

Q&A IN RELATION TO BRIBERY OFFENCES IN KUWAIT

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1 Q&A In Relation to bribery offences in Kuwait

1. Legal Framework

What is the legal framework governing bribery in Kuwait?

- In the State of Kuwait, bribery and corruption are governed by several distinct and overlapping laws. In particular, Kuwait enacted a stand-alone anti-corruption law (Law No. 2 of 2016) (the Anti-Corruption Law), modeled on the UN Convention Against Anti-Corruption. Under the Anti-Corruption Law, bribery, as set out under Law No. 16 of 1960 (Kuwait Criminal Code) as amended by Law No. 31 of 1970 (the Amendment), constitutes a corruption crime (Anti-Corruption Law, art. 22(2)). The Anti-Corruption Law has supremacy over other laws such that any legal provision contradicting it is voidable (Anti-Corruption Law, art. 57).
- The Kuwait Criminal Code is the key law governing bribery in the public sector or involving public authorities. In some cases, bribery in the private sector may constitute a corruption crime under the Anti-Corruption Law.
- Unless otherwise stated, all article references in this summary refer to the Amendment.

2. What Constitutes a Bribe?

What constitutes a bribe?

- Under the Amendment, a bribe refers to any promise, gift or benefit, whether material or non-material, to induce or reward a public official in the improper performance of a relevant function or activity, or assumed function or activity (whether or not the function or activity is legitimately assumed) (arts. 35 and 38).

What are the principal offences under this legal framework?

- Bribery generally includes the request, acceptance, offer of or making of any promise or gift (or other advantage) to a public official either directly or indirectly in order to abet that public officer or person to abuse their power, whether actual or presumed, in order to obtain, from a public department of authority, an unlawful benefit (arts. 35 and 41).
- Requesting, agreeing to receive, or accepting a bribe in the capacity of a public official (art. 35).
- Knowingly assisting or abetting in the commission of a bribe.
- Acting as an intermediary for a bribery transaction (art. 39).
- Accepting or procuring a bribe to obtain, or attempt to obtain anything of value from a public authority (art. 37).
- Private sector bribery does not constitute bribery under the criminal bribery provisions (i.e. the Amendment), but in certain instances, it may constitute a corruption crime where it involves corruption prohibited under another law such as a breach of competition law or tax evasion (Anti-Corruption Law, art. 22).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- The bribery offenses above do not apply outside Kuwait..

4. Who may be liable?

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

- Private individuals, public officials, legal entities, managers, directors, agents, intermediaries, and any person who aids or abets a bribery offense can be prosecuted for bribery offenses.

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

- Yes, though the circumstances in which this may occur are fact-specific. Some possibilities include where:
 - the subsidiary is established as a branch in Kuwait in which the principal parent may be directly liable for the acts of the subsidiary;
 - the parent company acts as an intermediary in the bribery offense; or
 - the parent company acted directly or indirectly in the commission of the bribe.

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?

- There are no express provisions under Kuwait Criminal Code/Amendment that restrict political or charitable contributions.
- There are, however, restrictions under fundraising and charity laws that could apply to charitable contributions. Fundraising and the establishment of charities in Kuwait is highly regulated, in part to mitigate the risk of terrorism financing and money laundering. Charities are closely scrutinized and regulated and fundraising is only permitted in partnership with locally established charities.
- As Kuwait is a constitutional monarchy, political contributions are not applicable.

Does the legal framework place restrictions on corporate hospitality?

- The Amendment makes no express provisions with regard to corporate hospitality and any financial or other advantage given in that context would be assessed by reference to the provisions described in this note.
- There are various restrictions on corporate hospitality under other anti-bribery laws in Kuwait. For instance, federal employees are prohibited from accepting any gifts unless they are promotional gifts bearing the name and logo of the presenting party and would not influence the federal employee in any decision-making.

6. Legal Defences

Are there any defenses for bribery offences?

- The Amendment states that a briber or intermediary who self-reports a bribery offense before it is discovered shall be exempted from the penalty (art. 39). However, it is not clear whether the self-reporter would be exempt from bribery, corruption or other related offenses under other legislation.

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- Further, the Amendment states that among conspirators to bribery, if any person notifies the public authorities of the criminal conspiracy and the participants involved, before an investigation commences or a crime is committed, they shall be absolved for liability for offense of conspiracy (art. 40).

7. Regulatory and Enforcement Bodies

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

- In addition to the police and public prosecution offices, the Public Authority for Anti-Corruption investigates any financial irregularities discovered in federal organizations.

8. Legal Consequences

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

Application	Legal Consequence
<ul style="list-style-type: none">• Public official who requests or accepts a bribe.• Any person who promises, offers or gives a bribe to either a public official or a private person.• Intermediaries involved in bribery transactions.• In general, accessories to a crime may also be liable.	For each offense: <ul style="list-style-type: none">• up to ten years' imprisonment (art. 35); and• a fine not exceeding double the value of the bribe (promised or given) (art. 35).
<ul style="list-style-type: none">• Facilitation offenses: lesser offense for bribers or intermediaries, where the act committed or refrained from is legal.	<ul style="list-style-type: none">• up to five years imprisonment (art. 39); and a fine up to KWD1,000; or either of these.
<ul style="list-style-type: none">• Attempted bribery: lesser offense for briber or intermediary where the bribe is not accepted.	<ul style="list-style-type: none">• up to five years imprisonment (art. 39); and a fine up to KWD1,000; or either of these.
<ul style="list-style-type: none">• Bribery of a foreign public official (Article 190 bis).	<ul style="list-style-type: none">• up to three years imprisonment (art. 39); and a fine up to KWD250; or either of these.
<ul style="list-style-type: none">• Attempted Facilitation offense: lesser offense for bribers or intermediaries, where the act committed or refrained from is legal and the bribe is not accepted.	<ul style="list-style-type: none">• Confiscation of the proceeds of crime (art. 42).
<ul style="list-style-type: none">• Bribes paid to public officials.• Proceeds of crime refers to the bribe itself.	<ul style="list-style-type: none">• Confiscation of the bribe.

9. Deferred Prosecution Agreements

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

- Bribery offenses are not currently capable of being settled by way of a DPA under Kuwait anti-bribery laws.
- No formal settlement mechanisms are available under Kuwait Criminal Code/Amendment.
- On an informal basis, settlements can be discussed with the regulator at any stage during investigations or prosecution, but no consistent or transparent mechanisms currently exist in Kuwait for settlement.

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