GETTING THE DEAL THROUGH

Anti-Corruption Regulation

in 44 jurisdictions worldwide

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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The United Nations Convention against Corruption was signed on 7 December 2003 and ratified by Portugal on 12 September 2007.

The United Nations Convention against Transnational Organized Crime was signed on 12 December 2000 and ratified by Portugal on 10 May 2004.

The Council of Europe Criminal Law Convention on Corruption was signed on 30 April 1999 and was ratified by Portugal on 20 September 2001.

The Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union was adopted by the Member States on 26 May 1997 and ratified by Portugal on 3 December 2001.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed on 26 May 1997 and ratified by Portugal on 10 March 2000.

The EU Convention on the Protection of the Financial Interests of the Communities and Protocols entered into force on 17 October 2002, having been ratified by all member states.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Portugal has had anti-corruption legislation in place since 1995 when 'active and passive corruption' was criminalised. In fact, the first criminal offences were included in the Portuguese Criminal Code and several autonomous laws and regulations have been created since then.

This approach to legislation means that Portuguese anti-corruption rules often overlap and are complex and frequently subject to legal peculiarities. This makes it necessary to address each one of the laws currently in force separately.

Under articles 372 to 374, the Portuguese Criminal Code creates five different criminal offences in respect of public officials.

Article 372(1) of the Criminal Code criminalises the conduct of a public official who, while performing his duties, or because of such duties, requests or receives (by himself or through a third party with his consent or approval), a financial or other advantage (for himself or for a third party).

Similarly, article 372(2) of the Criminal Code makes it a crime for a person to give or promise (even if through a third party, with that person's consent or approval) to a public official, while performing his duties, or because of such duties, or to a third party with the public official's knowledge, an undue financial or other advantage.

Article 373 of the Criminal Code creates two criminal offences of 'passive corruption'. Under article 373(1), whenever a public official requests, receives or agrees to receive (by himself or through a third party with his consent or approval), a financial or other advantage (for himself or for a third party), in order to act or omit to act (or to 'reward' a previous act or omission), when the act or omission breaches the public official's duties. If the act or omission does not breach the public official's duties and the advantage is not due, the conduct is criminalised under article 373(2).

Article 374(1 and 2) of the Criminal Code creates the offence of 'active corruption', where a person gives or promises (by himself or through a third party with his consent or approval) to a public official or to a third party with the public official's knowledge, a financial or other advantage, in order to lead the public official to act or omit to act (or to 'reward' a previous act or omission), regardless of whether the act or omission is in breach of the public official's duties.

Moreover, on 28 November 2001, criminal offences of corruption were created in respect of political office holders and high-ranking public officials. These offences were then incorporated into Law No. 34/87 of 16 July 1987 (most recent amendment: Law No. 4/2013 of 14 January 2013).

Under article 18(1 and 2) of this law, it is a criminal offence for a person to give or promise (even if through a third party, with that person's consent or approval) to a political office holder, a high-ranking public official or to a third party (upon the political office holder or high-ranking public official's orders or with any of those persons' knowledge) a financial or other advantage, in order to lead the public official to act or omit to act (or to 'reward' a previous act or omission), regardless of whether that conduct or omission breaches the political office holder's or public official's duties.

Furthermore, a political office holder or high-ranking public official is also subject to criminal liability if, while performing his duties or due to his duties, gives or promises (by himself or through a third party with his consent or approval) to a public official, to a political office holder or to a high ranking public official, or to a third party with any of those persons' knowledge, an undue financial or other advantage, in order to lead the political office holder or public official to act or omit to act, regardless of whether that conduct or omission breaches the political office holder or public official's duties (article 18(3) of Law No. 34/87).

Additionally, the political office holder or the high-ranking public official that, while performing his duties or due to his duties, requests, receives or agrees to receive (by himself or through a third party with his consent or approval), a financial or other advantage (for himself or for a third party), in order to act or omit to act (or to 'reward' a previous act or omission) in breach of the public official's duties is also subject to criminal liability under article 17(1) of Law No. 34/87). If the advantage is not due and the act or omission does not breach the public official's duties, the conduct is punishable under article 17(2) of Law No. 34/87.

Finally, article 16(1 and 2) create two additional and autonomous criminal offences:

- any political office holder or high-ranking public official who, while performing his duties, or because of such duties, requests

or receives (by himself or through a third party with his consent or approval), an undue financial or other advantage (for himself or for a third party) (article 16(1) of Law No. 34/87); and
- giving or promising (even if through a third party, with consent or approval) to a political office holder or high-ranking public official, while performing his duties, or because of such duties, or to a third party with the political office holder or high-ranking public official's knowledge, an undue financial or other advantage (article 16(2) of Law No. 34/87).

Law No. 100/2003 of 15 November 2003 (most recent amendment: Rectification No. 2/2004 of 3 January) creates, also autonomously, criminal offences in respect of military officials.

On the one hand, anyone who gives or promises (by himself or through a third party with his consent or approval) a military official or employee or a third party, with any of those persons' knowledge, an undue financial or other advantage, as a 'reward' for an act or omission on breach of the duties inherent to any of those persons' duties or activities and that constitutes a danger to national security, may be punished under article 37 of Law No. 100/2003).

On the other hand, the conduct of a military official or employee who requests, receives or agrees to receive (by himself or through a third party with his consent or approval) an undue financial or other advantage (for himself or for a third party), as a 'reward' for an act or omission that breaches the duties inherent to his duties or activity and that constitutes a danger to national security, is also criminalised (article 36 of Law No. 100/2003).

Notwithstanding the above, corruption is also punishable in the private sector. In fact, Law No. 50/2007 of 31 August 2007 establishes criminal liability for unsporting conduct.

Article 9 of this law criminalises 'active corruption': anyone who gives or promises (by himself or through a third party with his consent or approval) to a sports agent or to a third party with the sports agent's knowledge, an undue financial or other advantage, to commit an act or omission meant to modify or manipulate the outcome of a sports competition.

'Passive corruption' is, on the other hand, criminalised under article 8: any sports agent that requests, receives or agrees to receive (by himself or through a third party with his consent or approval), an undue financial or other advantage (for himself or for a third party), in order to act or omit to act in a way intended to modify or adulterate the outcome of a sports competition.

Law No. 20/2008 of 21 April 2008 creates criminal offences of corruption in international trade and in the private sector.

Under article 9 of Law No. 20/2008, it is an offence for a person to give or promise (even if through a third party, with that person's consent or approval) to a private sector employee or to a third party with his knowledge, an undue financial or other advantage, in order to lead the employee to act or omit to act in breach of the duties inherent to his functions or activities.

It is also a criminal offence, under article 8 of Law No. 20/2008, if a private sector employee requests, receives or agrees to receive (by himself or through a third party with his consent or approval), a financial or other advantage (for himself or for a third party), in order to act or omit to act in breach of the duties inherent to his functions or activities.

Finally, article 7 of Law No. 20/2008 makes it a crime for a person to give or promise (even if through a third party, with that person's consent or approval) to a public official (domestic, foreign or of an international organisation) or to a political office holder (domestic or foreign) or to a third party with the knowledge of one of those persons, an undue financial or other advantage, in order to obtain or maintain an agreement, a contract or any other undue advantage in international trade

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Portuguese law has no specific provision regarding bribery of a foreign public official.

However, as detailed below, when it comes to a possible legal definition of 'foreign public official', article 386 of the Portuguese Criminal Code, article 3 of Law No. 34/87 and article 7 of Law No. 20/2008 include, in the corresponding definitions of 'public official' and 'political office holder', a series of references that can be read as a notion of a 'foreign public official', (even though such definition is not defined by a specific law).

Bribery of a foreign public official will thus be directly reliant on the specific provisions of each one of the above-mentioned laws. For these purposes, bear in mind the considerations in question 4 in respect of the definition of a foreign public official.

4 Definition of a foreign public official

How does your law define a foreign public official?

Though Portuguese law does not offer a concrete definition of a foreign public official, several legal references are made to what may be assumed as the relevant definition of foreign public official for criminal purposes.

As regards criminal offences described in the Portuguese Criminal Code, article 386 offers a definition of public official. This definition includes, among others:
- a magistrate, public official, agent or equivalent of the European Union, regardless of his nationality or place of residence;
- a public official of any other member state of the European Union, whenever the offence is committed, in whole or in part, in Portugal.

The same equivalence is made in respect of the concept of 'political office holder' in Law No. 34/87, which includes, under article 3:
- a European Union political office holder, regardless of his nationality or place of residence;
- a political office holder of any other member state of the European Union, whenever the offence is committed, in whole or in part, in Portugal.

Finally, Law No. 20/2008, under article 7, specifically mentions that the relevant 'public official' can be domestic, foreign or of an international organisation and that the 'political office holder' can also be domestic or foreign.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

One of the main concerns of Portuguese companies is, in fact, the extent of hospitality the company is legally allowed to provide to its customers, employees and business partners.

In this regard, it is an unarguable fact that Portuguese law does not aim to prohibit hospitality or the allocation of bonuses as long as they are considered reasonable. The touchstone is the specific circumstances that underlie the hospitality, as well as the level of influence the person receiving it has on the business decision in question.

This means that gratuities and acts of hospitality cannot appear to represent any form of pressure or influence on the decision of the person receiving them and should always be kept within reasonable limits of what is commonly and socially accepted.

Among the acts of hospitality and bonuses that are consistent with commercial practices commonly accepted are, for instance, the following:

- casual offering of lunch or dinner in the context of the company's business;
- sporadic supply of tickets to sporting or arts events, as a demonstration of good business relations;
- travel expenses of trading partners; and
- gifts of low value, such as merchandising or small promotional items.

To ensure that the rewards and hospitality provided fall within this criterion of reasonableness, hospitality and bonus practices should be evaluated in light of common sense and, mainly, it ought to be clear that there is no intention of influencing a decision and that the hospitality or gratuity is not capable of undermining the free will of the beneficiaries. It is perfectly acceptable to provide a gratuity or an act of hospitality aimed, for instance, at fostering good business relations, improving the commercial image of the company, its products or services, or if it corresponds to a common practice in the sector.

The reasonableness of gratuities and acts of hospitality depends heavily on an analysis of the specific circumstances of the case. Nevertheless, what is clearly considered restricted is, for instance, hospitality or gratuities offered on a reciprocal basis; bonuses granted in cash or the equivalent (ie, vouchers, bonds, etc); entertainment of a sexual or similar nature; bonuses to employees and public officials and their families (unless this is the social practice in the country concerned).

In general terms, we should assume that Portuguese law does not consider conduct consistent with socially accepted customs to be relevant in criminal terms.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Facilitation payments are common in some countries, made to expedite certain routine steps that the public official has a clear and non-discretionary duty to perform.

However, in Portugal, facilitation payments fall under the scope of the acts prohibited by the legislation against bribery.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

As mentioned above, in Portugal all bribery offences can be committed through a third party (see, above, 'by himself or through a third party').

Moreover, Portuguese law also considers anyone who commits the offence through a third party to be 'the principal' of a crime, as long as the third party does not have the 'criminal intent' (eg, when the third party acts under coercion or in error) – article 26 of the Criminal Code.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Under the Portuguese Criminal Code, both individuals and companies may be prosecuted for bribery of a foreign official in respect of the criminal offences contained in articles 372 and 374 of the Criminal Code (article 11(2) of the Criminal Code).

A similar provision is established for the criminal offences of Law No. 20/2008 (article 4).

The remaining offences can only be committed by individuals.

In fact, a company's liability must be expressly established by law, since it is an exception to the general rule according to which only individuals can be criminally liable (article 11(1) of the Criminal Code).

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

Bribery is a criminal offence, thus enforcement of bribery laws will take place through criminal proceedings. However, anyone who causes damage to a third party is responsible for repairing such damage, thus, any party that considers it has suffered a loss or damage may seek adequate compensation (principally by joining the criminal proceeding as a civil party or, in some exceptional circumstances, by means of separate civil proceedings).

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

There is no specific government agency in Portugal responsible for the enforcement of bribery laws. Public prosecutors are responsible for investigating (possibly with the cooperation of the police) and prosecuting bribery offences.

However, the Central Department of Investigation and Prosecution (DCIAP), was created in August 1998 as a multidisciplinary organisation directly dependent on the Attorney General's Office – the highest body of the Portuguese Public Prosecution Service.

This department is exclusively responsible for investigating and prosecuting bribery offences whenever the criminal activity occurs in a different area of the country or, by order of the Attorney General, whenever the complexity or territorial dispersion of the offences justifies a centralised investigation.

Trial is committed to a judicial court (usually, a court specialising in criminal matters).

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

In respect of criminal offences of corruption, Portuguese law does not establish any sort of disclosure mechanisms that guarantee the company an application of a lower sanction.

However, article 374-B of the Portuguese Criminal Code and article 19-A of Law 34/87 establish an exemption from the penalty if the defendant denounces the crime within 30 days of its commission and if no criminal proceedings are already pending by the time the disclosure is made.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

Portuguese criminal procedure assumes the 'principle of legality' as a main procedural principle.

This means that the public prosecutor is forced to initiate an investigation whenever he receives notice that a crime has been committed (the sole exception being private crimes in the broad sense, where a complaint is required).

The public prosecutor is also under a duty to prosecute whenever sufficient evidence is gathered, during the inquiry, that the requirements on which the application of a criminal sanction depends are fulfilled (the sole exception being private crimes in the strict sense, where private prosecution is required).

The principle of legality means that our law does not recognise any means of resolving criminal matters by 'bargaining'. Nonetheless, there are some legally recognised deviations to this principle.

Article 280 of the Portuguese Criminal Procedure Code establishes that the Public Prosecutor, at the end of the investigatory phase, may close the proceedings if he concludes all the conditions that

could lead to the application of an exemption from the penalty later at trial are met. This exemption is applicable to the offences punishable with imprisonment not exceeding six months or fine not exceeding 120 days, if:

- the gravity of the facts and the culpability of the defendant are low;
- the damage is compensated or repaired; and
- the exemption does not compromise the purposes of prevention.

This decision must be agreed with by an investigating judge, who can also dismiss the proceedings if, once the defendant has already been prosecuted, he considers the requirements are fulfilled.

The Portuguese Criminal Procedure Code also establishes the 'provisional suspension of the proceedings', under article 281. Under this rule, the public prosecutor must 'provisionally suspend the proceedings' if the offence is punishable with imprisonment not exceeding five years or with a sanction other than imprisonment and:

- both the defendant and the complainant (in general terms, the offended party) agree with its terms;
- there is no prior conviction or prior 'provisional suspension' for a crime of the same nature;
- a security measure of internment in a mental institution is not applicable (lack of capacity);
- the culpability of the defendant is not high; and
- the defendant's compliance with the prohibitions and rules imposed on it is deemed sufficient to accomplish the purposes of prevention.

Under article 282 of the Criminal Procedure Code, the suspension has, in principle, a maximum term of two years, during which the defendant must comply with certain prohibitions and rules – which may include, for example, the reparation of the damage caused to the victim. If the defendant respects the rules imposed and commits no other crime during the period of the suspension, the proceedings are closed.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Since 1 January 2002 (when Law No. 108/2001, of 28 November, entered into force), the law specifically establishes that, in respect of bribery offences established in articles 16 to 18 of Law No. 34/87 (see question 2), public officials include not only Portuguese public officials, but also EU political office holders, regardless of their nationality or place of residence, and political office holders of any other EU member state, whenever the offence is committed, in whole or in part, in Portugal.

Furthermore, Law No. 59/2007, of 4 September, established possible criminal punishment of companies in respect of criminal offences of bribery in the Portuguese Criminal Code.

Finally Law No. 20/2008, of 21 April, implementing Framework Decision No. 2003/568/JAI, of 22 July, created the above-mentioned offence of corruption in international trade, also establishing companies' criminal liability for the commission of this offence.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

In general terms, the jurisdiction of the Portuguese courts and the application of Portuguese criminal law are restricted to crimes committed in Portugal, either by Portuguese or foreign citizens or companies.

The Portuguese Criminal Code includes some exceptions to this general rule, but none is applicable to a situation of a foreign company bribing a foreign public official, unless the representatives of the foreign company are found in Portugal, the crime allows extradition and the extradition cannot be granted or it is decided not to execute a European arrest warrant or any other international cooperation measure (article 5(1) f)).

As regards corruption in international trade, a foreign company can be prosecuted for bribing a foreign public official, an official of an international organisation or a foreign political office holder if its representatives are found in Portugal, regardless of where the criminal offence was committed (article 3(a) of Law 20/2008)

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

Portuguese law establishes different penalties for individuals and companies that commit 'passive corruption' offences in respect of a foreign public official.

In fact, according to the Portuguese Criminal Code, individuals are punishable with:

- imprisonment up to five years or fine up to 600 days when giving or promising the public official an undue advantage (article 372(2));
- imprisonment from one to five years when giving or promising an advantage for an act or omission that breaches the public official's duties (article 374(1)); and
- imprisonment up to three years or fine up to 360 days when giving or promising an advantage for an act or omission that does not breach the public official's duties (article 374(2)).

On the other hand, under Law No. 34/87, individuals may be punished with:

- imprisonment up to five years or fine up to 600 days when giving or promising the political office holder an undue advantage (article 16(2));
- imprisonment from two to five years when giving or promising an advantage for an act or omission that breaches the political office holder's duties (article 18(1)); and
- imprisonment up to five years, when it does not breach the political office holder's duties (article 18(2)).

Finally, according to Law No. 20/2008, individuals are punishable for bribery offences with imprisonment from one to eight years when giving or promising the public official or political office holder an undue advantage in order to obtain or maintain an agreement, a contract or any other undue advantage in international trade (article 7).

An imprisonment penalty of up to one year can be replaced by a penalty that does not imply deprivation of freedom, subject to certain requirements (principally if the purposes of prevention are not compromised) – articles 43 to 46 of the Criminal Code.

If the sentence is up to five years, it can be suspended if the purposes of prevention are not compromised; the suspension can be subject to the imposition of certain injunctions and rules (articles 50 to 52) or of probation orders (articles 53 and 54 of the Criminal Code).

If the defendant could be sentenced to imprisonment up to two years, the penalty may be replaced by community service if the purposes of prevention are not compromised (articles 58 and 59 of the Criminal Code).

A fine can also be replaced by community service, if the purposes of prevention are not compromised and upon the defendant's request (article 48 of the Criminal Code). It can also be replaced, if the defendant could be sentenced to a fine up to 240 days, if the purposes of prevention are not compromised by a mere admonition and if the damage caused has been repaired (article 60 of the Criminal Code).

Apart from that, and subject to several requirements, an offence committed by a public official or political office holder can determine

Update and trends

According to Transparency International's 2013 Corruption Perceptions Index, the Portuguese public sector is seen as still suffering from corruption – in a list of 177 countries and territories, Portugal is ranked 33rd, with a score of 62 out of 100 (where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean).

Nevertheless, there have been several events and initiatives aimed at ensuring that the law is not just law in writing but also law in action.

For instance, in January 2012, the Central Department of Investigation and Prosecution organised a public conference to publicise its recently published 'Good Practice Guide' on corruption offences.

In December 2012 the project GestãoTransparente.Org was created. This is a practical guide to the management of corruption risks in organisations that promotes and develops anti-corruption strategies for organisations. The website of the project (http://gestaotransparente.org/en/) even enables companies to assess the internal risks of corruption through an online simulator.

Finally, it is also worth noting the founding, by a civic association – the Portuguese representative of the Transparency International network – of a support centre for citizens that aim to denounce corruption situations. This centre will also provide legal advice and is expected to become operational during the first half of 2014.

such measures. Measures to achieve these ends may include, inter alia: ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures (article 12(2), paragraph f).

Furthermore, and in order to prevent corruption, each signatory state must introduce such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this convention:

- the establishment of off-the-books accounts;
- the making of off-the-books or inadequately identified transactions;
- the recording of non-existent expenditure;
- the entry of liabilities with incorrect identification of their objects;
- the use of false documents; and
- the intentional destruction of book-keeping documents earlier than provided for by the law (No. 3).

In spite of the above, it must be pointed out that, in accordance with article 422(3) of the PCC, the company's statutory auditor and the members of the supervisory board must pass on to the Public Prosecution Service any wrongful facts which have come to their knowledge and which constitute public crimes, as is the case of bribery. The very same duty falls upon the chairman of the audit committee of share companies (if any) – article 423-G(3) of the PCC.

In fact, and in general terms, the members of the corporate bodies with supervisory powers must execute their duties in the interests of the company, executing proper care and employing high standards of professional diligence and loyalty (under article 64(2) of the PCC).

It should also be understood that the same duty of disclosure – both with regard to bribery actions and associated accounting irregularities – falls upon the managers or directors of private companies, considering the extent of their obligations towards the companies, as set out in article 64 of the PCC, as follows: their duty of care towards the organisation, displaying willingness, technical competence and an understanding of the company's business that is appropriate to their role, and executing their duties with the diligence of a careful and organised manager; and their duty to be loyal to the interests of the company, serving the long-term interests of the partners and taking into account the interests of other relevant parties such as employees, clients and creditors in ensuring the sustainability of the company.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

We understand that the rules mentioned above were created to prosecute both domestic and foreign bribery, as long as there is – of course – some sort of relevant connection with the Portuguese company at issue, whose interests the law is intended to safeguard. Nonetheless, specific provisions on the territorial application of the laws must be assessed and complied with on a case-by-case basis.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

From a corporate law point of view, failure to comply with the legal procedural requirements applicable to the management report and the annual accounts – whatever the cause may be – causes the resolutions passed by the quotaholders or shareholders (as applicable) in respect of the report and accounts to be voidable. In such event, the partners may apply to the courts for the annulment of the resolution, provided such application is submitted within 30 days of its approval (or, in the case of a written resolution, as from the third day following service of the minutes, or, in case of absence of the quotaholder, as from it becoming aware of the resolution, provided certain conditions are met).

Attention must also be paid to the fact that, as a result of the non-compliance with such duties, both the statutory auditor and the managers or directors of the companies in question are liable towards them (meaning their shareholders) – articles 72 and 81 of the PCC.

Article 519 of the PCC establishes that individuals may also be criminally punished if any false information related to the company is provided to a third party (if those individuals are legally obliged to provide that information) – with imprisonment up to three months and with a fine up to 60 days, unless the same conduct is more severely punished by another law.

From a criminal law point of view – reference being made to the Portuguese Criminal Code, article 256 – individuals and companies may also be held criminally liable for 'forgery of documents', if the intention is:

- to cause a loss to a third party or to the state; or
- to obtain (for themselves or a third party) an unlawful benefit; or
- to prepare, facilitate, execute or conceal the commitment of another criminal offence.

With reference to credit institutions and financial companies, forgery of accounts and the failure to maintain an organised accounting, as well as the failure to comply with any other accounting rules applicable may be also considered as an administrative offence (article 211(g) of the General Regime for Credit Institutions and Financial Companies), if that forgery or failure seriously interferes with an accurate assessment of the asset or financial position of the company.

the prohibition or suspension of his duties (articles 66 to 68 of the Criminal Code).

Companies can only be punished with a principal penalty of fine or dissolution (and with several ancillary penalties, including a ban on continuing its activity or making contracts with Portuguese state-owned or related entities) (article 90-A(1 and 2) of the Criminal Code)

Whenever the law does not establish a fine for the offence, the imprisonment penalty established is converted into a fine (a month in prison is equivalent to 10 days of fine) (article 90-B (1 and 2) of the Criminal Code).

If the company should be sentenced to a fine up to 240 days, the court can decide to apply a mere admonition, if the purposes of prevention are not compromised and if the damage caused has been repaired (article 90-C of the Criminal Code). The fine can also be replaced by a good conduct bond (from €1,000 to €1 million for a period of one to five years), if it should be applied in no more than 600 days (article 90-D of the Criminal Code). In this situation, it can also be replaced by the mere obligation of having a judicial representative auditing its activity, for a period of one to five years (article 90-E of the Criminal Code).

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

According to the annual report of the Attorney General of the Republic concerning the year 2012, the number of complaints related to bribery saw a significant increase – 1,895 complaints were made.

The allegations of corruption and fraud made on the website of the Portuguese Public Prosecution Service gave rise to 34 criminal investigations.

However, there is no official register that enables us to determine which of the initiated proceedings involves foreign bribery.

Financial record keeping

17 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

In accordance with the Commercial Code, enacted by Letter of Law of 28 June 1888, as most recently amended by Decree-Law No. 62/2013, of 10 May 2013, commercial companies are under the duty to have minute books containing all the minutes of meetings held by the company's shareholders, managers and directors and other corporate bodies, which must be recorded and duly signed.

The Portuguese Companies Code (PCC), enacted by Decree-Law No. 262/86, of 2 September, as most recently amended by Law No. 66-B/2012, of 31 December, provides for a right to information on the part of quotaholders in respect of all management decisions, in the following terms (as per article 214): the managers of private companies limited by quotas (quota companies) must submit truthful, complete and clear information on the management of the company to any partner requesting it, and must also make the respective accounts, books and documents available for consultation at the company's registered offices.

The same duty is placed on directors of companies limited by shares (share companies), according to article 288 of the above code. In fact, any shareholder who owns shares corresponding to at least 1 per cent of the share capital may, provided he has just cause, consult the following at the company's registered offices:

(i) the annual report and financial statements required by law, relating to the previous three financial years, including statements of opinion from the supervisory board, the audit committee, general and supervisory council or the committee for financial matters, and also any reports from the statutory auditor which are subject to publication, under the terms of the law;
(ii) the notice of meeting, minutes and attendance lists of general and special meetings of shareholders and meetings of bondholders held in the previous three years;
(iii) the total value of remuneration paid in relation to each of the previous three years to members of the corporate bodies;
(iv) the total amounts paid in relation to each of the previous three years to the 10 employees of the company who received the highest remuneration (if the workforce exceeds 200) or the 5 employees of the company who received the highest remuneration, if the workforce is 200 or less; and
(v) the share registration document.

It should be noted that the accuracy of the items referred to in paragraphs (iii) and (iv) must be certified by the statutory auditor, if the shareholder so requires.

From a corporate governance structure perspective, we should point out that quota companies are not obliged to have a supervisory board or a sole auditor, save when, in two consecutive years, two of the following three thresholds are exceeded:

- total balance sheet in excess of €1.5 million;
- total turnover and other revenues of €3 million; and
- average of 50 employees throughout the year.

As for share companies, and on the contrary, the appointment of a supervisory board or at least a sole auditor (with an effective and an alternate member) is required. Moreover, if a company exceeds two of these thresholds – total balance sheet of €100 million; total net sales and other revenues of €150 million; or average number of employees throughout the financial year of 150 – during two consecutive years, it will be considered a major share company and subject to the applicable framework. This means that, if that is the case, some changes must be made to the corporate governance model of the company, mainly as to the respective supervisory and audit structure.

Finally, pursuant to Decree-Law No. 158/2009, of 13 July, both share companies and quota companies must submit annual (or quarterly in the case of public companies) accounting statements. The internal approval and public submission of company's accounts must follow these steps: first, the management report, balance sheet, profit and loss account and pertaining annexes must be prepared and signed by all the directors of the companies in office at the time the documents are to be submitted. Second, the company's statutory auditor must deliver an annual report, an opinion issued with reference to the account documents, as well as a legal certification of the accounts. Third, an annual general meeting of the quotaholders or shareholders (as applicable) must be held no later than three months after the financial year's end (ie, as a rule by 31 March of each calendar year), to pass a resolution approving the accounts and the proposal of allocation of the results. The annual accounts are directly submitted to the Tax Authority by the company's chartered accountant, by the 15th day of the seventh month following the end of the tax year.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Resolution of the Assembly of the Republic of Portugal No. 47/2007, of 21 September, approved the United Nations Convention against Corruption of 31 October 2003.

Article 12 of the convention provides that each signatory state must introduce measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Pursuant to the Portuguese Corporate Income Tax (CIT) Code, expenditures incurred in violation of Portuguese criminal law (even if outside its territorial scope of application) are non-deductible for tax purposes. Thus it is our understanding that both domestic and foreign bribes are not deductible in Portugal for tax purposes.

Domestic bribery

22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The relevant laws regarding bribery of (domestic or foreign) public official are the Criminal Code (articles 372(2) and 364), Law No. 34/87 of 16 July 1987 (articles 16(2) and 18) and Law No. 20/2008 of 21 April 2008 (article 7), as described in question 2. Law No. 100/2003 of 15 November 2003 creates bribery offences in respect of military officials (see question 2).

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

The law does prohibit both paying and receiving a bribe, as detailed in question 2 above. The first scenario is relevant for 'active corruption', while the second for 'passive corruption'.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

Portuguese law does not offer a definition of public official. However, article 386 of the Portuguese Criminal Code considers as public officials:

- civil officials;
- administrative agents;
- arbitrators, juries or experts;
- employees or staff (even if unpaid or temporary) that hold any position in administrative or judicial public activities or in a public utility body; and
- managers, members of the supervisory bodies and employees of public, nationalised, state-owned, state-controlled companies or of a public services concession-holder company.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Public functions should be carried out on an exclusive basis. For this reason, the general principle is a prohibition on carrying on public and private activities simultaneously (articles 25 and 28, Law No. 12-A/2008, of 27 February).

However, the law allows a public official carry on public and private activity if a prior authorisation is granted and, in general terms, if that private activity is considered as not being capable of jeopardising the public interest inherent to the public official's public functions and duties.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

In general terms, gifts and gratuities are prohibited. However, it is considered that those that are socially accepted and usual according to tradition and local customs are not relevant for criminal purposes. (See question 5.)

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

In general terms, gifts and gratuities that are socially accepted and usual according to tradition and local customs are not relevant for criminal purposes. (See question 5.)

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Yes. See question 2 regarding Law No. 50/2007 of 31 August and Law No. 20/2008 of 21 April.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

The penalties for foreign and domestic bribery are the same (see question 15).

Specifically regarding Law No. 100/2003 of 15 November, active corruption of an airforce or any other military force's official or employee is punishable with imprisonment from one to six years. For this crime, only individuals can be criminally liable.

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30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Portuguese law does not distinguish facilitation payments from other bribes, see question 6.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

The most recent high-profile criminal case is related to the investigation of a major group of Portuguese companies, principally as regards business relationships established with state-owned or part owned companies. Several companies and individuals are accused of criminal association, corruption, influence-peddling and fraud, among other crimes. This case is known as *Face Oculta* and at the time of writing the trial is still under way.

One of the most high-profile cases involving bribery laws being currently investigated relates to the purchase contract for submarines made between the Portuguese state and a German manufacturing consortium. Several companies and individuals are being investigated for the crimes of corruption, money-laundering, fraud and tax evasion and misconduct in office, among other crimes.