

Bribery, Corruption, Economic and Financial Crimes

INTRODUCTION

Corruption is generally described as any dishonest action or inaction, by any person, in any form of authority, to derive any form of illegitimate, illicit, immoral, incompatible or unethical advantage.

As bribery, corruption, economic and financial crimes remain a deterrent to human capital advancement, various global bodies and countries have enacted their anti-corruption, bribery, economic and financial crimes legislations. Some of these legislations will now be reviewed in the paragraphs following underneath.

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

The United Nations Convention Against Corruption is an internationally binding Treaty designed to promote, facilitate and support transnational cooperation, technical assistance and the exchange of information which prevents, detects and deters in a more efficient and effective manner, the international transfer of corrupt and illicitly acquired property.

Signatories to this Treaty are obligated to, subject to their legal systems, develop and implement Anti-corruption Policies which promote the prevention of corruption, money laundering and the proper management of public affairs, public property, integrity, transparency and accountability.

More than 140 member states of the United Nations have signed and ratified this Treaty and domesticated it in their statute books.

AFRICAN CONVENTION ON PREVENTING AND COMBATING CORRUPTION

The African Convention on Preventing and Combating Corruption (the African Convention) describes corruption to include the solicitation or acceptance, directly or indirectly, of anything of value in exchange for any act or omission in the course of, or in performance of any duty.

Illicit enrichment and the diversion of state resources by an individual or group of individuals for purposes that is unrelated to the purpose for which those resources are intended, also amounts to criminal corruption.

OECD CONVENTION ON COMBATING BRIBERY.

The Organisation for Economic Co-operation and Development (OECD) also has a Convention on combating the bribery of foreign public officials in international business transactions. This Convention, like other similar anti-bribery conventions, seeks to enshrine effective measures which promptly deter, prevent, combat and criminalise the bribery of foreign public officials.

Each party to the OECD Convention on Combating Bribery is required to implement measures which make it a criminal offence under its Laws for any person to intentionally offer, promise or give any undue pecuniary or other advantage to a foreign public official for the purpose of such public official acting or refraining from acting, in order for some improper advantage to be obtained.

Each Party to the OECD Convention on combating bribery is also enjoined to ensure by domesticated Legislation, that the bribery of a foreign public official is punishable by effective, proportionate and dissuasive criminal penalties which should include the deprivation of individual liberty and the extradition of suspected offenders to their home countries for prosecution and sentencing.

US FOREIGN CORRUPT PRACTICES ACT

The United States Foreign Corrupt Practices Act (US FCPA) prohibits the giving or offering of anything of value to foreign government officials or their third party proxies for the improper purpose of influencing any decision to the benefit of the giver of the bribe, or to such other parties related to the giver of the bribe.

Examples of 'anything of value' include cash, gifts, travel, entertainment, transportation, free lodging, political or charitable donations, discounts, giving favourable employment or business opportunities, etc.

Under the US FCPA, there is no minimum value as to what constitutes a bribe.

UK BRIBERY ACT

The United Kingdom (?UK?) Bribery Act is broader in scope to the US FCPA, as the UK Bribery Act prohibits the giving of a bribe to any person, whether such a person is a government official or not, for the improper purpose of influencing any benefit to the giver of the bribe.

Under the UK Bribery Act, both the bribe giver and the bribe receiver are subject to strict liability, which includes criminal prosecution and conviction.

Corporations are compulsorily required to adopt and implement an anti-bribery policy. This is as the UK Bribery Act holds corporations subject to UK jurisdiction strictly responsible where the giving and the taking of a bribe is not prevented from occurring by corporations.

NIGERIAN CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT

In Nigeria, the applicable law is the Corrupt Practices and Other Related Offences Act. The Corrupt Practices and Other Related Offences Act describes corruption to include bribery, fraud and other similar dishonest offences.

The Corrupt Practices and Other Related Offences Act established the Anti-Corruption Commission with a charge to investigate any corrupt practice in the public sector of the economy, and recommend appropriate cases for prosecution by the office of the Attorney-General of the Federation.

EXAMPLES OF CORRUPTION AND PUNISHMENTS

Any person, who in the discharge of his or her duties asks for, gives, receives, procures, conspires or facilitates the obtaining of any property or benefit, in return for any favour, thing, omission or commission, commits an offence which on conviction attracts a seven (7) year term of imprisonment.

It is also an offence for a Public Servant to acquire and hold, directly or indirectly, any private

interest in any contract or agreement emanating from a public establishment. The punishment on conviction for this offence is also seven (7) years imprisonment.

It is equally a criminal offence for any person to offer to a public servant any gratification as an inducement or reward for the public servant to perform, expedite, delay, hinder, prevent or abstain from performing any duty. The punishment for this offence is five (5) years imprisonment with hard labour.

Where a public servant uses his or her office or position to confer any corrupt or unfair advantage on himself or on any third party, an offence is committed which on conviction carries a term of imprisonment of five (5) years without the option of a fine.

FORFEITURE OF GRATIFICATION

In addition to the term of imprisonment for bribery offences, the Corrupt Practices and Other Related Offences Act prescribes the forfeiture of the object of the gratification, and the payment of a fine that is not less than five (5) times the sum or the value of the subject matter gratification.

DUTY TO REPORT BRIBERY

Any public officer to whom any gratification is promised, offered or given; and any individual whom any gratification is solicited or obtained from; is statutorily required to report such bribery incident to the nearest office of the Anti-Corruption Commission or to a police officer.

Any person who fails to make such a bribery incident report, without a reasonable excuse, is guilty of an offence, and liable on conviction to a fine not exceeding One Hundred Thousand Naira (N100,000) or to a term of imprisonment not exceeding two (2) years; or to both the fine and the term of imprisonment.

INDEPENDENT COUNSEL

Where an allegation of corruption or bribery is made against the President or the Vice-President, or against any State Governor or Deputy Governor, the Chief Justice of Nigeria is required to, if reasonable cause is provided, appoint an Independent Legal Counsel to investigate the allegation

and report his or her findings to the National Assembly in the case of the President or Vice-President, or to the relevant State House of Assembly in the case of a State Governor or Deputy Governor.

MULTI-JURISDICTIONAL LIABILITY FOR BRIBERY

The provisions of the Corrupt Practices and Other Related Offences Act also apply to persons who though are not Nigerian citizens, enjoy permanent residence status in Nigeria, for corrupt and bribery offences committed inside and outside Nigeria.

CORRUPTION AS AN ECONOMIC CRIME

The Economic and Financial Crimes Commission (Establishment, etc.) Act, 2004 describes an economic and financial crime to be the non-violent, criminal and illicit activity committed with the objective of gaining wealth illegally.

Examples of economic and financial crimes include any form of bribery, corrupt practices, advance fee fraud, narcotics, drug trafficking, money laundering, embezzlement, illegal charge transfers, contract scams, credit card fraud, human trafficking, child labour, tax evasion, foreign exchange malpractices, theft of intellectual property, piracy, etc.

The Economic and Financial Crimes Commission (?EFCC?) is charged with the investigation of all economic and financial crimes in Nigeria. As part of its investigative responsibility, EFCC is enjoined to identify, trace, freeze, confiscate or seize proceeds derived from economic, financial and terrorist criminal activities.

SPECIAL POWERS OF EFCC

In addition to the statutory authority to investigate economic and financial crimes, the Economic and Financial Crimes Commission (?EFCC?) is also empowered to conduct investigations into the assets of any individual where there is a mismatch between such an individual?s lifestyle and his or her sources of income.

It is also the statutory responsibility of EFCC to co-ordinate the enforcement of all economic and

financial crimes legislations among which are the Money Laundering Act, the Advance Fee Fraud and other Related Offences Act, the Failed Banks Act, the Banks and other Financial Institutions Act, etc.

PUNISHMENT FOR ECONOMIC AND FINANCIAL CRIMES

Other financial and economic crimes for which various punishments are prescribed under the law include financial malpractices, aiding and abetting acts of terrorism, giving false information, possessing, retaining, using, concealing and converting the proceeds of a financial or economic crime, etc.

And some of the punishments for the above paragraph financial and economic crimes include terms of imprisonment, fines equivalent to one hundred per cent (100%) of the value of the proceeds of the financial or economic crime; or to both the term of imprisonment and the punitive fine.

All the assets and properties derived or acquired from any economic or financial crime, including the international passports of the offenders, are liable to forfeiture or confiscation. Where such derived or acquired asset or property is in a foreign country, the asset or property shall be subject to any treaty or arrangement that Nigeria has with such a foreign country for the repatriation of the proceeds of any financial or economic crime.

CONCLUSION.

In practice, the Bribery, Corruption, Economic and Financial Crimes Laws are held more in disdain than in compliance. This is as a result of many reasons ranging from a continuing, overbearing, endemic bribery and corruption culture; an ill-equipped enforcement and judicial system; etc.

The harmonisation of the various legislations and enforcement agencies ? like EFCC, the Anti-Corruption Commission, the Police, etc. ? will remove the current duplication of investigative powers and streamline enforcement resources.

Following from the above comment is the observation that while the robustness or otherwise of

bribery and corruption laws may not be comparable to those in the United Kingdom, or in the other OECD countries and in the United States, improvements in the enforcement of the current legislations with their harmonisation by parliament should improve enforcement.

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