

# Albania

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## **Brief overview of the law and enforcement regime**

The main laws governing and dealing with anti-bribery and anticorruption in Albania are:

- (i) Criminal Code of the Republic of Albania approved upon Law no. 7895, dated 27 January 1995, as amended (the “Criminal Code”), whose latest amendments (i.e. Law no. 23 dated 1 March 2012) have significantly enhanced the provisions governing corruption by adding new articles that define its meaning.
- (ii) Criminal Procedure of the Republic of Albania passed upon Law no. 7905, dated 21 March 1995 (the “Criminal Procedure Code”) as amended, governing the investigation procedures of bribery and corruption.
- (iii) Law no. 9745, dated 14 June 2007 “On the criminal liability of the legal entities”, which provides for the criminal liability of legal entities where the offence has been committed on behalf of the legal entity or for the benefit of the legal entity through its bodies or representatives.
- (iv) Law no. 9643, dated 20 November 2006 “On public procurement”, which also contains anti-corruption provisions.
- (v) Law no. 9367, dated 07 April 2005, “On the prevention of the conflict of interests in the exercising of public functions” (the “Conflict of Interest Law”) as amended. The rules defined by this law are obligatory for implementation *inter alia* by every state institution, central or local, and every organ or subject created by and/or under the above subjects, including state or local undertakings, commercial companies with a controlling participation of state or local capital, non-profit organisations and other legal entities controlled by the above subjects.
- (vi) Law no. 9049, dated 10 April 2003 “On the declaration and audit of assets, financial obligations of elected persons and certain public officials” (hereinafter “the Law on Declaration of Assets”).

The main bodies involved in the identification and prevention of bribery and corruption are the Prosecutor Office, the High Inspectorate of Declaration and Audit of Assets, and all structures created for such purpose within the public bodies.

The penalties provided by the Albanian legislation for cases of bribery and corruption are the following:

- for individuals, the penalties provided in the Criminal Code vary from fines to imprisonment up to 10 years.
- for legal entities, under the Law on the Criminal Liability of Legal Entities, the penalties vary from fines (commencing from 300,000 Albanian Lek (€2,158) to 5,000,000 Albanian Lek (€5,971)) to the winding up of the legal entity. Also, the same law provides for supplementary punitive measures, such as prohibition from participating in public tenders, for soliciting public funds, obtaining specific licences and permits, termination of several of the activities conducted out by the legal entity, etc.

## **Overview of enforcement activity and policy during the past two years**

The Prosecution Office has become more active in recent years as a result of the establishment of a task force, and there have been a number of high profile investigations and criminal prosecutions.

However, improvements still need to be made to: (i) the consolidation of investigations and increasing efficiency of criminal prosecution through implementation of effective tools to aid investigations; (ii) increasing the supervision of the police force; (iii) the consolidation and expansion of the public's access to information; (iv) the consolidation of the use of information technology; and (v) the consolidation of the cooperation mechanisms between the Prosecution Office, the police and other agencies dealing with bribery and corruption.

According to the publicly available information, more than one hundred (100) corruption cases are being reported every day by citizens, and the General Prosecution Office has undertaken a large number of investigations on such regard. No public information on the exact number of bribery-related prosecutions is available.

From the public statements made by the Prosecution Office in 2012, it would appear that the focus is on tackling the corruption of high ranking public officials, corruption within the General Prosecution Office itself and District Prosecution Offices, and politicians, and the immediate commencement of criminal proceedings against the persons involved thereof in case of the existence of the elements required for the commencement of criminal proceedings.

As regards cases that have been prosecuted and sanctions made, please note that the following case to which we are referring herein is dated May 2008. We are not aware of any details and specifications on current cases.

In May 2008, the Tirana District Prosecution Office ordered the arrest of several high ranking officials of the Ministry of Public Works and Transports and 2 shareholders of private companies suspected of rigging tenders for the construction of a highway in Albania. Various individuals were accused of having collaborated with each other so as to favour several companies who tendered for the works projects. In return for favouring the companies, the individuals received a kickback (10% of the project cost). On 28 May 2008, the Tirana District Court found all of the accused guilty and convicted them with fines (varying in degree from 400,000 Albanian Lek (€288) to 2.6 million Albanian Lek (€1,870,500) and with prison sentences of between 4 months and 2 years in length. A number of individuals successfully managed to appeal against this decision.

#### **Law and policy relating to issues such as facilitation payments and hospitality**

Matters related to ethics and the independence of public officials during the course of their activities are mainly governed by Conflict of Interest Law, Law no. 9131 dated 08 September 2003 "On Ethics' Rules in the Public Administration" (the "Ethical Rules Law") and Decision of Council of Ministers no. 714 dated 22 October 2004 "On Personal Activities and Receipt of Gifts by Public Officers During Exercise of their Office".

Article 4 of the Conflict of Interest Law defines a 'public official' as, *inter alia*, any person (officer/official) having a public office and certain responsibilities and competencies in the state authorities of the central or local government. As a general rule, the public officials must not directly and/or indirectly solicit or accept gifts, favours, or any other benefits, from any third party (natural person and/or private or public legal entity) that would create, or would be perceived to create, a situation of conflict of interest which would influence/affect the independence of the public officials in the course of performing the official duties. Customary invitations, gift(s) of symbolic value, traditional or courtesy gifts, where custom and traditional "code of behaviour" so-requires, but that do not lead to a perception of influencing the public official's behaviour in terms of ethics and independence, are permitted.

The Conflict of Interest Law defines a situation leading to conflict of interest as any situation, connected with the public duties carried out by the public officials and their direct and/or indirect personal interests, which would influence the independence of the public officials during the course of its official duties. Personal interests of a public official for the purpose herein shall be considered as any interest deriving, *inter alia*, from gifts, favours and other benefits/preferential treatments.

The Conflict of Interest Law provides for certain mandatory conditions to be met for the acceptance of gifts/hospitality by public officials:

1. The gifts/hospitality by third parties should not have the purpose of influencing the public official in the performance of their official duties, should not exceed the terms of ethics, courtesy, or hospitality and, in any case, should maintain the independence of the public official in the performance of their duties.
2. The gifts/hospitality should not exceed the amount of Albanian Lek 10,000 (approximately €70) during a one year period (note that such gifts/hospitality are not subject to disclosure to the respective public authority).
3. The gifts/hospitality exceeding the amount of Albanian Lek 10,000 (approximately €70) should be duly disclosed to the respective public authority.

As far as it constitutes corruptive practice, the giving of gifts or hospitality to government officials and public servants is considered as active bribery and prohibited by the articles 244, 245 and 245/1, first paragraph, 319, 319/b and 328 of the Criminal Code.

The same consideration is to be made also in relation to the giving of gifts and hospitality in the private sector, as far as it constitutes a corruptive practice. The relevant provision prohibiting such practice is article 164 (a) of the Criminal Code. There are no specific currency limits in this regard.

#### **Key issues relating to investigation, decision making and enforcement procedures**

The Prosecution Office is the competent authority for investigating and prosecuting corruption. The Prosecution Office is organised and operates under the supervision of the general prosecutor as a centralised structure, and includes the office of the General Prosecutor, the Prosecution Council and the District Prosecution Offices. The court is the competent decision making authority whose decisions are enforceable.

Article 300 of the Albanian Criminal Code and articles 281, 282, and 283 of the Criminal Procedure Code provide that any person must self-report when he has knowledge about any crime committed or that is taking place.

An Anti-corruption Commission has been established upon a Decision of the Council of Ministers in order to: (i) establish a strategy for the organisation and direction of the fight against corruption; (ii) effectively co-ordinate the anti-corruption activities of the state institutions and private sector; and (iii) ensure the necessary cooperation with the international financial institutions supporting the government's anti-corruption initiatives.

Recently, the newly appointed Attorney General has publicly declared that the priorities of his work in the General Prosecution Office shall consist of detecting the corruption cases within the General Prosecution Office itself and District Prosecution Offices, and corruption in the public administration and in the immediate commencement of the criminal proceedings against the persons involved thereof.

Further, the General Prosecution Office has recently created, on its official web site, a new page where any citizen can directly report corruption cases including the names of the persons involved in such cases. According to the publicly available information of the General Prosecution Office, more than one hundred (100) corruption cases are reported each day by the citizens. Further, as per the said publicly available information, the persons involved in the reported corruption cases are high ranking officials and politicians whose names are currently not available to the public and not officially confirmed but shall be made publicly known in the future.

The General Prosecution Office has established a special office having as a target the following up of mass-media developments or citizens' reports or claims. Any case of such nature is taken into consideration by the special office within the General Prosecution Office, and then such cases are observed, and verified whether the elements of the criminal offence exist in order to initiate the investigation proceedings. All the reported corruption cases are in the process of verification and the special office of the General Prosecution Office dealing with them must decide whether the elements to commence the criminal proceedings exist.

Corruption in Albania constitutes a crime under the provisions of the Albanian Criminal Code and, therefore, the Prosecution Office is the competent authority for investigating and prosecuting corruption. The Prosecution Office puts forth the criminal prosecution, as well as representing the

accusation in court on behalf of the state. This office is organised and operates under the supervision of the General Prosecutor as a centralised structure, and includes the office of the General Prosecutor, the Prosecution Council and the District Prosecution Offices. The Prosecution Office exerts its functions through the prosecutors. The court is the competent decision making authority whose decisions are legally enforceable.

### **Corporate liability for bribery and corruption offences**

The definition of a corruption offence is provided under the provisions of the Albanian Criminal Code which indicates the two forms of corruptions as active and passive corruption: (i) Active corruption includes the promising, offering, giving, directly or indirectly, of any type of irregular advantage or irregular promise, for oneself or for other persons, or the acceptance of an offer or of a promise deriving from an irregular advantage, in order to perform or not to perform an action which is related to a person's duty/position or capacity; and (ii) Passive corruption includes the requesting, receiving, directly or indirectly, of any type of irregular advantage or irregular promise, for oneself or for other persons, or the acceptance of an offer or of a promise deriving from an irregular advantage, from a person serving in a leading function/office or that works in any position of the private sector, in order to perform or not to perform an action which is related to a person's duty/position or capacity. Article 164(a) of the Criminal Code provides for the offence of active bribery in the private sector i.e. by legal entities.

Further, the concept of criminal liability of legal entities in the Republic of Albania was introduced through the Law on the Criminal Liability of Legal Entities. Article 2 of the Law on the Criminal Liability of Legal Entities provides that the provisions of the said law are applicable to the legal entities only in case the Albanian Criminal Code, the Criminal Procedure Code and other criminal provisions do not provide otherwise. The provisions of the civil-commercial legislation also apply to legal entities, to the extent that such law does not provide otherwise.

Provisions of the Law on the Criminal Liability of Legal Entities are applicable to Albanian legal entities and to foreign legal entities that have acquired legal personality according to the provisions of the Albanian Company Law (Law no. 9901 dated 14 April 2008 On Entrepreneurs and Commercial Companies). The law applies to both national and foreign legal persons (e.g., joint stock and limited liability companies, and non-profit organisations) and, with a few exceptions, to local governmental bodies, public legal entities, political parties and labour unions.

Article 3 of the Law on Criminal Liability of Legal Entities does not provide for the specific offence of bribery of companies, but does provide for the criminal liability of a legal entity for offences performed on its behalf or for its benefit by: (i) the bodies and representatives of such legal entity; or (ii) by a person being under the authority of the person that manages the legal entity.

According to the law provisions, legal entities can be held criminally responsible for a wide variety of crimes committed in its name or for its benefit: (i) by its managing body or legal representatives; (ii) by a person who is under the authority of the person who runs, represents and administers the legal entity; or (iii) due to a lack of control or surveillance by the person that runs, represents and administers the legal entity. According to the law, any individual who, under Albanian legislation and the bylaws of the legal entity, represents, runs, administers or controls the activity and the managing bodies of such entity is considered to be a managing body or a representative of the legal entity.

Two types of penalty are imposed on legal entities: principal penalties; and supplementary penalties, which are applicable to the offender in addition to the principal penalties. The principal penalties consist of pecuniary fines or compulsory dissolution of the legal entity, while the supplementary penalties may lead to, for example: (i) the cessation of one or more of the offending company's activities; (ii) its temporary receivership; (iii) a prohibition on participating in public procurement procedures; and/or (iv) publication of the court decision.

The court may sentence the compulsory dissolution of the legal entity where: (i) the legal entity established for the purpose of conducting criminal activities; (ii) the legal entity has devoted a significant proportion of its activities to commit the criminal offence; (iii) the criminal offence has severe consequences; or (iv) the legal entity is a recidivist.

Although the law has been in force since 2007, it is hard to apply and so far little progress has been made in punishing criminal offences committed by legal entities. This should probably be ascribed to that part of the Albanian judiciary system which remains loyal to the maxim "*societas delinquere non potest*" ("companies cannot be criminals") and a certain lack of expertise in this particular branch of criminal law.

#### **Proposed reforms/The year ahead**

To the best of our knowledge, no new reforms in connection with the anticorruption legislation have been proposed. The latest reform was the one related to the amendment of the Albanian Criminal Code, concretely Law no. 23 dated 1 March 2012, which significantly enhanced the provisions governing corruption and bribery by adding new articles that define its meaning, as well as providing for offences such as: active bribery of domestic public officials; active bribery of foreign public officials; active bribery in the private sector; attempted bribery; and bribery of a person through an intermediary or third party, etc.

Notwithstanding the above, as regards the fight against corruption/bribery, the target of the Albanian government is the harmonisation of the domestic legislation with the international standards and obligations, which constitutes a positive development and priority. The government of Albania has already adopted the amendments to the Criminal Code related to the corruption offences of foreign and local public officials and has imposed significant penalties. A significant ongoing progress that should be highlighted is the work of the High Inspectorate of Declaration and Audit of Assets, which has increased the level of the investigations related to the corruption of public officials.

Further, the introduction of an electronic system in the public administration as regards procurement procedures, which has decreased the contacts between the contracting authority and bidders, thus having an influence on the decrease of corruption of public officers by bidders, is another reform that has given a positive impact as regards the fight against bribery and corruption.

However, the investigation of high ranking officials charged for corruption and bribery is still an open issue and the non-performance in certain cases of the investigation procedures by the Prosecution Office reflects this problem.

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