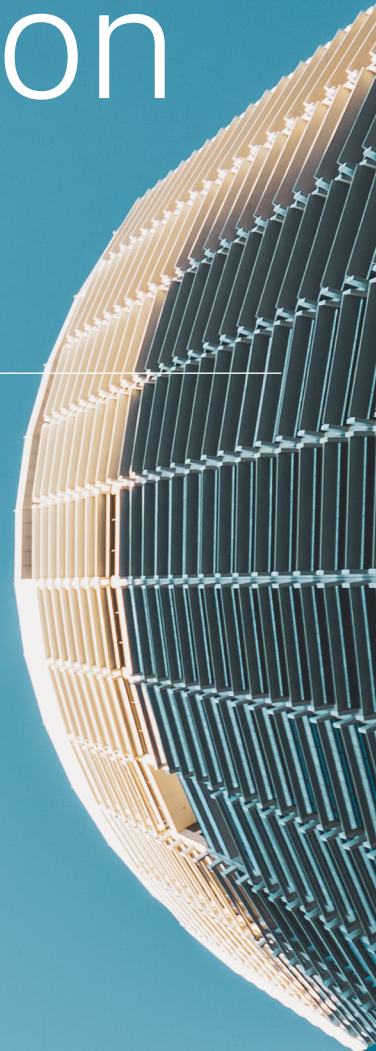

CHAMBERS GLOBAL PRACTICE GUIDES

Anti-Corruption 2025

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Portugal: Law and Practice

Pedro Duro, Mariana Proença Lobo
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CS'Associados



PORTUGAL



Law and Practice

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CS'Associados offers a comprehensive advisory service focused on the specific regulatory requirements of different sectors of activity, both in relation to the prevention of illegal practices – through the promotion and implementation of compliance policies – and the monitoring of the different phases of sanctioning processes. The team monitors cases before national and international courts (such as the Court of Auditors, the Constitutional Court and the European Court of Human Rights), administrative authorities (namely, the Securities Market Commission,

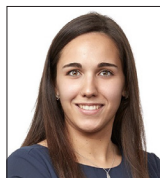
the Bank of Portugal, the Competition Authority and the Insurance and Pension Funds Supervisory Authority) and parliamentary inquiry committees, and supports negotiations in the pre- and post-litigation phases. CS'Associados also advises in cases where the team's knowledge and experience can help clients in the investigation and defence of cases, in internal investigations of any company in any sector, and in national and international sports sanctioning proceedings.

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1. Legal Framework

1.1 International Conventions

Portugal is a party to several international conventions related to the prevention of corruption and bribery, namely:

- the EU Convention on the Protection of the European Communities' Financial Interests (1995) and Additional Protocols (1996 and 1997);
- the EU Convention on the fight against corruption involving officials of the European Union or officials of Member States of the European Union (1997) (to be replaced by a Directive of the European Parliament and of the Council, in accordance with the European Commission's proposal (COM/2023/234));
- the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) of the Organization for Economic Co-operation and Development (OECD);
- the Council of Europe's Criminal Law Convention of Corruption (1999) and Additional Protocol (2003);
- the United Nations' Convention against Corruption (2003); and
- the United Nations' Convention against Transnational Organized Crime (2003) and Protocols.

Portugal has also been a member of the Council of Europe's Group of States against Corruption since 1 January 2002.

1.2 National Legislation

Portugal recognises several criminal offences related to bribery and corruption. A list of the relevant national legislation and offences is provided in the following.

- The Criminal Code:
 - (a) influence-peddling (Article 335);
 - (b) undue receipt/offer of advantages by a public official (Article 372);
 - (c) passive corruption in the public sector (Article 373); and
 - (d) active corruption in the public sector (article 374).
- The Companies Code: submission of fraudulent accounts by the manager or director of a commercial company (Article 519-A).
- Law No 34/87 of 16 July 1987, as amended, regulating the criminal liability of holders of political offices in relation to:
 - (a) undue receipt/offer of advantages by a political or high public official (Article 16);
 - (b) passive corruption of political and high public officials (Article 17); and
 - (c) active corruption of political and high public officials (Article 18).
- Law No 100/2003 of 15 November 2003 approving the Code of Military Justice and relating to:
 - (a) passive corruption of an individual serving in the armed forces or other military forces for the performance of an illicit action (Article 36); and
 - (b) active corruption of an individual serving in the armed forces or other military forces (Article 37).
- Law No 14/2024 of 19 January 2024 regulating corruption in sports, namely:
 - (a) passive corruption in the context of sports competitions (Article 14);
 - (b) active corruption in the context of sports competitions (Article 15);
 - (c) influence-peddling (Article 16); and
 - (d) undue receipt/offer of advantages (Article 17).
- Law No 20/2008 of 21 April 2008, as amended, regulating corruption in international trade and the private sector, namely:

- (a) active corruption in prejudice of international trading (Article 7);
 - (b) passive corruption in the private sector (Article 8); and
 - (c) active corruption in the private sector (Article 9).
- Decree-Law No 28/84 of 20 January 1984, as amended, regulating anti-economic and public health offences, namely:
 - (a) undue use of EU revenue (Article 37-A).

Corruption is also relevant in other contexts. For instance, under Article 55 of the Public Procurement Code (Decree-Law No 18/2008 of 29 January 2008, as amended), anyone who has been convicted of corruption cannot take part in a public tender. Corruption is also deemed to be an aggravating circumstance when determining the penalty applicable to the defendant for customs, tax crimes and crimes against the social security system, pursuant to the provisions of Article 97 (paragraph d), Article 104 (paragraphs c and d) and Article 106(3) of Law No 15/2001 of 5 June 2001, as amended.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

The National Anti-Corruption Mechanism (*Mecanismo Nacional Anticorrupção*) published, in September 2023, guidelines on the drafting and implementation of the corruption prevention mechanisms foreseen in the Portuguese Corruption Prevention Framework. The National Anti-Corruption Mechanism was preceded by the Court of Auditor's Corruption Prevention Council (*Conselho de Prevenção da Corrupção*), which also issued guidelines on the interpretation and enforcement of national legislation aimed at bribery and corruption prevention.

Article 372 of the Criminal Code and Article 16 of Law No 34/87 of 16 July 1987, as amended,

are not applicable when the conduct foreseen therein is “socially relevant”. Even though a definition of “socially relevant” is not provided, it has been accepted that socially relevant conduct is in line with the guidelines for acceptance of gifts and invitations by members of the government and of their respective cabinets, as provided for in the government's Code of Conduct, approved by Resolution No 64/2024 of 24 April 2024 and Law No 52/2019 of 31 July 2019, establishing guidelines for the acceptance of institutional offers and hospitality from holders of political and high public offices.

1.4 Recent Key Amendments to National Legislation

In 2024, the following key amendments were approved:

- Law No 4/2024 of 15 January 2024, amending the Criminal Code and Decree-Law No 28/84; and
- Law No 14/2024 of 19 January 2024, establishing a legal framework for integrity in sports and the fight against anti-sporting behaviour.

2. Bribery and Corruption Elements

2.1 Bribery

The receipt of a bribe, directly or through a third party (such as a family member), is an offence (corruption) in Portugal. A bribe may be a pecuniary or non-pecuniary advantage.

The following behaviours (committed directly or through a third party) could be also considered as an offence:

- offering of an advantage;
- proposing an advantage; or
- requesting an advantage.

The above-mentioned behaviours may be punishable when committed by the following persons:

- a public official;
- a foreign public official;
- a public official of an international organisation;
- a foreign political officeholder; or
- a private sector employee.

Public Officials

Public officials include:

- civilian public employees and military employees;
- anyone who holds a public office by virtue of a special bond;
- anyone who, temporarily or provisionally, for remuneration or free of charge, or voluntarily or compulsorily, has been called upon to perform or participate in the performance of an activity included in the administrative or judicial public service;
- judges of the Constitutional Court, judges of the Court of Auditors, judicial magistrates, magistrates of the Public Prosecution Office, the Prosecutor General of the Republic, the Ombudsman, members of the Superior Council of the Judiciary, members of the Superior Council of Administrative and Tax Courts and members of the Superior Council of the Public Prosecution Office;
- arbitrators, jurors, experts, technicians assisting the court in judicial inspection, translators, interpreters and mediators;
- notaries;
- anyone who, provisionally or temporarily, for remuneration or free of charge, or voluntarily or compulsorily, performs – or participates in the performance of – a public administrative function or exercises functions of authority in

relation to a legal person or entity of public benefit, including private charities; and

- anyone performing or participating in the performance of public functions in a public association.

The following persons are considered equivalent to public officials: members of a management, administrative or supervisory body, and employees of public, nationalised, publicly owned companies, companies with a majority holding of public capital or companies that are concessionaires of public services. In the case of companies with an equal or minority holding of public capital, the members of a management or administrative body appointed by the state or by another public entity are treated as employees.

The following persons are also considered to be public officials for the purposes of Articles 335 and 372 to 375 of the Criminal Code:

- magistrates, officials, agents and equivalent organisations governed by public international law, regardless of nationality and residence;
- officials who are nationals of other states;
- all those who perform functions identical to those described for the public officials identified in the foregoing, within the scope of any international public law organisation of which Portugal is a member;
- magistrates and officials of international courts, provided that Portugal has declared that it accepts the jurisdiction of those courts;
- all those who perform functions within the scope of extrajudicial conflict resolution procedures, regardless of nationality and residence; and
- jurors and arbitrators who are nationals of other states.

Foreign Public Official

A foreign public official is a person who, in the service of a foreign country as an official or a servant, or in any other capacity – whether temporarily or provisionally, for remuneration or free of charge, or voluntarily or compulsorily – has been called upon to perform or participate in the performance of an activity included in the public administrative or judicial service or, in the same circumstances, performs functions or participates in public utility bodies, is a manager, supervisory board member or employee of a public, nationalised, publicly owned or publicly majority-owned company, or is a public service concessionaire. Any person who takes up and exercises a public service function in a private company under a public contract is also a foreign public official.

Public Official of an International Organisation

A public official of an international organisation is a person who, in the service of an international organisation governed by public law – as an official or servant, or in any other capacity, and whether temporarily or provisionally, in exchange for remuneration or free of charge, on a voluntary or compulsory basis – has been called upon to perform or participate in the performance of an activity.

Foreign Political Officeholder

A foreign political officeholder is a person who, in the service of a foreign country, holds a position in the legislative, judicial or executive branch at the national, regional or local level to which they have been appointed or elected.

Private Sector Employee

A private sector employee is a person who performs duties, including management or supervisory duties, under an individual contract of

employment, service provision or otherwise – even temporarily – for remuneration or free of charge in the service of a private sector entity.

Bribery Between Private Parties

An example of corruption in the private sector is where an employee of a private company offers an advantage to another employee of another private company to be chosen to provide a certain service. This behaviour may be punishable under Articles 8 and 9 of Law No 20/2008 of 21 April 2008, as amended.

Hospitality Expenditures, Gifts, Promotional Expenditures and Facilitation Payments

Regarding gifts and hospitality (travel expenses, meals), Portugal has a specific regime only applicable to holders of political and high public office. Law No 52/2019 of 31 July 2019 has established a maximum and reasonable limit of up to EUR150. The same limit is established in the government's Code of Conduct. There is no identical limitation for private companies. However, and with the entry into force of the Portuguese Corruption Prevention Framework, all companies with more than 50 employees have the obligation to implement a Code of Conduct that sets out principles, values and rules in relation to professional ethics, taking into account the criminal rules on corruption and related offences and the risks of the entity being exposed to these crimes. In September 2023, the National Anti-Corruption Mechanism (responsible for the supervision of compliance with the duties foreseen in the Portuguese Corruption Prevention Framework) published guidelines with some indications and explanatory notes on methodological precautions for drawing up and adopting, among other things, the Code of Conduct. In relation to the aforementioned guidelines, the National Anti-Corruption Mechanism states that it is important to foresee situations in which

the receipt of gifts, hospitality or other types of benefits is allowable in an institutional context. It is also recommended that internal communication be promoted, with entities and organisations keeping a record of all situations of this nature as a way of strengthening and deepening trust and transparency.

With this in mind, companies have been establishing rules regarding receiving gifts and hospitality (allowance or prohibition), as well as a maximum value (frequently in line with the regime created for politicians).

In light of the foregoing, receiving a gift, hospitality expenses or promotional expenses does not constitute an offence itself. The specific circumstances should be analysed in order to conclude whether it is a reasonable gift or hospitality expense, or whether it is a means of bribing an employee.

Facilitation payments are not allowed and are considered to constitute an offence in the Portuguese jurisdiction.

2.2 Influence-Peddling

Influence-peddling is foreseen as a crime under Article 335 of the Criminal Code.

A person who requests or accepts a patrimonial or non-patrimonial advantage, or the promise thereof, in order to abuse their influence, real or supposed, with any national or foreign public entity, may be punished with:

- imprisonment for a period of one to five years, if a more serious penalty is not applicable under any other legal provision and if the purpose is to obtain any favourable unlawful decision; or

- imprisonment for a period of up to three years or a fine, if a more serious penalty is not applicable under any other legal provision and if the purpose is to obtain a favourable lawful decision.

A person who gives or promises a patrimonial or non-patrimonial advantage, or the promise thereof, in order to abuse their influence, real or supposed, with any national or foreign public entity may be punished with:

- imprisonment for a period of up to three years or with a fine, if the purpose is to obtain any favourable unlawful decision; or
- imprisonment for a period of up to two years, or a fine with a period of up to 240 days, if the purpose is to obtain a favourable lawful decision.

Attempts made towards the above-described offences are also punishable.

For individuals, the period of the fine ranges from 10 to 360 days, with the minimum and maximum daily amount of the fine varying between EUR5 and EUR500 (depending on the financial situation of the defendant).

For companies, the daily amount of the fine ranges between EUR100 and EUR10,000 (depending on their financial situation). The minimum fine period for companies is 10 days, and the maximum period depends on the crime the company is being charged of (please see **5.1 Penalties on Conviction** and **5.2 Guidelines Applicable to the Assessment of Penalties**).

2.3 Financial Record-Keeping

Document forgery (including forgery or inaccuracy of corporate books and records) is a crime under Article 256 of the Criminal Code, being

punishable with imprisonment for a period of up to five years.

Moreover, Article 379-E of the Portuguese Securities Code criminalises the use of false or wrongful information in operations launched by public companies, with the applicable punishment being imprisonment for a period of up to eight years (wrongful offence) or four years (negligent offence).

Pursuant to the Legal Framework of Credit Institutions and Financial Companies, account forgery, a lack of organised accounting and violation of the accounting rules established by the Banco de Portugal are deemed as regulatory offences under Article 211, No 1, paragraph g, punishable with a fine of up to EUR5 million (for individuals and companies).

2.4 Public Officials

Embezzlement

Embezzlement is a crime under Article 375 of the Criminal Code, being punishable with imprisonment for a period of one to eight years if a more serious penalty is not applicable under another legal provision. Where the valuables/objects unlawfully appropriated are of a value higher than EUR102, the public official may be punishable with imprisonment for up to three years or a fine.

If the public official lends, pledges or in any way takes valuables or objects that have been handed over to him or her, he or she may be punished with imprisonment for up to three years or a fine, if a more serious penalty is not imposed by virtue of another legal provision.

Personal Favouring

Under Article 367 of the Criminal Code, the crime of “personal favouring” occurs when a person

prevents, frustrates or evades – in whole or in part – the probationary or preventative activity of a competent authority, with the aim of preventing another person who has committed a crime from being subjected to a penalty or security measure. This is punishable with imprisonment for up to three years or a fine. The same penalty applies to anyone who assists another person with the aim of totally or partially preventing, frustrating or evading a sentence or security measure that has been imposed on them.

Personal Favouring by a Public Official

This is a crime under Article 368 of the Criminal Code. Whether committed by a public official who intervenes or has the power to intervene in the proceedings, or by someone who has the power to order the execution of a sentence or security measure, or is charged with executing it, this crime may be punishable with imprisonment for up to five years.

2.5 Intermediaries

Intermediaries are treated, under Portuguese law, as co-authors or accomplices, being subject to the penalties applicable to individuals for the crimes referred in **1.2 National Legislation**.

2.6 Lobbyists

Lobbying activities are not regulated in Portugal. Nevertheless, with the new government coming into office, the regulation of lobbying activities has become a goal, where the government is contemplating the implementation of a few measures such as a transparency registry (a database that includes all representatives of legitimate interests who wish to contact public organisations and decision-makers, including sovereign bodies, public administrations and regulators), a Code of Conduct for the legitimate interests of representatives and public entities, a public agenda and cooling-off periods, so that

those who have held political or public offices or functions in public organisations cannot dedicate themselves to representing the interests of, and are restricted in their interactions with, the public entity they worked for. Moreover, the Minister of Justice has already anticipated that there will be an anti-corruption agenda: a package of measures against corruption is already being drawn up, where the Minister established a two-month deadline for doing so.

In June of 2024, two bills of law (*Projeto de Lei* No 179/XVI/1 and *Projeto de Lei* No 190/XVI/1) aimed at regulating lobbying activities in Portugal and implementing a registry of transparency and a legislative footprint mechanism were presented. The bills should apply to interactions between public entities and other entities that wish to ensure the representation of interest groups or lobbies – ie, all those who aim to influence, directly or indirectly and on their own behalf or on behalf of specific groups or third parties, in decision-making processes and the formulation, execution or results of public policies, as well as in legislative, regulatory or administrative acts – and public contracts – in compliance with the law.

In addition, both bills propose to create a registry of transparency – as mentioned in the foregoing – where enrolment will be mandatory for all those who wish to ensure the representation of interest groups or lobbies. This registry will be publicly accessible and will be made freely available on the internet in a machine-readable, searchable and open data format. After enrolling, the entities that are covered will be grouped into categories of interests and lobbies, and will make available on their website a page detailing all ongoing public consultations regarding their initiatives. In addition, under Bill of Law No 179/XVI/1, it is proposed that public entities will report their

interactions with the registered entities to the Transparency Authority, on a monthly basis.

Regarding cooling-off periods, political officeholders, high public officers and people with similar positions may not represent the interests of a legal person, ministry or body in which they were an officeholder for a specific period (one political party proposes three years; another proposes four years) after their term of office.

3. Scope of Application

3.1 Limitation Period

The general limitation period for the crimes referred to in **1.2 National Legislation** is 15 years. Such period may, however, be increased in the event of suspension or interruption of the limitation period, under the conditions foreseen in the Criminal Code.

3.2 Geographical Reach of Applicable Legislation

As a rule, Portuguese law is applicable to crimes committed in Portuguese territory, regardless of the nationality of the offender, and on board Portuguese ships and aircrafts. In some situations, Portuguese criminal law is also applicable to crimes committed abroad.

Particularly with respect to corruption, Law No 20/2008 of 21 April 2008 (as amended) establishes that the regime foreseen therein also applies to:

- the crime of active corruption that is to the detriment of international commerce, involving acts committed by Portuguese or foreign citizens who are found in Portugal, regardless of the location where the acts occurred; and

- the crimes of passive and active corruption in the private sector, regardless of the location where the relevant action occurred, when the agent who gives, promises, demands or accepts the bribe or the promise of a bribe is a public official or a political official or, if of Portuguese nationality, an official of an international organisation.

3.3 Corporate Liability

Companies are criminally liable for offences related to corruption and bribery. Under Article 11 of the Criminal Code, companies can be held liable for infractions committed by those who have a leadership position within the organisation, regardless of whether the act is committed under the company's name and interest (direct or indirect) or whether it was committed by someone who works under the authority of people in a leadership position within the organisation in violation of surveillance or control duties. In these cases, both the individual and the company can be criminally liable.

4. Defences and Exceptions

4.1 Defences

The defences are the same regardless of the offence. The defendants have a set of rights and duties established in the Portuguese Criminal Procedure Code.

The defendants have, among others, the following rights:

- to be present at procedural acts that directly affect them;
- to be heard by the preliminary judge (*juiz de instrução criminal*) or the trial court whenever they have to render any decision that affects the defendants personally;
- to be informed of the facts with which they are charged before making a statement to any body (police entities, public prosecutor or court);
- to appoint or request the appointment of a defence lawyer; and
- to intervene in the inquiry and investigation, offering evidence and requesting any measures that may seem necessary.

In any case, the defendants are entitled to the presumption of innocence.

4.2 Exceptions

There are no exceptions to the defences mentioned in 4.1 **Defences** or others set out in the Portuguese Criminal Procedure Code.

4.3 De Minimis Exceptions

There are no minimis exceptions in these matters.

4.4 Exempt Sectors/Industries

There are no sectors or industries exempt from the offences.

4.5 Safe Harbour or Amnesty Programme

There are no safe harbour or amnesty programmes based on self-reporting or adequate compliance procedure/remediation efforts. However, Article 374-B of the Criminal Code provides for situations in which the penalty may be waived or reduced. The penalty may be waived in the following situations:

- where the agent has not committed an act or omission contrary to the duties of the office for which they requested or accepted the advantage and voluntarily returns or repudiates the advantage or, in the case of a fungible thing or animal, returns its value (Article 373, No 1, of the Criminal Code);

- where the agent voluntarily returns or repudiates the advantage or, in the case of a fungible thing or animal, returns its value (Article 372, No 1, and Article 373, No 2, of the Criminal Code);
- where the agent has withdrawn the promise of an advantage or requested its restitution or repudiation from an official or third party before an act or omission contrary to the duties of the office is committed (Article 374, No 1, of the Criminal Code); and
- where the agent has withdrawn the promise of an advantage or requested its restitution or repudiation from an official or third party (Article 372, No 2, and Article 374, No 2, of the Criminal Code).

A public official may be exempted from punishment if, during the investigation or inquiry – and where one of the above-mentioned provisions is verified – they have contributed decisively to the discovery of the truth.

Moreover, the penalty should be waived for offences that are a consequence of the crimes foreseen in Articles 372 to 374 of the Criminal Code, or that are intended to continue or conceal such offences, or the advantages derived from them, provided that the agent has reported them or has decisively contributed to their discovery.

5. Penalties for Violations

5.1 Penalties on Conviction

The penalties for individuals or legal entities (where applicable) are listed in the following.

Influence-Peddling (Article 335 of the Criminal Code)

This provision applies to anyone who requests or accepts a pecuniary or non-pecuniary advantage, or the promise thereof, in order to abuse their influence, real or supposed, with any public entity, national or foreign, as follows:

- individuals – imprisonment for one to five years if the purpose is to obtain a favourable unlawful decision, or imprisonment for up to three years or a fine (maximum of 360 days) if the purpose is to obtain a favourable legal decision; and
- legal entities – a fine with a period ranging from 120 to 600 days, if the purpose is to obtain a favourable unlawful decision, or a fine for up to 360 days if the purpose is to obtain a favourable legal decision.

For anyone who gives or promises a pecuniary or non-pecuniary advantage, the penalties are as follows:

- individuals – imprisonment for up to three years or a fine, if the purpose is to obtain a favourable unlawful decision, or imprisonment up to two years or a fine for up to 240 days if the purpose is to obtain a favourable legal decision; and
- legal entities – a fine for up to 240 days.

Undue Receipt of Advantage by a Public Official (Article 372 of the Criminal Code)

This provision applies to an official who, in the performance of their duties or because of them, requests or accepts a pecuniary or non-pecuniary advantage that is not due, as follows:

- individuals – imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – a fine for up to 600 days.

Anyone who gives or promises an official a pecuniary or non-pecuniary advantage that is not due to them, in the exercise of their duties or because of them, faces the following penalties:

- individuals – imprisonment for up to three years or a fine for up to 360 days; and
- legal entities – a fine for up to 360 days.

Passive Corruption in the Public Sector (Article 373 of the Criminal Code)

This provision applies to an official who requests or accepts a pecuniary or non-pecuniary advantage, or the promise thereof, for the performance of any act or omission contrary to the duties of the office, even if prior to the request or acceptance, as follows:

- individuals – imprisonment for one to eight years; and
- legal entities – a fine ranging from 120 to 960 days.

If the act or omission is not contrary to the duties of the office, and the advantage is not due, the following penalties apply:

- individuals – imprisonment for one to five years; and
- legal entities – a fine ranging from 120 to 600 days.

Active Corruption in the Public Sector (Article 374 of the Criminal Code)

This provision applies to anyone who gives or promises to give an official a pecuniary or non-pecuniary advantage for the performance of any act or omission contrary to the duties of office, as follows:

- individuals – imprisonment for up to five years; and

- legal entities – a fine for up to 600 days.

If the act or omission is not contrary to the duties of the office and the advantage is not due, the following penalties apply:

- individuals – imprisonment for three years or a fine for up to 360 days; and
- legal entities – a fine for up to 360 days.

Submission of Fraudulent Accounts by the Manager or Director of a Commercial Company (Article 519-A of the Companies Code)

The penalties here are as follows:

- individuals – imprisonment for up to three years or a fine; and
- legal entities – N/A.

Undue Receipt of an Advantage by a Political or High Public Official (Article 16 of Law No 34/87, of 16 July 1987)

This provision applies to a political officeholder who, in the exercise of their functions or because of them, requests or accepts a financial or non-financial advantage that is not due:

- individuals: imprisonment from one to five years; and
- legal entities: N/A.

Anyone who gives or promises a political officeholder a pecuniary or non-pecuniary advantage that is not due to them, in the exercise of their functions or because of them, faces the following penalties:

- individuals – imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – a fine for up to 600 days.

A political officeholder who gives or promises another political officeholder, senior public official or civil servant a pecuniary or non-pecuniary advantage, or the promise thereof, which is not due to them, in the performance of their duties or because of them, faces the following penalties:

- individuals – imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – N/A.

Passive Corruption of Political and High Public Officials (Article 17 of Law No 34/87, of 16 July 1987)

This provision applies to any political officeholder who, in the course of their duties or because of them, requests or accepts a pecuniary or non-pecuniary advantage, or the promise thereof, for the performance of any act or omission contrary to the duties of the office, as follows:

- individuals – imprisonment for two to eight years; and
- legal entities – N/A.

If the act or omission is not contrary to the duties of the office, and the advantage is not due, the following penalties apply:

- individuals – imprisonment for two to five years; and
- legal entities – N/A.

Active Corruption of Political and High Public Officials (Article 18 of Law No 34/87, of 16 July 1987)

This provision applies to anyone who gives or promises a political officeholder or a third party, on their recommendation or with their knowledge, a pecuniary or non-pecuniary advantage for the performance of any act or omission contrary to the duties of the office, as follows:

- individuals – imprisonment from two to five years; and
- legal entities – a fine ranging from 240 to 600 days.

If the act or omission is not contrary to the duties of office, and the advantage is not due to them, the following penalties apply:

- individuals – imprisonment for up to five years; and
- legal entities – a fine for up to 600 days.

The crime of active corruption committed by a political or high public official is punishable with the same penalties as those ascribed to the crime of passive corruption.

Passive Corruption of an Individual Serving in the Armed Forces or Other Military Forces for the Performance of an Illicit Action (Article 36 of the Code of Military Justice)

The penalties here are as follows:

- individuals – imprisonment for two to ten years; and
- legal entities – N/A.

Active Corruption of an Individual Serving in the Armed Forces or Other Military Forces (Article 37 of the Code of Military Justice)

The penalties here are as follows:

- individuals – imprisonment for one to six years; and
- legal entities – N/A.

Passive Corruption in the Context of Sports Competitions (Article 14 of Law No 14/2024, of 19 January 2024)

The penalties here are:

- individuals – imprisonment for one to eight years; and
- legal entities – a fine ranging from 120 to 960 days.

Active Corruption in the Context of Sports Competitions (Article 15 of Law No 14/2024, of 19 January 2024)

The penalties here are as follows:

- individuals – imprisonment for one to five years; and
- legal entities – a fine ranging from 120 to 600 days.

Influence-Peddling (Article 16 of Law No 14/2024, of 19 January 2024)

This provision applies to anyone who, directly or through an intermediary, with their consent or ratification, requests or accepts, for themselves or for a third party, a pecuniary or non-pecuniary advantage – or the promise thereof – to abuse their influence, real or supposed, with any sports agent with the aim of obtaining any decision intended to alter or distort the result of a sports competition, as follows:

- individuals – imprisonment for one to five years (if a higher penalty is not imposed by another legal provision); and
- legal entities – a fine ranging from 120 to 600 days.

For anyone who, directly or through an intermediary, with their consent or ratification, gives or promises to a third party a pecuniary or non-pecuniary advantage, with the aim of obtaining any decision intending to alter or distort the result of a sports competition, the following penalties apply:

- individuals – imprisonment for up to three years or a fine (if a higher penalty is not imposed by another legal provision); and
- legal entities – a fine for up to 360 days. Attempts are also punishable.

Undue Receipt of Advantage (Article 17 of Law No 14/2024, of 19 January 2024)

This provision applies to a sports agent who requests or accepts a pecuniary or non-pecuniary advantage, or the promise thereof, from an agent who has, or may have, a claim against them dependent on the exercise of their duties, as follows:

- individuals – imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – a fine for up to 600 days.

Anyone who, directly or through an intermediary, with their consent or ratification, gives or promises to a sports agent or to a third party – by indication of the sports agent – an undue pecuniary or non-pecuniary advantage for the performance of their duties or because of them, faces the following penalties:

- individuals – imprisonment for up to three years or a fine for up to 360 days; and
- legal entities – a fine for up to 360 days.

Active Corruption in International Trade (Article 7 of Law No 20/2008, of 1 April 2008)

The penalties here are as follows:

- individuals – imprisonment for one to eight years; and
- legal entities – a fine ranging from 120 to 960 days.

Passive Corruption in the Private Sector (Article 8 of Law No 20/2008, of 21 April 2008)

This provision applies to a private sector worker who requests or accepts a pecuniary or non-pecuniary advantage, or the promise thereof, for any act or omission that constitutes a violation of their functional duties, as follows:

- individuals – imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – a fine for up to 600 days.

If the previous act or omission is likely to cause a distortion of competition or damage to third-party assets, the following penalties apply:

- individuals: imprisonment for one to eight years; and
- legal entities – a fine ranging from 120 to 960 days.

Active Corruption in the Private Sector (Article 9 of Law No 20/2008, of 21 April 2008)

This provision applies to anyone who receives a pecuniary or non-pecuniary advantage for any act or omission contrary to the duties of office, as follows:

- individuals – imprisonment for up to three years or a fine for up to 360 days; and
- legal entities – a fine for up to 360 days.

If the previous conduct is intended to obtain or is likely to cause a distortion of competition or damage to the property of third parties, the following penalties apply:

- individuals: imprisonment for up to five years or a fine for up to 600 days; and
- legal entities – a fine for up to 600 days.

Undue Use of European Union Revenue (Article 37-A of Decree-Law No 28/84, of 20 January 1984)

This provision applies to any person who uses a legally obtained benefit, resulting from EU revenue other than value added tax on their own resources, for a purpose other than that for which it was intended, and which involves a loss or advantage of an amount exceeding EUR100,000, as follows:

- individuals – imprisonment for up to five years; and
- legal entities – a fine for up to 600 days.

If the previous conduct causes a loss or advantage in an amount equal to or greater than EUR10,000 and less than or equal to EUR100,000, the following penalties apply:

- individuals – imprisonment for up to two years or a fine for up to 240 days; and
- legal entities – a fine for up to 240 days.

The same penalties will be imposed on anyone who commits the crime described in the foregoing by omission, and which is contrary to the duties of office.

5.2 Guidelines Applicable to the Assessment of Penalties

Determining the appropriate penalty for individuals requires observing the provisions of Articles 70 et seq of the Criminal Code. The rules applicable to the sanctions to be imposed on companies are set out in Articles 90-A et seq of the Code.

For individuals, the main sanction is imprisonment. With respect to companies, the main sanction is a fine, which is measured in days (the amount due for each day ranges from EUR100

to EUR10,000, depending on the financial situation of the company).

The minimum imprisonment period for individuals, except if otherwise foreseen in the relevant provision for the offence, is one month, with the maximum imprisonment period being 20 years (or 25 years in specific situations). With respect to companies, the minimum fine period is 10 days, with a daily amount of EUR100; the maximum amount of the fine varies in accordance with the crime (please see **5.1 Penalties on Conviction**).

The specific sanctions are decided in accordance with Article 71 of the Criminal Code for both individuals and companies. When deciding on the appropriate sanction, the court must take into consideration:

- the seriousness of the crime;
- the level of guilt of the defendants;
- the existence of prior convictions;
- the defendants' financial situation;
- whether there was any premeditation;
- the defendants' behaviour after the commission of the crime (namely, whether they co-operated with the Public Prosecution Office or with the court); and
- whether the defendant, being a company, has any internal procedures and policies regarding bribery and corruption prevention.

Penalties may be increased if the defendant is a repeat offender. Under some circumstances, mitigation of the penalties is also possible.

6. Disclosure Processes

6.1 Disclosure Obligations

Portuguese law does not foresee a general duty to report crimes or other infractions committed by private companies and/or individuals.

There are, however, some exceptions:

- under Article 242 of the Criminal Procedure Code, (i) police entities are obliged to report any crimes of which they become aware, and (ii) public officials are obliged to report any crimes they become aware of during the exercise of their duties or because of them; and
- Article 190 of the Statute of the Statutory Auditor's Bar Association foresees a special duty of the company's statutory auditor to report to the public prosecutor public crimes they become aware of during the exercise of their functions.

6.2 Voluntary Disclosure Incentives

Articles 8 and 9 of Law No 36/94 provide for situations where the penalty may be reduced, or the proceedings may be dismissed, and Article 374-B of the Criminal Code provides for situations where the penalty may be waived or reduced.

The penalty may be waived or reduced in the following situations:

- in Article 8 of the Law No 36/94, and regarding the crimes of embezzlement and economic participation in business, and economic and financial offences with an international or transnational dimension, the penalty may be especially reduced if, until the close of the trial, the defendant actively co-operates in the discovery of the truth;
- in Article 374-B, and regarding the crimes of corruption or undue receipt or offer of and

advantage committed by a public official, the penalty may be especially reduced if, until the close of the trial, the defendant actively co-operates in the discovery of the truth;

- in Article 373, no 1, of the Criminal Code, where the agent has not committed the act or omission contrary to the duties of the office for which they requested or accepted the advantage and voluntarily returns or repudiates the advantage or, in the case of a fungible thing or animal, returns its value;
- in Article 372, no 1, and Article 373, no 2, of the Criminal Code, where the agent voluntarily returns or repudiates the advantage or, in the case of a fungible thing or animal, returns its value;
- in Article 374, no 1, of the Criminal Code, where the agent has withdrawn the promise of an advantage or requested its restitution or repudiation from the official or third party before the act or omission contrary to the duties of the office is committed; and
- in Article 372, no 2, and Article 374, no 2, of the Criminal Code, where the agent has withdrawn the promise of an advantage or requested its restitution or repudiation from the official or third party.

A public official may not be subject to punishment if, during the investigation or inquiry, provided that one of the above-mentioned provisions applicable, they have contributed decisively to the discovery of the truth.

Moreover, the penalty should be waived for offences that are a consequence of the crimes foreseen in Articles 372 to 374 of the Criminal Code, or that are intended to continue or conceal such offences, or the advantages derived from them, provided that the agent has reported them or has decisively contributed to their discovery.

The proceedings may be dismissed in the following situation:

- in Article 9 of the Law No 36/94, and regarding the crime of active corruption or offering an undue advantage, a provisional suspension of proceedings may be applied, and if the defendant contributes decisively to the discovery of the truth and complies with the remaining injunctions, the case may be dismissed.

6.3 Self-Disclosure Procedures

For the defendant (natural or legal person) to benefit from a reduction or waiver of a penalty, or from a provisional suspension of proceedings, specific requirements should be fulfilled.

- According to Article 374-B of the Criminal Code and Article 8 of Law No 36/94, the trial judge should (i) verify if the contribution to the discovery of the truth is decisive for the proceedings, and (ii) should present, when the decision (*sentença or acórdão*) is made, the reason for the decision to waive or reduce the penalty.
- In Article 9 of Law No 36/94, a provisional suspension of proceedings could be requested by the Public Prosecutor's Office. If the investigating judge (*juiz de instrução*) agrees, the proceedings will be dismissed after verification of the decisive contribution to the discovery of the truth and any remaining injunctions.

6.4 Protections Afforded to Whistle-Blowers

In accordance with Law No 93/2021 of 20 December 2021, whistle-blowers benefit from protection as long as they act in good faith and have serious grounds to believe that the information is true at the time of making the report.

In general, whistle-blowers are entitled to legal protection, which means they may benefit from the witness protection measures provided for in criminal proceedings (Law No 93/99 of 14 July 1999).

6.5 Incentives Provided to Whistle-Blowers

The main incentives for whistle-blowers are:

- the possibility of anonymity; and
- protection against retaliation.

In some circumstances, a mitigation of the penalty is possible if the defendant, despite technically not being a whistle-blower, aids the investigation; that is, if they gather and provide the competent authorities with evidence that is relevant for the identification of other perpetrators and situations of corruption and/or bribery.

7. Enforcement Trends

7.1 Enforcement

Anti-bribery and anti-corruption laws are subject to criminal enforcement.

The Portuguese Corruption Prevention Framework foresees the existence of a national body specially created for the prevention of corruption. This body, the National Anti-Corruption Mechanism (*Mecanismo Nacional Anticorrupção*), was formally created on 6 June 2023 by Decree (*Portaria*) No 155-B/2023 of 6 June 2023. In 2024, the National Anti-corruption Mechanism issued recommendations and guidelines for entities obliged to create a compliance programme.

7.2 Enforcement Bodies

The enforcement body for the above-mentioned offences is the Public Prosecutor's Office (dur-

ing the investigation phase), assisted by criminal police bodies (such as the judiciary police) and criminal courts (for the trial phase). The National Anti-Corruption Mechanism acts mainly in a preventative role, being the public body responsible for the supervision of compliance with the duties foreseen in the Portuguese Corruption Prevention Framework. Considering its recent creation, interactions between the National Anti-Corruption Mechanism and the Public Prosecution Office are not yet public knowledge. In April 2024, the National Anti-Corruption Mechanism published a report on judicial communications received in 2023. The report aims to analyse the decisions adopted in the various procedural stages by the respective criminal prosecution bodies (the Public Prosecutor's Office in relation to the inquiry and the courts in relation to the trial) in relation to the crimes falling under the Portuguese Corruption Prevention Framework.

7.3 Jurisdictional Reach of Enforcement Bodies

The Public Prosecutor's Office and the criminal courts are only competent to investigate and punish infractions in the terms referred in 3.2 Geographical Reach of Applicable Legislation.

7.4 Discretion for Mitigation and Aggravation

Articles 281 and 282 of the Criminal Procedural Code allow a provisional suspension of the proceedings. This is possible only for crimes punishable with imprisonment for less than five years or a sanction different from imprisonment, and suspension is subject to approval by the defendant, the victim (*assistente*; when applicable), the public prosecutor and the court, provided that the circumstances foreseen in Article 281, No 1, of the Criminal Procedural Code are fulfilled. A similar solution is provided for under

Article 9 of Law No 36/94 of 29 September 1994, as amended.

7.5 Recent Landmark Investigations or Decisions

The following are the most relevant investigations involving corruption in Portugal.

- Operation Marquês related to corruption acts allegedly carried out by a former Prime Minister, the former CEO of the largest Portuguese private bank at the time and other former chief executives of Portugal Telecom, who were charged on several counts of corruption, money laundering, document forgery and tax fraud. Most of the charges were dropped in the pre-trial phase and further reinstated by the Court of Appeal in Lisbon (*Tribunal da Relação de Lisboa*). The rendering of a new pre-trial decision is pending.
- Operation E-Toupeira investigated corruption in the sports sector. A former executive of one of the biggest Portuguese football clubs was found guilty of active corruption and was sentenced to imprisonment for two years and six months, which was suspended by the court. The defendant appealed the sentencing decision, which was confirmed by the Court of Appeal in Lisbon.
- Operation Lex investigated alleged corruption practices in the judicial system, which ended with the indictment of two former judges and the former president of a major Portuguese football club.
- Operation CMEC related to corruption practices in the energy sector, involving the top management of relevant Portuguese companies operating in the sector and former ministers (eg, the Minister of Economy) and secretaries of state, which ended with an indictment for the crime of corruption (active and passive) relating to the unlawful act of a political officeholder.
- Operation Tutti-Frutti investigated corruption, influence-peddling, abuse of power and embezzlement by, among others, several relevant political figures.
- Operation Altice investigated corruption and tax fraud in the telecommunications and real estate sectors.
- Operation Influencer investigated corruption, prevarication, influence-peddling and undue receipt of advantages in the lithium, hydrogen and data centre sectors.
- Operation Zarco investigated corruption, prevarication, influence-peddling, unjustified receipt of advantages and abuse of power in the construction sector on Madeira Island.
- Operation Maestro investigated fraud involving European subsidies allegedly carried out by a sports commentator and entrepreneur, and a journalist, among other people.
- Operation Ab Initio investigated several criminal practices such as economic participation in business, undue receipt or offer of advantages, prevarication and prohibition of funding of political parties, allegedly carried out by several political figures.
- The “Emails case” investigated several criminal practices, such as active and passive corruption in the private sector, and economic participation in business and tax fraud in the sports sector involving one of the biggest Portuguese football clubs.

7.6 Level of Sanctions Imposed

Apart from the sentence imposed in Operation E-Toupeira, the most severe penalty for corruption imposed in Portugal was 13 years’ imprisonment in Operation Face Oculta, relating to a corruption ring favouring a private group operating in the waste management sector.

8. Compliance Expectations

8.1 Compliance Obligations

According to Article 5 of the Portuguese Corruption Prevention Framework, companies based in – or with branches in – Portugal with 50 or more employees must adopt a compliance program that includes the following:

- a plan to prevent risks related to corruption and related offences;
- a code of conduct;
- a training programme;
- a whistle-blowing channel; and
- a compliance officer.

Failure to adopt and implement a compliance programme with the requirements foreseen in the Portuguese Corruption Prevention Framework may constitute an administrative offence, punishable by a fine of between EUR2,000.00 and EUR44,891.81 and ancillary sanction, namely the publication of the decision.

Failure to create a whistle-blowing channel may constitute an administrative offence, punishable by a fine of between EUR1,000 to EUR125,000 and ancillary sanction.

8.2 Compliance Guidelines and Best Practices

The National Anti-Corruption Mechanism issued a guide in 2023 setting out the minimum requirements for policies (the Code of Conduct and Risk Prevention Plan for Corruption and Related Offences), a whistle-blowing channel and a training programme, which should be considered by legal entities when implementing the compliance programme referred to in **8.1 Compliance Obligations**.

8.3 Compliance Monitorships

According to Article 4 of the Portuguese Corruption Prevention Framework, compliance with such regime is monitored by the National Anti-Corruption Mechanism. The National Anti-Corruption Mechanism can verify if the legal entities are behaving in accordance with the Portuguese Corruption Prevention Framework and impose fines in the event of non-compliance with the obligations resulting therefrom.

In addition, the adoption of a compliance programme may be imposed under Article 9 of Law No 36/94.

The implementation and effectiveness of compliance programmes is also considered under Article 90-A, paragraph 4, of the Criminal Code, in the determination of the sanction applicable to the legal entity in the context of a criminal trial.

If the entities covered are in a group relationship, a single compliance officer may be appointed.

9. Assessment

9.1 Assessment of the Applicable Enforced Legislation

According to the Corruption Perception Index published by Transparency International in January 2024, with reference to 2023, Portugal is one of the countries in Europe where regulation on integrity in politics is lacking. According to Transparency International, Portugal should strengthen or create rules on conflicts of interest, ethical standards and transparency in the exercise of public functions and lobbying activities. According to the OECD Anti-Corruption and Integrity Outlook in 2024, Portugal needs to improve in three main areas:

- corruption risk management and audit regulation – there is a lack of definitions of internal audit or control applicable across all government institutions, and an absence of regulations establishing operational provisions and management responsibilities for internal auditing;
 - political finance regulation – non-compliance with the obligation for political parties to present their accounts on an annual basis must be addressed; and
 - lobbying – there is a need to regulate lobbying activities, considering that this is essential to ensure transparency.
- the lowering of the maximum amount of cash payments to EUR10,000;
 - extension of the obligation to provide information on the ultimate beneficial owner to entities based outside of the EU when certain operations (such as the granting of a public contract for goods or services or concessions by a contracting authority in the EU or the acquisition of motor vehicles for non-commercial purposes at a price equal to or greater than EUR250 000 or its equivalent in the national currency) are carried out; and
 - member states making available, through a centralised mechanism, information on holders of bank accounts or payment accounts, including virtual IBANs, securities accounts, crypto-asset accounts and safe deposit boxes.

9.2 Likely Changes to the Applicable Legislation of the Enforcement Body

A new package of rules regarding money laundering and terrorism financing prevention has been approved by the EU, including Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 and Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024; these encompass some relevant changes in this sector (which may subsequently impact the Portuguese legislation on money laundering prevention), namely:

- the inclusion of new obliged entities (mostly entities in the crypto-asset sector, luxury goods traders and football clubs and agents);
- the lowering of the thresholds that trigger the need to comply with due diligence duties (the minimum threshold for customer identification and verification in occasional transactions is lowered to EUR10,000);

Regulation (EU) 2024/1624 will be applicable from 10 July 2027 (for some entities, the Regulation will only be applicable from 10 July 2029). Directive (EU) 2024/1640 must be transposed between 2025 and 2027 (with the exception of one provision, which needs to be transposed only by 10 July 2029).

Compliance with the obligations foreseen in the above-mentioned rules will be monitored by the European Anti-Money Laundering Authority, created by Regulation (EU) 2024/1620 of 31 May 2024, which is also responsible for granting support to the financial intelligence units of the member states of the EU.

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