



Lex Mundi Global Anti-Corruption Compliance Guide

Myanmar

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

This overview is provided by [Tilleke & Gibbins](#), the Lex Mundi member firm for Thailand.

Contributor: [Timothy Wales](#)

Contents

Anti-Corruption Compliance

[What is the key anti-bribery and corruption legislation in your jurisdiction?](#)

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

[Is a bribe payment to domestic government officials prohibited by the legislation?](#)

[Is a bribe payment to foreign government officials prohibited by the legislation?](#)

[Is requesting or accepting a bribe prohibited by the legislation?](#)

[Who is subject to the legislation?](#)

[Is there criminal liability for corporate entities who have either paid or accepted a bribe payment?](#)

[What is the penalty for individuals violating the law?](#)

[Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?](#)

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

[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?](#)

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

The key anti-bribery and corruption legislation for prosecuting corrupt conduct in Myanmar is the *Penal Code* and the *Anti-Corruption Law of 2013*. Other civil and criminal law provisions in separate legislation also address bribery and corruption; however, the *Penal Code* and *Anti-Corruption Law* provide the foundation for which the legal system counters corrupt activities.

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

Myanmar's *Anti-Corruption Law* was enacted in 2013 and is the first in a series of laws, notifications, and guidelines which specifically address corrupt conduct. More recently in 2018, the Myanmar Anti-Corruption Commission published a notification under *Section 72(b)* of the *Anti-Corruption Law* which introduced a series of fundamental principles for companies to adopt in developing appropriate internal control measures to prevent corruption.

Other recently enacted laws which have provisions that address bribery and corruption include the *Myanmar Investment Law 2016* and the *Myanmar Investment Rules 2017*. This continued trend of implementing additional laws addressing corruption is intended by the government to demonstrate Myanmar's commitment to improving opportunities for foreign business and investment. For example, the *President's Office Guidelines on Accepting Gifts*, which was published in 2016, is aimed at eliminating "tea money" incentives among government officials.

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

Yes, by both the *Penal Code* and the *Anti-Corruption Law*. *Section 161* of the *Penal Code* addresses the acceptance of benefits by government officials or public servants in exchange for the exercise of the person's official function or omission of such exercise; however, the wording of this particular section appears to limit the punishment of the offense to only government officials or public servants. Nonetheless, in practice, the private individuals offering bribes can be charged for abetting convicted public servants in the crime under the *Penal Code* section on abetment.

The *Anti-Corruption Law* defines corruption as the direct or indirect abuse of his post and authority or other means by any person in order when performing or refraining from performing a lawful act by offering, giving, or discussing a form of consideration in order to receive a benefit for himself or another person or organization. Prior to the *4th Amendment* to the 2013 *Anti-Corruption Law*, the definition of corruption referred to abuse of his position by "an authoritative person," defined as public servants, individuals holding political positions, and senior government officials. The *4th Amendment* removed the "authoritative person" wording and substituted abuse by "any person," thereby expanding the *Anti-Corruption*

Law to include corruption involving only private persons and not government officials.

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

The legislation does not specifically address the payment of bribes to foreign government officials except when occurring in Myanmar, which is consistent with the general principle of Myanmar laws not extending beyond the Republic's boundaries.

Nonetheless, in addition to Myanmar's anti-corruption laws, business operators should also be aware of possible infringements of the *Foreign Corrupt Practices Act (FCPA)* of the United States and the *United Kingdom Bribery Act*. Both these acts cover active and passive forms of bribery. Although the domestic anti-corruption laws of Myanmar do not cover acts occurring outside Myanmar, these foreign laws generally apply to bribes extended by Myanmar citizens and companies in those jurisdictions, as well as corrupt acts committed in Myanmar by British and U.S. citizens and companies.

Is requesting or accepting a bribe prohibited by the legislation?

Yes, both requesting and accepting a bribe is prohibited. *Section 161* of the *Penal Code* prohibits the acceptance, an agreement to accept, or the solicitation of a bribe from any person, for himself or any other person which is not legal remuneration, and in exchange for the official's or public servant's exercising of their official function. *Sections 162* and *163* similarly prohibit acceptance or solicitation of a bribe by any person for inducing or motivating a public servant's decision making by corrupt or illegal means (*Section 162*) or by using his personal influence (*163*).

The *Anti-Corruption Law's* definition of corruption also includes the accepting, receiving, attempting to receive, or discussing the acceptance of benefit in order to receive a benefit for himself or another organization.

Who is subject to the legislation?

All government officials and civil servants are the subjects of the *Penal Code* anti-bribery provisions. Individuals in the private sector can be prosecuted as well for abetting offenders in the public sector. The *2018 Amendment to the Anti-Corruption Law* changed the subject of the legislation from government officials to "any person".

Is there criminal liability for corporate entities who have

There are no provisions in the *Penal Code* or the *Anti-Corruption Law* which provide for separate penalties related to criminal liability for corporate entities who paid or accepted bribes. However, the *Myanmar*

<p>either paid or accepted a bribe payment?</p>	<p><i>Interpretation of Expressions Law (1973)</i> includes any company in the definition of the word “person,” Thus, the same penalties theoretically apply to companies, or the directors, managers, or employees of companies; and private individuals.</p>
<p>What is the penalty for individuals violating the law?</p>	<p>The punishment for a government official or public servant for committing the offense of bribery as defined in <i>Section 161</i> of the <i>Penal Code</i> is imprisonment up to three years, a fine, or both.</p> <p><i>Section 55</i> of the <i>Anti-Corruption Law</i> states a “political post holder” convicted of corruption is liable to a fine and up to 15 years’ imprisonment; <i>Section 56</i> states any other authorized person is liable to a fine and up to ten years imprisonment; and</p> <p><i>Section 57</i> states anyone else is liable to a fine and up to seven years imprisonment. The same penalties apply to those committing a conspiracy or abetment offense. Thus, the law provides for different levels of punishment for bribery depending on the status level and position of the offender.</p>
<p>Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?</p>	<p>As explained above regarding the extension of the individual liability to the companies themselves, the penalties for violations of law are no different. Practically, the law can penalize the individuals of a corporate entity the same as they would individuals acting outside the scope of their position in an entity.</p> <p>Myanmar anti-corruption provisions also recognize the confiscation of property or assets involved in corrupt conduct; therefore, a corporate entity could lose their right to property or assets which are involved in bribes to government officials. Nonetheless, Myanmar courts have not used the <i>Anti-Corruption Law</i> to hold any companies in the private sector liable for corruption offenses.</p>
<p>Assuming corporate entities are liable for violating the legislation, does having a compliance program designed to prevent bribery constitute a defense?</p>	<p>Currently, there are defenses which an entity can raise to rebut bribery charges which relate to a compliance program that a company may have. However, the recent <i>Notification No. 14/2018</i>, in conjunction with <i>Section 16(q)</i> of the <i>Anti-Corruption Law</i>, strongly encourages companies to implement and maintain a compliance program to reduce the risks of instances of bribery occurring as a result of directors, managers, or employees conduct. The existence or non-existence of such a compliance program is likely to impact the prosecution of alleged corrupt acts by a company.</p>

Additionally, it is imperative that foreign and local investors take a proactive and cautious approach to ensure that they are minimizing potential liabilities, both under domestic and foreign anti-corruption laws. Perhaps it is even more important to have a compliance program in place while Myanmar continues to develop its anti-corruption policies, especially when enforcement and penalties are not yet consistent.

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?

Any type of deferred prosecution agreements, lenient sentencing, or plea agreements for individuals or entities would be decided on a case by case basis within Myanmar's legal system and is not provided for by any statutory provision.

Please be advised that the information set forth above is intended only as a general overview of the law. This entry is not intended to constitute legal advice or a tax opinion, and no conclusions may be inferred from or are implied by the statements or discussions contained herein. Readers requiring legal advice should not rely on this entry as an alternative to the engagement of local counsel and should consult with the Lex Mundi member firm in the relevant jurisdiction. Please note that this entry refers to laws and regulations in force on the date of submission by the contributing Lex Mundi member firm and is subject to change by future legislation.