

Excerpts from the RDTL 2009 Penal Code

Articles covered by the proposed Anti-Corruption Law

July 2018

Article 192. Traffic of influence

1. Any person who, directly or through a third person, and with his or her consent or endorsement, asks for or accepts, for him or herself or a third party, any material or other gain or promise thereof, to abuse his or her influence, whether actual or supposed, in relation to any public entity, is punishable:

- a) With 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision, if the purpose is to obtain any unlawful favorable decision;
- b) With up to 1 year imprisonment or a fine, if no heavier penalty is applicable by force of another legal provision, if the purpose is to obtain any favorable lawful decision.

2. Any person who, directly or through a third person, and with his or her consent or endorsement, gives or promises material or other gain to the persons referred to in the preceding subarticle for the purposes described in subparagraph a) of the preceding subarticle, is punishable with up to 4 years imprisonment or a fine.

Article 274. Intentional mismanagement

1. Any person who is in charge of disposing of or managing interests, services or assets of another party, even though partner of the company or corporate entity that owns said assets, interests or services, and does intentionally violate rules of control and management or act in serious breach of the duties inherent to his or her office, causing significant economic equity loss, is punishable with 1 to 4 years imprisonment.

2. If the assets, interests or services referred to in the preceding subarticle are owned by the State, a public utility company, cooperative or people's association, the perpetrator is subject to an applicable penalty of 2 to 6 years imprisonment.

3. The same penalties are applicable to any person who misappropriates, or allows misappropriation of property that were only to be disposed of within the scope and for the specific purposes of managing property of a third party.

Article 275. Negligent mismanagement

1. Any person who, being under the conditions described in subarticle 1 of the previous article, causes serious equity loss for having failed to act diligently as obligated to and capable of, is punishable with up to 1 year imprisonment or a fine.

2. A penalty of up to 2 years imprisonment or a fine is applicable if any of the situations described in subarticle 2 of the preceding article relate to said assets or interests.

3. Prosecution depends on the filing of a complaint.

Article 287. Malfeasance by a magistrate or official

1. Any judge, public prosecutor or official who, at any stage of a court proceeding, and with intent to benefit or cause harm to any other person, wilfully and unlawfully performs an act within the scope of the official powers invested in the same or fails to do so, being required to perform it, is punishable with 2 to 6 years' imprisonment.
2. If any of the acts described above result in deprivation of liberty of any person or cause a situation of unlawful arrest or detention, the penalty is 3 to 10 years imprisonment.

Article 288. Malfeasance by an attorney or public defender

1. Any attorney or public defender who intentionally compromises a case entrusted to him or her is punishable with 1 to 4 years imprisonment.
2. Any attorney or public defender who, in said case, serves as a defender or counsel to parties in a dispute, with intent to act for the benefit or detriment of any of the same, is punishable with 2 to 6 years imprisonment.

Article 290. Assisting a criminal

1. Any person who, wholly or partially hinders, frustrates or misleads investigative or preventative action by competent authorities with knowledge or intent to avert enforcement of a penalty or security measure upon a person who has committed a crime, is punishable with up to 3 years imprisonment or a fine.
2. The attempt is punishable.
3. If said assistance is provided by an official involved or with power of involvement in the case or responsible for executing said penalty or security measure, or to order execution thereof, the same is punishable with 2 to 5 years imprisonment.
4. The commission of the crimes described in subarticle 1 shall not be punishable whenever:
 - a) In committing the act, the perpetrator seeks simultaneously to avoid enforcement of a penalty or security measure on him or herself;
 - b) The perpetrator is a spouse, descendent, parent, has adopted or been adopted by, relative or similar to up to the second degree of the person for whom the act was committed or with whom the perpetrator lives in a situation analogous to that of spouse.

TITLE VI
CRIMES COMMITTED IN THE PERFORMANCE OF PUBLIC FUNCTIONS

Article 292. Passive corruption for an unlawful act

1. Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself or any third party, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with 3 to 15 years imprisonment.
2. Whenever the perpetrator, before commission of the act, voluntarily repudiates the offer or promise accepted, or returns the benefit, or, when a fungible item, restitutes its value, the same shall not be punished.
3. The penalty is extraordinarily mitigated whenever the perpetrator assists in collection of decisive evidence for identification or capture of other persons responsible.

Article 293. Passive corruption for a lawful act

1. Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission not contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with up to 3 years imprisonment or a fine.
2. The same penalty shall apply to any official who, directly or through a third party endorsed by or with consent of the former, requests or accepts, for him or herself or a third party, any undue material or immaterial benefit from a party who has, has had or will have any interest that depends on performance of the his or her official duties.

Article 294. Active corruption

1. Any person who, directly or through a third party with consent or endorsement of the former, gives or promises an official or third party who knows the official, any material gain or other benefit not due to said official, for the purpose described in article 292, is punishable with 3 to 10 years imprisonment.
2. If the purpose of the conduct described in the preceding subarticle is identical to that described in article 293, the perpetrator thereof is punishable with up to 2 years imprisonment or a fine.

Article 295. Embezzlement

1. Any official who unlawfully appropriates, for his/her own use or that of another, money or any moveable property, public or private, which has been placed in his/her custody, possession or is accessible by virtue of his or her office, is punishable with 3 to 10 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.
2. If any official lends, pledges or, by any other means, encumbers said value or property referred to in the preceding subarticle, the same is punishable with up to 3 years imprisonment or a fine if no heavier penalty is applicable by virtue of another legal provision.
3. If the value or property referred to in the previous subarticles exceeds US\$ 5,000.00, the penalties shall respectively be from 4 to 12 years or 2 to 5 years imprisonment.
4. If the value or property referred to in subarticle 1 is less than US\$ 50, the perpetrator is punishable with up to 3 years imprisonment or a fine.

Article 296. Misappropriation of public assets

Any official who uses or allows another to use any vehicle or other moveable asset of significant value in his or her responsibility or possession or to which he or she has access due to the office held, for purposes other than those intended, to obtain for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with up to 2 years imprisonment, if said assets were in possession of the official or accessible by reason of his or her office.

Article 297. Abuse of power

Any official who abuses powers or violates duties inherent to his or her office with intent to obtain, for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with 1 to 4 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.

Article 298. Abusive use of public force

Any official who, having authority to employ, requisition or order deployment of a public force, does so to hinder enforcement of the law, a valid warrant from the court or lawful order issued by a public authority, is punishable with up to 3 years imprisonment, if no heavier penalty is applicable by virtue of another legal provision.

Article 299. Economic involvement in business

1. Any official who, due to holding public office, should be involved in a contract or other transaction or activity, and takes advantage of said position to obtain, for him or herself or another, directly or through a third party, any material gain or any other unlawful economic share, thereby harming public interests that he or she is charged to manage, oversee, protect or perform, is punishable with 2 to 8 years imprisonment.

2. If the conduct above results in losses to the State exceeding US\$ 10,000, the penalty is 3 to 15 years imprisonment.

Article 314. Tax fraud

1. Any person who, with intent to evade payment or enable a third party to evade payment, wholly or in part, of any tax, fee or other pecuniary tax obligation due to the State, by:

- a) Failing to declare taxable items or facts required for the payment of said tax;
- b) Inaccurately declaring facts used as the basis for assessment; or
- c) Hinders, by any means, or withholds necessary information for proper monitoring of any activity or fact subject to taxation, shall be punishable by 2 to 6 years imprisonment.

2. If the amount due and unpaid exceeds US\$ 5,000.00, the perpetrator shall be punishable by 2 to 8 years imprisonment.

Article 319. Mismanagement of public funds

1. Any person who uses public funds differently than as established by law is punishable by up to 2 years imprisonment or a fine.

2. If funds are misused for other than public purposes established by law, the penalty is 2 to 6 years imprisonment.