

# Anti-Bribery and Corruption

An International Guide: Australia, Belgium, China, France, Germany,  
Hong Kong, Italy, Saudi Arabia, Singapore, Spain, UAE and UK

# Anti-Bribery and Corruption Regimes: At a Glance

Jurisdiction	Description
Australia	The Australian anti-bribery regime is currently under Government review. So far, the track record of prosecutions is sparse. However, OECD pressure is causing a greater focus on investigations and legislative tightening of exceptions.
Belgium	In Belgium, both public and private bribery, as well as passive and active bribery are criminalized. The Criminal Code imposes both fines and imprisonment when bribery is proven.
China	For certain types of bribery, the threshold for prosecution has been revised by the Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery (law on "Bribery Interpretation"), which was released on April 18 2016. The sanctions range from criminal detention to death penalty and a fine shall be imposed. <sup>1</sup> If the circumstances are serious, the court may also confiscate assets.
France	In addition to the existing criminalization of bribery and influence peddling that can lead to a fine up to €5,000,000, French legislation is about to evolve in favour of a more efficient prevention of such offences, through compliance programmes. The objective is also to have a harmonized approach with regard to bribery issues by bringing French legislation closer to the international standards set by the FCPA and the UK Bribery Act.
Germany	German law differentiates between criminal sanctions against bribery in the public sector on the one hand and in private business on the other hand as well as administrative offences. A business can avoid conviction under the corporate offence of bribery, if it can show that there were adequate procedures in place designed to prevent active and passive bribery.
Hong Kong	Hong Kong's anti-bribery and corruption regime: <ul style="list-style-type: none"> <li>· comprises a combination of statutory and common law offences;</li> <li>· criminalises offering, soliciting and receiving bribes;</li> <li>· also criminalises possession of disproportionate wealth by current or former public servants;</li> <li>· applies in both public and private sectors, and can have extra-territorial impact; and</li> <li>· is enforced by a specialised and independent anti-corruption agency.</li> </ul>
Italy	Legislative Decree 231/2001 introduced the liability of Italian companies for bribery criminal offences. Companies shall be liable if they cannot prove that they have put in place adequate procedures and controls.
Saudi Arabia	The Combating Bribery Law and the Civil Service Law criminalise various forms of corruption, including active and passive bribery. Those violating the law by accepting bribes face up to 10 years in prison or fines of up to 1 million Riyals.
Singapore	Singapore's main anti-bribery legislation, the Prevention of Corruption Act has a broad reach and covers both public and private bribery and targets both recipients and givers of bribes. The PCA defines a bribe by reference to the term "gratification", which broadly covers both financial and non-financial benefits. There are no exceptions or defences.
Spain	The Spanish Criminal Code punishes both payment and receipt of bribes to and by not only public officials but also persons entrusted with public service functions. Since 2010 legal entities can also be found liable for bribery, and the sanctions that may be imposed are severe (e.g. fines of up to €9,000,000, dissolution and termination of the company). Companies can avoid criminal liability by proving that they have implemented corporate compliance programs to prevent bribery as long as the task of verifying the effectiveness of the compliance programs was endorsed by a body of the company with independent powers or by a third party legal entity.
United Arab Emirates	The UAE Federal Penal Code criminalises bribery and attempted bribery in the public and private sectors, but distinguishes between the two sectors. A bribe is anything that confers a benefit with the intent to procure an employee to act (or to abstain from an act) in violation of their duties, even if the act is not within their official duties. A bribe is still a bribe even if it is accepted without actual intent to violate his/her duties. A briber, or intermediary, may seek exemption from applicable sanction by reporting the crime prior to its discovery. The applicable sanction depends on whether the bribe arose in the public or private sector. Sanctions include imprisonment (for up to 10 years) and fines.
United Kingdom	The individual and corporate offences, as well as the introduction of Deferred Prosecution Agreements speak to a real focus from the UK's enforcement and prosecuting bodies on encouraging a 'clean' business environment in the UK. The legislative levers within the UK Bribery Act represent the gold standard in international anti-bribery law and are already having a significant effect on corporate behaviour and compliance culture.

<sup>1</sup> Except for the crime of accepting a bribe by non-state functionary

# Australia

On 24 June 2015, the Commonwealth Senate voted in favour of an inquiry into foreign bribery. The Senate will consider why prosecutions of foreign bribery offences under Australian law appear difficult to bring and so rarely result in conviction. The inquiry will also provide an opportunity to examine whether Australian authorities should have more latitude to negotiate plea bargains with offenders, in addition to conventional criminal prosecutions. Public submissions closed on 24 August 2015, and King & Wood Mallesons provided submissions seeking further guidance on how to comply with the law as it currently stands. The inquiry is likely to lead to legislative changes depending on the recommendations that result. A further development is the recent introduction of accounting records offences.



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## 1. What is bribery?

The offence of bribing a foreign public official is contained in section 70.2 of the Criminal Code Act 1995 (Cth) ("Criminal Code"). Hence, foreign bribery is regulated at a Federal national level. A person is guilty of an offence if the following elements are present:

- the person provides, offers or promises to provide a benefit to another person, or causes a benefit to be provided to another person; and
- the benefit is not legitimately due to the other person.

The bribe must be given or offered with the intention of influencing a public official in the exercise of his or her duties, to obtain or retain business or to obtain or retain a business advantage. That intention need not be expressed and the benefit given can be monetary or non-monetary.

Sections 141 and 142 of the Criminal Code criminalises bribery of domestic public officials.

There is also regulation of domestic bribery at the State and Territory level. Generally, domestic bribery involves the corrupt giving, offering or receiving of inducements or rewards to or from employees or agents of companies and individuals or public officials. The conduct will be "corrupt" only if the person engaging in it had the intention of influencing the recipient of the inducement or reward to show favour.

## 2. What are the exceptions/defences?

The Criminal Code provides two defences against allegations of foreign bribery:

- lawful conduct in the jurisdiction in which it was made according to the written law in that jurisdiction; or
- a facilitation payment, or a minor payment provided in return for expediting or securing the performance of a 'routine government action', and an appropriate record of the payment was created. This exception is under review.

## 3. What are the sanctions?

The Criminal Code provides significant penalties for the bribery of foreign and domestic public officials:

- for individuals, a fine of up to AU\$1.8 million or up to ten years' imprisonment; and
- for corporations, a fine which will be the greatest of AU\$18 million, three times the value of the benefit received by the corporation and its related entities, or 10% of the annual turnover of the corporation and each of its related entities.

In relation to domestic bribery, each State or Territory varies as to the specific penalties that may be imposed. Generally, individuals may be liable for anywhere between three to ten years' imprisonment. In relation to bribery by a company, certain jurisdictions provide for fines instead of imprisonment whereas other jurisdictions make no specific provision.

# Belgium

## 1. What is bribery?

Under the Belgian Criminal Code, a distinction is made between active and passive bribery in the private and public sector.

Active public bribery is offering, promising or giving an advantage of any kind, directly or indirectly, to a person exercising a public function either for him/herself or for anyone else, in order to induce him/her to:

- (i) perform an act within the scope of his/her responsibilities which is not subject to remuneration;
- (ii) perform an improper act, or refrain from a proper act, in the exercise of his/her function;
- (iii) commit an offence in the exercise of his/her function; or
- (iv) use influence derived from his/her function to obtain performance or non-performance of an act by a public authority.

Passive public bribery is defined as the request or acceptance, directly or indirectly, of an advantage of any kind, for himself/herself or for anyone else, in exchange for a specific action or omission (as set out above).

In Belgium, the following persons are also considered as persons exercising a public function:

- A candidate for a public function;
- Anyone who pretends by use of a false identity that he/she will exercise a public function in the future;

- Anyone pretending to exercise a public function; or
- Any person carrying out a public function in a foreign state or in a public international organisation.

Active private bribery, on the other hand, is offering, promising or giving an advantage of any kind, directly or indirectly, to a director, manager or other representative of a legal entity or natural person, for him/herself or for anyone else, intending to induce him/her to act or refrain from certain acts within his/her function without the authorization of the board of directors, the shareholders or principal.

Passive private bribery is defined as the request or acceptance by a director or other representative of a company, directly or indirectly, of an offer, promise or advantage of any kind, for him/herself or for anyone else, to do or refrain from certain acts within his/her function, without authorization of the company's board of directors, the shareholders or principal.

## 2. What are the exceptions/defences?

There are few defences available once bribery has been proven.

The level of the sanction may be reduced if a business can show that there were adequate procedures in place designed to prevent bribery. In Belgium, companies are encouraged to put in place a Code of Conduct.

## 3. What are the sanctions?

In the public sector, penalties range from 6 months to 10 years imprisonment and/or €600 to €600,000 in fines. The maximum sanctions apply in case of bribery of police officers, members of the public prosecutor's office or judges.

In the private sector, penalties range from 6 months to 3 years imprisonment and/or €600 to €300,000 in fines. Apart from the negative publicity, a legal entity could also be added to the public procurement black list. In addition, a company may be denied certain fiscal advantages previously enjoyed.

The level of the sanction can be reduced if a business can show that there were adequate procedures in place designed to prevent bribery.



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# China

The tough sanctions imposed by PRC Criminal Law make it imperative for businesses to ensure effective procedures are in place to prevent commercial or official bribery.



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## 1. What is bribery?

The PRC Criminal Law distinguishes between two types of bribery: official bribery and commercial bribery.

### Official Bribery

Official bribery is the criminal offence of giving, accepting, soliciting or introducing a bribe to or by state functionaries. One of the parties involved in the offence of official bribery must be a state functionary and a government related entity. There are monetary thresholds for these offences. The threshold for prosecution of the crime of giving a bribe is RMB30,000, if both the offeror and the recipient are individuals. However, in some specific situations<sup>1</sup>, the crime of giving a bribe is committed if the value of the bribe is more than RMB10,000 and less than RMB30,000. If the offeror is an individual and the recipient is a government related entity, such as a government agency or state-owned enterprise, the threshold for prosecution is RMB100,000; if the offeror is a legal entity, the threshold for prosecution is RMB200,000 regardless of whether the recipient is an individual or not. With respect to the crime of accepting a bribe, the threshold for prosecution is RMB30,000, if the recipient is an individual and RMB100,000, if the recipient is a government related entity. Similar to the crime of offering a bribe, exceptions also exist for prosecuting the crime of accepting a bribe.<sup>2</sup> Furthermore, the threshold for prosecution is RMB20,000 for introducing an individual to give a bribe, while the threshold for prosecution of introducing an entity to give a bribe is RMB200,000<sup>3</sup>.

### Commercial Bribery

Commercial bribery includes giving a bribe and accepting a bribe. Here, none of the

parties involved is government related. With respect to the crime of giving a bribe, the threshold for prosecution is RMB60,000, if the offeror is an individual, and RMB200,000, if the offeror is an entity. The threshold for prosecution of the crime of accepting a bribe is RMB60,000 regardless of whether the offeror is an individual or not. Accepting a bribe by a private-owned entity shall not constitute a criminal offense.

In certain defined circumstances, crimes involving amounts below the aforementioned thresholds will be investigated.

Commercial bribery is also prohibited by the PRC Anti-unfair Competition Law which defines commercial bribery as business operators using money, assets, or other means to bribe counter parties to sell or purchase goods. Commercial bribery includes kickbacks provided covertly and off the books. No monetary threshold for initiating an administrative investigation against commercial bribery is stipulated under the PRC Anti-unfair Competition Law.

According to the PRC Criminal Law, a state functionary is defined as:

- a person who performs public services in state organs (including executive, administrative, judicial, prosecutorial, and military organs of all levels);
- a person who performs public services in state-owned companies or enterprises;
- a person who is assigned by state organs or state-owned enterprises to enterprises or institutions that are not owned by the state but perform public services; and
- other people who perform public service according to law.

## 2. What are the exceptions/defences?

According to article 389 of the PRC Criminal Law, if the offeror gives assets to a state functionary due to the extortion conducted by the state functionary but does not receive any illegal benefit, the offeror shall not commit the crime of giving a bribe.

## 3. What are the sanctions?

Under the PRC Criminal Law, the sanctions for the three sub-categories of crimes of official bribery are listed as followings: 1) sanctions for accepting a bribe range from criminal detention of not more than three years imprisonment to life imprisonment or the death penalty; 2) sanctions for the crime of giving a bribe range from criminal detention of not more than five years imprisonment of not more than fifteen years imprisonment or life imprisonment; 3) sanctions for introducing a bribe range from criminal detention to not more than three years imprisonment.

The sanctions for the crime of commercial bribery are as follows: sanctions for accepting a bribe by a non-state functionary range from criminal detention of not more than five years imprisonment to a maximum of fifteen years imprisonment. Sanctions for giving a bribe to a non-state functionary range from criminal detention of not more than three years imprisonment to not more than ten years imprisonment.

With respect to the sub-categories of crimes mentioned above, the offender's assets and illegal proceeds may also be confiscated. In addition, Amendment (IX) to the PRC Criminal Law, which took effect in November

2015, imposes a fine in respect of each of the above-mentioned crimes except for the crime of accepting a bribe by non-state functionary.

According to the PRC Anti-unfair Competition Law, administrative penalties for commercial bribery may include a fine ranging from RMB10,000 to RMB200,000, as well as disgorgement of illegal income generated from the commercial bribery.

**COMMERCIAL  
BRIBERY  
INCLUDES  
KICKBACKS  
PROVIDED  
COVERTLY AND  
OFF-THE-BOOKS.**

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### Footnotes

1 E.g. offering bribes to three or more people, using unlawful gains for the bribe, giving bribes to officials of certain government agencies, seeking promotion opportunities by offering bribes, bribing judicial officers and affecting the judicial justice, or causing loss in value of more than RMB500,000 and less than RMB1,000,000

2 E.g. having been penalized by Party's discipline rules and administrative agencies due to graft, bribery, or embezzlement, having been penalized under Criminal Law due to intentional offence, using the illicit money and property for illegal activity, refusing to confess the use of the illicit money and property or refusing to cooperate with asset recovery efforts and causing the failure of recovery, causing damage to public property and the interests of the nation and people, seeking opportunities of promotion and position for others

3 The threshold for prosecuting the crime of introducing for giving a bribe has not been revised by the Bribery Interpretation

# France

Prevention is better than cure. Create a compliance culture and prevent any issues from arising by having internal alerts and best practice procedures in place.



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## 1. What is bribery?

French criminal law prohibits payment or receipt of a bribe and influence peddling in both the public and private sectors. This includes: (i) promising or requesting a bribe; and (ii) paying or receiving a bribe at home or abroad.

## 2. What are the exceptions/defences?

Once an act of bribery or influence peddling has been proved, there are few defences available. However, a business could demonstrate the existence of certain circumstances as a potential defence: for example, coercion, imminent danger, etc.

This is nonetheless difficult to prove and rarely accepted by the French Courts, particularly with regard to companies (as opposed to individuals). The level of sanction may be reduced if a business can show there were adequate procedures in place designed to prevent bribery, and will also depend on the extent of the offence and whether it is a repeat offence.

## 3. What are the sanctions?

Sanctions can include a maximum of ten years' imprisonment and a maximum fine of €1,000,000 (individuals) or €5,000,000 (legal entities), this amount may be increased up to twice the benefit resulting from the offence, for bribery and for influence peddling in the public sector. In respect of

the private sector, penalties can be up to five years imprisonment and a maximum fine of €500,000 (individuals) or €2,500,000 (legal entities). This amount may be increased up to twice the benefit resulting from the offence.

Additional discretionary penalties include (i) confiscation of the object used or intended to be used for the commission of the offence; (ii) publication of the decision; (iii) prohibition of the activity in the exercise or on the occasion of which the offence was committed for a maximum of five years; (iv) placing under judicial supervision for a maximum of five years; (v) closure of the company's establishments used to commit the offence for a maximum of five years; and (vi) exclusion from public procurement procedures for a maximum of five years.

In 2015, the French Ministry of Economy began a project to reform French anti-bribery legislation through the Transparency in the Economic Sphere Bill. If this becomes law, it will create a new obligation to implement compliance programmes for all companies employing at least 500 employees and will create a new anti-bribery agency with investigation and enforcement powers. The bill also seeks to create a new offence under the French Criminal Code of bribery or influence peddling of a foreign public officer, even where it does not constitute an offence in the foreign country, as well as an additional penalty in the case of bribery or influence peddling where there has been a failure to implement a compliance programme, leading to up to 2 years imprisonment and a fine of up to €2,000,000 for companies.

# Germany

## 1. What is bribery?

The German Criminal Code differentiates between bribery in the public sector and in private business.

In the public sector, the law prohibits both payment to and receipt of bribes by public officials, persons entrusted with special public service functions and soldiers. Payments to a public official are generally prohibited regardless of whether or not the payment is for the purpose of receiving a benefit. This is to avoid any public misconception that payments to public officials derive benefits. An offence of aggravated bribery is established where the offence relates to a 'major benefit' or the offender continuously pays or accepts benefits and their purpose is the continued commission of such offences.

In the private sector, an employee or agent of a business must not demand, allow himself to be promised, or accept a benefit for himself or another person in a business transaction as consideration for according an unfair preference in the competitive purchase of goods or commercial services. The same applies to anyone who offers, promises or grants such persons a benefit in this context.

Private sector offences also fall under the law governing administrative offences that establishes liability in respect of a company's directors as well as legal entities. Therefore, if an employee of a company bribes an employee or any public official while acting for the company, the company's directors may be liable if they wilfully or negligently omitted adequate supervision. Liability may also attach to the company itself.

## 2. What are the exceptions/defences?

A business could avoid conviction under the corporate offence of bribery if it can show that there were adequate procedures in place designed to prevent active and passive bribery. For example, as there is an exception for gifts up to a certain value (up to approximately €50, but subject to a case by case assessment) a business should provide guidance in this respect.

## 3. What are the sanctions?

Criminal sanctions range from fines (the amounts depending on the perpetrator's income) to imprisonment of up to three years and up to ten years for aggravated cases.

Administrative fines against the company can amount to up to €10,000,000. Fines against the proprietors of businesses, directors and other authorised representatives can amount to up to €1,000,000.

Since the amended law became effective in November 2015 German bribery law covers even more business activities. Therefore, companies should train their directors and employees accordingly.



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# Hong Kong

Bribery cases are attracting increasing public attention in Hong Kong. There is heightened sensitivity around dealings with jurisdictions that score poorly on corruption perception indices and politically exposed persons, particularly in the financial services space. Practical compliance controls are key.



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## 1. What is bribery?

### Public sector

The Prevention of Bribery Ordinance of Hong Kong (Cap. 201) (“PBO”) creates a number of public and private sector bribery offences. In the context of the public sector, it prohibits the following acts:

- solicitation or acceptance by a prescribed officer, whether in Hong Kong or elsewhere, of any advantage without the Chief Executive’s permission;
- offering any advantage to a public servant, or acceptance by a public servant of any advantage, in connection with performing or not performing public duties, or for assisting or hindering any business transaction between any person and a public body;
- offering, soliciting, or accepting any advantage in connection with procuring a contract with a public body, withdrawing a tender for a contract with a public body, or refraining from bidding at an auction conducted by a public body;
- offering any advantage to a prescribed officer or a public servant while having dealings with the government or a public body; and
- possession of unexplained property by a current or former Chief Executive or a prescribed officer.

The terms “prescribed officer”, “public body” and “public servant” are broadly defined in the PBO and generally relate to government-related and judicial officers. “Advantage” includes money, gifts, commissions, offices, contracts, services,

favours and discharge of liability in whole or in part.

### Extension to private sector

Extending to the private sector, the PBO makes it an offence to offer an agent, or for an agent to solicit or accept, any advantage as an inducement or reward to perform or abstain from performing any act in relation to their principal’s affairs or business without the principal’s permission. An “agent” is broadly defined to include a public servant and any person employed by or acting for another.

### Extra-territorial impacts

The offences under the PBO may have extraterritorial effect. That is, they may capture conduct undertaken outside of Hong Kong. For example, the offence relating to bribery of agents applies even if the agent in question is a foreign public official, and where the advantage is received in relation to their public duties in a place outside Hong Kong. The necessary nexus is that the advantage is received in or offered from Hong Kong.

### Additional common law and sector-specific offences

Importantly, the PBO has not replaced the common law offences relating to bribery and misconduct in the course of public duties, which continue to apply in Hong Kong. In addition, specialised legislation in Hong Kong creates sector-specific bribery offences. For example, section 124 of the Banking Ordinance (Cap. 155) prohibits the directors and employees of Hong Kong-regulated banks and other “authorized institutions” from soliciting or accepting a broad range of advantages from customers.

This guide focuses on the offences under the PBO.

## 2. What are the exceptions/defences?

Under the PBO, it is a general defence for any person to prove that they offered, accepted or solicited the advantage with lawful authority or reasonable excuse. However, it is not a defence to show that it is customary practice to accept the advantage, nor is it a defence that the advantage did not or could not have any effect on the person accepting it.

## 3. What are the sanctions?

### Financial penalties and imprisonment

The following table summarises the maximum penalties prescribed under the PBO:

Offence	Summary conviction	Conviction on indictment
Soliciting or accepting an advantage	<ul style="list-style-type: none"> <li>■ Fine of HK\$100,000</li> <li>■ 1 year imprisonment</li> </ul>	Not applicable
Bribery	<ul style="list-style-type: none"> <li>■ Fine of HK\$100,000</li> <li>■ 3 years imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>■ Fine of HK\$500,000</li> <li>■ 7 years imprisonment</li> </ul>
Bribery for giving assistance or withdrawal of tenders	<ul style="list-style-type: none"> <li>■ Fine of HK\$100,000</li> <li>■ 3 years imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>■ Fine of HK\$500,000</li> <li>■ 10 years imprisonment</li> </ul>
Bribery in relation to auctions and public servants; corrupt transactions with agents	<ul style="list-style-type: none"> <li>■ Fine of HK\$100,000</li> <li>■ 3 years imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>■ Fine of HK\$500,000</li> <li>■ 7 years imprisonment</li> </ul>
Possession of unexplained property	<ul style="list-style-type: none"> <li>■ Fine of HK\$500,000</li> <li>■ 3 years imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>■ Fine of HK\$1,000,000</li> <li>■ 10 years imprisonment</li> </ul>
The relevant property may also be awarded to the Government		

### Additional consequences

Any person convicted of accepting a bribe must also pay the amount or value of the bribe received by them to such person or public body as the court orders.

In addition, anyone convicted of an offence under the PBO may be prohibited for a period not exceeding seven years from taking up or continuing employment as a professional or as the director or manager of a corporation, public body, partnership or firm.

### Principal investigative agency

The Independent Commission Against Corruption is the principal agency responsible for investigation corruption and enforcing the PBO in Hong Kong.

## 4. Recent developments

There have been a number of recent high profile cases involving bribery / corruption. For example, in 2014, Thomas Kwok, Hong Kong's third-richest person and former joint Chairman of Sun Hung Kai Properties, was sentenced to five years' imprisonment and fined HK\$500,000 for providing various advantages, including unsecured loans and rent-free accommodation, to the former Chief Secretary for Administration, Rafael Hui.

As Chief Secretary, Hui was the second-most senior official in the Hong Kong Government. He was convicted of multiple offences relating to misconduct in public office and bribery. He is currently serving a term of 7½ years imprisonment, and was ordered to pay bribe monies amounting to HK\$11.182 million to the Government.

Interestingly, Hui was convicted under the PBO while Kwok was convicted of a common law offence. Having been refused bail, both men are currently in prison pending the resolution of their respective appeals.

# Italy

Prevention is key, as Italian law provides that sufficient internal controls can be a defence to a charge of commercial bribery.



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## 1. What is bribery?

The Italian Criminal Code makes it a criminal offence for anyone who bribes or attempts to bribe a foreign public official where the offence is committed in order to procure an undue benefit directly or indirectly in international business transactions.

Legislative Decree no. 231 of 8 June 2001 introduced for the first time into Italian law the principle of criminal liability for legal entities. A company will be liable for certain criminal offences, including bribery, carried out in the company's interest or for its advantage by: (i) people representing, administering or directing the company or an autonomous branch of the company (the "Key People"); or (ii) people subject to the control or supervision of the Key People. Individuals acting in their own or a third party's interest will not trigger the company's liability.

## 2. What are the exceptions/defences?

The company will escape liability if it can prove that the directive body of the company undertook internal procedures tailored to prevent such offences and that this was supervised by a body with independent powers. There is no exception under Italian law for facilitation payments.

## 3. What are the sanctions?

Sanctions range from imprisonment for individuals, to fines, seizure of assets and publication of the judgment both for individuals and for legal entities.

# Saudi Arabia

## 1. What is bribery?

Bribery in Saudi Arabia is a criminal offence which can be committed by public officials or private individuals according to the Combating Bribery Law (the "CBL").

The CBL penalizes the offering of any promise or gift to a public official to perform or cease to perform or neglect any of the public official's duties (of his function or claimed to fall within his function), even where the act is lawful, or to use the public official's powers to obtain from any public authority an order, decision, commitment, authorization, supply contract, job, employment, service or any other kind of privilege, or to use the public official's powers to follow up on a transaction in any governmental department. The prohibition applies regardless of the intention of the public official not to perform the act.

However, the CBL makes no distinction between foreign and domestic public officials and the Saudi government criminalises the bribery of foreign public officials by Saudi nationals.

For foreign companies, Saudi Arabian courts generally do not accept jurisdiction over a foreign company if the elements of the bribery take place entirely outside Saudi Arabia. Foreign companies doing business in Saudi Arabia, with or without a formal legal presence in the country, are also subject to the CBL with respect to their acts within Saudi Arabia.

## 2. What are the exceptions/defences?

The briber or any middleman will be exempt from prosecution under the CBL if they voluntarily inform the relevant authorities with respect to a crime before the crime is discovered.

## 3. What are the sanctions?

Sanctions for individual violators (including public officials and principals of companies) vary depending on the case and may include:

- up to 10 years imprisonment
- fines of up to SAR1 million

As foreign investment continues to flow into Saudi Arabia, the risks of corruption will increase. It is important for businesses to have clear anti-corruption policies and procedures in place so they are well equipped to deal with challenges that may arise.



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# Singapore

Companies should implement and regularly update a Code of Conduct and appropriate financial controls in relation to gifts, expenses, corporate hospitality and anti-bribery compliance generally. In contrast to the UK, the existence of and compliance with a Code of Conduct or any adequate compliance procedure is not a defence in Singapore, in and of itself. Nevertheless, it is still a valuable tool to mitigate bribery risks.



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## 1. What is bribery?

Singapore's main anti-bribery legislation, the Prevention of Corruption Act ("PCA") covers both public and private bribery and targets both recipients and givers of bribes. The PCA defines a bribe by reference to the term "gratification", which broadly covers both financial and non-financial benefits.

The PCA prohibits any person (whether independently or in conjunction with any other person) from corruptly:

- giving, promising or offering; or
- soliciting, receiving, agreeing to receiving,
- any gratification as an inducement to or reward for or otherwise on account of:
- any person doing or forbearing to do anything in respect of any matter or transaction (whether actual or proposed); or
- any member, officer or servant of a public body doing or forbearing to do anything

in respect of any matter or transaction (whether actual or proposed), in which such a public body is concerned.

The term "person" covers companies as well as individuals. There is no de minimus threshold.

The PCA also creates specific offences for corrupt dealings by or with agents in relation to their principal's affairs or business. It also provides that in any case where gratification is given to or received by a public official, the gratification is deemed to have been given or received corruptly as an inducement or reward unless the contrary is proved. The PCA has some extra-territorial application.

In addition, Singapore's Penal Code creates a number of specific offences that relate to bribery of "public servants".

## 2. What are the exceptions/defences?

There are no exceptions or defences. Unlike the UK Bribery Act, adequate compliance procedures are not a defence. There is also no exemption for facilitation payments.

The PCA expressly states that evidence that any gratification is customary in any profession, trade, vocation or calling is inadmissible in any civil or criminal proceedings under the PCA. For example, the fact that the giving or receiving of "red packets" for Chinese New Year is customary in Singapore is not, of itself, a defence to the giving or receipt of such a gift being found to be an offence.

## 3. What are the sanctions?

Under the PCA, penalties are either or both of a fine not exceeding SGD 100,000 and imprisonment for a term not exceeding five years (for private sector bribery offences) or

seven years (for public sector bribery offences).

In addition, section 13 of the PCA provides that where a person has accepted any gratification in contravention of the PCA, the Court can impose a penalty equal to the amount of the gratification or the value of the gratification (if valuation is possible).

Further, section 14 of the PCA provides that where any gratification has been given by any person to an agent in contravention of the PCA, the principal may recover the amount or the value of the gratification as a civil debt either from the agent or from the person who gave the gratification to the agent. This statutory entitlement does not affect any other rights of recovery which the principal may have at law. In the civil case of *Leong Wai Kay v Carrefour Singapore Pte Ltd* [2007] 3 SLR 78, a manager of a multi-national company who was convicted of bribery offences had to pay the quantum of the gratification he received twice – approximately SGD 300,000 as a penalty to the state (plus a custodial sentence) pursuant to a criminal proceeding, and SGD 300,000 to the multi-national company as a civil debt. The Court held that the PCA provided for two distinct proceedings – a criminal proceeding to disgorge the bribes and a civil proceeding to recover the bribes.

Under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, confiscation orders may also be made against a person convicted of bribery offences in respect of benefits derived from that person's bribery offences. When assessing the value of such benefits, the Court will have regard to any order made under section 13 of the PCA and leave out of account the benefits that were taken into account under that order.

Under the Penal Code, penalties are either or both of a fine and imprisonment for a term ranging from one to three years.

# Spain

## 1. What is bribery?

The Spanish Criminal Code prohibits influence peddling and both payment and receipt of bribes to and by public officials, persons entrusted with special public service functions, juries, arbitrators, experts and administrators, auditors or bankruptcy trustees appointed by the Court. Attempting to bribe is also prohibited.

Both individuals and legal entities (companies) can be found liable for the offence of bribery. In particular, a company shall be found liable when (i) the offence is carried out on behalf of and for the benefit of the company by its legal representatives or administrators or by those who individually or as a member of a corporate body are authorized to take decisions on behalf of the company or have power of organization and control within the company (the "Key People"); or (ii) the offence is committed while carrying out the company's corporate activities and for the benefit of the company by people subject to the control and supervision of the Key People and as a consequence of a serious breach by the Key People of their duties of control and supervision.

## 2. What are the exceptions/defences?

The company shall not be liable if at the time of the offence all the following conditions are met: (a) the company has adopted and successfully implemented corporate compliance programs designed to control

and prevent bribery offences or to significantly reduce the likelihood of such offences being committed; (b) the supervision of the compliance of such compliance programs is entrusted to a body of the company with independent powers or to an entity legally entrusted with the function of supervising the effectiveness of the internal controls of the company; (c) the individual liable for the offence fraudulently eluded the corporate compliance program; and (d) the body mentioned in condition (b) has not insufficiently complied with their functions of control and supervision.

Less severe sanctions will be imposed if the same internal procedures are implemented after the offence is committed but before the oral trial begins. Such internal procedures do not affect the liability of individuals acting on behalf of and for the benefit of the company who will remain liable in any event.

## 3. What are the sanctions?

Sanctions can include a maximum of six years' imprisonment for individuals and fines of up to €9,000,000 (for legal entities) or €288,000 (for individuals). Additional sanctions for legal entities might include: (i) suspension of the company's activities for a maximum of five years; (ii) closure of the company's premises for a maximum of five years; (iii) an administrator being appointed by the Court to run the company; and (iv) dissolution and termination of the company.

The emphasis of the law on an effective compliance program reflects a shift towards embedding a culture of bribery compliance within Spanish business.



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# United Arab Emirates

A regional leader for international business, the UAE attracts investment from different cultures all over the World, which co-exist in a society where offering gifts and hospitality in business was traditionally seen as a matter of courtesy. The UAE has had anti-bribery legislation to deal with these challenges since the late 1980s. The current trend is towards pro-enforcement, as the Emirates promote transparency in business, to maintain their position as a favoured international business hub. Multinationals in the UAE are no longer primarily concerned with extra-territorial foreign legislation, equal consideration must be given to domestic legislation.



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## 1. What is bribery?

Under the UAE Penal Code bribery is a criminal offence which can be committed by public officers or private individuals.

For public officers, it is an offence to solicit or accept for oneself or for another person any kind of donation, advantage, promise or anything of the like:

- in order to commit or omit an act in violation of the duties of his function, regardless of the intent of the perpetrator; or
- after committing or omitting an act in violation of the duties of his function; or
- in order to commit or omit an act which is not part of his function.

For private individuals, it is an offence to offer a public officer a donation, advantage or promise of any kind in order to commit or omit an act in violation of the duties of his functions, even if the public officer does not accept the bribe. It is also an offence if an individual accepts for himself or another a gift, benefit or privilege for his influence or the use of his power before a public officer.

## 2. What are the exceptions/defences?

The briber or the middleman will be exempt from prosecution if he reports the offence of bribery to the judicial or administrative authorities, provided that this is before it is discovered.

## 3. What are the sanctions?

Sanctions range from imprisonment (for a period up to 10 years) to fines, depending on the case.

# United Kingdom

## 1. What is bribery?

The enactment of the UK Bribery Act 2010 (the "Act") has codified the previously fragmented law in England and Wales in respect of the offence of bribery, and establishes:

- two general criminal offences of giving or receiving a bribe or other advantage (including offering, requesting or agreeing to accept the same);
- a specific offence of bribery of foreign public officials; and
- a new corporate offence of failure to prevent bribery by anyone who is associated with a commercial organisation and performs services on its behalf.

## 2. What are the exceptions/defences?

A business could avoid conviction under the corporate offence of failure to prevent bribery if it can show that it had adequate procedures in place designed to prevent bribery. There is no exception under English law for facilitation payments.

## 3. What are the sanctions?

Sanctions include unlimited fines for companies and imprisonment for up to 10 years for individuals. Since 2014, the Serious Fraud Office added to its enforcement armoury when it became able to enter into Deferred Prosecution Agreements ("DPAs") with corporates guilty of economic crimes. Under a DPA, proceedings are instituted but then deferred on terms (such as the payment of a financial penalty, compensation and implementation of a compliance programme). If the terms of the agreement are met in the agreed period, proceedings are discontinued. However, if the terms of the agreement are breached the prosecution can be recommenced. It should also be noted that in October 2014, sentencing guidelines on financial penalties for companies convicted of economic crimes came into force. These guidelines are used to inform the level of any financial penalty that forms part of a DPA or in sentencing anyone found guilty of an offence under the Act.

Developments such as the sentencing of the Sweett Group plc to a fine of £2.25m in February 2016 for securing and retaining contracts in Dubai through bribery committed by its UAE subsidiary and the creation of the UK's International Corruption Unit mark a maturing of the UK's anti-corruption enforcement regime. In addition, the continued growth of investment opportunities in high risk jurisdictions means that prevention and detection policies are still critically important for UK business.



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# List of Services

King & Wood Mallesons' Investigations, Fraud and Compliance Group are specialist advisors on anti-bribery and corruption law and compliance. We sit on the ICC Committee on anti-corruption, and have published widely on the subject. We also have ongoing communication and links with prosecutors and regulators, which gives us a unique insight into their approach and adds value to the advice we give to our clients.

We advise clients on proactively managing and responding to their bribery and corruption risks, in particular in response to the UK Bribery Act 2010 and US FCPA 1977 as well as local laws in the various jurisdictions in which we practice. We do this by providing a range of bespoke services on an international level across all business sectors including:

- Preparing effective anti-bribery policies that comply with the relevant legislation
- Preparing comprehensive Codes of Conduct incorporating anti-bribery policies, including whistle-blowing, disciplinary and other related procedures
- Formulating Guidance Notes and/or practical examples to illustrate areas of risk and compliance in various business divisions
- Formulating specific policies on gifts, hospitality, facilitation payments and promotional expenditure
- Advising on wider reputation management issues
- Advising on, developing and implementing best practice in compliance programmes
- Preparing and delivering anti-bribery and corruption training programmes
- Conducting thorough risk assessments on business exposure to bribery and corruption risks, examining existing controls and how these can be enhanced
- Conducting anti-bribery and corruption due diligence in relation to specific transactions and third party dealings
- Advising on anti-bribery and corruption warranties and indemnities in contractual arrangements
- Conducting internal investigations and advising on potential or actual violations of bribery and corruption legislation
- Advising on external investigations into fraud and/or corruption and liaising with regulators and/or prosecutors throughout the investigation process
- Assisting in the remediation of issues identified during bribery and corruption investigations

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## About King & Wood Mallesons

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How do we do this? By focusing not just on what you want, but how you want it. Working in close partnership with clients, our relationships are built on delivering a market leading experience and providing access to deep legal insights and local connections, with the benefit of a global platform.

As the only firm in the world able to practise Chinese, Hong Kong, Australian, English, US and a significant range of European and Middle Eastern laws, we open doors and unlock opportunities for clients as they look to unleash the fullest potential of the Asian Century. Our ability to connect emerging opportunities, with market leading capability, is pushing the frontiers of what can be achieved - connecting Asia to the world, and the world to Asia.

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