CIS LCN*

*The CIS Leading Counsel Network

Comparative Summary of Anti-Corruption Laws in the CIS Economic Region

2011

Second edition









The Practical Legal Guide for Companies' Compliance Policies

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Foreword

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We are pleased to present the second edition of "Comparative Summary of Anticorruption Laws in the CIS Economic Region" - the joint publication of the CIS Leading Counsel Network.

The CIS Leading Counsel Network (LCN) was established in 2009 by nine leading law firms from the countries of the CIS (Commonwealth of Independent States) economic region, and it aims to transcend the national boundaries and offer clients a seamless advice across these fast developing markets, which are increasingly attracting international investments. LCN brings together the following prominent national law firms: in Armenia - Ameria, in Azerbaijan - FINA, in Belarus - Vlasova Mikhel & Partners, in Kazakhstan - Aequitas, in the Kyrgyz Republic - Kalikova & Associates, in Moldova - Turcan Cazac, in Russia - Egorov Puginsky Afanasiev & Partners, in Turkmenistan - ACT and in Ukraine - RULG – Ukrainian Legal Group.

LCN members have a long history of successful collaboration. The alliance takes to a new level their time-tested relationships and offers clients integrated teams in these dynamic and challenging jurisdictions. Our several successful joint workshops and publications attest to the benefit of joining efforts and offering global business audiences up-to-date coverage of legal developments in our part of the world. Our other new publications include "Comparative Summary of Antitrust Laws in CIS Economic Region" and "CIS: Tax Compass 2011", which are available at www.cislcn.com

There are two main reasons for this new edition of "Comparative Summary of Anticorruption Laws in the CIS Economic Region":

1) the popularity of the first edition, which was in such a great demand among our readers that it ran out of print; and
2) the need to reflect changes in the anticorruption legislation in some countries of the CIS economic region that occurred since our first edition was published in 2010 (for example, in Ukraine a new law "On the Fundamentals of Corruption Prevention and Counteraction" was adopted in 2011)

We hope that this edition will be as popular as the first one because the topic of anticorruption remains a top priority for our clients around the world, and we continue to offer extensive expertise in this area and to expand our compliance practice.

We strongly believe that compliance is a joint concern for both the business and the legal communities, and the legal community must be in the forefront of fight against corruption, which was reflected in the report of International Bar Association, OECD, and UNODC on development of an anti-corruption strategy for the legal profession. On our part each of the LCN members has allocated serious attention over the years to building their individual compliance practices. At the same time, being members of the first integrated regional network, we also took our compliance practices to the new level and developed joint expertise that will greatly benefit our clients doing business in the CIS economic region. We are happy to share our knowledge with you and hope that this practical guide will help you to improve the understanding of the CIS economic region and to develop sophisticated and efficient compliance policies.

We, at LCN, look forward to continuing dialogue with our readers and to offering you new publications on important legal developments in the CIS economic region!

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Preface

Multinational companies pay increasing attention to developing their worldwide Compliance Policies, which govern interactions with the commercial (including customers and contractors) and public sector counterparts in terms of gifts, entertainment, sponsored travel, etc.

As in many other transition economies of the world, careful consideration needs to be given to compliance issues in the countries of the CIS Economic Region. According to Global Corruption Report 2010 published by Transparency International, Corruption Perceptions Index for these countries varies between 1.6 and 2.9 points out of 10 (highest score is assigned to countries with low level of corruption). Corruption involves not only moral but also economic costs.

According to the Global Corruption Report 2009 (http://www.transparency.org/publications/gcr) in developing and transition countries alone, companies colluding with corrupt politicians and government officials, have supplied bribes estimated at US $40 billion annually). Research in this Report also shows that half of international business executives polled estimated that corruption raised project costs by at least 10%.

Recognizing this problem, the majority of the CIS Economic Region countries have been actively implementing programs to combat corruption: adopting new laws, acceding to international conventions, increasing scrutiny and strengthening law enforcement and judicial practice, as well as cooperating with the private sector to combat corruption.

CIS LCN has prepared this brochure to improve the understanding of anticorruption laws of international companies doing business in this region and to help them develop comprehensive and up-to-date Compliance Policies.

This brochure includes a chapter devoted to each of the nine countries (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Turkmenistan, Ukraine), and each chapter consist of six sections covering:

1. Principal sources of law applicable to anticorruption issues.

2. Persons subject to anticorruption regulation.

3. Legal restrictions imposed on government officials/public officers.

4. Liability for the violation of anticorruption laws.

5. Anticorruption practices.

6. Recommendations on Companies' Compliance Policies.

Comparative summary of these sections is provided below.

1. Principal sources of law applicable to anticorruption issues

This section provides a brief overview of the sources of law in each country, as well as a list of the most important international conventions, federal/state laws, court decisions, and other regulations:

	UN Convention against Corruption (2003)	Criminal and Civil Anti-corruption Conventions (Strasbourg, 1999)	UN Convention against Transnational Organized Crime	Special Anticorruption Laws & Regulations
Armenia	Ratified, 2007	Ratified, 2006 & 2005	Ratified, 2003	No special laws. New Criminal Code (2011) Edict of the President "On the Establishment of the Board to Combat Corruption" (2006). Anticorruption Strategy (2003).
Azerbaijan	Ratified, 2005	Ratified, 2003	Ratified, 2003	Law "On Combating Corruption" (2004, amended in 2005, amendments to other laws introduced in 2007) Anticorruption Decrees of the President (2007, 2009)
Belarus	Ratified, 2004	Ratified, 2006 & 2008	Ratified, 2003	Law "On Counteracting Corruption" (2006, amended in 2008)
Kazakhstan	Ratified, 2008 (with some qualifications)		Ratified, 2008	Law "On Combating Corruption" (1998) State Program of Combat Against Corruption for 2006-2010 (2005)
Kyrgyz Republic	Ratified, 2005		Ratified, 2003	Law "On Combating Corruption" (2003, amended in 2009); National Strategy for Combating Corruption (2009)
Moldova	Ratified, 2007	Ratified, 2003	Ratified, 2005 (with some qualifications)	Law "On Preventing and Combating Corruption" (2008) National Strategy for Preventing and Combating Corruption (2004)
Russia	Ratified, 2006	Ratified only Criminal convention, 2006.	Ratified, 2004	Law "On Prevention Corruption" (2008) National Strategy on Prevention of Corruption and National Plan on Prevention of Corruption (2010)
Turkmenistan	Ratified, 2005		Ratified, 2005	No special laws. Criminal Code (2010)
Ukraine	Ratified, 2006	Ratified, 2006 & 2005	Ratified, 2004	Law "On the Fundamentals of Corruption Prevention and Counteraction" (2011)

As the above chart shows, all countries ratified international conventions against corruption and almost all countries adopted special anticorruption laws and programs in the beginning of XXI century. Only Armenia and Turkmenistan do not have a special anticorruption law, but their Criminal Codes and other laws address anticorruption issues.

Due to the complexity and fast development of anticorruption laws and practices, we highly recommend to check with local counsel in case of any anticorruption compliance concerns in order to avoid the risks of reputation damage and liability.

2. Persons subject to anticorruption regulation

2.1. General definitions

This section provides definitions of terms used in national laws to describe persons subject to anticorruption regulation, including for example:

- Government Officials (Rus. – "государственные служащие");
- Municipal Officials (Rus. – "служащие органов местного самоуправления");
- Heads of State Organizations (Rus. – "руководители организаций, деятельность которых финансируется из государственного бюджета либо в уставном капитале которых имеется государственная доля ");
- Officials – (Rus. – "должностные лица").

It should be noted that the terminology is complex and varies from country to country. Moreover, different laws of the same country sometimes use uncoordinated or conflicting definitions. The categories of persons subject to anticorruption regulation are not limited to government / public sector and include private sector.

Not every country's laws, however, contain a definition of **a** public sector. According to the recommendation given in this brochure, in defining the public sector for the purposes of identifying corruption acts one should proceed on the basis of the list of the persons that are authorized to perform the responsibilities of the state or local self-government bodies and the persons that are regarded as being vested with such responsibilities, who are listed in sections **"2.2. List of persons subject to anticorruption regulation".**

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

In most countries government officials/public officers by law are prohibited:

- to misuse their authority, official position, state property and information (for example, as stated in Kyrgyz law: favoring certain individuals and legal entities while adopting decisions for their own private gain or interest; or violating the manner of reviewing and adopting decisions with regard to appeals of individuals and legal entities);

- to use their official positions to derive unlawful benefits or accept promises or offers of the benefits for themselves or other persons;
- to be involved, directly or through other persons, in other paid or business activities, (except for teaching, scientific, creative and similar activities; with the exception of Azerbaijan, where involvement in teaching and other paid activity requires a permission of the head of the state body the person serves in);
- to independently participate in management of a commercial organization, unless the management or participation is included in his official duties in accordance with the legislation.

One of the anticorruption responsibilities of government officials/public officers is annual submission of information about their income and financial liabilities, including abroad, covering these persons and their family members, and in some cases including real estate and valuable movable property, bank deposits and securities.

In selected countries government officials/public officers are subject to the following specific restrictions:

- prohibited to be an attorney of the third persons on cases of state or local self-governing bodies (Azerbaijan);
- prohibited to have personal accounts in foreign banks, except for cases of performance of the state functions in the foreign states and other cases established by law (Belarus);
- gifts coming without the person's knowledge must be surrendered free-of-charge within seven days to the special state fund, and services rendered to such person under the same circumstances must be paid by him/her by way of transfer of money to the national budget (Kazakhstan);
- prohibited to participate (using their voting or decision-making rights) in examination and resolving of problems in their personal interest or in the interests of their family members (Moldova);
- prohibited to be involved during working hours in otherwise allowed activities: teaching, scientific and creative activities, medical practice, instructor and sports referee practices (Turkmenistan).

3.2. Gifts and other benefits

There is a general rule in the legislation of all nine countries: a gift and other benefits of any value can be considered a bribe if the gift/benefits are in exchange for an action or omission by public officials in favor of the offeror.

For example:

- Law of Azerbaijan "On Combating Corruption", Article 8 "Restrictions related to gifting" states that "no public official shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be a reward relating to his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts and use of conventional hospitality".

- Supreme Court of the Republic of Belarus stated that: souvenirs and gifts may be given to an official on occasion of his (her) birthday and specific holidays providing they are handed to the official without any expectations of compensation by his/her relevant actions.
- Civil and State Service Laws of Armenia prohibit public officials from taking gifts "for conduct of their official duties".

Taking into account this "general gold rule", below we compare what is allowed in different countries:

<table>
<tr><th></th><th>Gifts</th><th>Meals, entertainment</th><th>Sponsored trips</th></tr>
<tr><td>Armenia</td><td>Officials shall transfer received gifts to the State if such gift/s exceeds five times his/her monthly wages</td><td colspan="2">No special provisions. General restrictions applicable to gifts, services and benefits should be applied.</td></tr>
<tr><td>Azerbaijan</td><td>Only minor gifts in regard to conventional hospitality (aggregated year value should not exceed approximately USD $68).</td><td>Only conventional hospitality.</td><td>No special provisions. General restrictions applicable to gifts, services and benefits should be applied..</td></tr>
<tr><td>Belarus</td><td>Gifts may be given during official (protocol) events only. If the value of such gifts exceeds approximately USD $58, such gifts are to be transferred into the State property.</td><td>No special provisions.
General restrictions applicable to gifts, services and benefits should be applied.</td><td rowspan="3">Allowed if:
(i) paid by close relatives;
(ii) the relationships therewith do not involve the official duty activities of the invited persons;
(iii) with the consent of the superior official in order to participate in humanitarian events, etc. (or as private trip – Belarus)</td></tr>
<tr><td>Kazakhstan</td><td>Strictly prohibited; still unclear practice concerning ordinary gifts with small value less than approximately USD $96</td><td>Prohibited.</td></tr>
<tr><td>Kyrgyz Republic</td><td>Only token gifts, symbolic souvenirs presented following the commonly accepted rules of courtesy or during protocol or other official events; ordinary gifts with value less than approximately USD $22.</td><td>Only the commonly accepted rules of courtesy or during protocol or other official events.</td></tr>
<tr><td>Moldova</td><td>Only symbolic signs of attention and souvenirs according to the norms of protocol and international courtesy (gift value should not exceed approximately USD $50)</td><td colspan="2">No special provisions. General restrictions applicable to gifts, services and benefits should be applied.</td></tr>
</table>

	Gifts	Meals, entertainment	Sponsored trips
Russia	Symbolic signs of attention with the value not exceeding approximately USD $100.	Prohibited	Prohibited.
Turkmenistan	Not explicitly prohibited by the legislation.	No regulations. As a practice, permitted without any limitation.	No regulations. As a practice, may be allowed after formal approval from the superior official.
	The only monetary limitation relates to the deductibility of costs for tax purposes (gifts and benefits more than approximately USD $175 should be declared)		
Ukraine	Only gifts in line with the generally accepted customs of hospitality (personal gift value should not exceed approximately USD $60).	No special provisions. General restrictions applicable to gifts, services and benefits should be applied.	Implicitly prohibited.

4. Liability for the violation of anticorruption laws

4.1. Criminal offences and liability

Criminal Codes of all nine countries specify different type of crimes concerning corruptions, for example: abuse of power, commercial subornation, giving/receiving a bribe, illegal participation in entrepreneurial activity, etc.

The penalties for government officials and individuals who give bribes include:

- arrest;
- fine;
- correctional labour / public work;
- prohibition to hold certain positions for up to several years (up to 7 years in Kazakhstan, 5 year in Belarus, Moldova and, in other countries - up to 3 years);
- confiscation of property;
- imprisonment (up to 15 years in Belarus, Kazakhstan, Moldova, and Russia for especially big amounts of bribes; in other countries – up to 12 years).

In some countries (e.g. Azerbaijan, Russia) there is a provision of releasing from criminal liability a person who gave a bribe, if this person was under threat from an official or if the person has voluntarily informed the appropriate state body about the bribe.

4.2. Administrative offences and liability

In all countries there are different administrative (minor) offences specified in Administrative Codes related to corruption, although Administrative Infringements Codes in Azerbaijan and Turkmenistan do not clearly specify any particular corruption offences. But the Ukrainian Administrative Infringements Code, for example, specifies the following offences:

breach of the limitations concerning the use of official status;

- offering or providing an illegal benefit;
- breach of limitations concerning the plurality of offices and simultaneous engagement in other activities;
- breach of the statutory limitations concerning received gifts (donations);
- breach of financial supervision requirements;
- breach of the requirements pertaining to notification on conflict of interests;
- unlawful use of information learned by a person in the course of official responsibilities;
- failure to take measures to counteract corruption.

Administrative penalties include:

- fines;
- official warning (binding cease-and-decease instruction);
- administrative arrest;
- public works;
- prohibition to engage in certain activities or to hold certain positions for specific period of time;
- confiscation of assets;
- recovery of the value of the object of administrative offence.

4.3. Offences and liability incurred by legal entities

In all countries (except Moldova[1]) the legal entities are not subject to criminal liability in general, and for breach of the corruption regulations in particular. But the court may order the forfeiture of the "goods resulted from the crime" or the goods "used or intended to commit a crime", if the representatives of the respective legal entity knew about the illegal award of such goods. All public acquisition contracts awarded through corruption acts will be deemed void by a court of law. The damages caused by the officials of the state bodies to the legal and natural persons as a result of their illegal acts (or act of omission) must be compensated in full by the state.

Unlike criminal liability, a legal entity may be held liable for administrative offences when specifically provided by the law. Penalties may include

- fines,
- prohibition of certain legal entities' activities (withdrawal of license),

[1] In Moldova, legal entities are generally subject to criminal liability for certain crimes. But legal entities are not subject to criminal liability for breach of the anti-corruption regulations.

- confiscation of property,
- liquidation of the legal entity.

For example, in Russia the amount of fine that may be imposed on legal entities for committing a corruption offence may be up to three times the paid amount , three times the price of the securities, other assets or property-related services rendered, but not less than one hundred million rubles (approximately USD $3400000) together with confiscation of transferred funds, securities and other assets.

5. Anticorruption practices

This section gives examples of recent cases and court decisions as well as reflecting trends in practice of law enforcement agencies.

6. Recommendations on Companies' Compliance Policies

The final sections summarize the main recommendations for the Companies' Compliance Policies in specific countries.

We hope that this practical legal guide on anticorruption regulation in the CIS Economic Region will be an indispensable handbook for developing Compliance Policies for the countries in the CIS economic region.

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Founded in 1998, Ameria is a leading advisory firm in Armenia. It acts as a financial, legal and strategic development counsel and partner to the public and private sectors, as well as to international organizations in Armenia and the South Caucasus. Ameria advises its clients through an effective structure of five advisory units comprising Management Advisory Services, Legal Practice, Assurance and Taxation, and Investment Banking. Ameria Group of Companies includes Ameriabank CJSC and Ameria Invest CJSC.

Overview of Anti-corruption Laws in Armenia

David Sargsyan, Partner, AMERIA CJSC

1. Principal sources of law applicable to anticorruption issues

The anticorruption legislation in Armenia remains underdeveloped although the Government adopts specific initiatives under anti-corruption programs to fight corruption in specific areas of state governance. The Criminal Code of the Republic of Armenia is the main source of legislation enacted and enforced to prevent corrupt activities and, in particular, bribery. The remaining body of the applicable legislation defines programs and methods to fight corruption.

The main anticorruption laws and regulations applicable to GO ("Government officials" and/or "State/Civil Servants") and those with governmental status are:

1.1. International anticorruption regulations

- UN Convention against corruption, dated 3 October 2003, ratified by Republic of Armenia on 23 October 2006 and in force from 7 April 2007;
- Criminal Anti-Corruption Convention (ETS 173) ratified by Republic of Armenia on 18 October 2006, and Addendum Protocol to the Criminal Anti-Corruption Convention, dated 15 May 2003 in force in the Republic of Armenia from 01 May 2006;
- Civil Anti-Corruption Convention, dated 4 November 1999, ratified by Republic of Armenia on 01 May 2005.

1.2. Laws

- Criminal Code of the Republic of Armenia,
- Laws on various types of public service such as Civil Service, Service in Police, Service in Military, Service in Administration of National Assembly, Bailiff Service, Judicial Service, Criminal-Punishment Service, Municipal Service, the Judicial Code, the Law on the Central Bank (Public Service Laws)

1.3. President's anticorruption initiatives

Edict of the President of Republic of Armenia dated 1 June 2006 "On the Establishment of Corruption Fighting Board".

1.4. Resolutions of the Government of Republic of Armenia

- Resolution No. 1522 of the Government of Republic of Armenia "On the Republic of Armenia Anticorruption Strategy and the Measure of its Implementation", dated 06 November 2003.
- "The Republic of Armenia anti-corruption strategy and its implementation action plan for 2009-2012"

2. Persons subject to anticorruption regulations

2.1. General definitions

Defined widely as all persons proved to have paid a bribe and/or elicited a bribe will be subject to liability as separately defined under the provisions of the Criminal Code referred to in Section 4.1 below. One party in the corruption activity (excluding provisions on commercial bribery) have to be persons with relevant status under the laws of Civil Service, Service in Police, Service in Military, Service in Administration of National Assembly, Bailiff Service, Judicial Service, Criminal-Punishment Service, Municipal Service, the Judicial Code, the Law on the Central Bank (Public Service Laws).

Below is a summary review of the relevant legislation in relation to civil servants.

Article 3 of the Law of Republic of Armenia "On Civil Service" defines the following terms:

Official – professional whose work is independent from the changes of politics and political rulers, which is performed in the bodies highlighted in Clause 1, Article 4 of the Civil Service law, with the purpose of implementing the objectives and functions reserved to those bodies by the legislation of the Republic of Armenia.

Official Position – position envisaged by the Roster of Official Positions.

Roster of Official Positions – list of all Official Positions approved.

Official/s– persons occupying a position (with the exception of a temporarily vacant position) envisaged in the Roster of Official Positions or enlisted in the Official Personnel Short-term Reserve.

Section 2 of Article 3 of the Civil Service law identifies the following positions as political:

The position of the President of the Republic of Armenia, Deputies to the National Assembly of the Republic of Armenia, the Prime Minister of the Republic of Armenia, Ministers of the Republic of Armenia and the Leaders of Communities of the Republic of Armenia.

In addition, under the section 3 of Article 3 of the same law, Discretionary Positions shall mean the following:

The positions of the Chief of Staff of the President of the Republic of Armenia, the Chief of Staff of the Government of the Republic of Armenia (RA), Head of Control Service of the RA President, Head of Control Service of the RA Prime Minister, Heads of State Administrative Bodies attached to the Government of the Republic of Armenia as well as their Deputies, the Deputy Ministers of the Republic of Armenia, Ambassadors Extraordinary and Plenipotentiary of the Republic of Armenia, Permanent representatives of the Republic of Armenia in international organizations, the Marzpets (Regional Governors) of the Republic of Armenia (the Mayor of the City of Yerevan), the deputy Marzpets /the Deputy Regional Governors/, (Deputy Mayors of the City of Yerevan), as well as the positions of advisers, press secretaries and assistants of the President of the Republic of Armenia, of the Chairman of the RA National Assembly and his/her deputies, of the Prime Minister of the Republic of Armenia, of the Ministers of the Republic of Armenia, as well as the positions of the deputies, advisers, press secretaries, assistants secretaries of the Leaders of Communities of the RA.

The stated personnel do not fall under the classic definition of the civil servant.

The Civil Servants are those public servants who have relevant status under the Law on Civil Servants. Those who have public servant status under relevant Public Service laws are considered as judicial, municipal, criminal-punishment service servants, bailiff service servants, military servants, parliamentary servants, police servants, and Central Bank servants.

2.2. List of persons subject to anticorruption regulations

The following are subjects to anticorruption regulation:

1. Officials (as mentioned above)
2. Civil Servants
3. Other public servants (judicial, municipal, criminal-punishment service servants, bailiff service servants, military servants, parliamentary servants, police servants, and Central Bank servants)

2.3 Legislative changes

The state registration of legal entities

One of the most corrupted areas in the system of the State bodies of the Republic of Armenia was deemed to be the State Registry of legal entities.

Reforming the process of applying to various agencies and getting documents from them that are required for state registration of legal entities is important for reducing the levels of corruption. Thus, commercial legal entities were required to go to a bank to pay the legally established state duty for the registration of a legal entity, and then go to the tax authorities to get a taxpayer's code. Within a single registration process, a person had to deal with a number of state servants, which increases the risk of corruption. To reduce this risk, progress has been made with the implementation of a new law on company names, enacted in 2008, which allows entrepreneurs to go directly to the state registration body instead of the previous requirement to submit a decision of an authorized body on state registration.

Besides, changes have been made in the Law of the RA on "The State Registration of the Legal Entities" which provides a new system for the registration of legal entities. The new system is an electronic version for the submission of all the necessary documents/Charter, Decision of the shareholder(s) on establishment of a new legal entity, the application, the receipt of the paid state fee that is required for the State registration. The applying person only has to fill in the templates approved by the Minister of Justice of the RA with identification data.

Now the corruption risks are reduced because the direct contact between the citizens and the personnel of the above mentioned state body have been reduced to the minimum.

The state registration of the Property rights

The other changes of equal importance were made in the area of State Cadastre (registration of property rights). These draft laws are already signed by the President of the RA, and will come into force in 2012. The changes are made in the Civil Code of the RA and in the Law of the Republic of Armenia on "The State registration of the Property rights" (new edition).

It has removed the obligation of notary verification of all Real estate agreements, and the Property rights registration process will now use an electronic form. This also the direct contact between the citizens and State body, as well as the corruption risks.

The new anticorruption centre

Recently a new center was created called the "Advocacy and assistance centre", which gives a free consultation to the victims of corruption. It is governed by Armenian NGO's, and people may apply to these centers to get free assistance. Since the opening of the first center in October 2008, AACs have served over a thousand citizens and handled cases in a variety of corruption-related matters, including land registration, pension payments and health services.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

As mentioned above the main/only duty of public officers (except for not breaching the criminal law) with respect to corruption issues, is not to accept gifts in return for exercising their official duties, and to hand over the gifts of value received in officio to the treasury.

3.2. Gifts and other benefits

Except for the provisions of the Criminal Code restricting bribe taking (which includes all forms of material benefits for that official or any person pointed by the latter), Public Service Laws prohibit the relevant public servants from accepting gifts "for conduct of their official duties". Breach of this law shall incur a disciplinary action, such as the termination of employment or public servant status. Gifts of considerable value received "in-officio" by the officials must be handed over to the treasury.

Civil servants shall be prohibited from receiving gifts, amounts of money or services from other persons for his/her service duties, with the exception of the cases envisaged by the legislation of the Republic of Armenia.

According to section 3 of the Decree N 48-N of the Government of Republic of Armenia "On the procedure of transferring of received gifts during the state service duties to the State" dated February 17, 1993 (hereinafter also referred to as a Decree) the state officers/ officials shall transfer during performance of their state service duties all gifts received to the State if such gift/s exceeds five times of his/her monthly wages.

However, it shall be stated that under the section (g) of Article 24 of the Law of Republic of Armenia "On Civil Service" it is forbidden for the Officials to receive gifts, amounts of money or services from other persons for his/her service duties. Consequently, the same article prohibits Officials from receiving gifts even for the lower value (which does not exceed five times of Official's monthly wage) for the purpose of performing his/her service duties.

Therefore, it is stated that if the transfer of gift or entertainment (if entertainment shall be categorised, or otherwise interpreted as providing service to the Officials) to the Official is interpreted as being in exchange for the performance of his/her duties, then it shall constitute a violation of Article 24 of the Law of RA "On Civil Services"

4. Liability for the violation of anticorruption rules

The Criminal Code and relevant Public Service laws define any person/s breaching restrictions stipulated in the laws as potentially breaching the Criminal Code prohibitions. However disciplinary liability can be applied irrespective of the Criminal liability being waived under circumstances defined in the Criminal Code.

There is no criminal liability imposed on legal entities.

4.1. Criminal offences and liability

The corruption offences for which criminal liability is imposed by the Criminal Code include:

Articles 154^2 - Election Bribe, 200 – Commercial Bribe, 201 Sport and General Competition -Contest Bribe, 308-309 – Abuse of Authority, 311 –Taking bribe by an official, 311^1 – Taking a bribe by a public servant, 311^2 – Abuse of Influence, 312 – Giving Bribes to officials, 311^2 – Giving Bribes to public servants, 313 – Bribe mediation , 350 – Bribe provocation.

The liability includes: fines, deprivation of the right to hold certain positions/occupations (as main or secondary punishment), arrest (up to 6 months) or imprisonment (up to 12 years), confiscation of property (only as secondary punishment). The type of punishment defined in the case of each crime differs depending on the qualifying circumstances and the gravity of the offence.

4.2. Administrative offences and liability

The corruption offences for which administrative liability is imposed *only* include:

1. Breach of duty to hand over to the state valuable gifts received "in officio" by an official from private and public entities, the punishment is the confiscation of the gift and one month minimal salary or four times the value of the gift, in the case that the gift is not found.
2. Breach of rules of gift disposal by the state official for gifts made of precious stones and metals and received "in officio", the punishment is a fine up to equivalent of 850 USD.

5. Anticorruption practices

The court practice mainly concerns decisions on criminal cases. It must be noted that the criminal justice practice in the Republic of Armenia does not produce major law enforcement results. Furthermore, no major corruption case was been addressed by the court, although there are a number of corruption cases involving low level officials of the state cadastre of the real estate registration, local police, customs and tax officials, etc. These cases do not have a major impact as those mostly relate to minor charges and convictions.

Nevertheless, the Government implements its anticorruption policies targeting the most corrupted areas and that the implemented measures are effective for fighting and decreasing corruption in specific areas (such as education, traffic police, registration of the legal entities etc).

6. Recommendations on Companies' Compliance Policies

General observation is that accepting any material incentive that can influence an official or public servant decision making and benefit both the relevant official and the person providing such material incentive can be treated as an offence. We advise companies to develop internal compliance policies in accordance with the limitations imposed by relevant legislation of the Republic of Armenia as well as the relevant rules of ethics on liaising with state officials and/or public servants and specific guidelines on the gift, study tour and entertainment policies. Although underdeveloped and internally drafted, these regulations will precisely guide the company employees' activities with a view to refraining from any action which might potentially imply the violation of the stated laws and regulations.

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FINA LLP was founded in 2002 in Baku and offers a variety of domestic and international business and commercial legal services in Azerbaijan. This leading Azeri firm seeks to establish long-term relationships with its clients, and to provide effective solutions to their problems based upon a clear understanding of their needs. All attorneys of FINA LLP maintain the same standards of professional responsibility and performance that clients would expect from them practicing in the world's leading commercial centers.

Overview of Anti-corruption Laws in Azerbaijan

Nariman Ramazanov, Founder and Managing Partner, FINA LLP

1. Principal sources of law applicable to anticorruption issues[1]

1.1. International anticorruption regulations

- Civil Law Convention on Corruption, Strasbourg, 04 November 1999; ratified by the Law of Azerbaijan, dated 30 December 2003, № 571-IIQ;
- Criminal Law Convention on Corruption, Strasbourg, 27 January 1999; ratified by the Law of Azerbaijan, dated 30 December 2003, № 570-IIQ;
- UN Convention against corruption, dated 3 October 2003; ratified by the Law of Azerbaijan.

1.2. Laws

- Criminal Code of Azerbaijan, dated effective from 01 September 2000;
- Law of Azerbaijan "On Combating Corruption" No 580-IIQ, dated 13 January 2004;
- Law on "Procedures on declaration of finance related information by public officials", dated 24 June 2005;
- Law on "Civil Service № 926-IQ", dated 21 July 2000;
- Administrative Infringements Code of Azerbaijan, dated 11 July 2000.

1.3. Decrees and orders

- Decree of the President of the Republic of Azerbaijan on "National Strategy on Increasing transparency and Combating Corruption", dated 28 July 2007;
- Decree of the President of the Republic of Azerbaijan on "Strengthening the fight against corruption related law violations in the management of state and municipal property and resources area", dated 22 June 2009;
- Statue of the Department on "Struggle against Corruption under the General Prosecutor Office".

1.4. Ethics codes

- Rules of Ethical Conduct of Civil Servants

2. Persons subject to anticorruption regulations

2.1. General definitions

Identification of the GO\PO by the other legislative acts of Azerbaijan

The main term used by the relevant laws of the Azerbaijan Republic in the context of state service is "*state servant*" (*"dövlət qulluqçusu"* in Azeri or *"gosudarstvennyi sluzhaschyi"* in Russian) but not "**government official**".

[1] The list of sources is much wider than the given one.

According to the provisions of Article 2 ("*State service*") of the Law of the Azerbaijan Republic "On State Service" the term "*State and\or Civil service*" is defined as: "*performance of the official duties of state\civil servants in the area of implementation of state objectives and functions in accordance with the Constitution and other legislative acts of the Republic of Azerbaijan*".

In Azerbaijan the provisions of Law "On State Service" apply to the state servants carrying out their state services in all three branches of state powers such as: *executive power; legislative power; and judicial authorities.*

However, the peculiarities of services of the state servants ("*state servant*" here means (*"dövlət qulluqçusu"* in Azeri or *"gosudarstvennyi sluzhaschyi"* in Russian) but not "*government official*") carried out in: *the prosecutor's office; bodies of justice; national security; defense; emergencies; border service; migration service; internal affairs; customs; tax; foreign affairs; field-chasseur service and the National Bank of Azerbaijan* - are regulated by other specific laws of the Azerbaijan Republic. These regulations take into consideration provisions and requirements of the Law of the Azerbaijan Republic "On State Service" related to the rights of citizens of Azerbaijan to be recruited to the state service, recruitment to state service on competition and transparency basis, performance appraisal of the state servants and other principles of state service. The conduct of service in these bodies is considered to be a *specific type of the state service*[2].

The Law of the Azerbaijan Republic "On State Service" is also applied to the persons working in the offices of the aforementioned bodies (*with the exception of the National Bank of Azerbaijan*) and the persons not owning military and\or other specific ranks (employees not being civil servants, such as cleaners, yard cleaners, gardeners, guards, stokers, workers without professional qualifications, etc.).

However, the provisions of the Law of the Azerbaijan Republic "On State Service" are not applied to: *the President of the Republic of Azerbaijan; deputies of Milli Mejlis of the Republic of Azerbaijan; Prime Minister of the Republic of Azerbaijan and his deputies; judges of courts of the Republic of Azerbaijan; an Attorney of the Republic of Azerbaijan for Human rights (Ombudsman); heads of central executive power bodies and their deputies; chairman, deputies, secretaries and members of the Central Election Commission of the Republic of Azerbaijan; chairman, deputy and auditors of the Chamber of Accounts of the Republic of Azerbaijan; officials (heads) of local executive bodies; deputies of the Supreme Mejlis of Nakhchevan Autonomous Republic; Prime Minister of Nakhchevan Autonomous Republic and his deputies; heads of central executive bodies of Nachchivan Autonomous Republic; military servants; and also the employees of institutions being subordinated to the relevant bodies of executive power (Labour relations of these employees are regulated by the provisions of the "Labour Code of Azerbaijan").*

The identification and legal status of these aforementioned persons (*in fact, not the persons themselves as a "physical persons" but the official positions occupied by them in the relevant state and government bodies*) are provided and determined by the Constitution and the other legislative acts of the Azerbaijan Republic.

Under Article 14 ("*State Servant*") of the Law of the Azerbaijan Republic "On State Service" the term "*State Servant*" is defined as: "*a citizen of the Azerbaijan Republic who holds salaried (the salary should be exclusively paid from the state budget) state service position in the order*

[2] For example, the peculiarities of conducting the "state service" in the Prosecutor's office are regulated by the Laws of the Republic of Azerbaijan: i) "On Prosecutor's Office" No 767-1Q, dated 07 December 1999; and ii) "On Conduct of Service in Prosecutor Bodies" No 167-IIQ, dated 29 June 2001.

determined by the Law Republic of Republic "On State Service", and who swears allegiance to the Republic of Azerbaijan when being recruited to the state service on administrative position".

The State servant holding an administrative position and being entitled to have authority is considered to be a "**state official**".

Besides the definitions of "*state servant*" (*"dövlət qulluqçusu"*) provided by the Law of the Azerbaijan Republic "On State Service", the Article 308 ("*Abusing official powers*") on p. 2 of the Criminal Code of Azerbaijan, which came into effect from 01 September 2000, specifies the term "**public official**" as: "*a person who is constantly, temporarily or on special power carrying out functions of authority representative; either carrying out organizational - administrative or administrative functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organizations, and also in other commercial and non-commercial organizations.*

Article 16 of the "*Administrative Infringements Code* of Azerbaijan", dated 11 July 2000, provides a similar definition of the term "**public official**".

With regard to corruption crimes, under the provisions of the Criminal Code of Azerbaijan the state servants and employees of institutions of local government who are not admitted as public officials, and also employees of other commercial and non-commercial organizations bear the same criminal liabilities under Articles of Chapter 33 of the Criminal Code of Azerbaijan ("*Corruption Crimes and Crimes against state, interests of state service and institutions of local government power and also in other commercial and non-commercial organizations*") in cases, which are specially provided by appropriate Articles.

Status of Government officials

One of the important requirements of financial nature aimed at prevention of corruption among the *Azerbaijani state servants,* provided by the acting legislation, is the requirement of submission of the *relevant information* by the state servants and\or public officials within the procedure laid down by the legislation, such as[3]:

- yearly, on their income, indicating the source, type and amount thereof;
- on their property being a tax base;
- on their deposits in banks, securities and other financial means;
- on their participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their property share in such enterprises;
- on their debt exceeding five thousand times the nominal financial unit ;
- on their other financial and/or property obligations exceeding thousand times the nominal financial unit4 (appr. 1,100 manat).

The information envisaged in Article 5 of the Law of Azerbaijan "On Combating Corruption" No 580-IIQ, dated 13 January 2004, may be requested in an order defined by the legislation. However, the acting legislation does not strictly emphasize this requirement as a *permanent* and *compulsory norm* and the grounds provided by law for requesting such information are not entirely clear.

[3] Article 5, Law of Azerbaijan "On Combating Corruption" No 580-IIQ, dated 13 January 2004.
[4] Article 2, Law of Azerbaijan "On Nominal Financial Unit" No 48-IIQ, dated 26 December 2000.

"*Prohibition for next of kin to work together*" is another requirement provided by law on prevention of corruption of state servants and public officials.The next of kin of a state servant or public official may not hold any office under his or her direct authority, except for the elective offices and other cases provided for in the legislation. The persons who violate the aforementioned requirement of law shall, within 30 days of the finding of that violation, be transferred, if such violation is not removed voluntarily, to another office In cases when this is not possible, either of the persons concerned shall be dismissed from his or her office.

2.2. List of persons subject to anticorruption regulations

Under the Article 2 of the Law "On Combating Corruption" the following persons are subject to offences related to corruption:

- persons elected or appointed to State bodies within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan;
- persons who represent State bodies withspecial powers;
- public servants who hold administrative office;
- persons who exercise management or administrative functions in appropriate structural units of the State bodies, in State-owned institutions, enterprises and organizations as well as in enterprises in which the controlling package of shares is owned by the State;
- persons whose nominations to elective offices in the State bodies of the Republic of Azerbaijan were registered as stipulated by Law;
- persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan;
- persons with management or administrative functions in municipal bodies;
- persons with management or administrative functions in non-State entities discharging the powers of State authorities in cases provided for by law;
- persons who obtain material and other values, privileges or advantages for having unlawfully influenced the decision of an official by using his or her authority or contacts;
- individuals or legal persons who unlawfully offer, or promise, or give material and other valuables, privileges or advantages to an official, or who mediate in such acts.

Persons referred to in the Article above shall be regarded as **"officials"**.

On the territory of the Republic of Azerbaijan the Law "On Combating Corruption" shall apply to all individuals, including foreigners and persons without citizenship, as well as legal persons. Beyond the territory of the Republic it shall apply to citizens of the Republic of Azerbaijan and legal persons registered in the Republic of Azerbaijan, in accordance with the international treaties to which the Republic of Azerbaijan is a party (Article 3, the Law of Azerbaijan "On Combating Corruption").

Bodies carrying out the fight against corruption (Article 4, the Law of Azerbaijan "On Combating Corruption"):

- All State bodies and officials shall, within their powers, fight against corruption.
  In cases, where an corruption-related offence leads to administrative or criminal responsibility, fight against corruption shall be carried out by the law enforcement bodies within the procedure laid down by law.

- Functions of a specialized body in the area of corruption prevention shall be discharged by the Commission on Combating Corruption of the Republic of Azerbaijan.
- The Commission shall consist of members appointed by the executive, legislative and judicial bodies. The powers of the Commission shall be determined by a statutory act.

2.3. Legislative changes

In February and March 2011 the President of the Azerbaijan Republic signed several decrees designed to increase transparency and efficiency of state bodies. Under the Decree of 25 February 2011 "On the improvement of the social protection of the traffic patrol service officers of the Ministry of Internal Affairs and some measures on the regulation of traffic rules" 25 percent of the fines collected for the violation of traffic rules will be added to monthly salaries of policemen of the traffic patrol service and other officers participating in the regulation of traffic. The Cabinet of Ministers was given a month to prepare proposals on amendments to legislation in order to ensure that payments of fines for traffic offences are made only by bank transfer or credit card. The Ministry of Internal Affairs was also instructed to increase control over the compliance of traffic security officers with the requirements of legislation while on duty and during the review of administrative violations.

Under the Decree of 14 February 2011 "On the improvement of social protection of officials of the State Customs Committee, the simplification and increase of transparency in customs procedures" the State Customs Committee, Ministry of Internal Affairs and Ministry of Justice have to ensure that the procedures on customs registration, state registration, inclusion in the Registry, issuing of state registration documents and number plates and procedures on ownership, use and transfer rights on vehicles are carried out according to the "*one-stop shop*" principle.

The Decree also requires all customs payments to be made to the State Customs Committee via bank transfer or credit card. In order to increase operational efficiency and transparency in the services rendered by customs bodies the Committee was tasked with establishing an electronic administration system (*electronic queue*).

Under the Decree 25 percent of the extra budgetary funds of the Customs Committee formed from allocations of confiscated goods and fines will be added to the monthly salaries of the customs officers.

Three presidential Decrees of 3 March 2011 define measures for transparency and efficiency in the work of the Customs Committee, Ministry of Transport and Ministry of Internal Affairs.

Under the Decree №-393 the Cabinet of Ministers was given two months to simplify its procedures on rendering services and issuing documents, registration procedures for the transfer of vehicles to third parties on the basis of rent or letters of attorney which are carried out by the Traffic Police Department of the Ministry of Internal Affairs.

Under the Decree №-396 the State Customs Committee together with the State Border Service were given a month to ensure that all relevant laws and regulations on customs, information on tariffs and list of restricted goods are displayed at all border posts so that they are visible to the public and also to make arrangements to calculate customs tariffs on goods electronically.

Under the Decree of 11 March 2011 "On measures for improvement of work of the Anti Corruption Department at the Prosecutor General's Office of the Republic of Azerbaijan", the Department's staff is to be increased from 40 to 100 prosecutors. The Cabinet of Ministers is also instructed to increase substantially the salaries of officers of the Anti Corruption

Department at the Prosecutor General's Office of the Republic of Azerbaijan and take necessary measures to improve this Department's material maintenance.

A draft law submitted to parliament by the President of the Azerbaijan Republic in March 2011 envisages allocating 25 percent of the fines collected for the violation of migration rules to monthly salaries of migration service officers.

Another draft law submitted to the parliament by the President of the Azerbaijan Republic in March 2011 envisages amendments to the Detective Search Activity Act, under which the Anti-Corruption Department at the Prosecutor General's Office, which used to have only powers of investigation, will be vested with the authority to carry out special investigation means into corruption offences. The amendments go beyond this to exclude all other law enforcement agencies from carrying out policing in respect of corruption offences, with the exception of legitimate extraordinary circumstances.

A draft law on amendments to the Criminal Code submitted to the parliament by the President of the Azerbaijan Republic in February 2011 envisages extending the scope of subjects of corruption crimes. Under new amendments, the subjects of corruption crimes will include all categories of civil servants listed in the Civil Service Act, employees of institutions who, although they do not occupy administrative and managerial posts, are still materially in charge of affairs, employees of the municipalities, officials of foreign states, "other employees" of international organizations, members of international parliamentary assemblies, officials and judges of the international court, arbiters of international arbitrary tribunals, foreign and local jurors. In terms of active and passive bribery the legislation is to introduce the acceptance of an offer or promise to do so as well as the offer and promise of a bribe.

Besides, in order to ensure the transparency and efficiency and also to enable direct communication between citizens and government officials the President of the Azerbaijan Republic issued a Decree "On some measures in the sphere of organization of provisions of electronic service delivery by the State Bodies" No 429, dated 23 May 2011.

3. Legal restrictions imposed on government officials / public officers

3.1 Restrictions Imposed on State Servants

Under the provisions of Article 20 ("*Restrictions related to State Service*") of the Law "On State Service" a State servant is subject to the following restrictions and is not entitled to:

- hold an additional paid position (except for the temporary position in accordance with the labour legislation), nor any elective or appointed post in state bodies;
- except for scientific and creative activity, be involved in pedagogical and other paid activity without permission of the head of state body he/she serves in;
- be an attorney of the third persons on cases of state or local self-governing bodies;
- use information on issues concerning his/her state service and state secret or any other information protected by the law within the terms specified by the legislation of the Republic of Azerbaijan for the benefit of third persons after termination of state service;

- travel abroad at the expense of foreign country without notifying the head of the state body he/she is serves in;
- take part in activity of political parties when in public service;
- participate in strikes and other actions undermining activities of the state authorities;
- use the status of state servant in order to promote religions and to officialise religious actions of the entities subordinate to the state bodies;

If actions of a state servant conflict with the aforementioned restrictions and requirements applied to state servants by law, a state servant must upon the receipt of a notification determine whether he/she prefers state service or other activity and inform the relevant head of a state body on this decision within thirty (30) days, unless otherwise is provided by the legislation.

In addition, according to the provisions of the Article 25 ("*Liabilities of the State servant*") of the Law "On State Service", a state servant may be called to *disciplinary, administrative* and\or *criminal responsibility* in cases and order stipulated by the legislation, and for non-performance or unduly performance of the duties assigned to him\her, as well as for the non-compliance of liabilities determined by law.

State servants also bear material responsibility for any damages caused to third parties in the order determined by the legislation. Damages caused by legal actions of state servants must be fully reimbursed at the expense of the state .

As mentioned above, relevant restrictions and requirements applied to other specific types and kinds of "GO"s, such as state servants and public officials of the state and government bodies provided under the p. 2.1 here above, are also specified by the respective laws and legislative acts regulating the activities of those state servants\official and bodies.

For example, the Article 30 of the Law of the Azerbaijan Republic "*On Prosecutor's Office*" No 767-1Q dated 07 December 1999 also contains the list of activities prohibited for prosecution officers. The kinds of activities prohibited by this law for the prosecution officers are more or less the same as the activities prohibited for the state servants provided by the Law "On State Service".

3.2. Gifts and other benefits

According to the provisions of the Article 14 ("*Restrictions on Acceptance of Gifts*) of the Law of Azerbaijan "On Rules of Ethical Conduct of State Servants" No 352-IIIQD dated 31 May 2007, a state servant shall not demand or accept any gifts for himself/herself or other persons which may influence or appear to influence the impartial performance of their duties, or gifts that may be interpreted to be as a reward for his/her duties or might create an impression of such influence, or are given as a reward for performance of his/her duties, or might create an impression of such reward. This rule shall not apply to cases of awarding minor gifts in regard to hospitality and with a value not over than amount described in the Law "*On Combating Corruption*" of Azerbaijan.

If a state servant is not able to decide whether to take or refuse the gift, or benefit from the hospitality, they should seek advice of their direct supervisor.

Under the provisions of the Article 8 ("*Restrictions related to gifting*") of the Law of Azerbaijan "On Combating Corruption" No 580-IIQ dated 13 January 2004, "*no public official shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service*

duties, or may be or appear to be reward relating for his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts and use of conventional hospitality".

State servants and\or public officials may not solicit or accept multiple gifts from any natural or legal persons during any *twelve (12) month period* where the aggregate value of the gifts exceeds **fifty five manats**[5]. Gifts that exceedthis limit shall be considered as belonging to the State authority or municipal body in which that state servant or public official is performing his/ her duties (powers).

In cases where astate servant or public official cannot determine whether the acceptance of a gift violates this requirement of law, he/she must seek guidance from superior public official or the relevant state body.

In entering into civil contracts with physical and legal persons or in performing them, state servants or public officials are prohibited from obtaining any privileges or advantages relating to their service activity.

When being offered material and non-material gifts, privileges or concessions that may be deemed illegal a state servant or public official must refuse them. In case when material and non-material gifts, privileges or concessions are given under circumstance not depending upon the will of a state servant or public official, he/she should inform about it to his/her direct supervisor, and material and non-material gifts, privileges or concessions must be handed over a state body where the a state servant or public official is employed.

Restrictions concerning other Business Amenities

According to the Law of Azerbaijan "On Rules of Ethics Conduct of State Servants"[6], state servants are prohibited from actions (or inaction) or decisions directed or leading to the illegal acquiring of material and non-material benefits, privileges or concessions.

Also, a state servant rendering services that require payment as defined by the legislation may not require any additional fees or any other kind of benefits exceeding the amounts estimated for those services by law.

State servant may not be a party to transactions where another party is a state body where he/ she works.

State servants should not allow conflict of interests while performing his/her duties and should not illegally use his/her service authorities for his/her private interests.

It is prohibited for state servants to use property, funds, communication channels, computers and other communicative systems, vehicles and other logistical provisions of individuals or legal entities whom he\she deals with when carrying out his\her duties for his\her personal benefits, as well as for other aims related to the fulfillment of his\her duties.

State servants cannot use the information obtained in the course of duty for his/her private interests.

With regard to political activity, a state servant has a right to be a member of public or political associations unless is otherwise specified by the legislation, however, state servants are not allowed to use their official position and authorities for their personal benefits and\or for the benefits of other candidates, and\or political parties during elections.

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[5] 55 manats is approximately 69.9,-USD under the official Manat\USD exchange rate of the Central Bank of Azerbaijan established for August 09, 2011 (1,-USD=0.7866,-AZN)

[6] Articles 12 and 13, Law of Azerbaijan "On Rules of Ethics Conduct of State Servants"

4. Liability for the violation of anticorruption rules

Under the provisions of the Article 10 of the Law "On Combating Corruption" the offences related to corruption shall give rise to disciplinary, civil, administrative or criminal responsibility as provided for in the legislation. In cases, when commission by a state servant or a public official entails civil, administrative or criminal responsibility, enacting of legal proceedings against that official shall be carried out in accordance with the relevant legislation of the Republic of Azerbaijan.

Chapter III of the Law "On Combating Corruption" specifies the types of offences related to corruption and responsibility for such offences.

4.1. Offences related to corruption and responsibility for such offences

The following acts or inaction are considered as corruption offences:

- request or receipt by a state servant or public official, directly or indirectly, of material and other values, privileges or advantages, for himself/ herself or for third persons, or the acceptance of an offer or a promise of such material, privileges or advantages, for acting or refraining from acting in the exercise of his/her duties or powers;
- offering, promising or giving to an official by individuals or legal persons, directly or indirectly, of material and other valuables, privileges or advantages, for him/her or for third persons, for acting or refraining from acting in the exercise of his or her duties or powers;
- use by an official of unlawfully obtained property with a view to deriving benefit for himself or herself or for third persons, for acting or refraining from acting in the exercise of their duties or powers;
- obtaining by an official, in the course of performing his/her duties (powers) of material and other valuables, privileges or advantages without payment or for the price (tariff) lower than the market price or the prices regulated by the State;
- obtaining by an official, in the course of performing his/her duties (powers), benefits from savings (deposits), securities, rent, realty or lease;
- offering, promising or giving, directly or indirectly, of material and other valuables, privileges or advantages to any person who states of their ability to exert improper influence over the decision-making of an official;
- receipt of material and other valuables, privileges or advantages or the acceptance of an offer or a promise of such material or other valuables, privileges, advantages, by a person who, for certain reward, undertakes to exert an improper influence over the decision-making of an official.

A number of actions or inactions of a state servant or public official are considered as offences conducive to corruption (Article 9 of the Law "On Combating Corruption").

In addition to the cases envisaged above, other offences related to corruption may also be determined by legislative acts governing the activity or status of the state servants and public officials.

In cases, when committing offences by state servants or public officials here above does not entail administrative or criminal responsibility, it may give rise to disciplinary responsibility as provided for in the legislation (Article 10 of the Law "On Combating Corruption").

Individuals committing corruption offences as defined by law, if such acts do not constitute a crime, shall be subject to an administrative fine.

Legal entities committing corruption offences as defined by law shall be fined within the procedure laid down by the legislation, or their activity may be terminated.

4.2. Liabilities for Violation of Anti-corruption Rules

Administrative Liability

Regarding the administrative liabilities for violation of the anti-corruption rules and regulations, the acting legislation of Azerbaijan provides very general requirements. Such general requirements are mainly provided by the Laws "On State Service", "On Combating Corruption", "On Rules of Ethics Conduct of State Servants", as well as by other laws regulating the activity of certain types and categories of state servants and public officials and also by some other secondary legislative acts.

Under the provisions of the Article 16 of the Administrative Infringements Code of Azerbaijan dated 11 July 2000, public officials - persons constantly, temporarily or with special power either carrying out organizational or administrative functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organizations, and also in other commercial and noncommercial organizations bear the administrative liability for non-fulfillment or improper fulfillment of their official duties.

However, the Administrative Infringements Code of Azerbaijan does not clearly specify any certain *corruption offences* and also the *penalties* imposed for administrative corruption offences.

Criminal Liability

The corruption crimes for which a relevant criminal liability is imposed are provided under Chapter 33 of the Criminal Code of Azerbaijan, which include:

Abusing official powers[7]

- punished by the penalty at a rate *from 1-2,000manat*, or withholding the right to hold certain positions or to engage in certain activities for the term up to three years, or work in a correctional facility for the term up to two years, or imprisonment for the term up to three years.

In case when a criminal act entails heavy consequences, it is punished by imprisonment for the term from three up to seven years with no right to hold certain positions or to engage in certain activities for the term up to three years.

State servants and local government employees who are not admitted as public officials, and also employees of other commercial and noncommercial organizations also carry criminal liability under articles of the Chapter 33 of the Criminal Code of Azerbaijan.

Reception of a bribe[8]

- punished by imprisonment for the term from two to seven years with taking away the right to hold certain positions or to engage in certain activities for the term up to three years.

[7] Article 308 of the Criminal Code of Azerbaijan
[8] Article 311 of the Criminal Code of Azerbaijan

Reception by a public official of a bribe for illegal actions (inaction) is punished by imprisonment for the term from five to ten years with taking away the right to hold certain positions or to engage in certain activities for the term up to three years.

If the above acts are committed:

- on preliminary arrangement by a group of persons or organized group;
- repeatedly;
- in the large amount;
- with application of threats – they are punishable by imprisonment for the term from seven to twelve years with confiscation of property[9].

Offering a bribe[10]

- punished by the penalty at a rate from *one to two thousand manat* or imprisonment for the term up to five years with the penalty at a rate from five hundred to one thousand of nominal financial unit (*which is 1100 manat* or USD 1.398) or without it.

Offering a bribe to an official for committing an obviously illegal action (inaction) or repeated offering of a bribe is punished by the penalty from two to four thousand of nominal financial unit or imprisonment for the term from three to eight years with possible confiscation of property.

The person given a bribe, maybe released from criminal liability if presentation of a bribe took place by the means of threats or if the person has voluntarily informed the appropriate state body about the bribe.

Civil Liability

The Civil Code of Azerbaijan specifies a general rule regarding civil liability for wrongful acts of the state bodies, self-government authorities (municipalities) and their officials (for *delict*).

Under the Article 1100 of the Civil Code the damages caused by officials of the state bodies and self-government authorities (municipalities) to the legal and natural persons as a result of their illegal acts (or acts of omission) must be compensated in full by the state of Azerbaijan Republic and/or the relevant municipality.

5. Anticorruption practices

5.1. Practical Measures on Combating Corruption

Despite a series of reforms in the government, legislation, development of civil society and business, corruption still remains a serious problem in Azerbaijan. Unfortunately according to annual ratings prepared by leading international organizations, Azerbaijan remains among the countries with high level of corruption. However, it is also recognized that the country is making substantial efforts to address the problem. The authorities of the Republic of Azerbaijan acknowledged that corruption is a priority issue and requires comprehensive and serious countermeasures. To address this problem the Government has introduced a State Programme on Combating Corruption, a comprehensive anti-corruption strategy which

[9] «the large amount» bribe is understood as the sum of money, cost of securities, property or benefits of the property nature, exceeding five thousand manat

[10] Article 312 of the Criminal Code of Azerbaijan

requires a joint effort of different state institutions to implement relevant legislative and organizational measures. In carrying out this programme commendable progress has been made in adopting new legislation and amending existing legislation. The government has also created a new business registration mechanism based on a one-stop shop principle under the Ministry of Taxes, allowing for companies to register within 3 days. Recent years have seen rising salaries for civil servants in Azerbaijan and training undertaken to raise awareness of state officials about corruption.

The year 2011 was declared the Year of Tourism in Azerbaijan. A special draft law has been drawn up to develop tourism and increase transparency in the issuing of visas. Under the proposed legislation, tourism companies will be able to apply directly to the relevant embassies or consulates via the Internet and submit required documents electronically in order to obtain visas for tourists. Embassies or consulates will have to examine the documents and grant visas within 15 days. Visas will be issued in electronic form and submitted to travel agencies by email. These visas will not be placed in passports, but presented at the border control together with the passport. The information on the required documents, application forms and state tariffs will be placed on the official web page of the Ministry of Foreign Affairs and the relevant embassies or consulates of the Republic of Azerbaijan.

Also, on 3 March 2011 the Prosecutor General's Office of Azerbaijan launched a special hot-line with the number "161". The easy-to-access, toll-free hot line is designed to receive citizens' complaints about corruption offences. Within a few days of the launch, the Anti-Corruption Department received a numberof complaints covering a variety of issues.

5.2. Government Hotline Services

Hotline program offers an attractive option for policy-makers in Azerbaijan who would like to be perceived as taking action against corruption. It helps demonstrate both intent and action, and is relatively easy to present to the public. The National Strategy provides for the creation of hotlines and a response system to public complaints to enable direct communication between citizens and government officials.

The effectiveness of a hotline program in institutions depends on the existence of policies authorizing it. Lack of endorsement can leave the program open to challenges by organizational elements. A guideline document should authorize the program, define relationships and responsibilities of the officials involved, and regulate the receipt and processing of information. While the Government of Azerbaijan expressed commitment to such a program in the Strategy and Action Plan, no general guidelines for the creation of hotlines in government agencies were issued. As a result each agency adopted its own approach to developing and implementing the program.

The following technical approaches are the most common:

- *Electronic hotline* – a standard form available on the official website of the agency that can be used by the public to make inquiries/complaints;
- *Telephone line* – (i) a non-dedicated standard telephone line, which is used among other things for receiving calls from the public during official hours; (ii) a dedicated point-to-point communication link (hotline) for public inquiries/complaints;
- *Three-digit dedicated line* – (i) a three-digit non-automated line for public inquiries/complaints; (ii) a three-digit automated line that operates 24 hours per day;

- *Multi-line telephone instrument* – a three-digit multi-line communication link that can handle multiple simultaneous calls and operates 24 hours per day.

Government hotlines in Azerbaijan contribute to:

i) Reinforcing the public interest by providing access to information and enabling citizens to submit complaints in a more efficient and straightforward manner;

ii) Promoting a more customer-oriented approach and better service in government agencies through a stronger sense of responsibility;

iii) Improve a sense of equality and fairness in the resolution of conflicts and empower citizens to seek and obtain information.

6. Recommendations on Companies' Compliance Policies

1. We would recommend indicating in the section of the **Companies' Compliance Policy** concerning Azerbaijan, as stated above under p. 3.2, the aggregate value of the multiple gifts that can be given during any 12 months period to any representative of the public sector performing his or her duties (powers) should not exceed **fifty five (55) manats[11] (or USD$69.9).**

As the official AZManat/USD exchange rate of the National Bank of Azerbaijan fluctuates, the **Business Gifts Policy** should indicate that these requrements should be considered before making any kind of gifts.

2. In defining the public sector for the purposes of identifying corrupt actions, a list of persons who are subject to corruption-related offences should bepresented. Accordingly, we would recommend providing such a list in the section of the **Companies' Compliance Policy** concerning Azerbaijan.

Under the Article 2 of the Law "On Combating Corruption" the persons listed in section 2.2 above are subjects of corruption-related offences.

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[11] 55 manats is approximately 69.9,-USD under the official Manat\USD exchange rate of the Central Bank of Azerbaijan established for August 09, 2011 (*1,-USD=0.7866,-AZN*)

Belarus

Vlasova Mikhael & Partners

Minsk, Belarus

CIS LCN Member for Belarus

Vlasova, Mikhel and Partners was created in 1991. For the last three years the company was recognized as the best law firm of the country by the Ministry of Justice of the Republic of Belarus. For the five years in a raw Global Chambers recognized law firm Vlasova, Mikhel and Partners as the leading Belarusian consultant in commercial law. Partners of the firm are on the top of the list of best Belarusian lawyers. The company has more than 20 lawyers who ensure legal support of businesses of both national and foreign companies in Belarus. Vlasova, Mikhel and Partners has been selected as local counsel by many international law firms.

Overview of Anti-corruption Laws in Belarus

Tatiana Emelianova, Partner, Vlasova, Mikhel & Partners
Andrej Ermolenko, Associate, Vlasova, Mikhel & Partners

1. Principal sources of law applicable to anticorruption issues

Belarusian law regarding corrupt practices and counteraction thereto is extensive. However, many provisions in anticorruption regulations are of declarative nature, and liability issues are not always adequately addressed. Case law is mainly comprised of bribery accusations and accusations related to abuse of power, which are often broadly interpreted.

1.1. International anticorruption regulations

- Criminal Law Convention on Corruption (ETS 173) ratified by the Republic of Belarus on 26 May 2003, in force from 01 March 2008;
- UN Convention against Corruption, dated 31 October 2003, ratified by the Republic of Belarus on 25 November 2004;
- Civil Law Convention on Corruption, dated 4 November 1999, ratified by the Republic of Belarus on 26 December 2005, in force from 01 July 2006.

1.2. Codes

- Civil Code of the Republic of Belarus No 218-3, dated 7 December 1998, last amended on 3 July 2011 ("Civil Code");
- Criminal Code of the Republic of Belarus No 275-3, dated 9 July 1999, last amended on 27 December 2010 ("Criminal Code");
- Code of the Republic of Belarus "On Administrative Offences" No. 194-3, dated 15 June 2009, last amended on 30 December 2010 ("Administrative Offence Code").

1.3. Laws

- Law "On Government Service in the Republic of Belarus", dated 14 June, 2003 No. 204-3, last amended on 2 June 2009 ("Law on Government Service"); and
- "On Counteracting to Corruption" Law of the Republic of Belarus, dated 20 July 2006 No. 165-3, last amended on 14 June 2010 ("Anti-Corruption Law").

1.4. Case law review

- Resolution of Assembly of the Supreme Court of the Republic of Belarus "On Case Law regarding Bribery", dated 26 June 2003 No. 6, amended on 25 September 2003 No. 11, and 24 September 2009 No 8; and
- Resolution of Assembly of the Supreme Court of the Republic of Belarus "On Case Law regarding Crimes against the Interests of Public Service" dated 16 December 2004 No. 12 last amended on 2 June 2011 No.2.

Due to complexity of the regulation it is highly recommend to check with local counsel in case of any anticorruption compliance concerns in order to avoid reputation damage and personal liability of a company's officers.

2. Persons subject to anticorruption regulations

2.1. General definitions

The main terms set out in the Belarusian anticorruption regulations are:

- "Officials" (Rus. – "должностные лица"),
- "Government Officials" (Rus. – "государственные служащие"),
- "Public Officials" (Rus. – "государственные должностные лица").

The definitions of the aforesaid terms are given below. It must be noted that certain terms are not limited to government/public sector and include private sector.

The term **"Officials"** (Rus. – "должностные лица") refers both to public and private sectors and is defined in the criminal and administrative legislation.

Under the Criminal Code of the Republic of Belarus ***the term "Officials" covers:***

a) representatives of authorities;

b) representatives of the public, excluding public servants, but those authorized to perform some duties on protection of public order, counteraction to offences, etc. ;

c) individuals performing organizational and regulatory functions. Individuals who occupy positions connected to the performance of organizational and regulatory functions, control operation of institutions, enterprises (their subdivisions) and separate subordinate individuals. Such individuals organize the work; and are responsible for the overall functioning of organizations (their subdivisions and parts); have at least one subordinate employee;

d) individuals performing administrative and economic functions. Individuals who occupy positions connected to the performance of administrative and economic functions and exercise powers connected with disposition of valuables and cash. They keep stock of material valuables, organize storage, distribution and sale of valuables;

e) individuals authorised to perform "actions significant in law" in regard to the rights and legal interests of unsubordinated persons and legal entities, as well as in regard to their own rights and legal interests (for example, a proxy granted with a right to execute deals). **"**Actions significant in law" are actions which result or may result in consequences relevant in law in the form of creation, change or termination of legal relationships affecting other persons;

f) foreign officials, members of foreign public assemblies, officials of international organisations, members of foreign parliament assemblies, judges and officials of the international courts[1].

[1] Article 4 of Criminal Code

The Administrative Offence Code of the Republic of Belarus defines the "Official" as a person who permanently, temporarily or due to a special authority performs organisational and regulatory or administrative and economic functions[2].

As a general criterion for qualification as the "Official", both Criminal Code and the Administrative Offence Code generally provide that the Official is a person who has a legal right to make binding orders affecting persons not subordinated to him/her by law.

Liability imposition for bribery is distinguished in Belarusian legislation between the Officials and the Officials occupying responsible position[3] which results in differentiation of criminal liability.

The term **"Government Officials"** (Rus. – "государственные служащие") under Belarusian law refers to a citizen of the Republic of Belarus who occupies a public position which provides him/ her with some permissions and charges to carry out certain official duties[4].

Public position is a regular occupation within state body associated with performance and enforcement of functions of the relevant state body[5].

The term **"Public Officials"** (Rus. – "государственные должностные лица") is defined in the Anti-Corruption Law and considers the following persons as Public Officials:

a) the President of the Republic of Belarus;

b) Deputies of the Chamber of representatives,

c) Members of the Council of the Republic of the National Assembly of the Republic of Belarus (members of the Parliament);

d) Deputies of the local Councils of deputies exercising their powers on professional basis;

e) Other governmental employees, individuals who occupy positions at government organisations, Armed Forces of the Republic of Belarus, other army and military organisations of the Republic of Belarus and persons, who are qualified as the officials according to the legislation of the Republic of Belarus[6].

Apart from the above, Belarusian legislation includes such term as **"Individuals having the Same Status as Public Officials"** (Rus. – "Лица, приравненные к государственным должностным лицам"). This term constitutes a separate category of officials and includes following positions:

a) members of the Council of the Republic of the National Assembly of the Republic of Belarus,

b) Deputies of the local Councils of deputies, working on non-professional basis,

c) Citizens registered as candidates for the position of the President of the Republic of Belarus,

d) Candidates for the position of deputy of the Chamber of representatives,

e) Members of the Council of the Republic of Belarus,

f) Members of local Councils of deputies;

---

[2] Article 1.3. of Administrative Offence Code
[3] Article 4 of the Criminal Code
[4] Article 5 of Law on Government Service
[5] Article 4 of Law on Government Service
[6] Article 1 of Anti-Corruption Law

g) Individuals, who permanently or temporarily or due to a special authority occupy positions in non-governmental organisations connected with the performance of organisational-regulatory and administrative-economic functions;

h) Individuals authorised according to the established order to perform actions significant in law;

i) Representatives of the public carrying out security duties, preventing violation of law, carrying out justice;

j) Government Officials who are not qualified as officials according to the legislation of the Republic of Belarus, other employees of governmental authorities or other government organisations not recognised as Public Officials but carry out activities connected directly with satisfaction of needs, demands and requirements of citizens[7].

The term **"Individuals having the Same Status as Public Official"** has a broad interpretation and expands application of the Anti-Corruption Law to the "Official" in the most universal sense that covers private sector.

Terms **"Public Official"** and **"Individual having the Same Status as Public Official"** are used only in the Anti-Corruption Law. The Anti-Corruption Law provides for general definitions and rules on anti-corruption relations and determines general principles of counteraction of corruption. However, the Anti-Corruption Law does not set sanctions for the corrupt practice nor provides any specific procedures for calculation / application of sanctions. Therefore, the Criminal Code and the Administrative Offence Code have higher practical significance since both legislative acts establish liability for bribery crimes and other corruption offences.

2.3. List of persons subject to anticorruption regulations

According to Article 3 of Anti-Corruption Law the persons who are subjects of corruption offences (i.e. persons covered by anticorruption regulations) are:

- Public Officials;
- Individuals having the same status as Public Officials;
- Foreign officials;
- Persons who bribe Public Officials or Individuals with the same status as Public Officials and Foreign officials.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

Persons subject to anticorruption regulations are prohibited:

- to engage in commercial activity, either directly or through their authorised representatives,

[7] Article 1 of Anti-Corruption Law

- to assist their close relatives in commercial activity by using their official position,
- to represent third parties on issues related to activity of state structures (other state organisations) which hired government official,
- to perform other paid services (work) not related to execution of their duties on principal place of work. At the same time, the Government Officials are allowed to provide services (perform work) connected with teaching, scientific, cultural, creative activity and medical practice;
- to take part personally or through authorised representatives in management of the commercial legal entity, except for the cases provided by the acts of the Republic of Belarus;
- to have personal accounts in foreign banks, except for cases of performance of the state functions in the foreign states and other cases established by acts of the Republic of Belarus;
- to dispatch the errands concerning office (labor) activity, which are given by the political party, other public association where government official is having a member (except for deputies of the House of Representatives and members of the Council of the Republic of the National Assembly of the Republic of Belarus, deputies of the local Councils of deputies of the Republic of Belarus).
- to occupy other state positions except for those provided by the Constitution of the Republic of Belarus and other Belarusian legal acts;
- to participate in strikes;
- to have other part-time occupation, except for work in other state organisations;
- to use their public position for the benefit of political parties, religious organisations, other legal entities, and also citizens if such actions are not in compliance with the interests of government service;
- to use equipment, financial and informational assets and other property of a state structure and official secrets for off-duty purposes;
- to accept state awards of foreign states without the permission of the President of the Republic of Belarus.

Public Officials have the following duties:

- to transfer shares (stocks) of the commercial legal entities owned by them into managing trust within three months after appointment (election) to a position;
- to terminate membership in political parties in case when performance of their state functions is incompatible with membership in a political party.

3.2. Gifts and other benefits

Belarusian legislation prohibits acceptance of gifts by Public Officials but fails to expressly distinguish between “personal gifts” and “business gifts”.

The Anti-Corruption Law prohibits granting gifts to Public Officials in connection with the duties they have to perform[8]. Under Criminal Code this may be interpreted as crime of bribery.

The Anti-Corruption Law and the Law on Government Service provide that gifts may be granted to the Public Officials during official (protocol) events only. If the value of such gifts granted during official events exceeds 5 basic units (currently about 58 USD), such gifts are to be transferred into the State property.

Accepting gifts by the Public Officials outside official events may qualify as misconduct

and lead to disciplinary action (for details see Section 4 below) or, under certain circumstances, may be interpreted as a bribery.

The differentiation between gifts and bribery was introduced by Assembly of the Supreme Court of the Republic of Belarus. Under its regulation souvenirs and gifts may be granted to an official on occasion of his/her birthday and specific holidays providing they are handed to the official without any expectations of compensation by his/her relevant actions[9].

The Anti-Corruption Law also recognises acceptance of other benefits (like services) as a corrupt practice if caused by position of such a Public Official. Equally acceptance of being a sponsored tourist or other travel arrangements would qualify as corrupt practice, subject to a number of exceptions:

- traveling is paid by their close relatives;
- traveling is required under an international treaty of Belarus;
- traveling within the framework of exchange between Belarusian and foreign state authorities;
- traveling is paid by other individuals relations with whom are outside Public Official's scope of duties;
- traveling for personal puspose approved by higher executives of relevant state body.

Other practices, such as solicitation of loans, acquisition of securities or real property by abusing authority of the Public Official are also considered as corrupt.

4. Liability for the violation of anticorruption rules

Depending on the status of relevant person, subject to anticorruption regulations and type of violation disciplinary, administrative and criminal liability may apply.

Disciplinary actions that may be imposed on Public Officials are:

- notice;
- reprimand;

[8] Artcile 21 of the Anti-Corruption Law

[9] Paragraph 20 of the Decision of Plenum of the Supreme Court of the Republic of Belarus No. 6 dated 26 June, 2003.

- warning of partial professional incompliance;
- demotion of class of Public Official up to 6 months;
- dismissal10.

Disciplinary action may be imposed by executives of relevant state body where a Public Official is employed and the level of action depends on the character of the offence, prior record and behavior of the Public Official.

The Anti-Corruption Law provides a comprehensive list of corrupt practices comprising anticorruption violations. However, liability for each particular violation is found either in Administrative Offences Code or in Criminal Code as outlined below. Where respective offence is described in the Anti-Corruption Law but liability is not provided in either Code, it would constitute the basis for disciplinary liability as discussed above.

4.1. Criminal offences and liability

Crimes which entail criminal liability include[11]:

- abuse of power or official position;
- official's inaction;
- misuse of authority or exceeding official powers;
- forgery;
- negligence;
- illegal participation in entrepreneurial activity;
- accepting a bribe;
- offering or giving a bribe;
- bribery brokerage;
- illegal enrichment.

Types of punishment to be imposed for the above crimes depend on gravity and scope of material damage and the nature of crime. The penalties include:

- arrest;
- fine;
- disciplinary labour;
- ban to hold specific positions for the term of up to 3 years;
- seizure of property;
- deprivation of freedom (i.e. imprisonment) for the maximum term of up to 15 years.

Criminal liability may only be imposed on individuals.

[10] Article 57 of the Law "On Public Service in the Republic of Belarus"
[11] Chapter 35 of the Criminal Code

4.2. Administrative offences and liability

Administrative liability provided by the Code of Administrative Offences now is envisaged for rather specific offences that do not explicitly qualify for crimes, e.g. unlawful rejection to provide information, failure to comply with mandatory instructions of competition authority, record of false data on credit history etc.

Unlike criminal liability, a legal entity may be held liable for administrative offences when specifically provided by the Code of Administrative Offences, in the event an officer of such entity is imposed with administrative liability the legal entity itself is not exempt from the liability, and vice versa[12],

Foreign individuals and foreign legal entities could be held liable for administrative offences.

Administrative penalties include:

- fines;
- official warning (binding cease-and-decease instruction);
- administrative arrest up to 15 days;
- community work;
- prohibition to engage in certain activities or to hold certain positions for specific period of time;
- confiscation of assets;
- recovery of the value of the object of administrative offence (i.e. damages, value of stolen property etc.).

5. Anticorruption practices

Anticorruption regulations in Belarus are often applied in case of bribery and authority misuse charges are brought against the Officials. Among the general trends in anticorruption cases the following are the example of the most prevalent:

- broad interpretation of terms “Officials” and “Public Official” that are subject to anticorruption regulation. A large number of employees who merely contact legal entities and individuals regarded as Public Officials, and employees occasionally (on the basis of a specific, once-only authorisation) fulfilling organisational and regulatory or administrative and economic functions are regarded as the Officials.
- Criminal liability for bribery and other corrupt practices can be applied irrespective of the size of the illegally acquired valuables. Sometimes minor bribes may result in imprisonment and property confiscation.
- anticorruption regulation is widely used by the law-enforcement authorities as a tool of influencing and effectively controlling the private sector.

[12] Article 4.8 of the Code of Administrative Offence

6. Recommendations on Companies' Compliance Policies

Since anticorruption regulations in Belarus are currently underdeveloped and often the distinction between a disciplinary and administrative offence or a crime is vague we highly recommend developing and implementing a detailed anticorruption corporate policy with assistance of qualified legal practitioners acquainted with local practice.

Such policy may incorporate the following cornerstone provisions:

- Corporate anticorruption policy should be binding for all company's employees without exception;
- Corporate anticorruption policy should describe in detail the list of persons subject to anticorruption regulations, including all of the Officials, Public Officials, Government Officials and Individuals having the Same Status as Public Officials, as denoted herein. For the purposes of effectiveness of such policy it is important to cover any position which vests relevant officer with specific authority and/or official duties that may be exercised in respect of individuals and legal entities not subordinated to such an officer.
- Corporate anticorruption policy should directly and strictly oblige employees to inform their senior management about making any gift or providing any benefit to any Public Official or Official;
- Gifts (including services) as a general rule could be granted to Officials only during ceremonial, protocol or other official events. However such gifts (including services) would be seized and transferred for the benefit of the State of Belarus in case where their value exceeds 5 basic units (currently about USD $58). Since both the basic amount and the official BYR/USD exchange rate set by the National Bank of the Republic of Belarus change from time to time – corporate anticorruption compliance policy should instruct the personnel to double-check the figures before granting and receiving any gift;
- It is highly recommended at all times to avoid creating the perception that the purpose of any gift giving may be connected to the exercise of an Official's authority and/or duty for the benefit of the gift-giver and/or of the company.

Corporate anticorruption policy should specify that the company and its employees are not allowed to finance Public Officials/Officials, grant them whatsoever material and/or intangible assistance, perform works free of charge, and render services free of charge (except otherwise expressly provided by Belarusian laws, e.g. reimbursement of travel and accommodation costs during certification and testing procedures).

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Kazakhstan

Aequitas

Almaty, Astana and Atyrau, Kazakhstan

CIS LCN Member for Kazakhstan

Aequitas was founded in January 1993 with offices in Almaty, Astana and Atyrau. This leading Kazakh firm advises some of the biggest international corporations working in Kazakhstan and major national companies and provides a full range of legal services from support on complex new ventures to obtaining licenses or representation in the court of any level. Partners of Aequitas directly participated in the development and improvement of the most important acts of civil and economy legislation of Kazakhstan.

Overview of Anti-corruption Laws in Kazakhstan

Nurlan Sholanov, Partner, AEQUITAS Law Firm

1. Principal sources of law applicable to anticorruption issues

From the time of declaring its independence from the USSR, Kazakh authorities have been demonstrating their commitment to the fight against corruption. A number of legal acts were adopted and special services alongside with other anti-corruption measures have been set up since the President's Edict, dedicated to the fight against corruption was issued in March 1992. Nonetheless, according to Transparency International, an international non-governmental organization, over the entire period of research, the Corruption Perception Index (CPI) in Kazakhstan never went higher than 3 points (Kazakhstan was included in the research since 1999). In 2010, Kazakhstan was ranked 105th according to its CPI.

Main laws and regulations applicable to *State servants* (please see clause 2.1 below) status and setting anti-corruption rules are:

1.1. International anti-corruption regulations

- UN Convention against corruption dated 31 October 2003, ratified by Kazakhstan on 4 May 2008 (with minor amendments).

1.2. Codes

- Criminal Code No. 167-I of the Republic of Kazakhstan, dated 16 July 1997 (Chapter 13);
- Administrative Violations Code No. 155-II, dated 30 January 2001 (Chapter 30).

1.3. Laws

- Law No. 267-I of the Republic of Kazakhstan, On Combating Corruption, dated 2 July 1998;
- Law No. 453-I of the Republic of Kazakhstan, On State Service, dated 23 July 1999.

1.4. Kazakhstan President's anti-corruption initiatives

- Edict No. 793 of the President of the Republic of Kazakhstan, On Additional Measures for Strengthening Fight Against Crime and Corruption and Further Improvement of Law Enforcement Activities in the Republic of Kazakhstan, dated 22 April 2009;
- Edict No. 1686 of the President of the Republic of Kazakhstan, On State Program of Fight Against Corruption for 2006-2010, dated 23 December 2005;

- Edict No. 1550 of the President of the Republic of Kazakhstan, On Measures for Strengthening Fight Against Corruption, Strengthening Discipline and Order in the Activities of Governmental Agencies and Officials, dated 14 April 2005;
- Edict No. 377 of the President of the Republic of Kazakhstan, On Measures for Improvement of the System of Combat Against Crime and Corruption, dated 20 April 2000;
- Edict No. 3731 of the President of the Republic of Kazakhstan, On Measures for Strengthening National Security, Further Strengthening of Fight Against Organized Crime and Corruption, dated 5 November 1997;
- Edict No. 1567 of the President of the Republic of Kazakhstan, On the Code of Honor of State Servants of the Republic of Kazakhstan, dated 3 May 2005.

1.5. Resolutions of the Government

- Decree No. 677 of the Government of the Republic of Kazakhstan, On the Plan of Measures for 2009-2010 for the Implementation of the State Corruption Fight Program for 2006-2010, dated 8 May 2009;
- Decree No. 96 of the Government of the Republic of Kazakhstan, On the Plan of Measures for the Implementation of the State Program of Fight Against Corruption for 2006-2010, dated 9 February 2006.
- Decree No. 308 of the Government of the Republic of Kazakhstan, On Approval of Branch Program on Fight Against Corruption in the Republic of Kazakhstan for 2011 - 2015, dated 31 March 2011.

2. Persons subject to anticorruption regulations

2.1. General definitions

In order to understand the Kazakhstan anti-corruption laws and regulations (collectively referred to as "**anticorruption regulations**") it is necessary to provide definitions of government officials, officers, and other persons to whom the anti-corruption regulations apply. Several categories of such persons are not limited to government/public sector and include private sector.

Although the theory recognizes division of law into private and public, the Kazakh legislation contains neither a definition of public sector, nor the word *"public"* in its vocabulary.

In our opinion, in defining the public sector for the purposes of identifying corruption acts one should proceed on the basis of the list *of the persons that are authorized to perform State functions and the persons that are regarded as being vested with such responsibilities as stipulated in the legislation* (all these persons are listed in clauses 2.2.1-2.2.2 of section 2 of this Overview).

Category of "Government officials" or GO (Rus. – "государственные служащие") – a citizen of the Republic of Kazakhstan holding, in accordance with the legally established procedure, an office in a governmental agency funded from the national budget or local

budgets or from the funds of the National Bank of the Republic of Kazakhstan and performing official duties for the purposes of implementation of the objectives and functions of the State[1].

AEQUITAS Note: The term "government official" is not appropriate from a purely Kazakhstan law perspective, which uses the term "state servant" (*gosudarstvennyi sluzhaschyi*), subdividing the servants into *administrative State servants* and *political State servants.*[2] However, for the purpose of unification with the possible terminology of this brochure we will be using the term "government official."

The persons carrying out technical maintenance and ensuring the functioning of governmental agencies are not referred to as 'government officials'. The list of such persons is established by the Government of the Republic of Kazakhstan.[3]

Category of "Officers" *(*Rus. – *"должностные лица")* includes public and private sector. In case of public sector this category includes persons that are permanently, temporarily or under a special authorization carrying out functions of a **representative of authority** or performing **organizational-and-executive** or **administrative-and-economic** functions in the governmental agencies, local self-administration bodies, as well as in the Armed Forces of the Republic of Kazakhstan or other troops or military formations of the Republic of Kazakhstan.[4]

A **representative of a state authority** is an official of a governmental agency granted, in accordance with the statutory procedure, regulatory powers with regard to persons who are not directly subordinate to him.[5]

Organizational-and-executive functions are the activities of persons carried out in order to exercise the powers of an executive body of an organization as set out by the legal and foundation documents. These powers include general staff management, organization and control over the work of subordinates, as well as maintaining discipline,[6]

Administrative-and-economic functions are the activities carried out by persons vested with full material responsibility within the framework of their powers granted to manage and dispose of property, including money.[7]

2.2. List of persons subject to anti-corruption regulations

The persons who would be held liable under corruption acts include government officials and several other categories stipulated by legislation.

According to Article 3 of the Law on Combating Corruption, persons who would be held liable for corruption offences (hereinafter - **"Corruption Infringers**") are:

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[1] Article 1 of the Law No. 453-I of the Republic of Kazakhstan, On State Service, dated 23 July 1999, as amended (hereinafter, Law on State Service).

[2] Article 1 of the Law on State Service.

[3] Article 4 of the Law on State Service.

[4] Para 4, Article 2 of the Law on Combating Corruption.

[5] Para 1, footnote in Article 320, Criminal Code of the Republic of Kazakhstan, dated 16 July 1997, as amended (hereinafter, Criminal Code).

[6] Para 2, footnote in Article 3, Law No. 267-I of the Republic of Kazakhstan, On Combating Corruption, dated 02 July 1998, as amended (hereinafter, Law on Combating Corruption).

[7] Para 3, footnote in Article 3, Law on Combating Corruption.

2.2.1. Referred to persons authorized to perform state functions are:

a) officers;

b) deputies of Parliament and maslikhats (municipal councils);

c) judges; and

d) all government officials (GOs).

(We do not quote the list of positions of government officials and officers, because it contains more than a hundred items).

2.2.2. Deemed equivalent to persons authorized to perform state functions are:

a) persons elected to local self-administration bodies;

b) individuals registered in accordance with the statutory procedure as candidates for the office of the President of the Republic of Kazakhstan, candidates for deputies of the Parliament of the Republic of Kazakhstan and maslikhats, and for members of the elective local self-administration bodies;

c) employees permanently or temporarily working at local self-administration bodies whose work is funded from the national budget of the Republic of Kazakhstan;

d) persons performing managerial functions at State organizations and organizations in which the State has at least 35 per cent interest, as well as at organizations in which the State's interest (not less than 35 per cent) is transferred to national managing holdings, national holdings, national development institutes, national companies, as well as to subsidiaries of thereof.

2.2.3. Other entities

Corruption Infringers are also individuals and legal entities bribing officers or other persons authorized to perform State functions, or equivalent persons, as well as persons unlawfully providing them with property values and benefits.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

Legal status of various categories of officials is stipulated by the laws/regulations that govern activities of the respective bodies/persons. In particular, the legal status of GOs is set forth in the Law on State Service as well as in the Law on Combating Corruption, which cover their responsibilities, rights, limitations and liability.

One of the anticorruption responsibilities of a GO (as well as of the persons who are candidates for a public office or for an office associated with the performance of public or equivalent functions) and their spouses is annual submission of an income statement including income received outside Kazakhstan, covering this person's movable property, bank deposits, securities and other belongings that are subject to taxation. This requirement, however, does not cover legal relations associated with the acquisition into ownership

of dwellings and construction materials for construction of dwellings in the Republic of Kazakhstan.[8]

3.1.1. Corruption-related Infringements

The following acts of the persons listed in clauses 2.2.1-2.2.2 of section 2 of this Overview are regarded as infringements creating conditions for corruption (selectively)[9]:

1. Unlawful interference with the activities of other governmental agencies or organizations;
2. Use of one's official powers in resolving issues associated with the satisfaction of material interests of the above persons or their close relatives or in-laws;
3. Granting unlawful benefit to individuals or legal entities when preparing and making decisions;
4. Rendering to anyone any assistance not provided for by the legislation in carrying out entrepreneurial activities or other activities associated with the derivation of income;
5. Expressly hindering individuals or legal entities in the exercise of their rights or lawful interests;
6. Delegation of powers to perform State regulation of entrepreneurial activities to individuals or legal entities carrying out such activities, as well as powers to control such activities;
7. Transfer of State control and supervision functions to organizations, which do not have the status of a governmental agency.

It should also be noted that, as a general prohibition, Corruption Infringers (except for maslikhat deputies who do not carry out their activities on a permanent or full-time basis and persons listed in clauses 2.2.2(b) and 2.2.2(d) of sub-section 2.2 of section 2 of this Overview) are not allowed to:

a) Engage in other paid activities, except for pedagogical, scientific or other creative activities;

b) Engage in entrepreneurial activities, independently participate in management of a commercial organization, unless the management or participation is included in his official duties in accordance with the legislation; assist in the satisfaction of material interests of organizations or individuals by way of using of one's official powers for personal gain.

3.1.2. Corruption offences associated with unlawful obtainment of benefits and advantages

The following acts of the persons listed in clauses 2.2.1-2.2.2 of section 2 of this Overview are regarded as corruption offences associated with unlawful material gain:

1. Acceptance of any undue compensation for performing one's duty (money, services or other) from organizations or individuals, unless otherwise provided for by the legislation.

   Money that appears on an account of a person authorized to perform State functions without this person's knowledge must be transferred, within two weeks after it is discovered, to the national budget with submission of explanations to the relevant tax authority about the circumstances of receipt of such money.

[8] Article 9 of the Law on Combating Corruption.
[9] Article 12 of the Law on Combating Corruption.

2. Acceptance of gifts or services in connection with the performance of one's duty from individuals, or from persons subordinate to them.

   Gifts received without the person's knowledge must be surrendered free-of-charge within seven days to the special State fund. Such person under the same circumstances must be paid by him/her by way of transfer of money to the national budget.

3. Acceptance of invitations to tourist, treatment-and-rehabilitation or other trips, inside the country or abroad, at the expense of individuals or legal entities, local or foreign, except for the trips as follows:

a) at invitation from spouses or relatives, at their expense;

b) at invitation of other individuals (with consent of a higher authority), if relations with such individuals do not conflict/compromise official activities of the invitees;

c) done in accordance with the international treaties of the Republic of Kazakhstan or upon mutual agreement between the governmental agencies of the Republic of Kazakhstan and the governmental agencies of foreign states, at the expense of the relevant governmental agencies and/or international organizations;

d) done upon consent of a higher officer or body for participation in scientific, sports, creative, professional or humanitarian events at the expense of organizations, including travel done within the framework of chartered activities of such organizations.

4. Use of benefits not provided for by the legislation in obtaining credits, loans, acquiring securities, immovable or other property.

Family members of a GO who is already convicted for corruption have no right to accept gifts or services, invitations to tourist, treatment-and-rehabilitation or other trips at the expense of individuals or legal entities, foreign or local, with which the said GO is connected by virtue of his official service. Any individual is expected to surrender within seven days the gifts received by his/her family members to the special State fund and compensate the cost of services unlawfully used by his family members by way of transferring relevant amount to the national budget.

3.2. Gifts and other benefits

3.2.1. Applied Prohibitions

Pursuant to the Law on Combating Corruption, acceptance of any compensation in the form of money, gifts, services or in other form for the performance or in connection with the performance of their duty by the persons listed in clauses 2.2.1-2.2.2 of section 2 of this Overview is regarded as corruption offences[10]. It should also be noted that the previously existing norm of the said Law, which allowed for acceptance of *"symbolic signs of attention and symbolic souvenirs in accordance with the generally accepted norms of politeness and hospitality or in the conduct of protocol and other official events,"* was deleted in 2007 by the Law No. 308-III of the Republic of Kazakhstan, On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Improvement of Fight Against Corruption, dated 21 July 2007, i.e., this norm was deleted in order to strengthen and improve the fight against corruption.

[10] Article 13 of the Law on Combating Corruption.

Although the Kazakh legislation stipulates prohibition of gifts, it does not contain the definitions of **"gifts"** or **"business gifts."** We can assume that the definition of "gift" may mean any material valuables.

Anticorruption regulations use a term **"unlawful benefits and advantages "** (Rus. – *«противоправные блага и преимущества»*), which may include money, gifts, services, traveling at the cost of the third parties or benefits and advantages in any other forms, including use of benefits not provided for by the legislation in obtaining credits, loans, acquiring securities, real estate or other property[11].

While the basic criterion of a corrupt= act is receiving or granting of an unlawful benefit in connection with the exercise of one's official duty, the Law on Combating Corruption does not associate *the use of benefits not provided for by the legislation in obtaining credits, loans, acquiring sec urities, immovable or other property* with the exercise of one's official powers.

3.2.2. Conflicting laws in Kazakh legislation

Article 509 of the Civil Code of the Republic of Kazakhstan contains a general rule according to which the following types of gifts are prohibited, except for ordinary gifts the value of which does not exceed the amount equal to ten monthly calculation indexes that are set annually by law for purposes of calculating of taxes, State levies, duties, fees, etc.

1) gifts on behalf of minors or legally disabled individuals made by their legal representatives;
2) gifts to employees of health, educational or social care institutions and other similar institutions by individuals staying at such institutions for treatment, care or education, or by spouses or relatives of such individuals;
3) gifts to GOs in connection with their official status or the performance of their official duties.

Taking into account that The Law on Combating Corruption directly prohibits the receipt of gifts in connection with the exercise of official powers and related duties, we deem that the above allowance (Article 509 of Civil Code) for a gift of a limited value is a conflict within Kazakhstan legislation.

In accordance with the Law No. 213-I of the Republic of Kazakhstan, On Normative Legal Acts, dated 24 March 1998, codes have larger legal force than laws, i.e., in case of controversy between the norms of codes and norms of laws, the norms of codes must apply[12]. However, this conflict (between the allowance for gifts of limited value and complete prohibition of gifts) has not until now been tested by the Kazakhstan law enforcement practice and, in particular, by court practice. In this regard, we have contacted top-ranked officials in charge of development of legislative acts in the sphere of state service who acknowledge the existence of the specified controversies in legislation and tend to believe that in case of disputable situations connected with gifts to governmental officials, the Law on Combating Corruption is to be applied. Due to this, we deem that it would be expedient for anyone to refrain from giving gifts until the legislation is appropriately amended.

[11] Article 13 of the Law on Combating Corruption.

[12] Articles 4 and 6 of the Law No. 213-I of the Republic of Kazakhstan, On Normative Legal Acts, dated 24 March 1998, as amended.

4. Liability for the violation of anti-corruption rules

According to The Law on Combating Corruption, the persons guilty of corruption may incur criminal, administrative, civil-law or disciplinary punishment in compliance with the existing legal procedure.

Persons disciplined for corruption offences will be kept on a special record maintained by prosecution authorities[13].

4.1. Criminal offences and liability

The corruption offences include:

- embezzlement or misappropriation, i.e., theft of someone else's property;
- fraud;
- pseudo-entrepreneurship;
- legalization of money or other illegally acquired property;
- economic contraband;
- abuse of official powers;
- excess of authority or official powers;
- illegal entrepreneurial activities;
- provision and acceptance of bribe, and mediation in bribery;
- forgery;
- omission by an official;

Officials listed in clauses 2.2.1-2.2.2 of section 2 of this Overview as well as individuals who give bribes may be subject for prosecution for the above offences.

Types of punishment (penalties) to be imposed for the above offences depend on gravity and scope of material damage and the type of crime. The punishment (penalties) includes:

- arrest;
- fine;
- correctional labour or community work;
- ban to hold certain positions for up to 7 years;
- imprisonment (maximum term is 15 years for especially large bribes).

The above types of punishment may be combined with the confiscation of property.

4.2. Administrative offences and liability

Corruption offences for which administrative punished is imposed include *inter alia*:

[13] Order No. 4 of the Prosecutor General of the Republic of Kazakhstan, On the Approval of Instruction on Maintaining the Record of Persons Who Committed Corruption Offences and Were Brought to Disciplinary Liability, dated 20 January 2004, as amended.

- failure to provide information or submission of false or incomplete information[14:]
- carrying out illegal entrepreneurial activities and derivation of unlawful income[15];
- failure to take measures to prevent and counteract corruption[16];
- hiring persons who were previously convicted of corruption offence[17];
- receiving a gift or other benefits and advantages illegally[18];
- provision of unlawful material compensation by legal entities or individuals[19].

The principal administrative punishment is a fine.

The actions listed in clauses 3.1.1-3.1.2 of section 3 of this Overview, unless they contain the elements of administratively or criminally punishable acts, incur disciplinary punishment (e.g., demotion, removal from job, dismissal, etc.).

4.3. Offences and liability incurred by legal entities

Kazakhstan does not have a special legislative act establishing penalties for legal entities, however, legal entities may be brought to administrative charge (including for committing corruption offences). Although legal entities are not subject to criminal liability, the managers and officers of the legal entities are still liable, if there are grounds for criminal liability.

Fines or prohibition of legal entity's activities may be imposed on a legal entity as a punishment for corruption offences.

The maximum fine that can be collected from a legal entity for a corruption offence is five hundred monthly calculation indexes (explained in 3.2.2.).

5. Anti-corruption practicies

There are a number of corruption related crime cases in Kazakhstan but not all of them are available for public access. From among available cases one may mention, as a matter of example, a case as of May 2009, when a former officer of the Northern Kazakhstan Oblast's Tax Committee was found guilty of corruption and was sentenced to imprisonment for 7 and half years, with confiscation of all property. In another similar case, one of the top rank officers of the tax committee of the special economic zone was sentenced to imprisonment for 7 years with the confiscation of all property.

Additionally, there is a Regulatory Ruling of the Supreme Court of the Republic of Kazakhstan No. 18 dated 13 December 2001 "On the practice of consideration by courts of criminal cases on corruption-related crimes", which contains explanatory recommendations for lower courts for the purpose of the uniform application of the rules regarding liability for corruption.

[14] Article 532 of the Administrative Violations Code of the Republic of Kazakhstan, dated 30 January 2001, as amended (hereinafter, Administrative Violations Code).
[15] Article 535 of the Administrative Violations Code.
[16] Article 537 of the Administrative Violations Code.
[17] Article 537-1 of the Administrative Violations Code.
[18] Article 533-1 of the Administrative Violations Code.
[19] Articles 533 and 534 of the Administrative Violations Code.

6. Recommendations on Companies' Compliance Policies

Since anti-corruption regulations in Kazakhstan are still under development and subject to regular amendments we highly recommend developing and implementing a reasonably detailed anti-corruption corporate policy with the assistance of qualified legal practitioners acquainted with local practice or adjusting existing Compliance Policies concerning Kazakhstan in accordance with the above information.

- We recommend indicating in the section of the Compliance Policy concerning Kazakhstan that no gift can be given by employees to any representatives of the public sector until a practice is formed with regard to the conflict between the norm of the Civil Code (regarding gifts of limited value) and the norm of the Law on Combating Corruption prohibiting gifts altogether, or until this issue is resolved otherwise.
- Corporate anti-corruption policy should specify that the company and its employees are not allowed to finance representatives of the public sector, grant them whatsoever material and/or intangible assistance, perform works free of charge, or render services free of charge.
- It is highly recommended at all times to avoid creating the perception that the purpose of any amenity giving might be connected with exercise of an Official's authority and/or duty for the benefit of the amenity-giver and/or of the company.

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Kyrgyzstan

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Founded in 2002, Kalikova & Associates has rapidly grown into one of the leading law firms in Kyrgyzstan specializing in Business Law. The firm has proudly built a strong reputation as a reliable partner to many leading foreign companies, international organizations and diplomatic missions. Kalikova & Associates' strength lies in thorough analysis of current law in combination with economic, political and cultural trends in Kyrgyzstan and a bespoke approach to every client project.

Overview of Anti-corruption Laws in Kyrgyz Republic

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1. Principal sources of law applicable to anticorruption issues

The Kyrgyz Republic has introduced a number of laws and policies in order to fight corruption and bribery in the country. These legal acts are specific to governmental officials, officials of local self-governed authorities and those holding state or equivalent positions in the Kyrgyz Republic. The Law of the Kyrgyz Republic "*On Fighting Corruption*" adopted on 6 March 2003 is the main legal act on fighting corruption and bribery in the Kyrgyz Republic.

The list of other major legal acts, including codes, presidential edicts and governmental regulations specific to corruption, bribery, and abuse of power are provided below.

1.1. International anticorruption regulations

- UN Convention against corruption, dated 10 December 2003, ratified by the Law of the Kyrgyz Republic on August 6, 2005.
- Millennium challenge account threshold programme assistance agreement between the United States of America and the Kyrgyz Republic for the programme to improve the rule of law and control corruption, dated 14 March 2008 ratified by law No. 56 of the Kyrgyz Republic on 14 April 2008.

1.2. Codes

- Criminal Code of the Kyrgyz Republic dated 1 October 1997 (as amended on 11 July 2011) (Articles 5, 183, 224, 310 - 314).
- Civil Code of the Kyrgyz Republic Part II dated 5 January 1998 (as amended on 17 July 2009) (Article 511).

1.3. Laws

- Law of the Kyrgyz Republic "On Fighting Corruption", dated 6 March 2003 (as amended on 26 February 2009);
- Law of the Kyrgyz Republic "On Public Service", dated 11 August 2004 (as amended on 25 February 2010);
- Law of the KR "On Municipal Service" dated 21 August 2004 (as amended on 28 April 2008);
- Law of the Kyrgyz Republic "On Public Procurement", dated 24 May 2004 (as amended on 20 July 2009);
- Law of the Kyrgyz Republic "On Combating Financing of Terrorism and Legalization of Illegally Generated Revenues (Money Laundering)", dated 31 July 2006;
- Law of the Kyrgyz Republic "On Declaring and Publication of Data on Revenues, Obligations and Property of Persons Occupying Political and Other Special State Positions, and Close Relatives Thereof", dated 7 August 2004 (as amended on 28 December, 2006);

- National Strategy for Fighting Corruption in the Kyrgyz Republic, dated 11 March 2009;
- Regulation on National Agency of the Kyrgyz Republic for Corruption Prevention, dated 21 October 2005;
- Regulation on National Council of the Kyrgyz Republic on Fighting Corruption, dated 17 February 2009;

1.4. Kyrgyz Republic President's anticorruption initiatives

- Edict No. 382 of the President of the Kyrgyz Republic "On additional measures on strengthening of the fight against economic crime, smuggling and corruption", dated 14 December 1998;
- Edict No. 240 of the President of the Kyrgyz Republic "On measures on improving the system of the fight against corruption and economic crime" dated 22 July 2003;
- Edict No. 476 of the President of the Kyrgyz Republic "On urgent measures of fight against corruption", dated 21 October 2005;
- Edict No. 155 of the President of the Kyrgyz Republic "On national strategy for fighting corruption in the Kyrgyz Republic", dated 11 March 2009;
- Edict No. 146 of the President of the Kyrgyz Republic "On priority measures on implementing systems of testing using polygraph detectors in the sphere of public service", dated 27 August 2010;

2. Persons subject to anticorruption regulations

2.1. General definitions

In the Kyrgyz Republic (KR) anticorruption laws and regulations are applicable to:

- Government Officials;
- Municipal Officials;
- Heads of State Organizations;
- Officials.

(i) Government Officials

Pursuant to the Law of the KR "*On Public Service*" dated 11 August 2004 (the "Public Service Law"), Governmental Officials are defined as Kyrgyz citizens holding political or administrative public offices in the state body on a permanent basis, paid from the state budget and performing professional activities within the provided authority. According to the KR President's Decree "*On Approving Register of Public Positions of KR*", dated 27 August 2007, the list of the Governmental Officials includes:

(a) Political public officials - President of the KR; State Secretary of the KR; Advisor of the President of the KR; Head and deputy heads of the President's Administration of the KR; Prime Minister of the KR; Ministers of the KR; Speaker of the Parliament of the KR; Governors of the KR; as well as other heads of governmental offices of the KR;

(b) Judicial officials - judges and all other officers of judicial bodies of the KR; prosecutors and other officers in the prosecutor's offices of KR;

(c) Administrative public officials - officers of various state authorities of the KR, including officers of the State Secretariat; officers of the President's Administration of the KR and its subdivisions; officers of the Security Council of the KR; officers of the ministries of the KR; officers of the central Government of the KR, officers and members of the KR Parliament, officers of administrative agencies, state committees and foundations under the Government of the KR; advisors and assistants of all political public officers; officers of customs, tax authorities, financial police, social fund, statistical committees, National Bank, State Auditing Chamber, Central Commission on Elections and National Referendums, drug enforcement agencies as well as other officers of various state bodies of the KR.

(ii) Municipal Officials

Pursuant to the Law of the KR "*On Municipal Service*" dated 21 August 2004 (the "Municipal Service Law") the Municipal Officials are defined as Kyrgyz citizens holding political or administrative municipal offices in the representative and executive-administrative bodies of self-governed authorities. According to the KR President's Decree "*On Approving Register of Political and Administrative Municipal Positions of KR*", dated 28 June 2006, the Municipal Officials include:

(a) Political municipal officials - deputies of local governments, heads of counties, towns and cities, mayors of cities and other elected officials of local self-governed authorities;

(b) Administrative municipal officials – all officers of local self-governed authorities.

(iii) Heads of State Organisations

Pursuant to the Anti-Corruption Law, the Heads of State Organisations are defined as heads of organisations and companies whose activity is financed from the state budget or where the state has a participating interest (shares) in the charter capital. However, the Anti-Corruption Law does not set an exact amount of the participation interest (shares) to be owned by the state. Accordingly, heads of organisations and companies, where the state has any shareholding of any size can be considered as being subject to anticorruption laws. Commercial companies, such as Kyrgyztelecom, Kyrgyzaltyn (Kyrgyzgold), Kyrgyzneftegaz (Kyrgyz Oil and Gas), fall within the definition of state organisations since the Kyrgyz Republic is the majority shareholder in these commercial companies.

(iv) Officials

Under the laws of the Kyrgyz Republic the Officials are those persons who are permanently, temporarily or under special authorization carry out functions of a representative of authority or perform organisational-and-executive, administrative-and-economic, controlling and auditing functions in the state bodies, local self-governed authorities, state and municipal organisations, as well as the Armed Forces of the Kyrgyz Republic or military formations.

(v) Other

Individuals and legal entities, including their officials and employees, who illegally provide benefits, material and other amenities to Governmental Officials and Municipal Officials.

2.2. List of persons subject to anticorruption regulations

Pursuant to the Law of the KR "*On Fighting Corruption*" and the Criminal Code of the Kyrgyz Republic the following persons are recognized as being subject to anticorruption laws:

- Officials;
- Governmental Officials;
- Municipal Officials;

- Heads of organisations and companies whose activity is financed from the state budget or where the state has a participating interest in the charter capital;
- Individuals and legal entities, including the latter's officials and employees, who illegally provide benefits, material and other amenities to Governmental Officials and Municipal Officials;

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

Pursuant to the Kyrgyz anticorruption laws and regulations the Officials, Government Officials, Municipal Officials and Heads of State Organisations are prohibited from receiving, from individuals and legal entities, rewards or compensations in a form of gifts, money, services, actions or inaction incidental to the performance of their official duties.

In addition to above, the Government Officials and Municipal Officials are prohibited from:

(a) engaging in commercial activity, other than pedagogical (educational), scientific and other creative activities;

(b) engaging in entrepreneurial activity, as well as using their official status to derive benefit or to support third parties' activity with a view to receive any form of compensation;

(c) unlawfully interfering with the operation of other state bodies and legal entities;

(d) unlawfully favouring certain individuals and legal entities while adopting decisions for their own private gain or interest; or violating the manner of reviewing and adopting decisions with regard to appeals of individuals and legal entities;

(e) unreasonably refusing to provide information to individuals and legal entities or providing such information in an untimely and/or inadequate manner, as well as unlawfully requesting from such persons information not required by Kyrgyz Laws;

(f) transferring governmental and municipal financial and other resources to campaign funds of candidates and public organisations; as well as unlawfully transferring such resources to individuals and legal entities;

(g) impeding access for individuals and legal entities to exercise their rights and interests; and

(h) affecting the procurement procedures in the interest of any parties to such procurement.

3.2. Gifts and other benefits

Pursuant to the Anticorruption Law the Officials, Government Officials, Municipal Officials and Heads of State Organisations are prohibited from accepting

- any gifts[1], money, or services paid by third parties incidental to performance of their official duties, except for token gifts, symbolic souvenirs presented following the commonly accepted rules of courtesy or during protocol or other official events;

[1] The Governmental Officials and Municipal Officials may accept ordinary gifts, provided that the value of such gifts does not exceed 10 (ten) index rates (approximately USD 22).

- travel invitations for holiday trips, health or any other purposes within the Kyrgyz Republic and abroad from any legal entities and individuals, except if such travel invitations are made:

(a) upon invitation of close relatives at their own expense;

(b) upon invitation of other individuals, if the relationships therewith do not involve the official duty activities of the invited persons;

(c) under international treaties of the Kyrgyz Republic or mutual agreement between Kyrgyz and foreign state authorities and/or international organisations;

(d) with the consent of the superior official or collective management body in order to participate in international scientific, sport, creative, professional, or humanitarian events, or made in accordance with the charter activities of public associations upon invitation and at the expense of the counterparts.

4. Liability for the violation of anticorruption rules

Depending on the status of relevant person subjected to anticorruption regulations and type of violation the Kyrgyz Laws stipulate for disciplinary, administrative and criminal liability.

4.1. Criminal offences and liability

The criminal offences, which are directly related to corruption and entail criminal liability, include *inter alia* the following:

- legalisation of money or other illegally acquired property;
- abuse of power or official position;
- official's inaction;
- registration of illegal transactions;
- misuse of authority or exceeding official powers;
- forgery;
- false bankruptcy;
- negligence;
- illegal participation in entrepreneurial activity;
- receiving a bribe;
- offering or giving a bribe;
- bribery brokerage;
- illegal enrichment.

The types and amounts of the penalties to be imposed for above crimes depend on gravity and scope of material damage and the type of crime. The penalties include:

- fines;
- termination of office;
- disciplinary labour;

- deprivation of right to hold specific positions or engage in certain activities for a specific term;
- confiscation of property;
- imprisonment.

It should be noted that the criminal liability may only be imposed on individuals.

4.2. Administrative offences and liability

The corruption offences for which administrative liability is imposed include *inter alia*:

- illegal refusal by officials to review applications of individuals and legal entities;
- distortion of information in state registries by officials;
- failure to provide information or submission of false or incomplete information;
- carrying out illegal entrepreneurial activities and derivation of unlawful income;
- failure to take measures to prevent and counteract corruption;
- provision of unlawful material compensation by legal entities or individuals.

Administrative penalties include:

- fines;
- official warning;
- administrative arrest;
- requirement to undertake public works;
- prohibition to engage in certain activities or to hold certain positions for specific period of time;
- confiscation of property.

Foreign individuals and foreign legal entities could be held liable for administrative offences.

4.3. Offences and liability incurred by legal entities

Under the laws of the Kyrgyz Republic, Kyrgyz legal entities bear only civil and administrative liability arising from the anticorruption laws. Legal entities are not subject to criminal liability, however, should the grounds for criminal liability arise, the managers and officers of such entities are subject to criminal liability.

Fines or prohibition of a legal entity's activities may be imposed on a legal entity as a punishment for corruption offences.

5. Anticorruption practices

In the Kyrgyz Republic anticorruption charges lead to criminal punishment for bribery, abuse of power, illegal enrichment and similar offences. Generally the bribery involves a demand by government officials for financial reward for fulfilling his or her official duties,

bribery of the members of various state commissions which grant rights for property during bids. It should be noted that bribery by government officials is considered by the courts of the Kyrgyz Republic as one of the most serious crimes as it undermines the reputation of the government offices, creates a widely held perception that by way of corruption it is possible to reach personal goals and usually bribery entails the commission of other crimes.

One of the best examples of corruption can be illustrated in the case when the state prosecutor was accused of corruption as he filed a claim in the interest of the claimant-commercial entity which allowed the claimant to avoid the requirement to pay the state duties for the judicial review of the claim. As pursuant to the procedural laws of the Kyrgyz Republic claims filed by the state prosecutor's are exempt from the payment of state duties.

6. Recommendations on Companies' Compliance Policies

As a former USSR country and being similar to its neighboring countries, the Kyrgyz Republic is at the initial stages of developing and implementing corporate anti-corruption regulations and compliance procedures.Only a small number of companies, which are mainly large international or global corporations doing business in the Kyrgyz Republic have introduced corporate anti-corruption policies.

Taking into account the latest trends in the Kyrgyz Republic aimed at strengthening the anti-corruption regulations it is highly recommended that all companies operating in the Kyrgyz Republic develop corporate anticorruption policies and ensure that these are implementated by executives, employees and representatives, and especially by companies that often deal with licensing and permitting, state procurement and government contracts.

Such policies shall among other things:

- provide detailed description of types of anticorruption violations, legal restrictions imposed on government officials to accept any gifts and other benefits and potential;
- provide list of persons subject to anticorruption regulations;
- provide detailed description of acts which might be common business practice, however are considered anticorruption offences such as gifts, invitations to cultural and sport events, souvenirs and company's promotional materials and similar;
- define potential gravity of liability for the Company, government official and the employee who is in violation of anticorruption regulations.

Each employee should be provided and acquainted with the company's anticorruption policies at all times. It is also important that companies regularly update their anticorruption compliance policies in accordance with developments in the anticorruption regulations in the Kyrgyz Republic.

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Moldova

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The firm's team is described by researchers as "clearly the best" in Moldova, "a clear leader in the Moldovan market", and "leading law practice in the country", while the "level of service " is described by clients and researches as "superb". The firm made 'best friends' among fellow leading law firms in Almaty, Ashgabat, Astana, Baku, Bishkek, Bucharest, Kyiv, Moscow, Minsk, St. Petersburg, Tashkent, Tbilisi and Yerevan. The firm is an advocate of reform and improvement of the legal environment for doing business and an active member of the Moldovan business community.

Overview of Anti-corruption Laws in Moldova

Marin Chicu, Senior Associate, Turcan Cazac

1. Principal sources of law applicable to anticorruption issues

The Moldovan legislation regulating the status of public officials and establishing anticorruption rules consists of multiple laws and subordinated normative acts. Recently, the Moldovan Parliament has significantly changed the legislative framework in this field by passing new laws that came into force on 1st January 2009.

The main laws and regulations setting anticorruption rules are:

1.1. International anticorruption regulations

- UN Convention against corruption dated 3 October 2003, ratified by Moldova on 1 October 2007;
- Criminal Anti-Corruption Convention dated 27 January 1999, ratified by Moldova on 30 October 2003, and Addendum Protocol to the Criminal Anti-Corruption Convention dated 15 May 2003 ratified by Moldova on 6 July 2007;
- Civil Anti-Corruption Convention dated 4 November 1999, ratified by Moldova on 19 December 2003.

1.2. Laws

- Law of the Republic of Moldova No. 90-XVI on Preventing and Combating Corruption dated 25 April 2008;
- Criminal Code of the Republic of Moldova dated 18 April 2002;
- Law of the Republic of Moldova No. 16-XVI on Conflict of Interests dated 15 February 2008;
- Law of the Republic of Moldova No. 25-XVI on the Code of Ethics of the Public Official dated 22 February 2008;
- Law of the Republic of Moldova No. 158-XVI on Public Service and the Status of Public Officials dated 4 July 2008;
- Law of the Republic of Moldova No. 199 on Status of Persons Holding High Public Functions dated 16 July 2010.

1.3. Resolutions of the Moldovan Parliament

- Resolution of the Moldovan Parliament No. 421-XV on Approval of the National Strategy for Preventing and Fighting Corruption and of the Action Plan for Implementing of the National Strategy, dated 16 December 2004.

1.4. Resolutions of the Moldovan Government

- Resolution No. 1341 of the Moldovan Government "On Establishing the Coordination Council for Prevention and Combating Corruption, on approval of its Regulation and List of Members", dated 28 November 2008;
- Resolution No. 1341 of the Moldovan Government "On Approval of Regulation on the Mechanism for Reporting and Monitoring the Level of Corruption within Public Authorities", dated 19 December 2008.

2. Persons subject to anticorruption regulations

2.1. General definitions

In order to understand the Moldovan anticorruption laws and regulations (collectively referred to as "anticorruption regulations"), it is first necessary to identify the categories of persons to whom the anticorruption regulations apply. In Moldova, both public officials and certain other categories of persons that do not perform public functions are subject to anticorruption regulations.

The Moldovan law defines a **public official** (Romanian – "*functionar public"*), as an individual appointed, in accordance with the legal provisions, into a public function, whereas the **public function** (Romanian – "*functie publica*") constitutes all duties and obligations established under the law, for the purpose of achieving the prerogatives of a public authority[1].

The Moldovan law distinguishes a separate category of officials, persons exercising '**high public functions**', who are appointed directly through elections or indirectly through nomination, in accordance with the law, and includes inter alia, the President of the Republic of Moldova, the Prime Minister, the President and deputies of the Parliament, ministers, mayors etc., as per an exhaustive list prescribed by law[2].

Also, for the purpose of the applicability of the Moldovan Criminal Code (in particular in relation to the criminal liability for corruption offences), a different definition is used. The Article 123 of the Moldovan Criminal Code makes a distinction between the "**executive officers**" and "**high executive officers**"[3].

As defined by the Moldovan Criminal Code, the "**executive officers**" (Romanian – *persoana cu functie de raspundere*) are persons who are granted, permanently or temporally, by virtue of law, by appointment, election or by separate assignment, certain rights and obligations required to perform the functions of a public authority, or administrative and disposition responsibilities or organisational-economic responsibilities within an enterprise, a public institution, organisation of the state or of the local public administration, or within their

[1] Article 2 of Law of the Republic of Moldova No. 158-XVI on Public Service and the Status of Public Officials dated 4 July 2008.

[2] Article 2 and Annex of Law of the Republic of Moldova No. 199 on Status of Persons Holding High Public Functions dated 16 July 2010.

[3] The status of "high executive officer" constitutes an aggravating circumstance in the case of crime provided by the Article 324 - "Passive Corruption" of the Moldovan Criminal Code.

subdivisions. For example, the following persons qualify as "executive officers": public officials empowered with decision-making rights, directors and deputies of state-owned enterprises, institutions, organisations, agencies, universities, hospitals, or their subdivisions.

The "**high executive officers**" (Romanian – *persoana cu inalta functie de raspundere*) are persons whose appointment or election is regulated by the Constitution of the Republic of Moldova and Moldovan organic laws, as well as persons with powers delegated by high executive officers. For example, the following persons qualify as "high executive officers": the President of the Republic of Moldova, the President and members of the Parliament, Prime Minister and ministers, all judges, including judges of the Constitutional Court, prosecutors, and members of the Court of Accounts.

2.2. List of persons subject to anticorruption regulations

Under the Article 4 of the Law of the Republic of Moldova No. 90-XVI on Preventing and Fighting Corruption, dated 25 April 2008, the following categories of persons having a public status could be held liable for corrupt practices (hereinafter - "Corruption Infringers"):

a) persons holding 'high public functions' (e.g. the President of the Republic of Moldova, the President of the Moldovan Parliament, the Prime Minister, members of the Parliament, ministers and mayors, and other officials as per the list provided in the Law of the Republic of Moldova No. 158-XVI on Public Service and the Status of Public Officials dated 4 July 2008)

b) public officials;

c) judges, prosecutors, criminal investigation officers, employees of diplomatic service, tax authorities, customs, the Center for Combating Economic Crimes and Corruption, officers of the state security and of internal affairs bodies;

d) heads and deputies of public institutions, state or municipal enterprises, of commercial entities with majority state capital;

e) persons empowered, under normative acts, to take decisions in relation to the property owned by the state or by local public authorities, including in relation to financial means, or who have the right to dispose of such property;

f) persons providing public service;

g) persons who are permanently or temporary delegated with one of the functions mentioned from above;

h) public officials after expiration of their authority, who resigned or were removed, according to the law;

i) agents of electoral competitors;

j) notaries, auditors, advocates and representatives in court proceedings;

k) other persons provided by laws.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

The legal status of various categories of public officials is stipulated by laws or regulations governing the activities of the respective authorities and persons. In particular, the legal status of public officials is regulated by the Law of the Republic of Moldova No. 158-XVI on Public Service and the Status of Public Officials dated 4 July 2008, which covers their responsibilities, rights, restrictions, liability, employment, promotion, remuneration and social benefits, disciplinary liability, termination of service.

One of the anticorruption responsibilities of a public official is an annual submission of income declaration containing information about his/her income and financial liabilities, covering the respective person, his wife/her husband and the family members who are minors as per the requirements of a specific law.

The persons listed in Clause 2.2 (the Corruption Infringers) are restricted from performing the following acts that are interpreted as corrupt behavior[4]:

a) to interfere in the activity of other bodies, enterprises, institutions and organisations, regardless of type of ownership and legal form, in cases where such an act does not fall within their competence, making use of their position, which leads to conflicts of interests;

b) to participate (using their voting or decision-making rights) in the examination and resolving of problems in their personal interest or in the interests of their family members;

c) to provide illegal support to the entrepreneurial activity or to other kinds of private activity, or acting as representatives of third parties within the public authority where they are employed, or which are subordinated to them, or the activity of which they control;

d) to unlawfully grant advantages to individuals or legal entities in connection with the drafting or issuance of decisions;

e) to take advantage of privileges in order to obtain for himself or for other credits and loans, or to purchase securities, real estate and other property by taking advantage of their position;

f) to unlawfully use, in their own interest or in the interests of other persons, public goods that are available to them for exercising their duties;

g) to use information received while exercising their duties, in their own interest or in the interests of other persons, when such information cannot be disclosed;

h) to refuse, in their own or others interests, to issue to individuals or legal entities the information the provision of which is permitted by normative acts, to delay issuing such information or to intentionally issue false or incomplete information;

i) to manage public goods and finances contrary to their designation, in their own interest or the in the interest of others;

[4] Article 15 of Law of the Republic of Moldova No. 90-XVI on Preventing and Combating Corruption dated 25 April 2008.

j) to receive from any person or legal entity gifts or other benefits for the performance of official duties or due to their social status, and to offer such gifts to other public officials, except for the symbolic signs of attention and souvenirs according to the unanimously recognised norms of protocol and international courtesy;

k) breach of any other restrictions set by the codes of conduct and other similar rules.

3.2. Gifts and other benefits

Under the Law of the Republic of Moldova No. 90-XVI on Preventing and Fighting Corruption dated 25 April 2008, the Corruption Infringers are prohibited from accepting gifts or other benefits in connection with their position, except for the "symbolic signs of attention and souvenirs according to the norms of protocol and international courtesy"[5]. Additionally, under the Law of the Republic of Moldova No. 25-XVI on the Code of Ethics of the Public Official dated 22 February 2008, public officials are also restricted from accepting gifts, services or other benefits, except for the "symbolic signs of attention and souvenirs" according to "unanimously recognised norms of protocol and courtesy, if the value of such symbolic signs of attention or souvenirs does not exceed the amount of **one minimum monthly wage** in Moldova", which is currently set at MDL 600 Lei (about USD 50).

If the value of gifts received by the public official, without his knowledge or granted by foreign persons, exceeds the amount mentioned, then the public official shall have to transfer it into a special state repository fund.

Therefore the range of socially acceptable and legally unproblematic gifts and benefits is rather narrow. The law also requires public officials to undertake certain measures to protect themselves when an undue benefit has been offered to them, including identifying the persons offering undue benefits and reporting such attempts.

Such "small signs of attention and souvenirs" cannot be offered in connection with/in exchange for an identifiable official act performed or expected to be performed by a certain public official, in favor of the offeror, because it could be qualified as a bribe, under the Moldovan Criminal Code[6]. For such qualification a relation between the advantages offered and an identifiable official act (action) on behalf of the public official is always required, even if such official act was not performed by the respective official.

The Moldovan laws do not contain specific provisions with regard to events and entertainment, meals, travel and sponsored education. However, we believe that such categories could fall under the general restrictions described above applicable to gifts, services and benefits.

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[5] Article 15 of Law of the Republic of Moldova No. 90-XVI on Preventing and Combating Corruption dated 25 April 2008.

[6] In this regard, under the Article 325 of the Moldovan Criminal Code, the person who promises, offers or pays to an executive officer, either directly or through an intermediary, any advantages in return for fulfillment or non-fulfillment of an action, or for delaying or accelerating the fulfillment of an action included in the service duties of that executive officer, or for fulfillment of an action contrary to his service duties, or for the purpose of obtaining from public authorities of distinctions, positions, access to markets or a certain favorable decision shall be held criminally liable.

4. Liability for the violation of anticorruption rules

Under the Law of the Republic of Moldova No. 90-XVI on Preventing and Fighting Corruption dated 25 April 2008, the Corruption Infringers (both public officials and other persons that are subject to anticorruption regulations), who are guilty of corrupt practices could incur criminal, civil, disciplinary or contraventional (petty offence) liability, in compliance with the procedures stipulated by the law.

4.1. Criminal offences and liability

The corruption offences for which the Moldovan Criminal Code[7] establishes criminal liability include:

- active corruption;
- passive corruption;
- abuse of influence;
- receiving a bribe;
- offering a bribe;
- receipt of undue reward.

The executive officers, as well as individuals who give bribes could be held liable for such crimes.

Types and amounts of the penalties to be imposed for above crimes depend on gravity and scope of material damage and the type of crime. The penalties include:

- fines;
- prohibition to hold certain positions for up to 5 years;
- imprisonment (up to 15 years, in case of passive corruption with aggravating circumstances)
- confiscation.

4.2. Contraventional (administrative) offences and liability

The corruption offences for which contraventional liability[8] is imposed include *inter alia*:

- abuse of power or abuse of service;
- excess of service duties;
- concealment of corruption and protection acts and failure to counteract corruption;
- receiving an illegal reward or a material benefit.

The penalties imposed for such contraventional corruption offences are fines and/or the termination of duties with prohibition to hold certain positions for up to one year.

[7] Articles 324-330/1 and 333-334 of the Moldovan Criminal Code.
[8] Articles 312-315 of the Moldovan Contraventional Code dated 24 October 2008.

4.3. Offences and liability incurred by legal entities

Under the Moldovan Criminal Code, the legal entities themselves are not directly subject to criminal liability for breach of the corruption regulations.

Although the Moldovan Criminal Code does not allow for the direct liability of legal entities, there are still some serious legal consequences. Besides the individual criminal liability for an employee violating the law, there is a risk that the court may order the forfeiture of the "goods resulted from the crime" or the goods "used or intended to commit a crime", if the representatives of the respective legal entity were aware of the illegal award of such goods.

Additionally, all the public acquisition contracts awarded through corruption acts will be deemed void by a court of law[9].

5. Anticorruption practices

In practice, there are many cases in the Moldovan courts where public officials are held liable for corruption crimes. For example, in a recent case dated January 2010, the Supreme Court of Justice has maintained the decisions of the lower courts, by which a member of the Audiovisual Coordination Council of the Republic of Moldova was found liable for corruption crime. In particular, a member of the Audiovisual Coordination Council (assisted by another individual), was found guilty of requesting EUR 50,000 from the director of a Moldovan company in exchange for obtaining a broadcasting license. The director has paid only EUR 10,000 in two installments. Among other evidences presented by the prosecutor and accepted by the Moldovan courts as grounds for their decisions, was a document containing initials of other members of the Audiovisual Coordination Council, together with the distribution of EUR 50,000 among such members, handwritten by the convicted official. The respective member of the Audiovisual Coordination Council, was sentenced to imprisonment of 5 years, fined for MDL 30,000 (about USD 2500), deprived of the right to be a member of the Audiovisual Coordination Council for three years, suspended of imprisonment sanction for a 2-year probation period.

Additionally, the Supreme Court of Justice through its Decision No. 5 dated 30 March 2009 on "Application of legislation regarding criminal liability for passive and active corruption", has approved an explanatory decision for the purpose of uniform application by the Moldovan courts of the provisions of the Criminal Code regarding liability for corruption. Please note that decision does not refer to specific cases, but has a recommendatory character for lower courts.

6. Recommendations on Companies' Compliance Policies

Anticorruption regulations in Moldova are recent and therefore unclear on certain practical issues. Since the range of legally unproblematic gifts is narrow, we highly recommend developing and implementing an anticorruption corporate policy with assistance of qualified Moldovan counsel.

[9] Article 30 of the Moldovan Law on Public Acquisitions dated 13 April 2007

Among particulars of such policy the following cornerstone provisions need to be incorporated:

- Corporate anticorruption policy should be binding on all the company's employees without exceptions;
- Corporate anticorruption policies need to thoroughly describe the list of persons who are subject to anticorruption regulations, including the Corruption Infringers, the 'executive officers', and 'high executive officers', as described above;
- Corporate anticorruption policy should directly and strictly oblige the employees to inform the senior management about making any gift or providing any benefit to any public officials;
- As a general rule, "symbolic signs of attention and souvenirs" could be offered as gifts (and services) to public officials only during official delegations and other official meetings, according to "unanimously recognised norms of protocol and courtesy". Value of such symbolic signs of attention or souvenirs could not exceed the amount of one minimum monthly wage in Moldova, which is currently set at MDL 600 Lei (about USD 50). As both the amount of minimum monthly wage and the official MDL/USD exchange rate could fluctuate – corporate anticorruption compliance policy should instruct the company's personnel to check the current figures before granting any gift;
- It is highly recommended at all times to avoid creating the perception that the purpose of any gift offering might be connected, directly or indirectly, with exercise by the public official of its official duties;
- Corporate anticorruption policy should specify that the Company and its employees are not allowed to finance public officials, grant them whatsoever material and/or intangible assistance, perform works free of charge, or render services free of charge.

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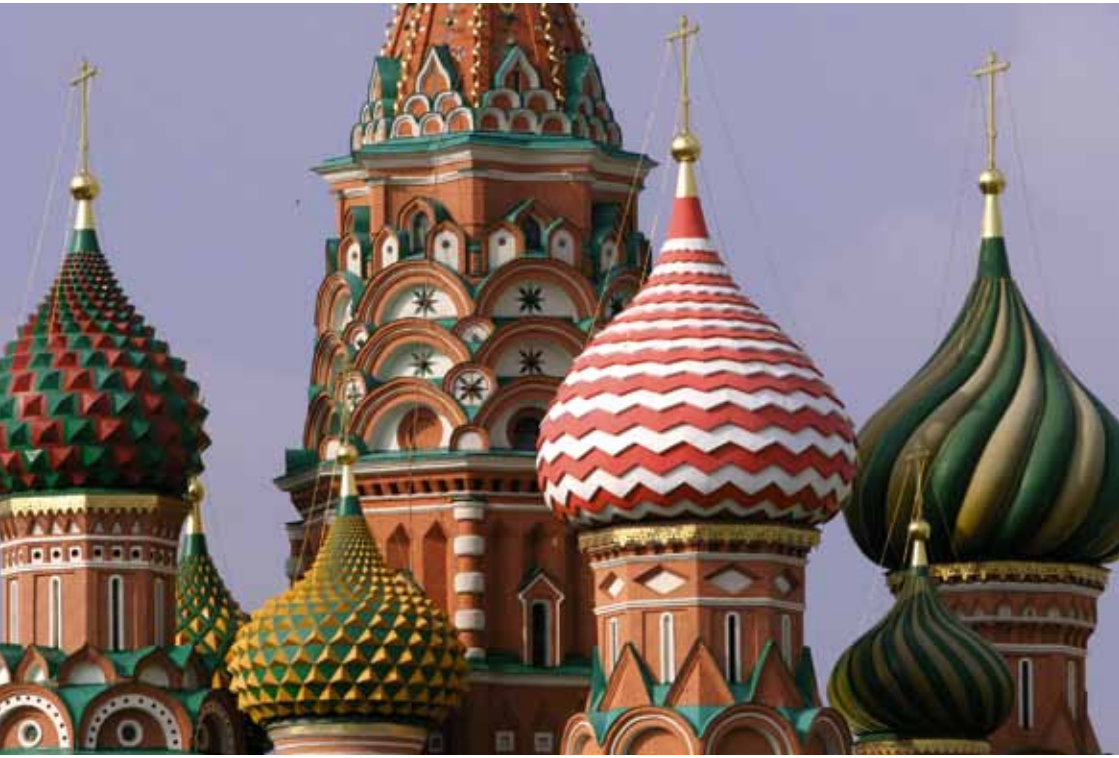

Overview of Anti-corruption Laws in Russia

Dr. Victoria Burkovskaya, Senior Associate, Egorov Puginsky Afanasiev & Partners

1. Principal sources of law applicable to anticorruption issues

The Russian authorities recognise that the level of corruption in the country is inadmissibly high and that polls held over the past years testify to widespread corruption in all public sectors, including the political level and the executive branches at various levels, law-enforcement bodies, judicial system, public procurement agencies, public health services, education system, housing and communal services etc. According to the Corruption Perceptions Index produced by Transparency International, Russia is still one of the most corrupt countries in Europe.

The issue is a serious cause for concern for Russian authorities and the fight against corruption is recognised as an important priority at the highest political level.

Russian authorities have initiated numerous strategies and reforms that include preventive and repressive measures to fight corruption.

These initiatives include general reforms among large number of institutions and public administration to specific anticorruption measures in the law enforcement system.

Specifically, in 2011, the criminal liability for different forms of corruption was strengthened, namely: a special provision sets out criminal liability for mediation in bribing; fines are now calculated as a multiple of the amount of bribe.

The main laws and regulations to prevent corruption are:

1.1. International anticorruption regulations

- UN Convention Against Corruption, dated 31 October 2003, ratified by the Russian Federation on 17 February 2006.
- Criminal law Convention on Corruption ETS 173, dated 27 January 1999, ratified by the Russian Federation on 14 July 2006.

1.2. Codes

- Criminal Code No. 167-I of the Russian Federation, dated 13 June 1996 (Chapters 22, 30);
- Code of Administrative Offences No. 195-FL, dated 30 December 2001 (Chapters 5, 7, 19).

1.3. Laws

- Law No. 273 -FZ On Prevention Corruption, dated 25 December 2008 (as amended on 11 July 2011);
- Law No 25-FZ, On Municipal Service of the Russian Federation, dated 2 March 2007 (as amended on 17 July 2009)
- Law No. 79 - FZ On the Public Civil Service, dated 27 July 2004.

- Law No. 885 – FZ On general principles of the Civil Servants Conduct, dated 12 August 2002
- Law No. 58 – FZ On the Public Service System, dated 25 May, 2003.
- Law No 172-FZ On anti-Corruption Expertise of Normative Acts and Draft Normative Acts, dated 17 July 2009

1.4. President's anti-corruption initiatives

- Decree No 460 of the President of the Russian Federation, On National Strategy for the Prevention of Corruption and National Plan for the Prevention of Corruption in 2010-2011, dated 13 April 2010;
- Decree No 925 of the President of the Russian Federation, On Measures for Implementation of Certain Provisions of the Law of Russian Federation, On Prevention of Corruption;
- Decree No 815 of the President of the Russian Federation, On Measures for Prevention of Corruption, dated 1 July 2010;
- Decree No 1799 of the President of the Russian Federation, On Central Authorities of the Russian Federation Responsible for the Implementation of Provisions of the United Nations Convention Against Corruption Relating to Mutual Legal Assistance, dated 18 December 2008;
- Decree No 1966 of the President of the Russian Federation, On Verification of Completeness of the Information, Provided by Persons Applying for Civil Service Positions of the Russian Federation and Occupying Civil Service Positions of the Russian Federation, and Compliance with Restrictions by Persons Occupying Civil Service Positions, dated 21 September 2009;
- Decree No. 561 of the President of the Russian Federation, On Approval of the Procedure for the Placement of Information on Income, Assets and Proprietary Obligations of Persons Occupying Civil Service Posts of the Russian Federation, Federal Civil Servants and Members of Their Families on the Official Websites of Federal State Organs And State Organs of Subjects of Russian Federation and Provision of This Information to the All-Russian Mass Media for Publication, dated 18 May 2009 (as amended on 12 January 2010);
- 9. Decree No 560 of the President of Russian Federation, On Provisions by Persons Applying for Civil Service Positions in State Corporations, Funds and Other Organizations, Persons Occupying Managerial Positions in State Corporations, Funds and Other Organizations, of the Information on Income, Assets and Obligations of Proprietary Nature, dated 18 May 2009.

1.5. Government Resolutions

Resolution No 96 of the Government of the Russian Federation, On Anti-Corruption Expertise of Normative Acts and Draft Normative Acts, dated 26 February 2010 (together with the Rules for the Conduct of Anti-Corruption Expertise of Normative Acts and Draft Normative Acts and Methodology for the Conduct of Anti-Corruption Expertise of Normative Acts and Draft Normative Acts)

1.6. Court decisions

Resolution No 6 of the Presidium of Supreme Court of the Russian Federation, On Court Practice in Bribery and Commercial Bribery Cases, dated 10 February 2000

1.7. Furthermore, there are a number of anticorruption programmes carried out by various agencies, such as: the Ministry of Internal Affairs, the Prosecutor General's Office, and the Federal Customs Service.

2. Persons subject to anticorruption regulations

2.1. General definitions

Russian legislation on the prevention of corruption employs the following principal terms.

Public official, which includes:

a) Federal state civil servant – a citizen performing his/her professional function at a position within federal civil service and receiving funds (remuneration, monetary allowance) from the federal budget funds.

b) State civil servant of a subject of the Russian Federation – a citizen performing his/her professional function at a position within state civil service of a subject of the Russian Federation and receiving funds (remuneration) from the budget of the respective subject of the Russian Federation. In cases provided by federal law, the state civil servant of a subject of Russian Federation may also receive funds (remuneration) from the federal budget.

c) Municipal civil servant is a citizen performing his/her professional function of municipal service prescribed by municipal acts in accordance with federal laws and laws of the Russian Federation and receiving salary from the funds of the local budget.

State Officials (Officials)

Under the Criminal law of the Russian Federation the term "Officials" applies to:

a) persons permanently, temporarily, or by special power carrying out the functions of a representative of power and fulfilling organisational-administrative or administrative-economic functions in State agencies, agencies of local self-governed authorities, State and municipal institutions, State corporations, and also in the Armed Forces of the Russian Federation, other forces and military formations of the Russian Federation,

b) persons occupying posts established by the Constitution of the Russian Federation, federal constitutional laws, federal laws for the direct performance of powers of State agencies,

c) persons occupying posts established by the constitutions or charters of subjects of the Russian Federation for the direct performance of the powers of State agencies,

d) foreign state officials and officials of international public organisations (Art/ 290 CC RF).

Criminal Code also defines the term "A representative of power" as an official of a law enforcement or controlling agency, and also anofficial endowed with administrative powers with respect to persons who are not dependent upon him by reason of employment.

In the private sector the term "**persons performing managerial functions in a commercial organization or other organization**" is used to define persons who permanently, temporarily, or by special power are fulfilling organisational-administrative or administrative-economic duties in a commercial organisation, irrespective of the form of ownership, and also in noncommercial organizations, which are not State agencies, agencies of local self-governed authorities, or State or municipal institutions.

2.2. List of persons subject to anticorruption regulations

In the Russian Federation the list of persons who bear responsibility for corruption is not clearly defined.

The law of the Russian Federation, On Prevention of Corruption, contains a general statement that citizens of the Russian Federation, foreign citizens and persons without citizenship may bear responsibility for committing corruption offences.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

The laws of Russian Federation provide a detailed list of obligations of state and municipal civil servants regarding the provision of information on their income, assets and proprietary obligations, notification of any offer to commit corruption offences. These laws establish the procedure for prevention and resolution of conflict of interests in state and municipal civil service.

There are also special legislations that aim to govern the performance of state civil service and municipal civil service.

Under the Law of Russian Federation On Preventing Corruption, and the Law On Public Civil Service, the following acts are prohibited:

For a State Civil Servant in Relation to Performance of State Civil Service:

1) participation for remuneration in the managerial body of a commercial organisation, save in cases provided by federal law;

2) occupation of a position of state civil service in case of:

- being elected to a paid position in a body of a trade union, including an elected body of the primary trade union, created within the state authority;
- carrying out entrepreneurial activity;
- acquisition in cases provided by federal law of securities on which income may be received;
- being an attorney or representative of third parties before the state authority, in which he/she occupies a state civil service position, unless otherwise provided by this federal law or other federal laws;

3) receipt of remuneration from individuals and legal entities (gifts, monetary remuneration, loans, services, payment for entertainment, recreation, transportation expenses and other forms of remuneration) in connection with performance of state functions.;

4) travel outside of the Russian Federation in connection with executing state functions paid using funds provided by individuals or legal entities, other than business trips on the basis of international treaties of the Russian Federation or on reciprocal basis of agreement between federal state authorities, state authorities of subjects of the Russian Federation and state authorities of other states, international organisations or foreign organisations;

5) use of the means of material and other support, other state property, or transfer of the same to other persons for purposes unrelated to state functions,;

6) disclosure or use of information, classified in accordance with federal laws as confidential, or state civil service information which became known to him/her during the performance of state functions, for purposes unrelated to the state civil service;

7) accepting without written permission of a representative of the employer awards, honorary and special titles (excluding scientific) of foreign states, international organisations, as well as political parties, other community unions or religious unions, if his/her functions include interaction with the mentioned organisations and unions;

8) use of the privileges of his/her office for the pre-election campaign and campaigning matters of referendum;

9) use of his/her powers in the interests of political parties, other community unions, religious unions, and other organisations, and to publicly express his/her attitude towards such unions and organisations in the capacity of state civil service if this is not part of his/her state functions;

10) discontinuation of exercising state functions for the purpose of settlement of an internal dispute;

11) participation in the managerial, guardian or supervisory boards, or other bodies of foreign non-governmental non commercial organisations operating in the Russian Federation or their structural units, unless otherwise provided by an international treaty of the Russian Federation or the laws of the Russian Federation;

12) performance, without written consent of a representative of the employer, of paid activities financed exclusively from the funds of foreign states, international and foreign organisations, foreign citizens and persons without citizenship, unless otherwise provided by an international treaty of the Russian Federation or the laws of the Russian Federation.

In cases where ownership by a state civil servant of interest-bearing securities, shares (participation interests in the charter capitals of organisations) may lead to conflict of interest he/she shall transfer the said securities, shares (participation interests in charter capitals of organisations) to fiduciary management in accordance with the civil legislation of the Russian Federation.

After termination of the position in state civil service the person may not:

- without consent of the relevant commission for compliance within two years occupy positions or work on the basis of civil law contract in commercial and non-commercial organisations, if certain functions of state management of those organisations were within the state functions of the state civil servant;
- disclose or use of confidential proprietary information, which became known to him/her in the course of his/her duties, in the interests of organisations or individuals.

The same restrictions apply to the municipal civil servants and officials.

3.2. Gifts and other benefits

Matters related to the acceptance of gifts by governmental officials are regulated by the Civil Code, which stipulates that no gifts can be presented to officials except for "ordinary ones", the value of which does not exceed 100 USD.

Such gifts can be given in certain situations, i.e. to staff of medical and educational institutions, social protection institutions, and other similar institutions by citizens who use their services, as well as by the spouses and relatives of these citizens. The same applies to governmental and municipal officials in connection with their official status or performance of official duties as well as relations between commercial organisations.

Furthermore, the Law of the Russian Federation On Public Civil Service stipulates that a civil servant, who performs his/her duties, has no right to accept rewards from natural persons and legal entities in connection with the performance of his/her official duties (in the form of gifts, monetary rewards, loans, services, payment for recreation, entertainment, transportation costs and other rewards). The gifts received by a civil servant at protocol events, official journeys and other official events shall be regarded as federal property or property of a constituent element and must be handed over to a governmental authority where he/she has been appointed to a civil service position.

Furthermore, a civil servant has no right to travel outside the Russian Federation in connection with his/her official duties at the expense of natural persons and legal entities, except for official journeys or for purposes unrelated to his official duties.

4. Liability for the violation of anticorruption rules

Under the Law of the Russian Federation On Prevention of Corruption, the persons found guilty of corruption acts incur criminal, administrative, civil-law or disciplinary liability in compliance with the procedure stipulated by legislation.

4.1. Criminal offences and liability

The following offences are reflected in the Criminal Code of the Russian Federation:

- active bribery in the public sector – defined as a bribe given in person or through a mediator;
- passive bribery – defined as a bribe taken for acts or inaction in the public sector;
- active bribery in a profit-making organisation – defined as illegal transfer of money, securities or other assets to a person who discharges the managerial functions in a profit-making or any other organisation; likewise the unlawful rendering of property-related services to him or other pequniary benefits for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by this person;
- passive bribery in the private sector – defined as illegal receipt of money, securities, or any other asset by a person who discharges the managerial functions in a profit-making or any other organisation, and likewise the illegal use of property-related services for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by this person.

- bribery in a profit-making organisation would, according to the authorities, apply to private as well as public business (state enterprises);
- an attempt, i.e. deliberate act (inaction) of a person aimed at commission of bribery in a profit-making organization;
- a promise or request for a bribe;
- mediation in bribing;
- abuse of Authority is the use of authority by a person discharging managerial functions in a profit-making or any other organisation (except State agency, local self-governed authority or a governmental municipal institution) in defiance of the lawful interests;
- abuse of Official Powers is the use by an official of his/her powers contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organisations or the legally-protected interests of the society or the State;
- money laundering;
- evasion of tax or fees by a natural person;
- evasion of tax and fees by an organization;
- concealment of pecuniary means or property of an organisation or a private individual;
- forgery or the use of false documents as well as fraud

The Russian Criminal Code also regulates offences committed in Russia as well as outside Russia. Any person who has committed a crime in the territory of the Russian Federation is to face criminal charges under the Russian Criminal Code. Russian citizens and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of Russia are to face criminal charges under the Criminal Code, unless these persons have been convicted in a foreign State. Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside Russia are to face criminal charges in Russia if the crime runs counter to the interests of the Russian Federation or if provided for by an international agreement, unless they have been convicted in a foreign State and are brought to criminal justice on the territory of the Russian Federation. Foreign citizens who commit corruption offences outside Russia may be recognised as the subject of the crime committed by functionaries due to the fact that the crime can be regarded as actions prejudice to the Russian State in accordance with its international obligations.

Types of penalties to be imposed for the above listed crimes depend on gravity and scope of material damage and the type of crime itself. Punishments (penalties) include:

- fine of up to 500 000 000 rubles (the fine can be calculated as a multiple of the bribe);
- prohibition to hold certain positions for up to 3 years;
- deprivation of freedom (maximum term for deprivation of freedom is up to 15 years for especially large bribes).
- New approach introduced in 2011 enables a fine to be calculated as a multiple of the amount of bribe, which in fact is the confiscation of property.
- These high fines are to make the corruption “economically” unfeasible and should be of material preventive value.

According to Article 104.1 of the Criminal Code, confiscation of proceeds of corruption is possible only in respect of passive bribery in a profit-making organisation, abuse of official powers and bribe-taking. It is therefore excluded in respect of active bribery in the public sector and abuse of authority. The decision to confiscate the proceeds of crime is made by the court taking into consideration all the facts of the case. According to Article 104-1 of the Criminal Code not only funds and valuables acquired through the commission of a crime but also the instruments of a crime can be confiscated.

According to Article 104.1 of the Criminal Code, confiscation of criminally acquired money, valuables and other property as well as any proceeds from this property (indirect confiscation) is possible Moreover, money, valuables and other property, used or allocated for financing terrorism, organised crime, illegal armed groups, may be confiscated. Weapons, equipment and other instruments of crime belonging to an accused can also be confiscated. This confiscation also applies to the proceeds from crime. If the proceeds of a crime were merged with legally obtained property, only the value of the part of the joint property emanating from the crime can be confiscated.

Proceeds of a crime assigned by the accused to another person (organization) are to be confiscated if the person who received the property knew or should have known that it was acquired illegally.

According to Article 104.2 of the Criminal Code money can be confiscated instead of property. Thus, if a certain object, listed in Article 104.1 CC, cannot be confiscated at the moment of taking the decision on confiscation because it is in use, has been sold or lost or due to other reasons, the court can confiscate the sum of money corresponding in value to the said object.

As a rule, confiscation, according to Article 104.1 of the Criminal Code, is possible only when the offender has been convicted and sentenced for the offence relating to the confiscation request. This follows on from Chapter 39 "Passing the sentence" of the Criminal Procedure Code (CPC).

In addition, "procedural confiscation" of instruments and proceeds of crime (direct as well as indirect proceeds) in accordance with Article 81 of the Criminal Procedure Code for the purpose of being used as evidence is also possible. Article 81 of the Criminal Procedure Code is wider than Article 104.1 of the Criminal Code in that it is not limited to the list of offences provided for in the latter Article. According to Article 81 CPC, any object, money, valuables that have been used as the instrument of an offence or retained traces of an offence is to be recognised as physical evidence.

Corruption proceeds can also be confiscated both under Article 169 of the Civil Code, which deals with the invalidity of contracts which would violate fundamental principles of public order and morality, and under Article 170 of the Civil Code which concerns the validity of fictitious and fraudulent deals. When a deal between two parties is based on corruption, the deal could be considered invalid. In such a situation all property emanating from this deal may be subject to confiscation in accordance with Articles 169 and 170 of the Civil Code.

4.2. Administrative offences and liability

The system of administrative liability for corruption offences is governed by the Code of Administrative Offences providing for administrative responsibility for actions which could be referred to as corruption. Some regulations on administrative offences are:

- violation of the terms of information provision on the opening and closing of an account with a bank or any other lending institution violation of the terms of submitting tax returns to a tax authority or an authority of a State off-budget fund;

- failure to submit information necessary to conduct tax control and for violations of the rules of bookkeeping and accounting;
- violations of the law encroaching on the rights of citizens, in particular during preparation for, and conduct of, elections and referenda;
- misappropriation through embezzlement;
- restriction of the freedom of trade;
- misuse of budgetary means; use of insider information on the market of securities;
- violation of the terms of consideration of applications (requests) for land or water object provision;
- Illegal remuneration paid on behalf of a legal entity;
- Illegal employment of a state civil servant (former state civil servant).

The principal administrative punishment is a fine.

Article 3.7 of the Code of Administrative Offences provides for confiscation of instruments or objects of an administrative offence. According to Articles 3.2 and 3.3 COA, this can be applied as a penalty to natural and legal persons who have committed administrative offences. The decision on administrative confiscation is also taken by a court according to Chapter 25 of the Arbitrary Procedure Code and Chapter 29 of the Code of Administrative Offences.

4.3. Offences and liability incurred by legal entities

Legal entities can be subject to administrative liability for administrative corruption offences. Administrative liability of legal entities is specified in the Code of Administrative Offences.

The current principles for legal persons' administrative responsibility are set out in the Code of Administrative Offences or by the laws on administrative offences adopted in various regions of the Federation. According to the Code of Administrative Offences available administrative sanctions which can be imposed on legal persons include: warning, administrative fine, confiscation of the instrument of crime or the subject of the administrative offence, and administrative suspension of the activity.

According to the Federal Law *On Fighting Legalisation (Laundering) of Proceeds of Crime and Financing of Terrorism of 7* August 2001 (No. 115-FZ), the licence of the organisations which conduct transactions with funds or other assets and operate on the basis of a licence, may be withdrawn. If a legal person violated the legislation on money-laundering, the legal person can be brought to administrative responsibility according to the Code of Administrative Offences.

The size of a fine that may be imposed on legal entities for certain corruption offences may be up to three times the amount of funds paid, three times the price of the securities, other assets or property-related services rendered, but not less than one million rubles together with confiscation of transferred funds, securities and other assets.

If a bribe or corrupt payment were made on an especially large scale (i.e. above RUB 20 million), the size of a fine that may be imposed on legal entities for certain corruption offences may be a multiple of the amount of funds paid, three times the price of the securities, other assets or property-related services rendered, but not less than one hundred million rubles together with confiscation of transferred funds, securities and other assets.

5. Anticorruption practices

In order to ensure correct and uniform application of the legislation, the Presidium of Supreme Court of the Russian Federation in its Decision No. 6 dated 10 February 2000 (amended 2007) On Court Practice in Bribery and Commercial Bribery Cases (Plenum) noted that receiving the payment by the following persons may not be treated as bribery: employees of the state authorities or municipal authorities, state and municipal establishments, performing professional or technical functions that are not organizational and managerial or administrative and business. The Plenum has also explained which functions should be treated as organizational and managerial or administrative and business.

The Plenum further noted that the bribe and commercial bribe may be given not only be money, securities or other property, but also by pecuniary benefits which are provided gratuitously, but are normally required to be paid for (tourist vouchers, refurbishment of apartment, construction of country house). Pecuniary benefits further include reduction of lease payments, interest rates on bank credits.

The Plenum noted that extortion of a bribe is a request by an official or person exercising managerial functions in a commercial or other organization, to give a bribe or transfer illegal remuneration in the form of money, securities or other property and in case of commercial bribery be subject to the threat of taking action which may cause damage to legitimate interests of the person or put the latter in a position, where he is forced to give a bribe or to commit commercial bribery for the purpose of prevention of damaging consequences for his interests protected by law.

The court practice review shows that most of the convictions made by Russian courts for bribery in 2010 was against medical workers (25%), road police officers (14%), police officers (11%).

At the same time, it is important to note that out of all convicts only 2.7% were held liable for a bribe of more than RUB 1 million, while two thirds of them were punished last year for taking a bribe of RUB 500,000 – 10,000.

This indicates that corruption is being fought against mostly at a lower level.

About 25% of bribe-takers were sentenced to imprisonment, 63% were imprisoned on probation, and another 11.8% were fined. Moreover, 43% convicts were additionally prohibited from holding certain positions and from being engaged in certain types of activities.

Statistics show that fines, as a punishment, are seldom applied and therefore are unlikely to play a significant role in preventing corruption.

6. Recommendations on Companies' Compliance Policies

We recommend:

- inclusion of the procedure envisaging that at the time a former state or municipal civil servant is employed, it is verified whether a permission for such employment should be sought (in case it creates a conflict of interest) and that, if required, such permission is obtained;

- procedures ,aimed to verify before the event whether any benefit provided for such servant in relation to the event may be prohibited by the Russian legislation, and that if such benefit is permitted it is appropriately documented, are put in place for events involving state civil servants;
- introduce internal anti-corruption standards taking into account the provisions of Russian anti-corruption legislation
- the price of gifts to state civil servants shall not exceed the limits provided by law;
- gratuitous provision of paid-for services may be treated as giving a bribe;
- ensure systematic education of the employees on anti-corruption legislation provisions, including the one that any person may be held responsible for some violations of anti-corruption laws such as giving a bribe.;
- advise the employees of the obligations imposed on state civil servants. For example, of the obligation of the state and municipal civil servants to notify prosecutor's office and other state authorities of all instances when such servants are approached by any persons for the purpose of encouraging the servant to commit a corruption-related offence.

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Turkmenistan

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ACT is nationally recognized as being in the top tier of legal service providers in Turkmenistan. ACT provides advice on legal, financial and taxation issues; it advices multinational corporations, major financial institutions and international law firms in regards to banking, insurance, oil and gas, telecommunications, shipping, construction, foreign investment and other matters of Turkmenistan legislation.

Overview of Anti-corruption Laws in Turkmenistan

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1. Principal sources of law applicable to anticorruption issues

Anticorruption legislation of Turkmenistan remains extremely undeveloped. Law in Turkmenistan does not define corruption *per se*, but giving and accepting bribes constitutes criminal offences. There is no separate legislative act specifically aimed at fighting corruption. The Criminal Code of Turkmenistan, adopted in May 2010 and entered into force on 1 July 2010, currently serves as the principal instrument to suppress bribery of public servants and acts of commercial bribery alike. The internal service rules with regard to acceptance of gifts and business courtesies by public officials are very general and as a result essentially inapplicable.

1.1. International anticorruption regulations

- UN Convention against Corruption, dated 31 October 2003, ratified by Turkmenistan on 28 March 2005;
- UN Convention against Transnational Organized Crimes, dated 15 November 2000, accessed by Turkmenistan on 28 March 2005.

1.2. Codes

- Civil Code of Turkmenistan, dated 17 July 1998, as last amended on 04 October 2010 ("Civil Code");
- Criminal Code of Turkmenistan, enacted 1 July 2010 ("Criminal Code").

1.3. Laws

- Law "On Selection of State Officers and Public Officials for the Public Service in Turkmenistan" (2002) ("Law on Public Service");
- Law "On Restriction of Joint Service of Relatives in the Organs of State Power and Government" (1995).

1.4. President's Decrees

- Decree of the President of Turkmenistan № PP-1478 as of 1 February 1995, approved Regulations on the "Disclosure of the Annual Total Revenues of Officials of Organs of State Power and Government".

1.5. Case law review

- Resolution of Assembly of the Supreme Court of Turkmenistan «On Judicial Practice on Cases of Bribery", dated 28 April 1997, No. 5.

Due to complexity of the regulation we highly recommend checking with local counsel in case of any anticorruption compliance concerns in order to avoid reputational damage and personal liability of a company's officers.

2. Persons subject to anticorruption regulations

2.1. General definitions

The main terms set out in Turkmenistan anticorruption regulations are:

- "Authorised official persons" (Rus. – "Должностные лица"),
- "State authorized persons" (Rus. – "Государственные должностные лица"),
- "Public servants " (Rus. – "Государственные служащие"),
- "Persons with managing functions" (Rus. – "Лица, выполняющие управленческие функции")

The definitions of the aforesaid terms are given below. It should be noted that there is no consistency in different laws on the usage of such terms.

The term **"Authorised official persons"** (Rus. – "Должностные лица") is used in the Criminal Code and applies to the public sector. Chapter 23 of the Criminal Code defines the term "authorised official persons" as "persons who permanently, temporarily or by special authority perform the functions of authorities' representatives as well as those who perform organisational, regulatory, administrative and economic, or control and auditing functions in state bodies, local self-governed authorities, governmental enterprises, institutions or organisations as well as in the Armed Forces, other troops and military detachments."

The term **"State Authorised Persons"** (Rus. – "Государственные должностные лица") is described in the Law on Public Service and in the Criminal Code. Article 6 of the Law on Public Service defines a "state authorised person" as a Turkmen national who holds a state position with powers and responsibilities inherent to such position and who is entitled to make decisions necessary to the performance of the functions of public service.

The same Law stipulates that a "**Public Servant**" (Rus. – "Государственные служащие") in Turkmenistan is a Turkmen national holding a position included in the Registry of positions of public servants and performing the tasks of public service. The above mentioned Registry is approved by the President of Turkmenistan.

The term **"Persons with managing functions"** (Rus. – "Лица, выполняющие управленческие функции") applies to private sector and is described in the Criminal Code as persons engaged in commercial or other organisations. It must be noted that in accordance with Article 20 of the Criminal Code only individuals can be held liable under the criminal legislation of Turkmenistan, meaning that legal entities can neither be the subject of a crime nor incur any criminal liability.

2.2. List of persons subject to anticorruption regulations

The term **"Authorised official persons"** (Rus. – "Должностные лица") used in the Criminal Code applies to public sector and since this term is not in consistence with the

terms used in the Law on Public Service, we assume it incorporates both **"State Authorised Persons"** (Rus. – "Государственные должностные лица") and **"Public Servants"** (Rus. – "Государственные служащие"). The list of Public Servants is approved by the President of Turkmenistan. At the same time the following positions are included in the definition of "**State Authorised Persons**":

1) Chairman of the Cabinet of Ministers;

2) Deputy Chairman of the Cabinet of Ministers;

3) Minister, Deputy Minister;

4) Chairman of the state committee, deputy chairman;

5) Director of institution or organization under the aegis of President of Turkmenistan;

6) Head of state institution or organisation of Turkmenistan, deputy head;

7) Chairman of Governing Board of state, state-commercial, commercial bank and his (her) deputy;

8) Head of state concern, corporation, association, industrial association and his (her) deputy;

9) Editor-in-Chief of central, regional newspapers and magazines;

10) Heads of higher educational institution;

11) Ambassador, consul and diplomatic representative;

12) Khakim (governor or mayor) of region, district, city, his deputies;

13) Deputy of Mejlis (Parliament) of Turkmenistan;

14) Judge;

15) Archin (head of local self-governing authority);

16) Prosecutor;

17) General and command staff of the Armed Forces, Border Troops, national security and internal affairs of Turkmenistan.

The term **"Persons with managing functions"** (Rus. – "Лица, выполняющие управленческие функции") also includes all persons in managing positions in commercial and other organisations.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

Persons subject to anticorruption regulations are prohibited:

The Law on Public Service (Article 19) sets the following limitations related to the performance of public service with regard to both state authorised persons and public servants:

- to engage in any other paid activity, except academic, research and creative work;
- to engage in entrepreneurial activity personally or through entrusted persons;
- to use state property and official information for purposes not related to the service;
- to employ for personal benefit the services of citizens and legal entities in connection with the discharge of official duties.

The Law "On Restriction of Joint Service of Relatives in the Organs of State Power and Government" prohibits relatives to serve in the same governmental entity or to be interdependent from each other in any governmental entities.

Due to poor anticorruption regulation the list of restrictions and duties is limited. However, we highly recommend checking with local counsel in case of any anticorruption compliance concerns in order to avoid reputational damage and personal liability of a company's officers.

3.2. Gifts and other benefits

Acceptance of **gifts** by public servants is not explicitly prohibited by the legislation. The definition of gifts and their permissible value are not clearly described by law. A gift of any value can be considered a bribe if the gift is in exchange for an action or omission in favour of the offeror.

Gifts carrying a company logo are less likely to be characterised as bribes since these items generally cannot be resold. However, if they were given in exchange for an action or omission in favour of the offeror, then it is still possible that they may be considered a bribe.

There are no clear regulations that establish limits on the value of a gift or the number of times that a gift may be given. The only monetary limit established under the legislation of Turkmenistan is a requirement to report gifts, the value of which exceeds ten times the minimum monthly wage (total value 500 Turkmen manats (175 USD) per reporting period received by an individual from a legal entity under Article 187 of the Tax Code of Turkmenistan (2004) for income tax purposes. The current minimum monthly wage in Turkmenistan is 50 Turkmen manats, therefore gifts valued in excess of 500 Turkmen manats must be reported for tax purposes. (Note: the minimum monthly wage is subject to change).

There are no rules, regulations or otherwise established standards with regard to **business courtesies**. In practice such courtesies are not limited to those held in conjunction with business meetings, but may be appropriate in connection with other events, such as national holidays, anniversaries, presentations, training or social events.

The only monetary or other value limitation arising is set out in Article 158 of the Tax Code of Turkmenistan, which establishes the tax deductions that legal entities may take with regard to such expenditure. Article 158 allows for deductions for "representation costs related to official receptions and services provided to representatives of other legal entities taking part in negotiations for the purpose of establishing and developing cooperation" to the extent that such costs do not exceed 1% of gross income. This provision is equally applicable to receptions and services provided to governmental entities.

The provision of business courtesies to public servants, especially with respect to international and local travel and lodging, should be approached on a case-by-case and

agency-by-agency basis. Generally, the best practice to minimise risk is to request formal approval from the superior governmental official or agency. Such request should be made in writing and include a detailed explanation of the programme for the trip and the expenses which are to be covered by the host.

It is permissible to provide **meals** and refreshments to public servants on or off company premises which are relevant to business meetings with no monetary limitations, as long as such meals are not granted in exchange for an act or omission in favour of the offeror. Meals which are not related to business are also allowed. There are no requirements or customs and traditions suggesting that the cost of such meals must be "reasonable." As a result, the host may decide on type of food or drinks to offer, as long as the intent is not to improperly influence the official.

As mentioned above the only monetary limitation relates to the deductibility of costs for tax purposes.

Pursuant to local practice it is permissible to pay for entrance to and hospitality at **entertainment** establishments, sports and cultural events or other group events incidental to business meetings, so long as such entertainment is not granted in exchange for an act or omission in favour of the offeror. Acceptance of entertainment by public officials is generally widespread in Turkmenistan. The host is permitted to determine the type of entertainment he/she would like to offer, so long as the intent is not to improperly influence the official. Officials are free to accept entertainment within the limits set by their superiors.

Facilitation payments to a public official in Turkmenistan will be considered a bribe, unless such payments are officially permitted. For example, a payment made to speed up an administrative process, such as obtaining an entry visa issued by the State Migration Service of Turkmenistan in an urgent manner.

It must be noted that the Resolution of Assembly of the Supreme Court of Turkmenistan "On Judicial Practice on Cases of Bribery", dated 28 April 1997, No. 5, instructs courts of justice to take into consideration that money, securities, material assets as well as paid services which are rendered free of charge (e.g. recreational or tourist tours, travel tickets, performance of repair, restoration, construction and other works) can constitute a bribe.

4. Liability for the violation of anticorruption rules

Depending on the gravity of the crime committed, the number of offenders involved, and the value of assets illegally provided or obtained, the criminal legislation of Turkmenistan envisages the following sanctions for the commission of corruption-related offenses:

- Abuse of office;
- Receipt of a bribe;
- Giving of a bribe;
- Intermediation in bribery;
- Receipt of Illegal Remuneration;
- Commercial bribery;
- Provocation of bribery or Commercial bribery.

The punishment established by the Criminal Code of Turkmenistan includes:

- a fine (monetary penalty) assigned within the limits established by the Criminal Code and corresponding to the number of the average monthly wages as fixed by current law in Turkmenistan on imposing a penal sanction;
- withholding the right to hold certain positions or engage in certain types of activities, which means a restriction on holding positions in public service, self-governed authorities, at enterprises of any form of ownership, or in public associations, or to engage in certain professional activity;
- detention, which implies community work served by a convict at his/her place of work or at the residence of the convict. Following the court ruling, the convict is obliged to transfer from 5 to 20 % of his income in favour of the state;
- punishment in a form of a ban, which means that the convict is obliged to reside in certain areas away from his permanent place of living;
- confiscation of personal property which was unlawfully acquired by the convict;
- imprisonment.

Criminal liability may only be imposed on individuals, including foreign citizens. Please note that Code of Administrative Offences does not regulate any of the corruption matters.

However, it should be mentioned that in 2005 Turkmenistan has ratified the United Nations Convention against Transnational organized crimes, which regulates and specifies the liability of the legal persons.

In accordance with the Law of Turkmenistan "About the normative legal acts" the International agreement prevails over the local legislation in case of the contradiction between such legal acts.

5. Anticorruption practices

Practice of courts of justice on criminal cases in Turkmenistan is not published or otherwise made public. However, information on such cases can be obtained from official mass media reports. Most frequently anticorruption regulations in Turkmenistan are applied in case of bribery and abuse of office and charges are brought against authorized official persons. Several such cases are described below.

In May 2005 criminal charges of bribery were brought against a former Vice-Chairman of the Cabinet of Ministers in charge of the oil and gas sector. He was punished for acceptance of bribes from a Turkish company.

In August 2005 a criminal charges of bribery were brought against a former Chief Executive of a State Company "Turkmenoil" who was found guilty for illegal receipt of funds from one of the foreign oil companies.

In July 2009 criminal charges of bribery were brought against the rector of the Turkmen National Institute of World Languages, who was accused of accepting bribes for admission to the institution in an amount totaling USD $119, 000.

In July 2011 criminal charges of bribery were brought against a group of banking employees accused of accepting bribes from the entrepreneurs in the guise of financing amounting to USD$4,646,300.00; €106,183.00 and 14.532 manat.

6. Recommendations on Companies' Compliance Policies

Currently Turkmenistan has no specific laws or anticorruption regulations, however, certain regulations related to this issue exist. Hence, companies are recommended to develop and implement anticorruption corporate policy in accordance with current regulations of the legislation with more detailed policies developed by local legal counsel as well as in accordance with international standards.

The total value of gifts offered to the officials at different level (or Persons with managing functions) should be limited by the anticorruption corporate policy. Since there is no corporate liability for corruption under the country's criminal code, it is advised that anticorruption corporate policy is mandatory for entire staff and is part of a Code of Conduct.

A gift of any value can be considered a bribe if the gift is in exchange for an action or omission in favour of the offeror. Therefore, at all times, it is highly recommended to avoid creating a perception that gifts are provided in exchange for an action or omission in favour of the offeror.

The provision of business courtesies to public servants, especially with respect to international and local travel and lodging, should be approached on a case-by-case and agency-by-agency basis. Generally, the best practice to minimise risk is to request formal approval from the superior government official or agency. Such requests should be made in writing and include a detailed explanation of the programme for the trip, and the expenses which are to be covered by the host.

Paid services which are rendered free of charge (e.g. recreational or tourist travel, travel tickets, performance of repair, restoration, construction and other works) may constitute a bribe. Hence, it is recommended to prohibit financing of such activities by companies' staff to officials of any kind (including Persons with managing functions).

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Overview of Anti-corruption Laws in Ukraine

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and Xenia Eremenko, Senior Counsel, RULG – Ukrainian Legal Group

1. Principal sources of law applicable to anticorruption issues

It is important to note that a number of fundamental changes were made in the Ukrainian anticorruption regulations. Long awaited new anticorruption Laws took effect on 1 July 2011.

The main anticorruption laws and regulations applicable to GO (**"Government officials")** are:

1.1. International anticorruption regulations

- UN Convention against corruption dated 3 October 2003, ratified by Ukraine on 18 October 2006;
- Criminal Anti-Corruption Convention (ETS 173) ratified by Ukraine on 18 October 2006, and Addendum Protocol to the Criminal Anti-Corruption Convention dated 15 May 2003, ratified by Ukraine on 18 October 2006;
- Civil Anti-Corruption Convention dated 4 November 1999, ratified by Ukraine on 16 March 2005.

1.2. Laws

- Law of Ukraine No. 3206-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 7 April 2011;
- Law of Ukraine No. 3207-VI "On Amending Certain Ukrainian Legislative Acts Pertaining to Liability for Corruption Offences" dated 7 April 2011.

1.3. Ukrainian President's anticorruption initiatives

- Edict of the President of Ukraine No. 742/2006 "On the Concept of Overcoming Corruption in Ukraine "On the Way to Morality" dated 11 September 2006;
- Edict of the President of Ukraine No. 80/2008 "On Some Measures Concerning the Improvement of the Formation and Implementation of the State's Anticorruption Policy" dated 1 February 2008;
- Edict of the President of Ukraine No. 328/2008 "On Some Measures Concerning Prevention of Corruption in Courts and Law-Enforcement Bodies" dated 11 April 2008;
- Edict of the President of Ukraine No. 414/2008 "On the Decision of the Ukrainian Council for National Security and Defense of 21 April 2008 "On the Measures Concerning the Implementation of the National Anticorruption Strategy and Institutional Support of a Consistent Anticorruption Policy" dated 5 May 2008;

- Edict of the President of Ukraine No. 1101/2008 “On the Decision of the Ukrainian Council for National Security and Defense of 31 October 2008 “On the Status of Anticorruption Efforts in Ukraine” dated 27 November 2008;
- Edict of the President of Ukraine No. 275/2010 “On Establishing the Anticorruption Committee” dated 26 February 2010.

1.4. Resolutions of the Cabinet of Ministers of Ukraine

- Resolution No. 1057 of the Cabinet of Ministers of Ukraine “On the Implementation of the State’s Anticorruption Policy” dated 16 September 2009.

1.5. Court practice

- Resolution No. 13 of the Plenary Meeting of the Supreme Court of Ukraine “On Practical Consideration by Courts of Corruption and Corruption Related Offences” dated 25 May 1998;
- Resolution No. 5 of the Plenary Meeting of the Supreme Court of Ukraine “On the Court Practices in Litigations Concerning Bribery” dated 26 April 2002;
- The Letter of the Supreme Court of Ukraine “Summary of Court Practices in Litigations Concerning Crimes” Stipulated by Cl. 368 of the Criminal Code of Ukraine (receiving a bribe) dated 1 July 2010.

2. Persons subject to anticorruption regulations

2.1. General definitions

In order to understand the Ukrainian anticorruption laws and regulations (collectively referred to as “anticorruption regulations”) we should first identify **government officials, officers, officials** and other persons to whom the anticorruption regulations apply, however, it is important to note that several categories of such persons are not limited **to government/ public sector** and include private sector.

It should be taken into account that the Ukrainian legislation does not define **public sector**.

According to the definition in Article 63 of the Commercial Code of Ukraine, State-owned companies are those based on the State form of ownership.

According to Article 326 of the Civil Code of Ukraine, State ownership means the property and money owned by the State of Ukraine. Public authorities exercise the right of ownership on behalf of and in the interests of the State of Ukraine.

According to Article 22 of the Commercial Code of Ukraine, public-sector subjects of business activity are the persons/entities that act exclusively on the basis of State-owned property, as well as the entities in the authorized capital of which the State’s ownership interest is in excess of 50% or is such that provides the State with the right to have the decisive impact on the business activities of these entities.

According to cl. 1 of Notes to Article 364 of the Criminal Code of Ukraine state and municipal enterprises are legal entities in whose statutory fund the state or municipal stake, respectively, exceeds 50 percent, or constitutes the value that assures to the state or to the territorial community the right of decisive influence on the economic activity of such enterprise.

We believe that in defining the public sector for the purposes of identifying corruption acts one should proceed on the basis of the list *of the persons that are authorized to perform the responsibilities of the State or local self-government bodies and the persons that are regarded as being vested with such responsibilities as stipulated in the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction"* (see below clauses 2.2.1-2.2.3).

Category of "Government officials" or GO *(*Ukr. – *"державні службовці",* Rus. – *"государственные служащие")* includes persons holding positions in public authorities and departments thereof, who have powers to implement goals and responsibilities of the State through their professional activities and receive salaries from the State[1].

Category of "Officers" *(*Ukr. – *"посадові особи",* Rus. – *"должностные лица")* applies to public and private sector. In public sector this category includes heads and deputy heads of public authorities and departments thereof, other government officials vested with organization, administrative and advisory responsibilities pursuant to laws and other regulations[2].

Ukrainian law also has a **general category of "official"** (Ukr. – *"службова особа"*, Rus. – *"служебное лицо"*), which includes public and private sector. In public sector this category includes persons who permanently, temporarily, or by special authority perform the functions of representatives of state authorities or local governments, as well as hold permanently or temporarily positions involving the performance of **organizational-executive or administrative-economic** functions in state authorities, local government bodies, at state or municipal enterprises, in institutions or organizations; or perform such functions by special authority granted to the person by a state authority, local government body, central state executive body with a special status, authorized body or authorized person of an enterprise, institution, organization, court, or by law[3]. **Deemed officials** shall also be officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states, including jurors, other persons who perform the functions of the state on behalf of a foreign state, in particular, on behalf of a state agency or a state enterprise), foreign arbitrators, persons who have powers to resolve civil, commercial, or labor disputes in foreign states according to procedures that constitute alternatives to judicial procedure; officials of international organizations (employees of an international organization or any other person authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies in which Ukraine participates, and judges and officers of international courts[4].

Public authority includes public authority employees who have the right to issue requirements within their powers and to make decisions binding upon legal entities and individuals regardless of the specific authority they belong to and regardless of their subordination[5].

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[1] Article 1 of Law of Ukraine No. 3723-XII "On State Service" dated 16 December 1993.

[2] Article 2 of Law of Ukraine No. 3723-XII "On State Service" dated 16 December 1993.

[3] Paragraph 2, Article 18; Paragraph 1, footnote in Article 364, the Criminal Code of Ukraine dated 5 April 2001 (amended as of 1 August 2011).

[4] Paragraph 4, Article 18 of the Criminal Code of Ukraine.

[5] Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

Organizational-executive responsibilities of an official include management of a specific industry, personnel, sector; production activities of employees of enterprises, institutions or organizations, regardless of form of ownership. These responsibilities are implemented by heads of ministries, other central bodies of executive power, heads and deputy heads of enterprises, institutions and organizations (including State-owned, collective or private), heads and deputy heads of structural units (heads of workshops, departments, laboratories, university departments), etc.[6]

Administrative-economic responsibilities of an official include management of State-owned, collective or private property. These powers (to various extent) are vested with heads and deputy heads of business planning, supply and finance departments and services, managers of shops, workshops, studios and heads of departments of enterprises, in-house auditors, supervisors, comptrollers, etc. [7]

2.2. List of persons subject to anticorruption regulations

Persons who would be held liable for corruption acts include government officials and several other categories stipulated by law.

According to Article 4 of Law "On the Fundamentals of Corruption Prevention and Counteraction" dated 07 April 2011, persons who would be held liable for corruption offences (hereinafter - **"Corruption Infringers**") are:

2.2.1. Persons authorized to perform responsibilities of the State or local self-governed bodies:

a) the President of Ukraine; the Chairperson of the Verkhovna Rada of Ukraine; his/her First Deputy and Deputy; Prime Minister of Ukraine; First Vice-Premier of Ukraine; Vice-Premiers of Ukraine; ministers and other heads of central executive bodies who are members of the Cabinet of Ministers of Ukraine, and their deputies; Head of the Security Service of Ukraine; the Prosecutor-General of Ukraine; Chairman of the National Bank of Ukraine; Chairman of the Chamber of Accounts; Verkhovna Rada of Ukraine's Human Rights Commissioner; Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea; and Chairman of the Council of Ministers of the Autonomous Republic of Crimea;

b) People's Deputies of Ukraine, Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Deputies of local councils;

c) Public servants and officials of local government;

d) Military officers of the Armed Forces of Ukraine and of other military formations created pursuant to statutes;

e) Judges of the Constitutional Court of Ukraine; other professional judges; Chair, members, and disciplinary inspectors of the Higher Qualifying Commission for Judges of Ukraine; officers of the Secretariat of said Commission; Chairman, Deputy Chairman, and secretaries of sections of the Higher Council of Justice, as well as other members of the Higher Council of Justice; people's assessors and jurors (in the time of performance of these functions);

[6] Paragraph 3, Article 1, Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

[7] Paragraph 4, Article 1, Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

f) Persons of rank-and-file and commanding personnel of the bodies of internal affairs, the State Criminal-Executive Service, bodies and units of civil defense, State Service of Special Communications and Protection of Information of Ukraine, and senior personnel of Tax Militia;

g) Officials and officers of the Public Prosecutor's offices, Security Service of Ukraine, Diplomatic Service, Customs Service, and State Tax Service;

h) Members of the Central Electoral Commission

i) Officers and officials of other public authorities;

2.2.2. Persons regarded as being authorized to perform the responsibilities of the State or local self-governed bodies:

a) Officers of public-law legal entities who are not mentioned in clause 2.2.1 but receive their salary from the State or local budget;

b) Persons who are not public servants or officials of local government but render public services (auditors, notaries, and appraisers, as well as experts, arbitration managers, independent brokers, members of labor arbitration tribunals, arbitrators in the time of performance of these functions, other persons in cases established by law);

c) Officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states including jurors; other persons who perform the functions of the state on behalf of a foreign state, in particular, on behalf of a state agency or a state enterprise), as well as foreign arbitrators, persons who have powers to settle civil, commercial, or labour disputes in foreign states according to procedures that constitute alternatives to judicial procedure;

d) Officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies in which Ukraine takes part, and judges and officers of international courts;

2.2.3. Persons who hold permanently or temporarily the positions of organizational-executive or administrative-economic functions, or the persons specially authorized to perform such duties in private law legal entities irrespective of their corporate form pursuant to the law;

2.2.4. Officers of legal entities and individuals - if an unlawful benefit is received from them or through their involvement by the persons listed in clauses 2.2.1 - 2.2.2;

We recommend providing this list in the section Compliance Policy concerning Ukraine.

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

The legal status of various categories of officials is stipulated by laws/regulations governing the activities of respective bodies/persons. In particular, the legal status of GO (government

officials) is identified in the Law of Ukraine "On State Service" and covers their responsibilities, rights, limitations and liability.

One of the **anticorruption responsibilities** of a GO is annual submission of information about his/her income and financial liabilities, including outside of Ukraine, covering this person and his/her family members, and in some cases - also his/her and family members' real estate and valuable movable property, bank deposits and securities[8].

There are also specific regulations concerning the procedure for employing a GO, his/her promotion, material and social benefits, disciplinary liability, termination of state service, etc.

3.1.1. The persons listed above in clauses 2.2.1 - 2.2.3 are prohibited from using their official powers and associated opportunities with the purpose of gaining illegal benefit or in connection with the acceptance of a promise / offer of such a benefit for themselves or other persons, including[9]:

a) To illegally assist individuals or legal entities in their economic activities, obtaining subsidies, subventions, grants, credits, or perks, and concluding contracts (including the contracts for the procurement of goods, works, and services for public funds);

b) To illegally assist in appointing a person to a position;

c) To illegally intervene in the activities of state authorities, local government bodies, or officials;

d) To illegally provide advantage to individuals or legal entities in connection with the preparation of drafts, issuance of normative-legal acts and adoption of decisions, and approval (harmonization) of opinions.

3.1.2. The persons listed above in clause 2.2.1 are prohibited (however such restrictions do not extend to the deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils (apart from those who perform their duties in the relevant councils on a permanent basis), members of the Higher Council of Justice (apart from those who work in the Higher Council of Justice on a permanent basis), and people's assessors and jurors[10] from:

a) being engaged in other paid or entrepreneurial activities (apart from teaching, scientific, and creative activities, medical practice, and sports coaching and referee practices);

b) acting as members of management bodies or supervisory boards of profit-making enterprises or organizations (apart from cases where such persons perform the functions of managing shares (stakes, equity) owned by the state or a territorial community, and represent the interests of the State or territorial community in company boards (supervisory boards) or auditing commissions of economic companies);

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[8] Article 13 of the Law of Ukraine No. 3723-XII "On State Service" dated 16 December 1993.

[9] Article 6 of the Law of Ukraine No. 3206-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 7 April 2011.

[10] Article 8 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

3.1.3. The persons listed above in clause 2.2.1 who resigned from their positions or otherwise terminated activities associated with state and local government responsibilities, are prohibited for a period of 1 year from the date of termination from:

a) entering into employment agreements (contracts) or to engage in legal transactions in the realm of entrepreneurial activity with legal entities, if such persons within a period of 1 year prior to the date of termination of the performance of state or local government functions, executed the authority involving the supervision, overseeing, or the preparation or the adoption of the relevant decision affecting the activities of such legal entities;

b) disclosing or otherwise using in their own interests the information obtained in the course of their official duties;

c) representing the interests of any persons in judicial proceedings (including those considered by courts) where the other party is the body (bodies) where they worked.

3.1.4. Persons listed above in clause 2.2.1 and subclause (a) of clause 2.2.2. are obliged to submit a declaration concerning the property, income, expenses, and obligations of financial nature for the previous year, annually by April 01, at the place of their employment (service).

3.1.5. The persons listed above in clause 2.2.1 and subclauses (a)-(b) of clause 2.2.2. are obliged:

a) to take measures to prevent any conflict of interests;

b) to inform without delay their direct superior of the existence of a conflict of interests.

3.1.6. The persons listed above in clauses 2.2.1 - 2.2.3 are prohibited from:

a) refusing to provide individuals or legal entities with the information that must be provided to the individuals or legal entities by law;

b) not providing the information that must be provided pursuant to the law in due time, or from providing false or incomplete information.

Individuals and legal entities are not allowed to finance public authorities or local self-governed bodies, to grant them material and/or intangible assistance, to perform works free of charge, to render services free of charge, to transfer means or other property, except for the cases stipulated by the laws and the international treaties of Ukraine[11].

In our opinion, these legal provisions prevent the financing of trips of the persons working in the public sector and the financing of the accompanying services, which should be reflected in the relevant section of the Compliance Policy concerning Ukraine.

3.2. Gifts and other benefits[12]

Pursuant to the Law "On the Fundamentals of Corruption Prevention and Counteraction", the persons listed above in clause 2.2.1 and sub-clauses (a) and (b) of clause 2.2.2 (i.e. the persons authorized to perform the responsibilities of the State or local self-governed bodies

[11] Article 17 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".
[12] Article 8 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

and the persons who are regarded as being vested with such responsibilities) are forbidden to receive, directly or through other persons, gifts from legal entities or physical persons in the following cases[13]:

a) as a reward for decisions, actions or lack of action in the interests of the donator, adopted or performed both directly by such persons and with their concurrence by other officials and bodies;

b) if the person who makes a gift is a subordinate.

Although the Ukrainian legislation stipulates the prohibition of gifts, it does not define **"gifts"** or **"business gifts"**.

The anticorruption regulations define "**unlawful benefit"**, which can be interpreted as pecuniary funds or other assets, advantages, perks, services, or non-material assets which without lawful grounds are promised, offered, provided, or received without pay or at a price below the minimum market price[14].

The basic criteria of an act of corruption is receiving or granting to a Corruption Infringer (i.e. person subject to anticorruption legislation) an unlawful benefit in connection with that person's official powers and related potential options.

Whereas the anticorruption regulations do not contain a definition of "gift", we can only assume that it may mean any material valuables that can be regarded as unlawful benefits. The basic difference between receiving an unlawful benefit and receiving a gift is absence of any interest on the part of a person who grants the benefit in an act by the person authorized to perform the responsibilities of the State or local self-governed bodies.

The Law "On the Fundamentals of Corruption Prevention and Counteraction" stipulates that the persons listed above in clause 2.2.1 and sub-clauses (a) and (b) of clause 2.2.2 (i.e. persons authorized to perform the responsibilities of the State or local self-governed bodies and persons who are regarded as being vested with such responsibilities) may accept gifts that fall within the generally accepted notions of hospitality, and donations, apart from cases above, **provided that the value of such gifts does not exceed 50 percent of the minimal wage as fixed on the day when the gift was accepted (effective 1 April 2011 the minimal wage in Ukraine is UAH960, or approximately USD120), one time, and the aggregate value of such gifts (donations) received from one source within one year, does not exceed one minimal wage as of 1 January of the current year (effective 1 January 2011, the minimal wage in Ukraine is UAH941, or approximately USD118).**

The limitation concerning the value of gifts does not apply to the gifts presented (made) by closely related persons or received as accessible to all discounts on goods, services, accessible to all winnings, prizes, premiums, and bonuses.

The Law "On the Fundamentals of Corruption Prevention and Counteraction" also stipulates that gifts received by these persons on behalf of the State, a territorial community, state or municipal institutions or organizations, shall be respectively deemed state or municipal property and shall be transferred to the body, institution, or organization in compliance with the procedure set by the Cabinet of Ministers of Ukraine.

[13] Part 1, Article 8 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

[14] Article 1 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

It appears that the above provisions do not differentiate between "**personal gifts**" and "**gifts for the State/ territorial community**". While the Law clearly established the cost of a personal gift (it cannot exceed 50 percent of the minimal wage as of the day when the gift was accepted), there is no indication if this restriction is also applicable to the gifts received in the course of official events.

The Cabinet of Ministers of Ukraine has not developed a procedure for submitting the received gifts to a public authority, organization or legal entity, and there are no relevant clarifications so far from public authorities or judicial bodies. Therefore, some issues are yet to be clarified.

For other benefits please see clause 3.1. above.

We recommend indicating in the section of the Compliance Policy concerning Ukraine that value of a gift that can be given by a Company X employees to any representatives of the public sector cannot exceed 50 percent of the minimal wage as of the day on which the gift was accepted in UAH (or its USD equivalent according to the official UAH/USD exchange rate of the National Bank of Ukraine). Because both, the amount of the minimal wage and the official UAH/USD exchange rate of the National Bank of Ukraine, change from time to time, the Compliance Policy should indicate that these indicators should be checked by the Company X employees before making the gift.

4. Liability for the violation of anticorruption rules

According to the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction", persons subject to liability for corruption offences who are guilty of corruption acts will face criminal, administrative, civil-law charges or a disciplinary action in compliance with the procedure stipulated by law.

Information about the persons brought to justice for corruptive offences is entered within 3 days from the date of entry into force of the relevant court judgment of the institution of civil proceedings, or of the imposition of disciplinary penalty in the Single State Register of the persons who committed corruptive offences to be made and maintained by the Ministry of Justice of Ukraine[15].

4.1. Criminal offences and liability

The corruption offences for which criminal liability is imposed are listed in the section "Crimes in service activities and professional activities involving public services" and include:

4.1.1. Official misconducts in private law legal entities and crimes in the course of professional activities of rendering public services:

- abuse of office by an employee of a private law legal entity irrespective of organizational-legal form[16];
- exceeding of authority by an officer of a private law legal entity irrespective of organizational-legal form[17];

[15] Article 21 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".
[16] Article 364-1 of the Criminal Code of Ukraine.
[17] Article 365-1 of the Criminal Code of Ukraine.

- abuse of authority by persons who render public services[18];
- commercial subornation of an officer of a private law legal entity irrespective of organizational-legal form[19];
- subornation of the person who renders public services[20].

Persons who commit such crimes are officials of private-law legal entities, persons who render public services, as well as individuals who render them for unlawful benefits.

4.1.2. Crimes in the course of official duties:

- abuse of power or official position[21];
- exceeding of powers or official powers[22];
- official forgery[23];
- official negligence[24];
- receiving a bribe[25];
- unlawful enrichment[26];
- abuse of influence[27];
- offering or giving a bribe[28];
- provocation of a bribe or of commercial subornation[29].

Persons who commit such crimes are officials listed above in clause 2.2.1, as well as individuals who give bribes.

Types of punishment imposed for above crimes depend on gravity and scope of material damage and the type of crime. The penalties include:

- fine;
- restriction of freedom;
- correctional labour;
- deprivation of right to hold certain positions, engage in certain activities for up to 3 years;
- confiscation of property;
- imprisonment (maximum term for deprivation of freedom is up to 12 years for especially big amounts of bribes)

[18] Article 365-2 of the Criminal Code of Ukraine.
[19] Article 368-3 of the Criminal Code of Ukraine.
[20] Article 368-4 of the Criminal Code of Ukraine.
[21] Article 364 of the Criminal Code of Ukraine.
[22] Article 365 of the Criminal Code of Ukraine.
[23] Article 366 of the Criminal Code of Ukraine.
[24] Article 367 of the Criminal Code of Ukraine.
[25] Article 368 of the Criminal Code of Ukraine.
[26] Article 368-2 of the Criminal Code of Ukraine.
[27] Article 369-2 of the Criminal Code of Ukraine.
[28] Article 369 of the Criminal Code of Ukraine.
[29] Article 370 of the Criminal Code of Ukraine.

4.2. Administrative offences and liability

Corruption offences for which administrative liability is imposed include *inter alia*:

- breach of limitations concerning use of official status[30];
- offering or providing an illegal benefit[31];
- breach of the limitations concerning plurality of offices and simultaneous engagement in other activities[32];
- breach of the statutory limitations concerning received gifts (donations)[33];
- breach of financial supervision requirements[34];
- breach of the requirements pertaining to notification on conflict of interests[35];
- unlawful use of the information learned by a person in the course of official responsibilities[36];
- failure to take measures to counteract corruption[37].

Penalties for administrative corruption offences include:

- Fines;
- Confiscation of illegal income, gift, etc.

5. Relevant anticorruption practices

Practice of Ukrainian courts shows that most cases of corruption related crimes involve bribes and providing illegal benefits to business entities. Statistics is that over the last years Ukrainian courts have become more efficient and improved the quality of legal proceedings in such cases. Please note again that the New Laws introduce new corruption offenses and corpus delicti. Since the New Laws have just taken effect, there are no recommendations from the Supreme Court as to practical implementation of these provisions.

6. Recommendations on Companies' Compliance Policies

6.1. We recommend indicating in the section of the Compliance Policy concerning Ukraine that the value of a gift that can be given by Company X employees to any representatives of the public sector cannot exceed 50 percent of the minimal wage as of the day on which the gift was accepted in UAH (or its USD equivalent according to the official UAH/USD

[30] Article 172-2 of the Ukrainian Administrative Infringements Code.
[31] Article 172-3 of the Ukrainian Administrative Infringements Code.
[32] Article 172-4 of the Ukrainian Administrative Infringements Code.
[33] Article 172-5 of the Ukrainian Administrative Infringements Code.
[34] Article 172-6 of the Ukrainian Administrative Infringements Code.
[35] Article 172-7 of the Ukrainian Administrative Infringements Code.
[36] Article 172-8 of the Ukrainian Administrative Infringements Code.
[37] Article 172-9 of the Ukrainian Administrative Infringements Code.

exchange rate of the National Bank of Ukraine). Because both, the amount of the minimal wage and the official UAH/USD exchange rate of the National Bank of Ukraine, change from time to time, the Compliance Policy should indicate that these indicators should be checked by the Company X employees before presenting the gift.

6.2. In our opinion, in defining the public sector for the purposes of identifying corruption acts one should proceed on the basis of a list of persons that are authorized to perform the responsibilities of the State or local self-governed bodies and the persons that are regarded as being vested with such responsibilities. We would recommend providing the list of persons, as stated in section 2.2. (clauses 2.2.1-2.2.4).

6.3. In the section of the Compliance Policy concerning Ukraine we recommend including a provision which stipulates that individuals and legal entities are not allowed to finance public authorities or local self-governed bodies, to grant them material and/or intangible assistance, to perform works free of charge, to render services free of charge, to transfer means or other property (except for the cases stipulated by the laws and the effective international treaties of Ukraine made in compliance with the procedure prescribed by law). In our opinion, these legal provisions prevent financing of trips of persons working in the public sector and financing the accompanying services.

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