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CHAMBERS GLOBAL PRACTICE GUIDES

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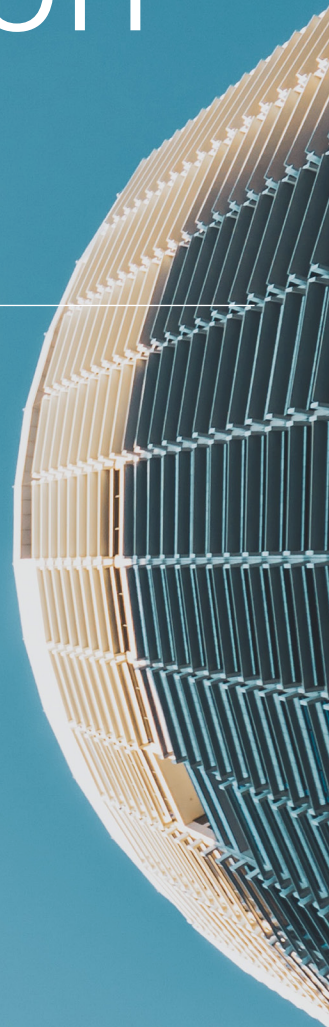
# Anti-Corruption 2024

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**Portugal: Law & Practice**

Pedro Duro, Mariana Proença Lobo  
and Joana Avelino Gomes  
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 the prevention of illegal practices – through the promotion and implementation of compliance policies – and in the monitoring of sanctioning processes in their different phases. 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, Securities Market Commission,

the Bank of Portugal, the Competition Authority, the Insurance and Pension Funds Supervisory Authority) and parliamentary inquiry committees, as well as supporting 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 in any company or sector and in national and international sports sanctioning proceedings.

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## 1. Legal Framework for Offences

### 1.1 International Conventions

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

- European Union's Convention on the protection of the EU's financial interests (1995) and Additional Protocols (1996 and 1997);
- European Union's 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));
- Organisation for Economic Co-operation and Development's (OECD) Convention on combating bribery of foreign public officials in international business transactions (1997);
- Council of Europe's Criminal Law Convention of Corruption (1999) and Additional Protocol (2003);
- United Nations' Convention against Corruption (2003); and
- United Nations' Convention against Transnational Organized Crime (2003) and Protocols.

Portugal is also 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 in several legal acts. A list of the relevant national legislation, highlighting the relevant offences, is provided below.

- Criminal Code:

- (a) influence-peddling (Article 335);
- (b) undue receipt of advantage 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).
- Companies Code: submission of fraudulent accounts by the manager or director of a commercial company (Article 519-A).
- Law No 34/87, of July 16th, as amended, regulating the criminal liability of holders of political offices:
  - (a) undue receipt of an advantage 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 November 15th, approving the Code of Military Justice:
  - (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 January 19th, as amended, regulating corruption in sports:
  - (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 of advantage (Article 17).
- Law No 20/2008, of April 21st, as amended, regulating corruption in international trade and private sector:
  - (a) active corruption in international trade (Article 7);
  - (b) passive corruption in the private sector

- (Article 8); and
- (c) active corruption in the private sector (article 9).

Corruption is also relevant for other purposes. For instance, under Article 55 of the Public Procurement Code (Decree-Law No 18/2008, of January 29th, 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 and tax crimes and crimes against the social security system, pursuant to the provisions of Articles 97, paragraph d), 104, paragraphs c) and d), and Article 106, number 3, of Law No 15/2001, of June 5th, as amended.

### 1.3 Guidelines for the Interpretation and Enforcement of National Legislation

The National Anti-Corruption Mechanism (*Mecanismo Nacional Anti-Corrupção*) 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 had also issued guidelines on the interpretation and enforcement of national legislation of bribery and corruption prevention.

Article 372 of the Criminal Code and Article 16 of Law No 34/87, of July 16th, as amended, are not applicable when the conduct foreseen therein is "socially relevant". Even though the respective legal acts do not provide for a definition of "socially relevant", it has been accepted that a "socially relevant" conduct is one that 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 42/2022, of May 9th, and with Law No 52/2019, of July 31st, where establishing guidelines for the acceptance of institutional offers and hospitalities by holders of political and high public offices.

### 1.4 Recent Key Amendments to National Legislation

Apart from the key amendments referred to in previous editions of this Anti-Corruption Practice Guide (namely, the amendments resulting from the Portuguese Corruption Prevention Framework, approved by Decree-Law No 109-E/2021, of December 9th), no key amendments were brought to the national legislation in 2023.

## 2. Classification and Constituent Elements

### 2.1 Bribery

The receipt of a bribe directly or through a third party (such as a family member) is an offence in Portugal (corruption). 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:

- public official;
- foreign public official;

- public official of an international organisation;
- foreign political office holder; or
- private sector employee.

Definitions of the persons identified now follow.

## Public Official

Public official includes the following:

- civilian public employee and military employee;
- anyone who holds a public office by virtue of a special bond;
- anyone who, whether temporarily or provisionally, for remuneration or free of charge, 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;
- arbitrator, juror, expert, technician assisting the court in judicial inspection, translator, interpreter and mediator;
- notaries;
- anyone who, whether provisionally or temporarily, for remuneration or free of charge, voluntarily or compulsorily, performs or participates in the performance of a public administrative function or exercises functions of authority in a legal person of public benefit, including private charities; and
- anyone performing or participating in the performance of public functions in a public association.

Moreover, the following persons are considered equivalent to public officials:

- members of a management or administrative body or a supervisory body and employees of public, nationalised, publicly owned companies or companies with a majority holding of public capital, as well as 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 374 of the Criminal Code:

- magistrates, officials, agents and equivalent of organisations governed by public international law, regardless of nationality and residence;
- officials who are nationals of other states;
- all those who exercise functions identical to those described for the public officials identified above, within the scope of any international public law organisation of which Portugal is member;
- magistrates and officials of international courts, provided that Portugal has declared that it accepts the jurisdiction of those courts;
- all those who exercise 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, servant



or in any other capacity, whether temporarily or provisionally, for remuneration or free of charge, 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 in or participates in public utility bodies or is a manager, supervisory board member or employee of a public, nationalised, publicly owned or publicly majority-owned company or a public service concessionaire, as well as any person who takes up and exercises a public service function in a private company under a public contract.

### **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, servant or in any other capacity, 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 Office Holder**

A foreign political office holder is a person who, in the service of a foreign country, holds a position in the legislative, judicial or executive function at national, regional or local level for 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 the case in which an employee of a private company offers an advantage to another employee of another private company in order to be chosen to provide a certain service. This behaviour may be punishable under Articles 8 and 9 of Law No 20/2008, of April 21st, as amended.

### **Hospitality Expenditures, Gifts, Promotional Expenditures and Facilitation Payments**

Regarding gifts and hospitalities (travel expenses, meals), Portugal has a specific regime only applicable to holders of political and high public office. Law No 52/2019, of July 31st, has established a maximum and reasonable offer 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 the principles, values and rules in terms of 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 others, the Code of Conduct.

In the aforementioned guidelines, the National Anti-Corruption Mechanism states that it is important to foresee the situations in which

the receipt of gifts, hospitality or other types of benefits is allowed in an institutional context. It is also recommended that the duty of 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 the permission or prohibition of receiving gifts and hospitalities, as well as a maximum value (frequently in line with the regime created for politicians).

In light of the above, 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, 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 from 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 with 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 with a fine of up to 240 days if the purpose is to obtain a favourable lawful decision.

The attempt is punishable.

For individuals, the period of the fine ranges from 10 to 360 days, 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 to EUR10,000 (depending on their financial situation). The minimum fine period for companies is of 10 days, the maximum depending 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 the 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.

Other than such crime, Article 379-E of the Portuguese Securities Code criminalises the use of false or wrongful information in operations launched by public companies, the applicable fine 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, lack of organised accounting and violation of the accounting rules established by the Banco de Portugal are deemed as regulatory offences under Article 211, number 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 from one to eight years if a more serious penalty is not applicable by another legal provision. Where the valuable or object unlawfully appropriated is of a value higher than EUR102, the public official may be punishable with imprisonment up to three years or a fine.

If the public official lends, pledges or in any way encumbers valuables or objects, they may be punished with imprisonment up to three years or with 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, in whole or in part, prevents, frustrates or evades the probationary or preventative activity of a competent authority, with the aim or knowingly to prevent another person, who has committed a crime, from being subjected to a

penalty or security measure, and 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, or with the awareness, of totally or partially preventing, frustrating or evading the execution of 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, it 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 penalty applicable to individuals for the crimes referred in **1.2 National Legislation**.

## 3. Scope

### 3.1 Limitation Period

The general limitation period for the crimes referred 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, in 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 April 21st (as amended), establishes that the regime foreseen therein also applies to:

- the crime of active corruption to the detriment of international commerce, to acts committed by Portuguese or foreign citizens who are found in Portugal, regardless of the location where the relevant action 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.

## 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:

- 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 repudi-

- ates 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 be waived from punishment if, during the investigation or inquiry, and if 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

### 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:

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

Anyone who gives or promises a pecuniary or non-pecuniary advantage:

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

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

- individuals: imprisonment up to three years or fine up to 360 days; and
- legal entities: fine 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:

- individuals: imprisonment of one to eight years; and
- legal entities: fine 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:

- individuals: imprisonment of one to five years; and
- legal entities: fine 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 an official a pecuniary or non-pecuniary advantage for the performance of any act or omission contrary to the duties of office:

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

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

- individuals: imprisonment of three years or fine up to 360 days; and
- legal entities: fine 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 are:

- individuals: imprisonment up to three years or 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 July 16th)

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:

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

- individuals: imprisonment up to five years or fine 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 July 16th)**

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:

- individuals: imprisonment from 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:

- individuals: imprisonment from 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 July 16th)**

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:

- individuals: imprisonment from two to five years; and
- legal entities: 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:

- individuals: imprisonment up to five years; and
- legal entities: fine 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 are:

- individuals: imprisonment from 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 are:

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

Anyone who gives or promises a pecuniary or non-pecuniary advantage that is not due to them, in the course of their duties or because of them:

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

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

The penalties are:

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

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

The penalties are:

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

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

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:

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

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:

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

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

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:

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

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

## Active Corruption in International Trade (Article 7 of Law No 20/2008, of April 21st)

The penalties are:

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

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

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:

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

If the previous act or omission is likely to cause a distortion of competition or damage to third parties' assets:

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

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

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

- individuals: imprisonment up to three years or fine up to 360 days; and
- legal entities: fine 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:

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

## 5.2 Guidelines Applicable to the Assessment of Penalties

Assessment of 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 same Code.

For individuals, the main sanction is imprisonment. With respect to companies, the main sanction is the fine, which is determined in days (the amount due for each day ranging 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, the maximum imprisonment period being 20 years (eventually 25, in specific situations). With respect to companies, the minimum fine is of 10 days, at the 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 assessing 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 cooperated with the Public Prosecution Office or with the court); and
- whether the defendant, being a company, had any internal procedures and policies regarding bribery and corruption prevention.

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

## 6. Compliance and Disclosure

### 6.1 National Legislation and Duties to Prevent Corruption

As per the Portuguese Corruption Prevention Framework, companies and public entities with more than 50 employees must have an internal control system aiming at corruption prevention. This entails the approval of internal policies, that is, codes of conduct and risk prevention plans, as well the training of employees on these matters.

The existence of such policies may be relevant to exclude the company's liability or, at least, may justify a mitigation of the penalty applicable to the company if it is found liable for crimes of corruption and/or bribery.

### 6.2 Regulation of Lobbying Activities

Lobbying activities are not regulated in Portugal.

### 6.3 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

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

Nevertheless, failure to report criminal activity (including bribery and corruption) within companies may result in criminal liability of the person who did not report the crime and of the company in whose interest the crime was committed.

There are, however, some exceptions.

- Under Article 242 of the Criminal Procedure Code, police entities and public officials are obliged to report any crimes they become aware of in the context of the performance of their duties or because of them.

- 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 in the context of the performance of their functions.

### 6.4 Protection Afforded to Whistle-Blowers

In accordance with Law No 93/2021, December 21st, the whistle-blower benefits 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 the report.

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

### 6.5 Incentives for 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 which is relevant for the identification of other perpetrators and situations of corruption and/or bribery.

### 6.6 Location of Relevant Provisions Regarding Whistle-Blowing

In 2021, a law was passed on the protection of whistle-blowers, transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protec-



tion of persons who report breaches of Union law – Law No 93/2021, of December 21st.

However, whistle-blowers were granted, prior to the approval of Law No 93/2021, of December 21st, protection under specific regimes, such as Article 4 of Law No 19/2008, of April 21st, as amended.

## 7. Enforcement

### 7.1 Enforcement of Anti-bribery and Anti-corruption Laws

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. Such body is the National Anti-Corruption Mechanism (*Mecanismo Nacional Anticorrupção*), which was formally created on June 6th, by Decree (Portaria) No 155-B/2023, of June 6th.

### 7.2 Enforcement Body

The enforcement bodies for the above-mentioned offences are the Public Prosecution Office (during the investigation phase) and criminal courts (for 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 of public knowledge.

### 7.3 Process of Application for Documentation

The Public Prosecutor and the courts may, within the powers legally attributed to them, request all information they deem as relevant from the people under investigation or from third parties, including private companies.

There is a limitation as to the disclosure of information subject to secrecy, namely banking and professional secrecy. In the event the competent authorities deem as necessary for the purposes of the investigation in course the disclosure of information subject to secrecy, the judicial authority conducting the proceedings must give prior order for its breach.

The Public Prosecution Office and the courts have access to the database of the registry services, the tax authorities, the criminal record and the social security databases, therefore being able to obtain information deemed as relevant from such databases.

### 7.4 Discretion for Mitigation

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 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 September 29th, as amended.

### 7.5 Jurisdictional Reach of the Body/Bodies

The Public Prosecution Office and the criminal courts are only competent to investigate infrac-

tions in the terms referred in **3.2 Geographical Reach of Applicable Legislation**.

## 7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

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.
- “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 a penalty of imprisonment for two years and six months, which was suspended by the court. The defendant is believed to have appealed the sentencing decision.
- “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 and secretaries of state.
- “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.

## 7.7 Level of Sanctions Imposed

Apart from the sentence imposed in “Operation E-Toupeira” (which has not yet reached a res judicata effect), the most severe penalty for corruption imposed in Portugal was of 13 years in “Operation Face Oculta”, with respect to a corruption ring favouring a private group operating in the waste management sector.

## 8. Review

### 8.1 Assessment of the Applicable Enforced Legislation

According to the Corruption Perception Index published by Transparency International in January 2023, with reference to 2022, it is considered that the lack of guidelines for the implementation of the Portuguese Anti-Corruption Strategy has resulted in the slow implementation of corruption prevention measures in the public sector. It also highlighted that during the past decade Portugal has not implemented significant measures aimed at the prevention of corruption and bribery.

### 8.2 Likely Changes to the Applicable Legislation of the Enforcement Body

Apart from the approval of a new EU Money Laundering and Terrorism Financing Prevention package (which is expected soon and encompasses some relevant changes in this sector, which may impact the legislation on corruption and bribery), no changes are likely to be made to the applicable legislation or the enforcement bodies in the foreseeable future.

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