

## Lex Mundi Global Anti-Corruption Compliance Guide

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### Laos

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Submitted by [Tilleke & Gibbins, the Lex Mundi member firm for Thailand](#) / 27 Nov 2018

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What is the key anti-bribery and corruption legislation in your jurisdiction?

The Lao People's Democratic Republic (Laos) has two main pieces of legislation which address corruption and bribery in the country.

*Anti-Corruption Law No.27/NA*, dated December 18, 2012 (The "**Anti-Corruption Law**") defines the principles, rules, and measures to counter corruption, "in order to ensure that the property of the State and society, and the rights and interests of citizens, are not damaged, embezzled, or swindled, and to subject offenders to legal proceedings, and to protect those who are innocent...". It was amended in 2012 in order to further criminalize activity which was only previously penalized under the *Penal Law*.

*Penal Code No. 46/NA*, dated November 17, 2017 (the "**Penal Code**"), has a chapter related to corruption. *Article 354* of the **Penal Code** defines corruption as the behavior of any employee of an enterprise in the private sector, employees of the State, officials, persons entitled to represent these persons, persons vested with official functions, foreign employees, and employees of international organizations, which fall under the scope of corrupt acts as cited in the **Penal Code** list shown below:

- Misappropriation of Government property or collective property.
- Deceit related to Government property or collective property.
- To give a bribe.
- To receive a bribe.
- Abuse of designation powers, power and duty to take over Government property, collective property, or individual property.
- Use of Government property or collective property (for his/her own benefit).
- Overusing designation powers, power and duty to take over Government property, collective property, or individual property.
- To steal, falsify technical construction standards, designs, calculations, and others.
- Defrauding a bid or a concession.
- Document falsification or use of falsified documents.
- Disclose secrets for his/her own benefit.
- To hold documents or delaying the document process.

Has there been a specific anti-bribery and corruption law enacted in your jurisdiction in the last ten years?

Until this year, the 2012 amendments to the *Anti-Corruption Law* were the most recent significant changes to anti-bribery and corruption laws in Laos. During this time, Laos continued to gradually implement other legislation to address illegal activities, such as the *Law on Anti-Money Laundering and Counter-Financing of Terrorism (2014)*.

Following the *Decision on Prohibitions and Disciplining State Employees in the Finance Sector No. 1124/MOF*, dated April 10, 2017, the Ministry of Finance has since enacted 10 prohibitions which are applicable to its own officials and civil servants. These prohibitions aim to sanction reporting which is false or incorrect, which would prevent the true and proper

collection of tax, and also prohibit any acts that delay the consideration and approval of documents for direct or indirect personal gain or to enable family or relatives to receive gains or to enable collective gains. The regulation is also intended to avoid conflicts of interest by prohibiting officials and civil servants from the Ministry of Finance, from serving as a broker, an accounting consultant, or any related position. Officials and civil servants who breach these prohibitions may be subject to a range of sanctions, ranging from educational measures to imprisonment.

Finally, on October 17, 2018, the **Penal Code** was published in the digital *Lao Official Gazette*, wherein an entire Chapter defines the acts which are related to corruption, and also bribery.

Is a bribe payment to domestic government officials prohibited by the legislation?

Yes, the payment of a bribe to a domestic government official is prohibited.

The amended *Anti-Corruption Law* criminalized both givers and receivers of the bribe. Such law still requires the act of corruption to cause damage to the interests of the state, or to the rights and interests of the citizens. This language has been criticized as a hindrance to any results that could be derived from the application of laws to reduce corruption.

The 10 principles issued by the Ministry of Finance also prohibits officials from the Ministry of Finance from accepting any type of benefit, in order to incite to act, or not to act, in favor of the ultimate person giving the bribe. It should be noted that most of the provisions in these principles are a reiteration of what already exists in the existing laws/regulations.

Finally, *Article 357* of the **Penal Code** prohibits any person, as defined under *Article 354*, from giving, proposing, giving on behalf of someone else, or promising to give money, any assets, or any type of benefit, in person, or through an intermediary, directly, or indirectly, to employees, in order to have said employee act, or to induce said employee to act, or to incite said employee not to act, for the benefit of the person giving the bribe. Furthermore, *Article 358* focuses on accepting a bribe, whereby, according to this article, the same persons as described in *Article 354* will be sanctioned for accepting bribes.

Is a bribe payment to foreign government officials prohibited by the legislation?

The **Anti-Corruption Law** refers expressly to domestic government officials. However, the law only refers to employees of international organizations, and foreign employees, without mentioning whether or not foreign government employees are concerned by the **Anti-Corruption Law**.

The Articles relating to giving and accepting a bribe, specifically target the persons referred to in *Article 354*. However, there is no definition provided for the term “foreign employee”, or “an employee of an international

organization”. Although an explicit reference to domestic officials is made under *Article 354*, this is not the case for foreign government officials. The **Penal Code** is still nascent, and further clarification may be provided for the definition for a “foreign employee”, and an “employee of an international organization”.

Nonetheless, in addition to Laos’ anti-corruption laws, business operators should also be aware of possible infringements to the *Foreign Corrupt Practices Act (FCPA)* from the United States and the *United Kingdom Bribery Act*. Both of these acts cover active and passive forms of bribery.

Although the domestic anti-corruption laws of Laos do not specify foreign official offenses, however, the laws of other jurisdictions may still apply to bribes which are accepted while conducting business in Laos.

Is requesting or accepting a bribe prohibited by the legislation?

*Article 10* of the **Anti-Corruption Law** prohibits the acceptance of a bribe. *Article 13* further prohibits officials and civil servants from requesting, claiming, or agreeing to take bribes or other materials for benefit, in exchange for using the official’s power or position to directly or indirectly benefit the briber.

In addition, under the **Penal Code**, *Article 358*, specifically provides that taking, accepting, claiming, requesting, or agreeing to receive money, or other types of benefit, fall under the scope of the **Penal Code**.

Who is subject to the legislation?

We note that official government officials and civil servants are the primary subjects of the legislation. Individuals and entities who engage in prohibited behavior can also be prosecuted under Laos’ anti-corruption provisions. Additionally, the *Anti-Corruption Law* requires damages for State interests, or a citizen’s rights and interests. This language hinders the application of the anti-bribery and corruption law in Laos and limits its effectiveness.

The **Penal Code** targets employees who have a leading role, administrative role, and a specialist role (having a certain expertise in a particular field), as well as a general employee of a company. The **Penal Code** also states that public servants, police officers, military, and Village Chiefs (a local authority that is not directly employed by the State, who often serves as mediator, and who also certifies some documents), or persons representing these people, are expressly cited by the **Penal Code**. An interesting addition to the Penal Code, as compared to previous regulations thus far, is the chapter dedicated to the liability of legal entities. Eventually, *Article 354*, which sets out the persons who are subject to this legislation, also provides that foreign employees and employees of International organizations fall under the scope of the **Penal Code**.

In regard to the private sector, the **Penal Code** makes only a reference to “employees”, which may exclude persons who have an interest with a company, but who are not qualified as employees, such as the shareholders of a company for instance. Since the **Penal Code** is very nascent, we do not know if this is an oversight of the **Penal Code**, or whether further clarifications will be made on this specific point later on.

The **Penal Code** also encompasses employees of the private sector, in addition to government officials. However, ambiguity remains in regard to foreign government officials, since, in regard to a foreigner, reference is only made to a foreign employee, and employees working in International organizations.

Is there criminal liability for corporate entities who have either paid or accepted a bribe payment?

One of the interesting additions brought by the **Penal Code** is the liability of a legal entity. *Article 88* renders legal entities liable for acts which are committed under the **Penal Code**. According to *Article 89*, the offense must have been done under the following circumstances:

- The offense has been done under the name of the legal entity;
- The offense has been done for the benefit of the legal entity; or
- The offense has been done according to the direction, supervision, and agreement of the legal entity.

What is the penalty for individuals violating the law?

The **Anti-Corruption Law** provides that if a minor offense is found, the value of the loss is not than LAK five million, and the offender honestly reports [the offense], and admits to the concerned organization that he committed the offense and returns all assets that he took away, he/she will be subject to education measures and a warning.

For disciplinary measures the **Anti-Corruption Law** provides that if the offense and the value of the damages thereof are not more than LAK five million, but this has not been willingly reported, the following disciplinary measures will be applied:

For a government official:

- Be criticized, and be admonished by recording a note in his biographical file;
- Be suspended from receiving any promotion, [raise in] salary level, or rewards by recording a note in his biographical file;
- Be removed from his position, or transferred to another position which has a lower title than his former position, by recording a note in his biographical file;
- Be removed from his all positions by recording a note in his biographical file;

- Be dismissed from office, without receiving any policy.
- A person who is subject to the imposition of disciplinary [measures] must completely return all of the property that was unlawfully taken.

For the staff an enterprise, staff of an international organization, and foreign staff, they will:

- Be admonished; or
- Have to pay compensation and a fine equal to 1 percent of the value of the loss.

According to the **Penal Code**, the sanctions will depend on the amount of damages resulting from the act of bribery:

- Below LAK 20 million - Imprisonment for one to two years, and a fine of 1 percent of the damage costs;
- Above LAK 20 million to LAK 50 million - Imprisonment for more than two to four years, and a fine of 1 percent of the damage costs;
- Above LAK 50 million to LAK 100 million - Imprisonment for more than four to six years, and a fine of 1 percent of the damage costs;
- Above LAK 100 million to LAK 300 million - Imprisonment for more than six to eight years, and a fine of 1 percent of the damage costs;
- Above LAK 300 million to LAK 500 million - Imprisonment for more than eight to ten years, and a fine of 1 percent of the damage costs;
- Above LAK 500 million to LAK 600 million - Imprisonment for more than ten to twelve years, and a fine of 1 percent of the damage costs;
- Above LAK 600 million to LAK 700 million - Imprisonment for more than twelve to fourteen years, and a fine of 1 percent of the damage costs;
- Above LAK 700 million to LAK 800,000,000 - Imprisonment for more than fourteen to sixteen years, and a fine 1 percent of the damage costs;
- Above LAK 800,000,000 to LAK 1,000,000,000 - Imprisonment for more than sixteen to eighteen years, and a fine of 1 percent of the damage costs;
- Above LAK 1,000,000,000 to LAK 2000,000,000 - Imprisonment for more than eighteen to twenty years, and a fine of 1 percent of the damage costs; and
- Above LAK 2,000,000,000 - Sentenced to life imprisonment and a fine of 1 percent of the damage costs.

Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?

The **Anti-Corruption Law** does not expressly provide a list for the liabilities of legal entities.

However, the **Penal Code** provides that legal entities may be fined, or have their business license withdrawn, or be prohibited from carrying out some specific activities, or prohibited from mobilizing capital (from external

sources out of the company), or prohibited from using checks - see assets seized, or prohibited from carrying out the activity ever again.

Assuming corporate entities are liable for violating the legislation, does having a compliance program designed to prevent bribery constitute a defense?

Currently, there are defenses which an entity can raise to rebut bribery charges, which are related to a compliance program that a company may have. Nonetheless, it is always recommended for a company to implement and maintain a compliance program, in order to reduce the risks of instances of bribery occurring as a result of the conduct of directors, managers, or employees. As stated earlier, foreign companies operating in Laos can still be held liable under their home jurisdictions' anti-corruption laws, and having a compliance program may raise the defenses against any charges under such laws.

Assuming corporate entities are liable for violating the anticorruption law, is it possible for a corporate entity to reach a deferred prosecution agreement or leniency agreement with the enforcement authorities?

Individuals of companies, such as directors, managers or employees, who violate anti-bribery or corruption laws can raise some defense. *Article 146 of the **Anti-Corruption Law*** provides that any person who gives bribes under force or threat, and who thereafter notifies the authorities, will not be considered an offender in respect to the charge of bribery. Additionally, if the offender willingly reports their own wrongdoing, and returns the assets in the same manner, they would face education measures and a warning.

Regarding any type of deferred prosecution agreements, lenient sentencing, or plea agreements for individuals or entities, this will be solely determined on a case-by-case basis within Laos' legal system, and it is not provided for by any statutory provision.

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