



ANTI-CORRUPTION POLICY
FOR THE TRADE COUNCIL OF
DENMARK

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1. INTRODUCTION

Globalisation has significantly increased the movement of capital, goods and services in recent years. Danish and foreign companies operate on an increasingly international basis and compete on foreign markets, resulting in a number of benefits. Increased international trade can generate economic growth and social development, but is dependent on well-functioning markets characterised by transparency. Corruption, in this connection, is a financial problem since it hinders the effective functioning of markets by clouding the transparency of financial transactions.

Surveys show that corruption represents a significant threat to Danish companies operating on foreign markets. Corruption permeates the public and private sector in several countries, and it is estimated that in 2005 more than 30% of Danish companies were exposed to bribery or other forms of corruption, resulting in a loss of approx. DKK 530 million¹. Surveys further reveal that over the last five years on a global basis, more than 40% of companies consider that they have lost contracts as a consequence of corruption, and that more than 35% have declined otherwise financially attractive investments due to fear of corruption and bribery².

Companies have several reasons to avoid corruption:

Corruption results in contracts and orders being awarded not only on the basis of price and quality, but also through the influence of bribery, favours or personal relationships. Unfair competition has adverse financial consequences for Danish companies in the form of lost contracts.

Corruption functions as an extra tax on investments and trade, thereby increasing Danish companies' costs associated with investing in a given country.

Acceptance or use of corruption and bribery causes damage to a company's reputation and a consequent decline in its economic fortunes, whereas a clean, non-corrupt reputation can be an economic advantage for any company.

If one Danish company engages in bribery and corruption, it has a damaging spillover effect on all Danish companies.

A company risks continued exposure to bribery or other forms of corruption, once it has agreed to pay. A single such incident risks making the total investments in a given country more costly.

The immediate, these financial consequences for Danish companies are accompanied by additional adverse effects, such as a damaged reputation and soured relations with collaboration partners, all of which can have serious repercussions for the individual company and the Danish corporate sector as a whole. Danish companies have a good reputation for being non-corrupt, and the aim of the Trade Council of Denmark (TCD) is to help safeguard this reputation, which represents a significant asset for the Danish corporate sector.

Furthermore, giving and receiving bribes is counter to basic Danish values, and for this reason is punishable under Danish criminal law.

1 PricewaterhouseCoopers: "Global Economic Crime Survey, Denmark", 2005.

2 Control Risks Group: "International Business Attitudes to Corruption - Survey 2006"

According to criminal law it is a punishable offence both to give and receive bribes, and TCD has therefore introduced an anti-corruption policy applying to its activities.

NATIONAL AND INTERNATIONAL LEGISLATION

The international focus on corruption has sharpened in recent years, resulting in a number of regional and international conventions making demands on the conduct of private individuals, companies and civil servants. The 1996 OECD convention obliges 30 OECD members and 6 non-members to criminalise bribery of foreign civil servants and has played a significant role in the development of national legislation. Similarly, the United Nations Convention Against Corruption (UNCAC), which focuses on the establishment of national prevention mechanisms, can be expected to have a great effect on the development of national legislation and institutions globally in the coming years.

In addition, regional conventions and action plans such as the Inter-American Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption oblige countries to strengthen legislation and institutions in the fight against corruption. This is a new international agenda, which breaks with the previous acceptance of corruption as a "necessary evil" of international trade.

This agenda has fed through at a national level, where several countries are strengthening their anti-corruption legislation and relevant institutions beyond the demands of international conventions. Private individuals, companies and civil servants are thus obliged to observe an integrated and complementary set of laws. In addition, both companies and public institutions are increasingly developing internal guidelines and anti-corruption policies to ensure that staff and collaboration partners comply with existing legislation. In Denmark, e.g. Danida adopted a comprehensive anti-corruption policy in 2004. Danida has also been the initiator of an anti-corruption portal, where companies can seek information on legislation and local legal matters³.

THE TRADE COUNCIL OF DENMARK'S ROLE

TCD represents the Danish state and assists Danish companies operating in foreign markets where corruption is rife. TCD does not offer direct legal assistance, but informs companies of relevant legal matters and provides them with specific tools to avoid bribery and corruption on a given market. This gives TCD a significant role in the fight for more transparent and effective international trade and investment to the benefit of Danish businesses.

Such a task requires that TCD makes clear its own values, rules and procedures. Consequently, TCD's anti-corruption policy contains guidelines for notification and reporting of bribery in connection with handling cases where TCD staff become suspicious or aware of the involvement of Danish companies in bribery and corruption. As a general principle, Danish civil servants at home and abroad are not legally obliged to report bribery and corruption. However, an expectation regarding reporting to superiors will often be incorporated in the role and general obligations of the civil servant. The guidelines are shown in section 4.

³ See www.business-anti-corruption.com

2. ZERO-TOLERANCE POLICY

TCD understands corruption as abuse of trusted power and funds for personal gain. This is the definition that exists in Danish criminal law and in international conventions. Corruption can take many forms: collusion over offers, secret agreements between companies, fraudulent offers, fraud in connection with auditing, deliveries which are not agreed, incorrect prices or faulty equipment, false invoicing of staff or equipment, bribery or acceptance of gifts, abuse of funds, business travel fraud, and theft. Criminal law distinguishes between active and passive bribery and establishes that "...the one who unwarrantedly gives, promises or offers someone who works in Danish, foreign or international service or duty, a gift or other advantage to induce the person in question to do or refrain from doing something in the exercise of that person's duty" is guilty of active bribery, while the one who receives bribes is guilty of passive bribery.

TCD has a zero-tolerance policy towards corruption, and does not accept any forms of bribery or corruption within TCD, collaboration partners or customers.

We neither give nor receive bribes.

We warn Danish companies against giving or receiving bribes - regardless of local conditions.

We react if we become suspicious or aware of cases where Danish companies or staff in TCD have given or received bribes.

The zero-tolerance principle means absolute enforcement of existing legislation which to the maximum possible extent criminalises corruption. In relation to our consultancy, the zero-tolerance policy means that we **always** warn Danish companies against giving or receiving bribes. This applies regardless of whether bribery is a normal element in local business life. Zero-tolerance of corruption obliges TCD to act if information is received which indicates use of bribery or other forms of corruption. This means that staff in TCD, based on the guidelines for notification, are obliged to inform their superiors in these cases (cf. section 4). Danish companies can still safely seek advice and guidance from TCD, and it is important to underline that the zero-tolerance principle is not synonymous with reporting to the police of companies unwittingly involved in bribery or corruption. TCD does not actively investigate corruption cases, but will inform companies about local conditions in accordance with its role as advisor to Danish companies.

Because TCD recommends that companies refrain from using any form of bribery or other forms of corruption, it naturally follows that the same rules apply internally in TCD. The zero-tolerance policy is supplemented by 7 principles applying to the work of TCD staff, to help ensure a high degree of integrity for staff individually and for TCD as a whole. These principles form the value basis for staff conduct and serve as guidance for all TCD staff in their daily work with Danish companies. The 7 principles are listed in section 5.

3. THE TRADE COUNCIL OF DENMARK'S COLLECTIVE ANTI-CORRUPTION POLICY

TCD's collective anti-corruption policy consists partly of an internal policy and partly of strengthened advice to Danish companies. TCD aims to ensure that all staff possess the necessary competences to handle corruption cases in accordance with the established guidelines. Staff need to be conscious of TCD's values, rules and procedures, and able to supply a high level of service to companies in the form of advice and guidance on bribery and corruption, local conditions and specific legal issues.

TCD's anti-corruption policy comprises a number of services to companies designed to avoid corruption and lessen the risks associated with investing in countries where corruption is rife. To strengthen the representations' advisory work, a toolbox has been prepared as an integrated part of Danida's anti-corruption portal www.business-anti-corruption.com.

This portal features a closed area, where representations can log on with the user name DTC (upper case) and password tradecouncil (lower case). The toolbox, which is accessed via the sub-menu Trade Council of Denmark (in the menu on the left), provides the following tools for risk assessment and management in relation to corruption:

- Simple model for screening of agents, consultants and collaboration partners
- Template for an information collection system
- Help in connection with public contracts
- Overview of general assistance to companies in minor cases
- Model for building local networks
- Contact with public authorities (small practical cases and larger political cases)
- A compendium of the most important laws and conventions, and a brief introduction to the provisions which are of special importance in a business context
- Simple overview of corruption based on a pooling of existing indexes

TCD's collective anti-corruption policy has the following components:

- A zero-tolerance policy for TCD staff
- Guidelines for notification and reporting of cases of bribery
- 7 principles applying to the work of TCD staff
- A services toolbox, which can support companies' own activities in the area
- Internal courses introducing the toolbox, and Danish and international legislation

The representations have a central role in the anti-corruption policy, since they handle the everyday contact with Danish companies operating in foreign markets. It is therefore necessary that TCD staff at the representations are familiar with the individual parts of the anti-corruption policy.

In this connection it is important to underline that the representations are not expected to give specific legal assistance to companies or advice regarding the preparation of internal policies. TCD expects the following of the representations:

- Familiarity with TCD's anti-corruption policy, hereunder the guidelines for notification and the 7 principles
- Familiarity with local and Danish law
- Basic familiarity with the extent of corruption on the local market, including high-risk sectors
- Familiarity with how anti-corruption networks are established
- Familiarity with the anti-corruption toolbox

HOW IS DE'S ANTI-CORRUPTION POLICY IMPLEMENTED?

A range of different activities ensures that TCD's anti-corruption policy reaches staff, collaboration partners and customers. The following initiatives form the core of policy implementation:

- Sending out instructions to the representations, informing them about the internal policy and the toolbox
- Preparing a product sheet, which markets strengthened advice regarding bribery and corruption. This information will also be presented on TCD's website
- Incorporating zero-tolerance of corruption in payment conditions i.e. the inclusion of an anti-corruption clause in contracts
- Holding anti-corruption courses for TCD staff. Half-day anti-corruption courses will be an obligatory part of all introduction courses
- Information on zero-tolerance policy and the toolbox for the TCD board and key collaboration partners, including the Ministry of Foreign Affairs' Contact Forum.

4. GUIDELINES FOR NOTIFICATION AND REPORTING OF CASES OF BRIBERY

Giving and receiving bribes are counter to basic Danish values. It is therefore punishable under Danish criminal law either to give and receive bribes. This also applies abroad. Therefore, TCD has a zero-tolerance policy as described.

GUIDELINES FOR NOTIFICATION

As a consequence of the zero-tolerance policy, it rests with all staff in TCD both domestically and abroad, including locally employed staff, immediately to notify TCD's secretariat if they become suspicious or aware of specific cases of Danish companies using bribery.

The same applies to suspicion or awareness of TCD staff, including locally employed staff, giving or receiving bribes. TCD's secretariat will notify the head of the representation, if the information about bribery is not already known by, or has not originated from, the head of the representation.

GUIDELINES FOR REPORTING

In connection with concrete suspicion or knowledge of bribery, the representations cannot without a special agreement with TCD's secretariat make an approach to either Danish or foreign authorities or to the company and/or individual involved.

The decision to notify Danish or foreign authorities, including possible reporting to the police, where there is suspicion or knowledge of specific cases of bribery is taken by TCD's secretariat in consultation with the International Law Office of the Ministry of Foreign Affairs on the basis of the available information. This applies regardless of whether this has taken place in Denmark or abroad, and regardless of how the information came into TCD's possession.

It follows from TCD's zero-tolerance policy that, as far the most important rule, notification of the authorities will happen in cases of knowledge of specific instances of bribery, including reporting to the police. The same applies to suspicion of bribery based on trustworthy evidence.

Whether the company and/or individual about whom there is suspicion of bribery shall be confronted with the suspicion before a possible decision about notifying the authorities, is determined in every case by TCD's secretariat, hereunder in the light of the risk of possible destruction of evidence and other hindrances to investigation that such a confrontation could cause.

THE LEGAL BASIS OF THE GUIDELINES

TCD is close to the activities of many Danish companies both domestically and abroad. As part of TCD's zero-tolerance policy it has therefore been decided that clear guidelines will be prepared regarding the circumstances under which TCD notifies other authorities, including possibly the police (reporting to the police), concerning knowledge or suspicion of the use of bribery by Danish companies.

The basis of the zero-tolerance policy is the criminalising of active and passive bribery under Danish law, hereunder the international obligations that Denmark has accepted.

As part of the international collaboration, Denmark has accepted a range of obligations to counter and/or criminalise bribery and other forms of corruption in both the public and private sector. In 2000, Denmark ratified the Council of Europe's criminal law convention on corruption (the Council of Europe's corruption convention), which covers active and passive bribery of national and foreign public officials and in the private sector, and complicity in these actions. In 2002, Denmark also adopted OECD's "Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions", where the participating states pledge to take the necessary precautions nationally to make it punishable for individuals to bribe foreign public officials, and to be able to prosecute them. In 2003, Denmark furthermore signed the UN corruption convention, which in addition to containing an obligation for participating states to criminalise bribery of national and international public officials, also contains an obligation to criminalise public officials' embezzlement or other forms of illegal appropriation of funds which are under the control of the officials in question by virtue of their position. The convention further contains an obligation to criminalise both active and passive bribery in the private sector and complicity herein.

In 2000, as part of the EU collaboration, Denmark ratified the first EU convention protocol for the protection of the European Community's economic interests (EU fraud convention). The protocol covers combating bribery involving public officials in the European Community or EU member states, i.e. bribery in the public sector. Denmark has furthermore ratified a convention on combating bribery involving public officials in the European Community or EU member states (EU bribery convention). Like the first EU fraud convention protocol, this convention is aimed at bribery in the public sector, i.e. public officials in EU member states and the European Community. In addition, a framework decision was taken in 2003 under the aegis of EU regarding combating bribery in the private sector. The framework decision obliges member states to criminalise both active and passive bribery, when it is deliberate and takes place as part of business activities.

WHAT IS PUNISHABLE BRIBERY ACCORDING TO DANISH LAW?

Criminalising active and passive bribery, including the previously mentioned international obligations and the obligations resulting from EU collaboration, has been incorporated in criminal law.

The relevant provisions in criminal law regarding bribery in the public sector are given in § 122 and § 144.

According to § 122 of the criminal law *"The one who unwarrantedly gives, promises or offers someone who works in Danish, foreign or international public service or duty, a gift or other advantage to induce the person in question to do or refrain from doing something in the exercise of that person's duty"*, is punishable with a fine or imprisonment for up to 3 years.

§ 122 of the criminal law concerns active bribery of individuals in foreign or international public service or duty, and also covers unwarranted advantages, without the requirement that the advantages are given to induce the public official to act in breach of duty. It is sufficient that the gift or the advantage (unwarranted) is given, promised or offered to induce the public official to do or refrain from doing something in the exercise of that person's duty. It is not further required that what the public official is sought to be induced to do, will involve an action in breach of the official's duty, or that the briber has this intention. Giving a gift as a reward for an action already carried out without a prior pledge here to, falls outside § 122.

Criminalising passive bribery, i.e. of the individual who receives bribes, is covered in § 144 of the criminal law, according to which *"The one who in execution of Danish, foreign or international public service or duty, unwarrantedly receives, requires or is promised a gift or other advantage, is punishable with imprisonment for up to 6 years, under mitigating circumstances with a fine"*.

In relation to the private sector, the relevant provisions that criminalise both active and passive bribery are given in § 299, section 2) of the criminal law.

§ 299, section 2) of the criminal law states that *"The one who, without the conditions for applying § 280 being present, 2) by safeguarding another's assets for himself/herself or others in an unwarranted way receives, requires or is promised a gift or other advantage, as well as the one who gives, promises or offers such a gift or other advantage, is punishable with a fine or imprisonment for up to 18 months."*

The criminal law regarding attempts (§ 21) and complicity (§ 23) also applies to §§ 122, 144 and 299, 2). It is furthermore a precondition that there is criminal intent. Intent exists when the one who bribes (or recipients of bribes) causes what according to the above mentioned criminal law provisions is required for the crime or considers its occurrence a necessary or likely consequence of the action, or only considers the crime's occurrence as possible but would have acted even if he had considered it certain.

LOCAL CUSTOMS/SMALL FACILITATION PAYMENTS

Although the elements of a crime are the same for bribery of foreign public officials as for bribery of Danish public officials, the formulation of § 122 and § 144 of the criminal law presupposes that it cannot be excluded that in some countries, special conditions can exist that certain tokens of appreciation (small facilitation payments) according to circumstances fall outside the punishable area, although the bribery would be punishable if it took place in Denmark. Whether such payments are non-punishable i.e. not "unwarranted", rests on specific assessment of the individual case, including the purpose of giving the small facilitation payment. The payment of a sum in connection with international business dealings to induce a public sector employee to act in breach of duty will however always be unwarranted and thus punishable.

This distinction between punishable bribery and small facilitation payments is emphasised in the Ministry of Justice's guidance on corruption (the publication is available through the Ministry of Justice's website: www.jm.dk, in Danish only). Notwithstanding this distinction, it is TCD's view that neither small facilitation payments nor other local customs, which in reality are expressions of bribery, are acceptable, and the distinction between what is considered legal or illegal can in practice result in considerable doubt. Obligations to warn against bribery therefore also unconditionally apply where small facilitation payments are concerned. If there is the slightest doubt whether the specific case concerns legal use of small facilitation payments or punishable bribery, TCD staff are obliged to notify TCD's secretariat just as if it were punishable bribery. In other words, TCD staff can only refrain from notification when it is fully obvious that the circumstance concerns the legal use of small facilitation payments.

IN WHAT CIRCUMSTANCES SHOULD THERE BE NOTIFICATION/REPORTING?

According to Danish law, there is no general obligation/requirement to report punishable offences and/or suspicion of punishable offences. This also applies to knowledge and/or suspicion of specific instances of bribery. According to legislation, there is no obligation/requirement to report suspicion or knowledge of violations of the relevant provisions of the criminal law regarding bribery/corruption, i.e. violation of §§ 122, 144 and 299, 2).

It follows however from the rules for good administrative practice that an authority under certain circumstances should notify another authority - and also possibly the police - in cases of punishable offences or suspicion of punishable offences. This also applies to suspicion or knowledge of violation of provisions in the criminal law concerning bribery. It is good administrative practice to notify another authority concerning knowledge of specific instances of bribery based on trustworthy evidence or well-founded suspicion of bribery. Depending on circumstances, there could also be reporting to the police of both active and passive bribery. It also follows from the Public Administration Act that the general duty of confidentiality, which forbids disclosure of information to other authorities, is subordinated when the disclosure protects public interests which clearly outweigh the consideration of those interests which give grounds for secrecy, hereunder consideration for the individual whom the information concerns, or if the disclosure is necessary for handling the case or enabling an authority to carry out supervisory or control tasks.

To the extent that the TCD secretariat, as part of its work, becomes suspicious of or gains knowledge of specific instances of bribery, TCD will decide in consultation with the International Law Office of the Ministry of Foreign Affairs whether authorities should be notified, and in a given case which authorities, and whether there should be possible reporting to the police. It follows from TCD's zero-tolerance policy that as far the most important rule, notification of the authorities will happen in cases of knowledge of specific instances of bribery, including reporting to the police. The same applies to suspicion of bribery based on trustworthy evidence.

5. THE TRADE COUNCIL OF DENMARK'S 7 PRINCIPLES: HOW WE WORK

As part of the internal anti-corruption policy, 7 principles have been formulated which apply to the work of TCD staff. The objective of these principles is to ensure a high degree of integrity for staff individually and for TCD as a whole. The internal policy forms the value basis for staff conduct and thereby also serves as guidance for all TCD employees in their daily work with Danish companies.

- 1. We have a zero-tolerance policy in relation to corruption and bribery**
 - TCD staff must not bribe or be complicit in bribery
 - If we are put in situations comparable with being blackmailed, or where small facilitation payment is unavoidable, this must be notified as quickly as possible to the immediate superior
 - Regardless of local customary practice, we will not compromise on the zero-tolerance policy
 - We will not be unsympathetic towards local customary practice, e.g. in relation to gifts etc. We will never however give, ask for or accept gifts or other services, which have more than a symbolic value and which can influence our function, work performance or judgment.
- 2. The Trade Council of Denmark is the Danish state's official export and investment promotion organisation**

- We are also part of the Ministry of Foreign Affairs, which gives us obligations both as an organisation and as private individuals. When stationed abroad for the Trade Council of Denmark, the public often have greater expectations of our conduct than for ordinary citizens and business people. We are therefore always careful to conduct ourselves in ways which cannot be associated with bribery and corruption.

3. We protect our reputation as representatives of a nation which is known as one of the world's most incorrupt countries

- A reputation for being incorrupt is in itself an important sales asset in many countries. It is an important part of our marketing to emphasise integrity as a key part of Danish business culture.

4. Our field of activity is abroad

- Our host governments can always trust us, as private individuals and advisors, to respect local legislation and loyally pass on this knowledge to our customers
- We operate in countries where bribery and corruption can be a daily practice, regardless of whether there is legislation which forbids this. We will conduct ourselves in a way which respects and lives up to local legislation.

5. We are professional

- The Trade Council of Denmark provides the highest level of professional service to its customers. We often identify market opportunities before others, as well as the risks associated with the opportunities. Our advice to companies will always be a balanced description of opportunities and risks.

6. We protect our integrity

- We always ensure that our advice is based on customer needs and not on our own interests.

7. We have an obligation to act as a responsible authority

- If we become aware of circumstances that are in breach of Danish or local legislation, we will bring this to the attention of the customer
- If there are instances where there are clear issues that the customer needs to address in order to comply with legislation, we will bring this to the attention of the customer. In particularly serious circumstances we will, following internal consultation with TCD management and the legal service, notify the Danish authorities.

