



Morocco - Global bribery offenses guide

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1) What is the legal framework governing bribery in Morocco?

Bribery is governed by Articles 248 to 256 of the Moroccan Criminal Code (the Criminal Code).

2) What constitutes a bribe?

Bribery consists of soliciting or agreeing offers, promises, soliciting or receiving gifts, donations or other advantages in order to obtain the performance of an act or the non-performance of an act or any favors or advantages as specified in the Criminal Code.

3) What are the principle offenses under this legal framework?

The principle offenses under the Moroccan legal framework are the following:

- Bribery: Moroccan law distinguishes two types of bribery offenses: “active bribery” when the offense is committed by a third party, for example a company or any individual, and passive corruption when the offense is committed by the corrupt, i.e. a person with a public or private function.
- Trading of influence is an offense similar to corruption, with the difference that it requires the presence of an intermediary between the potential beneficiary and the public authority.

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

For the bribery offenses, the Moroccan authorities may take jurisdiction where any act or omission which forms part of the offense takes place in Morocco.

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

The following people/entities may be liable for bribery:

- Magistrates, public officers, or those invested with an elective mandate, arbitrators or experts appointed by administrative or judiciary authorities, member of any jurisdiction, doctors, surgeons, dentists, midwives.
- Employees, or any worker.
- Anybody.

Companies can be held liable for bribery acts. Indeed, article 251 of the Moroccan Criminal Code provides that “anyone” who gives or proposes a gift or advantage in exchange for a service to be rendered can be liable for criminal conduct (i.e

individuals or companies).

The penalties for each category of person differ and are set out in section 12 below.

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

There are no specific rules regarding the liability of parent companies for the acts of their subsidiaries. The Moroccan Code of Good Corporate Governance Practices imposes ethics rules on companies with a view to avoiding unlawful acts by such entities.

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 is given or received for the purpose of obtaining the performance of an act or the non-performance of an act or any favors or advantages in breach of the Criminal Code.

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.

10) Are there any defenses for bribery offenses?

There are no specific statutory defenses to charges except an exemption of liability in case of denunciation (please see point 12 below for further details).

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

Morocco signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 9 May 2007. Article 6 of the said Convention requires states party to the Convention to establish one or more bodies responsible for preventing corruption. These are L'Instance Nationale de la Probité de la Prévention et de la Lutte contre la corruption and Commission Lutte contre la Corruption (CGEM).

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

Magistrates, public officers, or invested with an elective mandate, arbitrators or experts appointed by administrative or judiciary authorities, member of any jurisdiction, doctors, surgeons, dentists, midwives are subject to punishment from two to five years of imprisonment and a fine from MAD2,000 to MAD50,000.

Employees, or any worker are subject to punishment from one to three years of imprisonment and a fine from MAD5,000 to MAD50,000.

Any person in cases of traffic of influence can be subject to punishment from two to five years of imprisonment and a fine from MAD5,000 to MAD100,000.

The Criminal Code also provides for the confiscation of any articles or material obtained as a result of the bribery (i.e. the proceeds of crime), which may include the income attributable to any contract obtained through corruption, and not just the value of the bribe paid.

A director convicted of a corruption offense is likely to be disqualified from holding a directorial position for a maximum period of ten years.

13) Are deferred prosecution agreements (DPAs) or other similar settlement

mechanisms available?

There are no rules regarding deferred prosecution agreements in Morocco. However, Article 256-1 of the Criminal Code provides that any person involved in a bribery act that reports a bribery offense to the judiciary authorities may be exempted from its liability if such denunciation occurs before responding to the request of bribery or if it is proved that the individual executed the request because the individual was forced to do so by the public officer.

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