
# Anti-bribery & corruption: the fight goes global

## Commercial Fraud Commission

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### National Report of Spain

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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?

The Spanish legal system does not provide a law or regulation exclusively focused on bribery and corruption. Nonetheless some articles of different laws could be used in order to analyze this issue.

It could be said that the concept of corruption is the abnormal functions of the Public Administration that acts without taking into consideration the principles that should govern its activity and particularly the general interest as a whole, which is replaced by particular interests arising from different circumstances such as a conflict of interest situations, bribes or others.

The regulation of bribery & corruption is mainly regulated by the Criminal Code and is focused on crimes against the Public Administration. The most relevant of these are as follows:

- **The willful neglect of duty and other unfair behaviors:**

  The public servant who issues an arbitrary resolution within an administrative procedure could be sentenced to a special disqualification from 7 to 10 years.

  The public servant who nominates, appoints or gives someone a public office without fulfilling the legal requirements and the person who accepts it could be sentenced to a fine from 3 to 8 months and given a suspension of employment or public office from 6 months to 2 years.

- **Bribery:**

  The public servant who, for their own benefit or for the benefit others, receives or seeks, for themselves or on behalf of another person, a gift, favor or remuneration of any type or accepts offers or promises in return for carrying out an action against his duties or for avoiding or delaying his duty or action could be sentenced from 3 to 6 years, given a fine from 12 to 24 months and a special disqualification from employment or public office from 7 to 12 years.

  If this act is not against his duties or he does not delay or avoid the action he could be sentenced from 2 to 4 years, given a fine from 12 to 24 months and a special disqualification from employment or public office from 3 to 7 years.

The public servant who only admits wrongdoing could be sentenced from 6 months to 1 year and given a suspension from employment or public office from 1 to 3 years.

The citizen who carries out these types of acts could be sentenced by the same punishment. However, if it is a private person in an award process for a public contract, giving subsidies or auction to the Public Administration, they could be sentenced to a special disqualification from 3 to 7 years.

The private person who accepted or sought a gift, favor or remuneration will be exempted of liabilities if he notifies this act to the authorities before the beginning of the procedure and no later than two months after.

- **Influence peddling:**

The civil servant who influences another public servant by taking advantage of his position or any other situation derived from his personal relations or hierarchy with the person concerned, or any other public servant, with the purpose of achieving a resolution that accrues, directly or indirectly, an economic profit for himself or a third party could be sentenced from 6 months to 2 years, given a fine of double the profit desired or achieved and a special disqualification from 3 to 6 years.

The civil servant that influences another public servant by taking advantage of any situation caused by his personal relationship with this public servant or any other with the aim of achieving a resolution that accrues, directly or indirectly, an economic profit for himself or a third party could be sentenced from 6 months to 2 years and given a fine of the double the profit.

Those who offer to carry out the aforementioned actions in return for gifts or remunerations or for accepting offers or promises by third parties could be sentenced from 6 months to 1 year or given a fine from 6 months to 2 years for a legal person.

- **Misappropriation of funds:**

The public servant who, on a profit-gaining basis, appropriates or allows the appropriation of the funds of which he is responsible due to his functions to a third party could be sentenced from 3 to 6 years and a special disqualification from 6 to 10 years.

In an event of serious gravity due to the high amount involved or the damages caused to the public service, he could be sentenced from 4 to 8 years and given a special disqualification from 10 to 20 years.

Additionally, if the appropriation is less than 4,000 Euros he could be sentenced from 6 months to 3 years, given a fine from 2 to 4 months and a suspension from employment or public office for 3 years.
The civil servant that allocates the funds or effects under his charge for the use of third parties could be sentenced to a fine from 6 to 12 months and given a suspension of employment or public office from 6 months to 3 years.

The civil servant who falsifies the accounts, documents or information regarding the economic situation could be sentenced to a special disqualification from 1 to 10 years and given a fine from 12 to 24 months.

This sentence could be given to the civil servants that releases false information regarding the economic situation or any of the documents or information to third parties.

In the event of economic damage, they could be sentenced from 1 to 4 years, given a special disqualification from 3 to 10 years and a fine from 12 to 24 months.

The civil servant who, on a personal or third party profit-gaining basis, causes severe damage to the public administration, privately using the movable and immovable assets could be sentenced from 1 to 3 years and given a special disqualification from 3 to 6 years.

This is also applicable to persons in charge of public funds or assets.

- **Fraud and illegal exaction:**

The civil servant who, due to his position, participates in public tender or liquidation of public assets, agreed with the interested persons or uses any other method to defraud the Public Administration could be sentenced from 1 to 3 years and given a special disqualification from 6 to 10 years.

Also the civil servant could be punished with the restriction to participate in public tenders, or to obtain subventions or tax advantages from 2 to 5 years.

The civil servant that asks for a higher fee that they are not owed could be sentenced to a fine from 6 to 24 months and given a suspension from employment or public office from 6 months to 4 years.

- **Forbidden negotiation or activities by public servants and abuses of their functions:**

  The civil servant who takes advantage of his participation in a contract, matter, operation or activity, in order to force or facilitate any kind of participation, directly or indirectly, in their business or actions, could be sentenced from 6 months to 2 years, given a fine from 12 to 24 months and a special disqualification from 1 to 4 years.

  The civil servant who directly or indirectly carries out a professional activity or advisement with the dependence or service of a private persons in a matter that will intervene or has intervened or that are submitted, informed or resolved in his office or management body could be sentenced from 6 to 12 months and given a suspension from employment or public office from 1 to 3 years.

  The civil servant, who uses secrets or privileged information obtained through their position with a personal or third party, on a profit-gaining basis, could be sentenced to fines of triple the profit and given a special disqualification from 2 to 4 years.

  If there is severe damage to the Public Administration or a third party they could be sentenced from 1 to 6 years and given a special disqualification from 7 to 10 years.

- **Corruption crimes in international transactions:**

  The person who through offers, promises or concessions for any benefit or profit, corrupts or at least attempts to corrupt, in favor of themselves or third parties and those who attend to their request with the purpose of acting or refraining from acting according to their public functions, in order to obtain an illegal contract or a benefit from international economic activity could be sentenced from 2 to 6 years and given a fine from 12 to 24 months. If the amount obtained is higher, the fine could be double of that obtained.

  They could also be sentenced to a restriction of their participation in public tenders, subsidies or tax benefits and prohibited from participating in commercial transactions with public transcendence from 7 to 12 years.

  If the responsible party is a legal person, they could be given a fine from 2 to 5 years of triple to quintuple the amount if the total is higher.

- **Abandonment of destination and failure to prosecute crimes:**

  The civil servant who abandons his destination in order to avoid or prosecute any kind crimes (Titles XI to XIV) could be sentenced from 1 to 4 years in jail and given a special disqualification from 6 to 10 years. However, any other kind of crime will be given a special disqualification from 1 to 3 years.

  The same punishment could be given when the abandonment is for not enforcing the punishments.

  The public servant who fails in the promotion of crimes prosecution will have a special disqualification from 6 months to 2 years.

- **Disobedience and failure to provide assistance:**

  The public servant, who refuses to implement the fulfillment of judicial resolutions, or the orders or decisions of a competent legal superior, could be fined from 3 months to 1 year and given a special disqualification from 6 months to 2 years.

  If it is reordered by the superiors, after the suspending of the conduct of the duty, and in a similar way they do not obey, they will receive fines from 12 to 24 months and will be given a special disqualification from 1 to 3 years.

- **Disloyalty with the custody of public documents and the violation of secrets:**

  The civil servant, who hides, destroys or takes documents under his custody thanks to his position could be sentenced from 1 to 4 years, given a fine from 7 to 24 months and a special disqualification from 3 to 6 years.

  Those civil servants responsible for the document's custody, who destroy or misuse the measures to restrict their access or consent for their destruction or misuse will be sentenced from 6 months to 1 year or given a fine from 6 to 24 months and a special disqualification from 1 to 3 years.

  The civil servants that in the same situation allow for the access to documents that have been restricted could be sentenced to a fine from 6 to 12 months and given a special disqualification from 1 to 3 years.

  The civil servant that betrays secrets or information of which he is responsible and does not have permission to release, could be fined from 12 to 18 months and given a special disqualification from 1 to 3 years.

If this action entails severe damage for the public administration, a jail sentence may be given from 1 to 3 years and special disqualification from 3 to 5 years.

If the secrets are in relation to a private person, he could be sentenced from 2 to 4 years, given a fine from 12 to 18 months and a suspension from employment or public office from 1 to 3 years.

The particular civil servant that uses the information for themselves or for a third party could be fined with the triple the amount of the profit obtained. If there is severe damage to a third party or to the public administration, they could be sentenced to jail from 1 to 6 years.

**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.**

In the Spanish Criminal Code, in the Chapter about the "crimes regarding the intellectual and industrial property, the market and the consumers" and Section 4 about the "corruption between private parties", a punishment for these sort of cases are established when it occurs in the private sphere.

The article which describes this act is the 286 bis, which states that those who directly or indirectly promise, offer or provide to managers, directors, employers or collaborators of a company, association, foundation or organization a non-justified benefit or advantage that favours themselves or a third party, is breaching their obligations in the acquisition or sale of goods or the contract of professional services, could be sentenced from 6 months to 4 years in jail, given a special disqualification from the industry or commerce and a fine from 1 to 6 years for triple the profit amount.

The same punishment could be given to the managers, directors, employers or collaborators, who obtain, ask or accept it.

Conduct that has the predetermined purpose to deliberately or fraudulently modify the results of the competition or match could also be punishable in the case of managers, directors, employers or collaborators of a sportive entity and also the players, referee or judges.

It must be noted that the distinction mainly lies on the subjects because with these acts, there is no involvement of a public servant or authority.

In addition to this, these cases do not punish the benefits or advantages offered without reason or the use of personal or professional relationships to reach an

agreement. Nor are the benefits in reward punished for acts that were carried out in the past.

In conclusion the conduct in question does not benefit the company, but rather the natural person, thus amounting to a conflict of interest.

**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?**

The Organic Law 6/1985, 1st July, of the Judicial Branch regulates the competency of the Spanish Criminal Courts in article 23.3.H, stating that the Spanish jurisdiction may be competent for the crimes committed overseas by nationals or foreigners when these acts can be considered, amongst others, crimes against the Spanish Public Administration and for the acts carried out by Spanish public servants in the exercise of their duty. This competency does not have limits or conditions like those established in paragraph 4.

Article 23.4.N is also important because it recognises Spanish court jurisdiction over corruption crimes against private parties or international economic transactions, as long as the procedure is against a spaniard or against a foreigner that is residing in Spain or against a manager, director, employee or collaborator of a company, association, foundation or organization that has its registered office or domicile in Spain or by a legal person, company, organization, groups or any other class of entities or persons agrupation with domicile or registered office in Spain.

The crimes of paragraph 4 cannot be prosecuted when the proceedings for the investigation and trial have begun in a International Court, or in the State where actions were committed or one in which the accused is national, when the person accused is not in the Spanish territory, or when there is an extradition process ongoing in the state of the actions, the victims or an International court.

When the exception is not for a International court but for other reasons, the Supreme Court can evaluate if this State does not have the intention of carrying out an investigation or if it is not able to do it.

These crimes will only be prosecuted if there are criminal charges submitted by the affected or the Public Prosecutor.

**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?**

There is not any exception for bribes that have spurious ground behind them like reaching a public contract or obtaining privileged information.

Also, as we have seen, article 422 of the Criminal Code punishes gifts, favors or retributions obtained by a public servant simply because of his position.

However, the Spanish Federation of Municipalities and Provinces has released some guidelines against corruption in the Public Administration. These guidelines can be regarded as "softlaw" unless the City Council has passed a rule to establish it as compulsory.

This Code for example says that the gifts cannot be accepted if they exceed the limits of the habits and customs of basic courtesy by entities or persons.

**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.**

Spain has passed some laws regarding bribery and corruption within the regulation of financial institutions. The most important of these are the Law 20/2010 on money laundering and funding of terrorism, Law 5/2009, 29th June, which modifies the Securities Market Act and the Royal Decree 304/2014, 5th May, which passes the regulation of the Law 10/2010.

The first law aforementioned forces the obligated subjects to create and apply written policies and procedures regarding due diligence, information, document conservation, internal controls and evaluation and risk management procedures required to fulfill the regulation, which prevents and avoids money laundering and terrorism funding operations.

In addition to this, a protocol must be passed to prevent money laundering and terrorism funding, which has to be updated with information about internal control measures.

Additionally, the Bank of Spain must ask the Executive Service of the Commission for an evaluation of the existence of rational indications of acts of money laundering or terrorism funding through the acquisition of significant shares.

Therefore, they have to create, develop and apply their policies, procedures and manuals for prevention in relation to the nature of the risk to the banking sector, the geographical area, its size, the type of clients, and the customs of the business… The aim is to detect as early as possible the conflicting clients and the risk to operations in order to avoid their execution.

For this reason they must write a document with a description and evaluation of the risk related to their activity and must take the necessary measures to restrict these risks.

The prevention shall be applied to all clients without any exception and must take into consideration the different types of clients and their risks. However, new clients and new products will require a more profound analysis of the situation.

The prevention procedures shall be based on the determination of the real holder, the knowledge of the funds used by the clients and the coherence of the operation, with the knowledge of the client that the entity has and his entrepreneur and risk profile.

The Executive Service of the Commission can analyze and review the effectiveness of the internal control and procedures and verify its implementation and adaptation to the banking activity. The aim is to identify and evaluate the risks.

The bodies responsible of these actions are as follows:

- The administration executive has some functions, attributions and competences regarding money laundering.
- The executive of internal control is responsible for the policy and procedure's application.
- The representative before the Sepblac carries out an administration or direction charge.
- The technical unit of prevention.

Some of the obligations established in the law are also the identification of the clients, natural or legal persons, verified through official documents, and the identification of the beneficial owner and the knowledge of the professional or entrepreneurial activity.

There are also reinforced measures of due diligence in business areas, activities, products, services, distribution and commerce channels, businesses networks and operations with high risks. This also includes cases established in the regulation, such as private banking or cash operations with more than 3,000 €.

The measures can be updated in relation to the information about the acceptance from the client, the purpose of the business, the origin of the funds or the wealth and the aim of the operation.

## 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, in Spain there is corporate criminal liability and entities can be sentenced for committing bribery and corruption acts.

**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.**

The lawmaker has not stated who is within the concept of corporate criminal liability. It could refer to any company, entity or person's aggrupation that has a legal personality which are ruled in any civil or commercial law. Nonetheless the public legal persons are excluded when they are exercising their activity within the scope of their administrative or sovereign functions.

The entities which are irregular, in organizations or those which are not considered as legal persons could also have some criminal liability because the accessory consequences of article 129 of the Criminal Code could be applied.

The crimes which establish a corporate criminal liability are the following:

- The discovering and disclosure of secrets.
- Bribery.
- Influence peddling.
- Corruption in international business transactions.

The acts can be committed by the legal or director and for this reason the legal person could be liable for the acts committed by the legal representatives when they act in this way and in the scope of their competences. The act may also be beneficial directly or indirectly.

Also, there could be corporate criminal liability for acts carried out by the professionals and employees of the company. For this to arise, the acts must be committed within the scope of the corporate activities and on behalf of (and to benefit) the legal person. The company is required to seek to prevent corporate liability by exercising due diligence and control over its employees. Three types of a measures can be developed in order prevent liability:

- Prevention measures: compliance programs;
- Control measures: notification box; and/or

- Disciplinary measures: sanctions to employees.

However, the surveillance conduct will be taken into account and will be checked to see if it has taken all the necessary measures to avoid the criminal conduct.

The fact that there is not a criminal punishment against the natural person does not entail that the legal person will not be liable, nor do the circumstances which modify the criminal liability of the natural person have to be applied compulsorily to the legal person. Only when there is a sentence or fine for the natural and legal person will the judges moderate it to not cause disproportionate justice.

The legal persons can be sentenced and punished as follows:

- Fines
- Company dissolution
- Suspension of the company activities
- Closing down of the company premises
- Prohibition of carrying out the activities which have committed, favored or covered a crime
- Judicial intervention
- Special disqualification for obtaining subsidies, contracting in the public sector and for benefiting from Tax or Social Security benefits and incentives

The fine is compulsory for all the crimes, whereas other punishments have a discretionary nature and the judge shall take into account the following circumstances:

- The necessity of preventing the continuity of the criminal acts or their effects.
- The social and economic consequences, particularly the effects on the employees.
- The position of legal person and the person who breach the control duty.

The criminal liability of the legal person will entail mutual civil liability and the punishments for the legal person are as follows:

- **Corruption between private parties:**

  Fine from 1 to 3 years if the crime committed by a natural person can be punished by more than 2 years of jail. In other cases, a fine from 6 months to 2 year could also be sentenced to other accessory measures of article 33.7.B to G.

- **Bribery:**

  Fine from 2 to 5 years or for triple to quintuple of the profit obtained when the amount was higher, if the crime is carried out by a natural person who incurs more than 5 years of jail. In any other case, a fine from 6 months to 2 years or from double to triple of the profit if the amount is higher. They could also be sentenced to other accessory measures of article 33.7.B to G.

- **Influence peddling:**

  Fine from 6 months to 2 years. Could also be sentenced to other accessory measures of article 33.7.B to G.

- **Corruption in international commercial transactions:**

  Fine from 2 to 5 years or for triple to quintuple the profit obtained if the amount is higher. Could also be sentenced to other accessory measures of article 33.7.B to G.

**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.**

The reform in Parliament regarding the Criminal Code modifies the liability of the state-owned companies that carry out public policies or public services of general economic interest.

It establishes some cases where the legal person will be exempt from criminal liability, those crimes committed by legal representatives or persons authorized with power to organize and control the company (all must be done):

- If the board of directors has established and executed, before the commission of the crime, organization and administration models which includes the surveillance and necessary control.
- That an organization in the company supervises the fulfillment of the prevention scheme with autonomous powers of initiative and control.
- The authors have fraudulently eluded the prevention and organization models.
- There is not an omission or insufficient exercise of surveillance or controls by the organization in the company.

If the workers themselves commit crimes, depending on the company, it could be responsible in cases in which the breaching of its surveillance duty has been severe.

## 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?**

Yes, Spain is a signatory of treaties such as:

- The United Nations Convention against Corruption, which entered into force on 19th July 2006. This Convention establishes some duties of cooperation in chapter IV about international cooperation, particularly in its articles 43 to 50.

- The XIII Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Council on 26th November 2009 within the OCDE Anti-Bribery Convention which entered into force on 4th March 2000.

- Criminal Law Convention on Corruption (number 173) of the Council of Europe which entered into force on 1st September 2010, that establishes in its Chapter IV, particularly articles 25 to 31, some rules about the international cooperation.

- Civil Law Convention on Corruption Council of Europe, which entered into force on 1st April 2010 and establishes some rules about international cooperation in its Chapter II, particularly in articles 13 to 14.

- Also, Spain have in force other Conventions in Criminal Matters with the countries of Jordan, Serbia, Cameroon, Turkey, Algeria, Saudi Arabia, Morocco, Senegal, Mali, Cape Verde, Yemen, Brazil, Mauritania, Dominic Republic, Ukraine, China, Russia, Venezuela, Cuba, South Korea, Tunisia, Moldova, United States of America, Egypt, Bolivia and others.

- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union which entered into force on 23th August 2005.

- European Convention on Mutual Assistance in Criminal Matters, which entered into force on 16 November 1982.

- United Nations Convention against transnational organized crime, which entered into force on 29 September 2003.

**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.**

This issue is regulated in different national and international regulations which deal with mutual assistance in criminal matters between Spain and other countries.

As regards to the European regulation, we could site the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29th May 2004 and the Council Framework Decision 2002/465/JHA on joint investigation teams. Besides the Spanish regulation in the Law 11/2003, of 21st May, that rules the joint criminal investigation teams within the European Union and the Organic Law 3/2003, of 21st May, which complements the Law about the criminal joint investigation teams within the European Union, laying down a criminal liability legal regime of the member's destined teams while they are working in Spain.

Article 1 of the Law 11/2003 defines its aim as the creation of joint investigation teams between two or more States belonging to the European Union when it is requested by one of them and the relevant Spanish Authority participates or if the activities are developed in the Spanish territory.

However, the Spanish Authorities do not have an obligation to follow the instructions of another European Member State because, as it is established in article 4, they shall assess and reach an agreement for the setting up of a joint investigation team that will be working in Spain. This investigation agreement must contain, amongst others, the explicit will of the other State, a sufficient motivation about its necessity, a deadline, the purposes of the investigation and a determined purpose.

The information obtained in the investigations could be used for the following purposes:

- For the aim that the team was created.
- To discover, investigate and judge other criminal offences, with the previous authorization of the State where the investigations have been carried out. This authorization can only be denied when it may put other criminal investigations at risk.
- To avoid an immediate and serious threat for public security.
- For other purposes when it has been agreed by the States working in the team.

When the investigation is carried out in another State, the relevant Spanish authority will be responsible for requiring the setting up of an investigation team or deciding about Spanish participation in a team set up for another State. In these case, they will have to meet the requirements aforementioned and those laid down in the other State.

This regulation will be also applied when there is an investigation carried out by EUROJUST, EUROPOL and OLAF.

It should be made clear that the relevant Spanish authorities are the National High Court when the investigation is regarding criminal offences within its competences and their members are judges or prosecutors; the Ministry of Justice when the investigation is for other criminal offences and their members are judges or prosecutors or the Ministry of Internal Affairs in investigations not carried out by judges or prosecutors.

With regard to bilateral treaties, we shall provide an illustration about one of the most recent conventions signed by Spain which establishes a general cooperation in criminal matters, but not only for bribery or corruption; i.e. the convention signed with Morocco regarding mutual assistance in criminal matters of 24th June 2009. According to the convention:

- Any refusal to collaborate with the other country shall be motivated and notified to the other party and could be justified, for instance, in connection with any "political" crimes.

- Only the judicial and prosecutorial authorities are competent in this area, and must follow a procedure with a central authority (in Spain this is the Ministry of Justice).

- Regarding the execution of the application for mutual assistance, each country must follow their own national legislation. However, the party required to assist should respect the procedures and formalities of the party that requires assistance, except if the Convention says otherwise or does not respect fundamental right / principles.

- Moreover, it must be said that there is an article (number 19) about bank secrets and the cooperation regarding bank information.

- Also, it is important to say that articles 276 to 278 of the Organic Law of the Judicial Power could be also applicable.

- The judicial authorities shall collaborate with the international judicial authorities in accordance with the treaties and conventions or, in another case, following the reciprocal principle that will be determined by the government through the Ministry of Justice.

- The application shall be addressed by the judges to the president of the Supreme Court, Superior Court of Justice or the National Court that will send the application to the Ministry of Justice, which, in turn, will send it to the relevant international authorities via or directly through the diplomatic or consular channels, if the international treaties establish it so.

- These articles also establish the reasons why an application for assistance may refused by the Spanish courts.

## 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.**

- **Bárcenas Case:**

Order 25th March 2013 of the Central Court of Investigation number 5 of the National Court Preliminary investigations 275/2008:

This order is related to the criminal investigation of the treasurer of a political party accused of crimes against the Public Administration, the Public Treasury, money-laundering, fraud in the procedure and falsification of commercial documents.

In this case there are rogatory letters from Spain, which are being investigated for their criminality in different countries, with the purpose of analyzing the economic situation and enrichment of the defendant who is related to the investigated crimes.

There are rogatory letters from Spain to Switzerland in order to block the defendant's funds. Moreover, the Swiss Authorities have submitted documentation which contains information about the defendant's bank accounts or those which he has used through other means, such as legal persons, in the Dresdner Bank and Lombard Odier Darer Hentsch & Cie.

In this case there are also rogatory letters from Spain to USA with the purpose of blocking funds due to the cooperation of a third party. The HSBC Bank USA received amounts transferred from the Swiss accounts aforementioned and the accounts of his companies.

In addition to this, there are other rogatory letters with the United Kingdom.

- **Granados Case**

Order of the 21st October 2014 of the Central Court of Investigation number 6 of the National Court Preliminary investigations 85/2014:

This order is related to the criminal investigation of money allegedly earned by politicians in compensation for construction plans and public administrative contracts.

According to the order, the defendants have bank accounts that belong to the defendants and their relatives in Switzerland.

In this case, the Autonomous Community of Madrid, the Tourism Institute, different City Councils and the Leon Provincial Government are investigated.

Supposedly, a group of companies achieve some public contracts (up to 100.000.000 €) and new urban uses for others companies that after that shall be compensated.

The alleged crimes committed include money laundering, crimes against the Public Treasury, criminal organization, bribery, influence peddling, fraud, embezzlement of public funds, prevarications, forbidden negotiation with public servants, disclosure of secrets and use of confidential information.

In this case, there was a rogatory letter from the Swiss Authorities about the different politician's bank accounts, their relatives and their companies which had been suspiciously used to commit an aggravated money laundering crime.

The licit origin of the amounts, with some suspicious movements, had not been declared. For this reason, the Swiss authorities required help from Spain. The economic police carried out deeper investigations and confirmed more bank accounts in Switzerland, more international transfers and the buying of financial actives and currencies.

The money stored in Switzerland came back to Spain after circulating through different countries simulating exports.

- **Pretoria Case**

Order 18th December 2014 Central Court of Investigation number 5 National Court Preliminary Investigations 222/2006:

In this case, there were intermediation groups which were awarded public contracts in urban planning from different municipalities in Catalonia, particularly in the province of Barcelona, in compensation for certain amounts of money.

In the municipality of Santa Coloma de Gramanet, they were awarded with public land which had had its urban uses recently modified. They then sold these real estate properties to another party with whom they had had an agreement.

In the municipality of Sant Andreu de Llavaneras they bought and sold real estate property in order to obtain 4% in commission if the urban use of the land changed.

In the municipality of Badalona they bought land located in the sportive port which belonged to public owners, not allowing for anyone else to submit an offer and only offering them very bad contract conditions.

In the municipality of Santa Coloma de Gramanet they manipulated public competition.

There were also rogatory letters to the countries of Costa Rica, USA, Portugal, Germany, Switzerland, Andorra and UK. These helped to uncover a complex group of companies and fund investments in the Cayman Islands as well as the repatriation of funds from Andorra to Spain. Moreover, the use of complex groups of companies, trusts and banks accounts in Switzerland and Andorra (in their own name, relatives' names and for the various different companies) were also discovered.

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