

Q&A IN RELATION TO BRIBERY OFFENCES IN PORTUGAL

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1. Legal Framework

What is the legal framework governing bribery in Portugal?

- Bribery and corruption are regulated in articles 372 (Unlawfully Receiving an Advantage), 373 (Passive Corruption) and 374 (Active corruption) of the Portuguese Criminal Code, in Law no. 34/87, of July 16 (Crimes of the Responsibility of Political Officeholders) and in Law no. 20/2008, of April 21 (Criminal Liability for Corruption Crimes in International Trade and Private Sector).

2. What Constitutes a Bribe?

What constitutes a bribe?

- The Portuguese Criminal Code sets forth three forms of bribes: unlawfully receiving an advantage, passive corruption and active corruption, all of which imply an advantage unlawfully given or received to or by an official.
- Official, within the meaning of the Portuguese Criminal Code (article 286) is defined as “civilian official, administrative agent, arbitrator, jury and expert, and whoever, whether remunerated or not, temporarily or not, voluntarily or compulsorily, has been required to perform or to participate in the performance of an activity included in the public administrative or judicial function or, in the same circumstances, to perform or participate in public functions.”

What are the principal offences under this legal framework?

- Solicitation or acceptance of an undue advantage by an official in the exercise of their functions or because of them, for themselves or for a third party – with exception to offers in accordance with local custom and usage (article 372(1) of the Portuguese Criminal Code).
- Offering or promising an undue advantage to an official or to a third party (through indication or knowledge of the official), during the course of its functions or because of those functions – with exception to offers in accordance with custom and usage (article 372/2 of the Portuguese Criminal Code).
- Solicitation or acceptance of an undue advantage by an official or a third party (through indication or knowledge of the official) in order to act or fail to act in a way that violates the duties of the office, even if committed prior to such solicitation or acceptance (article 373 of the Portuguese Criminal Code).
- Offering or promising an undue advantage to an official or to a third party (through indication or knowledge of the official) in order to have them act or fail to act in a way that violates the duties of the office, even if committed prior to such solicitation or acceptance (article 374 of the Portuguese Criminal Code).
- Any of the above described conducts, when practiced by a holder of political office or of a high public office (articles 16, 17 and 18 of Law no. 34/87, of July 16).
- Any of the above described conducts, when practiced by a foreign officer or by a private sector worker (articles 7, 8 and 9 of Law no. 20/2008 of April 21).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- The Portuguese Criminal Code is applicable to crimes committed in Portugal and to crimes whose perpetrator was found in Portugal, provided that the fact is punishable by the law of the place in which it was practiced and the conditions for the perpetrator's extradition are not met.

4. Who may be liable?

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

- Officials, within the meaning of the Portuguese Criminal Code, who receive an advantage, and private individuals, public officials and legal entities who give an advantage, can be prosecuted for bribery offences under the Criminal Code.
- Holders of political office or a high public office can be prosecuted for bribery offences under Law no. 34/87, of July 16.
- Private sector workers who receive an advantage, and private individuals, public officials and legal entities who give an advantage offered or promised, to foreign officers or private sector workers can be prosecuted for bribery offences under Law no. 20/2008 of April 21.

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

- Yes, if the subsidiary fulfills the concept of third person for the purposes of articles 372, 373 and 374 of the Portuguese Criminal Code, or if the conditions for lifting the subsidiary's legal personality are met. This is not to be assumed and will depend on the circumstances of each case.

5. High Risk Areas

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

- Yes, facilitation payments are considered bribery, no matter how small the amount.

Does the legal framework restrict political and charitable contributions?

- A political or charitable contribution could be considered a bribe if it is given or received with the intention of having a person act or fail to act in a way that violates the duties of their office.

Does the legal framework place restrictions on corporate hospitality?

- The Portuguese legislation makes no express provisions regarding corporate hospitality. However, article 372 of the Portuguese Criminal Code excludes offers in accordance with local custom and usage from the concept of unlawfully received advantages.
- Whether hospitality amounts to a bribe would be assessed on the basis of whether there was sufficient evidence to show that it was given or received with the intention of having a person act or fail to act in a way that violates the duties of their office.
- Please also note that following a scandal regarding offers of football tickets to members of the government and members of Parliament, in 2016 the government approved a Code of Conduct (Resolução do Conselho de Ministros no. 53/2016) applicable to all members of the XXI Constitutional Government, public administration officials under the supervision of the government and other public entity directors and officials. Among other general rules of conduct, this document sets the limit of EUR150 to courtesy offers made by individuals or legal persons to each member of the government within one civil year.

6. Legal Defences

Are there any defenses for bribery offences?

- Article 372 of the Criminal Code excludes offers in accordance with local custom and usage from the concept of unlawfully received advantages. Besides this exclusion there are no specific defenses for bribery offences.

7. Regulatory and Enforcement Bodies

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

- There are no specific bodies in charge of bribery regulation or enforcement.
- The Public Prosecutor's Office may investigate and prosecute all crimes, including bribery, and may put the police or other agents of enforcement bodies in charge of the investigative work.

8. Legal Consequences

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

- Individuals may face up to eight years' imprisonment and/or a fine to up to 600 days (the fine applicable to legal and natural persons is calculated in a variable amount by reference to the number of days in prison applicable to natural persons).
- Legal entities can receive a fine of up to 600 days.
- Minimum and maximum penalties can be increased by a quarter or one-third if the advantage obtained is high-valued (50 units of account) or of considerable high value (200 units of account), respectively.
- An individual and/or a legal entity may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offence.
- Individuals and legal entities convicted by a definitive decision of bribery crimes may also be excluded from public procurement tenders as set in the Portuguese Public Contracts Code.

9. Deferred Prosecution Agreements

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

- DPAs are not available in the Portuguese legal system.
- However, the perpetrator may be exempted from punishment:
 - if they denounce the crime within 30 days after the practice of the act and before the commencement of the criminal proceeding, provided that they voluntarily restore the advantage or, if it is a fungible thing, restore its value; or
 - if, before practicing the act, they voluntarily repudiate the offer or promise accepted, or restitute the advantage, (or, in the case of a fungible thing its value); or withdraw the promise, refuse to offer the advantage or request its return.
- Also, the penalty is especially mitigated:
 - if, until the end of the trial hearing at the first instance court, the perpetrator assists in obtaining or producing decisive evidence for the identification or capture of others responsible; or
 - if the perpetrator has committed the act at the request of an officer.

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