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# Anti-Corruption

Portugal

Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.

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# PORTUGAL

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## **LAW AND PRACTICE:**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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**Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** has six teams dedicated to litigation and arbitration. In the criminal litigation field, the practice covers different areas of specialty, such as corporate defence, compliance, anti-bribery and corruption, money laundering, tax crimes, financial crimes, international co-operation in criminal matters, and data protection. The team operates

in close coordination with other practice areas at the firm, such as banking and finance, insurance, regulation, tax, administrative, public procurement, construction and competition law. It has been involved in some of the most complex and high-profile criminal cases of Portuguese justice and also in the most significant cases brought by the regulatory authorities.

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## 1. Offences

### 1.1 Legal Framework for Offences

#### 1.1.1 International Conventions

Portugal has signed a number of conventions related to corruption, the most relevant being the OECD Anti-Bribery Convention (1997), the EU Convention on the fight against corruption involving officials of the EU or EU member states (1997), the Council of Europe Criminal Law Convention on Corruption (1999), and the UN Convention against Corruption (2003).

#### 1.1.2 National Legislation

Portuguese legislation recognises the following basic offences in the area of bribery and corruption:

- undue receipt of an advantage by a public official, punishable under Article 372 of the Criminal Code;
- passive and active corruption in the public sector, punishable under Articles 373 and 374 of the Criminal Code;
- undue receipt of an advantage by a political or high public official, punishable under Article 16 of Law 34/87 (16 July 1987);
- passive and active corruption of political and high public officials, punishable under Articles 17 and 18 of Law 34/87 (16 July 1987);

- active corruption in international commerce and passive and active corruption in the private sector, punishable under Articles 8 and 9 of Law 20/2008 (29 January 2008);
- undue receipt of an advantage, passive and active corruption in the context of sports competitions, punishable under Articles 8, 9 and 10-A of Law 50/2007 (31 August 2007);
- passive corruption of an individual serving in the armed forces or other military forces for the performance of an illicit action, punishable under Article 36 of Law 100/2003 (15 November 2003); and
- active corruption of an individual serving in the armed forces or other military forces, punishable under Article 37 of Law 100/2003 (15 November 2003).

Passive corruption can be defined as the request or acceptance of an undue advantage, and active corruption as the offer of or promise to offer an undue advantage. The corruption provisions will apply regardless of whether the undue advantage is offered or accepted by a public official, politician, private worker, sportsperson, military official or through an intermediary (if there is consent or ratification), and also regardless of whether the undue advantage is intended for the public official, politician, private worker, sportsperson, military official or for a third party, by indication or with the knowledge of the public official, politician or private worker.

Corruption crimes can be punishable whether the conduct expected in return for the undue advantage is an illicit (con-

trary to the duties exercised) or a licit (not contrary to the duties exercised) action or omission, although the penalty will be more severe if it is illicit.

Finally, Article 372 of the Criminal Code, Article 16 of the Law on corruption of political and high public officials and Article 10-A of Law 50/2007 (31 August 2007), regarding bribery in the context of sports competitions, assert that the acceptance or offer of an undue advantage by or to a public official, political or high public official or a sports agent constitutes a criminal offence, without the requirement of an action or omission being performed in return.

### 1.1.3 Guidelines for the Interpretation and Enforcement of National Legislation

There are no specific guidelines regarding the interpretation and enforcement of the national legislation. Case law and doctrine should be borne in mind.

Following some degree of media controversy, the Portuguese Government recently issued its own code of conduct (approved by the Council of Ministers Resolution 53/2016, 21 September 2016), establishing guidelines for the acceptance of gifts and invitations by members of the government and, among others, officials from their respective cabinets. According to these guidelines, an offer is considered to affect their impartiality and integrity in the exercise of their duties if it has a value equal or superior to a benchmark figure of EUR150. The guidelines include special provisions regarding invitations seen as consolidated social and political normal practices, invitations to events where the presence of a member of the government is of relevant public interest, and occasions involving official representation of the Portuguese state.

Recently, the entity responsible for organising the Portuguese football league approved a code of conduct which prevents referees from accepting offers equal to or greater than EUR150 in national championships.

### 1.1.4 Recent Key Amendments to National Legislation

The crime of undue receipt of an advantage has been added to Law 50/2007 (31 August 2007), regarding bribery in the context of sports competition. Some legislative reform in this field is expected to be issued in 2019, as described in **6.2 Likely Future Changes to the Applicable Legislation or the Enforcement Body**, below.

## 1.2 Classification and Constituent Elements

### 1.2.1 Bribery

A bribe ('undue advantage') can be defined as a monetary or non-monetary advantage which benefits the individual who receives it in any way without any legal ground or jus-

tification. The advantage may be given to a public official, politician or private worker, but it can also be given to a third party, where requested or consented to by any of the above-mentioned group of individuals. In all cases, the bribe can also be executed by means of an intermediary.

As described in **1.1.2 National Legislation**, above, the receipt of a bribe is deemed to be passive corruption.

When a public official is involved, bribery may qualify as an undue receipt of an advantage, foreseen as a crime in Article 372 of the Criminal Code and Article 16 of the Law on Crimes of the Responsibility of Political Officials, without any requirement that the results expected by the perpetrators actually occur.

Hospitality and promotional expenditures, as well as facilitation payments, may fall within the category of a bribe, particularly in contexts where they may be regarded as consideration for the action or omission to be performed. They may also encompass criminal risks under Article 372 of the Criminal Code and Article 16 of the Law on Crimes of the Responsibility of Political Officials, both of which establish the crime of undue receipt of an advantage, regardless of the existence of a specific consideration.

However, certain types of conduct are excluded from the criminal legal framework if they are considered to be socially adequate and in line with habits and normal practices. Each situation ought to be evaluated under a 'reasonableness' standard, considering the specific case: ie, the sector in question, the context and the parties involved.

Failure to prevent a bribe is not a criminal offence per se, but if an individual provides material or moral aide to the perpetrator of the offence, he or she may be criminally liable for bribery and corruption as an accomplice. In addition, companies may be held responsible for bribery-related offences if such offences occurred within their organisation (ie, if they did not have appropriate mechanisms in place to prevent such an offence from occurring).

Article 386 of the Criminal Code provides a very broad definition of 'public official' for crime-related purposes. According to it, public officials include politicians, civil servants, administrative agents, arbitrators, jurors and experts, members of managing or supervisory bodies or workers of state-owned or state-related companies (including private companies with a majority of capital held by the state or state-owned entities, and also companies operating public services under a concession agreement), of regulatory entities, of other states and of international organisations governed by public international law, regardless of their nationality, as well as anyone who holds office temporarily or is employed temporarily by a public administrative

or jurisdictional authority or who temporarily carries out official functions.

Bribery of foreign public officials is also criminalised. Under Article 7 of Law 20/2008, active corruption in the context of international commerce is punishable where an individual, acting on their own behalf or through an intermediary, gives or promises to give an undue advantage to a public official, national or foreign, or to an official from an international organisation, or to a third party with consent or ratification from any of the previously mentioned group of individuals, as a means to obtain or maintain a business, a contract or another undue advantage in international commerce.

Under Article 8 of the same law, passive corruption is punishable where a private sector worker, acting on their own behalf or through an intermediary, demands or accepts, for themselves or for a third person, an undue advantage, or the promise thereof, to perform an action or make an omission constituting a violation of his or her professional duties.

Bribery between private parties in a commercial setting, or any other, is covered under Article 9 of the same law: active corruption is punishable where an individual acting on their own behalf or through an intermediary, gives or promises to give an undue advantage to a private sector worker, or to a third party with his or her consent or ratification, to obtain an action or omission constituting a violation of the private worker's professional duties. Attempted corruption is punishable in this situation. Where the action performed or omission made by the private sector worker in return for the undue advantage is capable of distorting competition or causing economic losses for third parties, the maximum possible penalty is applied.

### 1.2.2 Influence-Peddling

Influence-peddling is a crime under Article 335 of the Criminal Code. A penalty of imprisonment for up to five years may be incurred by any individual who requests or accepts, on their own behalf or that of third parties, a pecuniary or non-patrimonial advantage, or its promise, in exchange for abuse of any real or supposed influence before any public entity in order to obtain a favourable decision.

### 1.2.3 Financial Record-Keeping

Aside from the crime of document forgery, foreseen in Article 256 of the Criminal Code and punishable by imprisonment for up to five years, Article 379E of the Portuguese Securities Code currently foresees the crime of capital investment fraud, which encompasses the use of false or wrongful information in capital investment operations launched by public companies (ie, companies whose shares are listed and traded on a stock exchange market). The maximum penalty amounts to eight years. Negligent behaviour is also punish-

able, although this leads to a reduction of the applicable penalty by half.

### 1.2.4 Public Officials

Embezzlement of public funds by public officials is foreseen as a specific crime (*'peculato'*) under Article 375 of the Criminal Code, and is punishable by imprisonment for up to eight years. This offence applies to public officials who unlawfully appropriate, for their own or another person's benefit, money or any movable or immovable property or public or private property that has been subject to their possession or is accessible to them on account of their functions.

Extortion by public officials, foreseen (as *'concessão'*) in Article 379 of the Criminal Code and punishable by imprisonment for up to two years, is also a crime under which any public official who, within the performance of their duties or exercising powers deriving therefrom, by themselves or by a person with their consent or ratification, receives for themselves, for the state or for a third party, by inducement of error or exploitation of an error of the victim, charges fees, compensation or fines which they know are not due.

Article 377 of the Portuguese Criminal Code includes the crime of taking economic advantage in public office, which is punishable by imprisonment for up to five years and applicable to any public official who, in the course of a legal transaction, and intending to obtain an unlawful economic participation for themselves or a third party, damages in whole or in part the public interest that they have the duty to manage, supervise, defend or carry out.

Although there is no specific offence addressing the issue of favouritism on behalf of public officials, the general crime of abuse of power, as provided in Article 382 of the Criminal Code, determines that any public official who abuses their official powers in order to secure an unlawful advantage for themselves or a third party, or to cause prejudice to another, is liable to imprisonment for up to three years (if they are not already subject to a more severe penalty under other provisions).

### 1.2.5 Intermediaries

According to the general principles that govern Portuguese criminal law, reflected in Articles 26 and 27 of the Criminal Code, intermediaries may qualify as joint principals (subject to the same maximum penalty provided for the perpetrator) or accomplices (the maximum and minimum limits of whose sentence, based on the penalty provided for the principal, shall be reduced by one third), depending on their level of involvement in the commission of the offence.

## 1.3 Scope

### 1.3.1 Geographical Reach of Applicable Legislation

As a general rule, Portuguese criminal law is applicable to all acts committed in Portuguese territory, regardless of the offender's nationality.

Law 20/2008, which created the criminal regime for corruption in international commerce and in the private sector, is also applicable for:

- the crime of active corruption in detriment of international commerce, to acts committed by Portuguese or foreign citizens who are found in Portugal, regardless of where the action took place; and
- the crimes of passive and active corruption in the private sector, regardless of where the action took place, when the perpetrator who gives, promises, demands or accepts the bribe or promise of a bribe is a public official or a political official or, if of Portuguese nationality, is an official of an international organisation.

Aside from the specific rules that govern Portuguese legislation on the bribery of foreign public officials within international commerce (which only require the active perpetrator to be of Portuguese nationality), Portuguese law shall apply also, notably, when the relevant crime:

- is perpetrated by Portuguese citizens against other Portuguese citizens that live in Portugal;
- is perpetrated by Portuguese citizens or by foreigners against Portuguese citizens, if the perpetrator is to be found in Portugal and if the facts are punishable in the territory where they took place (unless the punitive power is not carried out in that place) and the extradition cannot be performed or if it is decided not to surrender the offender as result of a European arrest warrant or other international agreement binding Portugal; or
- is perpetrated by or against a legal person with its headquarters in Portuguese territory.

Portuguese criminal law is also applicable to acts committed abroad in cases affected by international conventions to which Portugal is bound.

### 1.3.2 Corporate Liability

Corporate liability may coexist with individual liability for these offences, considering exactly the same set of facts. A legal person may be held liable (without excluding individual liability) if the relevant offence is committed in its name and collective interest by individuals who occupy a position of leadership, or by an individual who acts under the authority of someone occupying a position of leadership due to a violation of the monitoring and control duties pertaining to the latter.

Irrespective of its former or current owners or shareholders, corporate liability remains with the same legal person by

whom (and relating to whose activity) an offence has been committed. Such liability may not be transmitted to another entity, due to the constitutional principle that states that punitive liability is absolutely personal and non-transferable. In some cases, however, the directors of the relevant company may be subsidiarily asked to pay the fine for which the company was convicted, if the latter does not have the financial capacity to do so.

### 1.4 Limitation Periods

The statute of limitation for corruption crimes is 15 years.

## 2. Defences and Exceptions

### 2.1 Defences

A legal person's criminal liability may be excluded where the material perpetrator has acted against express orders or instructions given by people with proper authority within the organisation.

A company can avoid liability if it is able to demonstrate that the criminally relevant act or omission was not perpetrated on its behalf or collective interest and that there were no violations of any duties of due vigilance or control by the person with a leadership position responsible for these duties.

As mentioned in **1.2.1 Bribery**, above, conduct is excluded from the criminal legal framework if it is considered to be socially adequate and in line with habits and normal practices.

### 2.2 Exceptions

There are no exceptions to the defences stated above.

### 2.3 Exempt Sectors/Industries

There are no sectors or industries exempt from the above offences, apart from the state and public legal persons (when exercising prerogatives of public power (*acta jure imperii*)); in such circumstances, those public entities are exempted from criminal liability.).

### 2.4 Safe Harbour or Amnesty Programme

There are no specific safe harbour or amnesty programmes relating to corruption and bribery, although in some cases penalties can be waived or mitigated where certain conditions are fulfilled.



## 3. Penalties

### 3.1 Penalties on Conviction

#### Public Sector

##### *Undue advantage in the public sector*

- Individuals who ask for or accept an undue advantage – imprisonment for up to five years or a fine of up to 600 days\*;
- Legal persons who ask for or accept an undue advantage – a fine of up to 600 days;
- Individuals who give or promise to give an undue advantage – imprisonment for up to three years or a fine up to 360 days;
- Legal persons who give or promise to give an undue advantage – a fine of up to 360 days.

There are provisions aggravating these penalties in certain cases.

##### *Passive corruption crime in the public sector*

If the undue advantage constitutes consideration for an illicit act or omission to be performed by the public official:

- Individuals – imprisonment for between one and eight years;
- Legal persons – a fine of between 120 and 960 days.

If the undue advantage constitutes consideration for a licit act or omission by the public official:

- Individuals – imprisonment of between one and five years;
- Legal persons – a fine of between 120 and 600 days.

There are provisions aggravating these penalties in certain cases.

##### *Active corruption crime in the public sector*

If the undue advantage constitutes consideration for an illicit act or omission to be performed by the public official:

- Individuals – imprisonment for between one and five years;
- Legal persons – a fine of between 120 and 600 days.

If the offer or promise of an undue advantage constitutes consideration for a licit act or omission to be performed by the public official:

- Individuals – imprisonment for up to three years or a fine of up to 360 days;
- Legal persons – a fine of up to 360 days.

Attempted active corruption is punishable. There are provisions aggravating these penalties in certain cases.

#### Private Sector

##### *Passive corruption crime in the private sector*

If the undue advantage constitutes consideration for an act or omission to be performed against professional duties:

- Individuals – imprisonment for up to five years or a fine of up to 600 days;
- Legal persons – a fine of up to 600 days.

If this behaviour is designed to distort competition or cause economic losses for third parties:

- Individuals – imprisonment for between one and eight years;
- Legal persons – a fine of between 120 and 960 days.

##### *Active corruption crime in the private sector*

If the undue advantage constitutes consideration for an act or omission to be performed contrary to professional duties:

- Individuals – imprisonment for up to three years or a fine of up to 360 days;
- Legal persons – a fine of up to 360 days.

If this behaviour is designed to distort competition or cause economic losses for third parties:

- Individuals – imprisonment for up to five years or a fine of up to 600 days;
- Legal persons – a fine of up to 600 days.

Attempted active corruption is punishable.

#### International Commerce

##### *Active corruption crime in international commerce*

- Individuals – imprisonment for between one and eight years;
- Legal persons – a fine of between 120 and 960 days.

#### Political or High Public Officials

##### *Undue advantage to a political or high public official*

- Demanding or accepting an undue advantage is punishable by imprisonment for between one and five years;
- Offering or promising to offer an undue advantage is punishable by imprisonment for up to five years or with a fine of up to 600 days.

##### *Passive corruption crime by a political or high public official*

- Demanding or accepting an undue advantage for the practice of an illicit act or omission is punishable by imprisonment for between two and eight years;
- Demanding or accepting an undue advantage for the practice of a licit act or omission is punishable by imprisonment for between two and five years.



**Active corruption crime by a political or high public official**

- Offering or promising to offer an undue advantage for the practice of an illicit act or omission is punishable by imprisonment for between two and five years;
- Offering or promising to offer an undue advantage for the practice of a licit act or omission is punishable by imprisonment for up to five years;
- The crime of active corruption committed by a political or high public official is punishable by the same penalties as those ascribed to the crime of passive corruption.

**Armed Forces and Military Officials****Passive corruption by an armed forces or a military official**

- Demanding or accepting an undue advantage for the practice of an act or omission contrary to military duties and resulting in peril to national security is punishable by imprisonment for between two and ten years;
- If the perpetrator, before performing the act or omission, voluntarily rejects the offer or its promise or returns it, then the penalty will be waived.

**Active corruption by an armed forces or a military official**

- Offering or promising to offer an undue advantage is punishable by imprisonment for between one and six years;
- If the corrupting agent is an official of superior rank to the official being corrupted, or an official who hierarchically exercises a position of command over the corrupted official, the minimum of the applicable penalty will be doubled.

**Sports****Undue advantage in sports**

- A sports agent who asks for or accepts an undue advantage – imprisonment for up to five years or a fine of up to 600 days;
- Legal persons, qualified as sports agents, who ask for or accept an undue advantage – a fine of up to 600 days;
- Individuals who give or promise to give an undue advantage – imprisonment for up to three years or a fine of up to 360 days;
- Legal persons who give or promise to give an undue advantage – a fine of up to 360 days.

**Passive corruption in sports**

- Punishable with imprisonment for between one and five years;
- The minimum and maximum limits of the penalties will be aggravated by a third if the perpetrator is a sports director, referee, sports agent or legal person.

**Active corruption in sports**

- Punishable with imprisonment for up to three years or with a fine;
- The limits of the penalties will be aggravated by a third if the undue advantage is intended for a sports director, referee, sports agent or legal person.

(\*For individuals, under the terms of Article 47 of the Criminal Code, each day of the fine corresponds to an amount between EUR5 and EUR500, which the court determines according to the economic and financial situation and personal expenses of the convicted individual. For legal persons, Article 90-B of the Criminal Code establishes that each day of the fine corresponds to an amount between EUR100 and EUR10,000, which the court determines according to the economic and financial situation of the convicted legal person and its expenses with workers. In cases where the criminal provision does not contemplate days of fine, but solely imprisonment, the rule regarding legal persons is that one month of a prison sentence corresponds to ten days of a fine.)

**3.2 Guidelines Applicable to the Assessment of Penalties**

The minimum and maximum limits of penalties may be aggravated if the bribe or undue advantage offered is of a high or considerably high value. In certain circumstances, penalties may also be mitigated. See also the note on Article 47 of the Criminal Code in **3.1 Penalties on Conviction**, above.

**4. Compliance and Disclosure****4.1 National Legislation and Duties to Prevent Corruption**

Although there are no specific provisions regarding what comprise adequate compliance procedures, considering that companies may have their criminal liability excluded when the perpetrator of the offence has acted against the express orders or instructions of the proper authority, the existence of such procedures may be used as an argument of defence in order to try to demonstrate that the perpetrator acted against such orders or instructions.

**4.2 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions**

Portuguese law does not provide a general duty of report or denunciation vis-à-vis private entities or individuals. Nevertheless, the failure to report imminent bribery or corruption practices by those who assume a leading position within the organisation, and who are therefore bonded by law to prevent unlawful outputs, may result in the liability of the company itself and the omitting agent.

### 4.3 Protection Afforded to Whistle-blowers

There is not a specific regime affording special protection to whistle-blowers, but there are several legal provisions granting a waiver or mitigating the penalty of the perpetrator who, under certain conditions, reports the crime (under limited timeframes) or who has decisively contributed to the gathering of evidence which allows the identification and capture of others who are criminally liable.

In general terms, Law 93/99 (14 July 1999) establishes special measures for the protection of witnesses under criminal procedure.

Article 4 of Law 19/2008 (21 April 2008) establishes that workers of the public administration and of state-owned companies, as well as private sector workers, who report on offences that they become aware of in the course of their work or because of the exercise of their duties cannot be jeopardised in any way, including by means of non-voluntary transfer or dismissal. These workers also have the right to remain anonymous until a charge is brought. After the charge has been brought, they have the right to request a transfer to a different position, which cannot be refused.

### 4.4 Incentives for Whistle-blowers

Article 8 of Law 36/94 establishes a mitigation of penalty for corruption cases where a defendant aids the investigation, either in terms of the gathering of evidence or the identification and capture of others who are criminally liable.

Article 374-B of the Criminal Code is applicable to the crimes of corruption in the public sector and undue receipt of an advantage. It establishes that, under certain conditions, penalties can be mitigated or waived altogether.

Waiving of a penalty under this Article requires the perpetrator of the crime to:

- report the crime within 30 days of its occurrence, assuming criminal proceedings have not been already initiated, and as long as the perpetrator voluntarily returns the undue advantage or its value;
- voluntarily repudiate the undue advantage previously accepted or return it before the act or omission takes place; or
- withdraw the promise, refuse its offering or request its return before the act or omission is taken place.

On the other hand, the penalty may be mitigated if the perpetrator:

- specifically aids the investigation in acquiring and gathering decisive evidence or capturing others responsible; or
- performed the criminal acts at the request of a public official, either directly or by means of an intermediary.

### 4.5 Location of Relevant Provisions Regarding Whistle-blowing

Of the aforementioned provisions relating to waiver or penalty mitigation, the following are worth mentioning: Article 374-B of the Criminal Code; Article 8 of Law 36/94 (29 September 1994); Article 5 of Law 20/2008 (21 April 2008); Article 19-A of Law 34/87 (16 July 1987).

The Data Protection Enforcement Agency (CNPD) has issued a resolution (765/2009) granting special protection to whistle-blowers relating to all sorts of criminal offences, not just bribery and corruption.

## 5. Enforcement

### 5.1 Enforcement of Anti-bribery and Anti-corruption Laws

Anti-bribery and anti-corruption are subject to criminal enforcement only. There is, however, an independent administrative entity called the Council for the Prevention of Bribery, created under the umbrella of the Court of Auditors, the purpose of which is to develop measures in the field of the prevention of bribery and related offences. The Council, entitled with soft law powers only, has issued several instructions and recommendations, namely asking public entities to prepare, apply and publicise bribery prevention plans, as well as on how they should assess potential conflicts of interest.

### 5.2 Enforcement Body

Punishments of criminal offences are enforced in the courts of law. The Public Prosecutor's Office is the competent body to investigate any suspected corruption or bribery offences, aided by the Judiciary Police (in particular the National Anti-Corruption Unit). There is no particular enforcement body or entity specialising in these types of crime. Public Prosecutors have the powers attributed to them by law to investigate any acts which may constitute a criminal offence in Portuguese territory, without prejudice of the rules that govern extra-territorial jurisdiction of Portuguese law. Usually the investigation of most relevant cases is carried out by the Central Department of Investigation and Prosecution, which has nationwide jurisdiction to co-ordinate and direct the investigation and prevention of some specific criminal offences, namely those which are of a violent nature, of particular complexity or highly organised, the latter category including bribery and related offences.

### 5.3 Process of Application for Documentation

Aside from the powers generally endowed to the Public Prosecutor's Office in any criminal investigation, there are special provisions regarding the breach of secrecy of financial institutions, allowing a more effective collection of evidence by means of requesting documentation and information (Law 5/2002, 11 January 2002). Under Law 5/2002, any breach of banking and professional secrecy must be ordered

by the judiciary authority conducting the proceedings. This order must identify the envisaged individuals and it must specify the information and documents to be surrendered, even if generically. The request may also be made by reference to the accounts or transactions in relation to which the information needs to be obtained.

The enforcement body also has complete access to the tax administration database. Financial institutions are required to provide the information requested within a period of five days (when the information is available as computer data), or 30 days (when the information is not available as computer data); the latter timeframe is reduced to 15 days if there are suspects detained under custody. All documents not voluntarily rendered can be apprehended by court order.

#### 5.4 Discretion for Mitigation

Portuguese law provides a mechanism of provisional suspension of the enforcement procedure, under Articles 281 and 282 of the Criminal Procedure Code and Article 9 of Law 36/94 (measures applicable to the fight against corruption and financial and economic criminality).

This mechanism is agreed between the Public Prosecutor and the defendant, in accordance with a judge, and it determines that the procedure will be suspended upon the defendant adhering to an injunction and certain rules of conduct. The conditions that must be met in order for such an agreement to be offered are:

- the crime must be punishable by imprisonment for not more than five years, or with a penalty different from imprisonment;
- agreement of both the defendant and the offended party (when the offended party is part of the procedure);
- absence of previous conviction for a crime of the same nature;
- absence of previous provisional suspension for a crime of the same nature;
- absence of institutionalisation as a safety measure;
- absence of a high level of guilt; and
- it has to be foreseeable that compliance with the injunction and the rules of conduct is deterrent enough to fulfil the prevention demands in the concrete case.

In cases involving active corruption crime in the public sector, Article 9 of Law 36/94 establishes that the provisional suspension of the procedure may be offered to a defendant where he or she has reported the crime or the Public Prosecutor considers him or her to have made a decisive contribution towards the unveiling of the truth. The suspension in such cases requires fewer conditions: apart from the defendant's contribution, it is only necessary that he or she is in agreement with the suspension and that it is foreseeable that compliance with the injunction and the rules of conduct

will be deterrent enough to fulfil the prevention demands in the concrete case.

The suspension of the procedure can last as long as two years, during which time the limitation period is also suspended. If the defendant complies with the set of injunctions and rules of conduct prescribed, the Public Prosecutor dismisses the proceedings. In contrast, failure to comply with the terms agreed, or recidivism, cause the process to resume its course.

#### 5.5 Jurisdictional Reach of the Body/Bodies

See 5.2 Enforcement Body, above.

#### 5.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

In the recent years, there have been several high-profile cases of bribery or corruption prosecuted and tried in Portuguese courts, three of them with significant impact:

- 'Face Oculta', a case involving an alleged corruption ring designed to favour a private business group linked to business waste and waste management, with relevant public officials also involved;
- the 'Labirinto' operation, related to alleged unlawful concession of golden visas; and,
- the 'Marquês' operation, considered by many the biggest corruption case in Portugal's modern history, in which a former Prime Minister and the former CEO of one of the largest Portuguese private banks (among other corporate elites, namely former chief executives of Portugal Telecom) were formally charged with several counts of corruption, money laundering, document forgery and tax fraud.

#### 5.7 Level of Sanctions Imposed

Final decisions have not yet been reached in the last two cases referred to above ('Marquês' and 'Labirinto'). In 'Face Oculta', although there are still pending some extraordinary appeals, the main defendant was convicted to 13 years of imprisonment.

## 6. Review and Trends

### 6.1 Assessment of the Applicable Enforced Legislation

GRECO (the Group of States against Corruption, which is the Council of Europe anti-corruption body) published its Fourth Round Compliance Report on Portugal on 6 March 2018. This report deals with the prevention of corruption in respect of members of parliament, judges and prosecutors.

The report mentions that only one of GRECO's 15 recommendations has been implemented "satisfactorily" by Portugal. Of the remaining 14, only three have been "partially implemented" and 11 have not been implemented at all. GRECO says it is "disappointed" that Portugal has not com-

plied with “*recommendations it considers crucial to promote greater independence of the judiciary and judges,*” and asks the country to bolster the integrity, enhance the accountability and increase the transparency of a wide range of public office holders by the end of 2018 “*at the very latest.*”

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### **6.2 Likely Future Changes to the Applicable Legislation or the Enforcement Body**

A parliamentary commission on transparency has been working on new anti-bribery legislation for two years. Some of the topics discussed therein include the exclusivity obligation in the exercise of public office, the concentration in a single document (to be accessible online) of all the income and asset declarations issued by public officers, the regulation of lobbying activity, alternatives to the criminalisation of unlawful enrichment (which was judged unconstitutional by the Portuguese Constitutional Court) and, finally, the creation of the Entity of Transparency of Holders of Political Positions and High Public Offices, the aim of which is to monitor and assess the truthfulness of the income and asset declarations issued by public officers. The work of this parliamentary commission is expected to be finalised and publicly presented by 31 March 2019.