



Measures taken after the completion of the first cycle review report on Liechtenstein

Chapter III

While noting Liechtenstein's efforts in the field of anti-corruption, a number of challenges in implementation and/or grounds for further improvement were identified and it was recommended (depending on the mandatory or optional nature of the relevant requirements of the Convention against Corruption) that Liechtenstein:

- *Swiftly adopt and implement the planned amendments to the criminal code and other laws (Korruptionsstrafrechtsrevision) as envisaged in the white paper; in this sense, it is particularly recommended that the bill to be prepared endorses the recommendations below.*

On 1 June 2016 the revision of the Criminal Code (CC) entered into force. During the parliamentary process no changes to the relevant provisions proposed by the Government occurred.

- *Concerning article 15, 16 and 21 of the Convention:*

Criminalize active bribery of Members of Parliament, Members of a Municipal Council, and managing employees and staff members of a public enterprise also for acts not contrary to duty.

The definitions of public official in subparagraph 4a of article 74 paragraph 1 CC now read as follows:

Article 74 CC Other definitions

1) *For the purposes of this Act:*

4a. *Public official: anyone who*

a) for the State, a municipal association, a municipality or another person under public law, with the exception of a church or religious community, for another State or for an international organisation performs duties as a body or employee of the legislature, administration or justice,

b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or

c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of

the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise.

4b. Arbitrator: any person rendering a decision in an arbitration court in the meaning of articles 603 et seq. of the Civil Procedure Code, having its seat in the country or a seat which is yet-to-be determined (Liechtenstein arbitrator), or its seat abroad.

The new provisions relating to passive and active bribery read as follows:

Article 304 CC – Passive bribery

1) A public official or an arbitrator, who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for performing or refraining from performing an official act contrary to duty shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for delivering an incorrect evidence or expertise.

2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six months up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.

Article 305 CC – Acceptance of a benefit

1) A public official or an arbitrator who demands an advantage or who accepts or allows him/herself to be promised an undue advantage (para. 3), for him/herself or a third person, for performing or refraining from performing an official act in accordance with his/her duties shall be punished by imprisonment up to two years.

2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.

3) The following advantages are not considered undue:

1. advantages, the acceptance of which is explicitly permitted by law, or which are granted in the framework of events which are being attended because of an official or objective interest,

2. advantages for charitable purposes on the usage of which the public official or arbitrator does not exercise any decisive influence, and

3. in the absence of permissive rules as in lit. 1, customary tokens of courtesy of minor value as they exist at local or national level, unless the act is committed on a professional scale.

Article 306 CC – Acceptance of a benefit for an influence

1) A public official or an arbitrator who, in cases other than those falling under articles 304 and 305, acts with the intention to let him/herself being influenced in the performance of official duties, demands an advantage or accepts or allows him/herself to be promised an undue advantage (article 305 para.3), for him/herself or a third person, shall be punished by imprisonment of up to two years.

2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.

3) Accepting or allowing oneself to be promised merely a minor advantage is not to be punished in accordance with paragraph 1 unless the act was committed with the objective of obtaining a regular benefit.

Article 307 CC – Active bribery

1) *Whoever offers, promises or grants an advantage to a public official or an arbitrator for him/herself or a third person for performing or refraining from performing an official act contrary to duty, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or grant an advantage to an expert (article 304 para. 1) for him/herself or a third person for delivering an incorrect evidence or expertise.*

2) *Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.*

Article 307a CC – Granting of a benefit

1) *Whoever offers, promises or grants an undue advantage (article 305 para.3) to a public official or an arbitrator, for him/herself or a third person, for performing or refraining from performing an official act in accordance with his/her duties shall be punished by imprisonment of up to two years.*

2) *Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75.000 shall be punished by imprisonment from six months to five years.*

With the new definition in article 74 para. 1 item 4a CC assembly members are treated equally to other public officials under the new articles 304 to 307b CC. This broad expression covers any category of domestic public assembly members. The explanatory report to the draft law which was submitted to Parliament underlines that individual parliamentarians and mayors are covered by the concept of “body”. In the same way individual members of other elected assemblies (municipal councils) are equally covered. Managing employees and staff members of a public enterprise are covered under c). Moreover, the new provisions address situations involving a breach of duty and those which do not.

Criminalize active bribery of foreign officials and officials of international organizations also for acts not contrary to duty (“facilitation payments”).

The new provision in article 74 para. 1 item 4a CC uses a unified and broad concept of public official, which places on an equal footing domestic and foreign officeholders and employees of the legislature, administration or justice.

Consider criminalizing passive bribery of foreign officials and officials of international organizations.

The new provisions in articles 304 and 305 CC together with the new definition of public official in article 74 CC provide for the criminalization of passive bribery of foreign officials and officials of international organizations.

Abolish or significantly lower the value of the de minimis exemptions.

The definition of advantages which are not considered undue, as contained in the new article 305 paragraph 3 CC, has been specified in the explanatory re-

port to the draft law which was submitted to Parliament. According to this specification advantages of a value of up to CHF 150 may fall under this category.

Abolish the “no fault” exemption at the end of Section 307 (2) CC.

The „no fault“ exemption has been abolished in the revision.

Consider criminalizing passive bribery in the private sector; consider fully criminalizing active bribery in the private sector.

With the revision a new provision has been introduced in the Criminal Code:

Article 309 CC – Passive and active bribery in commercial matters

1) The employee or agent of a business entity who, in the context of commercial dealings, demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person in return for performing or refraining from performing an act in violation of his/her duties shall be punished by imprisonment of up to two years.

2) Shall be punished in the same way whoever offers, promises or grants an advantage to the employee or agent of a business entity, in the context of commercial dealings, for him/herself or a third person, for him or her to perform or refrain from performing an act in violation of his/her duties.

3) Whoever commits the act in relation to a benefit in excess of CHF 5 000 shall be punished with imprisonment up to three years, and where the benefit is in excess of CHF 75 000 francs, with imprisonment from six months to five years.

It is noteworthy that this offence has to be prosecuted ex officio in any case. The thresholds in paragraph 3 may establish aggravating circumstances. They are not meant to trigger ex officio prosecution.

The revision also entailed the deletion of article 4b of the Unfair Competition Act.

- Concerning article 18 of the Convention, consider comprehensively criminalizing active and passive trading in influence.

The new article 308 CC reads as follows:

Article 308 CC - Illicit intervention

1) Whoever demands, accepts or allows him/herself to be promised an advantage for himself/herself or for a third person for exercising improper influence on the decision-making of a public official or an arbitrator shall be punished by imprisonment up to two years.

2) Likewise, shall be punished whoever offers, promises or grants an advantage to someone for him/her to exercise improper influence on the decision-making of a public official or an arbitrator.

3) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding CHF 75.000 shall be punished by imprisonment from six months up to five years.

- 4) *The influence over the decision-making of a public official or an arbitrator is considered improper where its purpose is the performance or refraining from performing a legal act contrary to duties or where it involves the offering, promising or granting of an undue advantage (article 305 para. 3) to the public official or for him/her through a third person.*
- 5) *The perpetrator is not to be punished according to the provisions above if the act is punishable with a more severe punishment according to other legal provisions.*

The amendments introduced by the revision lower the intentional element to the first level (“purpose”) since the reference to the word “knowingly” is abandoned. They capture the act of trading in influence at an early stage, in accordance with the Convention: whether the influence was exerted or not (and thus leads to the intended result or not) is immaterial. These amendments have to be seen in conjunction with the introduction of the new offences under articles 306 and 307a which also contain an element of exertion of influence (active and passive).

- Consider the introduction of a specific offence to fully implement the mandatory criminalization requirements of article 25(a) of the Convention.

The revision of the Criminal Code did not entail such amendment. However, a revision of the Police Act provides for enhanced protection of witnesses:

<https://www.gesetze.li/lilexprod/showpdf.jsp?media=pdf&lgblid=2014109000&version=0>

- Concerning article 26 of the Convention, it was recommended to reconsider if the existing maximum penalty would be a sufficiently dissuasive deterrent sanction for larger enterprises and banks.

The different offences contained in the new articles 304 to 309 CC entail that the limitation period amounts to at least five years in all cases, and ten years for the most serious forms of passive and active bribery. This constitutes a considerable increase of the penalties for acts of bribery and trading in influence. The sanctions in the former provisions varied between up to one year and five years imprisonment for passive bribery involving a civil servant and between up to six months imprisonment (or a fine) and up to two years imprisonment for active bribery involving a civil servant.

- Concerning article 31 of the Convention, it was recommended to:

Amend the law according to the white paper, including a switch to the so-called “Brutto-Prinzip”, in order to bring Liechtenstein law fully in compliance with article 31(1)(a).

The revision of the Criminal Code also entailed the introduction of a valuation of “property benefits” in article 20 for the purposes of confiscation, which is based on the “gross benefit”.

Amend the law according to the envisaged § 19a CC, in order to bring Liechtenstein law fully in compliance with article 31(1)(b).

Article 19a of the Criminal Code has also been amended as envisaged in the white paper.

- Concerning article 33 of the Convention, Liechtenstein is encouraged to consider the introduction of whistle-blower protection in the private sector.

No specific whistle-blower protection in the private sector has been introduced. However, a revision of the Police Act provides for enhanced protection of witnesses:

<https://www.gesetze.li/lilexprod/showpdf.jsp?media=pdf&lgblid=2014109000&version=0>

Chapter IV

With regard to international cooperation, it is recommended that Liechtenstein:

- *Take appropriate measures to enable its competent law enforcement authorities to cooperate on the international level in conducting inquiries concerning the movement of proceeds of crime or property derived from the commission of offences covered by the Convention, when such proceeds are held in a banking institution.*

On 1 March 2016 the revised Financial Intelligence Unit Act came into force, broadening the powers of the financial intelligence unit to request additional information from reporting entities. These powers can be equally applied when requests from foreign financial intelligence units are sent to the financial intelligence unit. The financial intelligence unit regularly exercises these powers in a timely fashion and exchanges such information internationally in line with the standards of the Egmont Group of Financial Intelligence Units either upon request or spontaneously. Obligated entities are responsible for the filing of suspicious activity reports and suspicious transaction reports. A suspicious activity report is to be filed in cases when a suspicion occurs with regard to an active customer relationship (i.e. persons, entities, funds or other assets) and not in connection with a specific transaction. Suspicious transaction reports are filed in cases where the suspicion is caused on specific transactions.

With the transposition of the fourth EU anti-money-laundering directive the Financial Intelligence Unit has also been given the competence to temporarily block the transfer of suspicious funds.