

Anti-corruption (joint ventures) Q&A: Indonesia

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This Q&A provides country-specific commentary on *Practice note, Anti-corruption due diligence (joint ventures): Cross-border*, and forms part of *Cross-border joint ventures*.

Anti-corruption (joint ventures)

1. What are the main legislation and regulatory provisions relevant to bribery and corruption? Is the applicable legislation extraterritorial?

The main laws and regulations relevant to bribery and corruption in the Republic of Indonesia are:

- Indonesian Criminal Code (Criminal Code).
- Law Number 11 of 1980 on Bribery (Bribery Law).
- Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 (Anti-Corruption Law).
- Law Number 30 of 2002 on the Corruption Eradication Commission (Law No. 30/2002).
- Law Number 7 of 2006 on the Ratification of the United Nations Convention Against Corruption, 2003 (Law No. 7/2006).
- Law Number 46 of 2009 on the Corruption Court (Law No. 46 of 2009).
- Law Number 28 of 1999 on State Governance that is Free from Corruption, Collusion and Nepotism (Law No. 28/1999).
- Government Regulation Number 43 of 2018 on Implementation Procedures of Community Participation and the Award in the Prevention and Eradication of Corruption (GR No. 43/2018).

The Criminal Code is the umbrella law for criminal acts in general, including bribery and corruption. Some provisions of the Criminal Code relating to bribery and corruption have been revoked and replaced by the provisions of the Bribery Law and the Anti-Corruption Law. However, to the extent that Criminal Code provisions are not explicitly revoked by the Bribery Law and the Anti-Corruption Law, they may still apply.

Although the Criminal Code still applies, the relevant judicial authorities would, in practice, apply the *lex specialis* provisions of the Anti-Corruption Law or the Bribery Law (depending on the circumstances) in the prosecution of persons who are charged with criminal acts of bribery or corruption.

The Anti-Corruption Law is designed to address corrupt acts that result in financial or economic loss to the state, while the Bribery Law is designed to address acts of bribery that are not related to such financial or economic loss.

The Anti-Corruption Law applies extraterritorially. That is, individuals who reside outside the territory of Indonesia are subject to it (*Article 16, Anti-Corruption Law*). These individuals may be held liable for corruption if they provide any assistance, opportunity, infrastructure or information for a transnational criminal act of corruption in Indonesia that leads to an act of corruption specified under the Anti-Corruption Law.

The Bribery Law also has extraterritorial reach (*Article 4, Bribery Law*).

2. What international anti-corruption conventions apply in your jurisdiction?

Indonesia is party to the United Nations Convention Against Corruption (UNCAC), as ratified by Law No. 7/2006. However, Indonesia will not be bound by the dispute resolution mechanism concerning the interpretation or application of the UNCAC. The stance is taken on the basis that Indonesia does not recognise the compulsory jurisdiction of the International Court.

3. What are the specific bribery and corruption offences in your jurisdiction? Can both individuals and (incorporated or unincorporated) entities be held liable for criminal offences? At what level of management will an (incorporated or unincorporated) entity be responsible for the actions of its employees?

The Bribery Law

The Bribery Law is intended to regulate acts constituting bribery that are not covered by other laws and regulations, such as the Criminal Code and the Anti-Corruption Law which replaced Law No. 3 of 1971 on the Eradication of Corruption). Conceptually, however, actions constituting bribery under the Bribery Law also are regulated by the Anti-Corruption Law.

Elements of Bribery

Any person who gives or promises something to another person with the intention of persuading them to do or not to do something in the performance of their duties, in contradiction of their authority or obligations related to the public interest, is subject to criminal penalties under the Bribery Law (*Article 2, Bribery Law*).

Similarly, any person who receives something, or a promise, which they are aware, or are reasonably deemed to know, is intended to persuade them to do or not to do something in the performance of their duties, in contradiction of their authority and obligations related to the public interest, is subject to criminal penalties under the Bribery Law (*Article 3, Bribery Law*).

The Bribery Law does not clearly define which persons are subject to it. It uses the general term "any person", which may apply to persons who are active either in the public or private sector. In the absence of a clear definition of a person who is subject to bribery, it is deemed that the Bribery Law can apply to both individuals and companies. This applies both to the person who gives the bribe and the person who receives it.

The Bribery Law does not define the terms "something" or "promise". The "elucidation" (definition) section of the Bribery Law provides that these terms may include practices other than the exchange of money or goods. In practice, providing special treatment or privileges to a person to achieve a certain aim could be interpreted as "something" under the Bribery Law.

The Bribery Law does not define what constitutes "persuasion" to do or to refrain from doing something under the Bribery Law, nor does it define the term "public interest". These terms remain subject to judicial interpretation on a case-by-case basis.

The Elucidation to Article 2 defines "authorities and obligations" to include authorities and obligations determined by the code of ethics of the profession or the relevant organisations.

Penalties

Both the person who gives and the person who receives a bribe are subject to criminal penalties. A person who gives a bribe is subject to a maximum of five years' imprisonment and a fine of up to IDR15 million, and a person who receives a bribe is subject to a maximum of three years' imprisonment or a fine of up to IDR15 million.

Acts of Corruption

The following are criminal offences under the Anti-Corruption Law:

- Any person who illegally commits an act to enrich themselves, someone else or a corporation, which may cause a loss to the state's treasury or the state economy.
- Any person who intentionally benefits themselves, another person or a corporation, by abusing power, opportunity or facilities available to them due to their job or position in a way which could cause loss to the state's treasury or the state economy.
- A civil servant or state administrator who receives, because of their position, a present or promise which is given to encourage them to do something or not to do something, in breach of their obligations.
- A civil servant or state administrator who receives a grant (because of their executive, legislative or judicial function or other function/main duties related to the organisation of the state in accordance with the

regulations and laws) that is given because they have done something or not done something, in breach of their obligations.

- A judge who receives a grant or promise that is given to influence the verdict of a case handed down to them for trial.
- A person who, under the relevant legislation, is appointed as an advocate to attend a trial session, who receives a grant or promise which is given to influence their advice or view on the case referred to the court for trial.
- A civil servant or state administrator who intentionally benefits themselves or another person in breach of the law, or who, by abusing their power, forces a person to give something, pay money or receive a discounted payment, or do something for that civil servant or state administrator.
- A civil servant or state administrator who, at the time of performing a task, asks, receives or holds payments from another civil servant or state administrator or from the general treasurer, as if that other civil servant or state administrator or the general treasurer owes them that payment.
- A civil servant or state administrator who, at the time of performing their duty, asks for or receives an assignment or delivery of goods as if it is owed to them.
- A civil servant or state administrator who, at the time of performing their duty, uses state land (on which the Right to Use (*Hak Pakai*) has been granted), where this use harms the people entitled to the land under the prevailing laws and regulations and the use is in violation of the law.
- A civil servant or state administrator who, directly or indirectly, takes advantage from construction work procurement which they have been appointed to arrange or supervise (whether wholly or partially).

(Articles 2, 3 and 12, Anti-Corruption Law.)

The Anti-Corruption Law lists additional criminal offences under Articles 5 to 11. These offences primarily relate to bribery. We will not address these articles in detail as the Bribery Law is the principal piece of legislation dealing with bribery.

The Anti-Corruption Law primarily focuses on acts of corruption involving a civil servant or state administrator, whose acts may cause loss to the state's treasury or the state economy. The Anti-Corruption Law also regulates persons who work in private corporations and their directors and employees, to the extent that their acts of corruption cause a loss to the state's treasury or the state economy.

Under the Anti-Corruption Law, a "corporation" is defined as a collective of organised individuals or assets, whether in the form of a legal or a non-legal entity. Legal entities include limited liability companies, foundations and so on, while non-legal entities include partnerships, *commanditaire vennootschap* (CV) and so on (a CV is a type of partnership between a silent partner and an active partner. The active partner is entrusted to manage the silent partner's money and run the partnership; they are authorised to enter into agreements with third parties. The most salient feature of a CV is that if it owes a liability to a third party which has insufficient assets to cover, the active partner can be held personally liable. A CV is not a legal entity under Indonesian law, but it is deemed as a business entity).

If an act of corruption is committed by or on behalf of a corporation, the corporation and/or its management board (for example, a company's board of directors) can be prosecuted. The management board would represent the corporation in a corruption case against the corporation. Judges may impose penalties against the corporation,

the management board or both (*Article 23 (1), Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by a Corporation*).

The Elucidation to the Anti-Corruption Law enlarges the definition of "civil servants" to include those "receiving salaries and wages from a corporation that received capital or facility from the State or society". "Facility" means "any special treatment provided in any form, including non-market interest, special prizes, exclusive licenses ...". Because the Elucidation to the Anti-Corruption Law directs us to read the term "civil servants" broadly, for practical purposes we believe that the term covers employees of all governmental agencies and state-owned enterprises (*Badan Usaha Milik Negara*, or BUMN).

An "illegal" act means an act explicitly forbidden by law, while "violation of law" means an abuse of power or misuse of authority established by law.

The Elucidation of the Anti-Corruption Law offers the following comment on the meaning of "illegally" committing an act:

"[the term] includes illegal acts either in the formal or material sense, i.e. even though such acts are not defined in laws and regulations, if the acts are deemed to be wrong because they are not in line with the sense of justice or social norms, the action may be considered illegal. In this provision, the word "may" before the phrase "cause loss to the states' treasury or economy" indicates that the criminal act of corruption is a formal offense, i.e. the criminal act of corruption exists simply by virtue of the occurrence of the proscribed act without the need to show its results." The Constitutional Court has declared that the first sentence of the Elucidation is in breach of the Indonesian Constitution and therefore no longer has any legal effect (*Decision No. 003/PUU-IV/2006, dated 25 July 2006*). In striking out the first sentence, the Constitutional Court opined:

"[in stating] that the sense of justice (*rechtsgevoel*), ethical norms, and moral norms prevailing in society are sufficient criteria for which to judge whether an act is illegal, although viewed only materially ... such explanation ... not only serves to elucidate Article 2 (1) on illegal acts, but also creates a new norm in terms of measures not written formally in the law to determine illegal acts."

Therefore, it appears that one must point to specific laws and regulations to prove that illegal acts have indeed occurred. Acts that are deemed wrong by society because they are not in line with people's sense of justice or prevailing social norms, but which are not contrary to specific laws and regulations, would appear to be an insufficient legal basis under the Anti-Corruption Law.

The Anti-Corruption Law and its Elucidation do not define the terms "presents" or "promises", nor do they explain what "a view of the power or authority vested in ... post or position" means.

Gratuities

Any gratuity provided to a civil servant or state administrator is considered an act of bribery when it is related to their position and is against their obligation or duty (*Article 12(B), Anti-Corruption Law*). The burden of proving that such a gratuity has or has not been provided falls on the:

- Recipient if the gratuity amount is IDR10 million or more.
- Public prosecutor if the gratuity amount is less than IDR10 million.

If a public official receives a gratuity they can, irrespective of whether they intend to conduct a corrupt act, be found in breach of the Anti-Corruption Law, unless they make a report to the Corruption Eradication Commission (KPK).

The term "gratuity" covers the general concept of a grant. It includes not only money, but also goods and facilities, such as discounts, commissions, interest-free loans, lodging, travel tickets or free medical treatment. A gratuity can be received either in Indonesia or abroad, and can be conducted by electronic means.

Any civil servant or state administrator who receives a gratuity must make a written report to the KPK within 30 business days, using specified forms. Within 30 business days of receiving the report, the Chairman of the KPK must decide whether the gratuity can be retained by the recipient or should be surrendered to the state, along with the considerations underlying the Chairman of the KPK's decision. There is no specific sanction for failure to comply with this reporting requirement. However, where the recipient does not make the report, they may be deemed liable for bribery under the Anti-Corruption Law.

The provider of a gratuity is also subject to liability under the Anti-Corruption Law, irrespective of whether they work for a public or private sector entity.

Penalties

Any person who intentionally benefits themselves, another person or a corporation, by abusing power, opportunity or facilities available to them due to their job or position in a way which could cause loss to the state's treasury or the state economy, is liable to a sentence of lifetime imprisonment, or to between one and 20 years imprisonment and a fine of between IDR50 million and IDR1 billion.

A person found guilty of the other corruption offences set out above is liable to a sentence of lifetime imprisonment, or between four and 20 years imprisonment and a fine of between IDR200 million and IDR1 billion.

- The Anti-Corruption Law also provides additional penalties, including:
- Confiscation of movable or immovable goods.
- Compensation of up to twice the gain derived from the act of corruption.
- Whole or partial closure of a company for a maximum period of one year.

The basic criminal sentence against a corporation is a fine. The maximum fine applicable to individuals is increased by one third when applied to corporations.

4. Can associated persons (such as spouses and close relatives) and agents be liable for bribery and corruption offences and in what circumstances?

The Bribery Law and the Anti-Corruption Law apply any person. Therefore, associated persons (such as spouses and close relatives) and agents who provide assistance, opportunity, facilities or information related to an act of corruption are subject to the Bribery Law and the Anti-Corruption Law.

5. What are the potential penalties (for example, criminal, regulatory or administrative) for participating in bribery and corruption? Can matters be resolved by a deferred prosecution agreement (or similar alternative to formal prosecution) or civil settlement?

Any person who provides assistance in an act of corruption is punishable by a penalty similar to that imposed on the perpetrator (*Article 15, Anti-Corruption Law*).

The Bribery Law is silent on the penalty for participating in bribery. However, the penalty for any person who deliberately provides assistance to perform a criminal action will be reduced by one third of the maximum sanction (*Article 57, Criminal Code*). We believe that this should also apply to a person who provides assistance to the perpetrator of bribery under the Bribery Law.

The Bribery Law and the Anti-Corruption Law recognise Law No. 8 of 1981 on Criminal Procedure (Criminal Procedure Law) as the law governing general criminal procedure in Indonesia. The Criminal Procedure Law does not acknowledge the concept of deferred prosecution agreements or civil settlements. Therefore, matters related to participation in bribery and corruption could not be resolved by a deferred prosecution agreement or civil settlement.

6. What defences, safe harbours or exemptions are available (if any) and who can qualify? Are there any specific examples of payments being permitted by law, for example facilitation payments?

One example of a payment that may be permitted by law is payment of entertainment expenses. To be liable under Article 2 of the Bribery Law, a person must:

- Give or promise something to a person.
- With an intention to induce that person to do or not do an act within the scope of that person's job.
- Which is contrary to the person's authority and obligations related to the public interest.

Beyond this, however, the scope of activities proscribed is unclear.

The Elucidation to Article 3 (not Article 2) states that "something" or "promises" need not always be in the form of money or goods. Even though the Elucidation to Article 3 seems to indicate that we are to read "things or promises" broadly (including those referred to in Article 2), the absence of a similar Elucidation to Article 2 prevents us from drawing a similar firm conclusion. In addition, to the extent that the payment of entertainment expenses is not intended to corruptly induce government officials, one of the elements for liability under Article 2 is not met, and therefore no liability should arise. However, the risk remains that a stricter legal interpretation of the Bribery Law would expose a perpetrator to legal jeopardy.

Article 3 of the Anti-Corruption Law applies to the party on the receiving end of illegal expenditure. It prohibits any person from intentionally benefitting, or having another person or a corporation benefit, from abusing authority, opportunity or facilities available to them due to their job or position, where this can cause loss to the state's treasury or economy.

As discussed, the Constitutional Court seems to require that the illegal act be specifically defined in laws and regulations (see [Question 3](#)). Acts that are deemed wrong by society because they are not in line with peoples' sense of justice or the prevailing social norms, without elaboration, appear to be an insufficient legal basis for liability under the Anti-Corruption Law.

To the best of our knowledge, there is currently no law or regulation specifically prohibiting the payment of public officials' entertainment expenses. It would be difficult to argue that these payments fall under the Article 3 prohibition. Since the receiving party of the payments should not be deemed to have breached Article 3 of the Anti-Corruption Law, it is arguable that the payer of the expenses should equally not be deemed to have breached the Anti-Corruption Law. However, the risk remains that a stricter legal interpretation of the Anti-Corruption Law would expose them to some degree of legal jeopardy.

The concept of a "facilitation payment" (where a modest fee is paid to expedite or promote non-discretionary official action) is not specifically regulated in Indonesian anti-corruption and anti-bribery laws. However, we believe that facilitation payments may be considered as acts of bribery under the Bribery Law. In addition, payment of money is included in the definition of a "gratuity" under the elucidation of Article 12 B of the Anti-Corruption Law, and therefore a facilitation payment could be viewed as unlawful. There is no minimum amount that a payment must reach to constitute a gratuity - a facilitation payment may always be considered a gratuity.

Civil servants who receive a facilitation payment must report it to the KPK (see [Question 3](#)). An unreported facilitation payment will be considered a bribe.

7. What do companies usually do to mitigate their anti-corruption risk in your jurisdiction (for example, do they implement anti-corruption policies and procedures and roll-out training programmes for employees)?

An increasing number of companies in Indonesia, especially multinational companies, implement anti-corruption policies and procedures and roll-out training programmes for employees, although this is not yet common practice.

8. Which authorities have the powers of investigation, prosecution and enforcement in cases of bribery and corruption? What are these powers and what are the consequences of non-compliance? What are the possible outcomes of any investigations, prosecutions and other forms of enforcement?

KPK

The KPK was established by the government under the Anti-Corruption Law and the Corruption Court Law. The KPK is a state agency that, in performing its duties and authority, is independent and free from any and all influence.

The role of the KPK is as follows:

- Coordinating with authorised institutions (that is, the Financial Auditor Board (*Badan Pemeriksa Keuangan*), Financial and Development Supervisory Board (*Badan Pengawas Keuangan dan Pembangunan*), State Administrator's Assets Auditor Commission (*Komisi Pemeriksa Kekayaan Penyelenggara Negara*), and Inspectorate at the Government Ministries of Indonesia) to eradicate corruption.
- Supervising the authorised institutions in their activities of eradicating corruption.
- Conducting investigations, indictments and prosecutions against criminal acts of corruption.
- Preventing criminal acts of corruption.
- Monitoring the governance of the state.

(*Law No. 30/2002.*)

In performing its tasks, the KPK is authorised to:

- Coordinate investigations, indictments, and prosecutions of criminal acts of corruption.
- Implement a reporting system for the purposes of eradicating corruption.
- Request information on acts, with the purpose of eradicating corruption from relevant institutions.
- Arrange opinion hearings and meetings with institutions authorised to eradicate corruption.
- Request reports from relevant institutions pertaining to the prevention of criminal acts of corruption.

(*Law No. 30/2002.*)

The KPK is considered a powerful judicial body by the public, despite some efforts to weaken it, because of the broad powers granted to the KPK under Law No. 30/2002. Given its rapid growth, corruption is considered an important crime to tackle in Indonesia. For this reason, the government has taken steps towards eradicating criminal acts of corruption.

Police

The National Police of the Republic of Indonesia has the right to investigate criminal acts including corruption (*Criminal Procedure Law*). The police have the authority to conduct arrests, detention, searches and seizures, to carry out examination and seizure of documents, and to summon a person to be heard and examined as a suspect or a witness.

Since the establishment of the KPK however, the investigation of certain acts of corruption are now performed by the KPK, to centralise the handling of these cases. Some police officers and public prosecutors are seconded to the KPK.

Attorney General

The Attorney General's Office of the Republic of Indonesia is the government institution which implements the power of the state in the prosecution of criminal acts (*Law No. 16 of 2004 regarding the Attorney General of the Republic of Indonesia (Attorney General Law)*). The Attorney General's Office acts as the public prosecutor which submits a case to the district court or Corruption Court, in accordance with the law. The Attorney General has the duty and authority to:

- Conduct prosecutions.
- Implement the decisions of judges and courts that have legally binding force.
- Supervise the implementation of conditional criminal decisions, supervisory criminal decisions and parole decisions.
- Conduct investigations into certain criminal acts, based on the law.
- Complete certain case dossiers and conduct additional investigations before transferring the case to the courts.

(Article 30, Attorney General Law.)

The Attorney General's Office receives case files on investigations of criminal acts of corruption and bribery from the police and may also commence investigations of corrupt criminal acts itself.

Standing of the three bodies

The KPK, the police and the Attorney General have equal standing. There is no regulation on which of them should begin an investigation into bribery or corruption. Whichever of the bodies has sufficient preliminary evidence to conduct an investigation may proceed with one. This can result in an overlap of authorities.

Law No. 30/2002 seeks to address this problem. It gives the KPK the authority to take over the investigation or prosecution of a criminal act of corruption conducted by the police or the Attorney General's Office, if a number of criteria are met. Where the KPK is of the opinion, based on sufficient proof, that a criminal act of corruption should be prosecuted, it may conduct the investigation itself or transfer the investigation to the Attorney General's Office or the police (*Article 44 (4), Law No. 30/2002*). Conversely, it does not appear that the Attorney General's Office or the police have the authority to take over the investigation of a criminal act of corruption that has been initiated by the KPK.

The authority of the KPK to take over a police or Attorney General's investigation must be based on one of the following reasons:

A report from the public on a criminal act of corruption has not been followed up.

- The handling of a criminal act of corruption is delayed for no accountable reason.
- The handling of a criminal act of corruption is designed to protect the real perpetrator.

- There is an indication of corruption in the handling of the criminal act of corruption.
- There is an intervention by the executive, judicial or legislative branch in the handling of a criminal act of corruption.
- Another reason, based on the consideration of the police or Attorney General's Office, that it would be difficult for them to properly and accountably handle the criminal act of corruption.

(Law No. 30/2002.)

Although all three bodies have equal standing to investigate criminal acts of corruption, the Anti-Corruption Law provides that the KPK will generally be the relevant authority where the corruption meets any of the following:

- Involves the state legal enforcement apparatus, state organisers and others involved in the enforcement of criminal acts of corruption.
- Causes societal concern.
- Involves a minimum state loss of IDR1 billion.

It is not necessary for all of these elements to be present for the KPK to assert its authority to investigate an act of criminal corruption.

Any investigation that results in sufficient preliminary evidence should proceed to a court trial. In a court trial, the judges will only sanction the suspect when there are at least two sufficient pieces of legal evidence. If there is insufficient proof that a crime has occurred, the investigator may issue an order under the Criminal Procedure Law to stop the investigation (known as a *Surat Perintah Pemberhentian Penyidikan* (SP3)). The Attorney General's Office can also stop a prosecution if there is insufficient evidence that the relevant actions even took place, on the grounds that the event did not constitute a crime or in the interest of the law pursuant to the Indonesian Criminal Procedural Law (KUHAP). The KPK does not have any authority to stop an ongoing investigation or prosecution.

9. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

These payments are not tax-deductible as a business expense under Indonesian tax law.

10. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

The Bribery Law does not contain any provisions setting out reporting or disclosure requirements.

The Anti-Corruption Law provides that a person receiving a gratuity must report this to the KPK within 30 days of receipt (see *Question 3, Gratuities*). There are no other reporting or disclosure requirements under the Anti-Corruption Law.

11. Are there any whistleblowing protections?

There have been several cases of a corruption suspect volunteering themselves as a "justice collaborator" with the purpose of receiving more lenient sanctions.

The concept of a justice collaborator in Indonesia can be found in Law No. 13 of 2006 on Witness and Victim Protection, as amended by Law No. 31 of 2014 (Witness and Victim Protection Law).

The Witness and Victim Protection Law provides that a witness who is also an offender (that is, a justice collaborator) will be given special treatment during the examination process and will be rewarded for their testimony. The special treatment comprises being held in a separate location from the accused, separation of the witness' dossiers from those of the accused, and the ability to give witness testimony not in the presence of the accused. The witness may also be given leniency in their sentence, early parole and other rights.

A similar provision on lighter sanctions for justice collaborators can be found in Supreme Court Circular Letter No. 4 Year 2011 regarding Treatment for Whistleblowers and Justice Collaborators in Certain Criminal Acts. This stipulates that, in return for the collaboration offered by a justice collaborator, the judges may impose lighter sanctions or penalties compared to those applied to other suspects involved in the same criminal acts.

To encourage more whistleblowers to come forward, and to invite greater public participation in the fight against corruption overall, on 18 September 2018 the government issued Government Regulation No. 43 of 2018 on Public Participation in the Prevention and Suppression of Corruption (GR 43/2018). GR 43/2018 applies to whistleblowers in both the public and private sectors. It gives members of the public the right to "seek, obtain and provide information related to suspected corruption". Any person who participates in the prevention and eradication of a corruption case is entitled to legal protection, which will be granted if the whistleblower's report is true (there is no provision for protection of a whistleblower who gives a report in good faith that proves not to be true).

A whistleblower whose report proves to be well-founded, as evidenced by a final and conclusive judicial decision, is entitled to receive 2% of the total state losses that are recovered, up to a maximum of IDR200 million. Should the act of corruption involve a bribe, the whistleblower is entitled to receive 2% of the value of the bribe and/or the liquidated value of seized goods that are disposed of at auction, up to a maximum of IDR10 million.

12. Are anti-corruption representations, warranties and/or undertakings inserted in shareholders' agreements (or in any other relevant joint venture documents)? What is their usual wording?

It remains uncommon to insert anti-corruption representations, warranties or undertakings in joint venture documents, unless one of the joint venture partners originates from a jurisdiction in which anti-corruption legislation that has extra-jurisdictional scope is in force.

It may become more common to insert anti-corruption representations, warranties or undertakings in joint venture documents now that corporations can be held, and in practice are being held, liable for corruption committed by or on behalf of a corporation (*Article 23 (1), Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by a Corporation*).

Standard clause, Anti-corruption clauses (joint ventures): Cross-border encompasses the standard anti-corruption representations, warranties and undertakings used in connection with a joint venture subject to the anti-corruption laws applicable in the Republic of Indonesia. Jurisdiction-specific drafting notes (updated periodically) provide practical information for the Republic of Indonesia, including revised wording where appropriate.

13. Are there any other provisions that should be, or are commonly, set out in a shareholders' agreement (or in any other relevant joint venture documents) in relation to anti-corruption?

It is advisable for shareholders to agree in the shareholders' agreement that the company and the shareholders will procure that the joint venture company will formulate internal anti-corruption rules that the joint venture company must comply with.

It is also common to include a provision allowing the shareholders, including the shareholders who have not nominated a certain director or commissioner (who has the statutory task of supervising and advising the company's board of directors), to have the right to dismiss a director or commissioner in the event of gross negligence or wilful misconduct, including acts relating to corruption.

Finally, a shareholder may file a petition in writing to the District Court with jurisdiction over the domicile of the company for the purpose of collecting data or information from the company if there is suspicion that shareholders or a third party have suffered damage as a result of either:

- The company committing an unlawful act.
- A member of the board of directors or the board of commissioners committing an unlawful act.

(Law No 40 of 2007 on the Limited Liability Company Law.)

It may be prudent to strengthen this right contractually in the shareholders' agreement, by allowing shareholders access to relevant information without the involvement of the District Court.

14. Would your answers with respect to *Question 12* and *Question 13* be different depending on whether the joint venture is a 50:50 relationship between the parties or a majority/ minority shareholder relationship?

Our answers with respect to *Question 12* and *Question 13* would not be different depending on whether the joint venture is a 50:50 relationship between the parties or a majority/ minority shareholder relationship, except that the provision referred to in *Question 13* would need to be reciprocal (a majority shareholder will in principle always have the right to dismiss a director or commissioner, unless agreed otherwise).

15. What are the remedies for a "material breach" of anti-corruption representations, warranties and/ or undertakings?

A "material breach" of anti-corruption representations, warranties and undertakings will usually trigger an exit of the shareholder in breach of those representations, warranties and undertakings. Additional remedies may come in the form of damages for loss, including indirect losses such as reputational damage.

16. Is it common for any matter to be reserved to the shareholders' approval?

It is common for certain matters to be reserved to the shareholders' or commissioners' approval. If the appointment of any agent or other intermediary to conduct any of the business is subject to approval, it would usually be commissioners' approval.

17. Is there any effective mechanism available to the victims of bribery and corruption (for instance, the company and its shareholders whose assets have been diverted by the company's directors to corrupt government officials) to trace and recover assets?

It is open to a victim to file a civil suit and apply for an injunction or the freezing of the assets of the person or entity that received a bribe. However, once the court decides that the case is a criminal matter rather than a civil matter, it may suspend the civil proceedings pending the resolution of the criminal proceedings.

In addition, where company's directors use company assets to corrupt government officials, the criminal court will first decide whether the company and its shareholders are accomplices to the crime or merely victims. Even if the criminal court confirms that the company and its shareholders are the victims of the crime, it will not necessarily return the assets to the company and its shareholders. It is likely that those assets will be viewed as illegal payments and be confiscated by the court. The company and its shareholders may initiate civil proceedings against the company's directors for compensation, but it would usually be prudent to do this only once the criminal proceedings are settled.

Even where there is a legal ground to file a civil lawsuit, doing so in Indonesia is likely to prove particularly time-consuming for the claimant.

18. Do you expect that the United Kingdom's exit from the European Union (Brexit) may affect anti-corruption matters in relation to your jurisdiction?

We do not expect that the United Kingdom's exit from the European Union (Brexit) may affect anti-corruption matters in relation to Indonesia.

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