Law no. 6362* or the *Public Officials Law no. 657* contain regulations on this subject.

Furthermore, the *Law Against Corruption, Bribery and Declaration of Property no.3628* regulates procedural rules for bribery and corruption crimes. The code compels some persons such as elected public officials, notaries, certified public accountants, political party leaders, and newspaper owners to declare their properties periodically.

1.2. Which international anti-corruption conventions apply?

Turkey is a party to a number of international conventions regarding anti-corruption. Accordingly,

- the *United Nations Convention Against Corruption* dated 2003,
- the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* dated 1997,
- the *Council of Europe Criminal Law Convention on Corruption*, and
- the *Council of Europe Civil Law Convention on Corruption*

are applicable. Also, the below is a list of anti-corruption-related conventions to which Turkey is a party:

- the *United Nations Convention against Transnational Organized Crime*,
- the *Convention on the Transfer of Sentenced Persons*,
- the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*,
- the *European Convention on Mutual Assistance in Criminal Matters*,
- the *European Convention on the Suppression of Terrorism*,
- the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*,
- the *European Convention on the International Validity of Criminal Judgments*, and
- the *European Convention on the Transfer of Proceedings in Criminal Matters*.

1.3. What is the definition of bribery?

Bribery is defined as securing an undue advantage to a public official or another person indicated by the public official, directly or through other persons, to perform or not to perform a task regarding their duty. A public official who secures an undue advantage to himself or another person he/she indicates shall be sentenced to the same penalty. Where the parties agree upon a bribe, they shall be sentenced as if the offense were completed. In the case where the bribe offer is not accepted, the penalty to be imposed on the offeror shall be reduced by half.

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

In principle, at least one public official must be involved in the act of bribery. The exception to this is stipulated in Article 252/8 of the *Turkish Penal Code*. As per paragraph 8 of Article 252, an act is punished as bribery if the representatives of the below-listed legal bodies are involved, even if they are not public officials:

- Professional organizations with public institution status;
- Companies formed in association with public bodies or professional organizations with public entity status;
- Foundations that are part of public entities or professional organizations that are public entities;
- Public benefit associations;
- Cooperatives; or
- Publicly-held joint-stock companies.

In addition, if persons listed in the *Law Against Corruption, Bribery and Declaration of Property no. 3628* (see Section 1.1) acquire property illegitimately or conceal their property, these persons are sentenced to imprisonment from three years to five years and fined between TRL 5 million (approximately EUR 300,000 as of May 19, 2022) and TRL 10 million (approximately EUR 600,000 as of May 19, 2022).

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?

Any individual who is elected, appointed, or chosen in any other way to carry out a public duty for a temporary, perma-

nent, or explicitly defined period is considered a public official according to Article 6 of the *Turkish Penal Code*. Employees at state-owned enterprises are also treated as public officials (see Section 1.4.). However, there is not an official list of public officials, offices, or state-owned or state-controlled enterprises.

1.6. Are there any regulations on political donations?

Yes, political donations are strictly regulated in the *Political Parties Law no. 2820*. As per Article 66 of *Law no. 2820*, political parties cannot receive aid or donations in kind or in cash from foreign states, international organizations, real persons, and legal entities who are not Turkish nationals. Turkish public entities (such as local administrations, state economic enterprises, banks establish by special authority granted by law, etc.) are also strictly prohibited from making any kind of political donations. Other real persons and legal entities can make in kind or in cash donations to the political parties provided that the total value of the donations made in a year shall not exceed TRL 2 million (approximately EUR 120,000 May 19, 2022).

1.7. Are there any defenses available?

Where, prior to the commencement of an investigation, any person who offers, accepts, or participates in the act of bribery displays remorse by informing the authorities responsible for the investigation of such, no penalty shall be imposed upon such person, according to Article 254 of the *Turkish Penal Code* entitled "effective remorse." However, persons who bribe foreign public officials cannot dispose of such defense.

General reasons for setting aside or reducing criminal liability are also applicable such as having a mental disorder or being a minor.

1.8. Is there an exemption for facilitation payments?

No.

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

Bribery is punished by a sentence of four to 12 years imprisonment. If the perpetrator is a judicial officer, arbitrator, court expert, notary, or certified public accountant the penalty to be imposed is further aggravated.

According to the *Misdemeanors Code no. 5326*, if bribery or corruption crimes are committed for the benefit of a legal entity, an administrative fine between TRL 10,000 (approximately EUR 600 as of May 19, 2022) and TRL 50 million (approximately EUR 3 million as of May 19, 2022) is imposed against that legal person (see Section 4.4.).

Bribery is also considered unfair competition under the *Turkish Commercial Code no. 6102*. Even though bribery in the commercial sector is not necessarily illegal, disgruntled parties may seek claims based on unfair competition.

Furthermore, bribery is a tort that can result in tort liability under the *Turkish Code of Obligations no. 6098*. Similarly, an aggrieved party may bring tort liability claims.

Finally, bribery causes illegitimate acquirement of property per se. Therefore, sanctions regulated in the *Law Against Corruption, Bribery and Declaration of Property no. 3628* are applicable for bribery crimes (see Sections 1.1. and 1.4.).

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

Yes, according to Article 252/9 of the *Turkish Penal Code*, the following persons can be offenders of the crime of bribery as a bribe-giver or bribe-taker:

- Public officials elected or appointed in a foreign state;
- Judges, jurors, or other officials of international, supranational, or foreign state courts;
- Members of international or supranational parliaments;
- Persons operating a public service for a foreign country including activities of public institutions or public enterprises;
- Foreign persons or arbitrators who are appointed to resolve a legal dispute within the framework of the arbitration procedure; or
- Officials or representatives of international or supranational organizations established with an international agreement.

In other words, listed foreign persons may be penalized by Turkish courts if these persons give a bribe to a Turkish official or take a bribe within the Turkish legal jurisdiction.

1.11. What are the limitation periods for bribery offenses?

Under Turkish law, the limitation period for bribery is 15 years.

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

No.

2. Gifts and Hospitality

2.1. How are gifts and hospitality treated?

In principle, gifts and hospitality expenses might be consideres bribes under Article 252 of the *Turkish Penal Code*. Especially public officials are strictly prohibited from receiving or requesting gifts or deriving personal benefits due to their duties (*Public Officials Law no. 657, Art. 29*).

All kinds of goods and benefits that affect or may affect the impartiality, performance, or decision of a public official, whether they have economic value or not, and which are accepted directly or indirectly, are deemed as gifts as per the *Regulation on the Principles of Ethical Behavior for Public Officials and Procedures and Principles for Application* (Regulation). In this regard, accommodation and travel expenses might also be considered "gifts" and the individual who provides the gift as well as the official who accepts it might be punished for bribery.

Furthermore, the public officials listed in the *Law Against Corruption, Bribery and Declaration of Property no. 3628* must hand over gifts from any foreign person if the value exceeds 10 minimum wages in their institution within a month.

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

There is no specific regulation and/or guidance for the private sector in terms of gifts and hospitality. On the other hand, limitations and exceptions are listed in a detailed manner in Article 15 of the Regulation. For example, books, magazines, articles, cassettes, calendars, CDs, or advertising and handcraft products distributed to everyone for promotional purposes and having symbolic value do not constitute a breach of the ban on giving/receiving gifts (see Section 2.4.).

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 are no monetary limitations on the value of benefits that may be given to a public official. In other words, the limit is – in principle – set to zero.

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

Yes, there are some numerus clausus exceptions listed in Article 15 of the Regulation. Accordingly, these exceptions are:

- Gifts that contribute to the institution without jeopardizing the lawful execution of the institution's services received provided that they are allocated to public service, registered in the institution's fixture list, and disclosed to the public (except for official vehicles and other gifts dedicated to the use of a certain public official);
- Books, magazines, articles, cassettes, calendars, CDs, etc.;
- Prizes or gifts received as a result of participation in public competitions, campaigns, or events;
- Commemorative gifts given at conferences, symposiums, forums, panels, dinners, receptions, or other open-to-the-public events;
- Promotional advertising and handcraft products that are distributed to the public and have symbolic importance; and
- Market-driven loans obtained from financial institutions.

The following are within the scope of the ban on giving/accepting gifts:

- Welcome, farewell and celebration gifts, scholarships, travel, accommodation, and gift certificates received from those who have a business, service, or interest relationship with the relevant institution;
- Transactions involving the purchase, sale, or rental of moveable or immovable properties or services at excessive prices compared to the market price;
- All types of items, clothes, jewelry, food, etc. that are given by the service beneficiaries; or
- Debts and credits obtained from those with whom the institution has a business or service relationship.

In addition, the Public Officials Committee of Ethics has the authority to determine the scope of the ban on giving/accepting gifts. On the other hand, it should also be noted that in order for an act to be considered a "bribe," the gift and/or benefit must be given with a "corrupt intent." In this regard, hospitality expenses that are not made with corrupt intent, especially if they don't exceed reasonable daily allowances, might not be deemed a bribe.

3. Anti-corruption compliance

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

In principle, there is no such requirement for companies. Existing regulations are only advisory. Nonetheless, some companies such as banks, insurance companies, leasing companies, etc., and their branches, agencies, representatives, commercial agents are responsible for the implementation of the *Law on Prevention of Laundering of Crime Revenues no. 5549*. Therefore,

said companies are obliged to have compliance procedures and compliance officers.

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

No. Thus, companies wishing to enact compliance procedures utilize anti-corruption compliance guidelines published by international organizations such as the UN, OECD, and ICC.

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

Not extensively. The *Witness Protection Law no. 5226* is only applicable for crimes with a minimum sentence of 10 years. Therefore, the law does not cover whistleblowers reporting bribery or corruption. However, the *Law on Judgment of Public Officials and Other Public Agents no.4483* regulates that the identity of the whistleblower must be kept confidential. It should also be noted that not reporting a crime as a public officer also constitutes a crime in Turkey.

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?

Although a corporate entity cannot be held liable for giving or offering a bribe, corporate entities that obtain an unlawful benefit from the act of bribery might be subject to security measures.

Security measures that can be imposed on a corporate entity are stipulated in the *Turkish Penal Code* as **(i)** the revocation of the operational license granted by public authorities and/or **(ii)** the confiscation of the benefits gained as a result of the commitment of the crime (i.e. bribery/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?

A parent company can only be liable for an offense committed by an entity controlled or owned by it if it is also a board member of the controlled/owned entity. In other cases, the principle of individual criminal responsibility applies. There are no specific requirements to avoid this liability.

4.3. Can a company be liable for corrupt actions of a third-party agent engaged to help it obtain or retain business or a 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 company gains a benefit and/or advantage thanks to the corrupt actions of a third-party agent, these gains might be confiscated (see Section 4.1.).

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

Corporate criminal entities might be subject to security measures stipulated in Article 60 of the *Turkish Penal Code* (see Section 4.1.).

In addition to these, Article 43/A of the *Law on Misdemeanor* stipulates that a corporate entity may be imposed an administrative fine of TRL 10,000 (approximately EUR 600 as of May 19, 2022) to TRL 50 million (approximately EUR 3 million as of May 19, 2022) if bribery is committed by a corporate entity's representative or by persons taking charge within entity's scope of activity, even though they are not a representative.

5. Criminal proceedings into bribery and corruption cases

5.1. What authorities can prosecute corruption crimes?

Public prosecutors are competent and responsible to prosecute bribery. In some cases, the Financial Crimes Investigation Board of the Ministry of Treasury and Finance (the so-called "MASAK") may also support the investigation process.

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?

As per Article 278 of the *Turkish Penal Code*, a person who does not report a crime to the authorities is punished with up to one year of imprisonment. Thus, in principle, anyone who witnessed or became aware of an act of bribery or corruption is obliged to report it to the relevant authorities. Nonetheless, no penalty shall be imposed on the persons who are exempt from testifying (e.g. fiancée or (ex)spouse of either party, his/her or his/her spouse's descendants, etc.).

On the other hand, the sanction for failing to meet the obligation to report a crime (including bribery) is imprisonment from six months to two years for public officials who come to know a crime in connection with his/her duty (see also Section 3.3).

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

If corruption crimes are committed for the benefit of a legal entity, an administrative fine between TRL 10,000 (approximately EUR 600 as of May 19, 2022) and TRL 50 million (approximately EUR 3 million as of May 19, 2022) is imposed against that legal person (see Sections 4.4. and 1.9.).

Just like bribery, corruption crimes may constitute unfair competition under the *Turkish Commercial Code no. 6102*. This may result in liability for the damage that occurred. Additionally, corruption crimes may result in tort liability under the *Turkish Code of Obligations no. 6098*.

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

The *Turkish Code of Criminal Procedure* grants official authorities numerous rights to investigate corruption crimes. Searching, seizing property, appointing a trustee to companies, intercepting and recording communications, appointing undercover investigators, monitoring by technical means, taking testimony, and questioning suspects are the main instruments while gathering information about corruption crimes.

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. The bribe-taker will not be penalized for bribery if he/she gives the subject of the bribery to authorities to investigate before the official authorities discover the crime. Likewise, the bribe-giver or accessory to the crime will not be penalized for bribery if he/she regrets and informs the competent authorities about the bribery before the official authorities realize the crime. It should be also noted that leniency law is not applicable to those who bribe foreign public officials.

In addition, embezzlement criminals are also able to benefit from the leniency law by giving the subject of the crime to authorities and compensating injured parties. However, other corruption crimes are not covered by any leniency laws.

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

No, bribery and corruption are not covered by Article 253 of the *Turkish Code of Criminal Procedure* regulating plea bargains.

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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);
- 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.*

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 which 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 of 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;

e) judges, judges of the Constitutional Court of Ukraine, the Head, Deputy Head, members and 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 Peni-

tentiary 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);

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;

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)*;

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:

- fine (UAH 850 – 85,000) (approximately USD 30 – 3,000);
- corrective labor (up to two years)
- community service (up to 200 hours):
- arrest (up to six months);
- restriction of liberty (up to five years);
- imprisonment (up to 15 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 that 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.

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?

Due to the circumstances of the Russian aggression and martial law established in Ukraine, we do not exclude amendments to the anti-corruption legislation regarding restrictions on gifts received by public officials from volunteers to support the country's defense forces. On April 21, 2022, a relevant draft law was adopted in the first reading.

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

1. 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:

1) in connection with the performance by such persons of activities related to the performance of the functions of the state or local self-government;

2) 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:

1) are given by close relatives;

2) 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 one 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 two subsistence minimums for able-bodied persons. set on January 1 of the year in which the gifts are accepted. As of January 1, 2022, one subsistence minimum for able-bodied persons is UAH 2,481 (approximately USD 80).

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 in respect of 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 2.3 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.

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 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.

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 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 already mentioned, 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.

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.

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 of material or moral damages inflicted by a corruption crime,

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 in respect of 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.

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