





Bird & Bird & First for Disputes

Bribery Act 2010



Country Comparison
January 2014

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/gifts is acceptable and does not amount to a bribe?
<p>Australia</p>  <p>Graham Maher Truman Hoyle Lawyers Tel: +61 2 9226 9888</p>	<p>Criminal Code Act 1995 (Cth) and other State and Territory laws.</p>	<p>Bribing a Foreign Public Official</p> <p>It is an offence to provide a benefit to another person, cause a benefit to be provided to another person or offer to provide or promise to provide a benefit to another person when the benefit is not legitimately due to that person and the person offering the benefit does so with the intention of influencing a Foreign Public Official in order to retain, or retain and obtain business or a business advantage.</p> <p>A ‘benefit’ includes any advantage and is not limited to property.</p> <p>A ‘business advantage’ includes any advantage in the conduct of business’</p> <p>A ‘Foreign Public Official’ includes:</p> <ul style="list-style-type: none"> • an employee/official of, or an individual who performs work for, a foreign government body; • an individual who holds/performs the duties of an appointment, office or position under a law (or created by custom or convention) of a foreign country or part of a foreign country; • an individual who is otherwise in the service of a foreign government body (including a member of a military or police force); • a member of the executive, judiciary or magistracy of a foreign country or part of a foreign country; • an employee of, or an individual who performs work for or performs duties for, a public international organisation; • a member/officer of the legislature of a foreign country or of a part of a foreign country; or • an individual who is an authorised intermediary of a Foreign Public Official or holds himself or herself out to be the authorised intermediary of a foreign public official. 	<p>Yes, the laws surrounding bribing a Foreign Public Official apply to Australian citizens, residents and companies, while the laws with respect to bribing a Commonwealth Public Official or bribing an agent apply to any individual and company.</p>	<p>Under the Criminal Code Act</p> <p>For individuals:</p> <p>As at January 2014, the maximum penalty is \$1.7 million (AUD) and/or 10 years imprisonment.</p> <p>For companies:</p> <p>As at January 2014, the greater of:</p> <ul style="list-style-type: none"> • \$17 million; • 3x the value of the benefit; • 10% of the company’s annual turnover during the period of 12 months ending at the end of the month in which the offence occurred (if the value of the benefit cannot be determined). <p>Under State/Territory Laws</p> <p>The maximum penalty differs between each State/Territory, but includes substantial fines for individuals and companies, and/or imprisonment for individuals up to 10 years.</p>	<p>Under the Criminal Code Act</p> <p>Yes, this law has extra-territorial application and can apply even if the act of bribery takes place abroad.</p> <p>Under State/Territory Laws</p> <p>These laws may have extra-territorial application so long as there is a real and substantial link between the act and the particular State/Territory</p>	<p>Under the Criminal Code Act</p> <p>Yes, a company can be held liable. The Criminal Code Act 1995 (Cth) specifically provides that if “intention” is an element in an offence, that element must be attributed to a body corporate that “expressly, tacitly or impliedly authorised or permitted the commission of the offence”.</p> <p>Authorisation or permission may be established by:</p> <ul style="list-style-type: none"> • proving that the company’s board of directors intentionally carried out the relevant conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence; • proving that a high managerial agent of the company intentionally engaged in the conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence; • proving that a corporate culture existed within a company that directed, encouraged, tolerated or led to non-compliance with that law; or • proving that the company failed to create and maintain a corporate culture that required compliance with that law. <p>It is a defence if the company proves that it exercised due diligence to prevent the conduct or the authorisation or permission.</p> <p><i>(continued overleaf...)</i></p>	<p>No, facilitation payments are permitted, provided that:</p> <ul style="list-style-type: none"> • the benefit obtained is of a minor nature; • the person making the payment was doing so to expedite or secure the performance of a “routine government action” of a minor nature; and • the person making the payment made a record of the conduct as soon as practicable after the payment was made and has kept that record. <p>A “routine government action” is an action of a Foreign Public Official that:</p> <ul style="list-style-type: none"> • is ordinarily and commonly performed by the official; <p><i>(continued overleaf...)</i></p>	<p>No. It is yet to be determined what constitutes a “minor benefit”.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Australia</p> 		<p><i>(continued from previous page...)</i></p> <p>Bribing a Commonwealth Public Official</p> <p>It is also an offence to bribe a Commonwealth Public Official in the same way as it is to bribe a Foreign Public Official, except that the person must dishonestly provide the benefit, cause the benefit to be provided or offer to provide or promise to provide the benefit. Further, there is no requirement that the act be done for the purpose of retaining, or retaining and obtaining business or a business advantage. There is also a separate similar offence without an intention element; instead it must be that the receipt or expectation of the receipt of the benefit would tend to influence a Commonwealth Public Official.</p> <p>Importantly, it is not necessary to prove that the defendant knew that the official was a Commonwealth Public Official or that the duties were duties as a Commonwealth Public Official.</p> <p>The list of who may be considered a “Commonwealth Public Official” is extensive and includes, but is not limited to, ministers, members of the Australian Federal Police and Defence Force, an individual who holds or performs the duties of an office established by or under a law of the Commonwealth and an officer or employee of a Commonwealth authority.</p> <p>Corruptly giving/offering benefits to Agents</p> <p>State and Territory laws criminalise the corrupt giving or offering an inducement or reward to an agent for doing or not doing something in relation to the affairs of the agent’s principles. Individuals who aid, abet, counsel, procure, solicit or incite the commission of these offences are also guilty of an offence.</p>				<p><i>(continued from previous page...)</i></p> <p>A director or officer, however, cannot be held liable for an employee’s actions unless the director or officer aids, abets, counsels or procures or incites the commission of the offence by that employee. Significantly, the director or officer must have intended that his or her conduct would have this effect and he or she will not be guilty for simply failing to engender an appropriate corporate culture.</p> <p>Under State/Territory Laws</p> <p>A corporation/employer may be liable, especially if the conduct occurred in the course of the employee’s employment, meaning that the conduct is sufficiently connected to the conduct authorised by the employer.</p>	<p><i>(continued from previous page...)</i></p> <ul style="list-style-type: none"> • is covered by any of the following: <ul style="list-style-type: none"> » granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in part of a foreign country; » processing government papers such as a visa or work permit; » providing police protection or mail collection or delivery; » scheduling inspections associated with contract performance or related to the transit of goods; » providing telecommunications services, power or water; » loading and unloading cargo; » protecting perishable products or commodities from deterioration; or » any other action of a similar nature; and • does not involve or encourage a decision about whether to award new business, whether to continue existing business with a particular person or the terms of new business or existing business. 	

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Belgium</p>  <p>Cedric Berckmans +32 (0)2 282 6000</p>	<p>Belgium Criminal Code</p>	<p>Public bribery exists where a person directly or indirectly proposes to a person exercising public duties, an offer, a promise or an advantage, of whatever nature for that person or for a third party, in order to perform or omit to perform an act which falls within the scope of that person’s function, or which is facilitated by that person’s position.</p> <p>Private bribery exists where a person directly or indirectly proposes to a person who is a director, proxy-holder or employee of a legal entity or of a physical person, an offer, a promise or an advantage, of whatever nature, for that person or for a third party, in order to, without knowledge or authorisation of the board of directors, the shareholders’ meeting, the principal or the employer, to perform or omit to perform an act which falls within the scope of his or her function, or which is facilitated by his or her position.</p> <p>Both paying or offering to pay (“active bribery”) and soliciting or accepting such a bribe (“passive bribery”) are unlawful, whether this is done directly or indirectly. Intent is necessary.</p> <p>Belgian public officials are under a duty to report bribery which they are aware of.</p>	<p>Yes.</p>	<p>Fine: €600 - €600,000 Imprisonment: 6 months to 15 years</p>	<p>As a general rule, Belgian courts have jurisdiction if the offence is committed in Belgium.</p> <p>In addition, in the event of public bribery, Belgian courts will also have jurisdiction if the recipient is either (i) a Belgian public official or (ii) a foreign public official who works for a public international law organisation which has a registered office in Belgium.</p> <p>Belgian courts also have jurisdiction where an act of bribery is committed by a Belgian citizen or a person resident in Belgium when the recipient is either (i) a person carrying out a public function in a foreign state or (ii) a person working in a foreign public international law organisation.</p>	<p>Yes, it is possible for the individuals and companies to be jointly liable.</p> <p>However, if the offence has not been committed “knowingly and wilfully”, either the legal entity or the individual will be held criminally liable, depending on who committed the “most material fault”.</p>	<p>Yes, when these fall within the definition of bribery.</p>	

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/gifts is acceptable and does not amount to a bribe?
<p>Brazil</p>  <p>Peter Knight +44 (0)20 7415 6000</p>	<p>Lei Anticorrupção or Law #12.846</p>	<p>Companies and legal entities are liable for three 3 different types of practices that are performed by their employees / representatives:</p> <p>(a) Bribery and corruption;</p> <p>(b) Fraud in relation to agreements entered into with the public administration; and</p> <p>(c) Prevention or impairment of investigations of any of the acts above by public authorities.</p>	<p>Individuals committing violations of Law #12.846 are responsible for their actions under pre-existing legal provisions.</p> <p>Under Law #12.846, the liability of the company / legal entity is not dependent upon the respective individual being held responsible for the same violation. Therefore, the proceedings against a legal entity may run independently from the proceedings related to the respective individuals. The liability of the legal entity shall be strict in nature, i.e. proof of negligence shall not be necessary in order to establish the existence of liability.</p>	<p>The fines applicable to legal entities held responsible for a violation of Law #12.846 may range from 0.1% to 20% of the gross turnover of the company in the latest fiscal year prior the start of the administrative proceeding (excluded taxes levied on turnover). The fine should not be lower than the benefit obtained with the illegal practice and its calculation shall not be limited to the business field in which the infraction occurred.</p> <p>A company may also be prohibited from receiving subsidies, donations or loans from public entities and/or government-owned financial institutions, for a period of between 1 and 5 years.</p> <p>Law #12.846 also sets forth a joint liability among controlling, subsidiaries and affiliated companies (or even companies forming a consortium) for the payment of the fines and the indemnification of damages resulting from the practice of illegal conduct.</p>	<p>Law #12.846 also applies in relation to acts performed abroad against foreign public authorities by any entity having its headquarters, an agency or a branch in Brazil.</p>	<p>Companies are liable for any illegal practices performed by their employees / representatives. Law #12.846 also declares officers and shareholders with powers over management jointly responsible for penalties imposed on the respective legal entity, to the extent they have acted with fault.</p> <p>A sound compliance program may be taken into consideration as a mitigating factor in the calculation of the fine.</p> <p>Law #12.846 also sets forth the possibility for a company to enter into a leniency agreement, where it cooperates fully with any investigation into its activities. Such cooperation with the authorities and compliance with the specific terms of the leniency agreement may reduce the administrative fine by up to two-thirds and avoid the company being prohibited from receiving subsidies, donations or loan from public entities and/or government-owned financial institutions.</p> <p>Leniency however does not protect the relevant legal entity from civil liabilities in connection with the indemnification of damages. Criminal immunity is also not available but as a rule in Brazil only individuals can be subject to criminal prosecution.</p>	<p>Facilitation payments are prohibited under Brazilian law. Companies are subject to civil and administrative liability and individuals can face imprisonment of up to 12 years and a fine. Law #12.846 does not alter this</p>	<p>Does the law define what level of corporate hospitality/gifts is acceptable and does not amount to a bribe?</p> <p>Law #12.846 does not specifically define what is acceptable by way of a gift or hospitality. However, given the strict liability of the offence, in which anything given may represent a risk for companies, it is essential that companies have policies that are consistent with local regulations for gifts, hospitality, and entertainment.</p>


Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
Czech Republic  Vladimir Nyc +420 226 030 500	Criminal Code and other Acts	Anti-bribery laws prohibit any form of acceptance, request, provision or promise of a bribe in connection with (i) procuring public interest affairs; or (ii) carrying out business activities.	Yes, but only individuals may be held liable.		Yes, this is possible under the Czech law.	No.	Yes, when these fall within the definition of bribery.	No. There is no such definition under Czech law.
Finland  Tom Vapaavuori Pekka Raatikainen +358 96 22 66 70	Criminal Code of Finland (39/1989)	<p>A person who promises, offers or gives an unlawful benefit in order to gain advantage from that benefit is deemed to have committed a bribery offence.</p> <p>Accepting a bribe is also punishable under criminal law.</p> <p>Where the alleged bribery concerns a public authority, that bribe must relate to acts connected with that authority’s functions in order to be prohibited under criminal law. Where alleged bribery concerns a member of the Finnish Parliament the bribe must likewise be related to the member’s acts within parliamentary activities.</p>	Yes.	A company may also be prohibited from receiving subsidies, donations or loans from public entities and/or government-owned financial institutions, for a period of between 1 and 5 years.	<p>Where the alleged bribery concerns a public authority and/or a member of the Finnish Parliament, the offender can be prosecuted in Finland by default.</p> <p>Where the alleged bribery concerns other persons than a public authority and/or a member of the Finnish Parliament, prosecution in Finland requires that the act of bribery is criminalised by law in the state or country in which the alleged act of bribery is committed.</p>	Corporate entities may also be liable for offences committed by a person acting on its behalf.	Yes, when these fall within the definition of bribery.	No.


Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>France</p>  <p>Loic Poullain +33 (0)1 42 68 6000</p>	<p>French Criminal Code</p>	<p>Direct or indirect offers, promises, gifts or advantages made in order to induce a French (or non-French) public official to:</p> <p>(i) either perform or not perform an act pertaining to his public functions or an act facilitated by his public functions; or</p> <p>(ii) abuse his real or apparent influence, with a view to obtaining a favourable award or decision from a public body on behalf of the briber.</p> <p>An act of bribery directed towards a foreign public official in connection with an international business transaction is also a criminal offence, as is influencing or attempting to influence national or international court experts, arbitrators, judges or foreign public officials.</p>	<p>Yes.</p>		<p>French Courts have jurisdiction when a bribery offence is partly or wholly committed within French territory. They also have jurisdiction in relation to offences committed outside of French territory if the acts are connected with, or are inseparable from offences committed in France, or if the offence was committed by a French citizen or corporation (provided that the act also constitutes an offence pursuant to the laws of the nation where the act took place).</p>	<p>Similar criminal offences exist in relation to bribery committed by an individual or corporation within the private sector. In such instances, French criminal law does not distinguish between a bribe directed towards either a public or private sector recipient. Receiving (or consent to receive) a bribe from a private sector person is also a criminal offence.</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>Rather than applying specific criteria to determine whether a gift or payment is criminal, the French Courts take a holistic approach and will consider all relevant factors. It is commonly understood that, to be legal, a gift should be: (i) relatively inexpensive; (ii) made out of courtesy; and (iii) rarely be given. French Judges will also take into account the following criteria to determine whether a gift is lawful: (i) whether the gift is bona fide, reasonable and proportionate; and (ii) whether the gift is made with corrupt intent.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Germany</p>  <p>Alexander Duisberg Bernd Schmidt +49 (0)89 3581 6000</p>	<p>German Criminal Code (Strafgesetzbuch - StGB)</p>	<p>Within the public sector, granting of undue advantages to public officials or a third party in order to influence (e.g. expedite) administrative procedures and/ or to obtain official decisions may be subject to criminal sanctions for both, the recipient of the bribe and the person offering or granting the bribe.</p> <p>Whether or not the administrative decision itself is lawful or unlawful is only of relevance for categorising the severity of the criminal offence.</p> <p>Within the private sector, there is a fine line between legitimate business marketing and criminal activity. Activities which are traditionally associated with corruption (e.g. the donation of gifts, travel invitations, discounts etc.) may be criminal to the extent that such activities are based on the expectation of an illegal preference given in an unfair manner in relation to (and in exchange for) prospective business.</p> <p>In addition to these “traditional” acts of bribery, some activities which are traditionally not associated with bribery, may be in breach of criminal law (depending on the circumstances), such as career promotions or sexual attention.</p>	<p>Yes.</p>	<ul style="list-style-type: none"> • Law #12.846 also sets forth a joint liability among controlling, subsidiaries and affiliated companies (or even companies forming a consortium) for the payment of the fines and the indemnification of damages resulting from the practice of illegal conduct. 	<p>Receipt or payment of a bribe by a German national is criminal, irrespective of where the act is committed and irrespective of whether or not there is any effect in Germany. Thus, the fact that bribery and facilitation payments may form part of business customs in certain parts of the world is no sufficient defence in German (criminal) proceedings.</p>	<p>Yes.</p> <p>Companies can also be liable under the Administrative Offences Act (Ordnungswidrigkeitengesetz - “OWiG”) for bribery committed by an employee. However, in such instances, it must be established that (i) the company has not complied with its duty of care, by failing to take appropriate measures which are reasonably likely to prevent such conduct by its employees, and that (ii) taking appropriate measures by the company would have prevented or rendered impossible the act of bribery.</p> <p>As a defence, the company may show that it had implemented such measures to prevent bribery.</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>No.</p> <p>The German Criminal Code (StGB) generally covers (i) granting substantial and tangible hospitality/ gifts (e.g. presents, travel invitations, discounts etc.), and (ii). insubstantial or intangible benefits (e.g. career promotion, sexual attention etc.), to the extent such conduct is aimed at obtaining a favourable decision of any official of public authorities or, within the private sector, in case the offender expects a preference in an unfair manner in relation to (and exchange of) prospective business.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Hong Kong</p>  <p>Richard Keady +852 2248 6000</p>	<p>Prevention of Bribery Ordinance</p>	<p>The basic elements of a bribery offence under the Ordinance is where a person, without lawful authority or reasonable excuse, offers (or accepts) an advantage as an inducement or reward for performing or abstaining from certain acts.</p> <p>“Advantage” is defined broadly under section 2, which includes, among others, any payment, gift, loan, fee, reward, service or favour, but does not include entertainment. ‘Entertainment’ is defined to be provision of food or drink, for consumption on the occasion it is provided and any other entertainment connected with it.</p> <p>In the public sector, sections 4 to 8 of the Ordinance prohibit any public servant, public body and the Chief Executive of Hong Kong from receiving bribes. The same sections also provide for the briber’s criminal liabilities.</p> <p>In the private sector, the Ordinance prevents an “agent” (defined to include “any person employed by or acting for another”) from accepting or offering a bribe (section 9).</p> <p>Under section 11, the giver or acceptor of a bribe are both guilty regardless of whether or not the acceptor of the bribe has the power, right or opportunity to carry out the act bribed for. In addition, the acceptor of the bribe is still guilty under section 11 even if he has no intention (or opportunity) to do the act bribed for.</p> <p>Any person convicted of conspiracy to commit an offence provided for under sections 4 to 11 shall be dealt with and punished in like manner as if convicted of such offences (section 12A).</p>	<p>Yes.</p>	<p>Any person guilty of the offence under sections 5 and 6 (being bribes relating to procurement of public contracts or tenders) shall be liable to a fine of HK\$500,000 and to 10 years imprisonment (on conviction on indictment) or a fine of HK\$100,000 and 3 years imprisonment (on summary conviction).</p> <p>Any person guilty of the offence under sections 4, 7 - 9 and 11 shall be liable to a fine of HK\$ 500,000 and to 7 years imprisonment (on conviction on indictment) or a fine of HK\$100,000 and 3 years imprisonment (on summary conviction).</p> <p>In addition, any person convicted of an offence shall be ordered by the court to pay to such person or public body in such manner as the court directs, the value of any advantage received by him.</p>	<p>A public servant or the Chief Executive of Hong Kong will be criminally liable should they take bribes anywhere in the world in performance of any act in their respective capacities as public servant and Chief Executive. The briber may also criminally liable, regardless of whether he is located within or outside of Hong Kong. However, there is no extra-territorial effect in relation to bribes paid in the private sector under section 9.</p>	<p>No (unless the senior official is a co-conspirator).</p>	<p>Yes, when these payments fall within the bribery offences under the Ordinance (i.e. offering or accepting an advantage as an inducement or reward for performing or abstaining from certain acts).</p>	<p>The Hong Kong Chief Executive has issued an ‘Acceptance of Advantages (Chief Executive’s Permission) Notice 2010’ which sets out various rules for public servants. These provide that that where there are no official dealings between the parties, the acceptance of certain low value gifts or loans is permitted such as: (i) a loan which does not exceed HK\$1,500, where it is repaid within 30 days; (ii) a gift (including money) given on an occasion when gifts are traditionally given which does not exceed HK\$1,500; and (iii) gifts at any other time which do not exceed HK\$250.</p> <p>It is also important to note that ‘entertainment’ is not included in the definition of advantage in the Ordinance.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Italy</p>  <p>Edoardo Courir +39 02 30 35 6000</p>	<p>Italian Criminal Code (ICC), the Italian Legislative Decree No.231/2001 (Decree) and Italian Civil Code</p>	<p>ICC: (Article 318) Bribery for the exercise of functions: the public official who, in the exercise of its functions or powers, receives money or any other advantage or the promise thereof, for himself or a third party, as undue payment for performing or having performed acts related to his office.</p> <p>(Article 319) Bribery for acts against official duties: the public official who receives money or any other advantage or the promise thereof, for himself or a third party, for omitting or delaying or for having omitted or delayed acts relating to his office, or for performing or having performed acts in breach of his official duties.</p> <p>(Article 319 - quater) Undue inducement to give or promise advantages: unless the fact constitutes a more serious criminal offence, the public official or whoever in charge of public service, abusing his office or his powers, induces someone to unduly give or promise him or a third party money or other advantages.</p> <p>(Article 321) Penalties for the corrupting: any person giving or promising money or any other advantage to a public official or a person in charge of a public service.</p> <p>Decree: Any entity, irrespective of its legal form, may be subject to administrative sanctions in relation to the criminal offences committed by its officers/ employees/ agents in its interest or to its advantage. The entity is also liable when the individual who actually committed the offence has not been identified or is not chargeable as well as when the offence is extinguished for reason other than an amnesty.</p> <p>Italian Civil Code: (Article 2635) Bribery in private sector: unless the act constitutes a more serious criminal offence, directors, general managers, managers responsible for drafting financial reports, auditors and liquidators, whose, following the offer or the promise of money or other advantage, for themselves or others, fulfil or omit to fulfil some acts in violation of the obligations deriving from their office and duty of loyalty, causing harm to the company.</p>	<p>Yes, but only individuals may be subject to criminal liability pursuant to the ICC.</p> <p>Please note that the Decree does not apply to the State, to territorial public bodies, to other non-economic public bodies or to bodies performing constitutionally significant functions.</p>	<p>ICC: Imprisonment (i) from 1 year to 5 years in case of bribery for the exercise of functions, (ii) from 4 years to 6 years in case of bribery for acts against official duties, except for cases with extenuating or aggravating circumstances and (iii) from 3 years to 8 years in case of undue inducement to give or promise advantages.</p> <p>The price or the profit of the offence are always confiscated from the guilty parties.</p> <p>Decree: No criminal sanctions since the penalties that may be imposed on a company are:</p> <ul style="list-style-type: none"> • pecuniary fines; • prohibition on the company to carry on its activity on a temporary basis; • revocation or forfeiture of authorisations and licenses issued by the Public Administration relating to the offence committed; • prohibition to contract with the Public Administration, save for the supplying of public services; • exclusion from State financial facilities and revocation of those awarded to date; • prohibition to advertise company's goods or services. <p>The judge may also impose additional sanctions, such as the confiscation of the price or profit deriving from the crime.</p>	<p>A company located in Italy is, under certain circumstances, subject to the Decree even if an offence is committed abroad an individual may be subject to the ICC and - as a consequence - a company located in Italy under certain circumstances, may be held liable in relation to such offence pursuant to the Decree.</p>	<p>Yes.</p> <p>The Decree provides that an entity incurs an administrative liability for offences committed in its interest or to its advantage:</p> <p>a) by persons serving as representatives, or holding administrative or senior executive positions within the company or an organisational unit of same, as well as by persons actually exercising management and control of the entity (even as a matter of fact);</p> <p>b) by persons under the direction or supervision of one of the persons as per subparagraph (a).</p> <p>The entity cannot be held liable if the persons above mentioned act solely in their own interest or in the interest of a third party.</p> <p>The Decree provides that if an offence is committed by the persons above mentioned the company is not liable if it is able to demonstrate that:</p> <p>a) the executive body adopted and efficiently implemented, prior to commission of the offence, organisational and management models which are capable of preventing offences of the type occurring;</p> <p>b) the task of overseeing such operations, and ensuring the compliance with the models has been delegated to a Supervisory Body within the company vested with powers to act on its own initiative and conduct monitoring;</p> <p>c) the persons committed the offence by fraudulently circumventing the organisational and management models; or</p> <p>d) there has been no omission or insufficient oversight by the Supervisory Body. The Decree specifies that a useful measure is the introduction of a specific code of conduct within the entity.</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>No.</p>


Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Malaysia</p>  <p>Tay Beng Chai Tay & Partners Tel: +603 2050 1888</p>	<p>Malaysian Anti-Corruption Commission Act 2009 (Act 694)</p> <p>Tan Sri Abu Kassim Mohamed is the current Chief Commissioner of the Malaysian Anti-Corruption Commission.</p> <p>Headquarters contact no. : 03-88867000</p>	<p>There are seven basic bribery offences applicable to both individuals and corporations:</p> <ul style="list-style-type: none"> • Section 16 - offence of accepting gratification; • Section 17 - offence of giving or accepting gratification by agent; • Section 18 - offence of intending to deceive principal by agent; • Section 20 - corruptly procuring withdrawal of tender; • Section 21 - bribery of officer or public body; • Section 22 - bribery of foreign public officials; and • Section 23 - offence of using office or position for gratification. <p>Section 25 provides there is a mandatory duty to report bribery transactions for any person to whom any gratification is given, promised or offered and any person from whom any gratification has been solicited or obtained, or an attempt has been made to obtain such gratification. A failure to comply with this duty renders an offence.</p> <p>Even if the purpose for which the gratification given or accepted was not carried out or the gratification given or accepted was not in relation to the principal's affairs or business, the acceptor or giver will still be guilty (Section 19).</p>	<p>Yes.</p>	<p>Section 24(1) - Any person who commits an offence under Sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to:</p> <ul style="list-style-type: none"> • imprisonment for a term not exceeding twenty years; and • a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher. <p>Section 24(2) - Any person who commits an offence under Section 18 shall on conviction be liable to:</p> <ul style="list-style-type: none"> • imprisonment for a term not exceeding twenty years; and • a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher. 	<p>Any person who, whether within or outside Malaysia, whether directly or indirect, whether on its own behalf or on behalf of any other person, enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject matter of an offence under Section 16, 17, 18, 20, 21, 22 or 23 commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding seven years or to both (Section 26).</p>	<p>Yes where the employee or third party is acting for the company.</p>	<p>Yes, when these fall within the definition of 'gratification'.</p> <p>A "gratification" means (Section 3) –</p> <p>(a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;</p> <p>(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;</p> <p>(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;</p> <p>(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;</p> <p>(e) any forbearance to demand any money or money's worth or valuable thing;</p> <p>(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and</p> <p>(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).</p>	<p>No. The Act does not contain any such definition.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Netherlands</p>  <p>Evelyn Tjon-En-Fa +31 703 538 800</p>	<p>Dutch Criminal Code</p>	<p>Natural as well as legal persons can commit “active” bribery offences, and so both private individuals and public bodies may face sanctions for such “active” offences. However, the “passive” bribery offences are only directed at, and can only be committed by, certain individuals, namely civil servants and judges.</p>	<p>Yes.</p>	<p>Where a person bribes a civil servant, that person may face a sentence of 4 years’ imprisonment or a fine of up to €81,000. Where the person being bribed is a judge, this penalty may increase to 9 years’ imprisonment (with the same level of fine).</p>	<p>The following persons can be prosecuted in the Netherlands in respect of offences committed outside of the jurisdiction:</p> <ul style="list-style-type: none"> (i) a Dutch civil servant who has been bribed abroad; (ii) anyone who has bribed a Dutch civil servant abroad; (iii) a Dutch civil servant or employee of an international institution which is “seated” in the Netherlands who is being bribed, either domestically or abroad; or (iv) a Dutch citizen who has bribed a (foreign) civil servant abroad. <p>Furthermore, it should be noted that any bribery offence committed in a foreign jurisdiction must be punishable under local law in order for it to contravene the Dutch bribery offences.</p>	<p>Companies can also be liable under the criminal law for bribery committed by an employee. However, in such instances, the Public Prosecutor has to prove that the company has not complied with its duty of care, by failing to take those actions which it could reasonably be expected to take in order to prevent such conduct by its employees. Moreover, companies may also be liable under civil law regarding bribery acts by their employees.</p>	<p>Yes, when these fall within the definition of bribery, but generally prosecutions are limited to cases where a substantial amount has been paid.</p>	<p>No relevant provision.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Poland</p>  <p>Kuba Ruiz +48 22 537 4900</p>	<p>Polish Criminal Code (art. 228, 229, 230, 230a, 250a, 296a)</p>	<p>The Polish Criminal Code penalises the following types of bribery:</p> <p>1) Bribing a person performing public functions</p> <p>The offence of “passive” bribery is committed only by a person performing public functions who accepts, in connection with his official capacity, a material or personal benefit or a promise of such benefit. A person performing public functions who makes the performance of an official act dependent on receiving a material or personal benefit or a promise of such benefit also commits the offence of “passive” bribery.</p> <p>An “active” bribery offence can be committed by any person who gives a material or personal benefit or promises to provide it to a person performing public functions in connection with their official capacity.</p> <p>This type of bribery also includes situations in which a person, claiming to have an influence on a public authority, accepts a personal or material benefit in exchange for using its influence. The person who gives the benefit in the situation described above is responsible for active bribery.</p> <p>2) Bribing an elector</p> <p>This type of “passive” bribery occurs when a person entitled to vote in any kind of election accepts, in connection with his voting capacity, a material or personal benefit or demands such a benefit in exchange for voting in a certain way.</p> <p>Any person who gives a material or personal benefit is responsible for “active” bribery.</p> <p>3) Bribing a person performing executive functions</p> <p>In this type, bribery is committed by a person performing executive functions in any kind of an enterprise, who accepts (in connection with his function) a material or personal benefit or a promise of such benefit for an abuse of his powers or misconduct of his duties that may result in a material damage.</p> <p>A bribery offence is also committed by any person who gives a material or personal benefit or promises to provide it to a person performing executive functions in connection with their capacity.</p>	<p>Yes.</p>	<p>1) Imprisonment from 6 months to 8 years.</p> <p>Imprisonment from 1 to 10 years for accepting or giving a bribe for an act breaching the law.</p> <p>Imprisonment from 2 to 12 years if the benefit is of considerable value.</p> <p>In cases of minor significance a person may be punished with a fine, restriction of liberty or imprisonment of up to 2 years.</p> <p>2) Imprisonment from 3 months to 5 years.</p> <p>In cases of minor significance a person may be punished with a fine, restriction of liberty or imprisonment of up to 2 years.</p> <p>3) Imprisonment from 3 months to 5 years.</p> <p>Imprisonment from 6 months to 8 years if the damage caused by the bribery was significant.</p> <p>In cases of minor significance a person may be punished with a fine, restriction of liberty or imprisonment of up to 2 years.</p>	<p>The general rule limits the application of the Polish Criminal Code to perpetrators committing offences in Poland. However, the penalties for “passive” bribery stipulated in the Polish Criminal Code may also be imposed on a person, who in connection with performing a public function in a foreign state or organization, accepts a financial or personal benefit, or a promise thereof, or demands such benefit, or makes the performance of an official act dependent on the receipt of such benefit.</p> <p>Furthermore, the Polish Criminal Code may be applied to perpetrators who committed offences abroad, but only if that offence (e.g. bribery) committed in a foreign jurisdiction is also punishable under local law.</p>	<p>Yes.</p> <p>A company may be liable for actions of its employee or a third person acting on its behalf, if the person commits an offence and/or the company benefit from the fact of the offence.</p> <p>A company may be discharged from criminal liability if it proves due diligence in performing its managerial and supervisory tasks.</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>Whether a gift or a payment will be considered a bribe depends on the circumstances in which it was given and its value. The Criminal law does not define any level of corporate hospitality gifts that are acceptable and will not be considered a bribe. However, Polish tax law states that gifts worth up to 200 PLN may be declared for taxation. Thus, 200 PLN is considered as a benchmark price for corporate hospitality gifts.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Russian Federation</p>  <p>Anna Shashina +44 (0)20 7415 6000</p>	<p>Criminal Code and other Acts (criminal liability for individuals)</p> <p>Code of Administrative Wrongdoings (administrative liability for companies).</p>	<p>Anti-bribery laws prohibit being bribed or bribing a state official (interpreted widely), foreign public official, official of a public international organisation and/ or executive of a commercial or other organisation.</p> <p>Russian state officials have a duty to report to its employer, public prosecution office and other state bodies the instances when they are approached with bribery.</p>	<p>Yes, but only individuals may be subject to criminal liability.</p>	<p>Individuals: Penalties for general offences of serving as an intermediary in, being bribed and bribing a state official, foreign public official and/or official of a public international organisation are linked to the amount or monetary estimate of a bribe which falls within ordinary (not exceeding RUR25,000), significant (exceeding RUR25,000), high (exceeding RUR150,000) and major (exceeding RUR1,000,000).</p> <p>Penalties for all offences include:</p> <p>Fine up to 100 times the amount or monetary estimate of a bribe, which is limited to RUR500,000,000 and/or prohibition to hold certain jobs or be employed in certain professions; or</p> <p>Up to 15 years imprisonment and a fine (in certain cases).</p> <p>Companies (Code of Administrative Wrongdoings): Fine linked to the amount or monetary estimate of a bribe, which falls within ordinary (not exceeding RUR 1,000,000), high (exceeding RUR1,000,000) and major (exceeding RUR20,000,000), with the minimal amount of the fine being RUR 1,000,000 and maximum being 100 times the amount or monetary estimate of the bribe. The bribe (including money, shares, property, proprietary rights etc) is subject to confiscation.</p>	<p>Yes, it is possible.</p>	<p>Yes, an official executive of a commercial or other organisation (hereinafter a senior officer) who instructs an employee to bribe in the interests of the organisation, and the employee who bribes, may be liable under the Criminal Code. (In addition to criminal prosecution of a senior officer/an employee.)</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>Some gifts the value of which does not exceed RUR3,000 and which do not qualify as bribery may be legitimate under the Civil Code. A legitimate gift represents a token of gratitude to an official for his/her legitimate actions/omissions to act and should not be agreed in advance.</p>


Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Singapore</p>  <p>Naresh Mahtani Boey Swee Siang +65 6534 5266</p>	Prevention of Corruption Act	<p>The corrupt giving or receiving of gratification, as an inducement to or reward for any person doing or forbearing to do anything.</p> <p>If gifts are given to public agents, that gift is presumed to be corrupt unless proven otherwise.</p>	Yes.	<p>Punishments increase in severity if politicians or public servants are involved in such corrupt acts.</p> <p>An amount equivalent to the value of any bribe will be imposed as a penalty on the guilty party.</p> <p>In addition, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1999 provides the Singaporean police with powers to freeze and confiscate properties and assets obtained by corrupt practices.</p>	There is no distinction between acts and/or omissions of a citizen whether committed within or outside of Singapore.	<p>Where the company conspires with the employee or 3rd party to commit an offence under this Act, it will be liable under the Act.</p> <p>There are no special defences available.</p>	Yes, when these fall within the definition of corrupt “gratification”.	<p>No. The Act does not contain any such definition.</p> <p>Irrelevant that any giving is customary in any profession, trade, vocation or calling; and evidence of such custom is inadmissible as a defence.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Slovakia</p>  <p>Tomas Blazej +421 232 332 800</p>	Criminal Code No. 300/2005	Provisions of the Slovak Criminal Code on corruption and bribery prevent an individual from promising, offering or giving a bribe, whether directly, or indirectly via an intermediary. The Code also prohibits individuals from requesting, receiving or accepting an offer or promise of a bribe, which would result in a breach of that individual’s obligations arising from their employment, function or position.	Yes.	<p>Individuals (most common sanctions):</p> <ul style="list-style-type: none"> • Imprisonment up to 15 years; • Pecuniary sanction from €160 to €331,930; • Forfeiture of property; • Forfeiture of a thing/ item; and • Proscription/prohibition to carry out the activity to which the unlawful act is related from 1 year to 10 years. <p>Legal entities:</p> <ul style="list-style-type: none"> • Forfeiture of property; • Forfeiture of pecuniary amount from €800 to €1,660,000. <p>(exempted from this sanctions is property of state, EU, bodies of foreign states and international public law organisations).</p>	Very limited extra-territorial application in instances where the breach of rights resulting from an act or bribery or corruption committed abroad occurred in Slovakia according to the Code’s provisions. Therefore, generally, the Slovak Courts do not have jurisdiction in relation to acts of bribery and/or corruption carried out outside of Slovakia.	<p>Corporate entities can be held criminally liable if a director commits a criminal offence (e.g. bribery or corruption) or if a director fails to perform his supervisory and managerial tasks and as a result, a criminal offence is committed by a subordinate officer of the corporation.</p> <p>There are no special defences available.</p>	Yes, but the seriousness of the whole act will be considered in cases where the payment is small.	<p>The value of a payment or gift is an important factor for consideration when determining whether it amounts to criminal corruption/bribery. The manner and circumstances in which the corrupt act or bribery was committed, its consequences, the culpability of the individual and the incentive/motive for these acts will be taken into account when assessing the seriousness of the criminal offence.</p> <p>The aim of the person providing the gift/ corporate hospitality must not be to induce the recipient to breach their obligations arising as a result of their employment, function or position.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Spain</p>  <p>Javier Fernández-Samaniego +34 (0)91 790 6000</p>	<p>Articles 419-427 of the Spanish Criminal Code (Organic Law 10/1995, of 23 November) (“SCC”). Please note that such code has been subjected to an in-depth reform, approved on 22 June 2010 by Organic Law 5/2010 and in force as from the 23 December 2010.</p>	<p>The SCC distinguishes the following types of bribery:</p> <ol style="list-style-type: none"> 1. Bribery in order to commit a crime (Article 419 SCC): The civil servant or public authority accepts the gratuity in exchange for (i) performing an action contrary to his/her obligations, (ii) an unjustified delay of an action typical to his office, or (iii) omission of the performance of an action typical to his office. 2. Bribery in order to commit an unfair action (Article 420 SCC): The civil servant or public authority accepts the gratuity in exchange for performing an action while performing his/her duties, not constituting a criminal offence. 3. Bribery in order to perform an action typical of his office: The civil servant or public authority accepts the gratuity in exchange for performing an action typical of his office (Article 422 SCC), or as a reward for something he/she has already done (Article 421 SCC). <p>Criminal figures are also applicable to jurors, arbitrators, experts or any person performing public services (Article 423 SCC).</p> <p>According to Article 424 SCC, the people responsible for offering the abovementioned gratuities, or just acceding the civil servants or public authorities requests, shall also be considered liable for bribery.</p>	<p>Yes. Please note that the new reform introduces also bribery between private individuals as a criminal offence (article 286 bis).</p>	<ol style="list-style-type: none"> 1. Bribery in order to commit a crime (Article 419 SCC): It would entail a 3-6 years’ imprisonment, a 12-24 months fine, and a 7-12 years’ special disqualification for the public office. [The aforesaid notwithstanding the applicable penalties for the crime committed.] 2. Bribery in order to commit an unfair action (Article 420 SCC): If the unfair action is committed; it would entail a 2-4 years’ imprisonment, a 12-24 months fine , and a 3-7 years’ special disqualification for the public office. 3. Bribery in order to perform an action typical of his office: If the civil servant or public authority accepts the gratuity in exchange for performing an action typical of his office (Article 422 SCC); it would entail a 6 months-1 year’ imprisonment and a 1- 3 years’ special disqualification for the public office. If bribery is accepted as a reward for something he/she has already done (Article 421 SCC); it will entail the penalties described above in relation to the action performed. 	<p>Yes.</p>	<p>Please note that the new reform of the Code expressly introduces the criminal liability of the companies and legal entities (Article 31 bis SCC).</p>	<p>Yes.</p>	<p>The Spanish Criminal Code does not define what it is meant by “Corporate Hospitality” and when a present or gift could be considered as a bribery offence or not (in principle, acceptance of any gift or benefit could be considered as a bribery offence).</p> <p>However, article 54.6 of the “Spanish Statute of the Public Employee” (Law 7/2007, of 12 April) establishes that public employees may accept those gifts or presents seen as customary in our country.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>Sweden</p>  <p>Ulf Mellqvist Maria Grufman +46 (0)8 5063 2000</p>	<p>Penal Code Chapter 10.</p>	<p>Bribery: A person who, to an employee or contractor gives, promises or offers a bribe or other improper reward, whether for himself or any other person, for the exercise of official duties.</p> <p>Bribe-taking: An employee or contractor who, whether for himself or any other person, receives, accepts a promise of or demands a bribe or other improper reward for the performance of his duties. Equivalent terms are applicable on a competitor or official in a competition which is subject to public bets.</p> <p>In practice, the final test of impropriety will be if the illicit payment in casu is likely to attract and to influence a person placed in the same position as the recipient, i.e. to make him or her feel to be under an obligation to the briber. The bribe and bribe-taking regulations covers both the public and the private services.</p>	<p>In the public sector only private individuals can be held responsible.</p>	<p>The Penal Code: Fines and imprisonment for not more than 2 years. If the crime constitutes a serious offence the beneficiary/ recipient may be punished by imprisonment for no less than 6 months and a maximum period of 6 years.</p> <p>The Marketing Act: Fees and damages.</p>	<p>A crime committed outside of Sweden shall be tried under Swedish law by a Swedish Court of Law - inter alia - if the crime was committed by a Swedish citizen or by a person domiciled in Sweden, or by a person who has become a Swedish citizen or has taken domicile in Sweden subsequently to the crime, or by a foreigner staying in Sweden, if the crime is classified as serious, provided in all three cases that the crime is punishable under the lex loci delicti.</p>	<p>If illicit payments are made by a company or any other juristic person, the directors or employees who have taken part in the activity will be responsible. A company or a senior officer can also be held responsible if it provides money or other assets and thereby supports and makes the bribery possible by gross negligence. The obvious defence would be to argue that there is no link between the company and the agent since an independent agent acting on its own will be punished on its own.</p>	<p>Yes, when these fall within the definition of bribery.</p>	<p>Christmas and anniversary gifts etc. to employees must be of reasonable value to be accepted under the terms provided in taxation laws. Within the private sector these types of gifts are harder to assess since the case law deals mainly with the state and its officials. However, there are some cases, and this suggests that there is a presumption for impropriety if a the value of a gift can be estimated in five figures or more.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>United Arab Emirates</p>  <p>James Leeson +971 (0)50 8192473</p> <p><i>Produced in collaboration with Willem Steenkamp of Al Tamimi & Company</i> +971(0)4 3641641</p>	<p>Federal Penal Code 1987 (as amended) and various Emirate specific legislation.</p>	<p>A “Bribe” is considered to be anything that confers a benefit on a public or private sector employee with the intent to procure that such employee acts in a way that violates the duties assigned to his function or to commit an act that falls outside such duties.</p> <p>The key individuals who may be subject to prosecution under the Penal Code in the context of an offence of bribery (“Bribery”) vary depending on whether the Bribe relates to a public sector or private sector employee. Usually there are three main categories namely (i) the recipient of a Bribe, (ii) the offeror of a Bribe and (iii) the facilitator of a Bribe:</p> <p>Public Sector - Recipients: (i) Any public officer who solicits, either for himself or for another or accepts a Bribe in exchange for either: (a) doing or omitting to do something in violation of his official duties; or (b) doing something which falls outside the scope of his official duties. (ii) Any individual who solicits, either for himself or for another or who accepts a Bribe in exchange for exerting their influence over a public official.</p> <p>Public Sector - Offeror: Any individual who offers a Bribe to a public officer (regardless of whether the Bribe is accepted).</p> <p>Public Sector - Facilitators: Any individual who acts as a mediator in the Bribery or attempted Bribery of a public officer or any individual who is in a position to exert influence over a public officer.</p> <p>Private Sector - Recipient: Any member of the board of directors of a private sector company as well as any manager and employee who solicits and/or accepts a Bribe in exchange for doing or omitting to do something in respect of his duties. It should be noted that to date, the act of offering a Bribe in the private sector does not constitute an offence, however, the authorities may soon extend the provision of the Penal Code to criminalise this act also.</p> <p>In all instances described above, the offence of Bribery will be perpetrated regardless of whether the recipient of the Bribe intends to do or omit to do the act to which the Bribe relates and mere acceptance of the Bribe is sufficient to constitute the offence.</p> <p>There is also specific legislation at both federal and Emirate specific level which deals with for example, the standards of conduct expected from all government employees in order to curb corrupt practices.</p>	<p>Yes - see comments in previous column.</p> <p>It should be noted that the definition of public officer has been construed very broadly by the authorities in the Emirate of Dubai and may even encompass employees of government owned or semi-owned private entities. The authorities in the Emirate of Abu Dhabi, on the other hand, take a more narrow approach and do not classify such employees as public officers.</p>	<p>In relation to each of the individuals mentioned in the preceding column, the following penalties shall apply:</p> <p>Public Sector - Recipients: (i)(a) Up to 10 years imprisonment, confiscation of the benefit accepted and a fine (see comment below) if the Bribe relates to an act associated with his official duties; or (b) Up to 5 years imprisonment, confiscation of the benefit accepted and a fine (see comment below) if the Bribe relates to an act which falls outside the scope of his official duties. (ii) Not less than 1 year imprisonment, confiscation of the benefit accepted and a fine (see comment below) not exceeding AED 10,000.</p> <p>Public Sector - Offeror: Up to 5 years imprisonment, confiscation of the benefit offered and a fine (see comment below).</p> <p>Public Sector - Facilitators: Up to 5 years imprisonment, confiscation of the benefit offered and a fine (see comment below)</p> <p>Private Sector - Recipient: Up to 5 years imprisonment, confiscation of the benefit received by them and a fine (see comment below).</p> <p>(Note: the value of any fine in respect of the above penalties shall be the greater of the value of the relevant Bribe and AED 1,000).</p>	<p>Yes - an offence of Bribery shall be deemed committed in the UAE if any one of the elements of such offence has been committed within the borders of the UAE or if the effects of the Bribe (i.e. the acts performed in exchange for the Bribe) were intended to be executed within the UAE.</p> <p>It should be noted that in the context of multinational companies which have offices in the USA, UK and the UAE, a particular act of Bribery which occurs in the UAE could lead to such company being prosecuted not only in the UAE, but also under appropriate anti-bribery legislation in the USA and the UK.</p>	<p>Yes - corporate liability may be established in addition to or in substitution for the liability of an individual, where the act is performed by or on account of the company or in its name by its representatives, directors or agents in which event the manager or CEO of the company may be held accountable by the authorities.</p> <p>Generally, a senior officer of a private company (i.e. manager or CEO) will most likely only face criminal liability in either of the following scenarios: (a) if he was actively involved in the commission of a Bribery offence in the context of a public officer; or (b) if he was the recipient of a Bribe.</p>	<p>Yes - the relevant authorities consider any type of facilitation payment as constituting an act of Bribery.</p>	<p>No - although there is some guidance in some of the Emirate specific legislation relating to what gifts might be acceptable to a government employee.</p> <p>Generally, the relevant authorities do have regard to certain factors in order to determine whether a particular event of corporate hospitality/gift constitutes a Bribe being: (a) The value or materiality thereof; (b) The frequency with which it is offered; (c) The intention with which it is provided; and (d) The relevance thereof to the offeror and the recipient.</p> <p>As a rule of thumb, provided that the event of corporate hospitality/gift is reasonable and not extravagant in the circumstances, the relevant authorities should not generally regard it as being inappropriate and constituting a Bribe.</p>

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>United Kingdom</p>  <p>Michael Brown Peter Knight Steven Baker +44 (0) 20 7415 6000</p>	Bribery Act 2010	<p>There are three general offences applicable to individuals and corporations:</p> <p>Section 1: bribing another person; Section 2: being bribed; and Section 6: bribing a foreign public official, for which the only defence is if the briber can show that the recipient was permitted or required to receive the bribe under the written law applicable to the recipient.</p> <p>Section 7 imposes the so-called “corporate offence” of failing to prevent a bribing offence by a person “associated with” the commercial entity in question.</p> <p>Also, under Section 14, a ‘Senior Officer’ of a company, being “...a director, manager, secretary or other similar officer...”, can be personally liable if the company in question commits the offence(s) of bribing, receiving a bribe or bribing a foreign public official.</p>	Yes.	<p>Individuals: Up to 10 years sentence or an unlimited fine.</p> <p>Companies: Unlimited fines and potential disbarment from tendering for public contracts under the Public Contracts Regulations 2006 (Reg. 23 (1)).</p>	<p>Yes.</p> <p>A section 1, 2 or 6 offence may be prosecuted in the UK if the offence is committed outside out of the UK, provided that:</p> <p>(i) if the act or omission had been performed in the UK, it would amount to an offence; and</p> <p>(ii) the act or omission is committed by a person with a “close connection to the UK”. This includes a British Citizen, a company or partnership established under UK law and an individual ordinarily resident in the UK.</p> <p>A section 7 offence can be prosecuted in the UK irrespective of where the acts or omissions take place.</p>	Companies and partnerships incorporated or formed in the UK and any other body corporate (wherever incorporated) which carry on a business, or part of a business, in any part of the UK may be liable for failing to prevent a bribing offence by a person “associated with” that commercial entity. A defence may be available if it can show that it had adequate procedures in place to prevent such activity.	Yes, when these fall within the definition of bribery.	The Bribery Act does not contain set limits. It will therefore be a question of degree and context to determine whether the item may be a bribe.

Country	Governing Law	Elements of bribery offence	Do the bribery offences cover both public bodies and private individuals?	Penalties	Can the offence of bribery be committed outside the jurisdiction but still be prosecuted in the “home country”?	Can a company (or senior officer) be liable if an employee or 3rd party acting on behalf of the company commits an offence? If yes, are there any defences available?	Are facilitation payments illegal?	Does the law define what level of corporate hospitality/ gifts is acceptable and does not amount to a bribe?
<p>United States</p>  <p>Michael Brown Peter Knight +44 (0) 20 7415 6000</p>	<p>Foreign Corrupt Practices Act (FCPA).</p>	<p>The FCPA applies only to bribery of foreign officials (15 U.S.C. §§78dd-1(a) and (f)(1)).</p> <p>In alleging violations of the bribery provisions of the FCPA, the prosecutor must show that the defendant had the requisite state of mind with respect to his actions (15 U.S.C. §78dd-1(f)(2)): in brief, the offender must make an improper payment with the purpose of influencing an outcome.</p> <p>For civil liability, the test is whether the liable party has knowingly breached a provision of the FCPA.</p> <p>This section applies to a broad range of individuals and commercial entities based or operating in the United States</p> <p>The FCPA also contains the so-called book keeping offences.</p> <p>The FCPA requires entities which are required to file reports with the SEC (“issuers”) and have registered securities on a US exchange to:</p> <p>a) keep accurate books, records and accounts which in reasonable detail accurately and fairly reflect the issuer’s transactions and disposition of the assets; and</p> <p>b) devise and maintain reasonable systems of internal accounting control sufficient to provide reasonable assurances that FCPA violations will be prevented and detected.</p> <p>Prosecution for breach of this requirement (civil liability) requires the requisite knowledge or intent.</p> <p>The book keeping offences do not only apply to transactions with foreign government officials (see also the Sarbanes-Oxley Act).</p>	<p>Yes.</p> <p>The FCPA applies only to bribery of foreign officials (15 U.S.C. §§78dd-1(a) and (f)(1)) and does not deal with private to private bribery.</p>	<p>Corporations and other business entities are subject to a fine of up to \$2,000,000 per violation.</p> <p>(Wilful breaches of the “book-keeping” offences may be sanctioned with a fine of max. \$25,000,000 for a company, a max. \$5,000,000 individual criminal fine, and 20 years imprisonment.)</p> <p>Officers, directors, stockholders, employees and agents are subject to a fine of up to \$100,000 per violation and imprisonment for up to five years. The financial penalty is increased to \$250,000 for conspiracy to commit an offence under the FCPA.</p> <p>Under the Alternative Fines Act, the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment.</p> <p>The government may appoint an independent compliance monitor who, at the company’s expense, monitors its FCPA compliance under a duty to report to the government.</p> <p>The SEC may seek a disgorgement of the company’s profits obtained as a result of contracts secured in breach of the FCPA.</p>	<p>The FCPA covers foreign companies which are listed on a US stock exchange. Also, the FCPA may attach liability to a company for bribes “while in the territory of the United States”. Additionally, foreign subsidiaries and other third parties may be liable under the FCPA.</p> <p>It is a defence that the payment/benefit provided to a foreign public official is lawful under the written laws of the relevant foreign jurisdiction.</p> <p>Where the payment/ benefit was both a bona fide and reasonable expenditure and directly related to the promotion of a product/ service or the performance of a contract with a foreign government, a defence is available under the FCPA.</p>	<p>Possibly - see the other comments.</p>	<p>They are permitted in very limited circumstances when paid to foreign officials in order to expedite or secure the performance of a ‘routine governmental action’. This excludes a decision by a foreign official to award new business or to continue business with a particular party e.g. to obtain a license or be granted a concession (15 U.S.C. §78dd-1(b) and §78dd-1(f)(3)).</p>	<p>It is a defence if the expenditure is a reasonable and a bona fide business expense that is directly related to the promotion, demonstration or explanation of products or services (e.g. demonstration or tour of a pharmaceutical plant) or in connection with the execution of a particular contract with a foreign government.</p>

The content of this table is of general interest and is not intended to apply to specific circumstances. The content should not, therefore, be regarded as constituting legal advice and should not be relied on as such. In relation to any particular problem which they may have, readers are advised to seek specific advice. Further, the law may have changed since first publication and the reader is cautioned accordingly.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 15 Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

twobirds.com

Abu Dhabi & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Düsseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London
& Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Skanderborg & Stockholm & Warsaw

000071-01

Bird & Bird

twobirds.com