

Bribery & Corruption

Second Edition

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Albania

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Brief overview of the law and enforcement regime

The main laws governing and dealing with anti-bribery and anti-corruption 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. 98/2014, dated 31 July 2014) 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”) as amended.

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 public bodies.

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

1. For individuals, the penalties provided in the Criminal Code vary, up to imprisonment up to five years. When the criminal offence is carried out by high state officials, the penalty consists in imprisonment for up to 12 years.
2. For legal entities, under the Law on the Criminal Liability of Legal Entities, the penalties vary from fines, the minimum being ALL 300,000 (€2,150), 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 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 co-operation mechanisms between the Prosecution Office, the police and other agencies dealing with bribery and corruption.

The new Law no. 99/2014, dated 31 July 2014, "On amendments to Law no. 7905, dated 21 March 1995, 'Criminal Procedure Code of the Republic of Albania', as amended", provides that the Prosecution Office for Serious Crimes has the jurisdiction for investigating cases of corruption among high-level officials; judges, attorneys and other senior officials, excluding officers who are investigated by the General Prosecution Office. Based on the latter, a Corruption and Asset Investigation Unit was established in September 2014 near the Prosecution Office for Serious Crimes, to investigate cases of corruption among the above mentioned high-level officials, including the elected local government representatives.

As regards cases that have been prosecuted and sanctions imposed, please note that the following case to which we refer herein is dated September 2014 and is currently being tried by the Court for Serious Crimes. On 6 September 2014 the Court for Serious Crimes set the security measure of indefinite "detention in prison" for the Mayor of the Municipality of Berzhite (Tirana) and the Head of the Tax Office of this municipality, who in a corrupt way had acquired a cash amount of €4,500 in exchange for granting a permit for the use of a public space. The accuser, after being assured in July by the Mayor of the municipality about the obtainment of the permit, had began the works in the public area. The works had been interrupted without any legitimate cause, but upon the request of the Mayor and the Head of the Tax Office to pay them the amount of €4,500 in cash. After the initial denunciation, the accuser was assisted by the Tirana Regional Police Department in performing the interceptions authorised by the Prosecution Office where a public official is accused of bribery.

In a public statement in September 2014, the General Prosecutor declared that currently, besides the issues that are on trial, the Albanian authorities have under investigation a number of officials, mostly of senior rank, suspected of being involved in criminal acts of corruption and abuse of office. Also, the Prosecutor said that because of the current volume of work, an increase in human resources is considered necessary, as the number of investigations into corruption at high levels is undergoing significant growth.

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 the 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 official duties. Customary invitations, gift(s) of symbolic value, traditional or courtesy gifts, where custom and traditional “code of behaviour” so requires, but which 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 their 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 forbids the acceptance of gifts/hospitality by public officials during the performance of their duties.

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 corrupt practice. The relevant provision prohibiting such practice is article 164 (a) of the Criminal Code.

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. Also, law no. 99/2014 amending the Criminal Procedure Code provides that corruption at the level of senior officials is considered a serious crime to be examined by the Serious Crimes Court.

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 obtains knowledge about any crime committed or that is taking place.

An Anti-corruption Commission has been established by 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 co-operation with the international financial institutions supporting the government’s anti-corruption initiatives.

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

Further, the General Prosecution Office has created, on its official website, a new page where any citizen can directly report corruption cases, including the names of the persons involved in such cases. Several cases are reported each day by 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 its 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 it is 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 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 a promise deriving from an irregular advantage, from a person serving in a leading function/office or who 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 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, a legal entity 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 who 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 has been 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.

Overview of cross-border issues

In an effort to meet the best international practice in the fight against corruption, Albania has ratified several conventions such as the Civil Convention "On corruption", ratified on 06 July 2000 upon law 8635; in 2006 has ratified the United Nation Conventions against Corruption approved in New York on 31 October 2003; and the Criminal Law Convention on Corruption signed by Albania on 27 January 1999, ratified on 19 July 2001.

Albania since 2001 has been a member of GRECO and part of the regional anticorruption initiative, a platform for the government, civil society and international organisations for exchanging expertise and know-how on the subject, and for co-ordinating efforts between and within government branches. The recent years' results show the progress made with regard to police co-operation and the fight against organised crime and corruption. Strengthening the capacity of law enforcement agencies to ensure the imposition of the law is a priority action plan embodied in this. Interagency and international police co-

operation have continued to give good results, as regards the operations, arrests and joint investigations, including the investigations of criminal assets. The national anti-trafficking efforts are co-ordinated in a comprehensive way, engaging not only with state authorities, but also independent institutions, civil society and the general public.

Proposed reforms / The year ahead

The latest reform has been the one related to the amendment of the Albanian Criminal Code, concretely Law no. 98/2014, dated 31 July 2014, and the amendments of the Albanian Criminal Procedure Code, concretely Law no. 21/2014 dated 10 March 2014 and Law no. 99/2014 dated 31 July 2014. These amendments have further enhanced the provisions governing corruption and bribery, and most importantly they have stipulated that the body now responsible for the prosecution of all cases of corruption among high-level officials is the Prosecution Office for Serious Crimes.

In the framework of anti-corruption reforms during the last quarter in 2013, several concrete measures have been undertaken to ensure the strong political will of the Government to resolve the phenomenon of corruption in the country. During this period the National Anticorruption Coordinator (KKAK) was established as an important organ at a ministry level, co-ordinating anti-corruption efforts and policies at a national level. Along with the set-up of KKAK, two important processes began: a) the development of the National Anti-Corruption Strategy 2014-2017; and b) the creation of a network of co-ordinators and focal points of corruption, in the independent institutions as well as at the executive level (including the local level). Regarding the harmonised statistics and solid background on corruption issues, working groups chaired by the Minister of Justice have prepared the data for the third quarter of 2013. During 2014, work will be focused on the establishment of an electronic database that enables in-depth analysis based on statistics and data generated in each quarter. The process will be led by KKAK.

The approval of the EU candidate status for Albania brings new challenges in the fight against corruption. In light of this, the new government has committed to conduct a detailed review of the existing legislation and come up with legal initiatives that will be aimed at:

- reducing the room for involvement in corrupt practices to the largest extent possible, both in the public and private sector, in line with EU standards and international instruments (such as GRECO, OECD, UNCAC);
- pursuing state policies and applying specific measures in this area, including steps to upgrade and expand e-governance systems;
- improving in a dramatic way services for citizens in all public service sectors, in a bid to reduce every motive and opportunity for public officials and citizens to engage in corruption;
- implementing the National Strategy and Action Plan against Corruption; and
- working with commitment to ensure law enforcement and launch new initiatives in relation to the publication of official documents and transparency of administrative procedures.

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