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The Legal 500 Country Comparative Guides Armenia **BRIBERY & CORRUPTION**

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Armenia.

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ARMENIA

BRIBERY & CORRUPTION



1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The legal framework governing bribery and corruption is regulated by the following.

- the Law on Seizure of Property of Illegal Origin;
- the Law on the Anti-corruption Committee;
- the Law on the Corruption Prevention Commission (CPC);
- the Law on Public Service;
- the Law on Combating Money Laundering and Terrorist Financing;
- the Law on Whistleblowing Mechanisms;
- the Criminal Code; and
- the Criminal Procedure Code.

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

According to article 190 of the Criminal Procedure Code of Armenia bribery is investigated by the Anti-corruption Committee of Armenia and prosecuted by the Prosecutor General's office. In certain cases, those crimes can be investigated by the National Security Service of Armenia.

3. How is bribery defined?

Under Armenian criminal law, any payment made to a public official or other related person or any payment taken, demanded, promised to be taken or where the proposal to be taken has been accepted by a public official for implementation or non-implementation of action within their authority, or by using their official position to commit or not to commit an action on their official capacity, or for promoting or failing to do so, or for sponsorship or connivance in favour of the briber or briber's representative, is a crime classified as giving a bribe or taking a bribe, respectively.

The qualification applies regardless of the beneficiary, which can be either the party offering the bribe, or any other person designated by the latter.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?

In general, the regulations concern "public bribery". However, certain manifestations of "private bribery" are criminalised as well. In particular, commercial bribery. 'Commercial bribery' is defined as illegally promising, offering or giving individuals covered by the respective provisions money, property rights, securities or any other advantages in exchange for an act or omission in favour of the briber or another specified person.

Subjects of this crime are:

- employees of a commercial or other organisation;
- arbitrators;
- auditors; and
- attorneys.

Employees of commercial or other organisations, arbitrators, auditors, and attorneys can be held liable for accepting, promising to accept, requesting, or agreeing to an offer to accept a bribe.

Even though there is no universally applicable definition of the term "public official" in the criminal code (as the scope of the term was later clarified by the Cassation Court), considering both the legislation and relevant practice these individuals are the main "targets" of bribery:

- persons who hold the function of a government representative, whether permanently, temporarily or with separate

authority;

- persons who hold functions in state bodies, local self-government bodies or their organisations, the armed forces or other troops or military units of Armenia, whether permanently or temporarily; and
- persons who hold organisational, managerial, or administrative functions in such bodies with separate authority.

At the same time, foreign officials are defined as follows:

- persons performing the functions of a state official in accordance with the domestic law of a foreign state and members of a representative body of a foreign state legislative or administrative authority;
- officials of an international or supranational public organisation or body or, in cases provided for by the regulations of that organisation or body, contract employees or other persons performing functions corresponding to those performed by such officials or employees;
- members of an international or supranational organisation, parliamentary assembly or other body carrying out such functions;
- members or officials of international courts whose jurisdiction has been adopted by Armenia; and
- judicial officers of foreign courts.

When it comes to definitions and distinctions between private and public bribery, the actions which constitute crime mostly overlap.

5. What are the civil consequences of bribery in your jurisdiction?

Both corruption in general and bribery in particular are regulated by public-criminal limb of legislation. Even though several consequences such as confiscation of property or civil claims aimed to compensation are prescribed, that procedure takes place in frames of a criminal proceeding.

Nevertheless, as an example of indirect civil consequence of bribery in jurisdiction the Law on Procurement should be mentioned. In particular, according to that law, if during the 3 years prior to the filing of the application the participant of the procurement process or the representative of their executive body has been convicted for accepting or giving bribes, mediation of bribery, their participation will not be allowed.

6. What are the criminal consequences of bribery in your jurisdiction?

According to the Criminal Code of Armenia bribery of public officials is punishable by:

- fines of between AMD 100,000 and AMD 200,000; or
- detention for between one and three months; or
- imprisonment for up to three years.

The sanctions may be more severe in case of aggravating circumstances, for instance:

- the amount of the bribe exceeds AMD 200,000 /fines of between AMD 200,000 and AMD 400,000, or imprisonment from two to five years/
- the amount of the bribe exceeds AMD 1 million; or
- the bribe is paid by an organised group. /imprisonment from three to seven years/

Nevertheless, if the bribe has been offered as a result of extortion by the public official, the party that pays the bribe will be exonerated from criminal responsibility if he or she turns himself or herself in to the law enforcement agencies and assists them in uncovering the crime, as long as this happens:

- before the law enforcement agency learns of the crime independently; and
- within three days of committing the crime.

At the same time, Commercial bribery is punished by:

- fines of between AMD 200,000 and AMD 400,000; or
- a prohibition against occupying certain positions or undertaking certain activities for up to three years; or
- imprisonment for up to three years.

The penalties may be more severe in case of aggravating circumstances (e.g. the bribe is paid by a group of individuals based on a premeditated agreement).

The penalties for those accepting bribes include:

- fines of between AMD 300,000 and AMD 500,000; or
- imprisonment for up to four years.

However, if the bribe has been offered as a result of extortion, the party that pays the bribe is exonerated

from criminal responsibility if he or she turns himself or herself into the law enforcement agencies and assists them in uncovering the crime, as long as this happens:

- before the law enforcement agency learns of the crime independently; and
- within three days of committing the crime.

For receiving a bribe a public official can be imprisoned for up to twelve years. For receiving a commercial bribe a person can be imprisoned for up to five years.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

According to Armenian legislation holders of public servants should not accept gifts or agree to accept it later. For the purpose of the Law on Public Service the term "gift" implies any property advantage which would not reasonably be granted to a person who does not hold a position.

Permissible gifts for public officials include:

- Gifts or organized entertainment during state or official visits or events, as well as during business visits,
- Gifts usually given during public events,
- Usually organized hospitality,
- Materials provided free of charge for official use,
- Scholarship, grant, or allowance awarded as a result of a public competition with the same conditions applied to other applicants, with the same criteria or following a transparent process,
- Ritual gifts given by foreign states or international organizations.

If the gift received by the public official exceeds the value of 60.000 AMD, it is considered state or community property and is registered as such. The value of a gift considered permissible under the regulations are assessed on the basis of the reasonable market price.

8. Are political contributions regulated?

According to the Constitutional Law on Parties the Parties can get contribution from private individuals (this inter alia includes the provision of services, performance of work, etc.). The total amount of the donation given to

the party, as well as membership fee and the entrance fee, may not exceed 500.000.000 AMD in one year (the amount should not exceed 250.000.000 AMD per person). In case donations exceed the legislative maximum, the party is obliged to return the excessive part or the whole amount to the person who transferred the donation, or, in case of impossibility, transfer it to the state budget.

Donations from foreign countries, any types of legal entities, from state and community budgets, anonymous persons, stateless individuals are prohibited. In case of prohibited donations, the party is obliged to transfer them to the state budget within two weeks.

According to the Constitutional Law on Elections the parties shall open a pre-election fund, which shall be formed from the donations. The parties can donate up to 800.000.000 AMD to their pre-election fund. Anyone with the right to vote may donate a maximum of 5.000.000 AMD the minimum wage to the party.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

Taking into account the given definition of a bribe, Armenian law considers as a crime, and as such prohibits facilitating. In certain cases, facilitation payments are used to expedite communications with state organs. Where facilitation payments are not prescribed by law or by secondary regulatory acts, they will be considered to constitute bribery.

10. Are there any defences available?

Within the framework of criminal proceedings, individuals have rights guaranteed by the Constitution, international legal regulations, and the Criminal Procedure Code. These rights and fundamental freedoms include:

- the right to a fair trial;
- the right to effective defence; and
- the right to an adversarial proceeding.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

Compliance programs are not mitigating factors in frames of criminal procedure.

**12. Who may be held liable for bribery?
Only individuals, or also corporate entities?**

According to current criminal and criminal procedural regulations legal entities cannot be held criminally liable. Only individuals are liable not only for bribery but for any type of crime. Nevertheless, the newly passed Criminal Code prescribes criminal liability for certain crimes for corporate entities as well. These regulations are not in force yet.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

Anti-corruption proceedings and compliances are established for the entities under the supervision of the Central Bank.

14. Does the law provide protection to whistle-blowers?

According to the Law on Whistle-blowing system the whistle-blowers have the right to protection. This regulation concerns both individuals and legal entities. The whistle-blowers have the right to privacy and protection from harmful actions and their consequences. A whistle-blower who has submitted a report or whose report has been sent to criminal prosecution bodies shall be subject to protection in accordance with the procedure established by the Criminal Procedure Code. Moreover, a person affiliated with the whistle-blower has the right to use the means of protection of the whistle-blower if they reasonably substantiate that harmful actions may be taken against them because of the connection with the whistle-blower.

15. How common are government authority investigations into allegations of bribery?

According to statistics provided by the Prosecutor General's Office:

- 1,469 criminal cases were initiated to investigate corruption in 2018;
- 1,399 such cases were initiated in 2019; and
- 1,232 such cases were initiated in 2020 – a drop of 11.9% on the previous year.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?

The Covid-19 pandemic did not have any tangible impact on investigation. No substantial changes in the tactics and manner of investigation have occurred recently.

17. Is there a process of judicial review for challenging government authority action and decisions?

There are procedural rules that allow to challenge authority actions, inactions, and decisions. For instance, article 290 of the Criminal Procedure Code prescribes an opportunity for participants of the criminal case to appeal against the decision, actions, or inactions of the pre-investigator, investigator, or the prosecutor even during pre-trial stage.

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

One of the latest developments of bribery and anti-corruption was the Law on Seizure of Property of Illegal Origin. It is planned to establish a separate judicial instance to examine cases of corruption (both civil and criminal limbs). Furthermore, the investigative body Special Investigative Committee was reorganized to the Anti-Corruption Committee of the Republic of Armenia.

19. To which international anti-corruption conventions is your country party?

Armenia is signatory of the following anti-corruption conventions:

- the United Nations Convention against Corruption,
- the Criminal Law Convention on Corruption,
- the Additional Protocol to the Criminal Law Convention on Corruption,
- the Civil Law Convention on Corruption.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that

protection.

No.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

It is safe to state that tackling bribery and corruption is prioritized. Several laws were passed and amended. State policy to prevent, investigate, and prosecute corruption is rather strict. On the other hand, the means and methods to achieve the goals is not strong. Which results in some sort of contradiction between the aims of the Executive, the regulations, and practice.

22. Generally how serious are organisations in your country about preventing bribery and corruption?

In general, anti-bribery and anti-corruption compliances and policies are not commonly used in Armenian practice. The main exclusions are branches of international companies and companies supervised by the Central Bank. Therefore, at least on the regulative level this tendency is not widely spread.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

As most of the regulations of prosecuting and investigating bribery cases are novice, one of the major issues is the collection of evidence. According to the practice of Law Enforcement, the vast majority of bribery cases are uncovered at the time of commission due to wiretapping, covert recording, painted banknotes. Otherwise, the investigation of corruption and bribery cases is very difficult as the fact of giving or receiving the bribe is hard to establish.

24. What are the biggest challenges businesses face when investigating bribery

and corruption issues?

The biggest challenged for businesses when facing investigation concerns not the legal regulations but the practice. In particular, even though legal entities are not subjects to criminal liability, however in frames of criminal cases disproportionate limitations of proprietary rights are commonly imposed. For instance, attachments on properties without necessary factual basis, searches and seizures (including seizures of documents and electronic devices) as a result of accusative tendencies of proceedings.

25. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

In our evaluation the most significant corruption-related challenges posed to business over the next 18 months are going to be the practical enforcement of the new Criminal and Criminal Procedure Codes. As indicated above, according to Armenian legislation legal entities cannot be held criminally liable. Whereas the new codes prescribe criminal liability not only for individuals, but also for companies.

The major challenges and issues most probably will concern the practical enforcement of new regulations, as Armenian investigative authorities do not have such practice (because of absence of legislative basis). It is hard to predict the vector of development of that practice. Nevertheless, the possible engagement in a criminal proceeding as an accused is a huge challenge for businesses.

26. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

The improvements of the legal framework for preventing, investigating, and prosecuting cases of bribery could be improved by imposition of certain anti-corruption and compliance policies. In practice, milder policy towards businesses during criminal procedure would have a major impact on investigation and prevention of bribery cases. Particularly, elimination of inadequate limitations imposed on economic activities of legal entities.

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