

# Overview on anti-corruption rules and regulations in NORWAY

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## **I. What is the anti-corruption legal framework in your country (including brief overview on active / passive bribery, bribery of foreign officials, and commercial bribery)?**

The Norwegian penal code § 276 a and 276 b came into force in December 2005. We have a new penal code that entered into force in October 2015, with similar regulation in §§ 387 and 388. There are no material changes in the regulation with respect to the legal framework on corruption.

§ 387 is the general rule. It criminalizes both active and passive corruption. Corruption is defined as demanding, receiving, or accepting an offer, for himself or someone else, for an undue advantage in connection with a position, office or assignment, or giving or offering an undue advantage in said connection. Position, office or assignment includes public officials and employees etc. in private companies, whether in Norway or in other countries.

There is in the wording in § 387 no requirement of intent.

The maximum sentencing is 3 years imprisonment.

§ 388 regulates gross corruption, with a maximum sentence of 10 years imprisonment. Whether it is gross corruption is based on a broad assessment. Important factors indicating gross corruption would be if a public official is involved, if there is breach of a specific duty connected to the position, if large amounts are involved, if there is an element of concealing etc.

## **II. Does this framework also cover extra-territorial corruption?**

The rules apply to acts in Norway, on other Norwegian territories (Svalbard, Jan Mayen, parts of ant-arctic), on the continental shelf, in Norwegian economic zone, on Norwegian ships, vessels and installations, aircrafts etc.

The rules apply to acts in other countries when the perpetrator is a Norwegian citizen, or a person with domicile in Norway, or for a person acting on behalf of a Norwegian company, provided that the act constitutes an offense in the country in which the act is done. There are also some other less practical extensions of the territorial applicability (penal code § 5).

### **III. Is there a concept of corporate criminal liability?**

Yes, with significant fines, or loss of right to do business, permanently or for a period.

The regulation is in the penal code § 27. The condition is an act on behalf of the corporation. It is not a condition that the actual perpetrator is known or identified, and no individual has to have shown negligence, intent etc. The company has an objective liability.

### **IV. What are the penalties for legal entities (if applicable) and natural persons?**

Corruption: max 3 yrs imprisonment

Gross corruption: Max 10 yrs

Legal entities: Fine, no limit. The highest fine to a company until today, to my knowledge, is circa 46 million USD).

### **V. Which local authorities are competent for corruption investigations?**

Investigation in matters related to corruption lies, as a general rule, to the ordinary police. The competence to indict lies with the Council of ministers if it is against a public servant appointed by this council, otherwise with the district attorneys.

We do have a special branch (The National Authority for Investigation and Prosecution of Economic and Environmental Crime – Økokrim). This authority has a general competence to investigate cases involving economical or environmental crimes. Cases can be reported directly to this unit, they can be referred from local police, or Økokrim can, ex officio, start an investigation.

Økokrim is slightly differently composed, compared to ordinary police. The investigators are not necessarily police officers, but may have education or background as auditors, tax advisors, civil servants with experience from tax office, lawyers, compliance officers etc. The investigation is lead by the district attorney, who is directly involved in the investigation, and also holds the competency to indict. From defense attorneys view, this way of organizing the unit raises some concerns with respect to the principle of fair trial. In our opinion the district attorney should not have the power to indict in cases she or he has had the primary responsibility for investigating. Also, the background that some of the investigators have, leads to a “civil approach” in gathering and assessing evidence, and moving and reducing the burden of proof. This is now a matter of a

general debate in Norway, and the system will also undergo a broad assessment of whether it meets the required standards of fair trial.

#### **VI. Are there whistle-blower regulations?**

There is no such direct regulation in the penal code. A whistle-blower will not, and cannot, be granted immunity against criminal charges. However, he will benefit from rules reducing the sentencing. These rules are in the penal code § 78, see VII below.

#### **VII. Are there voluntary disclosure / self-reporting programmes and procedures?**

Yes. This is regulated in the criminal code § 78.

The court is obligated from the law to take voluntary disclosure, self-reporting and confession in to account upon sentencing. There is no obligatory reduction following from the law, but practice from the Supreme Court states that a reduction is mandatory. The range is a reduction with up to 35-40 %, or making parts of the sentence suspended, or all of it changed to community service. In general, the earlier the said activity from the accused comes, and the higher the implications are for purposes of reducing the investigating efforts or simplifying trial, the larger the reduction.

#### **VIII. What are the consequences for assessment of guilt or admission of wrongdoing for future business, work, permits e.a.?**

The penal code § 56 states that anyone who has committed a crime indicating that he is unfit for, or inclined to misuse a position, business or activity, can, when this is required from public interests, lose a position, or lose the right for the future to hold a position or to run a business or activity.

The loss of rights can be limited to certain functions, or there may be arranged for specific conditions to be met for this individual.

The loss of rights is generally limited to five years, but can, provided special reasons, be indefinitely.

The loss of rights is decided by the courts in the criminal case as part of the sentencing. The ne bis in idem principle apply.

Loss of work-permits is regulated in our law on foreigners entering and working in Norway. This is not decided by the court, but by the directorate for matters related to the law on foreigners entering in to and working in Norway. If a non-EEC national, loss and expulsion is the main rule.

## **IX. What are the latest developments in anti-corruption in your jurisdiction?**

At the present time, there are quite a few cases with charges for corruption being investigated and tried in the courts. I would say there are four primary issues now.

Firstly, the courts need to address the issue of whether intent is a condition for criminal liability for individuals. Økokrim is generally arguing that this is not a condition, and defense attorneys argue that it is. This has been tried once in the Supreme Court. The Court went a long way to say it is a condition, but did not finally decide in that case, as intent was proven.

Secondly, the matter of sentencing is not fixed, and certainly not for gross corruption. In one case, Økokrim argued for 7 years imprisonment, and the City court sentenced to 2,5 years. This case is under appeal. The discrepancy indicates the need for decisions from the courts to establish a level.

Thirdly, we have the matter of securing evidence from other countries, for instance statements from witnesses, other possible suspects, and to secure documentation and other physical evidence in other jurisdictions. In international cases this as a recurring problem. It should be solved in favour of the defendant, but this does not always appear to be the case.

Lastly, as I have pointed out above, there is the matter of the organizing of Økokrim. There will in the near future be established a group that will have a mandate from the Department of Justice to look in to the model, and give recommendations for changes – if any are called for.

## **X. The Author**

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*Arild Dyngeland is the chair of the Norwegian Bar association's committee giving expert opinions on suggested amendments in the penal code and in the criminal proceedings code. He has, until December 2015, also been a member of the disciplinary committee in the bar association trying complaints against lawyers under the code of conduct for lawyers.*

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