



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Portugal: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption law in Portugal.

It will cover the definition of bribery, regulation, compliance, liability and enforcement as well as insight and opinion and any upcoming legal changes planned for their respective country.

This Q&A is part of the global guide. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-corruption/>

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## 1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

Bribery and corruption are covered by five distinct laws, namely:

- Articles 372 through 374 of the Penal Code, which relate to civil servants;
- Articles 16 through 18 of Law no. 34/87, which relate to political office holders and high public office holders;
- Articles 36 and 37 of the Military Justice Code, which relate to military personnel;

- Articles 7 through 9 of Law no. 20/2008, which relate to corruption in international trade and in the private sector;
- Articles 8 and 9 of Law no. 50/2007, which relate to sports agents;

## **2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?**

It is incumbent upon the Public Prosecution Services to conduct a criminal enquiry with the assistance of competent criminal police authorities, in particular, the Judiciary Police.

Regarding crimes of corruption, the Central Department for Criminal Investigation and Action, which is a special department within the Public Prosecution Services, has the power to coordinate and conduct an investigation.

There is also the Council for Prevention of Corruption, which is an independent administrative entity that works with the Court of Auditors and carries out nation-wide activity within the scope of the prevention of corruption.

## **3. How is bribery defined?**

Although there are many different bribery offenses, which vary according to the status of the person who receives the bribe, they all share a common root definition, based on the United Nations Convention against Corruption's definition of bribery.

Bribery is separated into passive and active bribery.

Passive bribery is broadly defined as the promise, offering or giving, to someone, directly or indirectly, of an undue advantage, for that same person or another person or entity, in order that the person in question act or refrain from acting in the exercise of his or her duties.

Active bribery is broadly defined as the solicitation or acceptance by someone, directly or indirectly, of an undue advantage, for that same person or another person or entity, in order that the person in question act or refrain from acting in the exercise of his or her duties.

In the Military Justice Code, in addition to this definition, the bribed party's act must also endanger national security.

**4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?**

Yes, different laws and different sanctions are applicable depending on whether the bribed party is a public official or not and also depending on bribed party's position within the State.

Public officials can be distinguished between civil servants, military personnel and political office holders or high public office holders.

For the purposes of criminal law, the definition of civil servant includes:

- Civil servants;
- Administrative officials;
- Arbitrators, jurors and experts;
- Whoever, even where provisionally or temporarily, against consideration or without charge, voluntarily or mandatorily, has been called to perform or to participate in the performance of an activity falling under the administrative or jurisdictional civil service, or to perform functions in public-benefit bodies or to participate in them, under the same circumstances;
- Managers, officers of supervisory bodies and employees of nationalized public companies, publicly held companies or companies with a majority public capital holding and companies that are concessionaires of public services;

- Magistrates, officers, agents and others treated as such of public international law organizations, irrespective of their nationality and residence;
- Officers who are nationals of other States when the infringement has been fully or partially committed on Portuguese territory;
- Anyone who performs identical functions to those falling under the definition of civil servant within the scope of any public international law organization which Portugal is a member of, whenever the infringement has been fully or partially committed on Portuguese territory;
- Magistrates and officers of international courts provided that Portugal has declared to accept the jurisdiction of such courts;
- Anyone who performs functions within the scope of out-of-court dispute settlement procedures, irrespective of their nationality and residence, whenever the infringement has been fully or partially committed on Portuguese territory; and
- Jurors and arbitrators who are nationals of other States whenever the infringement has been fully or partially committed on Portuguese territory.

For the purpose of criminal law, the definition of military personnel includes:

- Officers, sergeants and privates in the permanent staff of the Armed Forces or the Republican National Guard, under any circumstance;
- Officers, sergeants and privates not in the permanent staff in effective service; and
- Students of officer and sergeant schools.

For the purposes of criminal law, political office holders are:

- The President of the Republic;
- The President of the Assembly of the Republic;
- Members of the Assembly of the Republic;
- Members of Government;
- Members of the European Parliament;
- Representatives of the Republic in the Autonomous Regions;
- Members an Autonomous Region's Government;
- Members of the representative body of a local authority;
- Political office holders of international organizations and of other States whenever the

infringement has been fully or partially committed on Portuguese territory.

For the purposes of criminal law, the definition of high public office holders includes:

- Public managers;
- Holders of management positions in companies which have been designated by the State;
- Members of executive bodies in companies which are part of the local public sector;
- Members of the directive bodies of public institutes;
- Members of independent public entities established in the Constitution or in the law;
- Holders of superior directive offices of 1st rank and equivalent.

## **5. What are the civil consequences of bribery in your jurisdiction?**

If the act performed as a result of a bribe is a violation of one's duties, the perpetrator of that act may be held civilly responsible for any damages caused by that act in the general terms of the law.

The State may be held jointly and severally liable for damages caused to individuals by the bribed party's actions.

Pursuant to Article 110 of the Penal Code, any proceeds resulting from bribery may be declared forfeit in favour of the State. Article 7 of Law 5/2002 establishes an enhanced forfeiture principle, which presumes that the difference between a person's actual estate and an estate consistent with that person's lawful earnings to be proceeds of a crime and thus may be forfeited in favour of the State.

## **6. What are the criminal consequences of bribery in your jurisdiction?**

Since there are many different types of bribery, the criminal consequences of each type vary between the each type and also according to multiple other variables:

- Passive bribery:

- Penal Code:

- between 1 and 8 years in prison if the act is contrary to the bribed party's duties;
    - between 1 and 5 years in prison if not;
    - these sanctions can be aggravated depending on the value of the bribe;
    - prohibition from holding public office or working in the public sector.

- Law no. 34/87 (political office holders and high public officials):

- between 2 and 8 years in prison if the act is contrary to the bribed party's duties;
    - between 2 and 5 years in prison if not;
    - these sanctions can be aggravated depending on the value of the bribe;
    - loss of office and prohibition of holding public office or working in the public sector.

- Military Justice Code:

- between 2 and 10 years in prison;
    - mandatory retirement;
    - expulsion from the military.

- Law no. 20/2008 (private sector workers):

- up to 5 years in prison;
    - between 1 and 8 years in prison if the bribed party's act disrupts competition or causes financial loss to a third party.

- Law no. 50/2007 (sports agents):

- between 1 and 8 years in prison;
    - suspension from participating in sporting events for a period between 6 months and 3 years;
    - denial of public subsidies for a period between 1 and 5 years;
    - prohibition of working as a sports agent.

- Active bribery

- Penal Code:

- between 2 and 5 years in prison if the intended act is contrary to the bribed party's duties;
  - up to 3 years in prison if not;
  - these sanctions can be aggravated depending on the value of the bribe;
  - prohibition from holding public office or working in the public sector.
- Law no. 34/87 (political office holders and high public officials):
    - between 1 and 5 years in prison if the intended act is contrary to the bribed party's duties;
    - up to 5 years in prison if not;
    - between 2 and 8 years in prison if the briber is a political office holder or a high public official and the act is contrary to the bribed party's duties;
    - between 2 and 5 years in prison if the briber is a political office holder or a high public official but the intended act is not a violation of the bribed party's duties;
    - these sanctions can be aggravated depending on the value of the bribe;
    - loss of office and prohibition of holding public office or working in the public sector.
  - Military Justice Code:
    - between 1 and 6 years in prison;
    - between 2 and 12 years in prison if the briber is a higher ranking officer than the bribed party;
    - mandatory retirement;
    - expulsion from the military.
  - Law no. 20/2008 (private sector workers):
    - between 1 and 8 years if the act is related to international commerce;
    - up to 3 years in prison or a fine;
    - up to 5 years in prison or a fine of up to 600 days if the bribed party's act disrupts competition or causes financial loss to a third party.
  - Law no. 50/2008 (sports agents):
    - between 1 and 5 years in prison;
    - suspension from participating in sporting events for a period between 6

months and 3 years;

- denial of public subsidies for a period between 1 and 5 years;
- prohibition of working as a sports agent.

**7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?**

The term “undue advantage” is used in the law to characterize any benefit granted and it can include facilitation payments, gifts and hospitality and, therefore, their request or acceptance or on the other hand, their offer or promise to offer even where not in consideration for any act or omission, may constitute a crime of undue receipt as set forth in Articles 372 of the Penal Code and 16 of Law no. 34/87.

A conduct deemed as socially appropriate and consistent with customs and practice is excluded from this legal framework.

Reasonable criteria must be used when assessing each situation, taking into account the specific case, and in particular, the sector under consideration, the context and the parties involved.

**8. Are political contributions regulated?**

Yes, Law no. 19/2003 establishes the framework for party financing.

Articles 7 and 8 of Law no. 19/2003 establish that political parties may not receive donations from anonymous donors or corporate entities.

Donations from individuals cannot exceed the annual limit of 25 times the Social Support Index. The Social Support Index for 2018 is 428,90 euros, which means that the maximum amount an individual can donate to a political party in 2018 is 10.722,50



euros.

9. **Are facilitation payments regulated? If not, what is the general approach to such payments?**

See: answer to question 7.

10. **Are there any defences available?**

Both natural and legal persons under investigation for the alleged commission of a crime of corruption have the same general rights of defence provided in the Criminal Procedure Code for any accused in criminal proceedings such as the right to appoint a lawyer or to request the appointment of legal defence, the right to be heard by the judge in charge of preliminary enquiries whenever the latter has to take any decision that personally affects the person under investigation, or the right to be informed of the facts imputed to them before making any statements before any entity.

Pursuant to Law no. 36/94 pertaining to the measures to combat corruption and economic and financial crime, the person accused of an active corruption crime is also entitled to request the provisional stay of proceedings provided that the Public Prosecution Service and the judge in charge of the preliminary enquiries agree that the requirements have been met for discovering the truth and for complying with injunctions and the rules of conduct on which their application by the judge is contingent. The possibility of a provisional stay of proceedings is also regulated in Article 281 Criminal Procedure Code in respect of crimes punishable by a prison sentence of less than five years.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?**

There is no specific rule in the Portuguese legal system that excludes the liability of legal persons for crimes of corruption when they have compliance programs in place aimed at preventing the commission of acts of corruption.

However, Article 11(6) of the Penal Code – pursuant to which “[the] liability of legal persons and entities treated as such is excluded when the perpetrator has acted against the orders or instructions of whoever is entitled to do so” – has been construed both by national legal theory and case law precisely in the sense that the existence and implementation of compliance programs and mechanisms that have certain characteristics may result in the exclusion of the liability of legal persons for acts of corruption committed by their workers, employees or any other person who has acted in the name and/or on behalf of the legal entity.

**12. Who may be held liable for bribery? Only individuals, or also corporate entities?**

In addition to individuals, corporate entities may be held liable for bribery under the Penal Code, under Law no. 20/2008 and under Law no. 50/2007.

**13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?**

Resolution of the Council of Ministers no. 53/2016, 21 September, which approved the Government Code of Conduct, deals expressly with the acceptance of offers and invitations by members of the 21st Constitutional Government, among others.

Pursuant to said statute, accepting offers of consumables or durables, or invitations to attend social, institutional or cultural events, or any other similar benefits that may compromise the impartiality and integrity of the functions performed is forbidden. It is

deemed that such a compromise exists whenever the value of the offer made is estimated at or higher than 150 euros which is the annual and accumulated limit for offers.

There are, however, several exceptions such as those concerning invitations that correspond to consolidated social and political customs and events in which the presence of members of the Government either on national territory or abroad, is of relevant public interest because such situations require the official representation of the Portuguese State, or because refusing such an invitation may be construed as a lack of interinstitutional respect.

#### 14. **Does the law provide protection to whistle-blowers?**

Although there is no general framework granting special protection to whistle-blowers, there are several rules in the Portuguese legal system that dispense with or mitigate the sentence of the a perpetrator who reports the crime under certain conditions (with restricted time limitations), or who plays a decisive cooperative role in obtaining evidence that allows the identification and capturing apprehension of others involved. As an example of such rules, we emphasize Article 374-B of the Penal Code, Article 8 of Law no. 36/94, Article 5 of Law no. 20/2008 and Article 19-A of Law no. 34/87.

Article 4 of Law no. 19/2008 also provides that public service workers and workers of the State business sector, as well as private sector workers who report the commission of acts of infringement they become aware of in the exercise of their functions or because of them, shall not be adversely affected in any way, including by way of non-voluntary transfer or dismissal. Such workers are also entitled to anonymity until they are indicted, except only in what concerns investigators. After the indictment, they also have the possibility of being transferred to exercise other functions, upon their request, which cannot be denied.

Finally, there is also Law no. 93/99 which sets out the protection measures for witnesses in criminal proceedings.

**15. How common are government authority investigations into allegations of bribery?**

According to statistics from the General Department of Justice Policy, between 2007 and 2015, the Judiciary Police has, on average, begun 378 new investigations into alleged corruption cases per year.

**16. What are the recent trends in investigations and enforcement in your jurisdiction?**

Recent years have been marked by a string of high-profile cases that have involved prominent individuals such as a former Prime-Minister, a former Minister of the Interior, an Appellate Court Judge and several bankers.

However, according to statistics from the General Department of Justice Policy, the number of people accused and condemned for corruption has been falling since 2010, with only 45 accused and 25 convicted in 2015 from 176 accused and 78 condemned from 2010.

**17. Is there a process of judicial review for challenging government authority action and decisions?**

Yes, the Criminal Procedure Code establishes the means for judicial review of all criminal proceedings.

**18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

A legislative process is underway, which aims to approve a Code of Conduct for Members of Parliament similar to the one in force for members of Government,

including the 150 euro limit for offers.

**19. To which international anti-corruption conventions is your country party?**

Portugal is party to the following conventions:

- OECD Convention on combatting bribery of foreign public officials in international business transactions;
- European Union Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union;
- Council of Europe Criminal Convention on Corruption;
- United Nations Convention against Corruption.

**20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.**

Lawyer-led investigations are not regulated in Portuguese law, nor are they done in practice. However, to the Bar Association Statute, attorney-client privilege covers all facts that are known in virtue of the offering of legal services.

**21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?**

It is undisputable that, for the past 10 or 15 years, the fight against corruption has been one of the public authorities' priorities in terms of the judiciary system and criminal policy, as is shown by the increasing number of corruption cases that are

initiated every year, by the high-profile persons that are involved in some of those cases, as well as by the approval of new anticorruption legislation.

22. **Generally how serious are organisations in your country about preventing bribery and corruption?**

We believe that there is a relevant awareness of the organizations in our country for the importance of anti-bribery and corruption policies.

23. **What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?**

We believe that the Portuguese public authorities are, in the present times, fully prepared to conduct thorough investigations related to bribery and corruption. As such, we believe that the biggest challenges are the same as in any other jurisdiction, such as the complexity of the facts and operations carried out by the perpetrators and the difficulties in the gathering of evidence, particularly when the cases involve several jurisdictions.

24. **What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**

We believe that the biggest challenges for companies operating in Portugal are, in the near future, the implementation of adequate compliance programs and policies, in order to comply with an increasingly demanding regulation, not only in relation to anti-bribery and corruption, but also to anti-money laundering.

25. **How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?**

We believe that Portuguese legal framework is adequate and sufficient to prevent, investigate and prosecute cases of bribery and corruption.

However, we believe that an example of an amendment that would, in our opinion, improve the anti-bribery and corruption legal framework and particularly contribute to the prevention of bribery and corruption practices is the approval of a legal provision(s) that would clearly state the legal benefits (mitigation or exemption of criminal liability) for a company that creates and implements adequate compliance programs and policies in anti-bribery and corruption matters, similar to the legal framework that exist, in this respect, and for instance, in Spain and Italy.