

Q&A IN RELATION TO BRIBERY OFFENCES IN SLOVAKIA

**Content Provided by DLA Piper
Published June 2019**

1 Q&A In Relation to bribery offences in Slovakia

1. Legal Framework

What is the legal framework governing bribery in Slovakia?

- The key piece of legislation concerning the legal regulation of corruption in Slovakia is the Criminal Code (Act No. 300/2005 Coll., as amended).
- Code of Criminal Procedure (Act No. 301/2005 Coll., as amended) contains several procedural elements to allow the facilitation of the investigation of corruption (for example, the use of agents in recording evidence of corruption).
- Corruption offenses are subject to the jurisdiction of a specialized criminal court (Sec. 14 of the Code of Criminal Procedure).

2. What Constitutes a Bribe?

What constitutes a bribe?

- A bribe is defined under Sec. 131 (3) of the Criminal Code as thing or other transaction of property or non-property nature to which there is no legal entitlement.
- The bribe may be of any material or immaterial value, counter-services, sexual service, low price of real estate or business share in comparison with the market price, sponsorship, the value of which will be paid in the form of rewards. There are a number of hidden forms that can be applied.

What are the principal offences under this legal framework?

- Requesting, receiving, or accepting a promise of a bribe – either directly or through an intermediary, for themselves or another (passive bribery);
 - and the perpetrator breaches their duties resulting from their employment, occupation, position or function (Sec. 328 of the Criminal Code); or
 - the perpetrator acts in connection with the procurement of a thing of general interest (Sec. 329 of the Criminal Code); or
 - the perpetrator is a foreign (non-Slovak) public official who acts in the performance of their official duties or in the performance of their duties with the intent to obtain or maintain a disproportionate advantage (Sec. 330 of the Criminal Code).
- Offering, promising, or giving of a bribe – either directly or through an intermediary (active bribery);
 - to a person, which breaches their duties resulting from their employment, occupation, position or function or to another person for this purpose (Sec. 332 of the Criminal Code); or
 - to a person in connection with the procurement of a thing of general interest or to another person for this purpose (Sec. 333 of the Criminal Code); or
 - to a foreign (non-Slovak) public official who acts in the performance of their official duties or in the performance of their duties with the intent to obtain or maintain a disproportionate advantage or to another person (Sec. 334 of the Criminal Code).
- Trading influence (Sec. 336 of the Criminal Code) means:
 - the perpetrator (directly or through an intermediary), receives, requests or accepts the promise of a bribe for using or having used their influence on the execution of duties by persons referred to in Sections 328, 329,

330 of the Criminal Code; or

- the perpetrator (directly or through an intermediary), promises, offers or gives a bribe to another person in order to make that person use their influence on the execution of duties by persons referred to in Sections 332, 333, 334 of the Criminal Code or for having used that influence, or gives, offers or promises a bribe to a third party for the same reason.
- In Slovakia there is also specifically regulated electoral corruption and sport corruption.

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- For bribery offences under the Criminal Code, the Slovak authorities may take jurisdiction where any act or omission which forms part of the offence takes place in the territory of the Slovak republic.
- The Slovak Criminal Code is also applied (under Sec. 4 of the Criminal Code) to determine the criminal liability for an act committed outside the territory of the Slovak Republic by a Slovak national, a foreign national with permanent residency status in the Slovak Republic or legal person registered in the Slovak Republic (Sec. 2 of the Act on criminal liability of legal persons).

4. Who may be liable?

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

- Private individuals, public officials and the legal entity concerned can be prosecuted for bribery offences under the Criminal Code and Act on criminal liability of legal persons.
- A company can be held liable under the “principle of attribution of the crime.” Under Section 4 (1) of the Act on criminal liability of legal persons, a criminal offense is committed by a legal person if it is committed in its favor, on its behalf, in the course of its activity or through it if it has acted:
 - a. as the statutory body or a member of the statutory body;
 - b. as the one who carries out control or supervision of the legal person; or
 - c. as any other person who is authorized to represent or decide on behalf of the legal person.
- A company or partnership may be liable for failing to prevent the commission of bribery.

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

- A parent company can be liable for its subsidiary’s involvement if the corruption crime can be attributed to parent company according to the principle of attribution under Sec. 4 of the Act on criminal liability of legal persons. The mere fact that it is the parent company of a company that is criminally liable is not sufficient.

5. High Risk Areas

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

- Yes, provided they meet the criteria, 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. This applies if the conditions of one of the

3 Q&A In Relation to bribery offences in Slovakia

essential facts of active (or passive) corruption are fulfilled: that is, if a political or charitable contribution is linked to a breach of an obligation arising from employment, occupation, position or function; or it is linked to the procurement of a thing of general interest in a particular case (e.g. a contribution to a municipality, the building contractor subsequently receiving a building permit); or when a foreign (non-Slovak) public official acts in the performance of his official duties or in the performance of their duties with the intent to obtain or maintain a disproportionate advantage.

Does the legal framework place restrictions on corporate hospitality?

- The Criminal Code and the Act on criminal liability of legal persons make no express provisions with regard to corporate hospitality and any financial or other advantage given in that context would have to be assessed by reference to the provisions in the relevant Slovak law.

6. Legal Defences

Are there any defenses for bribery offences?

- There are no specific statutory defenses to charges under provisions of the Criminal Code or the Act on criminal liability of legal persons.
- It is a defense for a commercial organization charged with the offence of failing to prevent bribery under Sec. 4 (2) of the Act on criminal liability of legal persons to prove that it has “adequate procedures” in place to prevent bribery. The adequate procedures are not defined and there is no guidance issued by state authorities. Every legal person should create its own “adequate procedures” depending on the activities of the legal person. The standard compliance principles are risk assessment, proportionate procedures, top level commitment, due diligence, communication and training, and monitoring and review.

7. Regulatory and Enforcement Bodies

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

- The prosecution of corruption offenses is carried out by the National Criminal Agency (*Národná kriminálna agentúra*). The National Criminal Agency is an organizational unit of the Presidium of the Police Force, which is competent to prosecute the most serious crimes.
- The Special Prosecutor’s Office supervises the prosecution of corruption offenses and brings the indictment.
- Corruption offenses are subject to the jurisdiction of a specialized criminal court (Sec. 14 of the Code of Criminal Procedure).

8. Legal Consequences

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

- For committing passive bribery, the offender may be punished with up to 15 years’ imprisonment.
- For committing active bribery, the offender may be punished up to 12 years’ imprisonment.
- Financial penalties up to EUR331,930 or forfeiture of the offender’s property are also possible sanctions for corruption crimes under Criminal Code for an individual.
- It is possible to impose on a legal person a financial penalty up to EUR1.6 million, forfeiture of property, punishment of the ban on receiving subventions (a grant of money from a government); and penalty of dissolution of a legal entity.

9. Deferred Prosecution Agreements

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

- Yes, bribery offences can be settled by way of a plea bargaining procedure under Sec. 232 and 233 of the Code of Criminal Procedure. It may be offered to both individuals and legal persons.
- Conditional Suspension of Criminal Prosecution under Sec. 216 and 217 of the Code of Criminal Procedure and Conciliation under Sec. 220 of the Code of Criminal Procedure cannot be applied in corruption offense cases.

Disclaimer

Every effort has been made to verify the accuracy of the information contained herein. All information was believed to be correct as of June 2019. Nevertheless, Transparency International UK (TI-UK) cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect TI-UK's opinion. They should not be taken to represent the views of any of those quoted or interviewed nor those of the companies or individuals that provided input or members of the Expert Advisory Committee or DLA Piper. Neither TI-UK nor DLA Piper assumes any liability for the information contained herein, its interpretation or for any reliance on it. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Professional advice should always be sought before taking action based on the information provided.

Transparency International UK

10 Queen Street Place,
London,
EC4R 1BE

www.transparency.org.uk
twitter.com/transparencyuk

Content Correct as of June 2019.

Cover Image: Transparency International Corruptions Perception Index 2018