

# Q&A IN RELATION TO BRIBERY OFFENCES IN ANGOLA

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## 1 Q&A In Relation to bribery offences in Angola

### 1. Legal Framework

#### What is the legal framework governing bribery in Angola?

- Bribery in Angola is legally understood as being corruption, as defined in the Law on the Criminalization of the Infractions Related to Money Laundering (Law n. 3/14, February 10), enacted in 2014 (Law 3/14).

### 2. What Constitutes a Bribe?

#### What constitutes a bribe?

- In accordance with the above Law 3/14, corruption is defined from a passive and active perspective.
- From a passive perspective, corruption occurs when a public employee or holder of a political role, within the exercise of its functions, requests or accepts, by themselves or by a third party, patrimonial or not patrimonial advantages or promises, for their own benefit or a third party's benefit, with the intention of acting or omitting to act, against their role's duties.
- From an active perspective, corruption occurs when someone, by themselves or by a third party, with their knowledge or ratification, provides or promises to a public employee, holder of a political role or a third party, by their indication or knowledge, patrimonial or not patrimonial advantages or promises with the intention of persuading them to exercise actions or omission of duties related to their role.

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

- Inappropriate advantage acceptance (Article 36);
- Passive Corruption (Article 37);
- Active Corruption (Article 38);
- Illegal business participation (Article 40);
- Influence Traffic (Article 41); and
- Corruption within International Trade or Business (Article 42).

### 3. Jurisdictional Reach

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

- According to Article 3 (1) of Law 3/14, this law is applicable to acts performed within the Angolan territory, either by nationals or foreign citizens.
- The Law 3/14 is also applicable to acts performed overseas when:
  - they are performed against Angolan citizens who usually live in Angola by the time of the performance of the act; and
  - the performer is found within the Angolan territory and cannot be extradited.
- Article 3(2) emphasizes that the legal framework is also applicable when performed by Angolan nationals or by Foreign citizens against Angolan nationals, where:

- the performer is found within the Angolan territory;
- the performer is a foreign citizen, found within the Angolan territory and extradition has already been requested, but not accepted;
- the performer is a legal person, or the action was performed against a legal person, with headquarters within the Angolan territory; and
- the performer is any legal person, group or entity which maintains commercial relations with natural or legal persons, public or private, located in Angola.

## 4. Who may be liable?

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

- According to Chapter VII of Law 3/14, public employees, private persons and legal entities can be found liable under the offenses above mentioned.
- However, the crimes of corruption in Angola do not occur where related to the private sector. Corruption is verified, however, where there is a relation between a private entity and a public employee or holder of a national or foreign political role.

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

- Yes, in circumstances where the parent company has knowledge or has ratified the action to be performed by its subsidiary.

## 5. High Risk Areas

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

- Yes, provided that the circumstance where the facilitation payment satisfies the criteria set within Articles 36-38 and Article 40-42 of Law 3/14.

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

- Law 3/14 does not restrict political and charitable contributions, provided that such contributions do not have as means the practice or omission of acts by public employees or holder of political roles, contrary to their professional duties.

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

- Law 3/14 does not provide place any such restrictions explicitly.

## 6. Legal Defences

### Are there any defenses for bribery offences?

- There are no specific defenses to charges under the offenses found within this legal framework.
- However, Law 3/14 provides a number of exceptions which can be applied by way of reducing or excluding the charges. Those are:
  - Article 36 (3) excludes the conducts set within article 36 (1) and (2) if such conduct is socially approved or is

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in accordance with the national use and customs.

- Article 37 (2) provides that if the action or omission is proven to not be against the duties inherent of the functions of the performer and the advantage has not been taken, the last is entitled to receive a penalty of imprisonment between six months and five years.
- Article 43 (1) provides that the performer is exempt of any penalty if it has reported the crime within a period of 90 days after the act has been performed; or before the performance of the act, repudiating voluntarily the offer or promise of the advantage; or before the performance of the act, withdraw the promise or refuse the offer of the advantage or request its refund.
- Article 43 (2) establishes that the penalty is reduced when, until the trial hearing, the performer has collaborated with the authorities in order to produce decisive evidence for the identification or capture of other offenders; or if the performer has practiced the act by direct or third-party request.

## 7. Regulatory and Enforcement Bodies

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

- The Public Ministry together with the National Police are the primary and sole bodies entitled to enforce this matter.

## 8. Legal Consequences

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

- Inappropriate advantage acceptance:
  - In the case of public employee: the law provides a penalty of imprisonment between six months and three years or a fine of 600 days (Article 36 (1)).
  - In the case of those who give the advantage: the law provides a penalty of imprisonment between six months and two years or a fine of 360 days (Article 36 (2)).
- Passive Corruption:
  - In the case of public employee: the law provides a penalty of imprisonment between one and five years (Article 37 (1)).
  - In circumstances where it has been provided that the act or omission were not against their duties the law provides a penalty of imprisonment between six months and three years (Article 37 (2)).
- Active Corruption:
  - In the case of the performer: the law provides a penalty of imprisonment between one to 5 years (Article 38(1)).
  - In circumstances where it has been provided that the act or omission were not against their functions or duties, the law provides a penalty of imprisonment between six months and three years or fine of 360 days (Article 38 (2)).
- Illegal business participation:
  - In the case of a public employee, the law provides a penalty of imprisonment between six months and five years (Article 40 (1)).
  - The public employee who commits an act in any other way which is not mentioned within article 40 (1) is

punishable with a penalty of imprisonment of up to six months or a fine of 60 days (Article 40 (2)).

- Influence Traffic:
  - In the case of the performer, the law provides a minimum penalty of imprisonment between six months and five years (Article 41).
- Corruption within International Trade or Business:
  - In the case of a public employee, the law provides a penalty of imprisonment between one and five years (Article 42).

## 9. Deferred Prosecution Agreements

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

- No, corruption crimes in Angola are not capable of being negotiated or settled.

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**Transparency International UK**

10 Queen Street Place,  
London,  
EC4R 1BE

[www.transparency.org.uk](http://www.transparency.org.uk)  
[twitter.com/transparencyuk](https://twitter.com/transparencyuk)

Content Correct as of June 2019.

Cover Image: Transparency International Corruptions Perception Index 2018