

**HOW TO AVOID  
CORRUPTION**

## FOREWORD



*By Lene Espersen, Minister of Justice*

Corruption is a global scourge. In addition to the moral aspects involved, corruption is also a significant obstacle to a healthy economic development in many countries.

Denmark takes an active part in the international fight against corruption. In that connection, Denmark has signed several international instruments against corruption, and Denmark participates in international cooperation fora for the purpose of fighting corruption.

In 2003, the Danish Government launched its "Action Plan to Fight Corruption", which is intended to fight corruption related to development aid. This action plan makes up one of several focus areas in the Danish support of good governance in Denmark's partner countries.

For many years, it has been widely accepted that corruption is non-existent in Denmark, but no country is completely free of corruption. However,

the number of corruption cases in Denmark has been very modest up until today.

We all have to make an effort to ensure that this situation will not change in the future. It is absolutely necessary that we stand united in our view that corruption and bribery represent completely unacceptable conduct which society and the individual citizens must sharply reject.

The primary objective of this booklet is to increase the awareness of corruption and bribery. The booklet gives an account of the provisions on bribery stipulated in the Danish Criminal Code (*straffeloven*) and gives advice on how the individual person can make an effort to counter corruption and bribery.

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*Lene Espersen*

## 1. WHAT IS CORRUPTION?

No universal definition of the concept of 'corruption' exists. The concept is not defined in the many international conventions intended to fight and prevent this type of criminal activity.

The anti-corruption organisation Transparency International and the World Bank define the concept of corruption as "*the abuse of entrusted power for private gain*". This is a very broad definition which not only comprises bribery in the traditional sense, but also other criminal offences such as embezzlement, fraud, etc.

The Danish Criminal Code (*straffeloven*) does not use the term corruption. In the context of the Criminal Code, bribery is a criminal offence, as are embezzlement, fraud, criminal breach of trust, misconduct, etc.

This booklet gives an account of the type of corruption consisting in bribery.

## 2. BRIBERY

### 2.1. Bribery of public employees

The rules on bribery of public employees are stipulated in sections 122 and 144 of the Criminal Code.

Section 122 of the Criminal Code is concerned with so-called **active bribery**, that is, the granting of a bribe to a public employee, whereas section

144 of the Criminal Code is concerned with so-called **passive bribery**, that is, the acceptance of a bribe by a public employee.

**Section 122.** (1) 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 advantage in order to induce him to act or refrain from acting in relation to his official duties is liable to a fine or imprisonment for up to three years.

**Section 144.** (1) 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 advantage is liable to a fine or imprisonment for up to six years.

These rules apply to persons exercising a "*public office or function*". This expression comprises not only public employees, but also persons exercising functions to which they have been elected or appointed, e.g.:

- Government employees (employees of ministries, police, courts, DSB (Danish railways), etc.)
- Local/regional authority employees (caseworkers, health sector staff, teachers at municipal schools, etc.), including employees stationed abroad

- Members of the Danish Parliament (*Folketinget*), local councils and parochial church councils
- Jurors and lay judges

#### Example:

In connection with an open invitation to tender, a total of five contractors have submitted tenders for the renovation of the town hall of a municipality. The municipality's building and construction committee will determine which of the contractors will be awarded the contract.

A local councillor who is a member of the building and construction committee is contacted by an employee with one of the five contractors. The contractor's employee offers to pay the building and construction committee member DKK 50,000 if the member will work in favour of the contract being awarded to the relevant contractor. The building and construction committee member accepts the offer.

**In this example, both parties would be guilty of bribery. The contractor's employee would be liable to punishment under section 122 of the Criminal Code (active bribery), while the building and construction committee member would be liable to punishment under section 144 of the Criminal Code (passive bribery).**

Bribery of public employees abroad is also punishable under the Danish Criminal Code.

#### Example:

A person resident in Denmark has brought an action against a German enterprise before a court in Germany. The Dane calls the judge who will decide the action and offers the judge DKK 10,000 in exchange for letting him win the action. The judge accepts the offer.

**In this example, the person resident in Denmark would be liable to punishment under section 122 of the Danish Criminal Code (active bribery).**

Similarly, bribery of e.g. employees of the European Union or employees of international public organisations in general (the Council of Europe, NATO, the OECD, the UN, etc.) is punishable under section 122 of the Code.

Bribery under sections 122 and 144 of the Criminal Code has taken place when a "*gift or other advantage*" has been granted. Accordingly, both financial and other advantages (e.g. non-financial personal return services) are comprised by the provisions.

Actions of this kind may be criminal even if the advantage will not be to the direct personal benefit of the public employee. A gift to the employee's spouse, children, parents or other closely related persons will thus also constitute bribery.

**Example:**

The managing director of a private enterprise which sells mobile phones offers the manager of a municipal nursing home to give the nursing home manager's spouse a mobile phone worth DKK 5,000 if the nursing home manager lets the managing director's mother jump the waiting list and gives her sheltered housing at the nursing home manager's institution.

**In this example, the managing director of the private enterprise would be liable to punishment under section 122 of the Criminal Code (active bribery) and, if accepting the managing director's offer, the nursing home manager would be liable to punishment under section 144 of the Criminal Code (passive bribery).**

Offering a public employee a gift or other advantage in order to make the public employee act or refrain from acting in relation to his official duties is a violation of section 122 of the Criminal Code (active bribery), even if no attempt is made to make the public employee act or refrain from acting in any way that would constitute a breach of duty. Certain countries have a tradition of 'small facilitation payments', that is, payment of small sums of money or small gifts to public employees performing their tasks, e.g. handing over a person's passport or issuing a permit. If such a strong tradition exists in a country, 'small facilitation

payments' may be non-criminal under the Danish Criminal Code even though, when considered in isolation, the action would be criminal in Denmark.

Paying sums of money in connection with international business relationships for the purpose of making public employees *breach* their duties will always be undue and thus constitute a criminal offence.

**Example:**

A Danish sales manager of a Danish software enterprise is in China to submit a tender to the Chinese authorities which are going to purchase some software. To secure the contract, the sales manager offers the software procurement officer of the Chinese authorities DKK 25,000 for making sure that the next contract will be awarded to the Danish enterprise.

**In this example, the Danish sales manager's action would be in violation of section 122 of the Criminal Code. The software enterprise has no right to be awarded the next contract. Moreover, DKK 25,000 is no small sum of money. In the example, the sales manager would thus not be offering a 'small facilitation payment', but a bribe.**

Giving a gift to a public employee without intending to thereby affect the carrying out of the public employee's work is *not* a criminal offence.

**Example:**

A patient has undergone major surgery at a public hospital. After the end of the patient's treatment at the hospital, the patient offers the surgeon who performed the surgery a sum of money as 'an expression of gratitude for a successful surgery'. The patient and the surgeon have not discussed this matter prior to or in connection with the surgery.

**In this example, the patient would not be liable to punishment for violation of section 122 of the Criminal Code as the gift was not offered for the purpose of affecting the surgeon's work.**

The fact that the patient in the above example would not be liable to punishment for violation of section 122 of the Criminal Code does not necessarily mean that the relevant surgeon is allowed to accept the gratuity.

Pursuant to section 144 of the Criminal Code (**passive bribery**), the receipt by a public employee of a gift or other advantage is a criminal offence, even if it was not the intention of the giver to make the public employee act or refrain from acting in a certain way, and even if receipt takes place after the performance of the relevant action without any prior promise of a reward. Receiving a gift, etc., is only a criminal offence if the gift or advantage relates to the carrying out of the public employee's work; however, a connection

between the advantage received and a specific action on the part of the public employee is not required.

Sometimes these rules give rise to doubts as to whether the receipt of gifts and other advantages is 'undue'. This is most often the case with public employees in jobs that do not involve the exercise of authority (e.g. healthcare staff and educators).

The predominant rule is, however, that receipt of a gift or other advantage is undue, and that receipt is thus punishable under section 144 of the Criminal Code. *Only* in cases where the gift or advantage is of a subordinate nature and implies no risk of influencing the performance of the recipient's work will the situation fall outside the criminal scope.

Any attention granted in connection with the public employee's job in general, e.g. in connection with anniversaries, resignation or promotion, will normally not be considered a criminal offence.

**Example:**

The 25<sup>th</sup> anniversary of a public employee is celebrated by the workplace by a reception for the employee. The employee's work has involved close collaboration with a private enterprise for many years, and at the anniversary reception this enterprise gives the public employee three bottles of red wine.

**The gift would typically be seen as a present given in connection with the public employee's function in general, and the receipt of the wine by the public employee would therefore not be 'undue' under criminal law and thus not punishable under section 144 of the Criminal Code.**

## 2.2. Bribery in the private sector

Not only bribery involving public employees is a criminal offence. So is bribery among private parties.

Bribery in the private sector is criminalised in section 299(1)(ii) of the Criminal Code. The criminal offence governed by this provision is normally called 'kickback' or 'secret commission'.

**Section 299.** (1) Any person who [...] (ii) in his capacity as trustee of any property of another person in breach of his duty claims or accepts a promise of a third party, for the benefit of himself or of others, a gift or any other advantage, as well as any person who grants, promises or offers such an advantage, is liable to a fine or to imprisonment for up to one year and six months.

The scope of application of section 299(1)(ii) of the Criminal Code typically includes situations where a person who is employed or associated with an enterprise receives a gift or other advantage from a person outside the enterprise. If the gift/advantage has been granted to make the recipient

act or refrain from acting in a certain way that would be in conflict with the recipient's obligations towards the enterprise, the action would constitute a criminal offence.

Both the person who grants, promises or offers an advantage (**active bribery**) and the person demanding or receiving such an advantage (**passive bribery**) are liable to punishment.

### Example:

A private enterprise produces a breakfast cereal which several supermarket chains are very interested in selling, and the product is in high demand among the chains' customers.

The sales manager of the breakfast cereal enterprise has been instructed by the enterprise's managing director to process the orders placed by the supermarket chains as they come in. The breakfast cereal enterprise does not, however, produce sufficient volumes to execute all incoming orders.

The sales manager is contacted by the managing director of a supermarket chain. He offers to supply the sales manager and his family with all groceries for six months free of charge if the sales manager will make sure that the orders placed by the relevant supermarket chain will always be executed promptly, regardless of the number of non-executed orders waiting. The sales manager accepts the offer.

**Both the sales manager receiving the advantage and the managing director of the supermarket chain offering the advantage would be guilty of violation of section 299(1)(ii) of the Criminal Code.**

Similarly to sections 122 and 144 of the Criminal Code (active and passive bribery of public employees), section 299(1)(ii) comprises not only financial advantages, but also other advantages (e.g. personal non-financial return services).

## 2.3. Arbitrators

Section 304a of the Criminal Code is concerned with bribery of arbitrators, that is, bribery of persons who have been requested, pursuant to an arbitration agreement, to decide on a dispute which the parties involved have brought before the arbitrator.

**Section 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.

The description of the criminal offence in this provision is similar to that of sections 122 and 144 of the Criminal Code on active and passive bribery of public employees, respectively, the only difference being that this provision is concerned with bribery of arbitrators.

## 3. WHAT TO DO IF YOU ENCOUNTER CORRUPTION?

If, as **a citizen or a representative of a private enterprise**, you are confronted with a demand for a bribe within the public administration or the private sector, you should report the matter to the police immediately.

If you accept to pay or in any other way grant a bribe, you will be personally liable to punishment.

If, as **an employee with the public administration**, you suspect that a colleague has received a bribe from a citizen or a private enterprise, you should immediately inform your superior of the matter so that it can be further investigated and reported to the police if there are grounds to do so.

The same applies if, as a public employee, you become aware in connection with the exercise of your functions that a citizen or a public or private enterprise has granted or offered a bribe.

If, as **an employee with a private enterprise**, you suspect that a colleague in the enterprise has either received or granted a bribe, you should inform your superior of the matter so that it can be further investigated and reported to the police.

Many methods exist for preventing private enterprises from becoming involved in corruption cases. One method is for the enterprise to formulate a code of conduct on corruption.

Such a code of conduct should describe the guidelines for enterprise employees to follow if they are confronted with a demand for a bribe and the conduct expected of enterprise employees. Moreover, a code of conduct may state the consequences entailed by any breach of the code for any employees involved.

The code of conduct is not only a useful tool internally in the enterprise as a guideline for enterprise employees on how to act if they are confronted with a demand for a bribe, are offered gifts, etc. The code of conduct may also be used to send a strong signal to business partners, customers, agents, etc. that the enterprise rejects bribery.

Another method to protect private enterprises from becoming involved in corruption and bribery cases is to identify internally in the enterprise the areas which involve a *particularly* large risk of bribery and minimise this risk, e.g. by introducing procedures to

ensure that the contracts concluded by the enterprise are reviewed and approved by more than one enterprise employee.

In all circumstances, it will be a good idea for the enterprise management and employees to discuss the issue of corruption and bribery so that everyone in the enterprise is fully aware that the enterprise rejects the use of corruption and bribery.

#### **4. FURTHER INFORMATION**

If you want to know more about corruption, there are several authorities and organisations to contact, of which the following should be mentioned:

##### **The Danish Ministry of Foreign Affairs**

In 2003, the Danish Ministry of Foreign Affairs launched the Danida action plan called the "Action Plan to Fight Corruption". The action plan makes up one of several focus areas in the Danish support of good governance in the developing countries.

The action plan describes activities to fight corruption and states deadlines for completion of these activities. The activities include increased funding for the fight against corruption and a large e-learning program about the fight against corruption. All persons who are employed by or receive pay from Danida must complete this e-learning program.

Additional information is available at <http://www.um.dk> under the headlines "Development Policy" and "Trade and Investment".

Danida has set up a hotline for reporting of suspicion or evidence of corruption and other forms of improper use of Danish development aid. Matters can be reported via the website <http://www.um.dk/da/menu/Udviklingspolitik/Antikorruption/HjaelpOsMedAtBekaempeKorruption>, which also offers further information, or via mail to The Danish Ministry of Foreign Affairs, Asiatisk Plads 2, 1448 Copenhagen K, Denmark. Please mark the envelope with "anti-corruption".

In August 2006, the "Business Anti-corruption Portal" was established in cooperation between the Danish Foreign Ministry, Transparency International and Global Advice Network. The portal offers information on specific corruption-related problems and advice on how to avoid corruption to Danish enterprises operating in developing countries.

The portal is located at [www.business-anti-corruption.com](http://www.business-anti-corruption.com) and has been constructed as a 'one-stop-shop' for enterprises in the fight against corruption.

##### **GRECO (Group of States against Corruption)**

In 1998, the Council of Europe decided to set up the Group of States against Corruption (GRECO).

Denmark is a member of GRECO, which has its seat in Strasbourg. The Group's objectives include monitoring the member states' compliance with the international anti-corruption instruments adopted in accordance with the Council of Europe's action plan against corruption.

Additional information about GRECO is available at <http://www.coe.int> under the headline "Legal Affairs".

##### **OECD (Organisation for Economic Co-operation and Development)**

The 30 OECD member states, including Denmark, cooperate on the development of an economic and social policy.

Under the auspices of the OECD, various initiatives have been launched to introduce a global prohibition against corruption, including the preparation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Denmark has acceded to this Convention.

Additional information about the anti-corruption initiatives of the OECD is available at <http://www.oecd.org>.

##### **Confederation of Danish Industry (Dansk Industri (DI))**

The Confederation of Danish Industry, which is a combined trade organisation and employers' association, has published comprehensive information material on corruption ("Avoid corruption – A guide for companies", August 2006).

Additional information about the material is available at <http://www.di.dk>.

### Transparency International

Transparency International is an international organisation which fights corruption on a global scale. The organisation's work includes the annual preparation of an anti-corruption index (CPI – Corruption Perceptions Index). The index compares the prevalence of corruption in the individual countries.

Additional information about the organisation is available at <http://www.transparency.org>.

### Transparency International Denmark

Transparency International has independent subdivisions in more than 85 countries, including Denmark.

Additional information about the Danish subdivision is available at <http://www.transparency.dk>.

## 5. TEST YOUR KNOWLEDGE

In the following, five specific case stories are outlined.

Try to determine whether the actions mentioned are punishable under the provisions on bribery set out in the Criminal Code (the provisions of sections 122, 144, 299(1)(ii) or 304a of the Criminal Code).

The answers can be found on the final pages of this booklet.

### Case story No. 1

A motorcycle police officer pulls over John Doe on the motorway, because Mr Doe has exceeded the speed limit of 110 km/h over a long distance.

The motorcycle police officer informs Mr Doe that he is facing a fine of DKK 5,000. The motorcycle police officer also tells Mr Doe that his violation of the Danish Road Traffic Act (*færdselsloven*) will not be registered if he pays the motorcycle police officer DKK 500.

**1. Is the motorcycle police officer's action punishable?**

**2. Will Mr Doe be liable to punishment if he accepts the motorcycle police officer's proposal and pays the officer DKK 500?**

**3. Would it make a difference if the motorcycle police officer had only asked Mr Doe to pay him DKK 20?**

### Case story No. 2

A houseowner would like to build a 40 m<sup>2</sup> annexe on his property. He therefore submits an application for a building permission to the local authorities.

The houseowner actually expects the local authorities to refuse his application as he wrongly believes that the maximum plot ratio for his property has already been reached.

To prevent a refusal, he makes an offer to the female local authority caseworker who decides whether building permissions are to be granted. He offers to pay for a one-week holiday stay at Lanzarote for her and her family if she issues him with a building permission.

She accepts his offer. She believes that she is doing nothing wrong as the houseowner would have been issued with a building permission anyway because the maximum plot ratio for his property has not yet been reached. She does not share this information with the houseowner as she really wants to go on holiday in the south with her family.

**1. Is the houseowner's action punishable?**

**2. Is the local authority caseworker's action punishable?**

**3. Would it make a difference if the matter involved two bottles of red wine instead of a holiday stay at Lanzarote?**

### Case story No. 3

A young girl has just passed her upper secondary school final examination in Danish with a very fine result. Her parents are very grateful for the efforts that her Danish teacher has made to support her over the year.

The girl's parents therefore contact the relevant teacher and ask whether they

may give the teacher an expensive piece of gold jewellery for the great efforts made.

**1. Is it a criminal offence for the parents to offer the teacher the piece of gold jewellery?**

**2. Can the teacher accept the piece of gold jewellery without becoming liable to punishment?**

**3. Would it affect the answers to the two questions above if the matter did not relate to an expensive piece of gold jewellery but e.g. a book of fiction worth DKK 200 and if the gift had been given in connection with the Danish teacher's resignation as a teacher at the relevant upper secondary school?**

### Case story No. 4

A private enterprise wants to purchase 20 cars for the purpose of offering a company car to all salesmen of the enterprise.

The CEO of the enterprise has fixed the maximum price for each car at DKK 300,000. He entrusts the choice of car make to the HR manager of the enterprise.

The HR manager contacts five different car dealers who each sell cars of one make. The HR manager indicates to the car dealers that he intends to choose the car dealer who will offer him the largest sum of money under the table.

After that, a contract on the supply of 20 cars is concluded with one of the five car dealers.

One of the remaining four car dealers who was not awarded the contract because he was unwilling to pay money under the table becomes upset with the HR manager's behaviour and contacts the police.

In connection with a search at the HR manager's office, the police find evidence that one of the car dealers offered the HR manager DKK 10,000, a second offered DKK 20,000, a third offered DKK 30,000, and a fourth offered DKK 100,000. The car dealer who offered DKK 100,000 was awarded the contract.

**1. Is the HR manager liable to punishment for bribery?**

**2. Is the car dealer who was awarded the contract liable to punishment for bribery?**

**3. Are the three remaining car dealers who offered the HR manager DKK 10,000, DKK 20,000 and DKK 30,000 under the table, respectively, liable to punishment for bribery?**

### Case story No. 5

A private landlord has decided to renew all toilet cisterns and wash basins in the 150 flats in the building.

He has hired a caretaker and asks him to obtain three offers from three named plumbers. He also informs the caretaker that he intends to accept the lowest of the three offers.

The caretaker and one of the three plumbers are good friends. One evening, the two friends discuss the landlord's renovation assignment. In that connection, the caretaker informs the plumber that the landlord intends to accept the lowest of the three offers.

The following day, the plumber suggests that the caretaker let him see the two other offers before he makes his own offer, thus ensuring that his offer will be lower than the offers made by the two other plumbers.

In exchange for this favour, as the plumber calls it, he offers to install a spa bath in the caretaker's flat free of charge.

The caretaker accepts the plumber's offer and, as agreed, sends him the offers made by the two other plumbers.

As expected, the landlord accepts the offer made by the plumber who is a good friend of the caretaker's as this plumber has quoted the lowest price.

However, the spa bath is never installed in the caretaker's flat, because he and the plumber have a falling out a few days later.

**1. Is the plumber liable to punishment for bribery?**

**2. Is the caretaker liable to punishment for bribery although the spa bath is never installed in his flat free of charge as agreed?**

### 6. ANSWERS

In the following, answers are given to the questions asked in connection with the five specific case stories.

#### Case story No. 1

##### Question No. 1:

Yes, the motorcycle police officer's action is punishable under section 144 of the Criminal Code (passive bribery).

##### Question No. 2:

Yes, John Doe will be liable to punishment for violation of section 122 of the Criminal Code (active bribery) if he pays the motorcycle police officer the DKK 500.

##### Question No. 3:

No, that would not make any difference. Both of them would be liable to punishment, regardless of whether the amount is DKK 20 or DKK 500.

#### Case story No. 2

##### Question No. 1:

Yes, the houseowner is liable to punishment for violation of section 122 of the Criminal Code (active bribery).

##### Question No. 2:

Yes, the local authority caseworker's action is punishable under section 144 of the Criminal Code (passive bribery).

##### Question No. 3:

No, that would not make any difference. Both of them would be liable to punishment, regardless of whether the matter relates to a holiday stay at Lanzarote or two bottles of wine.

#### Case story No. 3

##### Question No. 1:

No, the parents will generally not be liable to punishment for bribery. The reason for that is that their intention with the gift is not to make the Danish teacher act or refrain from acting in a certain way in relation to the teaching job.

If the intention had been to make the teacher give the daughter good marks in Danish or other courses in the future, section 122 of the Criminal Code (active bribery) would have been violated.

continues...

(Case story No. 3)

**Question No. 2:**

No. The Danish teacher will be liable to punishment for violation of section 144 of the Criminal Code (passive bribery) if she does not inform the parents that she is not allowed to receive such an expensive piece of gold jewellery.

**Question No. 3:**

Yes, if the gift had been e.g. a book of fiction worth DKK 200 that had been given in connection with the teacher's resignation, the Danish teacher would not be liable to punishment for violation of section 144 of the Criminal Code (passive bribery). The reason is that, in such an event, the gift would be of a subordinate nature and that granting the gift would not imply any risk of affecting the teacher's work.

**Case story No. 4**

**Question No. 1:**

Yes, the HR manager is liable to punishment for violation of section 299(1)(ii) of the Criminal Code (passive bribery in the private sector).

**Question No. 2:**

Yes, the car dealer who was awarded the contract is also liable to punishment for violation of section 299(1)(ii) of the Criminal Code (active bribery).

continues

(Case story No. 4)

**Question No. 3:**

Yes, the three car dealers who offered the HR manager DKK 10,000, DKK 20,000 and DKK 30,000 under the table, respectively, are liable to punishment for active bribery under section 299(1)(ii) of the Criminal Code, even though they were not awarded the contract.

**Case story No. 5**

**Question No. 1:**

Yes, the plumber is liable to punishment for active bribery under section 299(1)(ii) of the Criminal Code.

**Question No. 2:**

Yes, the caretaker is also liable to punishment for bribery under section 299(1)(ii) of the Criminal Code (passive bribery).

Please contact the Danish Ministry of Justice if you have any questions about corruption and bribery:

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