Transparency International on progress by Serbia

Continuing the country's declining trend in recent years, **Serbia** has scored 35/100 in the 2024 Transparency Corruption Perceptions Index (CPI), positioning it 105th out of 180 countries. The main reasons cited for Serbia's ranking in the 2024 CPI were the perceived dominance of the executive and institutional vulnerabilities to corruption. Despite making progress in various anti-corruption efforts, a lack of effective implementation of introduced policies and the slow enforcement of the applicable legislative framework remain a serious challenge.

Below, we provide a short overview of the legal framework governing criminal liability for bribery in Serbia, in which we highlight key aspects of national and international relevance, including cross-border compliance considerations.

1. Bribery and corruption

A bribe can be anything that constitutes an undue advantage. There is no set form or minimum value for an advantage to be considered a bribe, meaning there is no clear distinction between acts of bribery and lawful acts such as hospitality, gifts, travel expenses or meals.

Serbian criminal law comprehensively covers all forms of bribery. Bribery can be active (offering, promising or giving a bribe) or passive (accepting or soliciting a bribe). Facilitation payments are also punishable. Therefore, all forms of bribery are punishable regardless of the number of intermediaries between the parties.

Bribery cases most frequently involve influencing public officials (in a broad sense), bid rigging, bribery in public tenders and trading in influence (bribery of third persons to exert influence over public officials).

Both public and private bribery are criminalised. Whereas public bribery relates to criminal offences involving public officials, private bribery relates to commercial and other types of legal entities.

While the elements for incrimination are somewhat similar, bribery involving public officials is generally punishable by more serious criminal sanctions. The Criminal Code explicitly defines the offices considered as "public officials." In the context of bribery, a similar definition also extends to foreign public officials.

2. Corporate criminal liability (including bribery offences)

A company is liable for a crime if it was committed by an "authorised person" with the intention of deriving a benefit for the company. The term "authorised person" can encompass a wide spectrum of personnel, including managers, employees and board members. Companies are also liable for crimes committed by another individual, albeit for the benefit of the company, as a result of a lack of supervision and oversight by an "authorised person".

A company cannot avoid criminal liability simply by changing its legal form, or by way of restructuring. For example, in mergers with another company, any criminal sanctions that have been imposed will be enforced against the legal successor. Similarly, a company will be held liable for any criminal offence committed before or during the insolvency proceedings.

3. Duty to report bribery

The Serbian Criminal Code defines the situations in which failing to report a criminal offence is considered a crime. One of these situations is where an authorised person at a legal entity knowingly fails to report a criminal offence carrying a custodial sentence of at least five years, of which he/she became aware in the course of his/her duties. In such case, failure to report the criminal offence would constitute a crime.

The exceptions from this reporting obligation are quite narrow, broadly referrable to the perpetrator's relatives, as well as the defence attorneys, physicians and religious exponents who take confession. Accordingly, if there is a risk that a reporting duty will be triggered, a Serbian attorney should be consulted to review the issue.

4. Legal privilege and cross-border investigations

The concept of legal privilege (or attorney–client privilege) does not exist in the same form as in some other jurisdictions, and is instead expressed through the concept of "attorney secrets". Serbian attorneys are obligated to keep as a professional secret all information conveyed by the client or learned in any other way during and after the preparation and provision of legal services.

There are various procedural laws protecting attorney secrets, and a common feature of all proceedings is that attorneys cannot be forced to reveal facts which fall under attorney secret.

Therefore, special care must be taken where companies conduct cross-border investigations as, mostly, foreign investigators do not enjoy legal privilege in Serbia. In this respect, information exchanged with other local service providers or inhouse lawyers would not be subject to the same degree of legal protection as information exchanged with qualified attorneys-at-law.

5. Whisteblowing

In addition to other obligations under Serbian whistle-blowing regulations which are incumbent on all companies employing or engaging personnel, companies with more than 10 employees/engaged personnel must adopt a specific internal policy setting out the internal whistleblowing procedure This must be made available to all employees and must ensure that any whistleblowing report will be investigated impartially and independently.

Employees/engaged personnel training with respect to their rights conferred by whistleblowing legislation has resulted in an evident rise in whistleblower activity. For this reason, appropriate procedures should be put in place, taking into account the risk of triggering a reporting duty on the part of the authorised person receiving the whistleblowing reports.

6. Cooperation with prosecutors

Launching an internal investigation and being willing to cooperate with the prosecuting authorities, or even disclosing any misconduct, can arguably be considered a sign of effective compliance. However, the law does not directly make provision for a specific framework for cooperation between the prosecution authorities and companies wishing to cooperate. Therefore, companies must rely on the mutual trust built up between their attorneys and prosecution authorities.

Nevertheless, while the company does not derive any automatic statutory benefit from voluntary self-reporting or cooperating with prosecutors, it may potentially be exempted from criminal sanctions if it (i) reveals and reports a criminal offence before it learns that criminal proceedings have been instigated, and (ii) voluntarily remedies any resulting damage or returns any undue benefits acquired.

7. Non-trial resolution of bribery cases

Information on non-trial resolutions of bribery cases, including out-of-court settlements, is scarce.

When it comes to criminal offences punishable by monetary fines or imprisonment of up to three years, the public prosecutor may decide to formally drop the charges against a company if it is deemed that conducting criminal proceedings would not be “purposeful”. The public prosecutor will consider whether the company (i) reported the criminal offence before learning that the prosecution authorities were aware of the criminal offence, (ii) prevented or compensated damage and remedied any other consequences of the criminal offence, (iii) voluntarily returned any proprietary gain obtained through the criminal offence, (iv) has no assets or is subject to insolvency proceedings.

Serbian law also allows the possibility to negotiate a plea agreement with the public prosecutor. The agreement must be confirmed by the court and must contain a clear and voluntary admission of having committed the criminal offence, as well as confirmation of the criminal sanction agreed with the public prosecutor. While this legal mechanism may offer various benefits over criminal proceedings in which the outcome is certainty, its full potential does not yet appear to have been realised in connection with bribery-related offences.

Key experts

Aleksandar Ristić
Partner
E aleksandar.ristic@wolftheiss.com

Marijana Zekirović
Counsel
E marijana.zejakovic@wolftheiss.com