



# Romania - Global bribery offenses guide

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

The main piece of legislation covering bribery is the Criminal Code, passed through Law no. 286/2009. Anticorruption Law no. 78/2000 (Anticorruption Law) defines aggravated forms of bribery offenses as well as other corruption or similar offenses.

## 2) What constitutes a bribe?

A bribe can consist of money or any other undue benefits, both material and immaterial (promotions, memberships), which are received/solicited/accepted as a promise or given/offered/ promised, in order to influence work duties, public or private.

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

- Taking a bribe (art. 289 of the Criminal Code);
- Giving a bribe (art. 290 of the Criminal Code);
- Bribery by or in connection with arbiters or arbitral tribunal members (art. 293 of the Criminal Code);
- Bribery by or in connection with foreign officials (art. 294 of the Criminal Code); and
- Bribery between private persons (art. 297 of the Criminal Code).

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

The legal framework (and Romanian criminal law in general) applies (i) to acts made on Romanian territory, (ii) acts made outside Romanian territory by a Romanian citizen or a Romanian legal entity if (a) the sentencing stipulated by Romanian law is life imprisonment or a term of imprisonment longer than ten years or (b) if the act is also criminalized by the criminal law of the country where it was committed or if it was committed in a location that is not subject to any state's jurisdiction, (iii) acts committed outside Romanian territory by a foreign citizen or a stateless person against the Romanian state, against a Romanian citizen or against a Romanian legal entity (if the act does not form the object of judicial proceedings on the territory it was committed).

Romanian criminal law also applies to other acts committed outside Romanian territory by a foreign citizen or a stateless person who is located voluntarily on Romanian territory, in the following cases:

- an offense was committed that the Romanian state has undertaken to repress on the basis of an international treaty, irrespective of whether it is stipulated by the criminal law of the state on whose territory it was committed; or
- extradition or surrender of the offender has been requested and denied.

The latter does not apply when, under the law of the state on whose territory the act was committed, there is a cause to prevent the start of criminal action or the continuing of the criminal trial or the serving of the sentence or when the sentence has been served or when the sentence is considered as having been served.

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

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

A legal entity can be held criminally liable for any offenses committed in the performance of its object of activity, in its interest or on its behalf.

If the acts constituting the criminal offense have been committed by a member of a ruling body of the legal entity, there is a higher risk of criminal liability for the legal entity, as acts of the ruling bodies of legal entities are deemed to be acts of the legal entity itself.

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

Only if it has a specific contribution to the bribery offense itself (either as author or as an accomplice or instigator). A parent company cannot be liable for bribery committed by its subsidiary or a person thereof in the absence of such a contribution.

## 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?

If a political or charitable contribution fulfills the elements of a bribe as described in the answer to Question 2 above, it is considered bribery. Thus, if the purpose of a political or charitable contribution is made to influence the work duties of a person, it will represent bribery.

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

The legislative framework does not make any exception or references to corporate hospitality. However, even if such corporate hospitality would be made with the intention to influence work duties and could theoretically constitute a bribe, it could still be argued that it is not a serious enough offense to be prosecuted, in which case prosecutors can use the institution of relinquishing the criminal investigation to drop such a case.

However, as the law makes no distinction, these situations have to be analyzed on a case-by-case basis.

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

The giver of a bribe will not be held criminally liable if they report the act to the criminal investigation authorities before such are otherwise notified of it.

There are no other specific defenses in the case of bribery offenses, although general justifiability causes apply, such as state of necessity.

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

Bribery offenses are prosecuted by Prosecutor's Offices attached to Tribunals, which operate at county level.

High-level bribery offenses are investigated by the National Anticorruption Directorate, an elite prosecutor unit.

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

Individuals receiving a bribe face between three and ten years' imprisonment, while givers of a bribe between two and seven. In cases of bribery between private persons, the punishment limits are reduced by one-third. As per the provisions of the Anticorruption Law, if the receiver of the bribe is a dignitary, judge, arbiter, prosecutor, belongs to a criminal investigation authority or has duties in ascertaining administrative offenses, the punishment limits are increased by one-third.

Individuals can also face a temporary restriction on the exercise of certain rights.

Legal entities can receive a fine of between RON18,000 (EUR3,800) and RON1.5 million (EUR317,000) and complementary sanctions such a restriction to participate in public procurement procedures, suspension of one or more activities or places of business, and even dissolution.

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

Yes, bribery offenses are capable of being settled by way of a so-called Agreement Admitting Guilt. This is concluded between the defendant and prosecutor and includes the defendant's admission of their guilt and the legal classification of the offense and the amount of the punishment and how it is to be served.

However, such an agreement has to be approved by a judge, thus not being dependent solely on prosecutorial discretion.

This agreement can only be concluded with individuals, not legal entities.

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