

# Anti-Corruption Regulation

*Contributing editor*  
**Homer E Moyer Jr**



2019

GETTING THE  
DEAL THROUGH

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# Anti-Corruption Regulation 2019

*Contributing editor*  
**Homer E Moyer Jr**  
**Miller & Chevalier Chartered**

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# Preface

## Anti-Corruption Regulation 2019

Thirteenth edition

**Getting the Deal Through** is delighted to publish the thirteenth edition of *Anti-Corruption Regulation*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia and Sweden.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Homer E Moyer Jr of Miller & Chevalier Chartered, for his continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
January 2019

# Armenia

**Narine Beglaryan and Hovhannes Khudoyan**  
Concern Dialog Law Firm

## 1 International anti-corruption conventions

**To which international anti-corruption conventions is your country a signatory?**

Armenia is a signatory of the following international anti-corruption conventions:

- the United Nations Convention against Corruption (effective as of 7 April 2007);
- the Criminal Law Convention on Corruption (effective as of 1 May 2006);
- the Additional Protocol to the Criminal Law Convention on Corruption (effective as of 1 May 2006); and
- the Civil Law Convention on Corruption (effective as of 1 May 2005).

## 2 Foreign and domestic bribery laws

**Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).**

The following national legal acts contain the rules concerning or in connection with bribery:

- the Criminal Code of Armenia (adopted on 1 August 2003);
- the Law of Republic Armenia on Public Service (adopted on 9 April 2018);
- the Law of Republic of Armenia on Whistleblowing Mechanisms (adopted on 1 January 2018); and
- the law of Republic of Armenia on Commission of Prevention of Corruption (adopted on 9 June 2018).

Under the Constitution of the Republic of Armenia, in the case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply (article 5(3)).

## Foreign bribery

### 3 Legal framework

**Describe the elements of the law prohibiting bribery of a foreign public official.**

The elements of the law prohibiting bribery of foreign public officials are similar to those of a domestic public official.

The Criminal Code of Armenia defines taking a bribe (article 311 of the Criminal Code), trading in influence (article 311.2 of the Criminal Code), giving a bribe (article 312 of the Criminal Code), briber intermediation (article 313) and illegal payment for actual or supposed influence (article 312.2 of the Criminal Code of Armenia).

The Criminal Code of Armenia defines the list of foreign public officials who shall be considered as the subject of the crime (a public official) as regards the articles 311, 311.2, 312, 312.2 and 313 of the Criminal Code of Armenia (see question 4).

## 4 Definition of a foreign public official

**How does your law define a foreign public official?**

Armenian national law does not explicitly define the foreign public official; moreover, the term 'foreign public official' is not used in Armenian legislation. Nonetheless, according to article 308(4) of the Criminal Code of Armenia, the following officials are considered to be public officials in the meaning of articles 311 (taking a bribe), 311.2 (trading in influence), 312 (giving a bribe), 312.2 (illegal payment for actual or supposed influence) and 313 (briber intermediation) of the Criminal Code of Armenia:

- the persons with state officials' functions in the foreign state in accordance with the national law of that state, as well as members of the legislative body of the foreign state or other representative bodies with administrative authorities;
- officials of the international or supranational public organisations or bodies or, in cases described in the regulations of those organisations or bodies, employees or other persons engaged based on the contract and performing the functions the same as those officials;
- members of the international or supranational organisation, parliamentary assembly or other bodies with similar function;
- members or officials of the international court, authorities of which are accepted by the Republic of Armenia; and
- a jury of the foreign state courts.

## 5 Travel and entertainment restrictions

**To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?**

There are no rules stipulated in Armenian law as regards gifts, travel expenses, meals or entertainment in connection with foreign officials.

## 6 Facilitating payments

**Do the laws and regulations permit facilitating or 'grease' payments?**

Under Armenian criminal law, any payment made to a public official or other related person (article 312(1) Criminal Code of Armenia) or any payment taken, demanded, promised to be taken or where the proposal to be taken has been accepted by a public official (article 313(1) Criminal Code of Armenia) for implementation or non-implementation of action within his or her authority, or by using his or her official position to commit or not to commit to an action on his or her official capacity, or for promoting or failing to do so, or for sponsorship on connivance in favour of the briber or briber's representative, is a crime classified as giving a bribe or taking a bribe, respectively. Foreign public officials as presented in question 4 are the subject of these crimes and shall be liable for the commitment of these crimes.

Taking into account the given definition of a bribe, Armenian law considers as a crime, and as such prohibits facilitating, any 'grease' payments to public officials.

## 7 Payments through intermediaries or third parties

### In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Foreign public officials, described in question 4, are the subject of the crime bribery intermediation (ie, promotion of the agreement between the briber and bribe taker or implementation of a previously reached agreement).

## 8 Individual and corporate liability

### Can both individuals and companies be held liable for bribery of a foreign official?

According to the Criminal Code of Armenia, the individual is the one who held criminal liability, including those for bribery of a foreign official (article 23 of the Criminal Code of Armenia).

Although an entity is not a subject of crime under Armenian law, any property of the company that is proved to be directly or indirectly created or received because of crime may be subject to confiscation in favour of the state (article 103.1 of the Criminal Code of Armenia).

## 9 Successor liability

### Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?

The successor entity can hold liability for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition in the scope of article 103.1 of the Criminal Code of Armenia (ie, shall be claimed for confiscation of the property owned as a result of the crime).

## 10 Civil and criminal enforcement

### Is there civil and criminal enforcement of your country's foreign bribery laws?

#### Criminal enforcement

Citizens of the Republic of Armenia who committed a crime outside the territory of the Republic of Armenia, as well as stateless persons permanently residing in the Republic of Armenia, are subject to criminal liability under the Criminal Code of the Republic of Armenia, if the act committed by them is recognised as a crime in the legislation of the state where the crime was committed, and if they were not convicted in another state. When convicting the above-mentioned persons, the punishment cannot exceed the upper limit for punishment in the state where the crime was committed (article 15(1) of the Criminal Code of Armenia).

Citizens of the Republic of Armenia who commit a crime outside the territory of the Republic of Armenia, as well as stateless persons permanently residing in the Republic of Armenia, are subject to criminal liability under articles 311 to 313 (those connected to bribery) among others listed in the Criminal Code, regardless of whether the act is considered or not considered a crime in the state where the crime was committed (article 15(2) of the Criminal Code of Armenia).

The Criminal Code of Armenia enshrined the following rules with regard to extradition (article 16):

- citizens of the Republic of Armenia who committed a crime in another state are not extradited to that state;
- in accordance with an international treaty of the Republic of Armenia, foreign citizens and stateless persons who committed a crime outside the territory of the Republic of Armenia and who find themselves in the Republic of Armenia can be extradited to a foreign state, for criminal liability or to serve punishment. The extradition of these persons is not allowed if there are serious reasons to believe that they can be subject to torture and other cruel, inhuman or degrading treatment or punishment there. The extradition shall be declined if there are solid reasons to assume that the extradition is demanded for an investigation and punishment because of their race, beliefs, nationality, social group or political views;
- if the legislation of the country seeking extradition of persons who committed a crime envisages the death penalty for the given crime, then the extradition of persons who committed a crime can be turned down, unless the party seeking extradition presents

satisfying assurances to this country that the death penalty will not be executed; and

- in the case of refusal to extradite the person who committed a crime, the prosecution for the crime committed in the territory of a foreign country is done in accordance with the legislation of the Republic of Armenia.

#### Civil enforcement

Armenia has made the changes necessary to comply with the Civil Law Convention on Corruption, and damages deriving from corruption have been subject to claim under the general rules of civil law.

In addition, the Civil Procedural Code of Armenia defines the procedure of recognition of foreign court decisions (final and those of interim measures) and allows for compulsory enforcement in Armenia if the dispute is solved by civil means under Armenian law based on the international treaties or the reciprocity principle (Charter 52 of the Civil Procedural Code of Armenia).

The possibility of initiation of civil process in Armenia depends on whether the Armenian court has jurisdiction over the case or not. Hearing cases with the participation of foreign persons or entities for the cases explicitly listed in the Civil Procedural Code (articles 21 to 24 and 431) is allowed.

## 11 Agency enforcement

### What government agencies enforce the foreign bribery laws and regulations?

There are no special rules regarding enforcement of foreign bribery laws and regulations. Based on article 15 of the Criminal Code of Armenia, criminal prosecutor authorities are the investigative (in particular, the police and the national security service) and preliminary investigative agencies (in particular, the investigative committee, the special investigative service and the national security service). The agency who will be responsible for investigation or preliminary investigation is determined depending on the peculiarities of the crime subject to investigation.

In accordance with Resolution 726-N of the government of Armenia dated 17 July 2014, Armenia appoints the following as central authorities in the meaning of the UN Convention Against Corruption (article 46(13)): the office of the Prosecutor General – as regards pre-trial proceedings, and the Ministry of Justice – as regards trial proceedings as well as enforcement of the final judgments of foreign courts.

## 12 Leniency

### Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

A person who gives a bribe is exempted from criminal liability if it was subject to extortion, and if that person voluntarily informed the law enforcement bodies about giving the bribe no later than within three days after committing the crime, and assists the investigation, doing so before the law enforcement bodies become aware of the bribery (article 312(4)). There is a similar ground for exemption from criminal liability as regards article 312.2 – illegal payment for actual or supposed influence.

## 13 Dispute resolution

### Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

According to article 73 of the Criminal Code of Armenia, a person who commits a minor crime (the punishment for which is not more than two years' imprisonment) can be exempted from criminal liability, if he or she reconciles with the aggrieved, mitigates or compensates the inflicted damage in some other way.

There is no other means enshrined in the law to allow 'bargain' exception from criminal liability or imposing of punishment without trial as well as in the process of trial.

#### 14 Patterns in enforcement

##### Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

According to the open sources, including the judicial database, there are no cases of bribery with participation of foreign officials in the Republic of Armenia.

#### 15 Prosecution of foreign companies

##### In what circumstances can foreign companies be prosecuted for foreign bribery?

Companies are not the subject of the crime. As for the tracing of properties owned as a result of crime by foreign companies, it may be performed based on general grounds (ie, if the investigation and trial took place in Armenia) or recognition and allowance to enforcement of foreign court acts if it is subject to civil dispute resolution.

#### 16 Sanctions

##### What are the sanctions for individuals and companies violating the foreign bribery rules?

For those individuals listed in article 308 of the Criminal Code of Armenia who commit the crime of 'taking a bribe', the criminal punishment is as follows (article 311 of the Criminal Code of Armenia):

- in the case of absence of aggravating circumstances – a fine in the amount of 300,000 to 500,000 drams or imprisonment up to five years with deprivation of the right to hold certain posts or practise certain activities for up to three years;
- receipt of a bribe by an official for implementation or non-implementation of obviously illegal actions within his or her authority, in favour of the briber or briber's representative – imprisonment for three to seven years, with deprivation of the right to hold certain posts or practise certain activities for up to three years;
- taking a bribe by extortion or by a group of officials by prior agreement or in a large amount, or repeatedly – imprisonment for the term of four to 10 years, with or without property confiscation; and
- taking a bribe by an organised group or in a particularly large amount (1 million drams or more) or by a judge – imprisonment for a term of seven to 12 years, with or without property confiscation.

For giving a bribe to those individuals listed in article 308 of the Criminal Code of Armenia, the criminal punishment is as follows (article 312 of the Criminal Code of Armenia):

- in case of absence of aggravative circumstances – fine in the amount of 100,000 to 200,000 drams, or arrest for the term of one to three months, or imprisonment for the term of up to three years;
- giving a bribe in a large amount (200,000 to 1 million drams) – a fine in the amount of 200,000 to 400,000 drams, or imprisonment for the term of up to five years; and
- giving a bribe in a particularly large amount (1 million drams or more) or by an organised group – imprisonment for three to seven years.

#### 17 Recent decisions and investigations

##### Identify and summarise recent landmark decisions or investigations involving foreign bribery.

As mentioned above, there are no cases of bribery with the participation of foreign officials in the Republic of Armenia.

#### Financial record keeping

#### 18 Laws and regulations

##### What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The Tax Code of the Republic of Armenia (adopted on 1 January 2018), the Law of the Republic of Armenia on Accounting (adopted on 2 February 2003) and other laws related to those two require accurate corporate books and records and periodic financial statements.

As for the rules concerning internal company control, these are subject to corporate law regulation such as the Law of the Republic of

Armenia on Joint Stock Companies (adopted on 6 December 2001) and the Law of the Republic of Armenia on Limited Liability Companies (adopted on 7 December 2001). There are several sectoral laws that state the rules as regards the internal control for the specific company that is subject to the regulation of that law.

According to Armenian corporate legislation, it is not mandatory for the company to implement internal anti-bribery policies or rules. The Armenian companies that have approved such policies usually perform it under the foreign company shareholder's requirements.

Pursuant to the general rule, there is no requirement for the company to pass through external auditing. The periodical engagement of an external auditor is mandatory for companies acting in specific areas, the law on which demands auditing by an external auditor. Some big companies with foreign investments engage external auditors periodically (in general, on an annual basis) because of rules enshrined by their shareholders.

#### 19 Disclosure of violations or irregularities

##### To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Accounting irregularities are subject to tax office control and companies are obliged to make all corrections necessary to eliminate irregularities, otherwise they can impose liability from administrative to criminal (the director or accountant of the company will be the subject of the committed crime).

Under article 304 of the Criminal Code, concealment of a grave (those wilful acts for which the Criminal Code envisages a maximum punishment not exceeding 10 years of imprisonment but no less than five years) or a particularly grave (those wilful acts for which the Criminal Code envisages a maximum imprisonment of more than 10 years or life) crime, as well as tools and means of the crime, crime traces or criminally acquired items that had not been previously promised, is considered to be a crime.

#### 20 Prosecution under financial record-keeping legislation

##### Are such laws used to prosecute domestic or foreign bribery?

Financial record-keeping laws are not used directly but can be used for financial or tax inspections, as a result of which evidence can be obtained for cases of domestic or foreign bribery.

#### 21 Sanctions for accounting violations

##### What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There is no separate or peculiar punishment imposed for violation of accounting rules in cases of association with the payment of bribes. Violation of the accounting rules regardless of the reasons will be punished for such violation. If the violation is committing or abetting crimes concerning the bribe, it should be subject to sanction as for that crime.

#### 22 Tax-deductibility of domestic or foreign bribes

##### Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

The Tax Code of Armenia, in article 4(55), defines the concept of the 'paper-transfer document' (ie, an accounting document formally corresponding to the requirements prescribed by the Tax Code (supply of goods, performance of work or provision of service)), but the transaction mentioned therein has not been actually performed between the parties who have compiled that document or has been performed by indicating data smaller than 20 per cent and more than one of the data defined therein. An accounting document shall not be deemed to be a paper-transfer document where the taxpayer issuing it is liable for performing the transaction, pursuant to a contract on supply of goods, performance of work or provision of service. Paper-transfer documents shall not be a basis for calculation or payment of taxes or fees by taxpayers.

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## Domestic bribery

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### 23 Legal framework

#### Describe the individual elements of the law prohibiting bribery of a domestic public official.

The Criminal Code of Armenia defines taking a bribe by public officials (article 311 of the Criminal Code), taking of illegal payment by public servants not considered public officials (article 311.1), trading in influence by public officials (article 311.2 of the Criminal Code), giving a bribe (article 312), illegal payment to public servants not considered public officials (article 312.1), illegal payment for actual or supposed influence (article 312.2) and briber intermediation (article 313) as a crime.

According to criminal law, the bribe is the action that is:

- made for implementation or non-implementation of an action within the official's authority or by using his or her official position to commit or not to commit such actions for permission or service favouring or connivance in favour of the briber or briber's representative;
- given or taken or demanded or promised to take or accept the proposal to take or make a proposal to give money, property, rights to property, securities or other advantages;
- performed personally to or by the state official or through an intermediary; or
- made for the state official or another person.

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### 24 Prohibitions

#### Does the law prohibit both the paying and receiving of a bribe?

The Criminal Code of Armenia considers both paying and receiving of a bribe as a crime, and the law prohibits both paying and receiving of a bribe.

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### 25 Public officials

#### How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

The following public servants are considered state officials in Chapter 29 of the Criminal Code of Armenia (this Chapter includes articles 311 to 313 of the Criminal Code) (article 308(3) of the Criminal Code):

- persons performing the functions of a representative of the authorities, permanently, temporarily or by special authorisation; and
- persons, permanently, temporarily or by special authorisation, performing organisational, disciplinary and administrative functions in state bodies, local self-government bodies, organisations thereof, as well as in the army of the Republic of Armenia, or other forces of the Republic of Armenia.

Some definitions are given in the Law of the Republic of Armenia on public services (this law define rules as regards the gifts to domestic public officials) as well. This law defines public service as the exercise of powers vested in public bodies by the Constitution and laws of the Republic of Armenia, and it includes state service, community service and public positions (article 3) and afterwards gives the following definitions.

State service is the professional activity aimed at exercising the powers vested in state bodies by the legislation of the Republic of Armenia, which includes judicial service, civil service, diplomatic service, customs service, tax service, rescue service, military service (except for compulsory military service of the rank and file carried out by means of conscription for compulsory military service defined by law), service in national security bodies, police service, penitentiary service, judicial acts compulsory enforcement service, and court bailiff service (article 3 (2 and 3) of the Law on Public Services).

Community service is the professional activity aimed at exercising the powers vested in local self-government bodies by the laws of the Republic of Armenia and decisions of the relevant council of elders (article 3(4) of the Law on Public Services).

Public positions are elective or appointive positions occupied as a result of political processes, discretionary decisions and other similar procedures. Public positions shall be classified into the following

groups: state and community. State or community positions shall be classified into the following types: political, administrative, autonomous and discretionary (article 4 of the Law on Public Services).

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### 26 Public official participation in commercial activities

#### Can a public official participate in commercial activities while serving as a public official?

Persons holding public positions and public servants may not hold a position that is not related to his or her status within other state or local self-government bodies, or any position within commercial organisations, or engage in entrepreneurial activities, or perform any other paid work except for scientific, educational and creative work (article 31(1) of the Law on Public Services).

---

### 27 Travel and entertainment

#### Describe any restrictions on providing domestic officials with travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

If any travel expenses, meals or entertainment are provided to an official without the intent of receiving a mutual advantage, they may be considered as gifts (see question 28). The law permits only the receipt of certain types of gifts by an official, but in the remaining cases it is forbidden.

Prohibitions apply only to officials. There are no restrictions for providing such benefits.

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### 28 Gifts and gratuities

#### Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

Pursuant to article 29(2) of the Law on Public Service, the concept of a 'gift' shall imply any advantage related to property interests that would not reasonably be granted to a person not holding the position in question. It shall also include ceded claims, surrender of claims without compensation or at an apparently disproportionately low price, property transferred without compensation or property sold at an apparently disproportionately low price, services rendered or work carried out at an apparently disproportionately low price, as well as preferential loans, gratuitous use of another's property and other actions, as a result of which a person derives benefit or advantage.

Persons holding public positions and public servants must not accept, or agree to accept in the future, any gift if it is connected with the performance of their official duties (article 29(1) of the Law on Public Service).

The Law on Public Service (article 29(4)) allows persons holding public positions and public servants to receive the following gifts in connection with the performance of their official duties:

- (i) gifts given or hospitality organised during state or official visits or events, as well as work visits;
- (ii) gifts usually given during public events;
- (iii) hospitality usually organised;
- (iv) materials provided free of charge for official use;
- (v) scholarships, grants or benefits awarded in a public competition on the same conditions and criteria as those that apply to the other applicants, or as a result of another transparent process; or
- (vi) ceremonial gifts given by foreign states and international organisations.

Where the value of a gift accepted by a person holding a public position or a public servant and provided for by points (i), (ii), (iv) and (vi) above exceeds 75,000 drams, it shall be deemed to be the property of the state or community and shall be registered as such. Persons holding public positions and public servants shall be obliged to transfer such gifts to the state or community as prescribed by the government.

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### 29 Private commercial bribery

#### Does your country also prohibit private commercial bribery?

Article 200 of the Criminal Code of Armenia states disposition and sanction for commercial bribes. The subjects of this crime are the following:



- employees of a commercial or other organisation (those who permanently, temporarily or on the basis of special authority exercise executive or other managerial functions or occupy any other position in a commercial organisation, irrespective of the ownership of that organisation, as well as in a non-commercial organisation, which is not a governmental or local body or a department of governmental and local bodies);
- arbitrators, including those performing functions in accordance with the foreign state arbitration law;
- auditors; and
- attorneys.

The commercial bribery itself is illegally promising, offering or giving individuals covered by the respective article money, property rights, securities or any other advantages in exchange for an action or omission in favour of that person or other persons indicated by them.

The employee of a commercial or other organisation, arbitrator, auditor or attorney in question can be held liable for receiving, promising to receive, requesting or accepting the offer to receive such.

However, if the bribe has been given as a result of extortion, the person who has paid the bribe is exonerated from criminal responsibility if they turn themselves in and assist law enforcement authorities in uncovering the crime, on condition that this happens before the law enforcement learns about the crime independently and not more than three days after committing the crime.

### 30 Penalties and enforcement

#### What are the sanctions for individuals and companies violating the domestic bribery rules?

The sanction imposed for giving commercial bribes to persons covered by article 200 of the Criminal Code of Armenia is a fine in the amount of between 200,000 and 400,000 drams, or deprivation of the right to hold certain posts or practise certain activities for up to three years, or imprisonment for up to three years. The same actions committed by a group with prior agreement or by an organised group are punished with a fine in the amount of 300,000 to 500,000 drams, or imprisonment for a term of four years.

The sanctions imposed on the persons covered by article 200 of the Criminal Code of Armenia for receiving a bribe is a fine in the amount of 200,000 to 400,000 drams, or deprivation of the right to hold certain posts or practise certain activities for up to three years, or imprisonment for the term of three years. The same action, committed by extortion, is punished with a fine in the amount of 300,000 to 500,000 drams, or with deprivation of the right to hold certain posts or practise certain activities for up to five years, or with imprisonment for the term of five years.

As there are no differences between foreign and domestic bribery rules, sanctions presented in question 16 are also applicable for violations of the domestic bribery rules.

### 31 Facilitating payments

#### Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

As mentioned above, Armenian law does not provide separate regulations for facilitating or 'grease' payments.

### 32 Recent decisions and investigations

#### Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

According to open sources, including the judicial database, there are no cases of bribery involving foreign companies in the Republic of Armenia.



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