



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Angola: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption law in Angola.

It will cover the definition of bribery, regulation, compliance, liability and enforcement as well as insight and opinion and any upcoming legal changes planned for their respective country.

This Q&A is part of the global guide. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-corruption/>



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1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

The applicable Angolan legal framework is the following:

- Penal Code (Código Penal), approved by Decree of September 16th 1886;
- Law of the Crimes Committed by People who hold Positions of Responsibility (Lei dos crimes cometidos por titulares de cargos de responsabilidade) approved by Law no. 21/90, December 22nd 1990;
- Law that creates the High Authority against Corruption (Lei da Alta Autoridade contra a Corrupção), approved by Law no. 3/96, April 5th 1996;

- Law of Public Integrity (Lei da Probidade Pública), approved by Law no. 3/10, March 29th 2010;
- Order that regulates the terms for the execution of the obligations provided in the Fight Against Money-Laundering and Financing of Terrorism Law (Aviso que regulamenta as condições de exercício das obrigações previstas na Lei do Combate ao Branqueamento de Capitais e do Financiamento do Terrorismo), approved by Order no. 22/12, August 14th 2012);
- Law on the Fight Against Money-Laundering and Financing of Terrorism (Lei de Combate ao Branqueamento de Capitais e do Financiamento do Terrorismo), approved by Law no. 34/11, December 12th 2011, as amended by Law no. 3/14, February 10th 2014 and partially revoked by Law no. 19/17, August 25th 2017;
- The Law on the Criminalization of the Money Laundering Underlying Offences (Lei sobre a Criminalização de Infracções Subjacentes ao Branqueamento de Capitais) approved by Law no. 3/14, February 10th 2014;
- Regulation on the Duties of Preventive and Repressive Measures in the Fight Against Money-Laundering, Advantages of Illegal Origin, and the Financing of Terrorism in the Real Estate Sector (Regulamento dos Deveres de Medidas Preventivas e Repressivas de Combate ao Branqueamento de Capitais, Vantagens de Proveniência Ilícita e ao Financiamento do Terrorismo no sector do Imobiliário), approved by Order no. 713/14, March 27th 2014;
- General Tax Code (Código Geral Tributário), approved by Law no. 21/14, October 22nd 2014, as amended by Law no. 18/17, August 17th 2017;
- Code of Conduct for the Officials and Administrative Agents of the Ministry of Justice and Human Rights (Código de Conduta dos Funcionários e Agentes Administrativos do Ministério da Justiça e dos Direitos Humanos), approved by Executive Decree no. 258/15, May 13th 2015;
- Regulation for the compliance of the Law on the Fight Against Money-Laundering and Financing of Terrorism (Regulamento para o cumprimento da Lei do Combate ao Branqueamento de Capitais e do Financiamento do Terrorismo), approved by Regulation no. 4/16, June 2nd 2016;
- Law of Public Procurement (Lei dos Contratos Públicos), approved by Law no. 9/2016, June 16th 2016;
- Law on the Prevention and Fight against Terrorism (Lei sobre a Prevenção e o Combate ao Terrorismo), approved by Law no. 19/17, August 25th 2017;

Criminal Procedural laws applicable to the fight against corruption:

- Criminal Procedure Code (Código de Processo Penal), approved by Decree no. 16489, March 19th 1931;
- Law of Searches, Searches of Premises and Seizures (Lei Reguladora das Revistas, Buscas e Apreensões), approved by Law no. 2/14, February 10th 2014;
- Law of Precautionary Measures under Criminal Procedure, (Lei das Medidas Cautelares em Processo Penal), approved by Law no. 25/15, September 18th 2015.

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

Law no. 3/96, April 5th 1996, created the High Authority against Corruption, an independent entity, that was meant to act alongside the National Parliament, with the purpose of developing actions of prevention, enquiry and reporting of acts of corruption and fraud committed in the exercise of administrative powers to the competent authority for penal or disciplinary action. The competences of the High Authority include, as provided in this statute, (i) undertaking enquiries and other investigation efforts to assess the legality of certain actions or administrative procedures, within the relations between the Public Administration and private entities and (ii) monitoring processes along with the competent entities for the penal or disciplinary procedures. Despite being provided for in the Angolan Law since 1996, the High Authority against Corruption has never been effectively created, and it is not, at present, operating. However, on May 1st 2016, the biggest Angolan opposition party (UNITA) disclosed its intention to move forward with the effective creation of the High Authority against Corruption.

Under Article 60.2 of the Law on the Criminalization of Money Laundering Underlying Offences (“LCMLUO”), the fight against the crimes of corruption is a competence of the Public Prosecution Office, aided by the national police.

3. How is bribery defined?

Passive corruption crime

The conduct of a civil servant who, by himself or through a third party designated for such purpose and with his consent or ratification, requests or accepts receiving a pecuniary or non-pecuniary advantage as compensation for the commission of a certain act or omission is punishable pursuant to Article 37 (1) and (2) LCMLO, which define the crime of passive

corruption for an unlawful act and the crime of passive corruption for a lawful act, respectively.

Thus, the elements of a passive corruption crime are the following:

1. the request or acceptance by a civil servant of a pecuniary or non-pecuniary advantage or the promise of such advantage, either directly or through a third party, for himself or for a third party; and
2. the act or omission by a civil servant (precedent passive corruption) or the act or omission of an act already carried out by a civil servant (subsequent passive corruption). The act or omission may be contrary to the civil servant's duties, thus leading to the commission of an unlawful act, or it may correspond to a lawful act where there is no breach of the civil servant's duties. In any case, the act or the omission must represent consideration for the advantage mentioned in (i).

Only wilful misconduct is punishable.

Active corruption crime

Under the Angolan legal system, active corruption crime is set forth and punishable pursuant to Article 38 LCMLO.

On the one hand, Article 38 (1) LCMLO criminalizes the conduct of each and every person who, by themselves or through an intermediary with the former's consent or ratification, offer or promise to offer a pecuniary or non-pecuniary advantage to a civil servant or to a third party designated for such purpose, as consideration for the commission of an act or omission contrary to his official duties.

On the other hand, Article 38 (2) LCMLO criminalizes the conduct of each and every person who, by themselves or through an intermediary with the former's consent or ratification, offer or promise to offer a pecuniary or non-pecuniary advantage to a civil servant or to a third party designated for such purpose, as consideration for the commission of an act or an omission that does not represent a breach of his official duties.

4. **Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined?**

Are there different definitions for bribery of a public official and bribery of a private person?

Under the Angolan jurisdiction, only bribery of public officials is punishable, under Articles 37 and 38 of the LCMLO. Bribery in the private sector is not criminalized.

However, the agents of the crime of active corruption may, naturally, be entities of the private sector.

The law defines 'public official' as:

- a) Civil servant;
- b) Administrative agent;
- c) Arbitrators, jury members and experts;
- d) Holders of political office, elected or nominated; and
- e) Whoever, even if provisionally or temporarily, against payment or for free, voluntarily or mandatorily, has been called upon to perform or to participate in the performance of an activity within civil, administrative or jurisdictional service or, under the same circumstances, undertakes a position or participates in public-benefit organisations.

Paragraph 2 compares the concept of civil servants to managers, officers of supervisory bodies and workers of public companies, nationalised public companies, publicly held companies or companies with the majority of capital publicly held, and also companies that are concessionaires of public services.

Article 59 (3) further extends the treatment as civil servants to the following offices:

- a) Anyone who performs identical functions to those described in paragraph 1 within the scope of any public international law organization of which Angola is a member of, whenever the infringement has been fully or partially committed on Angolan territory; and
- b) Anyone who performs functions within the scope of out-of-court dispute settlement

procedures.

5. **What are the civil consequences of bribery in your jurisdiction?**

The Angolan legal system, having a civil law structure, does not include the concept of collateral civil consequences of criminal conviction as it is understood in common law systems.

The Angolan Penal Code provides for certain civil consequences for crimes, including, but not limited to, suspension of political rights, dismissal from public positions, being ineligible to public positions, being no longer legal guardian, etc. (art. 76).

Until 2014 bribery acts were sanctioned under the terms of the Angolan Penal Code but these provisions have been tacitly revoked by the entering into force of the LCMLO which establishes a new legal framework for the crime of corruption. We say tacitly because the new legislation does not include an express repealing norm. However, considering the overlapping scope of both norms, it seems that, from February 10th 2014 onwards — date of the entering into force of the LCMLO — the applicable legal instrument establishing and punishing corruption crimes will indeed be the LCMLO. Under the terms of the Angolan Penal Code, a public official could be, under certain circumstances, condemned to dismissal from the public office but this consequence does no longer arise from LCMLO.

6. **What are the criminal consequences of bribery in your jurisdiction?**

Crimes of corruption in the public sector

The sentences and penalties set out in the LCMLO for corruption crimes are fines and imprisonment. The LCMLO sets out cases for aggravation and special mitigation or discharge of sentences. The following table shows in detail the sentences applicable to each specific crime.

Regarding natural persons, each day of fine corresponds to an amount between AOA 1,000 and AOA 50,000, which is set by the court taking into account the economic and financial situation of the parties sentenced and their personal economic burden (Article 58 (2) LCMLO), whereas regarding legal persons, each day of a fine corresponds to an amount of AOA 10,000 and AOA 1,000,000, which is set by the court taking into account the economic and financial situation of

the legal persons and their economic burden with workers (Article 45 (5) LCMLO).

Crime	Sentence	Rule
Crime of undue receipt of advantage	<ul style="list-style-type: none"> ◦ A <i>civil servant</i> who is on the <i>passive</i> side of a crime of undue receipt of advantage is punished with a prison sentence of 6 months to 3 years, or with a fine of up to 600 days. ◦ A <i>natural person</i> who is on the <i>active</i> side of a crime of undue receipt of advantage is punished with a prison sentence of 6 months to 2 years, or with a fine of up to 360 days. ◦ A <i>legal person</i> who is on the <i>active</i> side of a crime of undue receipt of advantage is punished with a fine of up to 360 days. 	Articles 36(1) and (2), and 45(3) LCMLO
Passive corruption crime for unlawful act	A civil servant who is the perpetrator of a passive corruption crime for unlawful act is punished with a prison sentence of 1 to 5 years.	Article 37(1) LCMLO
Passive corruption crime for lawful act	<p>If the act or the omission carried out by the civil servant is not contrary to his official duties and the advantage is not due to him, the civil servant is punished with a prison sentence of 6 months to 3 years.</p> <ul style="list-style-type: none"> ◦ <i>Natural person</i>: prison sentence of 1 to 5 years. ◦ <i>Legal person</i>: fine of 120 to 600 days. 	Article 37(2) LCMLO
Active corruption crime	If the act or the omission are not contrary to the official duties and the advantage is not due, the <i>natural person</i> is punished with a prison sentence of 6 months to 3 years. In case of <i>legal persons</i> , the fine may be between 60 and 360 days.	Articles 38(1) and (2), and 45(2) LCMLO

Corruption crimes in international trade

Crime	Sentence	Rule
Corruption crime in international trade	<ul style="list-style-type: none">◦ <i>Natural person</i>: prison sentence of 1 to 5 years.◦ <i>Legal person</i>: fine of 120 to 600 days.	Article 38(1), 42(1), and 45(2) LCMLO

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

According to the LCMLO, gifts and hospitality may amount to an undue advantage (“vantagem indevida”). Any public official who, in the exercise of his public office functions or because of them, personally or through a third party, with their consent or ratification, requests or accepts, for himself or for a third party, an advantage (for value / in kind or not) which is not due (and this includes hospitality, travel and entertainment expenses) will be committing the crime of receiving an undue advantage .

The law excludes from the scope of this crime any socially adequate conduct consistent with habits and customs.

8. Are political contributions regulated?

Law no. 13/12, May 2nd 2012, which approved the internal regulation for the National Parliament (Assembleia Nacional) provides in its Article 71.1, f) that the specialized working commissions (Comissões de Trabalho Especializadas) – entities within the Parliament – shall mention, in their reports and opinions, the contributions received by entities with relevant interests in the matters under discussion.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

Facilitation payments are included in the concept of attribution of undue advantages and are,

therefore, considered a crime under Angolan legal framework.

See our answer 7.

10. **Are there any defences available?**

Article 43 of LCMLO provides certain defenses in the form of cases of dismissal or reduction of the sentence.

The sentence is dismissed when:

- a) The agent has reported the crime within 90 days following the act and always before the opening of the correspondent legal procedure;
- b) Before the act is committed, the agent voluntarily refuses the offer or promise that he / she had previously accepted, or restore the undue advantage received or, in case the thing is fungible, its value; or
- c) Before the act is committed, withdraw the promise or refuse the offering of an advantage or request its restitution.

The sentence is especially reduced when the agent:

- a) Until the closing of the trial hearing in the first instance, concretely aids in obtaining or producing decisive proofs for the identification or the capture of other responsible parties; or
- b) Has committed the act at the request of the civil servant, directly or through a third person.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?**

There is no specific rule set out in the Angolan legal system that excludes the liability of legal

persons for corruption crimes if they decide to adopt and implement compliance programs aimed at preventing acts of corruption from being carried out.

Article 5(6) LCMLO sets out that “[the] liability of legal persons and entities treated as such shall be excluded when the perpetrator has acted against express orders or instructions of whoever is entitled to do so”. The content of the rule may be construed in the sense of excluding the liability of legal persons for acts of corruption carried out by their workers, employees or any other person who has acted in the name and/or in representation of a corporate body when compliance programs meant to prevent acts of corruption are in force. However, there is no case law or doctrine trend to confirm this interpretation.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

Criminal liability of corporate entities has only been foreseen in the Angolan jurisdiction since 2011 (in 2011 for money laundering, terrorism financing, etc., and in 2014 for other economic crimes mentioned in the LCMLO, including the crime of corruption). The Angolan Penal Code, originally passed in 1886, does not provide for the liability of corporate entities and, therefore, legal persons cannot be held accountable for any facts (towards the crime of corruption) performed before the entering into force of the LCMLO. The wording of the law is not, however, very clear in terms of how the liability of corporate entities is established or which crimes it encompasses. It does seem that this law generally allows for this type of liability for all crimes it provides for, including for the crime of corruption. For the purposes of the present questionnaire and out of caution we shall assume this to be the correct interpretation of the law.

The consequences vary according to the person liable. In the case of natural persons, the consequences may be either a fine or imprisonment. As for legal persons, the consequences may only be fines and winding up.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective

corporate compliance program?

To the best of our knowledge, the government has not published any specific documents advising how to comply with anti-corruption and bribery laws. However, there are certain legal instruments that include provisions related to anti-corruption matters. For a reference to such laws, please see our answer 1.

14. Does the law provide protection to whistle-blowers?

There is no special regime providing protection to whistle-blowers.

However, as explained in answer 10, the sentence can be especially reduced when the agent concretely aids in obtaining or producing decisive proofs for the identification or the capture of other responsible parties, up until the closing of the trial hearing in the first instance.

15. How common are government authority investigations into allegations of bribery?

In Angola, judicial decisions are not available to the public on a centralised database, except for Constitutional Court's decisions. Therefore, the frequency of investigations of alleged bribery is virtually impossible to tell.

16. What are the recent trends in investigations and enforcement in your jurisdiction?

In the past recent years the enforcement of the legal framework relating to the fight against corruption has been increasing.

A more thorough approach from the government and a greater effort to comply from the organisations has led to an improvement of the paradigm.

17. Is there a process of judicial review for challenging government authority action and decisions?

The Angolan Constitution provides for the principle of division of powers and check and balances, meaning that, indeed, Angolan courts may, within certain circumstances, review government authority action and decisions. In particular, in case Government approves a legal act which does not comply with constitutional principles this act may be reviewed by the Angolan Constitutional Court - this is the court with powers to review and, if that is the case, revoke legal acts which are not in accordance with the Angolan Constitution (similar to the Supreme Court in the USA). 1/10 of the members of the Parliament, the State General Attorney, the President and the Angolan Bar Association may file a claim for these purposes (art. 230 of the Angolan Constitution).

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

See answer 2.

19. To which international anti-corruption conventions is your country party?

Angola is a party to the Protocol against Corruption of the Community for Development of Southern Africa, of 2001; and to the United Nations Convention against Corruption, of 2003. Through Resolution no. 38/10, 17 December 2010, Angola adhered to the International Convention for the Suppression of the Financing of Terrorism.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

In Angola there are no statutory instruments governing lawyer-led investigations but under Article 65.1 of the Statutes of the Angolan Bar Association, lawyers are obliged not to disclose

any information regarding facts related to professional matters which have come to their knowledge through the exercise of their profession that have been revealed by their clients or ordered by these.

As for the criminal procedural framework, lawyers are not obliged either to make statements or to testify, under Article 217.1 of the Angolan Criminal Procedure Code, in relation to the same facts as the ones mentioned above.

The same goes for civil procedural laws, under Articles 616 and 618.1, e) of the Angolan Civil Procedure Law, approved by Decree-Law no. 44129, 1 January 1963, as amended by Law no. 26/15, 23 October 2015.

The legal privilege includes documents or other things related directly or indirectly with the facts subject to privilege.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

It has been one of the most prolific fields in Angolan legislation. Given the fact that it is a very current issue and that it constitutes a structural obstacle to the development of Angola, the Government has been, in the past recent years, deeply engaged in this fight.

It is only logical that the greater the need for these policies, the harder it is to implement them. However, Angola has taken big steps recently in the fight against corruption, having complied with the rules set by FATF (Financial Action Task Force).

The recently elected President has taken a strong public stance against corruption.

22. Generally how serious are organisations in your country about

preventing bribery and corruption?

The interest has been increasing, within Angolan organisations, in obtaining foreign investment. Therefore, and given the global displays of concern related to these matters, Angolan organisations are increasingly aware of such problems and consequently more engaged in fighting them.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

The hardships related to the access to the relevant information; and the problems in obtaining prompt judicial decisions.

24. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

The most significant challenge will probably be changing the status quo. For a long time the organisations have operated in a certain fashion. Although not all required changes are equally important, the need for change is still significant.

25. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

We believe the legal framework is (at least for the time being) adequate to the Angolan circumstances and to the country's specific feature. We believe the next steps will be of adaptation to the current legal framework and to the new paradigm. Once these first steps are taken, then the time will come for Angola to start thinking on the following ones.