

# Q&A IN RELATION TO BRIBERY OFFENCES IN TANZANIA

---

Content Provided by DLA Piper

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

### 1. Legal Framework

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

- The main law governing anti-corruption/bribery in Tanzania is the Prevention and Combating of Corruption Act, 2007, (PCCA) which applies in conjunction with other related laws, like the Anti Money Laundering Act, 2006, the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002], Criminal Procedure Act, [Cap 20 R.E 2002], the Public Procurement Act, 2011, the Public Finance Act, 2004, subsidiary legislation and any guidelines published from time to time.

### 2. What Constitutes a Bribe?

#### What constitutes a bribe?

- The PCCA does not specifically define the term bribe, but it establishes corruption and related offenses. The PCCA makes it an offense to solicit, accept or obtain, agree to accept or attempt to obtain, for oneself or for any other person, any advantage without lawful consideration or for a lawful consideration which one knows or has reason to believe to be inadequate:
  - from any person whom they know or have reason to believe to have been, or to be, or to be likely or about to be, concerned in any matter or transaction with themselves or having any connection with their official functions or of any official to whom they are subordinate;
  - or from any person whom they know or have reason to believe to be interested in or related to or acting for or on behalf of the person so concerned, or having such a connection.
- The PCCA also states that it is an offense for a person in a position of power or authority, who in the exercise of their authority, demands or imposes sexual favors or any other favor on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment.
- The PCCA also provides for what constitutes an offense of corruption and a corrupt transaction. It is an offense:
  - to corruptly solicit, accept or obtain, or attempt to obtain;
  - from any person for oneself or any other person;
  - any advantage as an inducement to, or reward for, or otherwise on account of;
  - any agent, whether or not such agent is the same person as such first mentioned person and whether the agent has or has no authority to do, or for bearing to do, or having done or forborne to do;
  - anything in relation to their principal's affairs or business.
- It is also an offense:
  - to give, promise or offer any advantage to any person, whether for the benefit of that person or of another person;
  - as an inducement to, or reward for, or otherwise on account of;
  - any agent whether or not such agent is the person to whom such advantage is given, promised or offered and whether the agent has or has no authority to do, doing, or forbearing to do, or having done or forborne to do;
  - anything in relation to their principal's affairs or business.

- Generally, the PCCA prohibits making payments or gifts to government officials or another person in a powerful position in order to secure any improper business advantage.

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

The corruption offenses which can result in prosecution are:

- corrupt transactions in contracts (Section 16);
- corrupt transactions in procurement (Section 17), auctions (Section 18);
- corrupt transactions in employment (Section 20);
- bribery (Section 23);
- bribery of foreign public officials (Section 21);
- demand and imposition of sexual favors (Section 25);
- embezzlement and misappropriation (Section 28); and
- abuse of position (Section 31), and conspiracy (Section 31).

## 3. Jurisdictional Reach

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

- The Prevention and Combating of Corruption Bureau (PCCB) has the mandate to investigate and prosecute corrupt offenses in mainland Tanzania.
- Corrupt offenses are considered economic crimes and therefore triable at the High Court of Tanzania (Corruption and Economic Crimes Division), the High Court of Tanzania (Main Registry) and the Resident Magistrates' Court, depending on the nature of the offense.

## 4. Who may be liable?

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

- Private individuals, public officials and legal entities may be prosecuted for corrupt offenses under the PCCA.

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

- The PCCA is silent on a parent company's liability for involvement of its subsidiary in bribery.

## 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 set out on what constitutes corrupt transactions under the PCCA.

### **3 Q&A In Relation to bribery offences in Tanzania**

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

- A political or charitable contribution could be considered a bribe/corruption if it is given with the intention to obtain any advantage without lawful consideration or for a consideration which one knows or has reason to believe to be inadequate.

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

- The PCCA does not criminalize reasonable and proportionate corporate hospitality that is designed to improve the image of a corporation or establish friendly relationships with its customers. Corporate hospitality falling within the ambit of what is considered corruption and corrupt offenses will be considered a bribe.

## **6. Legal Defences**

#### **Are there any defenses for bribery offences?**

- There are no specific statutory defenses for bribery and corrupt offenses under the PCCA. Depending of the circumstances of the charge, one will need to justify that the advantage or property came into their possession lawfully.

## **7. Regulatory and Enforcement Bodies**

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

- The competent authority established to deal with anti-corruption/bribery investigations and prosecution is the PCCB, assisted by the Police Force to carry out investigation and enforcement of the PCCA.
- The PCCB is also assisted by the office of the Director of Public Prosecutions to prosecute corruption offenses.

## **8. Legal Consequences**

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

- An individual found guilty of bribery offenses may be sentenced to a period from three years up to seven years imprisonment or to a fine, or to both imprisonment and fine.
- An individual found guilty of bribery offenses may also face confiscation/forfeiture of the proceeds of crime arising from the offense, which can include the revenue attributable to any contract won through corruption, not just the value of the corruption paid.
- An individual found guilty of bribery offenses may also face having their assets frozen pending determination of the criminal charges.

## **9. Deferred Prosecution Agreements**

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

- In terms of section 194A-H of the Criminal Procedure Act, [Cap 20 R.E 2002] as amended by the Written Laws (Miscellaneous Amendments) (No.4) Act, 2019 bribery offenses are capable of being settled by way of a DPA.
- A DPA may be offered by the prosecutor after consultation with the victim/investigator of the crime or the accused/ their advocate may initiate DPA and notify the court of their intention to negotiate a DPA.

- If a DPA is offered and accepted, and provided that all conditions of the DPA are met:
  - a. the prosecutor may charge the accused with a lesser offense, withdraw other counts or take any other measure as appropriate depending on the circumstances of the case;
  - b. the accused may enter a plea of guilty to the offense charged or to a lesser offense or to a particular count or counts in a charge with multiple counts in exchange for withdrawal of other counts; or
  - c. the accused may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question.

Summary provided by IMMMA Advocates, a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.

#### Disclaimer

Every effort has been made to verify the accuracy of the information contained herein. All information was believed to be correct as of January 2020. Nevertheless, Transparency International UK (TI-UK) cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect TI-UK's opinion. They should not be taken to represent the views of any of those quoted or interviewed nor those of the companies or individuals that provided input or members of the Expert Advisory Committee or DLA Piper. Neither TI-UK nor DLA Piper assumes any liability for the information contained herein, its interpretation or for any reliance on it. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Professional advice should always be sought before taking action based on the information provided.

**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 January 2020.

Cover Image: Transparency International Corruptions Perception Index 2018