

Bribery Crimes in the Private Sector in Bahrain

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As a result, national penal code articles outlawing corruption, bribery, and embezzlement were of narrow scope and offered only partial protection against similar offences committed in the private sector. Incitements or gifts of any kind that were exchanged between private sector entities were not criminalised under the law. This oversight caused an imbalance in business conditions and impacted the ability of private-sector participants to compete on equal terms. Moreover, it had the potential to foster an environment where canvassing and covert solicitation was a common part of business culture.

In order to rectify this situation, Bahrain has taken significant steps to modernise its anti-corruption controls and create a just and propitious business environment. On 5 October 2010, Bahrain ratified the United Nations Convention Against Corruption (UNCAC) which obliges signatory states to bring their domestic legislation in line with international best practices that promote anti-corruption measures. It became a signatory to the International Anti-Corruption Academy (IACA) in October 2016 and ratified the Arab Anti-Corruption Convention on 13 February 2017. Bahrain's accession to these agreements surpasses purely symbolic statements over its resolve to fight corruption, and constitutes tangible and measurable progress towards superior legislative control.

Article 12(1) of the UNCAC stipulates that 'Each State Party shall take measures...to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures'. In order to comply with the convention, Bahrain issued Law No. 1 of 2013, which introduced a range of amendments to its Penal Code (Law No. 15 of 1976) including an additional chapter dedicated to tackling crimes of bribery and corruption in the private sector. In so doing, Bahrain significantly extended the protection against corruption provided by its legislative framework and joined a number of other GCC states in meeting the international standards of anti-corruption control.

In this article, we examine the provisions of Bahrain's amended Penal Code that criminalise bribery and embezzlement in the private sector, highlighting some of the most notable articles and demonstrating how they have been applied with reference to past cases.

Defining Private Sector Participants

Article 417 of the Penal Code indicates which private sector participants may be considered criminally liable for any acts of bribery. The list includes board directors and trustees of any private entity, specifically encompassing 'the chairman, the vice-chairman, and the board members regardless of the board's name or form'. More generally, the Article also covers all private entities and employees. A 'private entity' is defined as 'any group of persons or properties that are recognised as juristic persons by virtue of law', whilst the latter includes 'any natural person working in return of a salary for and under the management and supervision of an employer'. In order to maximise the applicability of the law's provisions, it is further extended to apply to self-employed individuals, or 'any person performing a job or a service in any capacity without being under the management and supervision of an employer'.

Crimes of Bribery in the Private Sector

Article 418 of the Penal Code provides the basis for tackling the root form of bribery crimes in the private sector, criminalising conduct that involves 'any solicitation of a bribe by a board director or employee within a private entity'. The bribe must have been solicited in order to commit or omit an act in violation of the offender's duties, harming the interests of the employer or private entity. For instance, an offender might request a bribe in exchange for awarding a certain contract to a private entity, or promising not to terminate a contract already held by that entity. There is no mental requirement under Article 418, meaning that a person is liable under the Article regardless of whether the offender intended to commit or omit the promised act, and sets a punishment of imprisonment for a period of up to ten years.

The Court of Cassation has taken a 'zero tolerance' approach to this issue. For example, in one instance an employee of a company filed a labour case against his employer following summary dismissal. In its defence, the company stated that the employee requested a luxury pen from one of the company's clients, thus providing grounds for the company to dismiss him. The employee did not deny this fact, but claimed that he paid the pen's price to the donor and said that if it were a serious offence, the company should have reported this incident to the authorities. Nevertheless, the Court of Cassation upheld the company's decision despite its failure to report the incident on the basis of breach of trust. The Court upheld the decision to dismiss the employee as a consequence of his alleged receipt of a bribe.

Article 419 creates an alternative type of bribery offence whereby an employee or a director can be subject to imprisonment for a period of up to ten years 'if a bribe is solicited or received after the commission or omission of the act' for which the benefit is demanded or paid. The difference between the offences criminalised by Articles 418 and 419 is the timing of the bribe. One criminalises seeking a bribe before the act or omission, and the other after the incident.

A different form of bribery takes place if a director or employee solicits or receives a bribe in order to commit or omit an act which is not part of that person's work functions or remit, but one that the offender alleges he is able to perform. An offence is committed whether or not the offender wrongfully believes he is capable of conducting the promised act; his actual authority has no bearing on establishing the crime. Article 420 of the Penal Code stipulates a punishment of imprisonment for up to ten years for such an act.

Whereas the previously mentioned articles deal with a director or employee taking or asking for a bribe, Article 421 criminalises acts of bribery on the part of person giving or offering the bribe. Any person offering a bribe to a board director or employee, in order to incentivise the same to commit or omit an act in violation of their duties or position or harming the employer, is liable for a sentence of imprisonment of up to three years.

Are Gifts Considered Bribes?

Bahrain's anti-bribery provisions give due consideration to the accused's intent. Consequently, a gift may only be considered a bribe if it is intended as such and there is direct or indirect evidence of such criminal intent. A number of factors are relevant when assessing whether the necessary evidence is present, including but not limited to: the value of the gift or hospitality, the timing of a gift (its proximity to a decision that is being made by the recipient or which the recipient has the ability to influence), and the ability of the recipient to affect the giver's position vis-à-vis winning or retaining business.

Additional Penalties

According to Article 423 of the Penal Code, in addition to the applicable penalties as described above, the court shall also confiscate the bribe from the receiver. The court, at its discretion, may impose a fine of not less than BHD 500 and not exceeding BHD 10,000 in addition to the applicable criminal penalties.

Leeway to Offenders

The applicable penalties can be mitigated or reduced if an offender reports the crime to the judicial or the administrative authorities prior to detection. Article 426 provides that such offender can be given a reduced punishment and the court, at its discretion, may entirely relieve an offender from the penalty.

Conclusion

The amended measures of the Penal Code are emblematic of Bahrain's resolve to eradicate corruption from its private sector. This marks a distinguished improvement from previous practices of confining bribery offences to conduct involving public officials, and further signifies Bahrain's commitment to implementing international best practices since ratifying a number of international anti-corruption agreements.

Al Tamimi & Company's Financial Crime team regularly advises on anti-bribery measures and corruption in the region. For further information please contact Khalid Al Hamrani (K.Hamrani@tamimi.com), Ibtissem Lassoued (I.Lassoued@tamimi.com) or Saad Al Doseri (S.Aldoseri@tamimi.com).