

## LEGISLATOR IN GERMANY TIGHTENS UP THE FIGHT AGAINST CORRUPTION

Currently on-going legislative measures represent the most extensive anti-corruption reform in Germany since 1997. Intention of the legal change is mainly to transpose the European and international conventions to fight cross-border corruption. It moves bribery rulings from supplementary laws to the Criminal Code and tightens existing regulations.

### MOST RELEVANT CHANGES ARE:

- Extension of scope of German Criminal Law for bribery in the public sector committed abroad
- Extension of criminal liability of bribery and corruption in the private sector with the "employer model"
- Broader regulation regarding bribery of delegates

### EXTENSION OF SCOPE OF GERMAN CRIMINAL LAW FOR BRIBERY IN THE PUBLIC SECTOR COMMITTED ABROAD

Most significant is the legal change concerning corruption in the public sector amending the provisions on bribery and corruption in Section 331 et. seq. German Criminal Code ("StGB") with the extension to "European public officials" and the extension of criminal liability for bribery and corruption abroad.

The term "European public officials" is very broad and includes not only members of the European Commission, European Central Bank, European Court of Auditors and all public officers but also persons (only) assigned by the EU. To fulfill the strict criminal regulations it is only necessary that a benefit is granted to or accepted by a public official without approval by his superior. The qualified offence requires in addition that a benefit is granted or accepted and that the public official is violating his duties.

The most important practical impact does have the new Section 335a StGB (*Granting bribes to international public officials*). The regulation adjusts criminal liability concerning "foreign and international public officials". The term "foreign and international public officials" comprises domestic officials in all other countries (including EU and Non-EU) and is interpreted in a very broad sense.

Now, anyone making payments with the aim of at least influencing the discretionary decision of a foreign official risks an arising initial suspicion and investigations. The new legislation extends the scope of German Criminal Law for German citizens wherever they pay bribes to public officials - whether the purpose of the benefit is based on commercial or private interests.

### EXTENSION OF THE CRIMINAL LIABILITY OF BRIBERY AND CORRUPTION IN THE PRIVATE SECTOR - APPLICABLE FOR BRIBES IN GERMANY AND ABROAD

So far, it was (only) a punishable offence to take and give bribes in commercial practice with the requirement that either the offender (as receiver) demands, allows himself or accepts or that he (as donator) offers, promises or grants a benefit for himself or a third person in a business transaction if both parties agreed on the advantage as a return for an unfair preference in competition ("**competition model**").

The new Section 299 StGB extends the criminal liability: Now, it also comprises benefits given to an employee or an agent of the company (or taken by them) based on an agreement of wrongdoing in a business transaction in return for a breach of duty to this company ("**employer model**"). Relevant duties can be stipulated by law or private contract (e.g. internal guidelines). It is especially relevant when offering and granting benefits outside competitive situations (e.g. preferences after conclusion) or where no competitive situation could be proven. The scope of the "employer model" in detail is controversially discussed, but the new legislation makes it much easier to start investigation proceedings. Furthermore, taking and giving bribes in commercial practice are now included as a predicate offence for money laundering.

## NEW REGULATION REGARDING BRIBERY OF DELEGATES

The new regulation regarding bribery of delegates will have a deep impact on all lobbying activities. Previously, only buying votes was comprised which was in practice difficult to prove by investigation authorities. Now, also influencing actions e.g. in faction meetings or working committees as well as non-material benefits are comprised.

## IMPACT ON COMPLIANCE SYSTEMS

The legal change will have a considerable impact on enterprises with international operations. Forms of collaboration which were accepted in the past may have become questionable under the new regime. A widespread review of international business relationships and actions including the review of existing guidelines and the briefing of employees may be recommendable.

## IMPACT ON TAXATION ISSUES

The new criminal regulations will also be of considerable significance for taxation law. Corruption payments are not permitted to be entered as operating expenses under German law. So, the tax authorities will examine whether benefits to European or foreign public officials or payments in the private sector come under the extended scope of criminal liability.

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