

Examining Bribery as a Financial Crime in the Private Sector within the Framework of Jordanian Penal Legislation

Mishael Al-Raggad¹, Abdullah Al-Raggad²,
Mohammed Al-Raggad³, Asma'a Alraggad⁴,
Ali al-mahasneh⁵ & Yazan Abu Huson⁶

Abstract

This research critically evaluates the strategies employed by the Jordanian criminal legislator in formulating conditions for the crime of bribery within the private sector, focusing on elements related to criminalization and punishment. Utilizing descriptive and analytical methodologies, the study delves into the multifaceted dimensions of the prevailing legal framework, unraveling intricacies associated with its execution. The findings accentuate the existence of practical impediments in addressing bribery within the private sector, leading to the development of recommendations designed to alleviate these challenges. The study significantly contributes to a more profound comprehension of the intricate dynamics involved in regulating bribery in Jordan, offering valuable insights for legal practitioners, policymakers, and scholars. The insights derived from this research hold particular relevance for understanding the subject matter comprehensively, providing a nuanced perspective on the complexities of dealing with bribery in the private sector within the legal context of Jordan.

Keywords: Bribery, Private Sector, Financial Crimes, Criminal Legislator, Criminalization, Punishment, Legal Framework, Integrity and Anti-Corruption Law, Jordan.

Introduction

Bribery is a serious crime that is universally condemned and punishable by law across nations (Spalding, 2010). In Jordan, the criminal legislation, notably the Jordanian Integrity and Anti-Corruption Law No. 13 of 2016, encompasses

¹ The author is Full-time Lecturer, Jadara University, Jordan. Mishael Mohammad Al-Raggad m.alraggad@jadara.edu.jo. Orcid no: <https://orcid.org/0000-0002-1846-8969>

² Associate Professor – German Jordanian University, Abdullah Khalaf Al-Raggad. abdallah.raggad@gnu.edu.jo Orcid no: <https://orcid.org/0000-0001-5159-9576>

³ Lecturer–Hashemite University, Mohammed Housin Abtan Al-Raggad. mhraggad@yahoo.com Orcid no: <https://orcid.org/0009-0009-5400-0798>

⁴ Associate Professor-Al-balqa Applied University, Asma'a Mohammad Alraggad Dr.asma@bau.edu.jo Orcid no: <https://orcid.org/0000-0002-1428-4265>

⁵ Jadara University, Jordan, Ali al-mahasneh a.mahasneh@jadara.edu.jo Orcid no: <https://orcid.org/0009-0006-7520-3592>

⁶ Ph.D. student in the Department of Accounting, Faculty of Economics, University of Valencia, Valencia, Spain. yaha@alumni.uv.es, Orcid: 0000-0001-6337-9423

bribery within the private sector, a newer addition to the scope of corruption offenses (Aloran, 2017). Corruption, in its various forms, severely undermines fair competition and diminishes efficiency within both public and private organizations (Al-Qudah et al., 2022). Among the emerging corruption crimes, bribery in the private sector stands as a prominent example due to its detrimental impact (Rose-Ackerman & Palifka, 2016).

Recognizing the corrosive effects of private-sector bribery, stakeholders such as businesses, academics, trade unions, and non-governmental organizations began advocating for anti-bribery regulations back in 2002 (Vasylchenko, 2021). Substantial efforts were directed towards criminalizing bribery, with initiatives like Transparency International (TI) leading the development of anti-bribery principles for businesses (Goel, 2012; Abu Huson et al., 2023). Collaborative programs involving entities like the Center for International Private Enterprise (CIPE) and international community organizations further aimed to assist businesses in formulating their anti-bribery strategies (Windsor, 2013; Abualoush et al., 2022).

The United Nations Convention against Corruption laid out a comprehensive framework applicable to all states to fortify their legal and regulatory systems against corruption and bribery (Webb, 2005). In tandem, national legislation, including Jordan's Integrity and Anti-Corruption Law No. 13 of 2016, addressed the issue of bribery in detail (Gharaibeh & Carchidi, 2022). However, this recent inclusion of private-sector bribery by the Jordanian criminal legislature raises the prospect of additional complexities, potentially necessitating modifications to existing rules and regulations (Aloran, 2017). This paper seeks to elucidate the legal framework governing bribery in the private sector by analyzing the pertinent legal texts. It aims to clarify any ambiguities and emphasize the structure, provisions, and penalties associated with this crime.

The study is organized as follows: Section Two provides research questions and an explanation of the methodology used, Section Three delves into the literature review, Section Four presents the results and discussion elucidating the theoretical and practical implications along with recommendations, and finally, Section Five outlines the conclusion.

Research Questions

This inquiry focuses on critical questions:

- How does penal legislation address the criminalization of bribery in the private sector?
- What distinguishes Jordan's legal framework in handling bribery?

- To what extent does it deviate from overarching regulations governing this specific type of bribery?

Methodology

This research holds notable significance as it delves into a relatively recent dimension of corruption that has garnered attention on a global, regional, and national scale. The scrutiny undertaken in this study aims to shed light on the intricacies surrounding bribery within the private sector. Through a comprehensive exploration, it seeks to clarify the various components and legal provisions associated with this form of corruption, contributing to a deeper and more comprehensive understanding of the subject.

Aligned with the legal context of this research, a dual approach was employed. The descriptive method was used to clarify the legal texts related to bribery in the private sector, providing a comprehensive overview. Simultaneously, the analytical approach was applied to scrutinize these texts, making references to legislation, jurisprudence, and judicial precedents whenever feasible. This combined approach aims to provide a thorough understanding of the legal landscape surrounding the crime of bribery in the private sector, encompassing both a detailed depiction and an insightful analysis grounded in legal frameworks and precedents.

Literature Review

Several studies have investigated criminal activities broadly, but there is a limited amount of research dedicated to examining the complexities of bribery as a specific crime (Von Lampe, 2015). This literature review is organized into three sections. The initial section analyzes the perspective of Jordanian penal legislation regarding the criminalization of bribery within the private sector. The second section explores the legal framework surrounding bribery as a crime in the private sector. The third section focuses on penalties associated with the crime of bribery in the private sector within the Jordanian legislation.

A. The Position of the Jordanian Penal Legislation on Criminalizing Bribery in the Private Sector

This section seeks to offer a comprehensive understanding of the Jordanian legal landscape in addressing private-sector bribery, shedding light on its distinctiveness in comparison to both foreign and Arab legislations.

i. The Position of the Jordanian Penal Code on the Crime of Bribery in the Private Sector:

Understanding the legal dynamics of bribery is crucial for grasping the regulatory framework that governs transactions within the private sector and the boundaries established by the Jordanian legal system (Della Porta & Vannucci,

2016). This exploration involves a thorough analysis of pertinent legal provisions, definitions, and the classification of offenses as outlined in the Penal Code.

A detailed review of the Jordanian Penal Code (2016) reveals a distinctive approach, setting it apart from various foreign and Arab legislations. Unlike the legal frameworks of England and France, which criminalized bribery in private business as early as 1906 and 1919, respectively, the Jordanian legislator has opted for a specific focus on regulating bribery within the public sector. This unique legal standpoint prompts questions about the singular nature of Jordan's approach and its adherence to international standards, particularly when compared to counterparts like Egypt, whose penal legislations explicitly address bribery in the private sector. The absence of a parallel emphasis on private-sector bribery within the Jordanian legal framework raises noteworthy considerations about its alignment with prevailing international norms and practices, a point emphasized by legal scholar Elfar in 2019.

ii. The Position of the Jordanian Integrity and Anti-Corruption Law on the Crime of Bribery in the Private Sector:

Analyzing corruption crimes within the Jordanian Integrity and Anti-Corruption Law reveals a nuanced strategy (Al-Hiari, 2022). Unlike Algerian legislation, which explicitly includes bribery prevention and fighting within its law, the Jordanian counterpart does not provide distinct texts addressing bribery in the private sector. Instead, the Jordanian legislator employs various strategies, including reference to other national legislation and the adoption of international conventions ratified by Jordan, such as the United Nations Convention against Corruption (Jordanian Integrity and Anti-Corruption Law, 2016).

The integration of Article 21 from the United Nations Convention against Corruption into Article 16/A/9 of the Jordanian Integrity and Anti-Corruption Law serves as the legal framework from which the criminalization of bribery in the private sector can be established. Several critics, including Kaplan et al. (2021), argue against this technique, contending that to provide an appropriate legal rationale, a precise criminalization text outlining the elements and consequences is necessary. Despite these disagreements, others argue that the adoption of international conventions is a lawful activity, and the text of the convention is incorporated into national law following ratification (Barafi et al., 2022).

Because Article 16/A/9 is generic and lacks specific features, doubts arise regarding the appropriateness of this provision as a basis for pursuing private bribery. The report suggests that the law should be revised and proposes that the Jordanian Integrity and Anti-Corruption Law include a separate paragraph explicitly targeting bribery in the private sector clearly and plainly. According to

the Jordanian Integrity and Anti-Corruption Law (2016), the suggested language should have the ability to express the objective aspects of the crime, ensuring that its requirements are both clear and efficiently organized.

B. The Legal Model for the Crime of Bribery in the Private Sector

The legal model provides a comprehensive analysis of legal provisions, regulatory measures, and enforcement mechanisms tailored to address and mitigate instances of bribery (Tarullo, 2003). It intricately defines the elements of the offense, establishing criteria for identifying prohibited behaviour within private-sector transactions (Rose-Ackerman, 2010; Loughman & Sibery, 2011).

Moreover, the legal model outlines the corresponding penalties and sanctions, functioning as a deterrent for potential wrongdoers. Beyond punitive measures, it signifies the jurisdiction's dedication to promoting ethical business practices, corporate integrity, and transparency (Werle, 2019; O'Reilly, 2009).

The term "legal structure of the crime" encompasses the complete framework of a crime, incorporating both general and specific features, essential elements, and the conditions under which they manifest. Dealing with a crime becomes implausible if any of these elements are absent, underscoring the indispensability of a legal text, as encapsulated by the maxim "Cullum crime sine lege." The legal text assumes a pivotal role in delineating the elements and conditions of the crime, with the criminalization text serving as a guiding document in specifying the fundamental aspects of the offense (Aaronson & Shaffer, 2021).

i. The Crime of Bribery in the Private Sector in its Positive Form (The Briber)

The objective of this unlawful conduct is to exert influence over a stakeholder, often an individual in charge of a private entity or an employee therein, to induce them to carry out particular actions or refrain from specific actions in return for a promised or granted advantage. Within the Jordanian Penal Code, the concept of criminal intent, or intent, is expressly elucidated in Article (63), articulating "the will to commit the crime as defined by the law." In legal doctrine, this has been construed as possessing an understanding of the elements of the crime and possessing a will aimed at accomplishing or accepting these elements.

This form relates to the briber, who promises, offers, or grants an undue advantage to an individual within the private sector. Article (21/a) specifies the material and moral elements, emphasizing intent and knowledge as crucial aspects of criminal intent (Hosni, 1975).

The material element involves the promise, offer, or giving of an undue advantage. The promise must be serious and specific, motivating the recipient to achieve a desired interest. Similarly, the offer can be explicit or implicit, direct or indirect, but it must be serious. Giving refers to the immediate delivery of the privilege to the bribe-taker, either directly or indirectly through intermediaries (Basabose & Basabose, 2019; Adam, 2023).

The crime is deemed complete upon the occurrence of the promise, offer, or giving, even if the bribe-taker does not accept it. However, if the bribe-taker remains unaware for any reason, it is considered an attempted crime. Notably, the study identifies a lack of specific penalties for attempted bribery in the private sector within the Integrity and Anti-Corruption Law (Jordanian Integrity and Anti-Corruption Law, 2016).

The moral element involves criminal intent, requiring the briber to possess knowledge of the elements of the crime and the will to commit it. Knowledge entails awareness of making a promise, offer, or grant for an undue benefit, as well as understanding the capacity of the bribe-taker and the reciprocal nature of bribery. The will encompasses the determination to achieve the material elements of the crime (Al-Majali, 2010).

ii. The Crime of Bribery in the Private Sector in its Negative Form (The Bribe)

In this particular form of bribery within the private sector, individuals holding positions of authority or working within a private entity accept an undue advantage, either tangible or intangible, as an incentive to either carry out specific actions or refrain from certain activities. Article (21/b) introduces a presumed element, emphasizing the importance of the actor's official role or capacity within the private sector entity (Mwenda, 2008; Abu Orabi et al., 2023).

The presumed element necessitates a discernible connection between the bribe and the private entity, underscoring a work-related association without explicitly specifying the legal nature of this relationship. The term "private sector entity" is broadly construed to encompass diverse entities governed by private law, including corporations, institutions, groups, or clubs (Kim, 2013; Obeidat et al., 2022).

Regarding the material element, the criminal activity is confined to the solicitation or acceptance of an undue advantage. Solicitation or acceptance occurs when an individual in the private sector explicitly expresses a willingness to receive an undue advantage, either for personal gain or on behalf of another, in exchange for committing an action or refraining from a particular deed. The crime is considered complete upon solicitation, even if the intended beneficiary rejects

it. Acceptance, whether explicit or implicit, verbal or written, concludes the crime, regardless of whether the bribe-taker fulfills the required action (Al-Shazly, 2014; Al-Rikani, 2014).

The central focus of the criminal activity revolves around the undue advantage offered, promised, or given to the bribe by the actor. This advantage must be undue, signifying an imbalance and impropriety in the context of the transaction, with no specific requirements regarding its type or quantity. Crucially, the advantage should be intrinsically linked to the actions required from the bribe; otherwise, the crime is deemed nonexistent (Buell, 2014).

The moral element in this manifestation mirrors criminal intent, relying on the knowledge and will of the actor. Knowledge entails a comprehensive understanding of the elements constituting bribery in the private sector, including the nuances of the legal framework and relevant regulations. Will encompasses the determination to deliberately achieve the material elements of the crime, reflecting an intention to carry out the corrupt act for personal or organizational gain (Al-Majali, 2010).

C. Penalties Regarding the Crime of Bribery in the Private Sector in the Jordanian Legislation

The section focuses on the substantive criminal rules governing the crime of bribery in the private sector in Jordan. The uniqueness of the Jordanian legislator's approach becomes evident as it integrates the obligation part of the United Nations Convention against Corruption into Article (21) and Article (16/A/9) of the Integrity and Anti-Corruption Law. This approach, while innovative, introduces a potential challenge due to the separation of the obligation and penalty components, particularly underscored in Article (23/a) of the Integrity and Anti-Corruption Law.

Turning to the prescribed penalty for bribery in the private sector, as articulated in Article (23/a), it includes imprisonment for a minimum of four months or a fine ranging from JD 500 to JD 5,000. However, the legislator's oversight in specifying the maximum duration of imprisonment necessitates consultation with general legal requirements to determine this limit. Without specific conditions, the legal definition of imprisonment spans from one week to three years, classifying bribery as a misdemeanour within this legal context.

The analysis further explores the nuances of excuses and factors influencing the penalty for private-sector bribery. An exempt excuse is a notable highlight, granting immunity to individuals who disclose corruption cases before their discovery—a procedural act more fitting as an exemption from punishment. Additionally, extenuating excuses, such as providing information leading to asset

recovery, result in a two-thirds reduction in the sentence, reflecting a judicious attempt to balance legislative and judicial considerations in individualizing penalties.

The introduction of an aggravated penalty for repeated offenses is a significant aspect grounded in the perceived threat to the integrity of private entities, as identified by Albalaweea et al. (2024). However, the legislator's departure from the general provisions in the Jordanian Penal Code is notable, as it fails to specify the upper limit for doubling the penalty in such cases.

Delving into precautionary measures outlined in the Integrity and Anti-Corruption Law, such as asset seizure, travel bans, and salary suspension (Hammouri, 2021), the legislator's approach deviates notably from the Jordanian Penal Code, particularly by excluding the confiscation penalty from the set of available measures.

Examining criminal participation in private sector bribery, Article (28) prescribes the same penalty for accomplices, accessories, or instigators, with legal excuses granted. However, this approach neglects the graduated reduction of penalties in cases of interference and incitement, setting it apart from the general provisions in the Jordanian Penal Code. This detailed exploration aims to provide a nuanced understanding of the complex legal terrain surrounding bribery within Jordan's private sector, offering valuable insights for legal practitioners, policymakers, and scholars seeking a deeper comprehension of the subject.

In summary, this thorough literature review sheds light on the complex legal framework governing bribery in the private sector in Jordan. The examination covers legislative strategies, the integration of international conventions, and the legal framework for both positive and negative aspects of bribery. This foundation paves the way for the forthcoming legal analysis, which seeks to elucidate, interpret, and propose potential amendments to improve the governing legal structure. Although the legislator approaches the issue of bribery in the private sector positively, certain adjustments are crucial to ensure alignment with legal principles and mitigate potential challenges in application.

Results and Discussion

The study reveals that the Jordanian legislature takes a positive approach in addressing bribery in the private sector. However, certain limitations in these findings underscore the need to exercise caution when precisely extracting legal texts, minimizing potential challenges in their application. Notably, the recent inclusion of the crime of bribery in the private sector, following the enactment of the Jordanian Integrity and Anti-Corruption Law in 2016, involves the adoption of the United Nations Convention against Corruption's text, specifically under

Article (16/A/9) of the Integrity Law. While aligning the criminalization text with the Convention, this approach is critiqued as potentially problematic, particularly concerning the application of legal texts related to trading in influence.

The separation of obligation and punishment components by the Jordanian legislator, with the United Nations Convention encompassing the obligation part in Article (21) and the Integrity and Anti-Corruption Law housing the punishment part in Article (23), lacks precision, introducing complications in the application process, especially concerning bribery in the private sector.

Moreover, the imposed penalty for influence trading under the Integrity and Anti-Corruption Law is considered inadequate for effective deterrence, given the gravity of the crime and its potential harm to the integrity of private entities. The absence of a legal excuse replacing the penalty for bribery in the private sector, with reliance on non-prosecution under specific conditions in the Integrity and Anti-Corruption Law, is deemed inappropriate, violating general provisions in the Code of Criminal Procedure. The legislator should have stipulated an excuse exempting potential liability, encouraging perpetrators to disclose the crime. This is especially crucial considering that an excuse is a substantive rule, unlike the non-prosecution procedure, which falls under procedural rules. Furthermore, the non-punishment of attempts in the case of bribery in the private sector is acknowledged as a reasoned approach that requires legislative regulation.

The study emphasizes that attempting to commit a crime is an inchoate crime with its elements, necessitating proper regulation and punishment. The introduction of precautionary measures for bribery in the private sector, under legal texts, particularly in the Jordanian Integrity and Anti-Corruption Law, is observed. However, this approach is seen as a violation of the general provisions within the Penal Code, lacking precision and exceeding some necessary precautionary measures. Therefore, it is recommended to incorporate additional precautionary measures mentioned in the Jordanian Penal Code, such as confiscation, to ensure a comprehensive and aligned legal framework.

Theoretical and practical implications

The theoretical implications of this study extend to the broader understanding of the legal dynamics surrounding bribery in the private sector, particularly within the Jordanian context. By scrutinizing legislative approaches, international conventions' integration, and the legal model for both positive and negative facets of bribery, the study contributes valuable insights to legal scholarship. It enhances theoretical frameworks related to the criminalization of bribery, paving the way for nuanced discussions on the alignment of national laws with international standards.

Practically, the study's findings offer guidance for legal practitioners, policymakers, and lawmakers in Jordan. The identification of necessary modifications and amendments to the legal framework provides practical direction for enhancing the effectiveness of anti-bribery measures. This study serves as a foundational resource for shaping legal practices, fostering transparency, and fortifying the integrity of private sector transactions in the ongoing efforts to combat corruption.

Recommendations

This study provides several key recommendations for enhancing the legal framework governing bribery in the private sector within the Jordanian context. First and foremost, it suggests the establishment of a specific criminal provision in the Integrity and Combating Law dedicated to bribery in the private sector, departing from the reliance on the United Nations Convention. Emphasizing the necessity of clear definitions, the recommendation underscores the importance of articulating precise elements, conditions, and aspects of the crime.

Furthermore, the paper proposes the integration of penalties within the obligation part, ensuring that the punishment aligns with the gravity of bribery in the private sector, thereby enhancing deterrence. Another crucial recommendation involves revising the punishment for accepting or taking bribes in the private sector and advocating for more severe penalties to address the seriousness of the offense.

Additionally, the study suggests the inclusion of a distinct provision excusing the penalty if the accused provides information leading to the detection or tracking of bribery in the private sector during the investigative stage. It calls for a specific provision addressing attempted bribery in the private sector, complete with a corresponding penalty. Finally, the study recommends amendments to legal articles related to precautionary measures, urging the incorporation of additional measures outlined in the Jordanian Penal Code. These recommendations collectively aim to refine and strengthen the legal framework, fostering a more effective approach to combatting bribery in the private sector.

Conclusion

This study provides a thorough examination of the legal framework surrounding bribery in the private sector within the context of Jordan. The analysis has revealed both positive strides and areas of concern within the existing legislation, shedding light on the complexities and challenges associated with addressing this form of corruption. The commendable efforts by the Jordanian legislator to criminalize bribery in the private sector, as demonstrated through the

enactment of the Integrity and Anti-Corruption Law of 2016, reflect a commitment to international standards. The incorporation of the United Nations Convention against Corruption into national law underscores the country's dedication to combating corruption at a global level. However, this alignment has not been without critique, particularly regarding the specificity and precision of the criminalization text.

The identified drawbacks in the legislation, such as the potential for application-related issues and the separation of obligation and penalty parts, highlight the need for a nuanced and context-specific legal approach. While the legislator's positive intent is evident, these issues may hinder the seamless application of legal provisions, especially concerning the crime of trading in influence. Additionally, the prescribed penalties for bribery in the private sector are deemed insufficient for achieving the desired level of deterrence, necessitating a careful reconsideration of the punitive measures.

Despite the contributions of this study, it is important to acknowledge its limitations. The analysis relies on existing legal texts, and interpretations are subject to individual perspectives. The focus on the legislative aspect leaves a gap in understanding the practical implementation of these laws, an area that warrants further empirical investigation. Moreover, the study's scope is confined to the Jordanian legal context, and generalizing findings to other jurisdictions requires caution. Looking ahead, future research directions should aim to address these limitations and provide a more comprehensive understanding of bribery in the private sector. Empirical studies incorporating case analyses and practical applications would offer insights into the real-world effectiveness of the legal framework. Exploring the perspectives of legal practitioners, law enforcement agencies, and businesses could uncover challenges and strengths in the current legal provisions. Comparative studies with legal frameworks from other jurisdictions would facilitate benchmarking and the identification of best practices.

Furthermore, investigating the socio-economic impact of bribery in the private sector and evaluating the role of legal deterrents in shaping ethical business practices would provide a broader societal perspective. A longitudinal analysis tracking the evolution of the legal framework and its impact on mitigating bribery in the private sector over time could assess the effectiveness of legislative changes.

In summary, while recognizing the achievements of the current legal framework, this study emphasizes the need for continuous evaluation and refinement. By addressing the identified limitations and delving into future research directions, scholars and policymakers can contribute to the ongoing

efforts to combat bribery in the private sector, fostering a more robust and effective legal landscape in Jordan and beyond.

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