

# Section 10: Corruption-Related Offenses and Other Offenses Involving a Public Official

## Article 141: Trading in Influence

---

### *Article 141.1: Definition of Offense*

1. A person commits the criminal offense of trading in influence when he or she:
  - (a) promises, offers, or gives to a public official, a foreign public official, an official of a public international organization, or any other person, directly or indirectly, an undue advantage, in order that the public official, foreign public official, official of a public international organization, or the person abuse his or her real or supposed influence and with a view to obtaining from an administration or public authority an undue advantage for the original instigator of the act or for any other person; or
  - (b) being a public official, a foreign public official, an official of a public international organization, or any other person, solicits or accepts an undue advantage, directly or indirectly, for himself or herself or another person or entity, in order that the public official, foreign public official, official of a public international organization, or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority an undue advantage.
2. For the purposes of Article 141:
  - (a) *foreign public official* has the same meaning as in Article 139(3)(a);

(b) *official of a public international organization* has the same meaning as in Article 139(3)(b).

## Commentary

Trading in influence is a somewhat different corruption offense. As stated in the explanatory report to the Council of Europe Criminal Law Convention on Corruption (paragraph 64), the inclusion of this offense in domestic legislation serves to close the gap on those involved in corruption: “[C]riminalizing trading in influence seeks to reach the close circle of the official or the political party to which he belongs and to tackle the corrupt behavior of those persons who are in the neighborhood of power and try to obtain advantages from their situation, contributing to the atmosphere of corruption.”

**Paragraph 1(a):** The wording of Article 141.1(a) is based on Article 18 of the United Nations Convention against Corruption. It also integrates the criminal offense of trading in influence of foreign public officials and officials of public international organizations that is contained in Article 12 of the Council of Europe Criminal Law Convention on Corruption and Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. These conventions require states to consider implementing the criminal offense of trading in influence into domestic legislation. This paragraph criminalizes a corrupt trilateral relationship where a public official, foreign public official, or official of a public international organization, having real or supposed influence, trades this influence for an undue advantage from someone seeking this influence. In this paragraph, it is the person seeking the influence and promising, offering, or actually giving any undue advantage to a public official who is guilty of a criminal offense. This offense is termed *active trading in influence*. In contrast to Article 138, above, there is no requirement that the public official, foreign public official, or official of a public international organization “act or refrain from acting” in the course of his or her duties. Instead, it is enough that the public official exerts, or proposes to exert, improper influence. The link with the influence of official conduct must also be established. It is irrelevant whether or not the supposed influence is exerted or whether or not it leads to the intended result.

Reference should be made to Article 1(9), for the definition of public official, and its accompanying commentary. Reference should also be made to the commentary to Article 138, above, which discusses the meaning of *promise*, *offer*, and *give* in more detail.

**Paragraph 1(b):** The wording of Paragraph 1(b) is taken from Article 18(b) of the United Nations Convention against Corruption. Similar wording is found in Article 12 of the Council of Europe Criminal Law Convention on Corruption. This paragraph criminalizes a corrupt trilateral relationship where a public official, having real or supposed influence, trades this influence for an undue advantage from someone seeking this influence. In this paragraph, it is the person who has the influence and who solicits or accepts an undue advantage for himself or herself who is guilty of a criminal offense.

This offense is termed *passive trading in influence*. In contrast to Article 138, above, there is no requirement that the public official, foreign public official, or official of a public international organization “act or refrain from acting” in the course of his or her duties. Instead, it is enough that the public official, foreign public official, or official of a public international organization exerts, or proposes to exert, improper influence. The link with the influence of official conduct must also be established. It is irrelevant whether or not the supposed influence is exerted or whether or not it leads to the intended result.

Reference should be made to Article 1(9) of the MCC, for the definition of public official, and its accompanying commentary. Reference should also be made to the commentary to Article 138, above, which discusses the meaning of solicit and accept in more detail.

## *Article 141.2: Penalty*

The applicable penalty range for the criminal offense of trading in influence is three to fifteen years’ imprisonment.

# **Article 142: Embezzlement, Misappropriation, or Other Diversion of Property by a Public Official**

---

## *Article 142.1: Definition of Offense*

A person commits the criminal offense of embezzlement, misappropriation, or other diversion of property by a public official when he or she:

- (a) being a public official;
- (b) embezzles, misappropriates, or diverts any property, public or private funds or securities, or any other thing of value entrusted to him or her by virtue of his or her position;
- (c) for his or her benefit or for the benefit of another person or entity.

## Commentary

The MCC contains two embezzlement offenses—one relating to embezzlement in the private sector (Article 127) and the present article on embezzlement involving a public official. Essentially, embezzlement involves theft of property by a person who is entrusted to look after or manage it. The protected interest under Article 127 is another person's property, whereas in Article 142 the protected interest is public property, funds, or securities. The wording of Article 142 is taken from Article 17 of the United Nations Convention against Corruption, which requires states to implement the criminal offense of embezzlement, misappropriation, or other diversion of property by a public official into domestic law. This offense covers misappropriation and diversion of property, funds, securities, or any other thing of value entrusted to the public official by virtue of his or her position.

### *Article 142.2: Penalty*

1. The applicable penalty range for the criminal offense of embezzlement, misappropriation, or other diversion of property by a public official is two to ten years' imprisonment.
2. The applicable penalty range for the criminal offense of embezzlement, misappropriation, or other diversion of property by a public official is three to fifteen years' imprisonment when the embezzlement, misappropriation, or other diversion involves property of high value.

## Article 143: Abuse of Functions

---

### *Article 143.1: Definition of Offense*

A person commits the criminal offense of abuse of functions when he or she:

- (a) being a public official;
- (b) in the discharge of his or her functions;
- (c) performs or fails to perform his or her duties, in violation of the applicable law;
- (d) for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

## Commentary

The criminal offense contained in Article 143 is taken from Article 19 of the United Nations Convention against Corruption, which requires states to consider implementing the criminal offense of abuse of functions into domestic criminal law. Before such an offense is included in domestic legislation, it is essential that the domestic law set out the duties of a public official. This process may involve amendments to domestic administrative law. In many cases, the law will be amended to combat corruption by providing for less discretion for individual public officials, therefore providing fewer opportunities for corruption. The process may also require the promulgation of a code of conduct for policing officials (as required under Article 8 of the United Nations Convention against Corruption). Reference should be made to the International Code of Conduct for Public Officials (UN document A/51/59) and the Council of Europe's Model Code of Conduct for Public Officials (appendix to Council of Ministers Recommendation No. R [2000] 10).

### *Article 143.2: Penalty*

The applicable penalty range for the criminal offense of abuse of functions is two to ten years' imprisonment.

## Article 144: Illicit Enrichment

### *Article 144.1: Definition of Offense*

A person commits the criminal offense of illicit enrichment when the assets of the person, being a public official, significantly increase in a manner that cannot reasonably be explained in relation to his or her lawful income.

## Commentary

The wording of Article 144 is taken from Article 20 of the United Nations Convention against Corruption, which requires states to consider implementing the criminal offense of illicit enrichment into domestic criminal law. This offense has been added to the domestic legislation of many states to broaden the net to catch corrupt officials. There has been considerable controversy in many post-conflict states over public officials possessing assets that could not have been obtained by recourse to their incomes only. These assets have included houses, vehicles, and many other things. The term

assets is extremely broad, although it includes only tangible assets rather than intangible things (e.g., legal rights) or nonmaterial benefits (e.g., sexual favors).

## *Article 144.2: Penalty*

The applicable penalty range for the criminal offense of illicit enrichment is two to ten years' imprisonment.

## **Article 145: Concealment**

---

### *Article 145.1: Definition of Offense*

Without prejudice to Article 135, a person commits the criminal offense of concealment when he or she:

- (a) after the commission of a corruption-related criminal offense;
- (b) without having participated in the offense;
- (c) conceals or continues to retain any property when he or she knows that such property is the result of a corruption-related offense.

## **Commentary**

The wording of Article 145 is taken from Article 24 of the United Nations Convention against Corruption, which requires states to consider implementing the criminal offense of concealment into domestic criminal law. According to the convention, the implementation of this offense into domestic legislation is a matter for the discretion of a state. There is a certain overlap between this offense and that of money laundering under Article 135. Both offenses cover the concealment of property when the perpetrator knows it is the proceeds of crime or that it was acquired as a result of a corruption-related offense. What is not covered in Article 135 on money laundering is the continued retention of the property. Such retention is addressed and criminalized in Article 145. For the purpose of Article 145, corruption-related offenses include those corruption offenses contained in Sections 9 and 10 of the Special Part of the MCC.

## *Article 145.2: Penalty*

The applicable penalty range for the criminal offense of concealment is two to ten years' imprisonment.

# Article 146: Threat and Improper Influence

---

## *Article 146.1: Definition of Offense*

1. A person commits the criminal offense of threat and improper influence when he or she:
  - (a) threatens unlawful harm to a public official;
  - (b) with the purpose of influencing him or her to act or refrain from acting in the exercise of his or her duties.
2. It is no defense to prosecution under Article 146 that a person whom the actor sought to influence was not qualified to act in the desired way, because he or she had not yet assumed office or lacked jurisdiction, or for any other reason.

## Commentary

The criminal offense of threat and improper influence involves the perpetrator seeking to achieve the same results as with corruption and corruption-related offense, but using the threat of harm rather than a bribe to achieve this purpose. Reference should be made to Article 1(9) and its accompanying commentary on the meaning of *public official*.

## *Article 146.2: Penalty*

1. The applicable penalty range for the criminal offense of threat and improper influence is one to five years' imprisonment.
2. The court may impose a fine, as an alternative principal penalty, upon a person convicted of threat and improper influence.