



# Mauritius - Global bribery offenses guide

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## 1) What is the legal framework governing bribery in Mauritius?

The Prevention of Corruption Act 2002 (POCA) (the Act) governs bribery in Mauritius. The Act provides for the prevention and punishment of corruption and fraud and for the establishment of an Independent Commission Against Corruption (ICAC).

The Act applies to conduct occurring from the implementation date of 1 April 2002.

## 2) What constitutes a bribe?

A bribe is the offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of their public or legal duties; something, such as money or a favor, offered or given to a person in a position of trust to influence that person's views or conduct.

A bribe can consist of immediate cash or of personal favors, a promise of later payment, or anything else the recipient views as valuable.

## 3) What are the principal offenses under this legal framework?

- When a public official solicits, accepts or obtains from another person, for themselves or for any other person, a gratification in the execution of their functions and duties (Section 4 POCA).
- When a person gives, agrees to give or offers a gratification to a public official in the execution of their functions and duties (Section 5 POCA).
- Any person who accepts or obtains, or agrees to accept or attempts to obtain, a gratification in consideration of concealing an offense or screening any other person from legal proceedings for an offense or not proceeding against any other person in relation to an alleged offense, or abandoning or withdrawing, or obtaining or endeavoring to obtain the withdrawal of, a prosecution against any other person (Section 6 POCA).
- Any public official who makes use of their office or position for a gratification for themselves or another person (Section 7 POCA).
- Any person who gives, or agrees to give, or offers, to a public official, a gratification for:
  - voting or abstaining from voting, or having voted or abstained from voting, at a meeting of a public body of which they are a member, director or employee, in favor of or against any measure, resolution or question submitted to the public body;
  - performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing, the performance of an act of a public body of which they are a member, director or employee; or aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any

contract or advantage in favor of any other person.

(Section 8(1) POCA)

- Any public official who solicits or accepts a gratification for either (a), (b) or (c) as mentioned in section 8(1). (Section 8(2) POCA)
- Any person who gives or offers a gratification to a public official in consideration of that public official using influence in:
  - promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
  - the payment of the price provided for in a contract with a public body; or
  - obtaining for that person or for any other person, an advantage under a contract for work or procurement.

(Section 12(1) POCA)

- Any public official who solicits, accepts or obtains from any other person, for himself or for any other, a gratification for giving assistance or using influence to (a), (b) and (c) as mentioned in section 12(1) POCA. (Section 12(2) POCA)
- It is an offense for any public official to solicit, accept or obtain a gratification for himself or for any other person:
  - from a person, whom they know to be concerned in any proceeding or business transacted by them, or having any connection with their functions or those of any public official to whom they are subordinate or of whom they are the superior; or
  - from a person whom they know to be interested in or related to the person so concerned.

(Section 15 POCA)

#### 4) What is the jurisdictional reach of the legal framework?

Where the bribery occurred outside Mauritius, a court in Mauritius shall, regardless of whether or not the act constitutes an offense at the place of its commission, have jurisdiction in respect of that offense if the person to be charged:

- is a citizen of Mauritius;
- is ordinarily resident in Mauritius;
- was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offense was committed;
- is a company incorporated, or registered as such under any law, in Mauritius; or
- is a body of persons incorporated in Mauritius, or an unincorporated body operating in Mauritius.

(Section 82A(1) POCA)

When an act of bribery is committed outside Mauritius by a person, regardless of whether or not the act constitutes an offense or not at the place of its commission, be deemed to have been committed also in Mauritius if that:

- act affects or is intended to affect a public body, a business or any other person in Mauritius;
- person is found to be in Mauritius; or
- person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

(Section 82A(2) POCA)

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

In Mauritius, public officials (Section 4 POCA), private individuals and legal entities including companies (Section 5 POCA) can be prosecuted for bribery offenses.

Note, however, that POCA does not provide for any penalty in the context of a corporate defendant. A 2013 case identified this lacuna in the law and noted that this could only be remedied by the legislature. The law has not yet been amended.

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

The law in Mauritius does not specifically provide for the liability of a company for its subsidiary's involvement in bribery.

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

Yes, facilitation payments can be considered as bribery as such payments are a sort of gratification to a public official in order to expedite the performance of an act in the execution of the public functions or duties. (Section 5 POCA).

## 8) Does the legal framework restrict political and charitable contributions?

The legal framework does not expressly restrict political and charitable contributions; however, any contribution that is given or received with the intention of inducing a person to act improperly, or as a reward for having done so, shall be considered as a bribe.

## 9) Does the legal framework place restrictions on corporate hospitality?

The law does not provide any restrictions on corporate hospitality.

Whether hospitality amounts to a bribe would be assessed on the basis of whether there was sufficient evidence to show that it was a bribe as described in this note.

## 10) Are there any defenses for bribery offenses?

There are no specific statutory defenses to charges found under sections 4, 5, 6, 7, 8 and 12.

The Independent Commission Against Corruption has put into place a Zero Influence test, which is to be considered by the public officials when accepting any gift or hospitality. All gifts or hospitality accepted should satisfy the test. Public officials should ensure that the two conditions found in the test are met. However, in any event, the public official must always report to their immediate supervisor or senior officers, any offer of gratification whether accepted or not (Guidelines on Gift and Gratifications for public officials - ICAC).

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

The Independent Commission Against Corruption (ICAC) has extensive responsibilities and the powers to forge a change of attitude and a mindset that will render the practice of corruption more difficult. Its functions include, inter alia, to:

- receive and consider any allegation that a corruption offense has been committed;
- detect or investigate any act of corruption; and
- investigate the conduct of any public official which, in its opinion, is connected with or conducive to, corruption.

The Office of the Director of Public Prosecutions prosecutes bribery offenses investigated by the police, committed either overseas or in Mauritius.

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

- An individual shall, on conviction, be liable to penal servitude for a term not exceeding ten years for the following bribery offenses:
  - Bribery by public official (section 4 POCA)
  - Bribery of public official (section 5 POCA)
  - Public official using his office for gratification (section 7 POCA)
  - Bribery of or by public official to influence the decision of a public body (section 8(1) and 8(2) POCA)
  - Bribery for procuring contracts (section 12(1) and 12(2) POCA)
  - Receiving gift for corrupt purposes (section 15 POCA)
- For taking gratification to screen offender from punishment (section 6 POCA)
  - Where the offense is a crime, be liable to imprisonment for a term not exceeding five years;
  - Where the offense is a misdemeanour, be liable to imprisonment for a term not exceeding one year;

- Where the offense is a contravention, be liable to imprisonment for a term not exceeding six months.

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

Neither Deferred Prosecution Agreements nor any other similar settlement mechanisms in the case of bribery are available in Mauritius.

*Summary provided by Juristconsult Chambers, a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.*

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