

PANORAMIC
**GOVERNMENT
RELATIONS**

Brazil



LEXOLOGY

Government Relations

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FORM OF GOVERNMENT

Constitution

What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

In Brazil, the basic source of law is the legislation. Other sources are customs, jurisprudence, doctrine and principles.

The Brazilian federal government is divided into three independent and coequal branches: legislative, executive and judicial, organised according to a system of checks and balances that prevents abuses in the exercise of power by any of the branches.

The lobbying activity must be regulated by the legislative power and, later, defined by the executive through normative acts such as decrees, resolutions and ordinances that specify how the law's broader definitions must happen.

Currently, the lobbying activity relies on the Constitution and sparse legislation and norms, such as the Criminal Code, the Anti-Corruption Act, the Brazilian Bar Association by-laws and other rules. The government and parliament are seeking to approve a law that specifically regulates lobbying and government relations.

Law stated - 19 janeiro 2024

Legislative system

Describe the legislative system as it relates to lobbying.

The Brazilian Constitution of 1988 is based on the existence of a democratic, republican and federative nation, in which all power belongs to the people, who exercise it through the election of representatives and their appointees.

The Federal Constitution ensures individual rights and guarantees that serve as the foundation of social participation in the decision-making process, which include freedom of speech and assembly, and the right to petition. In this sense, any citizen may submit a plea to the government to defend their rights and to oppose illegalities and abuses of power. These individual rights enable all citizens to exercise free democratic participation in the decision-making process, which is related to lobbying and government relations.

Law stated - 19 janeiro 2024

National subdivisions

Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

Paragraph 4 of article 60 of the Brazilian Federal Constitution establishes that a proposal to amend the Constitution, to abolish the federal form of government, direct, secret, universal and periodic suffrage, the separation of powers, and the rights and guarantees of the

individual, shall not be subject to deliberation. These are what we call *cláusulas pétreas* and they must be respected and reproduced by the Brazilian states and municipalities.

Thus, since social participation in the decision-making process is a result of the safeguarding of the exercise of individual rights and guarantees, the freedom of speech and assembly and the right to petition are guaranteed in every public body, at every level across the country.

Law stated - 19 janeiro 2024

Consultation process

Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

First of all, it is important to emphasise that the legislative process in the states and municipalities follows the principle of symmetry. Therefore, the general rules laid down in the Federal Constitution must be followed by the constitutions of the states and the organic laws of the municipalities.

All bills must be examined by the House of Representatives and the Senate. They are submitted to several thematic committees, chosen according to the relevance of the main subject. These committees, analysing the report of an appointed rapporteur, evaluate aspects such as the legal adequacy and constitutionality of the bills. In addition, the proposals are subject to internal debates and public hearings in which experts offer different points of view to help the congresspeople decide. The plenary sessions of the Houses may also evaluate the bills, depending on the type, priorities and issues to be voted on.

Regulatory bodies, such as agencies and ministries, are also entitled to issue infra-legal norms, such as resolutions and ordinances. Whenever they identify the need to amend aspects of these acts, they subject the norm to a public consultation procedure, during which all interested parties can make contributions to the reform, including through official websites. In addition to the public consultation, they also organise public hearings to gather further input on the legislative reform.

Law stated - 19 janeiro 2024

Judiciary

Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judiciary in Brazil is independent and coequal. It is composed of trial courts, appellate courts and the higher courts (the Superior Court of Justice and the Supreme Court). They rule on constitutional, administrative, civil and criminal law matters. In addition, Brazil has three specialised judicial systems for ruling on labour, electoral and military cases.

Trial judges are not elected but recruited as a result of their performance in specific high-level career exams.

A different system applies to the higher courts, where members are appointed by the President according to a list of eligible professionals selected by the appellate court. These lists are mainly composed of trial judges, but a quota is reserved for career prosecutors and lawyers.

All judges of the Superior Court of Justice are appointed by the President from a list of judges, lawyers and public prosecutors.

Regarding the Supreme Court, the President may appoint anyone aged between 35 and 65 with exceptional legal knowledge and an immaculate reputation.

In May 2023, the Supreme Court confirmed the legality of Complimentary Law No. 152/2015, which regulated an alteration brought by Constitutional Amend 152/2015, which increased the compulsory retirement age for public employees from 70 to 75 years old. The law had been questioned in 2015 through a Direct Unconstitutionality Action drafted by the Brazilian Judges Association.

Law stated - 19 janeiro 2024

REGULATION OF LOBBYING

General

Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

The framework for lobbying in Brazil is currently performed on the grounds of [article 5, XXXIV, sub-paragraph \(a\) of the Constitution](#), which establishes the right to petition by granting everyone the right to represent their interests and to advocate against illegalities and abuse of power. The Constitutional right of petition ensures that every citizen and sector has their demands and pleas assessed by the government, which indirectly confers on everyone the right to lobby. In parallel, several rules seek to set the parameters for public-private sector interaction, such as:

- [the Code of Conduct of the High Administration](#);
- [the Electoral Code](#) and Campaign Funding Rules;
- the Internal Rules of the [House of Representatives](#) and the [Senate](#);
- the Administrative Misconduct Law (Law No. 8,429/1992);
- [the Penal Code](#), in particular articles 321, 332 and 333, respectively on the defence of private interests as a lawyer, influence dealing and active corruption;
- [the Anti-Corruption Law \(Law No. 12,846/2013\)](#);
- the law dealing with conflicts of interest in the exercise of office or employment in the federal executive branch and impediments following the exercise of office or employment ([Law No. 12,813/2013](#)); and
- [the Brazilian Bar Association Act](#).

It is worth mentioning that in July 2022, [Law No. 14,365/2022](#) altered the Brazilian Bar Association Act to establish that lawyers may contribute to the legislative process and to the drafting of norms for executive, judicial and legislative powers. This was a significant step because the norm explicitly authorised lawyers to perform the lobbying activity.

Despite the existence of all this legal apparatus, lobbying itself is being regulated in Brazil, through [Bill No. 2,914/2022](#), due to cases of corruption and the continuing need to increase transparency in interactions between private individuals and public agents.

This Bill, which originated in the House of Representatives, strengthens the legitimacy of lobbying activities, establishes general rules of conduct with a focus on transparency and lists punishable misconduct in the exercise of the profession. In the Federal Senate, the text is now being analysed by the Transparency, Governance, Monitoring and Control and Consumers' Defense Committee. If there are changes to the content that came from the House of Representatives, it will have to be voted on once again in that chamber, as required by the Brazilian legislative process.

A direct consequence of lobbying awareness is the increasing number of private associations created to unite lobbyists and discuss the regulation of the activity. Most of these associations have a binding internal code of conduct that may serve as an informal marker of good conduct in the market. This voluntary membership may be interpreted as tentative self-regulation. We must note that Bill No. 2,914/2022 encourages organisations to adopt integrity procedures to better regulate auditing, transparency, interest conflict and incentives to report misconduct.

Law stated - 19 janeiro 2024

Definition

Is there a definition or other guidance as to what constitutes lobbying?

In Brazil, the term 'lobbying' has acquired a pejorative meaning, associated with the act of wrongdoing. Consequently, all draft and enacted laws have avoided the term. For example, the Brazilian Bar Association Act establishes that lawyers may participate in the legislative process and in the drafting of standards for the executive, judicial and legislative powers. This is an explicit authorisation for lawyers to engage in lobbying, although it does not use the exact term.

In Brazil, it is more common to refer to lobbying professionals as both 'government relations' or 'institutional and government relations professionals'. In fact, in 2018, lobbyists were included in the Brazilian Classification of Professions by the former Ministry of Labor as institutional and government relations professionals. This recognition was not intended to define or regulate the professionals, but only to include them in the list of professional activities of the Ministry of Labor.

As referred to in the previous answer, Bill No. 2,914/2022 to regulate lobbying is currently under review by Congress. In the Bill, lobbying is defined as the interaction between a private individual or a legal entity and a public agent when aiming at influencing the decision-making process within:

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the formulation, implementation and evaluation of government strategies, public policies, administrative acts, regulatory determinations or related activities;

- public bids and contracts; and
- the drafting, alteration or revoking of laws and other normative acts.

Law stated - 19 janeiro 2024

Registration and other disclosure

Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

There is no mandatory registration for lobbyists in Brazil, but there is voluntary registration in Congress for lobbyists who represent public agencies or civil entities recognised and authorised by the Senate or the House of Representatives' board of directors. This register is intended to facilitate access to Congress. It does not entail any disclosure to the entities and professionals accredited. Each federal body or civil entity is limited to two representatives per House. Only associations, trade unions and entities with national representatives have the right to register their representatives in Congress. Recently, the Senate system changed so that only government officials may register.

Bill No. 2,914/2022 does not require lobbyists to register, and it establishes a minimum disclosing rule for lobbyists to name who they are representing when engaging with politicians or public officials. Nonetheless, whenever those representatives participate in hearings and meetings, they are supposed to register the content and disclose it to the public.

Law stated - 19 janeiro 2024

Activities subject to disclosure or registration

What communications must be disclosed or registered?

Decree No 4,334/2002 and Law No. 12,813/2013 provide some rules regarding the matter. The Decree regulates hearings conceived for private individuals by public agents from the federal public administration, the autocracies and the federal public foundations, whereas article 11 of the abovementioned law determines that states' ministers; occupants of special nature posts; presidents, vice-presidents and directors of autarchies; public foundations; public companies and mixed-economy partnerships; those who work in higher direction and advising posts; and those who have access to any kind of privileged information within the public administration must display their agendas daily. Although those rules assure transparency to a degree, there is no specific lobbying registration in Brazil, and, therefore, no set rules for lobbying disclosure.

Bill No. 2,914/2022 may change this scenario, given that articles 10, 11 and 12 bring several rules to the disclosing of records from the meetings with a lobbying purpose. The new procedures bind the lobbyists to provide information about participants, the subject and the nature of the representation. The participating public agent must formalise the content of the meeting through a written document within four working days following the hearing, and they must provide the public entity with information about hospitality within six working days

following the event, with eight working days to rectify the information if necessary. The public entity has 10 working days from the meetings to publicise the information, which should remain available for at least five years.

Law stated - 19 janeiro 2024

Entities and persons subject to lobbying rules

Which entities and persons are caught by the disclosure rules?

Disclosure rules are under development now that the lobbying regulation is moving forward. In the approved text of Bill No. 2,914/2022, these rules apply to the lobbyist, the public representative and the entity to which this representative belongs. Therefore, if the Bill passes the Federal Senate's voting, these are the people who will be held accountable in the case of non-compliance.

Law stated - 19 janeiro 2024

Lobbyist details

What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Brazil does not regulate lobbying. Consequently, lobbyists do not need to disclose information about their services, engagement, clients or finances. Bill No. 2,914/2022 seeks to establish the obligation to share information mainly concerning meetings with government officials.

Law stated - 19 janeiro 2024

Content of reports

When must reports on lobbying activities be submitted, and what must they include?

The rules predicted in Bill No. 2,914/2022 demand active transparency in the disclosure of data on interactions between lobbyists and public agents. If the Bill is approved into law in its current form, the information provided after a hearing must include the following: the date of the meeting; the participants' identification; the identification of those whose interests are being represented; and a description of the subject matter.

The Bill exempts the publicising of market and commercial information that can compromise direct investments, economic development, industrial activity and other factors essential to maintain a competitive environment. In addition, it also requires previous consent from those whose representation stands for a social cause or for the accomplishment of a goal from a non-profit organisation regarding the publicising of sensible data and strategies.

Law stated - 19 janeiro 2024

Financing of the registration regime

How is the registration system funded?

There is no financing system for lobbying registration as there is no mandatory registration for lobbyists in Brazil. The only registration available for lobbyists are the two separate systems implemented in the House of Representatives and in the Senate to simplify access to these Houses, but this is free of charge.

Law stated - 19 janeiro 2024

Public access to lobbying registers and reports

Is access to registry information and to reports available to the public?

There are no disclosure rules for lobbying in Brazil. Therefore, there is no data regarding registry information and reports on lobbying activities to be released to the public. Upon request, the House of Representatives and Senate registration systems will disclose the entities registered in their files, but not the names of those representing them.

Within the bodies of the executive branch, it is mandatory to publicise the high authorities' agendas, so the public has access to the participants' identification, although the content is not fully displayed.

Law stated - 19 janeiro 2024

Code of conduct

Is there a code of conduct that applies to lobbyists and their practice?

Several norms that regulate political agents and public officials also apply to lobbyists. When combined, all of these rules result in a framework that is mandatory for lobbyists in Brazil.

For instance, the Code of Conduct of the High Administration is an indication of the limits imposed by the legislature on the private and public sectors about dispensing gifts and financing events, lunches, and trips. The Clean Company Act imposes stricter sanctions on private companies for actions carried out against the government by introducing strict liability for private companies. All procedures related to the legislative process are described in the Internal Rules of each house of Congress. In addition, Law No. 8,429/92 addresses the actions that are considered administrative misdemeanours and the Penal Code prescribes crimes related to public-private interaction. We also have Law No. 12,846/2013, also known as the Anti-Corruption Act, which establishes punishments for legal entities that take part in acts deemed as harmful to the public administration.

Most private associations of lobbyists have a binding code of conduct for their members. Specifically for lawyers who perform lobbying activity, the Bar Association Code includes several binding conducts to observe.

Bill No. 2,914/2022, which aims to regulate lobbying, also encourages representatives to adhere to conduct codes and self-regulation practices, obliging entities to establish internal integrity procedures.

Law stated - 19 janeiro 2024

Media

Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Brazil does not have specific media regulations on lobbying. There are broad limitations, and commercial interests' use of the media to influence public policy outcomes is not specifically addressed.

Brazilian consumer law establishes limits on all marketing campaigns, such as the prohibition of misleading and offensive advertising. Confusing consumers' perceptions of products, etc, through advertising is also prohibited.

The media is self-regulated, and the National Council for Advertising Self-Regulation (CONAR) is responsible for creating and enforcing advertising-related rules. CONAR's rules do not address the influence of propaganda on public policy outcomes.

Law stated - 19 janeiro 2024

POLITICAL FINANCE

General

How are political parties and politicians funded in your jurisdiction?

In Brazil, there are three pieces of legislation that establish the framework for political parties, campaigning and elections:

- the Electoral Code (Law No. 4,737/1965) regulates the right to vote and election for office, how elections will take place, and the role of the electoral judicial system, as well as prescribing electoral crimes;
- the Political Parties Act (Law No. 9,096/1995) establishes the parameters for political parties' by-laws and practices (the parties determine their by-laws) and determines how the parties will be funded; and
- Law No. 9,504/1997 establishes the rules for electoral campaigns, including requirements for candidates to run and to form coalitions, funding, accountability and campaign advertising.

Political parties are mainly publicly funded by the Special Fund for Financial Assistance to Political Parties (the Partisan Fund) and the Special Fund for Campaign Financing, which receives money from the general budget of the Federal Administration. The distribution of these resources is made according to each party's parliamentary representation.

A different framework is applied concerning campaign contributions. In broad terms, individuals may contribute to electoral campaigns up to a limit of 10 per cent of their

annual income before the election year, and legal entities are no longer authorised to make donations.

In September 2023, Bill No. 4,438/2023 – known as a ‘small electoral reform’ – was approved by the House of Representatives. The text is pending the Federal Senate’s analysis, and if approved as it is, it should bring a few changes to campaign financing as well, such as:

- the possibility of donations via Pix – a direct, free-of-charge money-transferring system often used in Brazil;
- a limit of 2,855.97 reais in donations, or 10 per cent of the person’s revenue from the previous year; and
- the right to use public resources to fund candidates’ personal expenses.

Law stated - 19 janeiro 2024

Registration of interests

**Must parties and politicians register or otherwise declare their interests?
What interests, other than travel, hospitality and gifts, must be declared?**

All political parties’ revenue and expenses must be annually reported for judicial review. If accounts are rejected or not correctly declared, the electoral justice system may apply different levels of sanctions.

During their terms, house representatives are entitled to some allowances and reimbursement of expenses, such as transportation, accommodation, telephone expenses, postal services, maintenance costs of parliamentary offices in support of parliamentary activity, food expenses, security services and use of consultancies.

Senators also have a monthly allowance to spend during their terms or are reimbursed for those expenses. Expenses including medical and dental care, accommodation, travel tickets or the leasing of aircraft are covered by the Senate if they are correctly reported by senators.

These interests must be declared to the respective house of Congress and made public to all citizens.

Law stated - 19 janeiro 2024

Contributions to political parties and officials

Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Political contributions and other disbursements are highly regulated in Brazil.

The 1988 Constitution originally determined in article 17, paragraph 3 that political parties were entitled to resources from the Partisan Fund and would receive the benefit of free access to television and radio broadcasting. This paragraph, however, was changed in October 2017 by Constitutional Amendment 97, which established a ‘barrier clause’ foreseeing a minimum threshold for political parties to benefit from the Partisan Fund and free access to television and radio broadcasting. The new rulings, which came into force

for the first time in the 2018 general elections and will be phased in gradually until full implementation in 2030, are as follows:

- parties must have obtained at least 3 per cent of the valid votes in the previous elections, which must be spread across a minimum of one-third of the federation states and have at least 2 per cent of valid votes in each of these states; and
- parties must have elected a minimum of 15 federal house representatives spread across at least one-third of the federal states. Parties that fail to meet this threshold will still be entitled to run and elect candidates but will not benefit from the Partisan Fund and the free television and radio exposure.

Partisan Fund resources derive mainly from the federal budget but also from the collection of penalty fines applied to those who breach the Electoral Code. Additionally, individuals may also make private donations to the Partisan Fund as long as they are earmarked and traceable. The distribution of fund resources is made according to each party's parliamentary representation.

Law 9,096 of 1995 determines what expenses may be financed by Partisan Fund resources, such as administrative costs of the party headquarters, personnel and campaigns. In September 2019, Law 13,877 made a few changes to extend the list of allowed expenses, which now include legal and accountancy fees.

In addition to financial funding, political parties are entitled under the Constitution to free television and radio broadcasting. The counterpart to this indirect public funding comes from tax waivers granted to broadcasting companies. The minutes allocated to each party are directly related to the number of congresspeople with mandates. Where party coalitions are admitted (this is now limited to executive office positions), their television and radio broadcasting may be aggregated.

Law stated - 19 janeiro 2024

Sources of funding for political campaigns

Describe how political campaigns for legislative positions and executive offices are financed.

The electoral legal framework was established in Brazil by Law No. 9,504/1997, which has been modified many times.

Until 2016, both individuals and private entities were allowed to contribute to political campaigns, with different contribution caps. There used to be a contribution limit of 2 per cent of a legal entity's income and 10 per cent of an individual's annual income.

In an effort towards more transparency and less corruption, changes were made to restrict campaign donations coming from legal entities. On 17 September 2015, the Supreme Court, having been called upon by the Brazilian Bar Association, ruled that campaign contributions coming from private legal entities were unconstitutional and would no longer be allowed. The ruling went into effect immediately. On 29 September 2015, Congress approved the ruling, and the Executive Office enacted new legislation reinforcing the prohibition of campaign donations by private legal entities.

In addition to the contribution limit of 10 per cent of an individual's income to prevent multimillionaire candidates from having an unlimited advantage over others, changes to the Electoral Code carried out by Law No. 13,878 of October 2019 established that contributions from candidates to their campaigns must have an additional limit of 10 per cent of the total campaign expenditure.

In 2017, other changes in campaign funding were approved by Congress to promote amendments to the Constitution (Amendment 97 of 2017) and Law No. 9,504/1997. Among these changes, Law No. 13,487/2017 created the Special Fund for Campaign Financing (the Campaign Fund). Unlike the Partisan Fund, which finances the activities of established political parties, the new Campaign Fund finances electoral campaigns. It is also subsidised by the federal budget and distributed among parties. It was created to fill the gap in private entities' campaign contributions.

In summary, the current legal framework:

- allows individuals to contribute to electoral campaigns up to a limit of 10 per cent of their income;
- allows candidates to contribute to their electoral campaigns up to a limit of 10 per cent of the total campaign expenditure;
- allows foreigners (individuals) to contribute to electoral campaigns as long as the funds originated in Brazil;
- prohibits legal entities from contributing to political campaigns; and
- establishes the Campaign Fund to help finance electoral campaigns.

Although it is possible to argue that private-sector interference in the results of the election may have diminished – at least officially – there is no clear evidence that more transparency or less corruption came out of the new legislation. Allegations of undue interference by private companies in social media campaigning put at stake the fair use of political tools. Another consequence of changes to campaign funding legislation is the imbalance caused by multibillionaire donors. As in Brazil individual campaign contribution is not a tradition, as soon as private entity donations were outlawed, a few individual donors stood out and created an imbalance in interests being represented in Congress.

Law stated - 19 janeiro 2024

Lobbyist participation in fundraising and electioneering

Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Although admitted as a practice under the constitutional right to petition, lobbying is not yet regulated in Brazil and registration is not mandatory (or even a voluntary common practice). Therefore, there are no specific rules as to how lobbyists must observe fundraising and electioneering limits. The rules applicable to lobbyists will be the same as those applicable to citizens in general.

Law stated - 19 janeiro 2024

Independent expenditure and coordination

How is parallel political campaigning independent of a candidate or party regulated?

According to article 14, paragraph 3, item V of the Constitution, among other requirements, political candidates must be affiliated with a political party to run for election.

However, the matter of independently running for a political position is pending a judicial decision by the Supreme Court. The above-mentioned constitutional rule is being questioned in the face of the American Convention on Human Rights (the Pact of San José), which limits the requirements for candidates to run for political elections and does not include in the list the condition of political affiliation. According to the arguments brought to the Supreme Court, the Pact of San José should prevail over the Constitution if it is more beneficial to citizens.

Concerning parallel campaigning to support or oppose a candidate or political party, the practice would not only be unusual in Brazil but is also likely to be considered indirect campaigning by the Superior Electoral Court and therefore may fall into the category of forbidden benefits.

Electoral campaigns made via the internet, which includes all types of social networks, such as websites, blogs, WhatsApp and email, were authorised for the 2018 elections. All individuals may campaign using the internet, as long as the content is not supported by payments. This restriction does not apply to official campaigns, in which a Brazilian internet supplier can be paid to boost campaign content to promote a candidate or party but never to undermine other candidates. Fines will be applied in cases of non-compliance.

Law stated - 19 janeiro 2024

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

Brazilian legislation has many applicable provisions on this subject. Most laws prohibit public officials from accepting gifts, transportation, lodging, compensation or any other favours, as well as accepting invitations to luncheons, dinners, parties and other social events of a certain value.

Officials may attend workshops, conferences or similar events, provided that the organisers have no special interest in the decisions to be made by them, and that the amount of payment and travel expenses are made public. The two general exceptions to this are: when the donor is a family member or a personal friend; or when offered by a foreign authority, in protocol cases where there is reciprocity or diplomatic circumstances.

Bill No. 2,914/2022, which aims to regulate lobbying, defines the limits of gifts and hospitality granted by the individual to officials. The text defines what these items are and establishes sanctions in the case of non-compliance with the rules.

Law stated - 19 janeiro 2024

Anti-bribery laws

What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

The Anti-Corruption Act (Law No. 12,846/2013) establishes civil and administrative liability to companies that carry out any action against the government, for example promising, offering or giving an undue advantage to a public official; manipulating the competitive nature of a public bidding procedure; removing or seeking to remove a bidder by fraud or offering an advantage of any kind; or manipulating the economic and financial balance of the contracts with the government.

Brazil does not have legislation on lobbying. In cases of violation during interaction with the public sector, criminal law sanctions are applied and lobbyists may be convicted of crimes such as corruption and influence peddling.

Law stated - 19 janeiro 2024

Revolving door

Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

Law No. 12,813/2013 provides for conflicts of interest in the exercise of office or employment in the federal executive branch and impediments following the exercise of office or employment. It prohibits officials, within a period of six months from the date of dismissal, exoneration, removal from office, resignation or retirement, unless expressly authorised by the Public Ethics Commission or the Office of the Comptroller General, as the case may be, to:

- provide, directly or indirectly, any type of service to any natural or legal person with whom they have a relevant relationship as a result of their position or employment;
- accept the position of administrator or advisor or establish a professional relationship with a natural or legal person who carries out activities related to the field of competence of the position or employment held;
- enter into service, consultancy, advisory or similar activity contracts with bodies or entities of the Federal Executive Branch that are related, even indirectly, to the body or entity in which the position or employment was held; or
- intervene, directly or indirectly, in favour of a private interest before a body or entity in which they have held office or employment or with which they have established a relevant relationship as a result of holding office or employment.

The law expressly states that the disclosure or use of privileged information obtained as a result of public activities carried out at any time, or the exercise of the activities described above within six months of the transition to the private sector, constitutes a conflict of interest that may be configured as an act of administrative impropriety under the terms of Law No. 8,429/1992.

In addition, the Code of Conduct of the High Administration establishes rules limiting public officials' professional activities after their term has been served.

The Code of Conduct of the High Administration determines four months before public officials can be employed elsewhere. It also provides that, after leaving office, a public official cannot:

- advocate on behalf of someone in any matter or business in which they took part as a public official; or
- be an adviser on cases based on non-disclosure information about public policies.

Finally, a public official must wait at least four months before:

- accepting proposals to manage or advise companies they had engaged with; or
- acting on behalf of companies or individuals in any administrative body that they had engaged with.

Law stated - 19 janeiro 2024

Prohibitions on lobbying

**Is it possible to be barred from lobbying or engaging lobbying services?
How?**

A priori, it is not possible to be prohibited from lobbying or providing lobbying services, but a professional could be sanctioned within the private association to which they belong, according to the binding internal code of conduct that may serve as a marker of good conduct in the sector. For example, a lawyer engaged in lobbying may be subject to fines, censorship, suspension or even expulsion from the Brazilian Bar Association if they commit an infraction as stated in the Brazilian Bar Association Code.

Moreover, there are ethics and compliance rules that must be observed while contracting and engaging with the public sector. Any violation of these rules during this engagement may be punished by criminal law. For example, there are penalties for influence peddling and corruption.

Law stated - 19 janeiro 2024

RECENT CASES AND SANCTIONS

Recent cases

Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

First, it is important to explain that there are four types of parliamentary amendments, but there is one that has seen more dissidence in Congress: the rapporteur's amendments. These allow the rapporteur to the Annual Budget Law Bill to change or include expenses, and it is not mandatory. The main issue with it is that there is no defined criterion of how the money is going to be used, or which congressperson used the fund, factors that hinder effective monitoring. Hence it gained the denomination of 'secret budget'.

However, at the end of 2022, the Supreme Court ruled that the rapporteur's amendments were unconstitutional. The judge of the Supreme Court expressed in her vote that these amendments violate the constitutional principles of transparency, impersonality, morality and publicity, because they are anonymous, without identification of the proposer or clarity about the recipient.

In 2022, the use of this type of amendment amounted to 16.5 billion reais, and 19.4 billion reais had been earmarked for this purpose in the 2023 budget.

According to the Supreme Court's decision, this type of budgetary practice was declared incompatible with the Brazilian constitutional order, and the rapporteur's amendments must be exclusively intended to correct errors and omissions.

Law stated - 19 janeiro 2024

Remedies and sanctions

In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

Reporting is not mandatory in Brazil.

While engaging with public officials, government relations professionals must observe other applicable laws, such as criminal, anti-corruption, ethics and compliance. However, regarding the registering or reporting of activities, there are no remedies or sanctions to be applied.

Law stated - 19 janeiro 2024

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

In 2022, there was a change to the Brazilian Bar Association Act with the issuing of Law No. 14,365/2022, to include the lawyer's right to contribute to the rulemaking process of executive, judiciary and legislative powers.

In addition, Bill No. 2,914/2022, aiming to regulate lobbying activities in Brazil, is now being analysed by the Transparency, Governance, Monitoring and Control and Consumers' Defense Committee. If there are changes to the content that came from the House of Representatives, it will have to be voted on once again in that chamber, as required by the Brazilian legislative process. However, if the Senate approves the Bill as received, it may turn into law this year, which would cause significant changes to lobbying practice.

Both developments were huge steps in the regulatory process, and we expect that the issuing of the subsequent law will bring many changes throughout 2024.

Law stated - 19 janeiro 2024

PANORAMIC GOVERNMENT RELATIONS 2024

Contributing Editors

Marcos Joaquim Gonçalves Alves, Fernanda Burle, Adriana Rocha Abrão and Ana Carolina Georges e Castro

MJ Alves Burle e Viana Advogados



LEXOLOGY

Government Relations 2024

Contributing Editors

**Marcos Joaquim Gonçalves Alves, Fernanda Burle, Adriana Rocha Abrão
and Ana Carolina Georges e Castro**

MJ Alves Burle e Viana Advogados

Quick reference guide enabling side-by-side comparison of local insights, including into applicable forms of government and opportunities to influence legislation; regulation of lobbying regulation; political finance; ethics and anti-corruption; recent cases; sanctions; and other recent trends.

Generated on: March 11, 2024

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UPDATE AND TRENDS

Key developments of the past year

FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

In Brazil, the basic source of law is the legislation. Other sources are customs, jurisprudence, doctrine and principles.

The Brazilian federal government is divided into three independent and coequal branches: legislative, executive and judicial, organised according to a system of checks and balances that prevents abuses in the exercise of power by any of the branches.

The lobbying activity must be regulated by the legislative power and, later, defined by the executive through normative acts such as decrees, resolutions and ordinances that specify how the law's broader definitions must happen.

Currently, the lobbying activity relies on the Constitution and sparse legislation and norms, such as the Criminal Code, the Anti-Corruption Act, the Brazilian Bar Association by-laws and other rules. The government and parliament are seeking to approve a law that specifically regulates lobbying and government relations.

Law stated - 19 January 2024

Legislative system

- 2 | Describe the legislative system as it relates to lobbying.

The Brazilian Constitution of 1988 is based on the existence of a democratic, republican and federative nation, in which all power belongs to the people, who exercise it through the election of representatives and their appointees.

The Federal Constitution ensures individual rights and guarantees that serve as the foundation of social participation in the decision-making process, which include freedom of speech and assembly, and the right to petition. In this sense, any citizen may submit a plea to the government to defend their rights and to oppose illegalities and abuses of power. These individual rights enable all citizens to exercise free democratic participation in the decision-making process, which is related to lobbying and government relations.

Law stated - 19 January 2024

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

Paragraph 4 of article 60 of the Brazilian Federal Constitution establishes that a proposal to amend the Constitution, to abolish the federal form of government, direct, secret, universal and periodic suffrage, the separation of powers, and the rights and guarantees of the individual, shall not be subject to deliberation. These are what we call *cláusulas pétreas* and they must be respected and reproduced by the Brazilian states and municipalities.

Thus, since social participation in the decision-making process is a result of the safeguarding of the exercise of individual rights and guarantees, the freedom of speech and assembly and the right to petition are guaranteed in every public body, at every level across the country.

Law stated - 19 January 2024

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

First of all, it is important to emphasise that the legislative process in the states and municipalities follows the principle of symmetry. Therefore, the general rules laid down in the Federal Constitution must be followed by the constitutions of the states and the organic laws of the municipalities.

All bills must be examined by the House of Representatives and the Senate. They are submitted to several thematic committees, chosen according to the relevance of the main subject. These committees, analysing the report of an appointed rapporteur, evaluate aspects such as the legal adequacy and constitutionality of the bills. In addition, the proposals are subject to internal debates and public hearings in which experts offer different points of view to help the congresspeople decide. The plenary sessions of the Houses may also evaluate the bills, depending on the type, priorities and issues to be voted on.

Regulatory bodies, such as agencies and ministries, are also entitled to issue infra-legal norms, such as resolutions and ordinances. Whenever they identify the need to amend aspects of these acts, they subject the norm to a public consultation procedure, during which all interested parties can make contributions to the reform, including through official websites. In addition to the public consultation, they also organise public hearings to gather further input on the legislative reform.

Law stated - 19 January 2024

Judiciary

- 5 | Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judiciary in Brazil is independent and coequal. It is composed of trial courts, appellate courts and the higher courts (the Superior Court of Justice and the Supreme Court). They rule on constitutional, administrative, civil and criminal law matters. In addition, Brazil has three specialised judicial systems for ruling on labour, electoral and military cases.

Trial judges are not elected but recruited as a result of their performance in specific high-level career exams.

A different system applies to the higher courts, where members are appointed by the President according to a list of eligible professionals selected by the appellate court. These lists are mainly composed of trial judges, but a quota is reserved for career prosecutors and lawyers.

All judges of the Superior Court of Justice are appointed by the President from a list of judges, lawyers and public prosecutors.

Regarding the Supreme Court, the President may appoint anyone aged between 35 and 65 with exceptional legal knowledge and an immaculate reputation.

In May 2023, the Supreme Court confirmed the legality of Complimentary Law No. 152/2015, which regulated an alteration brought by Constitutional Amend 152/2015, which increased the compulsory retirement age for public employees from 70 to 75 years old. The law had been questioned in 2015 through a Direct Unconstitutionality Action drafted by the Brazilian Judges Association.

Law stated - 19 January 2024

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

The framework for lobbying in Brazil is currently performed on the grounds of [article 5, XXXIV, sub-paragraph \(a\) of the Constitution](#), which establishes the right to petition by granting everyone the right to represent their interests and to advocate against illegalities and abuse of power. The Constitutional right of petition ensures that every citizen and sector has their demands and pleas assessed by the government, which indirectly confers on everyone the right to lobby. In parallel, several rules seek to set the parameters for public-private sector interaction, such as:

- [the Code of Conduct of the High Administration](#);
- [the Electoral Code](#) and Campaign Funding Rules;
- the Internal Rules of the [House of Representatives](#) and the [Senate](#);
- the Administrative Misconduct Law (Law No. 8,429/1992);

- [the Penal Code](#), in particular articles 321, 332 and 333, respectively on the defence of private interests as a lawyer, influence dealing and active corruption;
- [the Anti-Corruption Law \(Law No. 12,846/2013\)](#);
- the law dealing with conflicts of interest in the exercise of office or employment in the federal executive branch and impediments following the exercise of office or employment ([Law No. 12,813/2013](#)); and
- [the Brazilian Bar Association Act](#).

It is worth mentioning that in July 2022, [Law No. 14,365/2022](#) altered the Brazilian Bar Association Act to establish that lawyers may contribute to the legislative process and to the drafting of norms for executive, judicial and legislative powers. This was a significant step because the norm explicitly authorised lawyers to perform the lobbying activity.

Despite the existence of all this legal apparatus, lobbying itself is being regulated in Brazil, through [Bill No. 2,914/2022](#), due to cases of corruption and the continuing need to increase transparency in interactions between private individuals and public agents.

This Bill, which originated in the House of Representatives, strengthens the legitimacy of lobbying activities, establishes general rules of conduct with a focus on transparency and lists punishable misconduct in the exercise of the profession. In the Federal Senate, the text is now being analysed by the Transparency, Governance, Monitoring and Control and Consumers' Defense Committee. If there are changes to the content that came from the House of Representatives, it will have to be voted on once again in that chamber, as required by the Brazilian legislative process.

A direct consequence of lobbying awareness is the increasing number of private associations created to unite lobbyists and discuss the regulation of the activity. Most of these associations have a binding internal code of conduct that may serve as an informal marker of good conduct in the market. This voluntary membership may be interpreted as tentative self-regulation. We must note that Bill No. 2,914/2022 encourages organisations to adopt integrity procedures to better regulate auditing, transparency, interest conflict and incentives to report misconduct.

Law stated - 19 January 2024

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

In Brazil, the term 'lobbying' has acquired a pejorative meaning, associated with the act of wrongdoing. Consequently, all draft and enacted laws have avoided the term. For example, the Brazilian Bar Association Act establishes that lawyers may participate in the legislative process and in the drafting of standards for the executive, judicial and legislative powers. This is an explicit authorisation for lawyers to engage in lobbying, although it does not use the exact term.

In Brazil, it is more common to refer to lobbying professionals as both 'government relations' or 'institutional and government relations professionals'. In fact, in 2018, lobbyists were

included in the Brazilian Classification of Professions by the former Ministry of Labor as institutional and government relations professionals. This recognition was not intended to define or regulate the professionals, but only to include them in the list of professional activities of the Ministry of Labor.

As referred to in the previous answer, Bill No. 2,914/2022 to regulate lobbying is currently under review by Congress. In the Bill, lobbying is defined as the interaction between a private individual or a legal entity and a public agent when aiming at influencing the decision-making process within:

- the formulation, implementation and evaluation of government strategies, public policies, administrative acts, regulatory determinations or related activities;
- public bids and contracts; and
- the drafting, alteration or revoking of laws and other normative acts.

Law stated - 19 January 2024

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

There is no mandatory registration for lobbyists in Brazil, but there is voluntary registration in Congress for lobbyists who represent public agencies or civil entities recognised and authorised by the Senate or the House of Representatives' board of directors. This register is intended to facilitate access to Congress. It does not entail any disclosure to the entities and professionals accredited. Each federal body or civil entity is limited to two representatives per House. Only associations, trade unions and entities with national representatives have the right to register their representatives in Congress. Recently, the Senate system changed so that only government officials may register.

Bill No. 2,914/2022 does not require lobbyists to register, and it establishes a minimum disclosing rule for lobbyists to name who they are representing when engaging with politicians or public officials. Nonetheless, whenever those representatives participate in hearings and meetings, they are supposed to register the content and disclose it to the public.

Law stated - 19 January 2024

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

Decree No 4,334/2002 and Law No. 12,813/2013 provide some rules regarding the matter. The Decree regulates hearings conceived for private individuals by public agents from the federal public administration, the autocracies and the federal public foundations, whereas article 11 of the abovementioned law determines that states' ministers; occupants of special

nature posts; presidents, vice-presidents and directors of autarchies; public foundations; public companies and mixed-economy partnerships; those who work in higher direction and advising posts; and those who have access to any kind of privileged information within the public administration must display their agendas daily. Although those rules assure transparency to a degree, there is no specific lobbying registration in Brazil, and, therefore, no set rules for lobbying disclosure.

Bill No. 2,914/2022 may change this scenario, given that articles 10, 11 and 12 bring several rules to the disclosing of records from the meetings with a lobbying purpose. The new procedures bind the lobbyists to provide information about participants, the subject and the nature of the representation. The participating public agent must formalise the content of the meeting through a written document within four working days following the hearing, and they must provide the public entity with information about hospitality within six working days following the event, with eight working days to rectify the information if necessary. The public entity has 10 working days from the meetings to publicise the information, which should remain available for at least five years.

Law stated - 19 January 2024

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

Disclosure rules are under development now that the lobbying regulation is moving forward. In the approved text of Bill No. 2,914/2022, these rules apply to the lobbyist, the public representative and the entity to which this representative belongs. Therefore, if the Bill passes the Federal Senate's voting, these are the people who will be held accountable in the case of non-compliance.

Law stated - 19 January 2024

Lobbyist details

11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Brazil does not regulate lobbying. Consequently, lobbyists do not need to disclose information about their services, engagement, clients or finances. Bill No. 2,914/2022 seeks to establish the obligation to share information mainly concerning meetings with government officials.

Law stated - 19 January 2024

Content of reports

12 | When must reports on lobbying activities be submitted, and what must they include?

The rules predicted in Bill No. 2,914/2022 demand active transparency in the disclosure of data on interactions between lobbyists and public agents. If the Bill is approved into law in its current form, the information provided after a hearing must include the following: the date of the meeting; the participants' identification; the identification of those whose interests are being represented; and a description of the subject matter.

The Bill exempts the publicising of market and commercial information that can compromise direct investments, economic development, industrial activity and other factors essential to maintain a competitive environment. In addition, it also requires previous consent from those whose representation stands for a social cause or for the accomplishment of a goal from a non-profit organisation regarding the publicising of sensible data and strategies.

Law stated - 19 January 2024

Financing of the registration regime

13 | How is the registration system funded?

There is no financing system for lobbying registration as there is no mandatory registration for lobbyists in Brazil. The only registration available for lobbyists are the two separate systems implemented in the House of Representatives and in the Senate to simplify access to these Houses, but this is free of charge.

Law stated - 19 January 2024

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

There are no disclosure rules for lobbying in Brazil. Therefore, there is no data regarding registry information and reports on lobbying activities to be released to the public. Upon request, the House of Representatives and Senate registration systems will disclose the entities registered in their files, but not the names of those representing them.

Within the bodies of the executive branch, it is mandatory to publicise the high authorities' agendas, so the public has access to the participants' identification, although the content is not fully displayed.

Law stated - 19 January 2024

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

Several norms that regulate political agents and public officials also apply to lobbyists. When combined, all of these rules result in a framework that is mandatory for lobbyists in Brazil.

For instance, the Code of Conduct of the High Administration is an indication of the limits imposed by the legislature on the private and public sectors about dispensing gifts and financing events, lunches, and trips. The Clean Company Act imposes stricter sanctions on private companies for actions carried out against the government by introducing strict liability for private companies. All procedures related to the legislative process are described in the Internal Rules of each house of Congress. In addition, Law No. 8,429/92 addresses the actions that are considered administrative misdemeanours and the Penal Code prescribes crimes related to public-private interaction. We also have Law No. 12,846/2013, also known as the Anti-Corruption Act, which establishes punishments for legal entities that take part in acts deemed as harmful to the public administration.

Most private associations of lobbyists have a binding code of conduct for their members. Specifically for lawyers who perform lobbying activity, the Bar Association Code includes several binding conducts to observe.

Bill No. 2,914/2022, which aims to regulate lobbying, also encourages representatives to adhere to conduct codes and self-regulation practices, obliging entities to establish internal integrity procedures.

Law stated - 19 January 2024

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests’ ability to use the media to influence public policy outcomes?

Brazil does not have specific media regulations on lobbying. There are broad limitations, and commercial interests’ use of the media to influence public policy outcomes is not specifically addressed.

Brazilian consumer law establishes limits on all marketing campaigns, such as the prohibition of misleading and offensive advertising. Confusing consumers’ perceptions of products, etc, through advertising is also prohibited.

The media is self-regulated, and the National Council for Advertising Self-Regulation (CONAR) is responsible for creating and enforcing advertising-related rules. CONAR’s rules do not address the influence of propaganda on public policy outcomes.

Law stated - 19 January 2024

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

In Brazil, there are three pieces of legislation that establish the framework for political parties, campaigning and elections:

- the Electoral Code (Law No. 4,737/1965) regulates the right to vote and election for office, how elections will take place, and the role of the electoral judicial system, as well as prescribing electoral crimes;
- the Political Parties Act (Law No. 9,096/1995) establishes the parameters for political parties' by-laws and practices (the parties determine their by-laws) and determines how the parties will be funded; and
- Law No. 9,504/1997 establishes the rules for electoral campaigns, including requirements for candidates to run and to form coalitions, funding, accountability and campaign advertising.

Political parties are mainly publicly funded by the Special Fund for Financial Assistance to Political Parties (the Partisan Fund) and the Special Fund for Campaign Financing, which receives money from the general budget of the Federal Administration. The distribution of these resources is made according to each party's parliamentary representation.

A different framework is applied concerning campaign contributions. In broad terms, individuals may contribute to electoral campaigns up to a limit of 10 per cent of their annual income before the election year, and legal entities are no longer authorised to make donations.

In September 2023, Bill No. 4,438/2023 – known as a 'small electoral reform' – was approved by the House of Representatives. The text is pending the Federal Senate's analysis, and if approved as it is, it should bring a few changes to campaign financing as well, such as:

- the possibility of donations via Pix – a direct, free-of-charge money-transferring system often used in Brazil;
- a limit of 2,855.97 reais in donations, or 10 per cent of the person's revenue from the previous year; and
- the right to use public resources to fund candidates' personal expenses.

Law stated - 19 January 2024

Registration of interests

18 | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

All political parties' revenue and expenses must be annually reported for judicial review. If accounts are rejected or not correctly declared, the electoral justice system may apply different levels of sanctions.

During their terms, house representatives are entitled to some allowances and reimbursement of expenses, such as transportation, accommodation, telephone expenses,

postal services, maintenance costs of parliamentary offices in support of parliamentary activity, food expenses, security services and use of consultancies.

Senators also have a monthly allowance to spend during their terms or are reimbursed for those expenses. Expenses including medical and dental care, accommodation, travel tickets or the leasing of aircraft are covered by the Senate if they are correctly reported by senators.

These interests must be declared to the respective house of Congress and made public to all citizens.

Law stated - 19 January 2024

Contributions to political parties and officials

19 | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Political contributions and other disbursements are highly regulated in Brazil.

The 1988 Constitution originally determined in article 17, paragraph 3 that political parties were entitled to resources from the Partisan Fund and would receive the benefit of free access to television and radio broadcasting. This paragraph, however, was changed in October 2017 by Constitutional Amendment 97, which established a 'barrier clause' foreseeing a minimum threshold for political parties to benefit from the Partisan Fund and free access to television and radio broadcasting. The new rulings, which came into force for the first time in the 2018 general elections and will be phased in gradually until full implementation in 2030, are as follows:

- parties must have obtained at least 3 per cent of the valid votes in the previous elections, which must be spread across a minimum of one-third of the federation states and have at least 2 per cent of valid votes in each of these states; and
- parties must have elected a minimum of 15 federal house representatives spread across at least one-third of the federal states. Parties that fail to meet this threshold will still be entitled to run and elect candidates but will not benefit from the Partisan Fund and the free television and radio exposure.

Partisan Fund resources derive mainly from the federal budget but also from the collection of penalty fines applied to those who breach the Electoral Code. Additionally, individuals may also make private donations to the Partisan Fund as long as they are earmarked and traceable. The distribution of fund resources is made according to each party's parliamentary representation.

Law 9,096 of 1995 determines what expenses may be financed by Partisan Fund resources, such as administrative costs of the party headquarters, personnel and campaigns. In September 2019, Law 13,877 made a few changes to extend the list of allowed expenses, which now include legal and accountancy fees.

In addition to financial funding, political parties are entitled under the Constitution to free television and radio broadcasting. The counterpart to this indirect public funding comes

from tax waivers granted to broadcasting companies. The minutes allocated to each party are directly related to the number of congresspeople with mandates. Where party coalitions are admitted (this is now limited to executive office positions), their television and radio broadcasting may be aggregated.

Law stated - 19 January 2024

Sources of funding for political campaigns

20 | Describe how political campaigns for legislative positions and executive offices are financed.

The electoral legal framework was established in Brazil by Law No. 9,504/1997, which has been modified many times.

Until 2016, both individuals and private entities were allowed to contribute to political campaigns, with different contribution caps. There used to be a contribution limit of 2 per cent of a legal entity's income and 10 per cent of an individual's annual income.

In an effort towards more transparency and less corruption, changes were made to restrict campaign donations coming from legal entities. On 17 September 2015, the Supreme Court, having been called upon by the Brazilian Bar Association, ruled that campaign contributions coming from private legal entities were unconstitutional and would no longer be allowed. The ruling went into effect immediately. On 29 September 2015, Congress approved the ruling, and the Executive Office enacted new legislation reinforcing the prohibition of campaign donations by private legal entities.

In addition to the contribution limit of 10 per cent of an individual's income to prevent multimillionaire candidates from having an unlimited advantage over others, changes to the Electoral Code carried out by Law No. 13,878 of October 2019 established that contributions from candidates to their campaigns must have an additional limit of 10 per cent of the total campaign expenditure.

In 2017, other changes in campaign funding were approved by Congress to promote amendments to the Constitution (Amendment 97 of 2017) and Law No. 9,504/1997. Among these changes, Law No. 13,487/2017 created the Special Fund for Campaign Financing (the Campaign Fund). Unlike the Partisan Fund, which finances the activities of established political parties, the new Campaign Fund finances electoral campaigns. It is also subsidised by the federal budget and distributed among parties. It was created to fill the gap in private entities' campaign contributions.

In summary, the current legal framework:

- allows individuals to contribute to electoral campaigns up to a limit of 10 per cent of their income;
- allows candidates to contribute to their electoral campaigns up to a limit of 10 per cent of the total campaign expenditure;
- allows foreigners (individuals) to contribute to electoral campaigns as long as the funds originated in Brazil;

- prohibits legal entities from contributing to political campaigns; and
- establishes the Campaign Fund to help finance electoral campaigns.

Although it is possible to argue that private-sector interference in the results of the election may have diminished – at least officially – there is no clear evidence that more transparency or less corruption came out of the new legislation. Allegations of undue interference by private companies in social media campaigning put at stake the fair use of political tools. Another consequence of changes to campaign funding legislation is the imbalance caused by multibillionaire donors. As in Brazil individual campaign contribution is not a tradition, as soon as private entity donations were outlawed, a few individual donors stood out and created an imbalance in interests being represented in Congress.

Law stated - 19 January 2024

Lobbyist participation in fundraising and electioneering

- 21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Although admitted as a practice under the constitutional right to petition, lobbying is not yet regulated in Brazil and registration is not mandatory (or even a voluntary common practice). Therefore, there are no specific rules as to how lobbyists must observe fundraising and electioneering limits. The rules applicable to lobbyists will be the same as those applicable to citizens in general.

Law stated - 19 January 2024

Independent expenditure and coordination

- 22 | How is parallel political campaigning independent of a candidate or party regulated?

According to article 14, paragraph 3, item V of the Constitution, among other requirements, political candidates must be affiliated with a political party to run for election.

However, the matter of independently running for a political position is pending a judicial decision by the Supreme Court. The above-mentioned constitutional rule is being questioned in the face of the American Convention on Human Rights (the Pact of San José), which limits the requirements for candidates to run for political elections and does not include in the list the condition of political affiliation. According to the arguments brought to the Supreme Court, the Pact of San José should prevail over the Constitution if it is more beneficial to citizens.

Concerning parallel campaigning to support or oppose a candidate or political party, the practice would not only be unusual in Brazil but is also likely to be considered indirect campaigning by the Superior Electoral Court and therefore may fall into the category of forbidden benefits.

Electoral campaigns made via the internet, which includes all types of social networks, such as websites, blogs, WhatsApp and email, were authorised for the 2018 elections. All individuals may campaign using the internet, as long as the content is not supported by payments. This restriction does not apply to official campaigns, in which a Brazilian internet supplier can be paid to boost campaign content to promote a candidate or party but never to undermine other candidates. Fines will be applied in cases of non-compliance.

Law stated - 19 January 2024

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

23 | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

Brazilian legislation has many applicable provisions on this subject. Most laws prohibit public officials from accepting gifts, transportation, lodging, compensation or any other favours, as well as accepting invitations to luncheons, dinners, parties and other social events of a certain value.

Officials may attend workshops, conferences or similar events, provided that the organisers have no special interest in the decisions to be made by them, and that the amount of payment and travel expenses are made public. The two general exceptions to this are: when the donor is a family member or a personal friend; or when offered by a foreign authority, in protocol cases where there is reciprocity or diplomatic circumstances.

Bill No. 2,914/2022, which aims to regulate lobbying, defines the limits of gifts and hospitality granted by the individual to officials. The text defines what these items are and establishes sanctions in the case of non-compliance with the rules.

Law stated - 19 January 2024

Anti-bribery laws

24 | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

The Anti-Corruption Act (Law No. 12,846/2013) establishes civil and administrative liability to companies that carry out any action against the government, for example promising, offering or giving an undue advantage to a public official; manipulating the competitive nature of a public bidding procedure; removing or seeking to remove a bidder by fraud or offering an advantage of any kind; or manipulating the economic and financial balance of the contracts with the government.

Brazil does not have legislation on lobbying. In cases of violation during interaction with the public sector, criminal law sanctions are applied and lobbyists may be convicted of crimes such as corruption and influence peddling.

Law stated - 19 January 2024

Revolving door

25 | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

Law No. 12,813/2013 provides for conflicts of interest in the exercise of office or employment in the federal executive branch and impediments following the exercise of office or employment. It prohibits officials, within a period of six months from the date of dismissal, exoneration, removal from office, resignation or retirement, unless expressly authorised by the Public Ethics Commission or the Office of the Comptroller General, as the case may be, to:

- provide, directly or indirectly, any type of service to any natural or legal person with whom they have a relevant relationship as a result of their position or employment;
- accept the position of administrator or advisor or establish a professional relationship with a natural or legal person who carries out activities related to the field of competence of the position or employment held;
- enter into service, consultancy, advisory or similar activity contracts with bodies or entities of the Federal Executive Branch that are related, even indirectly, to the body or entity in which the position or employment was held; or
- intervene, directly or indirectly, in favour of a private interest before a body or entity in which they have held office or employment or with which they have established a relevant relationship as a result of holding office or employment.

The law expressly states that the disclosure or use of privileged information obtained as a result of public activities carried out at any time, or the exercise of the activities described above within six months of the transition to the private sector, constitutes a conflict of interest that may be configured as an act of administrative impropriety under the terms of Law No. 8,429/1992.

In addition, the Code of Conduct of the High Administration establishes rules limiting public officials' professional activities after their term has been served.

The Code of Conduct of the High Administration determines four months before public officials can be employed elsewhere. It also provides that, after leaving office, a public official cannot:

- advocate on behalf of someone in any matter or business in which they took part as a public official; or
- be an adviser on cases based on non-disclosure information about public policies.

Finally, a public official must wait at least four months before:

- accepting proposals to manage or advise companies they had engaged with; or

- acting on behalf of companies or individuals in any administrative body that they had engaged with.

Law stated - 19 January 2024

Prohibitions on lobbying

26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

A priori, it is not possible to be prohibited from lobbying or providing lobbying services, but a professional could be sanctioned within the private association to which they belong, according to the binding internal code of conduct that may serve as a marker of good conduct in the sector. For example, a lawyer engaged in lobbying may be subject to fines, censorship, suspension or even expulsion from the Brazilian Bar Association if they commit an infraction as stated in the Brazilian Bar Association Code.

Moreover, there are ethics and compliance rules that must be observed while contracting and engaging with the public sector. Any violation of these rules during this engagement may be punished by criminal law. For example, there are penalties for influence peddling and corruption.

Law stated - 19 January 2024

RECENT CASES AND SANCTIONS

Recent cases

27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

First, it is important to explain that there are four types of parliamentary amendments, but there is one that has seen more dissidence in Congress: the rapporteur's amendments. These allow the rapporteur to the Annual Budget Law Bill to change or include expenses, and it is not mandatory. The main issue with it is that there is no defined criterion of how the money is going to be used, or which congressman used the fund, factors that hinder effective monitoring. Hence it gained the denomination of 'secret budget'.

However, at the end of 2022, the Supreme Court ruled that the rapporteur's amendments were unconstitutional. The judge of the Supreme Court expressed in her vote that these amendments violate the constitutional principles of transparency, impersonality, morality and publicity, because they are anonymous, without identification of the proposer or clarity about the recipient.

In 2022, the use of this type of amendment amounted to 16.5 billion reais, and 19.4 billion reais had been earmarked for this purpose in the 2023 budget.

According to the Supreme Court's decision, this type of budgetary practice was declared incompatible with the Brazilian constitutional order, and the rapporteur's amendments must be exclusively intended to correct errors and omissions.

Law stated - 19 January 2024

Remedies and sanctions

- 28** | In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

Reporting is not mandatory in Brazil.

While engaging with public officials, government relations professionals must observe other applicable laws, such as criminal, anti-corruption, ethics and compliance. However, regarding the registering or reporting of activities, there are no remedies or sanctions to be applied.

Law stated - 19 January 2024

UPDATE AND TRENDS

Key developments of the past year

- 29** | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

In 2022, there was a change to the Brazilian Bar Association Act with the issuing of Law No. 14,365/2022, to include the lawyer's right to contribute to the rulemaking process of executive, judiciary and legislative powers.

In addition, Bill No. 2,914/2022, aiming to regulate lobbying activities in Brazil, is now being analysed by the Transparency, Governance, Monitoring and Control and Consumers' Defense Committee. If there are changes to the content that came from the House of Representatives, it will have to be voted on once again in that chamber, as required by the Brazilian legislative process. However, if the Senate approves the Bill as received, it may turn into law this year, which would cause significant changes to lobbying practice.

Both developments were huge steps in the regulatory process, and we expect that the issuing of the subsequent law will bring many changes throughout 2024.

Law stated - 19 January 2024



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UPDATE AND TRENDS

Key developments of the past year

FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

The ultimate source of law is the Constitution of Japan, enacted in 1946. The Constitution stipulates the rights (eg, freedom of speech) and obligations of the citizens, and establishes the legal framework, including the separation of powers (legislative, executive and judicial) and local autonomy. The Diet is the sole legislative body to enact national laws in Japan. Local governments have the power to establish local rules within their territory as long as they do not violate the Constitution or national laws.

The Constitution of Japan guarantees freedom of expression, freedom of assembly (both in article 21), freedom of business (article 22) and the right to petition (article 16) as fundamental human rights.

Law stated - 10 December 2023

Legislative system

- 2 | Describe the legislative system as it relates to lobbying.

Japan uses a parliamentary cabinet system. The Diet, consisting of two Houses, the House of Representatives and the House of Councillors, is the sole legislative body to establish national laws in Japan. The members of both Houses are directly elected by the citizens. The 465 representatives in the House of Representatives serve for four years. The 248 representatives in the House of Councillors serve for six years. The Prime Minister is elected by the Diet members, not by the voters. The Ministers in the Cabinet are appointed by the Prime Minister.

The members of the Diet or the committees of each House have the power to propose bills to the Diet. In the House of Representatives, at least 20 members need to agree to the bill before proposal. In the House of Councillors, at least 10 members need to agree. The committees of each House may propose bills if they are approved in a committee consisting of members of both the ruling party and opposing parties. The other option is the Cabinet, which also has the power to propose bills to the Diet. Under the current regime, bills proposed by the Cabinet are more likely to pass the Diet.

The Cabinet has the power to enact cabinet orders to execute the provisions of the Constitution and other laws. Certain powers of the Cabinet are delegated to 11 ministries, cabinet offices and agencies. The ministries may enact ordinances and guidelines to implement the laws and cabinet orders. In practice, these secondary sources of law are often just as important as the cabinet.

Under the parliamentary cabinet system, the House of Representatives is given superior power over the House of Councillors in some areas designated in the Constitution. The House of Representatives can override a decision by the House of Councillors on bills,

budget and the appointment of the Prime Minister. The term of the members of the House of Representatives is shorter than that of the House of Councillors and the Prime Minister may dissolve the House of Representatives if they think the Diet does not properly represent the will of the citizens. As such, the House of Representatives is considered to reflect the will of citizens more than the House of Councillors and was given superior power under the Constitution.

Further, although the Constitution does not mention the political parties, the political parties play important roles in the policy-making process in Japan. The Prime Minister is appointed by resolution of the Diet, which means they are the president of the ruling party. Before reaching the Diet, any bills or budget must get the approval of the ruling party in accordance with the ruling party's internal rules. Depending on the case, the political party will hold public meetings or closed meetings as part of the internal process.

Law stated - 10 December 2023

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

The Constitution establishes the principle of local autonomy and stipulates the organisations of the local government. The Local Autonomy Act (Act No. 67 of 1947) establishes rules for local self-government in response to the principles of local autonomy under the Constitution. Currently, there are 47 Prefectures and 1,724 municipalities (cities, towns and villages) in Japan.

The local governments have a similar separation of the power system to the national government. The local government consists of the local assembly and the chief executive officer (governor or mayor). Both the members of the local assembly and the chief executive officer are directly elected by the citizens.

After World War II, the centralised national government had strong power over local matters for a long time. However, decentralisation began in the 1990s, limiting the power of the national government on local issues and transferring authority to local governments. The roles of the national and local governments were reviewed, and the Decentralization Act (Act No. 96 of 1995) stipulated that the national government would focus on national matters (eg, diplomacy and national security), while local governments would be responsible for local administration close to the citizens. After this, a series of decentralisation reformations were implemented, and currently, local governments have power over local taxes, urban planning, land use, education, police and many other matters.

The separation of powers between the executive and legislative branches in local governments is similar to that of the national government. The governor or mayor, as the chief executive of a local government, has the power to submit budgets and local bills, while the members of the local assembly may submit these as well. The local assembly will review the submitted budgets and local bills and approve them.

In line with decentralisation, it is increasingly important to engage the governor or mayor or the members of the local assembly in some areas of law. The rules for engaging local public

officials are almost the same as for national public officials as described in this document, but the sources of law are different. The rules applying to the subject of lobbying whenever approaching local public officials must be checked.

Law stated - 10 December 2023

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

There is no official procedure other than discussion in the Diet for the national laws. However, before proposing new bills or new regulations, the government often holds public meetings with experts to gain endorsement. Some of these meetings are based on the laws (often called *Shingikai*, eg, the Legislative Council (*Hosei Shingikai*) in the Ministry of Justice), and others are not. Although it varies in areas of law, it is often the case that the policies or rules to be discussed are internally drafted before such public meetings.

For the cabinet orders or ministry guidelines, it is required, in principle, to go through the public comments before enactment (article 39 of the Administrative Procedures Act (Act No. 42 of 1999)). In the public comments procedure, comments must be submitted within the designated period of time (typically 30 days) after the publication of the draft. Accordingly, in most cases, early engagement with the relevant lawmakers or public officials before any publication or any public comments, or an expert meeting, is necessary to influence the policies. By the time the draft is published, it is likely to be too late to change direction.

Law stated - 10 December 2023

Judiciary

- 5 | Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judicial branch is independent of and coequal to the executive and legislative branches. The Chief Justice of the Supreme Court is appointed by the Emperor upon designation by the Cabinet. The other 14 judges of the Supreme Court are appointed by the Cabinet. Judges in lower courts are appointed by the Cabinet based on the recommendation of the Supreme Court. Supreme Court judges are subject to review by citizens at the first general election of members of the House of Representatives following their appointment, and every 10 years thereafter (article 79 of the Constitution). If a majority of citizens vote against a judge, the judge will be dismissed from the position. No judges have been dismissed through this public review since 1946.

The judges in Japan are professionally appointed judges, which means most of them were appointed after graduation from the Judicial Training Institute and never practised as a lawyer representing clients. The judges in Japan are transferred to different courts across

Japan every few years to avoid undue interaction with the public. Due to the lack of any electoral process other than the public review of the Supreme Court judges, the judicial branch is considered more separated from the public. As such, in a lobbying context, judges are difficult to engage with in many cases.

Law stated - 10 December 2023

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

There is no law that directly regulates lobbying in Japan. Article 21 of the Constitution is interpreted to guarantee freedom of political activities. However, several laws have detailed regulations that limit that freedom to some extent to ensure transparency and fairness in political activities including elections. Such laws include the Political Fundraising Control Act (Act No. 194 of 1948), the Public Offices Election Act (Act No. 100 of 1950), the [Criminal Law](#) (Act No. 45 of 1907), the [National Public Service Act](#) (Act No. 120 of 1947) and the [National Public Service Ethics Act](#) (Act No. 129 of 1999).

The Political Fundraising Control Act regulates politicians, candidates and political parties, and mandates that they submit to the Election Administration Committee or the Minister of Internal Affairs and Communications a report on their income and expenses every year. The outline of the report will be disclosed by the Election Administration Committee or the Minister of Internal Affairs and Communications.

The Public Offices Election Act regulates the number of Diet members and the procedures of their election. The rules for elections are quite complicated and violations are prosecuted during or after the election. It is important to consult experts before any lobbying related to an election. The Criminal Law prohibits bribery, penalising both the public officials and persons or entities who give, offer or promise a bribe. The National Public Service Ethics Act prohibits national public officials from receiving any gifts or meals and from travelling with interested parties. The National Public Services Act prohibits certain activities of public officials in office.

The lobbying industry is developing in Japan. Traditional trade associations like the Japan Business Federation (Keidanren) have a long history of lobbying in Japan and they may have internal rules for political funding and other matters.

Recently, the number of lobbying consultants has been increasing, but it is still limited. In hiring lobbying consultants, the scope of the work should not include legal services defined in the [Attorneys Act](#) (Act No. 205 of 1949), which prohibits non-lawyers from engaging in legal services for compensation.

Some Japanese companies employ former senior public officials after their retirement from public office (this is called *Amakudari*). These retirees advise their companies as requested, and sometimes play even more important roles for the employer. In many cases,

such retirees are former senior officials who used to be responsible for regulating the companies. *Amakudari* has developed along with the system of lifetime employment and the seniority system for public officials, but due to criticism starting in the 1990s that it led to collusion with interested companies, the Monitoring Committee was established in 2008. The Committee now monitors any potential violation of the National Public Services Act.

Law stated - 10 December 2023

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

Not applicable.

Law stated - 10 December 2023

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

Not applicable.

Law stated - 10 December 2023

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

There is no disclosure regulation on lobbying. However, the general disclosure law will apply. If lobbying is done by written forms such as letters or emails, they must be disclosed in accordance with the [Act on Access to Information Held by Administrative Organs](#) (Act No. 42 of 1999). The Act mandates that ministries and agencies disclose their 'administrative documents' that are made or obtained as part of the administration. The definition of administrative documents is broad and may include communication used in lobbying. There are several exceptions, but the exceptions are strictly interpreted by the ministries as the principle is to disclose in order to ensure transparency and accountability.

Public officials must make records of the decision in order to allow review of the decision-making process in the future under the [Public Records and Archives Management Act](#) (Act No. 66 of 2009). Once the documents are made, they should designate the retention period and file and maintain the documents. However, in the scandals related to the former Prime Minister in the late 2010s, it was revealed that important administrative documents were disposed of within one year by the relevant ministries. These scandals became the target of opposing parties in the Diet and were heavily criticised in public.

Following this, the guidelines under the Act clarified the rules on the retention period for documents and strengthened other rules.

Law stated - 10 December 2023

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

Not applicable.

Law stated - 10 December 2023

Lobbyist details

11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Not applicable.

Law stated - 10 December 2023

Content of reports

12 | When must reports on lobbying activities be submitted, and what must they include?

Not applicable.

Law stated - 10 December 2023

Financing of the registration regime

13 | How is the registration system funded?

Not applicable.

Law stated - 10 December 2023

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

Not applicable.

Law stated - 10 December 2023

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

Not applicable.

Law stated - 10 December 2023

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Not applicable.

Law stated - 10 December 2023

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

Political parties and politicians receive public funding as well as donations and contributions from individuals and corporations.

Political parties are provided with subsidies financed by taxes in accordance with the Political Party Subsidy Act (Act No. 5 of 1994). In 2022, the Liberal Democratic Party (LDP) was reported to [have received 70 per cent](#) of its income from such subsidies.

Other sources of income are donations by individuals (party members, supporters, etc) and corporations. Donations and contributions to political parties and politicians are subject to certain restrictions under the Political Fundraising Control Act. Any monetary contribution or economic benefit (eg, office lease) shall be interpreted as a donation under the Act. The regulations are complicated as to what extent and to which entity or person donations or contributions may be allowed. The regulations are outlined as follows.

Contributions to individual politicians by corporations or labour unions are prohibited under the Political Fundraising Control Act. A politician may only receive contributions from individuals within the designated cap per year. This is because the Act tries to encourage funding of the political parties rather than individual politicians in order to keep the focus on the parties and policies rather than individuals.

Another major source of funding is through the 'Political Fundraising Party' as defined in article 8-2 in the Law. It is interpreted that funding from such a party does not constitute

a donation if it satisfies certain conditions. Periodically, politicians or political entities hold such fundraising parties. The amount raised and the names of the big contributors should be published in the balance sheet report.

The contributions allowed under the Act are still subject to restriction on the total amount per year. In addition, any contribution by a foreign government, foreigner or foreign corporation is strictly prohibited under the Act.

Law stated - 10 December 2023

Registration of interests

18 | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

Not applicable.

Law stated - 10 December 2023

Contributions to political parties and officials

19 | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

The Political Fundraising Control Act provides detailed regulations on the contributions and other disbursements to political parties and politicians.

Law stated - 10 December 2023

Sources of funding for political campaigns

20 | Describe how political campaigns for legislative positions and executive offices are financed.

The political campaigns for legislative positions are financed by the political parties, individual candidates or both. All fundraising activities are subject to the Political Fundraising Control Act.

Law stated - 10 December 2023

Lobbyist participation in fundraising and electioneering

21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Not applicable.

Law stated - 10 December 2023

Independent expenditure and coordination

22 | How is parallel political campaigning independent of a candidate or party regulated?

There is no specific regulation on political campaigning undertaken by persons or groups other than the party or candidate. However, such individuals or groups are still subject to the Public Offices Election Act and the Political Fundraising Control Act. The Public Offices Election Act regulates the time, content and means for an election campaign.

Law stated - 10 December 2023

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

23 | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

Public officials may not receive gifts or meals nor travel with interested parties under the National Public Service Ethics Act. Although there are no similar laws to regulate local public officials, most local governments prohibit receiving gifts or travel under their own ordinances. As an exception, public officials are allowed to participate in stand-up receptions.

In Japan, the restrictions are very complicated and vary depending on the rank of the officials. If the officials are in a managerial position, they should report to the National Personnel Authority whenever they have a meal that costs more than ¥5,000.

In 2021, several senior public officials left their office due to violation of the National Public Service Ethics Act. They had dinner with related companies at a luxurious restaurant and they did not report this to the National Personnel Authority. The public officials were punished in accordance with the rules. However, the National Public Service Ethics Act is applicable only to public officials, so the companies, directors and employees of the companies were not punished under the Act. However, it became a huge scandal and the case was highlighted in attacks by the opposing parties in the Diet. The companies ultimately punished their directors and employees in accordance with their internal rules, even though the law did not require them to do so.

Law stated - 10 December 2023

Anti-bribery laws

24 | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

Criminal law prohibits bribery of public officials, including elected politicians. Contributions to politicians are regulated under the Political Fundraising Control Act.

Law stated - 10 December 2023

Revolving door

25 | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

Traditionally, there was no revolving door system in Japan. Due to the lifetime employment system for public officials, most public officials remained in office until retirement. Only a limited number of officials left the government before retirement. However, this has been changing recently. In the past 10 years, ministries have started to re-hire former public officials who had left government and worked in private or other sectors. The cases are still limited, but this revolving door system will likely become more common.

As the revolving door system was rare in Japan, regulations on public officials working in the private sector were not developed until the late 2000s. In 2008, the National Public Services Act was amended and strengthened regulations. In this amendment, public officials are prohibited from engaging in job searches to 'interested companies' while in office. Interested companies may include companies to which the ministries or agencies have given permission or approval for businesses or with which they have contracts. The National Public Services Act also regulates the provision of information on other public officials and on undue influence on the ministries by former public officials. Moreover, public officials who were in managerial positions are required to notify the Cabinet Secretariat of their new job for two years after retirement from public service. The list of the public officials reported to the Cabinet Secretariat is published every year.

However, *Amakudari* (former senior public officials working in senior positions in the private sector after retirement) is still prevalent in Japan. Although there are regulations as described above, it does not mean employment in the private sector is prohibited.

Law stated - 10 December 2023

Prohibitions on lobbying

26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

Lobbying may be subject to prohibition for non-attorneys to engage in legal services under article 72 of the Attorneys Act. The application of article 72 against lobbying is not clear. However, it may be applicable to certain cases depending on the advice the lobbyists give to their clients. Violation of article 72 of the Attorneys Act may lead to criminal charges.

Law stated - 10 December 2023

RECENT CASES AND SANCTIONS

Recent cases

- 27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

In Japan, cases related to lobbying are mostly prosecuted as bribery or violation of the Political Fundraising Control Act or Public Offices Election Act in criminal courts. This is partly because there is no regulation directly targeting lobbying, but rather it is regulated as bribery or as a violation of the Political Fundraising Control Act or Public Offices Election Act.

A notable case regarding bribery occurred in the Olympic Games in 2021. The director of the advertisement company who served as the public official for the Olympic Games Committee received bribes from related companies for approximately ¥200 million. The investigation is still underway, and the case has just been brought to the court. The former director is accused of facilitating the sponsorship agreement for his clients to be the sponsors for the Olympic Games in exchange for bribes. The CEOs of the companies who had given bribes to the former director were also prosecuted and found guilty of bribery.

The other recent example is the former Minister of Agriculture who received bribes from egg manufacturers. The court found that the former Minister was aware that the money was provided for the purpose of opposing an international organisation's proposed breeding standards and requesting that the Japan Finance Corporation relax its loan conditions. The court decided that the former Minister received these requests immediately before receiving the money and that he also gave instructions to his staff in line with the requests from the manufacturer after receiving the money.

The other cases are related to violation of the Political Fundraising Control Act or the Public Offices Election Act. A notable recent case is the former assistant to the Prime Minister, who was sentenced to three years in prison for violation of the Public Offices Election Act. There are numerous cases of violation of the Public Offices Election Act in every election; not only politicians but also supporters or voters may be prosecuted under the Act. In helping candidates or politicians in elections, a lobbyist should be careful to avoid any violation of the Act.

Law stated - 10 December 2023

Remedies and sanctions

- 28 | In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

Not applicable.

Law stated - 10 December 2023

UPDATE AND TRENDS

Key developments of the past year

- 29 | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

Something similar to lobbying used to be understood by Japanese companies as a regular part of engagement with the government, and they would have a designated section of the company to do so, called the Shogai Section. Companies would establish trade associations, and they had played and still play an important role in developing policies, including the budgets of the government, regulations and taxes in Japan.

US-style lobbying may have been introduced to Japan by Japanese subsidiaries of US companies, which have sections such as 'Government Relations' or 'Public Policies'. Japanese IT companies have these sections to advocate for a better business environment because the industry was still emerging and regulations were unclear or non-existent in certain areas (eg, web shopping). Recently, some Japanese companies in other sectors have created new sections or transformed their organisation structure to function more like US-style lobbying. This move reflects the changing environment of the global economy where Japanese companies need to advocate for themselves not only in Japan but also in other jurisdictions.

The other notable trend is that the number of lobbying consultants is increasing in Japan, as 'rule-making' or 'policy-making' becomes more and more popular among businesses. Although there is no statistical data available, consultants are often former public officials from central governments or local governments. In the public sector, lifetime employment and the seniority system are still prevalent. Partly due to this system and the work environment in the public sector, more and more young public officials are leaving office within 10 years and some are becoming lobbying consultants. This trend will not change for a while as long as hiring in the private sector remains unchanged.

In 2023, a huge scandal is making media headlines, involving the suspected violation of the Political Fundraising Control Act by the faction that used to be led by the former Prime Minister. It is alleged that the faction had allocated a fundraising target for its members and secretly distributed the earned money to the lawmakers who had achieved the target set by the faction. This scandal led to the resignation of several cabinet members. Currently, the Prosecutor's Office is investigating the facts around any violation of the Act. Prime Minister Fumio Kishida instructed the lawmakers of the Liberal Democratic Party to promptly start discussions on the reformation of the Act to ensure transparency in fundraising.

Law stated - 10 December 2023



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FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

Islamic law (shariah) is the basic source of legislation. The first article of the Permanent Constitution of the State of Qatar states that 'Qatar is an independent sovereign Arab State and the people of Qatar are part of the Arab nation. Its religion is Islam and the Shari'a is the main source of its legislation.' However, Qatar's legal system consists of shariah, Ottoman and European civil law, as well as (to a lesser extent) common law. The latter was introduced by borrowing codes from other European-influenced Arab states. The Constitution of Qatar, adopted in 2003, is the supreme law of the land and provides the framework for the governance of the state, including the powers and limitations of the government.

Qatar is technically a constitutional monarchy, but the ruler (the Emir) has executive power to approve or reject legislation.

The government of Qatar is divided into three main branches: executive, legislative and judicial.

In the executive branch is the Emir, who is the head of state and holds the highest executive power in Qatar. He is responsible for appointing the Prime Minister and the Council of Ministers (the Cabinet), which is responsible for various government departments and agencies with administrative powers.

On the legislative side, there is the Al-Shoura Council, which acts as the legislative arm of the government. The Al-Shoura Council consists of 45 members, 30 of whom are elected by direct, general and secret ballot, and the remaining 15 members are appointed by the Emir from among the ministers or other persons. The Al-Shoura Council shall be the legislative authority of Qatar, approve the general policy of the government and the budget, and exercise control over the executive authority in accordance with the Constitution. Also, as provided for in article 18 of the Constitution, the Al Shoura Council has the right to express to the government its interest in public matters.

The Judiciary in Qatar is an independent branch responsible for the administration of justice. It comprises various courts, including the Court of Cassation (the highest court), the Courts of Appeal and the Court of First Instance.

Qatar's system of government is based on the separation and collaboration of powers. However, it is important to understand that the Qatari system operates within the context of a monarchy, where the Emir has considerable influence over all branches of government.

In addition, according to article 144 of the Permanent Constitution, the Emir or one-third of the members of the Al-Shoura Council have the prerogative to request the amendment of one or more articles of the Constitution. If a majority of the members of the Council accept the amendment in principle, the Council may discuss it article by article. The amendment shall be adopted by a two-thirds majority of the members of the Council.

Law stated - 25 January 2024

Legislative system

2 | Describe the legislative system as it relates to lobbying.

The legislative system in Qatar, as it relates to lobbying, is shaped by the country's unique political and legal framework, characterised by a high concentration of power in the hands of the Emir and a less formalised approach to lobbying.

Qatar is a constitutional monarchy, with the Emir as head of state and the Prime Minister as head of government. Legislative authority is primarily vested in the Al-Shoura Council, although the Emir has significant legislative powers.

The Al-Shoura Council is responsible for setting the general budget and supervising the executive powers. It is also responsible for deliberating and making proposals on a number of issues, including:

- state policy on economic, administrative and political matters submitted by the Council of Ministers;
- all matters of state relating to social and cultural issues, on its own initiative or at the suggestion of the Council of Ministers;
- the general budget for public works;
- the budget of the Council and its final accounts;
- following up and monitoring the evolution of matters previously discussed and referred by the Council of Ministers and clarifying questions;
- directing questions to ministers in order to obtain clarification on matters related to their experience;
- proposing and recommending on matters before the Council; and
- expressing to the government its interest in public matters.

It is worth noting that the Council of Ministers, despite being part of the executive branch, can play an important role in the lobbying scene, according to article 121 of the Constitution. Its functions include:

- proposing draft laws and decrees and submitting them to the Al-Shoura Council for discussion;
- approving the regulations and decisions prepared by the ministries and other government bodies in their respective fields to implement the laws in accordance with their provisions; and
- formulating the general regulations that will adequately ensure the maintenance of internal security and public order in all parts of the state in accordance with the law.

Although Qatar does not have the structured lobbying mechanisms found in more democratic systems, influence is often exerted through informal channels and personal networks.

It is important to note that the Qatari Constitution states that ‘the people are the source of power and shall exercise it in accordance with the provisions of this constitution’ and ensures that ‘individuals have the right to address the authorities’. In addition, the Emir may seek public opinion through a referendum on important issues affecting the interests of the state.

Law stated - 25 January 2024

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

Qatar’s political and administrative structure is centralised, with most major legislative and regulatory powers vested at the national level.

Municipalities in Qatar are primarily responsible for local administration, including services, rather than making laws or regulations. Therefore, given the centralised structure, lobbying in Qatar is generally directed at national government bodies, particularly ministries and the Al-Shoura Council.

While formal lobbying at the local level is limited, there may be opportunities for consultation and engagement with local authorities on issues related to local governance and service delivery. However, this would not normally be classed as lobbying in the traditional sense.

Law stated - 25 January 2024

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

The legislative process in Qatar is predominantly top-down, with the Emir and central government playing key roles. As noted above, there is limited scope for municipalities to influence legislation, as they focus primarily on local administration and the implementation of national policies.

The Al-Shoura Council serves as a platform for consultation and review of proposed legislation. Draft laws are often prepared by the relevant government ministries and then sent to the Al-Shoura Council for review before being sent to the Emir for ratification.

There are no formal public consultation processes in Qatar, but there may be cases where government ministries consult with stakeholders, particularly on technical or specialised issues. Influence may also be exerted through informal channels.

It is important to note that article 59 of the Qatari Constitution states that ‘the people are the source of power and shall exercise it in accordance with the provisions of this

Constitution'. In addition, article 46 states that 'individuals have the right to appeal to the public authorities'.

Also, according to article 75, the Emir shall seek the opinion of the people in a referendum on important matters affecting the interests of the state. The subject of such a referendum shall be deemed acceptable if it is approved by the majority of the voters, and the results of the referendum shall be binding and effective from the date of its announcement.

It is worth noting that given Qatar's significant role in global energy markets and its efforts to diversify its economy, there may be opportunities for international companies and organisations to provide expertise or input, particularly in areas relevant to economic development and investment.

Law stated - 25 January 2024

Judiciary

- 5 | Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judiciary is deemed independent and vested in courts of different types and grades, according to article 130 of the Qatari Constitution.

The courts of justice are divided into the following main categories:

- The Criminal Court, which consists of the Lower Criminal Court and the Higher Criminal Court.
- The Civil Court, which is composed of the Lower Civil Court and the Higher Civil Court, and also includes the Civil Division and the Administrative Division.
- The Court of Appeal, which has three divisions: criminal, civil and administrative.
- The Court of Cassation, which has four sections: criminal, civil, administrative and constitutional.
- The Lower Criminal Court hears and decides cases of minor offences and misdemeanours. It is presided over by a single judge, known as the judge of the Lower Criminal Court.
- The High Criminal Court hears and decides on all cases of serious crimes and on appeals against sentences handed down by the Lower Criminal Court for minor offences. The powers of this court are vested in a tribunal consisting of one judge, known as the president of the Higher Criminal Court, and two judges as members.
- The Lower Civil Court is composed of a single judge known as the Lower Civil Court judge, who hears and decides all civil and commercial cases in which the amount in dispute does not exceed the sum of 100,000 Qatari riyals.

Judges are independent and their decisions are taken and implemented in accordance with the law. The court proceedings are open to the public unless the court decides of its own accord or at the request of an interested party to hold them in closed session. Arabic is the

official language in the courts of law in Qatar, but the courts will also hear evidence given by non-Arabic speakers and witnesses through an interpreter, who is required to take an oath and is obliged to observe the values of honesty, integrity and sincerity.

With the exception of the president of the Court of Cassation, who is appointed directly by the Emir, all judges are appointed by the Emir on the recommendation of the Supreme Council of the Judiciary. Since judges are not elected in Qatar, there are no judicial campaigns or associated financing issues.

Law stated - 25 January 2024

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

Lobbying is not a specifically regulated practice in Qatar.

The Emir has executive power to approve or reject legislation, and the Al-Shoura Council acts as the legislative arm of the government, expressing to the government its interest in public matters; hence, these would be the bodies guiding lobbying regulation if it were regulated.

However, Qatar is active in international diplomacy and regional politics. Such activities, including any lobbying efforts abroad, are typically funded and managed by the government and its diplomatic missions.

The unexpected resources of natural gas and oil enabled its successive emirs to build a state that allowed them to achieve their ambitions at the national, regional and international levels.

Hence, Qatar invests in industrialised countries and contributes to the development of emerging countries in the fields of education, health and the promotion of women's rights. African countries occupy a prominent place in the investments, and it has also provided humanitarian aid in the event of natural disasters such as the earthquake that struck Nepal in 2015 and Cyclone Idai in Mozambique in 2019. In this international environment, Qatar occupies a place of prime importance at the geopolitical, military and strategic levels.

Lobbyists usually liaise with officials and members of congress to lobby for laws and legislation involving a foreign policy issue. Qatar adopted this method after the imposition of the blockade by Saudi Arabia, the United Arab Emirates, Bahrain and Egypt in early July 2017. The country's lobbying differs from others, however, in that it has built a network of 'congressional caucuses', groups of lawmakers who share common legislative goals on a particular issue or country.

Qatar is a member of the Gulf Cooperation Council (GCC), which has significant countries — Saudi Arabia's accession to the G20 is a clear example. Together they produce 25 per cent of the world's gross oil and control 40 per cent of the world's proven reserves. In

addition, their assets account for 45 per cent of the world’s sovereign wealth funds, with a combined value of US\$2.3 trillion. Despite these realities, the GCC states still need to formalise international politics and economics through a strategic approach to lobbying.

Qatar maintains close relations with several international powers, especially the United States and the European Union. Their interventions in Iraq and Afghanistan are also supported by the Qatari government. The latter is viewed with suspicion, especially by other Gulf states, because of its moderate approach to Iran and other Islamic countries. There are also ongoing tensions with Saudi Arabia, Bahrain, the United Arab Emirates and Egypt.

In the early twenty-first century, Doha distinguished itself by participating in several peace initiatives and by hosting major international events, such as the 2022 International Federation of Association Football (FIFA) World Cup. All the regional players lobbied FIFA President Gianni Infantino hard to win their case. This anticipation of the reform was finally rejected in May 2019. According to a feasibility study carried out by FIFA, a change of format from 2022 was only conceivable under two conditions: Qatar would have to share the tournament with at least one of its neighbours, and this would require their agreement and the lifting of the blockade.

Law stated - 25 January 2024

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

No.

Law stated - 25 January 2024

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

Not applicable.

Law stated - 25 January 2024

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

Not applicable.

Law stated - 25 January 2024

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

Not applicable.

Law stated - 25 January 2024

Lobbyist details

11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Not applicable.

Law stated - 25 January 2024

Content of reports

12 | When must reports on lobbying activities be submitted, and what must they include?

Not applicable.

Law stated - 25 January 2024

Financing of the registration regime

13 | How is the registration system funded?

Not applicable.

Law stated - 25 January 2024

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

Not applicable.

Law stated - 25 January 2024

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

Not applicable.

Law stated - 25 January 2024

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Al Jazeera Media Network, which is partially funded by the government of Qatar, is one of the largest broadcasters in the world, providing comprehensive news coverage through 80 stations on a variety of media platforms in Arabic and English. In 2006, it was transformed into a public utility, a private company through a public memorandum and articles of association in accordance with the provisions of Qatar Law No. 21 of 2006.

Since the Arab Spring, Al Jazeera Media Network has stood out for its role in advocacy, especially through the different ways of reporting used in its communication and internationally, and has become one of the most influential networks.

Law stated - 25 January 2024

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

Qatar does not have political parties. The only elections held are for an advisory municipal council.

The electoral laws currently in force cover the elections for the Municipal Council and the Central Advisory Council.

Law stated - 25 January 2024

Registration of interests

18 | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

This is not applicable as Qatar does not have political parties.

Law stated - 25 January 2024

Contributions to political parties and officials

- 19 | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Given the absence of political parties in Qatar, there is not a framework similar to other countries for regulating political contributions to parties.

Nonetheless, there are restrictions under fundraising and charity laws that may apply to charitable contributions to individual officials or members of the government, which would be governed by laws related to anti-corruption and public integrity. In this context, fundraising and the establishment of charities in Qatar are highly regulated, to mitigate, for example, the risk of terrorist financing and money laundering.

Law stated - 25 January 2024

Sources of funding for political campaigns

- 20 | Describe how political campaigns for legislative positions and executive offices are financed.

Not applicable.

Law stated - 25 January 2024

Lobbyist participation in fundraising and electioneering

- 21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Not applicable.

Law stated - 25 January 2024

Independent expenditure and coordination

- 22 | How is parallel political campaigning independent of a candidate or party regulated?

Not applicable.

Law stated - 25 January 2024

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

23 | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

Qatar Cabinet Decision No. 18/2020 enacts a charter on the code of conduct and integrity for public officials, which states, among other things, that public officials shall not have personal interests that may conflict with the interests of the state or with their duties and responsibilities as public officials; shall inform their employer of cases that may result in a conflict of interest; shall not solicit or accept any gift, donation, benefit or other interest for themselves or others, except in certain limited circumstances; and shall safeguard the interests and rights of the state, including public funds.

The Qatari Penal Code forbids any public officer to ask for or accept, for themselves or another party, money, benefit or a simple promise for something if it is in return for undertaking any activity or abstaining from carrying out any activity under the remit of their office or even which is not included in the remit of their office when believing by error or pretending that it is so.

The country has acceded to and ratified the United Nations Convention against Corruption and signed the Arab Convention against Corruption, but has not implemented legislation based on these international commitments. There is no stand-alone anti-bribery law in Qatar. Bribery and corruption are prohibited by a number of laws primarily aimed at Qatari public officials, of which the Penal Code contains the most important laws regulating and criminalising bribery.

In addition, the Qatar Military Service Law No. 31/2006 prohibits a military officer from accepting, directly or through an intermediary, any gift or gratuitous payment. In addition, Qatar has an onshore business and financial centre, known as the Qatar Financial Centre, with a commercial and regulatory environment that is separate and independent from existing government systems.

Law stated - 25 January 2024

Anti-bribery laws

24 | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

In articles 140 to 147, the Qatari Penal Code contains provisions regarding acts that may be qualified as bribery of public officials, foreign public officials, public servants, international public companies and private sector employees.

Qatar's anti-bribery provisions have extraterritorial effect. The Penal Code extends the bribery provisions to anyone who commits or participates in bribery outside the state.

Law stated - 25 January 2024

Revolving door

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- 25 | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

Not applicable.

Law stated - 25 January 2024

Prohibitions on lobbying

- 26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

Not applicable.

Law stated - 25 January 2024

RECENT CASES AND SANCTIONS

Recent cases

- 27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

In 2017, Saudi Arabia, the United Arab Emirates, Bahrain and Egypt, all members of the Gulf Cooperation Council (GCC), severed diplomatic relations with Qatar. They were concerned that the country was taking a very independent role in its foreign relations and supporting extremist Islamic groups and Iran. Accordingly, the Arab Spring of 2011, covered by Al Jazeera Media Network, alarmed many governments in the region who saw the pro-democracy movements as a threat to their own leaders. When Saudi Arabia, Bahrain, the United Arab Emirates and Egypt cut ties with Qatar, access to their airspace was denied. Economic sanctions and restrictions on the movement of its citizens were imposed. However, Alena Douhan, United Nations Special Rapporteur on the negative impact of sanctions on human rights, stated that the measures imposed on Qatar violate the rights to freedom of movement, non-discrimination and freedom of expression, and called for their suspension.

In exchange for the blockade, the following conditions were imposed:

- restriction of diplomatic relations with Iran and ending of their diplomatic missions in the country, as well as the limitation of trade with Iran in accordance with US and international sanctions;
- cutting of ties with extremist organisations;
- shutting down of Al Jazeera and its affiliates;
- immediate ending of the joint military cooperation with Turkey; and
- alignment with the other Gulf states in the military, political, social and economic spheres.

In addition, Qatar was asked to consent to audits over a decade to ensure compliance with these conditions. Qatar rejected these requirements.

In 2021, Saudi Arabia announced the end of the blockade, restoring a degree of normalcy in relations between the two members of the GCC. As a result, Egypt, Bahrain and the United Arab Emirates resumed relations with Doha during the 41st GCC Summit. Then all the regional players lobbied International Federation of Association Football (FIFA) President Gianni Infantino hard in order to win their case to host the 2022 FIFA World Cup. This anticipation of the reform was finally rejected in May 2019. According to a feasibility study carried out by FIFA, a change of format from 2022 was only conceivable under two conditions: Qatar would have to share the tournament with at least one of its neighbours, and this would require their agreement and the lifting of the blockade.

In December 2022, the European Parliament prevented representatives of Qatar from entering the premises and suspended legislation related to the country, including the release of visas and planned visits. The moves followed allegations of corruption involving attempts to influence authorities in the European Parliament.

European Union countries returned to Qatar in an attempt to diversify energy supplies and compensate for shortfalls amid Russia's invasion of Ukraine, with Germany signing a 15-year liquefied natural gas (LNG) import deal in December. Doha provided a quarter of the EU's LNG imports last year.

Belgian authorities have charged four people with bribery on allegations that they accepted payments in exchange for supporting Qatar's bid in the European Parliament, which was criticised by Qatar because the investigation is still ongoing.

Law stated - 25 January 2024

Remedies and sanctions

28 | In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

Not applicable.

Law stated - 25 January 2024

UPDATE AND TRENDS

Key developments of the past year

29 | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

Qatar National Vision 2030

Launched in 2008, Qatar National Vision 2030 is a strategy that aims to build a diverse and competitive knowledge-based economy through the adoption of integrated economic policies where social justice prevails. It sets out four pillars to achieve sustainable development: human development, social development, economic development and environmental development.

FIFA World Cup

With the completion of the International Federation of Association Football (FIFA) World Cup 2022, Qatar has demonstrated not only that it is driven by grand politics and global ambitions, but also that it has developed the bureaucratic infrastructure and governance capacity necessary to address large-scale challenges in a way that still allows it to advance its national goals and state interests. As a result, Doha has regained its place in the Gulf Cooperation Council.

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Law stated - 25 January 2024

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UPDATE AND TRENDS

Key developments of the past year

FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

The legal system in Romania is based on formal enactment of legislation, process-driven in multiple cases by the accession of Romania to the European Union. Legislation is also aligned with various international treaties or conventions (eg, the European Convention on Human Rights).

In the order of yearly number of enactments, the principal legislators in Romania are the Romanian government, which issues mainly ordinances and decisions, and the Romanian Parliament, which issues laws. Other bodies and authorities may enact normative acts, such as ministries, public authorities, county and local councils, etc.

The sources of national law are the Romanian Constitution, laws and government ordinances, customs and the general principles of law. Court precedent is not binding, but courts do have regard to previous case law when presented with it by litigating parties.

The Romanian regulator is at liberty to regulate lobbying; however, it has not done this to date. According to media, lobbying is a relatively sensitive topic because certain forms of influence may qualify as illicit activities (eg, corruption-related criminal offences or conflicts of interest).

This has made political factors reluctant to push legislation in this field, leaving the domain unregulated and subject to interpretation (ie, lobbying is permitted as long as it does not amount in principle to illicit activity, and it falls on the lobbying party to ensure it does not overstep such limit).

Law stated - 22 May 2023

Legislative system

- 2 | Describe the legislative system as it relates to lobbying.

As per the Romanian Constitution, Romania is a semi-presidential republic. Key political institutions are the President, the Parliament and the government. The Romanian President is elected by universal election. He designates the Prime Minister, who in turn makes up the government. The Romanian government is vested by the Parliament through a vote. The Parliament is bicameral (Senate and Chamber of Deputies), with its members being elected by voting of lists.

The most important legislators are the Parliament and the government. Ministries, other public authorities, and county and local councils also have regulatory powers, albeit limited, but even under these circumstances, they may enact secondary legislation to which lobbying may be relevant.

Law stated - 22 May 2023

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

County councils and city councils do hold rulemaking powers that may be relevant for lobbying practice, especially in the case of projects of regional or local importance. In such cases, interested persons may formulate public inquiries or propose changes to draft local enactments.

Law stated - 22 May 2023

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

The legislative process is accessible to the public and subject to transparency rules regulated by law (ie, Law No. 52/2003 on decisional transparency in the public administration). Draft legislation is publicly available for consultation, including on the internet. Also, third parties may request regulators access to public interest documentation and may file claims in court in order to obtain the same if not provided.

Written opinions, points of view and arguments can also be submitted, and the public, including trade unions, federations, non-governmental organisations and chambers of commerce, may participate in debates on draft legislation. Therefore, there are means to provide feedback to authorities on legislative initiatives.

Law stated - 22 May 2023

Judiciary

- 5 | Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judiciary system in Romania is independent. Magistrates (both judges and prosecutors) are appointed by the president of Romania and are not elected. To become a magistrate, law graduates must attend the National Institute of Magistracy or have worked as a legal practitioner for a specific number of years.

The nine judges of the Constitutional Court are appointed like so: three by the Chamber of Deputies, three by the Senate and three by the President of Romania. Even under these circumstances, however, judges who form the Constitutional Court are independent in the exercise of their mandate and irremovable during its term.

Law stated - 22 May 2023

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

Romania has not enacted legislation on lobbying activities. Furthermore, while associations promoting lobbying may exist, it cannot really be said that the industry is self-regulated. In essence, each lobbying party should keep to those conducts that do not amount to an illicit activity.

By way of example, article 291 of the Romanian Criminal Code regulates influence peddling and article 292 of the Romanian Criminal Code regulates the buying of influence, both criminal offences sanctioned by imprisonment.

Influence peddling is defined as soliciting, receiving or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or who alleges that they have influence over a public servant and who promises they will persuade the latter perform, fail to perform, speed up or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties.

Buying influence is the promise, the supply or the giving of money or other benefits, for oneself or for another, directly or indirectly, to a person who has influence or who alleges they have influence over a public servant to persuade the latter to perform, fail to perform, speed up or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties.

Also, according to the provisions of article 13 of Law No. 78/2000 for preventing, discovering and sanctioning corruption deeds, a person playing a leading role in a political party, union, employer association or non-profit organisation is not allowed to use any influence or authority in order to gain, for oneself or another, money, goods or any other undue advantages.

Lastly, the good practice handbook on political party financing issued by the Romanian Election Authority, flags multiple risks of corruption in this field, including:

- the possibility of disguising illicit contributions by financially supporting organisations in which politicians or third parties controlled by them have interests;
- the abuse of state resources, through the reimbursement of subsidies for which there is no justification for spending the amounts for the intended purpose;
- that large companies can influence politicians with decision-making power from political parties, offering in different forms sums of money to be recovered from public procurement contracts, affecting the democratic governance process; or
-

attracting people with decision-making positions within some companies, for the purpose of financing parties, without them having affinities with political doctrine, but only with the possibility of obtaining further benefits.

Conclusively, in certain cases, some lobbying activities may amount to deeds of corruption.

Law stated - 22 May 2023

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

There is no definition or authoritative guidance regarding what constitutes lobbying. In a draft legislative initiative dated 2019, which, however, did not materialise in law, lobbying was defined as:

the action of a party or groups of parties, having varied, specific and well-defined interests, which aims to influence the decisions taken at the political level, an activity that will be able to intervene either before the adoption of a decision or during the decision-making process, either after the adoption of the decision, in the implementation stage.

Having said this, the activity of lobbying is acknowledged by Romanian legislation, namely through the statistical classification of economic activities, including activities akin to lobbying in NACE Code 7021 on public relations and communication activities, such as advice, guidance and operational assistance, and lobbying activities to businesses and other organisations in public relations and communications; as well as through occupational code 243220, which is allocated to specialists in lobbying.

This, however, is of no influence in substance for any lobbyist as the institution itself is not regulated, as previously indicated, and certain forms of lobbying may still amount to forms of corruption.

Law stated - 22 May 2023

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

No. There is no registry of lobbyists locally, and no licence for lobby activities provided or required by national authorities.

Law stated - 22 May 2023

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

Given the lack of regulation, there is no specific regime on the disclosure of communications. However, because when engaging in lobbying, activities should be confined to those conducts that do not amount to an illicit activity locally (eg, corruption, or conflict of interests), it is possible certain disclosures will need to be made, for example, where potential conflicts of interest may occur.

Law stated - 22 May 2023

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Lobbyist details

11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Content of reports

12 | When must reports on lobbying activities be submitted, and what must they include?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Financing of the registration regime

13 | How is the registration system funded?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

There is no code of conduct for lobbyists locally.

Law stated - 22 May 2023

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Media broadcasting and the issuing of information to the general public are regulated in Romania. Freedom of speech and the liberty of the press must follow a specific code of ethics. Media may also have an impact on public policies and on those who directly or indirectly have an interest in some economic sector, but this is generally done in detailed, public online or live meetings where actors from the political and economic sectors are invited to have an active dialogue on topics of current importance openly.

Law stated - 22 May 2023

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

According to Law No. 334 /2006 regarding the financing of the activity of political parties and electoral campaigns (Law No. 334/2006), the sources of financing the activity of a political party include member fees, donations, bequests and other liberalities, revenues from own activities that are not deemed commercial activities, subsidies from the state budget, cash loans from individuals and legal entities, and sums obtained from the selling or renting of own properties.

All revenue is subject to verification and documentation as the transparency principle is directly applicable. It is noteworthy that all political parties are obliged to publish in the Romanian Official Gazette information regarding member fees collected and donations received during the previous fiscal year.

Law stated - 22 May 2023

Registration of interests

- 18** | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

All money used by political parties and politicians is subject to verification and documentation, with transparency rules set out by law.

Also, politicians and state authorities must regularly make public their current wealth and income, as well as any holdings of close relatives. The National Agency for Integrity is active in Romania and monitors such matters.

Law stated - 22 May 2023

Contributions to political parties and officials

- 19** | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Contributions mainly take the form of donations. According to Law No. 334/2006, donations received by a political party in a fiscal year cannot exceed 0.025 per cent of the revenues provided for in the state budget for that year, donations received from a natural person in a year can be up to 200 times the minimum gross salaries at country level as of 1 January of the respective year and donations received from a legal person in a year can be up to 500 times the minimum gross salary at country level as of 1 January of the respective year.

It must be noted that the total amount of donations made by legal entities directly or indirectly controlled by another person or by a group of natural or legal persons cannot exceed the limits provided above.

The same law prohibits the acceptance by political parties of donations of material goods or sums of money, or the provision of free services made with the purpose of obtaining an economic advantage.

Law stated - 22 May 2023

Sources of funding for political campaigns

- 20** | Describe how political campaigns for legislative positions and executive offices are financed.

The financing of an electoral campaign can be done by candidates as well as by political parties. Candidates can finance the campaign using their own income, loans from individuals or credit institutions, and donations.

Political parties and citizens' organisations belonging to national minorities can contribute amounts of money to their own electoral campaign up to the maximum amount provided by law, and funds may come from member fees, donations, bequests and other liberalities, revenues from own activities, subsidies from the state budget, or cash loans from individuals and legal entities.

Additionally, political parties, political alliances or citizens' organisations belonging to national minorities can contribute to their election campaign with up to 50 times the minimum gross salary at the country level for each list of candidates for the county council and the General Council of Bucharest Municipality.

Public authorities and individual private companies working with public grants are prohibited from financing electoral campaigns in any way.

At least in the Romanian 2020 elections, all contributions were made available online by the Romanian Permanent Electoral Authority.

Law stated - 22 May 2023

Lobbyist participation in fundraising and electioneering

21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

Independent expenditure and coordination

22 | How is parallel political campaigning independent of a candidate or party regulated?

Parallel political campaigning is not expressly regulated. However, it is likely to go against the principles of Law No. 334/2006 on the financing of political parties and their electoral campaigns, which sets forth specific rules on the transparency of financing of political campaigns.

Essentially, operating parallel media advertising or generally engaging in propaganda for a specific candidate will amount to a direct or indirect contribution to the respective campaign bypassing the foregoing transparency rules on financings and donations, as support for candidates should be carried out only in the forms expressly regulated by Law No. 334/2006.

Law stated - 22 May 2023

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

- 23** | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

Public officials should refrain from receiving all but symbolic gifts from the public. All other gifts, especially those of monetary importance, should be declared and registered accordingly. If there is no proper documentation and transparency on the source of gifts, it may result in inquiries led either by the Prosecutor's Office or the National Integrity Agency.

It is important to note that any promise, giving or offering of money or other benefits (regardless of their value) to a public servant, in exchange for performing, not performing, speeding up or delaying the performance of an action, contrary to their professional duties, constitutes the offence of giving a bribe.

On a different note, provisions of Law No. 393/2004 regarding the statute on local elected officials, when referring to situations that need to be filed in the declaration of personal interests, state: 'gifts and any material benefits or advantages made by any natural or legal person, related to or arising from the position held within the local public administration authority' and also 'any gift or donation received by local elected officials on a public or festive occasion becomes the property of that institution or authority'.

Law stated - 22 May 2023

Anti-bribery laws

- 24** | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

Most of the anti-bribery measures are implemented by way of the Romanian Criminal Code, Law No. 78/2000 for the prevention, discovery and sanctioning of acts of corruption and Law No. 161/2003 regarding some measures to ensure transparency in the exercise of public duties, of public functions and in the business environment, and to prevent and sanction corruption.

Any interested person that supports, for example, a field of economy through supporting actions towards an official or an authority must strongly observe the laws mentioned above.

Law stated - 22 May 2023

Revolving door

- 25** | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

There are some interdictions applicable to former officials entering the private sector, most of them being concentrated on specific domains. For example, a former judge cannot plead as a lawyer in front of the court where they worked, for a specific time of five years after the termination of their position as a magistrate at that court (in Romania, a magistrate is considered a public official).

Law stated - 22 May 2023

Prohibitions on lobbying

26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

Not specifically, as this is not regulated. However, the limitation to interact with certain persons or groups of persons or to refrain from public opinions, may be a result of various criminal convictions or preventive measures taken by the criminal investigation authorities or courts of law. Also, during the elections, the Romanian Permanent Electoral Authority may intervene in the conduct of some participants in the process.

Law stated - 22 May 2023

RECENT CASES AND SANCTIONS

Recent cases

27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

A well-known court case regarding political finance was the case of the first vice president of a political party accused by the National Anticorruption Directorate of requesting financial support from a businessman for the electoral campaign prior to the local elections, being nominated as a candidate for mayor of Bucharest.

The criminal investigation authorities considered that the candidate used his influence as first vice president of a political party to gain undue financial advantages but the court decided there was not enough evidence that such a request existed.

Also, in another famous case, two Israeli lobbyists were convicted by the Romanian High Court of Cassation and Justice for setting up a criminal organised group, complicit in influence peddling and money laundering. They had been accused that, under the pretext of political consultancy activities carried out through a company, they helped a person to fraudulently acquire the Royal Farm Baneasa, receiving an important share of the value of the land.

Law stated - 22 May 2023

Remedies and sanctions

28 |

In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

Given the lack of regulation, this is not applicable.

Law stated - 22 May 2023

UPDATE AND TRENDS

Key developments of the past year

29 | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

The last legal initiative regulating lobbying activity occurred in 2019 and is currently still under discussion. According to existing information, Romania has assumed adopting and implementing legislation on lobbying activity through the National Recovery and Resilience Plan.

** The information in this chapter was accurate as at May 2023.*

Law stated - 22 May 2023



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UPDATE AND TRENDS

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FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

The basic source of law in Taiwan is the Constitution, including the Additional Articles of the Constitution, interpretations of the Constitutional Court (before 2022), decisions of the Constitutional Court (before 2022), and the International Covenant on Civil and Political Rights. The Constitution stipulates that people shall have, among other rights, freedom of speech, writing and publication, freedom of assembly and association, and the right to present petitions or lodge complaints. The Constitution further provides that all other freedoms and rights that are not specifically identified in the Constitution and that are not detrimental to social order or public welfare are guaranteed under the Constitution, and that none of the freedoms and rights enumerated in the Constitution shall be restricted by law except under conditions in which it may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance the public welfare. Decisions of the Constitutional Court have also confirmed and interpreted the essence and scope of the freedom of speech and assembly, and the right to petition the government in many cases. In addition, there are pieces of legislation, such as the Assembly and Parade Act, the Petition Act and the [Lobbying Act](#), which contain details regarding the aforementioned Constitutional freedoms and rights.

Law stated - 18 January 2024

Legislative system

- 2 | Describe the legislative system as it relates to lobbying.

The national government in Taiwan is a presidential-parliamentary system. The principal legislative body, the Legislative Yuan, is unicameral, and chambers are elected, either directly or indirectly. Taiwan has a mixed-member election system, which combines a proportional representation system (30 per cent) with a plurality voting system (70 per cent). Eligible voters have two votes, one for a district representative candidate and the other for a political party. Candidates for district representative positions are elected if their votes rank first in their respective districts. Votes for political parties determine, through proportional distribution, the number of seats one political party can gain for the allocation of the party's representatives in the Legislative Yuan.

Secondary legislation may be prescribed by units within the executive branch only if the primary legislation has given its authorisation to the executive units by law. Secondary legislation must not violate primary legislation. According to Taiwan's Lobbying Act (the Lobbying Act), the competent executive authority, the Ministry of the Interior, may enact regulations governing the implementation of the Lobbying Act as well as determine enforcement rules and charges regarding the matters of browsing, transcribing, photocopying or photographing registrations and financial statements of lobbyists.

Law stated - 18 January 2024

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

There are local governments in Taiwan for special municipalities, counties, cities and towns.

The Constitution provides non-exclusive lists for matters that must be dealt with by the central government and matters that may be delegated by the central government to the local government, as well as matters that can be dealt with by local government. The Local Government Act further stipulates, in detail, self-government matters. Local governments possess authority over matters in the counties and cities including but not limited to: the election and recall of public officials; land registration and administration; press administration; management of income; expenditures and finances; taxes and levies; formulation, review, and implementation of urban planning; construction administration; environment protection; and health administration, all of which interested parties may seek to influence through lobbying efforts.

According to the Local Government Act, disputes over the authority among the central government, special municipalities, and counties and cities shall be resolved by the Legislative Yuan.

At present, lobbying activities in Taiwan are mainly registered with the Ministry of the Interior. County and municipal governments have no special regulations on this.

Law stated - 18 January 2024

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

The legislative process at the national or subnational level generally includes three reading procedures. After the first reading, a draft bill will be handed to respective professional committees for review before entering the second reading stage. The committees may hold public hearings and invite proportional numbers of government officials and private persons to present affirmative and negative positions respectively, to express opinions and make a report or record for legislative reference.

Law stated - 18 January 2024

Judiciary

5 |

Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

The judiciary in Taiwan is generally deemed independent and coequal. Judges are generally previous law students who passed the judicial exam. A very small number of judges are selected from experienced lawyers and prosecutors.

All judges are not elected but appointed according to the Taiwan Judges Act.

Law stated - 18 January 2024

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

Lobbying in Taiwan is regulated by the Lobbying Act. According to the Act, lobbyists must, before lobbying, register with the government agency with which the lobbied party is affiliated through application on a case-by-case basis. The lobbied party may include the president, vice president, legislators of representative bodies at various levels, the chiefs and deputy chiefs of special municipalities, counties, cities or townships, and others specified by law. In addition to filing an application for registration before commencing any lobbying efforts, lobbyists must prepare financial statements for funding spent on lobbying and file a report to the lobbied government agency by 31 May of each year, and when managing the termination of their registrations.

While the Ministry of the Interior is designated as the authority for the Lobbying Act, each government agency to which a lobbied party is affiliated has the power, and is also obligated, to decline a registration application for lobbying and may refuse lobbying if the activity is restricted by the Lobbying Act. Such restrictions cover lobbying aimed at formulation, enactment, modification or annulment of laws, government policies, or legislation by persons who do not have any involvement with the subject of the lobbying, except for individuals or for-profit corporations designated for lobbying. Additionally, if the lobbying, by its nature, is permitted by law but is not legally registered, the lobbied party must refuse the lobbying efforts. If the lobbied party is unable to refuse the lobbying efforts in a timely manner, the lobbied party or its affiliated government agency shall notify the lobbyist to file for registration within a certain period of time.

Additionally, to avoid conflicts of interest within the legislative body, according to the Lobbying Act, legislators of representative bodies at the various levels cannot lobby for an enterprise operated by themselves or parties related to them, or in which their total invested shares exceed 10 per cent, and they shall not commission other lobbyists to engage in lobbying efforts on their behalf.

According to the authorisation conferred by the Lobbying Act, the Ministry of the Interior may issue guidance on lobbying. The Ministry has issued the Enforcement Rules for the Lobbying Act, the format of the registration application, and has determined the enforcement rules and charges for browsing, transcribing, photocopying or photographing lobbyists' registration and financial statements, which should be available to the public pursuant to the Lobbying Act. The Ministry has also published the guidance and frequently asked questions regarding the Lobbying Act.

In the event of a violation of the Lobbying Act, the regulators may penalise violators by imposing a fine ranging from NT\$50,000 to NT\$2.5 million, or if the proceeds or compensation of the lobbyist exceeds the highest amount of the penalty set forth, fines may be increased to the extent of the lobbyist's proceeds or compensation. In the event of a material violation owing to intentionally inconsistent registration content with actual lobbying or because of a failure to file financial statements or by deliberately providing fraudulent content in financial statements, the lobbied government agency may refuse the registration of this lobbyist for a period of one year.

Generally, the lobbied government agency investigates any breach of the Lobbying Act, provides sufficient evidence for penalties regulated by the Act, and submits the evidence to the Control Yuan, which is an investigatory agency that monitors the other branches of government, or to the Ministry of the Interior, depending on the professional capacity of the violator, for imposition of punishment. Notwithstanding the above, the Control Yuan and competent authority may also voluntarily conduct an investigation to impose the punishment under the Lobbying Act.

Law stated - 18 January 2024

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

Under the Lobbying Act, lobbying is defined as the actions of a lobbyist that aim to influence a lobbied party or its agency regarding the formulation, enactment, modification or annulment of laws, government policies or legislation by any oral or written communication conveyed directly to the lobbied party or its designee.

Law stated - 18 January 2024

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

There is a mandatory registration requirement for lobbyists. The Lobbying Act requires lobbyists to file registration applications to the government agency to which the lobbied party is affiliated before conducting any lobbying activities. Additionally, in the event of any change in the particulars of the registration, lobbyists must file for modification of their

registration within five days from the date of the change. The termination registration must also be filed within 10 days from termination of the lobbying activities. The primary purpose of these requirements is to ensure an open and transparent procedure for lobbying, and the participation of democratic politics, as well as to prevent the transfer of inappropriate interests. Moreover, as stated previously, lobbyists must file financial statements to the lobbied government agency by 31 May of each year, and when managing their termination registrations.

In addition to the above-mentioned registrations and financial statements filed by the lobbyists, the lobbied person or entity must also inform the government agency's responsible unit or individual of the name of the lobbyist, the date and time of the lobbying, the place and method of lobbying, and the content of the lobbying for registration within seven days after being targeted.

Law stated - 18 January 2024

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

According to the Lobbying Act, regardless of whether it is oral or written, all communication must be registered by the lobbied person, including details of the lobbyist, the date and time of the lobbying, the place and method of the lobbying, and the content of the lobbying efforts, within seven days of the lobbied person being targeted. The lobbied government agency must retain this registration for five years (there are no exceptions). Communications with officials of both the legislature and the executive are covered by this registration rule. The lobbied government entity must publicise the registration on the internet or in government notices or other publications, on a quarterly basis. However, a registration may be exempted from publication if it concerns items for which publication is prohibited in accordance with other laws.

Law stated - 18 January 2024

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

All entities and persons are covered by the disclosure rules. There is no distinction between entities and persons who lobby on behalf of themselves and those who lobby for third parties. Non-profit entities are not exempted from the disclosure rules. Additionally, there are no thresholds for registration — no matter how much time is spent on lobbying, how many contacts, or what fees are earned or funds expended for lobbying activities, registration is required for lobbying. Licensed lawyers cannot be exempted from these disclosure requirements when representing clients.

Law stated - 18 January 2024

Lobbyist details

- 11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Lobbyists are responsible for filing registration applications for lobbying before they begin their activities and must file financial statements yearly and when managing their termination registrations. Additionally, the lobbied person shall inform the responsible unit or person of the lobbied government agency, with which they are affiliated, of the lobbying details to be recorded within seven days of being lobbied.

The registration application filed by a lobbyist must include certain information. If the lobbyist is an individual, it must include:

1. the purpose and content of the intended lobbying;
2. the name and title of the lobbied person;
3. the duration of the lobbying activities;
4. the estimated expenditure for the lobbying;
5. an explanation of the lobbyist's relationship with the formulation, enactment, modification or annulment of laws, government policies or legislation that they intend to influence, and documents for proof; and
6. the lobbyist's name, date of birth, residence address, identification number, telephone number or other contact information.

If the lobbyist is a legal person or organisation, the information in points (1) to (5) must be included, along with:

- the lobbyist's name;
- the lobbyist's registration or permit or filing certificate;
- the lobbyist's principal location; and
- the name, date of birth, residence address, identification number, telephone number or other contact information of its representative or chair and the lobbying representatives.

For designated lobbyists, in addition to the above items, the registration should also include evidence of designation, agreed compensation, information sufficient to identify the designator, and, where the designated lobbyist is an individual, the certificate of qualification in the professional and technical special examination, and practising certificate number, or, where the designated lobbyist is a legal person or organisation, the articles of incorporation.

The financial statement must list the revenue, including service revenue and other revenue; the expenditure, including on personnel, operations, promotion or advertising, public

relations, transportation and travel, as well as miscellaneous expenditure; and any other items designated by the Ministry of the Interior.

Registrations made by the lobbied government agency after receiving notification by the lobbied party must include the name of the lobbyist, and the date and time, place and method, and content of the lobbying.

Law stated - 18 January 2024

Content of reports

12 | When must reports on lobbying activities be submitted, and what must they include?

The lobbied person or government agency must inform the agency's responsible person of the name of the lobbyist and the time, place, method, and content of the lobbying within seven days of the lobbying.

Law stated - 18 January 2024

Financing of the registration regime

13 | How is the registration system funded?

The registration system depends on public funding. However, if a person hopes to view or photocopy the registration and financial statements filed by the lobbyist or the registration recorded by the lobbied government agency, they must pay for the hours spent viewing the documents or be charged for the photocopying costs.

Law stated - 18 January 2024

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

Access to registry information and reports is available to the public. The lobbied government agency must retain the registration and financial statements filed by lobbyists as well as the registration reports of the lobbied government agency's responsible unit or individual for five years, and must publish these on the internet or in a government notice or other publication on a quarterly basis. The Ministry of the Interior also publishes statistical data every month on its [website](#). However, this is not applicable to registration items prohibited from publication in accordance with other laws.

Law stated - 18 January 2024

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

The main regulation in Taiwan relevant to lobbyists is the Lobbying Act. There are several enforcement rules enacted by the Ministry of the Interior that supplement the Lobbying Act. However, there is no specific code of conduct promulgated by the government or any professional association that directly relates to lobbying.

Law stated - 18 January 2024

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

Generally, there is no such restriction. However, the Tobacco Hazards Prevention Act specifically forbids any tobacco promotion, donations, and advertisements using broadcast, internet and other media. This ban's constitutionality was challenged and reconfirmed by the Constitutional Court in August 2020. Besides, the Tobacco and Alcohol Administration Act also imposes restrictions on alcohol promotion methods, which, as a consequence, may be regarded as restrictions that indirectly limit commercial interests' ability to use the media to influence public policy.

Law stated - 18 January 2024

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

Political parties are mainly funded by membership dues and political donations received from individuals, civil associations and profit-seeking businesses. In addition, according to the Political Party Act, the source of political parties' funds and income are limited to membership dues, political donations received in accordance with the laws, grants for parties, income from publications, promotional materials, conferring rights or income assignment for the purpose of promoting its ideas or engaging in promotional activities, other income received pursuant to the Political Party Act, or any interest generated from the above funds and income.

Law stated - 18 January 2024

Registration of interests

18 | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

According to the Political Donations Act, political parties, political associations and persons planning to participate in campaign activities must establish an accounting book of income and expenditure, recording, in each instance, the time of each receipt and disbursement, the person or entity relevant to this receipt or disbursement, and the address of this person or entity, as well as the purpose for and the monetary amount of, or the value of (if an economic benefit other than money), each donated item on a daily basis for reference, and they must compile an accounting report based on the aforesaid data. Political donations given as articles valued at less than NT\$2,000 do not have to be recorded.

A political party or political association must declare the accounting report to the relevant authority within five months of the end of each year. A person planning to participate in a campaign must declare the accounting report to the authority within three months of the polling day. The authority receiving the declaration must, within six months of the deadline, collate the declarations in a volume for enquiry, publish hard copies of the income and expenditure balance sheets, and publish them on the [internet](#).

In addition, according to the Act for Property-Declaration by Public Servants, certain public servants must declare their property, including the President; Vice President; Premier and Vice Premier of the Executive Yuan; the president and vice presidents of the Legislative Yuan, Judicial Yuan, Examination Yuan and Control Yuan; political appointees; and certain senior advisers, policy consultants of the Office of the President, and others regulated by the Act. Property that must be declared includes real property, vessels, cars and aircraft, cash, deposits, securities, jewellery, antique articles, calligraphy and paintings, and other property exceeding certain values, rightful claims of creditors, debts and investments in various ventures over certain values. Moreover, such property owned by the spouses and underage offspring of public servants must be jointly declared.

Law stated - 18 January 2024

Contributions to political parties and officials

19 | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Political contributions or disbursements to parties and political officials are regulated in Taiwan.

According to the Political Donations Act, the total amount of donations contributed to a single political party or political association each year may not exceed the limits set out below.

By individuals	NT\$0.3 million
By civil associations	NT\$2 million
By profit-seeking businesses	NT\$3 million

The total amount of all donations contributed to different political parties or political associations each year may not exceed the limits set out below.

By individuals	NT\$0.6 million
By civil associations	NT\$4 million
By profit-seeking businesses	NT\$6 million

In addition, the Civil Servants Election and Recall Act also stipulates the maximum amount of campaign funds for different elections, respectively. Nevertheless, the penalty for exceeding the maximum amounts of campaign funds in this Act has been removed for the purpose of encouraging candidates to honestly report their campaign funds.

Law stated - 18 January 2024

Sources of funding for political campaigns

20 | Describe how political campaigns for legislative positions and executive offices are financed.

Public funds are provided to subsidise candidates who have received a certain number of votes, which are provided after the relevant election. Non-public fundraising is permitted. Nevertheless, according to the Political Donations Act, political parties, political associations and persons planning to participate in campaigns cannot collect political donations by issuing fixed-maturity bonds, indeterminate, interest-bearing or interest-free bonds, or other securities to unidentifiable persons. The Political Donations Act regulates issues regarding such non-public fundraising for political events.

Law stated - 18 January 2024

Lobbyist participation in fundraising and electioneering

21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

There are no such special restrictions with respect to candidate fundraising.

Law stated - 18 January 2024

Independent expenditure and coordination

22 | How is parallel political campaigning independent of a candidate or party regulated?

According to the Political Donations Act, the individuals or associations that may accept political donations are limited to the political parties, political associations and persons planning to participate in a campaign. Therefore, parallel political campaigning is generally not permitted.

Law stated - 18 January 2024

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

- 23 | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

In addition to certain restrictions on political donations, there is also an Ethics Code for Government Officials that provides rules for accepting gifts and hospitality. Government officials may only accept gifts valued under NT\$500 (general) or NT\$3,000 (special occasions such as marriage, promotion, moving house or changing jobs) from people with interests, including lobbyists. In contrast, government officials may accept gifts from people without interest and are obligated to report to their superior when a gift is worth more than NT\$3,000.

Law stated - 18 January 2024

Anti-bribery laws

- 24 | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

The Anti-Corruption Act restricts payments and controls the activities of lobbyists or holders of government contracts. The Act identifies several actions that would be penalised, such as accepting bribes, seeking or making unlawful gains, or inflating prices and quantities of, or taking kickbacks from, public works or procurements. Pursuant to the Lobbying Act, a person who has committed any crime prescribed in the Anti-Corruption Act is sentenced to a fixed term of imprisonment, which cannot be suspended, commissioned or assigned to serve as a lobbyist.

Law stated - 18 January 2024

Revolving door

- 25 | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

There are regulations on public officials entering the private sector after ending their public service or becoming lobbyists. According to the Lobbying Act, within three years after

leaving office, the president, vice president, chief and deputy chief of special municipalities, counties, cities and townships, and certain persons specified in other laws, cannot lobby the organisations in which they previously served within the period of five years prior to leaving office, regardless of whether such lobbying is conducted for themselves, or on behalf of a legal person or organisation, and they may not commission other lobbyists to do so.

Law stated - 18 January 2024

Prohibitions on lobbying

26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

It is possible to be barred from lobbying in Taiwan to a certain extent. According to the Lobbying Act, within three years after leaving office, the president, vice president, chief and deputy chief of special municipalities, counties, cities and townships, and certain persons specified in other laws, cannot lobby the organisations in which they previously served within the period of five years prior to leaving office, regardless of whether such lobbying is conducted for themselves, or on behalf of a legal person or organisation, and they may not commission other lobbyists to do so. Also according to the Lobbying Act, there are other conditions (listed below) where an individual, legal person or organisation is barred from lobbying.

Except for individuals or for-profit corporations designated for lobbying, people shall not lobby regarding the formulation, enactment, modification or annulment of laws, government policies or legislation where such laws, government policies or legislation have no effect on such persons.

Foreign governments, legal persons and organisations shall not lobby without commissioning Taiwanese lobbyists to engage in lobbying on their behalf. Foreign governments, legal persons, organisations and natural persons also shall not lobby on matters of national defence, foreign affairs and China affairs related to national security or national secrets because of the special relationship between Taiwan and China.

People, legal persons, organisations or other institutions from China, Hong Kong or Macau shall not lobby in person or commission other lobbyists to do so because of the ongoing tension between Taiwan and China.

A person who has committed certain crimes (eg, related to corruption or organised crime) and has been sentenced to fixed-term imprisonment without probation being rendered, as prescribed by the Lobbying Act, cannot be commissioned or be assigned to serve as a lobbyist.

Legislators of representative bodies at the various levels shall not lobby for an enterprise run by themselves or parties related to them, or in which their total invested shares exceed 10 per cent, and shall not commission other lobbyists to do so on their behalf.

If there is a material violation as a result of intentionally inconsistent registration content related to lobbying or because of failure to file financial statements or making fraudulent

content of financial statements, the lobbied government agency may refuse the registration of said lobbyist for one year.

Law stated - 18 January 2024

RECENT CASES AND SANCTIONS

Recent cases

- 27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

In August 2021, after 13 years in trial, remanded by the Supreme Court five times, a former legislator who was involved in lobbying for the Chinese Medicine Association (CMA) to confer entitlement to Chinese medicine businesses to write and issue prescriptions was still convicted by the High Court of bribery. The High Court found that the CMA gave the legislator's brother NT\$5 million to expressly request that the legislator support an amendment to the Pharmaceutical Affairs Act that would favour Chinese medicine businesses and that the legislator carried out this request by strongly supporting the amendment, which evidenced consideration in the relationship between the payment from the CMA and the legislator's behaviour, and thus the Court held that the legislator was guilty of taking a bribe. The legislator was sentenced to imprisonment of three years and 10 months and was deprived of his qualifications to serve as a public official and from being a candidate for public office for three years, and the proceeds of the crime received by him (NT\$5 million) were confiscated. The Supreme Court upheld the High Court's decision and the conviction was affirmed in 2023.

More recently, five legislators along with seven accomplices were prosecuted for receiving illegal money from stakeholders to put pressure on amending the Company Act in 2020. This case originated from a series of company control litigations of a giant department store chain. One party bribed the legislators to amend the Company Act, trying to reverse the outcome of the litigation. Five legislators were all sentenced to prison by the judgment of the first instance on 6 July 2022.

Law stated - 18 January 2024

Remedies and sanctions

- 28 | In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

From 2008, when the Lobbying Act came into force, until March 2021, only 450 cases were registered per the Lobbying Act and the Ministry of the Interior has not imposed a fine on anyone who failed to register their lobbying. This might be because it has no way of knowing if lobbying is being conducted secretly and even if it learns of unregistered lobbying, the lobbyists may still remedy their mistake by filing a registration upon notification by the Ministry. It may also be a sign that the enforcement of the Act is weak.

With regard to the Political Donations Act, if a person planning to participate in a campaign accepts political donations from sources that are prohibited by law, fails to hand in donations to the declaration authority (to be deposited into the national treasury) that are not compliant with the law after having also failed to return the donations to the donation giver, or collects political donations by issuing fixed-maturity, indeterminate, interest-bearing or interest-free bonds or other securities to unidentifiable persons, they shall be condemned to fixed-term imprisonment of not more than five years. This shall also apply to agents or employees who accept or collect political donations for persons planning to participate in campaigns, as well as to the principals, representatives, agents, or employees of political parties or political associations.

In addition, according to the Political Donations Act, a person planning to participate in a campaign shall be sentenced to fixed-term imprisonment of not more than three years and may be fined a sum of not less than NT\$200,000 and not more than NT\$1 million if they accept political donations without obtaining permission to set up a dedicated account for acceptance of political donations, as required by law. This shall also apply to agents or employees who accept or collect political donations for a person planning to participate in campaign, as well as the principals, representatives, agents or employees of political parties or political associations.

Moreover, any individuals or associations that are not political parties, political associations or persons planning to participate in a campaign that accept political donations shall be fined a sum double the amount of the donations accepted. The same punishment applies to any person who accepts political donations that are contributed for or in the expectation of undue benefits, or who accepts political donations during periods prohibited by law. The spouse, children, relatives specified by law or dependants sharing property and living with people planning to participate in campaigns who illegally accept political donations shall be fined a sum triple the amount of the donations accepted. The donations shall be confiscated, and if all or a part of the donations cannot be confiscated, a sum equal to the value shall be replevied.

Additionally, anyone who acts as a broker in or encumbers the contribution of political donations by utilising official power, an employment relationship or other factors shall be fined a sum of not less than NT\$200,000 and not more than NT\$1.2 million. If a civil servant commits one of the above acts, they shall be sentenced to fixed-term imprisonment of not more than one year.

Furthermore, anyone who contributes political donations for or in the expectation of undue benefits shall be fined a sum double the amount of the donations given. Any person who: contributes in the name of others; contributes an anonymous donation of more than NT\$10,000; contributes a monetary donation in excess of NT\$100,000 but fails to pay by cheque or bank transfer, except for donations contributed in their will; is not allowed to contribute political donations but still makes contributions; or contributes political donations exceeding the amount set by the law, shall be fined a sum double the amount of the donations accepted.

A recent notable sanction was imposed on a former city council speaker, the lead legislator at the city level. He was found to have received political donations prior to obtaining permission to set up a dedicated account for accepting political donations as required by law and he also failed to deposit the political donations into the dedicated account for

specific use after he obtained permission for the account. Thus, he was found guilty and sentenced to imprisonment for six months, which can be converted into a fine.

In this case, the Control Yuan conducted an investigation and imposed a fine of NT\$1 million on the donation giver, based on the fact that the amount of the political donation made by the giver exceeded the maximum limitation and that the giver violated the regulation stipulating that a monetary donation that exceeds NT\$100,000 must be paid by cheque or bank transfer. Although the giver launched an appeal, the Taipei High Administrative Court upheld the Control Yuan's decision.

Law stated - 18 January 2024

UPDATE AND TRENDS

Key developments of the past year

- 29** | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

Regarding the ineffectiveness of the Lobbying Act, including the low number of lobbying registrations and the absence of actual punishment, the Ministry of Internal Affairs submitted a draft amendment to the Executive Yuan in April 2021. The draft includes an expanded scope of the lobbied party to include the legislator's assistant, the government chiefs' secretaries and the chiefs of third-level government agencies such as the police department, the immigration department and the banking bureau. The draft also states that if a foreign government, legal person or organisation engages in lobbying in Taiwan without commissioning a Taiwanese lobbyist, it will be fined NT\$500,000 to NT\$5 million. However, this draft is still subject to the Executive Yuan's approval and must be passed by the Legislative Yuan. The Bureau of Law under the Legislative Yuan submitted a research report to the legislators in 2022. Nevertheless, the draft is still under the review of the Executive Yuan and Legislative Yuan.

There are many reasons for the low number of lobbying cases in Taiwan. For instance, some people or groups subjectively believe that expressing opinions to the government is their right and should not bear obligations such as lobbying registration. Moreover, the lobbying registration procedures are cumbersome, which reduces the willingness of people to lobby and register, so they choose to express their opinions in other ways. In addition, in order to avoid increasing administrative burdens, the agency to which the person being lobbied belongs may suggest that the lobbyist express their opinions through petitions and constituent services, etc. Therefore, some scholars currently suggest amending the current lobbying law, adopting an online newspaper reporting system and abolishing the petition law.

Law stated - 18 January 2024

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UPDATE AND TRENDS

Key developments of the past year

FORM OF GOVERNMENT

Constitution

- 1 | What is the basic source of law? Describe the scope of, and limitations on, government power relevant to the regulation of lobbying and government relations.

The UK does not have a codified constitution. The UK Constitution is found in a variety of sources including legislation, court judgments and constitutional conventions. A notable recent development for scholars of the UK Constitution has been the elaboration by the courts of a theory of 'constitutional statutes' – see the cases of *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), and *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3.

Nonetheless, it can be hard to understand whether a particular law or rule falls within the scope of the Constitution. Lobbying legislation is not usually included in lists of constitutional statutes. However, it is possible some commentators would include lobbying rules within their more general definitions of the Constitution.

The UK does not currently have a Bill of Rights. The closest equivalent is the Human Rights Act 1998, which incorporates the rights from the European Convention of Human Rights (ECHR) into domestic law. The ECHR includes a right to freedom of expression (article 10) and to freedom of assembly and association (article 11). In June 2022, the [Bill of Rights Bill](#) was introduced, seeking to reform the law relating to human rights. However, the Bill of Rights Bill was withdrawn on 27 June 2023.

Law stated - 2 January 2024

Legislative system

- 2 | Describe the legislative system as it relates to lobbying.

The UK has a parliamentary system. The principal legislative body is Parliament, which consists of two chambers – the (elected) House of Commons and the (unelected) House of Lords. The House of Commons is the more important legislative chamber, since it can usually override objections by the House of Lords in the event of disagreement, and pass legislation using the provisions of the Parliament Acts 1911 and 1949. The role and constitution of the House of Lords is the subject of frequent debate – most recently, the Labour Party pledged to replace it with an elected second chamber, although this is no longer a first-term commitment following the October 2023 party conference.

Parliamentary sovereignty is – according to most commentators – the most important principle of the UK constitution, and Parliament is broadly understood to have the power to make and unmake any law whatsoever. The executive branch of government may pass secondary legislation where the power to do so has been delegated by a 'parent' Act of parliament. Most secondary legislation is made by government ministers, but primary legislation can also delegate law-making powers to other parties, such as public bodies.

Parliament may also give local authorities the power to make delegated legislation, known as byelaws.

Law stated - 2 January 2024

National subdivisions

- 3 | Describe the extent to which a legislative or rule-making authority relevant to lobbying practice also exists at regional, provincial or municipal level.

Devolution of powers has occurred from Westminster (the seat of the UK Parliament) to Scotland, Wales and Northern Ireland. The Scottish Parliament, Northern Ireland Assembly and Welsh Senedd may legislate on devolved matters. There is no English Parliament, and laws affecting England are made by the UK Parliament.

In Scotland, devolution happened through a system of 'reservations' – the Scottish Parliament may legislate on matters not specifically 'reserved' to the UK Parliament. Reservations are set out in Schedule 5 to the Scotland Act 1998, and include 'general reservations' such as international relations, and 'specific reservations' under a variety of heads, for example, financial and economic matters. The Scottish Parliament may make laws under section 28 of the Scotland Act 1998 and has limited powers to set income tax.

In Northern Ireland, there are three categories for devolution, under section 4 of the Northern Ireland Act 1998 – 'excepted matters' are set out in Schedule 2 of the 1998 Act and are intended never to be devolved. An example is international relations. 'Reserved matters' are set out in Schedule 3 of the 1998 Act. These may be transferred in future but have not yet been. An example is navigation. 'Transferred matters' means any matters that are not excepted or reserved, for example, education. These matters are devolved. The Northern Ireland Assembly may make laws under section 5 of the 1998 Act.

In Wales, the devolution model was changed in 2017 to a 'reserved powers model'. Now, as in Scotland, there are 'general reservations' (such as international relations) and 'specific reservations' under various heads (including financial and economic matters). There are also some exceptions. The reservation system is set out in Schedule 7A of the Government of Wales Act 2006. The Welsh Senedd may make laws under section 107 of the Government of Wales Act 2006.

There has also been some devolution of powers to English cities, specifically London and Manchester. Chapter 1 Part 2 of the Levelling Up and Regeneration Act 2023 provides for the establishment of Combined County Authorities, with devolved powers to exercise specific functions. Further devolution to new Combined County Authorities is proposed in the Levelling Up and Regeneration Bill currently going through Parliament. There have also been proposals for regional government in other areas of England, but these have been rejected.

Local authorities have broad powers to take decisions on a wide range of matters (including setting levels of council tax, setting local planning policy and taking most planning decisions) that can, to varying degrees, be influenced by interested parties (although many decisions must be taken in accordance with statutory frameworks and procedures that are enforceable by the courts). Generally, the papers for most decisions are made available

before meetings of local authorities and their committees. Interested parties have the right to make representations to decision makers before taking their decision and the decision maker has a right to receive and consider such representations (*R (Holborn Studios) v London Borough of Hackney* [2020] EWHC 1509 (Admin)) and interested parties may also attend meetings at which decisions are taken (Local Government Act 1972 Part VA).

Law stated - 2 January 2024

Consultation process

- 4 | Does the legislative process at national or subnational level include a formal consultation process? What opportunities or access points are typically available to influence legislation?

Public consultation documents are not always produced in relation to proposed legislation (primary and secondary). Sometimes, consultation documents are sent only to a predetermined list of consultees and sometimes there is no consultation at all. This is a matter for the government department concerned, although proposals for significant constitutional change should be set out in a green consultation paper. In 2008, the government published a [Code of Practice on Consultation](#).

The two main types of pre-legislative documents are green papers and white papers. Green papers are consultation documents produced by the government, which are intended to begin consultation and debate about a general policy area. They may be published on the government [website](#).

White papers are policy documents that set out a proposal for future legislation in more detail. They may announce firm government policy and they may be published more formally as 'Command Papers'. They may include a draft of the proposed legislation. They provide a basis for further consultation and discussion with interested or affected groups, and allow changes to be made before the bill or secondary legislation is presented to Parliament.

An obvious way to influence legislation at the consultation stage is to respond to any published consultation documents and attend any organised events, details of which may be found on the government [website](#). Once responses are received, consultations are usually summarised and published with a government reply. It is possible to lobby at any stage – from before a green paper, to after the government's reply – depending on what you are trying to achieve. However, it is worth bearing in mind that public bodies (including ministers and government departments) must not close their minds to a particular outcome before a consultation exercise is complete. If consultation by the government is seriously flawed, it is possible to bring a judicial review challenge in the High Court.

There may also be a process of pre-legislative scrutiny conducted by one or more Parliamentary committees, which will take evidence and make recommendations about the proposed legislation following detailed examination of an early draft. This can result in changes to draft legislation before it is formally presented to Parliament.

Any Member of Parliament (MP) can introduce a bill to Parliament, but most bills are proposed by government ministers representing agreed government policy. Other bills are

known as Private Members' Bills or (in the House of Lords) Private Peers' Bills and are introduced by MPs and Lords who are not government ministers.

Law stated - 2 January 2024

Judiciary

- 5 | Is the judiciary deemed independent and co-equal? Are judges elected or appointed? If judges are elected, are campaigns financed through public appropriation or candidate fundraising?

Judges in the UK are appointed by the Judicial Appointments Commission. UK Supreme Court justices are appointed using an independent selection commission.

The judiciary is independent of government and Parliament. However, Parliament is supreme over the judiciary following the constitutional principle of parliamentary sovereignty, therefore the judiciary cannot be considered co-equal. This is a point of contention, with some judges suggesting that the courts created parliamentary sovereignty and there may be circumstances in which another hypothesis of constitutionalism (for example, the Rule of Law) would have to prevail over parliamentary sovereignty, for example, if Parliament tried to oust the jurisdiction of the courts altogether. See [Jackson and others v Attorney General \[2005\] UKHL 56](#) [102]. In the recent Supreme Court Judgment concerning Rwanda [\[2023\] UKSC 42](#), the justices found that Rwanda is not a safe third country to which the government can send asylum seekers. Subsequently, the government has introduced the [Safety of Rwanda \(Asylum and Immigration\) Bill](#) making provision for the government to declare Rwanda as a safe third country. In accordance with the doctrine of parliamentary sovereignty, governments have certainly in the past sought to legislate to avoid the politically unwelcome implications of adverse rulings by the courts. The Rwanda example is unusual, though, as it represents a direct challenge to a finding of fact by the Supreme Court. The Bill has received its second reading in the House of Commons and a date to be committed to a Committee of the whole House is to be announced.

Law stated - 2 January 2024

REGULATION OF LOBBYING

General

- 6 | Is lobbying self-regulated by the industry, or is it regulated by the government, legislature or an independent regulator? What are the regulator's powers? Who may issue guidance on lobbying? What powers of investigation does the regulator have? What are the regulators' or other officials' powers to penalise violators?

While 'lobbying' may be widely understood to refer to activities by private individuals and organisations to influence law and policy, references to restrictions on lobbying in the UK will usually refer to the statutory consultant lobbying regime, whereby a limited category of lobbying directed at senior officials and government is regulated.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the 2014 Act) introduced a statutory regime for regulation of consultant lobbying in the UK. The regime requires registration with the Office of the Registrar of Consultant Lobbyists (ORCL) and ongoing disclosures about lobbying activities. Only those who lobby on behalf of another for payment are required to register.

ORCL is an independent statutory office sponsored by the Cabinet Office (see the [ORCL memorandum of understanding](#)) and accountable to Parliament. The Registrar has legal duties to keep up-to-date and publish a Register of Consultant Lobbyists (the Register) and monitor compliance with the obligations on consultant lobbyists in the 2014 Act. The Registrar has a variety of statutory monitoring and enforcement powers including the power to issue civil penalties.

A variety of legal and non-legal sources may restrict or ensure transparency in broader lobbying activities in the UK, depending on the status of the individual or organisation in question and the activities they are undertaking. There are also self-regulatory regimes for members of professional associations such as the Chartered Institute of Public Relations (CIPR).

Law stated - 2 January 2024

Definition

7 | Is there a definition or other guidance as to what constitutes lobbying?

For the purposes of the consultant lobbying regime, organisations and individuals are considered to be engaged in consultant lobbying if they meet the following three tests (as per section 2 and Schedule 1 of the 2014 Act):

- they make oral, written or electronic communications personally to a Minister of the Crown or Permanent Secretary (or equivalents specified in the 2014 Act) relating to:
 - the development, adoption or modification of any government proposal to make or amend primary or subordinate legislation;
 - the development, adoption or modification of any other government policy;
 - the taking of any steps by the government in relation to any contract, agreement, grant, financial assistance, licence or authorisation; or
 - the exercise of any other function of the government;
- the communication is made in the course of a business and in return for payment on behalf of a client, or further to payment received in the expectation that the communication would be made after it; and
- they are registered under the Value Added Tax Act 1994.

There are exceptions under the 2014 Act. ORCL produces [guidance on the types of bodies and activities that trigger registration](#) under the 2014 Act.

The scope of lobbying activities that may be caught by other restrictions will depend on the source of the restriction.

Law stated - 2 January 2024

Registration and other disclosure

8 | Is there voluntary or mandatory registration of lobbyists? How else is lobbying disclosed?

Consultant lobbyists must be entered on the Register of Consultant Lobbyists; carrying out consultant lobbying activity without being registered is an offence under the 2014 Act. Once registered, consultant lobbyists must submit a Quarterly Information Return (QIR) about their lobbying activities within 14 days of the end of each quarter (starting with the quarter before registration).

Other types of lobbying activities may be made public depending on the source of the control on that activity. For example, 8.14 of the [Ministerial Code](#) provides that government departments must publish details of ministers' meetings with external persons or organisations on a quarterly basis. It is generally necessary to view a department's transparency data on the government [website](#) to find such return – for example, see the Department for Work and Pensions' records [here](#).

Law stated - 2 January 2024

Activities subject to disclosure or registration

9 | What communications must be disclosed or registered?

Lobbying activities subject to disclosure will depend on the source of control on the activity in question.

With regard to the UK's statutory consultant lobbying regime, registrable communications are oral, written and electronic communications, whether formal or informal, made personally to a Minister or Permanent Secretary or equivalent (ie, addressed to them by name or by title) on behalf of a paying client in relation to government business.

Law stated - 2 January 2024

Entities and persons subject to lobbying rules

10 | Which entities and persons are caught by the disclosure rules?

Any organisation or individual, non-profit or not, will be subject to the consultant lobbying regime under the 2014 Act if both they and their activities meet the statutory criteria. Many organisations will not be required to register under this regime because they lobby the government on their own behalf or fall within an exception under the 2014 Act.

Law stated - 2 January 2024

Lobbyist details

- 11 | What information must be registered or otherwise disclosed regarding lobbyists and the entities and persons they act for? Who has responsibility for registering the information?

Under the consultant lobbying regime, consultant lobbyists must provide specified information about their organisational type and identity. QIRs must be made, either confirming that the registrant did not engage in lobbying or receive payment for lobbying during the quarter or confirming details of registrable lobbying information (including names of clients in full).

Law stated - 2 January 2024

Content of reports

- 12 | When must reports on lobbying activities be submitted, and what must they include?

Registered consultant lobbyists must submit a QIR to the Registrar within 14 days of the end of each quarter. A QIR must include the names of clients for whom consultant lobbying was carried out, or in respect of whom payment for consultant lobbying was received. Alternatively, if the lobbyist did not engage in consultant lobbying during the quarter, the QIR must include a statement to this effect.

Other lobbying disclosures will be subject to different requirements, depending on the source of the control on the activity in question.

Law stated - 2 January 2024

Financing of the registration regime

- 13 | How is the registration system funded?

In terms of the consultant lobbying regime, ORCL is an independent statutory office sponsored by the Cabinet Office. Most of its operational budget is allotted by the Cabinet Office as a grant-in-aid ([ORCL Statement of Accounts 2022-23, section 1.8](#)), so the ORCL is partly publicly funded. The grant-in-aid is supplemented by registration and other fees levied by the ORCL to registrants.

Law stated - 2 January 2024

Public access to lobbying registers and reports

14 | Is access to registry information and to reports available to the public?

Under the consultant lobbying regime, the Registrar is required to publish the Register. The Register is [available online](#) and can be searched or downloaded in its entirety. The entry for each registered lobbyist includes its organisational information and its current and past client lists taken from QIRs.

Law stated - 2 January 2024

Code of conduct

15 | Is there a code of conduct that applies to lobbyists and their practice?

Consultant lobbyists must notify the Registrar if they have undertaken to comply with a 'relevant code of conduct'. However, there is no obligation for registered lobbyists to subscribe to any code of conduct.

Two such codes include the CIPR's [Code of Conduct and associated guidance on professional standards in lobbyi ng](#), and the Public Relations and Communications Association's [Public Affairs Code](#). CIPR maintain their own [voluntary UK lobbying register](#). Adherence to each code is a requirement of membership of the respective professional association.

Law stated - 2 January 2024

Media

16 | Are there restrictions in broadcast and press regulation that limit commercial interests' ability to use the media to influence public policy outcomes?

There is a prohibition on political advertisements (other than permitted party political broadcasts) in broadcast media (ie, television and radio) under sections 319 and 321 of the Communications Act 2003 (the 2003 Act).

For the purposes of the prohibition, political advertisements are those placed by or on behalf of a body whose objects are wholly or mainly of a political nature, an advertisement directed towards a political end or an advertisement connected with an industrial dispute (section 321(2) 2003 Act). Objects of a political nature and advertisements directed at political ends are defined in section 321(3) of the 2003 Act.

There is no specific regulation of political advertisements in non-broadcast media, though such advertisements may be subject to requirements under electoral law, such as spending limits and a requirement for transparency details to be included on some types of election

campaign material (now including digital material and audio-only content) by non-party campaigners.

Communications in non-broadcast media aimed at influencing public policy outcomes may be restricted by general Advertising Standards Authority regulation of non-broadcast advertising, provided that the principal function of the ad is not to influence voters in elections or referendums (as such advertisements are exempt from regulation).

Law stated - 2 January 2024

POLITICAL FINANCE

General

17 | How are political parties and politicians funded in your jurisdiction?

At the UK level, political parties are funded predominantly by private donations, loans and membership fees. There is limited public funding available in some circumstances, such as funds available to opposition parties towards research costs, travel expenses and the running of the Leader of the Opposition's office. Additionally, Members of Parliament (MPs) are paid a basic annual salary and entitled to recover certain expenses, [regulated by the Independent Parliamentary Standards Authority](#).

Law stated - 2 January 2024

Registration of interests

18 | Must parties and politicians register or otherwise declare their interests? What interests, other than travel, hospitality and gifts, must be declared?

At the UK level, the MP's Code of Conduct mandates that MPs must register financial interests in the Register of Members' Financial Interests (RMFI). The RMFI is governed by the [Guide to the Rules relating to the conduct of Members](#) and is maintained by the Parliamentary Commissioner for Standards. The aim is to provide information about any financial interest that might reasonably be thought to influence an MP's actions in their capacity as an MP. The Guide sets out the types of interest to be declared, including outside employment and earnings, donations, shareholdings and property holdings that are registrable if they meet specified financial thresholds.

Politicians and parties are also subject to registration and disclosure requirements relating to financial interests such as donations and loans under electoral legislation.

Law stated - 2 January 2024

Contributions to political parties and officials

19 | Are political contributions or other disbursements to parties and political officials limited or regulated? How?

Private funding of political parties and politicians is regulated by electoral legislation (such as the Political Parties, Elections and Referendums Act (PPERA) and the Representation of the People Act 1983 (RPA)) and the operation of the MPs' Code of Conduct in relation to the RMFI. Donations may need to be disclosed depending on the value of the donation and the status of the donee. For example, under Schedule 7 PERA, donations to 'regulated donees' (including holders of certain elective offices and members of political parties) are regulated if given for political activities. Donations may only be received from permissible donors, broadly organisations and individuals with a sufficient UK connection.

The concept of a donation for the purposes of such rules is broad and may include cash gifts, sponsorship, subscription or affiliation fees and credit and non-commercial transactions.

Law stated - 2 January 2024

Sources of funding for political campaigns

20 | Describe how political campaigns for legislative positions and executive offices are financed.

There is very limited public funding of electoral campaigning in the UK. Public funding of MPs and political parties can generally not be used for electoral purposes. There are some limited exceptions.

Parties and candidates are not subject to restrictions on the amount of funds they raise during a political campaign (though they will be subject to restrictions on the type of donations they can receive, and reporting requirements on regulated donations received). However, they are subject to spending limits for campaign activities in a regulated period ahead of a relevant election.

Law stated - 2 January 2024

Lobbyist participation in fundraising and electioneering

21 | Describe whether registration as a lobbyist triggers any special restrictions or disclosure requirements with respect to candidate fundraising.

The consultant lobbying regime and regulation of contributions to political candidates and parties are separate. The requirements imposed upon recipients of political donations do not differ where the donor is registered as a consultant lobbyist.

Law stated - 2 January 2024

Independent expenditure and coordination

22 | How is parallel political campaigning independent of a candidate or party regulated?

Political campaigning that is not undertaken by a party or candidate is generally referred to as [non-party campaigning](#). This campaigning is regulated through PPERA (for general electoral campaigns) and through the RPA (for local electoral campaigns) or similar devolved legislation in relation to devolved authorities such as the Senedd in Wales.

The non-party campaigning regime broadly subjects individuals and organisations to a financial limit on the value of activities they undertake that can be seen to be aimed at influencing an election, in a regulated period prior to that election. Generally, only public-facing activities will be regulated and subject to these limits. For general campaigns, access to higher financial limits is only available to registered non-party campaigners and only organisations and individuals with a sufficient UK connection can register with the Electoral Commission.

This area of law has recently changed due to provisions of the Elections Act 2022, which introduced a lower spending limit before registration is necessary and an express prohibition on spending over £700 ahead of a general election by individuals and bodies without a sufficient connection to the UK (as set out in PPERA).

This regime is separate and distinct from the regime for consultant lobbyists.

Law stated - 2 January 2024

ETHICS AND ANTI-CORRUPTION

Gifts, travel and hospitality

23 | Describe any prohibitions, limitations or disclosure requirements on gifts, travel or hospitality that legislative or executive officials may accept from the public.

The [Ministerial Code](#) prohibits ministers (and their families) from accepting gifts or hospitality that might or might reasonably appear to compromise their judgement or place them under an improper obligation. Gifts given to ministers in their ministerial capacity become property of the government and do not need to be declared. Gifts with a value under £140 may be retained. Gifts with a value over £140 must be handed to the Minister's department for disposal or can be purchased by the Minister. Hospitality received by ministers in their ministerial capacity is declared by their department quarterly. Travel by ministers should be paid for from public funds except where an overseas government offers transport without creating an undue obligation. Breaches of the Code are investigated by the Cabinet Office or referred to an independent adviser on ministerial interests, and responsibility for enforcement of the Code lies with the Prime Minister.

Members of Parliament (MPs) (including ministers when acting other than in their ministerial capacity) are governed by a [Code of Conduct](#). The Code applies to all aspects of their public role as an MP, but not to activities in their personal or private lives. MPs must register their financial interests and draw attention to them in any proceedings in Parliament and in various communications with ministers, MPs, public officials or public office holders.

Financial interests include employment and earnings, donations and other support, gifts, benefits, and hospitality related to an MP's role or political activity from UK and non-UK

sources and visits outside the UK that are not wholly funded by the MP or public funds, subject to financial thresholds.

Any failure to comply with these rules is investigated by the Parliamentary Commissioner for Standards who can hold an inquiry into the MP and, where appropriate, [impose sanctions](#) including informal resolution, words of advice, requirement to attend training, written apology, withdrawal of services and facilities, personal restrictions, dismissal from select committee, salary or allowance withheld, suspension, or expulsion.

There are almost identical [rules](#) for members of the House of Lords. In addition, the [House of Commons Staff Handbook](#), Chapter 18 section 7, requires staff to adhere to the House of Commons policy on gifts and hospitality. Senior staff in the House of Commons at pay band 2 and above [must declare](#) any gifts or hospitality accepted with a value of £25 or more.

Donations and other financial support to MPs, holders of elective office, parties and other political entities are also controlled by electoral law under Part IV and Schedule 7 of the Political Parties, Elections and Referendums Act 2000.

Under section 27 of the Localism Act 2011, each local authority must adopt a code of conduct. The Local Government Association has produced a [Model Councillor Code of Conduct](#), which has been adopted by a number of local authorities. This prohibits Councillors from accepting gifts or hospitality that undermine their impartiality and requires gifts or hospitality with a value of at least £50 to be registered with the Monitoring Officer, including significant gifts that have been refused. In addition, pecuniary interests must be disclosed by Councillors by virtue of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Law stated - 2 January 2024

Anti-bribery laws

24 | What anti-bribery laws apply in your jurisdiction that restrict payments or otherwise control the activities of lobbyists or holders of government contracts?

The Bribery Act 2010 creates various criminal offences of bribery that broadly cover the giving or receiving of financial or other benefits in return for the improper performance of any relevant function or activity (broadly covering all activity taking place in the public, business or professional spheres). A function or activity is performed improperly if it is not performed to the relevant expectation of an ordinary person in the UK, and includes acting in bad faith or without impartiality, and abusing a position of trust. This covers bribery of all public officials (whether elected or not) in the UK and those holding government contracts. It is also an offence to bribe a foreign official.

The Honours (Prevention of Abuses) Act 1925 makes it a misdemeanour to grant honours in return for private gain.

The common law offence of misconduct in a public office covers most elements of corruption as well. There is also a parallel, but broader, common law tort of misfeasance in public office that is an abuse of public power or authority by a public officer who knew (or

recklessly) abused their power or authority with the intention, known probability or reckless indifference to the probability of harming another person (see eg, *Three Rivers District Council v Bank of England (No 3)*).

In addition, outside bribery, decisions taken by public authorities are subject to public law. Decisions can be held to be unlawful and quashed if the decision maker is acting for an ulterior or improper motive, is biased, or gives the appearance of bias.

Last, under their Code of Conduct, MPs are prohibited from speaking in Parliament, voting, or initiating parliamentary proceedings for payment in cash or kind. MPs also may not make approaches to ministers, other MPs or public officials that would confer a financial or material benefit on a person or organisation with whom they have a financial relationship. This does not prevent MPs from being remunerated as political advisors or consultants outside Parliament, provided such interest is declared on the register of financial interests. Lords are subject to similar rules under their Code of Conduct, which prevent taking payment for doing anything in Parliament that would exclusively benefit an outside body. As noted above, ministers are subject to the Ministerial Code.

Law stated - 2 January 2024

Revolving door

25 | Are there any controls on public officials entering the private sector after service or becoming lobbyists, or on private-sector professionals being seconded to public bodies?

The Business Appointment Rules for [former ministers](#) and [civil servants](#) (together, BAR) require ministers and civil servants to seek approval before taking up roles in the private sector. Ministers and civil servants are banned from lobbying the government. These rules apply for up to two years after the person leaves office. For ministers and senior civil servants, these rules apply to any role and applications are made to the Advisory Committee on Business Appointments; for more junior civil servants, an application is only required for certain roles where there are propriety concerns and applications are made to the civil servant's department. Applications can be approved unconditionally or conditionally. Conditions may include a waiting period of up to two years before the appointment can commence, a restriction on lobbying or advice that the position is unsuitable. Decisions are published by departments and any conditions imposed on civil servants must be communicated to the person's next employer. Further, ministers and senior civil servants are expected to wait a minimum of three months before starting a new role in the private sector. There is no sanction for non-compliance with BAR. However, compliance by some civil servants may be enforceable as a breach of contract as the Civil Service Management Code and the Model Contract for Special Advisers contains provisions on the Business Appointment Rules.

There are equivalent rules for members of the diplomatic service, intelligence agencies and the armed forces. There has been political debate about the introduction of further rules following the widely reported Greensill scandal and Baroness Mone's alleged misconduct in the award of government contracts for personal protective equipment during the covid-19 pandemic. Plans for reform of BAR were [published by the government](#) on 20

July 2023, following reports by the Committee on Standards in Public Life and Public Administration and the Constitutional Affairs Select Committee recommending that the Advisory Committee on Business Appointments should be put on a statutory basis, and that BAR should be legally enforceable with strengthened content. Consultation will take place on the proposed reforms.

Private-sector professionals may be seconded to public bodies. There are no special controls on such arrangements other than standard security procedures.

Law stated - 2 January 2024

Prohibitions on lobbying

26 | Is it possible to be barred from lobbying or engaging lobbying services? How?

There are various rules controlling who can lobby and engage lobbying services in various contexts.

BAR ban ministers and certain senior civil servants (including special advisers) from lobbying the government for two years after they leave office. The ban can be modified or reduced upon application. There is no sanction for non-compliance. BAR may only be enforced where compliance is a requirement of an employment contract.

Local authorities are prohibited under the [Code of Recommended Practice on Local Authority Publicity](#) from paying for consultant lobbyists and undertaking various activities that could be considered lobbying for political parties. However, local government can lobby the government for changes to law.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 makes it a criminal offence to carry out consultant lobbying without first being registered on the Statutory Register of Consultant Lobbyists. Broadly, provided the register is kept up to date with accurate information and the relevant fee is paid each year, a consultant lobbyist cannot be removed.

Some types of organisations in the UK are subject to restrictions on their activities, such as charities (which are unable to engage in party political activity and can only engage in political activities in accordance with Charity Commission guidance CC9).

Outside of this, broadly any person may lobby a public official on any subject on their own behalf (or on behalf of someone else, provided it is done free of charge) or engage a consultant lobbyist.

Law stated - 2 January 2024

RECENT CASES AND SANCTIONS

Recent cases

27 | Analyse any recent high-profile judicial or administrative decisions dealing with the intersection of government relations, lobbying registration and political finance?

[R v Mackinlay and others \[2018\] USKC 42](#) addressed the intersection between candidate and party-level spending. Aside from the decision in *Mackinlay*, the most high-profile recent judicial and administrative decisions in political campaigning law arose out of the EU referendum campaign in 2016 – most notably the High Court’s decision in [R \(The Good Law Project\) v Electoral Commission and others \[2018\] EWHC 2414 \(Admin\)](#), which concerned whether payments made as donations by Vote Leave to the activist Darren Grimes were also registrable as campaign expenses and the limits of the ‘joint working’ regime under electoral law.

The Office of the Registrar of Consultant Lobbyists (ORCL) periodically investigates alleged unregistered consultant lobbying by current and former Members of Parliament (MPs). The ORCL’s most notable investigation to date concerned alleged lobbying by former Prime Minister and current Foreign Secretary (now Lord) David Cameron on behalf of Greensill Capital (UK) Ltd, and cleared him of improperly failing to register himself as a consultant lobbyist ([Summary of investigation - Rt Hon David Cameron](#)).

Lobbying by MPs is also scrutinised by the Parliamentary Commissioner for Standards and the House of Commons Committee on Standards for compliance with the MPs’ Code of Conduct. Notable examples include Owen Paterson, who was [found to have breached the MPs’ Code of Conduct in 2021](#) (a finding he refutes and has sought to challenge by means of a petition to the European Court of Human Rights in respect of this ruling), and Scott Benton, who faces a 35-day suspension from Parliament and a possible recall petition following the Committee’s [ruling that he had improperly offered to lobby ministers on behalf of the gambling industry](#).

Law stated - 2 January 2024

Remedies and sanctions

28 | In cases of non-compliance or failure to register or report, what remedies or sanctions have been imposed?

The fines imposed on Vote Leave in the case mentioned above totalled £61,000; that imposed on Mr Grimes (overturned on appeal) was £20,000. This latter fine represents the maximum penalty that the Electoral Commission is capable of imposing in response to a breach of the reporting requirements or spending limits in the Political Parties, Elections and Referendums Act. The Commission takes the view that this limitation prevents its enforcement powers from acting as a genuine deterrent, and [has made repeated calls for it to be raised](#). In its 2022 inquiry into the work of the Electoral Commission, the House of Commons Public Administration and Constitutional Affairs Committee endorsed this view and recommended that the maximum fine available to the Commission be lifted to £500,000 or 4 per cent of the fined party’s total campaign spend, whichever is higher. This recommendation [was not taken up by the government](#).

The ORCL’s powers of enforcement are subject to an even lower cap (£7,500) and have only been exercised a handful of times since the office’s foundation (though both it and the Commission can refer matters to the police for criminal investigation).

Law stated - 2 January 2024

UPDATE AND TRENDS**Key developments of the past year**

- 29** | Are there any emerging trends or hot topics in government relations, lobbying or related law and regulation? Have changes occurred recently or are changes expected in the near future (through either legislation or court decisions) that will have an impact on the practice of government relations or lobbying disclosure?

The lobbying of ministers by consultants has been at the centre of a number of controversies in recent years, including those involving David Cameron and Owen Paterson in 2021. Public concern over lobbying and privileged access to ministers has often focused in recent years on the influence of alleged lobbying on the awarding of government contracts for the supply of personal protective equipment during the covid-19 pandemic (most notably involving Mr Paterson in connection with Radox and Baroness Mone in connection with PPE Medpro).

These stories have contributed to an ongoing debate over whether the reporting rules imposed on lobbyists in the UK are sufficiently rigorous. The House of Commons Committee on Standards has made recommendations for them to be strengthened ([Review of the Code of Conduct: proposals for consultant](#), paragraphs 162-171). The rules on donations to government ministers, the ultimate responsibility for the enforcement of which rests with the Prime Minister, have also come under scrutiny following criticism of recent use of donated funds by the Prime Minister. In response to various reports on strengthening ethics and integrity in central government in July 2023, the [government promised various reforms to the lobbying law framework](#) in the UK in line with recommendations by the Committee on Standards in Public Life.

Additionally, electoral law has been subject to various legal changes in recent years, mainly through the Elections Act 2022 and recent significant increases to political party spending and other election campaign limits (through the Representation of the People (Variation of Election Expenses, Expenditure Limits and Donation etc. Thresholds) Order 2023). Key changes to electoral law include a prohibition on non-party election campaign spending by individuals and overseas without a sufficient UK connection (as set out in the Political Parties, Elections and Referendums Act, as amended) above a de minimis spending limit of £700.

Law stated - 2 January 2024



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