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

The Practical Legal Guide for Companies' Compliance Policies

FIRST EDITION

CIS Leading Counsel Network (CIS LCN)

Ameria (Armenia)
FINA LLP (Azerbaijan)
Vlasova Mikhel & Partners (Belarus)
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CIS LCN*

*The CIS Leading Counsel Network

Contents

Foreword

We are pleased to present the first joint publication of the CIS Leading Counsel Network (LCN).

In September 2009 nine leading law firms from the countries of the CIS (Commonwealth of Independent States) launched a new alliance, the CIS Leading Counsel Network. This network aims to transcend national boundaries and offer clients a seamless advice across these fast developing markets.

The CIS Leading Counsel Network 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 & Turcan, in Russia – Egorov Puginsky Afanasiev & Partners, in Turkmenistan – ACT and in Ukraine – RULG – Ukrainian Legal Group. The network aims to combine the highest international professional standards with a local insight in the regions that are increasingly attracting international investments.

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.

We chose the topic of anticorruption for our first joint publication because compliance has become the top priority issue for our clients around the world, and we can offer extensive expertise in this area. 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 recent 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 given 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 a new level and developed joint expertise that will greatly benefit our clients doing business in the CIS. 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 as an economic region and to develop sophisticated and efficient compliance policies.

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Preface

Victor Pronkin Executive Coordinator, CIS LCN

Now more than ever, multinational companies are paying increasing attention to the State and development of their worldwide compliance policies. These policies regulate how the company interacts with its stakeholders, such as customers, contactors and the public sector, in terms of gifts, entertainment, sponsored travel and other benefits.

As is the case with many other emerging economies, careful consideration needs to be given to compliance issues in the CIS countries. According to the Global Corruption Report 2009 published by Transparency International, Corruption Perceptions Index for these countries varies between 1.8 and 3.3 points out of 10, which is remarkably low and indicates high levels of corruption. There are well known moral costs that result from corruption, but economically, this unlawful action is equally damaging. The Global Corruption Report 2009 values the bribes given to corrupt politicians by companies each year at $40 billion, and that is in developing and emerging countries alone. Another shocking statistic reveals that half of the international business executives polled estimate that corruption raises project costs by at least 10 per cent.

The majority of the countries in the CIS do in fact recognise this problem and have been actively implementing programmes to fight corruption. Countries have been adopting new laws, joining 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 international companies doing business in this region and to introduce them to CIS anti-corruption laws, which will help 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 and the Ukraine. The chapters each consist of six sections and cover the following:

1. Principal sources of law applicable to anti-corruption issues
2. Persons subject to anti-corruption regulation
3. Legal restrictions imposed on government officials/public officers
4. Liability for the violation of anti-corruption laws
5. Anti-corruption practices
6. Recommendations on Companies' Compliance Policies

A comparative summary of these sections is provided below.

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION 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)	Special Anti-corruption Laws & Regulations
Armenia	Ratified, 2007	Ratified, 2005 & 2006	• No special laws • New Criminal Code (scheduled for 2011) • Edict of the President "On the Establishment of the Board to Combat Corruption" (2006) • Anti-corruption Strategy (2003)
Azerbaijan	Ratified, 2005	Ratified, 2003	• Law "On Combating Corruption" (2004, amended in 2005, amendments to other laws introduced in 2007) • Anti-corruption Decrees of the President (2007, 2009)
Belarus	Ratified, 2004	Ratified, 2006 & 2008	• Law "On Counteracting to Corruption" (2006, amended in 2008)
Kazakhstan	Ratified, 2008 (with some qualifications)		• Law "On Combating Corruption" (1998) • State Program of Combat Against Corruption for 2006-2010 (2005)
Kyrgyz Republic	Ratified, 2005		• Law "On Combating Corruption" (2003, amended in 2009); • National Strategy for Combating Corruption (2009)
Moldova	Ratified, 2007	Ratified, 2003	• Law "On Preventing and Combating Corruption" (2008) • National Strategy for Preventing and Combating Corruption (2004)
Russia	Ratified, 2006	Ratified only Criminal convention, 2006	• Law "On the Prevention of Corruption" (2008) • National Strategy on the Prevention of Corruption and National Plan on Prevention Corruption (2010)
Turkmenistan	Ratified, 2005		• No special laws • Criminal Code (2010)
Ukraine	Ratified, 2006	Ratified, 2006 & 2005	• Law "On Combating Corruption" (1995) • New laws "On the Fundamentals of Corruption Prevention and Counteraction" and "On Legal Entities' Liability for Corruption Acts" (2009, scheduled to take effect on 1 January 2011)

As the above chart shows, all of the countries have ratified international conventions against corruption and almost all of the countries have adopted special anti-corruption laws and programs at the beginning of XXI century. Only Armenia and Turkmenistan do not have special anti-corruption legislation, but their criminal codes and other laws address anti-corruption issues.

Due to the complexity and rapid development of anti-corruption laws and practices, we highly recommend seeking advice from local counsel. The local firms can offer reliable information in case of any anti-corruption compliance concerns and will help the company avoid reputational risk and liabilities.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATION

2.1 General definitions

This section provides definitions of terms used in national laws to describe persons subject to anti-corruption regulation including:

- Government officials (Rus. "государственные служащие");
- Local government representatives (Rus. – "служащие органов местного самоуправления");
- Heads of State-backed organisations (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 in different countries is varied and complex. Moreover, different laws in the same country sometimes use uncoordinated or conflicting definitions. The categories of persons subject to anti-corruption regulation are not limited to the government/public sector and definitely include the private sector.

In a few countries, the laws contain a definition of public sector. According to 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 authorised 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 anti-corruption 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 abuse their authority, official position, State property and information (for example, as stated in Kyrgyz law: 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);
- 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 State body the person serves in);
- to independently participate in management of a commercial organisation, unless the management or participation is included in his official duties in accordance with the legislation.

One of the anti-corruption responsibilities of government officials/public officers is the 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 third persons on cases of State or local self-governing bodies (Azerbaijan);
- prohibited to have personal accounts in foreign banks, except for the purposes of performance of the State functions in the foreign states and other cases established by law (Belarus);
- gifts received without the person's knowledge must be surrendered 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) at 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 referee practices in sports (Ukraine).

3.2 Gifts and other benefits

The general rule in the legislation of all nine countries is that 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 favour 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/appear to be 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 states that: souvenirs and gifts may be given to an official on occasion of his/her birthday and specific holidays provided these are handed to the official without any expectations of compensation by his/her relevant actions.
- Civil and State Service Laws of Armenia are prohibiting public officials from taking gifts "for conduct of their official duties".

Taking into account this "general rule", the table below compares the allowance in different countries:

<table>
<tr><th></th><th>Gifts</th><th>Meals, entertainments</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 of 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>
</table>

<table>
<tr><th></th><th>Gifts</th><th>Meals, entertainments</th><th>Sponsored trips</th></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>
<tr><td>Russia</td><td>Symbolic signs of attention with the value not exceeding approximately USD $100.</td><td>Prohibited</td><td>Prohibited.</td></tr>
<tr><td rowspan="2">Turkmenistan</td><td>Not explicitly prohibitedby the legislation.</td><td>No regulations. As a practice, permitted without any limitation.</td><td>No regulations. As a practice, may be allowed after formal approval from the superior official.</td></tr>
<tr><td colspan="3">The only monetary limitation relates to the deductibility of costs for tax purposes (gifts and benefits more than approximately USD $175 should be declared).</td></tr>
<tr><td>Ukraine</td><td>Only gifts in line with the generally accepted customs of hospitality (personal gift value should not exceed approximately USD $55).
Gifts received in the course of official events (value of such gifts is not yet regulated) should be submitted to an appropriate public agency.</td><td>No special provisions. General restrictions applicable to gifts, services and benefits should be applied.</td><td>Implicitly prohibited.</td></tr>
</table>

4. LIABILITY FOR VIOLATION OF ANTI-CORRUPTION 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/community service;
- 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, and Moldova for especially big amounts of bribes and in other countries up to 12 years).

In some countries (i.e. Azerbaijan, Russia) there is an exemption from criminal liability of the person who gave a bribe, if this person was under threats from the 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 certain corruption offences. However, the Ukrainian Administrative Infringements Code, for example, specifies the following offences:

- deriving an unlawful benefit;
- subornation;
- illegal assistance to individuals or legal entities;
- failure to provide information or submission of false or incomplete information;
- failure to take measures to prevent and counteract corruption;
- failure to abide by the statutory procedure for financing political parties and election campaigns during elections to public authorities and local self-government bodies;
- receiving a gift illegally:

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 Ukraine) the legal entities are not subject to criminal liability in general, and for breach of the corruption regulations in particular. However, 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. All public acquisition contracts awarded through corruption will be deemed void by a court of law. The damages caused by officials of the State bodies to the legal and physical entities 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 law. Penalties may include:

- fines;
- prohibition of certain legal entity's activities (withdrawal license);
- 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 corruption offence may be up to three times the amount paid, three times the price of the securities, other assets or property-related services rendered, but not less than one million rubles (approximately 33,000 USD) together with confiscation of transferred funds, securities and other assets.

In Ukraine, for the first time in the CIS economic region, the new anti-corruption laws (expected to take effect as of 1 January 2011) introduced criminal liability of legal entities for corruption (the details are provided in the Ukrainian chapter).

5. ANTI-CORRUPTION PRACTICES

This section provides examples of recent cases and court decisions, and reflects on trends in practice of law enforcement agencies.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

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

We hope that this practical legal guide on anti-corruption regulation in the CIS Economic Region will provide an excellent platform for developing Compliance Policies for the countries in the CIS economic region .

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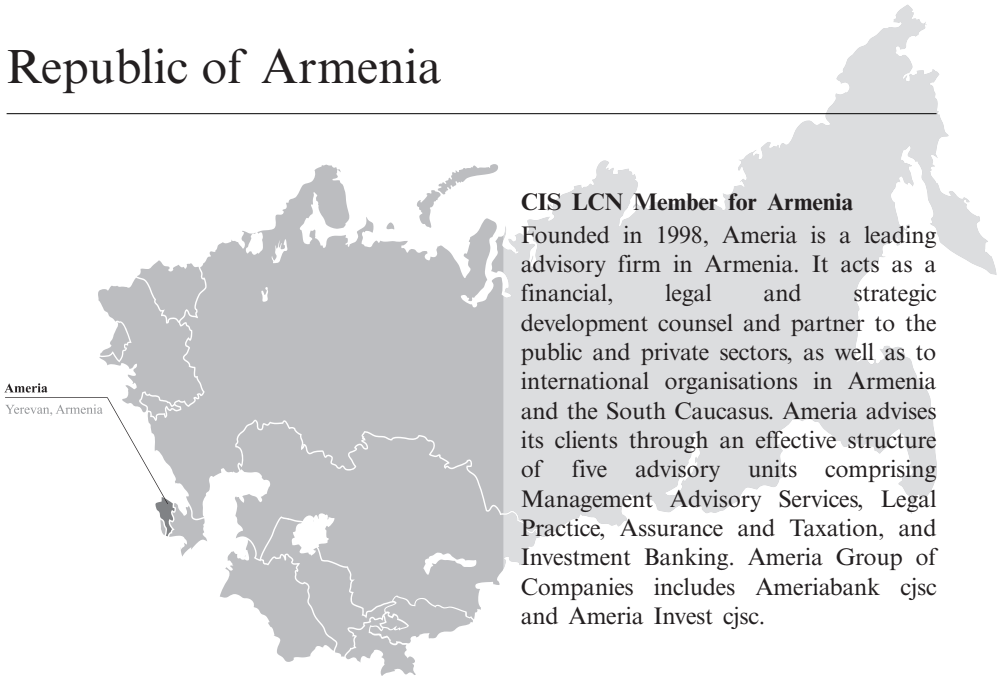

CIS LCN Member for Armenia

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 organisations 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 the Republic of Armenia

Author: David Sargsyan, Partner, AMERIA CJSC

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

The anti-corruption legislation in Armenia remains underdeveloped although the Government has adopted initiatives under anti-corruption programmes to fight corruption in specific areas of State governance.

The Criminal Code of the Republic of Armenia is the main source of legislation, enforced to prevent corrupt activities and bribery in particular. The remaining body of legislation defines programmes and methods to fight corruption.

The main anti-corruption laws and regulation applicable to GO ("Government officials" and/or "State/Civil Servants") are:

1.1 International anti-corruption 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 1 May 2006;
- Civil Anti-Corruption Convention, dated 4 November 1999, ratified by Republic of Armenia from 1 May 2005.

1.2 Laws

- Criminal Code of the Republic of Armenia;
- Laws on various types of public service including 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 anti-corruption 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 Anti-corruption Strategy and the Measure of its Implementation", dated 6 November 2003.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 General definitions

Defined widely, all persons proved to have committed bribes and/or bribe provocation will be subject to liability as separately defined under the provisions of the Criminal Code referred to in Section 4.1 below. One party of the corruption activity (excluding provisions on the commercial bribery) will be persons having relevant status under legislation for 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 – a professional activity independent from the changes of correlations between political forces, 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 – a position defined by the Roster of Official Positions.

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

Officials – a person occupying a position (with the exception of temporary vacant position) defined 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 positions:

> 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 are identified as 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, 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 organisations, 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 above do not fall under the classic definition of 'civil servant'. Civil Servants are therefore defined as public servants with relevant status under the Law on Civil Servants. Those with public servant status under relevant Public Service laws are judicial, municipal, criminal-punishment service servants, bailiff service servants, military servants, parliamentary servants, police servants, Central Bank servants.

2.2 List of persons subject to anti-corruption regulations

The following are subjects to anti-corruption regulation:

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

3. LEGAL RESTRICTIONS IMPOSED ON GOVERNMENT OFFICIALS/ PUBLIC OFFICERS

3.1 General restrictions and duties

The main/only duty of public officers (except for not breaching the criminal law) with respect to corruption issues, is to refuse gifts in return for official duties and to hand over any gifts of value received '*in officio*' to the treasury.

3.2 Gifts and other benefits

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

Civil servants are prohibited to receive gifts, amounts of money or services from other persons for his/her service duties, with the exception of 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 17 February 1993 (hereinafter referred to as a Decree), State Officers/Officials shall transfer during performance their State

service received gifts to the State if such gift/s exceeds five times his/her monthly wages. Therefore, if the annual sum of USD 500 for gift/s to Officials does not exceed five times of his/her monthly wage, the latter has no obligation to transfer received gift/s to the State as stated under the mentioned Decree.

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 Officials to receive gifts, amounts of money or services from other persons *for his/her service duties*. Consequently, the same article prohibits Officials to receive gifts of any value (including that not exceeding five times an Official's monthly wage) for the purpose of performing *his/her service duties*.

Therefore, it shall be stated that if the transfer of gifts or entertainment (if entertainment shall be categorised, or otherwise interpreted as to providing service to the Officials) to the Official is interpreted in such a way that the latter is deemed to have received such gift/s or services for 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 ANTI-CORRUPTION RULES

The Criminal Code and relevant Public Service laws define that any person/s breaching restrictions stipulated in such laws as deemed to be potentially breaching Criminal Code prohibitions. 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 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, 3112 – Giving Bribes to public servants, 313 – Bribe mediation, 350 – Bribe provocation.

Liability includes: fine, deprivation of the right to hold certain positions/occupations (as main or secondary punishment), arrest (up to six months) imprisonment (up to 12 years), confiscation of property (only as secondary punishment).

The punishment defined for each crime will differ 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 are only:

- Breach of duty to hand over to the State valuable gifts received '*in officio*' by an official from private and public entities.
  - Punishment – confiscation of the gift and payment of at least one month's salary or four times the value of the gift, in the case that the gift is not found.
- Breach of rules of gift disposal by the State official for gifts made of precious stones and metals and received '*in officio*'.
  - Punishment – fine of up to equivalent of 850 USD.

5. ANTI-CORRUPTION PRACTICES

Court practice mainly concerns decisions on criminal cases. It must be noted that the criminal justice practice in the Republic of Armenia has not yet produced major legislative changes. No major corruption cases have yet 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. These cases have not produced major changes and mostly relate to minor charges and convictions.

Nevertheless, the Government is implementing anti-corruption policies to target the most corrupted areas and the implemented measures are effective to fight and decrease corruption in specific areas (such as education, traffic police and registration of legal entities).

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

The general observation is that accepting any material incentive that is deemed to influence an official or public servant in decision making and to benefit both the relevant official and person providing such material incentive can be treated as an offence.

We advise companies to develop internal compliance policies in accordance with limitations imposed by relevant legislation of the Republic of Armenia as well as relevant rules of ethics on liaising with the State officials and/or public servants, and specific guidelines on gift, study tour and entertainment policies. Although underdeveloped and internally drafted, these regulations will guide company employees' activities with the aim of refraining from any action which might potentially imply the violation of the stated laws and regulations.

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Azerbaijan

CIS LCN Member for Azerbaijan

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 centres.

Overview of Anti-corruption Laws in Azerbaijan

Author: Nariman Ramazanov, Founder and Managing Partner, FINA LLP

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES[1]

1.1 International anti-corruption regulations

- Civil Law Convention on Corruption, Strasbourg, 4 November 1999, ratified by the Law of Azerbaijan, dated 30 December 2003, No. 571-IIQ;
- Criminal Law Convention on Corruption Strasbourg, 27 January 1999, ratified by the Law of Azerbaijan, dated 30 December 2003, No. 570-IIQ;
- UN Convention against corruption dated 3 October 2003, ratified by the Law of the Azerbaijan Republic.

1.2 Laws

- Criminal Code of Azerbaijan, dated effective from 1 September 2000;
- Law of Azerbaijan "On Combating Corruption" No. 580-IIQ, dated 13 January 2004;
- Law on "Procedures on declaration finance related information by public officials", dated 24 June 2005;
- Law on Civil Service No. 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 area of management of State and municipal property and resources", 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.

(1) The list of sources is much more wide than the given one. For more information it is recommended to refer to local counsel.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 General definitions

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

Accordingly, the main terms used by the relevant laws of the Azerbaijan Republic in the context of the State service are the "State servant" ("*dövlət qulluqçusu*" in Azeri, or "*gosudarstvennyi sluzhaschyi*" in Russian) but not "**government official**" (GO).

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: "the performance of the official duties of the 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 carried out in: *the prosecutor's office; bodies of justice; national security; defence; emergencies; border service; migration service; internal affairs; custom; tax; foreign affairs; field-chasseur service and the National Bank of Azerbaijan* are regulated by other specific laws of the Azerbaijan Republic, by taking into consideration the 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, and 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 (employers not being civil servants, such as cleaners, yard cleaners, gardeners, guards, stokers, workers without professional rank, 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, secretary 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 the local executive bodies; deputies of the Supreme Mejlis of Nakhchevan Autonomous Republic; Prime Minister of Nakhchevan Autonomous Republic and its 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 (*not the persons themselves as a "physical persons" but the official positions occupied 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 a salaried (the salary should be exclusively paid from the State budget) State service position in the order determined by the Law Republic "On State Service", and who swears allegiance to the Republic of Azerbaijan while being recruited to the State service for an administrative position.*"

The State servant holding an administrative position and 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*") section 2 of the Criminal Code of Azerbaijan coming into effect from 1 September 2000 specifies the term "**public official**" as: "*the person constantly, temporarily or on special power carrying out functions of authority representative either carrying out organisational - administrative or administrative functions in State bodies, institutions of local government, State and municipal establishments, enterprises or organisations, and also in other commercial and noncommercial organisations.*"

Article 16 of the *Administrative Infringements Code* of Azerbaijan, dated 11 July 2000 also 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 organisations, bear the same criminal liabilities under Articles of the 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 organisations*"), specially provided for by appropriate Articles.

Status of Government officials

Financial requirements aimed to prevent corruption among the *Azerbaijani State servants* provided by the acting legislation is the requirement of submission of the *relevant information* by State servants and/or public officials within the procedure laid down by the legislation, such as[3]:

(2) For example, the peculiarities of conducting the "State service" in the Prosecutor's office are regulated by the Laws of the Azerbaijan Republic: (i) "On Prosecutor's Office" No. 767-1Q dated 7 December 1999; and (ii) "On Conduct of Service in Prosecutor Bodies" No. 167-IIQ dated 29 June 2001.

(3) Article 5, Law of Azerbaijan "On Combating Corruption" No. 580-IIQ dated 13 January 2004.

- yearly income, indicating the source, type and amount thereof;
- property as a tax base;
- deposits in banks, securities and other financial means;
- participation in the activity of companies, funds and other economic entities as a shareholder or founder, or share in such enterprises;
- debt exceeding five thousand times the *nominal financial unit*;
- other financial and property obligations exceeding a thousand times the *nominal financial unit*.

The information envisaged in Article 5 of the Law of Azerbaijan "On Combating Corruption" (No. 580-IIQ, dated 13 January 2004), can be demanded in an order defined by the legislation. However, the acting legislation does not yet strictly emphasise this requirement as a permanent and compulsory norm and the major grounds provided by law for demanding such information are not entirely clear.

"*Prohibition for next of kin to work together*" is a legal requirement for the 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/her direct subordination, except for elective offices and other cases provided for in the legislation. Persons who violate the aforementioned legal requirement shall, within 30 days of the finding of that violation, be transferred, if such violation is not removed voluntarily, to another office. Excluding subordination, and when this is not possible, either of the persons concerned shall be dismissed from his/her office.

2.2 List of persons subject to anti-corruption 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 the State bodies within the procedure laid down in the Constitution and Laws of the Republic of Azerbaijan;
- persons who represent State bodies on the basis of special powers;
- public servants who hold administrative office;
- persons who exercise management or administrative functions in appropriate structural units of State bodies, in State-owned institutions, enterprises and organisations, as well as in enterprises in which the State controls the shares;
- persons whose nominations to elective offices in the State bodies of the Republic of Azerbaijan are registered as stipulated by law;
- persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan;
- persons who exercise management or administrative functions in municipal bodies;

- persons who exercise 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 unlawfully influencing the decision of an official, by using his or her authority or links;
- individuals or legal persons who unlawfully offer, or promise, or give material and other values, privileges or advantages to an official, or who mediate in such acts.

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

In the territory of the Republic of Azerbaijan, the law "On Combating Corruption" shall apply to all individuals, including foreigners and stateless persons, 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 of Law of Azerbaijan "On Combating Corruption").

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

- All State bodies and officials shall, within their powers, carry out the fight against corruption. In cases where an offence related to corruption gives rise to administrative or criminal responsibility, the fight against corruption shall be carried out by law enforcement bodies within the procedure laid down by law;
- The functions of a specialised body in the field of prevention of corruption 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.

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" the State servant is imposed the following restrictions and is not entitled:

- to hold an additional paid position (except a temporary position provided by labour legislation), or elective or appointment in State bodies;

- except for scientific and creative activity, to be involved in pedagogical and other paid activity without a permission of the head of the State body he/she serves in;
- to be an attorney of a third person on cases of State or local self-governing bodies;
- to use for the benefit of a third person information on issues concerning his/her State service and State secrets or any other secrets protected by law within the terms specified by the Legislation of the Republic of Azerbaijan after termination of State service;
- to travel abroad at the expense of a foreign country without first notifying the head of the State body in which he/she serves;
- to take part in political party activity during fulfilment of service duties;
- to participate in strikes and other actions damaging work of the State authorities;
- to use the status of State servant in order to promote a religion or to officialise religious actions in objects subordinated to State bodies;

If the actions of a State servant conflict with the aforementioned restrictions and requirements applied to the State servants by law, a State servant must, under the receipt of notification, determine whether he/she prefers State service or another activity and inform the head of the State body where he/she carries out his/her service of this decision within thirty (30) days, unless otherwise informed by the legislation.

According to the provisions of Articles 25 ("*Liabilities of the State servant*") of the Law "On State Service", a State servant may also be called to *disciplinary, administrative and/or criminal responsibility* determined by the legislation 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.

The State servant bears material responsibility for damage caused to any third party through his/her fault determined by the legislation. Damage caused by legal actions of State servants must be fully reimbursed at the expense of the State budget.

Relevant restrictions and requirements applied to other specific types and kinds of "GOs", such as State servants and public officials of the State and government bodies provided under paragraph 2.1 above, are also specified by the respective laws and legislative acts regulating the activities State servants/official and bodies. (For example, Article 30 of the Law of the Azerbaijan Republic "*On Prosecutor's Office*" No. 767-1Q dated 7 December 1999 also contains the list of activities prohibited for prosecutor officers. The kinds of activities prohibited by this law for the prosecutor officers are more or less the same with 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 Article 14 ("*Restrictions on Acceptance of Gifts*") of the Law of Azerbaijan "On Rules of Ethics 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 his/her duties, or may be or appear to be given as a reward relating to his/her duties, or might create an impression of such influence, or are given as 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 the amount described in the law "*On Combating Corruption*" of Azerbaijan.

If a State servant is not able to decide whether to take or to refuse the gift, or to benefit from the hospitality, he/she should apply for his/her direct supervisor's opinion under the provisions of 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 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.*"

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**[4]. Gifts received above this limit shall be considered as belonging to the State authority or municipal body in which the State servant or public official is performing his or her service duties (powers).

In cases where the State servant or public official cannot determine whether the acceptance of a gift violates this requirement of law, he/she must seek guidance from either his/her 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 shall be prohibited from obtaining any privileges or advantages relating to their service activity.

When being offered illegal material and non-material gifts, privileges or concessions, a State servant or public official must refuse them. For material and non-material gifts, privileges or concessions given for reasons outside his/her will, he/she shall inform his/her direct supervisor, and material and non-material gifts, privileges or concessions shall be given on a statement to the State body where the civil servant is employed.

(4) 55 manats is approximately 68.5,-USD under the official Manat/USD exchange rate of the Central Bank of Azerbaijan established for 1 October 2010 (*1,-USD = 0.803,-AZN*).

Restrictions concerning other Business Amenities

As it is stated by the Law of Azerbaijan "On Rules of Ethics Conduct of State Servants"[5], a State servant is prohibited to take actions (or inaction) or decisions directed or leading to the illegal acquisition of material and non-material benefits, privileges or concessions.

Accordingly, a State servant rendering disinterested services for persons, as defined by the legislation, may not demand fees for those services. Also, a State servant rendering services for persons for a payment as defined by the legislation may not demand additional fees or any other kind of benefits, above those amounts estimated for those services.

A State servant may not be party to a transaction where the another party is a State body in which he/she serves.

A State servant should not allow a conflict of interest while performing his/her service duties and should not illegally use his/her service authority for his/her private interests.

It is prohibited for the a State servant to use the property, funds, communication, computer and other communicative systems, vehicles and other logistics provisions of individuals or legal entities with 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 service duties.

A State servant cannot use the information obtained during his/her service performance 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 otherwise provided for by the legislation, however, a State servant is not allowed to use his/her duty station and authority for his/her own benefit or for other candidates, or political parties, election blocs during elections.

4. LIABILITY FOR THE VIOLATION OF ANTI-CORRUPTION 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 where commission by a State servant or a public official of offences entails civil, administrative or criminal responsibility, the institution 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:

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

There are many acts or inactions of a State servant or public official that are considered offences conducive to corruption (Article 9 of the Law "On Combating Corruption").

In addition to the cases envisaged above, the 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 where commission of offences by the State servants or public officials does not entail administrative or criminal responsibility, it shall give rise to disciplinary responsibility as provided for in 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 imposed a fine within the procedure laid down by the legislation, or their activity shall be terminated.

(5) Articles 12 and 13, Law of Azerbaijan "On Rules of Ethics Conduct of State Servants".

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 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", regulating the activity of certain types and category of State servants and public officials and by other secondary legislative acts.

Under the provisions of the Article 16 of the Administrative Infringements Code of Azerbaijan dated 11 July 2000, public officials – those persons constantly, temporarily or on special power carrying out functions of authority or representative carrying out organisational – administrative or administrative functions in State bodies, institutions of local government, State and municipal establishments, enterprises or organisations, and also in other commercial and noncommercial organisations - bear the administrative liability for non-fulfillment or fulfillment of their official duties.

However, the Administrative Infringements Code of Azerbaijan does not clearly specify *corruption offences* and *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[6]

– punished by the penalty at a rate from *one up to two thousand manat*, or with deprivation of the right to hold certain posts or to engage in certain activities for up to three years, or corrective works for up to two years, or imprisonment for up to three years.

If a criminal act entails heavy consequences, it is punished by imprisonment from three up to seven years, with deprivation of the right to hold certain posts or to engage in certain activities for up to three years.

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 organisations, also carry criminal liability under articles of the Chapter 33 of the Criminal Code of Azerbaijan.

Reception of a bribe[7]

– punished by imprisonment for the term from two up to seven years with deprivation of the right to hold certain posts or to engage in certain activities for up to three years.

(6) Article 308 of the Criminal Code of Azerbaijan.

(7) Article 311 of the Criminal Code of Azerbaijan.

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

If the acts provided above, are committed:

- on preliminary arrangement by group of persons or organized group;
- repeatedly;
- in the large amount;
- with application of threats.

– punished by imprisonment from seven to twelve years with confiscation of property[8].

Presentation of a bribe[9]

– punished by penalty at a rate from one to *two thousand manat* or imprisonment for up to five years with the penalty at a rate from five hundred up to one thousand of the nominal financial unit or without it.

The presentation of a bribe to an official for the commitment of obviously illegal actions (inaction) or repeated presentation of a bribe is punished by the penalty at a rate of from two up to four thousand of the nominal financial unit or imprisonment from three up to eight years with confiscation of property or without it.

The person given a bribe shall be released from a criminal liability if presentation of a bribe took place by threats of an official or if the person has voluntarily informed the appropriate State body about a presentation of a bribe.

Civil Liability

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

Under the Article 1100 of the Civil Code, the damages caused by the officials of the State bodies and self-government authorities (municipalities) 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 of Azerbaijan Republic and the relevant municipality.

5. ANTI-CORRUPTION PRACTICES

Despite a series of reforms in the government, legislation, development of civil society and business, corruption still remains a serious problem for Azerbaijan. Unfortunately, according to annual ratings prepared by leading international organisations, Azerbaijan

(8) «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.

(9) Article 312 of the Criminal Code of Azerbaijan.

remains among the countries with the highest level of corruption. Azerbaijan is making substantial efforts to address the problem of corruption. The authorities of the Republic of Azerbaijan acknowledge that corruption is a priority issue requiring comprehensive and serious countermeasures. To address this problem, the Government has introduced a State Programme on Combating Corruption, a comprehensive anti-corruption strategy which requires various authorities to implement legislative and organisational measures. In carrying out this programme, commendable progress has been made in adopting new legislation and amending existing legislation. Some positive developments have occurred in relation to corruption and investment. The Government has created a new business registration mechanism based on the principle of a one-stop shop under the Ministry of Taxes, allowing for companies to register within three days. Over recent years salaries for civil servants in Azerbaijan have risen with training undertaken to raise awareness in the bureaucracy about corruption.

Below is some statistical data regarding corruption issues[10]:

The Anti-Corruption Department of the General Prosecutor's Office of Azerbaijan completed investigation of criminal cases against 121 people. The Anti-Corruption Department completed and sent to the court 70 criminal cases against 121 people in 2008; 34 cases, including 4 cases of bribery, 12 – abuse of office, 5 – exceeding authority, 4 – office falsification, 2 – tax avoidance, 2 – neglect of duty, 2 – abuse of influence, 40 – robbery abusing the duty position and other actions of corruption; all were launched directly by the anti-corruption department.

Judicial proceedings on these cases were completed and the individuals charged with these cases were punished by the court. 32 introductions were sent to the offices and organisations related to the charged people and a number of workers were punished within the disciplinary regulations with necessary measures taken for elimination of law violations.

The Anti-Corruption Department has completed 15 criminal cases against 25 people sent to the courts since beginning of 2009. The investigation of 37 cases is still ongoing.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

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

As far as the official AZManat/USD exchange rate of the National Bank of Azerbaijan changes from time to time, the *Business Gifts Policy* should indicate that these indicators need to be kept in mind before making a gift.

(10) http://www.aznocorruption.az/eng/news/267-121-people-charged-with-corruption-in.html

(11) 55 manats is approximately 68.5,-USD under the official Manat/USD exchange rate of the Central Bank of Azerbaijan established for October 01, 2010 (*1,-USD=0.803,-AZN*).

6.2 In defining the public sector for the purposes of identifying corruption acts, a list of persons who are subjects of offences related to corruption should be specified. 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 paragraph 2.2 above are subjects of offences related to corruption.

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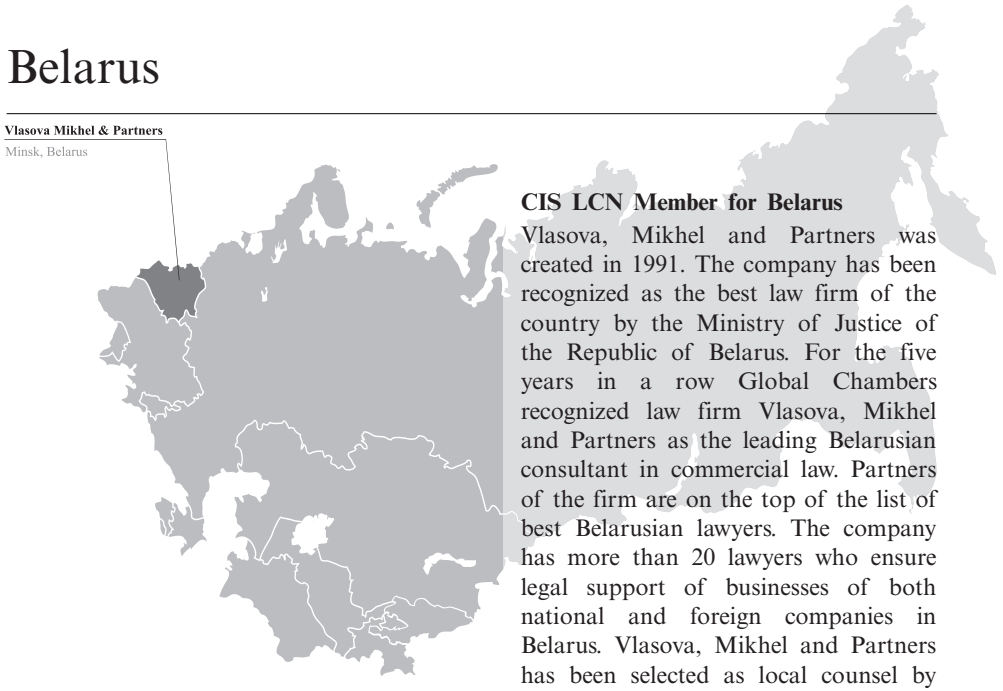

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Vlasova, Mikhel and Partners was created in 1991. The company has been recognized as the best law firm of the country by the Ministry of Justice of the Republic of Belarus. For the five years in a row Global Chambers recognized law firm Vlasova, Mikhel 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

Authors: Tatiana Emelianova, Partner and Andrej Ermolenko, Associate, Vlasova, Mikhel & Partners

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

Belarusian law regarding corrupt practices and counteraction thereto is extensive. However, many provisions in anti-corruption 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 anti-corruption regulations:**

- Criminal Law Convention on Corruption (ETS 173) ratified by the Republic of Belarus on 26 May 2003, in force from 1 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 1 July 2006.

1.2 **Codes:**

- Civil Code of the Republic of Belarus No. 218-3, dated 7 December, 1998 as last amended on 28 December 2009 ("Civil Code");
- Criminal Code of the Republic of Belarus No. 275-3, dated 9 July, 1999 as last amended on 15 July 2010 ("Criminal Code");
- Code of the Republic of Belarus "On Administrative Offences" No. 194-3, dated 15 June 2009 as last amended on 15 July 2010 ("Administrative Offence Code").

1.3 **Laws:**

- Law "On Government Service in the Republic of Belarus", dated 14 June, 2003 No. 204-3 as 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 as last amended on 21 July 2008 ("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 as 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 as amended on 24 September 2009 No. 8.

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

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 General definitions

The main terms set out in Belarusian anti-corruption 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 duties on protection of public order, counteraction to offences etc.;

(c) individuals performing organisational and regulatory functions;

(d) individuals who occupy positions connected to the performance of organisational and regulatory functions, control operation of institutions, enterprises (their subdivisions) and separate subordinate individuals. Such individuals organise the work and are responsible for the overall functioning of organisations (their subdivisions and parts); and have at least one subordinate employee;

(e) 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, organise storage, distribution and sale of valuables;

(f) 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;

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

The Administrative Offence Code of the Republic of Belarus defines an "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 permissions and charges to carry out certain official duties.[4]

Public position is a regular occupation within a 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;

(1) Article 4 of Criminal Code.

(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.

(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 terms 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;

(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 to cover 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 or the application procedure of such 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 corrupt offences.

(6) Article 1 of Anti-Corruption Law.

(7) Article 1 of Anti-Corruption Law.

2.3 List of persons subject to anti-corruption regulations

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

- Public Officials;
- Individuals having the same status as Public Officials;
- Foreign officials;
- Persons who bribe Government 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 anti-corruption regulations are prohibited:

- to engage in commercial activity, either directly or through their authorised representatives;
- to assist close relatives in commercial activity by using their official position;
- to represent third parties on issues related to the activity of State structures (other State organisations) which hired the government official;
- to perform other paid services (work) not related to execution of their duties at their 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 managing 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 performing State functions in foreign states and other cases established by acts of the Republic of Belarus;
- to dispatch errands concerning office (labour) activity, which are given by the political party, or other public associations, where a government official is hosting 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 a 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 citizens, if such actions are not in compliance with the interests of government service;
- to use material, financial and information 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 commercial legal entities owned by them into a managing trust within three months after appointment (election) to a position;
- to terminate membership of political parties in case 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 the Criminal Code this may be interpreted as bribery.

The Anti-Corruption Law and the Law on Government Service provide that gifts may be granted to 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 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 recognises that the acceptance of other benefits (such as services) is a corrupt practice if as a result of the position of a Public Official.

(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.

Equally acceptance of being a sponsored tourist or other traveler 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 or relations who are outside Public Official's scope of duties;
- traveling for personal purpose 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 ANTI-CORRUPTION RULES

Depending on the status of relevant person subjected to anti-corruption regulations and type of violation disciplinary, administrative and criminal liability may apply.

Disciplinary actions imposed to Public Officials are:

- notice;
- reprimand;
- warning of partial professional incompliance;
- demotion of class of Public Official up to six months;
- dismissal.[10]

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 behaviour of the Public Official.

The Anti-Corruption Law provides a comprehensive list of corrupt practices comprising anti-corruption violations. However, liability for each particular violation is found either in Administrative Offences Code or in Criminal Code as outlined below. Where a 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 outlined above.

4.1 Criminal offences and liability

The crimes which entail criminal liability include:[11]

- abuse of power or official position;
- Official's inaction;

(10) Article 57 of the Law "On Public Service in the Republic of Belarus".

(11) Chapter 35 of the Criminal Code.

- 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 above crimes depend on the 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 three years;
- seizure of property;
- deprivation of freedom (i.e. imprisonment) for the maximum term of up to 12 years.

Criminal liability may only be imposed on individuals.

4.2 Administrative offences and liability

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

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.

5. ANTI-CORRUPTION PRACTICES

Anti-corruption regulations in Belarus are often applied in cases of bribery and authority misuse charges are brought against the Officials. Among the general trends in anti-corruption cases the following are some of the most prevalent:

- Broad interpretation of terms "Officials" and "Public Official" subjected to anti-corruption regulation. A large number of employees who merely contact legal entities and individuals are 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 also regarded as Officials.
- Criminal liability for bribery and other corrupt practices can be applied irrespective of the size of the illegally received. Minor bribes may result in imprisonment and property confiscation.
- Anti-corruption regulation is widely used by law-enforcement authorities as a tool to influence, and effectively control the private sector.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

Since anti-corruption regulations in Belarus are currently underdeveloped and often the distinction between a disciplinary and administrative offence or a crime might be vague, we highly recommend companies develop and implement a detailed anti-corruption corporate policy, with the assistance of qualified legal practitioners acquainted with local practice.

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

- Corporate anti-corruption policy should be binding on all the company's employees without exceptions;
- Corporate anti-corruption policy should describe in detail the list of persons subject to anti-corruption regulations, including all 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 a relevant officer with a specific authority and/or official duties that may be exercised in respect of individuals and legal entities not subordinated to such an officer;
- Corporate anti-corruption policy should directly and strictly oblige the employees to inform senior management about making any gift or providing any benefit to any Public Official or Official;

(12) Article 4.8 of the Code of Administrative Offence.

- Gifts (including services) as a general rule could be granted to Officials only during ceremonial, protocol or other official events. 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 58 USD). Since both basic amount and official BYR/USD exchange rates are set by the National Bank of the Republic of Belarus, this will change from time to time – corporate anti-corruption 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 a 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 anti-corruption 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, or 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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CIS LCN Member for Kazakhstan

Aequitas was founded in January 1993 with offices in Almaty, Astana and Atyrau. This leading Kazakhstani law firm advises many of the biggest international corporations working in Kazakhstan and major national companies and provides a full range of legal services in Kazakhstan varying from the legal support on incorporation of new entities, obtaining licenses, and legal advice on different business matters, deals and projects of any complexity to representation in arbitration and the courts of any instances. Partners of Aequitas have been directly participating in the development, drafting and improvement of the most important acts of civil and business legislation of Kazakhstan.

Overview of Anti-corruption Laws in Kazakhstan

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1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION 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 organisation, 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 2009, Kazakhstan was ranked 120th of 150 countries 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.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 General definitions

In order to understand the Kazakhstan anti-corruption laws and regulations (collectively referred to as "**anti-corruption regulations**") we should first identify 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 recognises 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 persons that are authorised to perform State functions and 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 Memorandum).

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 *civil State servants, 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 authorisation carrying out functions of a **representative of authority** or performing **organisational-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]

Organisational-and-executive functions are the activities of persons carried out in order to exercise the powers of an executive body of an organisation as set out by the legal and foundation documents. These powers include general staff management, organisation 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]

(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, Article 1 of the Labor Code No. 251-III of the Republic of Kazakhstan, dated 15 May 2007 as amended (hereinafter – Labor Code).

(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 2 July 1998, as amended (hereinafter, Law on Combating Corruption).

(7) Para 3, footnote in Article 3, Law on Combating Corruption.

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:

2.2.1 ***The persons authorized to perform State functions:***

(a) officers;

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

(c) judges; and

(d) all government officials (GOs).

2.2.2 ***The persons authorized to perform State functions:***

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

2.2.3 ***Other entities***

Corruption Infringers are also individuals and legal entities bribing officers or other persons authorised 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 governing the 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 anti-corruption 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 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 Memorandum 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 Memorandum) 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

(8) Article 9 of the Law on Combating Corruption.

(9) Article 12 of the Anti-corruption Law.

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 Memorandum 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.

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 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 the 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 Memorandum 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.

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.

Anti-corruption 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]

(10) Article 13 of the Law on Combating Corruption.

(11) Article 13 of the Law on Combating Corruption.

While the basic criterion of a corruption 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 securities, 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, it is deemed that the above allowance (Article 509 of Civil Code) for a gift of a limited value is a contradiction 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 the top-ranked officials in charge of the 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 gifts until the legislation is appropriately amended.

(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;
- negligence by an official;

Officials listed in clauses 2.2.1-2.2.2 of section 2 of this Memorandum 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.

(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.

4.2 **Administrative offences and liability**

Corruption offences for which administrative punishedis imposed include *inter alia*:

- failure to disclose 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 Memorandum, 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 PRACTICES

There are a number of corruption crimes related 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 liable for corruption crime and was sentenced to imprisonment for 7 and half years, with confiscation of all property. In another similar case, one of the top ranked-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.

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 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, 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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(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.

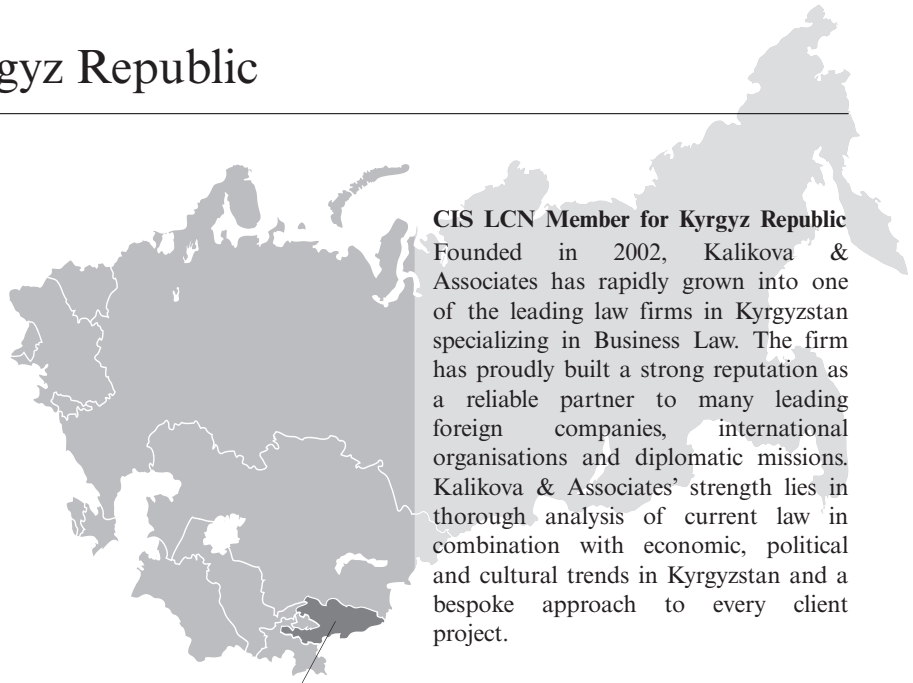
(16) Article 537 of the Administrative Violations Code.

(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.

Kyrgyz Republic



CIS LCN Member for Kyrgyz Republic
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Overview of Anti-corruption Laws in Kyrgyz Republic

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1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION 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 to 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, abuse of power are provided below.

1.1 International anti-corruption regulations

- UN Convention against corruption, dated 10 December, 2003, ratified by the Law of the Kyrgyz Republic on 6 August, 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 17 July, 2009) (Articles 5, 224, 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 Civil Service", dated 11 August, 2004 (as amended on 19 May, 2009);
- 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 Legalisation 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 anti-corruption initiatives**

- Edict No. 382 of the President of the Kyrgyz Republic "On additional measures on strengthening of 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 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 system of testing on polygraph detector in the sphere of public service", dated 27 August, 2010.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 **General definitions**

In the Kyrgyz Republic, the anti-corruption laws and regulations are applicable to:

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

(i) ***Government Officials***

Pursuant to the Law of the Kyrgyz Republic "*On Public Service*" dated 11 August, 2004 (the "*Public Service Law*"), Government 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 a professional activity within provided authority. According to the Kyrgyz Republic President's Decree "*On Approving Register of Public Positions of Kyrgyz Republic*", dated 27 August, 2007, the list of the Governmental Officials includes:

(a) *Political public officials* – President of the Kyrgyz Republic; State Secretary of the Kyrgyz Republic ; Advisor of the President of the Kyrgyz Republic; Head and deputy heads of the President's Administration of the Kyrgyz Republic; Prime Minister of the Kyrgyz Republic; Ministers of the Kyrgyz Republic; Speaker of the Parliament of the Kyrgyz Republic; Governors of the Kyrgyz Republic; as well as other heads of Governmental offices of the Kyrgyz Republic;

(b) *Judicial officials* – judges and all other officers of judicial bodies of the Kyrgyz Republic; prosecutors and other officers in the prosecutor's offices of Kyrgyz Republic;

(c) *Administrative public officials* – officers of various State authorities of the Kyrgyz Republic, including officers of the State Secretariat; officers of the President's Administration of the Kyrgyz Republic and its subdivisions; officers of the Security Council of the Kyrgyz Republic; officers of the ministries of the Kyrgyz Republic; officers of the central Government of the Kyrgyz Republic, officers and members of the Kyrgyz Republic Parliament, officers of administrative agencies, State committees and foundations under the Government of the Kyrgyz Republic; 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 Kyrgyz Republic.

(ii) ***Municipal Officials***

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

(a) *Political municipal officials* – deputies of self-governed authorities, 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 subjects of corruption offences. Commercial companies such as Kyrgyztelecom, Kyrgyzaltyn (Kyrgyzgold), Kyrgyzneftegaz (Kyrgyz Oil and Gaz) 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 Officials are those persons who are permanently, temporarily or under a special authorisation 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) ***Individuals and legal entities, including their officials and employees***, who illegally provide benefits, material and other amenities to Governmental Officials, Municipal Officials and Heads of State Organisations.

2.2 **List of persons subject to anti-corruption regulations**

Pursuant to the Law of the Kyrgyz Republic "*On Fighting Corruption*" and the Criminal Code of the Kyrgyz Republic the following persons are recognised as subjects of corruption offences:

- 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 Republic anti-corruption laws and regulations, 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, Government Officials and Municipal Officials are prohibited from:

- engaging in commercial activity, other than pedagogical (educational), scientific and other creative activities;
- engaging in entrepreneurial activity, as well as using their official status to derive benefit or to support third party' activity with a view to receive any form of compensation;
- unlawfully interfering with the operation of other State bodies and legal entities;
- 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;
- unreasonably refusing to provide information to individuals and legal entities or providing such information untimely and/or inadequately, as well as unlawfully requesting from such persons information not required by Kyrgyz legislation;
- 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;
- impeding access for individuals and legal entities to exercise their rights and interests;
- affecting the procurement procedures in the interest of any parties to such procurement.

3.2 **Gifts and other benefits**

Pursuant to the anti-corruption legislation, 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:
  - upon invitation of close relatives at their own expense;
  - upon invitation of other individuals, if the relationships therewith do not involve the official duty activities of the invited persons;
  - under international treaties of the Kyrgyz Republic or mutual agreement between Kyrgyz and foreign State authorities and/or international organisations;
  - 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 ANTI-CORRUPTION RULES

Depending on the status of relevant person subjected to anti-corruption regulations and type of violation, the Kyrgyz legislation stipulates disciplinary, administrative and criminal liability.

4.1 Criminal offences and liability

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.

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

- fine;
- termination of office;
- disciplinary labour;
- deprivation of right to hold specific position 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

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:

- fine;
- 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 entities bear only civil and administrative liability arising from the anti-corruption 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 legal entity's activities may be imposed on a legal entity as a punishment for corruption offences.

5. ANTI-CORRUPTION PRACTICES AND SUBSEQUENT CHARGES

In the Kyrgyz Republic anti-corruption charges lead to criminal punishment for bribery, abuse of power, illegal enrichment and similar offences. Generally, bribery involves demands by a Government official for financial reward for fulfilling his or her official duties, or bribery of the members of various State commissions that grant rights to 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 Government offices, generates a public opinion that by way of corruption it is possible to reach personal goals and usually entails the commission of other crimes.

One of the most noteworthy examples of corruption can be illustrated in a case when the State prosecutor was accused of corruption as he filed a claim in the interest of the claimant which was a commercial entity, allowing the commercial entity to avoid the requirement to pay the State duties for judicial review of the claim. As pursuant to the procedural laws of the Kyrgyz Republic, claims filed by the State prosecutors are exempt from the payment of State duties.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

As a former USSR country and similar to its neighbouring 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 in the Kyrgyz Republic, 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 anti-corruption policies and ensure that these are implemented by executives, employees and representatives, especially by companies which deal with licensing and permitting, State procurement and Government contracts.

Such policies should:

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

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

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Moldova

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Overview of Anti-corruption Laws in Moldova

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1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

The Moldovan legislation regulating the status of public officials and establishing anti-corruption rules consists of many laws and subordinated normative acts. The Moldovan Parliament has recently significantly changed the legislative framework in this field by passing certain new laws that came into force on 1 January 2009.

The main laws and regulations applicable to the status of public officials and setting anti-corruption rules are:

1.1 International anti-corruption 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.

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 ANTI-CORRUPTION REGULATIONS

2.1 **General definitions**

In order to understand the Moldovan anti-corruption laws and regulations (collectively referred to as "anti-corruption regulations"), we should first identify the categories of persons to whom the anti-corruption regulations apply.

In Moldova, both public officials and certain other categories of persons that do not perform public functions are subject to anti-corruption regulations.

The Moldovan law defines a **public official** as an individual appointed, in accordance with the legal provisions, into a **public function**, whereas the public function 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 holding "**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, defined in a list provided by the law.[2]

Also, for the purpose of applicability of the Moldovan Criminal Code (in particular in relation to the criminal liability for corruption offences), a different definition is used. 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, "**executive officers**" 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 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.

"**High executive officers**" are persons whose appointment or election is regulated by the Constitution of the Republic of Moldova and 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 anti-corruption 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 with public status could be held liable for corruption acts (hereinafter – "**Corruption Infringers**"):

- persons holding 'high public functions' (e.g. the President of the Republic of Moldova, the President of the Moldovan Parliament, Prime Minister, members of the Parliament, ministers and mayors, and other officials as defined on 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);
- public officials;
- judges, prosecutors, criminal investigation officers, employees of diplomatic service, tax authorities, customs, of the Centre for Combating Economic Crimes and Corruption, officers of the State security and of internal affairs bodies;
- heads and deputies of public institutions, State or municipal enterprises, of commercial entities with majority State capital;
- 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;
- persons providing public service;
- persons who are permanently or temporary delegated with one of the functions mentioned above;
- public officials after expiration of their authority, who resigned or were removed, according to the law;
- agents of electoral competitors;
- notaries, auditors, advocates and representatives in court proceedings;
- other persons provided by laws.

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

(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.

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 anti-corruption 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 which are interpreted as corruption behaviour:[4]

- to interfere in the activity of other bodies, enterprises, institutions and organisations, regardless of type of ownership and legal form, in case if such an act does not fall within their competence, making use of their position, which leads to conflict of interests;
- to participate (using their voting or decision-making rights) at examination and resolving of problems in their personal interest or in the interests of their family members;
- 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;
- to unlawfully grant advantages to individuals or legal entities in connection with the drafting or issuance of decisions;
- to take advantage of privileges in order to obtain for himself or for others credits and loans, to purchase securities, real estate and other property by taking advantage of their position;
- 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;
- 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;
- 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;
- to manage public goods and finances contrary to their destination, in their own interest or the in the interest of others;
- 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;
- 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, Corruption Infringers (both public officials and other persons subject to anti-corruption regulations) 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 the "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 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, 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 favour of the offeror, because it could be

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

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

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 an official act was not performed by the respective official.

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

4. LIABILITY FOR THE VIOLATION OF ANTI-CORRUPTION RULES

Under the Law of the Republic of Moldova No. 90-XVI on Preventing and Fighting Corruption dated 25 April 2008, Corruption Infringers (both public officials and other persons subject to anti-corruption regulations) who are guilty of corruption acts 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.

Executive officers, as well as individuals who give bribes, can 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. Penalties include:

- fines;
- prohibition to hold certain positions for up to five 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.

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

4.3 Offences and liability incurred by legal entities

Under the Moldovan Criminal Code, 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. IMPORTANT CASES RELATING TO ANTI-CORRUPTION

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 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 paid EUR 10,000 in two installments.

(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 favourable decision shall be held criminally liable.

(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.

(9) Article 30 of the Moldovan Law on Public Acquisitions dated 13 April 2007.

Among evidence presented by the prosecutor and accepted by the Moldovan courts as grounds for their decision, 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 five 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 two-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 Criminal Code regarding liability for corruption. Please note that this decision does not refer to specific cases, but has a recommendatory character for lower Courts.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

Anti-corruption 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 anti-corruption corporate policy with assistance of qualified Moldovan counsel. Among particulars of such policy the following cornerstone provisions need to be incorporated:

- Corporate anti-corruption policy should be binding on all the company's employees without exceptions;
- Corporate anti-corruption policy needs to thoroughly describe the list of persons subject to anti-corruption regulations, including the Corruption Infringers, the 'executive officers', and 'high executive officers', as described above;
- Corporate anti-corruption 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". The value of such symbolic signs of attention or souvenirs should 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 anti-corruption 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 of 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 anti-corruption 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, render services free of charge.

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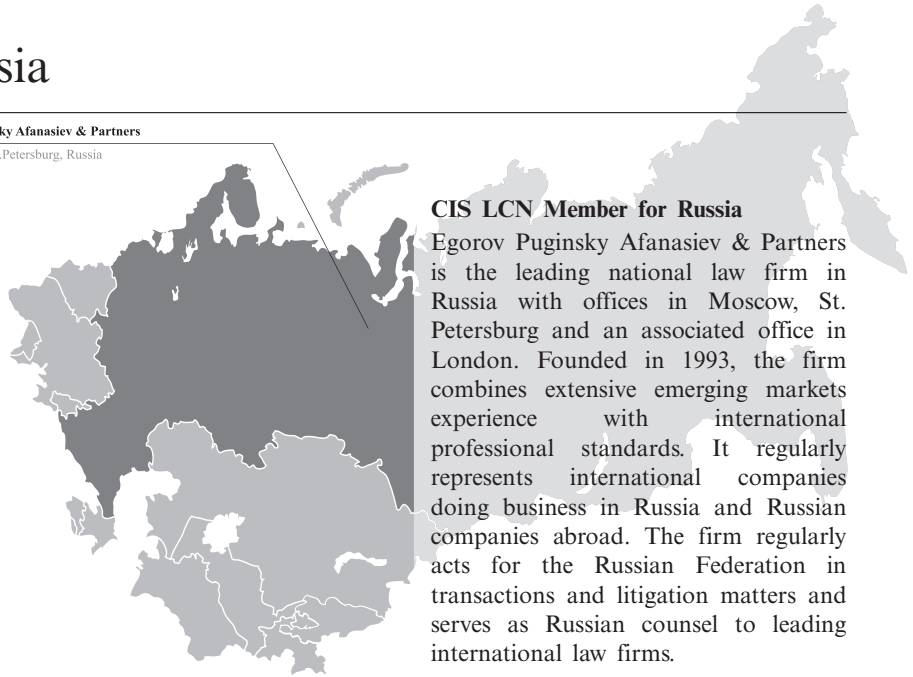

CIS LCN Member for Russia

Egorov Puginsky Afanasiev & Partners is the leading national law firm in Russia with offices in Moscow, St. Petersburg and an associated office in London. Founded in 1993, the firm combines extensive emerging markets experience with international professional standards. It regularly represents international companies doing business in Russia and Russian companies abroad. The firm regularly acts for the Russian Federation in transactions and litigation matters and serves as Russian counsel to leading international law firms.

Overview of Anti-corruption Laws in Russia

Authors: Mikhail Kazantsev, Partner and Dr. Victoria Burkovskaya, Legal Expert, Egorov Puginsky Afanasiev & Partners

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

The Russian authorities recognise that the level of corruption in the country is inadmissibly high and that research 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 matter 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. The initiatives include general reforms among large number of institutions and public administration to specific anti-corruption measures in the law enforcement system.

The main laws and regulations to prevent corruption are:

1.1 International anti-corruption 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;
- 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 Proprietory 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);
- Decree No. 560 of the President of Russian Federation, On Provisions by Persons Applying for Civil Service Positions in State Corporations, Funds and Other Organisations, Persons Occupying Managerial Positions in State Corporations, Funds and Other Organisations, of the Information on Income, Assets and Obligations of Proprietory 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 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 is a number of anti-corruption programmes carried out by various agencies, such as: the Ministry of Internal Affairs, the Prosecutor General's Office, the Federal Customs Service.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 **General definitions**

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

Public officials, which include:

(a) Federal State civil servant – a citizen performing his/her professional function at a position of 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 of 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 a subject of 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 organisation, who have committed a crime stipulated by the Articles of Chapter 30.

Criminal Code also defines the term "A representative of power" as an official of a law enforcement or controlling agency, and also another official 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 organisation or other organisation**" is used to define persons who permanently, temporarily, or by special power is fulfilling organisational-administrative or administrative-economic duties in a commercial organisation, irrespective of the form of ownership, and also in noncommercial organisation, which is not a State agency, agency of local self-governed authorities, or State or municipal institution.

2.2 List of persons subject to anti-corruption regulations

In the Russian Federation the list of persons who bear responsibility for corruption is not directly 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 of corruption offences.

The following persons that may be subjects of corruption offences:

(a) State civil servants;

(b) Municipal civil servants;

(c) Persons performing managerial functions in a commercial organisation or other organisation;

(d) Notaries;

(e) Auditors;

(f) State representatives (judges, prosecutors, policemen, etc.);

(g) and legal entities (in cases of administrative liability).

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, relaxation, 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 for the 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 the same to other persons for the purposes unrelated to State functions;
6. disclosure or use of the information, classified in accordance with federal law as confidential or State civil service information which became known to him/her in the course 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 campaignon 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, 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 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 functions, 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 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 relaxation, entertainment, transportation costs and other rewards). The gifts received by a civil servant within 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 persons and legal entities, except for official journeys or for purposes unrelated to his official duties.

4. LIABILITY FOR THE VIOLATION OF ANTI-CORRUPTION RULES

Under the Law of the Russian Federation On Prevention 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 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 is 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 organisation;
- a promise or a request for a bribe;
- 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 person;
- evasion of tax and fees by an organisation;
- 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 the 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. The punishments (penalties) include:

- fine of up to 30,000 USD;
- prohibition to hold certain positions for up to 3 years;
- deprivation of freedom (maximum term for deprivation of freedom is up to 12 years for especially big amounts of bribes).

According to Article 104.1 of the Criminal Code, a 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. Confiscation is also possible in respect of an attempt.

According to Article 104.1 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 dedicated 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 crime assigned by the accused to another person (organisation) 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 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 the value to the said object.

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

In addition, "procedural confiscation" of instruments and proceeds of crime (direct as well as indirect proceeds) in accordance with Article 81 Criminal Procedure Code for the purpose of being used as evidence is also possible. Article 81 Criminal Procedure Code is wider than Article 104.1 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 can 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 administrative responsibility for actions which could be referred to as corruption. Some regulations on administrative offences are:

- violation of terms of disclosing information about accounts 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, 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.

5. ANTI-CORRUPTION 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 organisational and managerial or administrative and business. The Plenum has also explained which functions should be treated as organisational and managerial or administrative and business.

The Plenum further noted that the bribe and commercial bribe may be given not only by 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 organisation, to give a bribe or transfer illegal remuneration in the form of money, securities or other property and in case of commercial bribery subject to 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.

On 2 April 2010 Russian division of car manufacturer Daimler AG, CJSC Mercedes Benz Rus following the parent company pleaded guilty to bribery charges raised by the US Department of Justice and Securities and Exchange Commission against Daimler AG.

Kick-backs from Daimler amounting to EUR 5 million at the minimum were, according to DOJ information, received by the employees of the special purposes garages of the Federal Protection Service, Ministry of Interior, Ministry of Defence and Mayor's offices of Moscow, Ufa and Novy Urengoi. According to the indictment, in Russia the manufacturer's representative paid bribes to civil servants in order to ensure that when the cars were imported the customs' officials treated them with less vigour.

The Financial Times "FT" reported that the US Federal District Court allowed Daimler to pay a US $185 million fine as part of the deal to settle the charges of paying bribes to high-ranking officials in 22 countries over the world to secure lucrative public contracts. In the absence of such a deal, the car manufacturer would have faced a fine of up to US $2 million, disgorgement of illegally received profit, revocation of licences, a ban on participation in public procurement in the US and possibly introduction of external monitoring of the compliance of its contracts.

In addition to the Russian division, the German division has also pleaded guilty in the case. US Department of Justice agreed not to investigate this case in China subject to compliance with certain conditions. FT notes, citing documents from the investigation file, that the growth of corruption in the company was caused by excessive independence of foreign divisions, bribery-tolerant environment and corruption of high-ranking managers occupying certain key positions.

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, namely:
  - 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 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 the 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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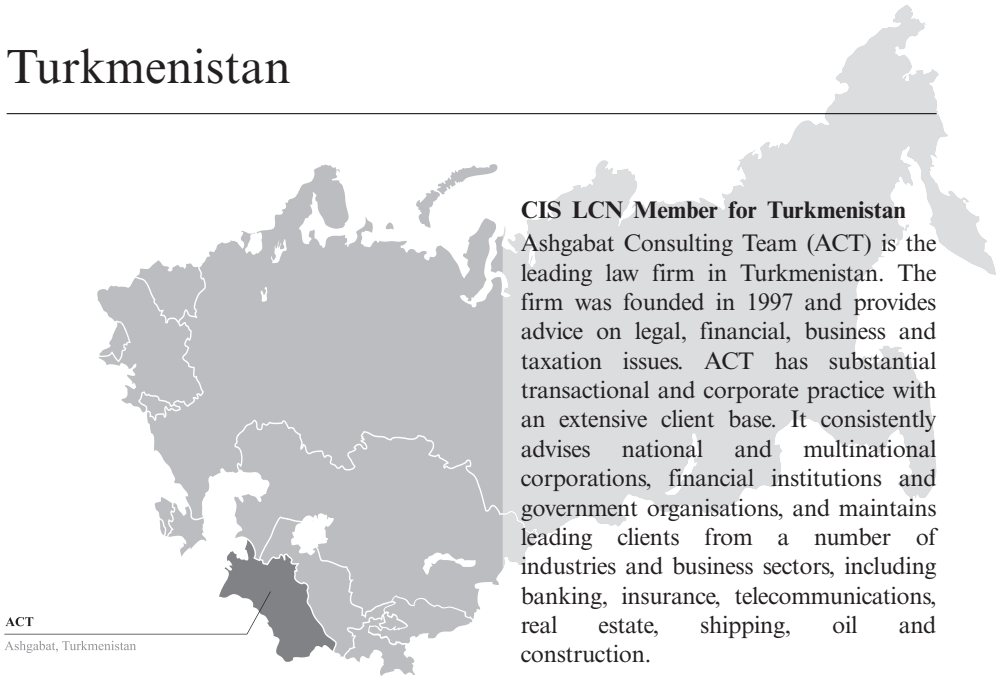
Turkmenistan



CIS LCN Member for Turkmenistan

Ashgabat Consulting Team (ACT) is the leading law firm in Turkmenistan. The firm was founded in 1997 and provides advice on legal, financial, business and taxation issues. ACT has substantial transactional and corporate practice with an extensive client base. It consistently advises national and multinational corporations, financial institutions and government organisations, and maintains leading clients from a number of industries and business sectors, including banking, insurance, telecommunications, real estate, shipping, oil and construction.

Overview of Anti-corruption Laws in Turkmenistan

Author: Vladimir Dolzhikov, Managing Partner, ACT

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

Anti-corruption legislation of Turkmenistan remains extremely undeveloped. Law in Turkmenistan does not define corruption *per se*, but giving and accepting bribes constitutes a criminal offence. There is no separate legislative act, which is aimed specifically 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 by public officials of gifts and business courtesies, are very general and, as a result, essentially inapplicable.

1.1 International anti-corruption regulations

- UN Convention against Corruption, dated 31 October, 2003, ratified by Turkmenistan on 28 March, 2005.

1.2 Codes

- Civil Code of Turkmenistan dated 17 July, 1998 as last amended on 4 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 No. 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 the complexity of the regulation we highly recommend consulting with local counsel in case of any anti-corruption compliance concerns in order to avoid reputation damage and personal liability of company's officers.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS.

2.1 General definitions

The main terms set out in Turkmenistan anti-corruption regulations are as follows:

- "**Authorised Official Person**" (Rus. – "Должностные лица"),
- "**State Authorised Persons**" (Rus. – "Государственные должностные лица"),
- "**Public Servant**" (Rus. – "Государственные служащие"),
- "**Person 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 person**" (Rus. – "Должностные лица") is used in the Criminal Code and applies to public sector. Chapter 23 of the Criminal Code, defines the term "authorised official person" as "persons, who permanently, temporarily or by special authority perform the functions of representatives of authorities 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 defined 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 "**Person with Managing Functions**" (Rus. – "Лица, выполняющие управленческие функции") applies to private sector and is described in the Criminal Code as persons occupied 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 crime nor incur any criminal liability.

2.2 List of persons subject to anti-corruption regulations

The term "**Authorised Official Person**" (Rus. – "Государственные служащие") 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 Servant**" (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 organisation 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 journals;
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-governed authority);
16. prosecutor;
17. general and command staff of the Armed Forces, Border Troops, national security and internal affairs of Turkmenistan.

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

3. LEGAL RESTRICTIONS IMPOSED ON GOVERNMENT OFFICIALS/ PUBLIC OFFICERS

3.1 General restrictions and duties

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 being interdependent from each other in any governmental entities.

Due to poor anti-corruption regulation the list of restrictions and duties is limited. However, we highly recommend consulting with local counsel in case of any anti-corruption compliance concerns in order to avoid reputation damage and personal liability of 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 as a bribe.

There are no clear regulatory rules establishing 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 expenditures. 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 per cent. 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 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.

It is permissible to provide **meals** and refreshments to public servants on or off company premises which are incidental to business meetings with no monetary limitations, so long as such meals are not granted in exchange for an act or omission in favour of the offeror. Meals which are not incidental to business meetings 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, so 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 ANTI-CORRUPTION 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 offences:

- Misuse of authority;
- 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;
- deprivation of right to hold certain positions or engage in certain types of activities which means a prohibition 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. As per the verdict of the court, the convict is obliged to transfer from 5 to 20 per cent. 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.

5. ANTI-CORRUPTION PRACTICES

The 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 anti-corruption regulations in Turkmenistan are applied in case of bribery and authority misuse charges being brought against the Authorised official persons. Several such cases are described below;

In May 2005, the former Vice-Chairman of the Cabinet of Ministers in charge of the oil and gas sector was sentenced to an unspecified term of imprisonment on charges of corruption, involving, among other offences, acceptance of bribes from a Turkish company.

In August 2005, the former Chief Executive of "Turkmenoil", a State Company, was sentenced to an unspecified term of imprisonment on charges of corruption and embezzlement. In particular, he was held liable 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 119,000 USD.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

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

The amount in monetary form of the gifts provided to the officials of different level (or Persons with managing functions) should be limited by the anti-corruption corporate policy. Since there is no corporate liability for corruption under the criminal code it is advised that anti-corruption corporate policy is mandatory for entire staff and is part of a Code of Conduct.

A gift of any value can be considered as 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 order to 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 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.

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. Hence, it is recommended to prohibit financing of such activities by company's staff to officials of any kinds (including Persons with managing functions).

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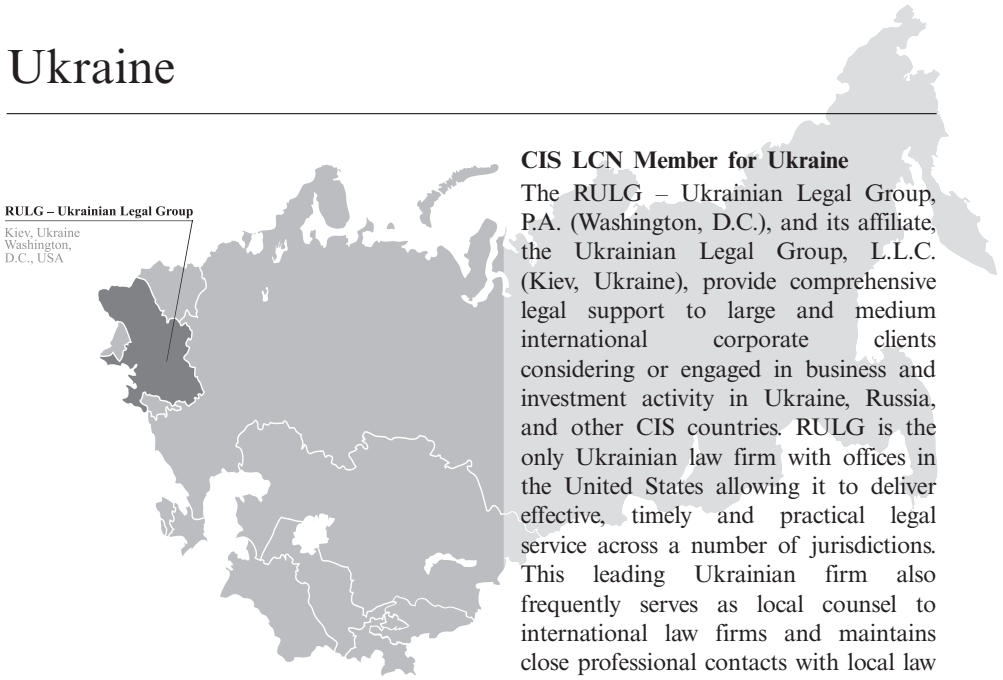

CIS LCN Member for Ukraine

The RULG – Ukrainian Legal Group, P.A. (Washington, D.C.), and its affiliate, the Ukrainian Legal Group, L.L.C. (Kiev, Ukraine), provide comprehensive legal support to large and medium international corporate clients considering or engaged in business and investment activity in Ukraine, Russia, and other CIS countries. RULG is the only Ukrainian law firm with offices in the United States allowing it to deliver effective, timely and practical legal service across a number of jurisdictions. This leading Ukrainian firm also frequently serves as local counsel to international law firms and maintains close professional contacts with local law firms throughout the CIS.

Overview of Anti-corruption Laws in Ukraine

Authors: Dr. Irina Paliashvili, President & Senior Counsel and Xenia Eremenko, Senior Counsel RULG – Ukrainian Legal Group, Ukraine

1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

It is important to note that a number of fundamental changes have been made to the Ukrainian anti-corruption regulations. A number of new anti-corruption laws adopted in Ukraine in June 2009 are expected to take effect on 1 January 2011. A number of regulations have yet to be adopted by the Cabinet of Ministers of Ukraine. However, all the analysis in this memorandum is based on the new laws.

The main anti-corruption laws and regulations applicable to GO ("**Government officials**") status are:

1.1 International anti-corruption 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

(a) ***New Laws*** (there were scheduled to take effect on 1 January 2010, but have been delayed until 1 January 2011):

- Law of Ukraine No. 1506-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 11 June 2009;
- Law of Ukraine No. 1507-VI "On Legal Entities' Liability for Corruption Acts" dated 11 June 2009;
- Law of Ukraine No. 1507-VI "On Amendments to Certain Legislative Acts of Ukraine Concerning the Liability for Corruption Acts" dated 11 June 2009.

(b) ***Effective Law on Corruption*** (will lose effect on 1 January 2011 when new laws take effect).

- Law of Ukraine No. 356/95 "On Fighting against Corruption" dated 5 October 1995.

1.3 **Ukrainian President's anti-corruption initiatives**

- Edict of the President of Ukraine No. 742/2006 dated 11 September 2006 "On the Concept of Overcoming Corruption in Ukraine; "On the Way to Morality";
- Edict of the President of Ukraine No. 80/2008 dated 1 February 2008 "On Some Measures Concerning the Improvement of the Formation and Implementation of the State's Anti-corruption Policy";
- Edict of the President of Ukraine No. 328/2008 dated 11 April 2008 "On Some Measures Concerning Prevention of Corruption in Courts and Law-Enforcement Bodies";
- Edict of the President of Ukraine No. 370/2008 dated 17 April 2008 "On the Inter-Departmental Anti-Corruption Working Group";
- Edict of the President of Ukraine No. 414/2008 dated 5 May 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 Anti-corruption Strategy and Institutional Support of a Consistent Anti-corruption Policy";
- Edict of the President of Ukraine No. 1101/2008 dated 27 November 2008 "On the Decision of the Ukrainian Council for National Security and Defense dated 31 October 2008; "On the Status of Anti-corruption Efforts in Ukraine".

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 Anti-corruption 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 Cases on 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 ANTI-CORRUPTION REGULATIONS

2.1 **General definitions**

In order to understand the Ukrainian anti-corruption laws and regulations (collectively referred to as "anti-corruption regulations") we should first identify **government officials**, **officers**, **officials** and other persons to whom the anti-corruption 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 per cent. or is such that provides the State with the right to have the decisive impact on the business activities of these entities.

We believe that in defining the public sector for the purposes of identifying corrupt acts one should proceed on the basis of the list of the persons that are authorised 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 the persons holding positions in public authorities and departments thereof, who have powers to implement through their professional activities the goals and responsibilities of the State 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 organisation, administrative and advisory responsibilities pursuant to laws and other regulations.[2]

Ukrainian law also has general category of "**official**" (Ukr. – "службова особа", Rus. – "служебное лицо"), which includes the public and private sector. In the public sector this category includes persons who act, permanently or temporarily, as government or self-government representatives and occupy, permanently or temporarily, positions in State-owned or public unitary enterprises, institutions or organisations performing organisational-executive or administrative-economic responsibilities, or perform such responsibilities based on the special authorisations

(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.

from public authorities, local self-governed authorities, the central body of the State Administration having a special status, an authorised body or a person in an enterprise, institution, organisation, court or by virtue of the law.[3]

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.[4]

Organisational-executive responsibilities include the management of a specific industry, personnel, sector, production activities of employees of enterprises, institutions or organisations, 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 organisations (including State-owned, collective or private), heads and deputy heads of structural units (heads of workshops, departments, laboratories, university departments), etc.[5]

Administrative-economic responsibilities include management of State-owned, collective or private property. These powers (to various extents) 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, controllers, etc.[6]

2.2 List of persons subject to anti-corruption regulations

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

According to Article 2 of Law "On the Fundamentals of Corruption Prevention and Counteraction" dated 11 June 2009, the persons who would be held liable for corruption offences (hereinafter – "Corruption Infringers") are:

2.2.1 ***The persons authorised to perform the responsibilities of the State or local self-governed bodies:***

(a) President of Ukraine, Chairman of the Verkhovna Rada (Parliament) of Ukraine and his deputies, Prime Minister of Ukraine and other members of the Cabinet Ministers of Ukraine, Chairman of the Security Service of Ukraine, Prosecutor General of Ukraine, Chairman of the National Bank of Ukraine, Chairman of the Counting Chamber, Human Rights Commissioner of the Verkhovna Rada of Ukraine, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, 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) government officials;

(d) officers of local self-governed bodies;

(e) military officers of the Armed Forces of Ukraine and other military units formed in accordance with the laws;

(f) judges of the Constitutional Court of Ukraine, professional judges, lay judges and members of the jury;

(g) rank and file staff and commanders of law-enforcement units, tax militia, State criminal-enforcement service, civil defense bodies and units, National Service of Ukraine for Special Communication and Information Protection;

(h) officers and employees of Public Prosecutor Office units, diplomatic service, customs, State tax service;

(i) officers and officials of other public authorities.

2.2.2 ***The persons regarded as being authorised 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) members of district/territorial and precinct election committees;

(c) directors of public organisations that are financed partly from the State or local budget;

(d) assistants-advisors to People's Deputies of Ukraine and other elected persons who are not government officials or local self-governed officers, but receive their salaries from the State or local budget;

(e) persons who are not government officials or local self-governed officers, but render public services (auditors, notaries, experts, appraisers, arbitration managers, independent mediators or members of a labour dispute arbitration in collective labour disputes, arbitrators and other persons in the cases prescribed by the law);

(f) officers of foreign states (persons holding positions in legislative, executive, administrative or court body of a foreign state, as well as other persons who perform the responsibilities of the State for a foreign State, in particular for a public authority or a State-owned enterprise);

(3) Paragraph 1, footnote in Article 364, Criminal Code of Ukraine dated 5 April 2001.

(4) Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

(5) Para 3, Article 1, Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

(6) Para 4, Article 1, Supreme Court of Ukraine Resolution No. 5 "On Court Practices in Bribery Cases" dated 26 December 2002.

(g) officers of international organisations (employees of an international organisation or any other persons authorised by such an organisation to act on its behalf).

2.2.3 ***The persons who hold, permanently or temporarily, positions that indicate they have specific authorisation to implement the organizing, management or administrative responsibilities of legal entities, as well as sole entrepreneurs***

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) and (2.2.2);

2.2.5 ***Legal entities*** (in the cases stipulated by law).

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 the 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 **anti-corruption 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 his/her and family members' real estate and valuable movable property, bank deposits and securities.[7]

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.

The persons listed above in clauses 2.2.1-2.2.3 are not allowed:[8]

3.1.1 To use their official positions to receive unlawful benefits or accept promises or offers of benefits for themselves or other persons, including:

- unlawfully assist individuals or legal entities in their business activities, receiving subsidies, subventions, grants, credits, privileges, contracts (including for the public procurement of goods, works and services);
- unlawfully assist in the appointment to a position of a person who has no advantages compared to other candidates;
- unlawfully interfere with the operation of other public authorities, local self-government bodies or officers;
- unlawfully grant advantage to individuals or legal entities in connection with the drafting or issuance of regulations and decisions, approval of conclusions;

3.1.2 To be involved, directly or indirectly in other paid or business activities (except for teaching, scientific and creative activities, medical practice, instructor and referee practices in sports, provided that these activities are carried out during non-working hours);

3.1.3 To be a member, including through other persons, of a management body or supervisory council of a for-profit entity or organisation (except when such persons manage State-owned shares (interests, equity stakes), and represent the State in a company's board (supervisory council) or auditing committee);

3.1.4 To refuse to issue to individuals or legal entities the information the provision of which is stipulated by law, to issue 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.

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

3.2 Gifts and other benefits[9]

Pursuant to the Law "On the Fundamentals of Corruption Prevention and Counteraction", the persons authorised to perform the responsibilities of the State or local self-governed bodies and the persons who are regarded as being vested with such responsibilities (all these persons are listed above in clauses 2.2.1-2.2.3) are not allowed to accept gifts, except for the cases expressly stipulated in this Law and other regulations.[10]

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

Anti-corruption regulations do define "**unlawful benefit**", which can be interpreted as money or property, advantages, privileges, material or intangible services that are promised, offered, granted or received free of charge or at a price that is lower than the minimum market price without relevant legal grounds.[11]

(7) Article 13 of Law of Ukraine No. 3723-XII "On State Service" dated 16 December 1993.

(8) Article 4 of Law of Ukraine No. 1506-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 11 June 2009.

(9) Article 5 of Law of Ukraine No. 1506-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 11 June 2009.

(10) Part 1, Article 5 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

(11) Article 1 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

The basic criterion of an act of corruption is the receiving, or the granting to a Corruption Infringer (i.e. person subject to anti-corruption legislation), of an unlawful benefit in connection with the exercise of his/her official powers.

Whereas the anti-corruption regulations do not contain the 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 authorised 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 authorised to perform the responsibilities of the State or local self-governed bodies and the persons who are regarded as being vested with such responsibilities can accept personal gifts that are in line with the generally accepted customs of hospitality, provided that the cost of one gift is not in excess of one tax social benefit.[12] At present one tax social benefit amounts to 434,50 hryvnias ("UAH")[13] or approximately $55.

The Law also stipulates that these persons must submit the gifts received in the course of official events to the public authority, organisation or legal entity where they are employed within three days in compliance with the procedure set by the Cabinet of Ministers of Ukraine.

It appears that the above provisions do not differentiate between "personal gifts" and "gifts received in the course of official events". While the Law clearly established the cost of a personal gift (it cannot exceed one tax social benefit), there is no indication if this restriction also applies to the gifts received in the course of official events.

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

For the 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 Company X employees to any representatives of the public sector cannot exceed one tax social benefit in UAH (or its USD equivalent according to the official UAH/USD exchange rates of the National Bank of Ukraine). Because both, the amount of the tax social benefit and the official UAH/USD exchange rates of the National Bank of Ukraine, change from time to time, the Compliance Policy should indicate that these indicators need to be checked by the Company X employees before making the gift.

(12) Part 2, Article 5 of the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction".

(13) Sub-clause 6.5.1, clause 6.5, Article 6 of the Law of Ukraine "On the Tax Levied on Individuals' Incomes".

4. LIABILITY FOR THE VIOLATION OF ANTI-CORRUPTION RULES

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

Respective record entries concerning the persons who incurred liability for corruption offences must be made in the Single State Register of the Persons Who Committed Corruption Offences within three days after the day of entry into force of the relevant court decision, enforcement of civil-law liability or imposition of a disciplinary action.[14]

4.1 Criminal offences and liability

The corruption offences for which criminal liability is imposed include:

4.1.1 ***Official misconduct in private-law legal entities and crimes in the course of professional activities of rendering public services:***

- abuse of power or official position;[15]
- abuse of powers or official powers;[16]
- abuse of powers by the persons who render public services;[17]
- commercial subornation;[18]
- subornation with respect to a person who renders public services.[19]

The persons who commit such crimes are officials of private-law legal entities, or the persons who render public services, as well as the individuals who provide them with unlawful benefits.

4.1.2 ***Crimes in the course of official duties:***

- abuse of power or official position;[20]
- abuse of powers or official powers;[21]
- receiving a bribe;[22]
- illegal enrichment;[23]

(14) Article 18 of Law of Ukraine No. 1506-VI "On the Fundamentals of Corruption Prevention and Counteraction" dated 11 June 2009.

(15) Article 235-1 of the Criminal Code of Ukraine.

(16) Article 235-2 of the Criminal Code of Ukraine.

(17) Article 235-3 of the Criminal Code of Ukraine.

(18) Article 235-4 of the Criminal Code of Ukraine.

(19) Article 235-5 of the Criminal Code of Ukraine.

(20) Article 364 of the Criminal Code of Ukraine.

(21) Article 365 of the Criminal Code of Ukraine.

(22) Article 368 of the Criminal Code of Ukraine.

(23) Article 368-1 of the Criminal Code of Ukraine.

- abuse of influence;[24]
- offering or giving a bribe.[25]

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

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

- arrest;
- fine;
- correctional labour;
- prohibition to hold certain positions for up to 3 years;
- confiscation of property;
- deprivation of freedom (maximum term for deprivation of freedom is up to 12 years for especially big amounts of bribes).

4.2 **Administrative offences and liability**

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

- receiving an unlawful benefit;[26]
- subornation;[27]
- illegal assistance to individuals or legal entities;[28]
- failure to provide information or submission of false or incomplete information;[29]
- failure to take measures to prevent and counteract corruption;[30]
- failure to abide by the statutory procedure for financing political parties and election campaigns during elections to public authorities and local self-governed bodies;[31]
- receiving a gift illegally.[32]

(24) Article 369-1 of the Criminal Code of Ukraine.

(25) Article 369 of the Criminal Code of Ukraine.

(26) Article 212-21 of the Ukrainian Administrative Infringements Code.

(27) Article 212-22 of the Ukrainian Administrative Infringements Code.

(28) Article 212-23 of the Ukrainian Administrative Infringements Code.

(29) Article 212-26 of the Ukrainian Administrative Infringements Code.

(30) Article 212-29 of the Ukrainian Administrative Infringements Code.

(31) Article 212-30 of the Ukrainian Administrative Infringements Code.

(32) Article 212-32 of the Ukrainian Administrative Infringements Code.

Penalties imposed for administrative corruption offences: fines and confiscation of illegally received material valuables.

4.3 **Offences and liability incurred by legal entities**

The New Laws that are scheduled to take effect as of 1 January 2011 for the first time stipulate liability of legal entities for corruption acts. According to the Law "On Legal Entities' Liability for Corruption Acts", a legal entity will incur liability if its director, founder, participant or another authorised person, independently or with the involvement of another person, commits on its behalf and in its interests any of the crimes stipulated by the Criminal Code's Article 209 ("Legalisation (laundering) of the incomes received by criminal methods"), parts one or two of Articles 235-4 ("Commercial subornation"), 235-5 ("Subornation of a person who renders public services"), Articles 364 ("Abuse of authority or official position"), 365 ("Abuse of powers or official powers"), 368 ("Receiving a bribe"), 369 ("Offering or giving a bribe") and 376 ("Interference in the operations of courts").

Furthermore the Cabinet of Ministers adopted a Resolution[33] according to which the legal entities held liable by a court decision for corruption (as per above listed Articles of the Criminal Code) must be entered into a public registry on the official web-site of the Cabinet of Ministers of Ukraine. This development will not have any immediate practical effect because imposing criminal liability on legal entities in general is a novelty in Ukrainian law, and in practice may take time for the courts to establish such precedents.

Depending on the gravity of offence by an official, founder, participant or another authorised person of the legal entity, the following penalties can be imposed on the legal entity:

- fine;
- prohibition of certain activities;
- confiscation of property;
- liquidation of the legal entity.

The prohibition to be involved in certain activities and liquidation of the legal entity can be imposed only as the principal penalty, while collection of a fine and confiscation of property can be imposed both as the principal and an additional penalty.

The maximum fine that can be imposed on a legal entity is fifteen thousand times the minimum tax-free income allowance of 17 UAH (a total of approximately $31,875).

(33) The Order of the Cabinet of Ministers No. 1315 "On Approving the Order of Accumulation and Making Public of Information on Legal Entities Brought to Responsibility for the Corruption Violations" dated 8 December 2009.

Liquidation of a legal entity can be ordered by court only if its authorised persons commit a gross or an especially grave crime.

5. ANTI-CORRUPTION PRACTICES

The practice of Ukrainian courts shows that most cases of corruption related crimes involve bribes and providing illegal benefits to business entities. The statistics show that over the last two years Ukrainian courts have become more efficient and improved the quality of legal proceedings of such cases. Herewith we would like to note once again that the New Laws introduce new corruption offences and *corpus delicti*. Since those New Laws have not come into effect yet, currently there are no recommendations from the Supreme Court as to practical implementation of these provisions.

It is interesting to note that the bribery and corruption trial of a former Lviv Appeals Court Judge, Mr. Ihor Zvarych, started at the end of September 2010. Criminal proceedings on suspicion that Mr. Igor Zvarych had received a $100,000 bribe were initiated in December 2008. If Mr. Igor Zvarych were found guilty, this would be one of the most significant corruption cases in Ukraine. There have never before been any court proceedings against judges of such seniority in Ukraine.

6. RECOMMENDATIONS ON COMPANIES' COMPLIANCE POLICIES

6.1 We recommend indicating in the section of the Compliance Policy concerning Ukraine that value of a gift that is given by Company X employees to any representatives of the public sector must not exceed one tax social benefit. As the amount of the tax social benefit fluctuates, the Compliance Policy should indicate that this indicator needs to be checked by the Company X employees before making 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 authorised 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 2.2.1-2.2.5)

6.3 In the section of the Compliance Policy which concerns Ukraine we recommend indicating the 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 the law). In our opinion, these provisions of the law prevent the financing of travels of persons working in the public sector and the financing of the accompanying services.

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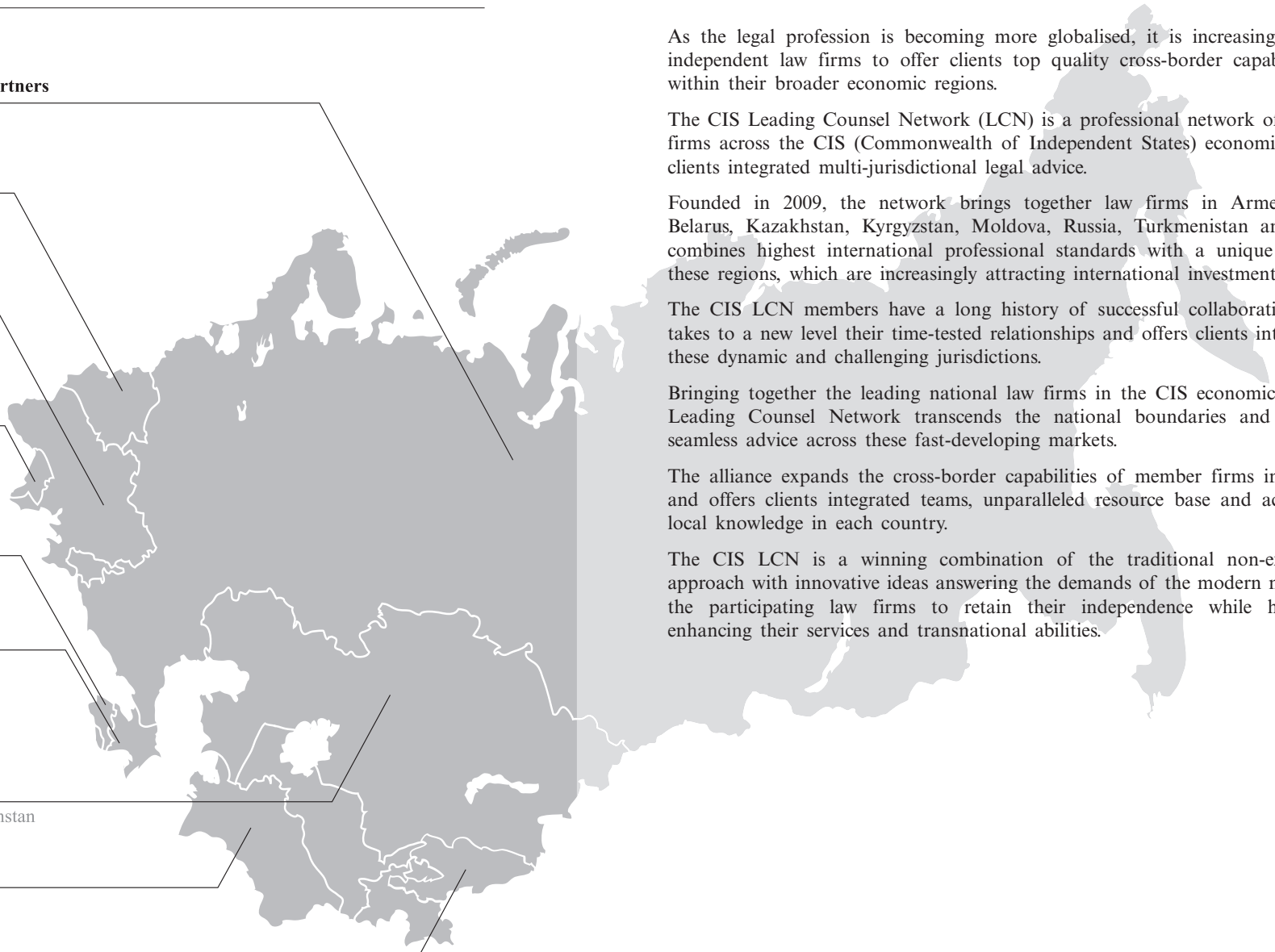

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