

CMS Guide to Anti-Bribery and Corruption Laws



Introduction

I am delighted to present the third edition of the CMS Guide to Anti-Bribery and Corruption Laws. Since the last edition was published in summer 2011, there have been significant changes to the global anti-corruption landscape. Many of the countries covered in the following pages have updated, strengthened and widened the scope of their anti-corruption laws.

This edition of the Guide now assesses the laws in 26 countries and includes full coverage of the BRIC nations. (We are very grateful to Khaitan & Co, the leading Indian law firm with offices in Mumbai, New Delhi, Kolkata and Bangalore, for contributing the section on India.)

Since the last edition, Austria has completely overhauled its anti-corruption laws. Other countries have strengthened elements of their existing regimes. For example, in the Czech Republic, legal entities can now be liable for corruption offences for the first time. Notably, Brazil is one of the few countries where organisations cannot be directly liable for such offences, although proposed new laws would provide for corporate liability and the possibility of fines up to 30% of turnover in the worst cases.

While there remains no international anti-corruption law or standard, an increasing number of countries are signing up to international conventions relating to corruption, such as the OECD Convention¹ and UNCAC². This has led to an increasing convergence between the countries covered in this Guide in the sorts of conduct that are criminalised, but not necessarily how they are criminalised.

For example, all of the countries outlaw public sector corruption and only two (India, and Bosnia & Herzegovina) do not criminalise private sector bribery. All of the countries covered also criminalise facilitation payments to a greater or lesser degree (although Switzerland only criminalises them in respect of Swiss public officials, not foreign officials). However, there is no universal agreement as to whose conduct is criminalised in the context of public sector corruption - in some countries only the public official can be prosecuted, in others it is the "briber" and in others still, it is both.

Further, in light of the increasing focus internationally on financial crime and corruption and the hardening attitudes towards them, it is perhaps unsurprising that where changes have been made since our last edition, the scope of, and penalties for, wrongdoing have generally increased. For example, in Switzerland, the maximum penalty for individuals committing private sector bribery has increased ten-fold to more than CHF 1 million; in Austria it has more than doubled for some offences.

While the Bribery Act in the UK has been touted as novel in allowing organisations to benefit from a defence where they can show they had put in place adequate procedures designed to prevent corruption, in fact a similar defence is available in Italy and, in Portugal, a corporate can avoid liability if it can show that an employee involved in the wrongdoing acted against express instructions. In Russia, somewhat like the US position, the law has been amended to oblige companies to put in place anti-bribery procedures.

The vast majority of the nations covered in this Guide exercise a degree of extraterritorial jurisdiction over acts that constitute corruption offences, with 21 of the 26 countries exercising jurisdiction over individuals who are resident in the jurisdiction and commit certain acts of bribery overseas. Similarly, more than half of the countries covered can, in certain circumstances, prosecute local organisations where active bribery offences are committed overseas by a foreign subsidiary. Therefore, again, while the extraterritorial ambit of the US Foreign Corrupt Practices Act and UK Bribery Act have been well-publicised, those doing business in any of the countries covered in this Guide would be advised to consider the local laws in other countries carefully as well.

In this Guide we provide answers to the following key questions for each of the 26 countries:

- what are the offences?
- who can be liable and when?
- what are the penalties?
- what are the defences?

We hope you find our Guide useful.

We wish to thank all those who have contributed to this Guide. Contact details of all our contributors are at the back of the Guide. Please do not hesitate to contact them with any questions you may have.



Omar Qureshi
Head of Anti-corruption
CMS UK

¹ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997.

² United Nations Convention Against Corruption, adopted by the General Assembly by resolution 58/4 of 31 October 2003.

ALBANIA

Sources of law	Criminal Code (Law no. 7895, dated 27 January 1995) Criminal liability of legal entities (Law no. 9754, dated 14 June 2007) Public collaboration in the fight against corruption (Law no. 9508, dated 3 April 2006)	
Offence	Active corruption in the private sector The direct or indirect promise, offer, or giving to a person who exercises a management function in a commercial company or who works in any other position in the private sector, of any irregular benefit for himself or for a third party, in order to act or not to act contrary to his duty. Passive corruption in the private sector The direct or indirect soliciting or taking of any irregular benefit or of any such promise for himself or for a third party, or accepting an offer or a promise that follows from the irregular benefit by the person who exercises a management function or with whatever other position in the private sector in order to act or not to act contrary to his duty.	Active corruption of persons exercising public functions, high state officials, and local elected/representatives The direct or indirect promise, offer, or giving to a person exercising public functions, or to high state officials or local elected/representatives of any irregular benefit for himself or for a third party in order to act or not to act contrary to his duty. Passive corruption of persons exercising public functions, high state officials, and local elected/representatives The direct or indirect soliciting or taking by a person exercising public functions or by high state officials or local elected/representatives of any irregular benefit or of any such promise for himself or for a third party, or the acceptance of an offer or promise deriving from an irregular benefit in order to act or not act contrary to his duty.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	✓	✓
Would corporate hospitality be caught?	Depends on intent ¹	Depends on intent ¹
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	X
Acts performed outside Albania		
Can bribery performed outside Albania be caught?	✓ (regarding foreign nationals under certain conditions) ²	✓ (regarding foreign nationals under certain conditions) ²
Does the act also need to be illegal in the foreign country of performance?	✓ (it depends on International Conventions between Albania and the state where the crime was perpetrated)	✓ (it depends on International Conventions between Albania and the state where the crime was perpetrated)
Who can be liable		
Albanian national?	✓	✓
Albanian company?	✓ (for criminal offences committed in Albania)	✓ (for criminal offences committed in Albania)
Albanian partnership (including limited liability partnership)?	✓ (for criminal offences committed in Albania)	✓ (for criminal offences committed in Albania)
Director of Albanian company?	✓	✓
Albanian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Albanian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Albania?	✓ (with regard to companies and partnerships under certain conditions) ³	✓ (with regard to companies and partnerships under certain conditions) ³
Foreign national domiciled or "ordinarily resident" in Albania if the bribe is committed outside Albania?	✓ (under certain conditions) ⁴	✓ (under certain conditions) ⁴
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Private Sector Individuals - Active corruption, imprisonment for up to 3 years and fine up to €7,000 - Passive corruption, imprisonment for up to 5 years and fine up to €21,000 Companies - Active corruption, fine up to €7,000 - Passive corruption, fine up to €35,000 - Other penalties such as termination, restriction of operation, debarment from tendering for public contracts; confiscation of benefits derived from bribery	Public Sector Individuals - Active corruption of persons exercising public functions, high state officials, and local elected/representatives sentenced to imprisonment between 6 months and 5 years and payment of a fine between €2,100 and €14,300 - Passive corruption of persons exercising public functions, high state officials, and local elected/representatives sentenced to imprisonment between 2 months and 12 years and payment of a fine between €2,100 and €35,000 Companies - Active corruption of persons exercising public functions, high state officials, and local elected/representatives, fine up to €35,000 (Continued on page 5)
Defences		
Are there any defences available?	X	X

Criminal Code (Law no. 7895, dated 27 January 1995)
 Criminal liability of legal entities (Law no. 9754, dated 14 June 2007)
 Public collaboration in the fight against corruption (Law no. 9508, dated 3 April 2006)

Active corruption of witnesses, experts, or interpreters

The direct or indirect promise, offer, or giving to a witness, expert or interpreter of any irregular benefit for himself or for a third party in order to secure false declarations or testimony, expertise or translation or to reject carrying out their obligation to the criminal prosecution bodies and the court.

Active corruption of judges, prosecutors, and other justice officials

The direct or indirect promise, offer, or giving to a judge, prosecutor or other employees of the judicial bodies, of any irregular benefit for himself or for a third party in order to act or not to act contrary to his duty.

Passive corruption of judges, prosecutors, and other justice officials

The direct or indirect soliciting or taking by a judge, prosecutor, or other employees of the judicial bodies, of any irregular benefit or any such offer for himself or for a third party, or the acceptance of an offer or promise deriving from an irregular benefit in order to act or not to act contrary to his duty.

X

√

Depends on intent¹

X

X

X

√
 (regarding foreign nationals under certain conditions)²

√
 (it depends on International Conventions between Albania and the state where the crime was perpetrated)

√

√
 (for criminal offences committed in Albania)

√
 (for criminal offences committed in Albania)

√

X

X

√ (with regard to companies and partnerships under certain conditions)³

√
 (under certain conditions)⁴

X

Individuals

- Active corruption of witnesses, experts, or interpreters sentenced to imprisonment up to 4 years and payment of a fine between €3,500 and €14,300
- Active corruption of judges, prosecutors, and other justice officials sentenced to imprisonment between 1 year and 4 years and payment of a fine between €2,800 and €14,300
- Passive corruption of judges, prosecutors, and other justice officials sentenced to imprisonment between 3 years and 10 years and payment of a fine between €5,700 and €28,500

Companies

- Active corruption of witnesses, experts, or interpreters, fine up to €35,000
- Active corruption of judges, prosecutors, and other justice officials, fine up to €35,000
- Passive corruption of judges, prosecutors, and other justice officials, fine up to €7,000
- Other penalties such as termination, restriction of operation, debarment from tendering for public contracts; confiscation of benefits derived from bribery

X

Companies (continued)

- Passive corruption of persons exercising public functions, high state officials, and local elected/representatives, fine up to €7,000
- Other penalties such as termination, restriction of operation, debarment from tendering for public contracts; confiscation of benefits derived from bribery

1 Corporate hospitality could be caught if it is offered for the purpose of benefiting from irregular and/or illegal procedures or acts.

2 The Albanian criminal law is applicable to foreign nationals where the bribe is committed outside Albania and the offence is against the interests of the Albanian Government or citizens.

3 Albanian criminal law applies to foreign companies and partnerships only if these are considered to have a permanent establishment in Albania.

4 Only if the bribe committed outside the jurisdiction is against the interests of the Albanian Government or citizens.

AUSTRIA

Source of law	Sec 304 and 305 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)	Sec 306 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)
Offence	Being Bribed 304: Public Sector Bribery Requesting or accepting a personal benefit ¹ or a benefit for a third person as a condition for the improper performance or omission of a public function . 305: Acceptance of benefits Requesting or accepting a personal benefit or a benefit for a third person as a condition for the proper performance or omission of a business activity .	Being Bribed Acceptance of benefits with the intent of being influenced Requesting or accepting a personal benefit or a benefit for a third person as a condition for exerting influence on a business activity .
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√ If a proper performance is induced, sec 305 regarding the acceptance of benefits (<i>Vorteilsannahme</i>) is applicable	√
Would corporate hospitality be caught?	√ (depending on intent)	√
Is there any <i>de minimis</i> ?	X (gifts of up to €100 are not considered an "advantage")	X (gifts of up to €100 are not considered an "advantage")
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√	√
Acts performed outside Austria		
Can bribery performed outside Austria be caught?	√ (if committed by an Austrian national or company or partnership which is incorporated in Austria)	√ (if committed by an Austrian national or company or partnership which is incorporated in Austria)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Austrian national?	√	√
Austrian company?	√	√
Austrian partnership (including limited liability partnership)?	√	√
Director of Austrian company?	√	√
Austrian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Austrian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Austria?	√	√
Foreign national domiciled or "ordinarily resident" in Austria if the bribe is committed outside Austria?	√	√
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals - Imprisonment for up to 3 years - When advantage exceeds €3,000 imprisonment between 6 months and 5 years - When advantage exceeds €50,000 imprisonment between 1 and 10 years 304: Companies/Partnerships - Fines between 55 – 130 daily rates² depending e.g. on amount of advantage given/offered 305: Companies/Partnerships - Fines between 40 – 100 daily rates depending e.g. on amount of advantage given/offered	Individuals³ - Imprisonment for up to 2 years - When advantage exceeds €3,000 imprisonment up to 3 years - When advantage exceeds €50,000 imprisonment between 6 months and 5 years Companies/Partnerships⁴ - Fines between 40 – 100 daily rates depending e.g. on amount of advantage given/offered
Defences		
Are there any defences available?	X (see definition of "personal benefit" above)	X

¹ "Personal benefit" does not include (i) advantages that are permitted by law or given in context of events, where there is an official or objectively justified interest in participating; (ii) advantages for public purposes, for the use of which a public officer does not exercise any influence; (iii) customary gifts of minor value, unless the act is committed with a view to generating income on a sustainable basis (*gewerbsmäßig*).

² Daily rates are financial penalties applied in place of a prison sentence. They are calculated by reference to the economic means of the perpetrator multiplied by a certain number of (fictitious) days reflecting the gravity of the offence.

³ Not liable for acceptance or request of a minor benefit, unless the act is committed commercially.

⁴ See footnote 3.

Sec 307 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)	Sec 307a and 307b of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)
Bribing Public Sector Bribery Offering, promising or giving to a public officer ¹ or to a third person a financial or other benefit intending to induce them improperly to perform a public function ² .	Bribing Sec 307a: Granting of benefits Offering, promising or giving to a public officer or a third person an undue benefit in favour of such public officer to properly perform or omit the performance of a public function . Sec 307b: Granting of benefits to influence Intentional offering, promising or giving an undue benefit to a public officer or a third person under the condition of influencing the public activity of the public officer.
X	X
√ If proper performance is induced, sec 307a on the grant of benefits (Vorteilszuwendung) is applicable	√
√ (depending on intent)	√ 307a (depending on intent) √ 307b
X (gifts of up to €100 are not considered an "advantage")	X (gifts of up to €100 are not considered an "advantage")
X	X
√	√
√ (if committed by an Austrian national or company or partnership which is incorporated in Austria)	√ (if committed by an Austrian national or company or partnership which is incorporated in Austria)
X	X
√	√
√	√
√	√
√	√
X	X
X	X
√	√
√	√
X	X
Individuals — Imprisonment for up to 3 years — When advantage exceeds €3,000 imprisonment between 6 months and 5 years — When advantage exceeds €50,000 imprisonment between 1 and 10 years Companies/Partnerships — Fines between 55–130 daily rates depending e.g. on amount of advantage given/offered	Individuals — Imprisonment up to 2 years — When advantage exceeds €3,000 imprisonment up to 3 years — When advantage exceeds €50,000 imprisonment between 6 months and 5 years Companies/Partnerships — Fines between 40–100 daily rates depending e.g. on amount of advantage given/offered
X	X

¹ "Public officer" includes arbitrators and experts establishing an expert opinion in a public function as well as members of the representative bodies in Austria, employees and organs of state and affiliated companies.

² Including foreign public officials.

AUSTRIA (CONTINUED)

Source of law	Sec 308 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)	Sec 309 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>)
Offence	Being Bribed/Bribing Illicit intervention Requesting or accepting a personal benefit or an advantage for a third person as a condition for exercising undue ¹ influence on the decision-making of a public officer; or Offering, promising or giving of a benefit to a third person in favour of such third person to influence decision-making by a public officer.	Being Bribed/Bribing Private Sector Bribery Requesting or accepting a personal benefit or a benefit for a third person as a condition for the improper performance or omission of a business activity; or Offering, promising or giving to an employee or agent of a company a financial or other benefit in his favour or in favour of a third person intending to induce them to improperly perform a business activity.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	✓	✓
Would corporate hospitality be caught?	✓ (depending on intent)	✓ (depending on intent)
Is there any <i>de minimis</i> ?	X (gifts of up to €100 are not considered an "advantage")	X (gifts of up to €100 are not considered an "advantage")
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	✓	Applicable only to private persons
Acts performed outside Austria		
Can bribery performed outside Austria be caught?	✓ (if committed by an Austrian national or company or partnership which is incorporated in Austria)	✓ (if committed by an Austrian national or company or partnership which is incorporated in Austria)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Austrian national?	✓	✓
Austrian company?	✓	✓
Austrian partnership (including limited liability partnership)?	✓	✓
Director of Austrian company?	✓	✓
Austrian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Austrian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Austria?	✓	✓
Foreign national domiciled or "ordinarily resident" in Austria if the bribe is committed outside Austria?	✓	✓
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals — Imprisonment up to 2 years — When advantage exceeds €3,000 imprisonment up to 3 years — When advantage exceeds €50,000 imprisonment between 6 months and 5 years Companies/Partnerships — Fines between 40 – 100 daily rates depending e.g. on amount of advantage given/offered	Individuals — Imprisonment for up to 2 years — When advantage exceeds €3,000 imprisonment up to 3 years — When advantage exceeds €50,000 imprisonment between 6 months and 5 years Companies/Partnerships — Fines between 40 – 100 daily rates depending e.g. on amount of advantage given/offered
Defences		
Are there any defences available?	X	X

¹ "Undue" refers to an influence which aims at improper performance of a public function or the omission of such performance, or is connected with the offering, promising or giving of an undue advantage to a public officer or a third person connected to him/her.

BELGIUM

Source of law	Criminal Code	
Offence	Public Bribery (art. 246 & foll. Criminal Code) Active Public Bribery Offering, promising or giving (directly or indirectly) an advantage of any kind to a person exercising a public function, either for himself or a third party, in order to induce him to: 1) Perform an act within the scope of his responsibilities which is not subject to remuneration; 2) Perform an improper act, or refraining from a proper one, in the exercise of one's function; 3) Commit an offence in the exercise of one's function; or 4) Use influence derived from one's function to obtain performance or non-performance of an act by a public authority. Passive Public Bribery A person exercising a public function requesting or accepting directly or via another person an offer, promise or any advantage for himself or a third party, to act as described in (i) to (iv) above.	Private Bribery (art. 504bis & foll. Criminal Code) Active Private Bribery Offering or giving to a company director any advantage intending to induce him to act, or to refrain from certain acts within his functions or accepting such advantage without the Board of directors' authorisation. Passive Private Bribery A person acting as a director or employee of a company requesting or accepting directly or through another person an offer, promise or any advantage for himself or a third party, to do or refrain from certain acts within his function, without authorisation of the company's Board of Directors.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	✓	✓
Would corporate hospitality be caught?	✓	✓
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	✓	X
Acts performed outside Belgium		
Can bribery performed outside Belgium be caught?	✓	✓
Does the act also need to be illegal in the foreign country of performance?	X	✓
Who can be liable		
Belgian national?	✓	✓
Belgian company?	✓	✓
Belgian partnership (including limited liability partnership)?	✓	✓
Director of Belgian company?	✓ (either directly or if the director consented or connived in an offence committed by the company)	✓ (either directly or if the director consented or connived in an offence committed by the company)
Belgian company if the bribe is committed abroad by its foreign subsidiary?	✓	✓
Foreign subsidiary of a Belgian company if the bribe is committed abroad?	✓	✓
Foreign national/company/partnership if the bribe is committed in Belgium?	✓	✓
Foreign national domiciled or "ordinarily resident" in Belgium if the bribe is committed outside Belgium?	✓	✓ (but the act also needs to be illegal in the foreign country of performance)
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Recipient — Fine — Imprisonment — Confiscation — Professional restrictions i.e. restrictions may be imposed on the power of company directors, auditors or managers Companies — Fine — Confiscation — Debarment from tendering for public contracts	— Fine — Imprisonment
Defences		
Are there any defences available?	X	X



BOSNIA AND HERZEGOVINA

Sources of law	Criminal Code of Bosnia and Herzegovina, Criminal Code of Federation of Bosnia and Herzegovina, Criminal Code of Republika Srpska and Criminal Code of Brčko District
Offence	Bribing Giving or promising (directly or indirectly) a gift or other benefit to an official (including a foreign public official or an international official) or responsible person in the institutions of Bosnia & Herzegovina, to induce performance or non-performance of an act within the scope of his official powers (whether or not the act should or should not have been performed by the person). Being bribed Requesting or accepting such a gift or benefit by an official (including foreign public official or an international official) or representative in the institutions of Bosnia & Herzegovina in return for performance or non-performance of an act within the scope of his official powers, or as a reward for such performance or non-performance (whether or not the act should or should not have been performed by the person)¹.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	Depends on intent
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√
Acts performed outside Bosnia and Herzegovina	
Can bribery performed outside Bosnia and Herzegovina be caught?	√ ²
Does the act also need to be illegal in the foreign country of performance?	√
Who can be liable	
Bosnia and Herzegovina national?	√
Bosnia and Herzegovina company?	√
Bosnia and Herzegovina partnership (including limited liability partnership)?	√
Director of Bosnia and Herzegovina company?	√
Bosnia and Herzegovina company if the bribe is committed abroad by its foreign subsidiary?	√ (if action on behalf of company in jurisdiction)
Foreign subsidiary of a Bosnia and Herzegovina company if the bribe is committed abroad?	√
Foreign national/company/partnership if the bribe is committed in Bosnia and Herzegovina?	√
Foreign national domiciled or "ordinarily resident" in Bosnia and Herzegovina if the bribe is committed outside Bosnia and Herzegovina?	√
Foreign company/partnership if the bribe is committed abroad?	√ ²
Penalties	
Penalties include:	Individuals — Bribing: imprisonment for up to 5 years (for performing an unauthorised act; or not doing what should have been done); fine or imprisonment for up to 3 years (for doing what should have been done (by accepting a facilitation payment); or for not doing what should have been done) — Being bribed: imprisonment for up to 10 years (for performing an unauthorised act; or not doing what should have been done); imprisonment for up to 5 years (for doing what should have been done (by accepting a facilitation payment); or for not doing what should have been done) Companies — Depending on the circumstances of the individual case: fines, confiscation orders and/ or dissolution of the company.
Defences	
Are there any defences available?	√ ³

- 1 Not to be confused with the Conflict of Interest laws, namely BiH, FBiH, RS and BD, which regulate situations where gifts (any payment, entertainment, service or item of value) is given directly to the recipient (elected officials, executive officeholders and advisors of governmental institutions) *without* compensation or expectation of compensation. Such gifts may be kept by recipients up to a certain value, and liability for breach is only on the recipient.
- 2 If the wrongdoer was on Bosnia and Herzegovina soil at the time of committing the offence and the potential penalty for the offence in the country where it was committed is 5 years imprisonment or more.
- 3 The individual who has given a bribe on the request of an official or responsible person in the institutions of Bosnia and Herzegovina, including a foreign official or international civil servant, can be cleared of charges if he or she reports the deed before it has been discovered or before becoming aware that the deed has been discovered. The gift or other benefit, if seized from the person who accepted the bribe, may be returned to the individual who committed the bribe.



BRAZIL

Source of law	The Criminal Code (Act n. 2.848, from 7.12.1940) ^{1,2}
Offence	The Criminal Code — Active Bribery (art. 333): “Offering or promising an undue advantage to a public official to induce him/her to perform, omit or delay an official act.” — Passive Bribery (art. 316): “To demand, for oneself or for another person, directly or indirectly, even outside the function of a public official or before being appointed as such, an undue advantage.” — Passive Bribery (art. 317): “Requesting or receiving, for oneself or for another person, directly or indirectly, even outside the function of a public official or before being appointed as such, but doing so because of the position, an undue advantage, or accepting a promise of such advantage.” — Traffic of Influence (art. 332): “Requesting, requiring, charging or obtaining, for oneself or for another person, an advantage or promise of advantage in exchange for influencing an act carried out by a public official in the exercise of his/her functions.” — Active Bribery in an International Business Transaction (art. 337-B): “Promising, offering, or giving, directly or indirectly, any improper advantage to a foreign public official or to a third person, in order for him/her to put into practice, to omit, or to delay any official act relating to an international business transaction.” — Traffic of Influence in an International Business Transaction (art. 337-C): “Requesting, requiring, charging, or obtaining, for oneself or for another person, directly or indirectly, any advantage or promise of advantage in exchange for influencing an act carried out by a foreign public official in the exercise of his functions relating to an international business transaction.”
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	✓
Would corporate hospitality be caught?	✓
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	✓
Acts performed outside Brazil	
Can bribery performed outside Brazil be caught?	✓
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Brazilian national?	✓
Brazilian company?	X (only individuals caught) ³
Brazilian partnership (including limited liability partnership)?	X (only individuals caught) ⁴
Director of Brazilian company?	✓ (if he is implicated in the actual bribery)
Brazilian company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Brazilian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Brazil?	✓ (for individuals only)
Foreign national domiciled or “ordinarily resident” in Brazil if the bribe is committed outside Brazil?	✓ (subject to the conditions mentioned in art. 7, I, “b” and “c”, II, “a”, and §2º of the Brazilian Criminal Code) ⁵
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Imprisonment for up to 12 years and fines
Defences	
Are there any defences available?	X

1 The Brazilian National Congress is currently analysing two bills (Project of Law – “PL”) that would impact on anti-corruption law but will take significant time to approve:
PL n. 6.826/2010 - “The Anti-Corruption Law” to deal with administrative and civil liability of companies involved in corruption, as well as other offences against the Public Administration. Sanctions include fines ranging from 1 to 30 percent of its gross turnover; debarment from public contracts or states subsidies; confiscation of benefits; and, as a last resort, winding-up.
PL n. 236/2012 - “The New Brazilian Criminal Code” would criminalise private bribery, and impose criminal liability for companies where crimes are committed against the Public Administration (active bribery, traffic of influence), Economic Order, the Financial System and the Environment. Companies would face fines, debarment from public contracts, rendering of community service, confiscation of assets, and temporary or permanent winding-up.
2 Under the current Brazilian legal system, criminal liability is personal. Only individuals may be convicted of crimes and companies cannot be held liable for the criminal behaviour of their executives. The current Criminal Code does not have any provisions on private bribery.
3 Under the current legislation, companies are not criminally liable. Notwithstanding, it may be possible to pursue a civil claim in damages if a company or individual causes damage to a third party by, for example, causing that third party to lose a public bid as a result of bribery.

4 A Partnership, in Brazil, is known as a ‘Sociedade em nome coletivo’ (art. 1.039 of the Brazilian Civil Code) and the equivalent to a limited liability partnership, is known as a ‘Sociedade em comandita simples’ (art. 1.045 of the Brazilian Civil Code). Although not commonly adopted in the country, both types of partnerships are considered as legal entities. Consequently, they cannot be liable for criminal offences.
5 The act of bribery may be subject to Brazilian law, even if committed in a foreign territory, by virtue of international treaties to which Brazil is a party. Where this is the case, the Brazilian law conditions require, inter alia, that the act carried out by the foreign national is illegal in the country where it was carried out; there is an extradition treaty in place; and the foreign national enters Brazil (and is caught). Please note, however, that where the act of bribery breaches the Brazilian rules and is against Brazilian property or the Brazilian public administration, the individual will be liable under Brazilian law without any need to satisfy these conditions or consider international treaties.

BULGARIA

Source of law	Criminal Code, Administrative Offences and Sanctions Act	
Offence	Criminal offences related to the office of public officials ¹	
	Recipient An official (including a foreign official) accepting any offer/promise of a gift or other undue benefit to perform or refrain from performing an act connected with his office, or because he has performed or refrained from performing such an act. The offence is committed also where, with the consent of the official, the gift or the undue benefit has been offered, promised or given to a third person. Briber Any person offering, promising, or giving a gift or any other benefit to an official (including a foreign official) in order to perform or to refrain from performing an act connected with his office, or because the official has performed or has refrained from performing such an act.	Recipient Any person requesting or accepting an offer or promise of a gift, or any undue benefit to exert influence over a domestic or foreign public official in relation to the decision-making of such official. Briber Any person offering, promising, or giving a gift or any undue benefit to a person who alleges that it may exert influence over a domestic or foreign public official in relation to the decision-making of such official.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	Depends on intent	Depends on intent
Is there any <i>de minimis</i> ?	X (except for the general restriction) ³	X (except for the general restriction)
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√	√
Acts performed outside Bulgaria		
Can bribery performed outside Bulgaria be caught?	√ (if committed by (i) a Bulgarian national, or (ii) a foreign national, where the offence concerned Bulgaria or a Bulgarian citizen)	√ (if committed by (i) a Bulgarian national, or (ii) a foreign national, where the offence concerned Bulgaria or a Bulgarian citizen)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Bulgarian national?	√	√
Bulgarian company?	X (only individuals caught)	X (only individuals caught)
Bulgarian partnership (including limited liability partnership)?	X (only individuals caught)	X (only individuals caught)
Director of Bulgarian company?	Recipient: n/a Briber: √ if implicated in the actual offence	Recipient: n/a Briber: √ if implicated in the actual offence
Bulgarian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Bulgarian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Bulgaria?	√ (individual only)	√ (individual only)
Foreign national domiciled or "ordinarily resident" in Bulgaria if the bribe is committed outside Bulgaria?	√ (if the offence concerns Bulgaria or a Bulgarian citizen)	√ (if the offence concerns Bulgaria or a Bulgarian citizen)
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Recipient — Imprisonment for up to 30 years — Fine of up to €15,000 — Confiscation of assets — Disqualification from taking similar offices Briber — Imprisonment for up to 10 years — Fine of up to €7,500 In both cases the benefit is expropriated	Recipient — Imprisonment for up to 6 years — Fine of up to €2,500 Briber — Imprisonment for up to 3 years — Fine of up to €1,500 In both cases the benefit is expropriated
Defences		
Are there any defences available?	X	X



Criminal Code, Administrative Offences and Sanctions Act

Criminal offences related to the employment of officials²

Recipient

Any person, who performs a job for a legal entity, requesting or accepting an offer/promise of a gift or any undue benefit in order to perform an act, or to refrain from doing so, in breach of his/her duties related to the business activities of the entity.

The offence is committed also where, with the consent of the person, the gift or the undue benefit has been offered, promised or given to a third person.

Briber

Any person offering, promising or giving a gift or any benefit to another person, who performs a job for a legal entity, in order for the latter to perform an act or to refrain from doing so, in breach of his/her duties related to the business activities of the entity.

Middleman

Middleman

Any person mediating the commission of any of the offences in the previous columns. (This would be a separate offence only where the involvement of the person is so limited that he cannot be considered as an accomplice in committing any of the other offences).

X

X

√

√

Depends on intent

Depends on intent

X
(except for the general restriction)

X
(except for the general restriction)

X

X

X
(applies only to officials of a private entity)

X
(applies to both public and private sectors)

√
(if committed by (i) a Bulgarian national, or (ii) a foreign national, where the offence concerned Bulgaria or a Bulgarian citizen)

√
(if any of the conditions under (i) or (ii) in previous columns were satisfied)

X

X

√

√

X
(only individuals caught)

X
(only individuals caught)

X
(only individuals caught)

X
(only individuals caught)

√
(if implicated in the actual offence)

√
(if implicated in the actual offence)

X

X

X

X

√
(individual only)

√
(individual only)

√
(if the offence concerns Bulgaria or a Bulgarian citizen)

√
(if the offence concerns Bulgaria or a Bulgarian citizen)

X

X

Recipient

- Imprisonment for up to 5 years
- Fine of up to €10,000

Briber

- Imprisonment for up to 3 years
- Fine of up to €7,500

In both cases the benefit is expropriated

- Imprisonment for up to 3 years
- Fine of up to €2,500

The benefit is expropriated

X

X

¹ Applies also to managers and directors of private entities and companies

² Applies also to managers, directors and employees of private entities and companies.

BULGARIA (CONTINUED)

Source of law	Criminal Code, Administrative Offences and Sanctions Act
Offence	Administrative liability related to criminal offences in public and private sector
	Benefiting entity A legal entity which has benefited or which could have benefited from any of the criminal offences in this table, committed by: 1) a person that make decisions for the entity; or 2) a person representing the entity; or 3) a member of a controlling or supervisory board of the entity; or 4) an employee of the entity, mandated by it to perform a certain activity, if the criminal offence was committed in relation to performance of that activity.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√ (if, depending on the intent, any of the aforementioned qualifies as a crime)
Is there any <i>de minimis</i> ?	X (except for the general restriction) ³
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X (applies to both public and private sectors)
Acts performed outside Bulgaria	
Can bribery performed outside Bulgaria be caught?	√ (if any of the conditions under (i) or (ii) in previous columns were satisfied)
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Bulgarian national?	X
Bulgarian company?	√
Bulgarian partnership (including limited liability partnership)?	X
Director of Bulgarian company?	X
Bulgarian company if the bribe is committed abroad by its foreign subsidiary?	X (unless the individual implicated in committing the actual offence acted also for the Bulgarian company under any of 1 to 4 above)
Foreign subsidiary of a Bulgarian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Bulgaria?	√
Foreign national domiciled or "ordinarily resident" in Bulgaria if the bribe is committed outside Bulgaria?	√ (if the condition in the previous columns is satisfied)
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Fine up to €500,000 but not less than the benefit received by the entity The benefit is expropriated
Defences	
Are there any defences available?	X

³ If the offence is so insignificant that it is not damaging to the public interest or the damage to the public interest insignificant, there would be no offence.



CHINA

Sources of law	The PRC Criminal Law, the PRC Anti Unfair Competition Law and the Interim Rules of the State Administration for Industry and Commerce on Prohibition of Commercial Bribery	
Offence	Active Bribery An individual or entity gives money or property to state working personnel ¹ , non-state working personnel, state organs, state-owned enterprises, public institutions or organisations for the purpose of obtaining improper benefits.	Passive Bribery An entity or an individual working for the entity demands or receives illegal money or property by taking advantage of his/her position for the purpose of obtaining benefits for other entities or individuals.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	√	√
Would facilitation payments be caught?	√ (Yes, in the case of payments to state working personnel ¹)	X
Would corporate hospitality be caught?	√ ²	√ ²
Is there any <i>de minimis</i> ?	X ³	X ³
Does the bribe have to be monetary?	X ⁴	X ⁴
Public officials		
Does the offence only apply to bribing public officials?	X ⁵	X
Acts performed outside China		
Can bribery performed outside China be caught?	√ (for Chinese citizens if the act constitutes a criminal offence)	√ (for Chinese citizens if the act constitutes a criminal offence)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Chinese national?	√	√
Chinese company?	√	√
Chinese partnership (including limited liability partnership)?	√	√
Director of Chinese company?	√ (only the person in charge or directly responsible for the act)	√ (only the person in charge or directly responsible for the act)
Chinese company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Chinese company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in China?	√	√
Foreign national domiciled or "ordinarily resident" in China if the bribe is committed outside China?	X	X
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals — Fine — Confiscation of property — Fixed-term/life imprisonment Companies — A fine of up to RMB 200,000 — Confiscation of illegal income — Fixed term imprisonment (the person in charge or directly responsible) for up to 5 years	Individuals — Criminal detention — Fixed-term/life imprisonment — Confiscation of property — In extreme cases: death penalty Companies — A fine of up to RMB 200,000 — Confiscation of illegal income — Fixed term imprisonment (the person in charge or directly responsible) for up to 5 years
Defences		
Are there any defences available?	The offence shall not be prosecuted if the following periods have elapsed: — 5 years, when the maximum prescribed punishment is fixed-term imprisonment of less than 5 years — 10 years, when the maximum prescribed punishment is fixed-term imprisonment of not less than 5 years but less than 10 years — 15 years, when the maximum prescribed punishment is fixed-term imprisonment of not less than 10 years — 20, when the maximum prescribed punishment is life imprisonment or death	The offence shall not be prosecuted if the following periods have elapsed: — 5 years, when the maximum prescribed punishment is fixed-term imprisonment of less than 5 years — 10 years, when the maximum prescribed punishment is fixed-term imprisonment of not less than 5 years but less than 10 years — 15 years, when the maximum prescribed punishment is fixed-term imprisonment of not less than 10 years — 25, when the maximum prescribed punishment is life imprisonment or death

1 "State working personnel" refers to government officials, persons who perform the management functions in State-owned enterprises (SOEs) and persons who are assigned by SOEs to non-SOEs to perform management functions, such as Directors, Supervisors, General Managers, department managers, accountants, etc.

2 If expenses are unreasonable and intended for the purpose of obtaining improper benefits.

3 Offering or receipt of gifts with significantly low value, in practice of less than RMB 300, does not constitute an offence.

4 The bribe can be either money or material gifts as well as benefits with monetary value including, e.g. building decorations, membership cards, travelling expenses, etc.

5 In the public sector, the recipients of the bribery are so-called "state working personnel", which include not only public officials but also persons performing management functions in SOEs. (For details, please refer to the definition in footnote 1. They are subject to more severe criminal liabilities than non-state working personnel should they commit crimes).



CROATIA

Source of law	Criminal Act ¹ , Act on Criminal Liability of Legal Entities ²	
Offence	Giving a bribe in business activities (Art. 253 CA): offering, promising or giving a bribe (or intermediating in those actions) during a business activity in order to favour the briber or someone else by or when making or performing a deal or rendering services, to the detriment of an entity the recipient represents or works for. Accepting a bribe in business activities (Art. 252 CA): demanding or accepting a bribe (or the offer or promise of a bribe), or intermediating in those actions, during a business activity in order to favour someone by or when making or performing a deal or rendering services, to the detriment of an entity he represents or works for. Giving a bribe (Art. 294 CA): offering, promising or giving a bribe (or intermediating in those actions) to an official³ or responsible person⁴ in order for her to (within or outside her powers) perform/not perform an action which should not/should be performed. Accepting a bribe (Art. 293 CA): demanding or accepting a bribe or the offer or promise of a bribe by an official or responsible person for herself or someone else, in order for her to (within or outside her powers) perform/not perform an action which should not/should be performed, as well as demanding or accepting a bribe after performing/not performing such action.	Giving a bribe for trading in influence (Art. 296 CA): offering, promising or giving a bribe (or intermediating in those actions) in order for someone to use the official or social status or influence for performing/not performing an action which should not/should be performed. Trading in influence (Art. 295/2, 3 CA): demanding or accepting a bribe or the offer or promise of a bribe (or intermediating in those actions) in order to use the official or social status or influence for not performing/performing action which should/should not be performed. Bribing a representative (Art. 339 CA): demanding or accepting a bribe or the offer or promise of a bribe by a representative in the Croatian or European Parliament or in a local and regional representative body, in order to vote in a certain way, as well as offering/promising/giving of such bribe. Accepting and giving a bribe in insolvency proceedings (Art. 251 CA): demanding or accepting a bribe or the offer or promise of a bribe, by a creditor or insolvency trustee for himself or someone else, in order to harm at least one creditor in the insolvency proceeding, as well as offering/promising/giving of such bribe.
The bribe		
Is there a presumption that any benefit was given/received corruptly?		X
Would facilitation payments be caught?		√
Would corporate hospitality be caught?		√
Is there any <i>de minimis</i> ?		√ ⁵
Does the bribe have to be monetary?		X
Public officials		
Does the offence only apply to bribing public officials?	X (except for the offence Bribing a representative)	
Acts performed outside Croatia		
Can bribery performed outside Croatia be caught?		√
Does the act also need to be illegal in the foreign country of performance?		√
Who can be liable		
Croatian national?		√
Croatian company?		√
Croatian partnership (including limited liability partnership)?		√
Director of Croatian company?		√
Croatian company if the bribe is committed abroad by its foreign subsidiary?	(provided the subsidiary is a branch office of a Croatian entity)	√
Foreign subsidiary of a Croatian company if the bribe is committed abroad?	(provided the subsidiary is a branch office of a Croatian entity)	X
Foreign national/company/partnership if the bribe is committed in Croatia?		√
Foreign national domiciled or “ordinarily resident” in Croatia if the bribe is committed outside Croatia?		√
Foreign company/partnership if the bribe is committed abroad?		√
Penalties		
Penalties include:	Individuals — Imprisonment for up to 5 years (for offences Giving a bribe in business activities and Bribing a representative) — Imprisonment for up to 8 years (for offences Accepting and giving a bribe in the insolvency proceeding, Accepting a bribe in business activities, Giving a bribe and Giving a bribe for trading in influence) — Imprisonment for up to 10 years (for offences Accepting a bribe and Trading in influence)	Companies — Fines (up to HRK 12 m (circa €1.6 million)) — Cessation of legal entity — Probationary sentence — Various safety measures⁶ — Seizure of gained profit, seizure of objects and publishing of the verdict
Defences		
Are there any defences available?	√ The perpetrator of the offences “Giving a bribe in business activities”, “Giving a bribe” and “Giving a bribe for trading in influence” can be released from punishment if he gave the bribe upon request of a responsible person and if he reported the offence before it was discovered or before he found out that the offence was discovered. Companies can be released from punishment if they reported the offence of the responsible person before it was discovered or before they found out that the offence was discovered.	

1 Criminal Act (Croatian: Kazneni zakon, Official Gazette of Republic of Croatia No. 125/11, as amended; hereinafter referred to as "CA").

2 Act on Criminal Liability of Legal Entities (Croatian: Zakon o kaznenoj odgovornosti pravnih osoba za kaznena djela, Official Gazette of Republic of Croatia No. 151/03, as amended).

3 An official person is a public official or an employee on a state or local/regional level, a judicial official, a juror, a member of Croatian National Judicial Council and Croatian State Prosecutorial Council, an arbitrator, a public notary, as well as every person performing those duties in European Union, a foreign country, an international organisation that Croatia is a member of, an international court or arbitration whose competence Croatia accepts.

4 A responsible person is a natural person who conducts the affairs of a company or is expressly or actually entrusted with conducting the affairs from the company's scope of work.

5 According to the Act on preventing of the conflict of interest (Croatian: Zakon o sprječavanju sukoba interesa, Official Gazette of Republic of Croatia No. 26/11, as amended), government officials can accept a gift or service of symbolic value (i.e. under HRK 500 (circa €67)) if it does not put the official into a dependent and/or obligatory position towards the donor. Accepting money, securities and precious metals is not allowed.

6 Examples of safety measures include the prohibition of certain activities or transactions, prohibition of acquiring licences, authorisations, concessions or subventions, prohibition of doing business with beneficiaries of state or local budgets and confiscation of objects.

CZECH REPUBLIC

Source of law	Czech Criminal Code: Act no. 418/2011 Coll., on criminal liability of legal entities
Offence	Major offences – acceptance of a bribe – active bribery – indirect bribery The Criminal Code defines a bribe as “offering, giving, requesting or accepting (directly or indirectly) in the public or private sector, an unauthorised benefit consisting in a direct material enrichment or other advantage which is obtained or is intended to be obtained by the bribed person or another person with his/her agreement, and to which s/he has no right.”¹ Other special offences apply in relation to public tenders and public auctions.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√ ²
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside Czech Republic	
Can bribery performed outside Czech Republic be caught?	√ ³
Does the act also need to be illegal in the foreign country of performance?	√ (if the act is committed by a foreign individual) ⁴
Who can be liable	
Czech national?	√
Czech company?	√ ⁵
Czech partnership (including limited liability partnership)?	√ ⁶
Director of Czech company?	√
Czech company if the bribe is committed abroad by its foreign subsidiary?	√ (if the crime is committed for the benefit of a Czech company) ⁷
Foreign subsidiary of a Czech company if the bribe is committed abroad?	√ (if the crime is committed for the benefit of a Czech company) ⁸
Foreign national/company/partnership if the bribe is committed in Czech Republic?	√
Foreign national domiciled or “ordinarily resident” in Czech Republic if the bribe is committed outside Czech Republic?	√ (provided that there is mutuality of criminal liability in both countries, such national is captured in the Czech Republic and not subject to extradition) ⁹
Foreign company/partnership if the bribe is committed abroad?	√ (if the crime is committed for the benefit of a Czech partnership, exclusions may apply)
Penalties	
Penalties include:	Individuals — Imprisonment for up to 12 years, perpetual injunction or forfeiture of assets, disqualification of directors and fines Companies — Fines, forfeiture of property, perpetual injunctions, compulsory publication of judgment, debarment from participating in public tenders and applying for subsidy and grant programmes; if held liable, the company may be dissolved (in extreme cases)
Defences	
Are there any defences available?	X

¹ Section 334 of the Czech Criminal Code.

² Would have to be examined on a case by case basis. Can be prosecuted under certain circumstances.

³ “Distant offences” committed by anyone (whether or not Czech, including companies) abroad but where such acts have an impact in the Czech Republic are caught, even if acts are initiated and completed abroad with an intention to complete the criminal act in the Czech Republic, pursuant to Section 4 of the Criminal Code.

⁴ Section 8 of the Criminal Code. International treaty to which Czech Republic is a party may also establish criminal liability of a company.

⁵ Public sector organisations are excluded from liability.

⁶ However, there are types of partnership in the Czech Republic which are not legal entities and thus cannot be liable.

⁷ Such liability is not limited to affiliated companies.

⁸ Such liability is not limited to affiliated companies.

⁹ Criminal liability may be also established if a foreign national not residing in the Czech Republic commits bribery for the benefit of a Czech company or a company with its registered branch in the Czech Republic.

FRANCE

Sources of law	International corruption: Articles 435-1 and seq of the French Criminal Code (French Statute of 13 November 2007, as amended by French Statute of 17 May 2011) Domestic corruption: Articles 432-11 and seq, 433-1 and seq, of the French Criminal Code (persons holding a public function) and Articles 445-1 and seq of the French Criminal Code (persons not holding a public function)	
Offence	Public Sector (various articles of the French Criminal Code) Bribing Unlawfully offering, promising or giving ¹ to a public official (including judicial officers and an elected foreign public official), directly or indirectly, any advantage for the future or past performance or non performance of any act within the official’s functions, duties or mandate. Private Sector (art. 445-1 and Seq. of the French Criminal Code) Bribing Unlawfully offering to a person holding a management position or any occupation, any advantage for the future or past performance or non-performance of any act within his activity or function, in breach of his legal, professional or contractual obligations.	
The bribe		
Is there a presumption that any benefit was given/received corruptly?		X
Would facilitation payments be caught?		√ ²
Would corporate hospitality be caught?		√
Is there any <i>de minimis</i> ?		X
Does the bribe have to be monetary?		X
Public officials		
Does the offence only apply to bribing public officials?		X
Acts performed outside France		
Can bribery performed outside France be caught?		√
Does the act also need to be illegal in the foreign country of performance?		√ ³
Who can be liable		
French national?		√
French company?		√
French partnership (including limited liability partnership)?		√
Director of French company?	(but this depends on his/her involvement in the bribery, including his/her knowledge and intent)	√
French company if the bribe is committed abroad by its foreign subsidiary?		√
Foreign subsidiary of a French company if the bribe is committed abroad?		√ ⁴
Foreign national/company/partnership if the bribe is committed in France?		√
Foreign national domiciled or “ordinarily resident” in France if the bribe is committed outside France?		√ ⁵
Foreign company/partnership if the bribe is committed abroad?		X ⁷
Penalties		
Penalties include:	Individuals Corruption involving a person holding a public office: — Imprisonment for up to 10 years — Fines of up to €150,000 Corruption in the private sector: — Imprisonment for up to 5 years — Fines of up to €75,000 — Additional penalties such as deprivation of rights, professional restrictions, publication of the decision, confiscation of sums of money or goods irregularly received Companies Corruption of a person holding a public office: — Fines of up to €750,000	Corruption of a person not holding a public function: — Fines of up to €375,000 — For a maximum of 5 years: • Interdiction on continuing the activity at stake • Placing under judicial supervision • Closure of the division/establishment used to commit the offence • Exclusion from the government procurement • Banning the entity from raising public funds • Banning from writing cheques other than those allowing funds to be withdrawn or certified cheques or using credit cards — Publication of the decision — Confiscation
Defences		
Are there any defences available?		X

1 Whether or not as a result of an unlawful request from such an official.

2 While any bribe is illegal, irrespective of the amount, in practice the French authorities are unlikely to prosecute small payments of this kind especially if the law of the country where the facilitation payment is made allows such advantages to be given.

3 France has enacted an exception whereby acts which are expressly legal in the relevant foreign jurisdiction in accordance with the OECD convention exception, will not result in liability under French law.

Public Sector (various articles of the French Criminal Code)**Being Bribed**

A public official (including judicial officers and an elected foreign public official) unlawfully requesting or accepting for himself or another an advantage for the future or past performance or non-performance of any act within the official's functions, duties or mandate.

Private Sector (art. 445-1 and Seq. of the French Criminal Code)**Being Bribed**

A person holding a management position or any occupation, requests or accepts, directly or indirectly, any advantage for the future or past performance of an act within his activity in breach of his legal, professional or contractual obligations.

X

 $\sqrt{2}$ $\sqrt{}$

X

X

X

 $\sqrt{}$ $\sqrt{3}$ $\sqrt{}$ $\sqrt{}$ $\sqrt{}$ $\sqrt{}$

(but this depends on his/her involvement in the bribery, including his/her knowledge and intent)

 $\sqrt{}$ $\sqrt{4}$ $\sqrt{}$ $\sqrt{6}$ X^7 **Individuals**

Corruption involving a person holding a public office:

- Imprisonment for up to 10 years
- Fines of up to €150,000

Corruption in the private sector:

- Imprisonment for up to 5 years
- Fines of up to €75,000
- Additional penalties such as deprivation of rights, professional restrictions, publication of the decision, confiscation of sums of money or goods irregularly received

Companies

Corruption of a person holding a public office:

- Fines of up to €750,000

N.B. In case of corruption involving a private person (as distinguished from a public officials), companies may be bribed.

- Fines of up to €375,000
- For a maximum of 5 years:
 - Interdiction on continuing the activity at stake
 - Placing under judicial supervision
 - Closure of the division/establishment used to commit the offence
 - Exclusion from the government procurement
 - Banning the entity from raising public funds
 - Banning from writing cheques other than those allowing funds to be withdrawn or certified cheques or using credit cards
- Publication of the decision
- Confiscation

X

4 For instance, if the French parent company is sentenced as the main offender ("directly or indirectly") and the foreign subsidiary as an accomplice.

5 This is permitted under article 689-1 of the French Procedural Criminal Code but it is only limited to the defence of European Community interests.

This also relates to the notion of residency as interpreted by French law.

6 This may be the case for foreign public officials belonging to an international organisation or arbitrators.

7 Although the foreign company could be prosecuted if it was an accomplice to a bribery offence committed by a French company.



GERMANY

Source of law	German Criminal Code	
Offence	Private Sector: Sect. 299 et seq. German Criminal Code ("StGB") Where someone promises or grants the employees or agents of another company or a third party a financial or other benefit in return for the latter treating him or his company preferentially in relation to other competitors without an appropriate reason. The same applies to employees or agents of a company who ask for or accept such benefits.	Public Sector: Sect. 331 et seq. StGB Where someone promises or grants a holder of office (i.e. any judge, civil servant or any person holding public office who performs public administration tasks at a public authority or other body) a benefit in order to convince him to perform an illegal act or act within his authority.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X (however, inappropriate or unusual benefits may lead to preliminary investigation and finally conviction)	X (however, advantages given/received in connection with the exercise of office constitute a bribe (Sect. 331 et seq. StGB))
Would facilitation payments be caught?	✓	✓
Would corporate hospitality be caught?	✓ (depends on the intent and on whether the benefit offered is "socially adequate" i.e. a reasonable benefit which does not have the potential improperly to influence the decision)	✓ (depends on the intent; however, significantly lower threshold than in private sector)
Is there any <i>de minimis</i> ?	X ¹	X ²
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	✓ ³
Acts performed outside Germany		
Can bribery performed outside Germany be caught?	✓	✓
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
German national?	✓	✓
German company?	✓ ⁴	✓ ⁴
German partnership (including limited liability partnership)?	✓ ⁵	✓ ⁵
Director of German company?	✓ (if he is implicated in the act of bribery or in cases of neglect of corporate duty to avoid criminal acts)	✓ (if he is implicated in the act of bribery or in cases of neglect of corporate duty to avoid criminal acts)
German company if the bribe is committed abroad by its foreign subsidiary?	✓ ⁶	✓ ⁶
Foreign subsidiary of a German company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Germany?	Foreign national: ✓ Foreign company or partnership: ✓ ⁷	Foreign national: ✓ Foreign company or partnership: ✓ ⁷
Foreign national domiciled or "ordinarily resident" in Germany if the bribe is committed outside Germany?	✓ (if caught within Germany and not subject to extradition)	✓ (if caught within Germany and not subject to extradition)
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals - Fines and/or imprisonment (up to 5 years) in case of conviction. An occupational ban may also be imposed on wrongdoers - Directors, board members and officers: fines (up to €1,000,000) in case of insufficient organisation, instruction and supervision Companies - Fines (in principle up to €1,000,000 - fine may be higher if benefit derived from bribery exceeds €1,000,000 - this is the exception rather than the rule) - Debarment of companies from tendering for public contracts - Confiscation of benefits derived from bribery	Individuals - Fines and/or imprisonment (up to 5 years) in case of conviction. An occupational ban may also be imposed on wrongdoers - Directors, board members and officers: fines (up to €1,000,000) in case of insufficient organisation, instruction and supervision Companies - Fines (in principle up to €1,000,000 - fine may be higher if benefit derived from bribery exceeds €1,000,000 - this is the exception rather than the rule) - Debarment of companies from tendering for public contracts - Confiscation of benefits derived from bribery
Defences		
Are there any defences available?	X	X

1 Low-value gifts are not subject to criminal prosecution. Generally, in the private sector gifts and invitations with a total value of €35 are considered as adequate.

2 Low-value gifts are not subject to criminal prosecution. In the public sector small gifts with a total value of €5 are considered as adequate.

3 Employees, officers or directors of privately operated companies who perform public functions may also be considered as public officials.

4 Even though legal entities are not subject to criminal prosecution in Germany they can be ordered to pay substantial fines; confiscation of benefits derived from bribery.

5 Depending on the individual circumstances; as above.

6 Depending on the individual circumstances; as above.

7 As in footnote 4.

HUNGARY

Sources of law	Act C of 2012 on the Criminal Code, as amended (the "Criminal Code") ¹ Act CIV of 2001 on Criminal Sanctions against Legal Entities, as amended (the "Corporate Sanctions Act") Act CLXIII of 2009 on the Protection of Fair Treatment and the Related Amendment of the Laws ("Fair Treatment Act")
Offence ²	Public Bribery (Sections 293-294 of the Criminal Code) Active Public Bribery Giving or promising an unlawful advantage to a Hungarian or foreign public official or to a third party to influence the relevant official's actions in his/her official capacity. Passive Public Bribery Requesting an unlawful advantage in (the Hungarian or foreign official's) official capacity, or accepting such advantage or a promise thereof, or agreeing with the party requesting or accepting the advantage.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	Depends on intent
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√
Acts performed outside Hungary	
Can bribery performed outside Hungary be caught? ³	√
Does the act also need to be illegal in the foreign country of performance?	X (unless committed by a foreign national)
Who can be liable	
Hungarian national?	√
Hungarian company? ⁴	√
Hungarian partnership (including limited liability partnership)?	√
Director of Hungarian company?	√ (The director of a company, or a member or employee with authority to exercise control or supervision is also liable for public bribery, if another member or employee of the company commits (domestic or foreign) public bribery for the benefit of the company and the bribery could have been prevented had the director properly fulfilled his/her control or supervisory obligations. Negligent acts are also punished.)
Hungarian company if the bribe is committed abroad by its foreign subsidiary? ⁵	√
Foreign subsidiary of a Hungarian company if the bribe is committed abroad? ⁶	√
Foreign national/company/partnership if the bribe is committed in Hungary? ⁷	√
Foreign national domiciled or "ordinarily resident" in Hungary if the bribe is committed outside Hungary? ⁸	√
Foreign company/partnership if the bribe is committed abroad? ⁹	√
Penalties	
Penalties include:	Individuals — Imprisonment up to 5 years in the case of active and up to 10 years in the case of passive bribery (may vary depending on the nature and seriousness of the crime) Companies (if applicable) — Termination — Restriction of operation (1-3 years), including debarment from public contracts or state subsidies — Fine: up to 3 times the pecuniary advantage gained or intended to be gained from the crime — Confiscation order
Defences	
Are there any defences available?	√ ¹⁰

1 Effective from 2 July 2013 on and replaces the former Act IV of 1987 on the Hungarian Criminal Code.

2 There are also special offences relating to bribery in judicial proceedings and influence peddling. In addition, it is also an offence if a public official fails to report bribery of any kind which he/she is aware of.

3 Bribery performed outside Hungary is illegal under the Criminal Code if the following conditions are met: the bribery is committed (1) by a Hungarian national, or (2) on a Hungarian ship or aircraft, or (3) by a foreign national and the act is also illegal in the foreign country of performance (to be assessed by the Hungarian General Attorney). (Section 3 of the Criminal Code).

4 Companies cannot be legally "liable" for a crime but certain criminal sanctions can be imposed on them under the following circumstances: (1) the crime is committed by the relevant natural person intentionally, (2) the crime targeted or resulted in an advantage in favour of the company, and the crime is committed by (3) a director, authorized representative, employee, officer, supervisory board member, manager, or a proxy of the above, as part of the activity of the company, or (4) a member or employee of the company, whose action the director, manager or supervisory board member could have hindered by exercising his/her duties. Sanctions can also be imposed if the crime resulted in an advantage for the company and the director, representative, manager or supervisory board member was aware of the crime. (Section 2 of the Corporate Sanctions Act).

5 Companies cannot be legally "liable" but certain criminal sanctions can be imposed on them, as outlined in footnote 4. If the bribe is committed abroad by a foreign subsidiary, criminal sanctions may be imposed on the Hungarian parent company if the act fell within the scope of its activity, although this has not yet been tested in practice. In addition, the conditions set out in the Criminal Code must also be met.

HUNGARY (CONTINUED)

Sources of law	Act C of 2012 on the Criminal Code, as amended (the "Criminal Code") ¹ Act CIV of 2001 on Criminal Sanctions against Legal Entities, as amended (the "Corporate Sanctions Act") Act CLXIII of 2009 on the Protection of Fair Treatment and the Related Amendment of the Laws ("Fair Treatment Act")
Offence ²	Private Bribery (Sections 290-292 of the Criminal code) Active Public Bribery Giving or promising an unlawful advantage to a person acting for a Hungarian or foreign company to induce that person to breach his/her duties. Passive Public Bribery Requesting an unlawful advantage by a person acting for a Hungarian or foreign company, or accepting such advantage or a promise thereof, or agreeing with the party requesting or accepting the advantage.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	Depends on intent
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside Hungary	
Can bribery performed outside Hungary be caught? ³	√
Does the act also need to be illegal in the foreign country of performance?	X (unless committed by a foreign national)
Who can be liable	
Hungarian national?	√
Hungarian company? ⁴	√
Hungarian partnership (including limited liability partnership)?	√
Director of Hungarian company?	√ (if he/she is implicated in the actual bribery)
Hungarian company if the bribe is committed abroad by its foreign subsidiary? ⁵	√
Foreign subsidiary of a Hungarian company if the bribe is committed abroad? ⁶	√
Foreign national/company/partnership if the bribe is committed in Hungary? ⁷	√
Foreign national domiciled or "ordinarily resident" in Hungary if the bribe is committed outside Hungary? ⁸	√
Foreign company/partnership if the bribe is committed abroad? ⁹	√
Penalties	
Penalties include:	Individuals — Imprisonment up to 8 years in the case of active and up to 10 years in the case of passive bribery (may vary depending on the nature and seriousness of the crime) Companies (if applicable) — Termination — Restriction of operation (1-3 years), including debarment from public contracts or state subsidies — Fine: up to 3 times the pecuniary advantage gained or intended to be gained from the crime — Confiscation order
Defences	
Are there any defences available?	√ ¹⁰

6 A foreign subsidiary of a Hungarian company can be liable in Hungary only if the bribe which is committed abroad is also illegal in the foreign country concerned – to be assessed by the Hungarian General Attorney. See also footnotes 5 and 7.

7 Foreign companies and partnerships may be sanctioned in accordance with the Corporate Sanctions Act because its scope does not differentiate between domestic and foreign companies and partnerships. However, such application of the Corporate Sanctions Act has not yet been tested in practice. Enforceability issues may also arise.

8 A foreign national domiciled or "ordinarily resident" in Hungary can be liable only if the bribe which is committed outside Hungary is also illegal in the foreign country concerned – to be assessed by the Hungarian General Attorney.

9 A foreign company/partnership can be liable in Hungary only if the bribe which is committed abroad is also illegal in the foreign country concerned – to be assessed by the Hungarian General Attorney. See also footnotes 5 and 7.

10 Before the bribe is detected, a person's penalty may be alleviated without limits or in some cases the liability may be avoided by providing the authorities with information regarding the bribe and (in case of passive bribery) by surrendering the unlawfully obtained advantage to the authorities.

INDIA	
Sources of law ¹	The Prevention of Corruption Act 1988 ("PCA") The Foreign Contribution (Regulation) Act 2010 ("FCRA") The Indian Penal Code 1860 ("IPC"), which also contains certain provisions relating to breach of trust, cheating and attempt to commit a criminal offence
Offence	Offences under the PCA By public servants 1. Accepting, obtaining, attempting to obtain, or agreeing to accept: a) "gratification", other than legal remuneration, as a motive or reward for <i>inter alia</i> doing or refraining from doing any official act or favouring or disfavoured any particular person; b) any valuable thing without consideration or with inadequate consideration, from any person who is concerned in any proceeding or business transacted by the public servant; 2. Obtaining money or any other gratification as a reward for inducing a person erroneously to believe that the official's influence with the Government has resulted in his obtaining a "title" (i.e. benefit) for the other person. By others 1. Offering "gratification" to a public servant. 2. Accepting, obtaining, attempting to obtain, agreeing to accept "gratification" in order to exert personal influence over a public servant. 3. Influencing a public servant by corrupt or illegal means, into <i>inter alia</i> doing or forbearing to do any official act. 4. Abetting public servants in committing acts punishable under the PCA (as set out above).
The bribe	
Is there a presumption that any benefit was given/received corruptly?	√ ²
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√
Acts performed outside India	
Can bribery performed outside India be caught?	√
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Indian national?	√
Indian company?	√ ³
Indian partnership (including limited liability partnership)?	√ ⁴
Director of Indian company?	√ ⁶
Indian company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Indian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in India?	√ ⁷
Foreign national domiciled or "ordinarily resident" in India if the bribe is committed outside India?	X
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Imprisonment between 6 months and 5 years — Unlimited fine
Defences	
Are there any defences available?	X

- The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill 2011, which aims at preventing corruption relating to bribery of foreign public officials and officials of public international organisations, is pending before the Parliament of India. This Bill punishes offering or attempting to offer a bribe to foreign public officials and officials of public international organisations as well as taking/attempting to take bribes by such officials.
- This presumption is applicable to public servants for the offences relating to gratification and any valuable thing, and to those private parties who abet the said offences. This presumption is additionally applicable to all parties for habitual commission of offences punishable under the PCA.
- While the PCA does not explicitly apply to companies, it punishes "persons" who abet the commission of an offence by a public servant. A "person" can also denote a company, under the General Clauses Act, 1897.
- A partnership has no separate legal personality. The partners are jointly and severally liable for all acts of the firm done while the said persons were partners, provided that the wrongful act was committed by one partner in the ordinary course of business of the firm or with the authority of his partners. A "Limited Liability Partnership" ("LLP") has a separate legal personality from that of its partners. The LLP, along with the partner, will be liable for any wrongful act/omission of a partner, done in the course of business of the LLP or with the authority of the LLP. However the other partners will not be liable for such wrongful act/omission.
- Ibid.
- The PCA does not specifically provide for directors to be held liable for the acts of the Company. In the situation when the Company has committed an offence, directors of a Company will be liable provided they commit an act which was not authorised by the Company, and that act constitutes an offence under the PCA.
- In the case of wrongdoing by a "public servant", the PCA only applies to Indian public servants, not foreign public officials or officials of foreign public international organisations.

INDIA (CONTINUED)

Sources of law ¹	The Prevention of Corruption Act 1988 ("PCA") The Foreign Contribution (Regulation) Act 2010 ("FCRA") The Indian Penal Code 1860 ("IPC"), which also contains certain provisions relating to breach of trust, cheating and attempt to commit a criminal offence
Offence	Offences under the FCRA "Foreign contribution" means, <i>inter alia</i>, any donation, delivery, or transfer made by any "foreign source" of any article (if not a gift), any currency or any security. "Foreign source" includes a foreign Government, foreign company or trust, as well as a citizen of a foreign country. "Foreign hospitality" means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment. It is an offence: For a candidate for election, a newspaper columnist, government servant, Member of the Legislature, political party or its office bearer, or a company engaged in production or broadcast of audio news ("Relevant Persons"), to accept a "foreign contribution" For an Indian resident, or a citizen of India who is resident outside of India, on behalf of a political party or a Relevant Person, to accept a foreign contribution. For any Indian resident (or Indian citizen outside India) to deliver to any person any currency, which has been accepted by a "foreign source", if the resident (or overseas citizen) has reasonable cause to believe/knows that such other person intends to deliver the currency to a political party or Relevant Person. To deliver any currency, which has been accepted by a foreign source, on behalf of any person or class of persons if so specified by the Central Government. For any Legislative member, office-bearer of a political party, judge or government servant (among others) to accept foreign hospitality, when visiting a foreign country, without the prior permission of the Central Government, except in cases of emergency medical aid. Not to comply with a prohibitory order made by Central Government, prohibiting any person, who has in his custody or control any article, currency or security, in contravention of any provisions of FCRA, from paying, delivering, transferring or otherwise dealing in any manner whatsoever, any such article or currency or security.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside India	
Can bribery performed outside India be caught?	√
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Indian national?	√
Indian company?	√
Indian partnership (including limited liability partnership)?	√ ⁵
Director of Indian company?	√ ⁸
Indian company if the bribe is committed abroad by its foreign subsidiary?	√ ⁹
Foreign subsidiary of a Indian company if the bribe is committed abroad?	√ ¹⁰
Foreign national/company/partnership if the bribe is committed in India?	√ ¹¹
Foreign national domiciled or "ordinarily resident" in India if the bribe is committed outside India?	√
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Varying imprisonment for offences; accepting or assisting in acceptance of foreign contribution or currency/security from a foreign source invites imposition of imprisonment up to 5 years, or with fine, or both. — Any article/currency/security received in contravention of the FCRA may be seized and subsequently disposed of, by the Central Government.
Defences	
Are there any defences available?	X

⁸ See footnote 6.

⁹ Provided it can be proved that the Indian company assisted in the wrongdoing.

¹⁰ Provided it can be proved that the foreign company assisted in the wrongdoing, through an Indian resident or through an Indian citizen resident outside India.

¹¹ Provided that the entity will qualify as a person resident in India. Alternatively, it must be proved that the entity assisted an Indian resident or a citizen of India resident outside of India, in commission of such offence.

ITALY

Source of law (Civil Law)	Italian Criminal Code (ICC), sec. No. 318 ¹ et seq.	Legislative Decree No.231/2001 (Decree 231) ²
Offence	Briber Giving or promising money/advantage to a public official, in order to act or not to act in a certain way (either in breach of his duties or not). Recipient Public official namely a Government official or public service agent receiving or accepting the promise of such reward for himself or for a third party⁴.	Briber Company's executive/representative or employee giving or promising, in the interest of and/or for the advantage of the company, money/advantage to a public official or to individuals, in order to act or not to act in a certain way (either in breach of his duties or not)⁵. Recipient Public official (Government official or public service agent) and individuals receiving or accepting the promise of such reward for themselves or for a third party.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	Depends on intent	Depends on intent
Would corporate hospitality be caught?	Depends on intent	Depends on intent
Is there any <i>de minimis</i> ?	X (although the gift cannot be so small that it is not considered a "reward")	X (although the gift cannot be so small that it is not considered a "reward")
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√ (although the penalties apply to anyone who gives or promises rewards to them)	X
Acts performed outside Italy		
Can bribery performed outside Italy be caught?	√ (if committed by an Italian national) ⁶	√ (if committed by an Italian national company's executive and/or employee) ⁷
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Italian national?	√	√
Italian company?	X	√
Italian partnership (including limited liability partnership)?	X	√ ⁹
Director of Italian company?	√	√
Italian company if the bribe is committed abroad by its foreign subsidiary?	√	√
Foreign subsidiary of an Italian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Italy?	√	√
Foreign national domiciled or "ordinarily resident" in Italy if the bribe is committed outside Italy?	X	X
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	— Imprisonment for up to 8¹⁰ years (for judicial bribery imprisonment up to 20 years) — Disqualifying penalties¹¹, if applicable — Confiscation	— Pecuniary sanctions of up to approximately €1,200,000 — Disqualifying penalties¹², if applicable — Confiscation — Publication of the judgment, if applicable
Defences		
Are there any defences available?	√ ¹³	√ ¹³

1 Art. 318 ICC was amended by the law No. 190/2012, to eliminate the link between the utility received and the execution of an act of the office.

2 Legislative Decree No. 231/2001 provides for corporate liability – formally called "administrative" but which is, in fact, essentially criminal in nature – that may be established in connection with specific listed crimes (including bribery) directly performed by the companies' executives/representatives or employees in the interest of and/or for the advantage of the corporate.

4 If the public official does not receive or does not accept the promise of receiving such reward, even if he is not punished, the person who has offered or promised money or other utilities to the public official will be punished for incitement to bribery, pursuant to art. 322 of Italian Penal Code.

5 Law no. 190/2012, in force since November 28, 2012, introduces private corruption to the list of crimes according to Decree 231. So, the offence of private corruption generates corporate liability if the crime is committed in the interest of or for the advantage of the company.

6 Italian nationals can be held liable for judicial bribery and bribery of a public official, but in the latter case only on request of the Minister of Justice or a civil claimant.

7 As above.

9 Decree 231 applies to all legal entities, companies and associations, even those without any legal personality.

10 Law No. 190/2012 increases the penalty of corruption for an act contrary to official duties, from 2-5 years, to 4-8 years. Anyway, pursuant to art. 321 of ICC, the punishment is extended to anyone who gives money/advantage to public official.

11 For example: debarment from public contracts or from representative assignments in private companies, prohibitions on negotiating and entering into agreements with the Public Administration, etc.

12 Disqualifying penalties are: debarment of the company from carrying out business; suspension or withdrawal of authorisations, licenses, or concessions that are related to the commission of the unlawful conduct; prohibition against the company contracting with the Public Administration; exclusion of facilities, financing, contributions or subsidies, and (if applicable) revocation of those already granted; prohibition on advertising the company's goods or services.

13 The company can avoid liability, as provided for by Decree 231, by adopting and effectively enforcing an organisational, management and control model (called a "Modello"), suitable for preventing the commission of crimes and appointing a Supervisory Body (called an "Organismo di Vigilanza") with the duty to control the correct implementation of the Model. The Model which should be adapted to the nature of a given business, must provide procedures to ensure that business activities comply with the law, and that company officers are alert to situations which increase the risk of bribery and promptly remove them when they are identified.

ITALY (CONTINUED)

Source of law (Civil Law)	Italian Civil Code (sec. No. 2635) ³
Offence	Briber Giving or promising any advantage to a company's managers, general directors, directors responsible for the company's balance sheet, auditors, liquidators and to anyone who is employed by them, in order to act or refrain from acting, in breach of their duties, provided that the damage is caused to the recipient's company concerned. Recipient Managers, general directors, directors responsible for the company's balance sheet, auditors, liquidators and anyone who is employed by them, who receive or accept the promise of such advantage.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	Depends on intent
Would corporate hospitality be caught?	Depends on intent
Is there any <i>de minimis</i> ?	X (although the gift cannot be so small that it is not considered a "reward")
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside Italy	
Can bribery performed outside Italy be caught?	√ (if committed by an Italian national) ⁸
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Italian national?	√
Italian company?	X
Italian partnership (including limited liability partnership)?	X
Director of Italian company?	√
Italian company if the bribe is committed abroad by its foreign subsidiary?	√
Foreign subsidiary of an Italian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Italy?	√
Foreign national domiciled or "ordinarily resident" in Italy if the bribe is committed outside Italy?	X
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Imprisonment for up to 3 years — Disqualifying penalties, if applicable
Defences	
Are there any defences available?	√ ¹³

³ Art. 2635 was amended by Law no. 190/2012, which introduces private corruption to the Italian Civil Code.

⁸ Only upon request of the Minister of Justice or a civil claimant.

¹³ The company can avoid liability, as provided for by Decree 231, by adopting and effectively enforcing an organisational, management and control model (called a "Modello"), suitable for preventing the commission of crimes and appointing a Supervisory Body (called an "Organismo di Vigilanza") with the duty to control the correct implementation of the Model. The Model which should be adapted to the nature of a given business, must provide procedures to ensure that business activities comply with the law, and that company officers are alert to situations which increase the risk of bribery and promptly remove them when they are identified.

THE NETHERLANDS

Sources of law¹	Art. 177 DCC Art. 177a DCC	Art. 362 DCC Art. 363 DCC
Offence	Bribing a public official² To offer or give a benefit to a public official ³ with the purpose of obtaining an act or omission by him/her that is (1) in breach of his/her official duties or (2) not in breach of his/her official duties.	A public official being bribed² To request or accept a gift, promise or service as a public official, knowing or reasonably suspecting that such an advantage has been given to obtain an act or omission by him/her that is in (1) breach of his/her official duties; or (2) not in breach of his/her official duties.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	Depends on intent	Depends on intent
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√ ⁴	√ ⁴
Acts performed outside the Netherlands		
Can bribery performed outside the Netherlands be caught?	√ ⁵	√
Does the act also need to be illegal in the foreign country of performance?	√	X
Who can be liable		
Dutch national?	√	√
Dutch company?	√	X
Dutch partnership (including limited liability partnership)?	√	X
Director of Dutch company?	√ ⁶	X
Dutch company if the bribe is committed abroad by its foreign subsidiary?	√ ⁷	X
Foreign subsidiary of a Dutch company if the bribe is committed abroad?	√	X
Foreign national/company/partnership if the bribe is committed in the Netherlands?	√	X
Foreign national domiciled or "ordinarily resident" in the Netherlands if the bribe is committed outside the Netherlands?	√	X
Foreign company/partnership if the bribe is committed abroad?	√	X
Penalties		
Penalties include:	— Imprisonment for up to 4 years — A fine of up to €78,000 for natural persons and up to €780,000 for companies — Disqualification from practising the profession in which the person committed the crime — Deprivation of certain rights	— Imprisonment for up to 4 years (or 6 years in limited circumstances) — A fine of up to €78,000 — Disqualification from practising the profession in which the person committed the crime — Deprivation of certain rights
Defences		
Are there any defences available?	X	X

¹ A major revision of the Dutch anti corruption statutes is under parliamentary consideration.

² Special offences apply if the official is a judge.

³ The term 'official' as defined in art.178, is deemed to include an official of a foreign state or an international organisation (art. 178a DCC).

⁴ Separate offences exist for bribery of and accepting bribes by non-public officials (art. 328ter DCC).

⁵ Bribery performed outside The Netherlands can be caught if performed by a Dutch official or regarding a Dutch official so long as the act is also penalised in the law of the country in which the offence is committed.

⁶ Liability for criminal acts is established, if the director (or a member of senior management) can be regarded as having "factually directed" the offence, i.e. if he had the authority and responsibility to take measures to prevent the offence, but fails to take those measures, thereby intentionally furthering the commission of the offence.

⁷ If the act is performed against/regarding a Dutch official and the act is also penalised in the law of the country in which the offence is committed, and the company can be regarded as having "factually directed" the offence (see footnote 6).

THE NETHERLANDS (CONTINUED)

Source of law ¹	Art. 328ter par. 2 DCC	Art. 328ter par. 1 DCC
Offence	Active private bribery To offer or give a benefit to an employee or agent or another, in relation to an act or omission in his/her employment or mandate in circumstances which must lead to the assumption that the employee/agent, in violation of good faith requirements, will conceal the advantage from his/her employer or principal.	Passive private bribery To accept a gift, or benefit in the service of an employer or in the exercise of a mandate, and in breach of good faith concealing the acceptance of the advantage from the employer or principal.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	√ ⁷	√ ⁸
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	X
Acts performed outside the Netherlands		
Can bribery performed outside the Netherlands be caught?	√ ⁹	√
Does the act also need to be illegal in the foreign country of performance?	√	√
Who can be liable		
Dutch national?	√	√
Dutch company?	√	X
Dutch partnership (including limited liability partnership)?	√	X
Director of Dutch company?	√ ⁶	√
Dutch company if the bribe is committed abroad by its foreign subsidiary?	√ ¹⁰	X
Foreign subsidiary of a Dutch company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in the Netherlands?	√	X
Foreign national domiciled or "ordinarily resident" in the Netherlands if the bribe is committed outside the Netherlands?	X	X
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	— Imprisonment for up to 2 years — A fine of up to €78,000 — Disqualification from practising the profession in which the person committed the crime	— Imprisonment for up to 2 years — A fine of up to €78,000 — Disqualification from practising the profession in which the person committed the crime
Defences		
Are there any defences available?	X	X

7 If the person who offers the hospitality reasonably assumes that its acceptance will be concealed from the employer or principal (even if the receiving employee does disclose the gift to his/her employer).

8 If the receiving employee conceals the acceptance of hospitality from his/her employer.

9 If performed by a Dutch national.

10 If the company can be regarded as having "factually directed" the offence.

POLAND

Source of law	The Criminal Code ¹ The Act on Liability of Organisational Entities for Acts Forbidden by Law, 28 October 2012
Offence	Offence Corruption (public sector offence) Giving or promising to provide a financial or personal benefit to a person performing public functions; receiving a financial or personal benefit or the promise of such benefit in connection with a person performing public functions. Corruption (private sector offence) Demanding or accepting a financial or personal benefit or the promise of such benefit in connection with performing managerial functions which could result in a loss, an act of unfair competition or preferential treatment.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside Poland	
Can bribery performed outside Poland be caught?	√
Does the act also need to be illegal in the foreign country of performance?	√ ²
Who can be liable	
Polish national?	√
Polish company?	√
Polish partnership (including limited liability partnership)?	√
Director of Polish company?	√
Polish company if the bribe is committed abroad by its foreign subsidiary?	√ ³
Foreign subsidiary of a Polish company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Poland?	√
Foreign national domiciled or "ordinarily resident" in Poland if the bribe is committed outside Poland?	√ ³
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	Individuals — Imprisonment for up to 12 years and/or fines Companies — Fines (in some cases these are dependant on a person acting on behalf of the corporate having been convicted of an offence) — Potential debarment from public tenders
Defences	
Are there any defences available?	√ Informing a prosecution body and revealing all details about the offence before it is detected or if the benefit is permitted under other legal provisions (such as pharmaceutical law).

¹ Separate special corruption offences apply in respect of bribery in the healthcare and pharmaceutical sectors. These apply both to bribery of public officials and private persons and companies.

² Not if a Polish public official committed a crime in a foreign jurisdiction when performing his public functions nor if a bribe is directed at a Polish office or public official.

³ Generally the offence in question must also constitute an offence in the country in which it was committed however this is not always required. For example, irrespective of the local criminal provisions, bribing of a Polish public official, committing a crime against Polish material public interests, or cases where the perpetrator makes an economic gain (whether directly or indirectly) in Poland will always attract liability in Poland.



PORTUGAL

Source of law	Criminal Code
Offence	Unlawful Receiving of an Advantage: a. It is a crime for an official (in the exercise of his functions or because of them), to solicit or accept, by himself or through an intermediary, with its consent or ratification, for himself or for a third party, an undue advantage. b. To offer or promise, individually or through an intermediary with its consent or ratification, any undue advantage to an official or to a third person (by indication or knowledge of an official), during the course of its functions or because of those functions – with exception to offers that are socially adequate. Passive Corruption It is an offence for an official, by himself or through an intermediary, with his consent or ratification, to solicit or accept, for himself or for a third party, an advantage, or its promise, in order to act or fail to act in a way that violates the duties of the office, even if committed prior to such solicitation or acceptance. Active Corruption It is an offence to give or promise to an official, directly or through an intermediary, with his consent or ratification, an advantage for the purposes referred in the crime of passive corruption.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	Depends on intent
Would corporate hospitality be caught?	Depends on intent ¹
Is there any <i>de minimis</i> ?	X ²
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√ ³
Acts performed outside Portugal	
Can bribery performed outside Portugal be caught?	√ ⁴
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Portuguese national?	√
Portuguese company?	√
Portuguese partnership (including limited liability partnership)?	√ (as long as it has legal personality, for example, a branch)
Director of Portuguese company?	√
Portuguese company if the bribe is committed abroad by its foreign subsidiary?	√ (only if the subsidiary company does not have legal personality)
Foreign subsidiary of a Portuguese company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Portugal?	√
Foreign national domiciled or “ordinarily resident” in Portugal if the bribe is committed outside Portugal?	√
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	For the crime of unlawful receiving of an advantage: — Up to 5 years imprisonment or a fine of up to 600 days⁶ — Up to 3 years imprisonment or a fine of up to 360 days respectively For the crime of passive corruption: 1 to 8 years imprisonment For the crime of active corruption: 1 to 5 years imprisonment If the act or omission is not contrary to the duties of the office and the advantage is undue, the penalty will be from 1 to 5 years imprisonment for the crime of passive corruption and up to 3 years imprisonment or a fine of up to 360 days for the crime of active corruption If the advantage exceeds €5,100,00, the penalty shall be aggravated by one quarter in its minimum and maximum; if the advantage exceeds €20,400,00, the penalty shall be aggravated by one third in its minimum and maximum
Defences	
Are there any defences available?	The company can avoid liability if it can demonstrate that the criminally relevant act or omission was not perpetrated on its behalf or collective interest and that there were no violations of any duties of due vigilance or control by the person with a leadership position responsible for these duties. The company may also avoid liability if it can demonstrate that the perpetrator acted against orders or express instructions provided by those with the authority and capacity to do so.

¹ Regarding the offence of unlawful receiving of an advantage, the law specifically states that socially adequate conduct in conformity with traditions and customs is not punishable.

² Although the gift cannot be so small that it is not considered an “advantage”.

³ Though if the perpetrator receives aid or cooperation in the perpetration of the offence by someone who is not an official, they may also be liable for such participation.

⁴ Though in only a few specific circumstances included in article 5 (1), b), e), f) and g) of the Portuguese Criminal Code, for example, (i) if the victim and perpetrator are Portuguese, live in Portugal at the time the offence is committed and the perpetrator is captured in Portuguese territory or (ii) if the offence is committed against a Portuguese victim by a Portuguese or foreign perpetrator who is captured in Portugal, where the offence is punishable in the country in which it was perpetrated and the facts that constitute the offence allow for extradition of the perpetrator and the extradition cannot be granted or when the Portuguese authorities decide not to surrender the subject in execution of an European arrest warrant or of any other legal instrument of international cooperation that binds the Portuguese State.



Law no. 20/2008, of April 21

Active corruption in damage of International Commerce:

To give or promise to give to an official, (whether national, foreign or from an international organisation) or to a holder of political office (national or foreign) or to a third person if any of the above mentioned persons knows of this offer or promise, an undue advantage, in order to obtain or retain a business, a contract or any undue advantage in international commerce.

Passive corruption in the private sector

A private sector employee or agent, who, by himself or through an intermediary, with his consent or ratification, accepts, for himself or for a third party, undue financial or non-material advantage, or its promise, in order to act or fail to act in a way that violates its functional duties.

Active corruption in the private sector

To give or promise to a private sector employee or agent, by oneself or through an intermediary with its consent or ratification, or to a third party with the knowledge of the employee or agent of such a gift or promise, an undue advantage in order to induce an action or an omission from that employee or agent in violation of its functional duties.

X

Depends on intent

Depends on intent

X²

X

√ for the crime of active corruption in damage of International Commerce
X for the Crimes of corruption in the private sector

√⁵

X

√

√

√

(as long as it has legal personality)

√

√

(only if the subsidiary company does not have legal personality)

X

√

√

X

For the crime of corruption in international commerce: 1 to 8 years imprisonment

For the crime of active corruption in the private sector:

- Up to 2 years imprisonment or a fine
- If the conduct is apt to produce a distortion in competition or causes damages to a third party, up to 5 years imprisonment or a fine of up to 600 days

For the crime of passive corruption in the private sector:

- Up to 1 year imprisonment or a fine
- If the conduct is apt to produce a distortion in competition or causes damages to a third party, up to 3 years imprisonment or a fine

The company can avoid liability if it can demonstrate that the criminally relevant act or omission was not perpetrated on its behalf or collective interest and that there were no violations of any duties of due vigilance or control by the person with a leadership position responsible for these duties.

The company may also avoid liability if it can demonstrate that the perpetrator acted against orders or express instructions provided by those with the authority and capacity to do so.

5 In addition to the circumstances included in article 5 (1) above, the perpetrator may also be caught outside the jurisdiction in the circumstances mentioned in article 3 of Law no. 20/2008, of April 21, for example in cases of active corruption in international commerce where the perpetrator, whether foreign or Portuguese, is captured in Portuguese territory or in cases of active or passive corruption in the private sector if the perpetrator is a public servant or the holder of any political office, or both a Portuguese national and an employee of a public international organisation.

6 The fine applicable to legal and natural persons is calculated in a variable amount having by reference the number of days in prison applicable to natural persons. The amount will be calculated taking into consideration the economic and financial status of the defendant, as well as its expenses.

ROMANIA

Sources of law	Criminal Code Law 78/2000 on prevention, discovery and punishing corruption act Law no. 656/2002 on prevention and sanctioning of money laundering Law no. 82/1991 on accounting registrations
Offence	Bribery Any person, directly or indirectly, promising, offering or giving money or undue benefits to another, either for the purpose of carrying out an act, intentionally omitting an act or delaying carrying out such act regarding his work or for carrying out an act contrary to his work. Receiving bribe The conduct of an official¹ who directly or indirectly receives, requests or accepts the promise of being given money or undue benefits, or fails to reject such promise for the purpose of carrying out an act, intentionally omitting an act or delaying carrying out such act regarding one's work or for carrying out an act contrary to his work. Influence peddling The acceptance or the soliciting of money or other undue benefits or the acceptance of promises or gifts, directly or indirectly, for himself/herself or for another person, by a person who has influence (or gives the impression that he/she has influence) over an official so that the official does or does not perform an act which is part of his/her work related function. Receiving undue benefits The conduct of an official who knowingly receives, directly or indirectly, an undue benefit (financial or otherwise) after carrying out his work. As well as setting out a number of other corruption-related offences, Law 78/2000 provides more serious sanctions (for example longer prison sentences) for the offences listed herein where those offences are committed by a public official.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√ (depends on intent)
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X (depends on the crime perpetrated and on the International Conventions between the state of the perpetrator and the state where the crime was perpetrated)
Acts performed outside Romania	
Can bribery performed outside Romania be caught?	√
Does the act also need to be illegal in the foreign country of performance?	(√) (depends on the crime perpetrated and on the International Conventions between the state of the perpetrator and the state where the crime was perpetrated)
Who can be liable	
Romanian national?	√
Romanian company?	√ ²
Romanian partnership (including limited liability partnership)?	X (there is no legal concept of "partnership" under Romanian law)
Director of Romanian company?	√ (a director can be liable for crimes which only he can commit)
Romanian company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Romanian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Romania?	√
Foreign national domiciled or "ordinarily resident" in Romania if the bribe is committed outside Romania?	√ (if the conduct is a crime in the state where it was committed and if the perpetrator is voluntarily on Romanian territory)
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	- For the most serious corruption offences, the Romanian Criminal Code provides a maximum prison sentence of 15 years - In cases of corruption crimes committed by or towards public officials who ascertain, control, prosecute or judge contraventions and/or crimes, the prison sentence is increased by two years under Law 78/2000 - Other penalties include restrictions on certain property, confiscation of money, valuables, or any other type of goods used for committing the crime, if these goods cannot be returned to the victim; where goods cannot be found, the offender has to pay the pecuniary equivalent
Defences	
Are there any defences available?	The briber will not be liable if he reveals his conduct to the authorities before the latter being formally tasked with investigating his crime.

1 An "official" refers to both public civil servants (meaning persons who carry out a job or task on a temporary or permanent basis, with or without remuneration, for the state or other central or local public authority) and persons who carry out a job or task on a temporary or permanent basis, with or without remuneration, for any legal entity other than the state or other central or local public authority.

2 As per Law 278/2006.

RUSSIA

Sources of law	Criminal Code, Code on Administrative Offences, Federal Law on Anti-Corruption, Federal Law on Counteraction against Laundering of Income Received by Illegal Means and Financing of Terrorism, Federal Law on State Civic Service
Offence	Giving bribe (giving a bribe to an official), acceptance of bribe (receipt by an official of money or securities or other property or benefits for his/her performance or non-performance), assisting in or provoking bribery, commercial bribery (illegal transfer of money, securities and other property or rendering services to a company executive for his/her performance or non-performance of acts in the interests of the briber if such acts related to the duties of this executive), unlawful gratification in the name of a legal entity. In accordance with article 13.3 of the Federal Law on Anti-Corruption which has been entered into force since 1 January 2013 companies are required to take measures aimed at preventing corruption which may include: — appointing a compliance officer or a compliance department to be responsible for preventing corruption and related offences — cooperation with the enforcement authorities — developing and implementing standards and procedures aimed at doing business in good faith — adoption of codes of ethics and conduct for the employees — prevention and resolving of conflict of interests — prevention of false accounting and fraud
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√ (unless permitted by law)
Would corporate hospitality be caught?	X (provided that the hospitality is not aimed at receipt of illegal advantages from the persons who are being hosted)
Is there any <i>de minimis</i> ?	√ ¹
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X ²
Acts performed outside Russia	
Can bribery performed outside Russia be caught?	√
Does the act also need to be illegal in the foreign country of performance?	X
Who can be liable	
Russian national?	√
Russian company?	√
Russian partnership (including limited liability partnership)?	√
Director of Russian company?	√
Russian company if the bribe is committed abroad by its foreign subsidiary?	√
Foreign subsidiary of a Russian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Russia?	√
Foreign national domiciled or "ordinarily resident" in Russia if the bribe is committed outside Russia?	X
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	Individuals — Imprisonment for up to 15 years — Fine of up to 100 times the amount of the bribe — Deprivation of holding certain certain job positions as an additional sanction Companies — Fine of up to 100 times the amount of the bribe (but not less than RUB 100,000,000) together with the confiscation of the bribe
Defences	
Are there any defences available?	√ An individual who has given or accepted or facilitated a bribe may be absolved of criminal liability if he/she has actively contributed to solving or preventing the bribery offence and informed the authorities about the bribe.

1 No gifts are allowed to state officials. Costs of gifts between commercial organisations may not exceed RUB 3,000 (approx. €75).

2 Russian criminal legislation provides sanctions for bribing the management of commercial companies (article 204 of the Criminal Code of the Russian Federation).

SERBIA

Sources of law	Criminal Code (<i>Official Gazette of RS No. 85/2005, 88/2005, 107/2005, 72/2009 and 111/2009</i>) Law on Criminal Liability of Legal Entities (<i>Official Gazette of RS No. 97/2008</i>)
Offence	Bribing Any gift or other advantage which is given, offered or promised, directly or indirectly, to an official, foreign official or responsible person in a company, institution or other legal entity in order that the official, acting within their powers, performs or omits to perform an act which he is permitted or not permitted to perform. Being bribed Any gift or other advantage which is requested or accepted, directly or indirectly, by an official, foreign official or responsible person in a company, institution or other legal entity in order that the official, acting within their powers, performs or omits to perform an act which he is permitted or not permitted to perform. Intermediary offence There is also an offence for intermediaries acting between the person giving and the person accepting the bribe.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	√ (i.e. if the degree of guilt is low, if there are no harmful consequences and/or if the offence is minor and imposing a penalty would not be in line with Serbian public policy)
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√
Acts performed outside Serbia	
Can bribery performed outside Serbia be caught?	√
Does the act also need to be illegal in the foreign country of performance?	√ (if the bribe is performed by the foreign national)
Who can be liable	
Serbian national?	√
Serbian company?	√
Serbian partnership (including limited liability partnership)?	√
Director of Serbian company?	√
Serbian company if the bribe is committed abroad by its foreign subsidiary?	√
Foreign subsidiary of a Serbian company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Serbia?	√
Foreign national domiciled or "ordinarily resident" in Serbia if the bribe is committed outside Serbia?	√
Foreign company/partnership if the bribe is committed abroad?	√ (under certain conditions) ¹
Penalties	
Penalties include:	Individuals — Imprisonment for up to 15 years (aggregated, together with different modalities of the offence) Companies — Fines (in general not higher than RSD 500,000,000 (€5,000,000)) — Cessation of the legal entity
Defences	
Are there any defences available?	√ In relation to offences under the Serbian Criminal Code, an individual may be cleared of charges if after committing the act of bribery (giving a gift or other benefit) that individual reports the bribe before it has been detected.

¹ If the foreign company/partnership is within the jurisdictional reach of the Serbian authorities (i.e. if the individual responsible is in Serbia or has been extradited there) and an offence has been committed against Serbia or a Serbian national.



SLOVAKIA

Sources of law	Act No. 300/2005 Coll. the Penal Code as amended (Art. 328- 336, Art. 326, Art. 233- 234, Art. 241, Art. 266- 268) Act No. 301/2005 Coll. the Criminal Procedure Code as amended (Art. 10 sec. 20, sec. 21 a sec. 22, Art.108, Art.113 to Art. 117) Act No. 291/2009 Coll. establishing Specialized Criminal Court Act, as amended	
Offence	Receiving bribes A person directly or indirectly receiving a bribe ¹ : (1) to influence his behaviour and incline him to act contrary to his duty arising from his employment, profession, position or function; or (2) in relation to an acquisition in the public interest (Penal Code Art. 328 and 329) ² . A public official ³ directly or indirectly receiving a bribe in connection with serving office (Penal Code Art. 331). A foreign public official directly or indirectly receiving a bribe to influence them in their capacity as such and to obtain or retain business or a business advantage (Penal Code Art. 330).	Bribery A person directly or indirectly offering or giving a bribe: (1) to influence his behaviour and incline him to act contrary to his duty arising from his employment, profession, position or function; or (2) in relation to an acquisition in the public interest (Penal Code Art. 332 and 333) ² . A public official ³ directly or indirectly offering or giving a bribe to a public official (Penal Code Art. 335). Directly or indirectly offering or giving a bribe to a foreign public official to influence him in his capacity as such and to obtain or retain business or a business advantage (Penal Code Art. 334).
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	Depends on intent ⁴	Depends on intent ⁴
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	X
Acts performed outside Slovakia		
Can bribery performed outside Slovakia be caught?	√ ⁵	√ ⁵
Does the act also need to be illegal in the foreign country of performance?	X ⁶	X ⁶
Who can be liable		
Slovakian national?	√	√
Slovakian company?	√ ⁷	√ ⁷
Slovakian partnership (including limited liability partnership)?	√	√
Director of Slovakian company?	√	√
Slovakian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Slovakian company if the bribe is committed abroad?	√	√
Foreign national/company/partnership if the bribe is committed in Slovakia?	√	√
Foreign national domiciled or "ordinarily resident" in Slovakia if the bribe is committed outside Slovakia?	√	√
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals — Imprisonment for up to 8 years (or 12 years if bribery of a foreign public official) Companies — Confiscation	Individuals — Imprisonment for up to 3 years (or 5 years if bribery of a foreign public official) Companies — Confiscation
Defences		
Are there any defences available?	X	X

1 "Bribe" means any object or performance, whether tangible or intangible, to which no legal entitlement exists (on the part of the receiver).

2 The intermediary of an indirect bribe will also be guilty of an offence (Penal Code Art. 336 sec.1 and 2).

3 i.e. a member of a foreign parliamentary assembly, a judge or an official of an international judicial body acknowledged by the Slovak Republic or a representative or an employee of an international, multinational, intergovernmental organisation or body of which the Slovak Republic is a member or with which it is in a contractual relationship, or a person in a similar position.

4 Public officials are prohibited from accepting any corporate hospitality.

5 If committed: (1) by a Slovak national or a body incorporated in the Slovak Republic; or (2) outside the jurisdiction, but the result of the bribe impacts in the Slovak Republic.

6 It must be illegal in the country of performance if committed by a foreign national who was arrested or taken into custody in the Slovak Republic and not extradited.

7 Where persons in charge of management (representation, decision and controlling tasks) have: (1) neglected supervision and control as a result of which an employee/ agent committed the offence; or (2) themselves committed the offence.



SLOVENIA

Source of law	The Criminal Code ¹	
Offence	Private Sector Unjustified giving of gifts (Art. 242 KZ-1) Offering or giving an unauthorised award, gift or any other advantage to a person (1) performing an economic activity in order to obtain an unjustified benefit for himself or for someone else and to induce that person to conclude business unlawfully (contrary to the interests of the organisation or causing damage to the organisation); or (2) in return for obtaining business or other benefits.	Private Sector Unjustified acceptance of gifts (Art. 241 KZ-1) Requesting or accepting an advantage personally or for someone else (1) in order to obtain or retain a business or other benefit and (2) in return for acting against the interests of the organisation or to cause damage or as a favour to obtain business or another advantage.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	√ (depends on intent)	√ (depends on intent)
Is there any <i>de minimis</i> ?	X ²	X ²
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	X
Acts performed outside Slovenia		
Can bribery performed outside Slovenia be caught?	√ (if committed by a Slovenian national or company)	√ (if committed by a Slovenian national or company)
Does the act also need to be illegal in the foreign country of performance?	√	√
Who can be liable		
Slovenian national?	√	√
Slovenian company?	√	√
Slovenian partnership (including limited liability partnership)?	√	√
Director of Slovenian company?	√	√
Slovenian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Slovenian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Slovenia?	√	√
Foreign national domiciled or "ordinarily resident" in Slovenia if the bribe is committed outside Slovenia?	X (however, possible if the criminal offence was conducted against the Republic of Slovenia or its nationals and other limitations) ³	X (however, possible if the criminal offence was conducted against the Republic of Slovenia or its nationals and other limitations) ⁴
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals — Imprisonment up to 5 years — Return of the value of the bribe Companies — Fine of up to 200 times the amount of damage caused or benefit obtained — Confiscation — Winding-up — Prohibition on participating in public procurement for up to 10 years — Prohibition of trading with financial instruments for up to 8 years	Individuals — Imprisonment up to 5 years — Return of value of the bribe Companies — Fine of up to 200 times the amount of damage caused or benefit obtained — Confiscation — Winding-up — Prohibition on participating in public procurement for up to 10 years — Prohibition of trading with financial instruments for up to 8 years
Defences		
Are there any defences available?	X (only regular legal remedies in criminal procedure)	X (only regular legal remedies in criminal procedure)

1 The Criminal Code (Kazenski zakonik, Official Gazette of the Republic of Slovenia, No. 55/2008 et al., hereinafter referred to as "KZ-1").

2 KZ-1 changed the way in which the *de minimis* rule can be used; it can no longer be invoked by a defendant but it may still be used at the discretion of the judge or the state prosecution.



Public Sector Bribing (Art. 262 KZ-1) Offering or giving an advantage to an official to perform or not to perform an act within the scope of his official duties, whether or not the act should be performed in any event.	Public Sector Being Bribed (Art. 261 KZ-1) Requesting or accepting a gift or other favour for the performance or non-performance of an act within the scope of his official duties, whether or not the act should be performed in any event.
X	X
√	√
√ (depends on intent)	√ (depends on intent)
X ²	X ²
X	X
√	√
√ (if committed by a Slovenian national or company)	√ (if committed by a Slovenian national or company)
√	√
√	√
√	X
√	X
√	√
X	X
X	X
√	X
X	X
X	X
Individuals — Imprisonment up to 5 years and monetary fine — Gifts are taken or a need to return the value of the bribe Companies — Fine up to 200 times the amount of damage caused or benefit obtained — Confiscation — Winding-up — Prohibition on participating in public procurement for up to 10 years — Prohibition of trading with financial instruments for up to 8 years	Individuals — Imprisonment up to 8 years and monetary fine — Fines may be remitted if such a person reports the criminal offence
X (only regular legal remedies in criminal procedure)	X (only regular legal remedies in criminal procedure)

3 The Penal Code of the Republic of Slovenia is also applicable to any foreign citizen who has, in a foreign country, committed an offence (as defined by the country in which the act was perpetrated) against a third country or any of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but not extradited to the foreign country. In such cases, the sentence shall be no more severe than that prescribed by the law of the country in which the offence was committed. Perpetrators shall not be prosecuted: (1) if they have served the sentence imposed on them in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in the Republic of Slovenia; (2) if he/she has been acquitted by a foreign court or if his/her sentence has been remitted or the execution of the sentence has fallen under the statute of limitations; (3) if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed.

The Slovenian Penal Code shall also apply to anyone who commits an offence abroad pursuant to an international agreement or general principle of international law, prosecutable in all countries irrespective of the place where it was committed. Permission of the Minister for the Judicial Affairs is required for the prosecution.

4 See reference No. 3.



SLOVENIA (CONTINUED)

Source of law	The Integrity and Prevention of Corruption Act ⁵	
Offence	Public Sector Prohibition and restrictions on the acceptance of gifts by officials (Art. 30 ZIntPK) An official (i.e. a functionary) shall not accept gifts or other benefits relating to the holding of office, except for protocol gifts ⁶ and occasional gifts of low value, ⁷ or not at all if they may affect the objective and impartial holding of office. Prohibitions and restrictions also apply to family members of the official.	Public Sector Gifts to State and local bodies and holders of public authority (Art. 34 ZIntPK) Public authorities and servants/officials may accept gifts only as provided by law. They may never receive gifts which affect or may affect the legality, objectivity and impartiality of their work.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	√ (depends on intent)	√ (depends on intent)
Is there any <i>de minimis</i> ?	√	√
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√	X
Acts performed outside Slovenia		
Can bribery performed outside Slovenia be caught?	√ (if committed by a Slovenian national)	√ (if committed by a Slovenian company)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
Slovenian national?	√	√
Slovenian company?	X	√
Slovenian partnership (including limited liability partnership)?	X	√
Director of Slovenian company?	X	√
Slovenian company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a Slovenian company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Slovenia?	X (the ZIntPK only applies to public officials)	X (the ZIntPK only applies to Slovenian state and local bodies)
Foreign national domiciled or "ordinarily resident" in Slovenia if the bribe is committed outside Slovenia?	X	X
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	— Fines for individuals ranging from €400 to €1,200	— Fines for a misdemeanour of an individual responsible person ranging from €400 to €4,000 — Fines from €400 to €100,000 for a misdemeanour on a holder of a public authority or another legal person of public or private law (except Republic of Slovenia and local authorities) ⁸
Defences		
Are there any defences available?	X (only initiation of an administrative dispute)	X (only initiation of an administrative dispute)

⁵ The Integrity and Prevention of Corruption Act (Zakon o integriteti in preprečevanju korupcije, Official Gazette of the Republic of Slovenia, No. 69/2011, hereinafter referred to as "ZIntPK").

⁶ Gifts to officials by representatives of other government bodies, countries and international organisations and institutions given in the course of visits or on other occasions, and other gifts given in similar circumstances, shall be regarded as protocol gifts.

⁷ Gifts given on special occasions not exceeding the value of €75 or gifts whose total value in a year does not exceed €150, if they are received from the same person, shall be regarded as occasional gifts of low value. In no case may cash, securities or precious metals be received as a gift of low value.

⁸ Art.78 of ZIntPK excludes the operation of this fine against certain legal persons, such as the Republic of Slovenia and its local authorities or municipalities. This penalty will therefore apply to limited public bodies, such as certain institutions and public/private partnerships but will apply to all individual perpetrators.

SPAIN

Sources of Law	Articles 419-422, 424, 427 and 445 of Organic Law 5/2010 of June 22 (CP 2010), enacting the new Penal Code effective on 23 December 2010
Offence	Bribing (1) Offering handouts, favours or remuneration of any kind to a public official¹ (for their or another's benefit) - to perform an act contrary to his duties - to omit or delay performance of an act within his duties - to carry out an act inherent to his office - offering in view of his office or duty (2) Offering, promising or giving an advantage to a foreign public official² (for their or another's benefit) to act or refrain from acting in a particular way, in order to obtain or retain business or another unfair advantage. Being bribed A public official soliciting or accepting a gift or other benefit: (1) to implement an unfair action; (2) to perform or omit to perform an act within the scope of his authority; or (3) as a reward for the same.
The bribe	
Is there a presumption that any benefit was given/received corruptly	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	√
Acts performed outside Spain	
Can bribery performed outside Spain be caught?	√ ³
Does the act also need to be illegal in the foreign country of performance?	√ (if there is no judgment yet)
Who can be liable	
Spanish national?	√
Spanish company?	√
Spanish partnership (including limited liability partnership)?	√
Director of Spanish company?	√
Spanish company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Spanish company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Spain?	√
Foreign national domiciled or "ordinarily resident" in Spain if the bribe is committed outside Spain?	X
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Imprisonment for up to 6 years or fines — Disqualification of the public official from public employment for up to 12 years depending on the offence — If the bribe was given in relation to public tenders, private individuals and/or corporates face disqualification from public tenders, subsidies and aid for 3 to 7 years — Suspension of corporate activities for up to 5 years and fines — For bribery of foreign public officials: as above and fines up to double the benefit obtained Individuals – Prohibition from public sector procurement and loss of subsidies/aid and prohibition from taking part in commercial transactions of public importance for 7 to 12 years Companies – Fines up to 5 times the benefit obtained In addition, the Courts may also impose the penalties of: — Dissolution — Suspension of activities for up to 5 years — Closure of premises and establishments for up to 5 years — Temporary or permanent prohibition on carrying out the activities through which it committed, favoured or concealed the felony; if temporary, the term may not exceed 15 years — Barring from obtaining public contracts, subsidies and aid, and any tax or Social Security benefits and incentives, for up to 15 years — Judicial intervention to safeguard the rights of the workers or creditors for the time deemed necessary up to 5 years
Defences	
Are there any defences available?	√ If an individual reports the benefit required from a public authority/officer before proceedings commence and within 2 months of the relevant events, he shall be exempt from punishment.

¹ Public official means a person who exercises public functions and includes jury members, arbitrators, experts, and anyone performing or providing public services and judicially appointed auditors. All EU public officials (i.e. public officials of any Member State and those performing equivalent functions within EU bodies) are treated as public officials for these purposes.

² Foreign public official means any person holding a legislative, administrative or judicial office of a foreign country whether appointed or elected, any person exercising a public function (including at a public agency or enterprise) of a foreign country and any agent or officer of a public international organisation.

SPAIN (CONTINUED)

Source of Law	Article 286 bis of Organic Law 5/2010 of June 22 (CP 2010), enacting the new Penal Code effective on 23 December 2010
Offence	Offering, promising or giving any advantage to a director, manager, or employee of a corporate whether for his or another's benefit, in return for the non-performance of his obligations. ⁴ Requesting or accepting such advantage by such director, manager, or employee for such non-performance.
The bribe	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	√
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
Public officials	
Does the offence only apply to bribing public officials?	X
Acts performed outside Spain	
Can bribery performed outside Spain be caught?	√ ⁵
Does the act also need to be illegal in the foreign country of performance?	√ (if there is no judgment yet)
Who can be liable	
Spanish national?	√
Spanish company?	√
Spanish partnership (including limited liability partnership)?	√
Director of Spanish company?	√
Spanish company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Spanish company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Spain?	√
Foreign national domiciled or "ordinarily resident" in Spain if the bribe is committed outside Spain?	X
Foreign company/partnership if the bribe is committed abroad?	X
Penalties	
Penalties include:	— Imprisonment for up to 4 years — Disqualification from engaging in trade for up to 6 years — Fines up to 3 times the value of the profit or advantage obtained Companies - A fine In addition, the Courts may also impose the penalties of: — Dissolution — Suspension of activities for up to 5 years — Closure of premises and establishments for up to 5 years — Temporary or permanent prohibition on carrying out the activities through which it committed, favoured or concealed the felony; if temporary, the term may not exceed 15 years — Barring from obtaining public contracts, subsidies and aid, and any tax or Social Security benefits and incentives, for up to 15 years — Judicial intervention to safeguard the rights of the workers or creditors for the time deemed necessary up to 5 years
Defences	
Are there any defences available?	X

3 If committed by a Spanish national/resident (art 23.2 LOPJ).

4 Small promotional gifts or lunch invitations that do not give rise to relevant commercial decisions are excluded from the term "advantage or profit". However, as this is a recently incorporated article, there are currently no judicial interpretations of this provision. In any event, companies should implement policies and procedures for employees or representatives.

5 If committed by a Spanish national/ resident (art 23.2 LOPJ).

SWITZERLAND

Sources of law	Article 322ter - Article 322octies Swiss Criminal Code (StGB) / Article 4a Federal Act against Unfair Competition (UWG)	
Offence	Public Sector Active Bribery of Swiss and Foreign public officials (Articles 322ter and 322septies StGB) Any act by which a public official ¹ is offered, promised or granted an undue advantage, for his own or another's benefit, for the commission or omission of an act in relation to his official duties that is contrary to his duties or depends on the exercise of his discretionary powers. Passive Bribery of Swiss and Foreign public officials (Articles 322quater and 322septies para. 2 StGB) Any act by which a public official solicits, elicits a promise of or accepts an undue advantage, for his own or another's benefit, for the commission or omission of an act that is contrary to his duties or depends on the exercise of his discretionary powers.	Private Sector Active Bribery in the private sector (Articles 4a para. 1 section a UWG)² Any act by which a person in the private sector ³ is offered, promised or granted an undue advantage, for his own or another's benefit, for the commission or omission of an act in relation to his official or business activities that is contrary to his duties or depends on the exercise of his discretionary powers. Passive Bribery in the private sector (Articles 4a para. 1 section b UWG) Any act by which a person in the private sector solicits, elicits a promise of or accepts an undue advantage, for his own or another's benefit, for the commission or omission of an act that is contrary to his official or business duties or depends on the exercise of his discretionary powers.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√ (Swiss public officials) X (Foreign public officials)	X
Would corporate hospitality be caught?	√ ³	√ ³
Is there any <i>de minimis</i> ?	√	√
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√	X
Acts performed outside Switzerland		
Can bribery performed outside Switzerland be caught?	√ (if the act is also a criminal offence in the respective foreign country)	√ (if the act is also a criminal offence in the respective foreign country)
Does the act also need to be illegal in the foreign country of performance?	√	√
Who can be liable		
Swiss national?	√	√
Swiss company?	√ ⁴	√ ⁴
Swiss partnership (including limited liability partnership)?	√ ⁴	√ ⁴
Director of Swiss company?	√ ⁵	√ ⁵
Swiss company if the bribe is committed abroad by its foreign subsidiary?	√ ⁶	√ ⁶
Foreign subsidiary of a Swiss company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in Switzerland?	√	√
Foreign national domiciled or "ordinarily resident" in Switzerland if the bribe is committed outside Switzerland?	√ (if the perpetrator is in Switzerland, and is not extradited to the foreign state)	√ (if the perpetrator is in Switzerland, and is not extradited to the foreign state)
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals — Imprisonment for up to 5 years — Monetary penalty of up to CHF 1,080,000 — Confiscation — Potential disqualification from acting as a director or executive officer (in highly regulated sectors) Companies — Fine up to CHF 5,000,000 — Confiscation	Individuals — Imprisonment for up to 3 years — Monetary penalty of up to CHF 1,080,000 — Confiscation — Potential disqualification from acting as a director or executive officer (in highly regulated sectors) Companies — A fine of up to CHF 5,000,000 — Confiscation
Defences		
Are there any defences available?	√ According to Article 322octies StGB, advantages to public officials are not deemed illegal when allowed by staff regulations or when they are of minor value in accordance with social custom.	√ According to Article 4a UWG, advantages to private persons are not deemed illegal if they are agreed with the principal or when they are of minor value in accordance with social custom.

1 A Swiss or Foreign public official is a member of a judicial or other authority, a public employee, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces.

2 Unlike bribery of public officials, bribery in the private sector is only pursued under criminal law upon complaint (Article. 23 UWG).

3 A person in the private sector is an employee, a business partner or an auxiliary worker ("Hilfsperson") of a third party. The meaning of term "auxiliary worker" is wide and cannot be generally defined. It includes employees and business partners but also any other person who – due to a contractual relationship – is subordinated to the third party (e.g. an agent, a consultant, a lawyer). In practice, the term "auxiliary worker" is thus mostly congruent with the term "business partner" or "employee".

4 Where the company/partnership has not undertaken all requisite and reasonable organisational precautions required to prevent the bribery of public officials.

5 A director is liable for his own behaviour.

6 Such liability is possible if the Swiss company was responsible for anti-corruption compliance of the foreign subsidiary.

UKRAINE

Sources of law	Law on Fundamentals of Preventing and Combating Corruption; Criminal Code of Ukraine; Code on Administrative Offences of Ukraine	
Offence	Criminal offences Being bribed Receiving a bribe: When a public official (or an officer of a legal entity, or a public services provider ¹ , or an employee ² of a state enterprise, a state agency or a state organization) accepts an offer to get an unlawful advantage ³ for him/herself or for a third party or receives an unlawful advantage for him/herself or for a third party in any form for performance or non-performance of his or her functions in the interests of the person offering or transferring the unlawful advantage or a third party. Illegal enrichment: When a public official receives an unlawful advantage of a significant amount ⁴ or such an advantage is transferred to a public official's close relatives, should it not be evident, for example, that the advantage is received for acting in the interests of the briber or a third party. Extortion (provocation of a bribe): When a public official offers, promises or receives an unlawful advantage with the aim of later reporting the person who offered, promised, gave the unlawful advantage or accepted the offer, the promise or received the unlawful advantage.	
The bribe		
Is there a presumption that any benefit was given/received corruptly?		X
Would facilitation payments be caught?		√
Would corporate hospitality be caught?		X
Is there any <i>de minimis</i> ?		X
Does the bribe have to be monetary?		X
Public officials		
Does the offence only apply to bribing public officials?		X
Acts performed outside Ukraine		
Can bribery performed outside Ukraine be caught?		√ (if performed by a Ukrainian citizen or person without citizenship domiciled in Ukraine)
Does the act also need to be illegal in the foreign country of performance?		X
Who can be liable		
Ukrainian national?		√
Ukrainian company?		X (legal entities cannot be held liable – only individuals caught)
Ukrainian partnership (including limited liability partnership)?		X (only individuals caught)
Director of Ukrainian company?		X
Ukrainian company if the bribe is committed abroad by its foreign subsidiary?		X
Foreign subsidiary of a Ukrainian company if the bribe is committed abroad?		X
Foreign national/company/partnership if the bribe is committed in Ukraine?		√ (only foreign nationals)
Foreign national domiciled or “ordinarily resident” in Ukraine if the bribe is committed outside Ukraine?		√
Foreign company/partnership if the bribe is committed abroad?		X
Penalties		
Penalties include:	Recipient (public official) — Fine of up to 2,000 tax-free allowances (approx. €3,270) — Forced labour for up to 2 years — Debarment from certain positions and activities for up to 3 years — Confiscation of property — Arrest for up to 6 months — Imprisonment for up to 12 years Recipient (in case of commercial bribery) — Fine of up to 15,000 tax-free allowances (approx. €24,530) — Debarment from certain positions and activities for up to 3 years — Confiscation of property	Recipient (public services provider) — Fine of up to 18,000 tax-free allowances (approx. €29,430) — Debarment from certain positions and activities for up to 3 years — Confiscation of property Recipient (an employee of a state enterprise, a state agency or a state organisation): — Fine of up to 750 tax-free allowances (approx. €1,230) — Public works for up to 240 hours — Forced labour for up to 2 years — Detention for up to 3 years — Imprisonment for up to 3 years
Defences		
Are there any defences available?	√ There are specific defences which cover extortion and reporting the bribe before a criminal case is opened in connection with such a bribe.	

¹ A public services provider shall be understood as an auditor, notary, or other person who is not a public official but who is conducting a professional activity connected with the provision of public services (including experts, trustees, arbitrators, etc.).

² i.e. being neither a public official, nor an officer.

³ An unlawful advantage shall be understood as anything of value for the purposes of this Brochure.

⁴ A significant amount should be understood as monetary funds or other property, advantages, benefits, services or intangible assets exceeding one hundred times social tax privilege (approximately €5,520) being promised, offered, provided or accepted without legal entitlement either at no charge or at a price that is lower than the minimum market price.



Criminal offences (Continued)	Administrative offence
Bribing Bribery: Offering, giving or transferring an unlawful advantage to a public official (or an officer of a legal entity, or a public services provider, or an employee of a state enterprise, a state agency or a state organization) for performance or non-performance of actions by exercising his or her authority in the interests of the person offering or transferring the unlawful advantage. Middleman When a person receives an unlawful advantage for him/herself or a third party for influencing the decision making of a person authorised to exercise state functions or for offering to influence such a decision. When a person offers or gives an unlawful advantage to a person offering or agreeing to influence the making of a decision by a person authorised to exercise state functions or to a third party.	Administrative offence Violation of legally established restrictions regarding the acceptance of gifts or donations: Violation of legally established restrictions or prohibitions by accepting gifts or donations. Failure to take action with respect to the prevention of corruption: Failure by a state official, local government official or an officer of a legal entity to take legally established actions to prevent and detect corruption offences.
X	X
√	√
X	√ ⁵
X	X
X	X
X	X
√ (if performed by a Ukrainian citizen or person without citizenship domiciled in Ukraine)	X
X	X
√	√
X (legal entities cannot be held liable – only individuals caught)	X (legal entities cannot be held liable – only individuals caught)
X (only individuals caught)	X (only individuals caught)
X	√ (applies only to a failure to prevent corruption)
X	X
X	X
√ (only foreign nationals)	√ (only foreign nationals)
√	X
X	X
Briber (of a public official) — Fine of up to 1,000 tax-free allowances (approx. €1,640) — Public works for up to 240 hours — Detention for up to 4 years — Imprisonment for up to 10 years Briber (in case of commercial bribery/of a public services provider) — Fine of up to 5,000 tax-free allowances (approx. €8,180) Briber (of an employee of a state enterprise, a state agency or a state organisation) — Fine of up to 500 tax-free allowances (approx. €820) — Public works for up to 200 hours — Forced labour for up to 2 years Middleman — Fine of up to 1,500 tax-free allowances (approx. €2,450) — Confiscation of property — Detention for up to 5 years — Imprisonment for up to 8 years	Recipient in case of violation of legally established restrictions regarding the acceptance of gifts or donations — Fine of up to 100 tax-free allowances (approx. €170) with confiscation of a gift or a donation Failure to prevent corruption — Fine of up to 125 tax-free allowances (approx. €210)
√ There are specific defences which cover extortion and reporting the bribe before a criminal case is opened in connection with such a bribe.	X

- 5 1. The corporate hospitality (donation) should not violate legally established restrictions or prohibitions regarding the acceptance of gifts and donations by public officials.
2. The value of the corporate hospitality (donation) received by an official may not exceed 50% of the minimum statutory monthly salary (approximately €55) for a one-off hospitality (donation) or one minimum statutory monthly salary (approximately €110) cumulatively for hospitality (donations) received from one source within one calendar year.



UNITED KINGDOM

Source of law	The Bribery Act 2010 (in force from 1 July 2011)	
Offence	General Offence - Bribing (clause 1) Offering or giving a financial or other advantage to a person: (1) intending to induce them, or another, improperly to perform a public function or business activity, or as a reward for the same; or (2) knowing or believing the acceptance would in itself constitute improper performance.	General Offence - Being bribed (clause 2) (1) Requesting or accepting an advantage intending personally or through another, improperly to perform a public function or business activity, or as a reward for the same; (2) Requesting or accepting such advantage when the request or acceptance would itself constitute an improper performance of a public function or business activity; or (3) Improperly performing such a function or activity in anticipation of receiving such an advantage.
The bribe		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	✓	✓
Would corporate hospitality be caught?	Depends on intent	Depends on intent
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	X	X
Acts performed outside UK		
Can bribery performed outside UK be caught?	✓ (if committed by a British national, or resident, a national of a British overseas territory or a body incorporated in the UK)	✓ (if committed by a British national, or resident, a national of a British overseas territory or a body incorporated in the UK)
Does the act also need to be illegal in the foreign country of performance?	X	X
Who can be liable		
UK national?	✓	✓
UK company?	✓	✓
UK partnership (including limited liability partnership)?	✓ ²	✓
Director of UK company?	✓ (either directly or if the Director consented or connived in an offence committed by the company ³)	✓ (either directly or if the Director consented or connived in an offence committed by the company)
UK company if the bribe is committed abroad by its foreign subsidiary?	X	X
Foreign subsidiary of a UK company if the bribe is committed abroad?	X	X
Foreign national/company/partnership if the bribe is committed in England or Wales?	✓	✓
Foreign national domiciled or "ordinarily resident" in UK if the bribe is committed outside UK?	✓	✓
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	Individuals - Imprisonment for up to 10 years - Unlimited fine Companies - Unlimited fine - Debarment from public contracts - A confiscation order under the Proceeds of Crime Act 2002 (POCA)	Individuals - Imprisonment for up to 10 years - Unlimited fine Companies - Unlimited fine - Debarment from public contracts - A confiscation order under the Proceeds of Crime Act 2002 (POCA)
Defences		
Are there any defences available?	X	X

¹ Unlike the other offences, the offence of bribing a foreign public official does not require "impropriety" as part of the wrongful act, but only that the advantage is given in order to "influence". Clearly, corporate hospitality is intended to influence the recipient to look favourably on the giver of the hospitality. Therefore, the legislation relies on prosecutorial discretion with respect to corporate hospitality given to foreign public officials.

² "person" is not defined, but under sections 5 and 11 of the Interpretation Act 1978, "person" is to be construed as extending to "a body of persons corporate or unincorporate".



Bribing a foreign public official (clause 6) Offering or giving to (or with the assent of) a foreign public official any advantage that is neither permitted nor required by the written law applicable to that official, intending (1) to influence them in their capacity as a foreign public official and (2) to obtain or retain business or a business advantage.	Corporate offence (clause 7) A company or partnership failing to prevent bribery (under clause 1 or 6) committed anywhere in the world by a person performing services on its behalf intending to obtain or retain business or a business advantage for the company/ partnership UNLESS adequate procedures were in place designed to prevent the bribery.
X	X
✓	✓
✓ ¹	Depends on intent
X	X
X	X
✓	X
✓ (if committed by a British national, or resident, a national of a British overseas territory or a body incorporated in the UK)	✓ (if the defendant company or partnership is incorporated, or “carries on a business, or part of a business” in any part of the UK)
X	X
✓	X Only corporates and partnerships can be liable
✓	✓
✓	✓
✓ (either directly or if the Director consented or connived in an offence committed by the company)	X
X	✓ (if the subsidiary is performing services on the UK company’s behalf and the bribe was made with the intention of obtaining or retaining business or a business advantage for the parent)
X	✓ (if the company “carries on a business, or part of a business” in any part of the UK)
✓	✓ (not foreign nationals)
✓	X
X	(✓) (if the company “carries on a business, or part of a business” in any part of the UK)
Individuals — Imprisonment for up to 10 years — Unlimited fine Companies — Unlimited fine — Debarment from public contracts — A confiscation order under POCA	Companies — Unlimited fine — Debarment from public contracts ⁴ — A confiscation order under POCA
X	✓ It is a defence for the corporate to show that it had in place “adequate procedures” designed to prevent bribery on its behalf ⁵

3 If no act or omission which forms part of the offence by the company took place in the UK, the Director (or senior officer) must have a “close connection” with the UK i.e by being a British national or resident, or a national of a British overseas territory.

4 The Government has indicated that such a conviction would not automatically trigger debarment but it remains a discretionary penalty.

5 Adequate procedures, in line with Government guidance published in March 2011, should heed six broad principles which are (1) proportionality, (2) commitment to an anticorruption culture from the senior management of the organisation, (3) assessment of possible risks, (4) due diligence on parties dealt with in the course of business, (5) communication and training on procedures and policies and (6) monitoring and review of the same.

Contacts

ALBANIA

CMS Adonnino Ascoli & Cavasola Scamoni
Rr. Sami Frashëri
Red building
1st Floor
Tirana, Albania
T +355 4430 2123
F +355 4240 0737

Marco Lacaita, Partner

E marco.lacaita@cms-aacs.com

Besnik Duraj, Associate

E besnik.duraj@cms-aacs.com

AUSTRIA

CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH
Ebendorferstraße 3
1010 Vienna (Eszett), Austria
T +43 1 404 43 0
F +43 1 404 43 90000

Peter Huber, Partner

E peter.huber@cms-rrh.com

Aakriti Chandihok, Associate

E aakriti.chandihok@cms-rrh.com

BELGIUM

CMS DeBacker
Chaussée de La Hulpe 178
1170 Brussels
Belgium
T +32 2 743 69 00
F +32 2 743 69 01

Jean-François Goffin, Partner

E jeanfrancois.goffin@cms-db.com

Gregory de Sauvage

E gregory.desauvage@cms-db.com

BOSNIA AND HERZEGOVINA

CMS Reich-Rohrwig Hainz d.o.o.
Ul. Fra Anđela Zvizdovića 1
71000 Sarajevo, Bosnia and Herzegovina
T +387 33 94 46 00
F +387 33 94 46 90

Nedžida Salihović-Whalen, Local Partner

E nedzida.salihovic-whelen@cms-rrh.com

BRAZIL

CMS Cameron McKenna
Consultores em Direito Estrangeiro
Travessa do Ouvidor, 5-Sala 6.01
Centro, Rio de Janeiro, RJ
CEP 20040-040, Brazil
T +55 21 3722 9831

Ted Rhodes, Office Managing Partner

E ted.rhodes@cms-cmck.com

Glenn McDonald, Senior Associate

E glenn.mcdonald@cms-cmck.com

BULGARIA

CMS Cameron McKenna LLP
Bulgaria Branch
Landmark Centre
Tzar Osvoboditel Blvd. 14
Floor 1
1000 Sofia, Bulgaria
T +359 (2) 921 99 10
F +359 (2) 921 99 19

Atanas Bangachev, Partner

E atanas.bangachev@cms-cmck.com

Pavlov and Partners Law Firm
in cooperation with CMS Reich-Rohrwig Hainz
4, Knyaz Alexander I
Battenberg Str., Fl. 2
1000 Sofia, Bulgaria
T +359 (2) 447 1314
F +359 (2) 447 1390

Valentin Savov, Senior Attorney

E valentin.savov@cms-rrh.com

CHINA

CMS China
2801 Plaza 66, Tower 2
1266 Nanjing Road West
Shanghai 200040, China
T +86 21 6289 6363
F +86 21 6289 0731

Dr. Ulrike Glueck, Managing Partner

E ulrike.glueck@cmslegal.cn

CMS China
Room 1901, Building A
Sanlitun Soho Centre
Chaoyang District
Beijing 100027, China
T +86 10 8527 0259
F +86 10 8590 0831

Nick Beckett, Managing Partner

E nick.beckett@cms-cmck.com

CROATIA

CMS Reich-Rohrwig Hainz
Ilica 1
10000 Zagreb, Croatia
T +385 1 4825 600
F +385 1 4825 601

Dr. Gregor Famira, Partner

E gregor.famira@cms-rrh.com

Hrvoje Bardek, Attorney

E hrvoje.bardek@bmslegal.hr

CZECH REPUBLIC

CMS Cameron McKenna v.o.s.
Palladium, Na Poříčí 1079/3a
110 00 Prague 1, Czech Republic
T +420 2 96 7 98 111
F +420 2 96 7 98 000

Tomáš Matejovský, Partner

E tomas.matejovsky@cms-cmck.com

Petr Benes, Associate

E petr.benes@cms-cmck.com

FRANCE

CMS Bureau Francis Lefebvre
1-3 villa Emile Bergerat
92522 Neuilly-sur-Seine Cedex
France
T +33 1 47 38 41 96
F +33 1 47 38 55 44

Stéphanie de Giovanni, Senior Associate

E stephanie.degiovanni@cms-bfl.com

GERMANY

CMS Hasche Sigle
Stadthausbrücke 1 - 3
20355 Hamburg, Germany
T +49 40 3 76 30 0
F +49 40 3 76 30 40 600

Dr. Markus Schoener, Partner

E markus.schoener@cms-hs.com

CMS Hasche Sigle

Nymphenburger Straße 12
80335 Munich, Germany
T +49 89 2 38 07 0
F +49 89 2 38 07 40110

Dr. Harald W. Potinecke, Partner

E harald.potinecke@cms-hs.com

Florian Block, Associate

E florian.block@cms-hs.com

HUNGARY

Ormai és Társai
CMS Cameron McKenna LLP
YBL Palace
Károlyi utca 12
1053 Budapest, Hungary
T +36 1 483 48 00
F +36 1 483 48 01

Dóra Petrányi, Partner

E dora.petranyi@cms-cmck.com

Zsolt Okányi, Partner

E zsolt.okanyi@cms-cmck.com

INDIA

Khaitan & Co
One Indiabulls Centre
13th Floor, Tower 1
841 Senapati Bapat Marg
Mumbai 400 0013, India
T +91 22 6636 5000
F +91 22 6636 5050
E mumbai@khaitanco.com

Anand Mehta, Partner

E anand.mehta@khaitanco.com

Rabindra Jhunjunwala, Partner

E rabindra.jhunjunwala@khaitanco.com

ITALY

CMS Adonnino Ascoli & Cavasola Scamoni
Via Agostino Depretis, 86
00184 Rome, Italy
T +39 06 47 81 51
F +39 06 48 37 55

Laura Opilio, Partner

E laura.opilio@cms-aacs.com

Emilio Battaglia, Partner

E emilio.battaglia@cms-aacs.com

THE NETHERLANDS

CMS Derks Star Busmann
Newtonlaan 203
3584 BH Utrecht
PO Box 85250
3508 AG Utrecht
The Netherlands
T +31 30 2121 740
F +31 30 2121 192

Dian Brouwer, Partner

E dian.brouwer@cms-dsb.com

POLAND

CMS Cameron McKenna
Dariusz Greszta Spółka Komandytowa
Warsaw Financial Centre
Ul. Emilii Plater 53
00-113 Warsaw, Poland
T +48 22 520 5555
F +48 22 520 5556

Arkadiusz Korzeniewski, Partner

E arkadiusz.korzeniewski@cms-cmck.com

Maciej Kópczyński

E maciej.kopczynski@cms-cmck.com

PORTUGAL

CMS Rui Pena & Arnaut
Rua Sousa Martins, 10
1050-218 Lisbon
Portugal
T +351 210 958 100
F +351 210 958 155

Joaquim Shearman de Macedo, Partner

E joaquim.macedo@cms-rpa.com

Andrea Baptista, Associate

E andrea.baptista@cms-rpa.com

ROMANIA

CMS Cameron McKenna SCA
S-Park
11-15, Tipografilor Street
B3-B4, 4th Floor, District 1
013714 Bucharest, Romania
T +40 21 40 73 800
F +40 21 40 73 900

Sergiu Mihailescu, Associate

E sergiu.mihailescu@cms-cmck.com

RUSSIA

CMS, Russia
Gogolevsky Blvd., 11
119019 Moscow, Russia
T +7 495 786 4000
F +7 495 786 4001

John Hammond, Partner

E john.hammond@cmslegal.ru

Sergey Yuriev, Partner

E sergey.yuriev@cmslegal.ru

Vsevolod Tyupa, Senior Associate

E vsevolod.tyupa@cmslegal.ru

SERBIA

Petrikic & Partneri AOD in cooperation
with CMS Reich Rohrwig Hainz
Cincar Jankova 3
11000 Belgrade, Serbia
T +381 11 32 08 900
F +381 11 32 08 930

Milica Popovic, Partner

E milica.popovic@cms-rrh.com

SLOVAKIA

Ružička Csekes s.r.o.
in association with members of CMS
Vysoká 2/B
811 06 Bratislava, Slovakia
T +421 2 32 33 34 44
F +421 2 32 33 34 43

Mgr. Sylvia Szabó, Advokát Junior Partner

E sylvia.szabo@rc-cms.sk

SLOVENIA

CMS Reich-Rohrwig Hainz
Bleiweisova 30
1000 Ljubljana, Slovenia
T +386 1 620 52 10
F +386 1 620 52 11

Luka Fabiani, Partner

E luka.fabiani@cms-rrh.com

Ela Omersa, Associate

E ela.omersa@cms-rrh.com

SPAIN

CMS Albinaña & Suarez de Lezo
Génova 27
28004, Madrid, Spain
T +34 91 45 19 300
F +34 91 44 26 045

Carlos Aguilar Fernandez, Partner

E carlos.aguilar@cms-asl.com

Nuria Serrano Gómez, Managing Associate

E Nuria.serrano@cms-asl.com

SWITZERLAND

CMS von Erlach Henrici Ltd
Dreikönigstrasse 7
8022 Zurich, Switzerland
T +41 44 28 51 111
F +41 44 28 51 122

Bernhard Lötscher, Partner

E bernhard.loetscher@cms-veh.com

Axel Buhr, Associate

E axel.buhr@cms-veh.com

Alain Friedrich, Associate

E alain.friedrich@cms-veh.com

UKRAINE

CMS Cameron McKenna LLC
6th Floor, 38 Volodymyrska Street
01030 Kyiv, Ukraine
T +380 44 391 3377
F +380 44 391 3388

Olexander Martinenko, Senior Partner

E olexander.martinenko@cms-cmck.com

CMS Reich-Rohrwig Hainz TOV

19B Instytutska St.
01021 Kyiv, Ukraine
T +380 44 503 3546
F +380 44 503 3549

Maria Orlyk, Senior Attorney

E maria.orlyk@cms-rrh.com

UNITED KINGDOM

CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD
T +44 20 7367 3000
F +44 20 7367 2000

Omar Qureshi, Partner

E omar.qureshi@cms-cmck.com

Kushal Gandhi, Associate

E kushal.gandhi@cms-cmck.com

Amy Smart, Associate

E amy.smart@cms-cmck.com

HOW CAN WE HELP?



Our lawyers advise on all aspects of bribery law and related risks issues, including money laundering and fraud. We have specialist, in-depth experience of advising on and conducting complex internal and external investigations and in dealing with regulators and prosecutors where problems are identified, across a range of industries. We assist clients in developing procedures to meet their legal and regulatory obligations, and can help implement improvements to systems in any areas where risks have been identified. We work with our clients to understand and manage risk, protect reputation, and put robust procedures in place.



As our team regularly advises clients in connection with internal and external investigations, they see first hand where client processes have failed or fallen down, or where gaps in those processes have enabled rogue staff and others to exploit them for improper ends. This experience informs our advice to clients in developing robust anti-bribery controls and procedures.



We also assist clients in developing and delivering training programmes and seminars, including bespoke training programmes to form part of a corporate compliance model. This also includes developing e-learning training solutions for global clients with large international workforces.

1 July 1999

CMS established

54

Offices

10

Member firms

>750

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48

Cities

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Jurisdictions present

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CMS is one of the largest providers of legal services in Europe and a leader in all areas of dispute resolution. Whatever the nature of your dispute, across Europe and beyond, our expertise and experience can help you resolve it successfully.

For more information on our dispute resolution services, please contact:

disputes@cmslegal.com

● CMS offices

◀ Rio de Janeiro

Dubai ▶

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Shanghai ▶

