

Law of The Republic of Azerbaijan on Combating Corruption

LAW OF THE REPUBLIC OF AZERBAIJAN ON COMBATING CORRUPTION

(adopted by Parliament on 13 January 2004)

This Law is aimed at prevention and detection of offences related to corruption and removal of consequences thereof, protection of social justice, human rights and freedoms, the creation of favourable conditions for development of the economy, and ensuring the lawfulness, transparency and effectiveness of activities of State authorities, municipal bodies and officials.

The aim of this Law is also to strengthen the confidence of the people in State authorities, to encourage professionals to take service in the State authorities and municipal bodies, and to create conditions precluding those persons from committing offences related to corruption.

Chapter I General provisions

Article 1. Definition of corruption

Corruption shall mean illicit obtaining by an official of material and other values, privileges or advantages, by using for that purpose his or her position, or the status of the body he or she represents, or his or her official powers, or the opportunities deriving from those status or powers, as well as bribery of an official by illicit offering, promising or giving him or her by individuals or legal persons of the said material and other values, privileges or advantages.

Article 2. Subjects of offences related to corruption

2.1. The following persons may be subjects of offences related to corruption:

2.1.1. persons elected or appointed to the State bodies within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan ;

2.1.2. persons who represent the State bodies on the basis of special powers;

2.1.3. public servants who hold administrative office;

2.1.4. persons who exercise management or administrative functions in appropriate structural units of the State bodies, in State-owned institutions, enterprises and organizations as well as in enterprises in which the control package of shares is owned by the State;

2.1.5. persons whose candidatures to elective offices in the State bodies of the Republic of Azerbaijan were registered as stipulated by Law;

2.1.6. persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan ;

2.1.7. persons who exercise management or administrative functions in municipal bodies;

2.1.8. persons who exercise management or administrative functions in non-State entities discharging the powers of State authorities in cases provided for by law;

2.1.9. persons who obtain material and other values, privileges or advantages for having unlawfully influenced the decision of an official, by using for that his or her authority or links;

2.1.10. individuals or legal persons who unlawfully offer, or promise, or give material and other values, privileges or advantages to an official, or who mediate in such acts.

2.2. Persons referred to in Articles 2.1.1 to 2.1.8 of this Law shall be regarded as officials for the purposes of this Law.

Article 3. Scope of application of the Law

In the territory of the Republic of Azerbaijan this Law shall apply to all individuals, including foreigners and stateless persons, as well as legal persons. Beyond the territory of the Republic it shall apply to citizens of the Republic of Azerbaijan and legal persons registered in the Republic of Azerbaijan , in accordance with the international treaties to which the Republic of Azerbaijan is a party.

Article 4. Bodies carrying out the fight against corruption

4.1. All State bodies and officials shall, within their powers, carry out the fight against corruption. In cases, where an offence related to corruption gives rise to administrative or criminal responsibility, the fight against corruption shall be carried out by the law enforcement bodies within the procedure laid down by law.

4.2. The functions of a specialized body in the field of prevention of corruption shall be discharged by the Commission on Combating Corruption (hereinafter referred to as the Commission) of the Republic of Azerbaijan.

4.3. The Commission shall consist of members appointed by the executive, legislative and judicial bodies. The powers of the Commission shall be determined by a statutory act.

Chapter II

Prevention of corruption

Article 5. Requirements of financial nature

(As amended by the law of 01.04.2005)

5.1. Officials shall submit the following information within the procedure laid down by the legislation:

5.1.1. yearly, on their income, indicating the source, type and amount thereof;

5.1.2. on their property being a tax base;

5.1.3. on their deposits in banks, securities and other financial means;

5.1.4. on their participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their property share in such enterprises;

5.1.5. on their debt exceeding five thousand times the nominal financial unit ;

5.1.6. on their other obligations of financial and property character exceeding a thousand times the nominal financial unit .

5.2. The information envisaged in Article 5.1 of this Law can be demanded in an order defined by the legislation.

Article 6. Responsibility for violation of requirements of financial nature

(As amended by the law of 01.04.2005)

6.1. Officials or persons wishing to take up a public office, shall be notified of the requirements envisaged in Article 5.1 of this Law as well as of the legal consequences of the failure to comply with those requirements, as provided for in the legislation.

6.2. Rules of exercising the control over compliance with the requirements envisaged in Article 5.1 of this Law shall be defined by the legislation.

6.3. Officials' failure to comply with the requirements envisaged in Article 5.1 of this Law, that is the failure, without any reasonable excuse, to timely submit the information mentioned in this Article, or the wilful submission of incomplete or distorted information may give rise to disciplinary responsibility of those persons. Persons, in respect of which a special procedure is provided for in the Constitution and laws of the Republic of Azerbaijan for initiating disciplinary proceedings, may be subject to disciplinary responsibility in accordance with those rules.

6.4. The Commission may have published in the official press information of the persons who fail to comply with the requirements envisaged in Article 5.1 of this Law.

Article 7. Prohibition for next of kin to work together

7.1. The next of kin of an official may not hold any office under his or her direct subordination, except for the elective offices and other cases provided for in the legislation.

7.2. Persons who violate the requirements of Article 7.1 of this Law shall, within 30 days of the finding of that violation, be transferred, if such violation is not removed voluntarily, to another office excluding subordination, and when this is not possible, either of the persons concerned shall be dismissed from his or her office.

7.3. Persons dismissed from their office on the grounds specified in Article 7.2 of this Law, may hold office in other bodies, institutions, enterprises or organizations.

Article 8. Restrictions related to gifting

8.1. No public official shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts as indicated in the article 8.2 of this Law and use of conventional hospitality.

8.2. Public officials may not solicit or accept multiple gifts from any natural or legal persons during any twelve month period where the aggregate value of the gifts exceeds fifty five mantas. Gifts received above this limit shall be considered as belonging to the State authority or municipal body in which that official is performing his or her service duties (powers).

8.3. In cases where the public official can not determine whether the acceptance of a gift violates this article, he/she must seek guidance from either his/her superior public official or the relevant state body.

8.4. In entering into civil contracts with physical and legal persons or in performing them, officials shall be prohibited from obtaining any privileges or advantages relating to their service activity.

8.5. When being offered illegal material and non-material gifts, privileges or concessions a civil servant official shall refuse them. In case if material and non-material gifts, priveleges or concessions are given for reasons not depending on him/her, he/she shall inform his/her direct supervisor about this, and material and non-material gifts, priveleges or concessions shall be given on a statement to a state body where the civil servant is employed.

Chapter III

Offences related to corruption and responsibility for such offences

Article 9. Offences related to corruption

9.1. Offences related to corruption consist of corruption offences themselves and offences conducive to corruption.

9.2. The following acts or inaction shall be considered as corruption offences:

9.2.1. the request or receipt by an official, directly or indirectly, of material and other values, privileges or advantages, for himself or herself or for third persons, or the acceptance of an offer or a promise of such material as other values, privileges or advantages, for acting or refraining from acting in the exercise of his or her service duties or powers;

9.2.2. the offering, promising or giving to an official by individuals or legal persons, directly or indirectly, of material and other values, privileges or advantages, for himself or herself or for third persons, for acting or refraining from acting in the exercise of his or her service duties or powers;

9.2.3. the use by an official of unlawfully obtained property with a view to deriving benefit for himself or herself or for third persons, for acting or refraining from acting in the exercise of his or her service duties or powers;

9.2.4. the obtaining by an official, in the course of performing his or her service duties (powers) of material and other values, privileges or advantages without payment or for price (tariff) lower than the market price or the prices regulated by the State;

9.2.5. the getting by an official, in the course of performing his or her service duties (powers), benefits from savings (deposits), securities, rent, realty or lease;

9.2.6. the offering, promising or giving, directly or indirectly, of material and other values, privileges or advantages to any person who states of his or her ability to exert improper influence over the decision-making of an official;

9.2.7. the receipt of material and other values, privileges or advantages or the acceptance of an offer or a promise of such material or other values, privileges, advantages, by a person who, for certain reward, states of his or her ability to exert an improper influence over-the decision-making of an official;

9.3. The following acts or inaction of an official shall be considered as offences conducive to corruption:

9.3.1. in the course of performing his or her service duties (powers), to hold any lucrative office or to engage in any lucrative activity, except for the scientific, pedagogical and creative activity;

9.3.2. using his or her position, or the status of the body he or she represents, or the official powers, or the opportunities deriving from those status or powers, to render any illicit assistance to individuals and legal persons in carrying out their entrepreneur activities, in receiving by them subsidies, subventions, dotations, credits and other privileges with a view to obtaining by them material and other values, privileges or advantages;

9.3.3. to engage, directly, through other or fictitious persons, in entrepreneur activity, to hold more than one office (except for the scientific, pedagogical and creative activity), as well as to enter into the executive bodies of economic entities carrying out entrepreneur activity, and financial and credit enterprises;

9.3.4. to unlawfully interfere with the activity of other State bodies on issues not falling within his or her competence, by using his or her status, or the status of the body he or she represents, or his or her powers, or the opportunities deriving from those status and powers;

9.3.5. to exert influence on the solution of issues related to his or her personal interest, by using his or her status, or the status of the body he or she represents, or his or her powers, or the opportunities deriving from those status and powers;

9.3.6. when adopting normative legal acts and other decisions, to give any advantages to individuals or legal persons not pertaining to their designation;

9.3.7. to be a representative of individuals or legal persons in affairs of the body in which he or she is holding an office or the body under his or her subordination or supervision or accountable to him or her;

9.3.8. to refuse, without due grounds, giving to individuals or legal persons information as provided for in the laws or other normative legal acts, or to delay the giving of that information or to give incomplete or distorted information;

9.3.9. to demand from individuals or legal persons any information the giving of which is not envisaged in the laws or other normative legal acts;

9.3.10. to give, without legal grounds, the material and financial means of the State authorities or municipal bodies to the election fund of candidates, registered candidates, political parties, blocks of political parties, referendum initiative groups;

9.3.11. unless otherwise provided for in the legislation, to give to non-State structures the material and financial resources belonging to the State funds, to economic entities of State authorities or municipal bodies;

9.3.12. to create artificial hurdles to individuals or legal persons for the realization of their rights and legitimate interests;

9.3.13. to give the powers related to the regulation by State of entrepreneur activity to individuals or legal persons exercising such activity.

9.4. In addition to the cases envisaged in this Law, other offences related to corruption may be determined by legislative acts governing the activity or status of officials.

Article 10. Responsibility of officials for offences related to corruption

10.1. Offences related to corruption shall give rise to disciplinary, civil, administrative or criminal responsibility as provided for in the legislation.

10.2. In cases, where commission by an official of offences referred to in Article 9 of this Law entails civil, administrative or criminal responsibility, instituting of legal proceedings against that official shall be carried out in accordance with relevant legislation of the Republic of Azerbaijan .

10.3. Measures of disciplinary responsibility for offences related to corruption shall be governed by this Law and other legislative acts.

10.4. In cases, where commission of offences referred to in Article 9 of this Law does not entail administrative or criminal responsibility, it shall give rise to disciplinary responsibility as provided for in the legislation, by complying with the following special circumstances:

10.4.1. In cases, where persons elected to the State authorities within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan commit any of the offences referred to in Article 9 of this Law, the anti-corruption body shall inform thereof the State authority, to which the official concerned was elected.

10.4.2. In cases, where persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan commit any of the offences referred to in Article 9 of this Law, the anti-corruption body shall inform thereof the respective election commission. The election commission shall, within 5 days as of the day when it receives relevant materials, inform of the offence committed by the person concerned the municipal body, to which he or she was elected.

10.4.3. In cases, where offences referred to in Article 9 of this Law are committed by persons whose candidatures to elective offices in the State bodies of the Republic of Azerbaijan were registered as stipulated by law, those persons shall be subject to the measures envisaged in the Election Code of the Republic of Azerbaijan.

10.4.4. If judges commit any of the offences referred to in Article 9 of this Law, the anti-corruption law shall inform thereof the Supreme Court of the Republic of Azerbaijan for being considered at the Disciplinary Board of the Supreme Court and taking relevant disciplinary measures.

Article 11. Responsibility of individuals and legal persons for corruption offences

11.1. Individuals committing corruption offences as defined by law, if these acts do not constitute a crime, shall be subject to an administrative fine.

11.2. Legal persons committing corruption offences as defined by law shall be imposed a fine within the procedure laid down by the legislation, or their activity shall be terminated.

Chapter IV

Removal of consequences of offences related to corruption

Article 12. Confiscation of unlawfully obtained property and compensation of unlawfully obtained privileges or advantages

12.1. The property unlawfully obtained by officials as well as the costs of unlawfully obtained by them privileges or advantages shall be voluntarily compensated to the benefit of the State. In cases, where officials refuse to return the unlawfully obtained property or to compensate it as well as the costs of the unlawfully obtained privileges or advantages, the unlawfully obtained property or its costs and the costs of the unlawfully obtained privileges or advantages shall be compensated to the benefit of the State by a court decision on the basis of a lawsuit brought in by the State bodies concerned.

12.2. Pending judicial examination, measures may be taken by a court against the property of the respondent as provided for in the Civil Procedure Code of the Republic of Azerbaijan .

Article 13. Revocation of acts adopted as a result of offences related to corruption

Acts adopted as a result of offences related to corruption may be revoked by the State bodies concerned or by court pursuant to a request made by the State bodies concerned or other persons.

Article 14. Entry into force

This Law shall come into force as of 1 January 2005 .