



# Austria - Global bribery offenses guide

17 February 2020

By: Thomas Kralik

## 1. What is the legal framework governing bribery in the UK?

Sections 304 to 309 of the Austrian Criminal Code (StGB) are the key pieces of the Austrian legislation governing bribery.

## 2. What constitutes a bribe?

A bribe is defined by the Austrian Criminal Code as a financial benefit or other advantage requested, received or promised by a public official or an arbitrator or offered, promised or given to a public official or an arbitrator in order to cause that public official or arbitrator to act contrary (section 304 and 307) or not contrary (section 305 and 307a) to the official's duties.

## 3. What are the principal offences under this legal framework?

Active bribery:

- Offering, promising, or giving an advantage to a public official or arbitrator or a third party in order to cause the public official or arbitrator to act contrary to duty (section 307).
- Offering, promising or giving an improper advantage to a public official or arbitrator or a third party in order to cause the public official or arbitrator to act according to duty (section 307a).
- Offering, promising or giving an improper advantage to a public official or arbitrator or a third party in order to influence their work as public official or arbitrator.

Passive bribery:

- Requesting, receiving or being promised an advantage by a public official or arbitrator for themselves or a third party for conducting official acts contrary to duty (section 304).
- Requesting an advantage or receiving or being promised an improper advantage by a public official or arbitrator for themselves or a third party for conducting official acts according to duty (section 305).
- Requesting an advantage or receiving or being promised an improper advantage by a public official or arbitrator or a third party for influencing their work as public official or arbitrator.

Lack of prevention measures:

- Failing to take appropriate measures to prevent bribery (section 3 VbVG).
- The company is charged with an offense if
  - The offense has been committed in its favor or
  - duties for which the company is responsible have been violated

- For offenses committed by a decision-maker, the company is responsible if the decision-maker has committed an unlawful and culpable act.
- The company is responsible for criminal offenses committed by employees if
  - Employees have acted unlawfully; the company is only responsible for a deliberate offense if the employee has acted deliberately. For an offense which presupposes negligent action, only if the employee has disregarded the care required by the circumstances.
  - The commitment of the offense was substantially facilitated by the fact that the decisions-makers failed to exercise due and reasonable care, in particular by failing to take essential technical, organizational or personnel measures to prevent such acts.

#### 4. What is the jurisdictional reach of the legal framework?

For bribery offenses the Austrian authorities may take jurisdiction where any act or omission which forms part of the offense takes place in Austria, or if the offender is an Austrian citizen or the bribe was committed in favor of an Austrian public official or arbitrator.

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

Private individuals, public officials and arbitrators can be prosecuted for bribery offenses.

A company can be held liable under the Company's Criminal Liability Act (VbVG).

A company or legal entity may be liable for bribery under section 3 VbVG, if the bribery was committed by a managing director or any other person entitled to act on behalf of the company and if the bribery was for the benefit of the company.

If a person who is not entitled to act on behalf of the company commits bribery for the benefit of the company, the company is only liable if there was an organizational fault enabling the bribery (e.g. missing compliance management system).

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

No.

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

Yes, provided they meet the criteria as an improper advantage, facilitation payments are considered bribery, no matter how small the amount. Advantages that are local customs and of insignificant value are allowed. The same applies to advantages given during an event, if the participation of the public official is factually justified.

#### 8. Does the legal framework restrict political and charitable contributions?

A political or charitable contribution could be considered a bribe if it meets the criteria described in this note.

Charitable contributions are allowed if the public official or arbitrator has no influence over how the contributions are spent.

#### 9. Does the legal framework place restrictions on corporate hospitality?

Yes, corporate hospitality is strictly restricted for public officials. Hospitality is only allowed during events if the participation of the public official is factually justified and also given to all other participants.

#### 10. Are there any defenses for bribery offences?

It is a defense for a company or legal entity charged with the offense of failing to prevent bribery under section 3 VbVG to prove that it has adequate procedures in place to prevent bribery.

The VbVG does not define what will be considered adequate procedures, but jurisdiction and doctrine refer to the accepted principles of compliance.

The common law defense of duress may be available where individuals are left with no alternative but to make payments in order to protect against loss of life, limb or liberty.

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

The Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption (Federal Public Prosecutor's Office for White-Collar Crime and Corruption, (WKStA)) is the primary authority for investigation and prosecution of corruption.

It is supported by the Bundesamt für Korruptionsbekämpfung (Federal Bureau of Anti-Corruption (BAK)), an organization integrated into the Austrian Police Organization.

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

Individuals face up to ten years' imprisonment, depending on the value of the bribe.

Companies and other legal entities can receive a fine up to EUR1 million.

An individual and/or company may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offense, which can include the revenue attributable to any contract won through bribery, not just the value of the bribe paid.

Companies convicted of bribery offenses may also face debarment from public procurement contracts under the Austrian Public Procurement Directive for a five-year period.

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

Yes, some bribery offenses are capable of being settled by way of a DPA. They may be offered by the prosecutor to an individual and a company or other legal entities. Not capable of being settled by way of a DPA are offenses under section 304 and 307 and offenses where the value of the bribe exceeds EUR50,000.

If a DPA is offered and accepted, and provided all conditions of the DPA are met, the prosecutor agrees not to pursue a prosecution against the individual or the entity concerned.

**For a pdf of the full brochure please email [corporatecrime@dlapiper.com](mailto:corporatecrime@dlapiper.com)**

[Return to Overview page](#)

## AUTHORS



### **Thomas Kralik**

Partner

Vienna | T: +43 1 531 78 1000

[thomas.kralik@dlapiper.com](mailto:thomas.kralik@dlapiper.com)