This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Denmark.

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1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The Danish Criminal Code governs bribery and corruption committed in Denmark and in certain circumstances also abroad (see 4. below)

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

There is no single authority handling bribery cases in Denmark. The State Prosecutor for Serious Economic and International Crime (Statsadvokaten for Særlig Økonomisk og International Kriminalitet, SØIK) handles cases concerning serious economic crime. A case is considered to involve serious economic crime if it is extensive in scope, has been committed as a part of organised crime, has been committed by means of a specific business method, or if it is deemed as particularly severe. If a case does not meet one of the above criteria or in other words does not involve serious economic crime, the case is handled by the local police.

3. How is bribery defined?

Danish law does not have a definition of bribery as such. However, bribery is generally interpreted in line with the common definition of abuse of office or position for private gain. As such bribery is interpreted as an act of wrongfully demanding, receiving, or being promised as well as giving, promising or offering advantages on condition that certain actions are carried out.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is ‘public official’ defined? Are there different definitions for bribery of a public official and bribery of a private person?

At the outset, the Danish Criminal Code distinguishes between three types of bribery; 1) “public active bribery” which is governed by section 122, 2) “public passive bribery” which is governed by section 144, and 3) “private bribery” which is governed by section 299(2), which applies to both “active” and “passive” bribery of private persons. As mentioned, section 122 governs “public active bribery” which means the act of giving, offering or promising a bribe to a public official. Accordingly, it follows from section 122 that: Any person who unduly gives, promises or offers to someone performing a public function or office with a Danish, foreign or international public organisation a gift or another benefit to make the relevant person perform or fail to perform such function or office is sentenced (...). Section 144 of the Danish Criminal Code mirrors section 122 in the sense that section 144 prohibits any individual exercising a domestic, foreign or international public function from unduly receiving, demanding or agreeing to receive a gift or another benefit. It is clear from the wordings of sections 122 and 144 that the provisions must be interpreted broadly and in accordance with the principles of the anti-corruption conventions ratified by Denmark. Accordingly, the provisions cover persons elected to, employed by or acting on behalf of any Danish public body (state and municipal alike), as well as persons with a similar relationship to either a foreign state or an international organisation (such as the UN, the OECD or NATO). As the provisions must be understood to reflect OECD guidelines and similar instruments, a public body includes functions carried out by limited companies, etc. on behalf of a public body. Consequently, “public official” must be understood broadly under Danish anti-bribery law. Section 299(2) of the Criminal Code governs bribery in the private sector. It follows from section 299(2) that a fine or imprisonment “… is imposed on any person who receives, demands or agrees to receive a gift or another benefit for himself or others in a manner contrary to his duty of managing the property entrusted to him by another person, and on any person, who grants, promises or offers such gift or benefit”. 
5. **What are the civil consequences of bribery in your jurisdiction?**

Case law on the civil consequences of bribery is very limited. However, it is generally accepted that, depending on the circumstances, bribery may have several civil consequences in Denmark, e.g. liability for damages resulting from bribery. Furthermore, any agreement concluded in connection with / because of bribery may be declared null and void by the courts (ordre public). Furthermore, bribery may result in exclusion from public procurement tenders.

6. **What are the criminal consequences of bribery in your jurisdiction?**

A fine or imprisonment. Prison sentences are limited to maximum 6 years for bribing public officials and 4 years for bribing private persons.

For bribery based on or related to the COVID-19 pandemic in Denmark, the penalty could be increased to double under section 81 d of the Danish Criminal Code for a limited time. In case the offence took place under such circumstances where a loan, credit, support, grants or similar compensation from a relief package for countermeasures of harmful effects of the covid-19 pandemic has been unauthorized obtained or sought, the penalty under section 81 d (2) may be increased four times. The specific amendment of the Danish Criminal Code was planned to be lifted on 1\(^{st}\) of March 2021, but the Danish Government has extended the duration until 1\(^{st}\) of January 2022.

7. **Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?**

Depending on the circumstances, such expenses may fall within the scope of the Criminal Code’s bribery provisions, especially for public officials. There is no specific regulation in relation to foreign public officials, however, the Criminal Code’s bribery provisions apply to Danish and foreign public officials alike. It has been recognised in practice that certain, smaller, gifts and expenses are excluded from the scope of sections 122 and 144. Some guidance is given by the Ombudsman who has made several observations on gifts and hospitality. As a rule of thumb, a Danish public official may not accept any gifts or benefits (must be understood in a broad sense), although under certain circumstances modest gifts may be acceptable. As for invitations to attend concerts, dinners, etc., the Ombudsman has opined that invitations, etc. must be assessed on a case-by-case basis but in general such invitations cannot be accepted. In relation to the private sector, there is no general restriction on such expenses beyond the general scope of section 299(2) on corruption.

8. **Are political contributions regulated?**

Yes, political contributions are governed by the provisions of the Danish Accounts of Political Parties Act. Among other things the Act imposes a limit to anonymous contributions. However, an anonymous contribution which does not exceed the limit may still be given through an intermediary.

9. **Are facilitation payments regulated? If not, what is the general approach to such payments?**

Under Danish law, no distinction is made between “regular” bribery and facilitation payments in the Criminal Code and as such facilitation payments fall within the scope of the Criminal Code’s bribery provisions. There is no published case law on facilitation payments.

10. **Are there any defences available?**

The general defences in the Criminal Code, such as necessity and self-defence, are available in relation to bribery and corruption as they are in connection with any other criminal offence.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?**

Examples in case law show that compliance programs may have a mitigating effect on sentencing. However, no general, clear-cut rule can be inferred from case law, and there is no general statutory rule of leniency, e.g. the UK Bribery Act.

12. **Who may be held liable for bribery? Only individuals, or also corporate entities?**

Any natural or legal person, including individuals and corporate entities, may be held liable for bribery.
13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

In 2015, the Ministry of Justice published a booklet called Undgå korruption (“Avoid corruption”) which provides an overview of the law as well as corresponding guidance. The booklet emphasises two elements in an effective corporate compliance program: 1) companies should establish a code of conduct which contains general guidance on conduct as well as specific guidelines on how employees should conduct themselves in relation to bribery issues. The booklet further states that the code of conduct could contain a description of the consequences that a violation of the code of conduct could have for the employee and 2) companies should identify areas of business that entail special risks (in relation to bribery offences) and seek to mitigate these risks by establishing relevant internal procedures.

In addition, the Agency for Public Finance and Management (former: the Agency for Modernisation) has in 2017 issued a guidance on good behaviour in the public sector, which among other things adduces examples of respectively illegal and legal reception of gifts.

14. Does the law provide protection to whistle-blowers?

Whistle-blowers are generally not yet protected by law in Denmark. The Ministry of Justice introduced on the 24th of February 2021 a draft bill on protection on whistle-blowers. The bill contains sections that implement directive 2019/1937/EU on protection of persons who report breaches of Union law.

The directive concerns, among other things, the prevention of corruption although it primarily regulates breaches of the EU-law. The directive includes the following entities: i) public authorities and ii) corporations with more than 50 employees. The draft bill implementing the directive in Denmark is currently in a 4-week hearing at eligible authorities and organizations. If the bill is passed in its current form, all public as well as private workplaces with 50 or more employees will be required to establish an internal whistle-blower system. The bill will enter into force on 17th of December 2021, after which the stricter rules for whistle-blower systems and the protection of whistleblowers will become part of Danish law.

Besides, the Danish Act on Salaried Employees provides some protection against unfair dismissal. However, the law is silent on whistle-blowers. There are special EU-law based provisions on whistle-blowers in the legal framework regulating the financial sector. The Danish Financial Business Act protects employees in relation to reports on potential violations of financial law. The Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism contains similar provisions in relation to potential violations of the Act.

15. How common are government authority investigations into allegations of bribery?

Investigations of bribery and corruption are handled by the Danish police districts, or in more serious cases by the Public Prosecutor for Serious Economic and International Crime (SØIK). Investigations into allegations of bribery are very few in Denmark and are rarely carried out.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?

Albeit Denmark is being criticised for lagging enforcement against corruption from the OECD and others, there is no imminent changes in law or practice affecting enforcement against corruption in Denmark. In March 2019 the Danish Ministry of Justice established a whistle-blower program. This program includes the department of the Ministry of Justice, the whole Danish Prosecution Service, the Danish police, the Danish Security and Intelligence Service and the Department of Prisons and Probations. The program ensures the employees in the listed organizations and their associates, including the employees in the associated organizations, access to report unacceptable behaviour, among these corruption and bribery. Moreover, the Danish government has established a whistle-blower program for the public sector including all government agencies Local governments will not be included in this program. The program was implemented in 2020 and it is likely that the program must be amended once the abovementioned directive 2019/1937/EU on protection of person who report breaches of Union law is implemented. See question 14 above.

In so far as the Covid-19 pandemic is concerned, the pandemic has had an impact on the maximum penalty. See question 6 above.

Moreover, the Danish Act on promotion on trade was
amended in June 2020 to protect whistle-blowers notifying about potential breaches of the economic compensation schemes for companies following the Covid-19 pandemic.

17. Is there a process of judicial review for challenging government authority action and decisions?

Investigative action, etc. by the police is subject to supervision from the State Prosecutor that reviews any complaints in that regard. Investigative actions and/or decisions may also be challenged before the courts.

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

As mentioned above (question 14), the Ministry of Justice introduced on the 24th of February 2021 a draft bill on protection on whistle-blowers. The bill contains sections that implement directive 2019/1937/EU, but the bill has not yet been implemented.

19. To which international anti-corruption conventions is your country party?

Denmark has ratified several anti-corruption conventions, notably the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe's Criminal Law Convention on Corruption, and the United Nations Convention against Corruption. Denmark is also a member of the Group of States against Corruption (GRECO), which monitors the members’ compliance with the organisation’s anticorruption standards. Additionally, Denmark is an EU Member State and has implemented relevant EU legislation on corruption, such as the Directive on Procurement implementing restrictions on participation in public procurement tenders and the Convention on the Protection of the European Communities’ Financial Interests with later protocols. It is worthy of mention that Denmark has not yet ratified the Council of Europe’s Civil Law Convention on Corruption.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

Under Danish law, the confidentiality between lawyer and client is recognised as a fundamental principle of the legal system. Consequently, it follows from the provisions of the Danish Administration of Justice Act that whether or not the police must be given access to documents and other materials produced or uncovered during lawyer-led investigations must be determined by the same legal standard applied when it is determined whether a lawyer can be compelled to testify/give evidence against his own client. This gives lawyer-led investigations considerable protection.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction’s approach to anti-bribery and corruption compares on an international scale?

While the level of corruption in Denmark is low (Denmark (together with New Zealand) is the best rated country in Transparency International’s corruption perceptive index), tackling corruption is not seen as a matter of political priority in Denmark.

22. Generally how serious are organisations in your country about preventing bribery and corruption?

Large private organisations handle corruption based on international best practice and are generally serious about their compliance and anti-corruption efforts. For smaller organisations, the lack of enforcement generally leads to a lack of attention and investment. In public organisations the attention on anti-corruption is generally low, particularly at the regional and municipal level.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

The biggest challenge that enforcement agencies face is the lack of available resources.

24. What are the biggest challenges businesses face when investigating bribery and corruption issues?
Bribery and corruption can have severe consequences for businesses, both economically and in terms of the company’s reputation. Many companies operate internationally, whereby multiple jurisdictions regarding anti-corruption can apply to the activities of the company. In order to comply with the widespread regulation and enable ongoing investigations of the issues, businesses would benefit from adapting internal policies and procedures in this regard. The reputational damages of not being compliant with the relevant legislation as well as the public opinion on bribery and corruption are massive.

When investigating bribery and corruption issues it is vital to ensure all documentation which can be challenging especially if the investigation is done in a foreign branch of the business. Also the need for keeping confidential information safe and at the same time informing the public of the ongoing investigation when needed is a difficult balance.

The best way to minimize the risk of bribery and corruption is to implement a compliance program in the businesses. Creating and implementing an effective anti-corruption program is a challenge and requires thorough analysis of the operations of the company, partners and the overall industry, while also taking into consideration the rapid development of rules and guidelines in this area. Challenges include identifying relevant risks and necessary measures, while also considering the associated costs and extent of the implementation and ensuring sufficient compliance with the anti-corruption program at all levels of the company. However, implementing such a compliance program will not be truly effective unless it is supported by a strong ethical culture within the businesses including a management acting as role models.

**25. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**

We do not foresee any significant corruption-related challenges posed to businesses other than those already outlined above.

**26. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?**

The main challenge in Denmark in terms of prevention of bribery and corruption is the lack of political priority and the resulting weak enforcement, particularly with respect to international financial crime / corruption. Consequently, an improved legal framework would have to be based on greater political attention resulting in more stringent regulation, more resources to the enforcement bodies, and generally higher societal awareness of corruption risks and its consequences.

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