



Global Investigations Guide: Eurasia

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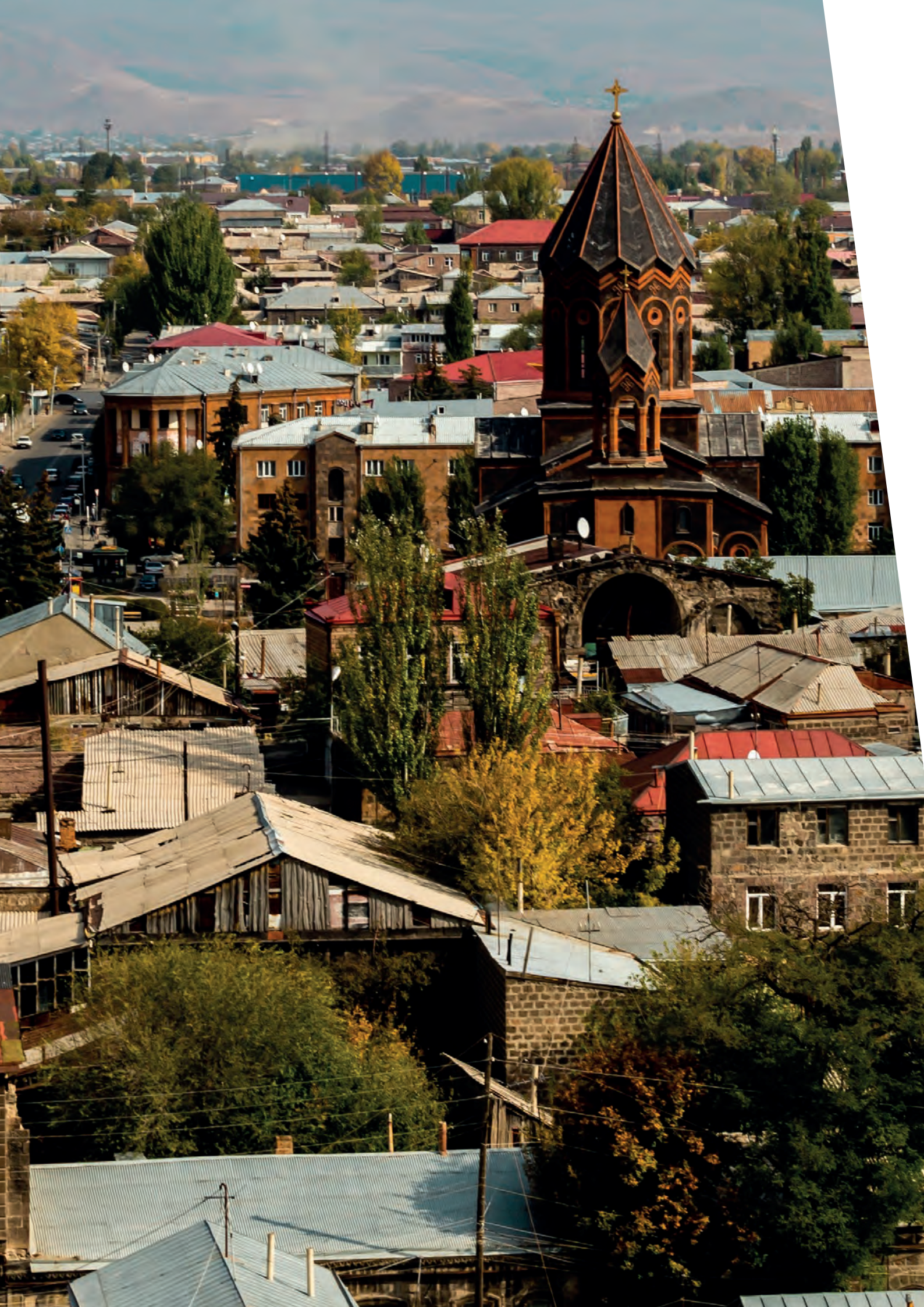
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Guide questions

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?
2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?
 - a. Employee representative bodies, such as a works council or union.
 - b. Data protection officer or data privacy authority.
 - c. Other local authorities.

What are the consequences of non-compliance?

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?
4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?
5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:
 - a. Conducting interviews?
 - b. Reviewing emails?
 - c. Collecting (electronic) documents and/or other information?
 - d. Analyzing accounting and/or other mere business databases?
6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?
7. Before conducting employee interviews in your country, must the interviewee:
 - a. Receive written instructions?
 - b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?
 - c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?
 - d. Be informed that they have the right to have their lawyer attend?
 - e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?
 - f. Be informed that data may be transferred across borders (in particular to the United States of America)?
 - g. Sign a data privacy waiver?



Armenia

Contributed by Concern Dialog Law Firm

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In the Republic of Armenia, the following substantive and procedural legal acts regulate the sphere of anti-corruption, bribery, and money laundering:

- Armenian Criminal Code (*Քրեական օրենսգիրք*) criminalizes various forms of corruption.
- Armenian Law Against Money Laundering and Financing of Terrorism (Law No. *ՀՕ-80-Ն Փողերի լվացման և ահաբեկչության ֆինանսավորման դեմ պայքարի մասին ՀՀ օրենք*) aims to set up mechanisms for protecting public, financial, and economic security from risks arising as a result of money laundering and terrorism.
- Armenian Law on Protection of Personal Data (Law No. *ՀՕ-49-Ն Անձնական տվյալների պաշտպանության մասին ՀՀ օրենք*) sets general and specific guarantees of personal data protection on the Republic of Armenia.
- Armenian Criminal Procedure Code (*Քրեական դատավարության օրենսգիրք*) provides applicable criminal procedural measures for investigating the abovementioned violations of law.

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

Not required by law. However, internal acts of a company may require informing employee representative bodies or work unions in case of internal investigations.

b. Data protection officer or data privacy authority.

Not required by law.

c. Other local authorities.

The requirement to inform local authorities is prescribed for investigations of accidents at work which causes death or injuries to employee(s). According to Article 260 of the Armenian Labor Code (*Աշխատանքային օրենսգիրք*), if an accident occurs which causes death of an employee, the employer is obliged to immediately inform the Police of the Republic of Armenia, the insurance company, and the Health and Labor inspection body of the Republic of Armenia.

What are the consequences of non-compliance?

Not applicable.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

In the Republic of Armenia, the internal investigations are not regulated by law and by default, the employees do not have a duty to support the investigation. However, internal disciplinary regulations of a company may stipulate such obligations and consequences in case of non-cooperation. For instance, a company is free to provide disciplinary liability in case of non-cooperation.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

According to Article 227 of Armenian Labor Code (*Աշխատանքային օրենսգիրք*), disciplinary sanctions may be imposed on an employee within a month following revelation of misconduct – the period of absence of the employee because of temporary incapacity, business trip or leave does not count. A disciplinary sanction may not be applied if six months have passed from the day when the misconduct occurred. If the misconduct is revealed during an auditing, financial-economic activity, a check (inventory) of sums or other values, the disciplinary sanction may be imposed on an employee if not more than one year has passed from the day when the misconduct occurred.

The Armenian Labor Code also stipulates that one disciplinary sanction shall be imposed for each disciplinary misconduct, i.e., multiple sanctions cannot be imposed for one misconduct. Different types of disciplinary sanctions (e.g., reprimand, severe reprimand, termination of employment contract in certain cases) are contained in the Armenian Labor Code. It is at the employer's discretion to choose the most convenient one for each case. Sanctions not envisaged by the law are prohibited.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

Safeguards provided under Armenian law on protection of personal data (Law No. *ՀՕ-49-Ն Անձնական տվյալների պաշտպանության մասին ՀՀ օրենք*) are applicable to any interaction with personal data. The main principles for processing personal data are the principle of lawfulness, the principle of proportionality, principle of reliability, and principle of minimum engagement of subjects. The processing of personal data can be considered lawful if the data has been processed in observance of the requirements of the law and the data subject has given his or her consent, except for cases directly provided for by the law or if the data being processed has been obtained from publicly available sources of personal data.

Personal data may be processed without the data subject's consent, where the processing of such data is directly provided for by law. The data subject's consent shall be considered to be given and the processor shall have the right to process, where personal data is contained in a document addressed to the processor and signed by the data subject. This is the position except for cases where the document, by its content is an objection against the processing of personal data, the processor has obtained data on the basis of an agreement concluded with the data subject and uses it for the purposes of operations prescribed by the agreement between parties or the data subject voluntarily, for use purposes verbally transfers information on his or her personal data to the processor.

The Guide on personal data protection in labor relations ("**Personal Data Guide**") drafted by the Agency for Protection of Personal Data of the Ministry of Justice of the Republic of Armenia ("**Agency**") provides that personal data protection is based on the principle of balance between interests of an employer and an employee. The Personal Data Guide also contains the principle of legal processing of

personal data with clarified certain aim and principle of employees being informed about the collection and process of personal data. In practice, these principles are to ensure the valid and active status of safeguards provided under Armenian law on Protection of Personal Data.

b. Reviewing emails?

Employers, based on their lawful interests, have the right to review working emails of employees. If the employee has under his/her employment contract or employers internal regulations to use his/her personal email for business purposes, such personal emails may also be reviewed if necessary. The employee should be informed before any review is carried out, although his/her consent is not necessary.

The best practice is to inform the employee in advance about the possibility of an email review. Nevertheless, no certain procedure is provided by the Personal Data Guide.

The Personal Data Guide specifically mentions that sometimes business emails are used for personal purposes. The employer should avoid reading personal emails and read business emails only. When an employee uses business email for private purposes, he/she should put those emails in a folder named “private”. The issue on whether the private folder can be reviewed if the employee has reasonable doubts that not only private emails are stored there is not regulated by legislation, nor by the Personal Date Guide.

It is considered to be best practice for the employer to develop and adopt rules for email review containing specific conditions under which the employer would be authorized to review emails.

c. Collecting (electronic) documents and/or other information?

The Personal Data Guide states that the employer should collect personal data about an employee from the employee himself/herself. If the necessary data is to be obtained from a third-party source, an employer should request the employee’s written consent for collecting documents and other information from the third-party source.

In order to receive written consent, the employer should inform the employee on the purposes of data collection, possible sources and means for obtaining the data, and nature of the data itself. The personal data of the employee should never be collected secretly without his/her consent.

d. Analyzing accounting and/or other mere business databases?

General and special safeguards stated above on data collection and processing are also applicable to analyzing accounting and/or other mere business databases.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Armenian law provides no specific procedures or any specific protection in connection with whistle-blower reports.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

There is no requirement to provide written instructions.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

There is no such obligation. However, there is a basic constitutional safeguard prescribing that every person may refuse to provide any self-incriminating information. It is very important to give notice of this constitutional protection in advance of an interview, if an internal investigation entails criminal proceedings, as a person may challenge the admissibility of the interview as evidence where such notice was not provided.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Not required by law.

d. Be informed that they have the right to have their lawyer attend?

There is no obligation to do so, but it is regarded as best practice.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Not required by law.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

The employee should be informed about his/her private data's transfer across borders (for more detail please see paragraph h).

g. Sign a data privacy waiver?

Not required by law.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Transferring personal data to another state includes the transfer of any report or copy of data by means of electronic or any other communication.

Personal data of an employee can be transferred to a third party only where written consent has been given by him/her. The personal data of the employee may be transferred to a third party without written consent if

- i. obtaining the written consent is impossible; and
- ii. such transfer is necessary to preserve the employee's health or life (e.g., the employee fainted during work and medical assistance is needed).

Regardless of the level of personal data protection in the state to which the personal data is being transferred, the transfer of personal data to other states is subject to employee's consent. While requesting for the employee's consent, the employee should be informed about the state receiving the data,

nature of the data, purpose of transfer and scope of people getting the data (e.g., the data is going to be received by employees of the human resources department).

If the personal data is transferred to a state without a proper level of data protection, the employer must receive the consent of the Agency before transferring. The Agency is obliged to confirm or refuse to confirm the transfer within 30 days from the day when the Agency received the request for the data transfer.

If the state has proper level of data protection, it may be transferred without Agency's approval. The state is considered to have proper level of data protection if:

- Personal data is transferred according to the procedure stated in international treaties.
- Personal data is transferred to states included in the Agency's official list (e.g., Italy, Denmark, Argentina, Canada, Russia, the United Kingdom of Great Britain and Northern Ireland, the United States of America (to commercial organizations) etc.)

i. Be informed that written notes will be taken?

Not required by law.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Not required by law. Internal relations may contain hold notices for investigative processes, i.e., the employer is free to provide such notices, breaches of which may result in disciplinary sanction.



9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

According to the Armenian law on Advocacy (Law No. ՀՕ-29-Ն Փաստաբանության մասին օրենք) attorney-client privilege applies to the information and evidence that a person seeking legal assistance has transferred to an “advocate” (i.e., to a lawyer admitted to the Armenian Bar and who has a status of an “advocate”), the content and nature of the advocate’s advice, and the information and evidence obtained by the advocate on his/her own behalf. If an internal investigation is conducted by a duly retained advocate, it is likely that the information regarding the investigation and obtained in the course of the investigation will be protected by attorney-client privilege.

10. Can attorney-client privilege also apply to in-house counsel in your country?

If an attorney provides legal aid to a client based on a labor contract between them, the information gained by the attorney is not protected by attorney-client privilege as the legal regime of employer-employee applies. However, if an attorney provides legal aid based on a contract of service or retainer, attorney-client privilege applies.

11. Are any early notifications required when starting an investigation?

There is no legal obligation to send any notifications when starting an investigation.

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

It is not required by law but such a requirement can be included in the insurance contract between parties.

b. To business partners (e.g., banks and creditors).

It is not required by law, but requirements for early notifications may be included in contracts between business partners.

c. To shareholders.

Not required by law.

d. To authorities.

Not required by law. In case of accidents, however, the employer is obliged to provide the information to relevant state authority as described in the response to question 2 above.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

There are no clear immediate measures prescribed by Armenian law.

Nevertheless, when a case of internal investigation is being revealed to or by a representative of a public authority, pre-investigation and investigation bodies may intervene in accordance with the procedure provided by the Armenian Criminal Procedure Code and require immediate measures to be taken. If the reasons of internal investigation *prima facie* contain elements of crime, state authorities will initiate criminal proceeding and carry it out themselves.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

There is no duty to self-report the discovered misconduct to prosecuting authorities.

Therefore, no liability may follow failure to self-report.

However, Armenian law provides for liability for concealment of a grave or particularly grave crime, as well as tools and means of the crime, crime traces, or criminally acquired items.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

If local prosecuting authorities become aware of an internal investigation, there are several scenarios which can take place.

- If the matter under internal investigation has criminal characteristics, pre-investigation authorities are likely to immediately take steps to initiate a criminal case, e.g., they may start taking explanations from certain individuals.
- State authorities may request the data which was already collected by the employer within the internal investigation and the employer is obliged to provide such data, or they may start gathering evidence by themselves from the very beginning, i.e., without usage of the information received within the internal investigation.
- Investigative bodies have to perform all the actions by themselves, i.e., they cannot instruct the employer to interview certain individuals or take any other steps.
- If there are no obvious elements of a crime, investigative authorities can take no steps to interfere in an internal investigation.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

The investigator may conduct a search if he/she has grounds to suspect that there are instruments of crime, files and assets acquired in a criminal way, and/or other items or documents, which can be significant for the case in any premises/place

or in possession of a person in order to find and obtain mentioned items. Searches at companies' offices are conducted on the basis of the investigator's order, while searches at private premises can be conducted only upon a court's prior approval. If the search is conducted in a personal cabinet of an employee, a court order is also needed as the legal regime for such searches is equalized to the regime for searches in apartments.

If the search was conducted with grave procedural violations, evidence gathered within it is deemed to be inadmissible.

When entering an office for a search, the investigator must firstly show the court order permitting the search to the person whose premises will be searched. After, the investigator offers to give an object or a person which/who is being searched. If the person refuses to voluntarily pass the objects to the investigator, the search begins. As a general rule, a search is conducted in the presence of the person whose premises is being searched. However, there is no legislative requirement for his/her presence, therefore the search can be legally conducted in the absence of such person. Showing the court order to the person whose premises is being searched is also not a legislative requirement either, consequently a search may take place without this procedure.

General rules of criminal procedure in the Republic of Armenia prescribe that investigative actions (including a search) should be conducted during daytime. But in exceptional cases (e.g., if the delay in conducting the search would make it purposeless), a search may be conducted at night.

Dawn raids are not provided by the legislation, but in practice, if necessary, dawn raids may be conducted.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Armenian law does not provide for cooperation with investigation, i.e., there are no legal safeguards that cooperation may help avoid or mitigate liability. However, the common practice is that cooperation leads to mitigation of liability.

Under Armenian criminal law, an individual is released from criminal liability for bribery if:

- The bribe was given as a result of extortion by a government official.
- A person who gave a bribe self-reported on the bribe and assisted in uncovering the crime. This is provided that such self-report was made before the law enforcement authority learns about the crime independently and not more than during three days after committing the crime.

The draft amendments to the Armenian Criminal Procedure Code, which are currently being discussed, contain regulations for cooperating procedures. The options of cooperation are not clarified by the draft amendments to the Armenian Criminal Procedure Code.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Not applicable. Corporations or any other types of legal entities are not subject to criminal investigation in the Republic of Armenia.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Under Armenian criminal law, penalties include fines, prohibition to hold certain positions or practice certain professions, arrest and imprisonment for a certain term.

Only individuals may be criminally liable; there is no criminal liability for legal entities. Furthermore, one can be held criminally liable in the Republic of Armenia only for actions or inactions committed by himself/herself individually.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Not regulated by law.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

The Republic of Armenia has prioritized the sphere of investigating corruption, bribery, and money laundering cases since its independence. Over the years, there has been a broad scope of regulations intended to minimize the possibility of any kind of violations in these spheres.

Recently, draft versions of the Armenian Criminal Code and the Armenian Criminal Procedure Code were presented and are being discussed by the appropriate authorities. Both legal acts provide specific proceedings for thorough investigation of crimes occurring in spheres discussed.

Particularly, the draft version to the Armenian Criminal Code contains a revolutionary provision which makes legal entities subject to criminal liability (e.g., illegal entrepreneurship, illegal actions during bankruptcy or insolvency proceedings, and deliberate bankruptcy).

The draft version of Armenian Criminal Procedure Code contains regulations allowing possible options of cooperation between state authorities and suspects. During the discussion of the draft amendments to the Codes, the idea of establishing a special court for examination of corruption cases only was also discussed.

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