

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

DENMARK

(Information as of 10 January 2006)

Date of deposit of instrument of ratification/acceptance or date of accession

The instrument of ratification was deposited with the OECD Secretary General on 5 September 2000.

Implementing legislation

The law implementing the Convention is Act no. 228 of 4 April 2000, which amended the Danish Criminal Code. The law came into force 1 May 2000.

One effect of Act no. 228 of 4 April 2000 was that active bribery of foreign public officials and officials of international organisations (OECD, Council of Europe, EU, NATO, UN, etc.) was made a criminal offence equal to bribery of Danish public officials. Furthermore, passive bribery by foreign public officials and officials of international organisations (OECD, Council of Europe, EU, UN, NATO, etc.) was made a criminal offence on equal terms as those applying to Danish public officials. Moreover, responsibility of legal persons (companies, etc.) was introduced as concerns active bribery in the public and private sectors, including liability for active and passive bribery in the public sector. The provision concerning responsibility of legal persons has later been amended. Criminal responsibility can now be imposed on legal persons for all violations of the Criminal Code.

Under Danish law, both active and passive bribery of persons exercising a public office or function is an offence under sections 122 and 144, respectively. The provisions read as follows:

“Section 122. Any person who unduly grants, promises or offers some other person exercising a Danish, foreign or international public office or function a gift or other privilege in order to induce him to do or fail to do anything in relation to his official duties shall be liable to a fine or imprisonment for any term not exceeding three years.”

Section 144. Any person who, while exercising a Danish, foreign or international public office or function, unduly receives, demands or accepts the promise of a gift or other privilege shall be liable to imprisonment for any term not exceeding six years or, in mitigating circumstances, to a fine.”

The Criminal Code rule on bribery in the private sector is laid down in section 299, no. 2. Pursuant to this rule, active and passive bribery is made a criminal offence collectively. It follows from section 299, no. 2, that any person who, in circumstances other than those covered by section 280 of the Danish Criminal Code, in his capacity as trustee of any property of any other person accepts or claims in breach of his duty the promise of a third party, for the benefit of himself or of others, a gift or any other privilege, as well as any person who grants, promises or offers such an advantage, shall be liable to a fine or to imprisonment for a term not exceeding one year and six months.

The provision has the following wording:

“**Section 299.** Any person who in circumstances other than those covered by Section 280 of this Act,

(1) [...]

(2) in his capacity as trustee of any property of another person accepts, claims or accepts the promise of a third party, for the benefit of himself or of others, a pecuniary advantage the receipt of which is concealed from the person whose interests he is protecting, as well as any person who grants, promises or offers such advantage;

shall be liable to a fine or imprisonment for any term not exceeding one year and six months.”

In addition to (purely) private property affairs, this rule will be applicable in cases where property belonging to public authorities is administered by persons falling outside the category of persons covered by section 144 of the Criminal Code.

It is of no significance for the criminal liability whether the person who is granting the bribe is a joint contractor or a third party. It is likewise without any significance whether the person who is to benefit from such bribe is the person who is in charge of the property relationship, or a third party.

The only thing required is that the granting or receipt of the pecuniary or any other advantage is connected with this person's taking care of another person's property.

It is also a criminal offence to receive or grant a bribe in ongoing business relationships even though the receipt or granting of a bribe has not been discussed or implied before entering into prior agreements if – considering the fact that it is a current relationship – it is to be assumed that the receipt or the granting of the bribe commission is made for the purpose of the further development of the business relationship.

Bribery of arbitrators is punishable under section 304a of the Criminal Code. The provision is worded as follows:

“**304a.** (1) Any person who unduly grants, promises or offers a gift or other advantage to any person who acts as an arbitrator in Denmark or abroad in order to induce him to act or refrain from acting in relation to the exercise of such function is liable to a fine or imprisonment for up to one year and six months.

(2) The same penalty applies to any person who, in Denmark or abroad, acts as an arbitrator, and who unduly, in the exercise of such function, receives, demands or accepts the promise of a gift or other advantage.”

Other information

Relevant authorities

Information on bribery offences must be reported to the police or the Public Prosecutor for Serious Economic Crime (SØK) who deals with severe white collar crime, including corruption.

The National Contact Point (NCP) in Denmark is:

Ministry of Justice
Slotsholmsgade 10
1216 Copenhagen K
jm@jm.dk

Phone (+ 45) 33 92 33 40

Relevant Internet links to national implementing legislation

All Danish legislation is publicly available, including on the website www.retsinfo.dk (text only in Danish).

Signature/Ratification of other relevant international instruments

Denmark has signed and/or ratified the following international instruments on combating corruption:

- European Criminal Law Convention on Corruption: Signed 27 January 1999, ratified 2 August 2000.
- European Civil Law Convention on Corruption: Signed 4 November 1999.
- Additional Protocol on the European Criminal Law Convention on Corruption: Signed 15 May 2003, ratified 16 November 2005.
- United Nations Convention against Corruption: Signed 10 December 2003.
- United Nations Convention against Transnational Organized Crime: Signed 12 December 2000, ratified 30 September 2003.
- In addition, Denmark is party to all EU instruments on combating corruption.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation
<http://www.oecd.org/dataoecd/39/57/2018413.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions
<http://www.oecd.org/dataoecd/14/21/36994434.pdf>