



# Anti-bribery and corruption laws

An international guide

August 2011



# Foreword

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Bribery and corruption is a growing concern for businesses in all sectors and jurisdictions, although some involve greater inherent risks than others. Corruption is a problem not only from an ethical and competition-distorting perspective, but also because of the risk it creates to the reputation of affected businesses and the potential financial implications of a conviction.

Despite the increasingly open and international marketplace, there is no international anti-corruption law or standard. The relevant laws in different jurisdictions are complex and diverse – the acts triggering offences in each state are sometimes very different; the focus is not the same; corporates are not always exposed to liability; and the penalties vary dramatically from state to state. For example, in many jurisdictions, the relevant offences carry administrative rather than criminal sanctions. By contrast, individuals may be sentenced to death in some countries for corruption offences (e.g. China).

Where there are similarities, this is often thanks to states enacting national laws to give effect to anti-corruption treaties and conventions to which they are party. The most effective of these is probably the Organisation for Economic Co-operation and Development's 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). Its 38 signatory states agreed to adopt legislation to criminalise bribery of foreign public officials and to provide international assistance in prosecuting foreign bribery, providing for corporate liability and imposing proportionate and effective sanctions. Most European states have signed up to the Convention, with Russia being the most notable absence (India and China are also not signatories).

Not only are the laws across Europe and the emerging markets complex, but they are changing and becoming more stringent – the UK's new Bribery Act, which came into force

on 1 July 2011, is perhaps the most well publicised recent example of this, but there have also been recent changes in Russia, Spain and Ukraine. Businesses need to stay ahead of developments in this rapidly evolving area of law and any board of directors that does not give due consideration to these issues is arguably failing in its duties.

In this guide, we offer a broad overview of the anti-corruption laws across the jurisdictions where CMS operates, by reference to the key questions that our clients want answered:

- What are the offences?
- Who can be liable and when?
- What are the penalties?
- What are the defences?

We have expanded the jurisdictions covered since our previous edition in October 2010 and are now delighted to include contributions from our associated offices in Albania and China.

While anti-corruption laws are evolving in many jurisdictions, the UK Bribery Act now represents the most expansive and stringent anti-corruption law in the world, even compared to the US Foreign Corrupt Practices Act (FCPA). Time will tell whether the Bribery Act will be enforced as aggressively by the UK authorities as the FCPA has been by the US authorities. In any event, businesses that operate in the UK now need to take heed of this legislation, in addition to any relevant local or other laws with extra-territorial reach that may apply to them. This guide has been prepared to help multinational businesses identify the risks they face in that regard.

We hope you find our guide useful. Contact details of our contributors are at the back of the guide. Please contact them with any questions you may have.



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The clear message for the successful global company is that with power comes responsibility and the privilege of access to the global market brings with it the responsibility to assume high standards of ethical business conduct.

*The Woolf Committee Report,  
"Ethical Business Conduct in BAE Systems plc – the way forward", May 2008*

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## UNITED KINGDOM

Sources of law	The Bribery Act 2010 (in force from 1 July 2011)	
Offence	<b>General Offence - Bribing (clause 1)</b> 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.	<b>General Offence - Being bribed (clause 2)</b> (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)?	√ <sup>2</sup>	√
Director of UK company?	√ (either directly or if the Director consented or connived in an offence committed by the company <sup>3</sup> )	√ (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:	<b>Individuals</b> — Imprisonment for up to 10 years — Unlimited fine  <b>Companies</b> — Unlimited fine — Debarment from public contracts — A confiscation order under the Proceeds of Crime Act 2002 (POCA)	<b>Individuals</b> — Imprisonment for up to 10 years — Unlimited fine  <b>Companies</b> — 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".



<b>Bribing a foreign public official (clause 6)</b> 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 (i) to influence them in their capacity as a foreign public official and (ii) to obtain or retain business or a business advantage.	<b>Corporate offence (clause 7)</b> 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
✓	✓
✓ <sup>1</sup>	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)
<b>Individuals</b> — Imprisonment for up to 10 years — Unlimited fine  <b>Companies</b> — Unlimited fine — Debarment from public contracts — A confiscation order under POCA	<b>Companies</b> — Unlimited fine — Debarment from public contracts <sup>4</sup> — 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 <sup>5</sup>

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 automatic debarment but it remaining a discretionary penalty.

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



## UKRAINE

Source of law	Law on Fundamentals of Preventing and Combating Corruption; Criminal Code of Ukraine; Code on Administrative Offences of Ukraine	
Offence	<b>Criminal offence</b> <b>Being bribed:</b> <b>Receiving a bribe:</b> When a public official receives a bribe in any form for performance or non-performance of his or her functions in the interests of the briber or a third party. <b>Illegal enrichment:</b> When a public official receives an unlawful advantage of a significant amount <sup>1</sup> 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. <b>Extortion (provocation of a bribe):</b> When a public official offers or receives a bribe or an unlawful advantage with the aim of later reporting the person who gave or received the bribe. <b>Bribing:</b> <b>Commercial bribery:</b> Offering, giving or transferring an unlawful advantage to an officer of a legal entity 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. <b>Bribing a public official:</b> Offering, giving or transferring to 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.) of an unlawful advantage for performance or non-performance of actions by exercising one’s authority in the interests of the person offering or transferring the unlawful advantage. <b>Middleman:</b> Receiving an unlawful advantage for influencing the decision making of a person authorised to exercise state functions or offering to influence such a decision.  Offering and giving an unlawful advantage to a person offering or agreeing to influence making of a decision by a person authorised to exercise state functions.	
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> ?		√
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)?		-
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:	<b>Recipient</b> <ul style="list-style-type: none"><li>— Fine of up to 1500 tax-free allowances (approximately €2,300)</li><li>— Debarment from certain positions and activities for up to 3 years</li><li>— Confiscation of property</li><li>— Detention for up to 5 years</li><li>— Imprisonment for up to 12 years</li></ul> <b>Briber</b> <ul style="list-style-type: none"><li>— Fine of up to 1000 tax-free allowances (approximately €1,550)</li><li>— Debarment from certain positions and activities for up to 3 years</li><li>— Imprisonment for up to 10 years</li></ul>	<b>Middleman</b> <ul style="list-style-type: none"><li>— Fine of up to 1500 tax-free allowances (approximately €2300)</li><li>— Confiscation of property</li><li>— Detention for up to 5 years</li><li>— Imprisonment for up to 8 years</li></ul>
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.

<b>Administrative offence</b>
<b>Abuse of office:</b> Abuse of office by a person who receives an unlawful advantage not exceeding one hundred tax-free allowances (approximately EUR 155) or accepting the promise/offer of such advantage for his own benefit or for the benefit of third parties.
<b>Offer or delivery of an unlawful advantage:</b> Offer or delivery of an unlawful advantage to a public official directly or to another related person not exceeding one hundred tax free allowances.
<b>Violation of legally established restrictions regarding the acceptance of gifts or donations:</b> Violation of legally established restrictions or prohibitions by accepting gifts or donations.
<b>Failure to take action with respect to the prevention of corruption:</b> 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
√
√ <sup>2</sup>
√
X
X
X
X
√
X
-
√ (applies only to a failure to prevent corruption)
X
X
√ (only foreign nationals)
X
X
<b>Recipient</b>
— Fine of up to 500 tax-free allowances (approximately €770)
— Confiscation of property
<b>Briber</b>
— Fine of up to 500 tax-free allowances (approximately €770)
<b>Failure to prevent corruption</b>
— Fine of up to 125 tax-free allowances (approximately €190)
X

1 A significant amount should be understood as monetary funds or other property, advantages, benefits, services or intangible assets exceeding one hundred tax-free allowances (approximately €155) 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.

2 The value of the corporate hospitality (donation) received by an official may not exceed 50% of the minimum statutory monthly salary for a one-off hospitality (donation) or one minimum statutory monthly salary cumulatively for hospitality (donations) received from one source within one calendar year.

## SWITZERLAND

Sources of law	Article 322ter - Article 322octies Swiss Criminal Code (StGB) Article 4a Federal Act against Unfair Competition (UWG)	
	Public Sector	Private Sector
Offence	<b>Bribery of Swiss and Foreign public officials (Articles 322ter and 322septies StGB, Article 322octies StGB)</b> Any act by which a public official <sup>1</sup> is offered, promised or granted an undue (material or immaterial) 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 that depends on the exercise of his discretionary powers, or otherwise for the performance of his duties.	<b>Bribery of private persons (Article 4a in connection with Article 23 UWG)<sup>2</sup></b> <b>Bribing</b> Offering, promising or granting an undue advantage to an employee, or other person acting on behalf of another in the private sector in connection with their official activity, in return for an act or omission in breach of their duty or at their discretion. <b>Being Bribed</b> Requesting, obtaining or accepting an undue advantage by such person.
<b>The bribe</b>		
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?	√ <sup>3</sup>	√ <sup>3</sup>
Is there any <i>de minimis</i> ?	√	√
Does the bribe have to be monetary?	X	X
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	X
<b>Acts performed outside Switzerland</b>		
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?	√	√
<b>Who can be liable</b>		
Swiss national?	√	√
Swiss company?	√ <sup>4</sup>	√ <sup>4</sup>
Swiss partnership (including limited liability partnership)?	√ <sup>4</sup>	√ <sup>4</sup>
Director of Swiss company?	√ <sup>5</sup>	√ <sup>5</sup>
Swiss company if the bribe is committed abroad by its foreign subsidiary?	√ <sup>6</sup>	√ <sup>6</sup>
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
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> — Imprisonment for up to 5 years — A fine of up to CHF 1,080,000  <b>Companies</b> — A fine of up to CHF 5,000,000	<b>Individuals</b> — Imprisonment for up to 3 years — A fine of up to CHF 100,000 — Potential disqualification from acting as a director (in highly regulated sectors)  <b>Companies</b> — A fine of up to CHF 5,000,000 — Confiscation
<b>Defences</b>		
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.

<sup>1</sup> A public official is a member of a judicial or other authority, a public employee, an expert, translator or interpreter employed by any authority, an arbitrator or a member of the armed forces.

<sup>2</sup> Unlike the bribery of public officials, the bribery of private persons is pursued under criminal law only on complaint (Article 23 UWG).

<sup>3</sup> According to Article 322octies StGB advantages to public officials are not undue when allowed by staff regulations or when they are of minor value in accordance with social custom (e.g. if a company bears the costs of a business lunch with public officials). Advantages to private persons are not undue if they are agreed with the principal or when they are of minor value in accordance with social custom.

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

<sup>5</sup> A director is liable for his own behaviour.

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



## SPAIN

Current Legislation		
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	Article 286 of Organic Law 5/2010 of June 22 (CP 2010), enacting the new Penal Code effective on 23 December 2010
Offence	<b>Bribing</b> (1) Offering or giving any gift or benefit to a public official <sup>1</sup> to perform an act in breach of his duties or to omit or delay performance of an act within his duties; (2) Offering, promising or giving an advantage to a foreign public official <sup>2</sup> (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. <b>Being bribed</b> A public official soliciting or accepting a gift or other benefit: (i) to implement an unfair action; (ii) to perform or omit to perform an act within this scope of his authority; or (iii) or as a reward for the same.	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 as such <sup>3</sup> .  Requesting or accepting such advantage by such director, manager, or employee for such non-performance.
<b>The bribe</b>		
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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	X
<b>Acts performed outside Spain</b>		
Can bribery performed outside Spain be caught?	√ <sup>4</sup>	√ <sup>5</sup>
Does the act also need to be illegal in the foreign country of performance?	√ (if there is no judgment yet)	√ (if there is no judgment yet)
<b>Who can be liable</b>		
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	X
Foreign subsidiary of a Spanish company if the bribe is committed abroad	X	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	X
Foreign company/partnership if the bribe is committed abroad?	X	X
<b>Penalties</b>		
Penalties include:	<ul style="list-style-type: none"> <li>— Imprisonment for up to 6 years or fines</li> <li>— Disqualification of the public official from public employment for up to 12 years depending on the offence</li> <li>— 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</li> <li>— Suspension of corporate activities for up to 5 years and fines</li> <li>— For bribery of foreign public officials: as above and fines up to double the benefit obtained</li> </ul> <b>Individuals</b> – 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  <b>Companies</b> – fines up to 5 times the benefit obtained	<ul style="list-style-type: none"> <li>— Imprisonment for up to 4 years</li> <li>— Disqualification from engaging in trade for up to 6 years</li> <li>— Fines up to 3 times the value of the profit or advantage obtained</li> </ul> <b>Companies</b> — A fine
<b>Defences</b>		
Are there any defences available?	X	X

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.

3 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.

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

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



## SLOVENIA

Sources of law	Criminal Act <sup>1</sup>	
Offence	<b>Unjustified giving of gifts (Art. 242 KZ-1)</b> (1) Offering or giving an unauthorised gift or advantage to a person: (A) performing an economic activity to (i) obtain an unjustified benefit for someone and (ii) inducing that person to conclude business unlawfully (contrary to the interests of the organisation or causing damage to the organisation); or (B) in return for business or other benefits.	<b>Unjustified acceptance of gifts (Art. 241 KZ-1)</b> (1) Requesting or accepting an advantage personally or for another: (A) in return for acting against the interests of, or to cause damage to the principal/employer, or as a reward for the same; or (B) to obtain or retain business or other benefits.
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	X
Acts performed outside Slovenia		
Can bribery performed outside Slovenia be caught?	√ (if committed by Slovenian national or company)	√ (if committed by 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	X
Foreign company/partnership if the bribe is committed abroad?	X	X
Penalties		
Penalties include:	<b>Individuals</b> — Imprisonment for up to 5 years — Return the value of the bribe  <b>Companies</b> — 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 on trading in financial instruments for up to 8 years	<b>Individuals</b> — Imprisonment for up to 5 years — Return the value of the bribe  <b>Companies</b> — 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 on trading in financial instruments for up to 8 years
Defences		
Are there any defences available?	X	X

<sup>1</sup> Criminal Act (Kazenski zakonik, Official Gazette of Republic of Slovenia, No. 55/08 et al., hereinafter referred to as 'KZ-1').



<b>Bribing (Art. 262 KZ-1)</b> 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.	
<b>Being Bribed (Art. 261 KZ-1)</b> 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	X
√	√
√ (if committed by Slovenian national or company)	√ (if committed by Slovenian national)
√	√
√	√
√	X
√	X
√	√
X	X
X	X
√	X
X	X
X	X
<b>Individuals</b> — Imprisonment for up to 5 years and a fine	<b>Individuals</b> — Imprisonment for up to 5 years and a fine
<b>Companies</b> — 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 on trading in financial instruments for up to 8 years	
X	X



## SLOVENIA (CONTINUED)

Sources of law	Public Sector Integrity Act <sup>2</sup>	
Offence	<b>Prohibition and restriction on receipt of gifts by officials (Art. 30 ZIntPK)</b> An official shall not accept gifts or other benefits relating to the holding of office, except for protocol gifts <sup>3</sup> and occasional gifts of low value <sup>4</sup> , or not at all if they may affect the objective and impartial holding of office.	<b>Gifts to government and local bodies and holders of a public authorisation (Art. 34 ZIntPK)</b> Public authorities and servants / officials may receive gifts only as provided by law, but shall not receive gifts which may affect the legality, objectivity and impartiality of their operation.
<b>The bribe</b>		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	X	X
Is there any <i>de minimis</i> ?	√	√
Does the bribe have to be monetary?	X	X
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	X
<b>Acts performed outside Slovenia</b>		
Can bribery performed outside Slovenia be caught?	√	√
Does the act also need to be illegal in the foreign country of performance?	X	X
<b>Who can be liable</b>		
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	X
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
<b>Penalties</b>		
Penalties include:	— Fines of €400 – €1,200	— Fines of up to €4,000 for a misdemeanour by the responsible person  — Fines of up to €100,000 for a misdemeanour on a holder of a public authority or another legal person of public or private law
<b>Defences</b>		
Are there any defences available?	X	X

<sup>2</sup> Public Sector Integrity Act (Zakon o integriteti in preprečevanju korupcije, Official Gazette of Republic of Slovenia, No. 45/2010, hereinafter referred to as 'ZIntPK').

<sup>3</sup> 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.

<sup>4</sup> Gifts given at 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 accepted.



## SLOVAKIA

<b>Sources of law</b>	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	
<b>Offence</b>	<b>Receiving bribes</b> A person directly or indirectly receiving a bribe <sup>1</sup> : (i) to influence his behaviour and incline him to act contrary to his duty arising from his employment, profession, position or function; or (ii) in relation to an acquisition in the public interest <sup>2</sup> (Penal Code Art. 328 and 329).  A public official <sup>3</sup> 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).	<b>Bribery</b> A person directly or indirectly offering or giving a bribe: (i) to influence his behaviour and incline him to act contrary to his duty arising from his employment, profession, position or function; or (ii) in relation to an acquisition in the public interest <sup>2</sup> (Penal Code Art. 332 and 333).  A public official <sup>3</sup> 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).
<b>The bribe</b>		
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 <sup>4</sup>	Depends on intent <sup>4</sup>
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	X	X
<b>Acts performed outside Slovakia</b>		
Can bribery performed outside Slovakia be caught?	√ <sup>5</sup>	√ <sup>5</sup>
Does the act also need to be illegal in the foreign country of performance?	X <sup>6</sup>	X <sup>6</sup>
<b>Who can be liable</b>		
Slovakian national?	√	√
Slovakian company?	√ <sup>7</sup>	√ <sup>7</sup>
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
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> — Imprisonment for up to 8 years (or 12 years if bribery of a foreign public official)  <b>Companies</b> — Confiscation	<b>Individuals</b> — Imprisonment for up to 3 years (or 5 years if bribery of a foreign public official)  <b>Companies</b> — Confiscation
<b>Defences</b>		
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: (i) by a Slovak national or a body incorporated in the Slovak Republic; or (ii) 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: (i) neglected supervision and control as a result of which an employee/ agent committed the offence; or (ii) themselves committed the offence.

## SERBIA

Source 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	<p><b>Bribing</b> 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.</p> <p><b>Being bribed</b> 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.</p> <p><b>Intermediary offence</b> There is also an offence for intermediaries acting between the person giving and the person accepting the bribe.</p>
<b>The bribe</b>	
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
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	√
<b>Acts performed outside Serbia</b>	
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)
<b>Who can be liable</b>	
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 <sup>1</sup> )
<b>Penalties</b>	
Penalties include:	<p><b>Individuals</b> — Imprisonment for up to 15 years (aggregated, together with different modalities of the offence)</p> <p><b>Companies</b> — Fines (in general not higher than RSD 500,000,000 (€5,000,000)) — Cessation of the legal entity</p>
<b>Defences</b>	
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.

<sup>1</sup> 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.



## RUSSIA

Source of law	Criminal Code, Code of Administrative Offences, Law on Anti-Corruption, Law on Public Procurement, Law on State Civil Service
Offence	<p><b>Corruption</b> Either involves the giving or taking of bribes, or actions by officials abusing their positions or power, which both damage the lawful interests of society or the state and are aimed at obtaining profits (including valuables, property, property services or property rights). Companies can be guilty where corrupt activities take place on their behalf or in their interest (Law on Anti-Corruption).</p> <p><b>Receipt of bribe by an official</b> Receipt by an official of money, securities or other property or benefits for his/her performance (or non-performance) of actions in favour of a briber, if such actions are related to the official's duties (Criminal Code).</p> <p><b>Giving a bribe</b> Giving a bribe to an official (Criminal Code).</p> <p><b>Commercial bribery</b> 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 are related to the duties of the executive (Criminal Code).</p> <p><b>Provoking a bribe or a commercial bribe</b> An attempt to give money, securities, other valuables or rendering services to an official or a company executive, in the absence of the person's consent, made for the purpose of falsifying evidence of a crime or blackmailing (Criminal Code).</p> <p><b>Intermediation in bribery</b> Direct transfer of a bribe upon request of the bribe giver or taker or other assistance to a bribe giver and/or taker to achieve agreement between them in giving or receiving a bribe. Intermediation in bribery for the knowing performance of illegal actions (or non-performance) by a person using his/her official position. Promise or offer to intermediate in bribery.</p>
<b>The bribe</b>	
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> ?	√ <sup>1</sup>
Does the bribe have to be monetary?	X <sup>2</sup>
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	X <sup>3</sup>
<b>Acts performed outside Russia</b>	
Can bribery performed outside Russia be caught?	X <sup>4</sup>
Does the act also need to be illegal in the foreign country of performance?	√
<b>Who can be liable</b>	
Russian national?	√ (for offences committed in Russia)
Russian company?	√ (for offences committed in Russia)
Russian partnership (including limited liability partnership)?	√ (for offences committed in Russia)
Director of Russian company?	√ (for offences committed in Russia)
Russian company if the bribe is committed abroad by its foreign subsidiary?	X
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
<b>Penalties</b>	
Penalties include:	<p><b>Individuals</b> — Imprisonment for up to 12 years with a fine of up to RUR 500m (€12.5m) or up to 70 times the sum of the bribe</p> <p><b>Companies</b> — Administrative fine of up to RUR 100m (€2.5m) and seizure of the pecuniary gain</p>
<b>Defences</b>	
Are there any defences available?	√ An individual who has given or accepted or facilitated a bribe may be absolved of criminal liability if after the bribe they actively contributed to solving or preventing the bribery offence and informed the respective authority about the bribe.

1 No gifts are allowed to state officials; cost of gifts between commercial organisations shall not exceed RUR 3,000 (€75) (Law on State Civil Service).

2 Not necessarily; the bribe could be in cash or in kind. (Law on State Civil Service, Criminal Code).

3 Bribery applies only to state officials; commercial bribery applies to corrupt practices in business. (Criminal Code).

4 No specific Russian legislation exists in this respect; bribery performed abroad could be caught by international treaties.

## ROMANIA

Source of law	Criminal Code: Law 78/2000 on prevention, discovery and punishing corrupt acts Law no. 656/2002 on prevention and sanctioning of money laundering Law no. 82/1991 on accounting registrations Law no. 188/1999 on the public officials' Statute
Offence	<p><b>Bribing and being bribed</b> Promising, offering, giving to, soliciting or receiving from an official, either directly or indirectly, money or other undue benefits for the purpose of inducing, or rewarding the performance, non-performance or delaying of a work related act, or with the purpose of carrying out an act contrary to the official's duties.</p> <p><b>Influence peddling</b> 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.</p> <p><b>Receiving undue benefits</b> Receipt by an official, directly or indirectly, of money or other benefits, by using his official position. The offences above represent pure corruption crimes. There are also numerous corruption or corruption-related crimes under Law 78/2000.</p>
<b>The bribe</b>	
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
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	X (it also applies to the public officials themselves and to people who control, participate in or can influence the decision-making process in matters of public interest)
<b>Acts performed outside Romania</b>	
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 two states (the state of the criminal and the state where the crime was perpetrated)
<b>Who can be liable</b>	
Romanian national?	√
Romanian company?	√ <sup>1</sup>
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?	X
Foreign company/partnership if the bribe is committed abroad?	X
<b>Penalties</b>	
Penalties include:	<ul style="list-style-type: none"> <li>— For the most serious corruption crimes, Romanian law provides a maximum prison sentence of 20 years</li> <li>— Other penalties include: restrictions on certain property, as well as confiscation of money, valuables, or any other type of goods used for committing the crime, if these goods cannot be returned to the victim. If the goods cannot be found, the offender has to pay the pecuniary equivalent</li> </ul>
<b>Defences</b>	
Are there any defences available?	X

<sup>1</sup> As per Law 278/2006

## POLAND

Source of law	The Criminal Code <sup>1</sup>
Offence	<p><b>The Criminal Code</b></p> <p><b>Corruption (public sector offence)</b> 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.</p> <p><b>Corruption (private sector offence)</b> 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.</p>
<b>The bribe</b>	
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> ?	√
Does the bribe have to be monetary?	X
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	X
<b>Acts performed outside Poland</b>	
Can bribery performed outside Poland be caught?	√
Does the act also need to be illegal in the foreign country of performance?	√ <sup>2</sup>
<b>Who can be liable</b>	
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?	√
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?	√
Foreign company/partnership if the bribe is committed abroad?	X
<b>Penalties</b>	
Penalties include:	<p><b>Individuals</b></p> <ul style="list-style-type: none"> <li>— Imprisonment for up to 12 years and/or fines</li> </ul> <p><b>Companies</b></p> <ul style="list-style-type: none"> <li>— Fines (in some cases these are dependant on a person acting on behalf of the corporate having been convicted of an offence)</li> <li>— Potential debarment from public tenders</li> </ul>
<b>Defences</b>	
Are there any defences available?	<p>√</p> <p>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).</p>

<sup>1</sup> 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.

<sup>2</sup> 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.

## THE NETHERLANDS

Source of law	Art. 177 DCC Art. 177a DCC	Art. 362 DCC Art. 363 DCC
Offence	<b>Bribing a public official<sup>1</sup></b> (1) To offer or give a benefit to a public official <sup>2</sup> with the purpose of obtaining an act or omission by him/her that is (i) in breach of his/her official duties or (ii) not in breach of his/her official duties.	<b>A public official being bribed<sup>1</sup></b> 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 (i) breach of his/her official duties; or (ii) not in breach of his/her official duties.
<b>The bribe</b>		
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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√ <sup>3</sup>	√ <sup>3</sup>
<b>Acts performed outside the Netherlands</b>		
Can bribery performed outside the Netherlands be caught?	√ <sup>6</sup>	√
Does the act also need to be illegal in the foreign country of performance?	√	X
<b>Who can be liable</b>		
Dutch national?	√	√
Dutch company?	√	X
Dutch partnership (including limited liability partnership)?	√	X
Director of Dutch company?	√ <sup>7</sup>	X
Dutch company if the bribe is committed abroad by its foreign subsidiary?	√ <sup>8</sup>	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
<b>Penalties</b>		
Penalties include:	<ul style="list-style-type: none"> <li>— Imprisonment for up to 4 years</li> <li>— A fine of up to €76,000 for natural persons and up to €760,000 for companies</li> <li>— Disqualification from practising the profession in which the person committed the crime</li> <li>— Deprivation of certain rights</li> </ul>	<ul style="list-style-type: none"> <li>— Imprisonment for up to 4 years (or 6 years in limited circumstances)</li> <li>— A fine of up to €76,000</li> <li>— Disqualification from practising the profession in which the person committed the crime</li> <li>— Deprivation of certain rights</li> </ul>
<b>Defences</b>		
Are there any defences available?	X	X

1 Special offences apply if the official is a judge.

2 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).

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

4 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.

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

6 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.

7 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.

8 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 note 7).

9 If performed by a Dutch national.

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



Art. 328ter par. 2 DCC	Art. 328ter par. 1 DCC
<b>Active private bribery</b> 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.	<b>Passive private bribery</b> 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.
X	X
√	√
√ <sup>4</sup>	√ <sup>5</sup>
X	X
X	X
X	X
√ <sup>9</sup>	√
√	√
√	√
√	X
√	X
√ <sup>7</sup>	√
√ <sup>10</sup>	X
X	X
√	X
X	X
X	X
— Imprisonment for up to 2 years — A fine of up to €76,000 — Disqualification from practising the profession in which the person committed the crime	— Imprisonment for up to 2 years — A fine of up to €76,000 — Disqualification from practising the profession in which the person committed the crime
X	X

## ITALY

Source of law (Civil Law)	Italian criminal code (ICC), sec. No. 318 et seq.	Legislative Decree No.231/2001 (Decree 231) <sup>1</sup>	Italian civil code (sec. No. 2635) <sup>2</sup>
<b>Offence</b>	<b>Briber</b> Giving 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). <b>Recipient</b> Public official namely a Government official or public service agent receiving such reward for himself or for a third party.	<b>Briber</b> Company's executive/representative or employee giving, in the interest of and/or for the advantage of the company, 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). <b>Recipient</b> Public official (Government official or public service agent) receiving such reward for himself or for a third party.	<b>Briber</b> Giving or promising any advantage to a company's managers, general directors, directors responsible for the company's balance sheets, auditors and liquidators, in order to act or refrain from acting, in breach of their duties, provided that damage is caused to the person concerned. <b>Recipient</b> Managers, general directors, directors responsible for the company's balance sheets, auditors and liquidators who receive or accept the promise of such advantage.
<b>The bribe</b>			
Is there a presumption that any benefit was given/received corruptly?	X	X	X
Would facilitation payments be caught?	Depends on the intent	Depends on the intent	Depends on the intent
Would corporate hospitality be caught?	Depends on the intent	Depends on the intent	Depends on the 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')	X (although the gift cannot be so small that it is not considered a 'reward')
Does the bribe have to be monetary?	X	X	X
<b>Public officials</b>			
Does the offence only apply to bribing public officials?	√	√	X
<b>Acts performed outside Italy</b>			
Can bribery performed outside Italy be caught?	√ (if committed by an Italian national <sup>3</sup> )	√ (if committed by an Italian national company's executive and/or employee <sup>4</sup> )	√ (if committed by an Italian national <sup>5</sup> )
Does the act also need to be illegal in the foreign country of performance?	X	X	X
<b>Who can be liable</b>			
Italian national?	√	√	√
Italian company?	X	√	X
Italian partnership (including limited liability partnership)?	X	√ <sup>6</sup>	X
Director of Italian company?	√	√	√
Italian company if the bribe is committed abroad by its foreign subsidiary?	X	X	X
Foreign subsidiary of an Italian company if the bribe is committed abroad?	X	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	X
Foreign company/partnership if the bribe is committed abroad?	X	X	X
<b>Penalties</b>			
Penalties include:	— Imprisonment for up to 8 years (for judicial bribery imprisonment up to 20 years) — Disqualifying penalties <sup>7</sup> , if applicable — Confiscation	— Pecuniary sanctions of up to approximately €1,200,000 — Disqualifying penalties <sup>8</sup> , if applicable — Confiscation — Publication of the judgment, if applicable	— Imprisonment for up to 3 years — Disqualifying penalties, if applicable
<b>Defences</b>			
Are there any defences available?	√ <sup>9</sup>	√ <sup>9</sup>	√ <sup>9</sup>

1 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.

2 This crime cannot generate corporate liability according to the Decree 231.

3 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.

4 As above.

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

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

7 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.

8 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.

9 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.



# HUNGARY

Source of law	Act IV of 1978 on the Criminal Code, as amended, of the Republic of Hungary (the "Criminal Code") Act CIV of 2001 on Criminal Sanctions against Legal Entities, as amended, of the Republic of Hungary (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 <sup>1</sup>	<b>Bribing a Hungarian or foreign public official (Section 253 and Section 258/B of the Criminal Code)</b> (1) Giving or promising an unlawful advantage to a Hungarian or foreign public official or to a third party in relation to the relevant official's actions in his/her official capacity. (2) The director of a company, or a member or employee with authority to exercise control or supervision, if another member or employee of the company commits (domestic or foreign) 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.	<b>Being bribed - Hungarian or foreign public officials (Section 250 and Section 258/D of the Criminal Code)</b> Requesting an unlawful advantage in (Hungarian or foreign) official capacity, or accepting such advantage or a promise thereof, or agreeing with the party requesting or accepting the advantage.
<b>The bribe</b>		
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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	√
<b>Acts performed outside Hungary</b>		
Can bribery performed outside Hungary be caught? <sup>3</sup>	√	√
Does the act also need to be illegal in the foreign country of performance?	X (unless committed by a foreign national)	X (unless committed by a foreign national)
<b>Who can be liable</b>		
Hungarian national?	√	√
Hungarian company? <sup>4</sup>	√	√ <sup>5</sup>
Hungarian partnership (including limited liability partnership)? <sup>6</sup>	√	√ <sup>7</sup>
Director of Hungarian company?	√ (if he is implicated in the actual bribery)	√ (if he is implicated in the actual bribery)
Hungarian company if the bribe is committed abroad by its foreign subsidiary? <sup>8</sup>	√	√ <sup>9</sup>
Foreign subsidiary of a Hungarian company if the bribe is committed abroad? <sup>10</sup>	√	√ <sup>11</sup>
Foreign national/company/partnership if the bribe is committed in Hungary? <sup>12</sup>	√	√ <sup>13</sup>
Foreign national domiciled or "ordinarily resident" in Hungary if the bribe is committed outside Hungary? <sup>14</sup>	√	√
Foreign company/partnership if the bribe is committed abroad? <sup>15</sup>	√	√
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> <ul style="list-style-type: none"> <li>Imprisonment between 1 and 5 years (may vary depending on the nature and seriousness of the crime)</li> </ul> <b>Companies (if applicable)</b> <ul style="list-style-type: none"> <li>Termination</li> <li>Restriction of operation (1-3 years), including debarment from public contracts or state subsidies</li> <li>Fine: up to 3 times the pecuniary advantage gained or intended to be gained from the crime</li> <li>Confiscation order</li> </ul>	<b>Individuals</b> <ul style="list-style-type: none"> <li>Imprisonment between 1 and 10 years (may vary depending on the nature and seriousness of the crime)</li> </ul> <b>Companies (if applicable)</b> <ul style="list-style-type: none"> <li>Termination</li> <li>Restriction of operation (1-3 years), including debarment from public contracts or state subsidies</li> <li>Fine: up to 3 times the pecuniary advantage gained or intended to be gained from the crime</li> <li>Confiscation order</li> </ul>
<b>Defences</b>		
Are there any defences available?	√ <sup>16</sup>	√ <sup>16</sup>

1 There are also special offences relating to bribery in judicial proceedings and influence peddling.

2 Business entities include foreign entities.

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 and Section 4 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, authorised 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 To be assessed on a case-by-case basis; the Corporate Sanctions Act does not apply to the Hungarian state, foreign states or bodies, performing executive, administrative and municipal acts under the law and international organisations established by international treaties.

6 As in footnote 4.

7 As in footnote 5.

8 Companies cannot be legally "liable" but certain criminal sanctions can be imposed on them, as outlined in footnote 3. 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)

<b>Offence<sup>1</sup></b>	<b>Bribery in business (Section 254 and Section 258/C of the Criminal Code)</b> Giving or promising an unlawful advantage to an employee or member of a budgetary agency, business entity <sup>2</sup> or NGO, or to another person in relation to the actions of such employee or member, to induce the employee or member to breach his/her duties.	<b>Being bribed in business (Section 251 and Section 252 of the Criminal Code)</b> Any employee or member of a Hungarian budgetary agency, business entity or NGO who requests an unlawful advantage in connection with his/her professional actions, accepts such advantage or a promise in exchange for violating his/her responsibilities or agrees with the party requesting or accepting the advantage.
<b>The bribe</b>		
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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	X	X
<b>Acts performed outside Hungary</b>		
Can bribery performed outside Hungary be caught? <sup>3</sup>	√	√
Does the act also need to be illegal in the foreign country of performance?	X (unless committed by a foreign national)	X (unless committed by a foreign national)
<b>Who can be liable</b>		
Hungarian national?	√	√
Hungarian company? <sup>4</sup>	√	√
Hungarian partnership (including limited liability partnership)? <sup>6</sup>	√	√
Director of Hungarian company?	√ (if he is implicated in the actual bribery)	√ (if he is implicated in the actual bribery)
Hungarian company if the bribe is committed abroad by its foreign subsidiary? <sup>8</sup>	√	√
Foreign subsidiary of a Hungarian company if the bribe is committed abroad? <sup>10</sup>	√	√
Foreign national/company/partnership if the bribe is committed in Hungary? <sup>12</sup>	√	√
Foreign national domiciled or "ordinarily resident" in Hungary if the bribe is committed outside Hungary? <sup>14</sup>	√	√
Foreign company/partnership if the bribe is committed abroad? <sup>15</sup>	√	√
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> — Imprisonment between 2 and 5 years (may vary depending on the nature and seriousness of the crime)  <b>Companies (if applicable)</b> — 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	<b>Individuals</b> — Imprisonment between 1 and 10 years (may vary depending on the nature and seriousness of the crime)  <b>Companies (if applicable)</b> — Termination — Restriction of operation (1-3 years), including debarment from public contracts or state subsidies — Fine: the minimum amount is HUF 500.000 (approximately €1,785), the highest amount is up to 3 times the pecuniary advantage gained or intended to be gained from the crime — Confiscation order
<b>Defences</b>		
Are there any defences available?	√ <sup>16</sup>	√ <sup>16</sup>

<sup>9</sup> See footnote 5.

<sup>10</sup> See footnote 8.

<sup>11</sup> See footnote 5.

<sup>12</sup> 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.

<sup>13</sup> See footnote 5.

<sup>14</sup> 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.

<sup>15</sup> 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 footnote 7.

<sup>16</sup> Section 255/A of the Criminal Code. Before the bribe is detected, a person can avoid liability by surrendering the unlawfully obtained advantage to the authorities and providing them with information regarding the bribe, whether a public official under section 250(1) or 250(2) or being bribed in business under sections 251(1) or 252(1). An exemption can also be achieved in the case of giving a bribe whether in the context of public officials (section 253) or in business (section 254).



## GERMANY

Sources of law	Criminal code	
	Public Sector	Private Sector
Offence	<b>Sect. 331 et seq. German Criminal Code ('StGB')</b> 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.	<b>Sect. 299 et seq. German Criminal Code ('StGB')</b> Where someone promises or grants the employees of another company 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 bribe		
Is there a presumption that any benefit was given/received corruptly?	X (however, advantages given/received in connection with the exercise of office constitute a bribe (Sect. 331 et seq. StGB))	X (however, inappropriate or unusual benefits may lead to preliminary investigation and finally conviction)
Would facilitation payments be caught?	√	√
Would corporate hospitality be caught?	Depends on the intent; however, significantly lower threshold than in private sector.	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.
Is there any <i>de minimis</i> ?	X	X <sup>1</sup>
Does the bribe have to be monetary?	X	X
Public officials		
Does the offence only apply to bribing public officials?	√ <sup>2</sup>	X
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?	√ <sup>3</sup>	√ <sup>3</sup>
German partnership (including limited liability partnership)?	√ <sup>3</sup>	√ <sup>3</sup>
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?	√ <sup>4</sup>	√ <sup>4</sup>
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: √ <sup>5</sup>	Foreign national: √ Foreign company or partnership: √ <sup>5</sup>
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:	<b>Individuals</b> <ul style="list-style-type: none"> <li>— Fines and/or imprisonment (up to 5 years) in case of conviction. An occupational ban may also be imposed on wrongdoers</li> <li>— Directors, board members and officers: fines (up to €1,000,000) in case of insufficient organisation, instruction and supervision</li> </ul> <b>Companies</b> <ul style="list-style-type: none"> <li>— 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)</li> <li>— Debarment of companies from tendering for public contracts</li> <li>— Confiscation of benefits derived from bribery</li> </ul>	<b>Individuals</b> <ul style="list-style-type: none"> <li>— Fines and/or imprisonment (up to 5 years) in case of conviction. An occupational ban may also be imposed on wrongdoers</li> <li>— Directors, board members and officers: fines (up to €1,000,000) in case of insufficient organisation, instruction and supervision</li> </ul> <b>Companies</b> <ul style="list-style-type: none"> <li>— 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)</li> <li>— Debarment of companies from tendering for public contracts</li> <li>— Confiscation of benefits derived from bribery</li> </ul>
Defences		
Are there any defences available?	X	X

1 Low-value gifts are not subject to criminal prosecution.

2 Public officials include officials of international organisations (e.g. FIFA).

3 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.

4 Depending on the individual circumstances; as above.

5 As in footnote 3.

## FRANCE

Source of law	French Statute of 13 November 2007 (articles 435-1 and Seq. of the French Criminal Code <sup>1</sup> )	
Offence	<b>Bribing</b> Unlawfully offering, promising or giving <sup>2</sup> to a public official (including an elected foreign public official), directly or indirectly, any advantage for the performance or non-performance of any act within the official's functions, duties or mandate.	<b>Being bribed</b> A public official (including an elected foreign public official) unlawfully requesting or accepting for himself or another an advantage for performance or non-performance of any act within the official's functions, duties or mandate.
<b>The bribe</b>		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√ <sup>3</sup>	√ <sup>3</sup>
Would corporate hospitality be caught?	√	√
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√ <sup>4</sup>	√ <sup>5</sup>
<b>Acts performed outside France</b>		
Can bribery performed outside France be caught?	√	√
Does the act also need to be illegal in the foreign country of performance?	√ <sup>6</sup>	√ <sup>6</sup>
<b>Who can be liable</b>		
French national?	√	√
French company?	√	X
French partnership (including limited liability partnership)?	√	X
Director of French company?	√ (but this depends on his/her involvement in the bribery, including his/her knowledge and intent)	X
French company if the bribe is committed abroad by its foreign subsidiary?	√	X
Foreign subsidiary of a French company if the bribe is committed abroad?	√ <sup>7</sup>	X
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?	√ <sup>8</sup>	√ <sup>9</sup>
Foreign company/partnership if the bribe is committed abroad?	X <sup>10</sup>	X
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> — Imprisonment for up to 10 years — Fines of up to €150,000  <b>Companies</b> — Fines of 5 times €150,000 (i.e. up to €750,000) — Temporary or permanent winding-up of the Company — Debarment from public contracts for a maximum of 5 years — Confiscation	<b>Individuals</b> — Imprisonment for up to 10 years — Fines of up to €150,000
<b>Defences</b>		
Are there any defences available?	X	X

1 Similar but separate offences apply in respect of bribery of judicial officers. There are also separate offences relating to influence peddling and domestic bribery (which have extraterritorial effect to a limited extent).

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

3 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.

4 But "public official" is widely defined and includes also employees of international organisations, arbitrators, court experts etc.

5 As above.

6 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.

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

8 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.

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

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

## CZECH REPUBLIC

Source of law	Czech Criminal Code
Offence	<p><b>Major offences</b></p> <ul style="list-style-type: none"> <li>– acceptance of a bribe</li> <li>– active bribery</li> <li>– indirect bribery</li> </ul> <p>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.”<sup>1</sup></p> <p>Other special offences apply in relation to public tenders and public auctions.</p>
<b>The bribe</b>	
Is there a presumption that any benefit was given/received corruptly?	X
Would facilitation payments be caught?	√
Would corporate hospitality be caught?	(√ <sup>2</sup> )
Is there any <i>de minimis</i> ?	X
Does the bribe have to be monetary?	X
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	X
<b>Acts performed outside Czech Republic</b>	
Can bribery performed outside Czech Republic be caught?	√ <sup>3</sup>
Does the act also need to be illegal in the foreign country of performance?	√ (if the act is committed by a foreign individual) <sup>4</sup>
<b>Who can be liable</b>	
Czech national?	√
Czech company?	X (corporate entities cannot be liable for a criminal offence) <sup>5</sup>
Czech partnership (including limited liability partnership)?	X (partnerships cannot be liable for a criminal offence) <sup>6</sup>
Director of Czech company?	√
Czech company if the bribe is committed abroad by its foreign subsidiary?	X
Foreign subsidiary of a Czech company if the bribe is committed abroad?	X
Foreign national/company/partnership if the bribe is committed in Czech Republic?	√ (for individuals only)
Foreign national domiciled or “ordinarily resident” in Czech Republic if the bribe is committed outside Czech Republic?	X
Foreign company/partnership if the bribe is committed abroad?	X
<b>Penalties</b>	
Penalties include:	— Imprisonment for up to 12 years, perpetual injunction or forfeiture of assets, disqualification of directors and fines <sup>7</sup>
<b>Defences</b>	
Are there any defences available?	X

<sup>1</sup> Section 334 of the Czech Criminal Code.

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

<sup>3</sup> “Distant offences” committed by anyone (whether or not Czech) 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. Section 4 of the Criminal Code.

<sup>4</sup> Section 8 of the Criminal Code.

<sup>5</sup> Note that in February 2011 the Czech Government approved a draft law introducing criminal liability of legal persons. The bill contains a new package of offences for which bodies corporate and company directors can be liable. Public sector organisations would be excluded from liability. If this goes ahead, the amendments may come into effect in 2012.

<sup>6</sup> However, under the proposed draft law on the criminal liability of legal persons, a limited liability partnership could be liable for a criminal offence.

<sup>7</sup> Stricter penalties are proposed by the draft legislation. Typical punishments would be 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.



## CHINA

Source 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	<b>Active Bribery</b> An individual or entity gives money or property to state working personnel <sup>1</sup> , non-state working personnel, state organs, state-owned enterprises, public institutions or organizations for the purpose of obtaining improper benefits.	<b>Passive Bribery</b> 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.
<b>The bribe</b>		
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 <sup>1</sup> )	X
Would corporate hospitality be caught?	√ <sup>2</sup>	√ <sup>2</sup>
Is there any <i>de minimis</i> ?	X <sup>3</sup>	X <sup>3</sup>
Does the bribe have to be monetary?	X <sup>4</sup>	X <sup>4</sup>
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	X <sup>5</sup>	X
<b>Acts performed outside China</b>		
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
<b>Who can be liable</b>		
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
<b>Penalties</b>		
Penalties include:	<b>Individuals</b> — Fine — Confiscation of property — Fixed-term/life imprisonment  <b>Companies</b> — 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 five years	<b>Individuals</b> — Criminal detention — Fixed-term/life imprisonment — Confiscation of property — In extreme cases: death penalty <b>Companies</b> — 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 five years
<b>Defences</b>		
Are there any defences available?	The offence shall not be prosecuted if the following periods have elapsed: <ul style="list-style-type: none"> <li>— five years, when the maximum prescribed punishment is fixed-term imprisonment of less than five years</li> <li>— ten years, when the maximum prescribed punishment is fixed-term imprisonment of not less than five years but less than ten years</li> <li>— fifteen years, when the maximum prescribed punishment is fixed-term imprisonment of not less than ten years</li> <li>— twenty years, when the maximum prescribed punishment is life imprisonment or death</li> </ul>	The offence shall not be prosecuted if the following periods have elapsed: <ul style="list-style-type: none"> <li>— five years, when the maximum prescribed punishment is fixed-term imprisonment of less than five years</li> <li>— ten years, when the maximum prescribed punishment is fixed-term imprisonment of not less than five years but less than ten years</li> <li>— fifteen years, when the maximum prescribed punishment is fixed-term imprisonment of not less than ten years</li> <li>— twenty years, when the maximum prescribed punishment is life imprisonment or death</li> </ul>

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).



## BULGARIA

Sources of law	Criminal Code, Administrative Offences and Sanctions Act	
Offence	Criminal offences related to the office of public officials	
	<p><b>Recipient</b> 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.</p> <p><b>Briber</b> 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.</p>	<p><b>Recipient</b> 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.</p> <p><b>Briber</b> 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.</p>
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 <sup>1</sup> )	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?	<b>Recipient: n/a</b> <b>Briber: √</b> if implicated in the actual offence	<b>Recipient: n/a</b> <b>Briber: √</b> 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:	<p><b>Recipient</b></p> <ul style="list-style-type: none"> <li>— Imprisonment for up to 30 years</li> <li>— Fine of up to €15,000</li> <li>— Confiscation of assets</li> <li>— Disqualification from taking similar offices</li> </ul> <p><b>Briber</b></p> <ul style="list-style-type: none"> <li>— Imprisonment for up to 10 years</li> <li>— Fine of up to €7,500</li> </ul> <p>In both cases the benefit is expropriated</p>	<p><b>Recipient</b></p> <ul style="list-style-type: none"> <li>— Imprisonment for up to 6 years</li> <li>— Fine of up to €2,500</li> </ul> <p><b>Briber</b></p> <ul style="list-style-type: none"> <li>— Imprisonment for up to 3 years</li> <li>— Fine of up to €1,500</li> </ul> <p>In both cases the benefit is expropriated</p>
Defences		
Are there any defences available?	X	X

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



## BULGARIA (CONTINUED)

Sources of law	Criminal Code, Administrative Offences and Sanctions Act	
Offence	Criminal offences related to the employment of officials	Middleman
	<b>Recipient</b> 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.  <b>Briber</b> 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.	<b>Middleman</b> 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).
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)	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?	X (applies only to officials of a private entity)	X (applies to both public and private sectors)
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 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	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?	√ (if implicated in the actual offence)	√ (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:	<b>Recipient</b> — Imprisonment for up to 5 years — Fine of up to €10,000  <b>Briber</b> — 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
Defences		
Are there any defences available?	X	X



<b>Administrative liability related to criminal offences in public and private sector</b>
<b>Benefiting entity</b> A legal entity which has benefited or which could have benefited from any of the criminal offences in this table, committed by: <ol style="list-style-type: none"> <li>1) a person that make decisions for the entity; or</li> <li>2) a person representing the entity; or</li> <li>3) a member of a controlling or supervisory board of the entity; or</li> <li>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.</li> </ol>
X
√
√
(if, depending on the intent, any of the aforementioned qualifies as a crime)
X
(except for the general restriction)
X
X
(applies to both public and private sectors)
√
(if any of the conditions under (i) or (ii) in previous columns were satisfied)
X
X
√
X
X
X
(unless the individual implicated in committing the actual offence acted also for the Bulgarian company under any of 1 to 4 above)
X
√
√
(if the condition in the previous columns is satisfied)
X
— Fine up to €500,000 but not less than the benefit received by the entity
The benefit is expropriated
X



## BOSNIA AND HERZEGOVINA

Source 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	<p><b>Bribing</b> 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 &amp; 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).</p> <p><b>Being bribed</b> 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 &amp; 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)<sup>1</sup></p>
<b>The bribe</b>	
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
<b>Public officials</b>	
Does the offence only apply to bribing public officials?	√
<b>Acts performed outside Bosnia and Herzegovina</b>	
Can bribery performed outside Bosnia and Herzegovina be caught?	√ <sup>2</sup>
Does the act also need to be illegal in the foreign country of performance?	√
<b>Who can be liable</b>	
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?	√ <sup>2</sup>
<b>Penalties</b>	
Penalties include:	<p><b>Individuals</b></p> <ul style="list-style-type: none"> <li>— Bribing: imprisonment for up to five years (for performing an unauthorised act; or not doing what should have been done); fine or imprisonment for up to three years (for doing what should have been done (by accepting a facilitation payment); or for not doing what should have been done)</li> <li>— Being bribed: imprisonment for up to ten years (for performing an unauthorised act; or not doing what should have been done); imprisonment for up to five years (for doing what should have been done (by accepting a facilitation payment); or for not doing what should have been done)</li> </ul> <p><b>Companies</b></p> <ul style="list-style-type: none"> <li>— Depending on the circumstances of the individual case: fines, confiscation orders and/ or dissolution of the company.</li> </ul>
<b>Defences</b>	
Are there any defences available?	√ <sup>3</sup>

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.

## BELGIUM

Sources of law	Criminal Code	
Offence	<p><b>Public Bribery (art. 246 &amp; foll. Criminal Code)</b></p> <p><b>Active Public Bribery</b> 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:</p> <ul style="list-style-type: none"> <li>(i) Perform an act within the scope of his responsibilities which is not subject to remuneration;</li> <li>(ii) Perform an improper act, or refraining from a proper one, in the exercise of one's function;</li> <li>(iii) Commit an offence in the exercise of one's function; or</li> <li>(iv) Use influence derived from one's function to obtain performance or non-performance of an act by a public authority.</li> </ul> <p><b>Passive Public Bribery</b> 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.</p>	<p><b>Private Bribery (art. 246 &amp; foll. Criminal Code)</b></p> <p><b>Active Private Bribery</b> 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.</p> <p><b>Passive Private Bribery</b> 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.</p>
<b>The bribe</b>		
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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	X
<b>Acts performed outside Belgium</b>		
Can bribery performed outside Belgium be caught?	√	√
Does the act also need to be illegal in the foreign country of performance?	X	√
<b>Who can be liable</b>		
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
<b>Penalties</b>		
Penalties include:	<p><b>Recipient</b></p> <ul style="list-style-type: none"> <li>— Fine</li> <li>— Imprisonment</li> <li>— Confiscation</li> <li>— Professional restrictions i.e. restrictions may be imposed on the power of company directors, auditors or managers</li> </ul> <p><b>Companies</b></p> <ul style="list-style-type: none"> <li>— Fine</li> <li>— Confiscation</li> <li>— Debarment from tendering for public contracts</li> </ul>	<ul style="list-style-type: none"> <li>— Fine</li> <li>— Imprisonment</li> </ul>
<b>Defences</b>		
Are there any defences available?	X	X

## AUSTRIA

Source of law	Sec 307 of the Austrian Criminal Code (Strafgesetzbuch)	Sec 168d of the Austrian Criminal Code (Strafgesetzbuch)
Offence	<b>Public Sector Bribery</b> Offering, promising or giving to a public officer <sup>1</sup> a financial or other advantage in favour of such public officer or to a third person intending to induce them improperly to perform a public function <sup>2</sup> .	<b>Private Sector Bribery</b> Offering, promising or giving to an employee or agent of a company a financial or other advantage in his favour or in favour of a third person intending to induce them improperly to perform a business activity <sup>3</sup> .
	Bribing	Bribing
<b>The bribe</b>		
Is there a presumption that any benefit was given/received corruptly?	X	X
Would facilitation payments be caught?	√ If facilitation payments shall induce a <b>proper</b> performance by the public officer, sec 307a on the grant of benefits (Vorteilszuwendung) is applicable <sup>4</sup>	√ (if a proper performance is induced, such payments do not fall under the scope of bribery)
Would corporate hospitality be caught?	Depends on intent	Depends 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
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	√	Applicable only to private persons
<b>Acts performed outside Austria</b>		
Can bribery performed outside Austria be caught?	√ (if committed by an Austrian national or company or partnership which is incorporated in Austria <sup>6</sup> )	√ (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?	√	√
<b>Who can be liable</b>		
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?	X	X
Foreign company/partnership if the bribe is committed abroad?	X	X
<b>Penalties</b>		
Penalties include:	Individuals <ul style="list-style-type: none"> <li>— Imprisonment for up to 3 years</li> <li>— When advantage exceeds €3,000 imprisonment between 6 months and 5 years</li> <li>— When advantage exceeds €50,000 imprisonment between 1 and 10 years</li> </ul> Companies/Partnerships <ul style="list-style-type: none"> <li>— Fines between 70 –100 daily rates<sup>7</sup> depending e.g. on amount of advantage given/offered</li> </ul>	Individuals <ul style="list-style-type: none"> <li>— Imprisonment for up to 2 years</li> </ul> Companies/Partnerships <ul style="list-style-type: none"> <li>— Fines of up to 55 daily rates</li> </ul>
<b>Defences</b>		
Are there any defences available?	X	X

<sup>1</sup> "Public officer" also includes arbitrators, experts providing an expert opinion in a public function and foreign public officials.

<sup>2</sup> Including foreign public officials.

<sup>3</sup> Including foreign persons working in the private sector.

<sup>4</sup> Usually facilitation payments are made to induce an improper performance of a public officer (which contravene the provisions of applicable law). Such payments fall under the scope of the main offence "bribery" pursuant to sec 307 of the Austrian Criminal Code. However, in some cases these payments are made to induce a proper performance of a public officer. Such actions fall under the scope of the offence "grant of benefits" (Vorteilszuwendung).

<sup>5</sup> Usually facilitation payments are accepted by public officers because improper performances are requested by the person who is offering such payments. Such payments fall under the scope of the main offence "being bribed" pursuant to sec 304 of the Austrian Criminal Code. However, in some cases these payments are accepted by public officers to perform a proper performance (in accordance with applicable laws). Such actions fall under the scope of the offence "grant of benefits" (Vorteilszuwendung).

<sup>6</sup> Pursuant to sec 65 Austrian Criminal Code and sec 12 of the Austrian Companies' Criminal Liability Act (Verbandsverantwortlichkeitsgesetz).

<sup>7</sup> i.e. an amount falling within a statutory range within which the specific amount is determined on the basis of the relevant person's economic means, multiplied by a certain number of (fictitious) days reflecting the gravity of the offence.



Sec 304 of the Austrian Criminal Code (Strafgesetzbuch)	Sec 168c of the Austrian Criminal Code (Strafgesetzbuch)
Requesting or accepting a personal advantage or an advantage for a third person as a condition for the improper performance or omission of a public function (only applicable to public officers).	Requesting or accepting a personal advantage or an advantage for a third person as a condition for the improper performance or omission of a business activity (only applicable to persons working in the private sector).
Being Bribed	Being Bribed
X	X
√ If facilitation payments are accepted by a public officer for a <b>proper</b> performance, sec 305 on the acceptance of benefits (Vorteilsannahme) is applicable <sup>5</sup>	√ (if such payments are accepted by private persons for a <b>proper</b> performance, such payments do not fall under the scope of bribery)
Depends on intent	Depends on intent
X (gifts of up to €100 are not considered an "advantage")	X (gifts of up to €100 are not considered an "advantage")
X	X
√	Applicable only to private persons
√ (if committed by an Austrian national or company or partnership which is incorporated in Austria <sup>6</sup> )	√ (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 70 –100 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  Companies/Partnerships — Fines between 55 –70 daily rates depending e.g. on amount of advantage given/offered
X	X

## ALBANIA

Source 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	<p><b>Active corruption in the private sector</b> 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.</p> <p><b>Passive corruption in the private sector</b> 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.</p>	<p><b>Active corruption of persons exercising public functions, high state officials, and local elected/representatives</b> 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.</p> <p><b>Passive corruption of persons exercising public functions, high state officials, and local elected/representatives</b> 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.</p>
<b>The bribe</b>		
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 <sup>1</sup>	Depends on intent <sup>1</sup>
Is there any <i>de minimis</i> ?	X	X
Does the bribe have to be monetary?	X	X
<b>Public officials</b>		
Does the offence only apply to bribing public officials?	X	X
<b>Acts performed outside Albania</b>		
Can bribery performed outside Albania be caught?	✓ (regarding foreign nationals under certain conditions) <sup>2</sup>	✓ (regarding foreign nationals under certain conditions) <sup>2</sup>
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)
<b>Who can be liable</b>		
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) <sup>3</sup>	✓ (with regard to companies and partnerships under certain conditions) <sup>3</sup>
Foreign national domiciled or "ordinarily resident" in Albania if the bribe is committed outside Albania?	✓ (under certain conditions) <sup>4</sup>	✓ (under certain conditions) <sup>4</sup>
Foreign company/partnership if the bribe is committed abroad?	X	X
<b>Penalties</b>		
Penalties include:	<p><b>Private Sector</b></p> <p><b>Individuals</b></p> <ul style="list-style-type: none"> <li>— active corruption, imprisonment for up to 2 years and fine up to € 7,000</li> <li>— passive corruption, imprisonment for up to 3 years and fine up to € 21,000</li> </ul> <p><b>Companies</b></p> <ul style="list-style-type: none"> <li>— active corruption, fine up to € 7,000</li> <li>— passive corruption, fine up to € 35,000</li> <li>— other penalties such as termination, restriction of operation, debarment from tendering for public contracts; confiscation of benefits derived from bribery</li> </ul>	<p><b>Public Sector</b></p> <p><b>Individuals</b></p> <ul style="list-style-type: none"> <li>— 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</li> <li>— 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 €35,00</li> </ul>
<b>Defences</b>		
Are there any defences available?	X	X

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.

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 intent<sup>1</sup>

X

X

X

√  
(regarding foreign nationals under certain conditions)<sup>2</sup>

√  
(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)<sup>3</sup>

√  
(under certain conditions)<sup>4</sup>

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

X

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A stylized map of Europe and surrounding regions, including parts of North Africa and the Middle East. The map uses a dark blue color for landmasses and a light beige color for water bodies. Several cities are marked with white circles and labeled in white text. The cities shown are Warsaw, Moscow, Kyiv, Bratislava, Budapest, Zagreb, Belgrade, Bucharest, Sarajevo, Sofia, and Tirana. The text in the top right corner is white and set against the dark blue background of the map.

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