

Anti-Corruption Regulation 2021

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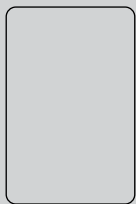
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Anti-Corruption Regulation 2021

Contributing editors**James G Tillen and Leah Moushey****Miller & Chevalier Chartered**

Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Anti-Corruption Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, James G Tillen and Leah Moushey of Miller & Chevalier Chartered, for their continued assistance with this volume.



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RELEVANT INTERNATIONAL AND DOMESTIC LAW

International anti-corruption conventions

1 | To which international anti-corruption conventions is your country a signatory?

Ukraine is a signatory to the following international anti-corruption conventions:

- the Civil Law Convention on Corruption, ratified by Ukraine on 9 September 2005;
- the Criminal Law Convention on Corruption, ratified by Ukraine on 27 November 2009;
- the United Nations Convention against Corruption, ratified by Ukraine on 2 December 2009;
- the United Nations Convention against Transnational Organized Crime, ratified by Ukraine on 4 February 2004; and
- the Protocols.

Foreign and domestic bribery laws

2 | Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The legal framework prohibiting bribery in Ukraine both of foreign and domestic public officials includes the following major acts:

- the Law of Ukraine On Prevention of Corruption of 14 October 2014, 1700-VII – defines the legal and organisational principles of the functioning of the anti-corruption system in Ukraine, the content and procedure for the application of preventive anti-corruption mechanisms, rules for eliminating the consequences of corruption offences;
- the Criminal Code of Ukraine of 5 April 2001, 2341-III – establishes criminal liability for corruption offences; and
- the Code of Administrative Offences of Ukraine of 7 December 1984, 8073-X – provides for administrative liability for corruption-related offences.

Ukrainian anti-corruption rules are also dispersed across other specialised laws and subordinate regulations that establish the rules of conduct for public officials, disciplinary liability for certain types of officials, conducting of inspections and investigations concerning corruption practices.

Successor liability

3 | Can a successor entity be held liable for violations of foreign and domestic bribery laws by the target entity that occurred prior to the merger or acquisition?

The successor liability concept is not applicable in Ukraine.

Civil and criminal enforcement

4 | Is there civil and criminal enforcement of your country's foreign and domestic bribery laws?

So far, established court practice has shown that the law enforcement in the bribery area remains rather subjective in Ukraine. The Ukrainian legal and business community is anticipating the first court ruling related to bringing companies to liability for corruption offences, which should provide some guidance on prospective law enforcement in this area.

Dispute resolution and leniency

5 | Can enforcement matters involving foreign or domestic bribery be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial? Is there a mechanism for companies to disclose violations of domestic and foreign bribery laws in exchange for lesser penalties?

The Criminal Procedure Code of Ukraine stipulates that a prosecutor and a suspected or accused person may conclude a special agreement on recognition of guilt named plea agreement, which is similar to deferred prosecution agreement, but not identical. In this way, a suspect may negotiate a plea agreement with the prosecution for lenient sentencing. A plea agreement imposes duties on a suspect or an accused person to cooperate with the prosecution to detect corruption offences. It will also set conditions for the partial release of criminal liability and detail the agreed punishment. At the same time, Ukrainian law does not provide for a mechanism to conclude plea agreements with companies in exchange for lesser penalties.

FOREIGN BRIBERY

Legal framework

6 | Describe the elements of the law prohibiting bribery of a foreign public official.

Corruption of foreign public officials is regulated under the Criminal Code of Ukraine (Chapter XVII) applicable to domestic public officials.

Definition of a foreign public official

7 | How does your law define a foreign public official, and does that definition include employees of state-owned or state-controlled companies?

According to Ukrainian law, a definition of the foreign public official may refer to the following persons:

- a person who acts in an official capacity for a legislative, administrative or judicial body in a foreign country;

- an official of a public international organisation and members of international parliamentary assemblies and international institutions; and
- a judge of an international commercial arbitration tribunal.

Gifts, travel and entertainment

8 | To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

When determining whether unlawful benefit took place, the Anti-Corruption Law and the Criminal Code of Ukraine do not distinguish between types of gifts. Besides, Ukrainian law does not provide for specific regulation for hospitality expenses (gifts, travel expenses, meals or entertainment) that may be lawfully offered or given both to domestic and foreign officials. Any such gifts both to domestic and foreign public officials will be considered as unlawful benefit. At the same time, there is no responsibility for providing gifts according to the current law of Ukraine, responsibility is provided only for domestic or foreign public officials who received a gift. The Anti-Corruption Law defines limitations concerning the value of the allowed gifts that may be presented to public officials. It is prohibited for public officials to receive any gifts except those corresponding to commonly accepted ideas of hospitality and within allowed limits. In particular, the Ukrainian law prohibits:

- receiving a gift, the value of which exceeds one subsistence minimum set on the day of acceptance of the gift; or
- receiving from one person (group of persons) during the year, the total value of which exceeds two subsistence minimums, established for a working person on 1 January of the year in which the gifts are accepted.

Exceptions for receiving gifts are the following cases:

- when a gift is given by close persons. These persons are: husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, siblings, siblings, brother or sister-in-law, nephew, niece, uncle, aunt, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, mother-in-law, guardian or trustee, a person who is under the guardianship or custody of the said official. However, if the value of a gift from a close person is more than five subsistence minimums, then such a gift must be reflected in the annual anti-corruption declaration. If the value of the gift exceeds 50 subsistence minimums, then official must indicate its receipt by submission the notice of significant changes in property status to the National Agency on Prevention of Corruption; and
- when gifts are received as public discounts on goods, services, winnings, prizes or bonuses.

Facilitating payments

9 | Do the laws and regulations permit facilitating or 'grease' payments to foreign officials?

Ukrainian legislation does not permit facilitation or 'grease' payments. Moreover, solicitations of such payments will be considered as a bribe. Any facilitation payments made with the intention or purpose of influencing the actions of receiver is prohibited and illegal.

Payments through intermediaries or third parties

10 | In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

The offences under the Anti-corruption Law and the Criminal Code do not differentiate between bribery committed directly or through intermediaries. Any such payment made through an intermediary will be considered as having been given directly and the intermediary will be considered as an accomplice to the act of bribery in accordance with the provisions of the Criminal Code of Ukraine.

Individual and corporate liability

11 | Can both individuals and companies be held liable for bribery of a foreign official?

Both individuals and companies could be found liable for bribery of a foreign official committed in Ukraine. Legal entities may be responsible for corruption offences under the following circumstances: (1) the company's authorised representative commits a corruption offence on behalf or in the interests of such a company; or (2) the authorised person failed to take anti-corruption measures that led to the commission of a corruption offence.

The Criminal Code of Ukraine establishes a criminal liability of companies. Companies may also bear civil liability for bribery that is represented in certain negative consequences. In particular, according to the Anti-Corruption Law, contracts and other documentation originating from a corrupt offence are considered null and void will lead to other negative consequences defined by civil and commercial legislation.

Private commercial bribery

12 | To what extent do your foreign anti-bribery laws also prohibit private commercial bribery?

Private commercial bribery in Ukraine is prohibited under the Anti-Corruption Law (section X). It requires Ukrainian companies to ensure the development and implementation of adequate measures for preventing corruption in their activities. It also obliges companies' CEOs and shareholders to ensure regular assessment of the corruption risks their companies may face, and the implementation of relevant anti-corruption measures. The violation of those anti-corruption measures and rules by any employee (if made part of the employment duties) may result in taking a disciplinary action against a guilty employee, up to his or her dismissal. Such effective measures may mitigate the risk of potential criminal liability of these companies for bribery offences committed by their officers and other authorised representatives.

Defences

13 | What defences and exemptions are available to those accused of foreign bribery violations?

Under the Criminal Code of Ukraine, defences available to those accused of foreign bribery violations are: active assistance in the investigation of a crime, confession to the commission of a crime and sincere repentance and active assistance in the investigation.

Agency enforcement

14 | What government agencies enforce the foreign bribery laws and regulations?

There are still no precedents of enforcement of the foreign bribery rules by Ukrainian government agencies. At the same time, the competent authorities in Ukraine must provide legal assistance to foreign law

enforcement authorities upon their request, if the international treaty on legal assistance is concluded between the respective states and ratified by Ukraine. In doing so, the Anti-Corruption law stipulates that the authorised Ukrainian agencies may provide for and obtain from the relevant foreign agencies' information, including confidential data, pertaining to the prevention and combating corruption. The National Agency on Corruption Prevention is entitled to exchange information with authorised foreign bodies and international organisations, to cooperate with foreign government agencies, NGOs and international organisations on the matters within the National Agency on Corruption Prevention credentials. The National Anti-Corruption Bureau is entitled to participate in international investigations and to conclude agreements with foreign and international enforcement authorities for collaboration on the matters within their power.

Patterns in enforcement

15 | Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Considering that Ukrainian anti-corruption legislation does not have extraterritorial jurisdiction, for now, there have been no cases of enforcement of foreign bribery rules in Ukraine, since Ukrainian bodies cannot commence any actions in Ukraine under foreign bribery laws.

Prosecution of foreign companies

16 | In what circumstances can foreign companies be prosecuted for foreign bribery?

Ukrainian bodies are not entitled to prosecute foreign companies for foreign bribery. However, they can cooperate with foreign law enforcement authorities at their request, if the international treaty on legal assistance is concluded between the respective states and ratified by Ukraine. To date, Ukraine has signed and ratified more than 60 treaties in the field of international legal cooperation in criminal cases.

Sanctions

17 | What are the sanctions for individuals and companies violating the foreign bribery rules?

Taking into account that Ukraine is not empowered to investigate and prosecute violations of foreign bribery rules, there is no legal framework for the application of any kind of sanctions for individuals or companies violating such rules.

Recent decisions and investigations

18 | Identify and summarise recent landmark decisions or investigations involving foreign bribery.

Considering that Ukrainian authorities do not investigate violations of foreign anti-corruption laws, the question is not relevant.

FINANCIAL RECORD-KEEPING AND REPORTING

Laws and regulations

19 | What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

Ukrainian legislation includes a number of laws concerning those questions:

- the Law of Ukraine on Securities and the Stock Market of 23 February 2006, 3480-IV;
- the Tax Code of Ukraine of 2 December 2010, 2755-VI;

- the Commercial Code of Ukraine of 16 January 2003, 436-IV; and
- the Law of Ukraine on Accounting and Financial Reporting in Ukraine of 21 December 2017, 2258-VIII.

Disclosure of violations or irregularities

20 | To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

In general, Ukrainian legislation does not directly oblige companies to disclose violations of anti-bribery or associated accounting irregularities. However, the Anti-Corruption Law, for instance, obliges state and local authorities, legal entities and their subsidiaries to report known corruption to the relevant authority. Also, there are generally no disclosure obligations for companies, except that notification be given to a compliance officer, CEO or shareholders of a legal entity.

Prosecution under financial record-keeping legislation

21 | Are such laws used to prosecute domestic or foreign bribery?

These laws are used to prosecute domestic and foreign bribery.

Sanctions for accounting violations

22 | What are the sanctions for violations of the accounting rules associated with the payment of bribes?

For failure to take anti-corruption measures and violation of the financial control requirements the Administrative Offences Code provides an administrative liability.

Tax-deductibility of domestic or foreign bribes

23 | Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Yes, Ukraine's tax laws prohibit the deductibility of domestic and foreign bribes.

DOMESTIC BRIBERY

Legal framework

24 | Describe the individual elements of the law prohibiting bribery of a domestic public official.

Bribery of domestic public officials is regulated by the Criminal Code of Ukraine (Chapter XVII) and the Law of Ukraine On Prevention of Corruption (often referred to as the Anti-Corruption Law). In 2014, by amending the Criminal Code of Ukraine, the criminal liability of private legal entities for corruption actions had been introduced in Ukraine.

The definition of public officials stipulated in the Criminal Code of Ukraine is quite broad and not sufficiently detailed. It encompasses any individual who exercises public managerial functions on behalf of the state. However, the Anti-Corruption Law provides a list of specific types of public officials, which consists not only of state-level civil servant, but also local government officers, managers of state-owned companies, notaries, auditors, experts, receivers, arbiters of arbitration tribunals or other persons who perform similar public functions.

Scope of prohibitions

25 | Does the law prohibit both the paying and receiving of a bribe?

Ukrainian legislation prohibits both the paying and receiving of a bribe. According to Ukrainian law, it is more correct to use the term 'unlawful benefit' rather than 'bribe'. The term 'unlawful benefit' implies

both active and passive bribery, which include promising, proposing, providing or receiving funds or other assets, benefits, privileges, services or non-material valuables with no legal grounds. This criminal offence (proposition, promise or granting of unlawful benefit to a public official) can be committed both by public officials (without distinction on domestic or foreign) and by private individuals who try to bribe or has bribed a public official. Unlawful benefit to employees of private legal entities is also punishable by law.

Definition of a domestic public official

26 How does your law define a domestic public official, and does that definition include employees of state-owned or state-controlled companies?

For the purposes of prosecution for bribery domestic public officials are defined as persons:

- for whom a special authority to perform such functions was provided by a respective state or local authority, central state executive body with a special authority, authorised body or official of an enterprise, institution or organisation, court of law; or
- those who permanently, temporarily or under special authority perform functions of representing state or local authorities or permanently or temporarily occupy positions in state or local bodies, state or municipal enterprises, institutions or organisations, related to managerial or business-administrative functions.

Gifts, travel and entertainment

27 Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and the receiving of such benefits?

Ukrainian legislation provides for certain restrictions on receiving gifts by domestic officials, but not on providing them with gifts. For violation of such restrictions, the person who received such a gift may be brought to administrative liability. Ukrainian anti-corruption law does not provide for specific regulation for hospitality expenses (gifts, travel expenses, meals or entertainment) that may be lawfully offered or given both to domestic and foreign officials. Thus, the definition of the term 'gift' is broad and includes any kind of financial or other unlawful benefit provided in terms of corporate hospitality. Receiving any of the mentioned above gifts will be considered as a violation of anticorruption law. However, there is no liability for providing gifts according to the current law of Ukraine; liability is provided only for officials who have received a gift. The Anti-Corruption Law defines limitations on the value of the allowed gifts that may be presented to public officials. It is prohibited for public officials to get any gifts except those corresponding with commonly accepted ideas of hospitality and within allowed limits. In particular, the Ukrainian law prohibits:

- receiving a gift, the value of which exceeds one subsistence minimum set on the day of acceptance of the gift; or
- receiving from one person (group of persons) during the year, the total value of which exceeds two subsistence minimums, established for a working person on 1 January of the year in which the gifts are accepted.

Exceptions for receiving gifts are the following cases:

- when a gift is given by close persons. These persons are: husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, siblings, siblings, wife's brother and sister (husband), nephew, niece, uncle, aunt, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, mother-in-law, guardian or trustee, a

person who is under the guardianship or custody of the said official. However, if the value of a gift from a close person is more than five subsistence minimums, then such a gift must be reflected in the annual anti-corruption declaration. If the value of the gift exceeds 50 subsistence minimums, then the official must indicate its receipt by submission the notice of significant changes in property status to the National Agency on Prevention of Corruption; and

- when gifts are received as public discounts on goods, services, winnings, prizes, bonuses.

Facilitating payments

28 Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Ukrainian anti-corruption laws do not envisage any difference between unlawful benefits and facilitating or 'grease' payments. Consequently, any unofficial payment made to derive unlawful advantage from Ukrainian officials will be considered as an unlawful benefit.

Public official participation in commercial activities

29 What are the restrictions on a domestic public official participating in commercial activities while in office?

Domestic public officials are prohibited from:

- engage in other paid activities (except for teaching, scientific and creative activities, medical practice, instructional and judicial practice in sports) or business activities, unless otherwise provided by the Constitution or laws of Ukraine; and
- be a member of the board, other executive or control bodies of the company, the supervisory board of the company or organisation aimed at getting profit (except when such officials perform the functions of management of shares (shares, units) owned by the state or territorial (local) community, and represent the interests of state or territorial community in the board (supervisory board), the audit commission of the economic organisation).

However, the restrictions do not apply to deputies of the local councils (except for those who exercise their powers in the relevant council on a permanent basis), members of the High Council of Justice (except for those who work in the High Council of Justice on a permanent basis), as well as jurors.

Payments through intermediaries or third parties

30 In what circumstances do the laws prohibit payments through intermediaries or third parties to domestic public officials?

Bribery through intermediaries is equal to direct bribery and is also a violation. For instance, the Criminal Code provides that an undue advantage received by a third party related to a public official or company officer constitutes a criminal offence equal to the one where the undue advantage is given directly to a public official or company officer. The same principle applies to cases where an undue advantage is promised, offered or given to a public official or company officer, so that a third party could benefit from such officer or official acting or refraining from acting in the exercise of his or her official duties.

Individual and corporate liability

31 Can both individuals and companies be held liable for violating the domestic bribery rules?

Yes, individuals and companies can be held for violating the domestic bribery rules. Legal entities may be liable for corruption offences under the following conditions: (1) the company's authorised representative

commits a corruption offence on behalf or in the interests of such a company; or (2) the authorised person failed to take anti-corruption measures that led to the commission of a corruption offence. Importantly, application of the 'measures of a criminal law nature' to the company is not autonomous in the sense that such corporate liability is linked to that of the 'authorised person' who committed the offence. Put differently, such measures are secondary to individual liability and require 'commission of the crime', inter alia, by the authorised person on behalf of and in the interests of the legal entity.

Private commercial bribery

32 | To what extent does your country's domestic anti-bribery law also prohibit private commercial bribery?

Private commercial bribery is prohibited under the Criminal Code. These includes such offences:

- bribery of an official of a private legal entity; and
- abuse of official authority by an officer of a private law legal entity, irrespective of organisational legal form.

For private bribery, Ukrainian legislation also operates with the term 'unlawful benefit' rather than 'bribery'. Thus, according to applicable rules, unlawful benefit may include funds or other assets, benefits, privileges, services and non-material assets that are promised, proposed, provided or received with no legal grounds.

This crime (ie, proposition, promise, acceptance or provision of the unlawful benefit) can be committed both by public officials and by private individuals who try to corrupt or have corrupted an official, employee or contractor of a private company.

The Criminal Code of Ukraine establishes a penalty and confiscation of the unlawful benefit for this crime.

The Criminal Code of Ukraine (as amended) has provided for the criminal liability of private legal entities. For corrupt practices, the penalty is a fine. As a rule, the fine should be twice the benefit received by the entity. If no benefit has been received, or if its amount cannot be determined, then the fine should be determined by the judge.

Defences

33 | What defences and exemptions are available to those accused of domestic bribery violations?

Ukrainian law does not provide for any statutory defences for bribery (such as exemption for facilitation payments or the availability of a compliance programme as protection from the imposition of criminal punishment in cases of bribery of various officials or undue influence by its officials), or other corruption-related offences.

In criminal proceedings, the general defence would be to challenge the prosecution (which bears the burden of proof) to prove the constitutive elements of the relevant corruption-related offence.

Further, the Criminal Procedure Code of Ukraine provides for the possibility of:

- challenging a notice of suspicion issued by the prosecution before an investigative judge (if such a notice is served, an individual becomes a suspect and might be subject to relevant restrictive measures in a criminal proceeding);
- requesting that the court recognise evidence provided by the prosecution as improper or inadmissible; and
- filing an appeal and cassation appeal against the judgment rendered.

The Criminal Procedure Code also enables participants in the criminal proceeding to request its closure on a procedural basis (eg, as based on a reasonable term of pretrial investigation principle).

The fine imposed on legal entities could be less (within the range established) if a company proves that measures were taken by its 'authorised person' (eg, director, shareholder) to prevent a criminal offence from occurring.

Agency enforcement

34 | What government agencies enforce the domestic bribery laws and regulations?

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 pretrial 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 the supervision of NABU in the course of pretrial investigation, and representation of the state prosecution in respective court proceedings.

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

The Asset Recovery and Management Agency 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 specialist court acting as a court of first and appeal instance. The jurisdiction of the HACC extends to corruption offences only.

Patterns in enforcement

35 | Describe any recent shifts in the patterns of enforcement of the domestic bribery rules.

In 2020, the legislation on anti-corruption declaration changed, particularly the requirements to anti-corruption declarations and information that it must contain, were increased. In Ukraine, according to the Anti-Corruption Law, public officials (persons holding positions in public authorities and local governments) are obliged to file anti-corruption declarations annually or upon their appointment or election to office or dismissal. The list of information that the declarant must provide about him or herself and his or her family members was expanded, as well as some aspects of the declaration procedure as a whole. From 1 January 2020, the following information is subject to the declaration of:

- legal entities, trusts, or other similar legal entities, the ultimate beneficial owner (controller) of which is the declaring entity or his or her family members;
- cryptocurrencies belonging to the declaring entity or his or her family members, which are declared as part of intangible assets; and
- banking and other financial institutions, including abroad, in which the declaring entity or his or her family members have opened accounts (regardless of the type of account, as well as accounts opened by third parties in the name of the declaring entity or members of his or her family), stored funds or other property.

It is also specified that information on monetary assets, financial obligations must be provided both about the declarant and his or her family members.

Data on the object of declaration, which was owned or used by the declarant or his or her family members, are now must be indicated in the declaration, if the object was in the possession or use of the above-mentioned persons as of the last day of the reporting period or at least for half days of the reporting period.

It is worth noting the amendments to the Criminal Code of Ukraine: currently, in the event of declaring knowingly unreliable information in a declaration, the offender will not be able to apply 'mitigation procedures', including exemption from criminal liability. The use of amnesty and pardon procedures is also limited.

Prosecution of foreign companies

36 | In what circumstances can foreign companies be prosecuted for domestic bribery?

Foreign legal entities are not expressly listed in the Criminal Code of Ukraine as subjects of corruption-related crimes and there is no example in practice of their being held criminally liable for such crimes in Ukraine.

Sanctions

37 | What are the sanctions for individuals and companies that violate the domestic bribery rules?

The Anti-Corruption Law stipulates that for committing corruption offences or corruption-related offences a person shall be subject to criminal, administrative, civil and disciplinary liability.

In terms of the type of liability and penalties that may be implied, the difference between the term 'corruption offence' and 'corruption-related offence' is that the Criminal Code of Ukraine stipulates criminal liability for corruption offences. The Code of Administrative Offences of Ukraine establishes administrative liability for corruption-related offences.

Criminal and administrative liability of individuals includes enforcement of one or several sanctions, such as a fine, confiscation, community service, public works, corrective works, arrest, restraint of liberty, or imprisonment. As additional punishment, forfeiture of property, derivation of the right to occupy certain positions or engage in certain activities also apply (optionally or mandatory) as well as a fine. All fines are set in relation to the minimum subsistence level for working adult individuals, a figure that is subject to regular review.

The following criminal sanctions may be applied to the individuals bribing the officials:

- penalty;
- restriction of liberty; and
- confiscation of property.

As to criminal penalties applicable to the officials accepting illegal benefits, they are more severe and include:

- penalty;
- derivation of the right to occupy certain positions or engage in certain activities;
- imprisonment; and
- confiscation of property.

As of 2014, private companies also became a subject of criminal liability after amendments to the Criminal Code of Ukraine came into force. For corruption offences, the penalty is a fine. Private companies might be punished for certain offences (including bribery of various officials or undue influence) committed by their officials or representatives, or for their failure to take measures to prevent the corruption that resulted in the commitment of the same offences by its employees (not officials). In

the above instances, the penalty is a fine. As a rule, the fine should be twice the undue advantage unlawfully received by such an entity. If no benefit has been received or if its amount cannot be determined, the fine should be determined by the judge.

Generally, penalties depend on the nature of the criminal offence (eg, receipt of bribe, unjust enrichment, improper influence or abuse of office), the type of official who committed the offence or to whom the improper advantage was offered (eg, private or public; rank of public official), the amount to which the criminal offence relates (eg, significant, especially large scale) and other circumstances (eg, if the offence was committed repeatedly, or as part of a conspiracy).

However, Ukrainian legislation does not establish disciplinary liability for corruption-related offence. At the same time, certain legislative acts stipulate the obligations for complying with the Anti-Corruption Law. Also, special legislation defines certain categories of officials to whom disciplinary action for corruption practices cannot be applied at all. Disciplinary measures cannot be applied to, inter alia: the president; chairman of the parliament and his or her deputies; members of the government and deputy ministers of the government; members of the parliament; members of local councils; village or city mayors. For some officials, Ukrainian law provides for special procedures for the application of disciplinary measures, among which: judges; military; prosecutors; government officials; other categories of officials whose responsibilities are established by special laws.

Recent decisions and investigations

38 | Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

As Ukrainian anti-corruption legislation has no extraterritorial application, as well as the absence of cases related to violation of Ukrainian anti-corruption laws by foreign companies, this question is not applicable.

UPDATE AND TRENDS

Key developments of the past year

39 | Please highlight any recent significant events or trends related to your national anti-corruption laws.

Corruption has long been one of Ukraine's top issues and a topic of constant debate for both Ukrainian and international communities. Among the latest news regarding national anti-corruption law is the 'constitutional crisis' that took place in October 2020. The Constitutional Court of Ukraine has declared article 366-1 of the Criminal Code of Ukraine unconstitutional, which provides for penalties for false declarations, as well as certain provisions of the Law on Prevention of Corruption. At the same time, in response to the mentioned ruling of the Constitutional Court, a draft law was submitted to the Parliament of Ukraine proposing to terminate the powers of the entire Constitutional Court. Such development of events led to a 'constitutional crisis' since there has been interference with the powers of the Constitutional Court, that is unlawful and unconstitutional for constitutional reasons according to the Constitution of Ukraine, which declares the judiciary as an independent branch. Despite this, the parliament later adopted a law that renewed liability for false declarations. Thus, Ukrainian legislation currently provides for the possibility of criminal prosecution for false declaration, but the constitutional crisis issue has not yet been resolved.

In addition, Ukraine harmonises its legislation on financial monitoring with international standards where:

- a risk-oriented approach to carrying out financial monitoring is implemented;
- work with politically exposed persons started;

- suspicious financial operations became subject to monitoring irrespective of the amount;
- transfer services that provide funds transfers are obliged to supplement the exceeding 30,000 hryvnia (with the exception of certain operations) with information regarding the sender and recipient of the transfer; and
- attorneys, auditors, notaries, accountants, etc, became the subjects of primary financial monitoring and must verify the origin of the funds they receive for their work.

Coronavirus

40 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Ukraine, as every other country, has faced the covid-19 global epidemic outbreak. Thus far, the pandemic has caused changes in domestic law to provide measures and restrictions to combat it. On 12 March 2020, the Ukrainian government introduced a quarantine for the whole territory of Ukraine, along with a list of restrictive measures.

With regard to amendments to anti-corruption laws, the deadline for submitting anti-corruption declarations has been extended to 31 May 2021 (previously, the deadline was 31 March 2020).

Regarding amendments related to litigation and legal disputes, for the duration of the covid-19 quarantine the following limitation periods have been extended:

- the statute of limitation period for the court claims to be filed in accordance with Ukrainian law; and
 - almost all procedural limitation deadlines (eg, deadlines for submission appeals, cassation appeals) for civil, commercial and administrative court proceedings at Ukrainian courts.
- As of May 2020, virtual participation in court hearings is possible. Important amendments to the tax legislation include:
- the income limit for single taxpayers was increased;
 - a VAT exemption on goods imported into the customs territory of Ukraine or the supply within the customs territory of Ukraine (including medicines, medical devices or equipment), necessary for the fight against coronavirus; and
 - the list of violations of tax legislation that may entail sanctions if committed within the period from 1 March 2020 to 31 May 2020 was expanded.

Reformation also has inevitably affected the provisions of the labor law. Inter alia, the amendments provided for:

- the obligatory conclusion of a labour agreement on distance (home) work in writing;
- the possibility to establish for employees a new regime of flexible working time. It was defined as a form of organisation of work that allows establishing a regime of work different from that determined by internal labour regulations; and
- the downtime that takes place not by the fault of the employee shall be payable at a rate of not less than two-thirds of the tariff rate set for the employee of a certain category (salary). Under the law, downtime includes downtime within the quarantine, established by the government.

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