

## THE NETHERLANDS

### 1 DUTCH ANTI-BRIBERY LEGISLATION

In the Netherlands, the Dutch Penal Code ("**DPC**") criminalises the act of bribing and the act of money laundering. Both *active bribery*, i.e., providing, offering or promising a bribe, and *passive bribery*, i.e., accepting a bribe, are criminalised. Additionally, the DPC criminalises bribery in both the *public sector*, e.g., bribery relating to local or foreign government officials, and the *private sector*, e.g., bribery of an officer in a private commercial company.

The DPC anti-bribery and anti-money laundering provisions apply to both natural and legal persons. Where a criminal offence has been committed by a legal person, criminal proceedings may be instituted against (i) the legal person, and/or (ii) the natural person who instructed the bribery or money laundering (*opdrachtgever*) and/or (iii) the natural person who (a) could have – and reasonably should have – taken measures to prevent the bribery or money laundering and (b) knowingly accepted the risk of the bribery or money laundering (*feitelijk leidinggevende*).

It is important to note that the DPC includes other, more generic provisions that may be directly relevant in the assessment of potential bribery and money laundering offences, such as those determining Dutch criminal law jurisdiction, the penalty scheme, and corporate and personal liability.

### 2 HIGH-LEVEL SUMMARY OF MAIN ANTI-BRIBERY AND ANTI-MONEY LAUNDERING PROVISIONS

Below we highlight the core anti-bribery and anti-money laundering provisions of the DPC. An unofficial translation of the articles is provided in the following section.

#### 2.1 Prohibition of active bribery relating to a civil servant (Art. 177 DPC)

The DPC criminalises the making of a gift, as well as the promising, provision and offering of a service to a civil servant (i) in order to induce him to do or not do something in the performance of his office; (ii) as a result of or in response to what this civil servant has or has not done in the performance of his current or former office.

#### 2.2 Prohibition of passive bribery relating to a government official (Art. 363 DPC)

The DPC criminalises the acceptance of a gift, promise or service by a civil servant, done while knowing or reasonably suspecting that it is being made, provided or offered to him (i) in order to induce him to do or not do something in the performance of his office, or (ii) as a result of or in response to what he has done or not done in the performance of his current or former office.

### **2.3 Prohibition of active bribery relating to the private sector (Art. 328ter DPC)**

The DPC criminalises the offering of a gift, the making of a promise, and the provision and offering of a service to a person who is employed or acting on the basis of a mandate other than as a civil servant, in response to what that other person has done or refrained from doing, or will do or refrain from doing, as part of his employment or mandate, if that gift, promise or service is of such nature or made or provided under such circumstances that the provider should reasonably assume that the other person acts in breach of his duty.

### **2.4 Prohibition of passive bribery relating to the private sector (Art. 328ter DPC)**

The DPC criminalises the request and acceptance of a gift, promise or service by an employee or other person acting on the basis of a mandate, in relation to something he has done or has refrained from doing, or will do or will refrain from doing, which is in violation of his employment duties or the exercise of his mandate, and in violation of the requirements of good faith.

### **2.5 Prohibition of money laundering**

Money laundering may consist of (i) hiding or concealing the true nature, origin, location or disposal of any object or property right; or (ii) moving, acquiring, possessing, transferring, converting or using any object or property right; when any of these actions is done while knowing that the object or property right originates, directly or indirectly, from a crime. The money laundering offence can be - and often is - used as an additional legal basis for criminal liability, alongside criminal offences such as bribery, forgery, and fraud.

## **3 UNOFFICIAL TRANSLATION OF SELECTED ARTICLES OF THE DUTCH PENAL CODE**

Below we provide an unofficial translation of selected articles of the DPC (as of 1 January, 2017). As noted, other provisions of the DPC may be relevant in the assessment of potential bribery and money laundering offences as well.

### **3.1 Jurisdiction**

#### [Art. 5](#)

1. Dutch criminal law applies to anyone outside the territory of the Netherlands who commits a serious criminal offence against a Dutch citizen, a Dutch civil servant, a Dutch vehicle, vessel or aircraft, insofar as this offence carries a statutory term of imprisonment of eight years or more and is punishable under the law of the country where it was committed.

2. For the purposes of paragraph 1, the foreign national who has his permanent place of residence or abode in the Netherlands, will be considered as equivalent to a Dutch citizen.

#### [Art. 6](#)

1. Dutch criminal law applies to anyone outside the territory of the Netherlands who commits an act insofar as a treaty or resolution of an international organisation designated by order in council requires that jurisdiction be established over that act.
2. The order in council referred to in paragraph 1 describes the acts in respect of which the treaties and resolutions of international organisations designated by order in council require that jurisdiction be established.

### **3.2 Legal entities**

#### [Art. 51](#)

1. Criminal acts can be committed by both individuals and legal entities.
2. If a criminal act is committed by a legal entity, criminal proceedings may be instituted and the sanctions and measures as prescribed by law, where applicable, may be issued:
  - 1°. against the legal entity; or
  - 2°. against those who have commissioned the criminal act and those who actually directed the unlawful acts; or
  - 3°. against the entity and individuals referred to in 1° and 2° jointly.
3. For the purposes of the preceding paragraphs, unincorporated companies, partnerships, shipping companies and special purpose funds are considered equivalent to a legal entity.

### **3.3 Sanctions**

#### [Art. 23](#)

1. A person sentenced to pay a fine must pay the amount to the State by the deadline to be set by the Public Prosecution Office charged with the execution of the order issuing the fine or the judgment.
2. The minimum amount of the fine is EUR 3.
3. The maximum fine that may be imposed for a criminal act is equal to the amount of the category set for that offence.
4. There are six categories:
  - the first category, EUR 410 [Note editor: As of 1 January 2016];

- the second category, EUR 4,100 [Note editor: As of 1 January 2016];
  - the third category, EUR 8,200 [Note editor: As of 1 January 2016];
  - the fourth category, EUR 20,500 [Note editor: As of 1 January 2016];
  - the fifth category, EUR 82,000 [Note editor: As of 1 January 2016]; and
  - the sixth category, EUR 820,000 [Note editor: As of 1 January 2016].
5. For a misdemeanour or crime which is not subject to a fine, a fine can be imposed up to the amount of the first or third category, respectively.
  6. For a misdemeanour or crime which is subject to a fine, but for which no category has been set, a fine may be imposed up to the amount of the first or third category, respectively, if this amount exceeds the fine amount set for the criminal act concerned.
  7. When sentencing a legal entity, a fine to the amount of the next higher category may be imposed if the category set for the act does not allow appropriate punishment. If a fine of the sixth category may be imposed for the act and that category does not allow appropriate punishment, a maximum fine may be imposed of 10% of the legal entity's annual turnover in the financial year prior to the judgment or order issuing the fine.
  8. The preceding paragraph equally applies if an unincorporated company, a partnership, a shipping company or a special purpose fund is sentenced.
  9. The amounts referred to in paragraph 4 are adjusted by a governmental decree every two years with effect from 1 January of each year and in line with the development of the Consumer Price Index since the previous adjustment of these amounts. In this adjustment, the amount of the first category will be rounded down to a multiple of EUR 5 and the amounts of the second through sixth categories will be determined in line with maintaining the ratio between the amount of the first category and the amounts of the other categories.

### **3.4 Bribery**

#### [Art. 177](#)

1. The following acts will be punished by a maximum prison sentence of six years or a fine in the fifth category:
  - 1°. anyone who makes a gift or promise or provides or offers a service to a civil servant in order to induce him to do or not do something in the performance of his office;
  - 2°. anyone who makes a gift or promise or provides or offers a service to a civil servant as a result of or in response to what this civil servant has or has not done in the performance of his current or former office.

2. The same sanction applies to anyone who commits an act as described in paragraph 1 under 1°, towards a person with the prospect of being appointed as a civil servant, if the appointment as a civil servant did occur.
3. If the offender commits any of the criminal offences described in this article in the course of his profession, he may be disqualified from practising that profession.
4. Disqualification from the rights listed in article 28, paragraph 1, under 1°, 2° and 4° may be imposed.

#### [Art. 178](#)

1. Any person who makes a gift or a promise or provides or offers a service to a judge in order to influence the decision in a case before his court, will be punished by a maximum prison sentence of nine years or a fine of the fifth category.
2. If the gift or promise is made or the service is provided or offered in order to obtain a conviction in a criminal case, the offender will be punished by a maximum prison sentence of twelve years or a fine of the fifth category.
3. If the offender commits any of the crimes defined in this article in the course of his profession, he may be disqualified from practising that profession.
4. Disqualification from the rights listed in article 28, paragraph 1, under 1°, 2° and 4° may be imposed.

#### [Art. 178a](#)

1. For the purposes of article 177, persons in the public service of a foreign state or an international organisation are considered equivalent to civil servants.
2. For the purposes of article 177, paragraph 1, under 2°, former civil servants are considered equivalent to civil servants.
3. For the purposes of article 178, the judge of a foreign state or an international organisation is considered equivalent to a judge.

#### [Art. 328ter](#)

1. Any person who is employed or acting on the basis of a mandate other than as a civil servant and accepts or requests a gift, promise or service in response to what he has done or refrained from doing, or will do or refrain from doing, in breach of his duty under his employment or mandate, will be punished by a maximum prison sentence of four years or a fine of the fifth category.
2. The same punishment will apply to any person who makes a gift or promise or provides or offers a service to another person who is employed or acting on the basis of a mandate other than as a civil servant, in response to what that other person has done or refrained from doing, or will do or refrain from doing, as part of his employment or mandate, if that gift, promise or service is of such nature or

made or provided under such circumstances that he should reasonably assume that the other person acts in breach of his duty.

3. Acting in breach of his duty as referred to in the preceding paragraphs in any case includes concealing the acceptance or request of a gift, promise or service, in violation of the good faith towards the employer or principal.
4. The same sanction will apply to anyone with the prospect of being employed or of acting under a mandate, provided that employment or acting under a mandate did occur, who commits an offence as described in paragraph 1, as well as to anyone who commits this act after his employment or mandate.
5. The same punishment will apply to anyone who commits an act as described in paragraph 1 towards a person with the prospect of being employed or of acting under a mandate, if this employment or mandate did occur, as well as to anyone who commits this act towards a person after his employment or mandate.

#### [Art. 339](#)

1. Upon conviction for any of the criminal offences described in this title, the judge may order publication of his judgment and the offender may be disqualified from practising the profession in which he committed the offence.
2. In the case of conviction for any of the criminal offences described in articles 326, 328, 331 and 332, disqualification from the rights listed in article 28, paragraph 1, under 1°, 2° and 4°, may be imposed.

#### [Art. 363](#)

1. A maximum prison sentence of six years or a fine of the fifth category may be imposed on a civil servant:
  - 1°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made, provided or offered to him in order to induce him to do or not do something in the performance of his office;
  - 2°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made, provided or offered to him as a result of or in response to what he has done or not done in the performance of his current or former office;
  - 3°. who requests a gift, promise or service in order to induce him to do or not do something in the performance of his office;
  - 4°. who requests a gift, promise or service, as a result of or in response to what he has done or not done in the performance of his current or former office.
2. The same sanction will apply to any person who, with the prospect of being appointed as a civil servant, commits an act as described in paragraph 1, under 1° and 3°, if the appointment as a civil servant does occur.
3. Any person who commits an act as described in paragraph 1 in connection with his capacity as minister, state secretary, royal commissioner, member of the

provincial executive, mayor, member of the municipal executive or member of a general representative body, will be punished by a maximum prison sentence of eight years or a fine of the fifth category.

[Art. 364](#)

1. A judge who accepts a gift, promise or service, knowing or reasonably suspecting that it is made, provided or offered to him in order to influence the decision in a case before his court, will be punished by a maximum prison sentence of nine years or a fine of the fifth category.
2. A judge who requests a gift, promise or service, in order to induce him to influence the decision in a case before his court, will be punished by a maximum prison sentence of nine years or a fine of the fifth category.
3. If the gift, promise or service is accepted, knowing or reasonably suspecting that it was made, provided or offered in order to obtain a conviction in a criminal case, the judge will be punished by a maximum prison sentence of twelve years or a fine of the fifth category.
4. If the gift, promise or service is requested in order to induce him to obtain a conviction in a criminal case, the judge will be punished by a maximum prison sentence of twelve years or a fine of the fifth category.

[Art. 364a](#)

1. For the purposes of articles 361, 363, 365 to 368 inclusive and 376, persons in the public service of a foreign state or an international organisation are considered equivalent to civil servants.
2. For the purposes of article 363, under 2° and 4°, former civil servants are considered equivalent to civil servants.
3. For the purposes of article 364, the judge of a foreign state or an international organisation is considered equivalent to a judge.

### **3.5 Money Laundering**

[Art. 420bis](#)

1. A person will be punished as guilty of money laundering by a maximum prison sentence of six years or a fine of the fifth category if that person:
  - a. hides or conceals the true nature, origin, location, sale or relocation of an object, or hides or conceals the identity of the person who is entitled to an object or has the object in his possession, knowing that the object originates – directly or indirectly – from a criminal offence;

- b. acquires, has in his possession, transfers or converts an object or makes use of an object, knowing that the object originates – directly or indirectly – from a criminal offence.
2. "Objects" includes all property and property rights.

[Art. 420bis.1](#)

Money laundering merely consisting of the acquisition or possession of an object that directly originates from any offence committed by oneself, will be punished as simple money laundering by a maximum prison sentence of six months or a fine of the fourth category.

[Art. 420ter](#)

1. A person who makes a habit of money laundering will be punished by a maximum prison sentence of eight years or a fine of the fifth category.
2. The same punishment will apply to any person who is guilty of money laundering in the exercise of his profession or business.

[Art. 420quater](#)

1. A person will be punished as guilty of money laundering of debts by a maximum prison sentence of two years or a fine of the fifth category if that person:
  - a. hides or conceals the true nature, origin, location, sale, or relocation of an object, or hides or conceals the identity of the person who is entitled to an object or has the object in his possession, while he has reasonable cause to suspect that the object originates - directly or indirectly - from a criminal offence;
  - b. acquires, has in his possession, transfers or converts an object or makes use of an object, while he has reasonable cause to suspect that the object originates - directly or indirectly - from any crime.
2. "Objects" includes all property and property rights.

[Art. 420quater.1](#)

Money laundering of debts merely consisting of the acquisition or possession of an object that directly originates from an offence committed by oneself, will be punished as simple money laundering of debts by a maximum prison sentence of three months or a fine of the fourth category.

**4 CONTACT INFORMATION: COUNTRY REPRESENTATIVE FOR THE  
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