



# Denmark - Global bribery offenses guide

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

In Denmark, bribery, as with other types of misconduct such as embezzlement and fraud, are considered acts of corruption. The Danish Criminal Code does not use the term corruption or bribery, but criminalizes corrupt acts, including bribery. Bribery is a criminal offense under the Danish Criminal Code consolidated by Act no. 1650 of 17 November 2020 (in Danish: *Straffeloven*).

The rules on bribery of public employees are stipulated in Section 122 and Section 144 of the Danish Criminal Code.

Bribery in the private sector is criminalized in Section 299 (2) of the Criminal Code.

Section 304a of the Danish Criminal Code is specifically concerned with bribery of arbitrators.

Under Section 23 of the Danish Criminal Code, complicity, aiding and abetting a criminal act is punishable.

Under Section 24 of the Danish Criminal Code, attempts to commit a criminal act under the Criminal Code are also punishable.

In addition, Denmark has ratified several international anti-corruption conventions, including the UN Convention against Corruption (UNCAC), the Council of Europe Criminal Law Convention on Corruption, and the Organization for Economic Cooperation and Development Anti-Bribery Convention (OECD Anti-bribery Convention).

As a member state of the EU, Denmark has also implemented the relevant directives and protocols issued by the EU against corruption.

## 2) What constitutes a bribe?

Bribery is not explicitly defined in the Danish Criminal Code, but the act of bribery is criminalized in the Danish Criminal Code with reference to acts:

- where a person unduly grants, promises or offers another person who exercises a Danish, foreign or international public office or function a gift or other advantage to induce the person to act or refrain from acting in relation to their official duties or where a person in such function receives, demands or accepts the promise of a gift or other advantage (bribery in the public sector); or
- where a person in their capacity as trustee of the property of another person in breach of their duty receives, claims or accepts, for the benefit of themselves or of others, a gift or any other advantage, as well as any person who grants, promises or offers such a gift or another advantage (bribery in the private sector).

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

The Danish Criminal Code criminalizes both bribery in the public and the private sectors.

Granting, promising, offering a bribe is considered active bribery, whereas receiving, demanding or accepting a bribe is considered passive bribery. Both active and passive bribery is criminalized under the Danish Criminal Code.

A bribe may be tangible as well as intangible gifts or advantages: e.g. cash, vouchers for goods, airline tickets, and holidays or offering a job to someone related to the person, granting permission, license or a permit etc.

The intent of inducing a person to act or refrain from acting may trigger criminal liability, notwithstanding whether the person actually acts or refrains from acting. Criminal liability may also incur even if the advantage is not actually paid or given, or if the act is carried out by an intermediary.

In tender offer situations and during contract negotiations, special attention should be made due to a very low threshold for gifts and/or advantages.

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

It follows from the principal rule of the jurisdictional reach of the Danish Criminal Code that the Danish Criminal Code applies to criminal acts committed within the Danish state, on board a Danish vessel or aircraft located within the territory of another state by a person belonging to or travelling on the vessel or aircraft, or on board a Danish vessel or aircraft located outside the territory of any state.

The Danish Criminal Code also applies to acts committed outside of the Danish territory when certain conditions are met. As a main rule, the extension of the applicability of the Danish Criminal Code requires that the act committed is also considered a criminal act under the national laws of the state concerned.

The Danish Criminal Codes makes no distinction with respect to the jurisdictional reach between acts committed by a physical person or legal person. However, it is a condition precedent to the criminal liability of a legal person that an offense has been committed in the course of its activities and that the offense was caused by one or more natural persons connected to the legal person or by the legal person as such.

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

Any natural person as well as judicial persons, including corporations, may incur liability for bribery under the Danish Criminal Code. In practice, corporations are more likely to incur liability in cases where an employee has committed bribery in the active form than in the passive form. See also Section 306 of the Danish Criminal Code concerning criminal liability for corporations and other judicial persons.

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

As a main rule, a parent company will not be directly liable for its subsidiary's involvement in bribery, unless the actual decision as to the criminal act was made or supported at group level, or the parent company has failed to fulfill their duty of care.

A parent company may incur liability for complicity in bribery under Section 23 of the Danish Criminal Code.

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

Yes. There is no legal distinction made between bribery and facilitation payments.

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

Political or charitable contributions are governed by the Danish Act on Private Contributions to Political Parties and the Publication of the Accounts of Political Parties (the Party Accounting Act) as set forth in in the Executive Act no. 139 of 7 February 2019.

A political or charitable contribution could be considered a bribe, if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so. Under the Party Accounting Act, donations from anonymous donors are prohibited. However, the prohibition applies only to donations to political parties and lists of candidates and not to individual candidates. Furthermore, donations not exceeding a certain threshold (currently DKK20 thousand) should not be reported.

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

Hospitality in the form of sponsorship is accepted if it is part of the company marketing or communication strategy. Sponsoring seminars, conferences, sports activities etc. with the aim of achieving commercial benefits is accepted. Yet, sponsorship must never be a means for concealing an unlawful act, such as a bribe. The propriety of gifts and hospitality depends on their intent and the benefit obtained.

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

There are no specific statutory defenses to charges under Section 122, Section 144, Section 299 (2) or Section 304a of the Danish Criminal Code.

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

The State Prosecutor for Serious Economic and International Crime (SØIK) is a special unit within the Danish Public Prosecution Authority which handles cases concerned with serious economic crime, including investigation of alleged bribery.

## 12) What are the legal consequences of being found guilty of bribery offenses?

Violations of laws and regulations concerning bribery are punishable by fine or up to six years' imprisonment.

Companies can receive a fine. There is no statutory limit to such fines.

A natural and/or judicial person may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offense.

Furthermore, companies convicted of bribery offenses 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?

No.

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