



Ukraine - Global bribery offenses guide

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Door:

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

Ukrainian legislation governing bribery is complex and intricate, since anti-corruption rules are spread across several statutes. The Law of Ukraine On Prevention of Corruption dated October 14, 2014 (Anti-Corruption Law) sets out principles of the corruption prevention system in Ukraine, rules on the application of anti-corruption mechanisms, and establishes fundamental principles on elimination of consequences of corruption offences etc.

The Criminal Code of Ukraine dated April 5, 2001 (Criminal Code) establishes criminal liability for corruption offences. In turn, the Code of Administrative Offences of Ukraine dated December 7, 1984 (Code of Administrative Offences) sets forth administrative liability for corruption-related offences.

In addition, a plethora of secondary legislation create rules and procedures on conducting inspections and investigations, establishes the rules of conduct for public officials, and clarifies certain provisions of Ukrainian laws.

2. What constitutes a bribe?

Ukrainian legislation employs the term unlawful benefit instead of a bribe. An unlawful benefit is any money or other property, benefits, privileges, services, intangible assets, any other non-financial advantages that are offered, promised, granted or received without any legal justification in order to receive improper advantage through abuse of powers given to a person.

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

Ukrainian legislation differentiates between corruption offences and corruption-related offences. The Criminal Code imposes criminal liability for the following forms of corruption offences associated with unlawful benefit:

- offering, promising, soliciting or requesting of unlawful benefits in one's own interests or in the interests of a third person;
- providing, accepting an offer, providing, promising or receiving of unlawful benefits;
- abuse of powers for obtaining unlawful benefits;
- submission of e-declarations with unreliable information on public servants' assets; and
- provoking a person to offer, promise or provide an unlawful benefit or accept an offer, promise or benefit itself, aiming to extort this person later.

In addition, persons could be found administratively liable for the following corruption-related offences: violation of restrictions on occupying two or more conflict positions; violation of restrictions on obtaining of gifts; violation of the rules on submission of e-declarations for public servants' assets; violation of the requirements for prevention or settlement

of the conflict of interests; illegal use of information that became known in connection with the performance of official powers; and failure to take anti-corruption measures if a corruption offence has been revealed.

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

In general, Ukrainian anti-corruption legal framework does not provide instruments with extraterritorial reach. However, there are some grounds for extraterritorial application.

Ukrainian citizens and stateless persons permanently residing in Ukraine are liable under the Criminal Code for committing corruption offences abroad. Foreigners and stateless persons that do not permanently reside in Ukraine could be prosecuted in Ukraine pursuant to the Criminal Code under any of the following conditions: (i) such persons committed corruption offences abroad in complicity with public officials who are Ukrainian nationals; (ii) such persons offered, promised or provided unlawful benefits to public officials who are Ukrainian nationals or (iii) they accepted an offer or promise of unlawful benefits, or received such benefits from public officials who are Ukrainian nationals.

Foreign companies could be found liable for corruption offences committed in Ukraine.

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

Ukrainian legislation provides an extensive list of persons who could be held liable for corruption and corruption-related offences, divided into the following groups, including:

- persons authorized to perform state functions or local government functions, namely, public officials, local government officials, military officials, officials of law-enforcement agencies;
- persons that for the purposes of the Anti-Corruption Law are conferred the same status as persons authorized to perform state functions, namely, officers of state entities, individuals rendering public services (e.g. auditors, notaries, experts, arbitrators etc.), representatives of public associations, scientific institutions and educational institutions;
- persons permanently or temporarily holding positions related to organizational, executive, or administrative and commercial duties, or persons specifically authorized to perform such duties in any private companies under the law etc.;
- candidates for elective positions;
- private individuals providing, offering or promising unlawful benefits; and
- legal entities may be liable for corruption offences under the following conditions: (i) the company's authorized representative commits a corruption offence on behalf and/or in the interests of such a company; or (ii) the authorized person failed to take anti-corruption measures that led to the commission of a corruption offence.

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

As mentioned above, a company may be brought to criminal liability only if the company's authorized representative commits a corruption offence on behalf and/or in the interests of this company. Consequently, Ukrainian legislation does not entail criminal liability for parent companies for corruption or corruption related offences committed by their subsidiaries.

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

Ukrainian anti-corruption legislation does not differentiate between unlawful benefits and facilitation payments. Therefore, any unofficial payment made for the purpose of getting certain advantages from Ukrainian officials would be considered an unlawful benefit.

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

A political or charitable contribution granted to public authorities would be considered an unlawful benefit, unless otherwise provided by law. Art. 54 of the Anti-Corruption Law prohibits free of charge obtainment by public officials of money or other property, intangible assets, material benefits, privileges or services from individuals or legal entities.

Furthermore, public officials and officials of local government bodies are personally liable for receiving such benefits.

Nevertheless, Ukrainian legislation provides for contributions in support of political parties. The Law of Ukraine On Political Parties in Ukraine prohibits donation of money in support of political parties by the following subjects: public authorities, local government bodies, state and municipal enterprises, foreign states, foreign legal entities, foreigners and stateless persons, as well as legal entities, the ultimate beneficiary owners (controllers) of which are foreigners or stateless persons etc.

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

Ukrainian anti-corruption legislation incorporates the term *gift* relating to generally recognized ideas of hospitality. Under the Anti-Corruption Law, a gift means money or other property, benefits, privileges, services, intangible assets granted/received free of charge or at a price lower than the minimum market price. Hence, the definition of a gift is broad enough to cover any financial or other advantages provided in terms of corporate hospitality.

The Anti-Corruption Law imposes certain restrictions on gifts. In particular, public officials are prohibited from demanding, request or receiving gifts for themselves or close relatives from legal entities or individuals under the following conditions: (i) where the gift relates to an exercise of the state or local self-government functions; or (ii) where the gift was received a subordinate.

As a rule, public officials may accept gifts that are consistent with the generally recognized ideas of hospitality considering that (i) the value of a gift does not exceed approx. USD74 and (ii) the total value of such gifts received from one person (group) during one year does not exceed approx. USD148 (values relevant for 2019). If these requirements are not met, the person bears administrative liability in the form of a fine with confiscation of the gift. Since the term “generally recognized ideas of hospitality” is vague and not clearly defined in legislation, there is a risk that any gift could be perceived as an unlawful benefit by law-enforcement bodies.

It is worth noting that there is no clear threshold between gifts that exceed the permissible value and unlawful benefits. Consequently, a company or an individual presenting a gift to a public official bears a risk of such a gift being treated as an unlawful benefit by law-enforcement bodies and courts.

10. Are there any defenses for bribery offences?

Ukrainian legislation does not provide any specific defenses for individuals in corruption cases.

Where the person in charge of implementing anti-corruption prevention measures in a company complies with statutory anti-corruption requirements, as well as company policies and bylaws, penal sanctions for certain corruption offences will not apply.

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

The National Agency on Corruption Prevention (NACP) is a central executive authority with a special status. Its main objective is to develop and implement anti-corruption policy. The main functions of NACP include, inter alia, implementation of the Ukrainian anti-corruption strategy and evaluation of its performance, monitoring the effectiveness of corruption prevention measures, and corruption counteraction.

The National Anti-Corruption Bureau of Ukraine (NABU) is a state law-enforcement agency that prevents, terminates, investigates and reveals corruption offences falling under its competence. Detectives of the NABU directly conduct pre-trial investigations of allegations regarding corruption offences.

The Specialized Anti-Corruption Prosecutor's Office (SAP) is an independent structural unit of the Prosecutor General's Office of Ukraine that is primarily responsible for (i) the supervision of NABU in the course of pre-trial investigation, and (ii) representation of the state prosecution in respective court proceedings.

The State Bureau of Investigations (SBIs) is a central executive authority aimed at preventing, terminating, revealing and investigating corruption offences placed under its jurisdiction, including crimes committed by officials of the NABU and the SAP.

The Asset Recovery and Management Agency (ARMA) is a special governmental body aimed at identification and tracing of property that may be seized in criminal proceedings, inter alia, for corruption offences.

The Higher Anti-Corruption Court (HACC) is a permanent higher specialized court acting as a court of first and appeal instance. The jurisdiction of the HACC extends to corruption offences only. The anticipated launch date of the HACC is September 5, 2019.

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

Under Ukrainian legislation, persons may face criminal, administrative, disciplinary and civil liability for corruption wrongdoing. The disciplinary liability applies to offenders who were not brought to criminal liability.

Criminal and administrative liability of individuals envisages imposition of one or several penalties such as a fine; confiscation; community service; corrective labor; arrest; restriction of liberty; imprisonment; and restrictions on occupying certain positions or performing certain activities.

Legal entities convicted of corruption offences may face a fine, which shall be calculated as double the amount of the unlawful benefit received by the legal entity, or liquidation. Both penalties may be complemented with property confiscation.

Furthermore, information regarding persons convicted for corruption and corruption-related offences shall be entered into the Unified State Registry of Persons Liable for Committing Corruption or Corruption-Related Offences, maintained by the National Agency on Corruption Prevention.

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

Ukrainian legislation does not provide for the use of DPAs. However, it offers a similar settlement mechanism – a plea agreement. As a rule, a suspect may negotiate a plea agreement with the prosecution for lenient sentencing. The Criminal Procedural Code envisages that a plea agreement may be negotiated regarding offences that harm only the state or public interests. Furthermore, a plea agreement may not be negotiated (i) with the company's authorized representative involved in corruption activities, when criminal proceedings are conducted in respect of a legal entity and (ii) in criminal proceedings regarding criminal offences that have harmed the interests of particular persons, where an aggrieved party participates in such proceedings.

A plea agreement imposes duties on a suspect or an accused person to cooperate with the prosecution to detect corruption offences. It will also impose conditions for the partial release of criminal liability and detail the agreed punishment etc. A plea agreement may be initiated at any stage of criminal proceedings before the court has passed its verdict.

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