

# Bahrain - Global bribery offenses guide

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Por Adam Vause

## 1) What is the legal framework governing bribery in Bahrain?

In Bahrain, there is no standalone bribery law. Articles 186-193 and 417-427 of the Bahrain Penal Code, which was published by Decree Law No. 15/1976, as amended (the Penal Code), provide for bribery related offenses. Under the Penal Code's bribery provisions, either bribery of public officials or bribery in the private sector (if it occurred after the 2013 amendments) may constitute bribery offenses.

All article references in this summary refer to the Penal Code.

## 2) What constitutes a bribe?

A bribe is not expressly defined under the Penal Code.

The bribery offenses describe a bribe as a gift or privilege of any kind whatsoever or a promise to be given the same, either directly or indirectly, to induce or reward the improper performance of a relevant function or activity.

## 3) What are the principal offenses under this legal framework?

Articles 186 to 190 bis outline the offenses relevant to public officials.

- Requesting or accepting (directly or indirectly) any gift or privilege in the capacity of a public official in exchange for the performance or non-performance of an act (regardless of their intention) (whether the gift is accepted before or after the act) which is within the remit of their office, or which they believe is within the remit of their office. (Articles 186 - 189).
- Bribery of a public official in Bahrain or in a foreign country for doing or omitting to do an act in breach of the duties of their office, to retain or gain any business advantage. (Article 190 and 190 bis).

Articles 417 to 422 outline the bribery offenses in relation to the private sector.

- Any employee, director or trustee who requests or accepts, directly or indirectly, a bribe in exchange for the performance or non-performance of an act (regardless of their intention) (whether the gift is accepted before or after the act) to the detriment of their employer or the private entity (Articles 418 and 419). This offense is deemed to have occurred even in instances where the act was not within the person's duties to their employer, but they mistakenly believed the act to be so (Article 420).
- Bribery of an employee, director or trustee (directly or indirectly) for doing or omitting to do an act in breach of the duties of their work or position or to cause damage to the interests of the employer or private legal person (Article 421 and 422).

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

In general, criminal offenses under the Penal Code apply outside Bahrain where any of the following conditions are met:

- the perpetrator or accomplice of the bribery offense is a foreigner or Bahraini national (or former Bahraini national removed of citizenship in connection with the offense);
- the perpetrator is a Bahraini public official acting during or in the performance of their duties; or
- the bribery offense is committed by a foreigner in Bahrain (even where application for extradition has not been requested).

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

Legal entities, private individuals, public employees, and any person who aids or abets a bribery offense can be prosecuted for bribery offenses.

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

There are no specific provisions addressing a parent company's liability for its subsidiary's involvement in bribery, though it is possible. The circumstances in which this may occur are fact-specific. Some possibilities include where:

- the subsidiary is established as a branch in Bahrain in which the principal parent may be directly liable for the acts of the subsidiary;
- the parent company acts as an intermediary in the bribery offense; or
- the parent company acted directly or indirectly in the commission of the bribe.

## 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?

There are no express provisions under the Penal Code that restrict political or charitable contributions.

Even though Bahrain is a parliamentary monarchy, political contributions are not currently utilized.

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

There are no express provisions in the law placing restrictions on corporate hospitality. However, corporate hospitality may fall within the general definition of bribery. Bribery is covered by offering or accepting gifts and privileges, which allows for a wide interpretation of the term.

Whether hospitality amounts to a bribe would likely be assessed on the basis of the criteria set out in this note.

## 10) Are there any defenses for bribery offenses?

There are no defenses for bribery offenses, however:

- Where an accomplice or co-conspirator self-reports or confesses a bribery offense involving a public official, before referral of the case to the court, this shall be a mitigating factor in sentencing. (Article 193).
- Where any party self-reports a private bribery offense (i.e. not involving a public official) before it is discovered, this shall be a mitigating factor in sentencing. (Article 427).

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

- The Public Prosecution Office.
- The National Audit Office (the NAO).
- The Anti-Corruption Directorate of the General Directorate of Anti-corruption and Economic and Electronic Security.

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

<b>Public Sector Offenses</b>	
<b>Legal Consequence</b>	<b>Application</b>
<ul style="list-style-type: none"> <li>• At least five years' imprisonment.</li> <li>• Up to ten years' imprisonment if the act/ omission actually took place.</li> </ul>	<ul style="list-style-type: none"> <li>• Premeditated bribery of a public official (Article 186).</li> </ul>
<ul style="list-style-type: none"> <li>• At least one year's imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Soliciting or accepting, directly or indirectly, a bribe as a public official after completion of or abstention from an act in breach of his duties (Article 188).</li> </ul>
<ul style="list-style-type: none"> <li>• At least one year's imprisonment.</li> <li>• Up to one year's imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Attempted bribery (Article 190).</li> <li>• Attempted facilitation payment (Article 190).</li> </ul>
<ul style="list-style-type: none"> <li>• At least one year's imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Bribery of a foreign public official (Article 190 bis).</li> </ul>
<ul style="list-style-type: none"> <li>• Fine equal to the value of the bribe (provided that the value is at least BHD500).</li> </ul>	<ul style="list-style-type: none"> <li>• All of the above offenses (Article 191).</li> </ul>
<ul style="list-style-type: none"> <li>• Confiscation of the bribe.</li> </ul>	<ul style="list-style-type: none"> <li>• All of the above offenses (Article 192).</li> </ul>
<ul style="list-style-type: none"> <li>• Up to three years' deportation.</li> </ul>	<ul style="list-style-type: none"> <li>• Any foreigner convicted of committing any of the offenses set out under the Penal Code (Article 64).</li> </ul>
<b>Private Sector Offenses</b>	

<ul style="list-style-type: none"> <li>• Up to ten years' imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Any employee, director or trustee who requests or accepts (directly or indirectly) any gift or privilege in exchange for the performance or non-performance of an act (regardless of their intention) (whether the gift is accepted before or after the act) to the detriment of his employer or private entity (Articles 418 and 419).</li> <li>• Any employee, director or trustee who intentionally breaches a trust given to him or her for personal gain or another person's gain (Article 425).</li> <li>• Attempted bribery (Articles 421 and 422).</li> </ul>
<ul style="list-style-type: none"> <li>• Up to five years' imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Requesting or accepting a bribe in exchange for an act in instances where that act was not within their duties to their employer, but they mistakenly believed it to be so (Article 420).</li> </ul>
<ul style="list-style-type: none"> <li>• Confiscation of the bribe.</li> </ul>	<ul style="list-style-type: none"> <li>• All of the above offenses (Article 423).</li> </ul>
<ul style="list-style-type: none"> <li>• Fine of at least BHD500, but not more than BHD10,000.</li> </ul>	<ul style="list-style-type: none"> <li>• All of the above offenses (Article 426).</li> </ul>
<ul style="list-style-type: none"> <li>• Up to three years' deportation.</li> </ul>	<ul style="list-style-type: none"> <li>• Any foreigner convicted of committing any of the offenses set out under the Penal Code (Article 64).</li> </ul>

\*Additional legal consequences may apply if the acts constitute crimes under other laws.

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

There are currently no laws in relation to bribery which specifically address or permit an enforcement action or prosecution to be resolved through a settlement agreement or some other similar means.

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