

Lex Mundi Anticorruption Compliance Guide

Cambodia

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<p>What is the key anti-bribery and corruption legislation in your jurisdiction?</p>	<p>The key anti-bribery and corruption legislation is the <i>Law on Anti-Corruption</i>, which was enacted on April 17, 2010. The <i>Criminal Code</i>, enacted on November 30, 2009, further penalizes both natural and juristic persons, though the majority of the bribery statute targets natural persons.</p> <p>Additionally, the <i>Common Statute of Civil Servants</i>, <i>Law on Public Procurement</i>, and <i>Law on Anti-Money Laundering and Combating the Financing of Terrorism</i>, address corruption offenses in conjunction with other crimes.</p>
<p>Has there been a specific anti-bribery and corruption law enacted in your jurisdiction in the last ten years?</p>	<p>Yes. The key anti-corruption and bribery laws cited in the answer to "<i>What is the key anti-bribery and corruption legislation in your jurisdiction?</i>" were all enacted in the last ten years.</p>
<p>Is a bribe payment to domestic government officials prohibited by the legislation?</p>	<p>Yes. Under <i>Article 594</i> of the <i>Criminal Code</i>, it is prohibited for a public official or a holder of a public elected office to solicit or receive a bribe. Further, under <i>Article 605</i> of the <i>Criminal Code</i>, it is prohibited to offer or make a bribe to a public official or a holder of a public elected office. Cambodian law generally prohibits providing bribes, gifts or other benefits of any value to any government officials to induce that person to perform or abstain from performing his or her duty.</p>
<p>Is a bribe payment to foreign government officials prohibited by the legislation?</p>	<p>Yes. A bribe offered to foreign government officials is expressly prohibited in Cambodia under <i>Article 34</i> of the <i>Law on Anti-Corruption</i>.</p> <p>A bribe includes gifts, donations, promises, or benefits that are unrightfully, directly or indirectly offered to foreign government officials or foreign officials of public international organizations or with the intention to have those officials facilitate any process related to their duties or refrain from performing such duties.</p>
<p>Is requesting or accepting a bribe prohibited by the legislation?</p>	<p>Yes. Under <i>Article 594</i> of the <i>Criminal Code</i>, it is prohibited for a public official or a holder of a public elected office to solicit or receive a bribe. Under <i>Article 33</i> of the <i>Law on Anti-Corruption</i>, it is prohibited for a foreign official to request or accept any benefits related to the performance of his/her duties.</p>
<p>Who is subject to the legislation?</p>	

The *Law on Anti-Corruption* applies broadly to all forms of corruption in Cambodia, and specifically refers to the following persons and organizations:

1. any person holding office in legislative, executive institutions, or judicial institution, who is appointed by legal standard letter, whether permanent or temporary, whether paid or unpaid, regardless of his or her status or age;
2. other persons holding a public office, including a public agency or public enterprise as well as other public institutions as stated in the law of the Kingdom of Cambodia;
3. any person holding a legislative, executive, or judicial office of a foreign country, whether appointed or elected; and any foreigner exercising a public function for a foreign country, including for a public agency or public enterprise;
4. an international servant or any person who is authorized by such an organization to act on behalf of that organization;
5. a member of the Senate, National Assembly, Capital Council, Provincial Council, Municipal Council, and District Council, Khan Council and members of Sangkat/Commune Councils as well as citizen vested with a public office through election for the performance of other public functions;
6. trial judges and prosecution judges;
7. a group of persons or foundation with juridical personality and is the subject of rights and obligations;
8. communities or groups of persons created for the sake of protecting the economic, socio-economic, political, scientific, cultural, and religious benefits, namely associations, NGOs and political parties.

The *Criminal Code* applies to both natural persons and legal persons in the public and private sectors.

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

Yes. *Article 42* of the *Criminal Code* generally addresses criminal responsibility of corporate entities. It provides that corporate entities are criminally responsible for offenses committed on their behalf by their representatives.

Corporate entities may also be held criminally responsible for violations of:

1. *Article 279* of the *Criminal Code* for corruption committed by its employees;
2. *Article 409* of the *Criminal Code* for offenses related to money laundering;
3. *Article 519* of the *Criminal Code* for unlawfully giving of a gift, offer, promise or benefit to a judge to perform an act pertaining to their function or refrain from performing any act pertaining to their function;

4. *Article 559 of the Criminal Code* for offering bribes to a witness, to an interpreter/translator, or to any expert'
5. *Article 644 of the Criminal Code* for offering bribes to any authorized person to issue falsified documents, and to a member of the medical profession to issue falsified documents, etc.
6. *Articles 37 and 46 of the Law on Anti-Corruption* for corruption proceeds offenses, which are defined as acts to conceal, keep or transport any kinds of goods with knowledge that those goods were the proceeds of corruption. Corruption proceeds offenses also include acts as an intermediary for transporting items with the knowledge that they are corruption proceeds and acts that benefit from corruption proceeds. Therefore, a corporate entity may violate *Articles 37 and 46* by virtue of the acts of its employees.

What is the penalty for individuals violating the law?

The *Criminal Code* and the *Law on Anti-Corruption* set out a number of penalties individuals. A selection of those penalties is set out below.

Offense	Penalty
Bribe-taking by a Cambodian public official	Imprisonment of seven to ten years
Bribe-taking by a foreign public official or official of a public international organization	Imprisonment of seven to ten years
Bribery of judge	Imprisonment of seven to ten years
Offering bribes to a public official	Imprisonment of five to ten years
Bribery of witness	Imprisonment of five to ten years
Illicit enrichment	Confiscation of the unexplained assets, plus imprisonment, plus prosecution for related offenses
Petty corruption	Imprisonment from seven to ten years
Giving a bribe to an employee and an employee's acceptance or request for a bribe	Imprisonment of six months to two years

In addition to fines and imprisonment, an individual may also be subject to a number of accessory penalties. A selection of those penalties is set out below.

- Removal of certain civil rights, either permanently or for a period not exceeding five years;
- Prohibition from practicing a profession in relation to the committed offense, either permanently or for a period not exceeding five years;
- Publication of the sentence in the newspaper;
- Broadcasting of the sentence for a period of eight days.

<p>Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?</p>	<p><i>Article 42 of the Criminal Code</i> provides that corporate entities may be held criminally responsible for offenses committed on their behalf by their representatives. The criminal responsibility of corporate entities does not preclude the criminal responsibility of natural persons for the same offenses.</p> <p>Corporate entities who become involved in corrupt activities can be fined, in addition to facing other penalties such as dissolution, judicial supervision, prohibition on conducting certain activities, disqualification from public tenders, legislation on making a public offer, confiscation of the instruments, materials or items used to commit the offense, closure of the establishment and publishing and broadcasting the sentence.</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>No. Cambodian law prohibits providing gifts or other benefits of any value to any employee or public official to induce that person to perform or abstain from performing his or her duty. There is no safe harbor for the monetary value of gifts or the frequency of gifts, and Cambodian law does not provide a value beneath which a gift or other benefit is presumed lawful. The giver and receiver of the gift or benefit are both punishable under Cambodian law.</p> <p>That said, in 2015 the Anti-Corruption Unit (ACU) issued the <i>Guidebook on Anti-Corruption Program ("Guidebook")</i> for Business in Cambodia to support the private sector's efforts in conducting business without corruption and complying with anti-corruption laws. The Guidebook recommends that corporate entities in Cambodia establish internal programs to prevent bribery, which will reduce the chance that an employee or authorized agent commits an offense that violates Cambodia's anti-corruption legislation. Nevertheless, the existence of such an internal program does not automatically raise a statutory or an affirmative defense.</p>
<p>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?</p>	<p>Cambodian law does not provide that a corporate entity may reach a deferred prosecution agreement or leniency agreement with the enforcement authorities. Any leniency received from the ACU or the courts would be determined on a case by case basis.</p>

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