



# Tunisia - Global bribery offenses guide

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## 1. What is the legal framework governing bribery in Tunisia?

Tunisia has ratified a number of international anti-corruption treaties, including The United Nations Convention against Corruption, dated October 31, 2003 and The Arab Convention against Corruption, ratified by Tunisia in 2016 through Presidential Decree No. 2016-134 of November 15, 2016.

At a national level, the legal framework governing bribery includes:

- The Penal Code
- The Code of Criminal Procedures
- The Public Accounting Code
- The Commercial Companies Code
- The Code of Obligations and Contracts
- Organic Law No. 2017-10 of March 7, 2017, on the reporting of corruption and protection of whistleblowers
- Framework Decree-Law No. 2011-120 of November 14, 2011, on the fight against corruption
- Law No. 83-112 of December 12, 1983, on the general status of State personnel in local public authorities and public administrative establishments
- Decree No. 3158-2002 dated December 17, 2002 (as well as the texts that amended it) on the organization of public procurement
- Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, the fight against illicit enrichment and conflict of interest in the public sector
- Governmental Decree No. 2018-818 of October 11, 2018, establishing the model for the declaration of assets and interest as well as the minimum amount of assets, loans and gifts to be declared
- Law No. 2016-48 of July 11, 2016, relating to banks and financial institutions

These texts mainly grant incentives to the structures in charge of preventing bribery and corruption, define the mechanisms and criteria for granting rewards to whistleblowers who have been able to prevent corruption crimes and encourage it in addition to whistleblower protection.

## 2. What constitutes a bribe?

A bribe is defined under laws against corruption as abuse of power, authority or function for personal gain. Corruption includes in particular, corruption offences in all its forms in the public and private sectors, the misappropriation or mismanagement or waste of public funds, abuse of authority, illicit enrichment, breach of trust, squandering of legal persons' funds and money laundering.

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

By reference to article 2 of the Framework Decree-Law on the fight against Corruption, Bribe offences are:

- abuse of power;
- abuse of authority or function for personal gain;
- misappropriation or mismanagement or waste of public funds;
- illicit enrichment;
- breach of trust;
- squandering of legal person's funds; and
- money laundering.

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

The jurisdictional reach of the legal framework concerns all Tunisian nationals and all acts of corruption committed on Tunisian soil or having any connection with Tunisia.

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

The scope of the anti-corruption prosecution is quite broad. According to the definition of prosecution given in article 2 of the framework decree on the fight against corruption, any natural person or legal entity, regardless of its status or function, who commits a corruption offence is criminally, civilly and disciplinarily liable.

Additionally, according to the article 32 of the above-mentioned framework decree, proceedings against the legal person shall not prevent the application of criminal sanctions against its representatives or partners who have an influence if their personal liability is established.

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

There is no mention of a parent company being liable for its subsidiary's involvement in bribery under Tunisian law. However, if a parent company was to be involved in the subsidiary's bribery offence in the manner described above, it could be pursued in its own right.

#### 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.

Article 83 of the Tunisian penal code provides that: "Any person who is a public official or similar in accordance with the provisions of this law, which shall have approved, without right, directly or indirectly, either for themselves or for others, gifts, promises, gifts or benefits of in any way whatsoever to perform an act related to its function, even if it is fair, but not subject to counterpart or to facilitate the performance of an act in relation to duties of his office, or to refrain from performing an act of their office, to which they are held, is punished by ten years' imprisonment and a fine of twice the value of the present received or agreed promises, but not less than TND10,000."

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

In the draft organic law on the organization of political parties and their financing, article 33 states that a political party is prohibited from accepting:

"...aid, donations and donations from public or private legal persons, except for the financing funded by the State budget.

...aid, gifts, gifts and bequests from natural persons, the annual amount of which exceeds TND100,000 per donor."

Further, article 34 of the same draft law indicates that:

"The political party is prohibited from granting any benefits in cash or in kind to citizens."

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

According to the provisions of the Arab Convention on the fight against Corruption, ratified by Tunisia in 2016 via Presidential Decree No. 2016-134 of November 15, 2016, are indicted for acts of bribery or corruption in the private sector those that were committed intentionally or deliberately (Article 4).

However, there are no concrete general restrictions on corporate hospitality, except when it comes to specific fields. For instance, the internal regulations of the National Order of Tunisian Lawyers, although not setting specific guidelines, state that it is forbidden for any lawyer to have recourse to illicit means or misleading people in order to attract potential clients.

## 10. Are there any defenses for bribery offences?

There are no specific statutory defences regarding bribery offences under Tunisian law.

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

The national anti-corruption body created by Framework Decree Law No. 2011-120 of November 14, 2011 on the fight against corruption is the regulatory or enforcement body regarding bribery.

The national anti-corruption body has legal personality and administrative and financial autonomy.

The body is responsible in particular for the following tasks:

- proposing anti-corruption policies and monitor their implementation in collaboration with the parties concerned;
- issuing general guidelines on the prevention of corruption and provide adequate means for its detection, in collaboration with the parties concerned;
- unveiling sources of corruption in the public and private sectors;
- receiving complaints and denunciations, investigating and forwarding corruption offences to the competent authorities, including judicial authorities;
- issuing opinions on draft legislative and regulatory texts relating to anti-corruption;
- facilitating communication and promoting interaction between services and parties involved in the fight against corruption;
- collecting data, information and statistics on corruption in order to create a database for use in the performance of its tasks;
- disseminating social awareness on the seriousness of corruption through awareness-raising campaigns, conferences and meetings, the publication of journals and guides, and the organization of training sessions and the supervision of training programs; and
- carrying out or assisting in research and studies related to the fight against corruption.

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

The Framework Decree-Law on the fight against Corruption provides that the commission of a corruption offence entails criminal, civil and disciplinary liability of any natural or legal person, regardless of their status or function, without mentioning the length of the sentence.

In relation to the Penal Code, penalties vary by offence, typically ranging from one to ten years' imprisonment and a fine, with the most serious penalties applying in the case of a judge who allows themselves to be corrupted, in favor or to the prejudice of the accused, with such offense being punishable by life imprisonment or the death penalty (Article 88).

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

There are no deferred prosecution agreements (DPAs) available under Tunisian law for bribery offences, nor any other settlement mechanisms.

*Summary provided by El Ajeri Lawyers, a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.*

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