



CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: WHITE COLLAR CRIME 2022 LITHUANIA



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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 commis-

sion 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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