



# Zambia - Global bribery offenses guide

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## 1. What is the legal framework governing bribery in the Zambia?

Bribery in Zambia is currently governed by the Anti-Corruption Act, 2012 (the Anti-Corruption Act).

## 2. What constitutes a bribe?

The word bribe is not particularly provided for in the Anti-Corruption Act. However, it is envisaged in the definition of the term corruption. Pursuant to the Anti-Corruption Act, corruption means:

“The soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for advantage or benefit for oneself or another person.”

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

The Act particularly prohibits corrupt transactions by or with public or private officers. More particularly, the Act specifically prohibits an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction.

Additionally, other principle offences provided for in the Anti-Corruption Act are: the possession of unexplained property, the concealment of property, the abuse of authority of office, the gratification of giving assistance with regards to a contract and the gratification for procuring the withdrawal of a tender.

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

In its advent, the Anti-Corruption Act has domesticated the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, the Southern African Development Community Protocol Against Corruption and other regional and international instruments on corruption to which Zambia is a party. This is of course, in addition to the local jurisdiction of the provisions contained with the Act itself.

Section 91 of the Act further provides that the Anti-Corruption Act shall have effect within as well as outside Zambia notwithstanding where any offence is committed by any person. It goes on to provide that the said offence shall be dealt with as if it has been committed within Zambia.

Foreign nationals are also encompassed within the jurisdictional reach of the Act. Particularly, section 26 prohibits and criminalizes corrupt practices by or on the part of foreign nationals. This is supplemented by section 92, which provides that an offence committed under the Act shall be deemed to be an extraditable offence under the provisions of the Extradition Act.

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

Sections 19 and 20 encompass all private and public bodies with respect of liability. This includes public officials, private individuals and, by implication, legal entities. Additionally, section 23 further includes agents within the scope of persons who are liable for bribery.

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

The Act does not specifically provide for the culpability of a parent company for its subsidiary's involvement in bribery.

It is worth mentioning that in the definitional element of the Anti-Corruption Act, one definition of an associate includes:

"A company in which that person or that person's nominee is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with that person's nominee, holds a controlling interest or shares amounting to more than 30% of the total share capital."

In this sense, a parent company will fall within this definitional element of an associate with respect to its subsidiary. Section 8 of the Act provides that where in a meeting a party's associate becomes the subject matter of the meeting, a party is obliged to declare such interest at the soonest possible time.

Hence, beyond the aforementioned obligation, the act does not appear to impute liability on a parent company for a subsidiary's involvement in bribery.

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

Section 19(2) of the Act provides as follows: "A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence."

Accordingly, a reasonable interpretation of this Act clearly outlaws facilitation or small payments to speed up government routines. As stated above, such conduct falls squarely within the ambit of an inducement or reward for services, acts which are strictly prohibited by the Anti-Corruption Act.

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

Political contributions are regulated under the Electoral Act of 2006. According to Section 79 of the Electoral Act, any person who corruptly either directly or indirectly, gives or lends money in order to induce or deter a voter from voting for a candidate, or creates an incentive for the election or return of a candidate has committed an offence of bribery.

There does not appear to be any specific reference made in the Anti-Corruption Act regarding charitable contributions. It must however be stated that a charitable contribution can reasonably fall within the ambit of a casual gift (as described more fully below) provided that it is not given with corrupt pretenses.

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

Corporate hospitality has been encompassed in the Anti-Corruption Act under the definitional element of a casual gift. A casual gift, is defined as: "... any conventional hospitality, on a modest scale or unsolicited gift of modest value, offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person, and includes any inexpensive seasonal gift offered to staff or associates by a public or private body or a private individual on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part III." Section 70(2) provides that no entertainment or casual gift offered or accepted under such conditions shall constitute an offence under Part III. Furthermore, Section 90 provides that one can validly raise a defense that the gratification that has been rendered constitutes an entertainment or casual gift.

Accordingly, it must be stated that in order for corporate hospitality not to fall under conduct which constitutes bribery under the Act it must specifically fall under the ambit of a casual gift. Should, however, the gratification go beyond the scope of a casual gift, it risks falling into the prohibited conduct of corrupt practices as defined above.

## 10. Are there any defenses for bribery offences?

According to section 90: "In any proceedings for an offence under this Act it shall be a valid defense that the gratification offered or accepted is an entertainment or a casual gift." It follows that the ambit for defenses in the Act are kept narrow. In the instance of an alleged bribery, one can only raise the defense that such conduct constituted entertainment or a casual gift.

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

The body that regulates and enforces offences pertaining to bribery pursuant to the Anti-Corruption Act is the Anti-Corruption Commission (the ACC).

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

There are varying penalties for individuals holding varying positions (mainly public officials). The penalties in question also vary depending upon the offence committed. With this being said, however, penalties with respect of general bribery offences are provided for in section 41 of the Act. According to section 41, persons found guilty of offences under the Act are liable upon conviction to serve a maximum prison sentence of 14 years, irrespective of whether they are a first time or subsequent offender. However, specifically pertaining to subsequent offenders, a minimum sentence of 5 years prescribed, although as stated, the sentence cannot exceed a maximum period of 14 years.

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

Section 80 of the Anti-Corruption Act specifically provides for out of court settlements. More specifically, this provision stipulates that in circumstances in which the ACC is obligated to institute proceedings against an individual, it is at liberty to issue a notice to the accused personally informing the individual that they could settle the claim within a specified time before the filing of court proceedings. Accordingly, subsection 2 empowers the ACC in such circumstances with the ability to negotiate and enter a settlement with the individual. More specifically, subsection 3 provides that the ACC may tender an undertaking, in writing, not to institute criminal proceedings against a person who: "(a) has given a full and true disclosure of all material facts relating to past corrupt conduct and an illegal activity by that person or others; and (b) has voluntarily paid, deposited or refunded all property the person acquired through corruption or illegal activity." Importantly, the Act stipulates the fact that a settlement or undertaking under this section shall be registered in court.

*Summary provided by Chibesakunda & Co, 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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