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in association with prominent African law firms

# ABOUT THE FIRM

## About our Regulatory Investigations and Financial Crime Practice

Clifford Chance's global Regulatory Investigations and Financial Crime practice has a substantial track record in handling complex cross-border investigations, from regulatory enforcement to multi-agency criminal and administrative investigations. We harness this experience to effectively guide our clients through their international regulatory and white-collar challenges.

We have a sophisticated network and the longest standing single global team of financial crime experts. Our practice comprises 70 specialist partners and counsel and is supported by more than 150 lawyers. We can assemble teams of experts with the skills and experience to help our clients manage the significant legal, commercial and reputational risks that are often associated with regulatory and financial crime issues.

We have advised leading businesses and global financial institutions, professional bodies, governments and international organisations, as well as individuals from the business community and public bodies. We have represented these clients in proceedings involving law enforcement agencies, regulators and other investigators in the US, Europe, the UK, the Middle East and Asia-Pacific.

## Our Anti-Bribery and Corruption team

Our team is experienced with anti-bribery and corruption-related legal issues and can assist companies with all aspects of their anti-corruption efforts. Specifically, we can assist with the design, implementation and testing of compliance policies and controls, perform anti-bribery due diligence in the context of mergers and acquisitions, and conduct internal investigations. In cases where problems do arise, we can represent clients in regulatory and criminal investigations, jury trials and other proceedings. Our team has in-depth knowledge of worldwide anti-corruption instruments such as the UN Convention Against Corruption and the OECD Anti-bribery Convention, as well as key legislation including the US Foreign Corrupt Practices Act ("**FCPA**"), the UK Bribery Act, the French law Sapin 2 and emerging anti-corruption legislation. It is in our practice to review compliance programmes in light of these instruments and apply our experience of what matters in enforcement actions and prosecutions.

Our team also has extensive experience across other key areas of risk, including sanctions and export controls, money laundering, fraud, whistle-blowing, insider trading and market manipulation, and antitrust.

## Our Africa practice group

Having been active in Africa for over 50 years, Clifford Chance is recognised as one of the leading international law firms across the continent. We bring global expertise to leading international and African corporates, banks and financial investors within a local context. Our Africa Practice is truly pan-African and spans the entire continent. We deliver our services through our regional office in Morocco, five dedicated Africa Regional Teams and more than 25 Africa Practice Leaders specialising in various products and sectors and more than 200 Clifford Chance lawyers around the globe, particularly in Paris, London, Amsterdam, Germany, the United States, the Middle East and Asia-Pacific. They are experts in their fields, multi-lingual and culturally fluent.

# FOREWORD

Welcome to the inaugural edition of the Africa Anti-Corruption Guide. This Guide seeks to serve as a clear, comprehensive and concise tool to help companies navigate the legal complexities of anti-corruption and anti-bribery regulations applicable in (10) African countries, including:

- Algeria
- Côte d'Ivoire
- Egypt
- Ghana
- Kenya
- Morocco
- Nigeria
- Senegal
- South Africa
- Tanzania

Understanding the specificities of national – and increasingly of regional and international – anti-corruption and anti-bribery laws and regulations is essential for companies to ensure that they are in conformity with applicable laws. Overlooking these differences can lead to significant repercussions as businesses could face not only financial penalties and regulatory sanctions, but also the scrutiny of the international community and reputational harm.

Each African country has its own legal framework, marrying international standards with local nuances. It is important for companies to ensure that they understand what is required as well as what is prohibited by the local anti-corruption legislation of the countries in which they do business, given the diversity across regimes. For example, while few countries covered by this Guide have requirements surrounding the adoption of corporate compliance programmes, a recent law promulgated in 2022 requires certain financial and designated non-financial Nigerian entities to implement such programmes.

One area that has seen a fair level of movement across a number of countries in recent years is whistle-blower legislation. Côte d'Ivoire launched a new channel for whistle-blowers in May 2023, while in 2022 Tanzania introduced a new protection law that penalises retaliation against whistle-blowers. At the time of publication of this Guide, both Kenya and Nigeria were considering the adoption of new laws that seek to expand the scope of the protection offered to whistle-blowers, and the President of Morocco's National Authority for Probity, Prevention and the Fight Against Corruption had recently called for a reform of local legislation for similar reasons.

Other proposed and upcoming reforms are described in the following chapters. Although Africa as a region has historically struggled with corruption issues, this Guide provides insight into the new initiatives being deployed in order to strengthen anti-corruption legislation and double down on the prosecution of such matters in different countries. While enforcement of anti-bribery and anti-corruption policies in Africa has generally been limited compared with other regions, a ramp-up in enforcement activities can be seen in some countries, particularly with respect to high-ranking officials and oligarchs.

It is the sincere hope of the Clifford Chance team, as well as that of all contributing firms, that this Africa Anti-Corruption Anti-Bribery Guide will provide you with pragmatic insight into the local laws across Africa that may help your company's operations to ensure compliance with applicable laws and regulations.

# ACKNOWLEDGMENTS

Clifford Chance expresses its sincere gratitude to all the law firms that contributed to the development of the 2024 edition of the Africa Anti-Corruption Guide. We appreciate the time and energy each firm has dedicated to this initiative, and in particular the collaborative spirit demonstrated throughout the project.

Their knowledge and insight into the local enforcement systems have been invaluable to this project. With their help, we have created a comprehensive resource that will assist companies around the world with navigating the complex landscape of anti-corruption regulations in force within the African countries covered by this Guide.

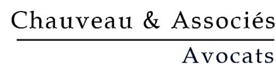
This Guide is a testament to our collective efforts, and we are pleased to have worked alongside such committed professionals in its development.

ALGERIA

GHANA

SENEGAL

CÔTE D'IVOIRE




KENYA

SOUTH AFRICA

EGYPT

MOROCCO

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NIGERIA

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# ALGERIA

*CONTRIBUTED BY ALN - ADNA*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | The 2006 Law No 06-01 on the prevention and fight against corruption (amended and completed) (the "**Law 06-01**"). |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/Addresses active and passive bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | The accused or accomplice of a corrupt act who, prior to criminal prosecution, discloses the facts to the legal authorities may be exempt from prosecution.<br><br>Furthermore, the accused or accomplice of an act of corruption who, following the initiation of proceedings, facilitates the arrest of at least one other individual involved shall have his or her sentence reduced by half. |
| **Obligation to self-report** | Yes |
| **Statutory penalties** | **Public sector bribery:** Up to 10 years' imprisonment and a fine of DZD 1,000,000 (approximately USD 7,000)<br><br>**Private sector bribery:** Up to 5 years' imprisonment and a fine of DZD 500,000 (approximately USD 3,500). |
| **Possibility to enter into a judicial settlement** | No |
| **Enforcement trends** | Very active.<br><br>During the past three years, we have seen a marked rise in the number of legal proceedings initiated against high-level public officials and well-known oligarchs in Algeria suspected of having committed acts of corruption or related offences (i.e., influence peddling, favoritism). These legal proceedings are mainly based on the facts of influence peddling and granting of unjustified advantages in public contracts. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

Corruption consists of performing or refraining from performing an act in the exercise of one's functions in return for an undue advantage, as well as unlawful dealing with property in the private or public sector. As such, pursuant to the Law 06-01, corruption takes a variety of forms, including bribery, embezzlement or misuse of property and influence peddling.

Bribery consists of receiving or attempting to receive, directly or indirectly, for the benefit of the public official or for the benefit of a third party, a remuneration or an advantage of any nature whatsoever.

Both active and passive bribery are punished. Indeed, it is prohibited to promise, offer or grant to a public official or any other person, directly or indirectly, an undue advantage. It is also prohibited for a public official or any other person to solicit, or accept directly or indirectly, an undue advantage for himself/herself or for another person.

## 2. What is the perception of the level of corruption in this jurisdiction?

In the Transparency's 2022 Corruption Perception Index, Algeria was ranked 116th out of 180 countries, with a score of 33 out of 100 points. Corruption appears, therefore, to be quite widespread in Algeria.

## 3. Is private sector bribery covered by the law?

Yes, Law 06-01 forbids bribery in the private sector, which is defined as either the fact of promising, offering or granting, directly or indirectly, an undue advantage to any person who directs or works for a private sector entity, for himself/herself or for another person, so that he/she performs or refrains from performing an act in violation of his/her duties, or the fact that a person who directs or works for a private sector entity, in any capacity whatsoever, solicits or accepts, directly or indirectly, an undue advantage, for himself/herself or for another person or entity, in order to perform or refrain from performing an act in violation of his duties.

However, under Algerian law, the main provisions set forth to prevent and combat corruption mostly focus on bribery in the public sector, namely when a public agent is involved in an act of corruption.

A public agent is any person who holds an administrative, legislative, executive, judicial mandate, or in a popular locally elected assembly, whether elected or nominated, permanent or temporary, whether paid or not, and regardless of their position in its hierarchy or level of seniority. The term also includes any other person holding a function or mandate, even temporary, paid or unpaid, who contributes as such, in the service of the public body or public enterprise, or any other company in which the State owns all or part of its capital, or any other company that provides a public service, or any other person defined as a public officer or who is assimilated as such in accordance with current legislation or regulations.

## 4. Can companies be held liable for acts of corruption?

Yes. Law 06-01 and the Algerian Criminal Code provide that companies shall be held liable for acts of corruption in the event the offence was committed on their behalf by one of their representatives or executive bodies (*organes*).

The Penal Code does not define the concept of legal representative or body.

We should therefore refer mainly to the provisions of the Commercial Code relating to the representation of commercial companies.

For example, limited liability companies are represented by a general manager. Article 577 of the Commercial Code provides that "*in dealings with third parties, the general manager is vested with the broadest powers to act in all circumstances on behalf of the company*".

A joint-stock company, on the other hand, is managed by (i) a board of directors or (ii) a management board. Either is therefore the management body of joint-stock companies. The legal representative(s) of a joint-stock company is the chairman of the board and (if any) the managing director.

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

Although there is no explicit legal provision providing for the possibility of companies being held criminally liable for the actions of third parties, a company may be held criminally liable for offences committed by a third party if this offence is committed for the account and benefit of the company. Algerian courts may use as a legal basis article 51 bis of the Criminal Code which punishes legal persons for offences committed on their behalf.

The same reasoning applies to foreign subsidiaries. There is no legal provision that would provide for the possibility to trigger the liability of a parent company in the event one of its foreign subsidiaries has committed an act of corruption. Subsidiaries have their own legal personality under Algerian law, so the parent company could not see its liability triggered by the acts committed by its subsidiaries unless it acted or deliberately omitted to act, or if it benefited from the offence.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Yes, aiders and/or abettors can be held liable for acts of corruption. Law 06-01 refers to article 44 of the Criminal Code, which provides that accomplices to an offence are subject to the penalty applicable to the relevant offence.

## 7. Does the law apply beyond national boundaries?

Law 06-01 does not provide an explicit provision for its application beyond national boundaries. It should, however, be noted that article 3 of the Algerian Criminal Code, which provides the general rule regarding Algerian courts' jurisdiction in criminal matters, states that criminal law also applies to offences committed abroad when they fall within Algerian criminal courts' jurisdiction in accordance with the provisions of the Criminal Procedure Code.

In other words, Algerian nationals who commit acts of corruption punishable by Law 06-01 outside the Algerian territory could be prosecuted in Algeria, provided the relevant person has returned to Algeria and has not been tried abroad as, under Algerian criminal law, a person cannot be prosecuted twice for the same offence.

Moreover, an act of corruption sanctioned by Law 06-01 committed outside Algerian territory by a foreigner could be qualified as an act against the interests of Algeria, and, consequently, this person could be prosecuted in Algeria.

### 8. Is there a whistle-blower protection regime in your jurisdiction?

Yes, article 45 of Law 06-01 includes protection measures for whistle-blowers and punishes any person who aims to cause harm to whistle-blowers, with penalties including 6 months to 5 years' imprisonment and fines ranging from DZD 50,000 (approximately USD 350) to DZD 500,000 (approximately USD 3,500). However, whistle-blowers who make "abusive" accusations face the same penalties.

Pursuant to the Law 22-08 of 5 May 2022, establishing the organization, composition and powers of the High Authority for the Prevention of Transparency and the Fight against Corruption, the High Authority may receive an alert and/or a complaint from any natural or legal person in possession of information, data or evidence relating to acts of corruption.

To be admissible, the complaint or alert must be written, signed, and contain elements relating to the facts of corruption and sufficient elements to determine the identity of the whistle-blower or complainant. Protection of the complainant or whistle-blower is carried out in accordance with the above-mentioned article 45 of Law 06-01.

### 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

Yes, article 47 of Law 06-01 requires any person, who by virtue of his/her permanent or temporary function or profession becomes aware of an act of corruption, to inform the competent public authorities in time. Failure to denounce such act is punishable by imprisonment for a period of between 6 months and 5 years, and a fine of between DZD 50,000 (approximately USD 350) and DZD 500,000 (approximately USD 3,500).

As corruption in the private sector is also governed by the provisions of Law 06-01, the above article also applies to employees or workers in the private sector who have knowledge of an act of corruption in the course of their employment.

### 10. Does the legislation include specific provisions in relation to influence peddling?

Yes, influence peddling is punishable under Algerian law.

Influence peddling is defined by article 32 of Law 06-01 as:

- The act of promising, offering or granting a public official or any other person, directly or indirectly, an unfair advantage, so that the said official or person abuses his/her real or supposed influence with a view to obtaining from a public administration or authority an unfair advantage for the instigator of the act or for any other person.

- The fact that a public official or any other person directly or indirectly solicits or accepts an unfair advantage for himself/herself or another person, in order to abuse his/her real or supposed influence with a view to obtaining an unfair advantage from a public administration or authority.

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Yes, in accordance with article 38 of Law 06-01, it is forbidden for public agents to accept a gift or any other undue advantage since this could influence the processing of a procedure or transaction related to his/her function.

Moreover, the 2020 Presidential Decree No 20-78 requires all public officials serving abroad to declare to the competent

authorities any gifts or advantage that they may have received in the course of their mission, unless their value does not exceed DZD 50,000 (approximately USD 350).

### 12. How are facilitation payments treated by the law?

Under Law 06-01, facilitation payments, namely payments made to a civil servant to induce him or her to complete some action or process expeditiously for the benefit of the party making the payment, are considered to be acts of corruption and, thus, strictly forbidden and punishable under the Law.

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

Law 06-01 encourages the regular keeping of accounting records as it contributes to preventing corruption.

Moreover, the Algerian Code of Commerce requires traders, be they individuals or corporate entities, to keep records of all daily operations.

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

To our knowledge, Algerian law does not contain specific provisions requiring the development and implementation of a compliance program.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (For example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Algeria has ratified the following anti-bribery conventions:

- the United Nations Convention against Corruption;
- the African Union Convention on Preventing and Combating Corruption; and
- the Arab Convention against Corruption.

## II. PENALTIES and DEFENCES

### 16. What are the penalties for corporates and individuals for bribery?

The penalties for corruption of a public agent include imprisonment of up to 10 years and a maximum fine of DZD 1,000,000 (approximately USD 7,000).

With respect to private sector corruption, the Law 06-01 provides for imprisonment of up to 5 years and a maximum fine of DZD 500,000 (approximately USD 3,500).

The fine applicable to corporate entities is one to five times that which is applicable to natural persons, and there are possible supplementary penalties, such as the seizure of the proceeds resulting from the offence and exclusion from public procurement.

Influence peddling is punished by an imprisonment of up to ten (10) years and a fine of up to DZD1,000,000 (approximately USD 7,000).

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self-reporting)?

Pursuant to Law 06-01, the disclosure of an act of corruption by the perpetrator or accomplice prior to prosecution allows him/her to benefit from an absolute exemption.

In addition, the perpetrator or accomplice, after prosecution, who assists the authorities in the arrest of one or more perpetrators or accomplices, benefits from a reduction of half the sentence.

There are no other mitigating factors provided by Algerian law.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for example, payments made under threat or duress)?

There is no specific defense related to corruption-related offences.

### 19. Does the legislation provide for judicial settlements and, if so, under what criteria?

No, Law 06-01 does not provide for judicial settlement in matters of corruption.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

Law 06-01 established the Central Anti-Corruption office, which is an operational central service of the Judicial Police, charged exclusively with searching for, investigating and examining crimes in the framework of the fight against corruption.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

In recent years we have noticed a very high number of actions being taken by the judicial authorities in relation to corruption.

These cases involved high-level public officials, including three former prime ministers and a dozen ministers, as well as well-known businessmen.

The defendants were sentenced to the maximum penalty as well as several additional penalties including the seizure of their assets.

As such, we deem Algerian justice is dealing effectively with corruption.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

There is no guideline for the interpretation and enforcement of the anti-corruption law. Moreover, other than for the Algerian Supreme Court, court decisions are not public in Algeria.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

We have been informed that an initiative to reform Law 06-01 is being prepared by the Algerian Ministry of Justice.

# CÔTE D'IVOIRE

*CONTRIBUTED BY CHAUVEAU & ASSOCIES*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | The 2013 Ordinance No 2013-660 relating to the prevention and the fight against bribery and assimilated offences (the "**2013 Anti-Bribery Act**") |
| **Covers/Addresses private sector bribery** | Yes (but not as commonly accepted) |
| **Covers/Addresses active and passive bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | No defences specific to corruption allegations except for the "mitigating excuse" (sentence being reduced) in the case of cooperation with the authorities. (*See* Question 17 below.) |
| **Obligation to self-report** | Yes |
| **Statutory penalties** | • Imprisonment from 1 to 10 years;<br>• Fines ranging from XOF 500,000 (approximately USD 800) to XOF 50,000,000 (USD 80,000) |
| **Possibility to enter into a judicial settlement** | Natural persons and legal entities can conclude a settlement agreement with the Ivorian judicial authorities, provided that the value of the illicitly acquired goods is less than or equal to 5,000,000 XOF (USD 8,000). |
| **Enforcement trends** | Limited but improving: Although corruption remains widespread and continues to be a serious problem in sectors such as mining and logging, the following improvements should be noted:<br><br>• In 2013, the establishment of the High Authority for Good Governance in application of the Anti-Bribery Act, which aims at coordinating anti-corruption strategies together with three specialized regulatory and law enforcement units (the Anti-Corruption Brigade, the Special Unit for Combating Customs Smuggling in the Ministry of Economy and Finance, and the Anti-Smuggling Unit in the Ministry of the Interior and Security); |

- In 2020, the establishment of the Ministry for the Promotion of Good Governance and Capacity Building in the Fight against Corruption in 2020 (abolished in October 2023); and
- In May 2023, the High Authority for Good Governance launched a secure multichannel platform for reporting acts of corruption, with a view to strengthening the system for promoting good governance. (*See* Question 8 below.)

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

Under Ivorian law, bribery in the public sector is strictly forbidden. Both active and passive bribery of public officials is punished. Public officials are employees of the State. The 2013 Anti-Bribery Act extended the scope of the prohibition of bribery to foreign public officials and to various corrupt practices in the public administration, including abuse of function, undue influence, embezzlement and illegal gratuity. The Act lists the main offences and divides them into two categories:

(i) Bribery acts; and

(ii) Offences assimilated to bribery.

Bribery acts include the following main offences:

- Passive bribery of public officials, which comprises any public official soliciting, or agreeing to receive or accepting, directly or indirectly, any advantage, including offers, promises, gifts, for himself or a third party, in order to accomplish or refrain from accomplishing an act falling within the remit of his/her functions or facilitated by his/her functions.
- Active bribery of public officials, which comprises any persons in offering or giving, directly or indirectly, any advantage, including offers, promises, gifts, to a public official, whether as a response to a solicitation from that public official or not, in order to have him/her accomplish or refrain from accomplishing an act which does not fall within the remit of his/her functions or can be facilitated by his/her functions.
- Influence peddling (*see* question 10 below for more details).
- Abuse of office by a public official;
- Misappropriation of public funds;
- Bribery in the private sector, which is mainly similar to “embezzlement” (*abus de bien social*) under French law.

Other offences conforming with bribery include conflict of interests for public officials, unlawful taking of interests (*prise illégale d'intérêts*), receiving gifts for public officials, illegal financing of political parties, refusal by public officials to declare his/her assets or make a false declaration thereon, and the inability to justify a substantial increase of his/her assets in comparison with his/her legitimate income.

## 2. What is the perception of the level of corruption in this jurisdiction?

Despite significant legal initiatives, such as the 2013 Anti-Bribery Act, corruption remains endemic. Transparency International's 2022 Corruption Perception Index ranks Côte d'Ivoire 99$^{th}$ out of 180 countries, with a score of 37 out of 100 points.

## 3. Is private sector bribery covered by the law?

Yes. The 2013 Anti-Bribery Act covers the prevention and repression of bribery in both the public and private sectors. However, bribery in the private sector does not have the meaning that is commonly given to corruption. It is defined as the use of the assets or credit of the company by a manager in a manner that is contrary to the company's corporate interest and that serves a personal interest (*abus de biens sociaux*). It is punishable by 5 to 10 years' imprisonment and a fine of XOF 5,000,000 to XOF 10,000,000 (approximately USD 8,000 to USD 16,000).

This is the core definition of bribery in the private sector; however, there are additional provisions applicable to other specific cases, such as passive bribery from an employee, a lawyer or a doctor. It is, however, relevant to note that bribery in the private sector is subject to fewer sanctions than some other

offences relating to bribery in the public sector, such as influence peddling.

### 4. Can companies be held liable for acts of corruption?

Under the 2013 Anti-Bribery Act, companies can be held liable in the event of an offence committed by one of its bodies or representatives acting on its behalf. Depending on the type of company, a body may be the general meeting or the board of directors, and representatives may be the manager or the managing director.

The criminal liability of legal entities does not exclude that of natural persons who are perpetrators or accomplices in the same acts.

### 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

Companies cannot be held liable for the actions of third parties unless they acted or deliberately omitted to act in furtherance of the offence, or if they are beneficiaries of the offence. In that sense, criminal liability is strictly individual.

With respect to subsidiaries, pursuant to Ivorian law, they have their own legal personality and are deemed autonomous. Thus, parent companies should not be held liable for the actions of their subsidiaries.

However, liability of parent companies can be triggered in the event they:

- have taken part in the wrongful relationship between the subsidiary and a third party;
- have imposed a decision on a subsidiary which may prevent the subsidiary from fulfilling its obligations and commitments; or
- have committed a management error which has consequences for the subsidiary.

### 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Yes, the author, co-author, instigator or accomplice are equally responsible for acts of corruption.

### 7. Does the law apply beyond national boundaries?

The Ivorian criminal rules generally provide that Ivorian nationals may be prosecuted before Ivorian courts whether they have committed the offence in Côte d'Ivoire or beyond national boundaries. In addition, provided that the legal entity has its head office in Côte d'Ivoire or if the victim is Ivorian, the legal entity may be brought before Ivorian courts.

### 8. Is there a whistle-blower protection regime in your jurisdiction?

The 2013 Anti-Bribery Act provides that whistleblowers benefit from special protection from the State against possible acts of reprisal or intimidation. However, there is no legal definition of whistle-blower.

Pursuant to the 2018 Law on the protection of, amongst others, whistle-blowers, any person who is likely to suffer from retaliatory measures due to whistle-blowing disclosures shall also benefit from this special protection.

It should also be noted that, in May 2023, the High Authority for Good Governance launched a secure multichannel platform for

reporting acts of corruption, with a view to strengthening the system for promoting good governance. This platform can be used by any person to lodge a complaint or report suspected cases of:

- Bribery of national public officials
- Bribery of foreign public officials and international civil servants
- Bribery in the private sector
- Offences similar to corruption

Once received, all complaints and denunciations are carefully examined by the relevant departments of the High Authority for Good Governance. The authority's website indicates that processing is facilitated if the facts reported are accompanied by as much information as possible and if the person making the complaint creates a secure channel for discussing any questions or additional information.

## 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

Any person who becomes aware of any facts that may constitute an offence under the 2013 Anti-Bribery Act Regulations must inform the competent authority, namely, the "*Haute Autorité pour la Bonne Gouvernance*".

Failing to comply with this obligation in due time is punishable by an imprisonment sentence (ranging from 1 to 5 years), and a fine (ranging from XOF 500,000 (USD 800) to XOF 5,000,000 (USD 8,000)).

The term "due time" remains unprecise. We believe it means in time to prevent the corruption act occurring, or to allow the prosecution of the perpetrator of such act.

## 10. Does the legislation include specific provisions in relation to influence peddling?

Yes, the 2013 Anti-Bribery Act forbids influence peddling (*trafic d'influence*), which is classified under bribery acts. Influence peddling consists, for any public servant, for himself or a third party, in soliciting, agreeing or receiving offers, promises or gifts in order to:

- make a person refrain or delay from doing something which falls within the remit of his/her role, which is justified or nor, but which is not subject to a payment;
- make or try to make somebody obtain decorations, medals, distinctions, rewards, positions, functions, works or favorable decisions granted by the public authority, contracts or other benefits resulting from treaties concluded with the public authority or an entity under the control of the public authority, thus abusing the influence (or alleged influence) conferred by his/her mandate.

It is punishable by a 1 to 5 years' imprisonment and a fine of XOF 5,000,000 (USD 8,000).

It should be also noted that in the private bribery section of the 2013 Anti-Bribery Act, it is mentioned that any person (including therefore a person from the private sector) could be punished for exercising his/her influence in exchange of offers, promises or gifts in order to:

- obtain or try to obtain decorations, medal, distinctions, rewards, positions, contracts, companies or other participations or benefits;
- intervene with a public official in order to obtain a favorable decision from the public authority.

It is punishable by a 1 to 3 years' imprisonment and a fine of XOF 50,000 to 500,000 (approximately USD 80 to 800).

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

The 2013 Anti-Bribery Act forbids public officials accepting from a third-party gifts or any undue advantage in order to perform his/her functions or merely to act within the scope of its functions. The person who gives or promises the gift can also be held liable in the same manner as the recipient of the gift.

The scope and conditions of the prohibition to receive (and give) any undue advantage should have been determined by decree taken by the Ivorian Ministers' Council. To the best of our knowledge, such decree has not yet been issued: the regulatory framework applicable to gifts therefore remains to be defined.

### 12. How are facilitation payments treated by the law?

Facilitation payments are not specifically addressed by the law. They could be punished as an act of corruption in the public sector.

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

Yes, the 2013 Anti-Bribery Act (Article 20) provides that companies are required to comply with the accounting standards and principles in force to prevent from acts of corruption and similar offences in the private sector.

In addition, in accordance with the Uniform Act on Accounting Law and Financial Reporting, companies subject to the provisions of commercial law, public and semi-public companies, cooperatives and, more generally, entities producing goods and services, whether for profit or not, are required to set up accounting systems, known as general accounting systems. More generally, entities producing market or non-market goods and services, in so far as they carry out, whether for profit or not, economic activities on a principal or accessory basis which are based on repetitive acts, with the exception of those subject to public accounting rules, are also required to set up a general accounting system.

The accounts must comply, in accordance with the convention of prudence, with the obligations of regularity, sincerity and transparency inherent in the keeping, control, presentation and communication of the information that is processed.

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

Yes, the 2013 Anti-Bribery Act (Article 19) requires companies to implement preventive measures to detect corruption or similar offences. These measures include:

- auditing standards used in the private sector;
- strengthening cooperation between the services responsible for detecting and combating corruption and similar offences and private companies;
- promoting the development of standards and procedures aimed at preventing the integrity of private companies, including Codes of Conduct to ensure that companies and all the professions concerned carry out their activities in a correct, honourable and appropriate manner, in order to

prevent conflicts of interest and encourage the application of good business practices by companies among themselves, as well as in their contractual relations with the State.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (for example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Côte d'Ivoire has ratified the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption.

## II. PENALTIES and DEFENSES

### 16. What are the penalties for corporates and individuals for bribery?

The penalties for the corruption offence range from 1 to 10 years' imprisonment and/or a fine ranging from XOF 500,000 (USD 800) to XOF 50,000,000 (USD 80,000).

Defendants may also be sanctioned with complementary penalties, such as the confiscation of all or part of his/her property, a ban on leaving the country for a period of 6 months to 3 years, and a temporary or permanent ban on practicing his/her profession during the exercise of which the offense was committed.

As for legal entities, the main sanction is a fine at a rate equal to five times that which is applicable to natural persons.

Complementary penalties include:

- Exclusion from public contracts, for a maximum of 5 years or permanently;
- Temporary (maximum of 5 years) or permanent prohibition from exercising the professional activity during the exercise of which the offence was committed;
- Temporary (maximum of 5 years) or permanent closure of one or more of the company establishments which served to commit the offence;
- Freezing and seizure of income derived from the offence; and
- Publicity of the decision pronounced.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self-reporting)?

Where a person prosecuted for one of the offences set forth under the 2013 Anti-Bribery Act provides the investigating or prosecuting authorities with useful information for investigative or evidentiary purposes, as well as factual and concrete assistance which could contribute to identifying the perpetrators, co-perpetrators or accomplices of the offence and to depriving them of the proceeds of the offence or to recovering such proceeds, he or she may benefit from the mitigating excuse.

If during the prosecution, and before the decision on the merits, the person prosecuted reveals the facts of illicit enrichment and return the proceeds, he or she benefits from the mitigating excuse.

The sentence of the person prosecuted and benefiting from the mitigating excuse will be reduced accordingly.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for example, payments made under threat or duress)?

There is no defences specific to corruption-related offences.

### 19. Does the legislation provide for judicial settlements and, if so, under what criteria?

According to the 2013 Anti-Bribery Act, a settlement is possible, provided the value of the illicitly acquired goods is less than or equal to XOF 5,000,000 (USD 8,000).

The Public Prosecutor proposes a fixed fine determined using a calculation method outlined by a decree. The offender proceeds to agree to this fine and consequently settles. The settlement constitutes an admission of guilt with regard to the commission of the offence. It thus includes the seizure of the instruments used to commit the offence or the proceeds of the offence. Nonetheless, once signed, it extinguishes the public prosecution.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

Those responsible for enforcing anti-bribery legislation in Côte d'Ivoire are the High Authority for Good Governance (“*Haute Autorité pour la Bonne Gouvernance*”) and the Ministry for the Promotion of Good Governance and the Fight against Corruption (“*Le ministère de la Promotion de la Bonne Gouvernance et de la Lutte contre la Corruption*”) before this Ministry was abolished following a cabinet reshuffle on 17 October 2023.

The minister who headed this ministry was appointed Chairman of the High Authority for Good Governance.

The High Authority for Good Governance is responsible for:

- developing and implementing the national anti-corruption strategy;
- coordinating, supervising and monitoring the implementation of policies to prevent and fight against corruption;
- assisting the public and private sectors in drawing up ethical rules;
- periodically evaluating administrative instruments and measures for determining their efficiency in preventing and combating corruption;
- identifying the structural causes of corruption and related offences, and proposing measures to the competent authorities to eliminate them in all public and semi-public services;
- providing advice and guidance on the prevention of corruption to any natural or legal person or any public or private body, and to recommend legislative and regulatory measures to prevent and tackle corruption;
- contributing to upholding the morals of public life and consolidating the principles of Good Governance, as well as the culture of public service;
- educating and raising public awareness of the consequences of corruption;
- ensuring that all public institutions have manuals of procedures that are effectively applied;
- disseminating and publicizing texts relating to the fight against corruption;

- carrying out investigations into corrupt practices;
- identifying and prosecuting suspected perpetrators and their accomplices;
- collecting, centralizing and processing reports and complaints referred to it;
- receiving inspection and audit reports from the State's anti-corruption control and detection bodies and structures;
- receiving declarations of assets;
- referring cases to the Public Prosecutor of the relevant jurisdiction;
- ensuring that intersectoral coordination is strengthened and that cooperation is developed with bodies involved in the fight against corruption, both nationally and internationally.

The main missions of the Ministry for the Promotion of Good Governance and the Fight against Corruption ("*Le ministère de la Promotion de la Bonne Gouvernance et de la Lutte contre la Corruption*") include:

- promoting a culture of transparency, self-monitoring and evaluation within the public sector, using appropriate instruments and systematic performance indicators;
- promoting morals in public life and consolidating the principles of good governance and the culture of public service;
- putting in place a mechanism for monitoring and evaluating reforms linked to good governance;
- taking an active role in implementing and promoting strategies and mechanisms to curb corruption and economic malpractice;
- participating in promoting a culture of rejecting corruption;
- collecting and disseminating information on corruption and setting up a whistle-blowing platform.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

Despite recent measures aiming at tackling the issue of corruption in Cote d'Ivoire, anti-corruption enforcement has been minimal to date.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

No guidelines have been published by administrative or judicial authorities regarding the implementation of anti-bribery law.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

There are no anticipated reforms to the legislation.

# EGYPT

## *CONTRIBUTED BY MATOUK BASSIOUNY AND HENNAWY*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | Egyptian Penal Code |
| **Covers/addresses private sector bribery** | Partially |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | No |
| **Defences** | Lack or inadmissibility of evidence, but no defences specific to corruption-related offences. |
| **Obligation to self-report** | No |
| **Statutory penalties** | Up to life imprisonment and a fine equivalent to double the amount of the bribe. |
| **Possibility to enter into a judicial settlement** | No |
| **Enforcement trends** | Active: the Administrative Supervisory Authority, which is the main competent enforcement authority, is widening the scope of its investigations into suspected corruption practices. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

The Egyptian Penal Code adopts a comprehensive definition of bribery, which covers various transactions in which a public official misuses her/his office to improperly influence the performance of a public action against any form of inducement/gift. A mere request by an official, either for her/himself or any third party, for an inducement/gift to do or refrain from doing a duty associated with her/his occupied office is considered a bribe, even if such request is rejected by the other party. Accepting any return or promise for a return against assuming or abstaining from a specific obligation or a duty by an official is considered a form of bribery.

The offence of bribery occurs once an official performs the act of requesting, accepting or taking any benefit, even if the bribee did not intend to perform the agreed upon act or omission.

Bribery is also considered to have occurred if the bribee pretended or misconceived that the act or omission falls within her/his role and authority. However, the act or omission needs to be of specific relevance to the office of the bribee for the briber to be persuaded, or for the bribee to misbelieve that the act or omission is attached to her/his office. Accordingly, if the bribee is only in a position to influence the act or omission which falls outside her/his authority, an act of bribery has occurred.

Bribery can still be found even if:

(i) the public official's act does not breach or prejudice her/his work duties;

(ii) the public official did not actually intend to perform the duty or refrain from doing it; or

(iii) the public official did not have the authority or competence to carry out a certain act or omission.

Bribees are public officials and are broadly defined under the Penal Code to include:

(i) any state employee or an employee of an entity under the state's control;

(ii) members of public or local houses of representatives, whether elected or appointed;

(iii) arbitrators, experts, liquidators and judicial guardians;

(iv) any person assigned to carry out a public service; and

(v) board members, directors and employees of corporations, companies, associations, organizations and establishments, in which the state or a public authority holds a stake.

## 2. What is the perception of the level of corruption in this jurisdiction?

Egypt was ranked 130 in Transparency International's Corruption Perceptions Index with a score of 30, which is considered to be a score that signals to individuals and companies that caution should be adopted when operating in this region.

## 3. Is private sector bribery covered by the law?

Private sector bribery is covered under Egyptian law only with respect to Egyptian joint-stock companies. Joint-stock companies are commonly used legal vehicles for projects that require major investments, whether listed at the Egyptian Stock Exchange or not. Joint-stock companies represent the majority of legal vehicles active in the Egyptian economy. An act of

bribery occurs if the bribee is a board member or an employee of an Egyptian joint-stock company and acts on behalf of the company. Egyptian law provides special protection to joint-stock companies as compared with other types of Egyptian companies. This special protection is not only related to bribery, as defined above, but also to financial crimes committed by the board or an employee of a joint-stock company, as the legislator believes that joint-stock companies are of significant importance to the Egyptian economy. Furthermore, foreign companies are not covered under the definition of bribery in Egyptian law.

### 4. Can companies be held liable for acts of corruption? If so, under what conditions?

Only individuals – including the briber, bribee and intermediary – can be subject to prosecution. There is no corporate liability for bribery under the Egyptian Penal Code. A company will not be held criminally liable for any bribery offence committed by its legal representative, employees, third parties or foreign subsidiaries.

### 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

As stated above, there is no corporate liability for corruption under Egyptian law.

### 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Only the bribee is classified as the principal perpetrator in an act of bribery. Both the briber and the intermediary are considered as aiders and/or abettors under Egyptian law. Such distinction between the legal position of the briber and the intermediary, on the one hand, and the bribee, on the other, relies on the nature of the criminal offence and its attachment to the public office as well as the powers possessed and bestowed upon the public official in relation to her/his position.

In this respect, the Egyptian Penal Code has designated a special crime for the act of offering a bribe without it being accepted by a public official. Only in this case are the bribee and the intermediary considered as the principal perpetrators of the act of offering a bribe. This crime is classified as a felony penalized by a jail sentence of up to 15 years and a fine of no less than EGP 500 (approximately USD 16) and no more than EGP 1,000 (approximately USD 33).

### 7. Does the law apply beyond national boundaries?

The Egyptian penal rules concerning bribery are not applicable beyond national boundaries. However, if a bribe is committed abroad by an Egyptian national who returns to Egypt without being prosecuted abroad, the individual can be prosecuted in Egypt provided that such act is recognized as an act of bribery in the jurisdiction in which the improper behaviour occurred.

### 8. Is there a whistle-blower protection regime in your jurisdiction?

No, although it is worth mentioning that the Egyptian government has submitted a draft amendment to the Egyptian Criminal Procedures Law including a protection regime for witnesses. This amendment is still being reviewed by the Parliament's sub-constitutional committee; the date of issuance of such amendment is remains to be seen.

### 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

There is no obligation to disclose crimes relating to bribery and corruption although such reporting is incentivized. If the briber

or the intermediary report the bribery or confess to the improper behaviour, s/he will be fully exempted from the prescribed penalty for bribery, should the court find her/his reporting or confession complete, accurate and not misleading in any way. Despite the full exemption from liability, the briber or the intermediary may be subject to detention before and during trial until the court issues its exemption ruling.

## 10. Does the legislation include specific provisions in relation to influence peddling?

The use or trade of real or purported influence by a public official to obtain or to try to obtain any gain or advantage for her/himself or for a third party is considered to be an act of bribery under Egyptian law.

## 11. Does the legislation include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

A government official is prohibited from receiving or accepting any gift or form of courtesy from any public or private entity. Only high-level officials (including the President, Prime Minister, Ministers, Governors, Head of Municipalities and their delegates) are permitted to receive gifts provided that (i) they are symbolic gifts, not exceeding EGP 300 (approximately USD 10) in value and which are customarily presented during formal occasions, and (ii) the gifts are presented by visitors or officials during formal occasions, such presentation being customary and the gifts are delivered to the government.

Strict application of Egyptian law provides that customary gifts of low monetary value qualify as "gifts" which might be considered as bribes; however, the general practice of the relevant Egyptian authorities is to tolerate such low-value gifts as long as they cannot be linked to malpractice on the part of the public official.

## 12. How are facilitation payments treated by the law?

Payments made to an official to expedite the performance of a routine service while following normal legal process can still be classified as a bribe.

## 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

Every Egyptian corporation is required to maintain accurate books and records for a period of no less than five years. Depending on the activity of the corporation, additional specific records might be required by the law.

## 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance programme (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

No.

## 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (for example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption, and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Egypt has signed and ratified certain anti-bribery treaties and conventions, including, among others: (i) the Arab Anti-Corruption Convention ("**AACC**"), (ii) the United Nations Convention against Corruption ("**UNCAC**") and (iii) the African Union Convention on Preventing and Combating Corruption ("**AUCPCC**").

## II. PENALTIES and DEFENCES

### 16. What are the penalties for corporates and individuals for bribery?

The law does not provide for criminal liability for corporates. Only individuals can be held liable for an act of bribery. The penalty prescribed for bribery differs depending on the act of the bribee.

Should the act of the bribee be considered as an act of "doing", the prescribed penalty is life imprisonment and a minimum fine of EGP 1,000 (approximately USD 33), capped at the amount of the bribe received or promised.

Should the act of the bribee be considered as an "omission", the prescribed penalty is life imprisonment and a minimum fine of EGP 2,000 (approximately USD 66), capped at double the amount of the bribe received or promised.

If the bribe was received after the act of doing or omission without prior agreement between the perpetrators, the prescribed penalty is up to 15 years' imprisonment, and a fine of at least EGP 100 (approximately USD 3) and not exceeding EGP 500 (approximately USD 16).

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance programme, self-reporting)?

The briber and the intermediary may be exempted from the prescribed penalty if s/he reports or confesses the wrongdoing at any stage during the investigation phase or before the court, even after the matter is reported, provided that the confession is complete, accurate and not misleading in any way. Despite the promulgated exemption of liability, the perpetrator most likely will be subject to detention before and during the trial until the court renders the exemption ruling.

### 18. What are possible defences (for example, effective compliance programme) or exceptions (for example, payments made under threat or duress)?

Based on the broad definition of bribery under the Egyptian Penal Code, the main defences to bribery are related to a lack of sufficient evidence or the inadmissibility of evidence. Usually, the National Security Police and the Administrative Supervisory Authority rely on telephone calls and meeting recordings between the bribee and the briber or the intermediary as the main evidence in a bribery case. These recordings need to be pre-approved by a judge to be entered into the case file. Accordingly, failure to obtain such permission prior to the recordings triggers the inadmissibility of key evidence.

It is common that both the briber and the intermediary choose to utilize the penalty exemption provided under the Penal Code by confessing to committing the criminal offence, which then limits the possible defences for the bribee.

### 19. Does the legislation provide for judicial settlements and, if so, under what criteria?

No.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

The National Security Police and the Administrative Supervisory Authority are the main departments responsible for enforcing the anti-bribery legislation. The National Security Public Prosecution department has exclusive jurisdiction to prosecute individuals.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

Both the National Security Police and the Administrative Supervisory Authority are active in investigating any claims of bribery and suspected improper behaviour related to public officials or joint-stock companies' employees and board members. Considering the recent increase in the number of huge projects handled and/or supervised by governmental bodies and entities, investigating authorities are increasingly focusing on monitoring any suspected improper behaviour, which has led to a relative increase in investigations.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

No.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

No.

# GHANA

*CONTRIBUTED BY AB & DAVID AFRICA*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | Criminal Offences Act 1960 (“**Act 29**”) as amended by the 2020 Criminal Offences (Amendment) Act (“**Act 1034**”) |
| **Covers/Addresses private sector bribery** | No |
| **Covers/Addresses active and passive bribery** | Yes |
| **Has extraterritorial reach** | No |
| **Defences** | No defences specific to corruption allegations. |
| **Obligation to self-report** | There is no affirmative obligation to self-report an act of bribery or corruption but there is an obligation for an individual who is aware that a crime is being committed to take reasonable steps to prevent it from occurring. |
| **Statutory penalties** | Imprisonment for a maximum period of 25 years. |
| **Possibility to enter into a judicial settlement** | Yes |
| **Enforcement trends** | Limited. |

# I. OVERVIEW

### 1. What is the definition of bribery and corruption?

The Criminal Offences Act ("**Act 29**") states that a person commits bribery of a public person when that person accepts, or agrees or offers to accept, any valuable consideration, under pretense or colour of having unduly influenced, or of agreeing or being able so to influence, any person in respect of his/her functions as a public officer or juror.

In addition, the 2016 Public Financial Management Act ("**Act 921**") ("**PFMA**") specifically prohibits persons who are acting in office or whose employment is connected with the procurement or control of government stores or the collection, management or disbursement of public funds from accepting or receiving money or valuable consideration for the performance of an official duty.

### 2. What is the perception of the level of corruption in this jurisdiction?

The perception of government-related corruption in Ghana is high and the country was ranked 72 in the Transparency International Corruption Perception Index in 2022, with a score of 43 out of 100 points.

### 3. Is private sector bribery covered by the law?

No. Private sector bribery is usually privately regulated through internal anti-bribery and corruption policies instituted by companies to manage the conduct of their officers and employees.

### 4. Can companies be held liable for acts of corruption? If so, under what conditions?

As regards corporate criminal liability, the 2019 Companies Act of Ghana ("**Act 992**") provides that a body corporate may be liable:

- When the bribery or corruption-related offence was undertaken by its members in general meeting, its board of directors or its managing director while carrying out business in the usual way;
- When the illegal act of corruption was authorised or ratified by the company or its representatives, or if the company is estopped from denying the act; or
- When the officer or agent of the company that committed the bribery or corruption-related offence was authorised by the company (expressly or impliedly) to act in that manner.

### 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

In the event that a third-party action is sanctioned or authorised by the directors or representatives of the company (via board and shareholder resolutions), the company shall be held liable.

With respect to the acts of foreign subsidiaries, companies are recognised by law as separate legal entities and therefore a company will generally not be held liable for the actions of its foreign subsidiaries except where officers of the parent company were complicit in or aided the foreign subsidiaries in their actions.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Pursuant to Act 29, persons who aid and abet crimes are deemed guilty of that crime and are punishable in the same manner as the perpetrator.

## 7. Does the law apply beyond national boundaries?

No.

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Yes. Ghana's 2006 Whistleblower's Act ("**Act 720**") was passed to empower individuals, in the public's interest, to disclose information that relates to unlawful or other illegal conduct, or the corrupt practices of others.

The disclosure of impropriety may be made where a person has reason to believe that:

- An economic crime has been committed or is about to be committed;
- Another person has not complied with a law or is in the process of breaking a law which imposes an obligation on that person; or
- There has been misappropriation or mismanagement of public resources in a public institution.

Act 720 allows a whistleblower to disclose the information to his/her employer, a police officer, the Attorney General or members of Parliament.

Though there is no legislation specific to private sector bribery, employees can raise alerts with respect to private company employers should such private sector bribery relates to:

- An economic crime which has been, is about to be or is likely to be committed;
- A person who has not complied with, is in the process of breaking or is likely to break a law which imposes an obligation on that person;
- A miscarriage of justice that has occurred, is occurring or is likely to occur;
- A public institution in which there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;
- Environmental degradation; or
- The health or safety of an individual or a community that is endangered, has been endangered or is likely to be endangered.

A whistleblower is not civilly or criminally liable for disclosing information unless it is proven that the disclosure was made with malicious intent.

Moreover, a whistleblower can never be subject to retaliatory measures, be they uttered or threatened, of any form (e.g. dismissal, suspension, denied promotion, discriminatory measures). In the event that a whistleblower believes that he/she has been subject to victimisation, he/she is entitled to file a complaint with the Commission for Human Rights and Administrative Justice ("**CHRAJ**") or bring a claim before the High Court, and will benefit under all circumstances from

protection from civil/criminal lawsuits, except where the whistleblower knew the information provided in the disclosure was false at the time of disclosing. Whistleblowers may also be granted police protection if they reasonably believe that their lives or property are in danger.

## 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

Ghanaian law provides for both obligations and incentives to disclose acts of bribery or corruption:

- *Obligation to disclose*: Under Act 29, a person who is aware that another person intends to commit or is committing a felony and fails to use "reasonable" means to prevent the commission or completion of the offence is guilty of a misdemeanour. The law does not define the scope of such "reasonable" means. Therefore, an assessment of whether a person has violated this law shall be made on a case-by-case basis following the prosecution and conviction of another person on a charge of corruption.
- *Incentive to disclose*: The Whistleblower's Act established the Whistleblower Reward Fund to provide funds for monetary rewards to whistleblowers. Whistleblowers whose disclosure leads to the recovery of funds are rewarded with either 10% of the amount recovered or an amount determined by the Attorney General in consultation with the Inspector General of Police.

## 10. Does the legislation include specific provisions in relation to influence peddling?

There are no specific provisions under Act 29 in relation to influence peddling. Nevertheless, whoever accepts, or agrees or offers to accept, any valuable consideration to influence a public officer is guilty of a misdemeanour.

Additionally, a public officer permitting his/her conduct in respect of his/her duties or office to be influenced by a gift, promise or the prospect of any valuable consideration is deemed as corruption under Act 29.

## 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Under Act 29 (as amended), it is an offence for a public official to receive a gift in the conduct of public business where the gift is given to influence the work of the public official.

Though there are no prescribed legal limits on the value of gifts that may be received by public officials, the 2013 Code of Ethics for Ministerial and Political Appointees released by the Government of Ghana sets the limits as follows:

- A Minister who wishes to retain gifts received in Ghana or overseas may do so, provided that the estimated value is not more than GH¢200.00 (approximately USD 17). If the estimated value of the gift is GH¢200.00 or more, the gift may be retained while in office but must be declared in the interest of the individual.
- Gifts with an estimated value of over GH¢500.00 (approximately USD 43) must be relinquished when the appointee exits office unless the appointee obtains the express permission of the President to retain them. Gifts which are relinquished are given to the Cabinet Secretary who arranges for the gifts to be displayed in an appropriate place or manner.

The Civil Service Code of Conduct also prohibits civil servants from receiving valuable gifts (other than ordinary gifts from personal friends) whether they be money, goods, hospitality or other personal benefits, if they have reason to believe that the gifts received are intended to influence their judgement or action on a case they are dealing with or will handle in the future. Where civil servants are presented with a gift, they are required to exercise discretion in whether the gift is likely to influence their judgement in this regard prior to accepting or rejecting a gift. In practice, where a civil servant is unable to make such determination, full disclosure to the relevant authority may be advisable.

## 12. How are facilitation payments treated by the law?

Though Act 29 does not define facilitation payments, its interpretation covers facilitation payments made to public officers where the quantum of the facilitation fee is determined to be likely to have an effect on the public officer. There is no threshold under which facilitation payments would be deemed as insignificant under Act 29. Therefore, such payments are sanctionable to the extent that they influence the conduct of the public officer.

## 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

Act 29 does not include specific provisions relating to the maintenance of accurate books and records.

However, Ghana's Companies Act requires all companies, regardless of their annual turnover or number of employees, to keep proper accounting records with respect to their financial position and file annual returns at the Office of the Registrar of Companies for compliance purposes.

Also, principal spending officers (i.e. the Chief Director, the Chief Executive or the most senior administrative head responsible for producing outputs of the public institution) of public institutions are required under the 2016 Public Financial Management Act to maintain proper records of accounts for audit purposes.

## 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (*e.g.*, code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

Ghana's Anti-Money Laundering Act, 2020 ("**Act 1044**") requires accountable institutions to conduct customer due diligence when establishing business relations and during ongoing business relations with their customers and/or third parties.

Accountable institutions are institutions whose business operations involve carrying out certain activities for or on behalf of customers, including lawyers, trading in foreign exchange, banking, insurance or securities business and dealing in securities, stocks and shares, among others.

Additionally, sector-specific directives issued by regulators may require regulated entities to implement policies which would mandate the entities to conduct due diligence on third parties. For example, the Bank of Ghana's Anti-Money Laundering Guideline requires banks and financial institutions in Ghana to carry out customer due diligence and enhanced due diligence prior to establishing, and during its business relations with, customers.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (For example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Yes. Ghana has signed and ratified the following international agreements, among others:

- 2003 UN Convention Against Corruption
- 2003 African Union Convention on Preventing and Combating Corruption
- 2001 Economic Community of West African States, Protocol on the Fight Against Corruption

## II. PENALTIES and DEFENSES

### 16. What are the penalties for corporates and individuals for bribery?

The criminal sanctions for bribery in Ghana range from fines (usually awarded at the discretion of the court taking into account the facts of the case) to imprisonment of up to 25 years. This also applies to officers of a company who are found liable of bribery or corruption of a public official or a juror.

The civil sanctions for corruption meted out to private persons may include prosecution and the confiscation of the property acquired as a result of the corruption. Generally, the civil consequences of bribery involving government or public officers include:

- Seizure or confiscation of property deemed to be the proceeds of bribery and corruption;
- Freezing of property/assets;
- Pecuniary penalty with regard to benefits derived from bribery and corruption;
- Revocation/suspension of licences (where entity is a regulated entity);
- Voiding transactions related to property after freezing or confiscation orders are made regarding that property; and
- Prohibiting the officers, directors or individuals involved in the misconduct from holding director positions or public office in the future.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self reporting)?

There is no specific legislation that lists the factors to be considered by a court when determining the penalty to be meted out to offenders convicted of corruption or bribery. Penalties may possibly be mitigated at the sole discretion of the court, which generally takes into account the following elements as provided in case law:

- The severity and size of resulting injury/loss;
- Whether there was premeditation;
- Whether the individual held a position of trust;
- The degree of revulsion felt by law-abiding citizens of society for the particular crime;
- The prevalence of the crime within the particular locality where the offence took place, or in the country generally; and
- Other circumstances such as whether it is the individual's first offence, he/she is extremely young and has demonstrated a good character.

Moreover, in practice, the courts may indeed take the effectiveness of a company's compliance programme into consideration when determining the appropriate sentence.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for example, payments made under threat or duress)?

There are no specific defences provided by the relevant anti-corruption and bribery laws.

### 19. Does the legislation provide for judiciary settlements and if so, under what criteria?

Under the Office of the Special Prosecutor Act, which establishes the Office of the Special Prosecutor as the authority to investigate and prosecute cases of corruption and corruption-related offences in Ghana, an individual who is under investigation or accused of corruption may voluntarily admit to the offence, make an offer of restitution or provide information to the Special Prosecutor and the Court. If the offer is acceptable to the prosecution and the Court, the Court will convict the accused on that plea and order the accused person to restitute the gains instead of sentencing them.

In determining whether the offer is acceptable, the Special Prosecutor may consider, for example, the history of the accused with respect to criminal activity, the level of co-operation the accused exhibited during the investigation, the likelihood of obtaining a conviction if the case proceeds to trial, the public interest in having the case tried rather than disposed of by a guilty plea, and the need to avoid delay in the treatment of other pending cases.

In addition to this, the Criminal and Other Offences (Procedure) Amendment Act 2022 ("**Act 1079**", which entitles accused persons to, prior to judgment being given, negotiate with the Attorney General for a plea agreement to, among others, reduce an offence to a lesser offence or reduce the punishment for an offence. The plea agreement may require the accused to, among others, pay compensation to the victim of the offence or make restitution.

In determining whether a plea agreement is acceptable, the court will consider whether the accused voluntarily entered into the agreement, was informed of and understood his/her rights and whether the accused understands that by accepting the plea, he/she is waiving his/her right to a full trial and an appeal and the nature of the charge to which the accused is pleading.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

For the purposes of enforcement, the most relevant institutions assigned with the responsibility for the fight against corruption include the following:

- **Commission on Human Rights and Administrative Justice (the "CHRAJ")**

  The Constitution mandates the CHRAJ to investigate complaints of corruption, abuse of power and misappropriation of public funds by public officers. The CHRAJ is also mandated under the Constitution to take appropriate steps, including reporting the results of its investigations to the Attorney General and the Auditor General. The CHRAJ has investigated a number of high-level cases that have been successfully prosecuted in the courts.

- **The Criminal Investigation Department ("CID") of the Ghana Police Service**

  The CID is mandated to carry out investigations based on complaints/allegations made by the public, which are forwarded to the Office of the Attorney General for prosecution.

- **The Economic and Organised Crime Office ("EOCO")**

  As part of its mandate under the Economic and Organised Crime Act, the EOCO also has the power to carry out investigations and recommend the prosecution of offences involving serious financial and economic loss to the state.

- **The Financial and Economic Crime Court ("FECC")**

  This is a specialised division of the High Court created by the Chief Justice to handle high-profile corruption and other related cases of public office holders.

- **Office of the Special Prosecutor**

  The 2017 Office of the Special Prosecutor Act ("**Act 959**") sets up the Office of the Special Prosecutor to which individuals may lodge a complaint if they have knowledge of the commission of corruption or a corruption-related offence and grants the Special Prosecutor the power to, on the authority of the Attorney General, initiate and conduct the prosecution of corruption and corruption-related offences.

With the exception of the CHRAJ, these institutions do not have direct prosecutorial powers and may only carry out prosecution if expressly authorised by the Attorney General.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

It appears that, notwithstanding the numerous laws and institutions set up to prevent and fight corruption, very few corruption cases have been prosecuted in Ghana. This observation is based upon the numerous allegations versus the number of prosecutions and convictions.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

The CHRAJ has published non-binding guidelines on conflicts of interest which provide guidance to public officials on how to identify, manage and resolve conflicts of interest, as well as other codes of conduct issues aimed at regulating the conduct of specific public offices.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

There is a draft Conduct of Public Officers Bill which is expected to provide regulations on the conduct of public officers in the performance of their functions. The bill will prohibit public officers from soliciting or accepting gifts which have the potential to influence the proper discharge of the duties or judgement of those public officers or the discharge of their duty. It will also allow investigation of complaints against officers by the CHRAJ and referral of criminal allegations to the Attorney General to institute criminal proceedings. The bill has yet to obtain the approval of the Cabinet, which is needed for it to be submitted to Parliament for debate and possible amendment prior to enactment.

# KENYA

## *CONTRIBUTED BY ANJARWALLA & KHANNA LLP*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | Bribery Act No. 47 of 2016 (the "**Bribery Act**")<br>Anti-Corruption and Economic Crimes Act No. 3 of 2003 ("**ACECA**") |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | The key statutes on bribery and corruption do not provide for specific defences. Moreover, Sections 49 and 50 of the ACECA expressly preclude a party from arguing custom or impossibility as defences to corruption. |
| **Obligation to self-report** | Yes |
| **Statutory penalties** | Penalties under Kenyan law include:<br>i) Monetary fines<br>ii) Imprisonment<br>iii) Confiscation of assets acquired from the proceeds of corruption<br>iv) Prohibition of individuals from holding public office<br>v) Prohibition of individuals from holding offices in private entities<br>vi) Prohibition of private entities from transacting with the government |
| **Possibility to enter into a judicial settlement** | Yes |
| **Enforcement trends** | The level of prosecution and conviction of corruption cases in Kenya has historically been relatively low. Furthermore, recent developments suggest a potential downward trend, as a number of high-profile cases have been dropped by the Office of the Director of Public Prosecutions on the basis of insufficient evidence. The reluctance in prosecution is especially evident where the cases involve public officials. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

Corruption is broadly defined to include bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust and offences involving dishonesty in connection with tax or elections of persons to public offices.[1] The ACECA expands this definition to include offences related to secret inducement, conflict of interest, deception by an agent, bid rigging and dealing with property one believes was acquired through corrupt means.[2]

The Bribery Act defines the act of giving a bribe as offering, promising or giving a financial or other advantage where the person knows or believes that the giving of the financial or other advantage would itself constitute the improper performance of a relevant function or activity.[3] The Bribery Act defines the act of receiving a bribe as requesting, agreeing to receive or performing a function in anticipation of the financial or other advantage mentioned above.[4]

## 2. What is the perception of the level of corruption in this jurisdiction?

Corruption is perceived to be high in Kenya. Transparency International gave Kenya a score of 32 on its 2022 Corruption Perception Index ("**CPI**"), allotting it with an overall ranking of 123 out of 180 countries worldwide.[5]

This was further cemented by a national survey done by the Ethics and Anti-Corruption Commission (the "**Commission**") in 2018. The survey revealed that the level of perception of corruption in the country stood at 65.3%, and corruption retained its position as the primary challenge plaguing the country as per the respondents' responses. The results of the report were based on responses from 5,942 respondents from a population-based sample survey conducted at household level.[6]

## 3. Is private sector bribery covered by the law?

Yes. The Bribery Act indicates that the Act shall apply to individuals, public officials and private entities.[7]

## 4. Can companies be held liable for acts of corruption? If so, under what conditions?

Yes, there is corporate liability for acts of corruption under Kenyan law. The Bribery Act defines private entities as "any person or organisation" that is not a public entity.[8] The Act places liability on any person that commits the offence of giving and receiving a bribe.[9] Therefore, companies that engage in the offence of giving or receiving a bribe will incur corporate liability for corruption.

1 Section 2, Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
2 Sections 40 to 44 and 46 to 47, Anti-Corruption and Economic Crimes Act.
3 Section 5, Bribery Act, No. 47 0f 2016.
4 Section 6, Bribery Act.
5 Corruption Perception Index, Country Data: Kenya: **https://www.transparency.org/en/countries/kenya**.
6 EACC, National Ethics and Corruption Survey 2018, page xvii: **https://eacc.go.ke/default/wp-content/uploads/2019/11/EACC-Ethic-Corruption-Survey-2018.pdf**.
7 Section 4, Bribery Act.
8 Section 2, Bribery Act.
9 Sections 5 and 6, Bribery Act.

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

Companies can be held liable for the actions of third parties as the Bribery Act considers private entities that fail to prevent bribery by persons associated with it to be liable.[10] The phrase 'associated person' is defined in the Act as any person who performs services for or on behalf of the entity as an agent, employee or in any other capacity.[11]

The Bribery Act also imposes liability on a private entity if acts of bribery done outside Kenya are done with the entity's consent or connivance.[12] Therefore, a company incorporated in Kenya can be held liable for the actions of its foreign subsidiaries if those actions were done with the consent of the parent company and would amount to an offence under the Act had the conduct taken place in Kenya.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Yes. The Kenyan Penal Code states that aiders and abettors to an offence may be charged with committing the offence committed by the principal offender.[13] This liability applies to acts of corruption which amount to an offence under the Penal Code.

## 7. Does the law apply beyond national boundaries?

Yes. The Bribery Act covers all activities of Kenyan citizens, and private and public entities incorporated in Kenya regardless of whether the activities were carried out within or outside Kenya.[14]

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Yes. The Bribery Act provides for the protection of whistle-blowers and witnesses in bribery cases from intimidation or harassment. The level of protection shall be determined by the Witness Protection Agency (the "**WPA**").[15]

The WPA is a body corporate whose functions and powers are overseen by the Witness Protection Advisory Board (the "**Board**"). The Board is chaired by the Solicitor General. The WPA is managed by a Director who is appointed by the Board.

Witnesses may be admitted into the Witness Protection Programme through the following avenues:

a) a decision by the Director to include a witness in the Programme along with consent by the witness to be included and the execution of a memorandum of understanding signed by both the witness and the Director;

b) application by the witnesses, law enforcement agencies, the public prosecutor, legal representative of the witness or any other intermediary; or

10 Section 10, Bribery Act.
11 Section 11, Bribery Act.
12 Section 16(2), Bribery Act.
13 Section 20(1)(c), Penal Code.
14 Section 15, Bribery Act.
15 Section 21(1), Bribery Act.

c) admission at the request of international courts, tribunals, commissions, institutions or organisations whose decisions are binding in Kenya.

Witnesses may apply to be included in the Witness Protection Programme by completing a prescribed application form provided in the Witness Protection Regulations, 2011.[16] There also exists a Witness Protection Committee which receives, considers and determines appeals from decisions of the Director and complaints against staff of the WPA.

The Whistleblower Protection Bill (2021), if passed into law, shall expand the scope of protection accorded to whistle-blowers while also providing a procedure for disclosure of information related to improper conduct in the public and private sectors. Key proposed protections include protection against workplace reprisals and reprisals in relation to employment contracts. [17]

## 9. Does the law mandate or incentivise disclosure of crimes relating to bribery and corruption?

Yes. The Bribery Act places a duty to report on all public officials and other persons holding a position of authority in public or private entities. Such persons shall report any knowledge or suspicion of instances of bribery to the Commission within 24 hours. Failure to do so constitutes an offence under the Act.[18]

The law also incentivises disclosures by providing an out-of-court settlement avenue for parties that wilfully disclose their participation in crimes relating to bribery and corruption. The Commission is empowered by the ACECA to issue an undertaking in writing that will then be registered in court to not pursue criminal proceedings against a person who has:

i) fully disclosed all material facts relating to past corrupt and economic crimes by themselves or others;

ii) voluntarily paid, deposited or refunded all property they acquired through corruption or economic crimes; and

iii) paid for the losses occasioned to public property by the corrupt conduct.[19]

The Act does not explicitly clarify whether the provision refers to a physical or juridical person; however, the wording implies that the person in this case is a physical person.

## 10. Does the legislation include specific provisions in relation to influence peddling?

The bribery and anti-corruption legislation in Kenya does not specifically address influence peddling. However, the ACECA implicitly prohibits influence peddling as it prohibits the abuse of office, which occurs when any person uses their office to improperly confer a benefit onto her or himself or anyone else.[20] Similarly, the Bribery Act applies to public officers and prohibits the giving or promising of a financial or other advantage to another person who knows or believes that the acceptance of such advantage would constitute the improper performance of the relevant function or activity. The definition of bribery under the Act is broad enough to include influence peddling.

16 Schedule One, Witness Protection Regulations, 2011.

17 Sections 25 and 26, The Whistleblower Protection Bill, 2021 No. 50 of 2021. Kenya Law Bill Tracker: **http://kenyalaw.org/kl/index.php?id=11332**

18 Section 14 (2), Bribery Act.

19 Section 56B, Anti-Corruption and Economic Crimes Act.

20 Section 46, Anti-Corruption and Economic Crimes Act.

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Yes. Public officials may receive gifts or donations given during a public or official occasion, or gifts given in an official capacity where such gifts are within the limits of propriety, are non-monetary and fall within the limits of the pecuniary value prescribed by the Commission.[21] The 2015 Leadership and Integrity Regulations cap the value of gifts to state or public officers at KES 20,000 (approximately USD 143). A state officer or public officer who receives a gift exceeding this limit is required to surrender it to the public entity in which the officer is employed.[22]

The Leadership and Integrity Act prohibits public officials from accepting any gift given with the intention of compromising the integrity, objectivity or impartiality of that public official.[23] Specifically, this Act prohibits public officials from accepting or soliciting gifts, hospitality or other benefits from a person who:

i) has an interest that may be achieved by the carrying out or not carrying out of the public official's duties;

ii) carries on regulated activities with respect to which the public official's organisation has a role; or

iii) has a contractual or legal relationship with the public official's organisation. [24]

Similarly, the Public Officer Ethics Act prohibits public officials from using their office to improperly enrich themselves or others.[25] Specifically, Section 11(2) of this Act provides for the same prohibitions as Section 14(3) of the Leadership and Integrity Act on the class of persons public officials are prohibited from accepting or soliciting gifts.

### 12. How are facilitation payments treated by the law?

Facilitation payments are considered as an advantage within the meaning of a bribe in the Bribery Act if they are made to expedite or secure performance by another person; they are, therefore, prohibited.[26]

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

The record keeping obligations are set out in the Companies Act which imposes a duty on companies to keep proper accounting records. The records shall only be proper if they show and explain the transactions of the company, disclose with reasonable accuracy the financial position of the company in the preceding three-month trading period and enable directors to ensure the financial statements comply with the requirements of the Act.[27]

21 Sections 14 (1) and (2), Leadership and Integrity Act, No. 19 of 201.
22 Regulation 5 (2), Leadership and Integrity Regulations, 2015.
23 Section 14(4), Leadership and Integrity Act.
24 Section 14 (3), Leadership and Integrity Act.
25 Section 11 (1), Public Officer Ethics Act, No. 4 of 2003.
26 Section 2(f), Bribery Act.
27 Section 628 (2), Companies Act, No. 17 of 2015.

## II. PENALTIES and DEFENCES

The records shall be kept and maintained at the company's registered office and shall be preserved for not less than seven years from and including the date on which they were created.[28]

The Commission is empowered to apply, with notice to affected parties, to the court for an order compelling any person to produce such records where the records are required for an investigation.[29] The person may be required to provide the records on an ongoing basis for a period not exceeding six months.[30]

Additionally, a receiver appointed by the Commission to manage and control suspect property[31] is required by the ACECA to keep proper books of account and give quarterly reports to the Commission.[32]

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance programme (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

Yes. Under the Bribery Act, both public and private entities are required to have in place procedures for the prevention of bribery, and failure to do so amounts to an offence. The procedure shall be in writing[33] and shall be appropriate with respect to the size and nature of the entity's operations.[34] The Commission published guidelines in 2021 to assist entities in the preparation of the procedures required.[35] The Commission's assistance extends to support with the implementation of the procedures.[36]

A subsidiary of a domestically incorporated company may adopt the procedures of the parent company. Local subsidiaries of foreign companies may adopt the bribery and corruption prevention procedures of the foreign parent company so long as they develop the procedures to align with the essential components set out in the Bribery Act.[37]

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (for example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Yes. Kenya has ratified the following treaties in relation to anti-bribery and corruption:

a) United Nations Convention Against Corruption;

b) 2003 African Union Convention on Preventing and Combating Corruption; and

c) Framework for the Return of Assets from Corruption and Crime in Kenya.

28 Sections 630 (1) and (2), Companies Act.
29 Section 28 (1), Anti-Corruption and Economic Crimes Act.
30 Section 28 (3), Anti-Corruption and Economic Crimes Act.
31 Suspect property' refers to property which one believes or has reason to believe was acquired in the course of or as a result of corrupt conduct.
32 Section 56A(8), Anti-Corruption and Economic Crimes Act.
33 Regulation 12, Bribery Act Regulations 2021.
34 Regulation 4(2), Bribery Act Regulations 2021.
35 The Guidelines were published in Gazette Notice No. 11125.
36 Section 12, Bribery Act.
37 Regulation 6, Bribery Act Regulations 2021.

According to Article 2(6) of the Constitution of Kenya (the "**Constitution**"), any treaty or convention ratified by Kenya shall form part of the laws of Kenya.

## II. PENALTIES and DEFENCES

### 16. What are the penalties for corporates and individuals for bribery?

The Bribery Act provides a general penalty for persons convicted of any offence under the Act for which there is no express penalty provided. The person shall be liable for a fine not exceeding KES 5 million (approximately USD 40,500), imprisonment for a term not exceeding 10 years, or both.[38]

The Act sets out the framework for penalties for bribery and economic crimes. Examples of penalties for convicted individuals include an additional fine if they received a quantifiable benefit or any other person suffered a quantifiable loss as a result of the conduct constituting the offence and being barred from holding public office. Convicted entities – both private or public – may see the proceeds of their improper behaviour confiscated and be disqualified from transacting with governmental entities for 10 years.[39]

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance programme, self-reporting)?

The Commission is empowered by the ACECA to issue an undertaking not to pursue criminal proceedings where a person self-reports past corrupt and economic crimes by themselves or others, among other criteria as discussed in the response to Question 19 below.[40]

### 18. What are possible defences (for example, effective compliance programme) or exceptions (for example, payments made under threat or duress)?

The Bribery Act does not expressly provide for any defences or exceptions to acts of corruption or bribery. Notably, the ACECA expressly precludes a party from arguing custom or impossibility as defences to corruption.[41]

The Kenyan Penal Code, Cap. 63 generally provides for compulsion as a defence to criminal liability whereby one is compelled to do an act under threat of death or instantaneous grievous bodily harm.[42]

### 19. Does the legislation provide for judicial settlements and, if so, under what criteria?

No, the key legislation covered in this Guide does not provide for judiciary settlements. However, other legislation provides for such settlements.

1. Out-of-court settlements: The Commission may provide an out-of-court settlement option to parties that wilfully disclose their participation in crimes relating to bribery and corruption. The Commission is empowered by the ACECA to issue an undertaking in writing not to pursue criminal proceedings against a person who has:
    a. fully disclosed all material facts relating to past corrupt and economic crimes by themselves or others;

38 Section 19, Bribery Act.
39 Section 18, Bribery Act.
40 Section 56B, Anti-Corruption and Economic Crimes Act.
41 Sections 49 and 50, Anti-Corruption and Economic Crimes Act.
42 Section 16, Penal Code, Cap. 63.

b. voluntarily paid, deposited or refunded all property they acquired through corruption or economic crimes; and

c. paid for the losses occasioned to public property by the conduct constituting corruption.[43]

2. Deferred Prosecution Agreements: The Office of the Director of Public Prosecutions ("**ODPP**") has introduced Deferred Prosecution Agreements pursuant to Articles 157 and 159 of the Constitution, the 2015 National Prosecution Policy and the 2019 Diversion Policy. Under these agreements, corporations charged with certain classes of crimes, including economic crimes, can defer the prosecution for a specific duration given that the corporations meet set criteria.

3. Plea Agreements: Persons accused of acts of bribery or corruption may enter into a plea agreement with the prosecutor.[44] The accused person will plead guilty to the offence in exchange for a reduced charge or the withdrawal of the charge altogether.

# III. ENFORCEMENT TRENDS

## 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

Anti-bribery legislation is primarily enforced by the Ethics and Anti-Corruption Commission ("**EACC**") which was established by the Ethics and Anti-Corruption Commission Act and pursuant to Article 79 of the Constitution.[45] The Commission is primarily tasked with enforcing ethical standards within the public sector, although the Bribery Act has expanded this scope to include the private sector.

The ACECA provides for investigation and prosecution of bribery offences captured in the Bribery Act. The investigations shall be conducted by the Secretary of the Ethics and Anti-Corruption Commission or a person authorised by the Secretary (the "**Investigators**").[46] For purposes of an ongoing investigation, the Investigators shall have the powers, privileges and immunities of a police officer in addition to any powers conferred on the Investigators under the ACECA.[47]

In addition, the National Police Service Act also confers overarching powers on police officers to conduct investigations into illegal conduct. The Directorate of Criminal Investigations ("**DCI**") is charged with conducting criminal investigations within the National Police Service. Upon conclusion of investigations, the EACC is required to report the results to the ODPP for prosecution where appropriate.[4849]

The High Court of Kenya also has a specialised Anti-Corruption and Economic Crimes division which is tasked with dealing with

43 Section 56B, Anti-Corruption and Economic Crimes Act.

44 Section 137A, Criminal Procedure Code, Cap. 75.

45 Section 3, Ethics and Anti-Corruption Commission Act, No. 22 of 2011.

46 Section 23 (1), Anti-Corruption and Economic Crimes Act. Section 23 (3), Anti-Corruption and Economic Crimes Act.

47 Section 23 (3), Anti-Corruption and Economic Crimes Act.

48 Section 35, Anti-Corruption and Economic Crimes Act.

49 During the 2019/2020 financial year, the Commission received 6,021 reports on corruption and unethical conduct. Only 2,225 of the reports received were within the Commission's remit. The 2,225 reports were broken down as follows: Bribery - 34%, embezzlement - 23%, procurement irregularities - 11%, abuse of office - 9%, unethical conduct - 9%, fraudulent acquisition and disposal of public property - 6%, unexplained wealth - 4%, conflict of interest - 3%, maladministration - 1%, fraud - 1%, others - 1%.

corruption and economic crimes. Other bodies involved in the enforcement of anti-bribery legislation include the Asset Recovery Agency which was established under the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009.

## 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

Kenya has a relatively low frequency of bribery enforcement actions, although we have seen evidence that this is changing. There is an upward trend in the prosecution of graft cases; however, many of these cases end in acquittal or are withdrawn.[50] For instance, the ODPP has recently withdrawn graft cases against State Officers accused of corruption, while the Anti-Corruption and Economic Crimes Division of the High Court has similarly terminated cases against State Officers facing charges of corruption as indicated below:

1. In December 2022, the Anti-Corruption and Economic Crimes Division of the High Court dropped a graft case against a former Nairobi governor on the basis that it had insufficient evidence.[51]
2. In October 2022, the Law Society of Kenya raised concerns over the ODPP's decision to withdraw two high-level graft cases and demanded further information on the reasons behind the move.[52]
3. In August 2022, the ODPP failed to amend charges against the ex-managing director of Kenya Power and Lighting Company after the charges were initially dropped. [53]

Despite the relatively high rate of acquittals, the Commission in conjunction with the ODPP have made strides in prosecuting graft cases. On 28 January 2022, a case investigated by the Commission and recommended to the ODPP for prosecution resulted in a historic graft fine record of KES 9.8 billion (approximately USD 70.3 million). The fine was part of the sanctions imposed by the Anti-Corruption and Economic Crimes Division of the High Court on three of the accused who were found to be guilty of fraudulently acquiring KES 1.2 billion (approximately USD 8.6 million) from the National Social Security Fund.[54] Additionally, the Commission has previously indicated that the ODPP improved the overall conviction rate for anti-corruption cases to 72.4% in the 2016/2017 Financial Year, which is the highest ever recorded conviction rate in this category in Kenya. [55]

50 Transparency International Kenya, What's the truth on ODDP's withdrawal of graft cases? **https://tikenya.org/whats-the-truth-on-oddps-withdrawal-of-graft-cases/**.
51 Anti-Corruption Court drops Sonko's KES 20 million graft case: **https://ntvkenya.co.ke/news/anti-corruption-court-drops-sonkos-kes-20-million-graft-case/**
52 The Star, LSK questions DPP for withdrawing corruption cases, **https://www.the-star.co.ke/news/2022-10-13-lsk-questions-dpp-for-withdrawing-corruption-cases/**.
53 Business Daily, DPP fails in bid to amend charges facing ex-Kenya Power MD Chumo: **https://www.businessdailyafrica.com/bd/economy/dpp-fails-in-bid-to-amend-charges-facing-ex-kenya-power-md-3908926**
54 Ethics and Anti-corruption Commission, NSSF Case Sets Historic Graft Fine Record of Kshs. 9.8bn: **https://eacc.go.ke/default/nssf-case-sets-historic-graft-fine-record-of-kshs-9-8bn/.**
55 ODPP, ODPP Registers highest conviction rate ever in Kenya: **https://www.odpp.go.ke/the-odpp-registers-the-highest-conviction-rate-ever-in-kenya/**.

### 22. Have these administrative or judicialauthorties published guidelines for the interpretation and enforcement of the legislation?

The EACC has published Draft Guidelines entitled the 'Guidelines to Assist Public and Private Entities in the Preparation of Procedures for the Prevention of Bribery and Corruption'.[56] However, these Guidelines are yet to come into force, and no formal timeline as to when they will be made available has been provided.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

The Statute Law (Miscellaneous) Amendment Bill, 2022 No. 26 of 2022 (the "**Bill**")[57] dated 10 May 2022 proposes a raft of amendments to key statutes that relate to bribery and corruption. The Bill contains proposed amendments to the following statutes:

i) **2012 Leadership and Integrity Act (No. 19 of 2012):** The Bill seeks to amend the Leadership and Integrity Act to allow the Commission to verify the suitability of candidates applying for jobs with public entities and to make recommendations to the recruiting entity on the integrity and suitability of the candidates. The Bill additionally proposes to allow any person to make an application to the High Court to declare the assumption of office by an officer invalid when the officer has failed to perform a commitment set out in the applicable Leadership and Integrity Code.

ii) **2003 Anti-Corruption and Economic Crimes Act (No. 3 of 2003):** The Bill proposes allowing the Commission to seek a court order for a public official under investigation or charged with corruption or economic crimes to be barred from accessing their office or exercising powers of that office if the public official is likely to interfere with investigations in any way.

iii) **2016 Bribery Act (No. 47 of 2016):** The Bill notably proposes to amend the Bribery Act to include both private and public entities within its scope. Additionally, the Bill proposes to expand the scope of persons required to report bribery offences by deleting the words "holding a position of authority" as stated in Section 14 (1) of the Bribery Act. If passed, the deletion would place a duty to report offences under the Act on all state officers and public officers, including even those not "holding a position of authority".

56 Guidelines to Assist Public and Private Entities in the Preparation of Procedures for the Prevention of Bribery and Corruption: **https://eacc.go.ke/default/document/guidelines-under-bribery-act/**

57 Kenya Law Bill Tracker, Statute Law (Miscellaneous) Amendment Bill, 2022 No. 26 of 2022: **http://kenyalaw.org/kl/index.php?id=11561**

# MOROCCO
*CONTRIBUTED BY CLIFFORD CHANCE INTERNATIONAL LLP*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | • The 2021 Law No. 46.19 implementing the National Authority for Probity, Prevention and the Fight against Corruption;<br>• the Moroccan Criminal Code;<br>• the 2011 Law No. 37.10 on the protection of victims, witnesses, experts and whistle-blowers with regard to crimes of corruption, embezzlement and influence peddling. |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | No |
| **Defences** | Self-denunciation |
| **Obligation to self-report** | No |
| **Statutory penalties** | **Public sector bribery:** imprisonment for a term of up to 5 years and a fine not exceeding MAD 50,000 (approximately USD 5,000). In the event the amount of bribery exceeds MAD 100,000 (approximately USD 10,000), the penalty is an imprisonment for a term of up to 10 years and a fine not exceeding MAD 100,000.<br><br>**Private sector bribery:** imprisonment for a term of up to 3 years and a fine not exceeding MAD 50,000 (approximately USD 5,000). |
| **Possibility to enter into a judicial settlement** | No |
| **Enforcement trends** | It is moderately active as it still lacks meaningful safeguards for some aspects such as whistle-blowing (limited institutional support, limited protection, etc.) but the Moroccan government showcases an overall desire to enforce the legislative and regulatory frameworks of anti-corruption (*Instance Nationale de la Probité, de la Prévention et de la Lutte contre la Corruption* or "**INPPL**" was created in 2015, the UN Convention on Combatting Corruption entered into force in 2008, and a series of legislative and regulatory reforms entered into force to improve transparency in the public sector). |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

Pursuant to the Moroccan Criminal Code and the 2021 Law No. 46.19, bribery is defined as soliciting or accepting offers or promises, soliciting or receiving gifts, presents or other benefits in order to perform or refrain from performing an act within the scope of his or her office, or an act which, although outside the scope of his or her personal powers, is or may have been facilitated by his or her office, making a decision or giving a favorable or unfavorable opinion. Both active and passive bribery are punished as described in articles 248, 249 and 251 of the Moroccan Criminal Code.

The 2021 Law No. 46.19 implements the National Authority for Probity, Prevention and the Fight against Corruption as embezzlement or misappropriation committed by public officials, and influence peddling. Corruption also includes administrative and financial offences referred to in article 36 of the Moroccan Constitution, namely those relating to conflicts of interest, insider trading and all financial offences, abuse of dominant position and all other practices contrary to the principals of free and fair competition.

## 2. What is the perception of the level of corruption in this jurisdiction?

In the Transparency's 2023 Corruption Perceptions Index, Morocco was ranked 97th out of 180, with a score of 38 out of 100 points.

## 3. Is private sector bribery covered by the law?

Yes, private sector bribery is punishable under article 249 of the Moroccan Criminal Code. This article applies to any paid employee or subordinate who, directly or through an intermediary, without the knowledge or consent of his or her employer, requests or approves offers, promises, gifts, commissions, discounts or bonuses in order to perform or abstain from performing any act within the scope of employment or which may be facilitated by such employment.

## 4. Can companies be held liable for acts of corruption? If so, under what conditions?

Under Moroccan Law, companies may be held liable for the actions of their representatives. However, articles of the Criminal Code may provide for the liability of a legal person. For example, a company can be held liable for money laundering offences because such a liability is provided under article 574-5 of the Criminal Code

Regarding acts of corruption and bribery, the liability of a legal person is not provided for in articles of the Criminal Code outlining sanctions in case of corruption/bribery.

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

A company implemented in Morocco has its own legal personality and cannot be held liable, under Moroccan law, for the actions of third parties, including those of a foreign subsidiary, with its independent legal personality, unless the company acted or deliberately omitted to act, or if it is a beneficiary of the offence.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Aiders and abettors can be prosecuted for complicity in corruption. Complicity is defined under article 129 of the Moroccan Criminal Code and is only admitted when the main offences are misdemeanors (*délits*) or felonies (*crimes*). Aiders and/or abettors are those who, without actively participating in the main offence (i) by gifts, promises, threats, abuse of authority or power, guilty machinations or artifices, provoked the action or gave instructions to commit it; (ii) procured weapons, instruments or any other means of action knowing that they were to be used for improper purposes; (iii) by withholding their knowledge, assisted the authors of the action in the activities which prepared or facilitated the offence; or (iv) with knowledge of their criminal conduct, provided accommodation, a place of retreat or meetings to one or more wrongdoers engaged in terrorism or violence against state security, public peace, persons or property.

## 7. Does the law apply beyond national boundaries??

Pursuant to article 10 of the Moroccan Criminal Code, all individuals, whether of Moroccan citizenship, foreigners or stateless, who are on Moroccan territory, are subject to the Moroccan Criminal law, expect for the exceptions set forth in domestic public law or international law.

Moroccan criminal law applies to offences committed outside the Kingdom when they fall within the jurisdiction of the Moroccan criminal courts. Regarding an offence committed abroad by a Moroccan citizen, it is possible to face prosecution in the Moroccan Kingdom as articles 707 (for felonies) and 708 (for misdemeanors) of the Code of criminal procedure provide that "*any act qualified as an offence both by Moroccan law and by the legislation of the country where it was committed, can be prosecuted and judged in Morocco, when its author is Moroccan*".

## 8. Is there a whistle-blower protection regime in your jurisdiction?

The 2011 Law No. 37.10 on criminal procedure for the protection of victims, witnesses, experts, and whistle-blowers in relation to offences of corruption, embezzlement, influence peddling and others entered into force in October 2011 (the "**Witness and Whistle-blower Protection Law**" or "**WWPL**").

Pursuant to article 82-9, a whistle-blower qualifies as such if he or she discloses, in good faith and for justified reasons, any of the offences referred to in article 82-7 of the above-mentioned law to the competent authorities, namely acts of corruption, embezzlement, influence peddling, misappropriation of public funds or money laundering.

This law aims to provide whistle-blowers with protection against disciplinary or judicial proceedings and defines several measures to protect whistle-blowers in the context of the fight against corruption in both private and public sectors (physical protection, concealment of identity, non-disclosure of address).

Nonetheless, whistle-blowers lack sufficient protection to deter them from going forward with their actions as they might face criminal charges if they do not present sufficient proof of allegations. Also, labor law provisions do not explicitly protect against unfair dismissal or other penalties for whistleblowing.

The 2021 Law No. 46.19 implementing the National Authority for Probity, Prevention and the Fight against Corruption also provides assistance and support for whistle-blowers in the event of a report made to the Authority.

### 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

Moroccan Law does not mandate disclosure of crimes relating to bribery and corruption.

However, in order to incentivize the disclosure of crimes relating to bribery and corruption, the Moroccan Criminal Code provides that a briber who reports a bribery offence to the judicial authorities may be exempted from liability, where the report was made before he/she acted on the request made to him/her to that effect, or if he/she establishes, in the case where he/she acted on the request for a bribe, that it was the official who obliged him/her to pay the bribe.

### 10. Does the legislation include specific provisions in relation to influence peddling?

Yes, , influence peddling is punishable by Moroccan law under the same criminal law provisions as corruption. Article 250 of the Moroccan Criminal Code states "… *is guilty of influence peddling and shall be punished with imprisonment for a term of 2 to 5 years and a fine of MAD 5,000* [(approximately USD 5,000)] *to 100,000* [(approximately USD 10,000)]*, any person who solicits or accepts offers or promises, solicits or receives donations, gifts, or other benefits, in order to obtain or attempt to obtain decorations, medals, distinctions or rewards, positions, functions or employment, or any favors granted by the public authority, contracts, enterprises, or other benefits resulting from treaties concluded with the public authority or with an administration under the control of the public power or, in general, a favorable decision of such authority or administration, and thereby abuses real or presumed influence*".

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Moroccan legislation expressly includes provisions in relation to gifts and hospitality as they can constitute a bribe. There are no specific provisions for government officials in that respect. Moroccan law does not provide for any specific *de minimis* or other exemptions with respect to gifts and hospitality expenses. Accordingly, any determination would depend on the intention of the parties and on other specific facts of the case.

### 12. How are facilitation payments treated by the law?

There are no specific provisions under Moroccan law defining or distinguishing facilitation payments. Hence, the legality of any such payments would be determined by the general provisions of the law relating to corruption.

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

Law No. 17.95 for limited companies provides, in articles 384 and sub., offences in relation to management and administration. Members of administrative, management or supervisory bodies who knowingly published or presented to shareholders inaccurate books and records, concealing the true state of the company will be punished by imprisonment of 1 to 6 months and a fine of between MAD 100,000 (approximately USD 10,000) and MAD 1,000,000 (approximately USD 100,000).

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

There is no legislation requiring companies to develop and implement said programs. Although many companies implement them as they are strongly recommended (by the Moroccan Code of good corporate governance practices produced by the *Commission nationale de gouvernance d'entreprise* or "**CNGE**", an authority jointly created by the CGEM (representative of the private sector amongst public authorities and institutions) and the Ministry of Economy.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (for example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Yes, Morocco has ratified many international anti-bribery treaties and conventions including:

- United Nations Convention against Corruption, signed on 9 December 2003 and ratified on 10 May 2007;
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997; and
- African Union Convention on Preventing and Combating Corruption signed on 11 July 2003.

## II. PENALTIES and DEFENSES

### 16. What are the penalties for corporates and individuals for bribery?

The penalty for bribery in the public sector is imprisonment from 2 to 5 years and a fine of MAD 2,000 (approximately USD 200) to MAD 50,000 (approximately USD 5,000).

When the proceeds of the offence exceed MAD 100,000 (approximately USD 10,000), the term of imprisonment is increased to 5 to 10 years and the fine ranges from MAD 5,000 (approximately USD 500) to MAD 100,000 (approximately USD 10,000).

In the case of bribery in the private sector, the penalty is imprisonment for a period of 1 to 3 years and a fine between MAD 5,000 (approximately USD 500) and MAD 50,000 (approximately USD 5,000).

Additional penalties are provided by the law including the deprivation of civil, civic or family rights and/or a 10-year ban on holding public office or public employment.

The Criminal Code also provides for the confiscation of any articles or material obtained as a result of the bribery (*i.e.,* the proceeds of crime), which may include the income attributable to any contract obtained through corruption, and not just the value of the bribe paid.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self-reporting)?

As mentioned above, pursuant to article 256-1 of the Criminal Code, the briber who self-reports or denounces a bribery offence to the judicial authorities shall be exempted if the denunciation took place before he/she acted on the request presented to him/her for this purpose, or, if he/she establishes, in the case where he/she acted on the request for bribery, that it was the public agent who obliged him/her to pay it.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for

### example, payments made under threat or duress)?

Generally, under Moroccan law, there are no specific statutory defenses to charges except an exemption of liability in case of denunciation.

### 19. Does the legislation provide for judicial settlements and, if so, under what criteria?

In Morocco, no kind of settlement agreements, such as deferred prosecution agreements (“**DPAs**”), have been implemented.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

There is no special regulatory body with authority to prosecute corruption and implement anti-bribery legislation. Corruption investigations and prosecutions are carried out by the public prosecutor and the criminal courts.

In parallel, the main objectives of the National Authority for Probity, Prevention and the Fight against Corruption, implemented in 2021, are to initiate, coordinate, supervise and monitor the implementation of policies to prevent and fight corruption, to collect and spread information in this field, to contribute to upholding morals in public affairs and to consolidate the principles of good governance, the culture of public service and the values of responsible citizenship.

To this end, the National Authority for Probity, Prevention and the Fight against Corruption carries out its missions within a framework of joint action between itself and the authorities, , institutions and other bodies concerned, in order to spread the values of integrity and to prevent and fight corruption.

Hence, within this framework, the Authority proposes the strategic orientation of Moroccan State policy in the prevention and fight against corruption, as well as the mechanisms and measures tailored to ensure its implementation. Consequently, the Authority can issue an opinion, on its own initiative or at the request of the Prime Minister, on national strategies and public policies directly related to the prevention and fight against corruption, and on their implementation. It also works on the elaboration and diffusion of reference guides on the management of public services and other institutions and organizations of the public and private sectors. For instance, the Authority issued on February 2022 an anti-bribery guide aimed at preventing bribery in the financial sector.

In addition, the Authority can also submit to the government, or to the two chambers of the Parliament, any recommendation or proposal aiming to spread and consolidate the values of probity and transparency, and at cementing the principles of good governance, the culture of public service and the values of responsible citizenship.

In furthering the fight against corruption, the Authority can receive and examine denunciations, complaints and information related to cases of corruption, carry out investigations and inquiries into such cases, and eventually draw up reports that are sent to the authority that requested the investigation.

To this end, the Authority may conduct the investigation alone or, if necessary, jointly with any other competent authority. However, the Authority does not prosecute the offences itself.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

According to the Annual Report for 2022 provided by the INPPLC, the anti-corruption regulations are beginning to be implemented, although there is no precise data due to the recent nature of the law.

The strategic direction adopted by the INPPLC in 2021 appears to be unattainable, as evidenced by a consistent downturn across various relevant international indicators. This downward trend can be attributed to insufficient engagement of key stakeholders, inadequate coordination and oversight of initiatives, and, most critically, the predominance of legislative measures with a lack of necessary regulatory texts that ensure their effective and efficient implementation.

There is no up-to-date data in Morocco in relation to recent convictions of companies or individuals for bribery. The above-mentioned Annual Report outlines that 783 cases were registered at criminal courts between in 2021 against 1486 in 2020. We can therefore note a decrease in bribery cases brought before the criminal courts, in a context where the court process for bribery cases is long.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

In 2022, as part of the cooperation between the National Authority for Probity, Prevention and the Fight against Corruption and the financial sector regulators (Bank of Morocco, the Moroccan Capital Market Authority and the Insurance and Social Security Supervisory Authority), an anti-corruption guide for financial sector players was published.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

In 2022, 2022, the President of the National Authority for Probity, Prevention and the Fight against Corruption called for a new dynamic of whistle-blower protection by mapping the forms of economic and professional retaliation to which a whistle-blower could be subject (discrimination; deprivation or unfair treatment; dismissal or revocation; denial of promotion; deprivation of access to public contracts; ...) and by extending protection to cover economic, professional and administrative dimensions.

The contemplated reform would therefore aim to create platforms for whistle-blowers, their treatment, and follow-up with the means and guarantees of protection, access to regulations, mobilization, communication and awareness.

# NIGERIA

*CONTRIBUTED BY: TEMPLARS*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | • The Corrupt Practices and Other Related Offences Act, 2000.<br>• The Economic and Financial Crimes Commission (Establishment) Act, 2004.<br>• Advance Fee Fraud and Other Fraud Related Offences Act, 2006.<br>• The Criminal Code Act (applicable to the southern part of Nigeria).<br>• The Penal Code (applicable to the northern part of Nigeria).<br>• Money Laundering (Prevention and Prohibition) Act, 2022.<br>• Proceeds of Crime (Recovery and Management) Act, 2022.<br>• The Code of Conduct for Public Officers as contained in Part 1 of the Fifth Schedule of the Constitution of the Federal Republic of Nigeria, 1999.<br>• Federal Ministry of Finance Policy on Whistle-blowing, 2016.<br>• Banks and Other Financial Institutions Act, 2020. |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | Yes, to a limited extent. |
| **Defences** | It is a statutory defence to show that gifts or benefits were received from relatives or close friends to such extent and on such occasions as are recognised by custom, or that they were received at or in relation to a public or ceremonial occasion (these defences only apply to public officers in Nigeria). However, the defence will not apply if the gift or benefit is offered to a public officer as an inducement or a bribe for granting any favour or the discharge of his/her duties in favour of the offeror. |
| **Obligation to self-report** | Yes |

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|---|---|
| **Statutory penalties** | The maximum fine depends on the offence committed and the anti- corruption legislation under which a defendant is charged. It ranges from N1,000 (approximately USD0.6004) to an amount not less than five times the value of the gift or benefit received.<br><br>The maximum term of imprisonment is seven years. |
| **Possibility to enter into a judicial settlement** | Yes, Nigerian law allows for plea bargaining. |
| **Enforcement trends** | The law against bribery and corruption is actively enforced in Nigeria. Successive Nigerian governments consistently avow their resolve to eradicate bribery and corruption, and this has resulted in a relatively high rate of prosecution and convictions for corruption. The Economic and Financial Crime Commission, which is only one among various other agencies with prosecution powers in this area, indicated in its latest report that it secured a total of 3,785 convictions for corruption and financial crimes in 2022. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

**Corruption**

The 2000 Corrupt Practices and Other Related Offences Act (the "**CPORA**")[1] defines corruption as "bribery, fraud and other related offences".

**Bribery**

Bribery is an appendage of corruption. It can manifest in different forms and is therefore covered by several pieces of legislation in Nigeria. Notably, the Criminal Code Act makes it an offence for any public officer corruptly to demand or for any person corruptly to give property or benefit of any kind in exchange for any act, omission, favour or disfavour by a public officer.[2] Both active and passive bribery are prohibited under Nigerian law.

## 2. What is the perception of the level of corruption in this jurisdiction?

The general perception of the level of corruption in Nigeria is high. In its 2022 Corruption Perceptions Index, Transparency International ranked Nigeria 150 out of the 180 countries in the world with a score of 24 out of 100 points, meaning that it is perceived to be the third most corrupt country in West Africa after Guinea.

## 3. Is private sector bribery covered by the law?

Yes. Section 17 of the CPORA, without making any distinction between official and private actors, makes it an offence for any person to accept, agree to accept, give, agree to give or offer any gift or consideration to any person as an inducement or a reward for acting or abstaining from acting. Similar provisions on private sector bribery can be found in Section 494 of the Criminal Code Act and Section 46 of the 2020 Banks and Other Financial Institutions Act.

## 4. Can companies be held liable for acts of corruption? If so, under what conditions?

Yes, Nigerian law provides for corporate liability for acts of corruption. The definition of persons to whom the provisions of the CPORA on active and passive bribery and the relevant penalties apply includes corporate entities.[3] For a company to be liable, it must be shown that the act of corruption was by an official of the company while carrying on the business of the company in the usual way.[4] Obviously, companies, unlike natural persons, cannot be sentenced to terms of imprisonment, hence the usual punishment applicable to corporate offenders in this area is the imposition of fines.

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1 Section 2.

2 Another example of bribery is contained in Section 121 of the 2022 Electoral Act, which provides that bribery covers the giving of any gift, loan, offer, promise, procurement, agreement or the receipt of any money to procure the return of any person as a member of a legislative house or an elective officer, or to induce any person to vote or refrain from voting.

3 Section 2 of CPORA.

4 *Agbebaku v. State* (2015) LPELR-25763 (CA).

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

Corruption is a criminal offence under Nigerian law for which liability is personal and not transferable.[5] A company can therefore not be held liable for actions of third parties or those of subsidiaries of the company – whether foreign or domestic. However, if it can be proven that the corrupt acts or omissions of a third party or of a company's subsidiary occurred in conspiracy with, or with the express or implied authorisation and knowledge of, the company, or that such acts or omissions were enabled, directed, instructed, counselled, aided or procured by the company, then both the company and the third party or relevant subsidiary can be criminally liable for the act of corruption.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Aiders and/or abettors can be held liable for corruption under Nigerian law as they are deemed to have taken part in committing the offence of corruption and will be charged with committing it.[6] For a person to be liable as an aider and/or abettor of corruption, it must be established that he/she has, by his/her acts or omissions, enabled, aided, counselled or procured another person to engage in acts of corruption.[7]

## 7. Does the law apply beyond national boundaries?

Yes, the CPORA applies beyond national boundaries. Specifically, it applies to Nigerian citizens and persons granted permanent residency in Nigeria, for acts committed both inside and outside Nigerian territory.

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Yes. Nigeria has a robust whistle-blower protection regime. The 2004 Economic and Financial Crimes Commission (Establishment) Act empowers the Economic and Financial Crimes Commission ("**EFCC**") to seek and receive information from any person, authority, corporation or company without hindrance in respect of offences it is empowered to enforce. As a form of protection for persons who have volunteered information, the EFCC cannot be compelled to disclose the source of its information, except by court order.

In 2016, the Federal Ministry of Finance, Budget and National Planning launched a whistle-blowing policy. The policy is aimed at encouraging people to disclose voluntarily information about bribery, corruption, financial misconduct, theft, etc. However, this policy does not apply to private contracts. Other sector-specific whistle-blower protection regimes are the 2008 Whistle Blowing Guidelines for Pensions issued by the National Pension Commission and the Central Bank of Nigeria Guidelines for Whistleblowing in the Nigerian Banking Industry 2014.[8]

5 *PML (Nig) Ltd v. F.R.N.* (2018) 7 NWLR (Pt.1619) 448.

6 Section 7 of the Criminal Code Act.

7 Section 7 of the Criminal Code Act.

8 Nigerian Courts have affirmed the whistle-blower protection regime. In *Olu Ibirogba v. the Council of the Federal Polytechnic Yaba & 2 Ors* [2015] 63 NLLR (pt.223) 343, the claimant was suspended by the defendant because he was a whistle-blower. In upholding the whistle-blower protection, the Nigerian National Industrial Court declared his suspension invalid.

### 9. Does the law mandate or incentivise the disclosure of crimes relating to bribery and corruption?

Yes. The CPORA mandates the reporting of bribery and corruption. Section 23 (1), (2) and (3) provides that a public officer to whom any gift or benefit is given, promised or offered, or any person from whom a gift or benefit has been solicited or obtained, or an attempt has been made to obtain such gift or benefit, shall report this to the nearest office of the Independent Corrupt Practices and Other Related Offences Commission, or a police station. Failure to report is a crime and any person found guilty shall be liable for a fine of up to N100,000 (approximately USD130-140), imprisonment for up to two years, or both.

Additionally, the whistle-blowing policy launched by the Ministry of Finance incentivises the disclosure of crimes relating to bribery and corruption. It provides that a whistle-blower is entitled to 2.5% to 5.0% of the amount of the gift or benefit recovered as a result of the whistle-blowing.

### 10. Does the legislation include specific provisions in relation to influence peddling?

Section 22(2) of the CPORA prohibits influence peddling. Specifically, it provides that it is an offence for any person, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement or reward for using or having used his/her influence to, among other things, promote or secure the execution of a contract.

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Yes. Both the CPORA[9] and the Code of Conduct for Public Officers have specific provisions in relation to gifts and hospitality provided to government officials. Under the CPORA, it is an offence for any person corruptly to give, confer, procure or promise to give any property or benefit to a public officer in exchange for any act, omission, favour or disfavour from the public officer. Anybody found guilty of this offence will be liable to imprisonment for a term of seven years.

However, if the government official were to show that the gift or benefit was a personal gift from relatives or personal friends, or that it was given to him/her at a public or ceremonial occasion or on an occasion that is recognised by custom, it would not be an offence,[10] unless the gift or benefit was offered to the said public officer as an inducement or a bribe for granting any favour or the discharge of his/her duties in favour of the offeror.[11]

### 12. How are facilitation payments treated by the law?

Facilitation payments are prohibited by Nigerian law. For example, the 1999 Constitution of the Federal Republic of Nigeria (the "**CFRN**") prohibits a public officer from asking for or accepting gifts or benefits for himself/herself or any other person for anything undertaken or omitted in the discharge of his/her duties.[12] To strengthen the efficacy of this prohibition, the CFRN provides that the receipt by a public officer of any gift or benefit

9 Section 9.
10 Section 6(3) of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999.
11 Section 8 of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999.
12 Section 6(1) of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999.

from commercial firms, business enterprises or persons who have contracts with the government shall be presumed to have been received in contravention of the prohibition of facilitation payments.[13] However, a public officer is allowed to receive gifts or benefits from his/her close friends and relatives, or at public or ceremonial occasions, provided that the gift or benefit is not intended to induce or bribe the public officer for any favour.[14]

Similar prohibitions of facilitation payments can be found in both CPORA[15] and the Criminal Code Act.[16]

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

No. There are no specific provisions in relation to maintaining accurate books and records within the context of bribery and corruption under Nigerian law. However, other legislative provisions, such as Section 16 of the CPORA and Section 16 of the EFCC Act, make it a criminal offence for any person knowingly to furnish false statements or returns.

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance programme (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

The 2022 Money Laundering (Prevention and Prohibition) Act requires financial[17] and designated non-financial businesses[18] and professions to develop programmes to combat the laundering of proceeds of crime or other unlawful acts. The relevant companies are required to appoint compliance officers, develop training programmes for their employees, and establish internal audit procedures to ensure conformity with compliance programmes.[19]

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (For example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Nigeria has ratified the following international and regional anti-bribery and corruption treaties and conventions: the United Nations Convention against Corruption ratified on 14 December 2004; the African Union Convention on Preventing and Combating Corruption ratified on 26 September 2006; and the Economic Community of West African States Protocol on the Fight against Corruption signed on 21 December 2001.

13 Section 6(2) of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999.
14 Sections 6(3) and 8 of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999.
15 Sections 8, 9 and 22 of the Fifth Schedule to the Constitution of Nigeria, 1999.
16 Section 98 of the Fifth Schedule to the Constitution of Nigeria, 1999.
17 This includes banks, insurance companies, finance companies and other companies included in section 30 of the 2022 Money Laundering (Prevention and Prohibition) Act.
18 This includes automotive dealers, companies in the hospitality industry, law firms, mortgage brokers and other companies included in section 30 of the 2022 Money Laundering (Prevention and Prohibition) Act.
19 Section 10 of the 2022 Money Laundering (Prevention and Prohibition) Act.

## II. PENALTIES and DEFENCES

### 16. What are the penalties for corporates and individuals for bribery?

The penalties for bribery offences vary dependent on the specific anti-corruption legislation under which a person is charged and the form of bribery in question. Key sanctions include:

a. **The CPORA**: The penalties for bribery and corruption range from two to seven years' imprisonment and/or fines ranging from N100,000 (approximately USD130-140) to N1,000,000 (approximately USD1,300-1,400). These fines apply to physical and legal entities. In the case of bribery in relation to an auction, the applicable fine is the current value of the property being auctioned. Regarding the payment of the gift or benefit, forfeiture of the gift or benefit and a fine of not less than five times the value of that gift or benefit can be ordered.

b. **The Criminal Code Act**: The penalties range from two to seven years' imprisonment and/or a fine of N1,000 (approximately USD0.6004). The fine applies to both physical persons and legal entities.

c. **The EFCC Act**: The penalties range from two to three years' imprisonment.

d. **The 2020 Banks and Other Financial Institution Acts ("BOFIA")**: The penalty stipulated in Section 46(1)(d) of BOFIA is a fine of N5,000,000 (approximately USD 3,002) (which applies to both physical persons and legal entities) and/or mandatory imprisonment for five years, as well as the forfeiture of the sum or item received as a gift or benefit.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance programme, self-reporting)?

Penalties for bribery and corruption are stipulated by the various anti-corruption legislations. However, courts generally have some discretion as to the imposition of penalties except in the case of offences with mandatory penalties and/or sentences, such as the mandatory seven-year term of imprisonment stipulated in CPORA as the penalty for asking for and receiving bribes. The mitigating factors that may be considered in the imposition of a penalty include whether a guilty plea is entered into, the youthful age of the offender and the previous good character of the offender.[20]

In line with the 2016 Sentencing Guidelines Practice Direction of the Federal Capital Territory of the Chief Judge of the High Court of the Federal Capital Territory, mitigating factors that may be considered by the court include the absence of any previous conviction, remorse (evidenced in particular by restitution or reparation to the victim), evidence of good character, co-operation with investigators during investigation or prosecution, etc.

### 18. What are the possible defences (for example, effective compliance programme) or exceptions (for example, payments made under threat or duress)?

A possible defence against a charge of bribery and corruption is to show that gifts or benefits were personal gifts from relatives or personal friends. This defence needs to be understood within the specific context that the CFRN[21] allows a public officer to accept personal gifts or benefits from relatives or personal

20 *Elizabeth v F.R.N.* (2021) LPELR-54632 (CA) .

21 Section 6(3) of Part 1 of the Fifth Schedule [to the Constitution of Nigeria, 1999].

friends to such an extent and on such occasions as are recognised by custom. In other words, merely accepting personal gifts or benefits from relatives or personal friends to be consistent with local custom would not in and of itself constitute an offence, provided that the gift or benefit is not offered to the public officer as an inducement or a bribe for granting any favour or for the discharge of his/her duties in favour of the offeror.

Another defence provided under the Fifth Schedule to the CFRN[22] is for the public officer to show that a gift or donation was given to him/her at a public or ceremonial occasion. Such gift or donation shall be treated as a gift to the appropriate institution of government represented by the public officer and cannot be used personally by the public officer. These statutory defences only apply to public officers in Nigeria.

## 19. Does the legislation provide for judicial settlement and, if so, under what criteria?

The 2015 Administration of Criminal Justice Act and the Administration of Criminal Justice Laws of the various states in Nigeria, which govern the trial of criminal offences, provide for judicial settlement in the form of plea bargaining. The conditions for entering into a plea bargain are as follows:

a. the consent of the victim or his/her representative during or after the presentation of evidence of the prosecution, but before the presentation of the evidence of the defence, is obtained; and

b. if the evidence of the prosecution is insufficient to prove the offence charged (in this case, bribery or corruption) beyond a reasonable doubt; and

c. one of the following three conditions is fulfilled:

   i. the defendant has agreed to return the proceeds of the alleged crime or make restitution to the victim or his/her representative; or

   ii. the defendant, in a case of conspiracy, has fully co-operated with the investigation and prosecution of the alleged crime by providing relevant information for the successful prosecution of other offenders; or

   iii. the offer and acceptance of a plea bargain is in the interest of justice, the public, public policy, and the need to prevent abuse of the legal process.

Whilst the first two conditions – (a) and (b) – are cumulative, only one of the last three conditions – (c)(i), (ii) and (iii) – is required for a plea bargain to go ahead. In other words, for a plea-bargain to proceed, the first two (cumulative) conditions, together with at least one of the last three conditions, must be satisfied.

22 Section 6(3) [of Part 1 of the Fifth Schedule to the Constitution of Nigeria, 1999].

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti- bribery legislation?

The administrative authorities responsible for enforcing anti-bribery legislation in Nigeria are:

a. The Independent Corrupt Practices and Other Related Offences Commission (the "**ICPC**"): Established under the CPORA, the ICPC has the foremost duty to investigate and prosecute bribery, corruption and other offences contained in CPORA.

b. The Economic and Financial Crimes Commission: Created by the EFCC Act, the Commission is responsible for investigating and prosecuting financial crimes, which include fraud and any form of corrupt malpractices.

c. The Nigerian Police (especially the Special Fraud Unit and Anti-Fraud section): The Nigerian Police has wide investigative and prosecutorial powers, and can, among other matters, investigate and prosecute cases of bribery and corruption brought under the Criminal Code Act and the Penal Code.

d. The Code of Conduct Bureau: This agency was created with the aim of maintaining a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability. The foremost function of this agency is to receive complaints about non-compliance with the Code of Conduct Bureau and Tribunal Act, and refer such complaints to the Code of Conduct Tribunal.

e. The Public Complaints Commission: This agency has wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies, or their officials.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

Bribery and corruption enforcement is frequently pursued by the relevant authorities. Findings by Transparency International show that the ICPC has secured 180 convictions for corruption-related offences since its inception on 29 September 2000. Also, the 2022 report card released by the EFCC indicated that a total of 3,785 convictions for corruption and financial crimes were secured in 2022[23].

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

Though the CPORA and the EFCC Act empower the chairman of the ICPC and the Attorney-General of the Federation, respectively, to make rules related to enforcement, none have yet been published. As indicated above, the Chief Judge of the Federal Capital Territory issued the 2016 Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction setting out the procedure for the sentencing of corruption and related offences.

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23 https://www.efcc.gov.ng/efcc/news-and-information/news-release/8781-efcc-secures-3785-convictions-in-2022#:~:text=The%20Economic%20and%20Financial%20Crimes,all%20its%20Commands%20in%202022

# IV. ANTICIPATED REFORMS

## 23. Are there any anticipated reforms to the legislation?

To strengthen the fight against bribery and corruption in Nigeria, some anti-corruption Bills are currently being considered by the legislative arm of the government, namely:

a. The **Anti-Corruption Court (Establishment) Bill (2014)**. This Bill seeks to establish a Special Corruption Court ("**SCC**") to strengthen the Nigerian fight against corruption and to accelerate the trial and prosecution of corruption cases. The SCC will, among other things, have the power to initiate investigations of a government official and/or civil servant to determine whether corruption has been committed, and to initiate investigations into the properties of any person where the person's lifestyle and properties are not commensurate with that person's source(s) of income. It was proposed in the Bill that corruption-related cases should be concluded within six months up to a maximum of 12 months.

b. The **Code of Conduct and Anti-Corruption Tribunal Bill (2021)**. This Bill is intended to repeal the 1989 Code of Conduct Bureau and Tribunal Act and to enact the 2020 Code of Conduct and Anti-Corruption Tribunal Act. It seeks to establish the Code of Conduct and Anti-Corruption Tribunal; this would exercise concurrent jurisdiction with the Federal High Court and have exclusive jurisdiction to hear and determine complaints of violation of the Code of Conduct for Public Officers (in Part III of the Bill), which is substantially a repeat of the Code of Conduct for Public Officers contained in Part 1 of the Fifth Schedule to the CFRN.

c. The **Whistle-blower Protection Bill (2019)**. This Bill seeks to provide for the manner in which individuals may, in the interest of the public, disclose information that relates to unlawful or other illegal conduct or corrupt practices, and to provide protection and rewards to whistle- blowers. Under the Bill, disclosure cannot be made in respect of: (a) records of deliberation of the Federal Executive Council; (b) information forbidden by the court to be published; (c) information that will constitute a breach of privilege of the legislature; (d) the sovereignty, strategic, scientific or economic interest of Nigeria, or the incitement of an offence; and (e) if disclosure violates national security and other offences prohibited under the Official Secrets Act.

While the Bill does not stipulate the criteria to be satisfied in order to qualify as a whistle-blower, it lists the following as persons who are qualified to make disclosure of improper conduct: (a) an employee in respect of an employer; (b) an employee in respect of another employee; or (c) a person in respect of another person or an institution.

To ensure their protection, the Bill provides that whistle-blowers shall not be subjected to victimisation. A whistle-blower would be considered to have been subjected to victimisation if, among other things, he/she is dismissed, suspended, declared redundant or denied a promotion. It bears mentioning that a whistle-blower would not be considered as victimised if the person against whom the

complaint of victimisation is made has the right in law to take the action complained of and the action is shown to be unrelated to the disclosure. A victimised whistle-blower has a right of action in court and may also request police protection if his/her life or property or that of his/her family members is endangered or likely to be endangered.

The Bill also seeks to void any contractual provisions that prohibit or discourage the disclosure of improper conduct. The Bill sets the following monetary rewards for whistle-blowers whose disclosure results in the recovery of money: (a) 1.5% of the amount recovered if it is less than N1,000,000,000 (approximately USD600,420[.3]); (b) 1% of the amount recovered if it is above N1,000,000,000 (approximately USD600,420[.3]); or (c) 1% of the monetary value of the property recovered, whether movable or immovable.

It is difficult to set an expected timeline for the enactment of the above-mentioned Bills. Potential sources of delay include the ordinarily protracted procedures of the relevant legislative houses and changes in legislative and policy priorities of the new government following relatively recent general elections in Nigeria. With the appropriate political will within the government, however, the passage of the Bills may be accelerated by the National Assembly and promptly signed into law by the President.

# SENEGAL

*CONTRIBUTED BY SCP MAME ADAMA GUEYE & PARTNERS*

## Key points

| | |
|---|---|
| **Key legislations** | The main legislation in effect in Senegal that deals with anti-corruption includes:<br>• Law on the Establishment of the National Office for the Fight Against Fraud and Corruption ("**OFNAC**")<br>• Law 2012-22 dated 27 December 27, 2012, on transparency in the management of public finance<br>• Law No. 61-33 of 15 June 1961, on the general status of civil servants, as amended<br>• Law No 2014-17 dated 2 April 2014, related to the declaration of assets<br>• Law No 2018-03 dated 23 February 2018 related to the fight against money laundering and terrorism financing<br>• Law No 2023-14 dated 27 July 2023, amending Law No 65-61 of 21 July 1965 on the code of criminal procedure and instituting a Financial Judicial Pool (Pool Judiciaire Financier or "**PJF**") at the Tribunal de Grande Instance hors classe and the Dakar Court of Appeal |
| **Covers/Addresses private sector bribery** | Yes |
| **Covers/Addresses active and passive bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | Under Senegalese law, self-reporting may be considered as a means of defence. In addition, the accused may raise any objection he/she believes is relevant, with the appropriate evidence. |
| **Obligation to self-report** | No, self-reporting is a right rather than an obligation. |
| **Statutory penalties** | For bribery offences, the maximum term of imprisonment is 10 years and the maximum fine amounts to twice the value or amount of the gifts received.<br>The penalties incurred by corporates include a fine, the maximum rate of which is equal to five times that provided for natural persons, as well as other ancillary sanctions. |
| **Possibility to enter into a judicial settlement** | Yes |
| **Enforcement trends** | Not many cases resulted in sanctions but for those that did, the penalty were imprisonment. |

# I. OVERVIEW

### 1. What is the definition of bribery and corruption?

According to the Senegalese Criminal Code, bribery and corruption occur when a public official or a private person solicits, accepts, offers, promises or receives gifts or presents in exchange for the accomplishment or omission of an act that forms part of their duty. This definition is similar to that provided by African conventions, such as the African Union ("**AU**") Convention and the Economic Community of West African States ("**ECOWAS**") Protocol.

Under Senegalese law, both active and passive bribery are prohibited.

### 2. What is the perception of the level of corruption in this jurisdiction?

The general perception of the level of corruption in Senegal remains high. Transparency International ranked Senegal 72 out of 180 countries worldwide in the 2022 Corruption Perception Index. Moreover, Senegal's ranking in the Corruption Perception Index has worsened in recent years.

Corruption in the public sector is of particular concern in Senegal.

### 3. Is private sector bribery covered by the law?

Yes, the Senegalese Criminal Code forbids both private and public sector bribery. Under article 159 paragraph 5 of the Senegalese Criminal Code, private sector bribery occurs when a clerk, employee or attendant either directly or through an intermediary, without the consent and knowledge of his/her employer solicits, accepts, offers, promises or receives gifts, presents, commissions, discounts or considerations for doing or refraining from doing any act.

### 4. Can companies be held liable for acts of corruption? If so, under what conditions?

With respect to corporate liability, the Senegalese Criminal Code expressly provides that legal entities are criminally liable for the offences committed on their behalf by their bodies-i.e. the board of directors named in the company's statues- or representatives-i.e. the company's managers acting on behalf of the company- and, as such, may be sentenced to pay a fine. The criminal liability of legal entities does not exclude that of any employees who are perpetrators of or accomplices to the act of corruption or bribery.

### 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

Companies cannot be held liable for the actions of third parties unless they acted or deliberately omitted to act, or if they are beneficiaries of the offence. In that sense, criminal liability is strictly personal.

Similarly, companies are not liable for the actions of their foreign subsidiaries which have separate and distinct legal personalities unless they participated in the commission of the offence.

### 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Aiders and abettors can be prosecuted for complicity in corruption but there is no specific definition for either term under Senegalese law.

### 7. Does the law apply beyond national boundaries?

Yes, foreign individuals or companies can be prosecuted for bribery outside of Senegal.

Based on article 13 of the AU Convention on Preventing and Combating Corruption, each state party has jurisdiction over acts of corruption and related offences where:

- The offence is committed in whole or in part on its territory;
- The offence is committed by one of its nationals abroad or by a person residing in its territory;
- The alleged offender is in its territory and is not extradited to another country; or
- The offence, although committed outside its jurisdiction, affects, from the point of view of the State party, its national interests, or where the deleterious and harmful consequences or effects of such offences have an impact on that State party

The Code of Criminal Procedure also provides that Senegalese criminal law is applicable when:

- Any Senegalese citizen who, outside the territory of the Republic, is guilty of an act qualified as a crime punishable by Senegalese law, may be prosecuted and judged by the Senegalese courts; and,
- Any Senegalese citizen who, outside the territory of the Republic, is guilty of an act qualified as a crime by Senegalese law, may be prosecuted and trialed by Senegalese courts if the act is punishable by the legislation of the country where it was committed.

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Although Senegal is party to the United Nations Convention Against Corruption which provides for a whistle-blower protection mechanism and mandates its members to implement it, Senegal has not adopted any laws related to the protection of whistle-blowers yet.

Nevertheless, the National Office Against Corruption and Fraud (“**OFNAC**”) and the public procurement authorities, amongst other authorities, have set up measures to guarantee the anonymity of whistle-blowers. This aims to protect individual or legal entities, whether Senegalese or not, who disclose facts related to corruption, fraud or similar offences.

By the same token, an alert can be raised by banks that have knowledge of suspicious transactions to the National Financial Information Processing Unit (“**CENTIF**”), which is the competent regulatory authority for any matters relating to money laundering or corruption. In case of suspicion of legal infringement, the CENTIF may refer the issue to the prosecutor's office.

Whistle-blower can also benefit from article 197 bis par 3 of Senegalese Criminal Code that prohibit retaliation measures against witness.

## 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

Senegalese law does not require disclosure of crimes relating to bribery. However, there are measures that have been implemented to encourage individuals to report such crimes. For instance, the anti-bribery and corruption authorities have established mechanisms that facilitate reporting, including:

- A toll-free number;
- An online anonymous reporting mechanism; and
- An address to which individuals can anonymously send mail.

Such information is then collected, analyzed and made available to the judicial authorities responsible for prosecution.

Individuals who have had knowledge of the commission of an offence of corruption and have decided to report it to the competent authorities shall not be prosecuted and retaliation measures against such individuals are strictly prohibited.

## 10. Does the legislation include specific provisions in relation to influence peddling?

There is no specific provision prohibiting influence peddling under Senegalese law. Nevertheless, the act of using one's influence to obtain favours or preferential treatment for another is generally associated with corruption.

## 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

The general anti-bribery provisions applicable in Senegal indicate that gifts and hospitality are considered as a form of bribery and, as such, are strictly prohibited in both the private and the public sector.

## 12. How are facilitation payments treated by the law?

Senegalese law does not provide for any rules relating to facilitation payments.

## 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

The Uniform Act on Accounting and Financial Reporting provides for an obligation to keep accounting records or documents as well as supporting documents for a period of 10 years.

This obligation applies to:

- Any trader, natural or legal person, including any commercial company in which a State or any other person governed by public law is a partner, as well as any economic interest grouping; and
- Commercial companies, cooperative companies, public entities and mixed economy companies.

The Senegalese Tax Code provides for the same duration of ten years.

Moreover, in the specific context of financial institutions, Law 2018-03 on money laundering and the fight against terrorism provides that, without prejudice to the provisions prescribing more stringent obligations, financial institutions shall keep for a period of ten years, starting from the closing of their accounts or the termination of their relations with their regular or occasional customers, the documents and records relating to their identity.

In general, how to provide evidence before the court is discretionary in criminal matters. As a consequence, one may have an interest in keeping and maintaining records or documents beyond the required period should they be useful for any future proceedings.

## 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

Senegalese law does not state specific provisions with respect to any compliance program. It is up to companies to decide whether or not to implement such policies.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (For example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Senegal )?

Senegal has ratified the following international anti-bribery and corruption treaties and conventions, including:

- The ECOWAS Protocol on the Fight Against Corruption;
- The African Union Convention on Preventing and Combating Corruption;
- The United Nation Convention Against Corruption; and
- Directive 1/2009/CM/UEMOA Establishing the Code of Transparency in Financial Management.

## II. PENALTIES and DEFENSES

### 16. What are the penalties for corporates and individuals for bribery?

The penalties incurred for bribery by corporate entities and individuals are provided for in the Senegalese Criminal Code.

Individuals condemned for acts of bribery or corruption face imprisonment for 2 to 10 years and a minimum fine of 150,000 Francs CFA (approximately USD 240), or double the promised value or goods received. Sentences may be reduced to 1 to 3 years in prison and a fine ranging from 25,000 (approximately USD 40) to 100,000 Francs CFA (approximately USD 160) when the offence is committed by an employee or a worker. An offence is considered not to have been committed by an employee if the individual is not bound by a subordination relationship, a salary and an employment contract with his/her employer.

Senegalese legislation also prohibits influence peddling and penalizes anyone carrying out such wrongful conduct with imprisonment from 1 to 5 years and the same fine as for corruption.

Legal persons can be sentenced to paying a fine five times that which is applicable to physical persons and may be subject to supplementary penalties, such as disqualification from public tenders, placement under judicial supervision or prohibition to make a public appeal for funds, prohibition from participating in procurement activities, forfeiture of gains improperly received and dissolution when the entity was created for improper purposes.

It is relevant to note that accomplices are subject to the same punishments as the perpetrators.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self-reporting)?

Courts generally have some discretion as to the imposition of penalties and may consider the following mitigating circumstances: the defendant's criminal record, his/her vulnerability, whether s/he is a minor and whether he/she acted in good faith.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for example, payments made under threat or duress)?

The existence of adequate anti-bribery procedures, namely an effective compliance programme, will not prevent the company from being subject to criminal proceedings for acts of corruption or bribery. However, what should have been an effective compliance program may be considered by the court when deciding the appropriate penalties.

### 19. Does the legislation provide for judiciary settlements and if so, under what criteria?

According to Senegalese legislation, it is possible to resort to penal mediation for both physical and legal persons, which consists of recourse to a mediator who seeks a solution freely negotiated between the parties to a conflict arising from an offence. The recourse to penal mediation can only be ordered by the public prosecutor or court of judgment, depending on the case. It takes place under the control of the mandating magistrate.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

Alongside the public prosecutor and Senegalese criminal courts, the administrative authorities and judicial authorities responsible for enforcing the anti-bribery legislation in Senegal are:

- OFNAC: aims to prevent and combat fraud, corruption and related offences. The OFNAC is also responsible for receiving, processing and keeping the declarations of assets of persons subject to the Law n°2014-17 of 2 April 2014 on the declaration of assets. Its investigation reports are directly transmitted to the competent public prosecutor.
- CENTIF: a structure for combating money laundering and related corruption. Its goal is to ensure the collection and processing of information relating to the fight against money laundering, in particular that resulting from suspicious transaction reports.
- Court of Repression of Illicit Enrichment ("**CREI**"): the court responsible for preventing illicit enrichment and any related corruption or concealment offences. It has jurisdiction to try individuals accused of unlawful enrichment to the detriment of the taxpayer.
- Pool Judiciaire Financier (PJF): specializes in the treatment of highly complex economic or financial crimes and related offences, including corruption, embezzlement, fraud, misappropriation of public funds, money laundering, illicit enrichment, and terrorist financing.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

There are no specific databases or statistics on corruption that would allow the assessment of anti-bribery enforcement actions in Senegal. However, to date, there have only been a handful of corruption cases that resulted in a conviction.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

No guidelines on the interpretation and enforcement of Senegalese legislation have been published.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

The National Assembly recently voted laws amending the following texts:

- Law No 2012-30 dated 28 December 2012 relating to the National Office for the Fight Against Fraud and Corruption (OFNAC)
- Law No 2014-17 dated 2 April 2014 relating to asset declaration.

At the date of publication of this Guide, this law had not been published in the official journal and thus was not yet in force.

# SOUTH AFRICA
*CONTRIBUTOR: ENSAFRICA*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | 2004 Prevention and Combating of Corrupt Activities Act ("**PRECCA**") |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | No statutory defences specific to corruption-related offences. However, the 2023 Judicial Matters Amendment Bill (the "Amendment Bill"), which has received Parliamentary approval, proposes an amendment to PRECCA by including an "adequate procedures" defence available to persons charged with the proposed new offence of failing to prevent corrupt activities. |
| **Obligation to self-report** | Yes, personal obligation for persons in a position of authority. |
| **Statutory penalties** | Unlimited fine and life imprisonment. |
| **Possibility to enter into a judicial settlement** | No. However, the 1977 Criminal Procedure Act (the "**Criminal Procedure Act**") provides for a legal mechanism that may result in the discharge of a state witness (who may or may not have already been charged) from prosecution, provided that, amongst others, such witness answers all questions put to him/her honestly and in full.<br><br>The Judicial Commission of Inquiry into Allegations of State Capture (the "**State Capture Commission**") has recently recommended that deferred prosecution agreements be introduced into South African law. The recommendation is currently being considered by the South African government. In the interim, the National Prosecuting Authority is relying on the Corporate Alternative Dispute Resolution Directive to enter into settlement agreements with entities as an alternative to prosecution. |
| **Enforcement trends** | There has historically been a lack of successful prosecution of corruption and related offences in South Africa. However, there is a recent drive towards the investigation and prosecution of corruption in the country, with a number of high-profile arrests having been made in connection with "state capture" following the publication of the report issued by the State Capture Commission. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

The primary legislation governing bribery and corruption in South Africa is PRECCA. While PRECCA does not refer to "bribery" specifically, the various corrupt practices prohibited by PRECCA are broad enough to encompass acts of bribery as traditionally understood. PRECCA creates a general offence of corruption as well as various specific corrupt offences.

Corruption is defined as: (i) accepting, agreeing or offering to accept any gratification from another person for the benefit of one's self or another person; or (ii) giving, agreeing or offering to give to another person any gratification for their benefit or the benefit of another in order to influence the receiver to act in a manner that is illegal or dishonest; misuses or sells information or material acquired while carrying out their function; amounts to an abuse of position, breach of trust or a violation of a legal duty; [is] designed to achieve an unjustified result; or amounts to any other unauthorised or improper inducement.

## 2. What is the perception of the level of corruption in this jurisdiction?

There is a high level of perceived corruption in South Africa and the country was ranked 72 out of 180 countries in the 2022 Transparency International Corruption Perceptions Index, with a score of 43 out of 100.

## 3. Is private sector bribery covered by the law?

Yes. PRECCA criminalises both public and private sector bribery.

## 4. Can companies be held liable for acts of corruption? If so, under what conditions?

Yes. The Criminal Procedure Act provides that a corporate body can be held criminally liable for: (i) any act performed by, under instruction of or with express or implied permission of a director or servant of a corporate body; and (ii) the omission of any act which ought to have been but was not performed by or under the instruction of a director or servant of a corporate body. Specific intent is not required to find liability[1].

The term "servant" is not defined by the Criminal Procedure Act and is generally understood to be synonymous with the term "employee," although jurisprudence on this topic is limited.[2] In addition, it may be possible that a business partner or other third party could fall within this concept.

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

They may be, depending on the nature of the conduct of the foreign subsidiaries. In the event that the conduct of a foreign subsidiary falls within the scope of section 332 of the Criminal Procedure Act as discussed above, a company may be liable on this basis.

1 Section 332(1) of the Criminal Procedure Act.
2 Du Toit et al *Commentary on the Criminal Procedure Act*.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Yes, PRECCA provides that any person who: (i) attempts; (ii) conspires with any other person; or (iii) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person to commit an offence in terms of PRECCA is also guilty of an offence.[3] A person convicted of the foregoing offence is liable to the same punishment as a perpetrator of the primary offence.[4]

## 7. Does the law apply beyond national boundaries?

PRECCA expressly provides for extraterritorial application. If an act alleged to constitute an offence under the Act (such as corruption) occurs outside South Africa, a court in South Africa shall still have jurisdiction if the person to be charged: (i) is a citizen of South Africa; (ii) is ordinarily resident in South Africa; (iii) was arrested in the territory of South Africa, in its territorial waters or on board a ship or an aircraft registered in South Africa at the time the offence was committed; (iv) is a company incorporated or registered in South Africa; or (v) is any body of persons, corporate or unincorporated, in South Africa.

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Yes. The primary legislation which provides protection to whistle-blowers is the 2000 Protected Disclosures Act (the "**PDA**"). The PDA describes the procedures for private and public sector employees to disclose information regarding unlawful or irregular conduct by their employers or other employees of their entity. It also provides protection to employees who make disclosures which are protected in terms of the PDA. To qualify as a protected disclosure, a disclosure must be made in good faith and in accordance with the procedures outlined in the PDA, which vary based on the category of person to whom the disclosure is made (e.g., an employer or a legal adviser). A disclosure is made in good faith when it is made in "*a responsible and honest manner without any motives to gain any personal advantages from making the disclosure*."[5]

## 9. Does the law mandate or incentivise disclosure of crimes relating to bribery and corruption?

Yes. There is a statutory mandatory reporting obligation. PRECCA places a reporting obligation on persons in a position of authority who know or ought reasonably to have known or suspected that any other person has committed an act of corruption, theft, fraud, extortion or forgery, and where the offence amounts to ZAR 100,000 (approximately USD 5,800) or more. Knowledge or suspicion of an offence must be reported to any police official in the Directorate for Priority Crime Investigation (also known as the "**Hawks**"). Any person who fails to comply with the reporting obligation is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding 10 years.[6]

South African legislation does not currently incentivise reporting of crimes relating to bribery and corruption.

3 Section 21 of PRECCA.

4 Section 26(2) of PRECCA.

5 *Protected Disclosures Act, 2000 (Act 26 of 2000): Practical Guidelines for Employees.*

6 Sections 34(1) and (2), read with section 26(1)(b) of PRECCA.

## 10. Does the legislation include specific provisions in relation to influence peddling?

No, PRECCA does not specifically refer to influence peddling. However, the practice as typically understood may fall within the conduct prohibited by PRECCA in circumstances where "gratification" is given or received, whether directly or indirectly, in order to influence another person to act in a corrupt manner. As PRECCA applies even where gratification is given indirectly (i.e. via an intermediary), conduct of the nature typically described as "influence peddling" may fall within the ambit of the various corrupt activities prohibited by PRECCA. An analysis of the specific facts would be required to determine whether particular conduct would amount to an offence in terms of PRECCA.

## 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Yes. The Local Government: Municipal Finance Management Act and the Municipal Supply Chain Management Regulations ("**Municipal Supply Chain Regulations**") place certain restrictions on gifts. Regulation 47(1) of the Municipal Supply Chain Regulations provides that no person who is a provider or prospective provider of goods or services to a municipal entity, or a recipient or prospective recipient of goods disposed or to be disposed of by a municipal entity, may either directly or indirectly promise, offer or grant: (a) any inducement or reward to the municipal entity in connection with the award of a contract; or (b) any reward, gift, favour or hospitality to any official or any other player involved in the supply chain of the municipal entity. The aforementioned restrictions do not apply to gifts less than ZAR 350 (approximately USD 19) in value.

## 12. How are facilitation payments treated by the law?

PRECCA does not expressly define or refer to facilitation payments. However, the making of such payments would likely constitute an offence in terms of PRECCA where it is coupled with an intention to influence another person to act in a manner:

i. That is illegal, dishonest, unauthorised, incomplete, or biased; or amounts to misuse or selling of information acquired in the course of the performance of any functions arising out of a constitutional, statutory, contractual or any other legal obligation;

ii. That amounts to the abuse of a position of authority, a breach of trust or the violation of a legal duty;

iii. Designed to achieve an unjustified result; or

iv. That amounts to any other unauthorised or improper inducement.

## 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

PRECCA does not provide for books and records provisions which are analogous to those contained in similar statutes in other jurisdictions. However, the 2008 Companies Act (the "**Companies Act**") places an obligation on companies to keep accurate and complete accounting records, and it is an offence for a company to fail to do so with an intention to deceive or mislead any person.[7] A person party to the falsification of any accounting records of a company is liable on conviction to a fine, imprisonment not exceeding 10 years or both.

7 Section 28, read with sections 214 and 216 of the Companies Act.

### 14. Does the jurisdiction include specific provisions requiring companies to develop and implement a compliance programme (e.g., code of conduct, anti-bribery policy, due diligence on third parties, etc.)?

No, although the 2017 PRECCA Amendment Bill includes proposed revisions to PRECCA, including a requirement for companies to implement an "*appropriate internal compliance programme*". This bill was issued for comment during 2018; however, no further steps have been taken in respect of passing this bill into law.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (for example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

South Africa has ratified, amongst others: (i) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments; (ii) the United Nations Convention against Corruption; (iii) the African Union Convention on Preventing and Combating Corruption; and (iv) The Southern African Development Community Protocol against Corruption.

## II. PENALTIES and DEFENCES

### 16. What are the penalties for corporates and individuals for bribery?

The act of corruption under PRECCA can result in an unlimited fine or life imprisonment for individuals. In the case of corporate entities, the maximum penalty is an unlimited fine.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance programme, self-reporting)?

The existence of a compliance programme may be considered a mitigating factor during sentencing. Furthermore, attempts to obtain legal advice and regulatory guidance may also be considered mitigating factors.

### 18. What are possible defences (for example, effective compliance programme) or exceptions (for example, payments made under threat or duress)?

PRECCA does not currently provide for statutory defences to a charge brought in respect of a contravention of the Act. However, the Amendment Bill, which has received Parliamentary approval and is awaiting Presidential Assent, proposes an amendment to PRECCA by way of the inclusion of a new offence of failure by members of the private sector or incorporated state-owned entities to prevent corrupt activities. No offence is committed if the member had in place "*adequate procedures*" designed to prevent persons associated with it from giving, agreeing or offering to give any gratification prohibited in terms of Chapter 2 of PRECCA.

### 19. Does the legislation provide for judicial settlements and if so, under what criteria?

South Africa does not currently have a legislative provision for judicial settlements or deferred prosecution agreements. However, the Criminal Procedure Act provides for a legal mechanism that may result in the discharge of a state witness from prosecution, provided that, amongst others, such witness answers all questions put to him/her honestly and in full.[8] This procedure has been referred to as a "*prosecutorial tool*" to motivate a witness, who is usually an accomplice or an

8 Section 204 of the Criminal Procedure Act.

accessory, to testify despite the self-incriminatory nature of the testimony.[9] Typically, the state will make use of the above mechanism with witnesses that are less complicit in the offence in question in order to gather evidence to pursue successfully the main perpetrator(s). This mechanism is, in principle, applicable to all categories of offences although there are certain specific technical exclusions.[10] This mechanism is not available to corporate entities.

In addition, as discussed further below, the State Capture Commission has recently recommended that deferred prosecution agreements be introduced into South African law. The recommendation is currently being considered by the South African government. In the interim, the National Prosecuting Authority is relying on the Corporate Alternative Dispute Resolution Directive to enter into settlement agreements with entities as an alternative to prosecution.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

The South African Police Service ("**SAPS**") is the investigating authority with the constitutional mandate to investigate crime in South Africa. The NPA is constitutionally mandated to prosecute crime in South Africa. There are specialised divisions within the SAPS and NPA which specifically focus on investigating and prosecuting corruption, including the Directorate for Priority Crime Investigation and the Anti-Corruption Task Team, respectively. In addition, the President of South Africa has recently appointed a National Anti-Corruption Advisory Council which is mandated to *"advise government on the critical preventative measures, institutional capabilities and resources that are required to proactively curb a recurrence of state capture and to prevent fraud and corruption in South Africa".*

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

There has historically been a lack of successful prosecution of corruption and related offences in South Africa. However, there has been a recent drive towards the investigation and prosecution of corruption in the country, with a number of high-profile arrests having been made in connection with "state capture", following the publication in 2022 of the report issued by the Judicial Commission of Inquiry into Allegations of State Capture.

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

The South African Companies and Intellectual Property Commission has published the Guidelines for Corporate Compliance Programmes (Guidelines 1 of 2018), which is addressed to social and ethics committees of: (i) all listed public companies; and (ii) any other company required to establish a social and ethics committee in terms of the Companies Act.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

The Amendment Bill proposes an amendment to PRECCA by way of the inclusion of a new offence of failure by members of the private sector or incorporated state-owned entities to

9 *S v Kuyler* 2016 (2) SACR 563 (FB).

10 For example, the provision is not available to persons prosecuted for perjury arising from the giving of the evidence in question.

prevent corrupt activities. No offence is committed if the member had in place "*adequate procedures*" designed to prevent persons associated with it from giving, agreeing or offering to give any gratification prohibited in terms of Chapter 2 of PRECCA.

The 2017 PRECCA Amendment Bill includes various proposed revisions to South Africa's primary anti-corruption legislation, including: (i) adding the definition of "facilitation payments" and expanding the definition of "gratification" to include facilitation payments; (ii) requiring considering the amount of gratification paid, the benefit derived and a company's annual turnover when sentencing a corporate body under the Act; (iii) providing civil and criminal immunity for persons who submit reports of, amongst other things, corruption, as required in terms of PRECCA (as discussed more fully above) in good faith; and (iv) requiring implementation of internal compliance programmes to promote the detection and reporting of corruption and related offences.

In addition, the State Capture Commission report contains various non-binding recommendations in respect of, amongst other things, proposed legislative reform.

1. The introduction of deferred prosecution agreements by which the prosecution of an accused corporation can be deferred on certain conditions, namely that: (i) a company has self-reported facts from which criminal liability could be inferred and has co-operated fully in making such report; (ii) the company has agreed to engage in specific conduct intended to ensure that such conduct is not repeated; (iii) the company has paid a fine or has been subject to other remedial action; and (iv) the terms and conditions of the agreement have been sanctioned by the Tribunal of the Public Procurement Anti-Corruption Agency (the "**Agency**"), whose establishment was recommended by the State Capture Commission.

2. That legislation be introduced or that existing legislation be amended: (i) to ensure that any person disclosing information to reveal corruption, fraud or undue influence in public procurement activity be accorded the protections stipulated in article 32(2) of the United Nations Convention Against Corruption which include, amongst others, procedures for the physical protection of witnesses, and the provision of evidentiary rules which permit witnesses to provide testimony in a safe manner such as through the use of video technology; (ii) identifying the Inspectorate of the Agency as the correct channel for the making of such disclosure; (iii) authorising the Litigation Unit of the Agency to incentivise such disclosures by entering into agreements to reward the giving of such information through a percentage of the proceeds recovered on the strength of such information; and (iv) authorising the offer of immunity from criminal or civil proceedings if there has been honest disclosure of information which might otherwise render the informant liable to prosecution or litigation.

# TANZANIA
*CONTRIBUTED BY A&K TANZANIA*

## KEY POINTS

| | |
|---|---|
| **Key legislation** | The Prevention and Combating of Corruption Act, Cap. 329 R.E. 2022 (the "**PCCA**") |
| **Covers/addresses private sector bribery** | Yes |
| **Covers/addresses passive and active bribery** | Yes |
| **Has extraterritorial reach** | Yes |
| **Defences** | The law does not provide any defences specific to corruption-related offences.<br><br>However, in practice, a possible defence is to distinguish any monetary or non-monetary advantage as being made separately from the obligation to perform or otherwise influence a government official in the execution of his/her duties. |
| **Obligation to self-report** | Yes |
| **Statutory penalties** | • Freezing of assets<br>• Fine not exceeding TSh 15,000,000 (approximately USD 6,500)<br>• Imprisonment for a term of 20 to 30 years<br>• Confiscation and forfeiture of instrumentalities and proceeds derived from the offence |
| **Possibility to enter into a judicial settlement** | Yes |
| **Enforcement trends** | The Prevention and Combating of Corruption Bureau (the "**PCCB**") is known to prefer apprehending an individual suspected of soliciting or accepting a bribe while in the act. In the case of monetary bribes, the PCCB provides the victims with bank notes with their serial numbers pre-recorded and verified upon making an arrest. As such, we note that, to a large extent, many corrupt transactions in the past would normally end up not reported due to the high threshold of proving that the offence occurred. |

# I. OVERVIEW

## 1. What is the definition of bribery and corruption?

The PCCA does not specifically define the term "bribery", but it establishes corruption and related offences. Specifically, according to the PCCA, a person commits the offence of corruption when he/she alone or with any other person:

(i) Solicits, accepts, obtains, or attempts to obtain from any person any advantage, either for himself/herself or for another, as an inducement to do, or a reward for doing, anything in relation to his/her duties; or

(ii) Gives, promises, or offers any advantage to any person, whether for the benefit of that person or of another, as an inducement to do, or a reward for doing, anything in relation to his/her duties.

Similarly, any public official who solicits or accepts any advantage as an inducement to carry out, or a reward for carrying out or abstaining from carrying out an act relating to his/her duties commits the offence of corruption. Consequently, corruption is punishable regardless of whether it is active, passive, direct or indirect.

The term "advantage" is interpreted broadly and does not only include pecuniary offers. Under the PCCA, the term "advantage" has been defined as a gift of any good, loan, fee, reward or favour, and includes valuable consideration of any kind, discounts, commissions, rebates, bonuses, employment or services in any capacity. The PCCA has not provided for any quantification of what would be deemed as an acceptable advantage. It is therefore implied that any amount of valuable consideration intended to induce, reward, or otherwise influence a government official in the execution of his/her duties will be caught by the provisions of the PCCA and would therefore be unlawful.

The PCCA also provides for a presumption of corruption when it has been proven that an advantage was offered, given, solicited, accepted, or obtained by a public official by or from a person holding or seeking to obtain a contract from a public office.

## 2. What is the perception of the level of corruption in this jurisdiction?

Tanzania was ranked 94 out of 180 countries in the 2022 Corruption Perceptions Index published by Transparency International, moving down seven ranks compared to the previous year.

## 3. Is private sector bribery covered by the law?

Yes, the PCCA covers transactions done in the private sector, meaning that private sector bribery could be investigated, tried and prosecuted in the same manner as public sector bribery.

## 4. Can companies be held liable for acts of corruption? If so, under what conditions?

The PCCA does not define who shall be regarded as a person in the context of corruption cases. However, the term "person" has been defined under the Interpretation of Laws Act, CAP 1 R.E. 2019 (the "**ILA**"), which includes public bodies, companies and associations. Consequently, if a company commits an act of corruption, it is not only possible but imperative that such company is charged with the offence of corruption under the PCCA.

As actions done by corporations are mainly through individuals/executives, individuals are more exposed to corruption charges than legal entities since the element of mens rea cannot be

proven for a legal entity. However, companies may be held criminally liable for actions done by their agents in the course of business during their employment for the benefit of the company. The liability arises when it is proved that the offence was committed yet no diligence was exercised to prevent the commission of the offence.

## 5. Can companies be held liable for the actions of third parties, including foreign subsidiaries? If so, under what conditions?

The PCCA does not provide for criminal liability of a parent company for the actions of its subsidiaries. What is clear is that a parent company will be liable for corruption where it commits an offence in conjunction with the subsidiary company or aids or abets the subsidiary company in committing an offence.

## 6. Can aiders and/or abettors be held liable for acts of corruption? If so, under what conditions?

Pursuant to the PCCA, any person who aids or abets another person in commission of an act of corruption commits an offence and shall be liable on conviction to a fine not exceeding TSh 2,000,000 (approximately USD 844) or to imprisonment for a term not exceeding two years, or both.

## 7. Does the law apply beyond national boundaries?

Pursuant to Section 2 of the PCCA, the act shall apply to any conduct that takes place in Mainland Tanzania, i.e. the majority part of the United Republic of Tanzania which excludes Zanzibar, and shall also apply to any Tanzanian national who commits any act or omission constituting an offence of corruption where: (i) the act or omission occurs somewhere other than in Tanzania; and (ii) the act or omission is done by that person, or for him/her, by another person somewhere other than in Tanzania.

## 8. Is there a whistle-blower protection regime in your jurisdiction?

Tanzania has a whistleblower protection regime provided for by the 2022 Whistleblower and Witness Protection Act CAP. 446 R.E. (the "**WWPA**"). Any person who discloses wrongdoing in accordance with the provisions of the WWPA qualifies as a whistleblower.

In addition to the WWPA, the PCCA provides safeguards to informers, witnesses, experts and victims for offences within its scope.[1] Under the PCCA, information relating to the commission of an offence or details leading to the apprehending of offenders shall not be admitted in evidence and no witness in either a civil or a criminal case shall be obliged to disclose any details relating to the whistleblower. Furthermore, any documentation, book or paper which contains information that may be used in evidence to disclose the whistleblower's details shall be concealed from public view.

Any whistleblower who suffers any injury or harm as a result of such disclosure of information will be afforded reasonable protection, compensation and assistance by the government after the PCCB's assessment of the magnitude of the harm.

The PCCA criminalises the victimisation of any person who made a disclosure with respect to any offence under the Act. Violation of this can result in a fine not exceeding TSh 500,000 (approximately USD 214) and imprisonment for a term not exceeding one year. The term "victimisation" has been defined to mean any act:

1 Sections 51 and 52 of the PCCA.

- Which causes injury, damage or loss;
- Of intimidation or harassment;
- Of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- Amounting to threats of reprisals.

## 9. Does the law mandate or incentivize disclosure of crimes relating to bribery and corruption?

The PCCA places an obligation on every person, whether private or public, who is or becomes aware of the commission of an offence under it to inform the PCCB. Moreover, failure to report the commission or the intent to commit any offence under the PCCA by any person who has been solicited to give or receive a bribe may also constitute an offence by such person jointly with the person offering such bribe.

There is no clear definition of the phrase "*become aware*" either in the PCCA or in the regulations, and it should therefore be interpreted within the context of the act. The purpose of giving information to the PCCB is to enable it to initiate the investigation process and therefore such information need not be conclusive.

The PCCA does not indicate a set timeline for reporting corruption matters but, rather, requires a person to report to the PCCB once they become aware. Additionally, it does not place any legal consequences on any third party with respect to the duty to report corruption matters. Based on official statistics published by the PCCB, between 2017 and 2020, the PCCB received 22,424 alerts related to corruption.

The PCCA further provides protection to whistleblowers against civil or criminal liability as a result of such disclosure.

The PCCB is known to prefer apprehending an individual suspected of soliciting or accepting a bribe while in the act. In the case of monetary bribes, the PCCB provides the victims with bank notes with their serial numbers pre-recorded and verified upon making an arrest. As such, to a large extent, many corrupt transactions in the past would normally end up not reported due to the high threshold of proving that the offence occurred.

The PCCA further provides that when a person discloses an act of corruption which he/she believes on reasonable grounds may be true at the time of disclosure, and the act is of such a nature as to warrant an investigation, the whistleblower will not incur civil or criminal liability as a result of such disclosure.

## 10. Does the legislation include specific provisions in relation to influence peddling?

Under the PCCA, any person who promises, offers or gives to a public official or any other person, directly or indirectly, an undue advantage in order that the public official or that other person can abuse his/her real or supposed influence with a view to obtaining from the administration or a public authority an undue advantage for the original instigator of the act or for any other person, commits the offence of trading in influence. It shall be liable on conviction to a fine not exceeding TSh 3,000,000 (approximately USD 1,280) or to imprisonment for a term not exceeding 2 years, or both.

Similarly, any public official who, directly or indirectly, solicits or accepts an undue advantage for himself/herself or for any other person in order that such public official abuses his/her real or supposed influence with a view to obtaining from an

administration or a public authority an undue advantage, commits the same offence and shall be liable on conviction to the same penalties.

### 11. Does the legislation (or other legislation) include specific provisions in relation to gifts and hospitality (e.g., provided to government officials)?

Public officials are prohibited from receiving or soliciting any advantage as an inducement or a reward for executing or abstaining from official duties. The term "advantage" includes gifts and valuable consideration of any kind regardless of monetary value. However, public officials can lawfully receive certain items that are not considered "advantages" (e.g. private meals, sports or cultural events, clients' conferences and seminars); whether an item constitutes an advantage is determined on a case-by-case basis.

Public officials can receive gifts or hospitality, if such gifts or hospitality are not in any way intended to induce or influence special treatment from them in the ordinary execution of their duties.

### 12. How are facilitation payments treated by the law?

As noted above, the PCCA has not quantified the threshold at which an advantage is not acceptable. Therefore, any facilitation payment made to a government official directly or indirectly (e.g. through an agent acting under the instructions of the principal) with the intention to induce, reward or otherwise influence a government official's performance in the execution of his/her duties is considered unlawful. Further, where an entity/a person holds or is seeking to obtain a contract from a public office, any facilitation payment to the official will be presumed to be a bribe unless it can be proven otherwise.

Alongside the PCCA, there are specific regulations, such as: (i) the Public Service Act (the "**PSA**"), which requires public officials, i.e. any person or organisation, in public service, with whom a public servant entered into a service contract and who is responsible for the payment of salaries of such public servant, to disclose facilitation payments to their employer; and (ii) the 2015 Public Leadership Code of Ethics Act Cap. 398 R.E. (the "**PLCEA**"), which prohibits public officials or members of their families on their behalf to solicit, receive or give gifts to persons which might compromise or might be seen to compromise their integrity, save for items of nominal value which are intended solely for presentation (e.g. greetings cards, pens, etc.).

Moreover, the PLCEA requires that gifts given to public servants (other than items of nominal value as described above) exceeding the value of TSh 50,000 (approximately USD 21) should be declared and surrendered to the employer of the public servant in writing and the employer will acknowledge receipt and enter the gift into the Register of Declared and Surrendered Gifts which shall then be given to charities on behalf of the government.

### 13. Does the legislation include specific provisions in relation to maintaining accurate books and records?

The PCCA does not provide for any specific provisions requiring the maintenance of accurate books and records. However, there are some specific laws, e.g. taxation laws, which have provisions related to maintenance of accurate books and records for taxation purposes.

### 14. Does the legislation include specific provisions requiring companies to develop and implement a compliance program (e.g., code of

**conduct, anti-bribery policy, due diligence on third parties, etc.)?**

There is no specific provision in the PCCA requiring companies to develop and implement a compliance programme but, rather, it imposes a duty on private sectors to report the commission of an offence to the PCCB. So, in practice, companies have adopted anti-corruption policies. The PCCB may examine and advise on the practices and procedures of public, parastatal and private organisations, in order to facilitate the detection of corruption or prevent corruption.

### 15. Has the jurisdiction ratified any international anti-bribery treaties and conventions (For example, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the Framework for the Return of Assets from Corruption and Crime in Kenya)?

Yes, Tanzania ratified the United Nations Convention Against Corruption on 25 May 2005 and the Southern African Development Community ("**SADC**") Protocol Against Corruption on 14 August 2001, among others.

## II. PENALTIES and DEFENSE

### 16. What are the penalties for corporates and individuals for bribery?

The penalties for the offence of general corruption range from 3 to 5 years' imprisonment and/or a fine ranging from TSh 500,000 (approximately USD 214) to TSh 1,000,000 (approximately USD 428). The PCCA has not specifically distinguished between penalties that can be imposed on physical persons versus corporate entities.

The penalties are increased if the act of corruption is committed in the context of a contractual and working/employment relationship, a procurement process or an auction.

### 17. What mitigating factors may be considered by authorities when defining a penalty (effective compliance program, self-reporting)?

Tanzanian legislation does not provide for specific mitigating factors in corruption matters. However, as a general principle, sentencing shall be carried out in accordance with the circumstances and facts of each case.

### 18. What are possible defenses (for example, effective compliance program) or exceptions (for example, payments made under threat or duress)?

There are no defences specific to corruption-related offences under Tanzanian law.

The general rule in Tanzania is that an individual is prohibited from receiving or soliciting any advantage of any kind as an inducement, a reward or on account of his/her execution or omission of any of his/her official duties. As such, a person cannot in his/her defence rely on the effectiveness of the compliance programme to evade bribery and corruption. However, a person may raise a defence to distinguish the payments made from the obligation to perform or otherwise influence a government official in the execution of his/her duties.

The PCCA, according to Section 34 (6), provides a defence to an accused person in relation to the transfer of proceeds of corruption if the accused satisfies the Court that the sum of money or property was delivered to an officer of the PCCB or some other person, as directed in the notice, or was produced

to, and retained by, the Court or the notice was withdrawn by the Director of Public Prosecution (the "**DPP**").

### 19. Does the legislation provide for judicial settlements and if so, under what criteria?

The PCCA does not provide for judiciary settlements for corruption cases specifically. However, a plea-bargaining framework has been established and adopted under the Criminal Procedure Act, CAP. 20 R.E. 2022 ("**CPA**"), applicable to some offences, including corruption.

## III. ENFORCEMENT TRENDS

### 20. What are the administrative or judicial authorities responsible for enforcing the anti-bribery legislation?

Prevention and Combating of Corruption Bureau

The PCCB is an independent public body established under the PCCA to take all necessary measures for the prevention and combating of corruption in the public, para-public and private sectors in Mainland Tanzania. The PCCB is established in every administrative region and district within Mainland Tanzania. Its mandate is defined under section 7 of the PCCA, which enables the PCCB, among other things, to investigate and prosecute offences under the PCCA and other offences involving corruption, and advise public, private, and para-public bodies on ways and means of preventing corrupt practices. The office of the DPP's consent is required prior to prosecution of corruption offences and the office participates in the investigation of the case.

It is important to mention that, in practice, the PCCB is known to prefer apprehending bribery suspects in the act. In the case of monetary bribes, the PCCB provides the victims with bank notes with their serial numbers pre-recorded and verified upon making an arrest. Therefore, under such circumstances, the person charged with the offence as a result of such apprehension shall have very limited defences against the corruption charges.

Financial Intelligence Unit (the "**FIU**")

The FIU is an extra-ministerial department under the Ministry of Finance established under section 4 of the Anti-Money Laundering Act, Cap. 423 R.E. 2022 (the "**AMLA**") to combat money laundering and the financing of terrorism. The FIU analyses and investigates suspicious transactions regarding potential money laundering activities of funds obtained from predicate offences.

The AMLA defines predicate offence to include, among other things, corrupt practices. The FIU works hand in hand with the Tanzania Police Force when exercising its investigative powers and prosecutorial powers for money laundering offences can be conducted by either the PCCB or via the Director of Public Prosecutions.

Given that corruption offences are recognised as economic crimes, they can therefore be tried by the High Court of Tanzania (Corruption and Economic Crimes Division), the High Court of Tanzania (Main Registry) and the Resident Magistrates' Court, depending on the nature of the offence.

### 21. How frequently are bribery enforcement actions pursued by the relevant authorities?

The PCCB has been active over the years in investigating and prosecuting corruption cases. This can be seen in the number of cases taken to court against various government officials and businessmen. In terms of statistics based on the PCCB's official communications, between 2017 and 2020 the PCCB: (i) received 22,424 alerts on corruption offences; (ii) opened up investigations on 5,208 new cases (in addition to 6,081 ongoing cases); (iii) prosecuted 1,781 new corruption cases (in addition to 2,540 cases which were ongoing from the previous year and while 6,081 cases remained under investigation); and (iv) convicted 747 individuals (631 individuals were cleared by the court).

### 22. Have these administrative or judicial authorities published guidelines for the interpretation and enforcement of the legislation?

The PCCB has the mandate to issue various guidelines both internally and externally to the public based on the preventive and enforcement measures against corruption and its role with respect to enforcement of the PCCA. However, no guidelines on the interpretation or enforcement of the PCCA have yet been issued or published.

## IV. ANTICIPATED REFORMS

### 23. Are there any anticipated reforms to the legislation?

As the PCCA was recently amended in June 2022, no major reforms are anticipated in the near future.

C L I F F O R D

C H A N C E

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