



CORPORATE ACCOUNTABILITY IN A CHANGING BUSINESS WORLD | FOREIGN CORRUPT PRACTICES

THE NETHERLANDS

BE UNSTOPPABLE

BUREN

LEGAL | TAX | NOTARY

This paper serves to create awareness and an understanding of the framework the Dutch legal system has in place to prevent and combat corruption and bribery of foreign public officials, most of which are contained in the Dutch Criminal Code. The paper is based on a contribution prepared for the ALFA virtual ICS held in March 2021.

Foreign and domestic public officials are under Dutch law treated equally. In addition to OECD rules, Dutch law is also influenced by EU law, in this regard the EU Directive 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Bribery and corruption

With respect to official corruption, Dutch law distinguishes active (bribing) and passive corruption (being bribed).

Article 177 DCC defines active bribery of public officials as:

- making a gift or promise to a public official or providing or offering a service with the intention of inducing the public official to do something or refrain from doing something in his or her public office; or
- making a gift or promise to a public official or providing or offering a service as a result of or in

connection with what he or she has done or refrained from doing in his or her present or past public office.

A similar definition applies to bribery of judges on the basis of article 178 DCC.

Article 363 DCC defines passive corruption as an act by a public official:

- who (i) accepts a gift or promise or a service, knowing or reasonably suspecting that it is made, granted or offered to him or her or (ii) requests a gift or promise or a service, in order to induce him or her to do something or refrain from doing something in his public office; or
- who (i) accepts a gift or promise or a service, knowing or reasonably suspecting that it is made, granted or offered to him or her or (ii) requests a gift or promise or a service, as a result of or in connection with what he or she has done or refrained from doing in his or her present or former public office.



A similar definition applies to bribery of judges on the basis of article 364 DCC.

Jurisdiction of Dutch courts

According to a directive on detection and prosecution of foreign corruption, the Dutch government is committed to a strict approach to foreign corruption. At the request of the Public Prosecutor's Office (Openbaar Ministerie) and the Fiscal Intelligence and Investigation Service (FIOD), the Dutch government provides targeted government-wide information with the aim of discouraging and preventing companies from committing corruption abroad, even if it concerns small amounts or payments to lower public officials. Dutch criminal courts would have jurisdiction with respect to:

- any person who bribes a public official (foreign or domestic) from within the Netherlands;
- a Dutch public official (not necessarily having Dutch nationality) or Dutch national bribed abroad;
- any person bribed abroad who is in the public service of an international organization having its seat in the Netherlands;
- a Dutch citizen who bribed a public official – foreign or otherwise – abroad; and
- a Dutch public official or a person in the public service of an international organization having its seat in the Netherlands and who committed the offence of bribery abroad.

A foreign public official bribed abroad by a Dutch citizen cannot be prosecuted in the Netherlands unless that public official is in the service of an international organization having its seat in the Netherlands or (part of) the act of bribery is committed within the territory of the Netherlands.

Consequences of non-compliance (penalties)

A person who is found guilty of bribery or corruption of a public official will be guilty of a criminal offense. The extent of penalties imposed will depend on whether an individual or corporation is involved.

For individuals, bribery or corruption of a public official can result in either or both of the following penalties:

- imprisonment for not more than 6 years; and/or
- a fine of up to EUR 87,000.-.

For a corporation, bribery or corruption can result in a penalty of EUR 870,000.- or, if the court does not deem this amount appropriate, a fine of up to 10 per cent of the annual turnover of the preceding fiscal year.

This paper is current as at December 2020

This publication is based on our contribution to the ALFA network Virtual ICS conference

Key contacts

Friederike Henke



Lawyer / advocaat |
Rechtsanwältin
E f.henke@burenlegal.com
T + 31 (0)20 237 1117

