

# Q&A IN RELATION TO BRIBERY OFFENCES IN ETHIOPIA

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

### 1. Legal Framework

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

- The key piece of legislation governing bribery in Ethiopia is Corruption Crimes Proclamation No. 881/2015, which follows the general principles and guidelines applicable in the 2004 Criminal Code of The Federal Democratic Republic of Ethiopia. The Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 882/2015 also provides special rules of procedure and evidence especially applicable for the crimes of corruption in general including bribery.

### 2. What Constitutes a Bribe?

#### What constitutes a bribe?

- For anyone, with intention to procure a public servant or employee of a public organization (including a conciliator, arbitrator, juror, trustee or liquidator, translator or interpreter) to perform or omit an act in violation of the duty proper to their office, and giving or offering an advantage or gift to such public servant or employee of a public organization.
- For anyone, giving or offering an advantage or gift to any official or employee of a foreign state or international organization, with intent to procure them to perform or omit an act related to international trade or transaction in violation of their official duties.
- For anyone, in consideration for the performance by a public servant or employee of a public organization of an act proper to their office, giving or offering them an advantage or a gift before or after the performance of such an act.
- For any public servant or employee of a public organization directly or indirectly, seeking, receiving or exacting a promise of an advantage for themselves or another, in order to act or refrain from acting, in violation of the duties proper to their office.
- For anyone, even without receiving any consideration for themselves, accepting money, a valuable thing, a service or some other benefit from another with a view to giving it as bribe to a public servant or employee of a public organization or using their bank account for such transaction or creating condition or mediating or offering meeting places for such bribery.

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

- The principal offences under this legal framework are Abuse of Power or Responsibility, Bribery, Acceptance of Undue Advantages, Maladministration of Government or Public Enterprise Work, Undue delay of Matters, Giving of Facilitating Bribe or Undue Advantage, etc.

### 3. Jurisdictional Reach

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

- The framework applies across federal and regional government offices, public enterprises and public organizations in the private sector which in whatever way administer money, property or any other resource collected from members or from the public except:
  - a. religious organizations;
  - b. political parties;

- c. international organizations;
- d. edir or other similar traditional or religious associations.

## 4. Who may be liable?

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

- A juridical person other than administrative authorities, public servants and officials, employees of public enterprises and organizations (as described in the answer to the above questions) and private individuals involved in crimes of corruption may be liable.

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

- In principle, Ethiopian Criminal law recognizes that guilt is individual and a person cannot be held liable for the crimes committed by another. Therefore, as far as a parent company does not have any participation in the commission of the crime in various degrees, it will not be held liable for its subsidiary's involvement in the crime. This is not to be assumed and will depend on the circumstances of each case. However, if a parent company obtains an undue advantage or causes damage to the property of a public office, enterprise or organization, it will be made to forfeit the unlawfully obtained gain or pay its equivalent or make good the damage caused.

## 5. High Risk Areas

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

- Yes, provided they meet the criteria, facilitation payments are considered bribery, no matter how small the amount.

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

- A political or charitable contribution could be considered a bribe if it is given or received with the intention of inducing an official or employee of a public administration, organization or enterprise to act improperly, or as a reward for having done so. Other than that, the legal framework does not restrict political and charitable contributions.

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

- Ethiopian law makes no express provisions with regard to corporate hospitality, and any financial or other advantage given in that context would fall to be assessed by reference to the provisions described in this note.
- However, it is criminal for any public servant or employee of a public organization to receive a thing of value without payment or with inadequate payment without proper cause.

## 6. Legal Defences

### Are there any defenses for bribery offences?

- Under The Criminal Code of Federal Democratic Republic of Ethiopia, there are general defenses applicable to all crimes. These are excuses and justifications such as duress or coercion, necessity etc.
- The specific defense available is to rebut the legal presumption of intention to obtain for oneself or to procure for

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another an undue advantage or to injure the right of another.

## 7. Regulatory and Enforcement Bodies

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

- The Federal Attorney General has the prosecutorial power in Ethiopia to prosecute corruption offences including bribery.
- The Federal Police Commission is responsible for investigation of any types of corruption crimes including bribery.

## 8. Legal Consequences

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

As per Article 10 of proclamation no.881/2015

- Bribery is punishable with simple imprisonment of not less than one year and a fine not less than ETB3,000 or rigorous imprisonment not exceeding ten years and a fine not exceeding ETB40,000.
- Where the purpose of the breach of responsibility or duty solicited, the extent of the advantage received, the degree of responsibility or powers of the culprit or the extent of harm to private, public or state interests or advantages renders the crime committed under foregoing paragraph of particular gravity, the punishment shall be rigorous imprisonment from 7 years to 15 years and fine not less than ETB10,000 and not exceeding ETB100,000.
- Where two or more of the circumstances mentioned in paragraph two of this reply are present concurrently, the punishment shall be rigorous imprisonment from 10 years to 25 years and fine not less than ETB20,000 and not exceeding ETB200,000.
- Facilitating bribery is punishable with simple imprisonment and fine or with rigorous imprisonment not less than three years and not exceeding ten years; and fine not less than ETB3,000 and not exceeding ETB10,000.
- For juridical persons, there is a corresponding amount of fine depending up on the gravity of the crime committed. These are: a fine of ETB20,000 for each year of penalty for crimes punishable with simple imprisonment; fine of ETB30,000 for each year of penalty for crimes punishable with rigorous imprisonment not exceeding five years; a fine of ETB50,000 for each year of penalty for crimes punishable with rigorous imprisonment from five years to ten years; and finally, a fine of ETB80,000 for each year of penalty for crimes punishable with rigorous imprisonment exceeding ten years.

## 9. Deferred Prosecution Agreements

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

- There are no deferred prosecution agreements or other similar settlement mechanisms available in Ethiopia. Although plea bargaining mechanisms are part of the Criminal Justice Policy of Ethiopia, they do not yet have a place in the currently applicable Criminal and Criminal Procedure Codes of the country.
- However, the Corruption Crimes Proclamation specially allows that whoever – having taken part in a corruption crime – supplies vital information on the crime committed and the role of participation therein, before the matter is taken to court, may be exempted by the competent organ from prosecution of corruption offence.

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