

Anti-Corruption Regulation

in 44 jurisdictions worldwide

2014

Contributing editor: Homer E Moyer Jr



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Miller & Chevalier Chartered

Getting the Deal Through is delighted to publish the eighth edition of *Anti-Corruption Regulation*, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 44 jurisdictions featured. New jurisdictions this year include Algeria, Bermuda, Cameroon, Denmark, Ecuador, Malaysia, Peru and Portugal. There is also a new chapter on asset recovery, in addition to a global overview and the perspectives of Transparency International and the OECD.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Homer E Moyer Jr of Miller & Chevalier Chartered for his continued assistance with this volume.

Getting the Deal Through

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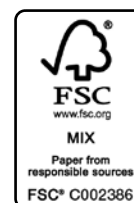
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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

In 2003, the Philippines became a signatory to the United Nations Convention against Corruption (UNCAC). Pursuant to section 21, article VII of the Constitution, the convention was ratified after the agreement of at least two-thirds of all the members of the Senate in 2006.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

There are no laws or regulations specifically penalising foreign bribery. While the Philippines is a signatory to UNCAC, no statute has been enacted to implement its provisions. For example, there is no law defining foreign bribery as contemplated under article 16 of UNCAC.

Article XI of the Constitution contains provisions on the accountability of public officers. Section 2 thereof includes bribery among the grounds for impeachment of the president, vice-president, members of the Supreme Court, members of the Constitutional Commissions and the ombudsman, while the other sections prescribe the functions of the Office of the Ombudsman, Office of the Special Prosecutor and the Sandiganbayan, which all play a vital role in addressing the problem of bribery and corruption in government from the filing of the complaint against erring public officers, prosecuting public officers and deciding these cases.

Also, the following are the applicable laws enacted penalising domestic bribery:

- articles 210, 211, 211-A and 212 of the Revised Penal Code define and penalise direct, indirect, qualified bribery and corruption of public officers;
- Presidential Decree No. 46 expressly prohibits public officials and employees from receiving gifts and private individuals from giving gifts;
- Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, enumerates specific corrupt practices committed by public officials and extends the prohibition to private individuals who induce or cause public officials to commit the penalised acts; and
- Republic Act No. 6713, the Code of Conduct and Ethical Standards for Public Officials and Employees, prescribes a code of conduct for public officials and expressly prohibits the solicitation or acceptance of gifts of public officials and employees and extends the prohibition to private individuals who participate in conspiracy with the public officials.

To strengthen the accountability of public officials, should it be determined that they illegally acquired or amassed wealth, the following laws were enacted:

- Republic Act No. 1379 orders the forfeiture in favour of the state of any property unlawfully acquired by the public official; and
- Republic Act No. 7080 defines and penalises the crime of plunder, which generally refers to a public official's accumulation of ill-gotten wealth in the aggregate or total amount of 50 million Philippine pesos through a series of criminal acts, including the receipt of gifts or kickbacks in connection with a government contract or by reason of the office of the public official.

To eliminate domestic bribery, particularly in government procurement, Republic Act No. 9184, the Government Procurement Reform Act, was also enacted.

On its own or upon the filing of any complaint, the Office of the Ombudsman has the authority to investigate any unlawful act or omission committed by public officials and private individuals who conspired with them. Depending on the rank of the public official concerned, the criminal cases are either filed with the anti-graft court, called the Sandiganbayan, or with the Regional Trial Court. For cases filed with the Sandiganbayan, the prosecution is assigned to the Office of the Special Prosecutor and for cases filed with the appropriate trial courts, the prosecution is assigned to prosecutors from the Office of the Ombudsman or any other deputised prosecutor in government service.

To address the difficulty of prosecuting offenders of bribery and graft, Presidential Decree No. 749 was promulgated affording immunity to witnesses who will testify against any public official or private individual. Immunity is afforded to witnesses even if they participated in the offence. The granting of immunity to said witnesses is subject to the following conditions:

- the information must refer to violations which have already been committed;
- the information and testimony are necessary for the conviction of the accused public officer;
- such information and testimony are not yet in the possession of the state;
- such information and testimony may be corroborated on its material points; and
- the informant or witness has not been previously convicted of a crime involving moral turpitude.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

There is no law defining foreign bribery as contemplated under article 16 of UNCAC.

4 Definition of a foreign public official

How does your law define a foreign public official?

Other than the definition of foreign public official in article 2(b) of UNCAC, which provides that a foreign public official: 'shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected and any person exercising a public function for a foreign country, including for a public agency or public enterprise', there is no other available definition in Philippine law.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

There is no applicable law.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

There is no applicable law.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

There is no applicable law.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

There is no applicable law.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

There is no applicable law.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The Philippines has not enacted any law penalising foreign bribery. However, with respect to the enforcement of its obligations under UNCAC, pursuant to article 6, paragraph 3 of UNCAC, the Office of the Ombudsman and the Commission on Audit were designated to assist other states in developing and implementing specific measures for the prevention of corruption.

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

There is no applicable law.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

There is no applicable law.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

There are none.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

There is no applicable law.

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

There is no applicable law.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

There are none.

Financial record keeping**17 Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

Implicit in section 75 of the Corporation Code that affords stockholders the right to be furnished with a corporation's most recent financial statement is the obligation of corporations to keep a record of its financial statements, including its balance sheet, a profit or loss statement which shows its assets and liabilities in reasonable detail and the result of its operations. Section 141 of the same code requires all corporations, whether domestic or foreign, to submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by an independent certified public accountant in appropriate cases, covering the preceding fiscal year.

Section 17 of the Securities Regulation Code requires covered corporations, including but not limited to issuers of securities listed for trading on an exchange, to file an annual report which shall include, among other things, a balance sheet, profit and loss statement and a statement of cashflows for the previous fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations within 135 days of the end of the corporation's fiscal year. Such corporations are also subject to the Revised Code of Corporate Governance, which requires management to formulate rules and procedures on financial reporting and internal control.

Section 232 of the National Internal Revenue Code requires corporations or other persons required by law to pay internal revenue taxes to keep a journal and a ledger or their equivalents and for corporations whose gross quarterly sales, earnings, or receipts exceed 150,000 Philippine pesos, to have their books of accounts audited and examined yearly by an independent certified public accountant.

Section 25 of the Government-Owned or Controlled Corporations (GOCC) Governance Act requires GOCCs to maintain a website and post thereon for unrestricted public access their latest annual audited financial and performance report within 30 days from receipt, audited financial statements in the immediate past five years, quarterly, annual reports and trial balance, current corporate operating budget, complete compensation package of all board members and officers, including travel, representation, transport and any other form of expenses or allowances, local and foreign

borrowings, performance scorecards and strategy maps, government subsidies and net lending, all borrowings guaranteed by the government and such other information or report the Governance Commission for GOCCs may require.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Under the Revised Code of Corporate Governance, management has the duty to 'ensure the corporation's faithful compliance with all applicable laws, regulations and best practices'. The same code requires the compliance officer of the corporation to report any violation of laws and regulations to the board of directors and recommend the imposition of appropriate disciplinary action on the responsible parties and the adoption of measures to prevent a repetition of the violation.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Both the National Internal Revenue Code and the Securities Regulation Code have penal provisions that generally apply to violations of said laws. In addition, section 257 of the National Internal Revenue Code penalises the making of false entries, records or reports and failing to keep books of accounts or keeping two or more sets of such books of accounts. The prosecution of these offences may proceed independently of the prosecution for other criminal offences, such as bribery.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There is no applicable law.

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Section 34(A)(1)(c) of the National Internal Revenue Code expressly prohibits or disallows the deduction of bribes, kickbacks and other similar payments. Notably, this provision contemplates both domestic and foreign bribes when it expressly prohibited the deduction from gross income of 'any payment made, directly or indirectly, to an official or employee of the national government, or to an official or employee of any local government unit, or to an official or employee of a government-owned or controlled corporation, or to an official or employee or representative of a foreign government, or to a private corporation, general professional partnership, or a similar entity, if the payment constitutes a bribe or kickback'.

Domestic bribery

22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Direct bribery under article 210 of the Revised Penal Code has the following elements:

- the offender is a public officer;
- the offender accepts an offer or promise or receives a gift or present by himself or through another;
- such offer or promise is accepted or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an act that does not constitute

a crime but is unjust, or to refrain from doing something which it is his or her official duty to do; and

- the act which the offender agrees to perform or which he executes is connected with the performance of his official duties (*Magno v Commission on Elections*, GR No. 147904, 4 October 2002).

Indirect bribery under article 211 of the Revised Penal Code has the following elements:

- the offender is a public officer; and
- the offender accepts the gifts offered to him by reason of his office.

Qualified bribery under article 211-A of the Revised Penal Code may be committed in one of two ways:

- by a public officer who is entrusted with law enforcement and refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusión perpetua* or death; or
- by a public officer who himself asks or demands for such gift or present.

Corruption of public officials under article 212 of the Revised Penal Code has the following elements:

- the offender is any person who could either be a public officer or a private person; and
- the offender offers or promises or gives the gifts penalised under articles 210, 211 and 211-A of the Revised Penal Code.

Presidential Decree No. 46, which expressly penalises public officials and employees from receiving gifts and private individuals from giving gifts, has the following elements:

- the offender is either a public official or an employee who receives, or the private person who gives, the gift, present or other valuable thing;
- the gift, present or other valuable thing is received or given on any occasion, including Christmas; and
- such gift, present or valuable thing is given by reason of the public official or employee's official position, regardless of whether or not the same is for past favour or in the expectation of a future favour.

Another offence under Presidential Decree No. 46 is the hosting of parties or entertainment in honour of the public official or employee or his immediate relatives.

Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, penalises the following corrupt practices:

- persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by a competent authority or an offence in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offence;
- directly or indirectly requesting or receiving any gift, present, share, percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the government and any other party, wherein the public officer in his official capacity has to intervene under the law;
- directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any government permit or licence, in consideration for the help given or to be given;
- accepting or having any member of his or her family accept employment in a private enterprise which has pending official business with him during that pending business or within one year after its termination;

- causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licences or permits or other concessions;
- neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter, some pecuniary or material benefit or advantage, or for the purpose of favouring his own interest or giving undue advantage in favour of or discriminating against any other interested party;
- entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will thereby profit;
- directly or indirectly having a pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;
- directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group;
- interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong;
- knowingly approving or granting any licence, permit, privilege or benefit in favour of any person not qualified for or not legally entitled to such licence, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled; and
- divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorised persons, or releasing such information in advance of its authorised release date.

Under section 7(d) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, public officials and employees are prohibited from soliciting or accepting any gift, gratuity, favour, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by, the functions of their office.

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. Articles 210, 211 and 211-A of the Revised Penal Code on direct, indirect and qualified bribery apply only to public officials, however, article 212 of the same code extends criminal liability for corruption of public officials to private individuals. Also, Presidential Decree No. 46, Republic Act No. 3019 and Republic Act No. 6713 extend to both public officials and private persons.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

The terms ‘public officials’ and ‘public officers’ are used in the different applicable laws penalising bribery and other corrupt practices. These terms are defined as follows:

- article 203 of the Revised Penal Code defines ‘public officers’ as ‘any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government of the Philippine Islands, or shall perform in said government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class’;
- section 2(b) in relation to section 2(a) of Republic Act No. 3019 defines ‘public officer’ to include ‘elective and appointed officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government’ and in turn, the term ‘government’ refers to the national government, local governments, government-owned and government-controlled corporations, and all other entities or agencies of government and their branches; and
- section 3(b) in relation to section 3(a) of Republic Act No. 6713 defines ‘public officials’ to include ‘elective and appointed officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount’ and the term ‘government’ includes the national government, local governments, and all other entities, agencies or branches of the Republic of the Philippines, including government-owned or controlled corporations and their subsidiaries.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The absolute prohibition to participate in any business or to practise any other profession only applies to the president, vice-president, members of the cabinet and their deputies and assistants (Constitution, article VII, section 13). However, members of the Senate and the House of Representatives are required to make a full disclosure of their financial and business interests upon assumption of office. They shall also notify the house concerned of any potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors (Constitution, article VII, section 12). Under section 6 of the Republic Act No. 3019 they are also prohibited from acquiring or receiving any personal pecuniary interest in any specific business enterprise that directly and particularly benefits from any law or resolution written by them or previously approved or adopted by Congress during the same term.

Members of the Senate and the House of Representatives are prohibited from personally appearing as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial or administrative bodies, and from having a direct or indirect financial interest in any contract with, or in any franchise or special privilege granted by, the government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during their terms of office (Constitution, article VII, section 14).

In the case of GOCC officials, ‘where a member of the board or an officer, by virtue of the office, acquires or receives for oneself a benefit or profit, of whatever kind or nature including, but not limited to, the acquisition of shares in corporations where the GOCC has an interest, using the properties of the GOCC for their own benefit, receiving commission on contracts from the GOCC’s assets, or taking advantage of corporate opportunities of the GOCC, all such profits or benefits shall be subject to restitution’ and without prejudice to any administrative, civil or criminal action against such erring member of the board or officer. This provision ‘shall be applicable notwithstanding the fact that such member of the board or officer risked one’s own funds in the venture’ (Republic Act No. 10149, section 19).

Update and trends

President Benigno S Aquino III requested the Inter-Agency Anti-Graft Coordinating Council (IAAGCC) to investigate the alleged misuse of the Priority Development Assistance Fund (PDAF). The IAAGCC is an existing body created by President Joseph E Estrada through Administrative Order No. 79 on 28 July 1999. It is composed of different agencies and units, such as the Commission on Audit, Civil Service Commission, Department of Justice, National Bureau of Investigation and the Presidential Commission Against Graft and Corruption, which was later replaced by the Office of the Deputy Executive Secretary for Legal Affairs. The results of the investigation

will be forwarded to the Office of the Ombudsman or Department of Justice for preliminary investigation and after the finding of probable cause, the appropriate information will be filed against those accused of wrongdoing.

In 2013, the Philippines ranked 94th out of 177 countries in Transparency International's Corruption Perception Index. The country's ranking improved from 2012 when it ranked 105th out of 174 countries. In addition, the country's improved investment grade ratings from rating agencies are perceived to reflect the present administration's success in eradicating corruption.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Presidential Decree No. 46 expressly penalises the throwing of parties or entertainments in honour of a public official or employee or his or her immediate relatives. It also penalises both the public official and the private person concerned.

Republic Act No. 3019 expressly penalises public officers who request or receive any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any government permit or licence in consideration for the help given or to be given. Section 4(b) of said law expressly extends the prohibition to any person who knowingly induces or causes any public official to commit the offences described therein.

Under section 7(d) of Republic Act No. 6713, public officials and employees are prohibited from soliciting or accepting any gift, gratuity, favour, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office. Under this law, only public officials may be punished.

The Revised Penal Code penalises both the provider and recipient of gifts. The person who offers, promises or gives the gift is penalised for corruption of public officials under article 212. The public officer who accepts the gift offered him is punished either with direct bribery under article 210, indirect bribery under article 211 or qualified bribery under article 211-A depending on the attendant circumstances.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

Section 14 of Republic Act No. 3019 expressly provides that 'unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions' of said law. Similarly, section 3(c) of Republic Act No. 6713 provides that unsolicited gifts of nominal or insignificant value not given in anticipation of, or in exchange for, a favour from a public official or employee do fall under the term 'gifts' which are prohibited to be solicited or accepted by public officials or employees under said law. Therefore, based on the foregoing provisions, unsolicited gifts of nominal or insignificant value that were given as a mere ordinary token of gratitude and friendship and not given in anticipation of, or in exchange for, a favour from a public official are permissible. Different factors are considered in determining whether a gift is of nominal value, such as the salary of the official or employee, the frequency or infrequency of the giving and the expectation of benefits (Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, rule X, section 1).

With respect to gifts or grants from foreign governments, section 7(d) of Republic Act No. 6713 allows the acceptance and retention by a public official or employee of a gift of nominal value rendered and received as a souvenir or mark of courtesy, gifts in the nature of a scholarship or fellowship grant or medical treatment as well as travel grants or expenses for travel taking place entirely outside the Philippines (such as allowances, transport, food and lodging) or more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

However, there is no similar qualification in Presidential Decree No. 46. Also, article 211 of the Revised Penal Code is general and quite broad in its language as it penalises a public officer from accepting gifts offered to him by reason of his office.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

There is no law prohibiting private commercial bribery.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

For public officers under articles 210, 211, and 211-A of the Revised Penal Code on direct, indirect and qualified bribery, penalties range from imprisonment, which in turn ranges from *prision correccional* (medium-length sentences – two years, four months and one day to four years and two months) to *reclusión perpetua* (20 years and one day to 40 years), to the death penalty. The imposed fine is based on the value of the gift received, which should be no less than twice or three times its value. The public officers shall also suffer a temporary special disqualification or a disqualification from the office held and from holding similar offices during the terms of the sentence.

For offenders punished under article 212 of the Revised Penal Code on corruption of public officials, the imposed penalty is the same as those imposed under articles 210, 211, and 211-A of the same code. But for private persons, the penalties of disqualification and suspension are inapplicable.

For violation of Presidential Decree No. 46, the imposed penalty on public officials and private persons is imprisonment for not less than one year nor more than five years. For convicted public officials, they shall also suffer perpetual disqualification from public office. The public official or employee concerned shall likewise be subjected to administrative disciplinary action for which he may either be suspended or removed from office.

For violation of the corrupt practices defined by Republic Act No. 3019, the penalty for public officials and private persons is imprisonment ranging from six years and one month to 15 years plus confiscation or forfeiture in favour of the government of any prohibited interest and unexplained wealth. For public officials, they shall also suffer perpetual disqualification from office.

For violation of Republic Act No. 6713, the penalty ranges from imprisonment not exceeding five years and a fine not exceeding 5,000 Philippine pesos, or both. However, section 11 of Republic Act No. 6713 provides that, if the violation of said law is punishable by a heavier penalty under another law, the public official or private individual should be prosecuted under the other law. The public official or employee concerned shall likewise be subjected to administrative disciplinary action for which he may either be suspended or removed from office.

Based on the applicable laws, only natural persons, either public officials or private individuals, may be prosecuted for violations thereof. Also, public officials or employees may be found both criminally and administratively liable.

Under Philippine law, a corporation may not be held criminally liable when the statute does not expressly specify corporations are among those who could violate the statute (*West Coast Life Insurance Co v Hurd*, 27 Phil 401 [1914]).

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Yes. For example, in *Cadio-Palacios v People of the Philippines* (GR No. 168544, 31 March 2009), the Supreme Court affirmed the Sandiganbayan's decision convicting the municipal mayor and municipal security officer of demanding and receiving 'grease money' to facilitate the release of the final payment to a government contractor for the construction of municipal roads.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

In 2013, a whistleblower exposed the multi-billion-peso 'Pork Barrel Scam' or the controversy involving the alleged misuse of the Priority Development Assistance Fund (PDAF) by certain legislators and non-government organisations (NGOs). The PDAF, commonly referred to as 'Pork Barrel', is the lump-sum discretionary fund of members of Congress intended for community projects, such as the building of infrastructure, providing scholarships and financing health programmes. It was alleged that the projects and the NGOs were fictitious and certain legislators, who approved the release of the PDAF for these projects, received kickbacks. The exposé was followed by separate investigations conducted by the Senate and the National Bureau of Investigation (NBI) and the Department of Justice (DOJ). During the Senate investigation, the chairperson of the Commission on Audit (COA) testified that there were irregularities in the disbursements of the PDAF. The NBI and DOJ investigation resulted in the filing of criminal complaints against incumbent senators for malversation, direct bribery and violation of the Anti-Graft and Corrupt Practices Act with the Office of the Ombudsman.

The Pork Barrel Scam also triggered the filing of several petitions with the Supreme Court assailing the constitutionality of the appropriation for the PDAF. The Supreme Court ruled that such appropriation was unconstitutional because the post-enactment authority lodged in the legislators violated the principles on separation of powers and of non-delegability of legislative power (*Belgica et al v Honorable Executive Secretary*, GR No 208566, 19 November 2013).



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