

Estonia

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International anti-corruption conventions

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

Currently Estonia is a signatory to the following international conventions:

- the United Nations Convention against Corruption;
- the Council of Europe's Criminal Law Convention on Corruption;
- the Council of Europe's Civil Law Convention on Corruption;
- the Convention on the fight against corruption involving officials of the European Communities or officials of member states of the European Union; and
- the OECD.

Foreign and domestic bribery laws

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

The two main sources of law prohibiting corruption and bribery are the Anti-Corruption Act and the Penal Code. Both of these acts have been harmonised with the EU regulations.

The Anti-Corruption Act applies to domestic public officials and selected private officials employed by private legal persons controlled by public authorities or otherwise performing public functions. The Anti-Corruption Act stipulates restrictions on employment and activities of public officials, defines and prohibits relationships involving the risk of corruption and defines and prohibits accepting income derived from corrupt practices. In general infringement of restrictions arising from the Anti-Corruption Act qualifies as a misdemeanor, but it may constitute a criminal offence penalised under the Penal Code.

The Penal Code penalises the following offences related to bribery:

- granting, arranging receipt and accepting gratuities to an official (an act is qualified as granting, arranging receipt and accepting gratuities, if property or other benefits are promised or accepted in return for a lawful act within the powers of an official's authority); and
- granting, arranging receipt and accepting bribes to an official (an act is qualified as granting, arranging receipt and accepting bribes, if property or other benefits are promised or accepted in return for an unlawful act within the powers of official's authority).

In addition to aforementioned offences related to bribery of officials the Penal Code also penalises:

- influence peddling (granting or accepting property or other benefits in return for illegal use by a person of his or her actual or presumed influence with the objective of achieving a situation where an official performing public administration duties commits an act or omission in the interests of the person handing over the property or giving the benefit, or a third person).

Please note that influence peddling is penalised only if the performing of public functions is, or is to be, influenced. Also the person using his or her influence must not be an official.

FOREIGN BRIBERY

Legal framework

- 3** Briefly describe the individual elements of the law prohibiting bribery of a foreign public official.

The court must establish the following individual elements to convict a person of bribery:

- the official position of the person consenting or accepting property or other benefits or to whom such benefits were offered or mediated;
- the fact of granting, arranging receipt and consenting or accepting property or other benefits by the accused person;
- the lawful (gratuities) or unlawful (bribery) act performed or to be performed in return for the bribe within an official's official position (in practice it suffices to reasonably specify the favour in return of the bribe).

In case of bribery of foreign (public) officials, foreign law shall be applied to establish the following elements of the criminal offence:

- the official position of the official consenting or accepting property or other benefit or to whom such benefit was offered; and
- the lawful or unlawful nature (per se) of the favour performed or expected to be performed in return for the bribe (for assessing the type of offence).

Definition of a foreign public official

- 4** How does your law define a foreign public official?

The Penal Code penalises bribery of an official. An official is a person who holds office in a state or local government agency or

body, or in a legal person in public or private law, and to whom administrative, supervisory or managerial functions, or functions relating to the organisation of movement of assets, or functions of a representative of state authority have been assigned. The definition of an official also extends to officials working in foreign states or international organisations. Therefore the same restrictions apply towards bribery of domestic and foreign public and private officials.

Travel and entertainment restrictions

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

The Penal Code prohibits any bribery or gratuities irrespective of the value or nature of the respective benefit. Therefore according to the Penal Code any provision of gifts, travel expenses, meals or entertainment is prohibited and penalised as a criminal offence, if other elements of a bribe are met (eg, a favour to be performed or expected to be performed in return for the benefit can be reasonably specified).

Facilitating payments

- 6 Do the laws and regulations permit facilitating or 'grease' payments (ie, small payments to officials for performing non-discretionary duties)?

Estonian law prohibits the accepting of facilitating or 'grease' payments; in some cases granting, arranging receipt and accepting such payments may constitute a criminal offence.

The Anti-Corruption Act prohibits an official from accepting gifts or consenting to the benefits which are made or granted to him or her, his or her close relatives or close relatives by marriage, and the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service. This prohibition applies towards domestic officials listed in the same law. Infringement of the prohibitions arising from the Anti-Corruption Act by the official constitutes a misdemeanor.

Restrictions arising from the Anti-Corruption Act are supplemented by the Penal Code. According to that law and respective criminal court practice 'grease' payments may constitute a criminal offence if it is possible to reason a connection between the benefit and possibility of a clearly unidentified favour in return for the benefit (eg, the benefit is accepted by an official who has the general possibility of favouring the person granting the benefit).

Payments through intermediaries or third parties

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

Intermediation of bribe or gratuities is prohibited in all circumstances. The Anti-Corruption Act prohibits accepting of benefits irrespective of whether such benefit is granted with or without intermediation. The Penal Code criminalises, in addition to granting and accepting, also arranging the receipt (intermediation) of bribe or gratuities.

Penalties and sanctions

- 8 What are the penalties and sanctions for individuals and companies violating the foreign bribery laws and regulations?

Arranging receipt of gratuities	pecuniary punishment or up to 3 years' imprisonment
Granting gratuities	pecuniary punishment or up to 3 years' imprisonment
Accepting gratuities	pecuniary punishment or up to 3 years' imprisonment
Arranging bribe	pecuniary punishment or up to 3 years' imprisonment
Giving bribe	pecuniary punishment or up to 5 years' imprisonment
Accepting bribe	pecuniary punishment or up to 5 years' imprisonment
Influence peddling	pecuniary punishment or up to 3 years' imprisonment

Liability

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

Yes they can.

Civil and criminal enforcement

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

Bribery is a criminal offence. Upon criminal conviction the court may rule to confiscate from the official the benefit accepted by him or her. In addition, the judgment of conviction may order the convicted persons (eg, persons that granted, arranged receipt or accepted (or both) the bribe) to pay damages for damage to public authorities or private persons injured by the offence. Public authorities or private persons (or both) may claim for damages in separate civil proceedings, but because of simplified procedure respective claims are usually filed in the course of criminal proceedings.

Agency enforcement

- 11 What government agencies enforce the foreign bribery laws and regulations?

In Estonia criminal proceedings are led by the prosecutor's office. Criminal pre-trial investigation in respect of the bribery of officials is conducted by the Police Board, except for bribery of high domestic officials that are investigated by the Security Police Board. The central authority responsible for performance of obligations arising from conventions and international treaties binding to the Republic of Estonia is the Ministry of Justice.

Patterns in enforcement

- 12 Describe any recent shifts in the patterns of enforcement of the foreign bribery laws and regulations.

Bribery of foreign (public) officials is penalised under the Penal Code starting from 1 July 2004. Therefore there is no publicly accessible enforcement practice regarding the foreign bribery laws that would facilitate establishing certain patterns or shifts in the patterns of enforcement.

Prosecution of foreign companies

- 13 In what circumstances can foreign companies be prosecuted for foreign bribery under your legal system?

A legal person (inter alia, a company) shall be held responsible for an act which is committed by a body or senior official thereof

in the interests of the legal person in the cases provided by law. Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence.

In addition to domestic legal persons also foreign legal persons can be held liable, if requirements for application of the Penal Code are met. The Penal Code applies to:

- acts committed within the territory of Estonia;
- acts committed against a citizen of Estonia or a legal person registered in Estonia; or
- acts committed by a citizen of Estonia or by an alien who has been detained in Estonia and is not extradited.

However, as the punishability of foreign bribery arises from international agreements binding on the Republic of Estonia, then exceptionally the Penal Code can be applied to such acts regardless of the place of commission, or law of the place of commission of a foreign bribery act.

Self-disclosure of violations

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

There are two mechanisms to exchange disclosure of violation for lesser penalties:

- Disclosure of violation may result in termination of criminal proceedings if voluntary disclosure has facilitated detection and investigation of the criminal offence so significantly that, without it, the detection and investigation of the offence would have been impossible or extremely difficult. Termination of criminal proceedings shall release the person from criminal liability (ie, both conviction and punishment). Application of this possibility is at the sole discretion of the Public Prosecutor's Office.
- Disclosure of violation may result in reduction of punishment if voluntary confession, sincere remorse or active assistance in detection of the offence (or both) is regarded as mitigating circumstances. Mitigating circumstances do not release the person from criminal liability, but they ground reduction of punishment.

Dispute resolution

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

The prosecutor's office may terminate criminal investigation of a bribery act without trial only on the following grounds prescribed in the law:

- occurrence of circumstances precluding criminal proceedings (eg, an offence cannot be established, expiry of limitation period, amnesty);
- failure to identify the person who committed the criminal offence;
- a criminal offence is committed by foreign citizens or in foreign states (highly discretionary); or
- a person has facilitated detection and investigation of the offence (as described in answer to question 14).

The accused person and prosecutor may agree on application of settlement procedure. In the course of the settlement procedure the accused person shall confess the offence and agree with the prosecutor the punishment and possible compensations to civil plaintiff or plaintiffs. The accused person and prosecutor shall conclude an agreement under which the court will convict the

offender and impose agreed punishment. The court is entitled to refuse to accept the agreement.

Recent decisions and investigations

- 16** Identify and briefly summarise recent landmark decisions or investigations involving violations of your laws prohibiting bribery of foreign officials.

Currently there have not been any recent landmark decisions or investigations in the matter, because there is no relevant court practice due to the enactment of the new regulations in the Penal Code concerning bribery only in 2004. Although pre-trial investigations are not public, there should not be any cases involving foreign officials.

DOMESTIC BRIBERY

Legal framework

- 17** Briefly describe the individual elements of the law prohibiting bribery of a domestic public official.

The court must establish the following individual elements to convict a person of bribery:

- the official position of the person consenting or accepting property or other benefits or to whom such benefits were offered or mediated;
- the fact of granting, arranging receipt and consenting or accepting property or other benefits by the accused person;
- the lawful (gratuities) or unlawful (bribery) act performed or to be performed in return for bribe within an official's official position (in practice it suffices to reasonably specify the favour in return for bribe).

Prohibitions

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

Yes it does. See question 2.

Public officials

- 19** Are any public officials not covered or accorded different treatment under these laws?

As noted previously, bribery is regulated in the Penal Code and is considered to be a criminal offence. The Penal Code is enforced equally to all officials; however, the regulation for a few 'high' officials may be specified to apply a more strict regulation in a special act. Furthermore, some high state officials acquire immunity with their office and therefore can be prosecuted only with the approval of, for example, the parliament.

Public official participation in commercial activities

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

A public official may not (while serving as a public official):

- operate as an undertaking;
- be a member of the directing or supervisory body of a company;
- be the director of a branch of a foreign company;
- be a member of the directing or supervisory body of a company with state or local government holding within three years after resignation from the public service;
- be a member of the directing or supervisory body of a com-

Update and trends

In 2001 Estonia ratified the Criminal Law Convention on Corruption making a reservation in article 12 (trading in influence). Since 12 January 2006 peddling with influence is considered to be a criminal offence according to the Estonian Penal Code and is therefore fully harmonised with the above-mentioned convention.

pany with state or local government holding within three years after resignation from the public service;

- hold a second job with a workload higher and at a time different than permitted by their immediate superior; or
- engage in self-dealing, or conclude transactions of a similar nature or involving a conflict of interest.

Travel and entertainment

- 21** 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?

As mentioned in question 6, the Anti-Corruption Act prohibits an official from accepting gifts or consenting to the benefits which are made or granted to him or her, his or her close relatives or close relatives by marriage, and the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service. This prohibition applies towards domestic officials listed in the same law. Infringement of the prohibitions arising from the Anti-Corruption Act by the official constitutes a misdemeanour.

The Penal Code prohibits any bribery or gratuities irrespective of the value or nature of respective benefit. Therefore according to the Penal Code any provision of gifts, travel expenses, meals or entertainment is prohibited and penalised as a criminal offence, if other elements of bribery are met (eg, a favour to be performed or expected to be performed in return for the benefit can be reasonably specified).

Gifts and gratuities

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

As mentioned above, an official shall not accept gifts or consent to the benefits which are made or granted to him or her, his or

her close relatives or close relatives by marriage, and the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service.

However if an official should accept a gift or gratuities in coherence with an international custom or diplomatic etiquette, the aforementioned will be considered to be the property of the state.

Private commercial bribery

- 23** Does your country also prohibit private commercial bribery?

The restrictions of bribery for an official also cover the private sector; therefore the same regulation applies. See question 2.

Penalties and enforcement

- 24** What are the penalties and sanctions for individuals and companies violating the domestic bribery laws and regulations?

The same rules apply to both foreign and domestic officials. See question 8.

Facilitating payments

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

The same rules apply to both foreign and domestic officials. See question 6.

Recent decisions and investigations

- 26** Identify and summarise recent landmark decisions and investigations involving violations of domestic bribery laws, including any investigations or decisions involving foreign companies.

There was a recent case of real estate transition from state property to private developers. The purpose of the property was changed from public use to a full-scale private housing development and given to the entrepreneurs for no apparent reason. The 'deal' was made public, which caused the minister of environment to resign, and the director of the Estonian Land Board ended up in jail. Several well-renowned entrepreneurs were also arrested for questioning under the charges of bribery. The important landmark in this procedure is the strict and rigid implementation of the Penal Code in relation to corruption cases.

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FINANCIAL RECORD-KEEPING

Laws and regulations

27 What laws and regulations exist requiring accurate corporate books and records, effective internal company controls, periodic financial statements and external auditing?

The Commercial Code and Bookkeeping Act regulate accounting and reporting. Specific requirements applicable in certain fields of activities arise from different laws (eg, requirements for credit institutions arising from the Credit Institutions Act).

Prosecution under financial record-keeping legislation

28 Are such laws used to prosecute domestic or foreign bribery?

Generally not, because special regulations arising from the Penal Code and the Anti-Corruption Act apply.

Disclosure of violations or irregularities

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

According to the Income Tax Act, gratuities and bribes may not be deducted from expenses, therefore although bribery or gratuities are not permitted, they have to be declared. This regulation entered into force in 2004 in association with the harmonisation procedure with the OECD principles.

Penalties and sanctions for accounting violations

30 What are the penalties and sanctions for violations of the accounting laws and regulations associated with the payment of bribes?

See question 6.

Deductibility of domestic or foreign bribes

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

Under Estonian tax laws the deduction of both domestic and foreign bribes is prohibited. See question 29.