



Peru - Global bribery offenses guide

4 December 2019

By: José M. Allemant

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

In Peru, bribery offences are regulated in the Peruvian Criminal Code, approved by Legislative Decree N° 635. Specifically, articles 376°-A, 393°, 393°-A, 394°, 395°, 395°-A, 395°-B, 396°, 397°, 397°-A, 398°, 398°-A of the Peruvian Criminal Code regulate bribery involving governmental authorities, in such cases those crimes are identified as government or public corruption; and, articles 241°-A and 241°-B regulate crimes of bribery among individuals or private corruption.

2. What constitutes a bribe?

According to Peruvian law, a bribe is defined as any donation, promise or any other advantage or benefit given in favor of a particular person or in favor of a third-party appointed by such particular person, for the execution or violation of any role or activity.

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

Under the Peruvian framework, the principal offences are:

- the abuse of authority by which the delivery of social programmes' goods and services are illegally conditioned, in order to obtain a political advantage;
- the direct or indirect request, acceptance or receipt of any donation, promise or any other advantage or benefit for: (i) conditioning, executing or failing to execute, any act in violation of any mandatory obligation; (ii) executing or failing to execute any act that may benefit a third-party in the acquisition or commercialization of goods, the procurement of services or in any commercial relationship; or, (iii) executing or failing to execute any act to the detriment of the legal entity to which they render their services;
- the direct or indirect acceptance of any donation, promise or any other advantage or benefit due to the violation of any mandatory obligation; or
- to offer, give or promise any donation, advantage or benefit to any governmental or private officer for the execution or failure thereof, of any act that exclusively corresponds to their position or for executing or failing to execute any act that may benefit a third-party in the acquisition or commercialization of goods, the procurement of services or in any commercial relationship.

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

According to Articles 1 and 2 of the Peruvian Criminal Code, Peruvian authorities may take jurisdiction where the offence takes place: (i) within the Peruvian territory; (ii) in any governmental Peruvian ship or aircraft, regardless of their location; (iii) in any Peruvian ship or aircraft of private domain when such ship or aircraft is located in an

area where no state exercises sovereignty.

Additionally, Peruvian authorities may take jurisdiction where the offences are committed abroad if:

- the offender is a Peruvian governmental officer acting within the scope of their governmental position;
- they constitute a risk against public security or tranquility or respond to money laundering offences, provided that their effects shall cause consequences in Peru;
- they prejudice the Peruvian state, Peruvian national defense, any of the powers of the Peruvian state, the Peruvian constitutional order and/or the Peruvian monetary system;
- they are perpetrated against a Peruvian citizen or by a Peruvian citizen and the offence may give rise to an extradition proceeding under Peruvian law, provided that such offence shall be also punishable in the country where the offence was committed and the offender enters in to the Peruvian territory; or
- Peru is obliged to suppress such offences in accordance with international treaties.

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

In Peru, governmental officials, as well as private individuals, may be liable for bribery.

Additionally, pursuant to article 3 of Law No. 30424 (Law that regulates the Administrative Liability of Legal Entities), legal entities are administratively liable for bribery when the respective crime has been committed in their name or on their behalf and for their direct or indirect benefit, by:

- a. their legally appointed or in fact managers, legal representatives and/or their corporate bodies, provided they act within the roles that correspond to their respective positions;
- b. individuals who provide any kind of services to the corresponding legal entity (regardless of their nature, legal regime or their contractual relationship), are subject to the authority and control of the persons mentioned in section a) above and act according to the orders or upon the authorization of the latter; or
- c. individuals referred to in section b) above, when according to the specific circumstances, due control and surveillance is not exercised by the persons mentioned in section a) above.

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

Yes, if the subsidiary commits a bribery offence for obtaining or maintaining businesses or any other advantage in favor of the parent company. Nonetheless, if the bribery act is committed for the exclusive benefit of the subsidiary, without the knowledge of the parent company and such circumstances are proved, the parent company will not be liable.

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

Yes, facilitation payments are considered to be bribes according to Peruvian law.

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

Yes, the Peruvian legal framework does restrict political and charitable contributions.

Law No. 28094 regulates the financing of political parties in Peru, establishing proceedings to be followed for executing contributions in favor of political parties.

Additionally, Law No. 30997 incorporates as offences: (i) the unlawful financing of political organizations; and, (ii) the falsehood or misrepresentation of information regarding contributions, incomes and expenses of political organizations.

Finally, Law 30424 and its Regulations establish the proceedings to be followed by private companies that intend to execute political contributions, as well as the criminal prevention system (including donations and political contributions policies) that should be implemented by such companies.

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

In Peru, there is no restrictive framework on corporate hospitality. However, the concepts incorporated in criminal definitions such as bribery, facilitation payments, benefits or promises should be taken as a reference. If any of these concepts are linked to corporate hospitality, they will evidently be prohibited.

10. Are there any defenses for bribery offences?

Yes, according to article 17° of Law No. 30424 and its Regulations, if a company implements within its organization (prior to committing a particular crime) a prevention model that duly corresponds to its nature, risks, requirements and characteristics and includes appropriate surveillance and control measures to prevent the commission of bribery offences or to significantly reduce the occurrence risk, the company may be exempted from liability.

If the implementation of the prevention model is subsequent to committing an offence, such implementation will reduce the applicable consequences.

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

In Peru the key regulatory bodies are: the *Contraloría General de la República* (the General Comptroller of the Republic), the integrity offices of the all governmental bodies and the internal control offices or internal auditors of the private companies.

The enforcement body is the *Ministerio Público* (Attorney General).

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

Individuals may be subject to imprisonment, may be perpetually disqualified to be appointed as a governmental officer and/or obliged to pay fines and/or civil indemnifications.

Legal entities may be obliged to: (i) pay fines of no less than UIT5 nor greater than UIT500 (for the fiscal year of 2019, a UIT amounts to PEN 4,200, approximately USD1,255); (ii) close its premises (temporarily or permanently); and/or, (iii) execute its dissolution and liquidation.

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

Yes, in Peru an effective collaboration mechanism, applicable to individuals and to legal entities is regulated in articles 472°-481° of the Criminal Procedure Code. According to such mechanism, if a person or an officer of a company that has committed a crime delivers all the truthful information of the crime they have committed or that refers to acts related to the corresponding crime and such information is subsequently verified by the competent prosecutor, the respective person may be exempted from liability; the applicable criminal consequences may be reduced or suspended; or criminal penalties could be modified to administrative penalties.

[Access the full guide](#)

[Return to Overview page](#)

AUTHORS



José M. Allemant

Partner

Lima | T: (511) 616 1200



jmallemant@dlapiper.pe
