

## MEASURES AGAINST CORRUPTIBILITY, GIFTS AND GRATIFICATION – “BRIBERY” IN THE MIDDLE EAST\*

### I. THE UNITED ARAB EMIRATES

“Bribery” is punishable in the United Arab Emirates (UAE) according to Articles 234 to 239 of the Federal Penal Code<sup>1</sup> and also according to penal codes of individual Emirates, if any, and the Federal Armed Forces Law. Notwithstanding that, there is no unified definition for measures against “bribery”.

The Federal Penal Code repealed only those provisions within the penal codes of individual Emirates which are contradictory to the Federal Penal Code.<sup>2</sup> Hence, both are enforceable simultaneously. The Federal Penal Code and the Dubai Penal Code make it illegal to offer, to give, or to agree to give, any gratification to any person who is, or, as far as Dubai is concerned, who is expected to be a public servant, as an inducement or reward for performing or refraining from performing any official act.

On the other hand, it is forbidden for public servants to attempt, to obtain, to accept, or to agree to accept, any such gratification, and it is illegal to use a third person as a conduit or intermediate, or to act in that capacity for payment of such gratification.

According to the Federal Penal Code it is not necessary that such a criminal gratification is related to an act concerning the specific duties of the public servant. Different to the other codes, the Dubai Penal Code also punishes an action to offer, to give, or to agree to give, to a public servant anything of value without consideration, and makes it illegal to attempt, to obtain, or to accept, such thing of value without regard to whether it is in connection with an official act or otherwise.<sup>3</sup> Thus, in Dubai even payments which do not have the purpose of influencing any official act are prohibited.

Finally, a payment not made “corruptly” may not be illegal under most of the UAE antibribery legislation, but again it would be criminal under the Dubai Penal

\* This note has been provided by Meyer-Reumann Legal Consultancy, PO Box 9353, Dubai, UAE ([www.meyer-reumann.pair.com](http://www.meyer-reumann.pair.com)). Meyer-Reumann has associated offices in Jeddah and Riyadh, KSA.

<sup>1</sup> UAE Penal Code, Federal Law No. 3/1987, issued on 17.4.1408(H) corresponding to 08.12.1987(G); the English text is based on “Development in the Gulf”, Abu Dhabi.

<sup>2</sup> Laubach, Charles S., “Legal Developments – Penal Codes”, MEER, November 1991, p. 20.

<sup>3</sup> Laubach, Charles S., “Anticorruption Laws in the Emirates”, MEER, April 1988, p. 18.

Code provisions prohibiting payment of anything of value without consideration to a public servant.

## II. KUWAIT

### **The Kuwaiti Penal Codes relating to bribery**

Bribery is punishable in Kuwait according to Articles 35 to 43 of the KWT Penal Code of 1970<sup>4</sup> and Articles 114 to 119 of the KWT Penal Code of 1960.<sup>5</sup> The Law of 1970 of course supersedes the Law of 1960, which, however, was not repealed and remains in force as far as it was not superseded. Furthermore, “corruptibility” is punishable in Kuwait according to Articles 11 and 12 of the Protection of Public Property Law.<sup>6</sup>

### **The Kuwaiti Penal Code of 1970**

Offering gifts to “public officers” – a term that has to be interpreted very broadly (Article 43) – with the intention to have a duty performed, is punishable according to Article 41 of the Penal Code of 1970, no matter whether the officer’s action is in line with his duties or not. A gift is defined in Article 38 as every interest no matter if it is material or immaterial.

The sentence is imprisonment not exceeding five years, or a fine of a maximum of 1,000 Dinar, which can be aggravated, if the object of bribery is a crime sentenced with a longer imprisonment. Moreover, everything that the briber has offered as bribery will be confiscated.

Nevertheless, the briber has the opportunity to be exempted from this sentence if he notifies the public authorities of the crime, even after it has been committed.

On the other hand, the public officer is not allowed to accept a promise or a gift for himself or a third party in return for performing a duty, even if he intends not to perform the duty, or the duty does not belong to his duties, although he claims that it does.

The public officer will also be punished if he accepts a gift after having performed his duty without previous agreement.

Finally, accepting a gift whilst claiming that you act as a mediator between the briber and the bribee while you actually intend to keep the bribery for yourself is punishable.

<sup>4</sup> KWT Penal Code, Law 31 of 1970, promulgated on 18.05.1390(H), 21.07.1970(G), translated by Meyer Reumann Legal Consultancy from the publication of the “Kuwaiti Legislation”, issued by *The Kuwaiti Lawyers Journal*, Vol. 9, First Part.

<sup>5</sup> Kuwaiti Penal Code, Law 16 of 1960, promulgated on 3.12.1379(H), 2.6.1960(G), in “Kuwaiti Legislation”, *The Kuwaiti Lawyers Journal*, Vol. 9, First Part.

<sup>6</sup> KWT Protection of Public Property Law, Law No. 1 of 1993, promulgated in *Kuwaiti Official Gazette*, issue No. 90, dated 14 February 1993.

### **The Kuwaiti Penal Code of 1960**

Additionally, the Penal Code of 1960 extends the means of bribery from promises and gifts to “interests”, defined as what the employee receives from selling properties at a higher price or purchasing them for a lower price than their value.

Moreover, according to Article 116 of the Penal Code of 1960 the sentence for bribery shall also apply to cases of coercion on a public officer whenever the agitator thereby receives what he is not entitled to get.

### **The Kuwaiti Protection of Public Property Law**

Articles 11 and 12 of the Protection of Public Property Law refer to any public official acting for the state, public bodies, and institutions, or companies and firms in which the former have participation of at least 25 per cent. According to Article 11 it is forbidden to obtain any benefit in any transaction resulting in rights or obligations to one of the aforementioned institutions, if this causes harm to the interests of these authorities. Article 12 deals with the same acts regarding the management of contracts. The attempt is also punishable and it is not decisive, whether the official receives the benefit for himself, or through, or for, a third party. The penalty is imprisonment for a period of at least seven years, and additionally according to Article 16 the dismissal of the official and payment of double the value of any benefit acquired.

### **Obtaining profits and benefits as “corruptibility” in the law of Kuwait**

“Corruptibility” is punishable in Kuwait according to Articles 11 and 12 of the Protection of Public Property Law.<sup>7</sup>

These articles refer to any public official acting for the state, public bodies and institutions, or companies and firms in which the former have a participation of at least 25 per cent.

According to Article 11 it is forbidden to obtain any benefit in any transaction resulting in rights or obligations to one of the aforementioned institutions, if this causes harm to the interests of these authorities.

Article 12 deals with the same acts regarding the management of contracts. The attempt is also punishable and it is not decisive, whether the official receives the benefit for himself, or through, or for, a third party.

The penalty is imprisonment for a period of at least seven years, and additionally, according to Article 16 the dismissal of the official and payment of double the value of any benefit acquired.

### *Conclusions*

Bribery in Kuwait is punishable for anyone who takes or makes an offer for money,

<sup>7</sup> *Ibid.*

or interest, or a promise as, or to, a government employee. It is also illegal to serve as a mediator between the briber and the bribee.

The law constantly sets the criminal gift or gratification in context to a deed requested or offered or mediated. Consequently, gifts or gratifications, which have been given without consideration in line with common practise, may not be considered as bribery under Kuwaiti legislation.

### III. QATAR

Bribery is punishable pursuant to Articles 109 to 111 of the Qatar Criminal Law.

According to the Qatar Criminal Law, bribery is constituted if a government employee requests or obtains something in consideration of the fulfilment of his duty notwithstanding whether his doing so is legal or not without such bribery.

It is forbidden to accept or request anything whether in money or in kind by a government employee. It makes no difference if the request forms part of his duties or not.

Bribery is also punishable for anyone who offers money, interest, or makes a promise, to a government employee who accepts the offer. It is also illegal to serve as a mediator between the briber and the bribee. An attempt of bribery, i.e. where the offered bribery was not accepted, is a punishable offence.

The Law sets the criminal gratification in context to a deed requested or offered. Consequently, gifts or gratifications, which have been given without consideration in line with common practise, may not be considered as bribery under Qatari legislation.

### IV. OMAN

“Bribery” is punishable in the Oman according to Articles 155 to 158 of the Omani Penal Code.<sup>8</sup>

The Omani Penal Code makes it illegal to receive, to accept, or to demand any money, gift, promise, or other benefit, with respect to actions either in compliance or non-compliance with any duties such as performing, stopping, or delaying, a task being in the employee’s job responsibility. It makes no difference whether bribery is accepted before or after performing the duty.

On the other hand, the briber will also be subject to a penalty, if he or she commits or tries to commit bribery. It is also illegal to serve as a mediator between the briber and the bribee.

The punishment depends on whether the bribery was for actions in compliance or non-compliance with a duty. The first will subject the bribee to imprisonment for three months to three years, the latter up to ten years; which also applies to the

<sup>8</sup> The Omani Penal Code was promulgated by Royal Decree No. 7/74.

briber. Additionally, a fine of at least equal to the amount that has been offered or accepted has to be paid.

## V. LEBANON

### **The Lebanese Penal Code**

Bribery is punishable in Lebanon according to Articles 350 to 356 of the Lebanese Penal Code.<sup>9</sup>

Offering gifts or promises to “civil servants” – a term that has to be interpreted very broadly (Article 350 of the Lebanese Penal Code) – with the intention of having a certain duty performed is subject to punishment no matter whether the civil servant’s action is in line with his duties or not.

The punishment depends on the person involved (civil servants, suborders, servants or employees in the sector, or accomplices) and varies from imprisonment of not less than two months to not exceeding five years, and a fine between Lira 500, and Lira 1,000, or a multiple of what has been offered.

Article 354 of the Lebanese Penal Code provides that even in the sector bribery if punishable is a deed discrediting or causing harm to the principal. Suborders and accomplices have the opportunity to be exempted from punishment if they notify the public authorities of the crime, even after it has been committed, but before it has been referred to the adjudicating jurisdiction (Article 353, para. 2 of the Lebanese Penal Code).

### *Conclusions*

Bribery is punishable in Lebanon for anyone who makes or takes an offer for a gift or a promise as, or to, a civil servant. It is also illegal to serve as a mediator between the briber and the bribee. Even bribery in the sector is punishable under certain circumstances.

However, the law constantly sets the criminal gift or promise in the context to a deed requested or offered or mediated. Consequently, gifts, promises, or gratification, which have been given or taken without consideration and which are in line with common practise may not be considered as bribery under the Lebanese legislation.

<sup>9</sup> Lebanese Penal Code, Law No. 340 of 1943, promulgated on 1 March 1943.