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Law

Business

Research

The Global Report on Corruption and the Private Sector: A Commentary Monty Raphael <i>Trustee and member of the board, Transparency International UK</i>	3
Overview Homer E Moyer Jr <i>Miller & Chevalier Chartered</i>	5
Antigua & Barbuda Edward H Davis Jr and Arnoldo B Lacayo <i>Astigarraga Davis Nicolette M Doherty Nicolette M Doherty Attorney at Law and Notary Public</i>	10
Argentina Adalberto Ramiro Barbosa and Patricio O'Reilly <i>Barbosa Abogados</i>	14
Austria Christina Hummer <i>Saxinger Chalupsky & Partners</i>	19
Bangladesh M Amir-UI Islam <i>Amir & Amir Law Associates</i>	24
Belgium Christiaan Barbier <i>Monard – D'Hulst</i>	30
Brazil Isabel C Franco <i>KLA – Koury Lopes Advogados</i>	35
Cambodia Vicheka Lay	40
Canada Milos Barutciski <i>Bennett Jones LLP</i>	43
China Nathan G Bush <i>O'Melveny & Myers LLP</i>	48
Costa Rica Gabriela Goebel <i>Prestinary Feinzaig Scharf & van der Putten</i>	54
Czech Republic Daniela Musilova and Lucia Zachariasova <i>PRK Partners</i>	58
Dominican Republic Marcos Peña-Rodríguez and Carmen Amaro Bergés <i>Jiménez Cruz Peña</i>	64
Ecuador Bruce Horowitz <i>Paz Horowitz, Abogados</i>	68
France Stéphane Bonifassi <i>Lebray & Associés</i>	71
Germany Kai Hart-Hönig <i>Dr Kai Hart-Hönig Rechtsanwältin</i>	76
Greece Ioanna Anastassopoulou and Alexandra Mitsokali <i>V&P Law Firm</i>	81
Guatemala Alfonso Carrillo M and Alfonso Carrillo M Jr <i>Carrillo & Asociados</i>	87
Hong Kong Angus Forsyth <i>Stevenson, Wong & Co</i>	91
India Vineetha M G and Aditya Vikram Bhat <i>AZB & Partners</i>	95
Indonesia Richard Cornwallis and Benny Bernarto <i>Makarim & Taira S</i>	103
Ireland Joe Kelly and Katie Byrne <i>A&L Goodbody</i>	108
Italy Roberto Pisano <i>Studio Legale Pisano</i>	116
Japan Kenichi Sadaka, Koya Uemura and Emi Sakai <i>Anderson Mōri & Tomotsune</i>	122
Kenya Godwin Wangong'u <i>Mboya & Wangong'u Advocates</i>	127
Korea Kyungsun Kyle Choi and Kyo-Hwa Liz Chung <i>Kim & Chang</i>	132
Lebanon Jihad Rizkallah, Karen Malek and Marie-Anne Jabbour <i>Badri and Salim El Meouchi Law Firm</i>	137
Liechtenstein Siegbert A Lampert <i>Lampert & Schächle Attorneys at Law Ltd</i>	143
Luxembourg Rosario Grasso <i>Kleyr Grasso Associés</i>	148
Mexico Luis Rubio-Barnetche, Bertha A Ordaz-Avilés and Carlos A Camargo-Tovar <i>Rubio Villegas y Asociados SC</i>	154
Namibia Peter Frank Koep and Hugo Meyer van den Berg <i>Koep & Partners</i>	158
Netherlands Bert A Fibbe <i>NautaDutilh NV</i>	162
Nigeria Babajide O Ogundipe and Chukwuma Ezediaro <i>Sofunde, Osakwe, Ogundipe & Belgore</i>	166
Peru José Ugaz Sánchez-Moreno <i>Benites, Forno & Ugaz, Ludowieg-Andrade Abogados</i>	170
Poland Janusz Tomczak <i>Wardyński & Partners</i>	174
Russia Khristofor Ivanyan and Vasily Torkanovskiy <i>Ivanyan & Partners</i>	179
Saudi Arabia Robert Thoms and Sultan Al-Hejailan <i>The Law Firm of Salah Al-Hejailan</i>	186
Suriname Hans Lim A Po Jr <i>Lim A Po Law Firm</i>	189
Sweden Harald Nordenson and Caroline Falconer <i>Setterwalls</i>	193
Switzerland Paul Gully-Hart and Peter Burckhardt <i>Schellenberg Wittmer</i>	199
Trinidad & Tobago Edward H Davis Jr, Ava Borrasso and Sunita Harrikkissoon <i>Astigarraga Davis</i>	205
United Arab Emirates Charles Laubach and Aly Shah <i>Afridi & Angell</i>	210
United Kingdom Monty Raphael <i>Peters & Peters</i>	217
United States Homer E Moyer Jr, James G Tillen, Jeffrey Hahn and Marc Alain Bohn <i>Miller & Chevalier Chartered</i>	229
Venezuela Fernando Peláez Pier, Giovanni Rionero and Patrick Petzall K <i>Hoet Peláez Castillo & Duque Abogados</i>	236
Vietnam Nghiem Thanh Tung and Mai Thi Minh Hang <i>Russin & Vecchi</i>	241
Zambia Mutembo Nchito <i>MNB Legal Practitioners</i>	247
Appendix	251

Saudi Arabia

Robert Thoms and Sultan Al-Hejailan

The Law Firm of Salah Al-Hejailan

1 International anti-corruption conventions

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

United Nations Convention against Corruption.

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).

- Combating Bribery Law (CBL), Royal Decree No. M/36, dated 29/12/1412AH corresponding to 30 June 1992;
- Civil Service Law, Royal Decree No. M/49, dated 10/7/1397AH corresponding to 26 June 1977; and
- National Strategy for Protecting Honesty and Combating Corruption, Council of Ministers Resolution No. 43, dated 1/2/1428AH corresponding to 19 February 2007.

Foreign bribery

3 Legal framework

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

The same elements as domestic bribery apply as set forth in question 22.

4 Definition of a foreign public official

How does your law define a foreign public official?

The CBL makes no distinction between a foreign or domestic public official, and Saudi Arabia takes the position that its legal system criminalises the bribery of foreign public officials by Saudi nationals. Please see the definition of 'public official' in question 22.

5 Travel and entertainment restrictions

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

The prohibition on a public official's receiving a 'gift' in the context of bribery includes gifts, travel expenses, meals or entertainment of any value, if the requisite elements of bribery are met. There is no special treatment of travel and entertainment in the CBL; in practice, modest levels are not objectionable if there is no specific intent to bribe.

6 Facilitating payments

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

This is not specifically addressed, except as regards prohibition of a public official's following up a formality with a government authority as an instance of bribery.

7 Payments through intermediaries or third parties

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

The CBL contemplates violations committed by or through intermediaries and accessories.

8 Individual and corporate liability

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

Yes.

9 Civil and criminal enforcement

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

The CBL is a criminal statute, although a private action concerning foreign bribery would be entertained.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The Council of Ministers, the Ministry of Interior, the Board of Grievances (administrative chamber) and the General Bureau of Supervision are the government agencies that enforce the foreign bribery laws and regulations.

11 Leniency

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

The briber or intermediary shall be exonerated if he or she reports the offence to the Saudi authorities prior to detection.

12 Dispute resolution

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

Yes. A trial is more a formality in such cases.

13 Patterns in enforcement

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

The recent National Strategy evidences an enhanced commitment of the Saudi government to combat corruption. Please see 'Update and trends'.

14 Prosecution of foreign companies

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

Saudi Arabian courts generally do not accept jurisdiction over a foreign company if the elements of the bribery take place entirely outside Saudi Arabia. Foreign companies doing business in Saudi Arabia, with or without legal presence, are subject to Saudi law with respect to their acts within Saudi Arabia.

15 Sanctions

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

The penalties are the same as for domestic bribery as set forth in question 22.

16 Recent decisions and investigations

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

Saudi Arabian jurisprudence does not include the doctrine of legal precedent, and judicial or administrative decisions are not systematically reported.

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?

The Commercial Books Law, the Companies Law, the Income Tax Law, the Anti-Money Laundering Law and the Capital Market Law are relevant.

18 Disclosure of violations or irregularities

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

Disclosure before detection can lead to exoneration of the briber or intermediary. The Capital Market Law requires disclosure in a prospectus (and as a continuing obligation) of material matters and facts, including as regards litigation and claims, and director convictions involving fraud, dishonesty or money laundering.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Not generally.

20 Sanctions for accounting violations

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

Not separate from the penalty for the bribery itself.

21 Tax-deductibility of domestic or foreign bribes

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

Not expressly, but it is well understood that a bribe is not a legitimate tax deduction.

Domestic bribery**22 Legal framework**

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

The CBL states the following:

- a public official is prohibited from accepting, receiving or soliciting a bribe, for himself or a third party, to perform any duty of his function (or claimed to fall within his function), even where the act is lawful;
- a bribe is any benefit or privilege, promise or gift, be it material or not;
- the prohibition applies regardless of the intention of the public official not to perform the act;
- the offence includes a public official's violating his duties or being remunerated for his actions;
- the act does not require prior agreement; and
- the act includes exercising real or alleged influence in order to obtain or attempt to obtain from any public authority any act, matter, decision, obligation, contract, licence, supply agreement, job, service or any other benefit or advantage.

The penalties are:

- maximum penalty of 10 years' imprisonment and a 1 million Saudi riyal fine;
- abstaining from acting (a lesser offence – maximum three years' imprisonment and 300,000 riyal fine);
- following up a formality (a lesser offence – maximum penalty of two years' imprisonment and 50,000 riyal fine);
- the same penalties attach to public officials, bribers, intermediaries and accessories, including any person who offers a bribe that is not accepted (in the latter case, a maximum penalty of 10 years' imprisonment and a 1 million riyal fine); and
- a person who is appointed by the briber or bribed to receive the bribe, and knowingly agrees to act, is subject to a maximum penalty of two years' imprisonment and 50,000 riyal fine.

A 'public official' is defined as:

- a person employed by the government or any public administrative authority, regardless of whether permanent or temporary;
- an arbitrator or expert appointed by the government or any judicial body;
- a person assigned by a government authority to perform a specific assignment;
- a person employed by a company that manages or operates a public facility or performs a public service, or employed by a joint-stock company or company in which the government has a holding, as well as a company carrying out banking operations; or
- a chairman or director of a company provided for in the preceding paragraph.

A conviction shall result in dismissal of the public official and future banning from any public office, or office tantamount to same, and confiscation of the property constituting the bribe.

A person who reoffends within five years of the imposition of a penalty may on a subsequent offence receive double the above penalties.

A corporate offender whose manager or any staff member has been found guilty serving the company interest is subject to a fine not exceeding tenfold the value of the bribe, as well as banning from government contracts (subject to reconsideration after at least five years by the Council of Ministers).

Government authorities for which such a banned company is currently executing work shall recommend to the Council of Ministers action deemed fit with regard to such work.

23 Prohibitions

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

Yes.

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 definition of public official is set forth above in question 22 and includes the chairman, directors and employees of state-owned companies, as well as state-controlled companies in the sense of companies managing or operating a public facility or performing a public service.

25 Public official participation in commercial activities

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

A public official within the Civil Service may not: engage directly or indirectly in trading, brokerage, commercial agency, contracting or other business; take part in the formation of companies; accept a chairmanship or other post in a company, except when appointed or seconded by the government; but may engage part-time in work in the private sector outside official work hours, pursuant to resolutions enacted by the Council of Ministers or by-laws such as those of the universities, subject to the approval of the department in which the public official is working.

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?

The prohibition on a public official receiving a 'gift' in the context of bribery includes gifts, travel expenses, meals or entertainment of any value, if the requisite elements of bribery are met. There is no special treatment of travel and entertainment in the CBL; in practice, modest levels are not objectionable if there is no specific intent to bribe. There would be equal treatment for providing and receiving such benefits.

27 Gifts and gratuities

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

Certain types of gifts and gratuities are permissible of nominal value – if there is no intent to bribe. Nonetheless, the Civil Service Law does prohibit a public official from accepting any gift, which is in keeping with the Islamic teaching (*hadith* – second source of Islamic law) on the subject.

Update and trends

In the context of the 'National Strategy for Protecting Honesty and Combating Corruption' promulgated by the Saudi Arabian Council of Ministers in 2007, a high level Royal Committee was formed pursuant to Royal Decree at the end of 2009 to investigate the circumstances surrounding the large number of deaths and extensive property damage caused by widespread flooding in Jeddah. A primary focus is on allegations of corruption with respect to the storm and waste water sewerage system in Saudi Arabia's second largest city as well as related road construction and buildings constructed in storm water plains. This step, under the leadership of HRH Prince Khalid Al-Faisal, governor of Mecca, and with the participation of persons on the level of the chief administrative prosecutor, high intelligence and police officials, the deputy minister of justice and the deputy government auditor, should be viewed as a demonstration of the Saudi government's commitment to acting strongly against corruption of public officials.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

This is not covered by the CBL; it would be considered a private action for contractual breach or actionable instance of unfair competition or unjust enrichment. Please note that the definition of 'public official' in question 22 includes certain persons otherwise considered to be in the private sector.

29 Penalties and enforcement

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

See question 22.

30 Facilitating payments

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

Generally not enforced, although the CBL proscribes, as an instance of bribery, following up a formality with a government authority. In theory, a bribe is still a bribe whether it is of material value or not.

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.

Saudi Arabian jurisprudence does not include the doctrine of legal precedent, and judicial or administrative decisions are not systematically reported.

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