



Q&A IN RELATION TO BRIBERY OFFENCES IN BELGIUM

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1. Legal Framework

What is the legal framework governing bribery in Belgium?

- The offence of bribery and corruption in Belgium is dealt with in the Belgian Criminal Code (BCC), and notably by the articles 246-252 (public bribery) and articles 504-bis and 504-ter (private bribery).

2. What Constitutes a Bribe?

What constitutes a bribe?

- In general, a bribe is defined as a financial or other advantage given or received etc., with the intention of inducing or rewarding the improper performance of a relevant function or activity.
- The offence of public bribery (article 246 of the BCC) exists when a person proposes directly or indirectly to a person exercising public duties (whether in Belgium or abroad), “an offer, a promise or an advantage, of whatever nature for that person or for a third party, in order to perform or omit to perform an act which falls within the scope of that official person’s function, or which is facilitated by his function.”
- Private bribery (under article 504-bis and article 504-ter of the BCC) is of application when a person, directly or indirectly, proposes to a person who is director, proxy-holder or employee of a corporate entity or of a physical person, “an offer, a promise or an advantage, of every nature, for that person or for a third party, in order to, without knowledge or authorization of the board of directors, the shareholders’ meeting or the employer, to perform or omit to perform an act which falls within the scope of his or her function, or which is facilitated by his or her function.”
- As the terms “offer, promise or advantage of whatever nature,” as used in the offence of bribery are broad, these do not only include pecuniary offers but may also include gifts of any kind (such as city trips) and benefits in kind. The value of the offer is irrelevant. However, in practice, small value gifts such as flowers or a pen with the logo of the company are generally not considered to constitute bribery (in the event they comply with the standard business practices).

What are the principal offences under this legal framework?

- Offering, promising, or giving of a bribe to another person (article 246§2 BCC and article 504bis§2 BCC);
- requesting, agreeing to receive, or accepting a bribe (article 246§1 BCC and article 504bis§1 BCC); and
- bribery of a foreign (non-Belgian) public official (article 250 BCC).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- For the bribery offences under articles 246-252 (public bribery) and articles 504-bis and 504-ter (private bribery) of the BCC, the Belgian authorities may take jurisdiction where any act or omission which forms part of the offence takes place in Belgium. Persons involved in the offence of bribery may be sued in Belgium if at least one of the constitutive elements of the offence is committed in Belgium.

4. Who may be liable?

Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Private individuals, public officials and companies (further to article 5 of the BCC) can be prosecuted for bribery offences under the relevant Belgian legislation and notably for the offences triggered by the articles 246-252 (public bribery) and articles 504-bis and 504-ter (private bribery).
- In practice, both individuals and legal entities may be summoned to appear before the Belgian criminal courts.

Can a parent company be liable for its subsidiary's involvement in bribery?

- As the parent company and the subsidiary are separate legal entities, the parent company is not liable for the acts of its subsidiary. As a result, the parent company will only be criminally liable if it commits all of the constituent elements of the relevant bribery offence.
- The rules of complicity are also applicable to legal entities. For example, the parent company may be liable in circumstances where it has instructed the subsidiary to commit bribery.

5. High Risk Areas

Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- As a rule, facilitation payments are forbidden under Belgian law.
- Facilitation payments are considered bribery, no matter how small the amount.

Does the legal framework restrict political and charitable contributions?

- A political (if permitted, see hereunder) or charitable contribution, irrespective of the amount, could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so.
- It must be noted that with respect to political contributions, reference must be made to the Belgian political financing legislation (and notably the Act of July 4, 1989) which states that political parties and members thereof are not permitted to receive from an individual a contribution in excess of EUR500 per year. Furthermore, an individual may not contribute more than EUR2,000 per year to political parties and politicians. Also, any contribution made by an individual to a political party of EUR125 or above must be registered by the political party. Legal entities are totally restricted from making political contributions.

Does the legal framework place restrictions on corporate hospitality?

- The Belgian legal framework makes no express provisions with regard to corporate hospitality and any financial or other advantage given in that context would fall to be assessed by reference to the provisions described in this note.
- Bribery does not depend on the number or value of the gifts or presents or promises.
- It would not be against the law to provide small promotional items as part of normal business life to Belgian officials. In practice, the value of such gift should not exceed, on a cumulative basis, EUR30-50 per year and per official.
- However, as the slightest element of bribery intent could be retained, it is recommended that such gifts only be offered at the occasion of recognized social events such as the end of the year, birthday, promotion or retirement.

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- Under their own disciplinary regulations, Belgian officials are under the obligation not to accept any gift or other presents (other than small value gifts from other public servants).

6. Legal Defences

Are there any defenses for bribery offences?

- There are no specific statutory defenses to charges under the articles 246-252 (public bribery) and articles 504-bis and 504-ter (private bribery) of the BCC.
- The sole fact of having (adequate) procedures in place in order to prevent bribery will not exclude criminal liability.

7. Regulatory and Enforcement Bodies

What are the key regulatory or enforcement bodies with regard to bribery?

- The Public Prosecution Office is the key regulatory/enforcement body that prosecutes bribery offences in Belgium.

8. Legal Consequences

What are the legal consequences of being found guilty of bribery offences?

- Public bribery under article 246 and following of the BCC may lead to imprisonment (ranging from 5 months up to 15 years) and/or a fine ranging from EUR800 up to EUR800,000. For legal entities, the fines may range up to EUR1.6 million).
- Private bribery under articles 504-bis and 504-ter BCC is subject to the following sanctions: imprisonment (ranging from six months to three years) and/or a fine (ranging from EUR800 to EUR400,000. For legal entities, the fines may range up to EUR800,000.
- An individual and/or company may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offence, which can include the revenue won through bribery.
- A director convicted of a bribery offence is likely to be disqualified from holding a position as a director for up to ten years.
- Bribery offences may also result in the cancellation of public contracts.
- Companies convicted of bribery offences may also face debarment from public procurement contracts.

9. Deferred Prosecution Agreements

Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- Yes, bribery offences are, subject to conditions, capable of being settled (further to article 216-bis of the Belgian Code of Criminal Procedure (CCP). The settlement can be offered by the prosecutor to an individual or a company.
- If a settlement is offered and accepted, and provided all conditions of the settlement agreement are met, the prosecutor agrees not to pursue a prosecution against the entity concerned. It must be noted that the procedure of criminal settlement is under judicial scrutiny in order to (i) review the formal requirements of the settlement; (ii) examine whether the perpetrator has entered the criminal settlement voluntarily and deliberately; and (iii) review whether the amount of the settlement is in proportion taking into account the seriousness of the offence and the behavior of the perpetrator.

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