

Nigeria

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1 International anti-corruption conventions

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

Nigeria is a signatory to the United Nations Convention against Corruption (UNCAC) and the African Union Anti-Corruption Convention. Nigeria signed the UNCAC on 9 December 2003 and the African Union Anti-Corruption Convention on 12 December 2003. It ratified the UNCAC on 14 December 2004, and the African Union Anti-Corruption Convention on 26 September 2006.

2 Foreign and domestic bribery laws

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

Nigerian law has no specific legislation prohibiting the bribery of foreign public officials. Given that Nigeria has been and principally remains a nation seeking foreign investment and assistance, the bribing of foreign public officials has not been considered an important issue.

Nigeria has, however, legislated against the bribing of domestic public officials and the provisions can be found in the criminal codes of the various states of the federation, in the Federal Criminal Code and in specific legislation that created the anti-corruption agency, the Independent Corrupt Practices Commission (ICPC). The legislation is uniform in prohibiting the corrupt giving of any property or benefit to public officers, or to any other person. It is conceivable that this latter provision could also be used to deal with the bribing of foreign public officials. Whether such an attempt would succeed remains to be seen as the courts have yet to consider the matter. Conviction of the offence of bribery carries a sentence of up to seven years' imprisonment. In addition, corruptly promising to give or attempting to give benefits to domestic public officials carries a sentence of up to seven years' imprisonment upon conviction.

Foreign bribery

3 Legal framework

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

Nigerian law does not specifically prohibit bribery of a foreign public official. The prohibition against bribery, to the effect that 'any person who corruptly gives, confers or procures any property or benefit of any kind to, on or for any person is guilty of an offence', also applies to persons other than public officials. Consequently, the giving of material benefit to any person, whether or not that person is a public official, for 'corrupt' purposes is an offence. The legislation further provides that, in specified circumstances, the material benefit is, unless the contrary is proved, 'deemed to have been given corruptly.' Thus, Nigerian laws prohibit all bribery and do not distinguish between domestic and foreign public officials.

4 Definition of a foreign public official

How does your law define a foreign public official?

Nigerian law contains no specific provisions relating to public officials and, consequently, there is no definition of a foreign public official. A public official is described as:

a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by a government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in Magistrate or Customary Courts or Tribunals.

Given the specific references to persons employed in the public service of one of the three tiers of government created under the Constitution, it seems that foreign public officials cannot be included in this description.

5 Travel and entertainment restrictions

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

The anti-bribery laws contain no specific provisions relating to this, and no guidelines are available as to the extent of what is permissible.

6 Facilitating payments

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

There are no specific provisions regarding facilitating or 'grease' payments. Nevertheless, any material benefit given to public officials in Nigeria is prohibited. This prohibition appears not to have been enforced at any time during the past 40 years, however.

7 Payments through intermediaries or third parties

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

Payments to any person for corrupt purposes, whether directly or through third parties, are prohibited under Nigerian law.

8 Individual and corporate liability

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

Individuals and companies can be held liable for bribery.

9 Civil and criminal enforcement

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

To date, the criminal enforcement of bribery laws in Nigeria has been sporadic and largely ineffective.

With regard to civil proceedings, theoretically it would be possible for persons injured as a result of such bribery to institute proceedings against bribe givers and takers, founded in tort, equitable tracing and constructive trusts.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The agency specifically empowered to enforce anti-bribery laws in Nigeria is the ICPC. In addition, the Economic and Financial Crimes Commission

(EFCC) is at the forefront of efforts to stamp out corruption locally. The prosecutions embarked upon by the EFCC have, however, tended to be based on anti-money-laundering and anti-fraud provisions rather than anti-bribery. Additionally, the Nigerian police force is empowered to enforce the laws. It was the ineffectiveness of the police that made it necessary for the other agencies to be established. The perception appears to be that the EFCC is the more vigorous agency. The ICPC, although empowered to investigate and prosecute, has not distinguished itself as a particularly effective agency.

11 Leniency

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

At present, there is no formal mechanism in place in Nigeria for companies to disclose violations in exchange for lesser penalties.

12 Dispute resolution

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

Enforcement matters can be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means. The use of such methods is, however, in its infancy in Nigeria and there is no formal framework regulating these procedures.

13 Patterns in enforcement

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

There are no specific laws prohibiting bribery of foreign officials. The provisions capable of being employed to punish the bribery of foreign officials have very rarely been employed in the fight against the bribery of local officials. Accordingly, the pattern of enforcement is that there is no enforcement to speak of. Developments since the elections of 2007 suggest that the current federal government does not view official corruption in the same manner as that in place between 1999 and 2007.

14 Prosecution of foreign companies

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

If it can be established that a foreign company committed a criminal act within Nigeria (acts done within Nigeria by individuals who can properly be described as the 'operating minds' of the foreign company), then there would be no obstacle, in theory, to the prosecution in Nigeria of that foreign company. Of course, there would be a number of practical problems in pursuing such a prosecution. It would not naturally follow that the action of the Nigerian subsidiary of a foreign company could create criminal liability in Nigeria in the foreign company.

15 Sanctions

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

There are no specific prohibitions against bribing foreign officials. Nevertheless, the provision capable of enabling the prosecution of persons bribing or seeking to bribe foreign officials stipulates a term of imprisonment of up to seven years. This provision enables the court to impose fines in lieu of imprisonment and such a sanction would be imposed upon a company convicted of violating the provision. As the legislation does not make any provision for a maximum fine, it would appear that, in theory, there is no limit on the fine that could be imposed.

16 Recent decisions and investigations

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

In the absence of laws prohibiting the bribery of foreign officials, there are no decisions or investigations upon which to report.

Financial record keeping

17 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The legislation regulating the conduct of joint stock corporations regulates the keeping of corporate books and records. In addition, banks and certain other financial institutions are subject to additional regulation under separate legislation, as are companies listed on, or trading on, the Nigerian Stock Exchange.

18 Disclosure of violations or irregularities

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

There are no provisions that require companies to disclose violations of anti-bribery laws. There are provisions that require banks or their auditors to report violations under the legislation regulating banking in Nigeria.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Financial record keeping laws have not been used to prosecute domestic or foreign bribery.

20 Sanctions for accounting violations

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

There are no accounting laws or regulations specifically associated with the payment of bribes.

21 Tax-deductibility of domestic or foreign bribes

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

Bribery, in any form, is prohibited under Nigerian law. Consequently, bribes are not deductible expenses for tax purposes. Needless to say, if such payments are made they are unlikely to be so described and are usually hidden under other heads of expenditure.

Domestic bribery

22 Legal framework

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

A public official who seeks or receives any material benefit for him or herself or for any other person or who agrees or attempts to receive such material benefit on account of any action taken by him or her that is connected with the discharge of his or her official functions is guilty of corruption. Similarly, any person who gives or offers to give a public official a material benefit on account of any action to be taken by the public official in his or her official capacity is guilty of corruption. In both instances, the material benefit is presumed to have been offered or received corruptly, shifting the burden of proving otherwise onto the accused.

23 Prohibitions

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

As indicated above, the law prohibits both the paying and receiving of a bribe.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

As indicated earlier, a domestic public official is described as 'a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by a government or its agency including the subsidiary of

any such company whether located within or outside Nigeria and includes judicial officers serving in Magistrate or Customary Courts or Tribunals’.

Accordingly, the definition covers employees of state-owned and state-controlled companies.

25 Public official participation in commercial activities

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

Public officials are permitted to hold interests in joint-stock companies and to ‘engage in farming’. Apart from the foregoing, all full-time public officials are prohibited from participating in the ‘management or running of any private business, profession or trade’.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

The anti-bribery laws contain no specific provisions relating to this. However, all material benefits given to public officials are prohibited and, in certain situations, it is presumed that the benefit was given for corrupt purposes, placing the burden of proving otherwise on the recipient or the giver. There has been little or no enforcement of these provisions and no guidelines are available as to the extent of what is permissible.

27 Gifts and gratuities

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

All material benefits received by a public official in Nigeria are presumed to have been corruptly received.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

There are prohibitions in the legislation dealing with official corruption that prohibit the giving of material benefits to ‘any person’. It is possible that such provisions could be employed to prosecute instances of bribery not involving government officials. In addition, there are provisions that make criminal the receipt of secret commissions by agents.

29 Penalties and enforcement

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

Persons convicted of bribery offences are liable to fines and to a term of imprisonment of between five and seven years. The legislation does not stipulate any maximum fine.

30 Facilitating payments

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

Domestic bribery laws have not been enforced with respect to facilitating or ‘grease’ payments.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

In February 2014 the federal government of Nigeria preferred several counts of stealing against the son of a former head of state in connection with the theft of US\$2.6 billion from the Nigerian Treasury between 1995 and 1998. In June 2014, the charges were withdrawn. No reasons were given for the decision to withdraw the charges.

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