



Federal Ministry
of Economics
and Technology

Federal Ministry
of Justice



Foreign Trade

Preventing Corruption

Information for German Companies
Doing Business Abroad

A Brochure

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Introduction



Corruption causes economic, social and political damage, and thus damages all of us. Corruption is often a real problem for companies active abroad.

Competitive pressures are intense. It is sometimes quite difficult to gain an overview of the legal situation, economic framework conditions and customs in a foreign country. You might even be aware of some competitors who “promote” their business with gifts and payments to public officials.

In order to enable fair economic and social conditions, corruption must be combated worldwide despite the differences in cultures and traditions. The industrialised countries associated in the Organisation for Economic Cooperation and Development (OECD) have taken coordinated action to criminalise bribery of foreign and international public officials in international business transactions. With this, comparable market conditions have been created for their internationally active companies with regard to corruption in foreign countries.

But amendments to the law will not be enough to combat corruption in its many manifestations. How you conduct yourselves with respect to corruption depends upon you and your company active abroad. Clear positioning on the part of company management is particularly important. Please live up to your responsibility in a conscious and informed manner! With this brochure, we hope to assist you in that process.

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Corruption Is a Criminal Offence – Whether Committed in Germany or Abroad

In the past few years, the opening and liberalisation of markets have led to substantial success in export performance; but it has resulted in increased awareness of alleged cases of corruption as well. Corruption in international business transactions was either ignored or tacitly accepted for a long time. But corruption is not a petty offence or a “necessary evil”; it is a criminal offence whether it is committed in Germany or abroad.

The Act on Combating International Bribery (IntBestG) incorporated the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions into German law. This law complements the provisions in sections 334 et seqq. of the German Criminal Code (StGB) against corruption in the public sphere. It provides that bribery

- ▶ of foreign public officials, judges and soldiers,
- ▶ of public officials who work for international organisations (e.g. the United Nations or the European Community),
- ▶ of foreign members of parliament or parliamentarians of an international organisation,

is punishable if it is made in order to obtain or retain for oneself or a third party business or an improper advantage in international business transactions.

The EU Bribery Act goes even further, in that it criminalises not only active bribery, but also passive bribery of public officials in other Member States of the European Union and the European Community outside the area of international business transactions.



This includes not only acts of bribery committed from Germany, but also those committed by Germans in foreign countries. Such acts may be punished with imprisonment of up to five years or a fine; in especially serious cases, imprisonment of up to ten years may be imposed.

Example:

Entrepreneur X wants to introduce a product in State Y. As a precondition for market access, Y requires state approval, which is not issued until an official testing facility in State Y has certified the product's safety for use. In order to avoid the usually protracted testing procedure, X offers a staff member of the testing facility an amount of money for him to certify the product's safety for use without testing.

X has committed a criminal offence according to German law. It does not matter whether the money is actually given to the staff member of the testing facility, nor does it matter whether testing would have shown that the product is indeed safe for use. This is because the official act constituting a breach of duty which X endeavours to obtain is committed upon failing to test the product.

Liability of Companies

Not only natural persons may be held liable for acts of corruption. Companies may also be held liable – not under the criminal law, but rather pursuant to the law on regulatory offences (OWiG) – for criminal offences committed by a person with managerial responsibility for the company. The prerequisite is that as a result of the criminal offence, duties of the company have been violated or that the company has been enriched or was intended to be enriched (section 30 OWiG).

Furthermore, a company may be held liable if its management has not taken reasonable supervisory measures required to prevent bribery by employees of the company (section 130 in conjunction with section 30 OWiG).

Regulatory fines may be imposed up to an amount of one million euros. This maximum fine can be exceeded in order to siphon off the economic advantage gained by the act (section 30 (3) in conjunction with section 17 (4) OWiG). As a general rule, the responsibility of the company exists independently of whether the natural person is held liable under criminal law or not (and vice versa).

What You Can Do

- ▶ Information is the foundation of every strategy to prevent corruption: What exactly does corruption involve, what are the forms in which it appears, and why must it be combated? Companies doing business abroad should inform themselves about the situation specific to the respective country, for example its legal situation, the political and economic framework conditions as well as local customs.
- ▶ The following ground rules can help you to prevent corruption in your company:
 - ▶ Design your company operations in a transparent manner, for instance by clearly delineating responsibilities, requiring reports, and documenting and archiving activities.
 - ▶ Identify work areas particularly susceptible to corruption and undertake special organisational protective measures (for example, introduction of the more-eyes principle and the rotation principle; obligating staff members to obtain counter signatures; particularly careful selection and direction of staff members).
 - ▶ Inform and sensitise all of your employees, both in general terms and specific to their work duties.
 - ▶ Expressly state in your employment contracts that every form of corruption is prohibited.
- ▶ Regular and rigorous controls ensure that these organisational measures are effective.
- ▶ If feasible in your company, establish an Ombudsman's office or Hotline to which employees can turn if they suspect corruption.

- ▶ Act as a model for your employees with your own rigorous attitude against corruption. Be proactive in bringing up the topic at staff meetings, and send a clear signal that no corruption of any kind will be tolerated in your company.
- ▶ If, despite all precautionary measures, suspicions of corruption arise in your company, prevent a cover-up of the conduct, such as by limiting or cutting off responsibilities, as well as by securing documents, workplaces and materials. Introduce the necessary corrective measures in order to prevent additional cases of corruption. If necessary, seek support from a lawyer, a trade association or the competent chamber of commerce, or go directly to the police or public prosecutor's office of your home country (in some Länder, the possibility exists of reporting cases of suspected corruption to the criminal prosecution authorities anonymously via a hotline). In foreign countries, the local German mission abroad might be able to help, such as through intervention to the authorities of the respective state.

Legal provisions

The following legal provisions may be helpful to you in examining the issue of corruption in international business transactions:

- ▶ OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions
www.oecd.org under Corruption/OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- ▶ Act on the Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions (IntBestG)
http://bundesrecht.juris.de
- ▶ Act on the Protocol of 27 September 1996 to the Convention on the Protection of the European Communities' Financial Interests (EU Bribery Act)
http://bundesrecht.juris.de
- ▶ German Criminal Code (sections 11, 299 to 302, 331 to 338)
http://bundesrecht.juris.de
- ▶ Act on Regulatory Offences (sections 17, 30 and 130)
http://bundesrecht.juris.de

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