



## **Anti-bribery & corruption: the fight goes global**

### **Commercial Fraud Commission**

**AIJA Annual Congress London 1 – 5 September 2015**

#### **National Report of Cyprus**

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September 2015

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## **1. The Legal Framework**

### **1.1 What criminal and/or civil/administrative law(s) exist in your jurisdiction which are specifically targeted at bribery & corruption? Please provide:**

- a. a brief summary of the offences;**
- b. any affirmative defences that are available; and**
- c. the penalties that may be imposed upon offenders.**

There are five pieces of legislation which are specifically targeted at bribery and corruption and three others which although not directly targeted at bribery and corruption they, nonetheless, include provisions towards that end.

The Laws which are specifically targeted at bribery and corruption are the following:

- (i) Prevention of Corruption Law, Cap 161;
- (ii) the Law Sanctioning the Criminal Law Convention on Corruption No. 23(III)/2000
- (iii) Law 22(III)/2006 which transpose the provisions of the Criminal Law Convention on Corruption 1999;
- (iv) Law 7(III)/2004 which transposes the provisions of Civil Law Convention on Corruption 1999; and
- (v) Law 114(I)/2007 which imposes restrictions on the employment of former public officials by the private sector

The Public Service Law 1/1990, the Criminal Code Cap 154 and the Law 20(I)/2011 Providing for Registration, Funding of Political Parties and other similar matters, also contain provisions targeted at combating bribery and corruption.

Under Cap 161 it is an offence: i) for an agent to obtain a consideration as an inducement or reward for doing any act, or showing favor or disfavor to any person, in relation to his principal's affairs ii) for any person to give a consideration to an agent to induce him to do an act in relation to his principal's affairs and iii) for any person or agent to knowingly falsify receipts, accounts or other documents with the intent to deceive the principal. Penalties under these offences are imprisonment of up to 7 years, a fine up to EUR 100,000 or both.

According to Law 23 (III)/2000 and Law 22(III)/2006 actions described in Articles 2-15 and 18 of the Criminal Law Convention on Corruption 1999 as well as the actions described in Articles 2-6 of the Additional Protocol, constitute offences under Cyprus Law. In brief the offences are i) bribery of foreign and domestic public officials, ii) bribery in the private sector, iii) trading in influence, iv) money laundering of proceeds from corruption offences, v) account offences and vi) participatory acts. Penalties for these offences are imprisonment for 7 years and fine up to EUR 17,000.

Law 7(III)/2000 which transposes the provisions of Civil Law Convention on Corruption 1999 grants to persons who have suffered damage as a result of corruption, the right to initiate an action in order to obtain full compensation. For the purposes of this Law corruption is defined as: *“requesting, offering giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.”*

The final piece of legislation specifically targeted at corruption was passed in 2007 in order to align the domestic legislation of Cyprus with the requirements of the United Nations Convention against Corruption 2003 to which Cyprus is a signatory. Law 114/07 makes it an offence for public officials who have resigned or retired from the public sector to be employed in the private sector for a period of two years after their resignation or retirement, without first obtaining an authorization from a special committee established for this purpose. All the members of the committee belong to the office of the Attorney General. Failure to observe this requirement can lead to the imposition of fine of up to EUR 8,500, imprisonment up to a year or both such penalties.

Further to the above, Public Service Law 1/1990 which in general, covers the conduct of public officers, contains a specific section, s.69 which makes it an offence for public officers to: “either directly or indirectly, receive or give any presents in the form of money, other goods, free trips or other personal benefits, other than ordinary gifts from or to personal friends”. Violation of this provision gives rise to disciplinary proceedings. This requirement can be relaxed by the Council of Ministers in specified cases where it would be undesirable or contrary to public interest for the present to be refused.

A secondary legislation is also in place, regulating the code of conduct of public officers and it provides for compulsory retirement or dismissal after a disciplinary punishment. This punishment is of an administrative nature. Such a punishment can be imposed in addition to any other criminal conviction.

The Criminal Code Cap 154 in s 100 provides that i) a public officer, who corruptly asks, receives or obtains or agrees or attempts to receive or obtain any benefit for himself or any other person on account of everything done or to be done, or omitted to be done, or ii) any

person who corruptly gives or offers to give or attempts to give to, upon, or for any person employed in the public service, or for any other person, any benefit on account of any act or omission as described under i) above, on the part of the person so employed shall be guilty of an offence.

S.101 of Cap 154 prohibits the acceptance of any reward by a public officer beyond his proper pay or any promise of such reward, in order to perform any duty deriving from his capacity as an officer. Penalties under this offence are fine and imprisonment of three years.

S.102 of Cap 154 prohibits receipt of any property or benefit of any kind by a public officer in order to show favor to the person giving the property or conferring the benefit or to any person in whom the person giving the property or conferring the benefit is interested in. Any public officer engaging in this kind of activity is liable to imprisonment of two years and also a fine.

Pursuant to section 105, any public officer who in abuse of his office, does or directs to be done any act which is prejudicial to the rights of another, is guilty of a misdemeanor. If the purpose of the act was gain, then the perpetrator is guilty of a felony and is liable to imprisonment of three years.

Finally, Law 20(I)/2011 which provides for registration and funding of political parties and other similar matters, among others, lays down rules concerning the transparency of the political parties' financial administration. Failure to observe the rules makes the party liable to a fine of up to EUR 8,000, taking the form of an administrative offence, which can be increased in case of repeated infringements.

The only affirmative defense is provided by s.69 of the Public Service Law 1/1990 which states that the requirements of this provision may be relaxed by the Council of Ministers in cases where it would be undesirable or contrary to public interest for the gift to be turned down. Other than that, the prohibitions laid down in the abovementioned legislation are absolute.

**1.2 Does your jurisdiction outlaw “private” bribery/corruption (i.e. transactions between two or more private entities or persons) as well as “public” bribery/corruption? If so, please explain how the distinction is drawn between private and public bribery/corruption.**

Cyprus outlaws both public and private corruption. Law 23(III)/2000 which transposes the provisions of Criminal Convention on Corruption 1999 through s.4 makes it a criminal

offence under Article 7 of the Convention when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities for themselves, or for anyone else, for them to act or refrain from acting, in breach of their duties. S.4 of the same, makes it a criminal offence under Article 8 of the Convention when committed intentionally in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof, for themselves, or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Furthermore, Prevention of Corruption Law Cap 161, which was introduced at a time when Cyprus was a British Colony and which mirrors the provisions of the British Prevention of Corruption Acts 1889 to 1916, can be applied equally to the public and private sectors. Cap 161 and the agent offence described therein (see 1.1 above) applies to all agents, whether in the public or private sector. An agent is defined as any person employed by or acting for another and includes employees and agents acting for private employers and people serving the public service.

S.2 of the Public Service Law 1/1990, defines public service as any service under the Republic but excludes the judicial service, service of the Armed Forces, service in the office of the Attorney General or the Auditor General or their Deputies or Service in any office provided for by other provisions or law or service by those whose remuneration is calculated on a daily basis or service by persons who are employed on a casual basis in accordance with “Employment of Casual Workers.”

Furthermore, pursuant to Article 122 of the Cypriot Constitution, public entities, or state-owned enterprises which were created by law come within the definition of the public service.

In case of offences involving in any way, persons holding office in the public service as defined above and the said involvement is related to their capacity as public officers, then the offence committed shall be considered as public corruption.

### **1.3 Is your law extra-territorial? If so, in what circumstances can it be enforced if the relevant acts/omissions of bribery/corruption occur outside your jurisdiction?**

According to s. 5 of the Criminal Code Cap 154 the latter and every other Law which creates an offence, are applicable to all offences committed:

- in any foreign country by a national of the Republic of Cyprus while being at the service of the Republic; (s. 5(c))
- in any foreign country by a national of the Republic of Cyprus, if that offence is punishable in the Republic by imprisonment which exceeds 2 years and the act or omission which constitutes the offence is also punishable under the laws of the country in which the offence was committed. (s.5(d))

**1.4 Are there any “safe harbours” or exemptions in relation to transactions that might otherwise be regarded as bribes, such as “facilitation payments”, which are expressly excluded from being illegal? If so, is this determined by statute/codified law, by case law or otherwise?**

The laws in Cyprus regarding bribery / corruption are very strict, almost absolute and there are no exceptions other than the affirmative defences described above. Cyprus is signatory to the UN Convention on Corruption (UNCAC) which prohibits facilitation payments.

In addition s.4 of Law 23(III)/2000 makes it a criminal offence when committed intentionally, to promise, give or offer an undue advantage, directly or indirectly, to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of certain persons, defined in the Law, in consideration thereof, whether the undue advantage is for himself or herself or anyone else, in consideration of that influence regardless of whether the said influence leads to the intended result.

Furthermore s.105A of the Criminal Code provides that any person who by any means attempts to influence any authority, committee, collective body or any member of them or a public officer in the course of his/her duties related to any procedure of taking, appointing, promoting, allocating, transferring, or of exercising administrative control in a governmental service, whether for his/her own benefit or the benefit of someone else, is guilty of a criminal offence punishable with imprisonment for up to 12 months, a fine of up to EYR 1,700 or both.

This section also requires any of the aforementioned persons to report any such approaches as described above within three days of the event otherwise they will be guilty of an offence punishable with imprisonment for up to 12 months, a fine of up to EUR 3,400 or both.

**1.5 Does the financial regulatory system (i.e. the law and regulations governing the operation and conduct of banks and other financial institutions) in your jurisdiction address the topic of bribery & corruption? If so, please provide a brief summary of the obligations (including systems/controls and reporting obligations) that are imposed on banks and other financial institutions in this regard.**

The major piece of legislation regulating the conduct of the banks and financial institutions in general is Banking Law 66(I)/1997 as amended referred to as Business of Credit Institutions Laws 1997 to 2015 which by virtue of s.15 prohibits the trading by financial institutions of their own shares for their own benefit without the prior approval of the Central Bank of Cyprus.

Other more precise pieces of legislation are, (i) Law 190(I)/2007 Providing for Transparency Requirements in Relation to the Information about Issuers Whose Securities are Admitted to the Trading on a Regulated Market (Transparency Law), (ii) Law 144(I)/2007 which provides for the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and other related matters and (iii) Insider Dealing and Market Manipulation (Market Abuse) Law 16(I)/2005.

Under the Transparency Law, an issuer is considered a legal entity whose shares are admitted to trading on a regulated market. An issuer in addition to the general requirement to disclose annual financial report and a half-yearly financial report has to issue an interim management report where to disclose the related parties' transactions during both six month periods of the financial year.

In addition, an interim statement is required during both six month periods of the financial year where the issuer must provide an explanation of the material events and transactions that have taken place during the relevant period.

Furthermore, an issuer is under an obligation to disclose acquire or disposal of its own shares where such acquire or disposal reaches or falls below certain thresholds. For the purposes of this Law the competent authority is the Cyprus Securities and Exchange Commission.

The law which provides for the Provision of Investment Services imposes certain reporting obligations on investment firms ("IF") which can be construed as a means of preventing corruption. The competent authority under this law is the Cyprus Securities and Exchange Commission. According to the law, there are some minimum organisational requirements with which an IF must comply. As a minimum it shall have organisational structure with transparent and consistent lines of responsibility, arrange for records to be kept of all services provided and transactions undertaken by it, which shall be sufficient to enable the Securities and Exchange Commission to monitor compliance with the requirements under the law.

Another major legislation targeted at combating corruption in the financial sector is the Market Abuse Law. The law imposes certain restrictions on persons holding confidential information and gives direction as to how confidential information should or should not be used. In addition it requires from the persons discharging managerial responsibilities within an issuer of financial instruments and the persons closely related to them to publicize every transaction made on their account and relates to financial instruments issued by the above issuer and traded on a regulated market.

Moreover, persons discharging managerial responsibilities within an issuer are obliged to make a list of the persons with whom they are closely associated to, and forward this list to the Securities and Exchange Commission whenever required.

Furthermore, s.20 of the Law prohibits market manipulation and it provides a list of what is considered as market manipulation like transaction with intent to give false signals to the market or dissemination of information through the media.

Reporting requirements are also imposed on persons who provide investment advice. Such persons must disclose their interests or indicate conflicts of interest concerning the financial instruments to which that advice relates.

Last but not least any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction or orders to trade might constitute insider dealing or market manipulation, shall notify the Securities and Exchange Commission without delay. A secondary legislation is in place indicating the way in which disclosure of the required information must be made.

## **2. Corporate Criminal Liability**

### **2.1 In the context of bribery/corruption, does your law recognise the concept of corporate criminal liability? E.g. can a corporate entity be found guilty of bribery?**

Yes.

### **2.2 If the answer to 2.1 above is “yes”, please provide a brief explanation of the legal theory of corporate criminal liability (i.e. what circumstances must be established for corporate liability to arise and what form does that liability take) as well as the penalties that may be imposed upon a corporate offender.**

Whenever there is a provision in any law providing for criminal offence by a person, then, since according to the Interpretation Law Cap1 a person is defined as any natural or legal person, a corporate entity could be liable for any such offence.

Criminal liability can arise both in relation to strict liability offences and offences which require mens rea on the part of the offender.

Usually the test applied in order to establish criminal liability of a corporate entity is that of attribution, which requires answer to the difficult question of whether the person or persons who acted in a certain way, hold such a position in the company so as to be reasonable to attribute the act of those persons to the company. Each case will be examined by the court in accordance with its own facts in order to establish corporate criminal liability.

Penalties that can be imposed on corporate entities for criminal conduct are fines. In occasions where corporate entities are licensed to perform certain functions, then the competent authority, might be able to revoke its license if the law so provides.

**2.3 Are there any pending or expected changes to the law of corporate criminal liability in your jurisdiction? If so, please explain the proposed changes and the expected timeframe for implementation.**

Currently there are no expected changes.

**3. Mutual Legal Assistance / Co-operation**

**3.1 Is your jurisdiction a signatory to any bi-lateral or multi-lateral treaties or other instruments regarding mutual legal assistance / co-operation in the context of bribery & corruption? If so, which ones?**

Cyprus is a member of the Group of States against Corruption of the Council of Europe (GRECO).

In addition Cyprus is a signatory to the following anti-corruption conventions:

- a. United Nations Convention against Corruption (UNCAC) which entered into force on 14<sup>th</sup> December 2005
- b. Agreement for the Establishment of the International Anti-Corruption Academy as an International Organisation (IACA) entered into force on 8<sup>th</sup> March 2011
- c. Criminal Law Convention on Corruption entered into force on 1<sup>st</sup> July 2002

- d. Additional Protocol to the Criminal Law Convention on Corruption entered into force on 1<sup>st</sup> March 2007
- e. European Framework Decision No. 2003/568/JHA, Combating Corruption in the Private Sector.

**3.2 Are the regulatory/prosecution authorities in your jurisdiction parties to any formal or informal co-operation arrangements with equivalent authorities in other jurisdictions (e.g. a memorandum of understanding, etc.)? If so, please provide a brief summary of the arrangements and the other authorities/jurisdictions.**

All pieces of primary legislation referred to in 1.5 above, contain provisions in relation to international cooperation. In short, those provisions provide for international cooperation with the corresponding competent authorities whenever this is necessary in order to allow them to perform the supervisory functions entrusted upon them, provided that the cooperation and exchange of information do not violate fundamental rights and are not contrary to Processing of Personal Data (Protection of Individuals) Law 138(I)/2001.

Further to the above, the Securities and Exchange Commission has signed bilateral agreements and memorandums of understanding for co-operation with over 40 other competent authorities in other jurisdictions.

Cyprus is signatory to numerous multilateral and bilateral treaties in the areas of mutual legal assistance, extradition and transfer of sentenced persons. Furthermore, the Law office of the Republic of Cyprus participates to several European networks for co-operation such as Eurojust and Eurojustice.

## **4. CASES**

**4.1 Please describe in brief three (3) cases of bribery/corruption in (or involving) your jurisdiction which illustrate the trend towards cross-border/global investigation and enforcement of anti-bribery laws. For example, cases where:**

- a. your jurisdiction's law(s) were enforced on an extra-territorial basis;**
- b. there was a degree of cooperation/assistance provided by your jurisdiction to another jurisdiction, or vice versa; and/or**

**c. penalties were imposed by your jurisdiction as well as by other jurisdictions, in relation to the same set of facts.**

A recent example of provision of assistance by the authorities in Cyprus was a request by the relevant authorities of Greece for extradition of a Cypriot ex-Minister who was accused by the Greek authorities that together with a Greek ex-Minister of Defence had been involved in money laundering activities and bribery in relation to the purchasing of defensive weapons on the part of the Greek Government. In order to allow such an extradition to be effected, Cyprus amended its Constitution so as to enable the extradition of Cypriot nationals to foreign jurisdictions for crimes which took place prior to the accession of Cyprus to the EU which was in 2004. Before the amendment, such extradition was possible only for crimes committed after 2004. The Cypriot ex-Minister, now serves a 15-year sentence in Greek prisons.

A good example of request for cooperation by the Russian Federation to extradite a Russian national who had been accused by the Russian authorities of embezzlement, market abuse and falsification of books is the case of Kartashov Vlatislav. The Cypriot Court denied the extradition as it had identified motives, other than proper administration of justice in the Russian Federation's request. The extradition was directly related to the Yukos case whereby, several officers of the said company had been prosecuted by the Russian Federation. The European Court of Human Rights ruled that in the series of cases in the Russian Federation which became known as "Yukos", there had been violations of human rights and especially the right to fair trial. The Cypriot Court ruled that there was severe danger of human rights violations and especially in case of extradition the right to fair trial could be jeopardised and on that ground the application for extradition was denied. This case indicates that in the global fight against corruption, the authorities of the countries must be very cautious and that cooperation shall not prevail against any cost and in violation or possible violation of human rights.

Although there are several cases in which the Cypriot Courts imposed sanctions for offences of bribery, these nonetheless, lack the extra-territorial element. At the moment of writing these lines, investigations are taking place in relation to two major cases involving bribery of public officials by foreign nationals in order to obtain permissions for major development projects.