

Czech Republic - Global bribery offenses guide

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1. What is the legal framework governing bribery in the Czech Republic?

The Czech Act No. 40/2009 Coll., the Criminal Code, as amended (Criminal Code) and the Act No. 418/2011 Coll., on Criminal Liability of Legal Entities, as amended, are the main pieces of Czech legislation governing bribery.

2. What constitutes a bribe?

A bribe is defined under the Criminal Code as offering, giving, requesting or accepting (directly or indirectly) in the public or private sector, an unauthorized benefit consisting of a direct material enrichment or other advantage which is obtained or is intended to be obtained by the bribed person or another person with their agreement, and to which they have no right.

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

- Accepting a bribe or a promise of a bribe for themselves or for another person (Section 331 of the Criminal Code).
- Giving or promising a bribe (Section 332 of the Criminal Code).
- Requesting, offering, accepting a promise of or accepting a bribe for having an influence on a public person, i.e. indirect bribery (Section 333 of the Criminal Code).

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

General territorial provisions of the Criminal Code and of the Act on Criminal Liability of Legal Entities apply.

Regarding individuals, general criminal law jurisdictional principles apply, i.e. territorial principle, active/passive personality principle, universal jurisdiction and subsidiary universal jurisdiction.

- (i) *territorial principle* means that Czech criminal law applies to criminal offences committed in the territory of Czech Republic;
- (ii) *active personality principle* means that Czech criminal law applies to Czech citizens no matter where the respective criminal offence has been committed;
- (iii) *passive personality principle* means that Czech criminal law applies to criminal offences committed against Czech citizens anywhere;
- (iv) *universal jurisdiction* means that Czech criminal law applies to specific criminal offences no matter where they have been committed or by whom (e.g. genocide, war crimes); and
- (v) *subsidiary universal jurisdiction* means that Czech criminal law applies to criminal offences committed by aliens outside the territory of Czech Republic subject to certain conditions set out in the Czech Criminal

Code.

Regarding companies, the Act on Criminal Liability of Legal Entities applies to corporations which have their registered office in the Czech Republic, have a business or branch in the Czech Republic, carry out activities in the Czech Republic or have assets in the Czech Republic.

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

Private individuals, public officials and the legal entities concerned can be prosecuted for bribery offences under Sections 331 to 333 of Criminal Code.

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

In general no, since the parent company and the subsidiary are two separate legal entities.

However, the parent company shall be responsible for training its subsidiaries about the prevention and detection of bribery, and about the bribery consequences, since problems with bribery connected with the subsidiary also cast shadow on the parent company.

Also, the parent company (i.e. controlling entity) should reimburse the controlled entity if there is any damage arising from such control.

7. 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.

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 set out in this note. In relation to civil servants (public officials) the Czech Act. No. 234/2014 Coll., on Civil Service, stipulates that a value limit of gifts or other benefits provided to civil servant amounts to CZK 300 (i.e. approximately EUR 12), however, the Supreme Court adjudicated in its recent jurisprudence that even a gift below this limit may constitute a bribery offence in certain situations.

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

The Criminal Code makes no express provisions with regard to corporate hospitality and any financial or other advantage given in that context would fall to be assessed by reference to the provisions described in this note.

Under Czech law, there is no expressly stipulated value limit of gifts in terms of corporate hospitality, however, it is customary that corporations set out this limit in their internal guidelines (usually up to CZK 500, i.e. approximately EUR 20).

10. Are there any defenses for bribery offences?

There are no specific statutory defenses to charges under Sections 331 to 333 of the Criminal Code.

In general, confession to a crime is usually an extenuating circumstance, together with cooperation with the investigation with police and other authorities, such as prosecutors and judges.

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

A police branch which specializes in investigating organized and financial crime – the National Centre Against Organised Crime.

Currently, there is no specialized prosecution branch focused on corruption-related crimes, therefore general public prosecutors are responsible for the prosecution of both individuals and corporates.

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

Individuals face up to 12 years' imprisonment forfeiture of property, monetary penalties, house arrest, community service, prohibition of entry to sporting, cultural and other social events, deportation and prohibition of residence.

Companies can face a monetary penalty, forfeiture of property, forfeiture of a possessed item, publication of judgment, punishment by disqualification from participating in public tenders and applying for subsidy and grant programs; if held liable, the company may be dissolved (in extreme cases).

Companies convicted of bribery offences may also face debarment from public procurement contracts under the EU Public Procurement Directive.

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

As long as the committed bribery is considered a misdemeanor, there is a possibility of a settlement agreement under the conditions set out by the Criminal Proceeding Code.

The accused transfers money – the amount is determined by the court or state prosecutor – to the court's account or to the state prosecution's account to be used for socially beneficial purposes, etc.

The settlement agreement must be confirmed by the court or by the state prosecutor (at the pre-trial phase). All the mandatory conditions must be satisfied together with the court's or state prosecutor's consideration that the settlement is sufficient with regard to the committed misdemeanor and with regard to the defendant and its property relations.

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