THE CRIMINALISATION OF BRIBERY IN INDIA AND PAKISTAN

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Abstract

Since 2006, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific has conducted Thematic Reviews of specific areas of its members' anti-corruption efforts. Through the Reviews, the Initiative’s Steering Group takes stock of each member’s efforts, identifies challenges that have been encountered, and proposes recommendations for a way forward in order to overcome these difficulties. The reviews also identify cross-country trends and common obstacles, which in turn allow the Initiative to tailor its capacity building activities to address these challenges. The first Thematic Review in 2006 focused on members’ anti-corruption efforts in public procurement. A second Review in 2007 looked at extradition, mutual legal assistance and asset recovery in corruption cases.

In 2008, the Initiative chose the criminalisation of bribery as the topic for its third Thematic Review. Criminalisation is a key component of all international anti-corruption instruments, such as the Initiative’s Anti-Corruption Action Plan for Asia and the Pacific; the United Nations’ Convention against Corruption (UNCAC); and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention). In this paper aims to compare and improve 2 members’ efforts from Asia India and Pakistan in this area and thus strengthen their fight against corruption.
Introduction

Criminalisation is a key component of a comprehensive anti-corruption strategy. It deters individuals and officials from engaging in corrupt behaviour. It can also disgorge the profits of the crime and recompense the victim and the state. Criminalisation is thus a vital complement to other anti-corruption efforts such as prevention and detection.

International anti-corruption instruments reflect the importance of criminalisation. Pillar 2 of the Initiative's Action Plan commits countries that have endorsed the Plan to ensure —the existence of legislation with dissuasive sanctions which effectively and actively combat the offence of bribery of public officials. Criminalisation is the focus of international instruments such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). It is also one of the three major pillars of the UN Convention against Corruption (UNCAC).

However, implementing an effective regime of criminalisation can be a challenging task, as seen with the parties to the OECD Anti-Bribery Convention. Effective bribery offences need to address the different means in which the crime can be committed. These offences must be supported with investigative tools. The offences must also be implemented and enforced. Deficiencies in these areas are not always obvious. With this in mind, the Steering Group decided in November 2008 to conduct a Thematic Review on the criminalisation of bribery offences under the UNCAC. The purpose of the review is to provide suggestions on how the Initiative’s members can strengthen their criminal legal and enforcement framework for fighting bribery.
The Steering Group also decided that this Thematic Review should draw heavily from the methodology used to monitor the implementation of the OECD Anti-Bribery Convention. Because of similarities between the OECD and UN Conventions, the lessons learned by OECD countries can help the Initiative's members avoid pitfalls on the road to UNCAC implementation. Two particular features of this methodology are worth noting. First, the review involves a detailed, element-by-element analysis of offences. The mere existence of a bribery offence is not adequate; there must be a closer examination to verify whether an offence meets international standards. Second, laws are meaningful only when they are adequately enforced. The review therefore attempts to analyze the enforcement of bribery laws and the investigation of bribery offences in practice.

Methodology

The Chosen Basis for Criminalisation

Most jurisdictions will seek to define corruption by adopting a transactional approach; in other words, providing for a criminal offence which is made out when, in broad terms, the offering or giving of an advantage in return for a gain takes place. However, should the definition of the corruption offence be further limited by reference to the agent/principal relationship (as in the UK Prevention of Corruption Act 1906) or by the notion of breach of trust?

The rigours and the breadth of anti-corruption evaluations under international instruments have engendered wider debates: Is criminalisation best served by a generic offence, or by a number of different corruption offences reflecting different types of corrupt transactions and relationships? Perhaps even more fundamentally, should a State seek to formulate a free standing definition of what amounts to corruption or should one avoid a definition of what amounts to the term `corruptly' and simply define the offence in relation to a breach of the agent/principal relationship or, at least, the notion of breach of trust? In the sphere of corrupt
activity with which we are particularly concerned, such considerations arise from a very basic difficulty: how to differentiate a corrupt act from the various kinds of legitimate giving and receiving of advantages that make up ordinary transactions of both business and social life.

What is the nature of corruption? Should criminalisation be confined to activity which is essentially the subversion of loyalty to a principal, such as an employer or, indeed, the public at large? Is the essence of corrupt activity `cheating' on the person or entity that you should be safeguarding or is it the wider notion of criminalising those activities within business/commerce and government which are morally reprehensible and which are not perhaps presently capable of being reflected by other existing offences?

The Bribery Act 2010

The four offences under the Act are: Domestic and Foreign Bribery Offences

1. Bribing another person (the _active offence_): where a financial or other advantage is offered to another person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity.

2. Being bribed (the _passive offence_): where a person receives or accepts a financial or other advantage to perform a function or activity improperly.

3. Bribery of a Foreign Public Official (FPO): where a person directly or through a third party offers, promises or gives any financial or other advantage to an FPO in an attempt to influence them in their capacity as a FPO and to obtain or retain business, or an advantage in the conduct of business.

4. Corporate offence: failure to prevent bribery: a UK commercial organisation (incorporated or acting as a partnership in the UK or carrying on business in the UK) can be found guilty of bribery where someone associated with the organisation is found to have bribed another person with the intention of obtaining or retaining business or an advantage in the conduct of business. Such persons _associated_ with the organisation could include employees, agents,
sub-contractors and joint-venture arrangements (amongst others). The bribery could take place anywhere in the world.

It is anticipated that the government will produce guidance on the adequate procedures defence in January 2011. Such procedures are likely to include:

- Ensuring that the company has an anti-bribery policy which effectively deals with the avoidance of bribery within the organisation

**Domestic and Foreign Bribery Offences**

- A company's board of directors (or similar body) should take responsibility for establishing an anti-corruption culture and programme.

- A senior officer should be responsible for overseeing the anti-corruption programme.

- There should be a clear and unambiguous code of conduct including an anti-corruption element, and procedures should be established to assess the likely risks of corruption arising in a company's business.

- Employment contracts should expressly state penalties relating to corruption.

- There should be a gifts and hospitality policy to monitor receipt of gifts and entertainment.

- Anti-corruption training should be provided on preventing and recognizing bribery.

- There should be financial controls to minimise the scope for corrupt acts to be committed.

- There should be appropriate whistleblowing procedures to enable employees to report corruption in a safe and confidential manner.

- Ensuring that any contracts with sub contractors providing a service to the company provide for a mechanism for termination in the event that bribery is suspected.

**Misconduct in public office**
This has been retained. I would say, sensibly so. The offence enables:

- A single course of prolonged criminal conduct to be reflected in a single charge
- Corrupt behaviour and other intertwined criminality (as is often the case) to be set out in a single charge
- A wide sentencing discretion (maximum of life imprisonment).

Challenges to Policymakers and Law Enforcement

The use of intermediaries to commit bribery presents several challenges. At the legislative level, criminal offences must adequately cover bribery through intermediaries. As noted in the Initiative’s Thematic Review on Criminalisation, bribery offences should ideally do so through express language similar to those found in international instruments such as the OECD Anti-Bribery Convention and UNCAC. Certain jurisdictions, however, continue rely on liability for parties to an offence. For instance, some jurisdictions consider an intermediary who gives a bribe to an official to be the principal offender, while the briber who hires the intermediary is only guilty of complicity or aiding the intermediary to commit bribery. This arrangement arguably does not adequately reflect the criminality of the briber, especially if the penal legislation provides for lighter penalties against a party to an offence than against the principal.

discussion

As of September 2010, India has signed but not yet ratified the UNCAC. It has been a member of the APG since 1998. India’s legal system is mainly based on statutory and common law. Its criminal bribery offences have not been externally reviewed.
India's main bribery offences are found of the Prevention of Corruption Act 1988 (PCA). The PCA repeals the Prevention of Corruption Act 1947, the Criminal Law Amendment Act 1952, and has removed (inclusive) of the Indian Penal Code (IPC). This report focuses on these bribery offences as well as on the PCA on criminal misconduct by a public servant and the habitual committing of the offence.

The PCA covers active domestic bribery indirectly through the act of abetment criminalises the abetment of the bribery offences of the PCA. further provides that a statement made by a bribe-giver in any proceeding against a public servant for passive bribery of the PCA shall not subject him/her to prosecution. In light of the PCA can be read as covering active bribery. However, framing active bribery through the act of abetment does not meet international standards, which require more specific language criminalising the intentional offering, promising or giving of a bribe, whether directly or indirectly. It is also unclear whether incomplete offences, such as when a bribe is offered to but not received by a public servant, or when a public servant rejects a bribe, are covered by the PCA. Covering active bribery this way can also be challenging for law enforcement authorities, and does not adequately raise awareness that active bribery as well as passive bribery are offences in India.

International standards for the criminalisation of passive domestic bribery cover the —requesting, soliciting, receiving or accepting of a bribe by a public official concern passive domestic bribery. The language used in these offences, such as the terms —legal remuneration, —favour or disfavour or —consideration, does not comply with the language typically used in international standards. The ensuing sections will highlight the provisions where there is lack of clarity and conformity to international standards.

Pakistan's main bribery offences are found in the Penal Code 1860 and the National Accountability Ordinance (NAO). while passive bribery may be covered by five separate offences in Penal Code. As will be seen below, there is considerable overlap among these
five passive bribery offences, as well as inconsistencies in the elements of the offences and available defences. This report focuses on these offences but will touch upon other corruption offences in the Penal Code and NAO where appropriate.

Penal Code covers active domestic bribery indirectly through the act of abetment; there is no specific offence of active bribery. Framing active bribery through the act of abetment falls short of international standards, which require more specific language criminalising the intentional offering, promising or giving of a bribe. The NAO criminalises active bribery by covering —any other person who —offers any gratification directly or indirectly.

**BRIBERY OF FOREIGN PUBLIC OFFICIALS**

In India, there are no express active and passive foreign bribery offences in the PCA. Foreign public officials are not included in the PCA’s definition of —public servant therefore, the active bribery offence through abetment, and the passive bribery offences, do not extend to foreign public officials.

**LIABILITY OF LEGAL PERSONS FOR BRIBERY**

India can impose criminal liability against legal persons for bribery provides that every person shall be liable to punishment under the Code. —person as including —any Company or Association or body of persons, whether incorporated or not However, it is unclear whether the liability of legal persons applies to state-owned or controlled companies, in the absence of supporting case law. It is also unclear whether corporate liability depends on the conviction of a natural person for the crime. According to Indian authorities, there appear to be no cases to date where a legal person has been convicted for bribery.

Indian courts have inherited the identification doctrine from the English legal system. Under this approach, which was set out by the U.K. House of Lords in *Tesco Supermarkets Ltd. v. Nattrass* [1972] AC 153, a company would be liable for bribery only if the fault element of the offence is attributed to someone who is the company’s —directing mind and will.
There are no express active or passive foreign bribery offences in Pakistan. Foreign public officials are not included in the Penal Code’s definition of —public servant— or the NAO’s definition of —holder of public office—. As such, none of the bribery offences in these statutes concern bribery of officials of foreign governments or public international organisations in the conduct of international business.

In theory, Pakistan can impose criminal liability against legal persons for bribery. the Penal Code provides that every person shall be liable to punishment under the Code. —person as including —any Company or Association or body of persons, whether incorporated or not . NAO contain similar language.

Whether corporate criminal liability for bribery is actually imposed in practice is unclear.

There is no reported case law in which a company has been prosecuted for a criminal offence. The National Accountability Bureau (NAB) is responsible for investigating and prosecuting bribery offences in Pakistan.

**JURISDICTION TO PROSECUTE BRIBERY**

India has jurisdiction over bribery committed in its territory provides for territorial jurisdiction and applies to the whole of India with the exception of the State of Jammu and Kashmir. However, it is unclear whether territorial jurisdiction is extended to offences which only partly take place in India.

Also provides for nationality jurisdiction. Accordingly, jurisdiction is available to prosecute Indian citizens who commit bribery while outside of India, including the abetment of bribery.

Nationality jurisdiction is not extended to prosecute legal persons for bribery; Indian companies are not included as —citizens— under the PCA, CCP or IPC.

Pakistan has jurisdiction over bribery committed in its territory. the Penal Code states that the Code —shall take effect throughout Pakistan—. Similarly, NAO provides that the Act
extends to the whole of Pakistan. However, it is unclear whether territorial jurisdiction is extended to offences that only take place partly in Pakistan.

The Penal Code and NAO also provide for nationality jurisdiction. Penal Code states that the Code applies to any offence committed by any Pakistani citizen in any place beyond Pakistan. NAO states the Ordinance applies to all citizens of Pakistan. Neither statute requires dual criminality, i.e. the act or omission in question need not be an offence in the place where it occurs.

The Penal Code and NAO further provide that they apply to persons in the service of the Pakistan outside of Pakistan. This would provide extraterritorial jurisdiction to prosecute non-Pakistani nationals in the service of the Pakistan Government who commit bribery.

Nationality jurisdiction is not extended to prosecute legal persons for bribery; Pakistani companies are not included as citizens under the Penal Code or NAO.

**SANCTIONS FOR BRIBERY**

The bribery offences under the PCA in India are punishable by imprisonment for a term which shall not be less than six months but which may extend to five years. Offenders are also liable to a fine; however, the amount of fines which may be imposed is unclear.

In addition to the main bribery offences, the PCA establishes the offence of criminal misconduct by a public servant for habitually engaging in the acts of bribery. A separate provision for habitually committing the bribery offence is provided for under the PCA. The PCA does not provide a definition for the term habitually; it is therefore unclear whether this applies to a situation where the offender can be convicted for engaging in a series of bribery offences, or whether it applies to an offender with a previous conviction. The punishment for the offence of criminal misconduct by a public servant is imprisonment for a term not less than one year but no more than seven years, and also liable to a fine.
punishment for those who habitually commit the offence of bribery is imprisonment for a term not less than two years but no more than seven years, and also liable to a fine. In fixing the fine for offences, the court is to take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence. Active and domestic bribery in the Penal in Pakistan are punishable by imprisonment of up to three years and/or a fine. The offence of corruption under NAO is punishable by imprisonment of up to 14 years and/or a fine. There is no maximum limit to the fine that may be imposed, as long as the fine is not excessive. Under the NAO, a fine must also be not less than the gain derived by the offender from the offence. Confiscation is available under the NAO, Anti-Money Laundering Ordinance (AMLO) and the Penal Code. Upon conviction for corruption under the NAO, a court may confiscate the pecuniary resources of the official that is disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices, whether in his name or in the name of any of his dependents. This also applies to property held beneficially for the official. The provision only applies upon a person's conviction for the offence of corruption under the NAO; it is therefore unavailable against convicted bribers because the NAO does not address active bribery.

Confiscation may also be available under the AMLO. Upon conviction for laundering the proceeds of a bribery offence (whether under the Penal Code and NAO), a court shall forfeit the proceeds. Proceeds is defined as any property derived or obtained directly or indirectly from the bribery. Finally, Code of Penal Procedure allows a court to confiscate any property regarding which any offence appears to have been committed, or which has been used for the commission of any offence. An explanatory note to the section states that the provision covers property originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and
anything acquired by such conversion or exchange, whether immediately or otherwise. The provision thus appears to cover both direct and indirect proceeds.

None of these confiscation provisions allow a court to impose a fine of equivalent value to the property subject to forfeiture, e.g. when the property is not available because it has been expended or converted.

TOOLS FOR INVESTIGATING BRIBERY

In India, the CVC exercises superintendence over the Central Bureau of Investigation (CBI), which is charged with the investigation of offences under the PCA. Provides investigative powers to inspect the bankers’ books and take certified copies of relevant entries of persons suspected to have committed an offence under the PCA, or of any other person suspected to be holding money on behalf of such persons. The Bankers’ Books Evidence Act (BBEA) defines —bankers’ books — to include — ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank. The term —bankers’ books under the BBEA applies only to banks and does not include the records of all financial institutions (i.e. credit unions, insurance companies, brokerage firms, mutual fund companies). However, according to Indian authorities, the CCP empowers investigators to obtain this information from other financial institutions for the purposes of an investigation. The CCP also provides for the seizure of additional information, such as account-opening information, client correspondence and instructions, account statements, etc. The CBI is also empowered to inspect and obtain copies of any classified or graded documents from the Audit Office. According to Indian authorities, investigators can access tax information. Search and seizure of company records (e.g. accounting records, corporate records that show the beneficial owners) or of the financial and company records of third party beneficiaries are also available under Indian law.
Pakistan As will be seen below, investigative tools available in bribery cases are mainly found in the NAO. But as mentioned earlier, the NAO contains passive but not active bribery offences. If the authorities are only investigating a briber but not an official (e.g. because the official has died or has already been convicted), then it is doubtful that the investigative tools in the NAO are available. If not, then investigators may have to resort to the much more limited tools in the Code of Criminal Procedure (CCP).

The NAO permits investigators to access documents and information possessed by private individuals or companies, including banks and financial institutions. The National Accountability Bureau (NAB) is responsible for investigating bribery offences in the NAO. The Bureau may demand information or documents from any persons. It may also request banks and financial institutions to provide information relating to any person, including entries in the institution’s books and transaction information. The power to demand information is available — notwithstanding anything contained in any other law —; this presumably overrides any applicable bank secrecy legislation.

NAB investigators may also obtain tax information. The NAO authorises the NAB to demand any documents or information from any government department. If a question of secrecy arises, the NAB Chairman has the final say. This would appear to allow the NAB to obtain information protected by tax secrecy.

ENFORCEMENT OF BRIBERY OFFENCES

India The CBI is the primary agency charged to conduct criminal investigations and prosecutions of bribery and corruption offences under the PCA. The prosecution of bribery offences require the authorization of the Central Government, the State Government or the
relevant authority competent to remove the public servant from office. It is unclear who in the Central or State Government, or relevant competent authority, issues this sanction.

In 2007, the CBI registered 558 cases under the PCA involving a total of 936 public servants. These cases mainly involved criminal misconduct by showing undue favour, obtaining bribes and possession of disproportionate assets by public servants. However, it is unclear whether these cases concern the specific offence of —criminal misconduct, or whether the term is herewith applied in the more general sense and refers to the individual offences under the PCA. There is also no information on the number of cases specifically concerning bribery.

During the same year, 796 cases were investigated under the PCA and the CBI recommended disciplinary action and prosecution in 229 cases; prosecution in 420 cases; disciplinary action in 82 cases; administrative action in 10 cases; and, closure in 52 cases. The courts disposed of 498 cases under trial of which 317 cases resulted in conviction, 127 in acquittal, 38 discharges, and 16 cases were disposed of for other reasons. The overall conviction rate was 63.6 percent.26 Again, there are no available statistics pertaining specifically to bribery.

As for administrative sanctions, in 2007, major administrative (disciplinary) penalties were imposed upon 1002 public servants, and minor administrative (disciplinary) penalties were imposed upon 1164 public servants. There are no available statistics that pertain to the sanctions imposed specifically for bribery.

**Pakistan**

The NAB has jurisdiction to conduct criminal investigations into bribery offences under the NAO, while the Prosecutor General Accountability prosecutes such cases (NAO). The NAO is silent on who has jurisdiction to investigate and prosecute Penal Code bribery offences. Presumably, the responsibility falls upon the general law enforcement and prosecutorial authorities.
The NAB’s Web site only contains enforcement statistics since 2007. The data are divided into the sequential stages of a case: complaint received, initial inquiry, formal investigation, and prosecution. The figures represent all corruption crimes, i.e. not only bribery but also embezzlement etc. For this reason, they provide some indication of the NAB’s enforcement capabilities, but are of limited use in assessing the enforcement of bribery offences.

RECOMMENDATIONS FOR A WAY FORWARD

India has undertaken significant efforts in criminalising bribery, especially in the area of passive domestic bribery. To further enhance compatibility with international standards, India could consider the following.

The PCA already contains a number of positive features that conform to international standards. For example, it covers passive domestic bribery offences and third party beneficiaries. The PCA also importantly provides a broad definition of —public servant— that includes those —expecting to be a public servant— as well as state-owned enterprises and corporations, and companies receiving state aid. This goes beyond what is required by international standards. The terms —gratification— and —valuable thing— under the PCA also broadly cover both pecuniary and non-pecuniary advantages.

To improve its bribery offences, India could consider further addressing the following areas:

(a) A specific offence criminalising active domestic bribery;

(b) Clarification of the relationship between the offences in the PCA, and the use of language in those offences that does not comply with language typically used to define these kinds of offences and international standards (e.g. —legal remuneration—, —favour or disfavour— —gratification—, —without consideration—).
(c) Express language covering additional modes of committing bribery, such as a promise to give a bribe;

(d) Clearer language covering bribery through the use of intermediaries;

(e) Ensuring that the term —official act— is not applied too narrowly, and that it includes any use of a public official’s position, whether or not within his/her authorised competence;

(f) Incomplete offences, such as when a bribe is offered to but not received by an official, or when an official rejects a bribe.

To conform to international standards, India may wish to consider adopting a specific offence criminalising bribery of officials of foreign countries and public international organisations in the conduct of international business.

International standards require that legal persons be held liable for bribery. India’s Penal Code broadly includes —corporations or associations or body of persons whether incorporated or not—in its definition of —persons.

Pakistan’s active and passive domestic bribery offences meet many requirements found in international standards, e.g. the different modes of committing the passive bribery offences, and third party beneficiaries. Pakistan could strengthen these offences by addressing the following issues:

(a) A specific offence criminalising active domestic bribery that expressly covers giving, offering and promising a bribe, and bribery through an intermediary;

(b) Express language covering active and passive domestic bribery through an intermediary;

(c) Definition of —public servant—that expressly covers persons performing legislative functions; persons holding unpaid or temporary office; and all persons who perform a public function, including for a public agency or public enterprise, or provide a public service

(d) More specific language covering the situation where a bribe is given or taken in order that a public servant use his/her position outside his/her authorised competence;
(e) —Gratifications\(\) of a small value; and

(f) Incomplete offences, such as when a bribe is offered to but not received by an official.

To bring its criminal bribery offences in line with international standards, Pakistan should criminalise the bribery of officials of foreign governments and public international organisations in the conduct of international business.

Pakistan’s Penal Code broadly includes —any Company or Association or body of persons, whether incorporated or not\(\) in its definition of —persons\(\).

**Conclusion**

Today, when one speaks of the criminalization of corrupt acts, it is not merely criminalizing the offence of giving and taking of bribes or the abuse of position. It includes criminalizing the proceeds of the crime of corruption and bringing to book corruptors, swiftly. Studies reveal that corruptors tend to hide themselves or their ill-gotten gains in foreign jurisdiction.

The denial of safe haven for corruptors and their proceeds of crime are vital in any strategy to combat corruption. Herein, lays the importance of international cooperation. Legislation or international initiatives on mutual legal assistance, extradition and anti-money laundering will only be effective if countries come together to mutually help.

Corruption as we all know is a ‘crime without boundaries.’ International cooperation is imperative in any country’s strategy towards combating corruption. To that end, the presence and unfailing commitment of international bodies like the ADB/OECD Anti-Corruption Initiative cannot be underplayed in helping a country achieve zero –tolerance towards corruption.

Finally, the Initiative could benefit from additional analysis of issues that are related to criminalisation but were beyond the scope of this study. Looking at other criminal corruption offences other than bribery, such as illicit enrichment, could be useful. On a more practical level, the Initiative could engage in a more in-depth examination of the actual application and
enforcement of corruption laws by considering the experience of investigators, prosecutors, lawyers, companies and civil society. A proper, thorough study of this topic would require an on-site visit of a reviewed country by experts. Other potential issues of interest could include the availability of resources; training and expertise, e.g. in financial investigations, information technology and forensic accounting; political interference in investigations and prosecutions; interagency coordination; and detection of corruption, such as through anti-money laundering systems, tax authorities, accountants and auditors. As a multilateral body, the Initiative could also be an appropriate forum for considering issues such as transborder corruption cases and joint investigations.

India should be commended for maintaining detailed statistics on the number of case registrations, investigations, prosecutions and convictions under the PCA, including the number and nature of the sanction. As statistics are essential to ascertain whether a scheme criminalising bribery is effective, India may wish to consider breaking down these figures by type of offence and maintain more detailed statistics which specifically pertain to bribery cases.

To properly measure the effectiveness of its criminalisation of bribery, Pakistan should maintain statistics on investigations, prosecutions, convictions, and sanctions for active and passive domestic bribery.

References


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<th>Criminalisation of Bribery in the Initiative's Member Jurisdictions</th>
<th>India</th>
<th>pakistan</th>
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<td>1</td>
<td>The Initiative’s Members with Overlapping General Bribery Offences</td>
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<td>2</td>
<td>The Initiative’s Members that Cover Bribery through Intermediaries Expressly or by Case Law</td>
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<td>3</td>
<td>The Initiative’s Members Whose Legislation Expressly Covers Non-Monetary Bribes</td>
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<td>4</td>
<td>The Initiative’s Members that Provide a Defence of —Effective Regret</td>
<td>NO</td>
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<td>5</td>
<td>The Initiative’s Members that Can (in Theory) Impose Criminal Liability against Legal Persons for Bribery</td>
<td>YES</td>
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<td>The Initiative’s Members that Have Nationality Jurisdiction to Prosecute Natural Persons for Bribery</td>
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<td>8</td>
<td>The Initiative’s Members that Punish Passive Bribery More Heavily than Active</td>
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<td>9</td>
<td>The Initiative’s Members that Permit Confiscation of</td>
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### Indirect Proceeds of Bribery

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<td>10: The Initiative’s Members that Provide for Confiscation of Property or a Monetary Penalty of Equivalent Value</td>
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<td>11: The Initiative’s Members that May Ban the Holding of Public or Elected Office as a Sanction for Bribery</td>
<td>NO</td>
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<td>12: The Initiative’s Members that Provide for Production Orders, Subpoenas, Authorisations or Summons for Gathering Evidence from Financial Institutions</td>
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<td>13: The Initiative’s Members whose Bank Secrecy Rules Do Not Impede Bribery Investigations</td>
<td>YES</td>
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<td>14: The Availability of Special Investigative Techniques in Bribery Cases in the Initiative’s Members</td>
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<td>15: The Initiative’s Members with Legislative Provisions or Guidelines Dealing with Co-operating Offenders</td>
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<td>16: The Initiative’s Members with Specialised Agencies and Bodies that Have Powers to Investigate and Prosecute Bribery</td>
<td>YES</td>
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Table 2:
Summary of Maximum Sanctions for Domestic Bribery in the Initiative’s India and Pakistan
Note: General bribery offences only; if multiple general offences, then the table reflects the one with the higher sanctions.

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<tr>
<th>Category</th>
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<td><strong>Natural Persons</strong></td>
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