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Taking stock.

A review of anti-bribery and corruption law and enforcement across the globe

Contents

Key Themes

in global anti-bribery and corruption law and enforcement

Cooperation between national regulators and prosecutors

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An understanding of the global reach of anti-bribery and corruption regulation, as well as the application of it within a specific jurisdiction, is key to managing risk for today's international businesses.

Linklaters' Comparative Review of anti-bribery and corruption law and enforcement will be of particular interest to businesses with international operations. It provides at-a-glance answers to eight questions:

- under what legislation are bribery and corruption unlawful in this jurisdiction?
- what activities are prohibited?
- in order to be unlawful, need the corrupt activities occur in whole or in part within this jurisdiction?
- to whom do the rules apply?
- what are the fines/penalties?
- what approach is taken to enforcement in practice?
- are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corruption?
- what future developments are anticipated in this area?

This Comparative Review is intended to highlight issues rather than to provide comprehensive advice. If you have any particular questions about bribery, corruption or foreign corrupt practices, please contact the Linklaters LLP lawyers with whom you work.

Law as at October 2017 unless otherwise stated

Acknowledgements

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Organisation for Economic Co-Operation and Development

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

What is the OECD?

The Organisation for Economic Co-Operation and Development is an international organisation which aims to improve the social and economic quality of life of people around the world. It was founded in 1961 and now has 35 member states[1], including economically advanced countries as well as emerging economies.

The OECD Anti Bribery Convention

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the Convention"), which entered into force on 15 February 1999, is one of the main international initiatives aimed at tackling global corruption. It establishes legally binding standards to criminalise acts of bribery in international business transactions. Its signatories comprise not only the 35 OECD member states, but Argentina, Brazil, Bulgaria, Colombia, Costa Rica, Lithuania, Russia and South Africa in addition. In particular, it deals with what is known in some countries' laws as 'active bribery' (although the Convention does not use this term), promoting laws to criminalise the individual or company that offers or gives a bribe, rather than the public official who receives it.

The Convention obliges signatory states to make it a criminal offence under its domestic law "*for any person intentionally to offer, promise or give any undue pecuniary or other advantage…to a foreign public official*" in order to gain or secure any improper advantage in international business[2]. Inciting, aiding and abetting, attempting and conspiring to bribe a public official is also to be outlawed.

The term 'foreign public official' is widely defined and includes "*any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization*"[3].

Penalties for those committing bribery should be "*effective, proportionate and dissuasive*"[4] and signatory states should be prepared to extradite national offenders to other signatory states where appropriate[5].

In 2009, the Council established further recommendations for combating the corruption of foreign public officials. These include practical guidelines for signatory states and propose preventive steps, criminalisation measures and preferred accounting methods.

The OECD's role in tackling corruption

The OECD Working Group on Bribery in International Business Transactions undertakes systematic and regular reviews of the status of implementation and enforcement of the Convention by signatory states, publishing its reports. The Working Group has not been slow to criticise signatory states where it finds what it considers to be a lack of commitment to enforce Convention pledges. Criticism by the OECD has proven to be a motivating factor in the enactment of new legislation and enforcement measures across a number signatory states, not least the UK.

The state of play

Despite the good intentions of member states, the instances of successful prosecutions for foreign corrupt practices remain few and far between. Transparency International's annual report for 2015 on the enforcement taken by states party to the Convention[6] found that over half of the 41 signatory states demonstrated no or only very limited enforcement activity between 2011 and 2014.

For its report, TI looked at investigations, cases commenced, convictions and settlements and other final dispositions of cases, in which sanctions were imposed, from 2011 to 2014 inclusive.

Although the report noted some very modest improvement on the part of a small number of countries (Greece, the Netherlands, Norway and South Korea), over half of the 41 signatory states still showed no or only very limited enforcement activity. As was the case in 2014, only four countries had demonstrated active enforcement (namely the US , UK, Germany and Switzerland). Moderate enforcement had been shown by six countries (Italy, Canada, Australia, Austria, Norway and Finland). However, the remaining signatory states, which together account for over 33% of world exports, showed only limited, little or no enforcement activity at all over the last four years. Six of these are in the G20.

1. Australia; Austria; Belgium; Canada; Chile; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Israel; Italy; Japan; Latvia; South Korea; Luxembourg; Mexico; Netherlands; New Zealand; Norway; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States.
2. Article 1.
3. Article 1.4(a).
4. Article 3.
5. Article 10.
6. Exporting Corruption. Assessing enforcement of the OECD Convention on combatting bribery". Published by Transparency International, August 2015 (the latest edition available).

Australia

> “It need not be shown that business, or a business advantage was actually obtained or retained.”

Under what legislation are corrupt practices unlawful in this jurisdiction?

Under the Criminal Code Act 1995 (Cth) (the “Criminal Code”) and State and Territory criminal legislation.

What activities are prohibited?

Bribery of a foreign public official

It is an offence to promise, offer or provide a benefit, or cause a benefit which is not legitimately due to be provided to another person, with the intention of influencing a foreign public official (“FPO”) in the exercise of their duties in order to obtain or retain business or a business advantage that is not legitimately due (section 70.2 of the Criminal Code).

The benefit can be monetary or non-monetary and it can be provided to the FPO directly or to a third party (such as a relative or business partner of the FPO). The briber’s intention must be to influence the FPO to obtain or retain business or a business advantage; it need not be shown that business, or a business advantage was actually obtained or retained. Following amendments to the Criminal Code in 2015, it is no longer necessary to show that the person conferring the benefit or advantage intended to influence any “particular” FPO (section 70.2(1A)).

A defence is available where the benefit is provided in the jurisdiction of which the FPO is a public official (as opposed to Australia or an unrelated third country) and the written law requires or permits provision of the benefit (section 70.3).

A defence is also available for “facilitation payments”, which are minor benefits offered or provided for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature (section 70.4). An inquiry into Australia’s foreign bribery laws by the Senate, due to report in December 2017, may recommend that the defence be revised or repealed.

The definition of FPO is broad and includes employees, officials and contractors of a foreign government body, and persons performing the duties of an appointment, office or position created by custom or convention. It also extends to officers, employees or contractors of public international organisations (such as the United Nations).

Bribery of an official of an Australian government

Under the Criminal Code, it is an offence to dishonestly promise, offer or provide a benefit, or cause a benefit to be provided, with either the intention of influencing a Commonwealth public official (“CPO”), or the result that the benefit’s receipt or expected receipt would tend to influence a CPO in the exercise of their duties (sections 141.1 and 142.1).

Bribery of a State or Territory public official is prohibited under State or Territory legislation.

There are no statutory defences to the offences of bribery of a CPO or State or Territory public official.

Private sector bribery

State and Territory criminal legislation concerning secret commissions prohibit private sector bribery (e.g. section 176 of the Crimes Act 1958 (VIC)).

Most State and Territory criminal legislation also prohibits obtaining property or a financial advantage by deception, which may capture some forms of private sector bribery that fall outside the definition of a secret commission.

There are no statutory defences to breaches of laws that prohibit private sector bribery.

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Need the corrupt activities occur in whole or in part within this jurisdiction?

No. An offence under section 70.2 of the Criminal Code can be committed where the conduct constituting the offence occurs:

> wholly or partly in Australia (or wholly or partly on an Australian aircraft or ship); or

> wholly outside of Australia and the person committing the offence is an Australian citizen or resident at the time, or a company incorporated in Australia (section 70.5).

The offence of bribery of a CPO can be committed regardless of where in the world the conduct occurs (section 142.3).

State and Territory laws that prohibit private sector bribery, or bribery of public officials from that State or Territory, apply to conduct in Australia, and may also apply to conduct that occurs outside of Australia.

To whom do the rules apply?

The prohibitions (aside from bribery of a CPO) apply to:

> Australian citizens and residents and companies incorporated in Australia; and

> all other persons and companies carrying out the conduct constituting the offence wholly or partly in Australia.

The prohibition on bribery of a CPO applies to any person or body corporate carrying out the conduct constituting the offence.

For bribery of an FPO or CPO, liability can be attributed to a company where an employee, agent or officer of the company, acting within the actual or apparent scope of their employment or authority, commits the offence. For a company to be liable, it must also be established (under section 12.3 of the Criminal Code) that:

> the board of directors or a high managerial agent intentionally, knowingly or recklessly carried out the conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence;

> a "corporate culture" existed that directed, encouraged or tolerated the offence; or

> the company failed to maintain a "corporate culture" that required compliance with the relevant law.

What are the fines/penalties?

The penalty for an individual who has violated section 70.2 of the Criminal Code is imprisonment for up to 10 years, a fine of up to AUD2.1m (approximately €1.4m), or both (per offence).

The maximum penalty for a company is the greater of AUD21m (approximately €13.9m), three times the value of the benefit reasonably attributable to the conduct constituting the offence or, if the court cannot determine the value of that benefit, 10% of the company's annual turnover during the 12 months prior to the offence.

Although the Australian Securities and Investment Commission ("ASIC") has not legislated jurisdiction over foreign bribery, it may bring civil enforcement actions in cases where a company's involvement in bribery leads to its directors facing liability under the Corporations Act 2001 (Cth). This can result in civil penalties including a fine of up to AUD200,000 (approximately €130,000) and a ban on being a director.

Bribery of State or Territory public officials and private sector bribery are also subject to terms of imprisonment and fines, which vary depending on the State or Territory jurisdiction involved.

> "The penalty for an individual... is imprisonment for up to 10 years."

> “As of April 2017, the AFP had 35 active foreign bribery investigations.”

What approach is taken to enforcement in practice?

Foreign corruption offences

The Australian Federal Police (“AFP”) and Commonwealth Director of Public Prosecutions (“CDPP”) are responsible for the investigation and prosecution of foreign corruption offences respectively. In recent years, ASIC and other federal government departments have assisted the AFP to investigate foreign bribery.

The AFP has been criticised for its low enforcement of anti-bribery laws, including its handling of referrals. In recent years however, enforcement has increased due to the AFP assigning high priority to foreign bribery investigations. In 2016, the AFP’s Fraud and Anti-Corruption Centre (“FAC Centre”) – a “multi agency” initiative established in 2014 to strengthen law enforcement capability and provide a coordinated approach to federal investigations and prosecutions – received an additional AUD14.7 million in funding. The AFP is also a member of the International Foreign Bribery Taskforce (“IFBT”) and, more recently, the International Anti-Corruption Coordination Centre (“IACC”). These recent developments signify a commitment by the AFP to devote significant resources to the investigation of foreign corrupt practices.

As of April 2017, the AFP had 35 active foreign bribery investigations, including four before the CDPP. To date, however, there have only been two foreign bribery prosecutions brought before Australian courts. The first prosecution against an Australian company was brought in July 2011, over 10 years after the corruption offences legislation came into effect. The charges reportedly marked the culmination of a two-year international investigation during which the AFP worked with regulators around the world. Australia’s second foreign bribery prosecution commenced in late March 2015. The accused individuals in that case pleaded guilty in July 2017. However, at the time of writing they had not been sentenced.

Domestic corruption offences

The AFP and CDPP are also responsible for the investigation and prosecution of domestic corruption offences against the Criminal Code. In addition, the Australian Commission for Law Enforcement Integrity detects and deters possible corrupt conduct in Commonwealth law enforcement agencies, including the AFP. Currently, there is no national anti-corruption watchdog to oversee all Commonwealth agencies. However, a Senate Inquiry was due to report on the establishment of a National Integrity Commission by 15 August 2017.

State and Territory police agencies and Directors of Public Prosecution investigate and prosecute domestic corruption offences which are against their laws. Further, several States have recently established or strengthened government agencies to investigate corruption and misconduct by police, public servants and politicians. Such agencies include the Independent Commission Against Corruption in New South Wales and the Independent Broad-based Anti-Corruption Commission in Victoria.

Are there any legal restrictions on a company’s ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes, such proceeds are likely to fall within the definition of “proceeds of crime” under Division 400 of the Criminal Code.

It is an offence for a company or individual to deal with “proceeds of crime” where they believe, or are reckless or negligent as to the fact, that the relevant money or property are proceeds of crime. Further, such proceeds are likely to fall within the definition of “proceeds” under the Proceeds of Crime Act 2002 (Cth) and, as such, can be forfeited to the Federal Government.

In recent years, the AFP Asset Confiscation Taskforce has had more involvement in foreign bribery investigations to target the proceeds of crime.

What future developments are anticipated in this area?

A number of future developments are expected in this area.

On 4 April 2017, the Australian Government released a consultation paper, and draft legislation, proposing wide-ranging reforms to Australia's foreign bribery laws. If introduced, the proposed amendments would: (i) clarify and broaden the existing offence of foreign bribery, and (ii) introduce two new offences — a 'UK-style' failure to prevent bribery offence, and an offence of 'recklessly' bribing. Submissions to the consultation closed on 1 May 2017, and it is anticipated that draft legislation will be tabled in early 2018. This consultation was separate to the Senate Inquiry into Foreign Bribery, which is now due to report on 7 December 2017.

Separately, on 31 March 2017, the Australian Government released a consultation paper calling for comment on the mechanics of a proposed Deferred Prosecution Agreement ("DPA") scheme in Australia. This follows on from a consultation in 2016 on whether such a scheme should be introduced in Australia at all. The DPA model being proposed by the Australian Government is, for the most part, similar to the UK model. Under the proposed scheme, the prosecutor would have the discretion to invite corporations (but not individuals) who are accused of certain serious economic crimes, including foreign bribery, to enter into confidential DPA negotiations. Under the Australian scheme, however, once agreed, the DPA would be subject to approval by a retired, as opposed to a sitting, judge in order to avoid separation of powers concerns. Submissions to the consultation closed on 1 May 2017.

Finally, on 30 November 2016, the Senate referred an inquiry into whistleblower protections in the corporate, public and not-for-profit sectors to the Joint Parliamentary Committee on Corporations and Financial Services. The Committee was due to report by 17 August 2017. It is understood that in producing its report, the Committee will have regard to the findings of the Department of Treasury consultation on the 'Review of tax and corporate whistleblower protections in Australia'.

Belgium

Under what legislation are corrupt activities unlawful in this jurisdiction?

Corrupt practices are punishable under Articles 246-253 (public bribery) and Articles 504bis-504ter (private bribery) of the Belgian Criminal Code ("BCC").

What activities are prohibited?

Both public and private bribery in their active and passive forms are unlawful under Belgian criminal law.

Active public bribery consists of directly or indirectly offering, promising or giving an advantage of whatever nature to a person holding a public office, for that person's benefit or the benefit of a third party, for the purpose of influencing that person's behaviour.

Passive public bribery consists of directly or indirectly soliciting or accepting an offer, a promise or an advantage of whatever nature by a person holding a public office, for that person's benefit or the benefit of a third party, with a view to demonstrating influenced behaviour.

The prohibition on public bribery not only applies in relation to a person holding a public office in Belgium, but also to a person holding a public office in a foreign country or in an international public organisation.

Active private bribery consists of directly or indirectly offering, promising or giving an advantage of whatever nature to a person who is the director of a corporate entity, or the agent or employee of a corporate entity or physical person, for that person's benefit or for the benefit of a third party, for the purpose of influencing that person to commit or not commit an act linked to or facilitated by that person's position, without the knowledge of or authorisation from – depending on the circumstances – the board of directors, the general assembly of shareholders, the principal or the employer.

Passive private bribery consists of soliciting or accepting an offer, a promise or an advantage of whatever nature by a person who is the director of a corporate entity, or the agent or employee of a corporate entity or physical person, for that person's benefit or for the benefit of a third party, with a view to committing or not committing an act linked to or facilitated by that person's position without the knowledge of or authorisation from – depending on the circumstances – the board of directors, the general assembly of shareholders, the principal or the employer.

The prohibition on private bribery covers both foreign and domestic bribery.

Need the corrupt activities occur in whole or in part within this jurisdiction?

As a general principle, with regard to criminal offences, Belgian courts have jurisdiction if the offence is committed in Belgium. An offence is considered to be committed in Belgium if one of its objective constitutive elements can be located on Belgian territory.

The Belgian Supreme Court applied this principle in a judgment of 23 December 1998 with regard to an act of public bribery committed by a French national. The Court held that the Belgian courts could exert jurisdiction over the criminal offence considering that at least one of the objective constitutive elements of the offence was located on Belgian territory. In this case, a French national was accused of bribing two Belgian ministers, active in Brussels, for the purpose of influencing them to enter into an agreement in Belgium with a company owned by the French national for the purchase of equipment destined for the Belgian Air Force. The offence could thus be deemed to be located in Belgium under the prevailing case law.

If certain conditions are met, the Belgian courts can also have jurisdiction with regard to criminal offences committed

on foreign state territory (i.e. for which none of the objective constitutive elements can be traced back to Belgian territory). Articles 7, 10, 11 and 12*bis* of the Preliminary Title of the Belgian Code of Criminal Procedure ("PTBCCP") determine certain general jurisdiction grounds on the basis of which *inter alia* cases of public and private bribery can be brought before the Belgian courts.

In addition, a specific jurisdiction ground in relation to public bribery is included in Article 10*quater* PTBCCP, which states that Belgian courts will have jurisdiction over a person committing an act of public bribery on foreign state territory:

> in respect of a person holding a public office in Belgium;

> in respect of a person holding a public office in a foreign country or in an international public organisation:

  – if that official is Belgian or the international public organisation has its seat in Belgium; or

  – if the offender is Belgian or has his main residence in Belgium and if the criminal act is also punishable under the laws of the country where the act is committed (requirement of double incrimination).

In relation to the aforementioned general and specific jurisdiction grounds, Article 12 PTBCCP determines that prosecution can, in principle, only take place when the suspect is located in Belgium.

To whom do the rules apply?

All physical persons and corporate entities (as author, co-author or accomplice of the material act of offence), whatever their nationality or (corporate) residence, may be subject to criminal sanctions for acts of bribery committed on Belgian territory.

For acts of bribery committed on foreign state territory, the exposure to criminal sanctions in Belgium may depend on nationality or (corporate) residence (see above for the rules in relation to extra-territorial application of Belgian criminal law).

What are the fines/penalties?

Public bribery (depending on the type of corrupt act) may lead to a prison sentence of six months to 15 years and/or a fine of €800 to €1,600,000 for physical persons. For corporate entities, the fine may range from €24,000 to €3,200,000.

Private bribery (depending on the type of corrupt act) may lead to a prison sentence of six months to three years and/or a fine of €800 to €400,000 for physical persons. For corporate entities, the fine may range from €24,000 to €800,000.

In addition to prison sentences and fines, other sanctions may comprise debarring the offender from exerting certain rights (e.g. holding public offices) and confiscating the object, the product and proceeds of the act of bribery.

> "No reliable guidance as to enforcement in practice can be provided given the limited available case law."

What approach is taken to enforcement in practice?

No reliable guidance as to enforcement in practice can be provided given the limited available case law with regard to both foreign and domestic corrupt practices.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. First, the Belgian courts may impose confiscation of the object, the product and the proceeds of a criminal offence. In addition, using or transforming the proceeds ensuing from bribery, while knowing or being assumed to know the origin of those proceeds, may result in further offences under anti-money laundering legislation (i.e. Article 505 BCC).

What future developments are anticipated in this area?

It is expected that Belgian law will provide for an increased protection of whistleblowers reporting acts of corruption. The federal act of 15 September 2013 already provides for a protection of civil servants reporting a suspected harm to integrity within a federal administrative authority. Similarly, a Bill modifying the Belgian law on the surveillance of the financial sector provides for a protection of the persons reporting financial offences to the market surveillance authority. This trend could extend to the private sector in the future.

France

> A "corruption agreement" does not necessarily require an express agreement between the two parties and does not necessarily precede the act of the corrupted person.

Under what legislation are corrupt activities unlawful in this jurisdiction?

Under the French Criminal Code.

What activities are prohibited?

On a domestic level, corruption may be committed by any person holding public authority, entrusted with a public service assignment, or a person holding a public electoral mandate; anyone who holds or occupies, within the scope of professional or social activity, a management position or any position for a legal or natural person, or any other body; and judges, clerks, experts, mediators or arbitrators.

French law distinguishes between active bribery and passive bribery, which enables the separate prosecution of both the bribe-giver and the recipient.

Active bribery is the act of unlawfully proposing at any time, directly or indirectly, any offer, promise, donation, gift or advantage to a person (public or private agent or judicial authority), for the benefit of that person or of others, for that person to carry out or abstain from carrying out, or because that person has already carried out or abstained from carrying out, an act pertaining to his or her activity, office, duty or mandate, or facilitated by his activity, office, duty or mandate, or of acceding to the demands of that person.

Passive corruption is the unlawful solicitation or acceptance of such advantages by a person (public or private agent or judicial authority), at any time, directly or indirectly, in exchange for carrying out, having already carried out, abstaining from carrying out or having already abstained from carrying out, an act pertaining to, or facilitated by, his or her activity, office, duty or mandate.

The offence therefore requires the following elements:

- either the solicitation or acceptance of any advantage (passive bribery) or the offering of an advantage or acceptance to pay it (active bribery) to carry out (or abstain from carrying out) an act pertaining to an activity, office, duty or mandate, or facilitated by them or to reward the person for having already carried out or abstained from carrying out such an act;
- a "corruption agreement", which entails a connection (from the point of view of the perpetrator) between the benefit solicited or proffered and the act of the corrupted person that is expected to be or has already been carried out. This agreement does not, however, necessarily require an express agreement between the two parties and does not necessarily precede the act.

Moreover, the offence of corruption is committed even if the expected act is not carried out, i.e. corruption is constituted by mere solicitation or by the acceptance of an offer.

French law also punishes influence peddling, which is close to bribery, with the distinction that this offence is committed when a person abuses his or her real or alleged influence with a view to obtaining distinctions, employment, contracts or any other favourable decision from an administration or a public authority, as well as from judges, clerks, experts, mediators or arbitrators.

In terms of foreign practices, the French Criminal Code prohibits all persons from unlawfully proposing or making, at any time, directly or indirectly, any offer, promise, donation, gift or advantage of any kind to an individual holding a public office or entrusted with a public service assignment or an electoral mandate in a foreign state or within a public international organisation (which includes bodies established under the Treaty of the European Union), for the benefit of that person or of others, for that person to

carry out or abstain from carrying out, or because that person has already carried out or abstained from carrying out, an act pertaining to his or her activity, office, duty or mandate or facilitated by his activity, office, duty or mandate (active corruption). It is also prohibited for anyone to accede to the demands of such individual (active corruption) as well as for the said individual to request or accept such a bribe (passive corruption).

France also prohibits active and passive influence peddling to obtain contracts or other favourable decisions but only when they concern the public agents of a public international organisation of a foreign state.

In addition, French criminal law proscribes active and passive corruption of:

> any person exercising judicial functions in a foreign state or in or with an international court;

> any official at the registry of a foreign tribunal or international court;

> any expert appointed by such a tribunal or court or by the parties;

> any person appointed as a conciliator or mediator by such a tribunal or court; and

> any arbitrator acting under the arbitration law of a foreign state.

French criminal law only proscribes active or passive influence peddling with a person exercising judicial functions in or with an international court, or designated by such a court.

As mentioned above, French criminal law prohibits acts of corruption towards private persons – i.e. any person who holds a management position or job other than that of public official – or private entities. Although this offence does not include any specific reference to a foreign practice, it could be applied in such a case.

Need the corrupt activities occur in whole or in part within this jurisdiction?

Offenders or accomplices to an offence may be prosecuted and tried by French criminal courts when the offence was committed in France or at least one of its constituent facts (which is broadly construed under French law) is committed within French territory.

French criminal courts may even have jurisdiction over an offence of bribery of a foreign public official or member of judicial staff wholly committed outside the territory of France, provided that it was committed by French nationals or by legal entities conducting part or whole of their business in France.

When the perpetrator of certain foreign corrupt practices is physically present in France, he can be tried in France in accordance with certain procedural rules, even if the practices took place wholly outside France. Individuals and legal entities who acted in France as accomplices of corrupt practices that took place wholly outside the territory of the French Republic may be tried in France under specific conditions.

To whom do the rules apply?

Subject to the principles described above, they apply to all individuals and legal entities.

What are the fines/penalties?

Regarding the active or passive corruption of (i) national or foreign public officials and (ii) national or foreign judicial staff (judges, clerks, experts, mediators and arbitrators), individuals can be penalised by up to 10 years' imprisonment, a fine of €1m and various additional penalties. Legal entities can incur a fine of up to €5m.

When corruption takes place between private persons or entities, individuals may be sentenced to up to five years' imprisonment and a fine of up to €500,000. Legal entities may be liable to a fine of up to €2.5m.

In all cases, the maximum fines noted above may be increased to twice the value of the proceeds of the offence in question if greater.

Additional penalties may also be imposed, such as the seizure of properties and/or the obligation to implement an anti-corruption program, under the supervision of the French Anti-Corruption agency for a maximum five-year duration.

The possible sanctions for offences of influence peddling in the domestic arena are similar to those for bribery.

The duration of imprisonment for corruption or influence peddling on foreign public officials may be reduced by half in cases where the offender or accomplice to the offence has warned the authorities, helped to put an end to the offence or, as the case may be, helped to identify the other offenders or accomplices. However, the legislator did not extend this policy to private corruption. Additionally, "no leniency guidelines exist for legal persons who have cooperated with French authorities". Yet, in practice, a judge may take into account, in his/her sentencing judgement, the fact that a company self-reported suspicious activities to the authorities.

What approach is taken to enforcement in practice?

On 23 October 2014, the OECD Working Group on Bribery reporting on France's implementation of the Anti-Bribery Convention stated that it was "concerned by the lack of proactivity of the authorities in cases which involve French companies in established facts or allegations of foreign bribery."

Over the past four years, French anti-corruption legislation has been reinforced with a view to better enforcement and while prosecution is being facilitated, settlements and DPAs are now also possible.

Firstly, the limitation period for bribery offences was extended from three to six years after the commission of the offence, i.e. the solicitation or the offering of remuneration and every substantive act potentially carried out in the implementation of the original corruption agreement (acceptance of the solicitation or of the offering; receipt of the donations, gifts or offered advantages). In the event the offence is carried out through successive acts, the limitation period starts to run from the last substantive act. Moreover, the French Supreme Court (*Cour de cassation*) considered, in a private bribery matter, that the limitation period is not likely to expire as long as the offence has not been discovered in a way that would permit prosecution to be initiated. In all cases, however, prosecution must begin within a 12-year period from the commission of the offence.

Secondly, the "Financial Public Prosecutor Office" was created in Summer 2016 and granted (i) concurrent jurisdiction with the non-specialised Public Prosecutors regarding offences of corruption of foreign public officials and private corruption (when these offences of private corruption have a high degree of complexity with respect to the large number of perpetrators, accomplices or victims or their geographical reach); and (ii) concurrent jurisdiction with the Inter-regional Specialised Courts in economic and financial matters ("JIRS") and the non-specialised Public Prosecutors regarding offences such as public bribery, influence peddling, unlawful taking of interests or misappropriation of public funds (when these offences have a high degree of complexity) and related money laundering activities. The intention of the legislator was to make this high-profile Prosecution Office responsible for investigating highly complex cases or cases that could have a significant national or international impact. In August 2016, the Financial Public Prosecutor was in charge of approximately 150 matters. Investigations are also reported to be under way in an increasing number of cases of alleged corruption involving an overseas element or a foreign official, some of them involving allegations of misappropriation of company assets.

Thirdly, registered non-governmental organisations ("NGOs") fighting corruption have been formally entitled to exercise the rights of a civil claimant (*partie civile*) before a criminal court, notably in matters of corruption, without having to allege the existence of a prejudice. Previously, French case law held that legal standing to exercise such rights in matters of corruption would be granted to non-registered NGOs fighting corruption only if they could establish that they were directly adversely affected.

Finally, companies facing corruption charges may now be invited by the prosecutor to conclude a sort of "deferred prosecution agreement" allowing them to escape criminal conviction and avoid pleading guilty. This settlement tool includes the payment of a fine representing up to 30% of the company's average annual turnover over the last three years and the implementation of a compliance plan under the supervision of the French Anti-Corruption Agency. This new tool is designed to encourage companies to settle with French authorities while not being found criminally liable for their conduct.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Such proceeds may fall within the offence of receiving the proceeds of an offence, namely to conceal, retain or transfer something or act as an intermediary in its transfer, knowing that it was obtained through a felony or an intermediate offence, or knowingly to benefit in any manner from the proceeds of a felony or of an intermediate offence.

Individuals can incur up to five years' imprisonment and a fine of up to €375,000 for such activities. Where the original offence is punishable by a prison sentence longer than that ordinarily incurred for receiving the proceeds of the offence, the receiver incurs the penalties pertaining to the offence that he or she knew about. The fines may be raised beyond €375,000 to reach half the value of the proceeds of the offence in question. Individuals may also incur additional penalties.

Legal entities may incur a €1,875,000 fine – an amount that may be increased to half the value of the proceeds of the offence if greater – and various additional penalties.

The penalties incurred by individuals and legal entities receiving the proceeds may also be increased when proceeds are received (i) on a regular basis, using the facilities offered by the exercise of a trade or profession, or (ii) by an organised gang. Such proceeds may also be confiscated.

Damages could be claimed by any person disadvantaged as a result of an act of corruption and any relevant contracts could be voidable. An NGO permitted to take part in the proceedings may also be entitled to receive damages.

It is also to be noted that French civil law deprives of any effect corruption and influence peddling agreements on the

grounds of unlawful and immoral cause or purpose, or fraud, or by reference to French public policy.

What future developments are anticipated in this area?

The "Sapin 2" Law ("the Law") was passed and published on 10 December 2016 to ensure more efficient prevention, detection and repression of corruption in France.

The Law strengthens the level of protection available for whistle-blowers so that they may not be found liable for breaching their duties of confidentiality (save for some excepted professions, such as lawyers, doctors and those within the field of national security). The Law also imposes a duty on any legal entity with at least 50 employees to put in place internal reporting procedures for collecting alerts from whistle-blowers.

More importantly, the Law introduces a major innovation under French law as it requires large companies – those with at least 500 employees and a turnover of €100m (or those which are part of a French group meeting these thresholds) - to implement a compliance plan by 1 June 2017. The compliance plan must include the following eight measures:

- a code of conduct listing conduct to be avoided
- an internal whistleblowing mechanism for the reporting of violations of the code of conduct
- an audit, to be updated regularly, identifying, analysing, and prioritising the risks of corruption
- a procedure to verify the integrity of clients, suppliers and intermediaries
- internal and external accounting controls procedures to check that the company's financial statements do not conceal corruption or influence-trafficking offences
- regular training for the company's executives and employees most exposed to corruption risks
- a disciplinary sanctions scheme for employees who do not comply with the company's code of conduct
- an internal control and evaluation scheme of the implementation of these measures.

The new French Anti-Corruption Agency ("FACA") has powers to apply administrative sanctions to ensure effective implementation of these plans (with fines of up to €1m for legal entities).

As a result, anti-bribery compliance systems will now be assessed by French authorities outside of criminal proceedings. Legal persons may in fact be sanctioned by the FACA, even though they have not actually committed, through their officers or employees, an offence of bribery.

The FACA is due to issue practical guidelines soon to help companies implement their compliance programs.

It is also expected to start investigating cases soon and referring appropriate cases to its own Sanctions Committee. This body will therefore develop its own case law as regards the anti-corruption compliance program.

Article 40 of the French Criminal Procedure Code provides that every civil servant or public authority who, in the performance of his or her duties, has gained knowledge of the existence of an offence, must notify the Public Prosecutor immediately and hand over any relevant information. Pursuant to this Article, the FACA may refer any corruption or bribery case it might encounter during its activities to the Public Prosecutor.

Germany

Under what legislation are corrupt practices unlawful in this jurisdiction?

Under the German Criminal Code (the "Criminal Code") and, with respect to active bribery of foreign members of parliament, under the International Bribery Act.

What activities are prohibited?

Corruption of public officials is unlawful. A person who offers, promises or grants a public official an advantage for the accomplishment of an act contrary to duty (bribery, section 334 of the Criminal Code) or in accordance with duty (granting of an advantage, section 333 of the Criminal Code), which has already been undertaken or which is still to be undertaken, renders himself/herself liable to prosecution (so-called "active bribery"). Also the public official renders himself/herself liable to prosecution in these cases when demanding, allowing or accepting such advantage (sections 331 and 332 of the Criminal Code, so-called "passive bribery").

Those provisions not only apply to German public officials but also to European Public Officials (*Europäische Amtsträger*)[1] and members of a court of the European Union. This equal treatment is the result of a recent law on fighting corruption which came into force on 26 November 2015 and thus brought a number of international legal instruments relating to corruption into the German Criminal Code, closed gaps in criminal liability and incorporated provisions which had so far only been contained in ancillary laws. Prior to that, active and passive bribery of public officials of European Member States e.g. only constituted a criminal offence if the bribe was connected to a (past or future) official act by the public official, in breach of his duties. Now, the taking and giving of bribes in the course of an official role is criminalised, even if there is no such corresponding official act.

Other Foreign and International Officials (*Ausländische und internationale Bedienstete*) under section 335a of the Criminal Code are treated as public officials under German criminal law for bribery offences concerning a future official act by the respective public official. Section 335a of the Criminal Code now penalises in a more comprehensive way than before the bribery of certain foreign (non-EU) public officials, judges and soldiers, by setting aside the former requirement for the bribery to have been committed in the course of "international business transactions".

Corruption in the course of business and trade may also be unlawful; i.e. under section 299 of the Criminal Code, a provision which has also been amended by the aforementioned law on fighting corruption in 2015.

Prior to the amendment, this criminal offence required a benefit being promised or granted (active bribery) and demanded or accepted (passive bribery) respectively, in exchange for otherwise unjustified preferential treatment in relation to other competitors. Now, in addition to the above mentioned offence, a breach of duties vis-à-vis the employer in exchange for a benefit in relation to the supply of goods or services is sufficient to incur criminal liability. Hence, making payments even outside any competitive situation now constitutes a criminal offence.

These prohibitions in principle apply both to domestic and foreign corruption.

In June 2016, another new law on fighting corruption which specifically targets corruption in the healthcare sector entered into force. The rationale behind this law is that corruption in the health sector affects competition, increases the cost of medical treatment and undermines patients' confidence in the integrity of health care decisions. Moreover, in 2012, the Grand Criminal Panel of the Federal

1 This definition includes, e.g., members of the European Commission, the European Central Bank, the European court of auditors, any court of the European union or any servant of the European Union, cf. section 11 para. 1 no. 2a Criminal Code.

Court of Justice (*Bundesgerichtshof*) held that the existing criminal law provisions on corruption do not apply to resident physicians since they are neither public officials nor agents of the statutory health service within the meaning of section 299 German Criminal Code, which penalises bribery in a commercial context. To close this gap in criminal liability, the new law implemented new sections 299a and 299b of the Criminal Code prohibiting both active and passive bribery of health care professionals who are required to undertake state-regulated training before they are permitted to practise or use their professional title. This includes not only classic academic health care professionals such as doctors, dentists, veterinary surgeons, psychotherapists and pharmacists but also so-called non-academic health care professionals such as nurses, occupational therapists or physiotherapists. In essence, criminal liability incurs where a benefit is promised or granted to a health care professional, or demanded or accepted by the same, with respect to the purchasing, prescribing or dispensing of drugs or medical products or to the referring of patients and test materials, and the benefit is given as consideration for unjustified preferential treatment in a national or international competitive market.

Companies themselves may be exposed in relation to public and business corruption. The Administrative Offences Act (*Ordnungswidrigkeitengesetz*) provides that companies may be fined where an executive body with representational authority, holder of a statutory power of attorney (*Prokurist*) or general agent (*Generalbevollmächtigter*) has committed a crime or an administrative offence, if this violates an obligation of the entity or the entity has benefitted. This therefore may apply to foreign corrupt practices.

In addition, companies will be guilty of an administrative offence if their management has failed to fulfil the supervisory measures required to prevent bribery by employees of the company.

Need the corrupt activities occur in whole or in part within this jurisdiction?

As a basic principle, the relevant offences are criminal when committed at least in part inside Germany. However, there are several exceptions to that restriction which significantly extend the applicability of the German Criminal Code. As per the new Section 5 no.15 Criminal Code, German Criminal Law also applies to bribery offences committed outside Germany if, *inter alia*:

> The perpetrator is, at the time the offence is committed, either a German citizen or a European Public Official whose department has its seat within Germany (section 5 no. 15 lit. a) and lit. b) Criminal Code);

> The offence is committed against a German public official (section 5 no. 15 lit.c) Criminal Code) regardless of their nationality; or

> The offence is committed against a European Public Official or arbitrator who is a German citizen, or against any Foreign and International Official under section 335a Criminal Code provided, again, the latter is a German citizen (section 5 no. 15 lit. d) Criminal Code).

To whom do the rules apply?

The rules of criminal law regarding international corruption apply primarily to individuals, such as private persons or public officials. The Administrative Offences Act also covers companies and other legal entities.

What are the fines/penalties?

The Criminal Code provides that persons found guilty of bribery or a related offence may either be fined or imprisoned. Sentences of imprisonment may be for up to 15 years. A legal entity may be fined up to €10m for violations under the Administrative Offences Act. If the profit generated by the offence is higher, then

“Companies themselves may be exposed in relation to public and business corruption.”

> Sanctions for companies may be significantly higher in the future.

the fine can be as high as the profit made or even exceed it. In recent cases, fines have even exceeded €100m.

Companies may also be subject to a forfeiture order requiring them to surrender all profits gained from the corrupt conduct. In calculating the amounts to be surrendered the courts generally apply the "gross principle", resulting in the calculation of the company's revenue without deducting any expenses. The applicability of the "gross principle" has recently been emphasised by the new law on asset recovery (*Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung*) of 13 April 2017 which entered into force on 1 July 2017.

The introduction of criminal liability for corporations has been under discussion in Germany since a draft bill was presented in September 2013 which would introduce corporate criminal liability. Should the law be implemented, sanctions for companies may be significantly higher in the future since the draft bill provides for, for example, a fine potentially amounting to up to 10% of the average annual turnover of the company assessed on the worldwide turnover of the corporate group over the past three years.

What approach is taken to enforcement in practice?

Activities that are suspected of involving corrupt practices are investigated and prosecuted by the police and the public prosecutor's office. Most public prosecutors' offices include departments dealing exclusively with investigating and prosecuting such activities. No current figures are available, but the number of investigations, as well as prosecutions, seems to be on the increase due to a rise in the reported cases of corruption.

Preventative measures are being taken by various Federal Ministries, for example, by issuing brochures on preventing corruption as well as distributing the OECD Guidelines to companies.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. The Criminal Code provides for confiscation and forfeiture as measures of recovering the proceeds of criminal offences, such as bribery and related offences. According to the Criminal Procedure Code, a court may order the seizure of proceeds at an early stage if they are suspected of having been procured by a criminal offence. Moreover, section 261 of the Criminal Code makes money laundering a criminal offence. This includes concealing pecuniary advantages resulting from bribery; concealing, obstructing or impeding the disclosure of their source; and concealing, obstructing or impeding the discovery, forfeiture or confiscation of such advantages. In addition, if the company is a financial institution or an insurance company, it may be subject to various duties of care and reporting obligations in this regard under the German Anti-Money Laundering Act. Breaches of these obligations are punishable by fines of up to €100,000.

What future developments are anticipated in this area?

A law dated 14 December 2016 provided the legal basis to ratify both the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 and the Additional Protocol to the Criminal Law Convention on Corruption of 15 May 2003. Ratification eventually took place on 10 May 2017.

Against this background and given the recent changes to the corruption law regime brought about by the law on fighting corruption and the law on fighting corruption in the healthcare sector, we currently do not expect any major legislative reform in the near future.

Hong Kong

> “These laws are primarily targeted at domestic corruption within Hong Kong.”

Under what legislation are corrupt practices unlawful in this jurisdiction?

The Prevention of Bribery Ordinance (“POBO”) is the key anti-corruption law in Hong Kong and includes offences relating to both public sector and private sector bribery. The POBO thus prohibits bribery of Hong Kong public servants and bribery of agents (which is broadly defined and may include Hong Kong public servants, foreign public officials, commercial agents or company employees). These laws are primarily targeted at domestic corruption within Hong Kong, but also capture certain foreign corrupt practices.

What activities are prohibited?

The POBO incorporates a general offence of bribing a Hong Kong public servant (section 4(1)) and a number of specific offences relating to bribery in the context of public contracts, tenders, auctions and other dealings with public bodies. There is a general offence of bribing an agent (being a public servant or any person employed by or acting for another) (section 9(2)). Cases involving public sector or private sector corruption can both be prosecuted under this section. In addition, there are offences relating to the solicitation or acceptance of bribes by Hong Kong public servants or agents.

Need the corrupt activities occur in whole or in part within this jurisdiction?

In general, foreign corrupt practices by Hong Kong persons which take place wholly outside Hong Kong will not be triable in Hong Kong. However, bribery of Hong Kong public servants may be prosecuted under section 4(1) of the POBO irrespective of where the relevant offer was made. In addition, the Hong Kong courts have asserted jurisdiction in respect of bribery of foreign public officials which takes place in Hong Kong under section 9(2) of the POBO (as agents of a foreign government), notwithstanding that the bribery relates to activities by those foreign public officials outside Hong Kong. It is likely that a similar position would be adopted in respect of bribery of commercial agents in Hong Kong in respect of activities to be undertaken by such agents outside Hong Kong.

To whom do the rules apply?

The POBO applies to any person to the extent that the relevant conduct constituting the offence takes place within Hong Kong (for example, an offer to pay a bribe to a foreign public official or a sales agent with responsibility for a third country that is made in Hong Kong). It will also apply to a person located outside Hong Kong who offers a bribe to a Hong Kong public servant.

What are the fines/penalties?

The general offences of bribing a Hong Kong public servant or bribing an agent may incur a term of imprisonment for up to seven years and a fine of up to HKD500,000 (approximately US$64,500). The Hong Kong courts also have the power to strip an offender of any advantage received as a result of the corrupt acts in question. An offence under section 5 or 6 of the POBO (relating to public contracts and tenders) can result in imprisonment for up to 10 years and a fine of up to HKD500,000 (approximately US$64,500).

What approach is taken to enforcement in practice?

Of the 2,891 corruption complaints (excluding election complaints) received in 2016 by the Independent Commission Against Corruption (“ICAC”), which is Hong Kong’s public body with primary responsibility for investigating corruption in Hong Kong, 63% related to private sector bribery and 29% related to government departments. The remaining 8% related to public bodies.

The Department of Justice examines evidence gathered by the ICAC and advises on prosecutions. The Secretary of Justice must consent to all prosecutions. The ICAC has adopted an increasingly aggressive approach to tackling corruption, focusing on senior public officials and business leaders. In recent high-profile cases, a former Chief Secretary for Administration was sentenced to seven and a half years' imprisonment and a property tycoon was sentenced to five years' imprisonment. Appeals by both individuals were rejected by Hong Kong's Court of Final Appeal in June 2017.

Approximately 200 individuals are charged by the ICAC each year with corruption-related offences and in 2016 86% of the 109 resolved cases resulted in convictions.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. A company will usually be restricted from dealing with the proceeds of any contracts or sales which are known or suspected to have been procured by corrupt practices. Under Section 25 of the Organized and Serious Crimes Ordinance ("OSCO"), it is a criminal offence if a person deals with any property, knowing or having reasonable grounds to believe that that property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence. For these purposes, it is sufficient that any conduct which occurred overseas would have been an indictable offence had it occurred in Hong Kong (corruption offences under the POBO are triable as indictable offences in Hong Kong). The proceeds of both domestic and foreign corrupt practices are therefore caught by the OSCO. It is a defence to an offence under Section 25 of the OSCO that the proposed dealing was reported to the Joint Financial Intelligence Unit ("JFIU") in Hong Kong prior to the relevant act taking place and the JFIU gave its consent to proceed.

What future developments are anticipated in this area?

The Court of Final Appeal's rejection in June 2017 of two high profile appeals in bribery-related cases has reinforced the efforts of the ICAC to combat bribery and corruption. At the same time, a jury's failure to reach a verdict in February 2017 on bribery-related charges against a former Hong Kong chief executive (though he was convicted of another charge related to misconduct in office), demonstrates that hurdles remain to successful prosecution of bribery offences.

High profile prosecutions, and the steady pace of enforcement generally, signal that combating bribery and corruption remain priorities in Hong Kong. Critically, statements by public officials continue to emphasise the importance of maintaining Hong Kong's strong position as a leading jurisdiction in the fight against bribery and corruption. In his 2016 annual update, for example, the ICAC Commissioner emphasised Hong Kong's ranking in various anti-corruption surveys, including that Hong Kong has been ranked as the world's freest economy in the Index of Economic Freedom released by the Heritage Foundation for 23 consecutive years. Hong Kong is unlikely to cede its reputation as a leader in the fight against bribery and corruption by moderating the jurisdiction's stance on enforcement.

"Hong Kong is unlikely to cede its reputation as a leader in the fight against bribery and corruption by moderating the jurisdiction's stance on enforcement."

India

Under what legislation are corrupt practices unlawful in this jurisdiction?

The Prevention of Corruption Act, 1988 ("PCA") deals with bribery and corruption in India and applies only to Indian public officials. There are no Indian statutes that (i) apply exclusively to kick backs, bribery or corruption in the private sector; or (ii) regulate and prohibit foreign corrupt practices in relation to foreign officials or persons working with international organisations. However, certain provisions of the Indian Penal Code ("IPC") relating to criminal breach of trust (section 405), cheating (section 415 or 420) and attempt to commit a criminal offence (section 511) may be applicable, depending on the facts of the case and the nature of the illegal acts to cover corruption in the private sector.

In addition to the above, the central and provincial governments (India follows a federal system of governance) have also prescribed several service rules and codes of conduct that regulate the conduct of public officials.

What activities are prohibited?

Bribery of an Indian public official is illegal. The PCA criminalises, *inter alia*, the following acts of corruption involving Indian public officials:

> the receipt or solicitation of illegal gratification by a public official with respect to exercise of an official function;

> the acceptance of gratification by an individual to induce and exercise personal influence over a public official with respect to an official function;

> misappropriating or converting any property (dishonestly or fraudulently) entrusted to them for personal use; and

> criminal misconduct which includes acts in the nature of acceptance of gratification as motive or reward for performance of an official function, attainment of pecuniary advantage by corrupt or illegal means by abusing one's position as a public official or accumulating assets disproportionate to known sources of income.

Abetting an offence committed under the PCA is a separate offence and any person who assists in the bribery or illegal act will also be liable to prosecution under the PCA. The PCA regards all payments made for facilitating a government action as acts of bribery.

Corruption in the private sector does not fall within the ambit of PCA but corrupt practices involving private individuals or entities are likely to be liable under the IPC. Criminal breach of trust under the IPC involves a person dishonestly misappropriating or disposing of property in a manner contrary to law or agreed contractual obligations.

Dealing with proceeds or amounts realised or accrued from bribery or corrupt practices could result in liability or sanctions under Indian money laundering regulations.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. The PCA applies to all Indian citizens whether residing in India or abroad and is intended to cover all cases of corruption where an Indian public official accepts illegal gratification from any person, whether in India or abroad. Similarly, the IPC also provides for extra territorial application and will extend to all offences committed by Indian citizens outside India.

TT&A
Advocates and Solicitors

To whom do the rules apply?

The PCA solely deals with bribery and corruption of public officials in India. The term "public servant" (used in the PCA, akin to "public official") has been defined widely under the PCA and includes:

> any person in the service of the government, a local authority or a corporation established by or under central or state statute;

> any judge or person associated with the judiciary;

> a person who holds an office by virtue of which they are authorised or required to perform any public duty; and

> any person connected with an educational, scientific, social or cultural institution that receives aid from the government.

The term "public duty" has been defined to mean a duty in the discharge of which the state, public or the community at large has an interest. In 2016 the India Supreme Court expanded the scope of "public servant" under the PCA to include officials of private banks as their duties are public in nature.

A private individual (irrespective of whether they are Indian or foreign) may be liable under the PCA where he is indicted for bribing a public official directly or abetting the offence.

In relation to offences under the IPC, the prohibition applies to all individuals and corporate entities. Further, under Indian law, if a company is convicted of an offence, then all officers of the company responsible for the affairs of the company at the time when the offence was committed will be held to be officers in default and shall be liable for the acts of the company.

What are the fines/penalties?

Depending upon the nature of the offence, various penalties have been prescribed under the PCA. The penalty for:

> acceptance of a bribe or any gratification to refrain from performing any official function is imprisonment for a period of six months to five years with a fine;

> criminal misconduct is imprisonment for a period not less than four years which may extend to 10 years, together with a fine; and

> abetment of an offence is imprisonment for a period not less than three years which may extend to seven years, together with a fine.

The fine for each of the above offences is determined by the court after taking into consideration (together with the nature of the facts connected with the case) the amount or value of the property the offender has realised from the commission of the offence.

Violations related to money laundering are punishable with imprisonment for a term ranging from three to 10 years and a fine, depending upon the class and nature of the offence. No statutory threshold has been prescribed in relation to the fine that can be imposed and the quantum of fine is decided by the court.

Under the IPC, (i) criminal breach of trust is punishable with imprisonment for up to three years or a fine, and (ii) cheating is punishable with imprisonment for up to seven years and a fine. The amount of the fine that can be imposed by the court will depend upon the gravity of the offence and the circumstances connected to it.

> "All officers of the company responsible for the affairs of the company... shall be liable for the acts of the company."

> “Illegally obtained assets from proceeds of crime can be confiscated by the Indian government.”

What approach is taken to enforcement in practice?

Activities that arouse suspicion of bribery or of involving corrupt practices are investigated by the police, central vigilance authorities and specific law enforcement agencies in India. Criminal investigations are often not made public. In the recent past there has been an increase in the number of investigations and prosecution of cases relating to corruption. To date, we are unaware of any publically disclosed prosecutions that have been initiated in India in connection with foreign corrupt practices.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes, there are restrictions under India's anti-money laundering regulations. The Prevention of Money Laundering Act, 2002 (“PMLA”, the primary Indian law which regulates money laundering) stipulates that any person who directly or indirectly attempts to indulge or knowingly assists or is involved in any process or activity connected with the proceeds of crime, including projection of such proceeds as untainted property, is guilty of money laundering and subject to criminal prosecution. The term “proceeds of crime” has been defined to include any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence under the PMLA. The PMLA identifies serious offences committed under various laws of India and categorises any offences committed under the PCA to be a scheduled offence. Therefore any person who deals with proceeds of crime that are suspected to have been obtained directly or indirectly by a person pursuant to commission of an offence under the PCA would also be subject to liabilities under the PMLA.

Illegally obtained assets from proceeds of crime can be confiscated by the Indian government and the courts are empowered to order seizure or freezing of assets or properties or forfeiture of proceeds, if they have been suspected to have been procured from criminal offences including bribery.

The Criminal Procedure Code, the procedural law on criminal proceedings, contains provisions under which investigating agencies have the power to prohibit the operation of bank accounts or seize assets if such an asset has direct links with the commission of an offence.

Indian courts have consistently held that contracts which involve moral turpitude or are based on illegal acts are against public policy and are void. It is unlikely that a court will permit compensation or specific performance for contracts procured through corrupt practices.

What future developments are anticipated in this area?

Foreign corrupt practices and bribery involving foreign public officials in international business transactions are not criminal offences under Indian anti-corruption regulations. In 2011, the “*Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011*” (“2011 Bill”) was introduced in the Indian parliament with the aim of regulating bribery involving foreign public officials. The 2011 Bill is pending in parliament and has been referred to a committee for revisions. The Indian government has also finalised amendments to PCA but this bill is yet to be introduced in parliament. We do expect legal developments and reforms in this area in the future but are unable to specify a timeframe by when such reforms may be implemented.

Indonesia

> The KPK has a zero tolerance policy with respect to the giving and receiving of gratification to/by government officials.

Under what legislation are corrupt activities unlawful in this jurisdiction?

Corruption is unlawful under:

- Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption ("Law No. 31"), as amended by Law No. 20 of 2001 on Amendment to Law No. 31 (together, the "Anti-Corruption Law"); and
- Law No. 11 of 1980 on Criminal Acts of Bribery (the "Anti-Bribery Law").

What activities are prohibited?

The legislation addresses only corrupt practices in the domestic public sector. It does not address corrupt practices in the private sector or involving foreign public officials.

Under the Anti-Corruption Law, it is an offence for any individual or company to:

- unlawfully enrich himself or itself, or another person or company, which may cause loss to the State's finances or economy (Article 2);
- misuse any authority, opportunities or facilities available as a result of their post or position, with the intention of enriching himself or itself, or another person or company (Article 3);
- give or promise to give something to an official with the intention of influencing that official to do or omit to do anything in their position that conflicts with their duties (Article 5); or
- give something to an official that is pursuant to, or in relation to, something that the official has done or omitted to do in their position that conflicted with their duties (Article 5).
- The Anti-Corruption Law also creates offences addressing the receipt of gifts, bribes and promises, and the misuse of public power and authority, by civil servants, state operators, public officials and judges (Articles 6 to 12).

In order to maintain consistency and with a view to the eradication of corruption, the Corruption Eradication Commission ("KPK") has a zero tolerance policy with respect to the giving and receiving of gratification to/by government officials. The KPK defines "gratification" in a very broad sense, namely including the granting of money, goods, discount, commissions, non-interest loans, travel tickets, lodging facilities, tours, free medical treatments and other facilities, whether received in the home country or abroad, and those conducted with or without the use of electronic facilities.

Under the Anti-Bribery Law it is an offence to give or receive a gratification as an inducement or reward for a person acting or not acting contrary to his/her authority or duties related to the public interest (Articles 2 and 3).

The KPK issued guidance on the control of gratification in June 2015, which provides further clarity on the thresholds and types of gratification in relation to bereavement, religious festivals and traditional ceremonies that do not need to be reported to KPK, provided there is no potential business interest associated with the gratification.

Need the corrupt activities occur in whole or in part within this jurisdiction?

Offences under the Anti-Corruption Law can be committed where the corrupt activities occur wholly or partly outside of the territory of Indonesia (provided that they result in the misuse of public power by an individual or company within the domestic public sector).

Further, the Anti-Corruption Law also applies to any individual or company outside of the territory of Indonesia who provides assistance, opportunities, facilities or information which leads to an offence under the Anti-Corruption Law (Article 16).

The Anti-Bribery Law also has extra-territorial effect, which means that acts of bribery and corruption committed outside of Indonesia will also be caught by the Anti-Bribery Law and can be prosecuted in Indonesia (Article 4) (again, provided that they result in an individual or company within the domestic public sector giving or receiving a gratification for acting or not acting contrary to his or her public interest authority or duties).

To whom do the rules apply?

The prohibitions under the Anti-Corruption Law apply to all natural persons and companies, regardless of nationality or place of incorporation.

Further, if an offence is committed under the Anti-Corruption Law by or on behalf of a company, the criminal proceedings and any resulting penalties can be imposed on the company's board of directors.

The Anti-Bribery Law applies to Indonesian and foreign citizens.

What are the fines/penalties?

The penalty for breach of Article 2 of the Anti-Corruption Law is imprisonment for between four and 20 years (or, in certain circumstances, life imprisonment) and/or a fine of between IDR200m (US$14,800) and IDR1bn (US$74,300).

The penalty for breach of Article 3 of the Anti-Corruption Law is life imprisonment in certain circumstances, or imprisonment for between one and 20 years and/or a fine between IDR50m (US$3,700) and IDR1bn (US$74,300).

The penalty for breach of Article 5 is imprisonment for between one and five years and/or a fine of between IDR50m rupiah (US$3,700) and IDR250m (US$18,500).

The penalties for breach of Articles 6 to 12 of the Anti-Corruption Law include imprisonment ranging from between one year and 20 years and/or fines of between IDR50m (US$3,650) and IDR1bn (US$73,500). However, if the corrupt practices involve an amount of less than IDR5m (US$370), the maximum term of imprisonment is three years and the maximum fine is IDR50m (US$3,700).

The penalties for breach of the Anti-Bribery Law are imprisonment for five years (for grantor) and three years (for receiver) and a maximum fine of IDR15m (US$1,100).

What approach is taken to enforcement in practice?

The KPK presently is responsible for investigating and prosecuting corruption offences. It is independent from the executive, judiciary and National Police and has over 100 employees in positions ranging from police to prosecutors and investigators. It is a very active agency and, through Indonesia's Corruption Court, has succeeded in arresting and convicting several high-ranking political figures and executives in the private sector. It has been successful in numerous convictions that it has prosecuted through the Corruption Court since the KPK's formation in 2003. However, the ordinary district courts continue to handle most corruption cases and it is perceived that corruption remains a serious problem in Indonesia's judiciary, parliament and other key institutions.

"It is perceived that corruption remains a serious problem in Indonesia's judiciary, parliament and other key institutions."

> A draft bill on the Corruption Criminal Act to replace the legislation described in this chapter remains on the legislative agenda.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corruption?

Yes, such proceeds are likely to fall within the definition of "proceeds of crime" under Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crime ("Law No. 8"). It is an offence for an individual or company to:

- place, transfer, spend, pay, grant, deposit, carry abroad, convert or exchange with currency or securities; or
- commit other actions with a view to hiding or concealing the origins of "wealth" (which includes movable and immovable and tangible and intangible goods), known or allegedly resulting from a "crime" (which includes corruption).

It is also an offence for an individual or company to:

- hide or obscure the origin, source, designation or location, or transfer the actual rights or ownership, of wealth known or allegedly resulting from a crime; and
- receive, control the placement of, transfer, pay, grant, donate, deposit, exchange or use wealth known or allegedly resulting from a crime.

If an offence is committed by a corporation, the penalty may be imposed on the corporation or the corporate controller.

Penalties for individuals range from fines of up to IDR10bn (US$734,700) and imprisonment for up to 20 years. Penalties for corporations include a maximum penalty of IDR100bn (US$7.3m), publication of the judge's decision, freezing of assets, revocation of business licence, dissolution of the company, seizure of corporate assets and acquisition of the corporation by the State.

Penalties will also apply to individuals and corporations within and outside the territory of Indonesia that take part in or assist with the implementation of a money laundering crime.

The Financial Transaction Report and Analysis Centre ("PPATK") has issued a number of implementing regulations in connection with the enforcement of Law No. 8.

The President of the Republic of Indonesia issued Presidential Instruction No.7 of 2015 regarding Corruption Prevention and Eradication Actions which instructed Ministers, heads of government institutions, Governors, Regents and Mayors to implement actions to prevent and eradicate corruption. These actions should cover, among other things, licensing service reform, public service monitoring, bureaucratic reform, ethics code implementation, disclosure of public information, public procurement transparency and law enforcement.

What future developments are anticipated in this area?

The President of the Republic of Indonesia issued Presidential Regulation No.87 of 2016 regarding the Illegal Payment Eradication Task Force (*Saberpungli*), established as a task force chaired by the General Supervision Inspectorate of the National Police and under the supervision of the Coordinating Minister for Political, Laws and Security Affairs. The members of Saberpungli includes the National Police, General Attorney, State Intelligence Agency and the National Army, who have authority to undertake preventive actions, investigations and enforcement actions. In addition, a draft bill on the Corruption Criminal Act to replace the legislation described in this chapter remains on the legislative agenda for 2014-2019. However, it remains unclear if and when, and in precisely what form, such a bill may be enacted.

Italy

> “Sanctions are doubled where the shares of the company are listed on regulated markets.”

Under what legislation are corrupt activities unlawful in this jurisdiction?

Corrupt activities involving public officers and, in general, public administration are unlawful under Italian Criminal Code (the “Criminal Code”) as subsequently amended by Law No. 190/2012 and Law No. 69/2015, which adopted new measures aimed at combating corruption illegality in both public administration and private enterprises. Corrupt activities involving employees of private companies are sanctioned under Article 2635 of Italian Civil Code (the “Civil Code”).

What activities are prohibited?

Public Corruption

Many provisions of the Criminal Code penalise bribery. Article 318 prohibits public officials and persons in charge of a public office from unduly receiving for themselves or a third party money or other benefits, or from accepting the promise of such money and benefits in order to exercise their functions or powers. Pursuant to Article 319, such activities are sanctioned if committed by the public officer in order to omit or delay an act of their office or to perform an act contrary to their duties. Anyone who gives or promises a public official or holder of a public office undue money or benefits is subject to the same sanctions as the public official.

Under Article 319-*quarter*, introduced by Law No. 190/2012, public officials and holders of a public office who persuade private individuals to give them undue money or other advantages are punished with higher sanctions; penalties are also imposed on the private citizens who are so persuaded.

Individuals who take advantage of their relationships with public officials to offer to act as a mediator or agent between the public official and third parties, on the promise or receipt of money or other pecuniary advantages (for themselves or for others) are also liable to sanctions (Article 346-*bis*).

In addition, Article 314 of the Criminal Code sanctions public officials or those in public service who corruptly use money or other benefits of which they are in possession for their official activities.

Private Corruption

Article 2635 of Civil Code sanctions directors, general managers, directors responsible for the drawing-up of company accounts, auditors, liquidators and employees who exercise directing activities, who cause damage to a company by the wrongful performance of or failure to perform their duties, in breach of their obligations or their duty of trust. Sanctions are doubled where the shares of the company are listed on regulated markets in Italy or other EU States or widely distributed among the public.

Recently, legislative decree no. 38/2017 extended the sanctions to the case of incitement to private corruption. Sanctions to the company have been increased and made more severe.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. As a general rule, Article 6 of the Criminal Code states that each crime committed in Italy shall be punished pursuant to Italian law. In this respect, a crime is considered to have been committed in Italy if the relevant unlawful behaviour is even partially carried out in Italy or if the consequences of such unlawful behaviour take effect in Italy.

Exceptions to this general rule are provided in Article 7 of the Criminal Code, which specifically states that public officials who commit crimes of corruption and embezzlement outside Italy are liable under Italian law, and by Article 9 of the Criminal Code, under which Italian citizens who commit certain crimes outside Italy (including crimes relating to both public and private corruption (where related to listed companies)) are liable under Italian law if they are located there.

To whom do the rules apply?

Subject to the principles described above, the prohibition against corruption applies to all individuals and legal entities. In addition, Legislative Decree No. 231/2001 provides for the administrative liability of a company where directors or certain other individuals (including employees of the company) have committed public corruption with the aim of benefiting the company.

What are the fines/penalties?

Penalties vary depending on the specific corruption crime committed. In general terms, the penalty for individuals is imprisonment, which can vary from a minimum of four years to a maximum of 10 or 12 years, depending on the crime committed.

With respect to companies, if a company has been found administratively liable under Legislative Decree No. 231/2001, the company will be subject to various sanctions and, in particular, to:

- monetary fines (determined by the judge within set parameters);
- seizure of the profits obtained from the crime;
- publication of the judge's findings;
- disqualifying sanctions (for relevant details see below).

> "It is likely that Italy will adopt further domestic measures to prevent corruption in the near future."

What approach is taken to enforcement in practice?

Crimes of corruption are investigated by Public Prosecutors and the Police. In addition, an important role is played by the National Anti-Corruption Authority, which has to be informed by the Public Prosecutors whenever investigations relating to corruption are conducted. The National Anti-Corruption Authority has approved a national anti-corruption plan drawn up by the Civil Service Department, aimed at coordinating the implementation of national strategies to prevent and penalise corruption.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes, restrictions are provided by many Italian Laws:

Legislative Decree No. 231/2001

A company found liable under Legislative Decree 231/2001 may be subject to various forms of disqualification, including disqualification from carrying out its business activities, revocation or suspension of authorisations, licences or permits granted to the company for carrying out its business, a ban from entering into agreements with the Public Administration, exclusion from or revocation of benefits, loans or other contributions or a ban on promoting its services or goods. Disqualifying sanctions can be applied for a period of three months to two years. Where the company has obtained an advantage from the crime and has been disqualified at least three times in the previous seven years, it may be permanently disqualified from carrying out its business.

Code of Public Contracts

Pursuant to Legislative Decree No. 50/2016, a company may be barred from participating in public tenders and selection processes for the awarding of public contracts should any of its employees have been convicted crimes of corruption.

What future developments are anticipated in this area?

In Italy, the inadequacy of current anti-corruption legislation was recently identified as a major problem to be resolved. In light of this, many amendments to existing legislation have been made (in general, pursuant to Law No. 190/2012, Law No. 69/2015) and legislative decree no. 94/201 which aim to prevent and punish corruption and illegality in both public administration and private enterprise. Measures adopted in May 2016 include increased penalties for corruption crimes and duties for public authorities to be more transparent towards citizens (the so called Freedom of Information Act). Since anti-corruption issues are also high on the international agenda, it is likely that Italy will adopt further domestic measures to prevent corruption in the near future, given that this a very sensitive and ongoing problem to be addressed.

Japan

> “Japanese nationals may be held liable wherever the relevant offending act or results of such act occur.”

Under what legislation are corrupt practices unlawful in this jurisdiction?

Foreign and domestic corrupt practices are dealt with under different regimes.

In relation to foreign bribery, Japan is a signatory of the OECD Convention and has implemented the convention's terms through the Unfair Competition Prevention Act (as amended) (the “UCPA”).

General domestic corrupt practices are dealt with in the Penal Code (“Penal Code”) along with the Antimonopoly Act, which deals specifically with bid rigging, the Public Election Act, which deals with corruption during election campaigns, the Political Funds Control Act, which deals with restrictions on donations to political parties, and the Act on Prevention of Transfer of Criminal Proceeds, which deals specifically with money laundering activities. Commercial bribery is also prohibited under the Companies Act.

What activities are prohibited?

Bribery of a foreign public official

Generally, the giving, offering or promising of any money or other benefits to a foreign public official (directly or indirectly) for the purpose of inducing that official to act or refrain from acting in a particular way in relation to his/her duties or having that official use his/her influence in order to obtain illicit gains in business with regard to international commercial transactions, is prohibited under Article 18 of the UCPA.

The term “illicit gains in business” is widely interpreted and includes, for example, the acquisition of general business opportunities, as well as more substantive rewards such as the execution of contracts and governmental approvals. In addition, the definition of “foreign public official” is very wide and includes, for example, employees of companies who are state-owned or controlled, as well as employees of international organisations.

If the bribery of a foreign public official relates to business conducted under the Official Development Assistance (“ODA”) programme, a company involved in such bribery will be excluded from the ODA programme for up to three years. This penalty period was renewed in 2014.

Bribery of Japanese public officials

Generally, the giving, offering or promising of any money or any other benefits to a public official (directly or indirectly) in connection with the public service or duty of such an official is prohibited under Article 198 of the Penal Code.

The term “public official” covers both national and local government employees, as well as elected officials and other people engaged in the performance of public duties.

Certain government and elected officials are also required to report the receipt of any gifts above a certain monetary threshold (whether or not they are considered to be a bribe) to designated government and parliamentary bodies.

Private sector bribery

The Companies Act includes specific provisions prohibiting: (a) the receiving, requesting or promising of any money or any other benefits in response to agreeing to perform illegal requests by, among others, directors, officers and employees in connection with their duty; and (b) the giving, offering or promising of such money or other benefits, but these provisions have rarely been enforced. In addition, private sector bribery by directors, officers and employees may also be prosecuted for breaching the duty of trust under the Companies Act.

Need the corrupt activities occur in whole or in part within this jurisdiction?

Japanese nationals may be held liable wherever the relevant offending act or results of such act occur. Otherwise, individuals of other nationalities can be liable where the relevant offending act or results of such act occur partly or wholly in Japan.

To whom do the rules apply?

Japanese nationals and individuals of other nationalities may be caught by the UCPA. In addition, under the UCPA, where the relevant person committing the offence is acting in regard to the business of his or her employer, the relevant company may also be punished.

As regards domestic corruption, both the individual providing, for example, a bribe, as well as the domestic public official receiving such a bribe are covered by the Penal Code. Both the individual providing a bribe as well as the directors, officers and employees receiving such a bribe can be prosecuted for commercial bribery under the Companies Act.

What are the fines/penalties?

Individuals who violate the provisions relating to bribery of foreign public officials under the UCPA may be imprisoned for up to five years and/or fined an amount up to JPY5m. When such an individual is a representative, agent or employee of a company and the relevant violation relates to the business of such company, the company itself may be fined an amount up to JPY300m.

Individuals who violate the provisions relating to bribery of domestic public officials under the Penal Code may be imprisoned for up to three years or fined an amount up to JPY2.5m. Companies cannot be punished for the actions of their employees under the Penal Code. The sanctions imposed on public officials vary depending on the circumstances.

Directors who violate the provisions relating to a breach of trust under the Companies Act may be imprisoned for up to 10 years and/or fined an amount up to JPY10m (approximately US$90,000). Directors, officers and employees, among others, who violate specific provisions prohibiting commercial bribery under the Companies Act may be imprisoned for up to five years or fined an amount up to JPY5m (approximately US$45,000).

What approach is taken to enforcement in practice?

Foreign bribery laws in Japan were once rarely enforced. A report by the OECD Working Group on Bribery published in June 2006 (and all updated reports thereof) suggested that Japan should do more to investigate and prosecute foreign bribery cases as part of its obligations as a signatory of the OECD Convention. Japan provided written follow-up reports to the OECD Working Group in March 2007 in which it stated its commitment to tackle foreign bribery and agreed to consider changes to legislation to support this commitment. Also, Japan has revised the guidelines on the prevention of foreign bribery several times. Although there have been no legislative developments in this area, such crimes are being monitored more keenly than before.

By contrast, the provision relating to a breach of trust by directors under the Companies Act is frequently enforced, while, as stated above, the provisions prohibiting commercial bribery by directors, officers and employees, among others, under the Companies Act are rarely enforced.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

There is no legislation or court precedent that directly imposes restrictions on companies which derive benefits from contracts or sales procured through corrupt practices. However, under the UCPA, any fine imposed on a company, whose employee is found guilty, will include an element to cover confiscation of any benefits derived from the relevant foreign corrupt practices.

Under the Act on Prevention of Transfer of Criminal Proceeds, a financial institution is required to report to a relevant governmental authority any suspicious transaction where an asset it received is considered to be the proceeds of certain crimes, including bribery of foreign public officials under Article 18 of the UCPA. This would indirectly prevent a company engaging in money laundering arising from bribery of foreign public officials. The governmental authority may order a financial institution to take necessary measures if the financial institution breaches the said reporting obligation. If an officer or employee of the financial institution does not follow the order, they may be imprisoned for up to two years and/or fined an amount of up to JPY3m and the financial institution itself may be fined an amount of up to JPY300m.

What future developments are anticipated in this area?

In addition to the reports from the OECD mentioned above, the OECD announced in January 2012 that serious concerns remained over Japan's enforcement of foreign bribery law, despite some positive developments. The OECD also announced in June 2014 that, in the absence of legal authority to confiscate the proceeds of foreign bribery and punish those who launder such proceeds, it questioned whether Japan could effectively implement the OECD Convention, including sanctioning companies that bribe overseas. The last evaluation by OECD took place in December 2011, and the next evaluation will be conducted in March 2019.

In response to these announcements, and in light of some Japanese companies or employees thereof having been prosecuted overseas for bribery, the Japanese government decided to revise the guidelines on the prevention of foreign bribery, specifying in more detail a threshold between illegal bribery and small amount facility payments that can be provided to the foreign government. These new guidelines were published on 30 July 2015.

Luxembourg

Under what legislation are corrupt activities unlawful in this jurisdiction?

They are unlawful under the Luxembourg Criminal Code (the "Code").

What activities are prohibited?

Articles 246 to 249 of the Code prohibit, in general, corruptly soliciting, receiving, promising or offering any gift, reward or other advantage, whether directly or indirectly, as an inducement to a person to do or forbear from doing anything in respect of any matter in which a public body is concerned or in relation to his principal's affairs.

Article 10 of the law of 16 April 1979 on the Statute of Luxembourg Civil Servants prohibits officials from requesting or accepting, directly or indirectly, any material advantage which could place them in conflict with their legal duties.

The Law of 23 May 2005, amended by the Law of 13 February 2011, prohibits passive and active corruption in the private sector.

For these purposes, passive corruption occurs where a director or manager of a legal entity, mandatory or agent of a legal entity or a natural person solicits or accepts, directly or through an intermediary, an offer, promise or advantage of any nature for themselves or for a third person, in order to do or abstain from doing any act of their function or facilitated by their function, without the knowledge and without authorisation, as appropriate, of the board of directors or the general assembly, the principal or the employer (Article 310). Active corruption is the offering, promising or conferring of such advantage (Article 310-1). The above prohibitions apply both to domestic and foreign corruption.

The Law of 13 February 2011 introduced the protection of whistle-blowers against corruption, influence peddling and the misuse of privileged information. In this respect, article L.271-1 of the Luxembourg Labour Code bans prejudice and repressive actions towards the employee reporting corruption. A similar protection applies to civil servants.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. Since the enactment of the law of 13 February 2011, such corrupt activities need no longer be committed in part in Luxembourg in order to be unlawful.

Article 5-1 of the Code of Criminal Procedure now provides that any Luxembourg national, resident or foreigner found in Luxembourg who has committed acts of corruption abroad may be prosecuted and tried in Luxembourg, regardless of the unlawfulness of these acts under the law of the foreign country where the corrupt practices took place.

In this regard, the authorities of Luxembourg may act of their own volition and need not receive a complaint from the victim of the foreign corrupt practices or a denunciation from the foreign authorities to prosecute such practices.

The Code applies to EC civil servants or national civil servants of foreign states, as well as to members of the Commission of the European Community, the European Parliament, the Court of Justice or the Court of Auditors of the European Community or any other international organisation.

Finally, under the Code of Criminal Procedure, acts committed outside Luxembourg are considered to be committed within the jurisdiction of the Luxembourg courts if any one element of an offence has been perpetrated on the territory of the Grand-Duchy of Luxembourg.

To whom do the rules apply?

Since the introduction of the law of 3 March 2010 on the criminal liability of legal entities, criminal law in Luxembourg applies to natural persons and to legal entities.

In relation to corrupt acts occurring in Luxembourg, the prohibition applies to private and public legal entities except for the state and for cities, and to all natural persons whether employed in the public sector or in the private sector and irrespective of their nationality.

Under the Code of Criminal Procedure, a foreigner who is an accomplice to a criminal offence committed abroad by a Luxembourg national may be prosecuted and tried in Luxembourg.

What are the fines/penalties?

A person found guilty of a public corruption offence can be punished by five to 10 years' imprisonment and a fine ranging from €500 to €187,500.

In the case of corruption of judges, the Code provides for a punishment of 10 to 15 years' imprisonment and a fine ranging from €2,500 to €250,000.

Other penalties may include having to reimburse the value of any gift or reward received or being debarred from appointment or election to public office for a period of between five years and life.

Active and passive corruption in the private sector are punishable, for natural persons, by one month's to five years' imprisonment and a fine ranging from €251 to €30,000.

For legal entities the maximum fine provided for in Article 36 of the Code is multiplied by five.

What approach is taken to enforcement in practice?

The Prosecution Office of Luxembourg is an independent judicial body. Although it does not include a department focusing on the prosecution of corruption in particular (either domestic or foreign), there is a strong declared desire on the part of the law enforcement authorities to ensure that all acts of corruption are sanctioned. Also an inter-ministerial committee, the Corruption Prevention Committee, was established. Its mission is to seek and propose the appropriate and necessary measures for an effective fight against corruption, taking a global and multidisciplinary approach, both at national and international level and in both the public and private sectors.

Investigations and prosecutions of cases of alleged corruption are carried out according to the general rules contained in the Code of Criminal Procedure and the Criminal Code.

A prosecution is carried out by the prosecutor's office, which has complete discretion as to whether to launch a criminal investigation. If the prosecutor decides to initiate a prosecution, he must request the appointment of an examination judge ("*juge d'instruction*") to conduct the actual investigation.

The final decision as to whether there will be a criminal trial or not lies with the "*Chambre du Conseil*". A prosecution will only be referred to a full trial court when there are sufficient charges made out against the accused person. Otherwise the prosecution will be dismissed.

To our knowledge, there have been few prosecutions for bribery.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes, restrictions apply to both natural persons (officers and employees) and legal entities. It is a criminal offence to acquire, use, possess, conceal, disguise, convert or transfer "criminal property".

A person found guilty of a "receiving offence" can be sentenced to 15 days' to five years' imprisonment, and to the payment of a fine ranging from €251 to €5,000. Legal entities may be punished by the maximum fine provided for in Article 36 of the Code, multiplied by five.

What future developments are anticipated in this area?

There are currently no proposals for further legislation or regulation in the economic crime field.

The Netherlands

> "In practice... "facilitation payments"... are not prosecuted, in order not to implement a stricter policy than the OECD Convention prescribes."

Under what legislation are corrupt activities unlawful in this jurisdiction?

Corrupt activities are unlawful in the Netherlands under Article 177 – 178a, 328ter and 363 – 364a of the Dutch Criminal Code (the "DCC").

What activities are prohibited?

Under the DCC, it is prohibited to make or offer a gift or service to a public official, including a person who has been or has the prospect of becoming a public official, with the aim of inducing him to do something or refrain from doing something in the course of his (current, former or future) employment. The same applies to the offer or provision of a gift or service as a reward for something the public official has done or did not do in the course of his (current or former) employment, regardless whether this would be in breach his duty.

Furthermore, it is prohibited for a public official or a person other than a public official (i.e. a private person), employed or acting on the basis of a mandate, to accept a gift or promise that is offered to him as a reward for something he will do or refrain from doing in the course of his employment or mandate, or to conceal the acceptance of such a gift or promise from his employer or principal, in bad faith. The same applies to a gift or promise offered as a reward for something the public official, employee or agent has done or refrained from doing in the past.

The prohibition under the DCC extends to so-called "facilitation payments", although in practice acts that fall within the scope of the term "facilitation payments" as stated in the OECD anti-Bribery Convention are not prosecuted, in order not to implement a stricter policy than the OECD Convention prescribes.[1]

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. Under the DCC, it is also a criminal offence:

- to bribe, in a foreign country, Dutch nationals who are acting as public officials or who are employed in the public service of a foreign state or by international organisations; and
- for Dutch nationals and entities to bribe a private person located outside the Netherlands, provided that the bribery is also a criminal offence in the country where the bribe was made.

To whom do the rules apply?

The prohibitions apply to all persons and entities who commit bribery offences within the Netherlands, including companies. In relation to bribery acts committed outside the Netherlands, the prohibitions apply to all Dutch persons and entities that try to bribe a Dutch or non-Dutch public official and all non-Dutch persons that try to bribe a Dutch public official or a foreign person employed by the Dutch state, as well as any person bribed abroad who is in the public service of an international institution, with its seat in the Netherlands. Dutch public officials also fall within the scope of the provisions when accepting a gift or service given to them with the aim of inducing them to do something or refrain from doing something in the course of their (current, former or future) employment.

1. This follows from the Instruction for criminal investigations and prosecution of foreign corruption (*Aanwijzing opsporing en vervolging buitenlandse corruptie*).

What are the fines/penalties?

With the entering into force of new anti-bribery legislation in 2015, maximum sentences and penalties have been increased. Depending on the gravity of the offence, a public official, person or entity found to have engaged in corrupt practices prohibited under the DCC can be imprisoned for up to six years (or up to twelve years in the case of a judge) or fined up to €82,000. A person may also be removed from his office. Bribery of private persons can be sanctioned with imprisonment of up to four years (the penalty was previously two years).

Where a company has been convicted of a crime for which the specified fine is found by the court to be insufficient or the relevant category of offence does not include an appropriate penalty, a fine may be imposed not exceeding the amount of the next higher category (section 23, subsection 7, DCC), i.e. €820,000. If this penalty is not deemed appropriate for the offence committed, a fine can be imposed of a maximum of 10% of the annual turnover of the preceding fiscal year.

What approach is taken to enforcement in practice?

In December 2012, the OECD Working Group on Bribery published the *Phase 3 Report on implementing the OECD Anti-Bribery Convention in the Netherlands*. In this report, the OECD concluded that the Netherlands should significantly step up its foreign bribery enforcement. In response, the Dutch government reinforced its specialised financial-economic (supervision) resources and the Public Prosecution tightened its guidelines in dealing with corruption. In addition, new legislation was proposed for fighting corruption in the Netherlands and came into effect on 1 January 2015. With these measures the Dutch legislator has recognised the importance of preventing corruption and financial economic crimes as a whole, increasing the sanctions and decreasing the incentive for individuals and companies to engage in corrupt practices. In its follow up report of May 2015, the OECD stated that the Netherlands had progressed significantly in respect of the enforcement of anti-corruption measures.

The Dutch National Police Internal Investigations Department is authorised to investigate suspicions of bribery involving Dutch public officials. Although the investigation into and prosecution of domestic corruption offences is increasing, the number of cases brought to trial to date remains limited. Examples of such cases include the Rotterdam port scandal, real estate fraud cases and bribery of local politicians. In general, there seems to be a tendency towards settling cases in relation to financial and economic crimes out of court. In addition, although several investigations have been conducted in relation to foreign corrupt practices, only a few have resulted in a criminal investigation, including a recent large-scale bribery in the telecom sector.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. Illegally obtained assets can be confiscated by the Dutch State from a person or entity that is convicted of corrupt practices. Furthermore, it is prohibited to acquire, possess or transfer assets, if the person or entity transferring the assets is aware that these were obtained through a criminal offence. Finally, a person commits a criminal offence under Dutch law if he conceals the nature, origin, location or transfer of illegally obtained assets, or conceals the identity of the rightful owner of those assets, if he knows that those assets were obtained as a result of a criminal offence.

What future developments are anticipated in this area?

With the recent focus on the active investigation into and prosecution of corruption, an increasing number of investigations into allegations of bribery are being undertaken in the Netherlands. It is expected that more and more cross-border investigations will be commenced in the years to come. Investigating authorities are increasingly focussing on "facilitators" of illegal conduct. Furthermore, the Dutch government is making a clear effort to encourage companies to implement internal anti-corruption procedures. In 2016, new legislation was enacted to provide greater protection to whistle-blowers.

> "New legislation... for fighting corruption in the Netherlands... came into effect on 1 January 2015."

Papua New Guinea

> The Code does not cover private bribery.

Under what law are corrupt practices unlawful in this jurisdiction?

In Papua New Guinea ("PNG"), the Criminal Code Act 1974 (the "Code") prohibits corrupt practices, which can be inferred to apply to foreign corrupt practices.

The Interpretation Act 1975 defines "persons" to include a body politic, a corporation or the holder of an office. Upon a literal interpretation of that definition, the application of "a person" under the Code can be extended to include a foreign government or a foreign public official.

What activities are prohibited?

It is an offence under the Code for a person to corruptly provide or receive a benefit from a person employed in the public service or a holder of a public office (section 87 of the Code).

It is also an offence under the Code for a person to offer or promise a reward beyond his/her proper pay to a person employed in the public service for the performance of that person's duty (section 88 of the Code).

The Code further prohibits a person from either impersonating or falsely representing and performing a requirement or assuming to do an act of a person employed in the public service (section 97 of the Code).

Under section 97B, the Code prohibits a person from bribing a public service employee and prohibits a public service employee from accepting a bribe from a person for the purposes of:

- voting or abstaining from voting at any meeting in favour of or against any measure; or
- performing or abstaining from performing, or aiding in procuring or hindering the performance of, an official act; or
- aiding in procuring or preventing the passing of any vote or granting of any contract in favour of any person; or
- showing or refraining from showing any favour or disfavour in his capacity as a person employed in the public service.

It is also an offence for a person not to report a bribe to a police officer.

A person employed in the public service includes a member of any state service, a constitution office-holder, a person employed in a statutory body, a Member of Parliament or a person employed in the provincial government.

The Code does not cover private bribery.

Need the corrupt activities occur in whole or in part within this jurisdiction?

Under section 12 of the Code, an offence can be committed where the conduct constituting the offence:

- actually occurred wholly or partly in PNG; or
- occurs wholly or partly outside PNG and the person committing the offence subsequently enters PNG; in such circumstances that person is guilty of an offence (of the same kind) as if that offence was committed in PNG.

It is a defence to the charge if that person can prove that he/she did not intend that the corrupt activity would have effect in PNG.

To whom do the rules apply?

Subject to the above mentioned principles, in relation to corrupt practices in PNG, the prohibitions apply to PNG citizens and businesses and companies incorporated in PNG, as well as foreign nationals and foreign companies incorporated in PNG.

Allens › ‹ Linklaters

What are the fines/penalties?

The fines/penalties for corruption offences under the Code are:

> for official corruption, imprisonment for a term not exceeding seven years and a fine at the discretion of the Court;

> for extortion, imprisonment for a term not exceeding three years and a fine at the discretion of the Court;

> for impersonating a public officer, imprisonment for a term not exceeding three years;

> for bribing a member of the public service, imprisonment for a term not exceeding seven years or a fine at the discretion of the Court, or both; and

> for not reporting a bribe to a police officer, imprisonment for a term not exceeding 12 months or a fine not exceeding PGK1000, or both.

The penalty is determined by the courts on a case by case basis, based on the assessment of aggravating and mitigating factors.

What approach is taken to enforcement in practice?

Generally, corrupt activities are investigated and prosecuted by the police and the Public Prosecutor's Office. The Public Prosecutor's Office has a department dealing exclusively with investigating and prosecuting corrupt activities. We have not identified any investigation or prosecution made in PNG for foreign corrupt practices.

The PNG Government is currently in the process of passing laws to establish the Independent Commission Against Corruption ("ICAC"), which will have the primary responsibility of investigating and prosecuting claims of corrupt conduct against individuals and companies.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. Under section 34 of the Proceeds of Crimes Act 2005, it is an offence for an individual or company to:

> engage directly or indirectly in a transaction that involved money, or other property, that the individual or company knows, or ought reasonably to know, to be the proceeds of crime; or

> receive, possess, dispose of or bring into PNG money, or other property, that the individual or company knows, or ought reasonably to know, to be the proceeds of crime; or

> conceal or disguise the source, existence, nature, location or control of money, or other property, that the individual or company knows, or ought reasonably to know, to be proceeds of crime.

> The penalty for an individual is a fine of PGK100,000 or imprisonment for up to 20 years, or both. The penalty for a company is a fine of PGK500,000.

It is a defence to a prosecution of an individual or a company for receiving, possessing, disposing of and bringing into PNG money or property being the proceeds of crime if that individual or company had no reasonable ground for suspecting that the property was derived or realised, directly or indirectly, from unlawful activity.

If there is a restraining order issued by the Court under the Proceeds of Crimes Act restraining an individual or company from disposing of, or otherwise dealing with a property, the breach of that restraining order is an offence.

The penalty for an individual is a fine of PGK70,000 or imprisonment for seven years, or both. The penalty for a company is a fine of PGK350,000.

In addition, the police may seize and detain an amount of currency greater than PGK5,000 which is being imported into or exported from PNG if there are reasonable grounds for suspecting that it is tainted property. However, the currency detained may not be detained for more than 24 hours after it is seized.

What future developments are anticipated in this area?

The enabling legislation for ICAC is yet to be passed by parliament. Once established, ICAC will have powers to investigate corrupt practices, conduct hearings and examine evidence, issue warrants and arrest and, upon obtaining the consent of the Public Prosecutor, prosecute indictable offences.

> "[ICAC] will have the primary responsibility of investigating and prosecuting claims of corrupt conduct against individuals and companies."

People's Republic of China

Under what legislation are corrupt practices unlawful in this jurisdiction?

The Criminal Law of the People's Republic of China ("PRC Criminal Law") prohibits corrupt acts in general, such as the offering and receiving of bribes, and criminal sanctions could be imposed on those who engage in certain corrupt practices (whether in the PRC or abroad) which are found to be serious.

Further to amendments in February 2011, the PRC Criminal Law criminalises the offering of money and property to foreign public officers and international organisation officials to obtain an unjust advantage.

What activities are prohibited?

In general, bribery is prohibited. According to PRC Criminal Law, the offering of money, property or other economic benefits which aims to secure an unjust advantage, or the solicitation or receipt of money, property or other economic benefits in exchange for providing an advantage, or even the giving of a promise to provide an advantage, whether in the public sector or private sector, could constitute a criminal offence, depending on the circumstances. More specifically, to constitute a criminal offence:

> for offering a bribe, the bribe payer must intend to gain unjust interests;

> for solicitation of a bribe, the proposed recipient must solicit benefits by taking advantage of his position; and

> for receipt of a bribe, the recipient must receive benefits by taking advantage of his position and undertake to secure interests for the person offering the bribe.

In addition, acting as an intermediary to facilitate the bribery of state officials may also constitute a criminal offence. The value of a bribe or bribes must exceed a certain level, or other serious circumstances must exist, in order for the above conduct to amount to a criminal offence.

The Anti-Unfair Competition Law of the PRC (1993) prohibits the use of money or property or any other method to bribe a person in order to sell or purchase goods. Secret commissions or kickbacks qualify as bribes.

Need the corrupt activities occur in whole or in part within this jurisdiction?

PRC Criminal Law applies under the following circumstances:

> to all (either PRC nationals or foreigners) who commit crimes within the territory of the PRC; a crime is deemed to have been committed within the PRC if either the act or consequences of a crime take place within the PRC;

> to PRC nationals who commit crimes outside the territory of the PRC and where the maximum sentence for such crime is more than a three-year fixed term of imprisonment under PRC Criminal Law; and

> to foreigners who commit crimes against the State or nationals of the PRC outside the territory of the PRC and where the minimum sentence for such crime is not less than a three-year fixed term of imprisonment under PRC Criminal Law, provided that such act is punishable according to the laws of the jurisdictions where it was committed.

To whom do the rules apply?

With respect to corrupt acts occurring in the PRC, the prohibition applies to all persons and entities, regardless of their nationality or jurisdiction of incorporation. With respect to corrupt acts committed outside the PRC, the jurisdiction of the PRC courts extends to PRC nationals and PRC-incorporated entities and, in some circumstances, to foreigners who have committed corrupt acts against the State or nationals of the PRC (see above).

What are the fines/penalties?

According to PRC Criminal Law, if a natural person is found guilty of bribing a public official, his/her property may be confiscated and he/she may be subject to sanctions ranging from criminal detention to life imprisonment. If a corporation is found guilty of bribing a public official, a fine may be imposed on the entity, and persons directly in charge of the corporation and those directly responsible for the offence may be punished by imprisonment for up to five years.

With respect to the bribing of individuals other than public officials, a person found guilty of such an offence may be subject to imprisonment for up to 10 years, as well as fines.

Administrative penalties may be imposed under the Anti-Unfair Competition Law in the form of fines and confiscation of earnings.

What approach is taken to enforcement in practice?

It appears that prosecutions brought in the PRC for foreign corrupt practices are very rare. However, domestic bribery prosecutions are fairly common in conjunction with the efforts being made by the Chinese government to build a credible market system.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Any illegal gains generated from corrupt practices may be confiscated. Although it is not entirely clear how the amount of illegal gains should be determined, it is widely accepted that for sales of goods, an illegal gain equals the sales price of the goods less the purchase price of the input materials.

What future developments are anticipated in this area?

It is anticipated that prevention of corrupt acts will continue to be a focus in the PRC. Earlier this year, a consultation draft of amended Anti-Unfair Competition Law was published to seek public comments. The draft clarified that the bribe receiver includes both a direct counterparty in the transactions and a third party who has a direct influence on the transactions by taking advantage of his/her authority, though no definition of "bribery" is provided under the draft.

> "Domestic bribery prosecutions are fairly common."

Poland

Under what legislation are corrupt activities unlawful in this jurisdiction?

Under the Polish Criminal Code (the "PCC").

What activities are prohibited?

Public bribery

The PCC prohibits providing or promising a material or personal benefit to a public official, both Polish and foreign, including officials working for international organisations, in connection with their office. The law does not require that the benefit or promise thereof is granted with a view to a particular purpose, only that it is granted in connection with the public function of the recipient. Should the benefit or promise be of significant value or be granted to a public official in order to influence his behaviour and incline him to act contrary to the law, the punishment will be more severe.

Private/commercial bribery

The offence of commercial bribery takes place when a material or personal benefit or promise thereof is granted to or received by a director of a company or a person having significant influence over the decision-making process in that company in exchange for actions that may damage the company, constitute unfair competition practices under the statute, or confer an unwarranted advantage upon the person giving or offering the bribe.

Under the Criminal Liability of Collective Entities Act 2002 (the "Act") companies (and other "collective persons") may be criminally responsible for the actions of persons acting on their behalf or with their consent or knowledge. However, for a company to be criminally liable under the Act, an individual must have been convicted of the crime that resulted in benefit to the company.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. As a general rule, Polish criminal law applies to all actions taken within Poland or on a Polish vessel or aircraft, as well as actions taken by Polish citizens outside Poland.

With regard to foreigners, Polish criminal law will apply if the activity is directed against the interests of Poland, a Polish citizen or a Polish entity.

Polish criminal law will always apply, regardless of the law of the place in which the offence took place, if the offence was aimed against the security of Poland, against Polish public officers or Polish public offices, against material economic interests of Poland or where any proceeds from it, even indirect, were gained in the territory of Poland.

To whom do the rules apply?

To all persons and entities, both Polish and foreign.

What are the fines/penalties?

Bribery of public officials, both Polish and foreign, is punishable by imprisonment for up to eight years or, if the bribe is of significant value, up to 12 years. If the bribe aims to influence a public official to act contrary to the law, the offender is liable for imprisonment for up to 10 years.

Commercial bribery is punishable by imprisonment for up to five years or, if the offence causes significant damage to the company, up to eight years.

Penalties may also include confiscation of the benefits or proceeds received or value thereof stemming from the offence. Companies committing an offence under the Act can be liable for a fine of up to PLN5m (€1.2m), but not exceeding 3% of revenue in the financial year in which the offence was committed. In case of a company committing an offence, confiscation of any proceeds and benefits stemming from the offence is obligatory.

If a company re-offends within five years of the first sentence, the fine may be up to PLN7.5m (€1.8m). The penalties may also include being banned from certain activities for a period of one to five years, including being banned from promoting the company's commercial activities, from benefiting from public subsidies or aid from international organisations and from participating in public tenders.

What approach is taken to enforcement in practice?

Currently numerous investigations regarding corruption are underway, mostly involving Polish persons and entities. Relatively recently, a number of investigations conducted by the Polish authorities with cooperation from the US Securities and Exchange Commission and Department of Justice regarding the alleged corruption of public officials have resulted in formal indictments being brought in the Polish criminal courts, as well as prosecution of corporations under the FCPA.

Corruption is perceived to be a serious problem in Poland. Enforcement authorities are taking a rigorous and strict approach to investigation and prosecution. In 2006 a powerful anti-corruption agency was created to fight corruption. After the 2015 parliamentary elections, the agency gained strong support from newly elected political leaders, hence increased emphasis on fighting corruption is expected.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Under the Act, Polish courts will order the confiscation of all proceeds even indirectly connected with corruption. Thus, all proceeds from a contract concluded as a result of bribery will be forfeited. Moreover, in order to guarantee enforcement, the seizure of corporate assets even indirectly connected with corrupt practices can be ordered before formal commencement of criminal proceedings. In addition, handling (buying/selling/possessing/hiding) or assisting in handling property resulting from corrupt practices may constitute a separate offence under the PCC, with a penalty of imprisonment for up to five years.

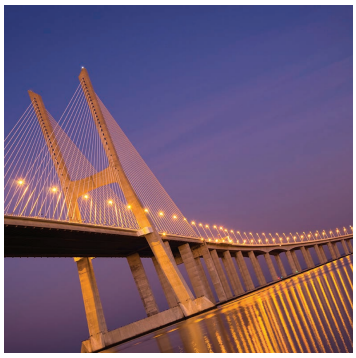
What future developments are anticipated in this area?

The enforcement agencies are continuing to increase their effectiveness in fighting corruption, including by lobbying for changes to the law giving them more powers. For example, the new 2016 regulation on wiretapping greatly increased their ability to use this procedure without requiring prior court authorisation.

Moreover, there has also been discussion about the possible introduction of a new Act on Criminal Liability of Collective Entities or a major revision to the current Act, which would introduce direct criminal liability for a company without requiring the prior conviction of an individual for the relevant offence.

> "Corruption is perceived to be a serious problem in Poland... increased emphasis on fighting corruption is expected."

Portugal



Under what legislation are corrupt activities unlawful in this jurisdiction?

Corruption is unlawful under:

> the Portuguese Criminal Code ("PCC")

> the Law on the Crimes of the Responsibility of the Holders of Political Positions ("RHPP"); and

> the New Criminal Regime on Bribery in the International Commerce and Private Sector ("BICPS").

What activities are prohibited?

Portuguese Criminal Code

Articles 372, 373 and 374 of the PCC prohibit:

(i) the solicitation or acceptance of an undue benefit, whether directly or indirectly, by an official performing his/her activity or due to his/her activity;

(ii) the offer or promise of an undue benefit, whether directly or indirectly, to an official performing his/her activity or due to his/her activity;

(iii) the solicitation or acceptance of a benefit or a promise of a benefit, whether directly or indirectly, by an official in exchange for the execution of an act or the omission of an act, regardless of whether it relates to acts or omissions that breach the official's duty (passive bribery); and

(iv) the offer or promise of a benefit, whether directly or indirectly, to an official in exchange for the execution of an act or the omission of an act, regardless of whether it relates to acts or omissions that breach the official's duty (active bribery).

The prohibitions extend to bribes made to third parties with the consent of an official.

This regime applies not only to Portuguese public officials, but also to certain officials of international organisations and also to judges and officials of international courts, provided that Portugal recognises the jurisdiction of the court. If the relevant acts are committed in whole or in part in Portugal, the prohibition also applies to officials of foreign states as well as to those who exercise functions in out-of-court dispute resolution procedures, irrespective of his/her nationality or country of residence, and to foreign arbitrators and juries.

Law on the Crimes of the Responsibility of the Holders of Political Positions

The RHPP sets out a specific legal framework applicable to individuals holding political positions or high public offices. If the relevant acts are committed in whole or in part in Portugal, the RHPP is also applicable to individuals holding political positions in international organisations or in foreign states.

New Criminal Regime on Bribery in the International Commerce and Private Sector

In what concerns bribery in international commerce, the BICPS prohibits the offer or promise of a benefit to a Portuguese or foreign state official, to an official of an international organisation or to a holder of a political position in Portugal or abroad and to any other person if one of those individuals is aware of that fact, in exchange for obtaining or maintaining a transaction, contract or any undue advantage in international commerce.

As to bribery in the private sector, the BICPS prohibits the offer or promise of an undue benefit to, or the solicitation or acceptance of a benefit by, an employee of a private company or other private legal entity in exchange for the execution of an act, or the omission of an act, which is contrary to such employee's duties. The offence is deemed to be more serious if it has the effect of distorting competition or causing loss to third parties. This prohibition applies to foreign employees of private companies (subject to the requirements outlined below).

The PCC also prohibits the offer or promise of a benefit to or the solicitation

or acceptance of a benefit by any person in exchange for the exertion of a real or supposed influence over any public entity (so called "influence peddling" or "trading in influence").

Need the corrupt activities occur in whole or in part within this jurisdiction?

As a general rule, Portuguese criminal law is applicable to acts committed in Portugal.

However, Portuguese criminal law is also applicable to acts committed outside Portugal:

> when the crime is committed against Portuguese citizens, by Portuguese citizens who, at the time of occurrence, reside and are located in Portugal;

> when the crime is committed by Portuguese citizens, or by foreigners against Portuguese citizens, whenever:

  – the perpetrators are located in Portugal;

  – the acts are punishable according to the law of the place where they were committed; and

  – extradition is refused or delivery up is not granted pursuant to a European arrest warrant or an instrument for international cooperation that is binding on Portugal;

> by foreigners located in Portugal where extradition is refused or delivery up is not granted pursuant to a European arrest warrant or an instrument for international cooperation that is binding on Portugal;

> by or against corporate entities with a seat in Portugal.

Portuguese criminal law is also applicable to acts committed outside Portugal when those acts amount to certain crimes such as, for example, influence peddling.

The BICPS applies:

> to Portuguese citizens and foreigners found in Portugal, regardless of the place where the relevant acts occurred, in cases of bribery in international commerce, and

> to Portuguese officers or holders of political positions in Portugal or Portuguese citizens holding an office in an international organisation, regardless of the place where the relevant acts occurred, in cases of bribery in the private sector.

To whom do the rules apply?

In relation to acts occurring in Portugal or (subject to the requirements outlined above) abroad, the prohibitions apply to both natural persons and legal entities.

What are the fines/penalties?

The following penalties/fines apply:

(i) in cases of solicitation or acceptance of an undue benefit by an official performing his/her activity or due to his/her activity, the penalty is imprisonment for up to six years and six months or a fine of up to €300,000;

(ii) in cases of the offer or promise of an undue benefit to an official performing his/her activity or due to his/her activity, the penalty is imprisonment for up to four years or a fine of up to €180,000 if the perpetrator is a natural person, or of up to €3.6m if the perpetrator is a company or any other legal entity;

(iii) in cases of solicitation or acceptance of a benefit or a promise of a benefit by an official in exchange for the execution of an act or the omission of an act, the penalty is imprisonment for up to six years and six months if the act or omission does not breach the official's duty, or imprisonment for up to 10 years and six months if the act or omission breaches the official's duty; and

> "The prohibitions extend to bribes made to third parties with the consent of an official."

(iv) in cases of the offer or promise of a benefit, whether directly or indirectly, to an official in exchange for the execution of an act or the omission of an act, the penalty is imprisonment for up to four years or a fine of up to €180,000 (or of up to €3.6m if the perpetrator is a company or any other legal entity) if the act or omission does not breach the official's duty, or imprisonment for up to six years and six months (or a fine of up to €7.8m if the perpetrator is a company or any other legal entity) if the act or omission breaches the official's duty.

When committed by a holder of a political position or a high public office, more severe penalties apply.

Offering or promising a bribe to an official to obtain an advantage in international commerce is punishable by imprisonment for up to eight years.

Bribery in the private sector is punishable (i) in cases of passive bribery, by imprisonment for up to five years or with a fine of up to €300,000; (ii) in cases of active bribery, by imprisonment for up to three years or with a fine of up to €180,000 if the perpetrator is a natural person, or of up to €3.6m if the perpetrator is a company or other legal entity. If the act is capable of distorting competition or causing loss to third parties, the punishment may go up to eight years (passive bribery), or to five years or a fine of up to €300,000 if the perpetrator is a natural person, or up to €6m if the perpetrator is a company or other legal entity (active bribery).

Trading in influence is punishable by (i) imprisonment for up to 5 years (or a fine of up to €6m if the perpetrator is a company or any other legal entity) if the purpose is to obtain an unlawful favourable decision or (ii) imprisonment up to three years or a fine of up to €180,000 (or a fine of up to €3.6m if the perpetrator is a company or any other legal entity) if the purpose is to obtain a lawful favourable decision.

What approach is taken to enforcement in practice?

Enforcement of foreign corruption offences in Portugal has been low with very few allegations being made. To our knowledge, not a single prosecution has been brought for foreign corruption.

With regard to domestic bribery, the Portuguese Ministry of Justice has reported 549 convictions for corruption and related offences over the last decade, including the convictions of 50 public officials who were given prison sentences. The latest available statistics show that between September 2014 and August 2016, 1,240 criminal investigations were initiated in relation to corruption and related offences, the majority of which (roughly 90%) related to corruption cases. During that period there were 63 prosecutions in relation to those same offences and the conviction rate in corruption cases in 2014 and 2015 was approximately 70%. Between 2007 and 2015, there was a decreasing trend in both the number of corruption cases reported by the police (which fell by 40%) and cases in which first instance court decisions were reached (which fell by roughly 50%). In that period, the yearly average number of defendants sentenced for corruption was 67.

The overall approach to law enforcement in corruption cases (both foreign and domestic) has been reported by international organisations (such as the OECD and EU) as one of the main concerns regarding Portugal in this respect and a point that requires further attention. The issues raised relate mainly to the capacity of the judicial system effectively to pursue corruption-related cases; cases are often not completed in a speedy manner and hardly ever lead to enforcement of final criminal sanctions. The ability of the specialised units that investigate corruption cases (such as the Central Department of Investigation and Penal Action ("DCIAP") and the National Anti-Corruption Unit of the criminal police) effectively to deal with complex corruption cases has also been questioned, particularly in the face of resourcing pressures.

Nevertheless, particularly since 2014, public awareness of corrupt practices has grown significantly due to the large number of very high-level investigations involving holders of political positions, high public offices and Portuguese companies and their executives, being conducted by the Portuguese authorities. Although there are still no statistics publicly available, the Council for the Prevention of Corruption noted in its 2014 report that the latest information to which it had access suggested that the Prosecutor's Office and the police in Portugal are making an effort to investigate and prosecute corruption-related offences effectively.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

There is no specific law to that effect.

However, article 111 of the PCC provides for the confiscation and forfeiture of the proceeds of criminal offences that represent a wealth increase (economic advantage) for the perpetrator, obtained either by means of transaction or exchange or directly through criminal conduct, and regardless of having been obtained for themselves or for a third party.

In particular, with regard to corrupt practices, Article 7 of Law 5/2002 of 11 January 2002, the Portuguese Law which lays down measures for the control of organised crime and economic/financial crime, sets out that in the event of a criminal conviction for any of the offences comprised in that category (which includes active and passive bribery, both domestic and international), the difference between the value of the perpetrator's assets and that which would be reasonable for such an entity, will be presumed to constitute an economic advantage for purposes of calculating the amount of proceeds of

crime to be forfeited. Although the seizure can only be ordered after there is a criminal conviction, in active and passive bribery cases the interim seizure of assets to secure payment can be ordered at an early stage of the judicial proceedings (once the Public Prosecutor's Office charges have been presented), provided that there is strong evidence that the crime alleged was committed.

What future developments are anticipated in this area?

As a result of several recent notable criminal cases and corruption scandals Portugal has faced in recent years, corruption is currently one of the main topics of public debate.

The anti-corruption legal framework has been continuously developed in the last few years in order to meet the best international standards. In this context, several laws were enacted in 2015 which notably increased the scope of application of the legislation concerning active and passive bribery to foreign public officials, officials of international organisations and judges and officials of international courts and granted some level of protection to whistleblowers, both in the public and private sectors.

Several other institutional anti-corruption measures were pursued, such as the creation of an independent administrative institution for the prevention of corruption and related offences (the Council for Prevention of Corruption) whose functions include, amongst others, monitoring the enforcement of the relevant laws, the creation of a team specialised in economic and financial crimes within DCIAP and the staffing increase of the National Anti-Corruption Unit of the criminal police. In parallel, several awareness-raising measures have been undertaken, particularly by the Ministry of Justice and DCIAP.

Nonetheless, Portugal has been criticised by several international organisations (e.g. the OECD and Council of Europe (via GRECO)) for being ineffective in enforcing the prohibitions relating to foreign corruption practices and despite the measures undertaken, the concerns about the adequacy of specialised expertise in DCIAP and the National Anti-Corruption Unit expressed by these international organisations remain. As said above, there have been no effective convictions for foreign corruption in Portugal to date, and a number of shortcomings have also been noted regarding the enforcement of domestic anti-corruption laws, well demonstrated by the continuous extensions of the deadlines to finish some on-going very high-level criminal investigations. Also, in 2016 GRECO advised the Portuguese authorities to instil a clear corruption prevention perspective into the regulations pertaining to members of parliament, judges and prosecutors, so as to attain tangible results and sustained enforcement.

However, over the last couple of years, corrupt practices have gained increased social visibility and relevance and a number of unprecedented high-profile investigations of corruption cases are proceeding, demonstrating a strong desire on the part of the law enforcement authorities to ensure that corrupt practices are effectively sanctioned. The results of several notable criminal cases involving holders of political positions, high public offices and Portuguese companies and their executives are expected to be known in the near future.

As noted by the Council for the Prevention of Corruption, a more comprehensive effort is being made by Portuguese law enforcement and it is expected that Portuguese authorities will continue to take a more proactive attitude towards the investigation of both foreign and domestic corruption in the future and seek more cooperation and interaction with foreign authorities going forward.

It is also possible that further law amendments will be enacted. For example, there is, at the time of writing, an intense discussion in Portugal regarding the possibility of introducing a plea bargaining regime for economic related offences.

Furthermore, the increasingly international strategy which is currently being adopted by a significant number of Portuguese companies will mean that corporate compliance programmes will have to be improved by necessity, in order to comply with the best international standards.

Russia

Under what legislation are corrupt activities unlawful in this jurisdiction?

Corruption is unlawful under:

> the Federal Law No. 273-FZ "On Combatting Corruption" (the "Law on Combatting Corruption");

> the Russian Criminal Code (the "Criminal Code") which prohibits public and commercial bribery and mediation in public bribery (see below) and which applies only to individuals[1]; and

> the Russian Code on Administrative Offences (the "Code on Administrative Offences") which prohibits public and commercial bribery on behalf of or in the interest of legal entities.

What activities are prohibited?

Under the Criminal Code the following activities are prohibited:

> public bribery, i.e. the giving or receipt of a bribe, in person or through an agent, by a Russian public official (including an executive of a state legal entity or a state corporation), a foreign public official, or an official of a public international organisation. A bribe may take the form of money, securities or other assets, or the illegal provision of proprietary services or proprietary benefits, (including where, by order of the public official, a bribe is transferred to another individual or legal entity), in exchange for action (or inaction) in favour of the bribe-giver or the persons he represents, in cases where such conduct is within the officer's authority or where the officer is able to assist in the commission of such conduct, or in exchange for general patronage or connivance.

> mediation in public bribery, i.e. the transfer of the bribe by order of the bribe-giver or bribe-taker, or otherwise assisting the bribe-giver and/or bribe-taker to reach an agreement on bribery, or the implementation of such an agreement, or the promise or proposal to mediate in public bribery.

> minor public bribery, i.e. giving or receipt of a bribe, in person or through an agent, of an amount not exceeding RUR10,000 (approx. €146[2]).

> commercial bribery, i.e. the giving or receipt of a bribe by a person carrying out management functions in commercial or other legal entities, other than state legal entities, (including where, by order of such a person, a bribe is transferred to another individual or legal entity), in exchange for conduct benefiting the bribe-giver or other persons, in circumstances where such conduct is within the bribe-taker's authority or where the bribe-taker is able to assist in the commission of such conduct.

> mediation in commercial bribery, i.e. the transfer of the bribe by order of the bribe-giver or bribe-taker, or otherwise assisting the bribe-giver or bribe-taker to reach an agreement on bribery, or the implementation of such an agreement, or the promise or proposal to mediate in commercial bribery.

> minor commercial bribery, i.e. commercial bribery for an amount not exceeding RUR10,000 (approx. €146).

In addition, the Code on Administrative Offences prohibits bribery on behalf of a legal entity. This is the giving of, or offer or promise to give, a bribe on behalf of or in the interest of a legal entity, to a public official, a person carrying out management functions in a commercial or other organisation (other than state legal entities), a foreign official, the official of a public international organisation or an executive of a state legal entity or a state corporation in exchange for action (or inaction) in favour of such legal entity, in circumstances where such conduct is

1. Generally in Russia there is no criminal liability for legal entities.
2. Using the exchange rate of the Central Bank of the Russian Federation as at 10 October 2017.

connected with the authority of the above mentioned officials.

Need the corrupt activities occur in whole or in part within this jurisdiction?

Under the Criminal Code it is not necessary that the unlawful conduct occur in whole or in part in Russia. The Criminal Code applies extraterritorially where:

> a Russian citizen or stateless person permanently residing in Russia commits a crime abroad against interests protected by the Criminal Code, provided that there is no foreign judgment against them for that crime;

> foreigners or stateless persons not permanently residing in Russia commit a crime abroad against (i) the interests of Russia, or (ii) a citizen of Russia, or (iii) a stateless person permanently residing in Russia, provided that they have not previously been convicted in a foreign state; and

> the application of Russian criminal law is stipulated in an international treaty or other international document which specifies obligations recognised by Russia, provided that the foreigner or stateless person not permanently residing in Russia has not already been convicted in a foreign state.

If any part of the conduct constituting a criminal action was committed in Russia, this could trigger the application of the Criminal Code.

Under the Code on Administrative Offences, foreign companies incorporated in foreign jurisdictions, as well as Russian companies, can be held administratively liable for commercial bribery committed outside of the territory of Russia (i) if such offence is intended against the interests of Russia, or (ii) in cases listed in relevant international treaties, provided that the company in question has not already been held criminally or administratively liable in a foreign state.

For example, by virtue of the OECD Convention, if a legal entity gives a bribe to a foreign public official outside the territory of Russia, it can be held liable for this corrupt practice in Russia.

To whom do the rules apply?

Under the Criminal Code, only individuals may be held liable. There is no criminal liability for legal entities.

Under the Code on Administrative Offences (in the context of corruption offences) only legal entities may be held liable. There is no administrative liability for individuals for the corrupt practice.

Under Russian law, finding an individual criminally liable for corrupt conduct does not eliminate the possibility of finding a legal entity administratively liable for corrupt conduct and vice versa. For example, the administrative liability of a legal entity does not exclude criminal liability of its management.

To some extent, an administrative investigation is similar to a criminal investigation and both can be carried out by the same investigative authorities. From a practical point of view, administrative cases against legal entities in Russia may be initiated on the basis of criminal cases against officers (involved in bribery or money laundering schemes) of such legal entities. Circumstances determined in the course of criminal proceedings against officers may be used as evidence in administrative proceedings against legal entities.

> “There is no criminal liability for legal entities.”

> The Law on Combatting Corruption obliges legal entities to take measures to combat corruption.

What are the fines/penalties?

Penalties for bribery and related offences depend on the amount of the bribe, the specific intention behind it and how the bribery is carried out, and vary considerably in severity.

In general, for individuals, the offences of giving or receiving a bribe and mediation in public bribery are punishable under the Criminal Code by a fine, imprisonment, debarment from holding certain positions and in some cases, corrective work or forced labour.

The Criminal Code penalises bribes according to their value in the following categories:

- bribes of up to RUR25,000 (approx. €365);
- bribes of RUR25,000 (approx. €365) – RUR150,000 (€2,190);
- bribes of RUR150,000 (€2,190) – RUR1m (approx. €14,600); and
- bribes in excess of RUR1m (approx. €14,600).

For individuals, the offences of giving or receiving a public or a commercial bribe and mediation in public or commercial bribery, are punishable under the Criminal Code by:

- a fine of;
  - i. up to RUR5m (approx. €73,000);
  - ii. income received in 3-5 years; or
  - iii. up to 100 times the amount of the bribe;
- imprisonment (up to 15 years);
- debarment from holding certain positions (up to 15 years); and
- additional penalties.

The exact penalties, including the amount of any fine, duration of any disbarment, imprisonment or other penalty differ according to the amount of the bribe and circumstances in which it is given, and are set out in the relevant paragraphs of the Criminal Code.

Companies and other legal entities found liable for bribery offences will be subject to a fine of an amount set out in the Code of Administrative Offences, which again differs according to the amount of the bribe.

The Code of Administrative Offences penalises bribes on the basis of their value as follows:

- bribes of up to RUR1m (approx. €14,600);
- bribes of RUR1m (approx. €14,600) – RUR20m (approx. €292,000); and
- bribes in excess of RUR20m (approx. €292,000) – RUR100m (approx. €1,460,000.

For companies and other legal entities, the penalty will be a fine of up to 100 times the amount of the bribe or RUR100m (approx. €1,460,000), whichever is greater, together with confiscation of the bribe. The exact penalties are set out in the relevant paragraphs of the Code of Administrative Offences and differ according to the amount of the bribe.

What approach is taken to enforcement in practice?

Activities that are suspected of involving corrupt practices are investigated by the investigation authorities and then passed as appropriate to the courts. It is difficult to assess the approach taken by the Russian authorities as criminal and administrative investigations in Russia are not public. In addition, court judgments and associated information are not always available.

The Law on Combatting Corruption obliges legal entities to take measures to combat corruption, such as designating departments, units and officers responsible for the prevention of bribery; developing and implementing

standards and procedures to ensure ethical business conduct; and creating a means of identifying, preventing and resolving conflicts of interest. Moreover, government officials can apply for a court order to compel a legal entity to comply with this obligation.

Having such measures in place may be cited by a legal entity as a defence to an allegation of corrupt practices.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Russian law on money laundering defines the proceeds of crime as "assets acquired as a result of crime". It is unclear whether the Russian courts consider that the proceeds of contracts or sales which are procured by corrupt practices fall into the category of proceeds of crime. If a court considers such assets to be the proceeds of crime, it may order their seizure or confiscation.

From the civil law perspective, contracts for sales, the subject matter of which are proceeds procured by corrupt practices, may be considered by the court as invalid transactions and the proceeds forfeited to the state.

What future developments are anticipated in this area?

In 2017, three draft laws "On the amendments to the Criminal Code and the Criminal Procedure Code for the purpose of increasing liability for corruption" were transferred to the Russian Parliament for consideration.

The draft law aims to bring Russian legislation in line with the recommendations of the Group of States Against Corruption (GRECO). In particular, the draft envisages a number of changes to the regulation of public bribery and commercial bribery, including:

- the introduction of criminal liability for public and commercial bribery where the bribe is of a non-pecuniary or non-proprietary nature (under current legislation only bribes of proprietary nature lead to criminal liability);
- the introduction of criminal liability for public bribery of an arbitrator (both Russian and foreign);
- increased criminal liability for bribery of a public official, foreign public official or an official of a public international organisation;
- the introduction of criminal liability for undue influence. Under this, any illegal transfer, offer or promise of money, securities, other property or pecuniary or non-pecuniary services to an individual, directly or through a mediator, with the intention of unduly influencing a decision of a public official, foreign public official or an official of a public international organisation, would be an offence. The consent of such an individual to use his/her influence would also be deemed to be a criminal offence;
- the introduction of criminal liability for a promise, offer or request to receive or transfer a bribe or a commercial bribe;
- the introduction of criminal liability for commercial bribery of an employee and/or an agent of a company; and
- the introduction of a range of fines for public or commercial bribery from RUR25,000 (approx. €365) to RUR500m (approx. €7,300,000).

There is currently no criminal liability for companies in Russia. However, a draft law which would create criminal liability for companies was transferred to the Russian Parliament in March 2015. The draft law provides that companies would be criminally liable for corruption, money laundering and other serious crimes. Suggested criminal penalties include significant fines, confiscation of the company's property, prohibition of the company's activities and involuntary liquidation. However, there have been no developments since October 2015 with regard to its adoption.

Since the introduction of criminal liability into the Russian legal system would necessitate complex amendments to the Russian Criminal Code, the Criminal Procedure Code and the Criminal Execution Code, finalisation of the proposals is likely to take some time.

> "A draft law which would create criminal liability for legal entities was published in March 2015."

Singapore

> "Local customary practices... will not constitute a valid excuse for giving or accepting bribes."

Under what legislation are corrupt practices unlawful in this jurisdiction?

Singapore's key anti-bribery laws are contained in:

(i) the Prevention of Corruption Act (Cap 241, 1993 Rev. Ed.) (the "PCA"); and

(ii) the Penal Code (Cap 224, 2008 Rev. Ed.).

What activities are prohibited?

The PCA regulates bribery in both the private and public sectors. It is a comprehensive statute which prohibits bribery in general and also contains prohibitions on bribery in specific situations, including bribery of domestic public officials such as a Member of Parliament and a member of a "public body". "Public body" is defined in the PCA as "any corporation, board, council, commissioners or other body which has the power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law."

The PCA prohibits any person, either by himself or in conjunction with any other person, from corruptly giving, promising, or offering (i.e. bribing), or soliciting, receiving, or agreeing to receive (i.e. being bribed), for himself or any other person, any gratification as an inducement to, reward for, or otherwise on account of:

(i) any person doing or forbearing to do anything in respect of any matter or transaction (whether actual or proposed); or

(ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction (whether actual or proposed) in which such a public body is concerned.

The PCA does not specifically target bribery of foreign public officials but such bribery could fall under the ambit of the general prohibitions. The bribery prohibition read together with the prohibition on bribery committed outside Singapore by a Singapore citizen in effect prohibits the bribery of a foreign public official outside Singapore by a Singapore citizen.

The Penal Code, on the other hand, focuses only on corruption of "public servants and does not address private sector bribery. "Public servants" is defined in the Penal Code to cover specific categories of persons, including but not limited to officers from the armed forces, judges and officers of a court of justice, officers of the government and persons tasked with the administration of justice, and officers with duties relating to the pecuniary interests and revenue process of the Singapore government.

A bribe is referred to under the PCA by the use of the term "gratification". The term "gratification" is comprehensively defined under the PCA and includes the giving, promising or offering of:

(i) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

(ii) any office, employment or contract;

(iii) any payment, release, discharge or liquidation of any loan, obligation, or other liability whatsoever, whether in whole or in part;

(iv) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary penal 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

(v) any offer, undertaking or promise of any gratification within the meaning of (i), (ii) (iii) and (iv) above.

The PCA expressly states that evidence that any gratification is customary in any profession, trade, vocation or calling is inadmissible. Consequently, local customary practices, such as giving or accepting red packets at Chinese New Year, will not constitute a valid excuse for giving or accepting bribes.

Under the Penal Code, "gratification" is used but it is not expressly defined. Based on the relevant guidance, "gratification" is not restricted to pecuniary gratification, or to gratification that is estimable in money.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. There are no provisions under either the PCA or the Penal Code which require the activity to occur wholly or in part within Singapore.

Extra-territorial activities outside Singapore are deemed to be unlawful and punishable if either the bribe giver or the recipient is a citizen of Singapore, or a "public servant" who is a Singapore citizen or permanent resident of Singapore ('PR"). Accordingly, a bribe paid or received overseas by a Singapore citizen, or received overseas by a "public servant" who is a Singapore citizen or PR, will be treated as though it was paid or received in Singapore.

For non-citizens, it is an offence if that person, from Singapore, instigates the commission of a bribery offence overseas in relation to the affairs or on behalf of a principal residing in Singapore; or, if based abroad, instigates the commission of a bribery offence in Singapore.

To whom does the prohibition apply?

An offence of bribery can be made out against "persons" – meaning individuals (including Singapore citizens, public servants and prospective public servants inside as well as outside Singapore), companies (private or public) and associations of persons corporate or unincorporated.

Both the PCA and the Penal Code do not expressly provide for the liability of a parent company for the actions of its subsidiary in which the parent is not involved. However, under the PCA, the offence is made out either when the act of bribery is done by "himself or in conjunction with another person" and this includes circumstances where an agent commits bribery on behalf of a principal. Companies can incur criminal liability for the acts of employees or agents if the relevant individual who committed the crime can be considered the "living embodiment of the company", or if their acts are performed as part of a delegated function of management. There are no provisions for liability of the principal for acts of intermediaries under the Penal Code.

There are no exceptions or defences to the application of anti-bribery measures. Unlike in other jurisdictions, such as the UK, adequate compliance procedures are not a defence. However, on 12 April 2017 Singapore adopted an ISO Standard on anti-bribery management systems, launched by the CPIB and Standards, Productivity and Innovation Board ("SPRING"). The Singapore Standard ISO 37001 is designed to help companies establish, implement, maintain and improve their anti-bribery compliance programmes. Further, the CPIB has published a new guidebook, PACT: A Practical Anti-Corruption Guide for Businesses in Singapore to guide business owners in developing and implementing an anti-corruption framework in their companies.

While compliance with the Singapore Standard and PACT will not provide a defence under the PCA, it will significantly reduce a company's risk of bribery and corruption and may carry more weight under the legislation in different jurisdictions for companies operating overseas.

There is no exemption for facilitation payments and the PCA expressly prohibits the offer of gratification to any member of a public body as an inducement or award for the member's "expediting" of any official act.

What are the fines/penalties?

For private sector bribery, the PCA provides for a fine not exceeding SGD100,000 and/or imprisonment for a term not exceeding five years.

For public sector bribery, the PCA and the Penal Code provide for a fine not exceeding SGD100,000 and/or imprisonment for a term not exceeding seven years (up to three years under the Penal Code and up to seven years under the PCA).

Singapore has shown it is willing to impose heavy fines/penalties. For example, the former CEO of shipbuilding company ST Marine was sentenced to ten months in jail and the maximum fine in December 2016 for his role in one of Singapore's largest bribery cases. In total, seven former senior executives were sentenced and/or fined for their involvement in paying bribes, disguised as entertainment expenses, of at least SGD24.9m in return for ship repair contracts.

A person convicted under the PCA (whether pursuant to public or private sector bribery) may also have to pay the amount of the bribe or gratification (if the value of the gratification can be assessed) as a penalty, in addition to the fine imposed.

> “Singapore’s key legislation against corruption... is likely to be reviewed.”

The PCA also provides that where any gratification has been given by any person to an agent in contravention of the PCA, the principal may recover as a civil debt the amount or money value of the gratification from the agent or the person who gave the gratification. This statutory entitlement is without prejudice to any other rights of recovery which the principal may have.

What approach is taken to enforcement in practice?

Singapore is generally regarded as one of the least corrupt countries in the world, currently ranked at number seven on the 2014 Transparency International Corruption Perceptions Index. Singapore’s anti-corruption regulator, the Corrupt Practices Investigation Bureau (“CPIB”) was tasked under the PCA to eliminate corruption in the country and has taken an aggressive approach from its inception by targeting corruption in the public and private sectors at all levels. The zero tolerance approach by the CPIB and the non-availability of statutory defences has made the enforcement of anti-corruption legislation extremely effective in Singapore.

Further, in order to encourage reporting of suspicions and complaints of corruption, the CPIB opened its Corruption Reporting and Heritage Centre (“CRHC”) on 9 January 2017. Tip-offs received by the CPIB are most commonly made in person (26%), therefore the CRHC offers a physical place for members of the public to report allegations of corruption.

The Singapore anti-corruption regime also includes a presumption of corruption when a public officer is found to have received a “gratification”. A public officer charged in court has a duty to explain to the court that relevant sums were not received corruptly and if they fail to do so to the satisfaction of the court, the public officer will be found to have received the money corruptly. This presumption has assisted prosecutors in securing corruption convictions against public officials.

Are there any legal restrictions on a company’s ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes. Under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (“CDSA”), it is an offence for any person who knows or has reasonable grounds to believe that any property represents another person’s benefit from criminal conduct to conceal, disguise, convert, transfer or remove that property from the country for the purposes of assisting any person to avoid prosecution. The CDSA applies to both transfers within and outside of the country and both the transferor (i.e. the person who “converts or transfers” the property) and the transferee (i.e. the person who “acquires, possesses or uses” the property) will be guilty of an offence. “Criminal conduct” means, amongst other things, a “serious offence” under the CDSA, which includes the offence of bribery and could also include criminal conduct overseas. The court also has the power to make a confiscation order under the CDSA in respect of any benefits derived from a “serious offence”.

In addition, the CPIB has the power to seize property (which includes freezing bank accounts) where there are suspicious circumstances indicating the commission of any offence during its investigations. The CPIB is aided by the country’s white collar investigation agency – the Commercial Affairs Department of the Singapore Task Force – which is autonomous from the police and reports directly to the Prime Minister. Any confiscation order will be given by the court on the application of the Public Prosecutor. The amount payable is considered a fine and imprisonment is given in default of payment.

What future developments are anticipated in this area?

Singapore's key legislation against corruption, the PCA, is likely to be reviewed. The Government has yet to indicate what amendments will be made to the PCA. Notwithstanding, we are likely to see refinements and adjustments to existing provisions and penalties to support a strong, anti-corruption culture in Singapore, and one which supports international cooperation against corruption and money-laundering activities.

In view of the increasingly cross-border nature of corruption and money-laundering activities, Singapore is taking a proactive role in combating such activities domestically and internationally.

In May 2016, Singapore attended the inaugural Anti-Corruption Summit in London and signed a global anti-corruption declaration which sets out high-level goals to combat corruption. Singapore stated that it would commit to provide law enforcement agencies in partner countries with timely access to beneficial ownership information of companies or legal entities registered in Singapore to facilitate investigations, and pledged to work with other countries to establish an International Anti-Corruption Coordination Centre.

Singapore also stated that it would continue to promote the culture of zero-tolerance against corruption through prevention and concerted enforcement efforts domestically. The opening of the CRHC on 9 January 2017 is an example of such efforts, where on-site duty officers from the CPIB are available to speak with individuals lodging allegations of corruption.

The Singapore Government has also indicated that it will increase the CPIB's staff strength by 20%, to cope with the increasingly complex nature of bribery and corruption cases, some of which have international links.

These developments signal the Singapore Government's continued emphasis to reinforce its policy of zero tolerance for corruption in Singapore and its commitment to exposing and facilitating investigations of such activities on a cross-border basis.

> "Singapore is generally regarded as one of the least corrupt countries in the world."

South Africa

Under what legislation are corrupt practices unlawful in this jurisdiction?

Such practices are unlawful under the following pieces of legislation:

> The Prevention and Combating of Corrupt Activities Act 12 of 2004 (the "Corrupt Activities Act").

The objective of the Corrupt Activities Act is to create measures and standards for the prevention of corrupt activities in the public and private sectors.

> The Prevention of Organised Crime Act 121 of 1998 (the "Organised Crime Act").

The Objective of the Organised Crimes Act is to combat money laundering and organised crime and to impose an obligation on certain persons to report specific information relating to known or suspected criminal activities to the relevant authorities.

> The Financial Intelligence Centre Act 38 of 2001 ("FICA") as amended by the Financial Intelligence Centre Amendment Act 1 of 2017.

The objective of FICA as amended is to establish a strong regulatory framework for the prevention and combating of money laundering and financial terrorism, i.e. the financing of terrorist and related activities.

The Corrupt Activities Act is the primary piece of legislation dealing with corrupt activities and offences in South Africa.

What activities are prohibited?

There are several offences in the Corrupt Activities Act which seek to criminalise corruption and bribery. Section 3 of the Corrupt Activities Act creates a general offence of corruption in terms of which any person who directly or indirectly accepts, gives, agrees or offers to accept or give any "gratification", whether for the benefit of himself or herself or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner that amounts to the illegal, misuse or unauthorised exercise of any power, function or duties, or that amounts to the abuse of authority, breach of trust or improper inducement to undertake to do or not to do anything, is guilty of the offence of corruption. The Corrupt Activities Act also creates a number of specific offences such as offences in respect of corrupt activities relating to auctions, sporting events, contracts and the procuring or withdrawal of tenders.

The Corrupt Activities Act further provides that to accept or agree or offer to accept any gratification includes to demand, ask for, seek, request, solicit, receive or obtain such gratification. This Act also provides that to give or agree or offer to give any gratification includes to promise, lend, grant, confer or procure such gratification.

The Corrupt Activities Act applies to the actions of corrupt public officials (local and foreign), as well as to corrupt activities that occur in the private sector.

The Corrupt Activities Act defines the term "gratification" as:

> money, whether in cash or otherwise;

> any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;

> the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

> any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity, and residential or holiday accommodation;

> any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

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- any forbearance to demand any money or money's worth or valuable thing;
- any other service or favour or advantage 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;
- any right or privilege;
- any real or pretended aid, vote, consent, influence or abstention from voting; or
- any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

Need the corrupt activities occur in whole or part within this jurisdiction?

The Corrupt Activities Act has extraterritorial jurisdiction. Section 35 of the Corrupt Activities Act provides that the Act applies to any activity that occurs outside of the Republic of South Africa, even if the activity in question is not an offence in the place it is committed.

The Corrupt Activities Act applies in this manner (i.e. on an extra-territorial basis) where the person to be charged with an offence under the Act:

- is a South African citizen;
- is ordinarily resident in South Africa;
- was arrested in South Africa;
- is a company, incorporated or registered under any law in South Africa; or
- is any association of persons, corporate or unincorporated in South Africa.

An activity which constitutes an offence in terms of the Corrupt Activities Act and that was committed outside of South Africa, by an individual who does not fall into the categories listed above, shall nevertheless be deemed to have been committed in South Africa if:

- the activity concerned affects or is intended to affect a public body, a business or another person in South Africa;
- the person who committed the offence is found to be in South Africa; and
- that person is, for one other reason, not extradited by South Africa.

To whom do the laws apply?

The Corrupt Activities Act has wide application (as discussed above) and applies to South African citizens and persons who ordinarily reside in South Africa.

The Corrupt Activities Act applies to the actions of corrupt public officials such as employees of a public body, as well as to corrupt activities that occur in the private sector such as the offer or receipt of an unauthorised gratification by any person who is a party to a contractual or employment relationship, in a manner which can improperly influence the execution and procurement of contracts. As such a person acting in this manner will be found guilty of an offence.

What are the fines/penalties?

The Corrupt Activities Act gives authority to a court to impose a fine or imprisonment up to a period of life imprisonment. In addition to any fine, a court may also impose a fine equal to five times the value of the gratification involved in the offence. The penalty applies to both individuals and companies.

Where an offence under the Corrupt Activities Act relates to corruption in relation to contracts, or relates to the procuring or withdrawal of tenders, a court may order that the particulars of the offender be placed on the Register of Tender Defaulters ("the Register"). The Register is held within the office of the National Treasury and is a public document. The purpose of the Register is to inform the public sector of individuals or entities that have been convicted of corrupt activities and to prevent them from supplying goods and services to the public sector while listed on the Register.

Where an individual continuously commits offences under the Corrupt Activities Act, the provisions of the Organised Crime Act may also apply with regard to penalties. The Organised Crime Act defines the "pattern of racketeering activity" as the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 of the Organised Crime Act. The offences found in the Corrupt Activities Act are listed in Schedule 1 of the Organised Crime Act. The penalty for an offence relating to a pattern of racketeering activities is a fine not exceeding ZAR 100m or imprisonment for a period, including possible life imprisonment.

What approach is taken in practice to enforcement in practice?

Under the Corrupt Activities Act, the National Director of Public Prosecutions has the power to institute investigations. Investigations may be triggered if the National Director of Public Prosecutions believes that a person may be in possession of information relevant to the commission or intended commission of an alleged offence, or any person or enterprise may be in possession, custody or control of any documentary material relevant to such alleged offence. The investigation may be instituted prior to any civil or criminal proceedings.

Furthermore, where the National Director of Public Prosecutions investigates offences of national priority, section 28(6) of the National Prosecuting Authority Act 32 of 1998 gives the investigating director the power to summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control

any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object.

The Corrupt Activities Act creates a duty to report corrupt transactions. Section 34 of the Corrupt Activities Act places an obligation on any person who holds a position of authority and who knows or ought reasonably to have known or suspected any corrupt activities, to report the corrupt transaction to the Directorate for Priority Crime Investigation ("the Directorate"). The Directorate forms part of the South African Police Service and is responsible for investigating corrupt activities.

In terms of the Companies Act 71 of 2008, a person of authority includes a manager, secretary or a director of a company.

The Criminal Procedure Act 51 of 1977 ("the Criminal Procedure Act") makes provision for the prosecution of corporations and members of associations. Section 332 of the Criminal Procedure Act provides that for purposes of imposing criminal liability on a corporate body, any act performed with or without intent, by or on instruction or with permission, express or implied, given by a director or servant of that corporate body, in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed by that corporate body. The effect of this is that the corporate body in question could in principle, be held liable for acts or omissions committed by its directors or servants.

Are there any legal restrictions on a company's ability to use or deal with proceeds of contracts or sales which are known or suspected to have been procured by corrupt activities?

Yes, the National Director of Public Prosecutions has the authority to apply for an asset forfeiture order under the Organised Crime Act (Part 3 read with Schedule 1) if the court finds, on a balance of probabilities, that the property concerned emanates from the proceeds of unlawful activities.

What future developments are anticipated in this area?

There are no formal legislative reforms in the pipeline. However, the Financial Intelligence Centre Amendment Act ("the FIC Amendment Act") which was signed into law in June 2017 and which will be phased into operation this year is aimed at enhancing the standards applicable the identification and verification of clients and to establish an even stronger regulatory framework to combat and prevent money laundering and financial terrorism. Accordingly, in an effort to achieve this, the FIC Amendment Act requires accountable institutions to develop, document, maintain and implement a programme for anti-money laundering and counter terrorist financing risk management and compliance.

Furthermore, the FIC Amendment Act also aims to provide for customer due diligence measures with respect to beneficial owners and persons in prominent positions, and to this end, the FIC Amendment Act requires accountable institutions to adopt a risk-based approach when carrying out customer due diligence or client vetting.

A beneficial owner is defined in the FIC Amendment Act as a natural person who, independently or together with another person, directly or indirectly owns the legal person, or exercises effective control of the legal person.

Section 21(1) of the FIC Amendment Act provides that an accountable institution may not establish a business relationship or conclude a transaction with a client unless the identity of the client has been established and verified. In addition to this, section 21B of the FIC Amendment Act requires that if the client is a legal person, the identity of the beneficial owner of that client must also be established. Accordingly, in the event that an accountable institution is unable or fails to identify the beneficial owner of a client, the accountable institution will be prevented from entering into a business relationship with the said client.

At a national policy conference in July 2017, the African National Congress ("the ANC"), recognised that corruption in government can become a threat to good governance. The ANC recognised that there is a need for stricter enforcement measures which should be implemented without fear or favour and that corruption must be exposed regardless of the seniority of the people or organisations that may be involved.

Furthermore, in the discussion document published pursuant to the national policy conference, the ANC recommended that:

- corruption must be uprooted in all state-owned entities and government must pay more attention to state-owned entities' reports on corruption;
- state owned entities must be compelled to report corruption;
- audits must be conducted on all persons who want to stand for office in all organs of state including the private sector; and
- systems and procedures for detecting and acting against corruption must be strengthened.


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FAMILE RICHARD
SMANGA

South Korea

> "The Anti-Graft Act provides additional restrictions against improper solicitation activities falling outside the scope of...bribery."

Under what legislation are corrupt practices unlawful in this jurisdiction?

There are several laws that prohibit corrupt practices, including the Korean Criminal Code (the "Criminal Code"), the Act on the Aggravated Punishment of Specific Crime (the "Specific Crimes Act"), the Act on the Aggravated Punishment of Specific Economic Crimes (the "Specific Economic Crimes Act") and the Act on Combating Bribery of Foreign Public Officials in International Business Transactions (the "Foreign Bribery Act"). The Prevention of Improper Solicitation and Graft Act, also known as the Kim Young Ran Act (the "Anti-Graft Act"), became effective on 28 September 2016 and significantly expanded the scope of prohibited corrupt practices.

What activities are prohibited?

The Criminal Code prohibits public officials and arbitrators from receiving, demanding or promising to accept a bribe in connection with their duties. It also prohibits the delivery of a bribe to a public official and any form of promise, or manifestation of a willingness, to deliver a bribe to a public official.

Furthermore, the Criminal Code prohibits the provision of economic benefits to a private person entrusted with conducting the business of a legal entity (for example, a company) or a natural person, if such benefits are related to an improper request made in connection with one's duties.

The Specific Crimes Act expands the scope of public officials under the Criminal Code to encompass officials of government-owned or controlled entities.

The Specific Economic Crimes Act, which supersedes the Criminal Code in respect of certain economic crimes, expressly prohibits the provision of illicit economic benefits to employees of financial institutions. "Financial institutions" include financial institutions that are government-controlled as well as private institutions such as commercial banks, securities companies, etc.

The Foreign Bribery Act provides regulations implementing the OCED Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Act prohibits promising, giving or expressing one's intent to give a bribe to a foreign public official in relation to an international business transaction, to obtain an improper advantage related to such transaction.

A "bribe" is defined as any unjust benefit received in connection with one's duties. It is usually interpreted broadly to cover any advantage of value gained by the recipient, including not only financial or proprietary gains, but also other types of tangible and intangible advantages. Thus, "benefit" includes entertainment as well as gifts. Furthermore, Korean courts construe the phrase "in connection with one's duties" broadly and recognise that benefits may be received not only during the course of one's *de facto* duties, but also during one's conduct of other related or ancillary tasks or duties by which a person provides assistance or may influence a decision-maker.

The Anti-Graft Act provides additional restrictions against improper solicitation activities falling outside the scope of the payment or delivery of a bribe. It further expands the scope of public officials to include persons who are commonly known to owe a duty of integrity to the general public, including media representatives, journalists, school teachers and other persons performing legal or official duties of a public nature (e.g., surveyors). Most notably, the Anti-Graft Act holds employers vicariously liable for the corrupt activities of its employees or agents.

The Anti-Graft Act broadens the definition of a "bribe" in certain instances by eliminating the qualification of "in connection with one's duties." However, it also provides certain exceptions to the scope of prohibited bribes, including meals up to KRW30,000 (approximately US$26), gifts up to

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KRW50,000 (approximately US$44), and congratulatory or condolence money up to KRW100,000 (approximately US$88), offered to facilitate performance of work duties or for social relationships, rituals or assistance in relation to celebratory events or funerals.

Need the corrupt activities occur in whole or in part within this jurisdiction?

It is generally understood that Korean anti-corruption laws are only applicable to crimes committed by Korean nationals and/or in Korea. Thus, when corrupt activities are committed by Korean nationals, anti-corruption laws may apply even if such corrupt activities are committed outside of Korea. On the other hand, with respect to foreigners, anti-corruption laws are applicable to crimes committed in Korea only.

To whom does the prohibition apply?

Under the Korean anti-corruption laws, the prohibition on corrupt activities applies to domestic public officials, officers and employees of government controlled entities or financial institutions as well as representatives and employees of education and media institutions.

In addition, the prohibition applies to Korean persons who pay or deliver a bribe to public officials (both domestic and foreign) and, in certain cases, the employer of such persons so paying or delivering such bribe.

What are the fines/penalties?

Penalties for individuals

Under the Criminal Code and Specific Crimes Act, a domestic public official who accepts a bribe may be subject to up to life imprisonment and/or a fine of two to five times the amount of the bribe. A bribe-giver may be subject to up to five years' imprisonment or a fine of up to KRW20m (approximately US$17,600).

In a commercial context, a person assigned with the operation or management of another person's business who accepts or receives a bribe in connection with his or her work duties is subject to up to five years' imprisonment or a fine of up to KRW10m (approximately US$8,800), and the bribe-giver is subject to up to two years' imprisonment or a fine of up to KRW5m (approximately US$ 4,400).

Under the Specific Economic Crimes Act, an employee of a financial institution who takes a bribe in relation to his or her duties is subject to up to life imprisonment or suspension from the financial industry for up to ten years and a fine of two to five times the amount of the bribe, and the bribe-giver is subject to up to five years' imprisonment or a fine of up to KRW30m (approximately US$26,400).

A bribe-giver breaching the Foreign Bribery Act may be subject to a maximum of five years' imprisonment and/or a fine of up to KRW2m (approximately US$ 1,760). Where the benefit exceeds KRW10m (approximately US$8,800), the maximum fine that may be imposed is twice the pecuniary benefit of the bribe.

Under the Anti-Graft Act, any person who is found guilty of improper solicitation may be subject to an administrative fine of up to KRW30 million (approximately US$26,400), and a public official or other persons who conducted their official duties pursuant to improper solicitation may be subject to up to two years' imprisonment or a fine of up to KRW20 million (approximately US$17,600). Furthermore, both the bribe-giver and receiver of the bribe may be subject to up to three years' imprisonment, a fine of up to KRW30 million (approximately US$26,400), or an administrative fine equal to an amount that is two to five times the amount of the bribe, as the case may be.

> "A domestic public official who accepts a bribe may be subject to up to life imprisonment."

> “Awareness of and compliance with anti-corruption laws are increasing substantially in the Korean market.”

Penalties for companies

Under the Foreign Bribery Act, companies may be fined up to KRW1bn (approximately US$880,000). However, where the pecuniary benefit obtained as a result of the bribery exceeds KRW500m (approximately US$440,000), the company may be fined up to twice the benefit.

Under the Anti-Graft Act, a company that is vicariously liable for the corrupt activities of its employees may be subject to a fine of up to KRW30 million (approximately US$26,400) or an administrative fine of two to five times the amount of the bribe, as the case may be.

What approach is taken to enforcement in practice?

Awareness of and compliance with anti-corruption laws are increasing substantially in the Korean market. For example, many Korean companies are preparing or introducing internal compliance programs on gifts and entertainment, and government and public entities almost always require a commitment letter on ethics to be completed and submitted before they will enter into contracts with private parties. Recently, certain financial institutions have made similar requests to their business partners.

Furthermore, following the effectiveness of the Anti-Graft Act, government agencies, public institutions, schools and media institutions as well as private companies have adopted stringent internal compliance programs to ensure compliance with increasingly stringent regulatory requirements. Korean regulators are also actively enforcing the nation’s anti-corruption law, resulting in a significant increase in enforcement actions and court rulings.

Are there any legal restrictions on a company’s ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

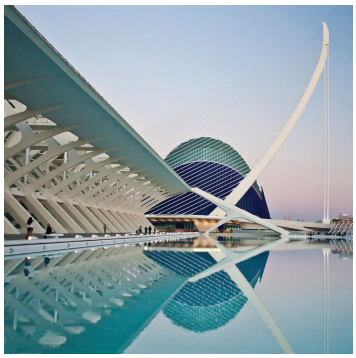
Under the Act on Regulation of Punishment of Criminal Proceeds Concealment, proceeds obtained through corrupt practices may be confiscated or forfeited.

What future developments are anticipated in this area?

Anti-corruption has become a focal point for governmental regulations and reform as a result of the controversy surrounding the former President, Park Geun-hye, who is charged with corruption for receiving bribes from Korean conglomerates. In response, the Korean National Assembly has resumed its deliberations on the establishment of a Special Investigative Authority for High-level Officials (“SIAHO”) separate from the public prosecutor’s office, which had previously been put on hold. The SIAHO is a proposed independent authority mandated to investigate corruption involving high-level officials.

The Korean National Assembly is also deliberating on an amendment to the Act on Contracts to Which the State is a Party (the “State Party Act”). Under the State Party Act, a person or an entity that pays or delivers a bribe to a public official in relation to a bidding process for a contract is barred for up to two years from further participation in such process. The proposed amendment would broaden the scope of the State Party Act to cover those persons or entities who merely promised or intended to pay or deliver a bribe, and those persons or entities who have found guilty of bribery in violation of the Criminal Code and the Anti-Graft Act.

Spain



Under what legislation are corrupt activities unlawful in this jurisdiction?

They are unlawful under the 1995 Spanish Criminal Code (the "Code"). The Code was amended by reforms which came into force on 1 July 2015, which defined more accurately the liability of companies for criminal offences.

What activities are prohibited?

Articles 419 to 424 of the Code address corrupt practices involving Spanish public servants ("Public Corruption"). Under these articles it is unlawful:

> to corrupt or try to corrupt Authorities (defined below) by means of promises, gifts and/or offerings, with the aim of that authority or public servant carrying out an improper action contrary to the duties inherent in their office, or not performing those duties, or improperly delaying those that they should carry out; or

> to accept propositions given by Authorities relating to the granting of promises, gifts and/or offerings with the purposes stated above.

It is also unlawful for the Authorities themselves to accept gifts and/or offerings in exchange for an action or failure to act in the performance of duties as described above, or as a reward or in consideration for their position or duties.

Article 286 *ter* of the Code tackles corrupt practices involving Authorities in the course of international economic activities ("Public Corruption in International Economic Activities").

The law prohibits the offering, promise or grant of any undue profit or advantage, monetary or otherwise, as a means of corrupting or trying to corrupt, directly or through an intermediary, a public servant or authority, for their benefit or the benefit of a third party. It must be intended to encourage the public servant to act or refrain from acting in the exercise of their public duties to gain or retain a contract, business or any other competitive advantage in international economic activities. Complying with such a request is also unlawful.

Article 286 *bis* of the Code addresses corrupt practices involving individuals in the course of business ("corruption between individuals").
Under this article it is unlawful:

> to corrupt a manager, director, employee or associate of a business undertaking or a company by means of promises, gifts and/or offerings of an unjustified benefit or advantage of any nature, for himself or herself or for a third party, as consideration so that they or a third party are unduly favoured over others in the acquisition or sale of goods, hire of services or in business relations; or

> for a manager, director, employee or associate of a business undertaking or a company to receive, solicit or accept an unjustified benefit or advantage of any nature, for himself or herself or for a third party, as consideration to unduly favour another in the acquisition or sale of goods or in the hire of services or in business relations.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No, but this is subject to the jurisdiction requisites set out below.

As a general rule, provided that part of the conduct constituting the offence takes place in Spain, or the perpetrator of the offence is a Spanish national (or a foreign national that later acquired Spanish nationality) or a company registered in Spain, the Spanish courts will have jurisdiction over the conduct.

However, in the cases where the conduct takes place outside Spain, such conduct must also be an offence in the country where it took place; the perpetrator must have not been acquitted or must have not already served the relevant sentence and either the affected person or the Public Prosecutor must bring a criminal action against the perpetrator before the Spanish courts.

In particular, Spanish courts will have jurisdiction over corrupt practices between individuals or corrupt practices involving Authorities in the course of international economic activities taking place outside Spain, provided that either the affected person or the Public Prosecutor brings a criminal action against the perpetrator before the Spanish courts and where any of the following conditions are present:

> the proceedings must be against a Spanish national or a foreign national with permanent residence in Spain; or

> the offence must have been committed by: (i) the officer, manager, employee or an associate of an entity which has a registered office or is based in Spain; or (ii) a legal entity which has a registered office or is based in Spain.

To whom do the rules apply?

In relation to Public Corruption, the prohibition applies to (i) Authorities, and (ii) any person (whether acting on his or her own account or on behalf of a company) based in Spain at the time the conduct that constitutes the corrupt practice was committed.

"Authorities" are:

> any person that holds a legislative, administrative or judicial position or job in a country in the European Union or any other foreign country, by appointment or by election;

> any person that carries out a public duty for a country in the European Union or any other foreign country, including a public body or public undertaking, for the European Union or for another public international organisation;

> any civil servant or agent of the European Union or of a public international organisation; and

> juries, arbitrators, mediators, court-appointed insolvency practitioners or any other persons performing a public duty.

In connection with corruption between individuals, the prohibition applies to managers, directors, employees or associates of a business undertaking or a company.

With regards to foreign corrupt practices, the prohibition applies to any person (whether acting on his or her own account or on behalf of a company) based in Spain at the time of the conduct that constitutes the corrupt practice. It also applies to Spanish nationals committing these practices in a foreign state where they are forbidden by law.

What are the fines/penalties?

For Public Corruption, if the Authority's actions constitute a breach of duty, the penalty is a prison sentence of up to six years, a fine as determined by the judge of between €2 and €400 a day for up to 24 months (for individuals) and between €30 and €5,000 a day for up to five years, or up to five times the profit obtained from the corrupt activity, whichever is the greater (for corporations). Offenders are also barred from holding a public position for up to 12 years. When the action does not constitute a breach of duty, penalties are lower.

For corruption between individuals, the penalty is up to four years' imprisonment, a specific ban on the pursuit of industry or commerce for a period of one to six years and a fine of up to triple the value of the benefit or advantage.

Based on the amount of the benefit or value of the advantage and the importance of the duties of the guilty party, the court may give a lower sentence and reduce the fine at its discretion.

For Public Corruption in International Economic Activities the penalty is up to six years' imprisonment and a fine calculated on the basis of 12 to 24 months (as explained for Public Corruption), save where the benefit obtained is higher in value than the resulting amount, in which case the fine will be up to triple the value of that benefit.

Aside from these sentences, the person responsible will in any case be barred from public sector contracts and lose the possibility of obtaining public aid or subsidies, the right to enjoy tax and social security benefits or incentives for seven to 12 years and will also be prohibited from business transactions of public importance for the same period.

> The Code now defines the requirements for organisational and management systems to prevent crimes.

In cases of Corruption between Individuals and Public Corruption in International Economic Activities, penalties may be increased depending on the seriousness of the particular offence.

Crimes will be considered particularly serious where:

- the benefit or advantage is of particularly high value;
- the offender's action is not an isolated case;
- the crimes are committed as part of a criminal group or organisation; or
- the object of the business is humanitarian services or goods or any other essential goods.

What approach is taken to enforcement in practice?

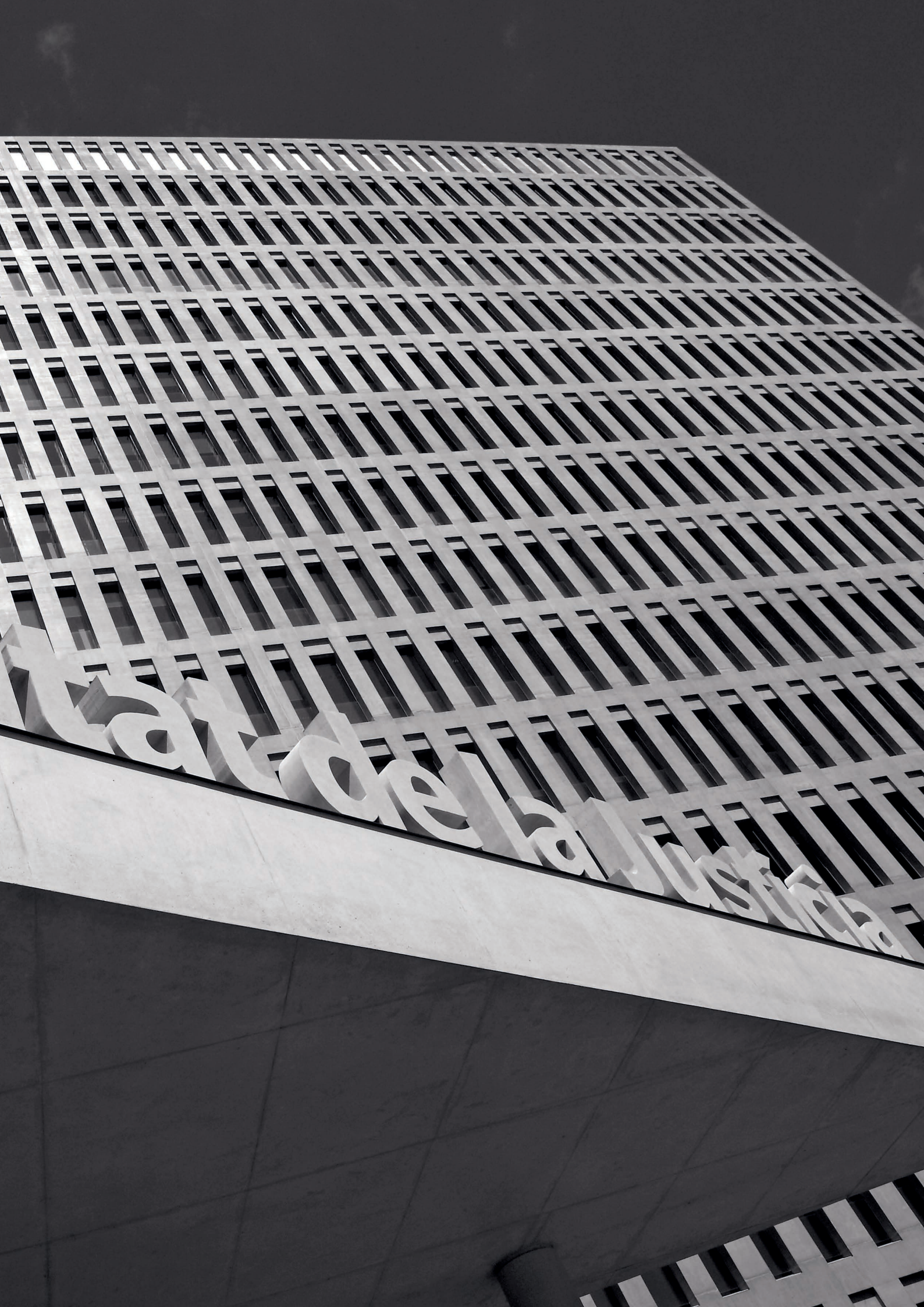
Judgments have been rendered by Spanish courts both in cases of domestic corruption and international foreign corruption, but there is still no case law in relation to the offences discussed above (articles 286 *bis* and *ter* of the Code) as they were introduced in the Code and that entered into force only on 1 July 2015.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

According to the new articles 127 *bis et seq.* of the Code, the proceeds obtained from all the corrupt practices described above, or in any way affected by it, will be seized by the court. This includes the seizure of assets obtained from corrupt practices and that were transferred to third parties when those third parties should have known about the illegal origin of the assets.

What future developments are anticipated in this area?

The current code will increase awareness of bribery and corruption issues amongst corporate bodies. The Code has put special emphasis on bribery and corruption crimes with some technical enhancements so that these offences are effectively punished. The Code has also had an impact on criminal liability of companies by properly delineating "due control", failure in which can trigger corporate liability. In this respect, the Code now defines the requirements for organisational and management systems to prevent crimes. This will lead to a better understanding of the procedures that should be put in place to prevent crimes and avoid convictions of corrupt conduct.


de la Justicia

Sweden

> A corrupt activity that occurs abroad is a criminal offence in Sweden only if it is also an offence in the jurisdiction where it occurs.

Under what legislation are corrupt practices unlawful in this jurisdiction?

Under the Swedish Penal Code.

What activities are prohibited?

It is unlawful to give, promise or offer an undue reward, directly or indirectly, to any agent or employee in relation to the performance of their duties. It is also unlawful for the agent or employee to receive or accept the offer of such an undue reward. The requesting of such a reward is also prohibited and the prohibition applies notwithstanding that the act was committed before the employee or agent took up, or after he left, his position.

The prohibition on giving or accepting bribes applies to corrupt activities in both the public and the private sectors. Bribery is therefore prohibited even if the receiving party has no connection with a public office. It also applies to both domestic and foreign activities.

Trading in influence

In addition to the above, it is unlawful to promise or offer an undue reward to a person who will, as a result, influence another person's decision, if that decision involves the exercise of official authority or public procurement. It is also unlawful for a person to receive, accept or request such an undue reward for the purpose of influencing another person's decision in those circumstances.

Financing of bribery

It is prohibited for a business proprietor to supply a representative of his with money or other assets if those assets are to be used by the representative to commit bribery or trading in influence and the business proprietor is grossly negligent as to what the funds will be used for.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. However, a corrupt activity that occurs abroad is a criminal offence in Sweden only if it is also an offence in the jurisdiction where it occurs. It should be noted that by prohibiting the financing of bribery, this limitation is expected to become less significant, as the negligent payment to an employee of a Swedish company will ordinarily be considered to take place in Sweden.

To whom do the rules apply?

Where the corrupt act occurs in Sweden, the prohibition applies to all individuals, regardless of their citizenship. However, where the corrupt act is committed wholly outside Sweden, the jurisdiction of the Swedish courts only extends to foreign citizens (i) who are domiciled in Sweden, (ii) who have become a Swedish citizen or acquired domicile in Sweden after the committed crime, (iii) who are a Danish, Finnish, Icelandic or Norwegian citizen and present in Sweden, or (iv) who are present in Sweden if the crime committed is punishable by imprisonment for a period of more than six months.

What are the fines/penalties?

Individuals convicted of:

a) giving or accepting bribes may be liable to pay a fine or face imprisonment for up to two years. If the crime is considered gross, the individual may face imprisonment from six months to six years;

b) trading in influence may be liable to pay a fine or face imprisonment for up to two years;

c) financing of bribery may be liable to pay a fine or face imprisonment for up to two years.

Other penalties for an individual may include having to pay back the value of any gift or reward received and a prohibition of operating in trade for up to 10 years. Penalties for corrupt acts committed outside Sweden are limited to the fines and penalties in the jurisdiction where they occur.

Crimes that can be viewed as part of a company's business activity may result in the company being fined up to SEK10m (approximately €1m). The size of the corporate fine is determined taking into account the seriousness of the crime and the affiliation with the company's business activity.

What approach is taken to enforcement in practice?

The Swedish Prosecution Authority takes a strict view on bribery and corruption and has, in a number of recent cases, investigated municipality officials and company representatives suspected of bribery in Sweden. However, recent case law regarding the enforcement of foreign bribery laws is scarce.

As regards the enforcement of anti-corruption legislation in foreign affairs, the OECD has criticized Sweden for its low number of investigations regarding such corruption.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

The Swedish Penal Code stipulates that if a company has derived financial advantage as a result of a crime committed in the course of its business, the value of the advantage obtained as a result of the crime may be declared forfeited. Such forfeiture will require a conviction in a criminal case. Proceeds shall not be forfeited if forfeiture would be unreasonable. Forfeiture may be deemed unreasonable if the employee who has committed the criminal offence acted without the knowledge of, or against express instructions from, the management.

It is also possible, should such a claim be made by a contracting party, that a contract entered into as a result of corruption could be declared invalid, meaning that any proceeds received under that contract would have to be returned

What future developments are anticipated in this area?

Sweden is currently seeking to bring its Penal Code provision on corporate fines in line with the OECD Convention. In November 2016, a government investigation proposed legislative amendments including raising the maximum corporate fine from SEK10m to SEK100m.

> "Sweden is currently seeking to bring its Penal Code provision on corporate fines in line with the OECD Convention."

Thailand

> Bribery of a non-Thai official is not an offence under the Code.

Under what legislation are corrupt practices unlawful in this jurisdiction?

Under the Thai Criminal Code (the "Code") and the Act supplementing the Constitution relating to the Prevention and Suppression of Corruption B.E. 2542 (1999) (the "Act"), as amended from time to time.

What activities are prohibited?

The offering or acceptance by a Thai public official of a bribe is a criminal offence under Thai law. Pursuant to the Code, any official who accepts or agrees to accept any undue reward for performing or refraining from performing any of his or her functions, whether wrongfully or not, commits an offence, and anyone who offers any property, asset or any undue benefits to any official in an attempt to persuade him or her to act contrary to his or her function, commits an offence. In addition, an intermediary involved in a corrupt activity, i.e. any person who receives any undue benefits from any other persons in consideration for persuading any official to perform or not to perform any of his or her functions, is also deemed to have committed an offence.

The Act prohibits any state official (e.g. any person in a political position, government official, employees of state agencies and/or state enterprises and any person authorised to exercise state authority, and those who have been released from being state officials for less than five years) from receiving any property or benefit from any person unless as prescribed by a specific regulation. In order to implement the provisions of the United Nations Convention against Corruption ("UNCAC") to which Thailand became a party on 1 March 2011, the third amendment to the Act B.E. 2558 (2015) (the "Amendment"), which came into effect on 10 July 2015, expands the bribery offences to cover state officials of foreign countries and officials of international organisations, defined under the Amendment as follows:

- foreign state official: any person holding a legislative, executive, administrative or judicial office of a foreign state or performing a public function, including on behalf of a public agency or state enterprise, whether permanent or temporary, paid or unpaid; and
- official of an international organisation: an international civil servant or any person who is authorised by such an organisation to act on behalf of that organisation.

Notably, bribery of a non-Thai official is not an offence under the Code. Further, bribery of a person other than a public official is not an offence under the Code. However, bribery of such persons may otherwise be restricted where a bribe is paid to procure an illegal act/omission. In addition, particular legislation may prescribe certain conduct as an offence (e.g. bribing an arbitrator).

Need the corrupt activities occur in whole or in part within this jurisdiction?

Pursuant to the general principle of the Code, the above prohibition applies to bribery of a Thai public official outside Thailand if "consequences" occur or if it is foreseeable or likely that "consequences" will occur in Thailand. Generally speaking, if it is likely or foreseeable that a Thai public official will bring the proceeds of a bribe back to Thailand, it is foreseeable or likely that the consequence of the bribe will occur in Thailand. Further, if one co-offender/accessory/principal is present in Thailand and another is outside Thailand, then the party outside Thailand commits an offence under Thai law.

To whom do the rules apply?

The prohibition on public bribery applies to all persons and entities regardless of nationality or place of incorporation.

What are the fines/penalties?

Fines and/or penalties under the Code

A person found guilty of offering an undue reward to an official shall be subject to up to five years' imprisonment and/or a fine of up to THB100,000 (approximately

US$3,000). Where the offeree is a judicial officer or public prosecutor or investigator, this increases to a maximum of seven years' imprisonment and a fine of up to THB140,000 (approximately US$ 4,200).

A person found guilty of requesting or accepting any property or any other benefits in consideration of persuading any official to perform or not to perform his or her function shall be subject to up to five years' imprisonment and/or a fine of up to THB100,000 (approximately US$3,000).

An official found guilty of any bribery offence shall be liable from five to twenty years' or life imprisonment and a fine ranging from THB100,000 to THB400,000 (approximately US$3,000 to US$12,000), or death.

Fines and/or penalties under the Act

The Amendment imposes criminal liabilities to the bribery-related offences that a person found guilty of offering an undue reward to a state official (as defined in the Act), a foreign state official and an official of an international organisation, or of acting as an intermediary, shall be subject to up to five years' imprisonment and/or a fine of up to THB100,000 (approximately US$3,000).

A state official, a foreign state official or an official of an international organisation found guilty of demanding, accepting or agreeing to accept any property or any other benefits for performing or refraining from performing his or her function shall be subject to up to life imprisonment and a fine ranging from THB100,000 to THB400,000 (approximately US$3,000 to US$12,000), or death.

Where the liable person is related to a corporation or legal entity, (including being an employee, agent, affiliated company or any person acting on behalf of the entity), regardless of whether or not such person is duly authorised to perform the relevant act, the offence will be considered to have been conducted for the benefit of that legal entity. If the entity does not have sufficient internal controls to prevent such an offence, the entity will itself be liable to a fine of between one and two times the amount of damages sustained or benefits received.

In addition, property and benefits obtained by the entity may be forfeited, including: the property used to commit corrupt activities; the property or benefits given or taken as a result of corrupt activities; the property or benefits derived from the sale or transfer of the property or benefits; and any economic advantage obtained from the proceeds of the offence. It is noteworthy that the Amendment enables the court to seize property of an equivalent value to the proceeds of the offence in order to facilitate the enforcement.

What approach is taken to enforcement in practice?

In 2017, Rolls-Royce, a renowned British engine manufacturer, was found guilty of significant levels of bribery in many countries, including Thailand, by Britain's Serious Fraud Office ("UKSFO"). Several Thai state enterprises and officials were implicated in the bribery, which amounted to US$50m. Currently, the case is being investigated by the Office of the National Anti-Corruption Commission ("NACC") and the Office of the Attorney General. According to public information, they are requesting relevant evidence from the UKSFO but the information has not yet been provided. According to the Secretary General of the NACC, the expected timeline for the completion of the investigation should be within one year from April 2017.

In addition, a major corruption case regarding foreign parties involving accusations of bribery in the amount of US$1.8m by two American film makers who sought to be named organisers of an international film event in Thailand. The proceeds were transferred to related persons in the US. The US and Thai authorities have co-operated in this matter. With respect to the Thai authorities, the NACC adjudicated the case and resolved that the Thai officials involved were guilty. The case was filed at the Central Criminal Court for Corruption and Misconduct Cases and the court sentenced the two Thai officials to up to fifty years' imprisonment and required them to repay the THB62m received.

In respect of domestic corruption, the police, the Office of the Attorney General and the NACC co-operate in the investigation and prosecution of corruption cases. According to the records of the NACC, between 1997 and 2016, 3,642 corruption cases were investigated.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Thai law does not specifically restrict private citizens from dealing with benefits from contracts or sales procured by corrupt practices (unless they were involved in the commission of the corruption offence). However, as noted above, the property or benefits derived from corruption may be forfeited to the Government.

Furthermore, the Supreme Court has ruled, by decision no. 7277/2549, that a contract may not be binding where its conclusion involved corrupt practices and malfeasance. It may also be possible therefore for the proceeds of corrupt contracts to be reclaimed under general law.

In addition, Thai law restricts public officials from transferring, using, depositing or acquiring assets or cash obtained through corruption.

What future developments are anticipated in this area?

Since the enactment of the Amendment in July 2015, we are not aware of any major development in this area. Note that in order to implement the provisions under the Act, the NACC still needs to issue relevant regulations, such as rules and methods to maintain and manage the property being forfeited.

United Kingdom

> "Facilitation payments"... remain illegal even if they are permitted, or even expected, by local custom.

Under what legislation are corrupt practices unlawful in this jurisdiction?

The Bribery Act 2010 (the "UKBA"), which came into force in July 2011, radically overhauled the UK's previous anti-corruption regime, rationalising a number of statutes and common law offences prohibiting corruption. The Act contains two general offences of bribing and being bribed and includes a specific offence of bribing foreign public officials ("FPO"). The UKBA also creates a new offence, which applies to commercial organisations only, of failing to prevent persons associated with the organisation from committing bribery. The UKBA applies to the whole of the UK, including Scotland, and also covers offences committed by UK nationals and residents wherever such offences are committed.

What activities are prohibited?

The UKBA makes it an offence for a person to offer, promise or give to another a financial or other advantage where the intention is that the advantage will influence the recipient improperly to perform a relevant function or reward him for the improper performance of such a function. It is not necessary for the person to whom the advantage is offered, promised or given to be the same individual who will perform (or has already performed) the function or activity concerned. It is also an offence for a person to accept or request an advantage in relation to the improper performance of a relevant function (sections 1 and 2 UKBA).

Functions of a public nature, activities connected with a business or performed in the course of a person's employment and activities performed by or on behalf of a company, body or group of persons, are relevant functions for the purposes of the UKBA (section 3 UKBA).

In addition, there must be an expectation that the person performing the function will perform it in good faith, impartially or that in performing it, they are in a position of trust. The test of what is expected is what a reasonable person in the UK would expect in relation to the performance of the function (sections 4 and 5 UKBA).

With regard to FPOs, it is an offence to bribe an FPO by offering, promising or giving an advantage to the FPO where the intention is to influence the FPO in his or her official capacity as an FPO, and the FPO is not permitted or required to be influenced by the advantage under local written law (section 6 UKBA). It does not matter whether the advantage is financial or otherwise, and it can be given to the FPO directly or to another person at the FPO's request. The briber's intention must be to obtain or retain business or an advantage in the conduct of business.

"Foreign public official" has a wide definition and includes persons who hold a legislative, administrative or judicial position of any kind in a country or territory outside the UK, and who exercise a public function on behalf of that country or territory. It also extends to officials and agents of public international organisations, whose members are made up of countries, governments and/or other public international organisations.

There is no exemption for so-called "facilitation payments", which remain illegal even if they are permitted, or even expected, by local custom.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. It does not matter that the acts or omissions which comprise the offence under section 6 (or part of it) take place outside the UK, if the person committing the offence has a "close connection" with the UK. Those with a "close connection" include: British citizens and overseas citizens; British nationals and individuals ordinarily resident in the UK; and companies incorporated in any part of

the UK and Scottish partnerships (section 12 UKBA).

To whom do the rules apply?

The UKBA has a very wide remit and applies to British citizens and individuals ordinarily resident in the UK and companies incorporated in the UK. In addition, pursuant to section 7 of the UKBA, companies and partnerships incorporated or registered in the UK and other companies and partnerships registered elsewhere but which carry on business in the UK, may also be liable for bribery offences, committed by persons associated with them (including employees, agents, and subsidiaries), if they have failed to implement "adequate procedures" to prevent bribery occurring (the so-called "corporate offence"). Guidance on what constitutes adequate procedures has been issued by the Ministry of Justice, according to which bribery prevention procedures should be informed by six governing principles: proportionate procedures; top-level commitment; risk assessment; due diligence; communication (including training); and monitoring and review.

What are the fines/penalties?

An individual found guilty of an offence under section 6 can be liable to an unlimited fine and imprisonment of up to 10 years. Companies and other business organisations can be liable to unlimited fines. Businesses also risk being debarred from competing for public contracts under the Public Contracts Regulations 2006.

Where a commercial organisation is found to have committed one of the principal bribery offences, including bribing an FPO, any senior officer (such as a director, manager or company secretary) with a "close connection" to the UK (as defined above) will also be guilty of the offence if it is proven to have been committed with the officer's "consent or connivance" (section 14 UKBA), and liable to an unlimited fine or up to 10 years' imprisonment.

A new definitive sentencing guideline came into force on 1 October 2014 applicable to the sentencing of corporates and individuals convicted of offences of fraud, bribery and money laundering, including offences under various tax statutes and that of common law conspiracy. The guideline may result in increased financial penalties for corporates accused of corruption offences and ultimately found guilty at trial.

Deferred prosecution agreements ("DPAs"), already a mainstay of criminal procedure in the US , came into effect in England and Wales on 24 February 2014. They provide a means by which a commercial organisation allegedly involved in criminal wrongdoing may agree with a UK prosecutor (most likely to be the Serious Fraud Office (the "SFO")), to various sanctions and penalties, approved by the court, in return for which the prosecutor agrees not to prosecute the corporate for the wrongdoing. The negotiations between the prosecutor and corporate take place in private but the terms of the final DPA will be made public.

At the time of writing, four DPAs have been concluded by the SFO: with Standard Bank PLC in November 2015; a so-far undisclosed company known for the time being as XYZ Ltd, in July 2016; Rolls-Royce plc in January 2017; and Tesco Stores Ltd in April 2017. The first three DPAs related to instances of bribery by the entity or an associated person under section 7 UKBA, while the latest, with Tesco Stores Ltd, related to claims of false accounting.

The scope and extent of self-reporting and co-operation that must be provided to the prosecuting authority by an entity seeking a DPA has come under considerable scrutiny. Credit has been given for conduct such as an early self-report by the entity; conducting an extensive internal investigation; full voluntary disclosure; co-operating with the SFO in witness interviews; and not asserting legal professional privilege routinely. Importance has also been attached to whether the misconduct had occurred under earlier management which had since been replaced and the steps taken by the entity to address the misconduct and prevent it occurring again. However, in each case, the approval of a DPA has resulted in a lower fine for the company with a reduction of at least 30% of what might have been expected following a successful prosecution. In the case of Rolls-Royce plc, the reduction was increased to 50% in recognition of the company's extensive co-operation throughout the investigation.

What approach is taken to enforcement in practice?

The failure of UK authorities to bring prosecutions for foreign corrupt practices was one of the main criticisms of the old bribery laws. Under the UKBA, prosecutions may be brought by the Directors of the SFO, Public Prosecutions and Revenue and Customs Prosecutions.

To date there have been a number of prosecutions under the UKBA, most of which have been of individuals for lower level offences. However, in February 2016, Sweett Group plc pleaded guilty to a charge under section 7 UKBA of failing to prevent bribery by associated persons, in the first instance of an offence under this provision. In addition, the DPAs entered into by XYZ Ltd and Rolls-Royce plc related to offences under both UKBA and previous legislation.

The National Crime Agency was established in October 2013 with the aim of bringing together various aspects of the investigation and prosecution of economic crime and boosting enforcement. In December 2014, the government published its anti-corruption plan which includes measures to bolster the UK's enforcement response to corruption, improve the recovery of stolen assets and illicit finance, (particularly those associated with money laundering and terrorist financing) and consideration of the UK's engagement with international agencies. In May 2016, the then prime minister, David Cameron, hosted a major

international anti-corruption summit in London and committed the UK government to a number of initiatives to fight corruption, such as the opening up of information regarding the beneficial ownership of property and assets held in the UK or by UK nationals. Some, although not all, of these have since been implemented.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

Yes, such proceeds are likely to fall within the definition of "criminal property" under the Proceeds of Crime Act 2002. It is a criminal offence to acquire, use, have possession of, conceal, disguise, convert or transfer "criminal property" unless (i) certain required disclosures are made and (ii) permission to proceed has not been expressly refused within a set notice period. In certain circumstances a failure to disclose such activities may itself be an offence. In addition, there is a very wide offence of entering into or becoming concerned with an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of "criminal property" by or on behalf of another person.

What future developments are anticipated in this area?

It is apparent that the UK's main regulator and prosecutor of economic crimes, the SFO, is taking a more aggressive approach to the investigation of corrupt conduct committed both in the UK and overseas. At the time of writing, the agency was engaged in a number of investigations involving high-profile, international companies for alleged corruption offences. The agency's director, David Green QC, has emphasised the SFO's role as an investigator and prosecutor of serious and complex fraud. David Green steps down from his role in April 2018 and at the time of writing, the Government was engaged in appointing his successor.

Separately, the difficulties surrounding the prosecution of large corporate bodies for corruption offences, given the need to prove that the "controlling mind" of the company knew of the unlawful conduct, have led to calls for the introduction of a general corporate offence of failure to prevent economic crime, possibly modelled on the "corporate offence" under section 7 of the UKBA. The government has expressed interest in the idea and in January 2017 issued a call or evidence seeking views on whether the law relating to corporate criminal liability for economic crime, such as fraud, false accounting and money laundering, needed reform.

While no further action has since been taken in relation to a general offence of failing to prevent economic crime, in September 2017, a new corporate offence of failing to prevent the facilitation of tax evasion was brought into force. The offence may only be committed by "relevant bodies", that is, essentially, corporates and partnerships, and not individuals. The "failure to prevent" model, akin to the corporate "failing to prevent bribery" offence under section 7 UKBA, is aimed at overcoming the historical difficulties of attributing liability for criminal offences to companies, by removing the need to show the "controlling mind and will" of the company was involved in or knew of the wrongdoing. It is a defence to the offence to demonstrate that the relevant body had in place reasonable procedures designed to prevent its associated persons facilitating tax evasion or, that in all the circumstances, it was not reasonable to expect the relevant body to have any prevention procedures in place. The government has published guidance as to what these procedures may be.

> "The SFO is taking a more aggressive approach to the investigation of corrupt conduct."

United States

> A seemingly minimal nexus to the US may be sufficient for the DOJ to take the position that it has jurisdiction.

Under what legislation are corrupt practices unlawful in this jurisdiction?

Under the Foreign Corrupt Practices Act ("FCPA").

If so, what activities are prohibited?

The 'anti-bribery' provisions of the FCPA prohibit Covered Persons (defined below) from paying or giving anything of value to foreign government officials, political party officials and candidates for political office to obtain or retain business. The FCPA does not require the corrupt payment to be successful.

The "books and records" provisions in the FCPA apply to issuers of US securities that are registered with the US Securities and Exchange Commission (the "SEC"). These provide a separate basis for liability in the event that prohibited payments are not accounted for properly in the company's books and records and/ or internal control procedures are inadequate.

Under the Travel Act, the United States also imposes criminal penalties on those who engage in commercial bribery abroad so long as such conduct involves interstate travel or communications. Finally, US federal and state law also prohibits domestic official and commercial bribery.

Need the corrupt activities occur in whole or in part within this jurisdiction?

No. Generally, any domestic or foreign Covered Person and their agents may be held liable for engaging in any conduct in the United states in furtherance of a corrupt payment. Additionally, Domestic Issuers or Domestic Concerns (both terms defined below) and their agents may be liable for furthering corrupt payments that occur outside the United States. Any Person (as defined below) can be liable if the corrupt payment has a territorial nexus to the United States. Territorial nexus is interpreted broadly by the US Department of Justice (the "DOJ") such that while untested in court, a seemingly minimal nexus to the United States may be sufficient for the DOJ to take the position that it has jurisdiction.

To whom do the rules apply?

The FCPA's anti-bribery provisions apply to three categories of "Covered Persons". Each category is exclusive.

Issuers

Any domestic or foreign entity that issues securities that are registered with the SEC or that is required to file reports under certain legislative provisions is subject to the FCPA, as are its officers, directors, employees, or agents and any stockholders acting on its behalf.

Domestic Concerns

This category covers a broad group of persons and entities, including individual US citizens (wherever located), US resident aliens, and corporations and other business entities organised under US state laws or having their principal place of business in the United States and their officers, directors, employees or agents.

'Any Persons'

Any persons acting within US territory are covered by the FCPA. Moreover, any person (including an entity organised in a foreign nation), is subject to the FCPA if she/he performs any act in furtherance of a corrupt payment within the US territory.

What are the fines/penalties?

Anti-Bribery Penalties

Entities are subject to a criminal fine of up to $2m per violation. Any officer, director, stockholder, employee, or agent who wilfully violates the FCPA may face a criminal fine of up to $250,000 per violation and up to five years' imprisonment. Criminal penalties may be increased to as much as twice the benefit sought by the violation.

Additionally, civil proceedings may also be initiated, resulting in fines and, significantly, disgorgement equal to the amount of the gain.

Books and Records Penalties

An individual may be fined up to $5m and imprisoned for up to 20 years for a wilful violation of the record keeping and internal control provisions. An entity may be fined up to $25m. In both situations, civil proceedings could result in fines and disgorgement equal to the amount of the gain.

Travel Act Penalties

Individuals that violate the Travel Act by traveling or engaging in interstate commerce to commit commercial bribery in the United States or abroad may be fined up to $250,000 or twice the benefit sought or gained per offense and imprisoned for up to five years. Organizations that violate the Travel Act may be subject to fines up to $500,000 or twice the amount sought or gained per offense.

What approach is taken to enforcement in practice?

Both the SEC and the DOJ are aggressive in enforcing the FCPA and take an expansive view of its scope and reach, even in circumstances where the alleged misconduct's connection to the United States is seemingly attenuated. In 2016, the DOJ brought 24 enforcement actions and the SEC brought another 37, all of which resulted in $2.43 billion in monetary penalties (including disgorgement).

The DOJ has, however, recently implemented a pilot program offering certain benefits for FCPA violators that self-disclose, cooperate with the DOJ, and remediate. The program was initially set to run for one year beginning 5 April 2016, but the DOJ extended it indefinitely while it continues to evaluate the program's effectiveness.

The pilot program requires companies to (i) voluntarily self-disclose FCPA-related misconduct; (ii) fully co-operate with any investigation; and (iii) remediate internal flaws in internal controls and compliance programs in order to be eligible for the full range of potential mitigation credit.

The pilot program offers up to a 50% reduction in otherwise applicable fines, as well as the possibility that DOJ will decline to prosecute any alleged violations for companies that self-disclose, cooperate, and remediate.

Are there any legal restrictions on a company's ability to use or deal with the proceeds of contracts or sales which are known or suspected to have been procured by corrupt practices?

The FCPA does not inherently regulate the use of proceeds that are obtained as a result of corrupt payments. The threat of disgorgement, however, may prevent an individual or entity from retaining those proceeds. Other US laws, including those criminalising money laundering (which, among other things, prohibits certain transactions involving the proceeds of unlawful activity) may also be implicated by a violation of the FCPA.

What future developments are anticipated in this area?

There is continued focus in the United States on corporate criminal liability. Further, US federal prosecuting authorities are focusing more of their attention on identifying the individuals responsible for corporate misconduct.

In connection with the pilot program, the DOJ has hired 10 additional FCPA prosecutors, increasing the number of staff in the FCPA Unit responsible for investigating and prosecuting violations of the Act by more than 50% to a total of 30 prosecutors.

Perhaps most notably, future enforcement of the FCPA is likely to involve greater international cooperation. Indeed, many of the largest FCPA enforcement actions in 2016 involved cooperation between the United States and multiple other enforcement bodies. For example, Rolls-Royce Plc recently paid the United States approximately $170 million as part of an $800 million global resolution involving investigations by three countries—the United States, the UK, and Brazil. To further improve its collaboration with other jurisdictions, the DOJ has also recently announced detailing one of its anti-corruption prosecutors to the UK's Financial Conduct Authority for one year and the UK's Serious Fraud Office the following year. While on detail, the DOJ prosecutor will collaborate with UK authorities in prosecuting financial fraud and bribery cases.

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