



Argentina - Global bribery offenses guide

4 December 2019

By: Santiago Fontán Balestra

1. What is the legal framework governing bribery in Argentina?

The crime of bribery is known in Argentina as bribery and influence peddling. The second book of the Argentine Criminal Code deals with bribery in Title XI (crimes against the Public Administration), Chapter VI (Bribery and Influence Peddling), sections 256 to 259. On December 10, 2003, Act # 25825 was passed, which amended this chapter, including the title.

2. What constitutes a bribe?

Bribery is the giving of a financial, or any other type of, advantage, with the intention of inducing or rewarding the improper performance of functions of a public nature. Hence, it is bribery when a public official receives some sort of asset as a result of having performed, or intentionally failing to perform, a certain act. Bribery against the public administration is committed both by the authority asking for or accepting the benefit (bribee) and by the one offering it (briber). The institution being protected is the public administration. Even if both the briber and the bribee are active parties to the crime, it is passive bribery when an official accepts a bribe and active bribery when the briber offers or gives the bribe.

3. What are the principal offenses under this legal framework?

The law provides that the following offenses constitute bribery:

- Any public official who, personally or through others, receives money or any other gift, or else promises to perform, delay or fail to perform an act in connection with their duties, either directly or indirectly.
- Any person who, personally or through others, requests or receives money or any other gift to unduly influence a public official so that the latter will perform, delay or fail to perform an act in connection with their duties.
- Any person who directly or indirectly offers or gives gifts so that a public official will perform or fail to perform an act in connection with their duties.
- Any person who unlawfully, directly or indirectly, offers, promises to give or gives a public official from another state or from an international public organization sums of money, any other asset with a monetary value or other rewards such as gifts, favors, promises or advantages for their own benefit or for the benefit of a third party so that, in return, the public official will perform, or fail to perform, an action in connection with their duties or will use the influence derived from their function in an issue related to an economic, financial or commercial transaction.
- Any public official who admits having received gifts on account of their functions, as long as the public official remains in office.

4. What is the jurisdictional reach of the legal framework?

Under section 1 of the Criminal Code, the criminal system under consideration comprises:

- crimes committed or having effects in the territory of Argentina or any other places under its jurisdiction;
- crimes committed abroad by public servants or agents working for Argentine authorities while performing their duties; and
- the crime provided for in section 258 bis (bribery in connection with a foreign public authority or international public entity) committed abroad by Argentine citizens or legal entities with principal place of business in Argentina, whether such principal place of business be the one in their corporate bylaws or that of any headquarters or subsidiaries they may have in the Argentine territory.

5. Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Public officials, whatever their function (whether they be authorities working for the Judicial Power or the Prosecutor's Office), and individuals or legal entities who offer, promise to give or give money or any other asset with a money value or other rewards such as gifts, favors, promises or advantages so that, in return, the public official will do, or fail to do, an act related to the performance of their duties.

6. Can a parent company be liable for its subsidiary's involvement in bribery?

Under section 1 of Act 27401, legal entities may be held liable for bribery and Influence peddling at national and transnational level. Such crime is provided in sections 258 and 258 bis of the Criminal Code of Argentina. Section 2 of the aforementioned act provides that legal entities may be held liable for bribery committed directly or indirectly through them, on their behalf, in their interest or for their benefit.

They are also held liable if the person acting for the benefit or in the interest of such legal entity is a third party having no powers to do so, as long as the legal entity has confirmed the act (even in an implied way). These considerations would be taken into account in determining whether a parent company could face liability for its subsidiary's involvement in bribery.

7. Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Under section 258 of the Criminal Code, any offering (whether direct or indirect) or payment of gifts to get a public official to perform or fail to perform an act in connection with their duties is deemed to constitute bribery.

8. Does the legal framework restrict political and charitable contributions?

Charitable policies are legally accepted as long as there is a charitable aim involved. However, a charity or political contribution may be deemed to constitute bribery if it is given or received with the intention of inducing a person to perform an improper act or as a reward for having performed it.

In addition, under section 259 of the Criminal Code, the mere giving of gifts is punished on account of the person involved being a public official, regardless of whether there was an intention of having such person perform or fail to perform an act in connection with its duties.

9. Does the legal framework place restrictions on corporate hospitality?

The Criminal System does not include any specific provision regarding corporate hospitality. Corporate hospitality is not punished as long as it is reasonable and proportionate, intended to improve the company image in front of its customers, not in front of a public official.

For hospitality to be deemed bribery it should be evaluated, with sufficient proof, if it meets any of the criminal elements provided under sections 259 to 259 bis of the Criminal Code; that is, if a gift was given or offered (whether directly or indirectly) to a public official or a foreign state authority or international public entity with the intention of inducing such public official to do or fail to do an act in connection with the performance of their public

duties, or to exercise the influence derived from their position.

10. Are there any defenses for bribery offenses?

There are no specific legal defenses for the crimes regulated under section 256 and subsequent sections of the Argentine Criminal Code.

However, in the case of individuals, section 41 ter of the Argentine Criminal Code regulates the brand-new System of the Repentant, which might be deemed a defense. This system sets forth the reduction of the sentence for the crime of bribery when, during the procedure that they are involved in, the repentants can provide specific reliable and truthful data. For this benefit to apply, the data provided must help prevent or stop the onset, permanence or completion of a crime; clarify the matter under investigation or other related matters; reveal the identity or whereabouts of the perpetrators, co-perpetrators, abettors or participants in the facts under investigation or other related facts; provide sufficient data that allows significant progress in the investigation or the whereabouts of victims who have been deprived of their freedom; find out the destination of the instruments, property, proceeds or profits that resulted from the crime; or point out the sources of funding of the criminal organizations involved in the offense.

As regards legal entities, section 8 of Act 27401 provides that, in order to lessen the sentence of a legal entity, courts will consider compliance with internal rules and procedures; the number and hierarchy of officers, employees and other assistants involved in the crime; failure to look over the dealings of both perpetrators and participants; the degree of the harm caused; the amount of money involved in the crime; the legal entity's size, nature and economic capability; the legal entity's voluntary report to the authorities as a result of an internal investigation or crime detection activity; the subsequent behavior; the attitude towards mitigating or else repairing the harm caused; and recidivism.

It is a defense for a business organization accused of not preventing bribery under section 8 to prove it has suitable procedures in place for bribery prevention. In addition, under section 9 it might be exempted from punishment and administrative liability if it voluntarily reported a crime regulated under this act as a consequence of an internal investigation or crime detection activity; if it had implemented a control and supervision system in light of the provisions of sections 22 and 23 of this act prior to the matter under investigation, and the violation of such system required an effort from the participants in the crime; or if it returned the benefit unduly obtained.

Hence, in order to carry out the defense and be exempted from criminal liability, the legal entity must prove that it has implemented the following Integrity Programme, regulated under section 22 of the aforementioned act.

"Legal entities covered by this system may implement integrity programmes, which consist of a group of internal actions, mechanisms and procedures intended to promote integrity, supervision and control, aimed at preventing, detecting and correcting any illegal acts comprised hereunder."

The required Integrity Programme must be in accordance with the risks involved in the legal entity's business, its size and economic capability, as provided by the entity's regulations.

Section 23 regulates the content of such Integrity Programme, which must include, at least, the following:

- a code of ethics or conduct, or else a set of integrity procedures and policies applicable to the entity's directors, managers and employees, regardless of their role or position, which provide certain guidelines for them to plan and carry out their tasks or duties in such a way to prevent the crimes provided hereunder;
- specific rules and procedures intended to prevent crimes in bidding processes, in the execution of administrative agreements or any other interaction with the public sector; or
- training directors, managers and employees on the Integrity Programme on a regular basis.

11. What are the key regulatory or enforcement bodies with regard to bribery?

The Anticorruption Office (OA) is in charge of developing and coordinating programs to fight corruption in the public sector nationwide, together with the Administrative Investigation Prosecution Office. The OA works under the Ministry of Justice and Human Rights of Argentina and is led by a Secretary of Public Ethics, Transparency and Fight against Corruption. This position is currently held by Laura Alonso.

12. What are the legal consequences of being found guilty of bribery offenses?

Public officials may be sentenced to prison for one to six years and permanent inability to perform their duties. If such public officials are authorities working for the Judicial Power or the Prosecutor's Office they will be sentenced to four to twelve years and permanent inability to perform their duties if, by themselves or through third parties, they have received money or any other gift or accepted a direct or indirect promise to render, issue, delay or fail to render or issue a decision, judgment or order in regard to matters within their competence.

Individuals may be sentenced to prison for one to six years and up to twelve years if their behavior was intended to unduly influence a Judicial Power or Prosecutor's Office authority to ensure that they render, issue, delay or fail to render or issue a decision, judgment or order in regard to matters within their competence.

In addition, a penalty may be imposed of two to five times the amount of money or value of the gift, undue benefit or money advantage offered or given.

As regards legal entities, section 7 of Act 27401 provides the following penalties:

- penalty of two to five times the undue benefit that has been or may have been gained;
- interruption of the legal entity's business activity, in whole or in part, which may not, in any case, be for more than ten years;
- inability to take part in bidding processes for public works or services or any other state-related business activity which may not, in any case, be for more than ten years;
- dissolution and liquidation of the legal entity if the sole purpose why it was organized was the commission of the crime or if such acts constitute the entity's main activity;
- loss or suspension of the state benefits that the legal entity may have; or
- serving notice with an excerpt of the judgment rendered at the legal entity's expense.

13. Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Summary proceedings provided under section 431 of the Argentina Code of Criminal Procedure¹ may be an alternative prosecution mechanism. In this case, if the Prosecutor's Office should deem it sufficient to impose a prison sentence of less than six years or a non-prison sentence which may even be admitted therewith, when claiming that the matter should be taken to court, it may petition that summary proceedings be instituted. In such case, the Prosecutor's Office must expressly state the penalty intended to be imposed. For the claim to be upheld, the defendant, duly assisted by its legal counsel, must admit the existence of the crime and its involvement therein, described in the prosecutor's petition that the matter be taken to court, and the applicable legal framework.

Summary proceedings are special proceedings that make it possible to speed up criminal processes and work as an alternative to oral and public trials by making the process shorter when strong evidence can be relied upon. They allow for an alternative way out by means of an agreement between the prosecutor, the defendant and its legal counsel, who is to provide the required technical advice so that an explanation be given to the defendant as to the characteristics of the proceedings. In every case, the defendant must agree freely and voluntarily.

This system applies to any crime when a (prison or non-prison) sentence is imposed. The prosecutor, the defendant and its legal counsel execute the agreement and submit it to the court. If sustained, judgment is rendered and a sentence is imposed, in the same way as in oral and public trials, but much faster, which allows for a reduced number of lawsuits.

The defendant must admit its criminal liability and, in exchange, it will receive a lower sentence than in an oral public trial.

In addition, it should be pointed out once more that, at any time before the criminal case has been taken to court, the defendant may opt for the system of the repentant as provided by section 41 ter of the Argentine Criminal Code, as a consequence of which it may be granted a reduction in the sentence.

As regards legal entities, Act 27401 regulates the possibility of cooperating with the investigation. Hence, section 16 provides that "the legal entity and the prosecutor may enter into an agreement of effective cooperation whereby

the legal entity undertakes to cooperate by providing information or accurate, useful and evidence-backed data aimed at discovering the facts, identifying the perpetrators or participants in the crime or recovering the proceeds or profits derived therefrom, as well as meeting the required conditions as provided by section 18 of this act.”

The effective cooperation agreement may be entered into until the summons to appear in court is received. The negotiation between the legal entity and the prosecutor, as well as any information exchanged in connection therewith up to approval of the agreement, shall remain strictly confidential. Within a year, the Prosecutor’s Office or the court must verify the truthfulness and usefulness of the information provided by the legal entity under the effective cooperation agreement. If the truthfulness and usefulness of the information provided is proved, the judgment to be rendered shall respect the terms of the agreement, and no other penalties shall be imposed.

[Access the full guide](#)

[Return to Overview page](#)

¹ Section 431 bis: If, with regard to the provisions in section 346, the Prosecutor’s Office should deem it sufficient to impose a prison sentence of less than six years or a non-prison sentence which may even be admitted therewith, when claiming that the matter be taken to court, it may petition that the proceedings provided hereunder be instituted. In such case, the Prosecutor’s Office must expressly state the penalty intended to be imposed.

AUTHORS



Santiago Fontán Balestra

Of Counsel

Buenos Aires | T: +5411 41145500

s.fontan@dlapiper.ar
