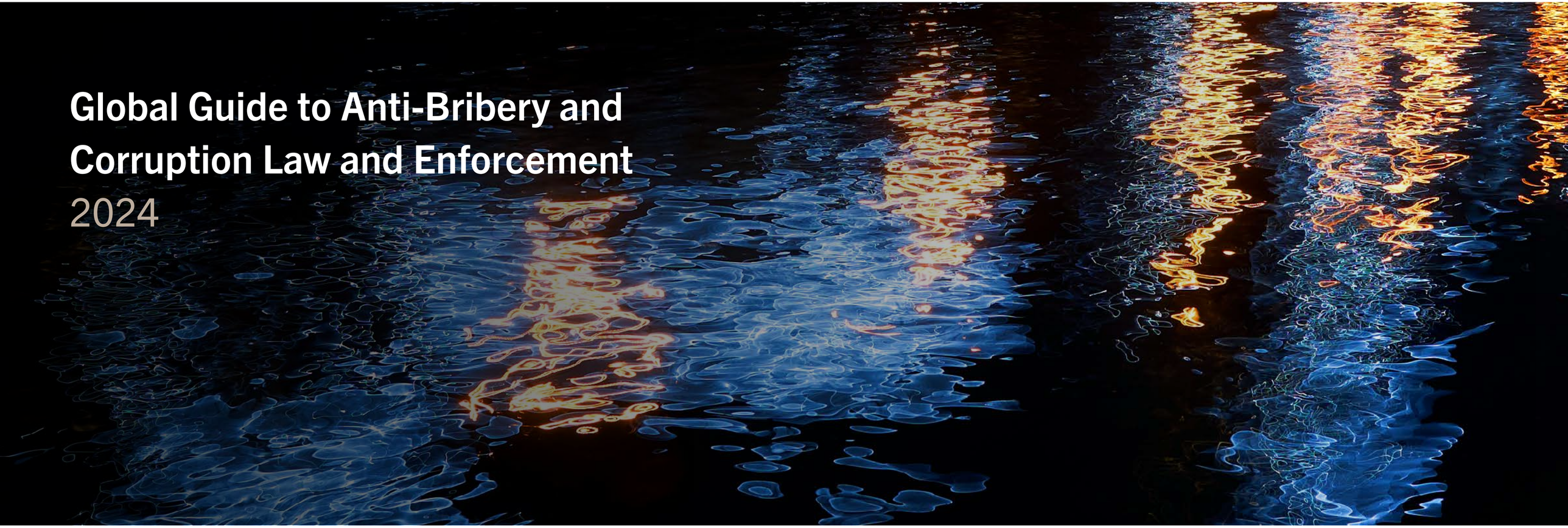
Linklaters

Global Guide to Anti-Bribery and Corruption Law and Enforcement

2024



Introduction

Bribery and corruption distort competition, increase costs and lead to unfair treatment of individuals and businesses alike. In a desire to win that next contract or increase profitability, individuals and businesses still seek to influence the outcome of tender processes or the decisions of public officials with bribes. Supply chains are impacted, consumers exploited and communities damaged by illicit financial deals that unduly and illegally benefit those involved.

And the problem is a global one. The cross-border structure of many businesses today means that bad conduct can take place across jurisdictions, dressed up as usual commercial practice or simply hidden from view.

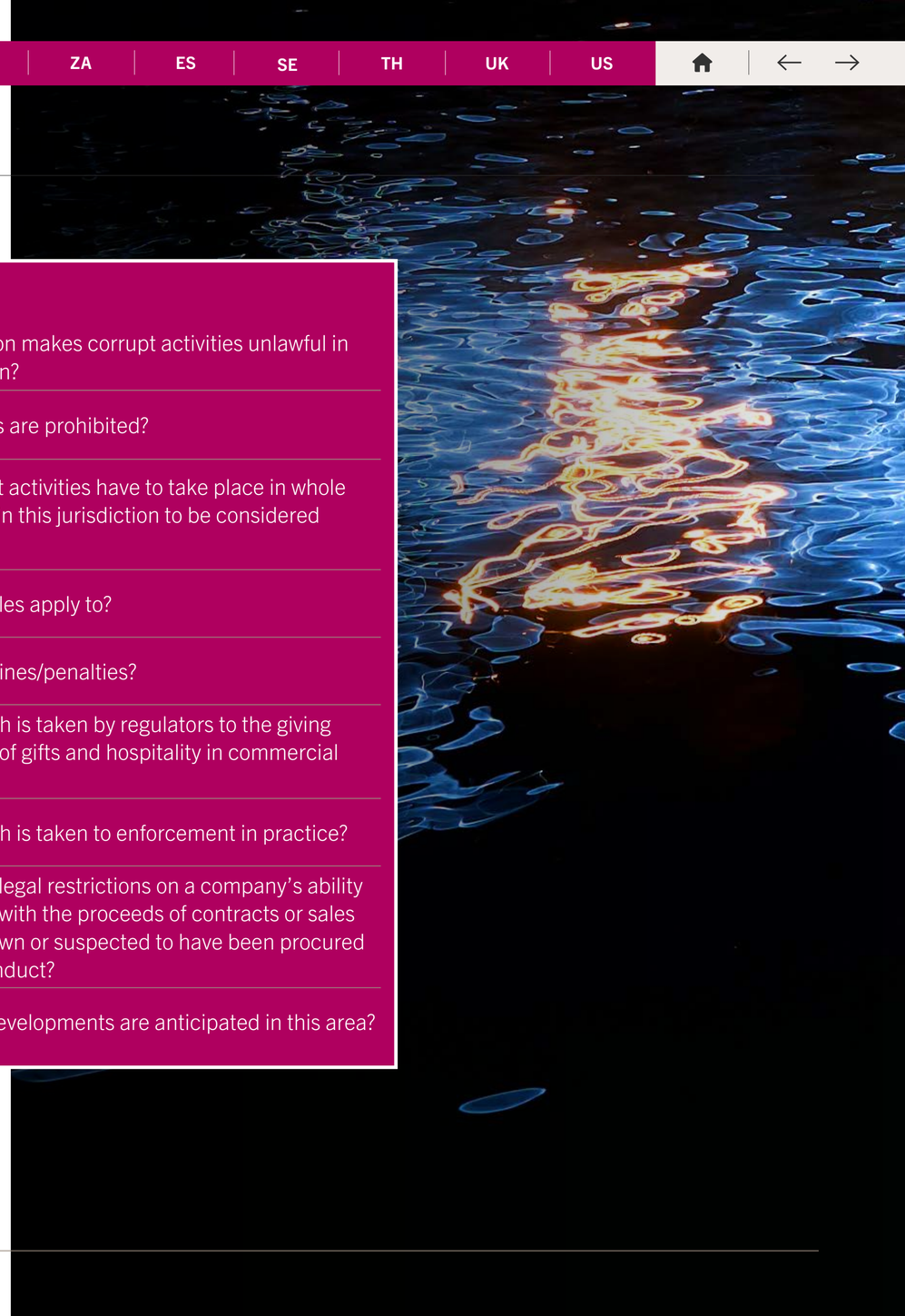
Global enforcement authorities recognise the damage such misconduct causes. But how successful are they at tackling crime and wrongdoing? What penalties are available to them to punish illegal behaviour? And when does "ordinary" commercial conduct fall the wrong side of the line?

An understanding of the global reach of anti-bribery and corruption (ABC) regulation, as well as the application of it within a specific jurisdiction, is key to managing risk for today's international businesses. As national enforcement agencies increasingly cooperate with each other to tackle financial crime, we have seen an uptick in wide-reaching cross-border investigations and correspondingly large penalties for companies engaging in unlawful behaviour.

Linklaters' Global Guide to Anti-Bribery and Corruption Law and Enforcement examines how jurisdictions across the globe are tackling commercial wrongdoing and will be of particular interest to businesses with international operations. It delivers quick insights into ABC law and practice across 20 jurisdictions, answering nine key questions per region:

Questions:

Q1	What legislation makes corrupt activities unlawful in this jurisdiction?
Q2	What activities are prohibited?
Q3	Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?
Q4	Who do the rules apply to?
Q5	What are the fines/penalties?
Q6	What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?
Q7	What approach is taken to enforcement in practice?
Q8	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 conduct?
Q9	What future developments are anticipated in this area?



Key themes

The approaches to dealing with bribery and corruption offences and the challenges faced by enforcement authorities differ across the jurisdictions surveyed. However, a number of key themes are common. These are discussed below, with examples drawn from across the globe.

Authorities continue to clamp down on corrupt misconduct…

- In the U.S. new laws have criminalised the demand for or acceptance by a foreign public official (FPO) of bribes with a U.S. nexus, closing a gap in the FCPA which dealt only with the supply side.
- Changes to the rules on corporate criminal liability in the UK have made it easier to prosecute companies for economic wrongdoing.
- In Mainland China, there has been an uptick in enforcement, particularly against corruption impacting ordinary livelihoods, such as in the healthcare sector.
- Enforcement in France has become notably more severe in recent years. However, the acquittal rate for bribery prosecutions is higher than for other types of prosecution.

… although some jurisdictions are more active than others

- Despite Australia operating a formal self-reporting code for companies, enforcement there remains low.
- Germany prosecuted fewer cases in 2022 than in the previous year. Despite the low number of prosecutions in Luxembourg for bribery, there are no plans there to develop the area further.
- There have been no prosecutions in Portugal at all for foreign bribery, although lots of enforcement activity for domestic offences.
- Authorities in Sweden adopt a strict approach towards corruption and score well on Transparency International's Corruption Perceptions Index. But even Sweden has been criticised by the OECD and EU for a lack of enforcement action.
- Surprisingly, and contrary to all other jurisdictions surveyed, the U.S. and Australia continue to make an exception for facilitation payments.

Governments continue to push enforcement onto the private sector through an increased emphasis on corporate compliance and self-regulation

- The UK's corporate offence of failing to prevent bribery by employees, agents and other "associated persons" is being emulated across the globe; a similar offence has been introduced in South Africa and one will come into effect in Australia later in 2024.
- In Spain, private companies are focussing on compliance and the prevention of wrongdoing through the introduction of internal ABC programmes while in Germany, companies may be liable if their owners fail to implement required supervisory measures to prevent bribery by their employees.
- In France, large companies are obliged to implement a compliance plan to identify and mitigate against corruption, with administrative sanctions for individuals and companies that fail to comply.
- Singapore's regime is particularly strict; companies are held accountable for wrongdoing by employees regardless of their internal prevention measures.
- In Portugal, however, there remain challenges and a lack of monitoring over regulations introduced in 2021 establishing compliance and whistleblowing regimes to prevent and sanction illegal conduct.

Acknowledgement and cooperation remain key

- The deferred prosecution agreement (DPA) regime in the UK continues to be employed to settle bribery investigations and has become the usual way of dealing with such prosecutions in the right circumstances.
- In Singapore, the outcome of the first case to be dealt with by way of DPA is awaited, while the question of whether to introduce a DPA regime in Australia will be considered again in 2026.
- The U.S. incentivises corporate disclosure and cooperation through specific policies, while the Belgian "repentance" regime offers a reduced sentence in return for a confession and the provision of evidence against third parties. Similarly, in Japan, the prosecutor may negotiate agreements with those accused of bribery and corruption in return for information.

While gifts and hospitality remain largely unregulated, they are increasingly on authorities' radars

- Few jurisdictions have specific laws dealing with gifts and hospitality (G&H) but it is widely recognised that they may constitute bribery given the typically broad definition of an "advantage". Whether G&H are challenged by local authorities may depend on their value and "social acceptability".
- Generally, public officials are subject to stricter rules in this regard than private entities and may even be forbidden from accepting or offering anything at all.

Cooperation on cross-border investigations and enforcement continues to grow

- Settlements such as the Airbus investigation demonstrate domestic agencies' willingness to work together to tackle and sanction wrongdoing.
- Meanwhile, the U.S. continues to assume a wide jurisdiction when it comes to FCPA enforcement internationally.
- The European Union has committed to establishing a pan-EU regime for addressing wrongdoing in its draft directive on combatting corruption.
- The UK's Serious Fraud Office has signalled its intention to work ever more closely with investigation and enforcement partners across the globe.

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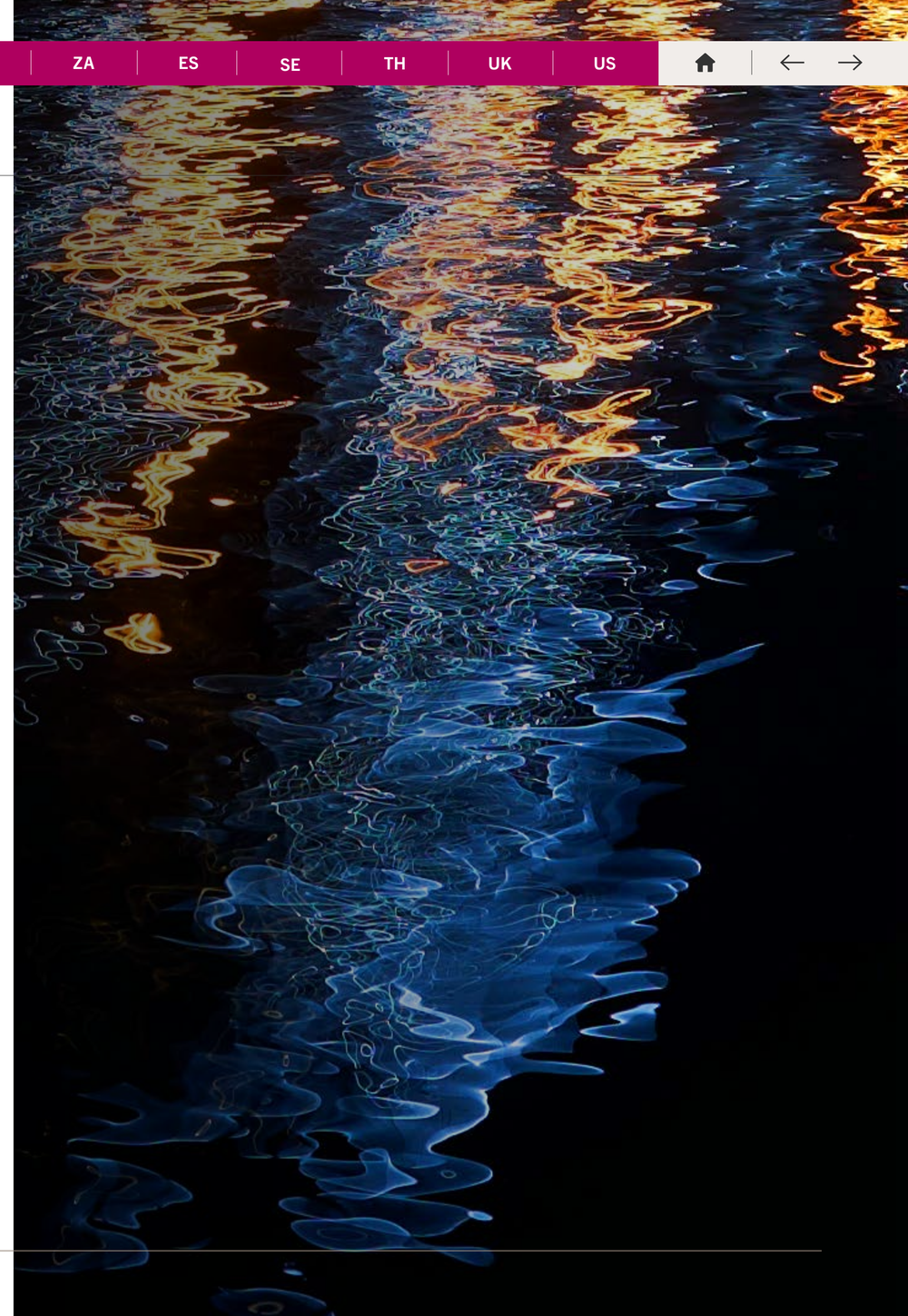


Australia

Australia

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

They are unlawful under the Criminal Code Act 1995 (Cth) (the "Criminal Code") and State and Territory criminal legislation. Amendments to the Criminal Code will come into effect on 8 September 2024 and are considered below (the "Amendments").

Q2 What activities are prohibited?

Bribery of a foreign public official (until 7 September 2024)

Presently, 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 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, or 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). In maintaining a facilitation payments defence, Australia is increasingly out of step with international practice.

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). The Amendments will broaden the definition of "associate" to include all officers, employees, agents, contractors and any person who performs services for or on the corporation's behalf. This includes subsidiaries and controlled entities, regardless of whether they are performing services for, or on behalf of, a corporation.

Bribery of a foreign public official (from 8 September 2024)

From 8 September 2024, it will be an offence to provide, cause or offer to provide a benefit to another person with the intention of improperly influencing a FPO in order to obtain or retain business or a business or personal advantage.

The new offence removes the existing requirement that the benefit or business advantage be "not legitimately due" and does not require that the FPO be influenced in the exercise of their official duties.

The new offence will also extend to include the bribery of candidates for public office, not just current holders of public office.

Notably, the Amendments do not abolish Australia's facilitation payment defence.

Failure to prevent bribery of a foreign public official by associates (from 8 September 2024)

From 8 September 2024, a company will face absolute liability where an 'associate' of the company (being its officers, employees, agents, contractors and other service providers or other associates as outlined above) has committed foreign bribery for the profit or gain of the company. The company does not need to have been involved in, authorised or permitted the offence to be liable.

A defence is available for companies if they can show they had adequate procedures in place to prevent the commission of the offence. As set out below, at the date of this publication, the Commonwealth Attorney General's Department is developing regulatory guidance on what constitute adequate procedures.

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 (eg section 176 of the Crimes Act 1958 (Vic) and section 249B of the Crimes Act 1900 (NSW)).

Most State and Territory criminal legislation also prohibit 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.

Australia

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

No. The primary foreign bribery offence and incoming failure to prevent foreign bribery by associates offence 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.

Q4 Who do the rules apply to?

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.

Australia's "corporate culture" attribution model is unique among comparable jurisdictions.

As outlined above, the new 'failure to prevent' offence will make companies liable for the actions of an associate. An 'associate' is defined broadly and includes all officers, employees, agents, contractors and any other person who performs services for or on the corporation's behalf. Importantly, this includes subsidiaries and controlled entities, regardless of whether they are performing services for, or on behalf of, a corporation.

Q5 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 AU$3.13m (approximately €1.62m), or both (per offence).

The maximum penalty for a company is the greater of AU$31.3m (approximately €16.2m), 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 Investments Commission ("ASIC") has no 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 AU$313,000 (approximately €162,000) 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.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Australian bribery laws do not specifically address gifts and entertainment and there have been no publicly disclosed enforcement actions addressing gifts and entertainment. However, gifts and entertainment are clearly capable of constituting bribes, depending on the circumstances in which they are offered or given.

Most Australian government departments have guidelines on the circumstances in which domestic public officials can accept gifts and entertainment.

Australia

Q7 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. On occasion, ASIC and other federal government departments also assist the AFP to investigate foreign bribery. Internationally, the AFP is a member of the International Foreign Bribery Taskforce, the International Anti-Corruption Coordination Centre, and regularly works with foreign enforcement authorities, including those of the UK and the US. Domestically, the AFP has extensive cross-agency partnerships, including as a participant in the Serious Financial Crime Taskforce.

There has been some criticism of Australia's foreign bribery enforcement efforts. However, enforcement is clearly strengthening. The first prosecution against an Australian company was brought in July 2011 against Securency International Pty Ltd and Note Printing Australia Pty Ltd. This remains the only completed prosecution in Australia of a company for foreign bribery. In the period 2018-2021, Australia opened eight foreign bribery investigations, commenced seven cases and concluded five cases with sanctions.

In recent years, Australian regulators have more visibly been investigating individuals. In 2018, the AFP charged the former chief executive of SKM Pty Ltd (now Jacobs Group (Australia) Pty Ltd) with conspiring to bribe foreign officials in Vietnam and the Philippines to secure infrastructure projects, while in December 2020, the AFP charged a former executive of Leighton Offshore Pte Ltd with conspiring to bribe Iraqi officials in relation to two crude oil export terminal reconstruction contracts worth almost US$1.5bn. In February 2021, a further charge of conspiring to pay up to AU$4m in bribes to high-ranking Tanzanian public officials for an AU$84m contract was added.

On 11 August 2023, the AFP reported on its first concluded matter which involved the application of the Commonwealth Director of Public Prosecutions' Best Practice Guideline on Self-Reporting of Foreign Bribery and Related Offending by Corporations ("the Best Practice Guideline"). The Best Practice Guideline was introduced in 2017 and outlines the principles and processes the AFP and CDPP will apply where a corporation self-reports conduct involving a suspected breach of the foreign bribery offence and related offences. The CDPP decided not to initiate a prosecution given the application of public interest factors in Best Practice Guidance and the Commonwealth's Prosecution Policy.

Domestic corruption offences

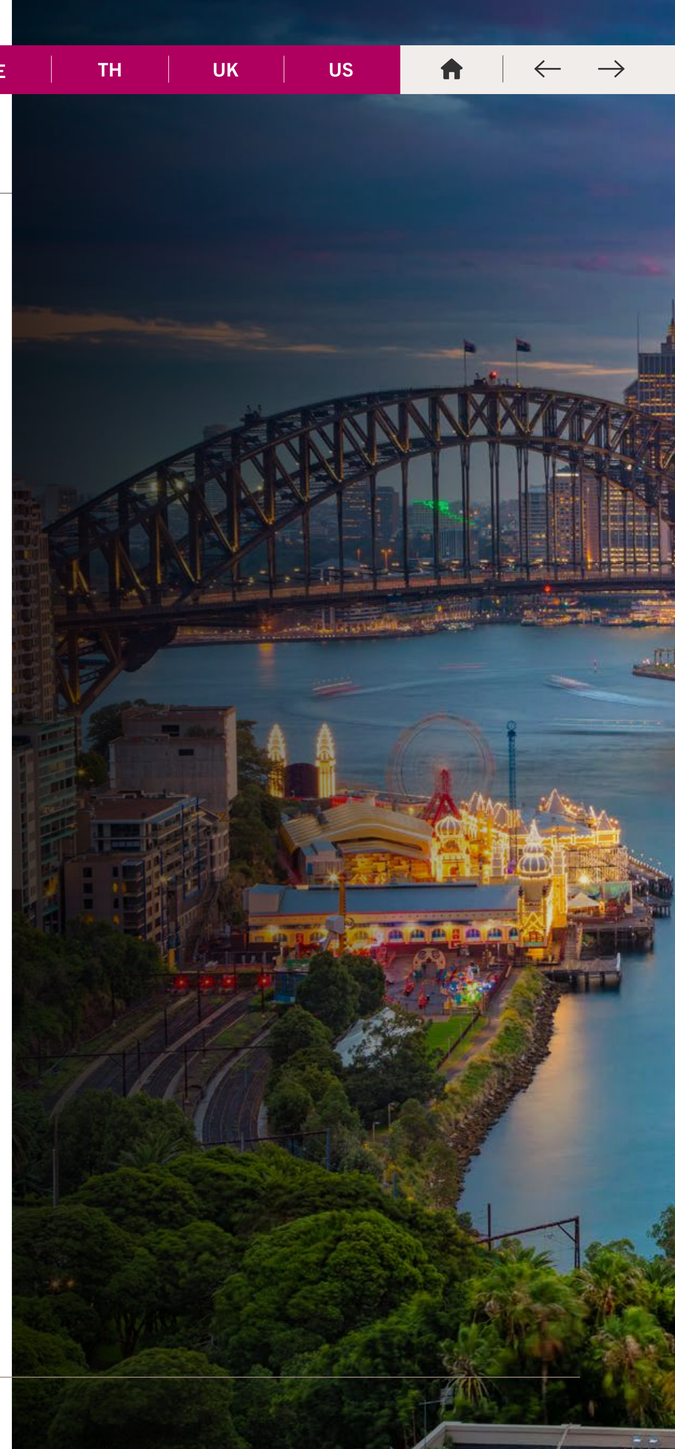
The AFP and CDPP are also responsible for the investigation and prosecution of domestic corruption offences against the Criminal Code.

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.

On 1 July 2023, the Australian Government established the National Anti-Corruption Commission ("NACC") as an independent federal agency to deter, detect and prevent corrupt conduct involving Commonwealth public officials in the Commonwealth public sector. The NACC has power to interview witnesses, obtain documents and records, analyse information and interview persons of interest. The NACC investigates conduct occurring before and after its establishment, and can investigate:

- conduct of any person adversely affecting a public official's honest or impartial exercise of powers or performance of official duties;
- a public official involving a breach of public trust;
- a public official involving abuse of office; and
- a public official or former public official involving the misuse of documents or information they have gained in their capacity as a public official.

As of 1 July 2023, the NACC has been involved in the successful investigation of a former Australian Tax Office employee who was sentenced for accepting bribes. In March 2024, the NACC initiated its first investigation against a former employee of the Western Sydney Airport who was charged with



Australia

allegedly soliciting a bribe of AU$200,000 during the procurement process for a contract to provide services at the airport worth an estimated AU$5 million.

As of April 2024, the NACC is conducting 15 corruption investigations, including five joint investigations and overseeing two investigations it has referred to other agencies.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Yes, such proceeds are likely to fall within the definition of "proceeds of general crime" or "proceeds of indictable 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.

Q9 What future developments are anticipated in this area?

Two key developments arising from the Amendments are anticipated.

First, pursuant to the Amendments, the Attorney-General must publish guidance on what steps corporations can take to prevent an associate from bribing foreign public officials before the new failure to prevent bribery offence comes into effect on 8 September 2024. On 29 April 2024, public consultation opened on draft guidance. The draft guidance is heavily influenced by and generally aligned with equivalent UK and US guidance.

Second, during the Parliamentary process by which the Amendments were legislated there was significant debate as to whether Australia should adopt a deferred prosecution agreement regime. A compromise was reached whereby the Attorney General will the review of the operation of the Amendments 18 months after the laws commence, at which time the matter will be reconsidered. This will be completed by 1 April 2026.

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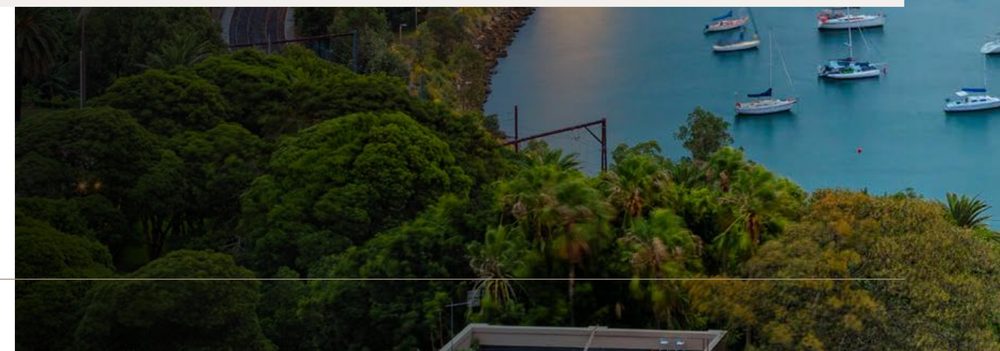
Contacts

James Campbell
Partner, Sydney
Tel: +61 2 9230 4751
james.campbell@allens.com.au

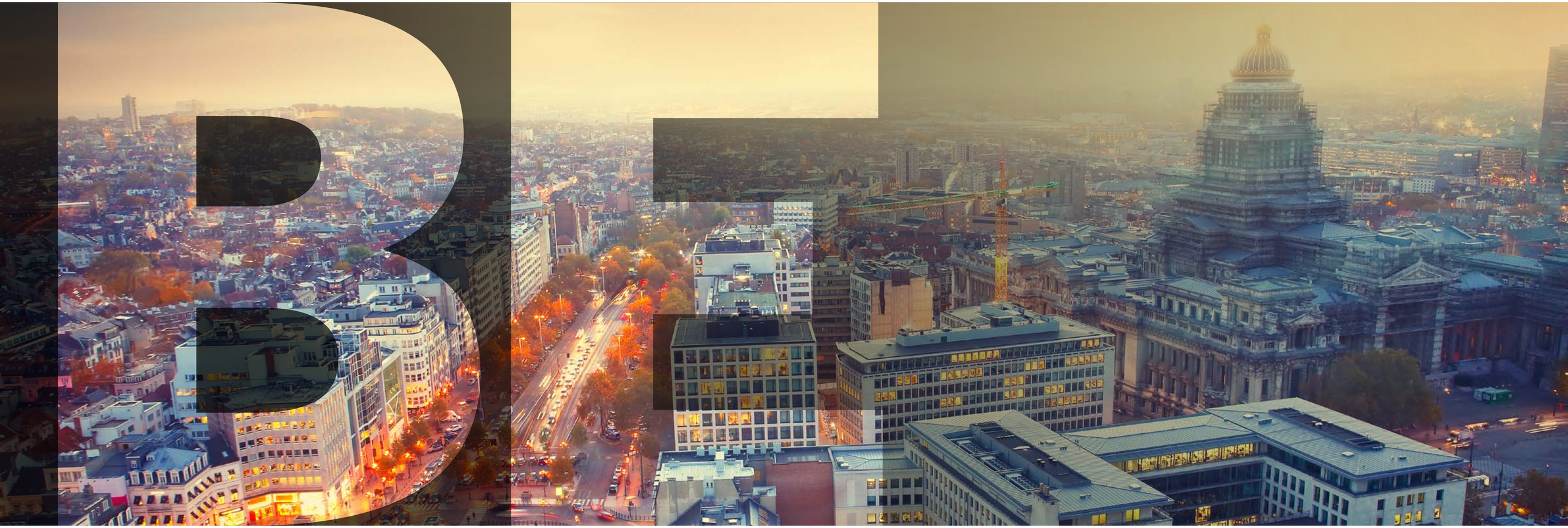
Christopher Kerrigan
Partner, Sydney
Tel: +61 2 9230 4208
christopher.kerrigan@allens.com.au

Rachel Nicholson
Partner, Melbourne
Tel: +61 3 9613 8300
rachel.nicolson@allens.com.au

Andrew Wilcock
Managing Associate, Melbourne
Tel: +61 3 9613 8440
andrew.wilcock@allens.com.au



Belgium



Belgium

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?[1]

Corrupt activities and bribery are punishable under Articles 246-252 (public bribery) and Articles 504bis-504ter (private bribery) of the Belgian Criminal Code ("BCC").

Q2 What activities are prohibited?

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

Public bribery

Active public bribery consists of the proposal – either directly or indirectly, either to the benefit of himself/herself or a third party – of an offer, promise or advantage of any kind to a person holding a public office, to induce the latter to perform or refrain from performing any act falling within the scope of his/her responsibilities.

Passive public bribery is the act of a person holding a public office – either directly or indirectly, either to the benefit of himself/herself or a third party – soliciting, accepting or receiving an offer, a promise or an advantage of any kind, in exchange for performing or refraining from performing any act falling within the scope of his or her responsibilities.

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.

The notion of "person holding a public office" must be interpreted in a broad and functional way. For instance, a private person entrusted with a "public service mission" (e.g. potentially a representative of a public hospital or public education institution) would be considered to be holding a public office.

Private bribery

Active private bribery consists of directly or indirectly offering, promising or giving an advantage of any kind 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 refrain from 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.

Passive private bribery consists of soliciting, accepting or receiving an offer, a promise or an advantage of any kind 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.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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 exert jurisdiction over 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 12bis 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 10quater 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 provides that prosecution can, in principle, only take place when the suspect is located in Belgium.

[1] These fines have already been multiplied by the Belgian judicial multiplicator according to the Act of 5 March 1952 regarding the judicial multiplicator, which is currently set at 8.

Belgium

Q4 Who do the rules apply to?

All physical persons and corporate entities (as author, co-author or accomplice of the material act of the offence (actus reus)), 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).

Q5 What are the fines/penalties?

Public bribery (depending on the type of corrupt conduct) may lead to a prison sentence of six months to 15 years and/or a fine of €800 to €4m for physical persons. For corporate entities, the fine may range from €24,000 to €8m. The exact range and amount of a penalty will depend on a number of factors.

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 include debarring the offender from exerting certain rights (e.g. holding public offices) and confiscating the object, product and proceeds of the act of bribery.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Bribery in a commercial setting will typically concern private bribery. Through private bribery, a person is induced to commit or to refrain from committing an act linked to or facilitated by that person's position. The victim of private bribery acts is effectively the company or the employer whose representative (director/agent/employee) has acted in his/her personal interest, rather than in the interest of the company or employer. Various examples of bribery have been given in the parliamentary documents: a procurement manager of a supermarket chain taking the decision to include a certain product in its product range in exchange for free tickets for the World Cup football final, a manager sharing confidential information with a competitor in exchange for a bribe, a sports referee who consciously ignores the fouls committed by the team that bribed him/her, etc.

It is, however, common for customers and suppliers to make certain offers or promises or grant advantages to one another in a competitive economic context. It is why the legislator added the condition that the solicitation, acceptance, offering, promising or giving of an advantage must happen "without the knowledge of or authorisation from" the board of directors, the general assembly of shareholders, the principal or the employer. In other words, once the company or the employer has been made aware of the gifts, presents or advantages offered to its representative, that company or employer is no longer deemed to be affected.

There is no *de minimis* threshold. However, large corporations usually publish on their website their internal policies concerning the maximum value of gifts that can be offered/accepted without any prior authorisation.

Belgium

Q7 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.

There are a number of alternative regimes for court proceedings available to the criminal authorities (including in cases of bribery).

- For bribery offences punishable with imprisonment of no more than 2 years, the public prosecutor can enter into a criminal settlement with the suspect. This requires the suspect (physical person or corporate entity) to pay a sum of money, after which the suspect can no longer be prosecuted for the facts covered by the settlement. Criminal settlements require court approval. Although a criminal settlement does not involve any recognition of criminal guilt, it entails the recognition of civil liability and an obligation to compensate the victim(s) of the offences.
- For bribery offences punishable with imprisonment of no more than 5 years, there is the possibility to enter into a "guilty plea". In essence, in exchange for an admission of guilt and compensation of any victim's damage, the public prosecutor can agree on a sentence with the suspect without the case proceeding to trial. A guilty plea involves the recognition of both criminal and civil liability. Guilty pleas are currently not often entered into in Belgium.
- The formal "repentance" regime allows the public prosecutor to enter into an agreement with a suspect who makes substantial, revealing, sincere and complete statements regarding the involvement of third parties and, as the case may be, his/her own involvement in (attempted) serious criminal offences, including public and private bribery. The agreement will typically contain a commitment from the prosecutor to issue a lesser sentence than the prosecutor would otherwise have requested the court to impose. The written agreement between the prosecutor and the suspect requires court approval. This repentance regime has to date most notably been used in the framework of a major criminal investigation into alleged bribery and fraud by football agents, club managers and referees. Through a recent Act of 14 April 2024, the Belgian legislator has shown its intention to have the public prosecutor increasingly make use of this regime by extending the possibilities where it can be applied. For example, a repentance agreement may already be entered into in the preliminary investigation phase.

Finally, acts of bribery and corruption are covered by the Belgian whistleblowing regime. The Act of 28 November 2022, which implements the EU Whistleblower Protection Directive, provides a general protection to reporters of acts of bribery and corruption in the private sector. The Act of 8 December 2022 provides for a similar protection within the federal public sector.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Yes. First, the Belgian courts may confiscate the object, product and proceeds of any criminal offence, including bribery offences. In addition, using, dealing with or hiding the proceeds derived from bribery, while knowing or having to know the illicit origin of those proceeds, may result in further offences under anti-money laundering legislation (Article 505 BCC).

Protection of reporters of acts of corruption: whistleblower regime

Before the implementation of the EU Whistleblower Protection Directive, Belgian law only contained a limited number of sector-specific whistleblowing regimes for reports of acts of corruption.

Currently, the Act of 28 November 2022, which implements the EU Whistleblower Protection Directive, provides a general protection to reporters of acts of corruption in the private sector.

In addition, the Act of 8 December 2022 on the reporting channels and protection of the reporters of integrity violations within the federal public authorities and the integrated police, provides for whistleblower protection within the federal public sector.

Belgium

Q9 What future developments are anticipated in this area?

On 29 February 2024, the Belgian legislator adopted a new Criminal Code. Book I of this new Code contains the general principles of criminal law, whereas Book II contains the individual criminal offences. The new Code is part of a general reform of Belgium's primary legislation and mainly aims at modernising and simplifying Belgian criminal law.

The new Criminal Code was published in the Belgian State Gazette on 8 April 2024 and will enter into force on 9 April 2026.

The new Criminal Code no longer provides for a specific penalty per offence but instead establishes a mechanism with eight levels of penalties for individuals on the one hand, and corporate entities on the other hand. Book II of the Criminal Code determines which level of penalty applies to the relevant offence. The legislator also expanded the different types of penalties that the courts can impose, e.g. a work penalty for corporate entities.

Regarding private bribery, the new Criminal Code does not change the definitions of passive and active bribery. Private bribery will in the future be sanctioned with a level 2 punishment:

- For individuals, this includes as a principal penalty an imprisonment of six months to three years or one of the alternative penalties foreseen by law (e.g. a work penalty). The court can also impose different additional penalties, e.g. a fine of €200 to €5,000.
- For corporate entities, this includes as a principal penalty, among others, a fine of €20,000 to €360,000[2].

Regarding public bribery, the new Criminal Code does not change the definitions of active and passive bribery but imposes more severe penalties. Public bribery will be sanctioned with a level 3 punishment:

- for individuals, this includes, among others, an imprisonment of three to five years as a principal penalty;
- for corporate entities, this includes a fine of €360,000 to €600,000 as a principal penalty;
- not only will public bribery be sanctioned with a level 3 punishment, the legislator also provided for additional penalties which could lead to additional fines of up to €600,000 (on top of the abovementioned principal penalties) for individuals and corporate entities. The court could even go above these maximum fines in case of e.g. transnational corruption. A court could also prohibit a company to carry out one or more activities falling within the scope of its corporate purpose.

In the case of both public and private bribery, Article 55 of the new Criminal Code provides that the court may, instead of imposing an additional fine, sentence each of the offenders to pay a sum corresponding to no more than three times the value of the pecuniary gain that the offender(s) derived or intended to derive directly or indirectly from the offence.

[2] These amounts are without the application of the judicial multiplicator, as this would be set to 0 with the entry into force of the new Criminal Code.

Contacts

Florence Danis
Partner, Belgium
Tel: +32 2 501 90 28
florence.danis@linklaters.com

Matthias Schelkens
Managing Associate, Belgium
Tel: +32 2 501 93 98
matthias.schelkens@linklaters.com

Stefaan Loosveld
Partner, Belgium
Tel: +32 2 501 95 21
stefaan.loosveld@linklaters.com

Zoë Deblander
Associate, Belgium
Tel: +32 2 501 95 40
zoe.deblander@linklaters.com

Bénédicte Deboeck
Counsel, Belgium
Tel: +32 2 501 93 67
benedicte.deboeck@linklaters.com

France

France

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Corrupt activities are unlawful under the French Criminal Code.

Q2 What activities are prohibited?

Domestic practices

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 their activity, office, duty or mandate, or facilitated by their 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, their 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 need to precede the act.

Moreover, the offence of corruption is committed even if the expected act is not carried out, ie 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 their 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.

Foreign practices

In terms of foreign practices, French law 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 prohibits 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.
- 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 – ie 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.

Facilitation payments may be prosecuted under French law on a charge of corruption.

Other criminal offences punish the lack of integrity of public servants.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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

France

French criminal courts may even have jurisdiction over an offence of bribery of a foreign public official or member of judicial staff committed wholly outside the territory of France, provided that it was committed by a French national or legal entity which conducts part or all of its business in France.

The jurisdiction of the French Courts may also be asserted, under certain procedural conditions, if the victim of a criminal offence committed outside French territory is a French national.

Anyone found to be using the proceeds of bribery and/or corruption offences in France may be prosecuted in the French courts for proceeds of crime or money laundering offences, even if French courts do not have jurisdiction over the relevant conduct.

Q4 Who do the rules apply to?

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

Those acting as accomplices to the offences are liable to be punished by the same penalties as those primarily responsible.

Knowingly using the criminal proceeds of these offences is also punishable.

Q5 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 (such as confiscation). 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 that is greater. Additional penalties may also be imposed, such as the seizure of properties and/ or the obligation to implement an anti-corruption programme under the supervision of the French Anti-Corruption Agency ("FACA"), for a maximum duration of five years.

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

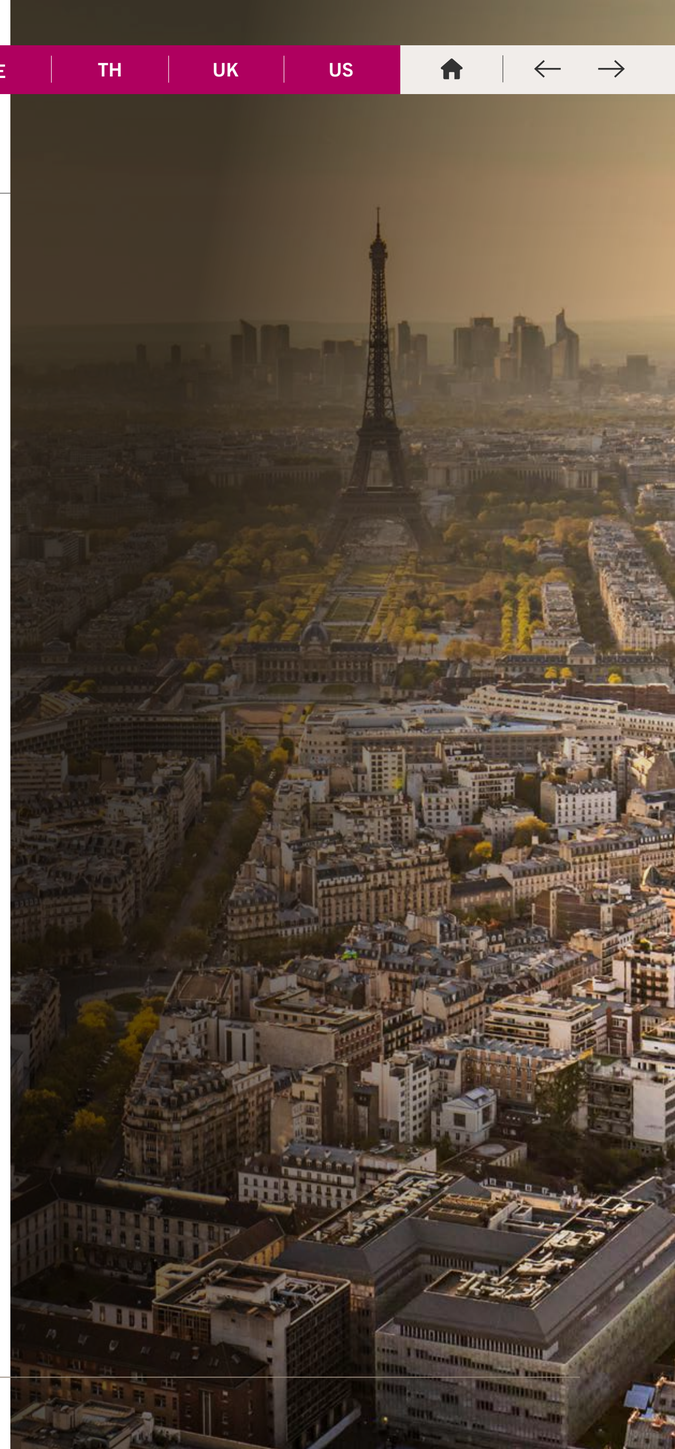
A conviction for bribery or influence peddling also leads to an automatic exclusion from public tender offers.

The term of imprisonment for corruption or influence peddling in respect of foreign public officials may be reduced by half 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. Self-reporting and cooperation with authorities may, however, be taken into account by the Public Prosecutor in order to offer settlements and by the Criminal Courts in their sentencing judgments.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Under French law, there is a general prohibition to offer unduly, at any time, directly or indirectly, "promises, gifts, presents or advantages" of any kind to a public official or a private person, for themselves or for others, to perform or refrain from performing an act of their function or mission ("Bribery Offence"). As such, the giving or receiving of gifts and hospitality may constitute a Bribery Offence if it is intended to obtain an undue advantage. This will be assessed on a case-by-case basis by authorities.

While there is no specific requirement, for neither public officials nor for private entities and individuals, to adopt gifts and business hospitality policies per se, it is best practice to do so.



France

The FACA has issued two sets of guidelines that bring together best practice on gifts and hospitality. These note in particular that:

- as a principle, public officials must never seek nor accept gifts or invitations in the performance of their duties. As an exception, the FACA admits that a public official may accept a gift or an invitation if justified by courtesy, protocol or other "professional reasons" (this concept is not expanded by the FACA). In any case, it must always be done at an appropriate time and of a low monetary value and never constitute a Bribery Offence;
- in private and public sector corporations, the policy must apply to all employees and occasional staff, and training must be provided to those facing the greatest exposure to bribery risks. In implementing the gifts and hospitality policies, private entities should consider three elements in particular: the purpose of the gift or hospitality; its value (the FACA does not advise on specific thresholds) and its frequency. The policy should include the procedure to be followed internally when giving or receiving gifts and hospitality. The FACA also recommends that private entities establish monitoring systems that may include audit processes.

Q7 What approach is taken to enforcement in practice?

The French enforcement approach has become notably more severe in recent years.

High scrutiny from authorities

In 2023, almost half of the investigations of the French Financial Prosecution Office ("FFPO") concerned offences related to lack of integrity (bribery, influence peddling and embezzlement of public funds) (ie 370 cases, of which 114 are corruption cases, resulting in an increase of 15% compared with the number of cases in 2020)[1].

Higher fines and multiplication of settlements

Since 2016, 17 *Convention judiciaire d'intérêt public* (CJIP) settlements with public prosecutors (in the form of a "deferred prosecution agreement" enabling the entities to avoid a criminal conviction or having to plead guilty) were concluded with respect to allegations of corruption, of which, seven were concluded in 2023[2].

Financial sanctions ordered under these settlements can be very high, as they can go up to 30% of the company's average annual turnover. In 2020, Airbus accepted to pay the amount of €3,6 Bn to settle bribery charges (the settlement was also co-ordinated with the UK's Serious Fraud Office and the U.S.'s Department Of Justice) – the amount is the highest penalty ever imposed by French criminal authorities against a corporate.

The FFPO issued guidelines in January 2023 to clarify the conditions that must be met by companies to enter into a CJIP and the factors to be taken into account when determining the amount of the fine ordered in the context of a CJIP. As such, a reduction of fine can be obtained through active cooperation by the companies in the investigation, including the conduct of an internal investigation.

An acquittal rate which is, however, still higher than the average dismissal rate

In 2021, the acquittal rate (ie the number of cases where the accused was found non-guilty) in matters of bribery (27.2%) was almost three times higher than the average acquittal rate for all criminal offences in France (7.5%)[3].

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Use of criminal proceeds and money laundering offences

Dealing with the proceeds of criminal offences such as money laundering may constitute the offence of receiving the proceeds of an offence *(recel)*, by knowingly concealing, transferring or benefitting in any manner from the proceeds of an offence. The offence of money laundering *(blanchiment)* may also be applied.

Where there is a connection with France, both offences may be prosecuted, even if the original bribery offence does not fall within the jurisdiction of the French courts.

Legal entities may be liable to 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.

Individuals can be liable to 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 may be subject to the penalties pertaining to the offence that they knew about. The fines may be increased beyond €375,000 to half the value of the proceeds of the offence in question. Individuals may also incur additional penalties. Penalties 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 group.

Such proceeds may also be confiscated.

[1] PlaquettePNF.pdf (justice.fr), p. 4, p. 9.

[2] PlaquettePNF.pdf (justice.fr) p. 10

[3] RA_AFA_2022_Web.pdf (agence-francaise-anticorruption.gouv.fr) p. 11

France

Civil disputes and arbitration

Damages can be claimed by any person disadvantaged as a result of an act of corruption and any relevant contracts could be voidable. An NGO may under certain conditions be permitted to take part in the proceedings (or even bring criminal proceedings) and be entitled to receive compensation, if it succeeds in demonstrating that it has itself suffered a loss.
It should also be noted that under French civil law, corruption and influence peddling agreements are void and ineffective on the grounds of unlawful and immoral cause or purpose, or fraud, or by reference to French public policy.

An arbitral award can be set aside by French courts on the ground of international public policy if it is tainted by bribery practices. Arbitral tribunals, as well as state judges, may rely on "red flags", i.e. on circumstantial evidence that must be serious, precise and consistent.

Q9 What future developments are anticipated in this area?

Criminal prosecution and settlements: Encouragement of settlements, self-reporting and internal investigations

Settlements are expected to be further encouraged in bribery-related matters, as well as internal investigations. The FFPO Guidelines of 2023 provide that conduct of internal investigations by companies is a factor likely to be taken into account when assessing the fine ordered in the context of a CJIP.

The current inability of individuals to benefit from DPAs is still being debated by the French legal community. Criticism of the settlement options available to individuals (who may only benefit from possible guilty pleas) has increased since February 2021, when the Paris Criminal Court publicly rejected the guilty plea agreed between the French Financial Prosecution Office and the CEO of one of the French largest companies involved in a bribery case.

Accountability of legal entities

On 16 June 2021, the French Supreme Court upheld the broad approach taken by a Criminal Court to the accountability of legal persons. It confirmed the criminal conviction of a parent company for acts of bribery committed by employees of one of its subsidiaries, in particular on the basis of the existence of *"a matrix organisation with two virtual and transversal entities without legal personality, grouping business groups and geographical areas, not taking into account the legal structures linking the parent company to its numerous subsidiaries"*.

A Parliamentary report of July 2021 encouraged the French legislator to relax the legal conditions under which legal entities are held criminally liable for acts committed by their employees. The draft bill filed in October 2021 proposed the creation of a general principle under French criminal law, according to which legal entities could be *"criminally liable when their lack of supervision has led to the commission of one or more offences by one of their employees"*. It has not been adopted.

France

Compliance programs and possible sanctions in case of breach of compliance obligations (Sapin 2 law)

In parallel with the strengthening of criminal prosecution, in 2016, French law obliged 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 prevent and detect bribery practices (the "Sapin 2" Law). Such companies must implement a compliance plan including, in particular, a corruption risk map, internal and external accounting controls procedures and internal procedures to verify the integrity of third parties (clients, suppliers and intermediaries).

The FACA has powers to apply administrative sanctions against individuals and legal entities to ensure the effective implementation of these compliance plans (with fines of up to €1m for legal entities in cases of non-compliance).

As a result, anti-bribery compliance systems are now assessed by French authorities outside of criminal proceedings and sanctions can be ordered even in the absence of bribery offences. About 20 private companies are audited each year by the FACA. To date, no fine has been imposed on any company in this context and few criminal matters have been reported to the Public Prosecutor following the FACA's audits.

The FACA publishes recommendations and a questionnaire outlining the expected questions and the required documents that must be submitted in the event of an investigation by the authority.

A more stringent approach to combating corruption can be expected. In December 2023, Bruno Le Maire, the French Minister of Economy and Finances, announced that a new set of measures would be aimed at curbing corruption. A national anti-corruption plan for 2024-2027 is currently under preparation at the FACA. While no concrete measures have been officially announced yet, the FACA's questions during the public consultation shed light on the potential avenues for reform, such as the possible implementation of stricter rules based on sectoral and geographical criteria.

Better protection of whistleblowers

In March 2022 France implemented the European Directive of 23 October 2019 on whistleblowing. This law surpasses the provision of the European Directive by extending protection to any *"natural person who reports or discloses, in good faith and without direct financial compensation, information concerning a crime, an offence, a threat or a prejudice to the general interest (…)"*.

The scope of protection includes safeguards against both criminal and civil actions. Whistleblowers have the option to report allegations either internally or directly to the relevant authorities. Moreover, French law facilitates the referral of integrity breaches to various administrative bodies, including the FACA. A decree issued on 3 October 2022 supplemented the law, outlining in more detail the expectations with respect to whistleblowing internal processes.

FR

Contacts

Arnaud de La Cotardière

Partner, Paris

Tel: +33 1 56 43 58 26

adelacot@linklaters.com

Eléonore Hannezo

Partner, Paris

Tel: +33 1 56 43 56 68

eleonore.hannezo@linklaters.com

Germany

Germany

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Under the German Criminal Code (*Strafgesetzbuch* – "StGB" or "Criminal Code") and, with respect to active bribery of foreign Members of Parliament, under the International Bribery Act (*Internationales Bestechungsgesetz*).

Q2 What activities are prohibited?

Public officials

Corruption of public officials is unlawful according to sections 331 et seqq. StGB. According to section 11 para. 1 no. 2 StGB, "public official" means any person who, under German law, (i) is a civil servant or judge, (ii) carries out other public official functions, or (iii) has otherwise been appointed to serve with an authority or other agency or has been commissioned to perform public administrative services, regardless of the organisational form chosen to perform such duties. Sections 331 et seqq. StGB do not not only apply to German public officials but also to European public officials, which include, 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 StGB). Other foreign and international officials (*ausländische und internationale Bedienstete*) including, e.g., judges of foreign and international courts and civil servants of foreign states and international organisations, are treated as public officials under section 335a StGB for bribery offences concerning a future official act by the respective public official.

Sections 331 et seqq. StGB differentiate between so-called "active bribery" (sections 334 and 333 StGB), which is the offer, promise or grant of an advantage, and "passive bribery", which occurs if the public official demands, allows or accepts such advantage (sections 331 and 332 StGB). Bribery always involves an (express or implicit) understanding between the person offering and accepting the bribe that the advantage is offered in return for an act that falls under the general scope of the official's duties. The act in question can be contrary to duty (so-called "bribery", sections 332, 334 StGB) or in accordance with duty (so-called "granting of an advantage", sections 331, 333 StGB) and may have already been carried out in the past or be expected in the future. Liability pursuant to sections 331 and 333 StGB may even be assumed if the grantor of the advantage does not have a specific act in mind and only intends to exert a general influence over the execution of official responsibilities or reward the entirety of the official's work.

Delegates

Members of the *Bundestag* or of one of the *Länder* parliaments or persons deemed equivalent to them (also known as "delegates") are not liable under sections 331 et seqq. StGB, as they are not public officials within the meaning of section 11 para. 1 no. 2 StGB. However, section 108e StGB penalises the exertion of influence on acts or omissions of delegates in the exercise of their mandate. According to a 2022 judgment of the German Federal Court of Justice (*Bundesgerichtshof* – "BGH"), liability will result only from the influence on acts connected to the parliamentary duties of the delegate, such as their participation in parliamentary debate and committees. Delegates are therefore not liable under section 108e StGB for accepting advantages in return for leveraging their influence with members of the executive, for instance, to facilitate deals between state institutions and private companies (decision of 5 June 2022 – StB 7/22 et al.).

Commercial practice

Corruption in the course of business and trade is prohibited by section 299 StGB for the purpose of safeguarding the public interest in free and fair competition. This provision applies only to perpetrators acting as an employee or an agent of a company during business and trade. In a 2021 judgment, the BGH indicated that acts committed with consent of the business owner or by the business owner themself might not be punishable under section 299 StGB (decision of 28 July 2021 – 1 StR 506/20).

Similar to the legislation on bribery of public officials, a person is liable under section 299 StGB for active and passive bribery if an advantage is offered, granted, demanded or accepted in return for (i) unfair preferential treatment in the competitive purchase of goods and services, or (ii) a breach of duty vis-à-vis the employer in relation to the exchange of goods and services. Since a breach of duty is sufficient to incur liability, making payments even outside any competitive situation may constitute a criminal offence.

Further provisions

With regard to the healthcare sector, sections 299a and 299b StGB prohibit both active and passive bribery of healthcare professionals who must complete state-regulated training to practise or use a professional title. These statutes safeguard against corruption in healthcare that threatens to distort competition, raise treatment costs, and weaken patient trust in healthcare decision-making.

There are further special provisions prohibiting bribery, such as section 108b StGB on bribing voters for not voting or voting in a particular way, section 119 of the Works Constitution Act (*Betriebsverfassungsgesetz*) on interfering with an election of the works council, and sections 265c, 265d and 265e StGB regarding the manipulation of professional sporting events via bribery of athletes, trainers and referees.

Germany

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

Not necessarily. Generally, German criminal law is applicable, if the act was committed in Germany (section 3 StGB) or – where the act is punishable at the location where it was committed – by or against a German citizen (section 7 StGB). With regard to corruption under sections 331 et seqq. StGB, the applicability is extended further to acts committed outside of Germany under section 5 no. 15 StGB 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) StGB); or
- the offence is committed against a German public official (section 5 no. 15 lit. c) StGB) 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 StGB provided, again, the latter is a German citizen (section 5 no. 15 lit. d) StGB).

Therefore, in these cases of bribery and corruption of public officials (sections 331 et seqq.), the act is unlawful under German law even if it is not unlawful at the location where it was committed. The same applies for bribery of foreign delegates under section 3 of the International Bribery Act if the crime was committed by a German citizen.

Q4 Who do the rules apply to?

German criminal law primarily applies to individual persons. Companies are not subject to criminal liability but may be subject to fines in relation to public and business corruption. Section 30 of the Administrative Offences Act (*Ordnungswidrigkeitengesetz* – "OWiG") provides that companies and other legal entities may be subject to fines if a person with authority – such as an authorised representative, a member of an executive committee, a person with statutory power of attorney (*Prokurist*), or someone with significant responsibilities for the management of the company – has committed a crime or an administrative offence that either breaches an obligation of the entity or results in a benefit for the entity.

In addition, according to sections 130 and 30 OWiG, companies will be held liable if their owner or the owners' authorised representative has failed to fulfil the supervisory measures required to prevent bribery by employees of the company.

Q5 What are the fines/penalties?

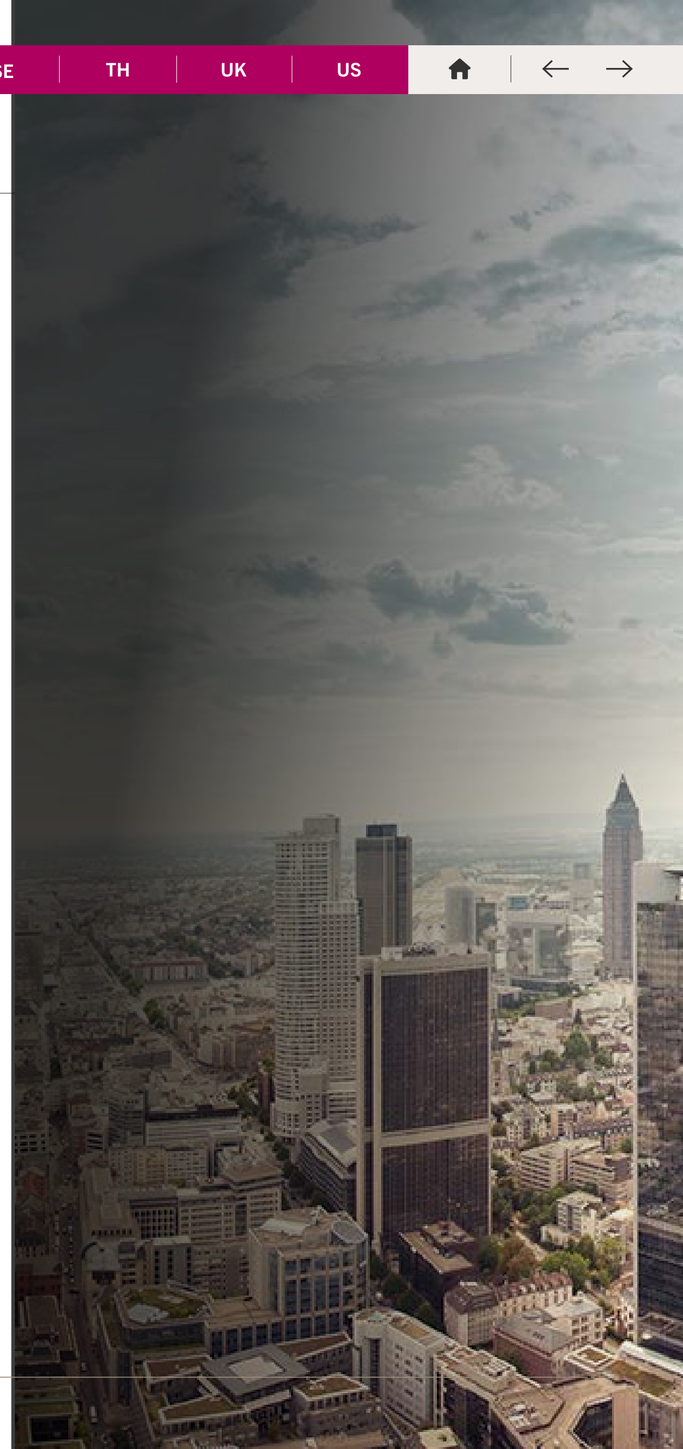
The Criminal Code provides that persons found guilty of bribery or a related offence may either be fined or imprisoned. Sentences of imprisonment may be for up to 10 years in particularly severe cases. A legal entity may be fined up to EUR 10m for violations according to section 30 para. 2 OWiG. Section 17 para. 4 OWiG provides that, if the profit generated by the offence is higher, then the fine can be as high as the profit made or even exceed it. In recent cases, fines have even exceeded EUR 100m.

Alternatively, the proceeds from the offence can be confiscated via criminal (sections 73 et seqq. StGB) or administrative (section 29a OWiG) confiscation. This allows the authorities to confiscate not only the profits, but the gross revenue acquired from the (criminal or administrative) offence, while expenses may in general not be deducted. Proceeds may also be confiscated from third parties, e.g., if the third party knew or should have known that the proceeds stem from a violation of the law.

Convictions of bribery are registered in the competition register and may result in the company being excluded from public tenders (sections 2, 6 and 7 of the Competition Register Act).

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

From a practical standpoint, gifts and hospitality in commercial settings are evaluated with reference to the principle of "social adequacy" on a case-by-case basis. The acceptance of certain advantages may be exempt from criminal liability if the advantages are relatively low-value courtesies that are granted on appropriate occasions and are therefore "socially adequate". Since this is determined according to the specific



Germany

circumstances of the case, there are no strict statutory value limits on what is socially adequate. Gifts and hospitality in both private and public sectors are judged using broadly the same principles, albeit with stricter scrutiny for public officials. Key considerations include:

- whether the gift or hospitality significantly exceeds the recipient's ordinary lifestyle,
- for hospitality, whether a similar reciprocal invitation from the recipient can be anticipated,
- whether the advantage is granted in a transparent manner, and
- whether the advantage is significant enough to sway the recipient's decisions.

Civil servants may only accept advantages with consent by the employing authority. Federal states and specific authorities have adopted extensive guidelines on permissible gifts, varying by region and profession. Cash gifts, even small tips, are generally considered inappropriate.

In business transactions, the range of acceptable benefits that are not subject to criminal penalties is typically broader compared to those in public administration. Dinner invitations, invites for cultural and sporting events as well as birthday and Christmas gifts may be permissible if they are socially adequate and unlikely to influence the receiver's decisions.

Q7 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 prosecutors' office. Many public prosecutors' offices include departments dealing exclusively with investigating and prosecuting business crime.

According to the most recent corruption report of the Federal Criminal Police Office (Bundeskriminalamt), a significant decrease in corruption offences in relation to the public and private sector was recorded in 2022 compared to the previous year. The decline can be primarily attributed to the completion of extensive and complex investigations in several German states that were underway from the previous year. The report also notes that the construction industry, the pharmaceutical and medical industry as well as the service industry are particularly affected by corruption. Nevertheless, a high number of unreported corruption offences is assumed.

Preventative measures are being taken by various Federal Ministries, for example, by issuing guides on preventing corruption. Moreover, the implementation of the EU Directive on combating money laundering through criminal law led to a fundamental revision of the criminal offence of money laundering (section 261 StGB) which came into effect in March 2021 (read more in this blog post). The reform established that any criminal act may now constitute a suitable predicate offence (i.e., the underlying crime that produced the illegitimate proceeds) for the pursuit of money laundering charges. This legal change, as was expected and is shown by statistics from the Financial Intelligence Unit, led to a constant increase in suspicious transaction reports for money laundering, in particular since the duty to report a suspicion of money laundering arises at a very early point in time, i.e. when facts indicate that an asset is derived from a criminal offence which could constitute a predicate offence for money laundering.

Bribery and corruption that affect the EU's financial interests are investigated by the European Public Prosecutor's office (EPPO). However, cases of corruption made up only around 3% of all investigations by the EPPO in 2023, with no case of corruption investigated in Germany (see EPPO's annual report 2023).

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Yes. As mentioned above, proceeds of bribery and related criminal and administrative offences may be confiscated from the company under the Criminal Code or the Administrative Offences Act. According to the Criminal Procedure Code (*Strafprozessordnung*), a court may order the confiscation of proceeds even without a conviction if evidence suggests that the proceeds originate from a criminal offence.

Germany

Moreover, the concealment, exchange, transfer, acquisition or retention of proceeds from any criminal offence may constitute criminal money laundering under section 261 StGB. This may include keeping funds in an account of the company if the person who controls the account has accepted the possibility that the funds have been procured by corrupt practices.

In addition, companies in certain sectors like financial institutions, insurance companies, accounting and law firms may be subject to various duties of care and reporting obligations under the German Anti-Money Laundering Act (*Geldwäschegesetz* – "GwG"). Breaches of these obligations are punishable by fines of up to EUR 150.000 or in severe or prolonged cases, EUR 5m or 10% of the total revenue that a financial institution or insurance company has received in the year before the authorities' decision about the violation, pursuant to section 56 para. 3 sentence 4 GwG.

Q9 What future developments are anticipated in this area?

Future developments in German legislation may include major reforms to criminal liability, driven by a new EU Directive on combating corruption proposed by the European Commission in 2023 and further associated EU legislation (read more in this blog post). While the core regulations regarding bribery and corruption proposed in the draft directive are comparable to existing German legislation, the draft directive also includes several changes that may increase criminal liability.

Enforcement could also be affected by possible new legislation pertaining to the fight against financial crimes. The Federal Ministry of Finance (*Bundesfinanzministerium*) has published draft legislation (*Finanzkriminalitätsbekämpfungsgesetz*) to this effect in 2023. The draft is looking to enhance the effectiveness of the fight against money laundering by, inter alia, establishing a new federal authority (*Bundesamt für Bekämpfung der Finanzkriminalität*), increasing transparency requirements for real estate transactions and adopting a 'follow the money' principle to guide investigations.

DE

Contacts

Kerstin Wilhelm

Partner, Munich

Tel: +49 89 41808 506

kerstin.wilhelm@linklaters.com

Mirjam Erb

Senior Associate (Knowledge), Frankfurt

Tel: +49 69 71003 611

mirjam.erb@linklaters.com

Hong Kong

Hong Kong

Q1 What legislation makes corrupt activities 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.

Q2 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.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

In general, corrupt conduct by Hong Kong persons which takes 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.

Q4 Who do the rules apply to?

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.

Hong Kong

Q5 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 of 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).

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Under the POBO, it is an offence for any employee to, without the permission of the employer or reasonable excuse, give or receive any gifts and hospitality, regardless of value. A company should therefore issue clear internal policy on the giving and receiving of gifts and hospitality, and specify the circumstances where the giving and acceptance of gifts and hospitality may be allowed, including threshold and handling procedures, and communicate the policy to their staff. For example, the provision or receipt of gifts of nominal value may be allowed when the gift is for legitimate business purpose and not made with ulterior or improper motives. All expenses should be properly approved and documented.

Q7 What approach is taken to enforcement in practice?

Of the 1,835 corruption complaints (excluding election complaints) received in 2022 by the Independent Commission Against Corruption ("ICAC"), which is Hong Kong's public body with primary responsibility for investigating corruption in Hong Kong, 64% related to private sector bribery and 29% related to government departments. The remaining 7% 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 for bribery and/or corruption. In 2022, 215 persons were prosecuted. The person-based and case-based conviction rates for non-election offences were 80% and 82% respectively.

To sustain a clean business environment in Hong Kong, the ICAC maintains close ties with the finance industry, including collaborative efforts with the Securities and Futures Commission ("SFC"). During 2022, the ICAC and the SFC successfully disrupted a syndicate operating ramp-and-dump schemes through a cross-shareholding network of listed companies in Hong Kong. The syndicate was alleged to have offered bribes to responsible officers and staff of brokerage firms in exchange for assistance in share placing. The ICAC also published a Corruption Prevention Guide for Banks jointly with the Hong Kong Monetary Authority to assist banks in establishing and strengthening their corruption prevention capabilities.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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 conduct.

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 conduct are therefore caught by the OSCO. It is a defence 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 if the JFIU gave its consent to proceed.

Hong Kong

Q9 What future developments are anticipated in this area?

In 2020, the Hong Kong Stock Exchange adopted new requirements in the ESG Reporting Guide with a focus on board governance and oversight of ESG issues, including anti-corruption efforts. Listed companies are now required to disclose information on (i) concluded legal cases regarding corrupt conduct brought against the issuer or its employees and the outcome, (ii) corruption prevention measures and whistle-blowing procedures and (iii) anti-corruption training provided to directors and staff on a 'comply or explain' basis. In 2022, through the introduction of a new provision under the Corporate Governance Code, the Exchange further requires that all listed companies establish anti-corruption and whistleblowing policies and procedures, encouraging stakeholders to raise concern about improprieties such as bribery.

Reported corruption in Hong Kong continues to remain at a very low level. According to the Corruption Perceptions Index 2023 released by Transparency International, Hong Kong was rated the 14th least corrupt place among 180 countries and territories.

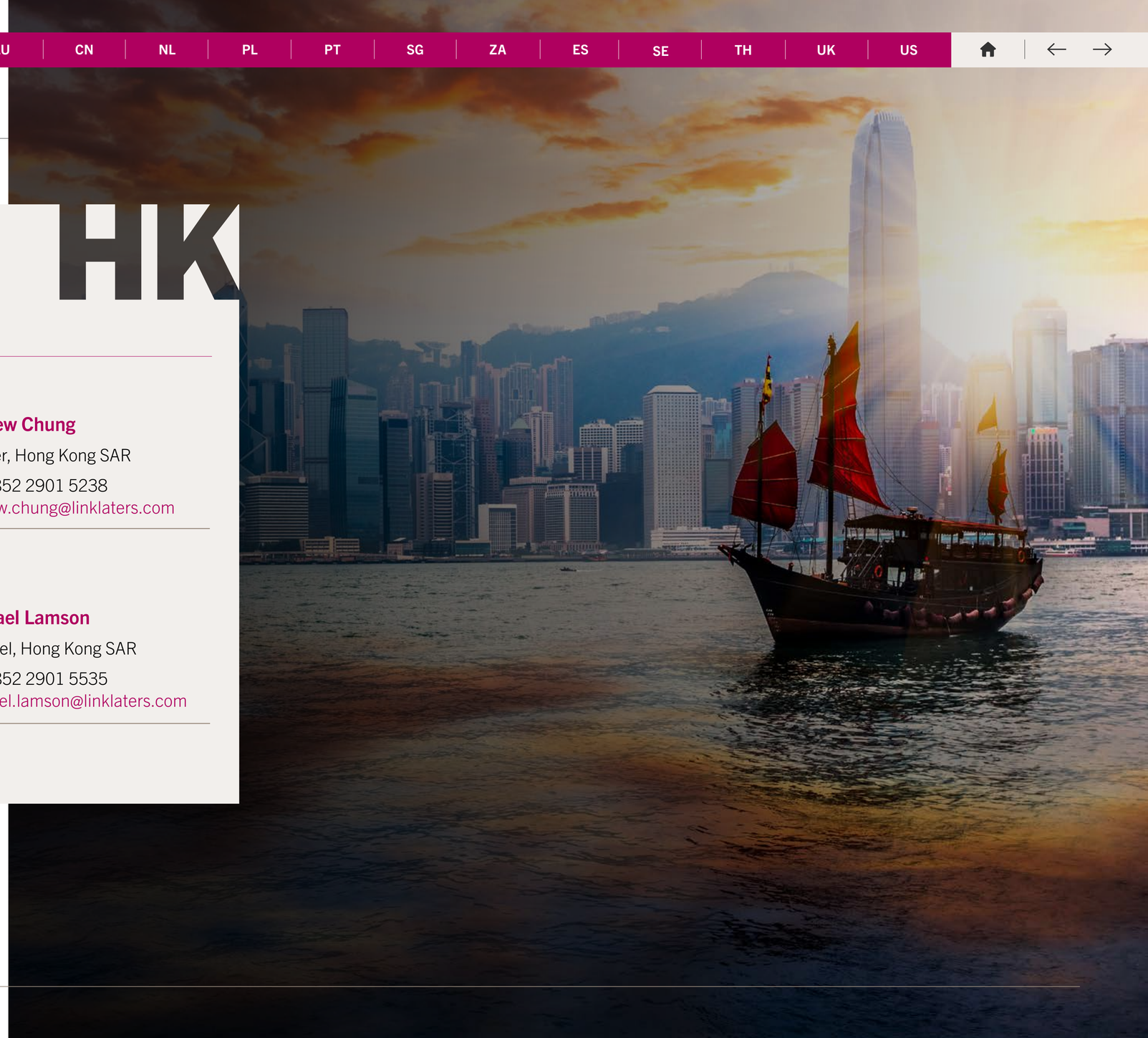
According to the ICAC Annual Survey 2022, almost all respondents (98.9%) had not encountered corruption personally in the past 12 months. As stated in the ICAC's 2022 annual report, the corruption situation in Hong Kong was consistently kept under control. The civil service and the public bodies generally remained clean and honest, while the private sector maintained a level-playing field for business.

HK

Contacts

Andrew Chung
Partner, Hong Kong SAR
Tel: +852 2901 5238
andrew.chung@linklaters.com

Michael Lamson
Counsel, Hong Kong SAR
Tel: +852 2901 5535
michael.lamson@linklaters.com



Indonesia

Indonesia

Q1 What legislation makes 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").

Q2 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 themselves 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 themselves 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 their authority or duties related to the public interest (Articles 2 and 3).

The KPK issued guidance on the control of gratification in March 2017, 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.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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

The Anti-Bribery Law also has extraterritorial effect, which means that acts of bribery and corruption committed outside of Indonesia will 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 their public interest authority or duties).

Indonesia

Q4 Who do the rules apply to?

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.

Q5 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$13,900) and IDR1bn (US$69,600).

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$3,480) and IDR1bn (US$69,600).

The penalty for breach of Article 5 is imprisonment for between one and five years and/or a fine of between IDR50m rupiah (US$3,480) and IDR250m (US$17,400).

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$3,480) and IDR1bn (US$69,600). However, if the corrupt practices involve an amount of less than IDR5m (US$348), the maximum term of imprisonment is three years and the maximum fine is IDR50m (US$3,480).

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$1,045).

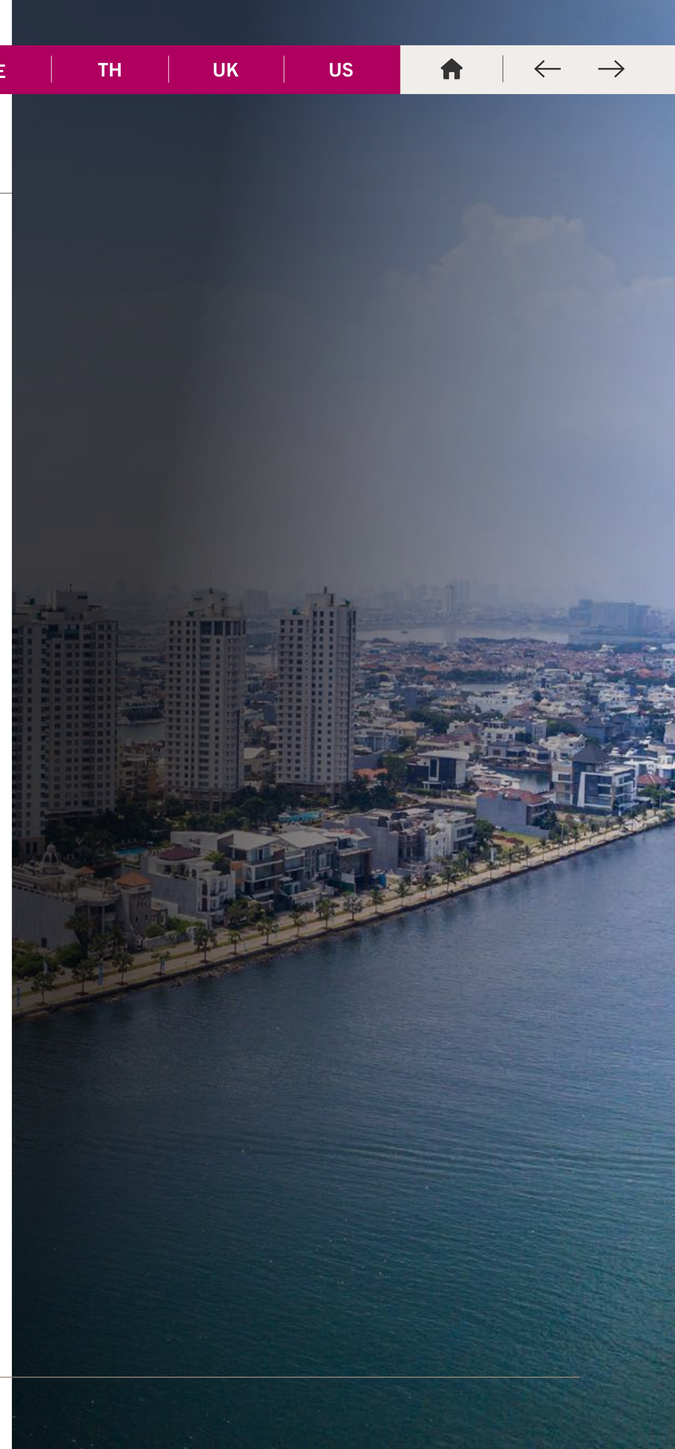
Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

As the government operates a zero tolerance policy with respect to the giving and receiving of benefits or gratification to/by government officials, the KPK has issued guidance on the receipt and reporting of such gratification. Every government institution is required to establish a Gratification Control Unit within its organisation. Civil servants or government officials receiving gratification shall report any gratification within a prescribed timeline either to KPK or to the relevant Gratification Control Unit (which will forward the report to KPK).

As a general proposition, the receiving of gratification in the form of gifts and hospitality with the monetary value of below IDR 1 million (approx. USD62) is excluded from the reporting obligation. Upon reviewing the gratification report, KPK will determine the ownership status of the gratification; either it will be classified as the receiver's or government's property.

Q7 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.



Indonesia

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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$696,000) and imprisonment for up to 20 years.

Penalties for corporations include a maximum penalty of IDR100bn (US$6.96m), 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.

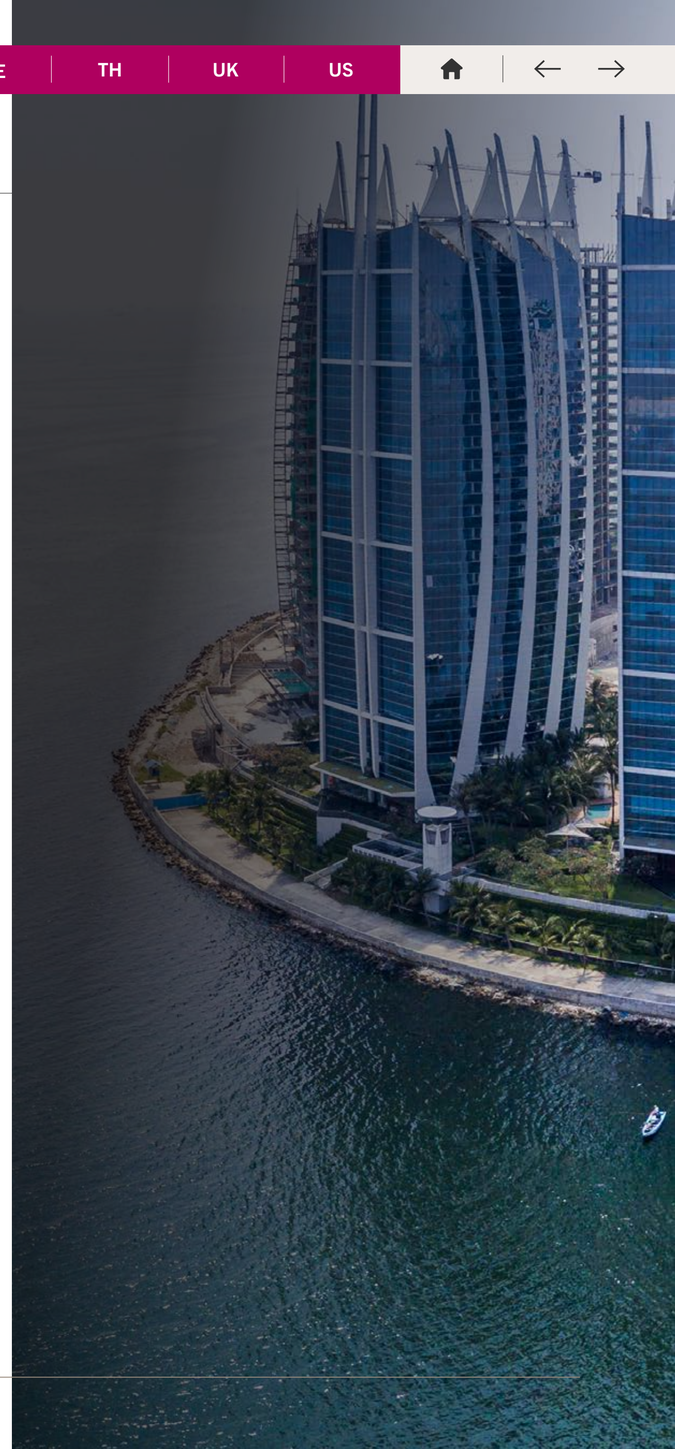
The Financial Transaction Report and Analysis Centre ("PPATK") has issued a number of implementing regulations in connection with the enforcement of Law No. 8.

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.

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 include 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 2019-2024. However, it remains unclear if and when, and in precisely what form, such a bill may be enacted.

Q9 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 include 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 2019-2024. However, it remains unclear if and when, and in precisely what form, such a bill may be enacted.



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Contacts

Narendra Adiyasa
Partner, Jakarta
Tel: +62 212 995 1583
narendra.adiyasa@linklaters.com

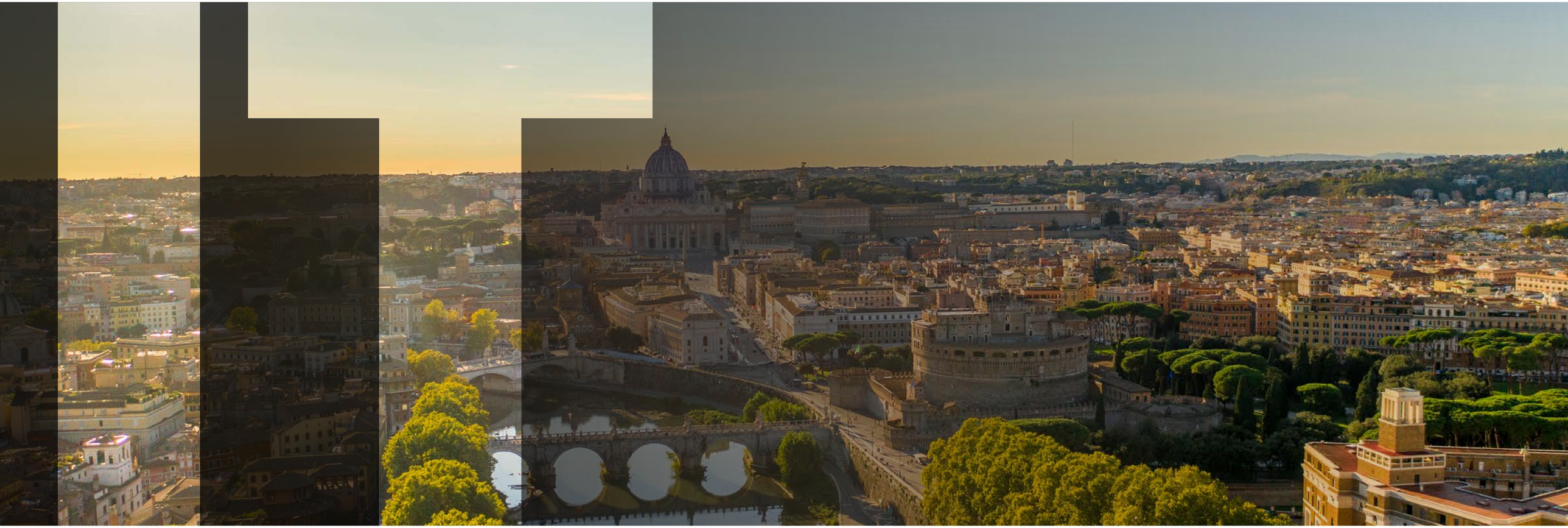
Yolanda Hutapea
Partner, Jakarta
Tel: +62 212 995 1596
yolanda.hutapea@linklaters.com

David Holme
Partner, Jakarta
Tel: +62 212 995 1509
david.holme@linklaters.com

David Siagian
Managing Associate, Jakarta
Tel: +62 212 995 1586
david.siagian@linklaters.com

Arie Priadhi
Managing Associate (Knowledge), Jakarta
Tel: +62 212 995 1551
arie.priadhi@linklaters.com

Italy



Italy

Q1 What legislation makes 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").

Q2 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

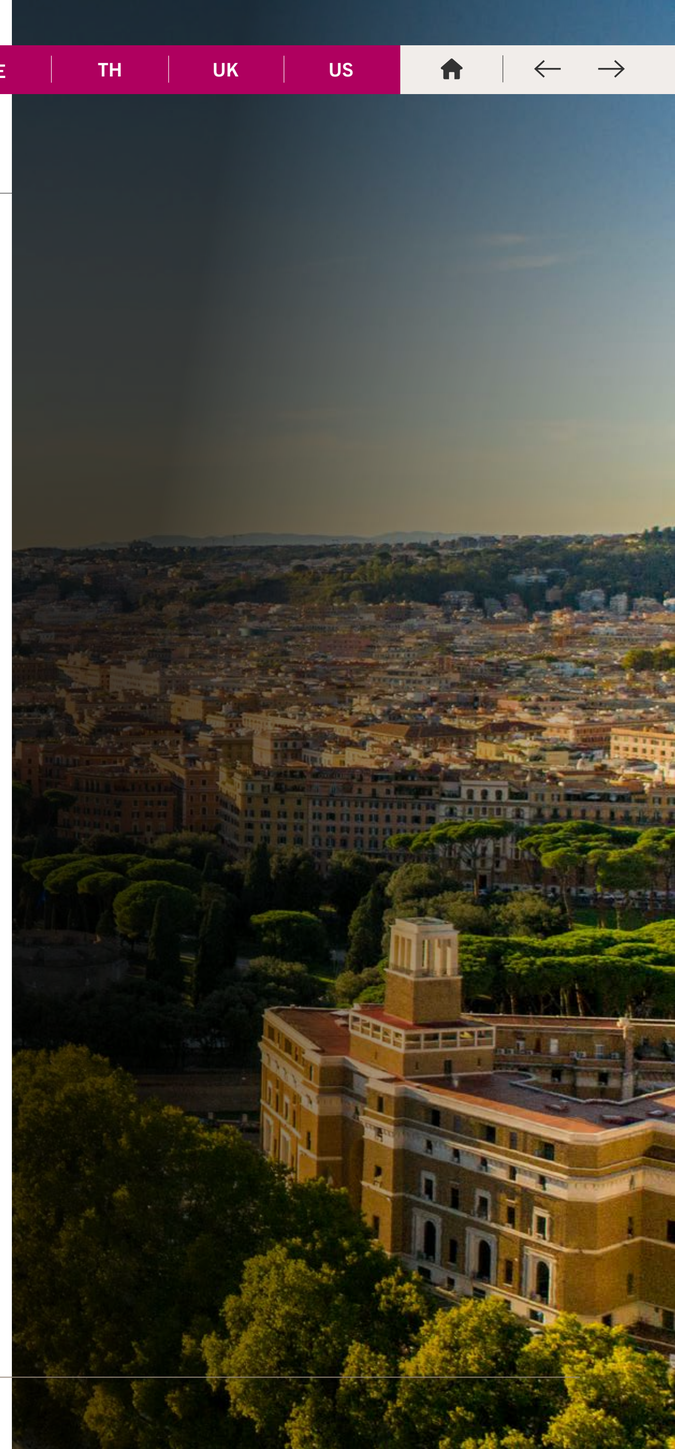
Article 2635 of Civil Code sanctions directors, general managers, directors responsible for the drawing-up of company accounts, auditors, liquidators and employees who exercise directing activities, who cause damage to a company by the wrongful performance of or failure to perform their duties, in breach 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.

Legislative decree no. 38/2017 extended the sanctions to the offence of incitement to private corruption. Sanctions that can be imposed on the company have been increased and made more severe.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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.



Italy

Q4 Who do the rules apply to?

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.

Q5 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.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Italian criminal law does not explicitly prohibit the giving of gifts and hospitality to public officials, but these could be considered an "undue advantage", which is illegal according to the Criminal Code. While there are no clear legal limits on the value of gifts and hospitality, case law indicates that gifts of nominal value are generally permissible as they do not typically qualify as bribery, unless given frequently or under certain conditions (such as during pending negotiations or when a business decision is near), when they could induce the beneficiary to do or not do something in breach of the latter's duties.

Certain non-criminal regulations provide for specific restrictions about providing Italian officials with gifts and other benefits. In particular, the Decree of the Prime Minister dated 20 December 2007 prohibits Italian government members and their relatives from personally keeping gifts received in official capacities which have a value higher than EUR 300 (unless they personally pay the excess amount to the public administration). Additionally, the code of conduct for public administration employees, set out under Presidential Decree no. 62 of 16 April 2013, sets the permissible value of 'courtesy gifts of small value' at a maximum of EUR 150, to prevent corruption and ensure adherence to duties of impartiality. Similar restrictions are often included in the ethical codes of corporations, where typically only 'commercial courtesies of small value' are allowed.

Q7 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.

Italy

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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. 36/2023, a company may be barred from participating in public tenders and selection processes for the awarding of public contracts should any of its economic operators have been convicted crimes of corruption.

Q9 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. 38/2017) which aim to prevent and punish corruption and illegality in both public administration and private enterprise. Measures adopted in May 2016 included increased penalties for corruption crimes and duties for public authorities to be more transparent towards citizens (the so-called Freedom of Information Act). More recently, Law No. 3/2019 increased the penalties for corruption offences and provided for ex officio prosecution of the offence of Private Corruption, and Law No. 105/2023 extended the list of crimes which, according to Legislative Decree 231/2001, can trigger the criminal liability of corporations. Since anti-corruption issues are 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 is a very sensitive and ongoing problem. In this regard, elevating standards of impartiality, legality and administrative integrity is crucial for this process, as is establishing clear regulations for lobbying activities, which Italy currently lacks.

Contacts

Alessandro Villani

Partner, Milan

Tel: +39 02 88 393 52 21

alessandro.villani@linklaters.com

Japan

Japan

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

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

Foreign bribery is criminalised under the Unfair Competition Prevention Act (Act No. 47 of 1993, as amended) (the "UCPA"), which implements the terms of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

General domestic corrupt activities are dealt with in the following legislation:

- the Penal Code (Act No. 45 of 1907, as amended), which criminalises the bribery of Japanese public officials; and
- the Companies Act (Act No. 86 of 2005, as amended), which prohibits commercial bribery.

Q2 What activities are prohibited?

Bribery of a foreign public official

Article 18, UCPA, prohibits the giving, offering or promising of any money or other benefits to a foreign public official (directly or indirectly) for the purpose of: (i) inducing that official to act or refrain from acting in a particular way in relation to their duties; or (ii) having that official use their position to influence another foreign public official to act or refrain from acting in a particular way in relation to their duties, in order to obtain illicit gains in business with regard to international commercial transactions.

The term "illicit gains in business" is interpreted broadly 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. There are no specific exemptions under the Penal Code or the UCPA for facilitation payments. In addition, the definition of "foreign public official" is very wide and includes, for example, employees of companies that 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 Japan's Official Development Assistance ("ODA") programme, a company involved in such bribery may be disbarred from the ODA programme for up to three years and fined 20% of the contract amount.

Bribery of Japanese public officials

Article 198, Penal Code, prohibits 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. This also applies to conduct outside Japan.

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 prohibits:

(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 who are generally or specifically authorised in respect of the company's business in connection with their duty (Article 967(1)); and

(b) the giving, offering or promising of such money or other benefits (Article 967(2)).

However, these provisions have rarely been enforced.

In addition, private sector bribery by directors, officers and employees who are generally or specifically authorised in respect of the company's business may also be prosecuted for breaching the duty of trust under Article 960, Companies Act.

Japan

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

Japanese nationals may be held liable wherever the relevant offending act or results of such act occur (Article 3, Penal Code, and Article 21(10), UCPA). Otherwise, individuals of other nationalities may be liable where the relevant offending act or results of such act occur partly or wholly in Japan (Article 1, Penal Code).

Q4 Who do the rules apply to?

Japanese nationals and individuals of other nationalities may be caught by the UCPA. In addition, under the UCPA, where the person committing the offence is acting in relation to the business of their 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 a bribe, are covered by the Penal Code. Both the individual providing a bribe as well as the directors, officers and employees receiving a bribe can be prosecuted for commercial bribery under the Companies Act.

Q5 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 ten years and/or fined an amount up to JPY 30m (approximately US$192,000[1]) (Article 21(4)(iv), UCPA). When the individual is a representative, agent or employee of a company and the relevant violation relates to the business of that company, the company itself may be fined an amount up to JPY 1 billion (approximately US$6.4m) (Article 22(1), UCPA).

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 JPY 2.5m (approximately US$16,000) (Article 198, Penal Code). 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$64,000) (Article 960(1), Companies Act). 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 JPY 5m (approximately US$32,000) (Article 967(1), Companies Act).

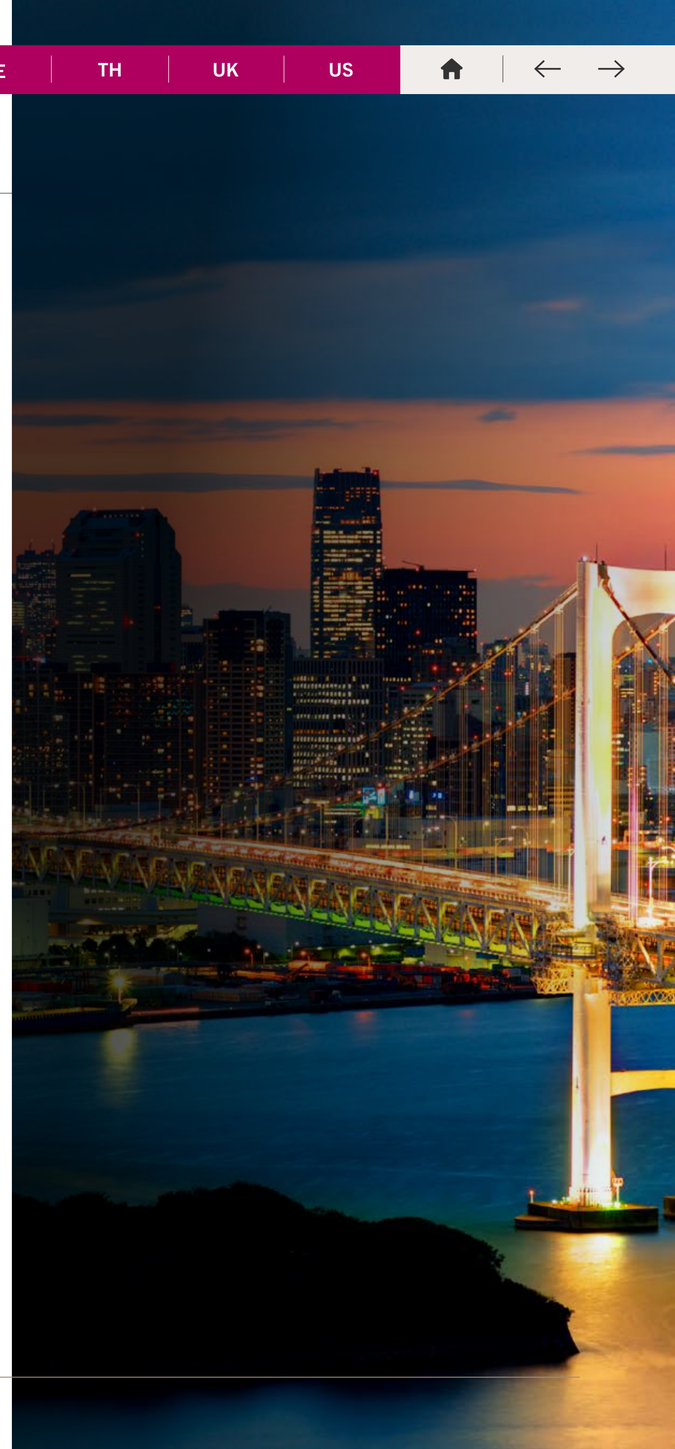
Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

There is no de minimis exception to commercial bribery in Japan, so regulators focus on the intention of giving or receiving the gifts and hospitality in commercial settings, as well as whether the value of the gifts and hospitality are socially acceptable / not extravagant in the context of that commercial relationship.

Q7 What approach is taken to enforcement in practice?

An immunity agreement system applicable to bribery came into effect in June 2018. This allows a prosecutor to negotiate immunity agreements with a defendant, who would receive more lenient treatment in exchange for information on another suspect or defendant. The first immunity agreement was agreed in July 2018, under which a major Japanese power plant construction firm avoided fines by cooperating with the investigation and prosecution of its former executives. There have been two additional immunity agreements concluded since then.

Historically there has been low enforcement of foreign bribery laws in Japan, for which the jurisdiction has been criticised by the OECD. However, there was comparatively more enforcement under the UCPA in 2020.



[1] Exchange rates in this chapter are as of May 2024 and may have changed since publication.

Japan

With regard to commercial bribery, 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.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

There is no legislation or court precedent that directly imposes restrictions on companies that 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 unlawful conduct.

Under Article 8 of 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 this 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 JPY 3m (approximately US$19,000) (Article 25, Act on Prevention of Transfer of Criminal Proceeds); and the financial institution itself may be fined an amount of up to JPY 300m (approximately US$1.9m) (Article 31(1), Act on Prevention of Transfer of Criminal Proceeds).

Q9 What future developments are anticipated in this area?

While investigations and prosecutions of bribery offences in or relating to Japan have historically been low, there has been an increase in investigations and prosecutions with the introduction of the immunity agreement system in 2018.

Despite this, a key challenge for enforcement by the Japanese authorities remains access to information. It remains to be seen whether amendments to the Whistleblower Protection Act (which require businesses to establish internal systems to properly respond to whistleblower reports), have made an impact on the reporting and investigation of bribery and corruption.

JP

Contacts

Yoshiyuki Asaoka

Partner, Tokyo

Tel: +813 6212 1286

yoshiyuki.asaoka@linklaters.com

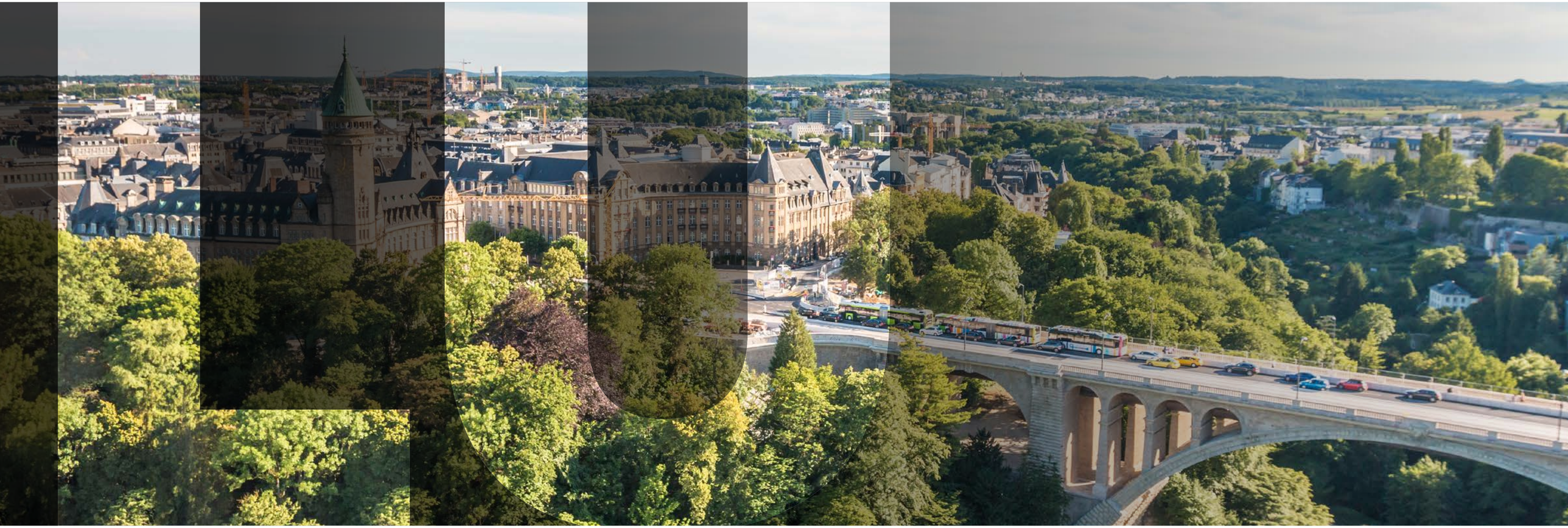
Eriko Kadota

Managing Associate, Tokyo

Tel: +813 6212 1225

eriko.kadota@linklaters.com

Luxembourg



Luxembourg

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

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

Q2 What activities are prohibited?

Articles 246 to 250 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 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. The Law of 16 May 2023 transposing Directive (EU) 2019/1937 guarantees whistleblowers anonymity, even in cases where their identity could be directly or indirectly deduced.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

No. Since the enactment of the Law of 13 February 2011, the 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 illegality of those acts under the law of the foreign country where the corrupt conduct 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 taken place in the territory of the Grand-Duchy of Luxembourg.

Q4 Who do the rules apply to?

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 conduct occurring in Luxembourg, the prohibition applies to private and public legal entities except for the state and for cities, and to all

Luxembourg

natural persons whether employed in the public sector or in the private sector, 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.

Q5 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. If this offence is committed within the framework of a criminal organisation, the minimum sentence will be increased by two years pursuant to article 251-1 of the Criminal Code.

In case of influence peddling article 248 of the Criminal Code provides for an imprisonment from six months up to five years and a fine ranging from €500 to €125,000. If this offence is committed within the framework of a criminal organisation, the minimum sentence will be doubled pursuant to article 251-1 of the Criminal Code.

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. If this offence is committed within the framework of a criminal organisation, the minimum sentence will be increased by two years pursuant to article 251-1 of the Criminal Code.

Active and passive corruption in the private sector are punishable, for individuals, by one month's to five years' imprisonment and a fine ranging from €251 to €30,000. If this offence is committed within the framework of a criminal organisation, the minimum sentence will be doubled pursuant to article 251-1 of the Criminal Code.

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

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Luxembourg is lacking a legal framework governing conflict of interest and, more precisely, matters related to the giving and receiving of gifts and hospitality in commercial settings. In fact, the Criminal Code does not set quantitative or qualitative restrictions on expenses that could raise concerns about bribery. Each situation must be assessed on a case-by-case basis.

If there is indeed a law prohibiting the civil servant from soliciting, accepting, or being promised from any source, either directly or indirectly, material advantages whose acceptance could put him in conflict with the obligations imposed him by laws, it however only applies to the latter (article 10 of the Law of 16 April 1979).

There are also rules governing the conduct of the government's administration, specifically, article 7 Section 6 of the code of ethics for members of the government annexed to the Internal government regulations dated November 28, 2023. Pursuant to this Code, Luxembourg government officials are permitted to accept gifts and hospitality from individuals, private organisations or public entities operating under private law competition rules. These gifts and acts of hospitality should align with customary practices of politeness and should not be of a nature that could sway the recipients' actions or decisions, provided that their estimated value is below EUR 150.

Q7 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. Further, an inter-ministerial committee, the Corruption Prevention Committee, has been established. Its mission is to seek for 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.

Luxembourg

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.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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. Moreover, a person found guilty of a "laundering offence" can be sentenced to one to five years' imprisonment, and to the payment of a fine ranging from €1,250 to €1,250,000. Legal entities may be punished by the maximum fine provided for in Article 36 of the Code, multiplied by five.

Q9 What future developments are anticipated in this area?

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

LU

Contacts

Guy Loesch
Partner, Luxembourg
Tel: +35 2 26 08 82 12
guy.loesch@linklaters.com

Louis-Eudes Giroux
Managing Associate, Luxembourg
Tel: +35 2 26 08 82 90
louis-eudes.giroux@linklaters.com

Mainland China

Mainland China

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

The major PRC statutes prohibiting corrupt practices are (i) the Criminal Law of China ("PRC Criminal Law"), and (ii) the Anti-Unfair Competition Law of PRC (2019) ("PRC AUCL").

- The PRC Criminal Law prohibits the giving and receiving of public and private bribes that meet certain conditions. Criminal sanctions may be imposed on those who are found to have committed bribery-related criminal offences.
- The PRC AUCL prohibits the giving of commercial bribery, violation of which may result in administrative liabilities.

Q2 What activities are prohibited?

Activities prohibited by the PRC Criminal Law

The PRC Criminal Law mainly prohibits (i) the giving and receiving of bribes in relation to PRC government agencies (including state-owned enterprises) and/or PRC officials, (ii) the giving and receiving of bribes in relation to employees of private organisations, and (iii) the giving of bribes to foreign officials (including officials of international public organisations).

In order for the above conduct to amount to a criminal offence under the PRC Criminal Law, the following conditions should be met: (i) the purpose of the bribe given or received should be for obtaining an unjust benefit; and (ii) the value of a bribe or bribes must exceed a certain amount, or other serious circumstances must exist.

Activities prohibited by the PRC AUCL

Under the PRC AUCL, business operators and their employees are prohibited from bribing certain types of recipients in the commercial context (i.e. the employee or agent of the counterparty, or anyone that could influence the transaction) in order to obtain a business opportunity or competitive advantage. There is no monetary threshold to constitute commercial bribery under the PRC AUCL.

The PRC AUCL also requires that any discounts provided to a counterparty, or any commissions paid to an intermediary should be agreed expressly and recorded accurately in the appropriate record books.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

Bribery of PRC government agencies or officials may be prosecuted under the PRC Criminal Law irrespective of where the relevant offer was made. Bribery of foreign officials by a PRC national (irrespective of where the relevant offer was made) or by a non-PRC national within the PRC may be prosecuted under the PRC Criminal Law. For bribery in the private sector, if it occurs within mainland China, irrespective of the nationalities of the giver and the receiver, or occurs between two PRC persons outside the mainland China, it may be covered under the PRC law.

Q4 Who do the rules apply to?

With respect to corrupt acts occurring in mainland China, the prohibitions imposed by the PRC Criminal Law and the PRC AUCL apply to all persons and entities, regardless of their nationality or jurisdiction of incorporation. With respect to corrupt conduct committed outside mainland China, the jurisdiction of the PRC Criminal Law may extend to PRC nationals and PRC-incorporated entities and, in some circumstances, to non-PRC persons who have committed corrupt conduct against PRC or PRC nationals (e.g. bribing PRC government agencies or officials).

Under the PRC Criminal Law, the bribery offences may be committed by both individuals and companies. Under the PRC AUCL, commercial bribery conducted by an employee is ostensibly attributable to his/her employer unless the company can establish that the employee's activities were irrelevant to the business opportunities or competitive advantages obtained.

Mainland China

Q5 What are the fines/penalties?

According to the PRC Criminal Law, if an individual is found guilty of giving a bribe, they may be fined and, in very serious circumstances, their property may be confiscated. They may also be subject to sanctions ranging from criminal detention to life imprisonment, depending on the identity of the recipient of the bribe, the value of bribe and the seriousness of circumstances.

Where it is an entity that is offering the bribe, that entity could be subject to fines. The individual in charge of the entity and directly responsible for the crime, along with any other directly responsible personnel of the entity, may also be subject to criminal detention or imprisonment.

Under the PRC AUCL, a fine of between RMB 100,000 (approximately €12,730) and RMB 3million (approximately €381,800) may be imposed on the business operator who provided a commercial bribe, depending on the seriousness of the circumstances, and any ill-gotten proceeds will be confiscated. In serious cases, the business licences of the business operator may be revoked.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

Under the PRC Criminal Law, if the aggregated value of the gifts and/or hospitality provided to an employee of a company exceeds RMB 30,000 (approximately €3,873), both the giver and the receiver could be subject to criminal sanctions.

There is no express acceptable limit on gifts or hospitality under the PRC AUCL and its related rules to be employed to distinguish a bribe from normal business activities. In practical terms, whether certain acts are viewed as commercial bribery by PRC authorities depends on various factors, including:

- the value of the gift/hospitality;
- reason for gift/hospitality, such as whether the gift/hospitality is provided for the purpose of obtaining certain advantage or benefits;
- the identity and position of the recipient and whether that position allows them to confer any potential advantage or benefit to the gift/hospitality-giver;
- the nature of the gift/hospitality and whether it can be justified as a necessary business expense or is usual in the business practices of certain industry (such as the sample product); and
- any relevant situational circumstances such as timing (e.g. whether the gift/hospitality is given around the time a contract is concluded, or around the time of seasonal occasions such as Chinese public holidays).
- whether the gift/hospitality is accurately recorded in the company's financial books.

None of the factors mentioned above is conclusive in practice and the PRC authorities may consider all relevant factors such as context, occasion and justification for certain acts.

Q7 What approach is taken to enforcement in practice?

In recent years, Chinese enforcement authorities have carried out a wide-ranging anti-corruption crack-down, with a focus on the healthcare sector. In practice, a "look-through" approach has been adopted to tackle those corruption activities carried out under the disguise of legitimate business dealings. For example, enforcement actions have been initiated against manufacturers who provide sponsorship or placement of medical devices to hospitals for free in exchange for the hospitals' minimum purchase commitments of consumables to be used on the sponsored device and/or exclusive purchase arrangement with the same manufacturer. Further, an increased number of enforcement actions have been launched against hospital chiefs and other key personnel in charge of the prescription of drugs and procurement of medical devices.

Mainland China

Following international practice on deferred prosecution agreements, China has, since 2020, established a compliance-based corporate non-prosecution regime in certain pilot cities. Under this regime, Chinese procuratorates may order a corporation suspected of criminal offences to establish and implement a compliance program within a certain period and decide not to prosecute the corporation and/or its personnel if the compliance obligations are fulfilled, verified following supervision and examination by an independent supervisory committee. There had been several published cases where the corporations and/or their personnel were successful in obtaining non-prosecution decisions rendered by the Chinese procuratorates.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Any illegal gains generated from corrupt activities 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, the illegal gain equals the sales price of the goods less the purchase price of the input materials.

As to whether there are reporting obligations arising from the suspicion that a crime has been committed, under the PRC Criminal Procedural Law, any entity or individual, upon discovering that a crime has been committed, has the right as well as the obligation to report the matter to the police or other judicial authorities. However, the law of mainland China does not impose any adverse legal consequences for a failure to make such a report.

Q9 What future developments are anticipated in this area?

Traditionally, the investigation of bribery-related crime has focussed more on the recipient of the bribe than the offeror. In recent years, the Chinese authorities are shifting the focus to cover both the bribe-giver and the bribe-taker. For example, the Chinese procuratorates are implementing the policy to tackle bribe-giving and bribe-receiving together under the PRC Criminal Law. The draft amendment to the PRC AUCL released in November 2022 for public consultation is also proposing to include recipients of commercial bribery and subject them to administrative liabilities under the PRC AUCL.

Furthermore, there is expected to be a trend of more rigorous enforcement actions to tackle corruption in areas involving people's livelihood, such as finance, healthcare, education, food work safety, and environmental protection etc. In the latest amendment of the PRC Criminal Law which took effect in March 2024, bribing a public official for obtaining an illicit interest in areas concerning people's livelihood would be regarded as an aggravating factor when the court imposes the criminal sanctions.

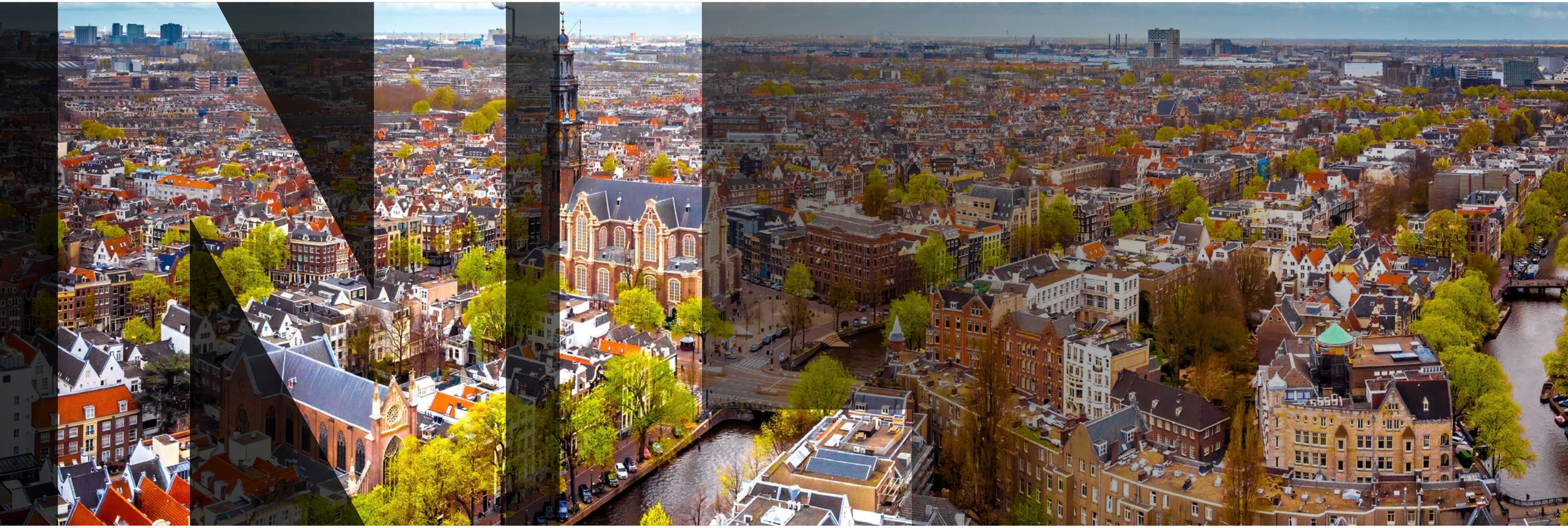
CN

Contacts

Qidi Zhang
Partner, Shanghai Zhao Sheng
qidi.zhang@linklaterszs.com

Corwin Feng
Associate,
Shanghai Zhao Sheng
corwin.feng@linklaterszs.com

Netherlands



Netherlands

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

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

Q2 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 them to do something or refrain from doing something in the course of their (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 their (current or former) employment, regardless of whether this would be in breach of their duty.

Furthermore, it is prohibited for any person employed or acting on the basis of a mandate, to request or accept a gift or promise that is offered to them as a reward for something they will do or refrain from doing in the course of their employment or mandate, or to conceal the acceptance of such a gift or promise from their 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.

Active and passive commercial bribery are also prohibited. Active commercial bribery includes offering or providing a favour to an employee or agent in consideration for an act or omission committed or to be committed in their capacity as such. The favour must be offered or provided in circumstances where the person who provides the favour knows or may reasonably assume that the recipient acts in breach of their duties. Passive commercial bribery includes accepting or requesting a favour in consideration of an act or omission committed or to be committed by an employee or agent in breach of their duties as an employee or agent. Acting in breach of their duties as an employee or agent includes, but is not limited to, concealing the favour from the employer or principal in violation of the standards of good faith.

According to the Instruction on the Investigation and Prosecution of Foreign Corruption, facilitation payments may also be prosecuted. This policy goes beyond what is called for by the OECD Convention.

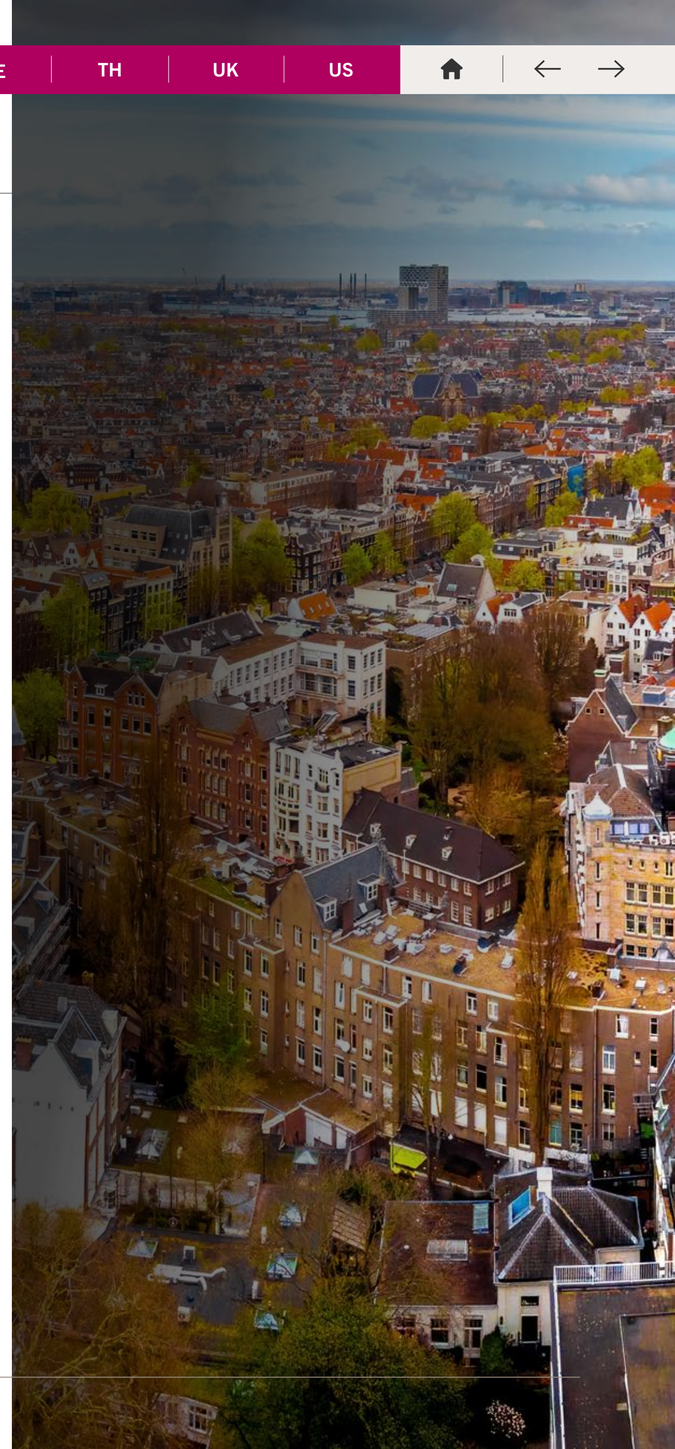
Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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

- to bribe, in a foreign country, Dutch or foreign 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.

Q4 Who do the rules apply to?

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. The provisions also apply to any person accepting a bribe abroad who is in the public service of an international institution that has 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.



Netherlands

Q5 What are the fines/penalties?

Depending on the gravity of the offence, a public official, person or entity found to have engaged in corrupt conduct prohibited under the DCC can be imprisoned for up to six years (or up to 12 years in the case of a judge) or fined up to €103,000. A person may also be removed from their office. Bribery of private persons can be sanctioned with imprisonment of up to four 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., €1,030,000. 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.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

As previously explained, the standard rule is that bribery is not permitted, including in commercial contexts as stipulated by article 328ter DCC. However, it is commonly accepted in practice to give and receive gifts and hospitality of nominal value, provided that the giving or receiving of the gift is reported to a supervisor.

In this regard, guidelines allow for the acceptance of gifts below €50 by public officials. While a similar threshold has not been set by law for the commercial sector, many companies have put in place their own codes of conduct detailing procedures for managing gifts and hospitality. These internal regulations differ across companies, yet it is common practice to adhere to a €50 threshold here as well. In instances involving more valuable gifts, permission often needs to be sought from a supervisor, and specific protocols apply. Self-regulation guidelines also apply in relation to specific industries, regulating the giving and receiving of gifts and hospitality.

The Public Prosecutor's investigations into commercial bribery tend to concentrate on cases involving very large sums of money, rather than on bribery in the form of gifts and hospitality. The relatively small number of investigations undertaken by the Public Prosecutor into corruption involving gifts and hospitality implies a somewhat lenient stance towards gifts and hospitality of nominal value.

Given that many commercial transactions take place in an international setting, and other countries may have a stricter approach, it is advisable for companies to establish a strict code of conduct governing the giving and receiving of gifts and hospitality. This approach ensures compliance with various regulatory regimes and maintains the integrity of business operations.

Q7 What approach is taken to enforcement in practice?

Foreign bribery enforcement has increased in the Netherlands following the establishment of specialised investigative and prosecutorial teams. Nevertheless, only a small number of cases have been concluded in relation to the size and risk profile of the Dutch economy. In light thereof, concerns about the continued low level of foreign bribery enforcement in the Netherlands, especially in view of the size and specific risk profile of the Dutch economy, continue to be expressed in global anti-bribery and corruption reports.

The Dutch Public Prosecution Service focuses, inter alia, on the investigation and prosecution of offences related to corruption of foreign public officials. The instruction on the Investigation and Prosecution of Foreign Corruption provides guidance on how to proceed with such investigations. This instruction contains a non-exhaustive list of factors that can be taken into account when deciding whether or not prosecution of foreign bribery is appropriate, such as: the significant size of the offer, promise or benefit (absolute and relative); whether the bribery is a structural component of how business is conducted; the involvement of influential foreign public officials or politicians or their close friends and relatives; whether the money paid as a bribe was derived directly or indirectly from the Dutch state budget or funds intended for international development aid; what damage was caused to the country where the official was bribed; repetition; and the chances of successful prosecution. The instruction states that in cases of "self-reporting", the Public Prosecutor will take this into account in the settlement or potential punishment. Furthermore, the instruction states that the involvement of a third party does not indemnify the company or organisation concerned against its own criminal liability.

Moreover, the Ultimate Beneficial Owner (UBO) registry serves as a valuable asset in enforcement efforts. Although more directly related to anti-money laundering, this registry facilitates the identification of UBOs behind legal entities, which can assist in anti-corruption investigations. Nearly all legal entities are obliged to register any person that has more than 25% economic interest in the entity, although publicly traded companies and government agencies are not obliged to register. As of 1 November 2022, trusts and mutual funds must also register in a separate UBO registry for trusts.

In terms of recent settlements, the Dutch Public Prosecution Service recently announced a €42 million out-of-court-settlement with a Dutch company in relation to charges of bribery, forging of documents and violation of international sanctions for activities in the Middle East and Asia. What is interesting about this case is that a discount of 25 per cent was agreed upon as a reward for self-reporting the violations, along with a further discount of 25 per cent for fully cooperating with the criminal investigation.

Netherlands

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Yes. Illegally obtained assets can be confiscated from a person or entity that is convicted of corrupt practices by the Dutch State. 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 they conceal the nature, origin, location or transfer of illegally obtained assets, or conceal the identity of the rightful owner of those assets, if they know that those assets were obtained as a result of a criminal offence.

Q9 What future developments are anticipated in this area?

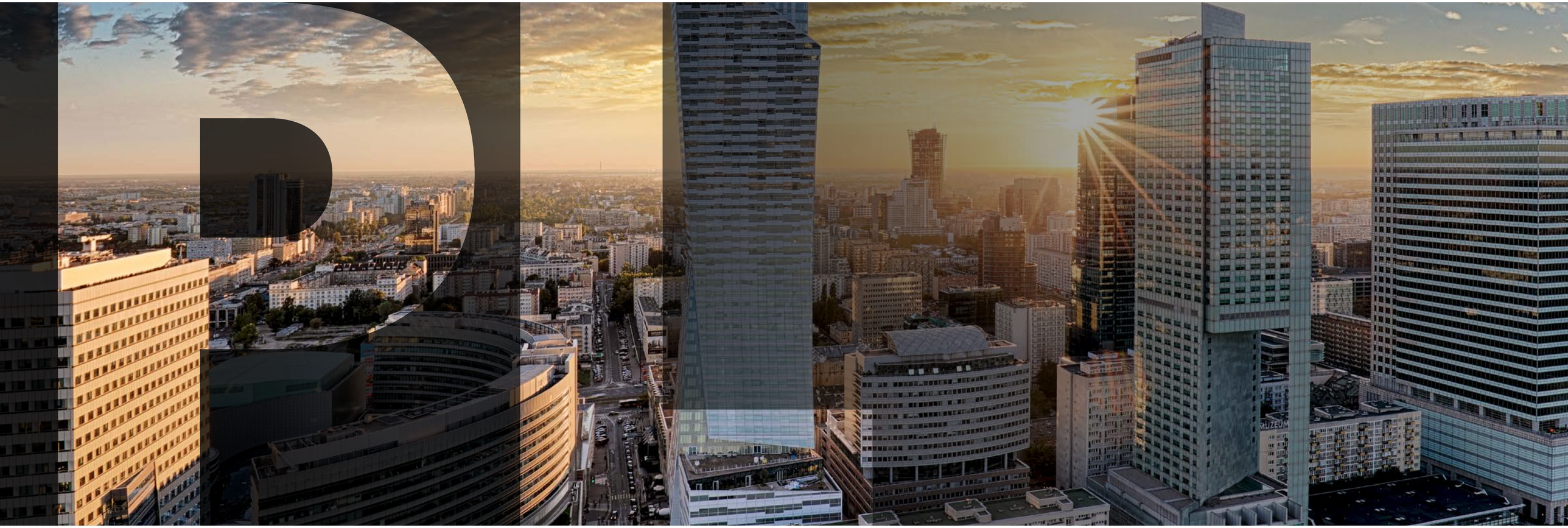
A proposal for judicial oversight of large settlements was published on 11 March 2021. This is the most important development currently in the Netherlands as, previously, these settlements were completely handled outside of the public eye. Whether a settlement is rightful and suitable or proportional was not checked by a judge. Currently, as an intermediate measure, three members of a committee consisting of a former judge, a former prosecutor and a professor in criminal law advise with regard to intended settlements. Depending on their advice, the settlement is proposed to the suspect or the chief prosecutor must decide on a different form of prosecution. As of 2024, the proposal has not yet been implemented, and the existing measure described above still remains in force.

Contacts

Daniella Strik
Partner, Amsterdam
Tel: +31 20 7996 338
daniella.strik@linklaters.com

Georgios Fasfalis
Managing Associate, Amsterdam
Tel: +31 20 7996 266
georgios.fasfalis@linklaters.com

Poland



Poland

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Bribery and corruption are subject to criminalisation primarily under Polish Penal Code (the "PPC"). However, provisions penalising activities falling within the general definition of bribery or corruption can also be found in, amongst others, the Polish Fiscal Penal Code, the Public Procurement Law, the Act on Trading in Financial Instruments of 29 July 2005, the Act on Refunding of Medicines, Special Dietary Product and Medical Devices of 12 May 2011, and the Act on Limitations on Public Officials Conducting Business Activity of 21 August 1997.

The procedure regarding fighting against corruption, including the functioning of the public body established for this purpose – the Central Anti-Corruption Bureau – is governed by the Act on the Central Anti-Corruption Bureau of 9 June 2006.

Q2 What activities are prohibited?

Public officials' bribery

The PPC 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 or great 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 a legal relationship with the company under an employment agreement, a contract of mandate or a contract for specific work 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 of 28 October 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.

Under specific provisions, some other examples of criminal behaviour relating to bribery as broadly understood are e.g. making a false statement regarding the lack of circumstances affecting impartiality of a person conducting a public procurement procedure or the receipt of a material or personal benefit by a person professionally engaged in the manufacturing or marketing of medicines or medical products paid for by the state in exchange for any activity that can impact the trade of such products.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

No.

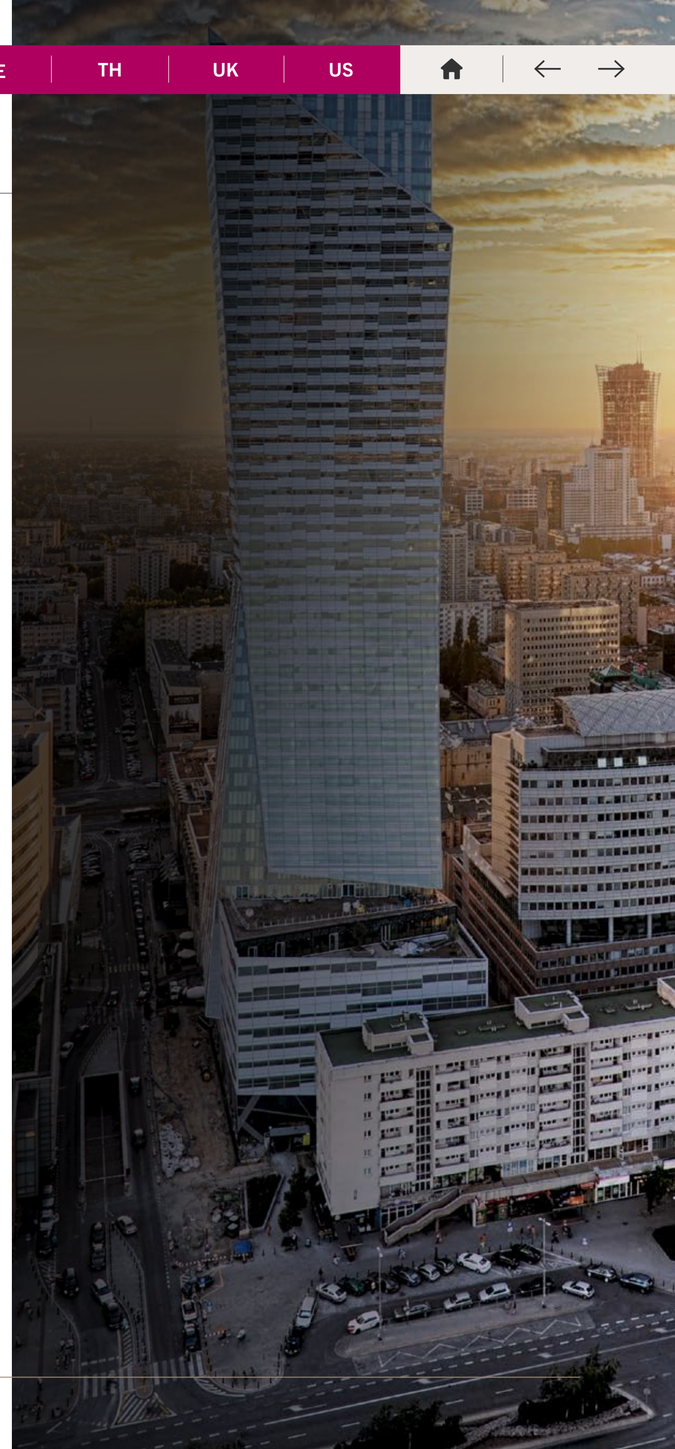
As a general rule, Polish criminal law applies to all actions taken within Poland or on a Polish vessel or aircraft, as well as actions taken by Polish citizens outside Poland.

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 is aimed against the security of Poland, against Polish public officers or Polish public offices, against material economic interests of Poland or where any material benefit, even indirect, is derived from such offence within the territory of Poland.

Q4 Who do the rules apply to?

To all persons and entities, both Polish and foreign.



Poland

Q5 What are the fines/penalties?

Bribery of public officials, both Polish and foreign, is punishable by imprisonment for up to eight years. However, if the bribe is of significant value (over PLN200k, i.e. €47k) – the term of imprisonment may be increased to up to 15 years, or if it is of great value (over PLN1m, i.e. €235k) – up to 20 years. If the bribe is intended 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. The penalty may also include confiscation of the benefits or proceeds received or value thereof resulting 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. Where a company has committed an offence, the confiscation of any proceeds and benefits resulting from the offence is obligatory.

If a company re-offends within five years of being sentenced, it may be fined 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.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

As a general rule, the PPC does not set out any threshold below which material benefit shall not be subject to criminalisation, therefore any *material benefit* involved, including even a small gift, can constitute the fulfilment of the material benefit condition as set out in the PPC (subject to certain minor exceptions, for example, in the medical sector).

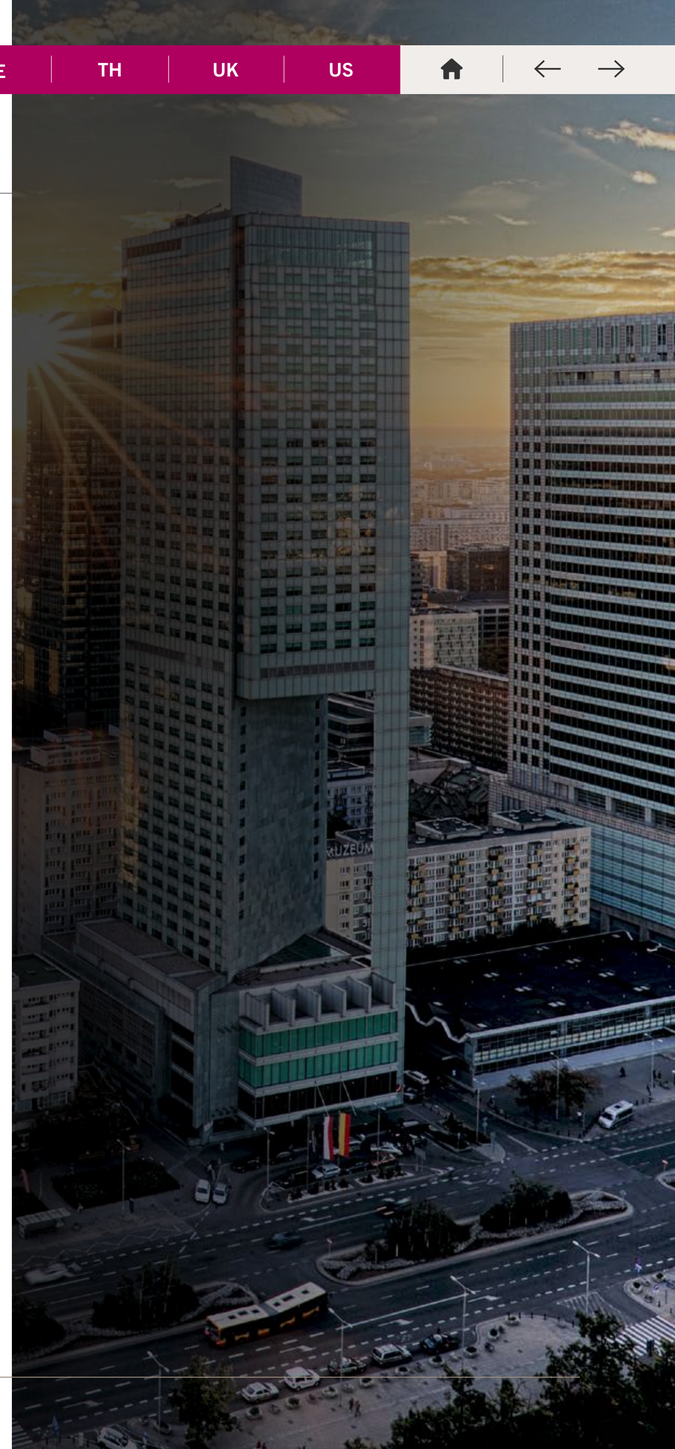
The Anti-Corruption Bureau strongly supports undertaking anti-corruption activities within both the public and private sectors and provides abundant training in this respect. In particular, the Anti-Corruption Bureau's guidelines on the establishment and implementation of effective compliance in the public sector and anti-corruption guidelines for entrepreneurs emphasise the importance and benefits of implementing a simple, clear and unambiguous anti-corruption policy, including a gift policy.

Most of the commercial entities in Poland have implemented a strict anti-corruption policy prohibiting the offering, promising, giving or receiving of any material or personal benefit in exchange for acting in breach of one's professional duties.

Q7 What approach is taken to enforcement in practice?

Currently numerous investigations regarding corruption and bribery are underway, involving both Polish public officials and private entities. Some of these investigations are proceeding in parallel with foreign law enforcement agencies in jurisdictions where the laws on combating bribery have extraterritorial reach. Deferred prosecution agreements are not available under Polish law. However, the perpetrator of a bribery offence is not subject to a penalty if the material or personal benefit, or its promise, has been accepted by a person performing a public function and the perpetrator has reported this to a law enforcement authority responsible for prosecuting crimes, disclosing all relevant circumstances of the crime before the authority has learned about it.

Enforcement authorities are taking a rigorous and strict approach to investigation and prosecution.



Poland

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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 the 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 PPC, with a penalty of imprisonment for up to five years.

Q9 What future developments are anticipated in this area?

According to recent information, the Council of Ministers is currently working on the proposed Act on *reinforcement of coordination of actions, liquidation of the Central Anti-Corruption Bureau and amending other acts*. The aim of the proposed amendment is being explained as the improvement of anti-corruption efforts by closing down the Central Anti-Corruption Bureau and delegating its tasks to other institutions, such as the Internal Security Agency, the National Revenue Administration and the Police, within which a Central Bureau for Combating Corruption, as an internal department, shall be established.

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Contacts

Tomasz Manicki

Of Counsel, Warsaw

Tel: +48 22526 5058

tomasz.manicki@linklaters.com

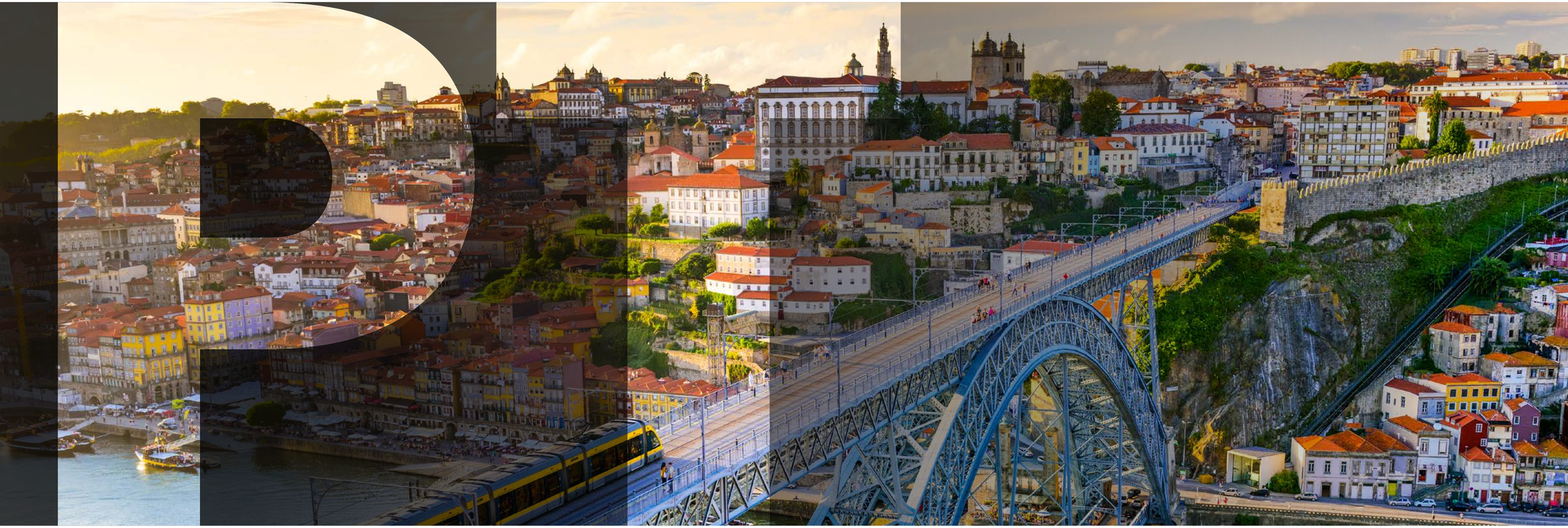
Michalina Waniewska

Associate, Warsaw

Tel: +48 22528 6120

michalina.waniewska@linklaters.com

Portugal



Portugal

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Corruption is unlawful under:

- the Portuguese Criminal Code;
- the Law on the Crimes of the Responsibility of the Holders of Political Positions;
- the Criminal Regime on Bribery in the International Commerce and Private Sector;
- the Legal Framework of Sports Integrity of Sports and the Fight Against Unsportsmanlike Behaviour; and
- the Military Justice Code.

Q2 What activities are prohibited?

Portuguese Criminal Code ("PCC")

Articles 372, 373 and 374 of the PCC prohibit:

- the solicitation or acceptance of an undue benefit, whether directly or indirectly, by an official performing their activity or due to their activity;
- the offer or promise of an undue benefit, whether directly or indirectly, to an official performing their activity or due to their activity;
- 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 whether relating to acts or omissions that breach the official's duty (passive bribery); and
- 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 whether relating 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 to judges and officials of international courts, provided that Portugal recognises the jurisdiction of said court.

If the relevant acts are committed in whole or in part in Portugal, these prohibitions shall also apply to officials of foreign states as well as to those who exercise functions in out-of-court dispute resolution procedures, irrespective of their nationality or country of residence, and to foreign arbitrators and juries.

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").

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

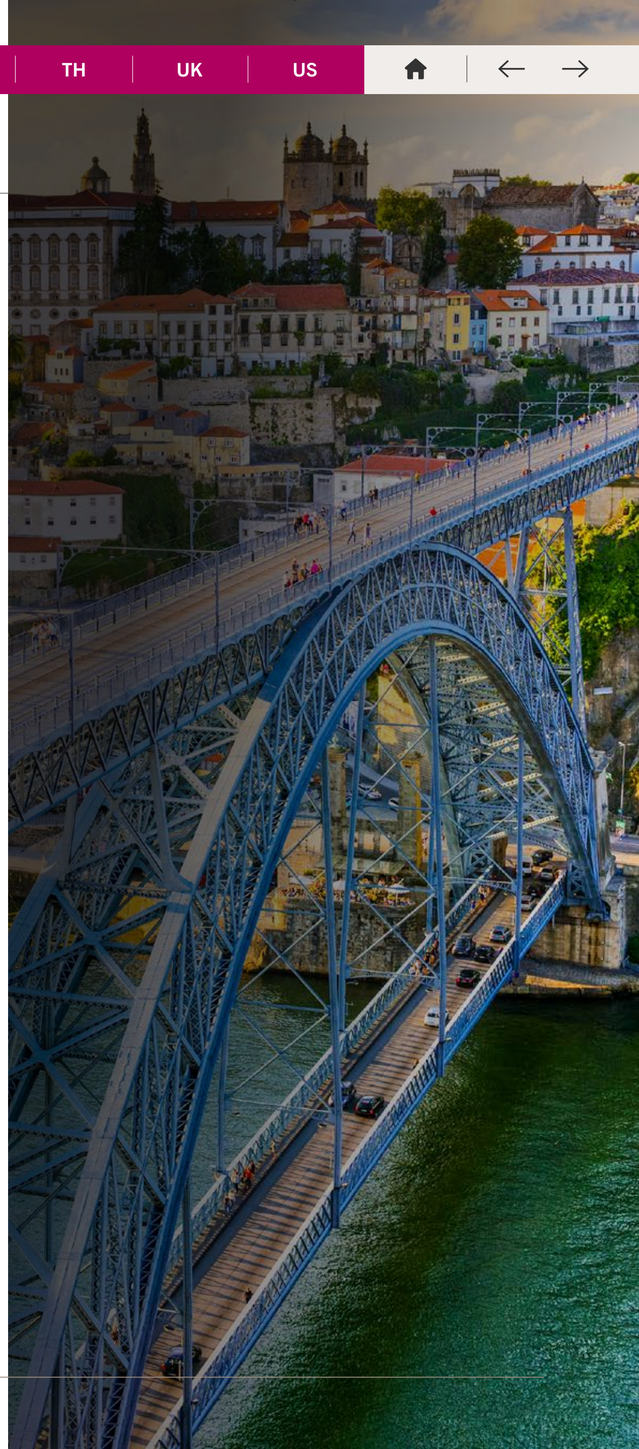
The RHPP sets out a specific legal framework applicable to individuals holding political positions or high public offices. If the relevant acts are committed in whole or in part in Portugal, the RHPP will apply to individuals holding political positions in international organisations or in foreign states.

This regime also prohibits the receipt or provision of an undue benefit, as well as both passive and active bribery, in terms that are similar to those outlined in the PCC.

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

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, to a holder of a political position in Portugal or abroad and to any other person working in the private sector 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



Portugal

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).

Legal Framework of Sports Integrity and the Fight Against Unsportsmanlike Behaviour (FAUB)

The FAUB sets out a specific legal framework relating to the criminal liability for conduct and behaviour that may impact the truth, loyalty and correctness of sports competitions and results. The FAUB sets out the crimes of receipt or provision of an undue benefit, as well as passive and active bribery in similar terms to those set out in the PCC, being the offer/promise or solicitation/acceptance of an undue benefit in exchange for the execution of an action/omission in order to alter or falsify the results of a sports competition.

The FAUB 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 sports agent, aimed at obtaining a specific result or falsifying the result of a sports competition (similar to the "influence peddling" or "trading in influence" framework under the PCC).

Military Justice Code ("MJC")

The MJC applies to all criminal activities of a military nature and aims to protect the military interests of national defence, as well as other responsibilities assigned to the Military Forces by the Portuguese Constitution. The MJC sets out the crimes of passive and active bribery in similar terms to the ones set out in the PCC. These crimes involve the offer/promise or solicitation/acceptance of an undue benefit. This is in return for an act or omission by a military official that is contrary to their duties and poses a threat to national security.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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:
  - i) the perpetrators are located in Portugal;
  - ii) the acts are punishable according to the law of the place where they were committed; and
  - iii) 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; and
- by or against corporate entities which seat is located Portugal.

Portuguese criminal law also applies to acts committed outside Portugal when those acts amount to certain crimes such as, for example, influence peddling, whenever the perpetrators are located in Portugal 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.

The BICPS applies to acts committed in Portugal and also (i) to Portuguese citizens and foreigners found in Portugal, regardless of the place where the relevant acts occurred, in case of bribery in international commerce, and (ii) 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 case of bribery in the private sector.

The MCJ applies to crimes that occur both in Portugal and abroad as long as, for a crime that occurred abroad and was committed by a foreigner, that foreigner is located in Portugal.

Q4 Who do the rules apply to?

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.

Q5 What are the fines/penalties?

The following penalties/fines apply:

PCC

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

(ii) in cases of the offer or promise of an undue benefit to an official performing their activity or due to their activity, the penalty is imprisonment for up to three 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, whether directly or indirectly, by an official in exchange for the execution of an act or the omission of an act, the penalty is imprisonment for up to five years if the act or omission does not breach the official's duty, or imprisonment for up to eight years if the act or omission breaches the official's duty;

Portugal

(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 three 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 five years (or a fine of up to €6m if the perpetrator is a company or any other legal entity) if the act or omission breaches the official's duty;

(v) in cases of solicitation or acceptance of a benefit by any person in exchange for the exertion of a real or supposed influence over any public entity, the penalty is (i) imprisonment for up to five years if the purpose is to obtain an unlawful favourable decision, or (ii) imprisonment for 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;

(vi) in cases of offer or promise of a benefit to any person in exchange for the exertion of a real or supposed influence over any public entity, the penalty is (i) imprisonment for 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 an unlawful favourable decision, or (ii) imprisonment for up to two years or a fine of up to €120,000 (or a fine of up to €2.4m if the perpetrator is a company or any other legal entity) if the purpose is to obtain a lawful favourable decision.

The PCC provides for higher penalties depending on the value of the undue benefit. Therefore, if the value of the undue benefit is higher than €5,100, the maximum penalties and fines are increased by a quarter of the normal limit. Where the value of the undue benefit is higher than €20,400, the maximum penalties and fines are increased by one third of the normal limit.

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

Recent amendments to the PCC allow for perpetrators of corrupt acts to be exempt from penalties or fines if they cooperate with judicial authorities.

Exemption from penalty is granted if the perpetrator reports the crime before the commencement of criminal proceedings and meets the following conditions:

(i) in cases of solicitation or acceptance of an undue benefit by an official performing their activity or due to their activity, the perpetrator voluntarily returns or rejects the benefit;

(ii) in cases of the offer or promise of an undue benefit to an official performing their activity or due to their activity, the perpetrator has withdrawn the promise of the benefit or requested its return or rejection from the official or the third party;

(iii) in cases of 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, the perpetrator has not committed an act or omission in breach of the duties of the position for which he or she requested or accepted the benefit, and voluntarily returns or renounces the benefit;

(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 perpetrator has withdrawn the promise of the benefit or requested its restitution or rejection from the official or third party before the commission of the act or the omission contrary to the duties of the position;

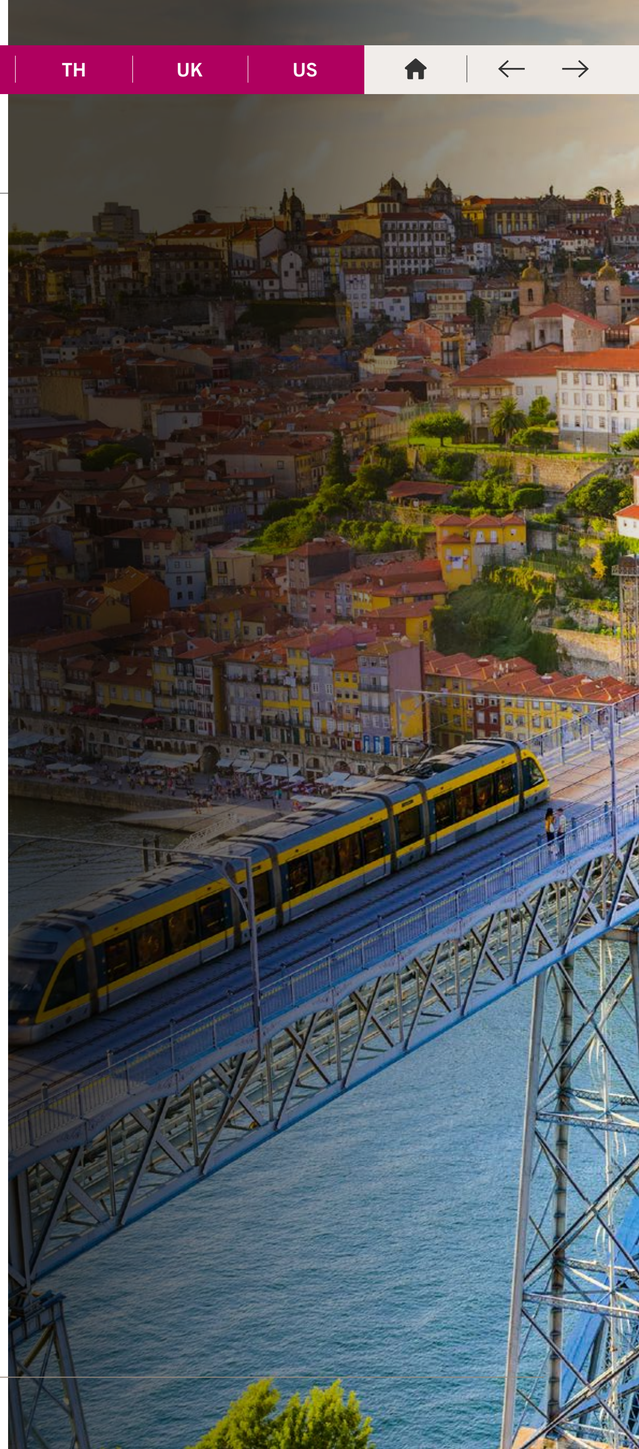
Exemption from penalty is also possible if, in the early stages of the criminal proceedings and under the aforementioned conditions, the perpetrator significantly contributes to the discovery of the truth.

Penalties are particularly mitigated if, up until the first instance trial hearing, the perpetrator actively cooperates in discovering the truth, thereby significantly contributing to the gathering of evidence.

Additionally, and also following recent amendments to the PCC, the implementation of a compliance programme before the commission of a crime may result in the reduction of the penalty if the programme is considered to be effective in preventing the crime in question.

BICPS

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



Portugal

Bribery in the private sector is punishable:

(i) in cases of passive bribery, with imprisonment for up to five years or a fine of up to €300,000;

(ii) in cases of active bribery, with imprisonment of 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 rise to up to eight years (passive bribery) or up 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).

FAUB

Pursuant to the FAUB, the following penalties/fines apply:

(i) in cases of solicitation or acceptance of an undue benefit by a sports agent performing their activity or due to their activity, the penalty is imprisonment for up to five years or a fine of up to €300,000;

(ii) in cases of the offer or promise of an undue benefit to a sports agent performing their activity or due to their activity, the penalty is imprisonment for up to three 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, whether directly or indirectly, of an undue benefit or promise thereof in exchange for any act or omission intended to alter or falsify the results of a sports competition, the penalty is imprisonment for up to eight years;

(iv) in cases of the offer or promise of an undue benefit, whether directly or indirectly, in exchange for the execution of any act or omission intended to alter or falsify the results of a sports competition, the penalty is imprisonment for up to five years;

(v) in cases of solicitation or acceptance of a benefit by any person in exchange for the exertion of a real or supposed influence over any sports agent, aimed at obtaining any decision intended to alter or falsify the result of a sports competition, the penalty is imprisonment for up to five years;

(vi) in cases of the offer or promise of a benefit to any person in exchange for the exertion of a real or supposed influence over any sports agent, aimed at obtaining any decision intended to alter or falsify the result of a sports competition, the penalty is imprisonment for 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).

MCJ

According to the MCJ the following penalties/fines apply:

(i) in the case of solicitation or acceptance of an undue benefit by an official from the Military Forces in exchange of the execution of an act or omission that breaches their duties and that results in a danger to national security, the penalty is imprisonment for up to ten years. Nevertheless, an official from the Military Forces may be exempted from the application of a penalty where they voluntarily reject or return the undue benefit before they engage in the act or omission in breach of their duties;

(ii) in the case of an offer or promise of an undue benefit to an official from the Military Forces in exchange of the execution of an act or omission that breaches their duties and that results in a danger to national security, the penalty is imprisonment for up to six years.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

As a general rule, offering gifts and hospitality to private entities is not prohibited under Portuguese law.

However, if gifts and hospitality are provided with the intent to influence employees of the private sector to perform any act or omission in violation of their duties (for example, in order to get a contract), this may constitute a crime of private corruption. Pursuant to the BICPS, the employees of the private sector could be punished with a prison sentence of up to five years or a fine ranging from €50 to €300,000. The providers of the offerings could be punished with a prison sentence of up to three years or a fine ranging from €50 to €300,000, while legal persons could face fines up to €6 million.

Portugal

Furthermore, it is important to note that Portuguese law strictly regulates gifts and hospitality for holders of political and high public office, as per Law no. 52/2019, dated 31 July 2019. This law imposes certain limitations, such as:

(a) Gifts of material goods or services valued over €150, received during an officeholder's term, must be reported to the designated authority as outlined in the applicable Code of Conduct.

(b) If an officeholder receives multiple gifts from the same organisation within a single year and the combined value exceeds €150, they are obliged to register these gifts. Any additional gifts received after reaching this cumulative value must also be reported.

Should the value of gifts and hospitality exceed these limits, it could be considered a crime of improper receipt or provision of advantage. In such cases, both the recipient and the provider of the advantage (for example, a legal person) may be held criminally liable. The recipient of the advantage could be punished with a prison sentence of up to five years or a fine ranging from € 50 to € 300,000. The provider of the advantage could be punished with a prison sentence of up to three years or a fine ranging from € 50 to € 180,000, while legal persons could face fines of up to € 3.6 million.

Regardless of the value of gifts and hospitality, if they are offered with the intent to influence officeholders to perform any act or omission in breach of their duties (for example, in order to get a contract), this may constitute a crime of corruption. The officeholders could be punished with a prison sentence of one to eight years. The offerors could be punished with a prison sentence of one to five years or a fine ranging from € 50 to € 180,000, while legal persons could face fines ranging from € 12,000 to € 6 million.

Q7 What approach is taken to enforcement in practice?

Enforcement of foreign corruption offences in Portugal has been low with very few allegations being made and, to our knowledge, not a single prosecution arising therefrom.

With regard to domestic bribery, for the year of 2023, the Public Prosecutor's Office (*Ministério Público*) has reported that 4,631 criminal investigations were initiated concerning corruption and related offences – a considerable increase from the 3,598 registered in 2022. The report also notes that in 2023, there were 191 indictments, and 1,521 cases were dismissed.

Between 2017 and 2019 there was a decreasing trend in the number of corruption cases reported by the police, with a 15% reduction. However, this trend has since reversed, with an increase of nearly 29% from 2022 to 2023. Similarly, the number of cases reaching first instance court decisions has been on the rise since 2020. In the period following 2020, the average duration of trials for corruption has slightly decreased, from one year to eight months. Regarding the number of convictions for corruption, there were only 25 in 2021, marking the lowest in the last 16 years. In contrast, 2022 saw a significant rise to 87 convictions.

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) to be one of the main concerns regarding Portugal 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) and 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, particularly in the face of resourcing pressures.

Public awareness of corrupt practices has significantly increased since 2014, largely due to numerous high-level investigations conducted by the Portuguese authorities involving holders of political positions, high public offices and Portuguese companies and their executives. Despite these efforts and extensive public debate, the perception of corruption among the public has persisted at high levels since 2012. It is noteworthy that in 2023, Portugal's Corruption Perceptions Index stood at 61%.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

There is no specific law to that effect.

However, article 110 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 the criminal conduct and regardless of having been obtained for itself or for a third party.

In particular, with regard to corrupt practices, Article 7 of Law 5/2002, 11 January 2002, 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 included in that category (including active and passive bribery, both domestic and international), the difference between the value of the perpetrator's assets and those that would be reasonable for such an individual or entity will be presumed to represent an economic advantage for the purposes of calculating the amount of proceeds of crime to be forfeited. While seizure is typically ordered only after a criminal conviction, in cases of active and passive bribery, assets can be subject to interim seizure to secure payment at an early stage of the judicial proceedings (once the Public Prosecutor's Office charges have been presented), provided that there is strong evidence of the alleged crime having been committed.

Portugal

Q9 What future developments are anticipated in this area?

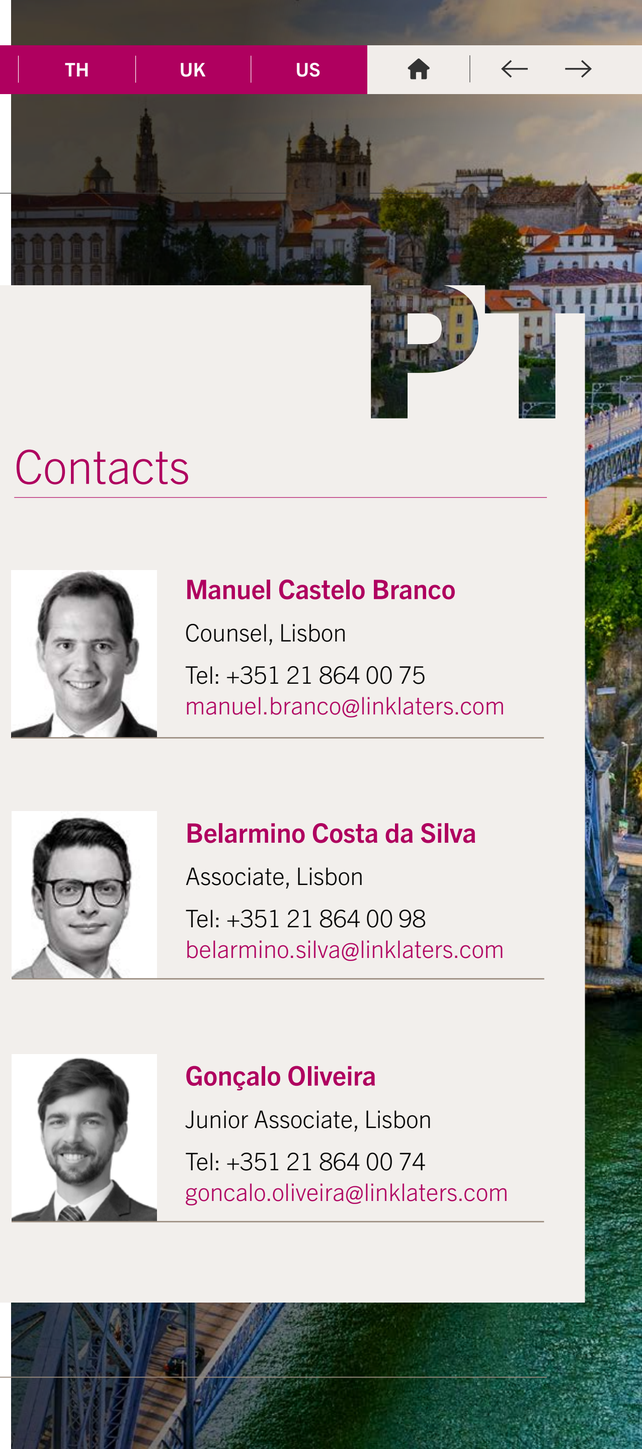
In our view, in Portugal the coming years will be marked primarily by challenges to the implementation of compliance policies, by the regulation of lobbying, the potential criminalisation of illicit enrichment, as well as by possible criminal investigations related to the use of European funds.

In recent years, Portuguese legislation has made remarkable progress in terms of compliance, which is leading to a reconfiguration of corporate activity in Portuguese companies. The General Regime for the Prevention of Corruption, approved by Decree-Law No. 109-E/2021, dated 9 December 2021, and the General Regime for the Protection of Whistleblowers, approved by Law No. 93/2021, dated 20 December 2021, are good examples of this legislative progress. They have compelled various Portuguese companies (specifically those employing 50 or more employees) to adopt and implement a compliance programme aimed at preventing, detecting and sanctioning acts of corruption and related offences carried out against or through the entity, as well as to establish internal reporting channels. Differently from what happened in the past, today many Portuguese companies seek legal support specifically for adopting and implementing compliance programmes. However, since this is a relatively recent development, Portuguese companies are still in a period of adaptation. Therefore, it is expected that Portuguese companies will continue to face challenges in implementing compliance programmes.

Although non-compliance with the obligations imposed by the General Regime Against Corruption and the General Regime for the Protection of Whistleblowers leads to the imposition of significant fines, it is noteworthy that, for the time being, there is still no effective monitoring of compliance, as the National Anti-Corruption Mechanism (*Mecanismo Nacional Anticorrupção*) – the authority responsible for overseeing the implementation of these regimes – still has less than half the human resources it should have and has not yet imposed any fines to date, as far as we are aware.

Furthermore, the newly elected government has identified the fight against corruption and related offences as one of its priorities and has promised to implement a package of measures based on three pillars: prevention, repression, and education. In terms of prevention, among various other measures, the government has committed to regulating lobbying activities, specifically by defining the concepts, principles, procedures and sanctions applicable to the influence activities on public decision-makers, as well as creating a mandatory and public register of lobbyists and represented entities. From the perspective of corruption repression, the government intends to criminalise illicit enrichment, although it should be noted that this issue raises several constitutional doubts that have led the Constitutional Court to reject similar initiatives twice in the past, particularly because they were seen as violating the principle of the presumption of innocence.

It is worth noting that in the last decade, the country has received significant amounts of European funds to implement a set of reforms and investments aimed at promoting economic growth. In this context, it was recently reported that the Public Prosecutor's Office has initiated 15 investigations for possible crimes related to the use of European funds, three of which concern funds obtained under the recent Recovery and Resilience Plan (*Plano de Recuperação e Resiliência*). Thus, considering that the country will continue to receive European funds under various ongoing programs, it is possible that the number of criminal investigations in this area may increase in the coming years.



Contacts

Manuel Castelo Branco
Counsel, Lisbon
Tel: +351 21 864 00 75
manuel.branco@linklaters.com

Belarmino Costa da Silva
Associate, Lisbon
Tel: +351 21 864 00 98
belarmino.silva@linklaters.com

Gonçalo Oliveira
Junior Associate, Lisbon
Tel: +351 21 864 00 74
goncalo.oliveira@linklaters.com

Singapore

Singapore

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

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

- the Prevention of Corruption Act 1960 (the "**PCA**"), and
- the Penal Code 1871 (the "**Penal Code**").

Q2 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" (Section 2 PCA).

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

- any person doing or forbearing to do anything in respect of any matter or transaction (whether actual or proposed), or
- any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction (whether actual or proposed) in which such a public body is concerned (Section 5 PCA).

The prohibitions also extend to acts of an agent in relation their principal's affairs or business (Section 6 PCA).

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 (Section 37 PCA), 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 (Section 21 Penal Code).

A bribe is referred to under the PCA by the term "gratification". That term 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 (Section 2 PCA).

The PCA expressly states that evidence that any gratification is customary in any profession, trade, vocation or calling is inadmissible (Section 23 PCA). 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. However, based on the relevant guidance, "gratification" is not restricted to pecuniary gratification or to gratification that is estimable in money.

Singapore

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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 ("PR") of Singapore. 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, while in 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.

Q4 Who do the rules apply to?

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 or bodies of persons, corporate or unincorporated (Section 2 Interpretation Act).

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. For example, 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 Corrupt Practices Investigation Bureau ("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 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 "performing" or "expediting" any official act (Section 12 PCA).

Q5 What are the fines/penalties?

For private sector bribery, the PCA provides for a fine not exceeding SGD 100,000 and/or imprisonment for a term not exceeding five years (Section 5 PCA).

For public sector bribery, the PCA and the Penal Code provide for a fine not exceeding SGD 100,000 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, in September 2023, a former managing director of a marketing services firm was sentenced to 13 months' jail for making corrupt cash payments totalling S$71,300 to a business development associate director at a local university to advance his firm's business interests.

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 (Section 13 PCA).

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 (Section 14 PCA).

In 2018, the Deferred Prosecution Agreements ("DPA") regime was introduced through the Criminal Justice Reform Act ("CJRA"). Under the DPA regime, the Public Prosecutor may agree to grant amnesty to a corporate entity (charged with or potentially to be charged with a corruption offence) subject to its agreement to certain requirements, which may include implementing or making changes to compliance programmes (Section 149E of the Criminal Procedure Code, amended by way of Section 35 of the CJRA). Financial penalties under the DPA regime are not subject to a statutory maximum, unlike financial penalties for corruption offences prosecuted under the PCA as explained above.

Singapore

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

There are no specific restrictions under the PCA or the Penal Code.

However, regulators in Singapore are subject to the Public Service Code of Conduct which is not publicly available but has been referred to in parliamentary debates. Based on the information described in such parliamentary debates, we understand generally that under the Public Service Code of Conduct:

- All gifts should be refused and returned to the donor without delay together with a personal explanation that while the recipient appreciates the gift, its acceptance would be a breach of the Public Service Code of Conduct. If the return of the gift will cause offence, or it is impracticable to return the gift, then the gift should be handed over for disposal, except (i) the recipient may purchase the gift from the Government at its cash value after an official valuation or where the value of the gift is under S$50, the recipient may be allowed to retain the gift without payment, or (ii) where the Permanent Secretary (of the relevant Ministry) thinks that the gift would be of interest, the gift may instead be displayed or officially used in the premises occupied by the Ministry. In this regard, it appears from the information available that "gift" is not specifically defined under the Public Service Code of Conduct but includes intangible benefits, hospitality, tickets, concessions or free / undervalued services.
- In relation to hospitality in the form of meals and entertainment, there does not appear to be any specific monetary value threshold, but public officers are required to declare and seek approval from the Permanent Secretary (of the relevant Ministry) if they receive any meal invitation, either before the meal, or if that is not possible, immediately after. This is especially if they assess that the value of the meal or hospitality is incongruent with the professional nature of the meeting and may give rise to perceptions of influence peddling and conflict of interest — real or perceived.
- Further, public officers are advised to avoid attending meals/events alone where the risk of being compromised is harder to manage.

Q7 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 five on the 2023 Transparency International Corruption Perceptions Index. Singapore's anti-corruption regulator, the CPIB is tasked under the PCA with eliminating corruption in the country. The CPIB, which is an independent agency reporting directly to the Prime Minister of Singapore, 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, to encourage reporting of suspicions and complaints of corruption, the CPIB maintains various channels through which members of the public may report allegations of corruption: (i) the Corruption Reporting and Heritage Centre which informants may write to or attend physically, (ii) a reporting hotline, (iii) an e-complaint platform via the CPIB website, (iv) a dedicated email reporting address, and (iv) a dedicated fax reporting line.

The Singapore anti-corruption regime also includes a presumption of corruption in respect of public sector cases where a public officer or agent is found to have received a "gratification" (Section 8, PCA). A public officer or agent 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 or agent will be found to have received the money corruptly. This presumption has assisted prosecutors in securing corruption convictions against public officials.

Based on annual statistics released by the CPIB for the year 2023:[1]

(i) The CPIB received 215 corruption-related reports in 2023, an 8% decrease from the preceding year (234 cases).

[1] Accessible at https://www.cpib.gov.sg/constant-vigilance-vital-to-the-fight-against-corruption/

Singapore

(ii) Of the 215 corruption-related reports received, the CPIB registered 81 reports as new cases for investigation. A report is registered for investigation if the information received is found to be pursuable based on preliminary investigation.

(iii) Private sector cases continued to form the majority of all cases registered for investigation (86%, 70 cases). There were 11 public sector cases registered, which was in line with the annual average of 11 cases for the preceding four years.

As highlighted above, the DPA regime was introduced in 2018 and a decision in the first case involving a DPA is still awaited. In March 2024, the CPIB announced that the Public Prosecutor was in discussions with Seatrium (formerly known as Sembcorp Marine), a Singapore oil and gas rig builder, concerning a DPA in respect of alleged corruption offences that occurred in Brazil. Of note, on 28 March 2024, Seatrium issued a statement that the Public Prosecutor was agreeable for the DPA to impose on Seatrium a financial penalty of USD 110 million, and that such amount be reduced to USD 57 million to take into account payments to be made by Seatrium to the Brazilian authorities pursuant to settlement agreements in relation to the investigation of the same offences in Brazil.[2] While the terms of the DPA are yet to be finalised and are subject to the approval of the Singapore High Court, this development could potentially mark the first use of the DPA regime in Singapore. Two notable observations on the approach to the use of the DPA regime arise in this instance: first, although the terms of the DPA are yet to be finalised, the CPIB and Seatrium (presumably with the consent of the Public Prosecutor) have released information on the proposed DPA publicly which could be driven by the authorities' desire to ensure transparency over the process. Secondly, the proposed DPA indicates that the Public Prosecutor will take into account multiple prosecutions in different jurisdictions against the same party when determining the financial penalty ultimately payable.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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 (Section 54 CDSA). "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 (Section 2 CDSA).

The CDSA applies to both transfers within and outside of the country. Both the transferor (ie the person who "converts or transfers" the property) and the transferee (ie the person who "acquires, possesses or uses" the property) will be guilty of an offence.

It is also an offence for any person who knows or who has reasonable grounds to suspect that any property represents another person's proceeds from criminal conduct to fail to lodge a Suspicious Transaction Report as soon as is reasonably practicable after it comes to his attention (Section 45 CDSA). Suspicious Transaction Reports are lodged with the country's white collar crime enforcement agency, the Commercial Affairs Department ("CAD") of the Singapore Police Force.

Separately, the court also has the power to make a confiscation order under the CDSA in respect of any benefits derived from a "serious offence" (Section 6 CDSA). 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 (Section 17 CDSA). In this regard, an officer of a company may be liable for the default in payment if such default was committed with the consent or connivance of the officer, or attributable to any neglect on the officer's part (Section 80 CDSA).

In addition, the CPIB (aided by the CAD) has the power to seize property (which includes freezing bank accounts) where there are reasonable grounds for suspecting that (i) a specified person has carried on or benefited from criminal conduct; and (ii) there is material relating to the specified person which is likely to be of substantial value to the investigation (Section 40 CDSA).

[2] Accessible at https://links.sgx.com/1.0.0/corporate-announcements/UEHDA0N4SES6KHA8/f60ea0a015b09e2fc4c9fa681dc3bbd93aff112f08d72d17c9dcb190f4657470

Singapore

Q9 What future developments are anticipated in this area?

In December 2021, amendments to the PCA came into effect but these were consequential amendments to take into account the enactment of the Insolvency, Restructuring and Dissolution Act 2018, and therefore no substantive changes were made to the PCA. Nonetheless, 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. With the proposed DPA with Seatrium as the first test case in Singapore, it is expected that cases involving corporate entities will primarily be resolved by way of the DPA regime.

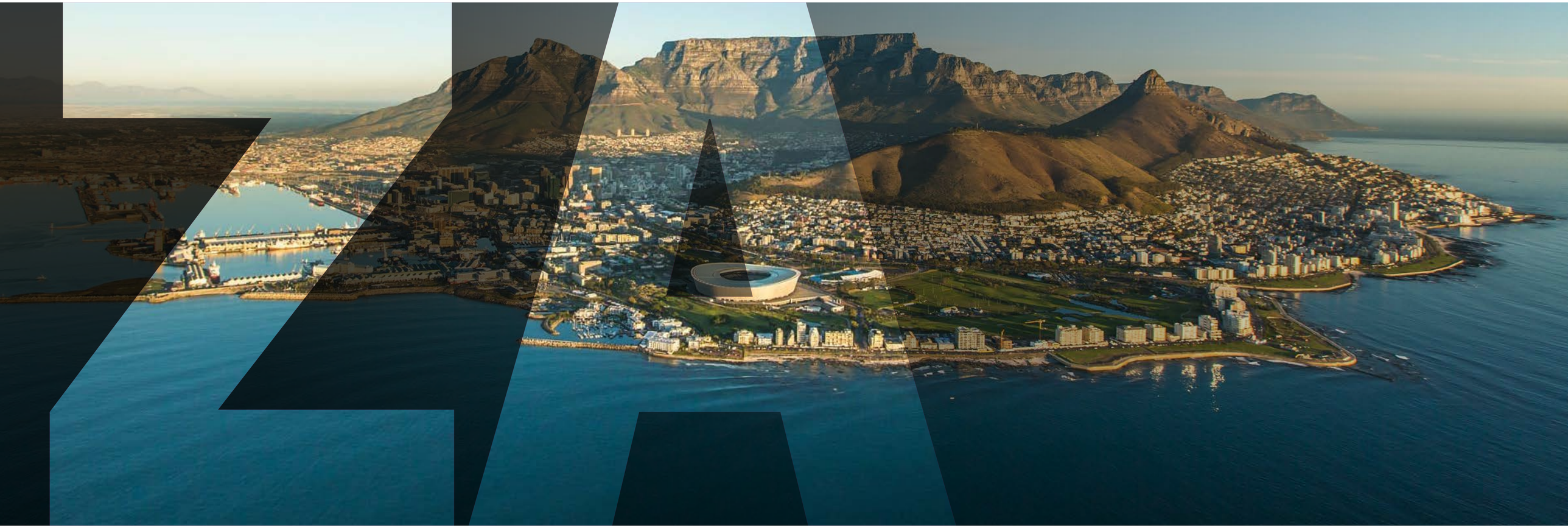
We can also expect greater improvements in the CPIB's enforcement powers and capabilities given the rapid developments in technology (including the proliferation of digital currencies which are unregulated and avoid easy detection) that contribute to the increasingly complex nature of bribery and corruption cases, some of which have international links. There has been persistent commentary on the need for a general whistleblowing law to encourage individuals to report wrongdoing. Presently, Singapore's laws on whistleblowing protect targeted groups of informants and while the PCA already affords anonymity to whistleblowers (Section 36 PCA), it does not expressly provide for the protection or reduction in culpability of whistleblowers who have participated in the activity that they have reported. An overarching whistleblowing legislation would be able to address such gaps, as well as allow a unified approach to the protection of whistleblowers across various types of misconduct.

Contacts

Jelita Pandjaitan
Partner, Singapore
Tel: +65 66 92 58 81
jelita.pandjaitan@linklaters.com

Junjie Huang
Managing Associate, Singapore
Tel: +65 66 92 58 83
junjie.huang@linklaters.com

South Africa



South Africa

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Some activities 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 Protection of Constitutional Democracy Against Terrorism and Related Activities Amendment Act, 23 of 2022 Amendments (POCDATARA Amendment Act)

The objective of the POCDATARA Amendment Act is to strengthen the provisions of the Protection of Constitutional Democracy Against Terrorism and Related Activities Act 33 of 2004, by expanding it to include aspects such as cyber-terrorism. Further amendments refine the offence of terrorist financing and provide improved processes for the implementation of financial sanctions against supporters of terrorist organisations.

> 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, ie 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.

Q2 What activities are prohibited?

The Corrupt Activities Act

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

Under the Corrupt Activities Act, the term "gratification" is defined 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;

> any forbearance to demand any money or money's worth or valuable thing;

South Africa

- 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.

Section 34 of the Corrupt Activities Act places a duty on certain persons to report certain offences to the Directorate for Priority Crime Investigations department of the South African Police Service ("DPCI"). Failure to report is a criminal offence. The offences must involve an amount of R100,000 or more. Included in these activities is corruption, theft, fraud, extortion, forgery and uttering of a forged document.

Any person who holds a position of authority (as defined in section 34(4) of the Corrupt Activities Act), who knows or ought reasonably to have known or suspected that any other person has committed an offence (of corruption) in terms of, among others, sections 3 the Corrupt Activities Act or theft, fraud, extortion, forgery or uttering of a forged document involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to DPCI. Section 34(2) of the Corrupt Activities Act provides that any person who fails to report such corrupt activities is guilty of a criminal offence (with a potential custodial sentence).

On 3 April 2024, the President signed into law the Judicial Matters Amendment Act (the "JMA Act") which amends the Corrupt Activities Act by inserting section 34A, which criminalises failure to prevent corruption. According to section 34A, a "member of the private sector or incorporated state-owned entity" will be guilty of an offence if 'an associated person' gives or agrees, or offers to give any gratification to another person (as currently prohibited in terms of Chapter 2 of Corrupt Activities Act) intending to obtain or retain business or an advantage for that member. The JMA Act draws from the failure to prevent bribery offences contained in section 7 of the United Kingdom Bribery Act.

Therefore, now, private sector and state-owned companies face potential liability for the conduct of "Associated Persons". An "associated person" is broadly defined and includes anyone associated with a business including employees, third party service providers, and contractors. Private companies and state-owned entities are guilty of an offence if an associate person commits a corruption offence in order to retain or obtain a business advantage for such company. An affirmative defence to section 34A if a company is able to demonstrate that it had adequate procedures in place designed to prevent associated persons from committing corruption offences

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

Section 4 of the Organised Crime Act makes it an offence for any person who knows that property is or forms part of the proceeds of unlawful activities, to enter into any agreement with anyone in connection with that property, or perform any other act in connection with such property, which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof, or of assisting any person who has committed or commits an offence, whether in South Africa or elsewhere, to avoid prosecution or to remove any property acquired directly, or indirectly, as a result of the commission of an offence.

FICA

FICA aims to provide for customer due diligence measures with respect to beneficial owners and persons in prominent positions. To this end, it requires accountable institutions to adopt a risk-based approach when carrying out customer due diligence or client vetting, including by establishing and verifying client identities (including the beneficial owners of legal persons) and taking steps to ensure compliance with all relevant anti-money laundering, counter terrorist financing and financial sanctions obligations.

South Africa

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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 where it is committed.

The Corrupt Activities Act applies in this extra-territorial manner 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 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 relevant activity 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 reason or another, not extradited by South Africa.

Q4 Who do the rules apply to?

FICA identifies business sectors which are vulnerable to money laundering and terror financing. It applies to accountable institutions and reporting institutions (listed in Schedules 1 and 3 of the legislation respectively), who must register with the FIC. Section 29 of FICA provides for the reporting of suspicious and unusual activities and transactions in the prescribed form. The obligation to report suspicious and unusual transactions and activities under this section applies to a very wide category of persons and institutions, and includes any person who:

- carries on a business;
- is in charge of a business;
- manages a business; or
- is employed by a business.

This means that any person associated with a commercial undertaking as an owner, manager or employee of that undertaking, is subject to the obligation to report suspicious or unusual transactions and activities to the FIC. The Corrupt Activities Act has wide application (as discussed above) and applies to South African citizens and persons who ordinarily reside in South Africa. This 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.

Q5 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 R100m or imprisonment for a period, including possible life imprisonment.

Section 68 of FICA provides that persons convicted of offences under the relevant provisions of FICA are subject to penalties, which may be up to 15 years of imprisonment or to a fine of not exceeding R100m.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

South African law does not generally prescribe limitations on hospitality expenses in the private sector in respect of commercial settings. The appropriateness of gifts and hospitality expenses may depend on the reasons for the gift or entertainment and if the hospitality expense was meant to be a form of inducement for a party to act in any authorized manner. Therefore, hospitality and gifts are not unlawful in the private sector provided that such expenses may not be considered to be gratification for improper or unauthorized inducement to do or not do something. Many companies regulate gifts and hospitality within their anti-bribery and corruption policies internally.

South Africa

Q7 What approach is taken to enforcement in practice?

Section 42(1) of FICA, read with guidance note 7 issued by the FIC, provides that an accountable institution must develop, maintain and implement a program for anti-money laundering and counter-terrorist financing risk management and compliance ("RMCP"). Accountable institutions must ensure that a RMCP adequately addresses requirements provided for in section 42(2). An accountable institution must be able to evidence the implementation of the RMCP in its day-to-day operations. Therefore, FICA is applied on a risk-based approach and each accountable institution must determine the extent to which it assesses its risks, depending on own its risk appetite.

The Financial Sector Conduct Authority ("FSCA") exercises oversight of the activities of financial services providers and has recently taken a strict approach to FICA compliance, sanctioning financial services providers for non-compliance with FICA. On 28 February 2024 and 13 March 2024, the FSCA issued press releases containing details of hefty administrative sanctions imposed on financial services providers for failing to comply with FICA.

Under the Corrupt Activities Act, the National Director of Public Prosecutions ("NDPP") has the power to institute investigations. Investigations may be triggered if the NDPP 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.

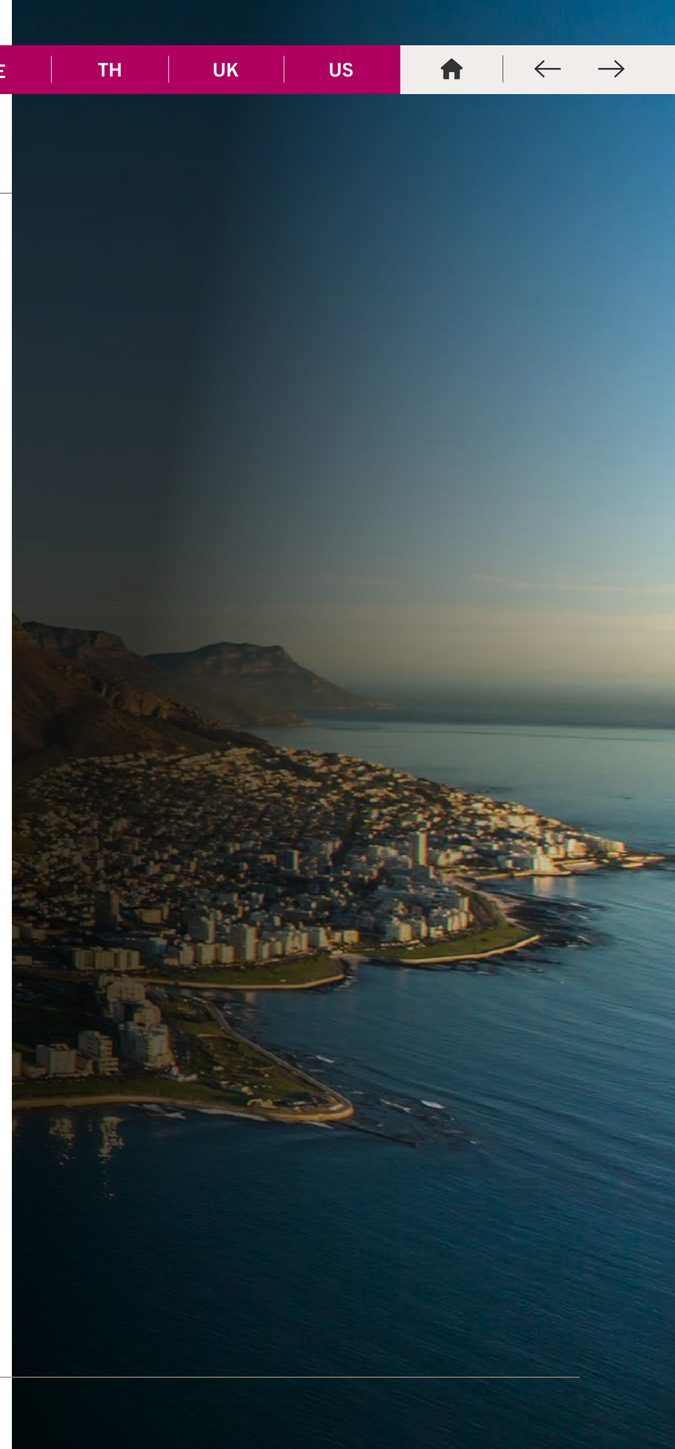
Furthermore, where the NDPP investigates offences of national priority, section 28(6) of the National Prosecuting Authority Act 32 of 1998 gives the investigating director the power to summon any person who is believed to be able to furnish any information on the subject of the investigation or to have 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. Under section 34, any person who holds a position of authority (which, under the Companies Act 71 of 2008, includes a manager, secretary or a director), and who knows or ought reasonably to have known or suspected any corrupt activities, is obliged 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.

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 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.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Yes, the NDPP 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.



South Africa

Q9 What future developments are anticipated in this area?

During May 2021 the Department of Public Service and Administration introduced two amendment bills – the Public Service Amendment Bill ("PSA Bill") and the Public Administration Management Amendment Bill ("PAMA Bill"). These bills seek to make changes to the legislative framework governing the public service in South Africa. However, they have been heavily criticised and may undergo several revisions before being promulgated.

On 19 June 2020, the Minister of Finance published proposed amendments to Schedules 1, 2 and 3 to FICA. The proposed amendment to Schedule 1 of FICA will widen the application of FICA by including additional categories of institutions and businesses as accountable institutions.

During January 2018, the President established a Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector, including organs of state. Justice Raymond Zondo was appointed as the chairperson of this inquiry, which has come to be called the "Zondo Commission". It has made substantial findings on corruption at various levels in government, the involvement of those implicated in "state capture" and the mismanagement of state-owned entities. It is anticipated that, in its final report, the Zondo Commission will, in line with its findings, make recommendations on ways to strengthen measures to prevent corruption and this may influence policy considerations in any future amendments to current legislation.

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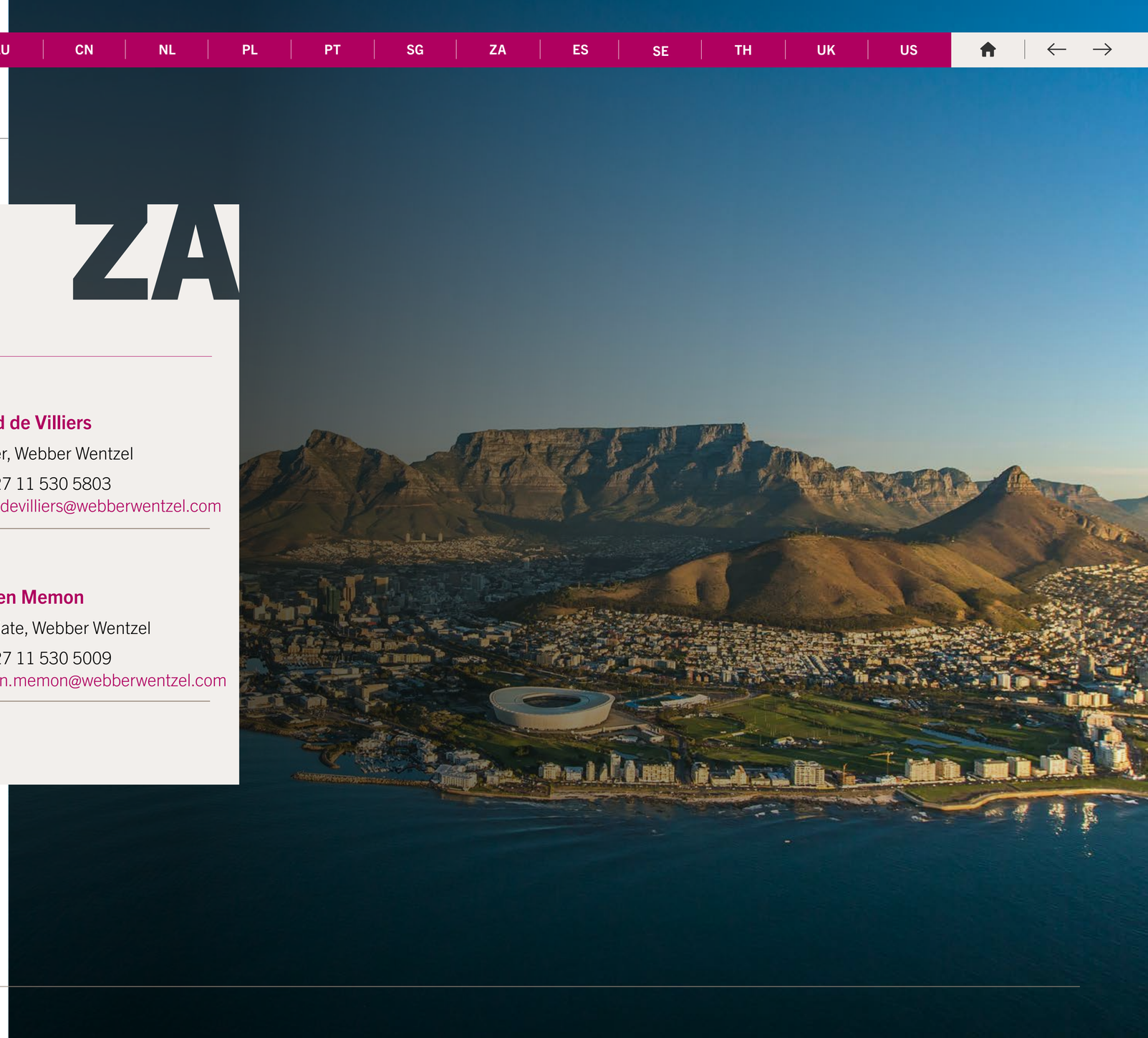
Contacts

Dawid de Villiers
Partner, Webber Wentzel
Tel: +27 11 530 5803
dawid.devilliers@webberwentzel.com

Mateen Memon
Associate, Webber Wentzel
Tel: +27 11 530 5009
mateen.memon@webberwentzel.com



Spain

Spain

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

They are unlawful under the 1995 Spanish Criminal Code (the "Code"). The Code was amended by a key reform that came into force in July 2015, which defined more accurately the liability of companies for criminal offences. Since then, only some minor legislative changes have been implemented in relation to bribery and corruption.

Q2 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, under "To whom do the rules apply?") 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. 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 themselves 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 (or the offer or promise thereof), for themselves 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.

In addition, article 286 bis also applies to managers, directors, employees or collaborators of a sports entity, irrespective of its legal form, as well as to athletes, referees or judges, regarding behaviours aimed at deliberately and fraudulently predetermining or altering the result of a sporting event, match or competition of special economic or sporting relevance.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

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 be also an offence in the country where it took place; the perpetrator must have not been acquitted or must have not already

Spain

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 addressed against a Spanish national or a foreign national with permanent residence in Spain; or
- the offence must have been committed by: (a) the officer, manager, employee or an associate of an entity with registered office or based in Spain; or (b) by a legal entity with registered office or based in Spain.

Q4 Who do the rules apply to?

In relation to Public Corruption, the prohibition applies to (a) Authorities, and (b) any person (whether acting on their 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;
- juries, arbitrators (national or international), mediators, court-appointed insolvency practitioners or any other persons performing a public duty; and
- since 2019, any person who is assigned to and performs a public service duty consisting of managing, in the Member States of the European Union or in third countries, the financial interests of the European Union or making decisions in respect of such interests.

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 their 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.

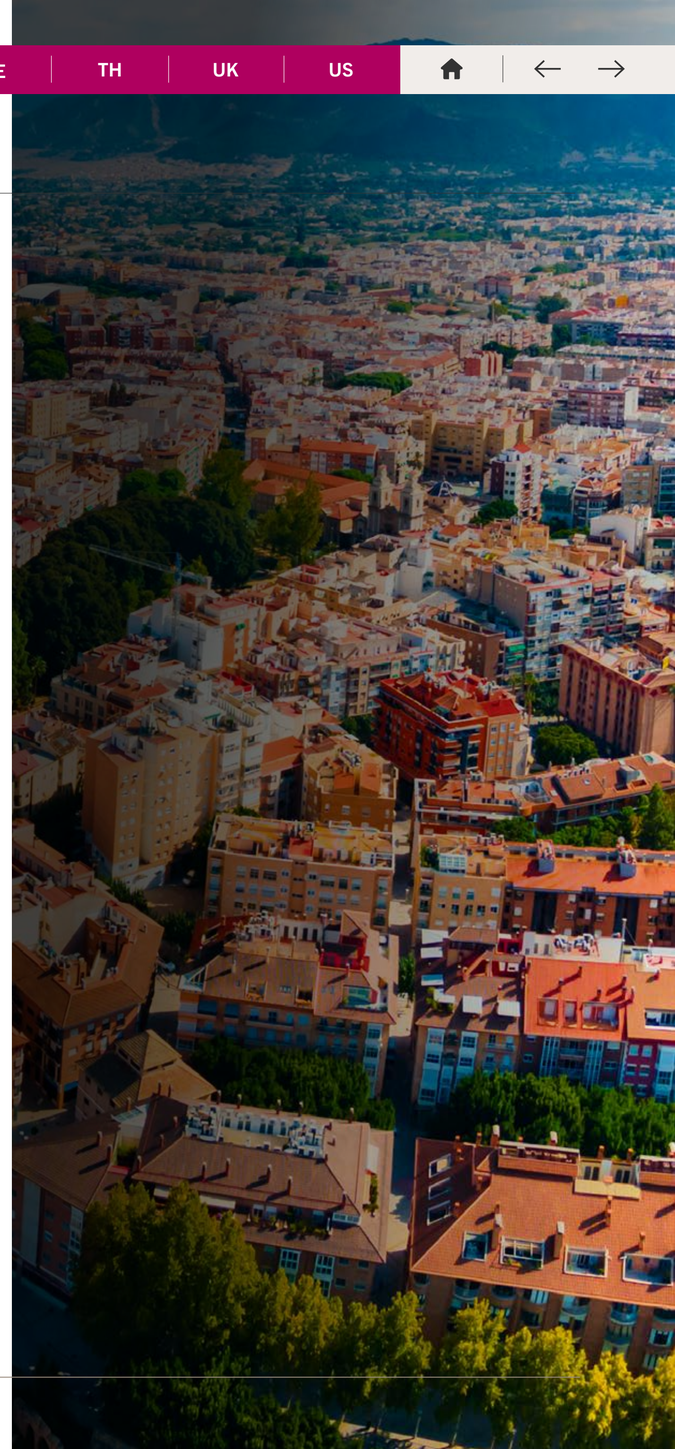
Q5 What are the fines/penalties?

For Public Corruption, if the Authority's actions constitute a breach of duty, the penalty for individuals is a prison sentence of up to six years and/or a fine as determined by the judge of between €2 and €400 a day for up to 24 months. For corporations the penalty is a fine of 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. 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.



Spain

Aside from these sentences, the person responsible will also be barred from public sector contracts and lose the possibility of obtaining public aid or subsidies and 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.

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.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

In Spain, there are no specific regulations governing the giving and receiving of gifts and hospitality in commercial settings. The existing Code lacks clear, objective criteria or a defined threshold to help determine when such actions might be deemed corrupt practices.

Judicial precedents have mainly addressed Public Corruption and have not established clear standards. They suggest that gifts and hospitality, if aligned with social norms – which can vary by region and local customs – may not be considered corrupt practices. The Spanish Supreme Court has also noted that it is impractical to set a universal monetary limit for gifts, emphasising that each situation should be assessed on its own merits.

In the absence of formal regulations, corporate ethical codes play a vital role in guiding behaviour in this area. It is common in Spain for these codes to include provisions that prohibit the acceptance or offering of gifts and hospitality valued over 100 euros, which helps in preventing corruption practices.

Q7 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. Regarding Public Corruption, the courts have determined that it is not necessary for the public servant or authority receiving or requesting gifts and/or offerings to be the one committing the corrupt act. It is sufficient if the public servant or authority who receives or requests the gifts and/or offerings facilitates the act of corruption.

On the other hand, we have not seen so far any significant trends in relation to the treatment by courts of Private Corruption.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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

In addition, under Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing, relevant parties are obliged to report to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences ("SEPBLAC"), on their own initiative, any event or transaction which, following a special examination, raises suspicions of money laundering or terrorist financing. This would include conduct which attempted to introduce into the market proceeds suspected to have been procured by corruption.

Spain

Q9 What future developments are anticipated in this area?

Companies have increased their involvement in the prevention of corruption and bribery within their own organisations and among their business partners. Compliance programs often include specific provisions for the prevention of these types of offences and, where certain requirements are met, the Code provides for the exclusion of corporate criminal liability as a result of the program's correct implementation and the presence of a widespread compliance culture.

Private equity investors are increasingly focusing on compliance within the entities they plan to invest in, particularly concerning anti-bribery and corruption measures. Consequently, having a compliance program that includes specific provisions to prevent these types of offences has become essential for professional investors.

On a different note, Law 2/2023 of 20 February on the protection of persons who report violations of the law and the fight against corruption has added some requirements that may help tackle corruption practices. This law mandates that companies with 50 or more employees establish an internal whistleblowing channel. This channel is intended to facilitate the reporting of various offences, including anti-bribery and corruption.

Finally, growing public concern over corruption in EU legislation has led to the proposal of a directive that, among other things, aims to ensure: (i) all forms of corruption are criminalised across all Member States; (ii) legal entities can be held accountable for such offences; and (iii) the imposition of effective, proportionate, and dissuasive penalties.

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Contacts

Borja Fernandez de Troconiz
Partner, Madrid
Tel: +34 91 399 6020
Borja.ftroconiz@linklaters.com

Gonzalo Sanchez del Cura
Managing Associate, Madrid
Tel: +34 91 399 6018
gonzalo.sanchezdelcura@linklaters.com

Alvaro del Baño
Junior Associate, Madrid
Tel: +34 91 399 6002
alvaro.delbano@linklaters.com

Sweden

Sweden

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

In Sweden, corrupt practices are unlawful and criminalised under the Swedish Penal Code (Sw. *brottsbalken* (1962:700)) (the "Penal Code").

Q2 What activities are prohibited?

Giving or taking of a bribe: under Chapter 10 Sections 5a–5b of the Penal Code

It is unlawful to give, promise or offer an undue advantage, 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, accept a promise of or request such an undue advantage, irrespective of whether the act was committed before the person obtained, or after the person left, the position. The same applies to a person who receives, accepts a promise of or requests a benefit for someone else. The prohibition further applies to a participant in, or official at, a competition subject to public betting if it concerns an undue advantage for their performance of tasks in the competition.

The prohibition on the giving or taking of 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.

In addition to the giving and taking of bribes, there are other activities worth mentioning that are prohibited under Swedish law in the context of bribery and corruption:

- Trading in influence: in cases other than those referred to above, it is unlawful to give, promise or offer an undue advantage to a person in order for him/her to influence a decision or measure taken by someone in the exercise of public authority or public procurement. In a similar way, it is unlawful for a person to receive, accept a promise of or request an undue advantage for the purpose of influencing another person's decision or action in relation to the exercise of public authority or public procurement.
- Negligent financing of bribery: it is also prohibited for a business proprietor to supply a representative with money or other assets if the business proprietor thereby, through gross negligence, promotes the giving of a bribe or the trading in influence.
- Breach of trust: further, it is unlawful for a person who, due to being in a position of trust, has been given the task of (i) managing a financial matter, (ii) independently handling a task requiring qualified technical knowledge or (iii) monitoring the management of such task, to abuse their position and thereby cause loss for their principal. However, this provision does not apply if the act falls under embezzlement (as stipulated in Chapter 10 Sections 1–3 of the Penal Code).

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

Where the corrupt act occurs in Sweden, the prohibition applies to all individuals, regardless of their citizenship. However, where the corrupt act is committed outside of Sweden, the jurisdiction of the Swedish courts can under certain circumstances be extended. This applies, *inter alia*, to;

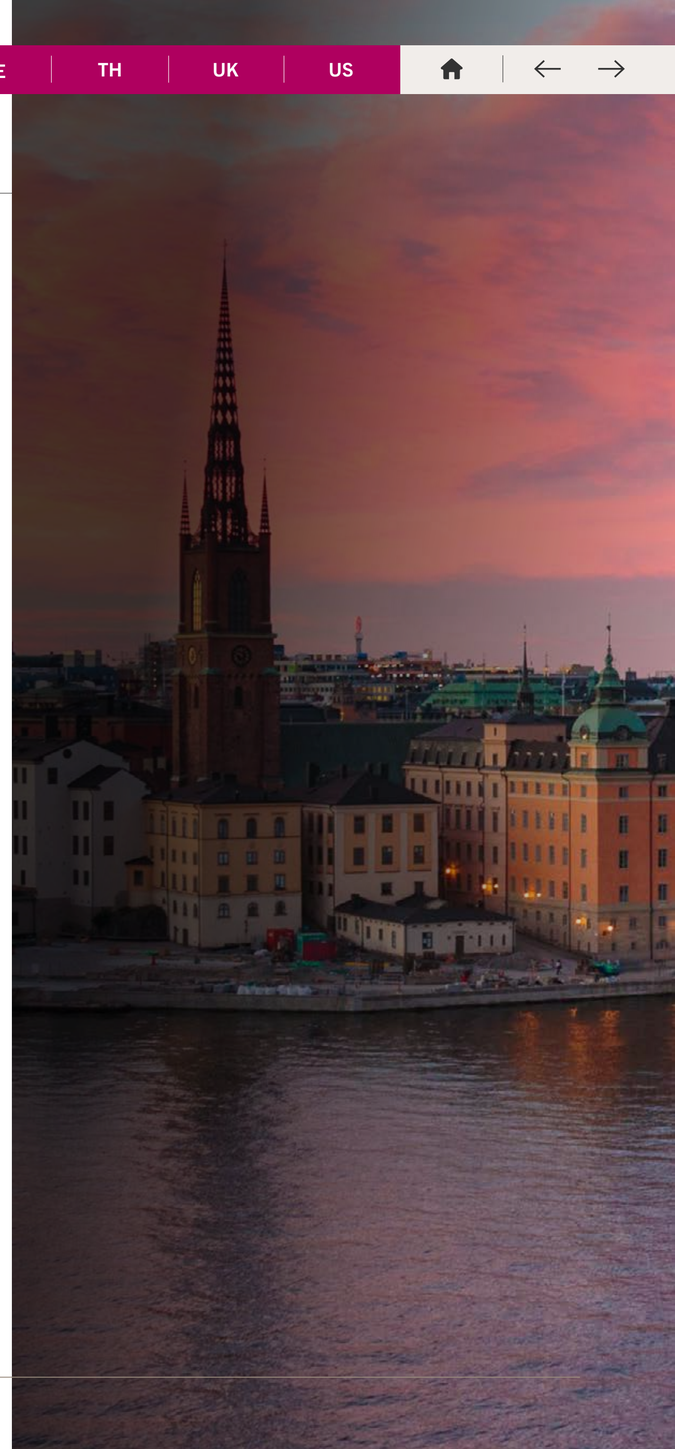
(i) Swedish citizens or foreign citizens who are domiciled in Sweden at the time of the offence or the prosecution;

(ii) foreign citizens present in Sweden, provided that the crime committed is punishable by imprisonment for a period of more than six months;

(iii) cases of giving or accepting bribes, if the crime is committed in the exercise of the business activities of a Swedish company;

(iv) crimes committed against Swedish citizens, foreign citizens who are domiciled in Sweden or Swedish companies.

A corrupt activity that occurs abroad can only be penalised in Sweden if it is also an offence in the jurisdiction where it occurs (the principle of dual criminality). Further, no penalty may be imposed in Sweden that is considered more severe than the most severe penalty provided for the offence under the law of the place where the act was committed.



Sweden

Q4 Who do the rules apply to?

Subject to the restrictions of Swedish jurisdiction described previously, the prohibitions apply to all individuals.

A company cannot face criminal liability under Swedish law but may be subject to a corporate fine if a crime was committed in the exercise of the company's (i) business activities, (ii) public activities that can be equated with business activities, or (iii) other activities conducted by the company provided that the offence was intended to lead to financial advantage for the company.

Q5 What are the fines/penalties?

Individuals convicted of:

- giving or accepting a bribe 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;
- trading in influence may be liable to pay a fine or face imprisonment for up to two years;
- negligent financing of bribery may be liable to pay a fine or face imprisonment for up to two years; and
- breach of trust 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 for between six months and six years.

Other penalties for an individual may include having to repay the value of any advantage received (under the provision on forfeiture in the Penal Code) and prohibition on trading for between three to ten years under the Trading Prohibition Act (Sw. lag (2014:836) *om näringsförbud*).

For a company, a corporate fine can be imposed up to a maximum of SEK 10m (approximately EUR 850,000) and, for a large company, up to a maximum of SEK 500m (approximately EUR 42.5m). A company is considered large if, for example, the average number of employees in the company has amounted to more than 50 in each of the last two financial years and the company's reported net turnover has amounted to more than SEK 80m (approximately EUR 6.8m) in each of the last two financial years.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

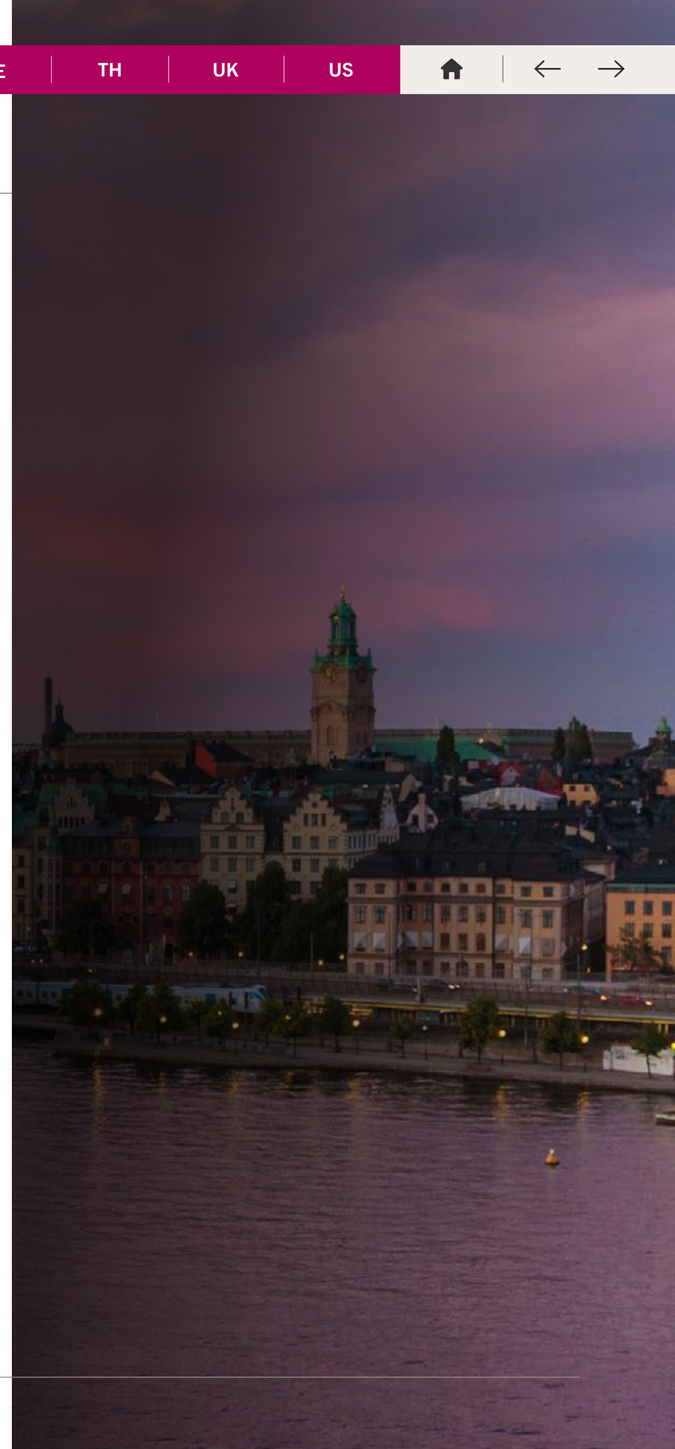
There is no specific approach regarding the giving and receiving of gifts and hospitality in commercial settings. However, gifts, hospitality and other forms of benefits in commercial settings could classify as bribes if they are considered to be undue. The definition of "undue" is not clear, but the preparatory works suggest that a gift is undue if it is likely to create a debt of gratitude for the recipient or if the gift is likely to influence how the recipient carries out a particular task.

Q7 What approach is taken to enforcement in practice?

The Swedish Prosecution Authority takes a strict view on bribery and corruption and has, in several cases, investigated municipality officials and company representatives suspected of bribery in Sweden. While Sweden is considered one of the least corrupt countries in the world, Sweden has received criticism from both the OECD and the EU in respect of its enforcement of anti-corruption legislation, citing its low number of investigations in relation to foreign bribery, e.g. bribery perpetrated abroad by intermediaries of Swedish companies. Partly due to this criticism, the Swedish government has initiated a commission of inquiry to review Sweden's legislation on anti-bribery and corruption (see the section regarding future developments below).

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

The Penal Code stipulates that if a company has derived financial advantage from a criminal offence committed in the course of its business activities, the value of the advantage obtained as a result of the offence may be declared forfeited. For example, if a profitable contract is entered into as a result of bribery, the real or estimated profit obtained under the contract



Sweden

may be forfeited. However, profits shall not be forfeited if such forfeiture would be unreasonable. This may be the case if an employee who has committed the criminal offence acted against express instructions from the organisation's management.

Q9 What future developments are anticipated in this area?

In February 2024, the Swedish government initiated a commission of inquiry to review Sweden's legislation on anti-bribery and corruption.

The inquiry will examine whether there is a need to:

(i) amend or clarify the Swedish legislation on the taking of bribes, the giving bribes and breach of trust;

(ii) exempt corruption offences committed abroad from the principle of dual criminality;

(iii) amend or clarify the Swedish legislation in relation to corruption involving companies in their commercial relations;

(iv) adapt Swedish legislation to the new EU directive on combating corruption; and,

(v) make Sweden's legislation on anti-bribery and corruption more effective and modern.

The commission of inquiry will present its findings and potential proposals for amending Swedish legislations at the latest on 25 July 2025.

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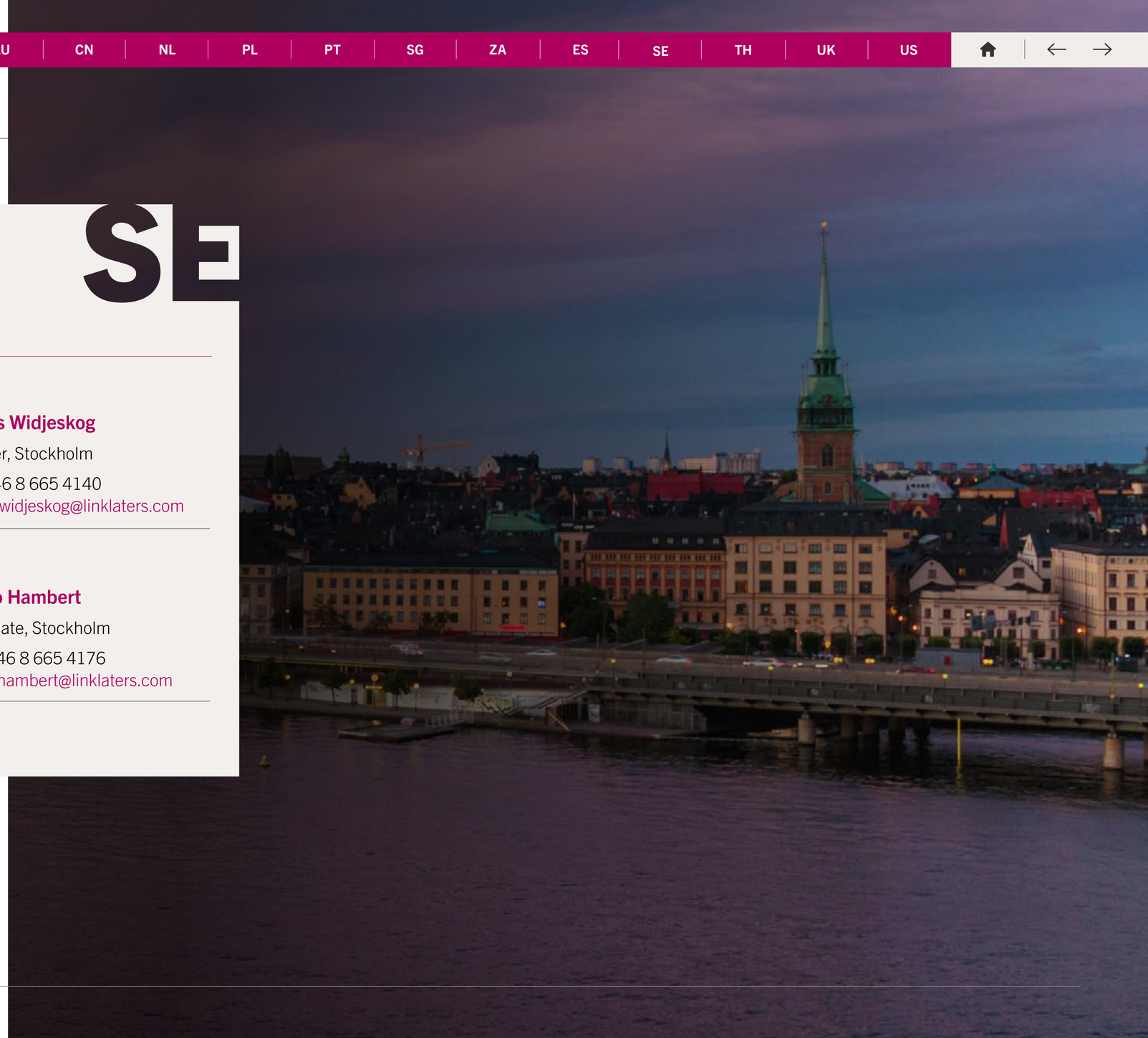
Contacts

Niclas Widjeskog
Partner, Stockholm
Tel: +46 8 665 4140
niclas.widjeskog@linklaters.com

Jakob Hambert
Associate, Stockholm
Tel: + 46 8 665 4176
jakob.hambert@linklaters.com



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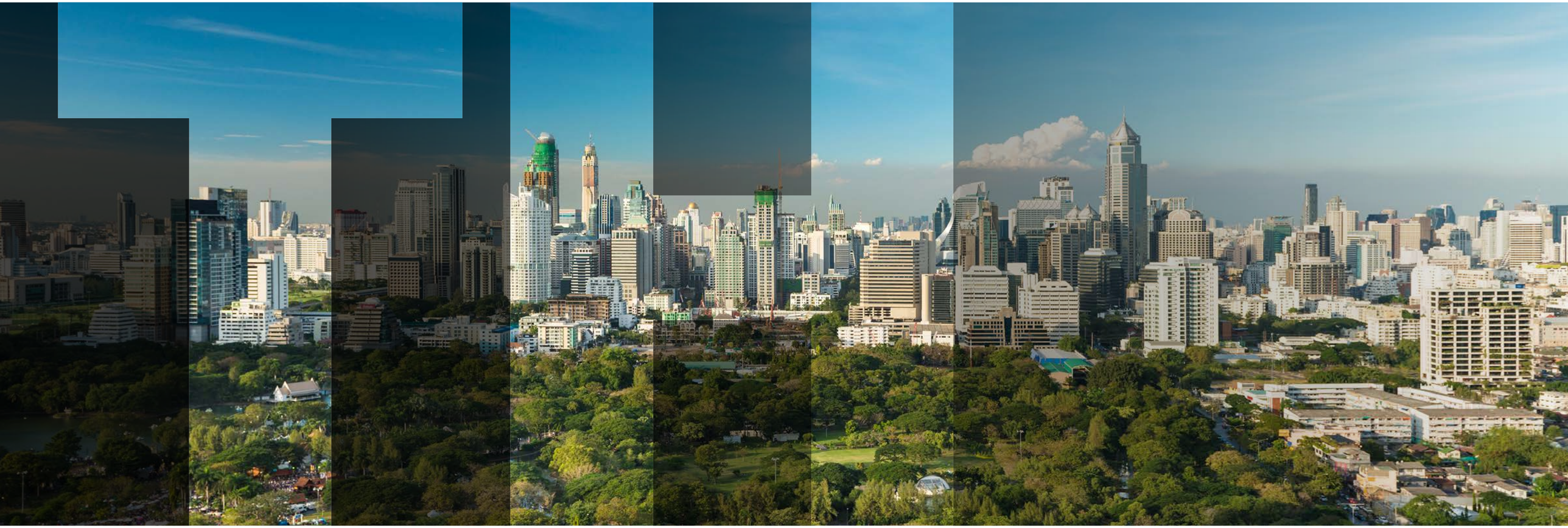

Thailand

Q1 What legislation makes corrupt activities 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. 2561 (2018) (the "Act"), as amended from time to time, superseding the Act Supplementing the Constitution relating to the Prevention and Suppression of Corruption B.E. 2542 (1999) (the "1999 Act").

Q2 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 demands, 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 or agrees to offer any property, asset or any undue benefits to any official in an attempt to persuade him or her to act contrary to their function, commits an offence. In addition, an intermediary involved in a corrupt activity, i.e. any person who demands, accepts or agrees to accept any undue benefits from any other person in consideration for persuading any official to perform or not to perform any of their functions, is also deemed to have committed an offence (collectively referred to as "Bribery Offences").

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). It should be noted that while bribery of a non-Thai official is not an offence under the Code, it is, however, prohibited under the Act.

Pursuant to the Act, the Bribery Offences cover (i) any public official, (ii) a foreign state official and (iii) an official of an international organisation, defined under the Act as follows:

- **public official:** state official, person holding a political position, judge of the Constitutional Court, person holding an independent organisation position, and member of the National Anti-Corruption Commission ("NACC").
- **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.
- **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; and

Not only does the Act prohibit Bribery Offences, it also prohibits any public official, or those who have been released from being public officials for less than two years, from receiving any property or benefit from any person unless permitted by a specific regulation. Due to the foregoing prohibition, facilitation payments are generally prohibited and charitable or political contributions are considered to be high-risk forms of gifts or benefits. In order for such a contribution to be exempted from the definition of a bribe under the Act, it must fulfil the criteria set out in the Notification of the Office of National Counter Corruption Commission Concerning the Provisions of the Acceptance of Property or any other Benefit on Ethical Basis by State Officials (*For more details, please see the response to the question on gifts and hospitality below*).

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

Pursuant to the general principle of the Code, the above prohibition applies to Bribery Offences concerning 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.

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Pursuant to the Act, even if the Bribery Offences are committed outside Thailand, if the offender is of Thai nationality or a public official, or if the Bribery Offences are committed against a person of Thai nationality or a public official, he or she shall be deemed to have committed an offence in Thailand.

Q4 Who do the rules apply to?

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

Under the Act, the prohibition also applies to Thai entities and/or foreign entities incorporated in other jurisdictions but operating a business in Thailand. These entities can be liable for failure to prevent bribery committed by representatives, employees, agents, affiliated companies, or any persons acting for or on behalf of the entity, irrespective of whether that person has the power or authority to take such action (the "Associated Person"), if the intent of the Associated Person was to obtain a benefit for such entity.

Q5 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 THB 100,000 (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 THB 140,000 (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 THB 100,000 (approximately US$3,000).

An official found guilty of any bribery offence shall be liable from five to 20 years' or life imprisonment and a fine ranging from THB 100,000 to THB 400,000 (approximately US$3,000 to US$12,000), or death. Where the offender is a judicial officer or public prosecutor or investigator, such person 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 the death penalty.

Fines and/or penalties under the Act

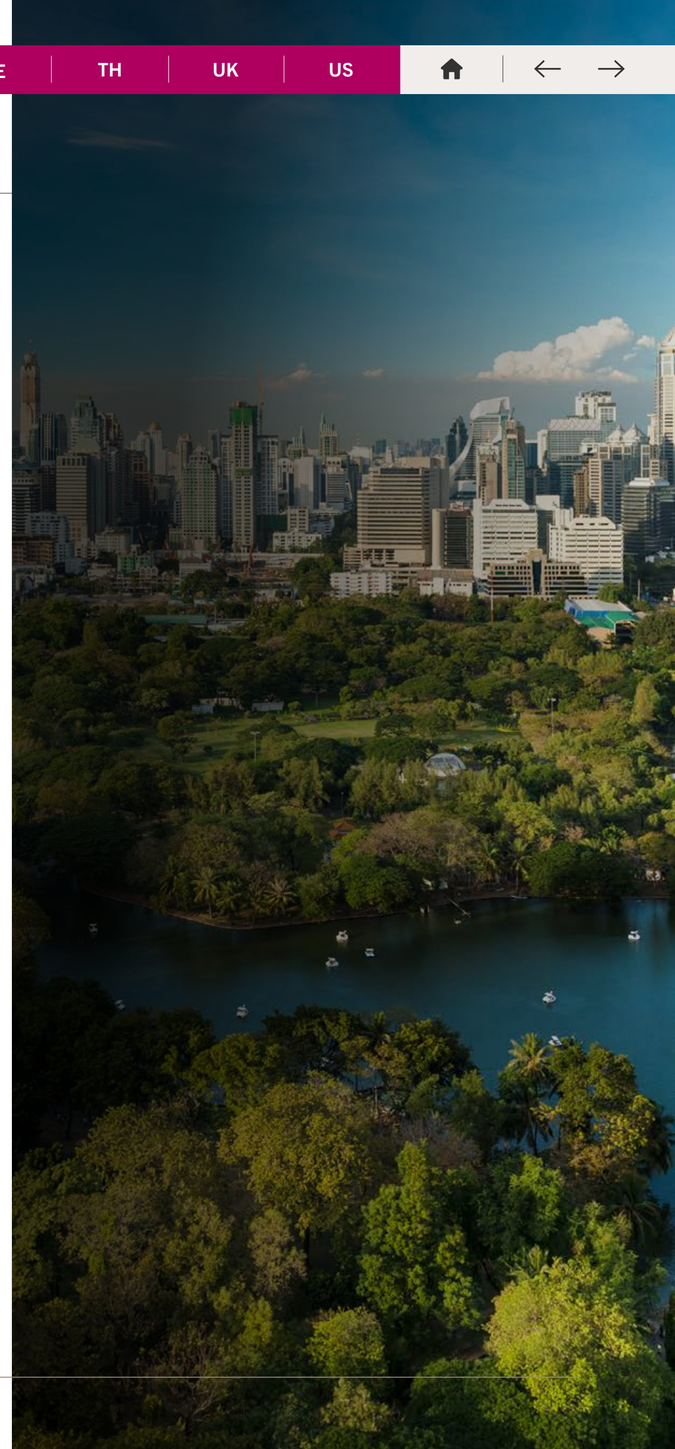
A public official found guilty of receiving any property or benefit which is not prescribed by a specific regulation, shall be subject to up to three years' imprisonment and/or a fine of up to THB 60,000 (approximately US$2,000).

A public 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 liable to imprisonment from five to 20 years' or life imprisonment and a fine ranging from THB 100,000 to THB 400,000 (approximately US$3,000 to US$12,000).

A person found guilty of requesting or accepting any property or any other benefits in consideration of persuading any public official, a foreign state official or an official of an international organisation 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).

A person found guilty of offering an undue reward to any public official, a foreign state official or an official of an international organisation, with an intent to induce such person to wrongfully perform, not perform, or delay the performance of any duty in his or her office, shall be subject to up to five years' imprisonment and/or a fine of up to THB100,000 (approximately US$3,000).

Where the offender is the Associated Person of a juristic entity, the offence was committed for the benefit of that entity, and the entity does not have sufficient internal controls to prevent the commission of such offence, the entity will itself be liable to a fine of one to two times the amount of damages sustained or benefits received.



Thailand

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

As previously mentioned, Thai public officials are generally prohibited from receiving gifts or any other benefits, except for reasonable gifts or benefits received in accordance with ethical standards. Pursuant to the announcement of the NACC on Criteria for Receiving Gifts or Other Benefits by Ethics of Public Officials B.E. 2563 (2020), a reasonable gift or benefit received in accordance with ethics is defined as (i) gifts or benefits from non-relatives valued at no more than THB 3,000 (approximately US$90) and (ii) corporate gifts given to the general public (e.g. calendars, diaries or notepads).

Public officials may also receive gifts or any other benefits exceeding the criteria described above if it is deemed absolutely necessary to accept them in order to maintain goodwill, friendship or good relations. However, in such cases, the public official must provide details and information about the receipt of gifts and benefits to their chief or supervisor for approval within 30 days from the date of receipt. The restriction on receiving gifts and benefits also applies to the family members of the public officials. Pursuant to the Regulations of the Prime Minister's Office on Giving or Receiving Gifts by Public Officials B.E. 2565 (2022), the family members of public officials are also prohibited from accepting gifts from persons involved in the execution of their official duties, unless the gifts are customary and given in accordance with traditions, provided that such gifts must be valued at no more than THB 3,000 (approximately US$90) per giver and per occasion, or as stipulated by the NACC. Persons involved in the execution of their official duties include visitors, those who gain benefits from the public officials' duties, and persons whose businesses are under the supervision of the officials, as defined under the regulations.

In addition to the regulations mentioned, most public organisations have also adopted a "no-gift policy" to be internally applied within their organisations. Many public sector entities have issued orders, announcements or policies to prevent their officials from accepting gifts or other benefits. Therefore, it is advisable to review each organisation's internal policy.

Q7 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. In July 2022, the NACC resolved to determine the guilt of the former finance minister, who also served as chairman of the board of directors, and the vice president of finance of Thai Airways for allegedly demanding money from Rolls-Royce, the engine manufacturer for the Boeing 777-200ER aircraft operated by Thai Airways. Although the statute of limitations for the alleged dereliction of duty has expired, these former senior officials of Thai Airways must still face criminal liability for purportedly using their authority dishonestly, which resulted in damage to the organisation (i.e. Thai Airways). They could be liable for a penalty of imprisonment ranging from five to 20 years, or even life imprisonment, and a fine of THB 2,000 to THB 40,000 (approximately US$60 to US$1,200).

> In 2024, NACC found that four executives of PTT Exploration and Production Public Company Limited ("PTTEP") had committed an offence by colluding to manipulate the bidding process, facilitating Rolls-Royce to secure the contract to supply PTTEP with two feed gas turbine compressors for the central production platform of the PTT Arthit Project for approximately THB 1 billion (approximately US$ 27 million). The NACC will further submit the relevant report, evidence and decision to (i) the Office of the Attorney General (OAG) to proceed with criminal legal proceedings and (ii) their supervisors to proceed with disciplinary action according to the offence. In addition, the NACC also proposed that the OAG issue an order to seize the assets in the total amount of approximately THB 10 million (approximately US$300,000).

> A major corruption case regarding foreign parties involved 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. In November 2020, the Supreme Court sentenced the two Thai officials to up to 50 years' imprisonment. Subsequently, the Anti-Money Laundering Office ("AMLO") seized US$500,000 from the Thai official in June 2021.

> A former judge from the Court of Appeals Region 8 was sued by the NACC on charges of corruption related to the performance of duties and offences against an official position. The former judge allegedly demanded a sum of up to THB 20 million in exchange for assisting in a case involving a Taiwanese suspect who had fled from a bank fraud case in Taiwan and entered Thailand to receive temporary bail. He was found guilty of receiving money from non-relatives, which were neither gifts nor benefits described by specific regulations, nor were they reasonable gifts or benefits received in accordance with ethical standards. On 30 June 2023, the Central Criminal Court for Corruption and Misconduct Cases sentenced the former judge to five years in prison and ordered the confiscation of THB 20 million or the equivalent value in assets from the individual.

> On 24 April 2024, the NACC found that the Subdistrict Mayor in Kanchanaburi Province had committed an offence by submitting asset and liability accounts containing false statements or the concealment of facts that should have been disclosed and acting in a manner that suggested an intent to conceal the source of assets and liabilities, according to the Act. The NACC will further submit

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the matter to the Criminal Case Division for Persons Holding Political Position to issue an order revoking the right to run for election and to impose criminal penalties in accordance with the offence.

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 1 October 2022 to 19 July 2023, 4,475 corruption cases were filed with the NACC and 2,748 were accepted for investigation, while the rest were forwarded to responsible agencies.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

Thai law does not specifically restrict private citizens from dealing with the benefits of contracts or sales procured by corrupt conduct (unless they were involved in the commission of the corruption offence).

However, under the Anti-Money Laundering Act B.E. 2542 (1999) (the "Anti-Money Laundering Act"), anyone who obtains or uses an asset, knowing at the time that the asset relates to the commission of a corrupt offence, thereby commits the offence of money laundering. Any person found guilty of such offence shall be liable to imprisonment for a term of up to 10 years and/or to a fine ranging from THB 20,000 to THB 200,000 (US$600 to US$6000).

Where the offender is an entity, such entity shall be liable to a fine ranging from THB 200,000 to THB 1 million (US$6000 to US$30,000). Where the offence occurred due to an order or act of any director, manager or person responsible for the conduct of the business of that entity, or where such persons are under a duty to give an order or do an act but refrain from doing so, which causes the entity to commit the offence, such persons shall be liable to imprisonment for a term of up to 10 years and/or to a fine of THB 20,000 to THB 200,000 (US$600 to US$6000).

Furthermore, the Supreme Court has ruled, in 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, the Anti-Money Laundering Act restricts public officials from transferring, using, depositing or acquiring assets or cash obtained through corruption.

Q9 What future developments are anticipated in this area?

In recent years, there have been notable developments regarding anti-corruption laws in Thailand. The Act, which came into force in 2018, expanded the scope of its predecessor, the 1999 Act, to include foreign entities that are registered abroad and operate a business in Thailand. Hence, foreign companies do not need to be physically present or registered in Thailand to be subject to the Act.

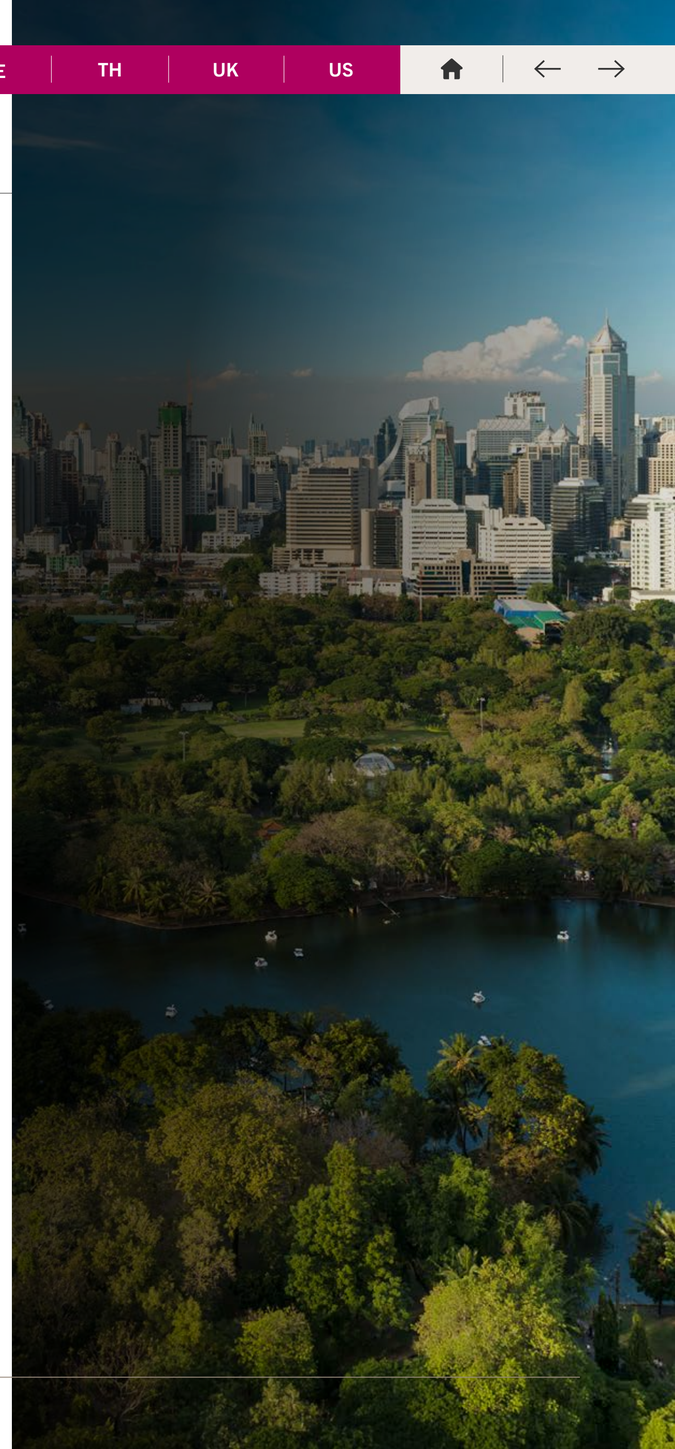
In addition, the Act also extended the liability of entities to acts of bribery committed by an Associated Person.

In order to promote public participation, the Act also established a new National Anti-Corruption fund to assist the NACC with investigation costs, to provide reward-based incentives to informants, and to raise awareness of anti-corruption locally.

In 2018, the NACC introduced the Extending Integrity and Transparency Business Roadmap (the "Project") to fight corruption, with an emphasis on integrity, ethics, and law and order. As part of the project for the fiscal year 2021, a memorandum of understanding (the "MOU") on integrity and transparency was signed by private companies who have contracts with the public sector. The MOU is aimed at promoting integrity and transparency in the business sector to help foster a corruption-free culture and prevent corrupt practices from becoming large-scale disasters.

According to its Anti-Corruption and Misconduct Action Plan (the "Master Plan"), the NACC's prime goal is to improve Thailand's Corruption Perceptions Index (CPI) to be ranked among the top 54 and/or achieve the score of no less than 50. It aims to achieve this through several measures, which include:

- developing technological systems to create transparency and reduce the use of discretion;
- increasing efficiency and transparency in the working procedure of the public sector;
- amending laws and regulations to reduce the use of discretion;



Thailand

- promoting and supporting the civil sector to participate in inspecting and monitoring corruption in the public sector; and
- increasing efficiency, transparency, and inclusivity of proceedings relating to corruption cases.

Monitoring the progress and performance of the Master Plan is the responsibility of the Steering Committee under the Master Plan, in connection with National Strategy on Anti-Corruption and Misconduct Issues (2018-2037). The Steering Committee is chaired by the NACC President and consists of experts and relevant agencies' representatives. To coordinate participation from all sectors, the Orchestra Model of data sharing will be implemented, including for the evaluation of achievement at project level and for overall perspective.

In its meeting in March 2021, the Cabinet acknowledged the Office of Public Sector Anti-Corruption Commission's (the "PACC") proposal to introduce measures to avoid conflicts of interest in the public sector, stop corruption and develop the framework of disclosure of assets and financial status of public officials. The proposal also includes campaigns against nepotism and the acceptance of gifts and benefits by public officials, as well as the promotion of public participation in preventing and suppressing corruption. The suggested measures include an introduction of a check-and-balance system and increasing access to knowledge and information on various procedures and laws, particularly for foreign investors. Furthermore, the PACC suggested that more whistleblowing channels be opened, for both nationals and foreigners who have been affected by corrupt public officials. Since then, the PACC, along with other government organisations, has adopted and developed these measures to be implemented in each organisation. Many organisations have issued internal policies to prevent corruption, such as the 'No Gift Policy' and policies to disclose the assets and financial status of public officials.

In 2024, the NACC declared its intention to continue its policy of "Prevention over Pressure" by advocating for measures to prevent corruption in all aspects, with a particular focus on preventing conflicts between personal and public interests. They have also developed and advanced the operations of the National Corruption Deterrence Center ("NCDC") to monitor, prevent, and suppress the corruption.

To promote confidence in investing in Thailand, a measure known as the Integrity and Transparency Assessment ("ITA") has been implemented. It serves as a tool for government agencies to self-evaluate and enhance their awareness, as well as improve the management and oversight of their operations. Additionally, the NACC has encouraged the private business sector to form a united front against corruption (Thai Private Sector Collective Action Against Corruption: CAC) and to participate in the inspection of operations within the public government sector.

Contacts

Pichitpon Eammongkolchai
Partner, Bangkok
Tel: +66 23 05 80 17
pichitpon.eammongkolchai@linklaters.com

Soammaras Ratanavanich
Managing Associate, Bangkok
Tel: +66 23 05 80 59
soammaras.ratanavanich@linklaters.com

Phornnapat Vutthithaveepat
Associate, Bangkok
Tel: +66 23 05 80 26
phornnapat.vutthithaveepat@linklaters.com

United Kingdom

United Kingdom

Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

The Bribery Act 2010 (the "UKBA"), which came into force in July 2011, overhauled the UK's previous anti-corruption regime, rationalising a number of statutes and common law offences prohibiting bribery and corruption.

The UKBA contains two general offences of bribing and being bribed and includes a specific offence of bribing a foreign public official ("FPO"). The UKBA also created 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 conduct in the whole of the UK, including Scotland, and also covers offences committed by UK nationals and residents, wherever such offences are committed.

Q2 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 them for the improper performance of such a function (section 1 UKBA). 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 (section 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.

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.

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 their official capacity as an FPO, and where 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 or not the advantage is financial 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.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

No. An offence may be committed under sections 1, 2 and/or 6 UKBA if the conduct comprising the offence, or any part of it, takes place outside the UK and the person committing the offence has a "close connection" with the UK, provided that if that conduct had taken place within the UK it would have formed part of such an offence.

Those with a "close connection" include: British citizens; British overseas territory citizens; a British National (Overseas); a British Overseas citizen; persons who are British subjects or British protected persons (as set out in the British Nationality Act 1981); individuals ordinarily resident in the UK; companies incorporated in any part of the UK; and Scottish partnerships (section 12 UKBA).

With regard to the "corporate offence" under section 7 UKBA (for which see below), it does not matter where in the world the unlawful conduct takes place if the corporate or partnership in question is incorporated or formed in any part of the UK or carries on business or part of a business in the UK, wherever it is formed.

Q4 Who do the rules apply to?

The UKBA has a very wide remit. It applies to conduct that takes place within the UK and to conduct by British citizens and individuals ordinarily resident in the UK and companies incorporated in the UK, no matter where it takes place (subject to the conditions under section 12 UKBA set out above).

Historically, a company could only be found liable under section 1, 2 or 6 of the UKBA if it could be shown that someone considered to be the "controlling mind and will" knew about or was involved in the offence. As this was difficult to prove, obtaining the conviction of an organisation was problematic for prosecutors. However, recent changes introduced under the Economic Crime and Corporate Transparency Act 2024 (ECCTA) are intended to address this issue. This is discussed further below under "What future developments are anticipated in this area?"

In addition, pursuant to section 7 UKBA, companies and partnerships incorporated or formed in the UK, and other companies and partnerships incorporated or formed elsewhere but which carry on business in the UK, may 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").

United Kingdom

Guidance on what constitutes adequate procedures has been issued by the Ministry of Justice, according to which a corporate's 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.

Q5 What are the fines/penalties?

An individual found guilty of an offence under section 1, 2 or 6 UKBA can be liable to an unlimited fine and/or 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 2015.

Where a commercial organisation is found to have committed one of the principal bribery offences, including bribing an FPO, any senior officer 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 and/or up to 10 years' imprisonment.

A definitive sentencing guideline came into force on 1 October 2014 which applies 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. Since its introduction, the guideline has been used to calculate financial penalties for a number of corporates accused of corruption offences - both after conviction and as part of a Deferred Prosecution Agreement ("DPA").

DPAs 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 (typically the Serious Fraud Office ("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 are made public.

At the time of writing, nine DPAs have been concluded by the SFO in relation to allegations of bribery. Three further DPAs have been concluded to resolve allegations of fraud and false accounting.

The scope and extent of self-reporting and cooperation 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; cooperating with the SFO by, for example, disclosing notes of witness interviews or allowing access to witnesses not interviewed by the company; 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. In each case, the approval of a DPA has resulted in a lower fine for the company with a reduction of, typically, 50% of what might have been expected following a conviction at trial (particularly where the company has demonstrated extensive co-operation throughout the investigation).

This has led to the consideration of whether it is necessary for a company to self-report wrongdoing in order to be offered a DPA. It appears that, although a self-report is strongly encouraged by the SFO, cooperation by the company with the enforcement agencies may be of greater importance.

The SFO has published the chapter of its internal operational guidance relating to the treatment of self-reports by companies and the extent to which it will take them into account when considering whether to prosecute. In addition, the agency has published guidance on corporate cooperation and DPAs, including information on the principles by which the SFO will determine whether a DPA would be an appropriate outcome in any given circumstances. The DPA guidance states that cooperation will be "a key factor to consider when deciding whether to enter into a DPA". At the time of writing, the SFO was reported to be reviewing its corporate enforcement policy, which may place more emphasis on early self-reporting.

United Kingdom

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

The giving and receiving of gifts and hospitality is not illegal but can raise questions of legitimate intention and give the appearance of attempting to influence. The SFO has issued guidance which recognises that bona fide hospitality or promotional or other legitimate business expenditure is an established and important part of doing business. However, it also notes that bribes are sometimes disguised as legitimate business expenditure.

Whether or not the SFO will prosecute in respect of a bribe presented as hospitality or some other business expenditure will be governed by relevant prosecuting codes and principles. If, on the evidence, there is a realistic prospect of conviction, the SFO will prosecute if it is in the public interest to do so. In appropriate cases the SFO may use its powers under proceeds of crime legislation as an alternative (or in addition) to prosecution.

In practice, many companies now choose to place financial limits on the expenditure and/or gifts that may be given or received by its staff, particularly where public officials are involved. In any event, it is advisable to maintain records of any hospitality or gift given or received to counter any later suggestion that they were inappropriate.

Q7 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. However, it is the SFO, currently headed by Nick Ephgrave, that has taken the lead in prosecuting offences of bribery and corruption.

To date there have been over 100 convictions under the UKBA, most of which have been of individuals for low level offences. It is fair to say that DPAs are becoming a common method of dealing with high value corruption; the vast majority of large-scale corruption cases that have been investigated by the SFO in recent years have been settled by way of DPA rather than prosecution. 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 prosecution of an offence under this provision. This was followed in February 2018 by the conviction of Skansen Interiors Limited for a section 7 UKBA offence in the first contested prosecution brought under that provision.

The SFO continues to investigate companies and individuals in a large number of suspected fraud and corruption cases. A longstanding SFO bribery investigation was brought to a close in April 2021 when GPT, a former subsidiary of Airbus, pleaded guilty to one count of corruption (under legislation pre-dating the UKBA) in relation to the awarding of £2bn of contracts to supply communications systems to the Saudi Arabian National Guard. The company was fined £7.5m and ordered to pay £20.3m by way of confiscation. However, two men prosecuted in connection with the company's wrongdoing were acquitted of bribery.

In October 2021, following a lengthy SFO investigation, Petrofac Limited pleaded guilty to seven separate counts of failing to prevent bribery across three Middle Eastern states and was ordered to pay approximately £77m by way of fines and confiscation. Two former executives of Petrofac will stand trial in October 2026 charged with offering or paying bribes in connection with the Middle Eastern contracts.

During the course of 2020 and 2021 the SFO secured the convictions of four individuals for bribery and corruption offences in relation to the activities of Unaoil, a Monaco-based oil service group. All were sentenced to periods of imprisonment. However, all but one of the convictions were subsequently quashed by the Court of Appeal following the discovery of disclosure and conduct failures by the SFO during the investigation process.

Nonetheless, the SFO and National Crime Agency have successfully prosecuted a number of companies and individuals for bribery-related offences. Notable examples include:

- In November 2022, the SFO secured the first conviction of a company for the substantive offence of bribery under section 1 Bribery Act 2010, when Glencore Energy (UK) Ltd pleaded guilty to bribery offences in five African countries. That offence requires that someone who can be identified as the directing mind and will of the company was involved in its commission. At least 11 individuals are thought be under investigation by the SFO in connection with the bribery scheme.
- In May 2024 the former Chief of Staff to the Madagascan President and her business partner were sentenced to periods of imprisonment for attempting to bribe a gemstone company in exchange for "highly lucrative" contracts that would have permitted the company to operate in Madagascar.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

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.

United Kingdom

Q9 What future developments are anticipated in this area?

Tackling economic crime, including corruption, money laundering and fraud, is likely to be high on the new UK government's agenda. Two pieces of legislation enacted in the last couple of years, the Economic Crime (Transparency and Enforcement) Act 2022 and the ECCTA, both seek to tackle economic crime and the use – or mis-use – of the UK's financial, corporate and real estate sectors for criminal activity, and in particular money laundering and fraud.

The ECCTA introduced a new corporate offence of failing to prevent fraud, similar to the failing to prevent bribery offence in section 7 UKBA. This will come into force once guidance on "reasonable procedures" that organisations can put into place to prevent fraud has been finalised and published, most likely in the later part of 2024. It is possible that we will see eventually more enforcement in this area, although the government has stated that a major aim of this legislation is to drive a change in corporate culture.

In addition, the ECCTA introduced changes to the corporate criminal liability regime intended to address the issues historically faced by prosecutors looking to hold corporates accountable for criminal misconduct, by expanding the range of persons for whose conduct an organisation may be held liable to include "senior managers". The new regime, which came into effect on 26 December 2023, focuses on the roles and responsibilities of the relevant senior manager, rather than their job title. It is someone who plays a "significant role" in making management decisions about all or a substantial part of the organisation's activities, or in actually managing or organising those activities. However, it is likely that there will be considerable debate over what exactly this means.

For the present, the provisions will only apply to specified economic crimes, including bribery, money laundering, fraud, false accounting, fraudulent trading and other related offences. However, the new basis for corporate criminal liability may ultimately result in an increase in the number of corporate prosecutions for bribery and other economic wrongdoing.

United Kingdom

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Contacts

Satindar Dogra
Partner, London
Tel: +44 20 7456 4316
satindar.dogra@linklaters.com

Alison Saunders
Partner, London
Tel: +44 20 7456 3812
alison.saunders@linklaters.com

Elly Proudlock
Counsel, London
Tel: +44 20 7456 2594
elly.proudlock@linklaters.com

Ben Packer
Partner, London
Tel: +44 20 7456 2774
ben.packer@linklaters.com

Jane Larner
Counsel, London
Tel: +44 20 7456 4244
jane.larner@linklaters.com

Francesca Bonner-Evans
Managing Associate, London
Tel: +44 20 7456 2499
francesca.bonner-evans@linklaters.com

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Q1 What legislation makes corrupt activities unlawful in this jurisdiction?

Corrupt activities are unlawful under federal and state legislation, with respect to both domestic United States officials and officials of foreign countries.

Bribery of foreign officials is unlawful under the Foreign Corrupt Practices Act ("FCPA").

Bribery of or by U.S. officials is unlawful under a variety of federal and state laws, most notably 18 U.S.C. § 201 and the Hobbs Act.

Commercial bribery is also unlawful under the laws of many U.S. states and can become a federal crime under the Travel Act.

Under the new Foreign Extortion Prevention Act ("FEPA"), it is unlawful for foreign government officials to engage in a variety of bribery practices with a U.S. nexus.

Q2 What activities are prohibited?

Foreign Bribery

The "anti-bribery" provisions of the FCPA prohibit Covered Persons (defined below) from giving, offering, or promising anything of value to foreign government officials, political party officials and candidates for political office in order to obtain or retain business or to gain a business advantage. Business advantage is interpreted broadly, and can include the attainment or retainment of contracts, influencing procurement, gaining bid information, avoiding taxes, influencing legal proceedings or regulations and circumventing licensing requirements or import controls. The FCPA does not require the corrupt offer or payment to be successful.

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

Unlike most foreign bribery laws, the FCPA does contain an exception for facilitation payments, which are defined as "facilitating or expediting payment" to foreign officials for "routine government action." The exception is generally interpreted to apply only to non-discretionary acts that do not entail abuse or misuse of an official's position. However, facilitation payments can still constitute a books and records violation if they are not properly recorded.

The FEPA, passed in December 2023, now criminalizes the demand or acceptance of bribes by foreign officials when such bribes have a U.S. nexus. Specifically, foreign officials cannot "corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value personally or for any other person or nongovernmental entity, by making use of the mails or any means or instrumentality of interstate commerce, from any person…while in the territory of the United States," or from Issuers or Domestic Concerns (both terms defined below), in return for the commission of official acts, omitting or violating official duty, or conferring any improper advantage. The law was intended fill a gap by criminalizing "demand-side" bribery, whereas the FCPA addresses the "supply."

Although the United States does not have a federal prohibition on commercial bribery (of private sector individuals), that conduct may still be captured by state commercial bribery laws in combination with the Travel Act, as described below.

U.S. Federal and State Bribery

Bribery of U.S. federal public officials is prohibited under 18 U.S.C. § 201, which prohibits both the offer or giving, and solicitation or receipt, of anything of value in exchange for influence in the performance of an official act, as well as the payment of gratuities "for or because" of an official act.

The Hobbs Act further targets official corruption by criminalizing extortion by public officials, also known as extortion "under color of official right." A variety of other federal U.S. laws address specific types of bribery, such as bribery of financial examiners or port security officials.

Most U.S. states also criminalize public and commercial bribery. New York, for example, prohibits the giving and receipt of bribes, rewards and gratuities by public servants, as well as the giving and receiving of a benefit of any kind in exchange for influencing business conduct by private parties.

The Travel Act is a federal law that forbids the use of U.S. mail or interstate or foreign travel for the purpose of engaging in certain unlawful acts, which include extortion and bribery in violation of federal law or the state law in which the act takes place.

This allows the United States to apply federal criminal penalties for commercial bribery, including on those who engage in commercial bribery abroad, so long as such conduct involves interstate travel or communications.

Q3 Do the corrupt activities have to take place in whole or in part within this jurisdiction to be considered unlawful?

FCPA: With respect to FCPA violations, Issuers and Domestic Concerns (both terms defined below) and their agents are liable for corrupt conduct, even if it occurs entirely outside the United States. Any Person (as defined below) is liable if a corrupt payment has a territorial nexus to the United States. Territorial nexus has generally been interpreted broadly by the U.S. Department of Justice (the "DOJ") such that a seemingly minimal connection to the United States may be sufficient for the DOJ to take the position that it has jurisdiction. These include any use of U.S. mails or means of interstate commerce, or any intrastate use of any interstate instrumentality. It also means that sending any messages, whether by phone, email, text, or fax, to, from or through the United States, sending wire transfers to, from or otherwise using

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the U.S. banking system, or traveling across U.S. or state borders could constitute sufficient jurisdictional conduct.

Although the broadest of these assertions have been somewhat limited by U.S. courts, the DOJ still pursues many cases of extraterritorial conduct involving non-U.S. actors. In recent years, the DOJ has also increasingly utilized money laundering and wire fraud statutes in cases that are beyond the FCPA's reach, both of which ground U.S. nexus to money transfers within the U.S. financial system.

FEPA: The FEPA's only explicit jurisdictional limitation is on the criminalization of demanding or accepting bribes from "any person while in the territory of the United States." The prohibition on demanding or accepting bribes from Issuers or Domestic Concerns does not have such a limitation in the statutory text. The text does, however, state that offenses under the FEPA are "subject to extraterritorial Federal jurisdiction." It has yet to be seen how these jurisdictional bounds will be tested in practice.

Q4 Who do the rules apply to?

FCPA: The FCPA's anti-bribery provisions apply to three categories of "Covered Persons."

"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 U.S. citizens, nationals and residents (wherever located), and corporations and other business entities organized under U.S. state or territory laws or having their principal place of business in the United States, as well as those corporations and entities' officers, directors, employees or agents.

"Any Persons"

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

The FCPA also recognizes traditional rules of subsidiary and successor liability, whereby parent companies can be liable for actions of a subsidiary, and successor entities can acquire the liability of predecessor entities through reorganization or M&A transactions.

The DOJ has also historically applied the FCPA to non-U.S. individuals through principles of conspiracy and complicity liability, whereby individuals could be held liable for conspiring to commit, or aiding and abetting, FCPA violations. These applications are now in doubt after the Second Circuit limited them to only those who could commit primary violations of the FCPA. This is a split with the Seventh Circuit, however, which has upheld them. The Second Circuit has also recently called the DOJ's broad definition of "agent" into question.

As noted above, other anti-corruption and anti-money laundering laws can and are increasingly applied to non-U.S. individuals and corporations for conduct outside the United States.

FEPA: The FEPA, meanwhile, applies to foreign officials. The definitions of Issuers, Domestic Concerns, and Any Persons otherwise mirror those of the FCPA.

"Foreign Officials"

This term includes: (i) any official or employee of a foreign government or any department, agency, or instrumentality thereof; (ii) any senior foreign political figure; (iii) any official or employee of a public international organization; and (iv) any person acting in an official or unofficial capacity for or on behalf of a government, department, agency, or instrumentality or a public international organization.

Q5 What are the fines/penalties?

FCPA Anti-Bribery Penalties

Entities are subject to a criminal fine of up to US$2m per violation. Any officer, director, stockholder, employee or agent who wilfully violates the FCPA may face a criminal fine of up to US$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.

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

FCPA Books and Records Penalties

An individual may be fined up to US$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 US$25m. In both situations, civil proceedings could result in fines and disgorgement equal to the amount of the gain.

FEPA Penalties

Any person who violates the FEPA may face a criminal fine not to exceed $250,000 or three times the monetary equivalent of the thing of value and up to fifteen years' imprisonment.

Domestic Bribery Penalties

Those convicted of paying or receiving bribes under §201 may be fined up to US$250,000 or triple the value of the bribe (whichever is greater), and imprisoned for up to 15 years. Payors or recipients of gratuities under §201 may be fined up to US$250,000 and imprisoned for up to two years. Violations of the Hobbs Act are punishable by a fine of up to US$250,000 and imprisonment of up to 20 years. Fines and penalties vary for state anti-corruption laws.

Travel Act Penalties

Individuals that violate the Travel Act by using mails or travelling or engaging in interstate commerce to commit extortion or bribery in the United States or abroad may be fined up to US$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 US$500,000 or twice the amount sought or gained per offense.

Q6 What approach is taken by regulators to the giving and receiving of gifts and hospitality in commercial settings?

With respect to bribery of foreign officials by private parties, the FCPA does not expressly prohibit gifts or hospitality expenses incurred for foreign official. Such expenses may be considered something "of value," and there is no minimum threshold amount for corrupt gifts or payments under the FCPA. The Resource Guide to the FCPA ("the Guide"), which was jointly released in 2020 by the DOJ and the SEC, provides several hallmarks of appropriate gift-giving: "the gift is given openly and transparently, properly recorded in the giver's books and records, provided only to reflect esteem or gratitude, and permitted under local law."

Items of nominal value, such as cab fare, reasonable meals, and entertainment expenses, are unlikely to result in enforcement action by DOJ or SEC. A 2023 advisory opinion issued by the DOJ indicates that reasonable travel expenses, such as economy class airfare and lodging at a mid-range hotel, coupled with a legitimate business purpose would likely not result in enforcement action. The Guide notes that the agencies' enforcement cases often involve single instances of large, extravagant gift-giving, such as sports cars or luxury items. The bribery of U.S. federal officials is similarly prohibited under 18 U.S.C. § 201, which criminalizes the payment, offer, and receipt of bribes with no minimum threshold.

Similarly, there are no specific federal statutory limits to gifts or hospitality expenses provide to private parties and it is unlikely that reasonable hospitality expenses or gifts would result in enforcement action by the DOJ and the SEC. Still, it is important to note that both the DOJ and the SEC are able to target domestic commercial bribery through various mechanisms. For instance, the DOJ can punish acts of domestic bribery in a commercial setting through the Travel Act, a federal statute that prohibits travel or use of the mails in interstate or foreign commerce with the intent to distribute the proceeds of any unlawful activity, including violations of the FCPA or state bribery laws. The SEC may also pursue enforcement actions against publicly traded companies for commercial bribery under the FCPA's accounting provisions, which require publicly traded companies to keep accurate records and maintain adequate internal controls.

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Q7 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 2023, the DOJ brought 17 enforcement actions and the SEC brought nine, the sum total of which resulted in an estimated $776 million in penalties.

The DOJ may bring charges against individuals and organizations for criminal violations of the FCPA through actions in U.S. courts, such as an indictment, criminal information or criminal complaints. It can also resolve criminal matters through a declination or negotiated resolution, such as a plea agreement, deferred prosecution agreement ("DPA") or non-prosecution agreement ("NPA").

The DOJ has substantially incentivized corporate disclosure and cooperation by making its former FCPA Pilot Program permanent and incorporating it into the Justice Manual as the Corporate Enforcement Policy ("CEP")[1].

Under the CEP, the DOJ offers the presumption of a declination for companies that, absent aggravating circumstances, (i) voluntarily self-disclose FCPA-related misconduct; (ii) fully cooperate with the DOJ's investigation; and (iii) timely and appropriately remediate, including by addressing internal flaws in internal controls and compliance programs.

Even companies with aggravating circumstances (which can include pervasive conduct, recidivism, executive involvement and substantial profit from misconduct) that face criminal resolutions may substantially benefit from participating in the CEP, given that the DOJ will still recommend a 50% reduction in otherwise applicable fines and refrain from requiring a compliance monitor. Moreover, companies that do not self-disclose, but do fully cooperate and remediate, can still earn up to a 25% reduction in applicable fines.

The SEC can pursue civil injunctions and remedies through U.S. courts, as well as administrative actions. Like the DOJ, it also may pursue negotiated resolutions through DPAs and NPAs, which typically require cooperation with the SEC investigation and compliance with express undertakings.

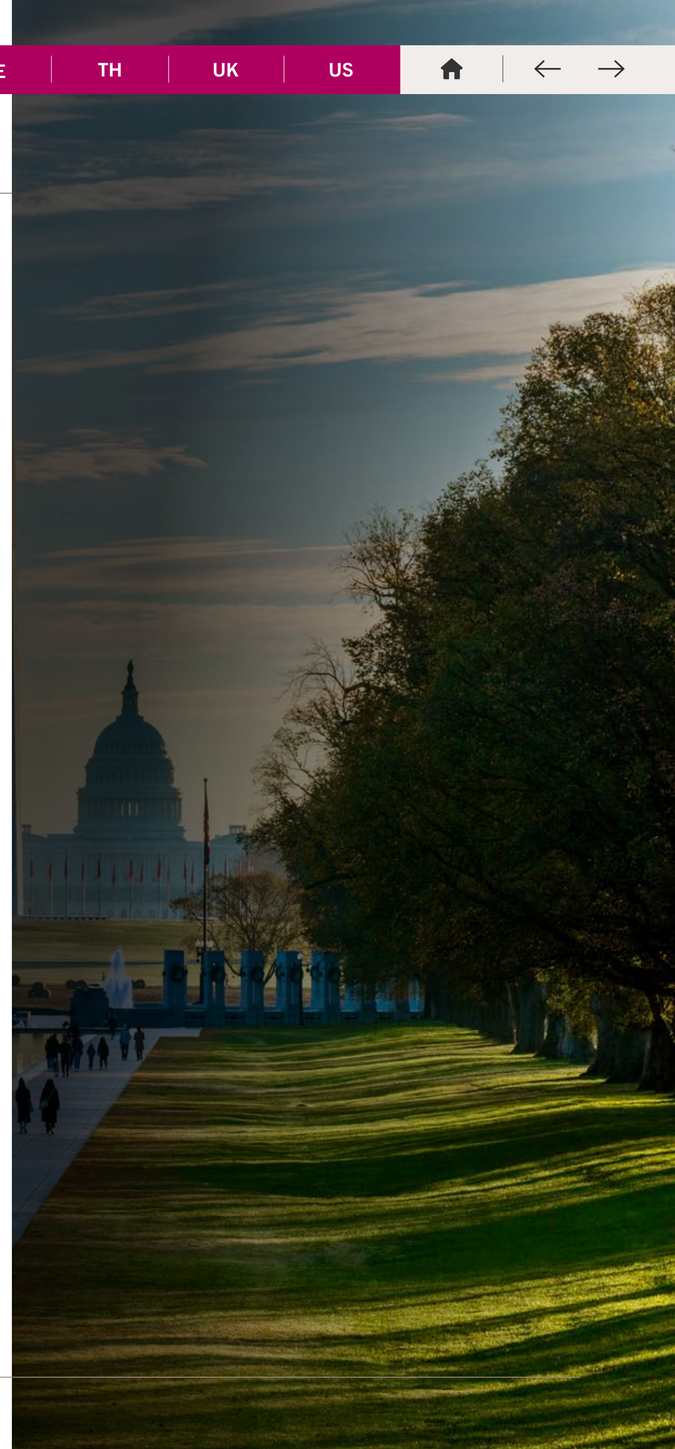
Although FCPA enforcement has traditionally been the purview of the DOJ and SEC, the Commodities and Futures Trading Commission ("CFTC") announced its first enforcement action for foreign corruption last year. The CFTC cannot directly prosecute FCPA violations but takes the position that the same conduct could also violate the Commodity Exchange Act ("CEA").

Domestic corruption is typically pursued by both local and federal agencies, often working in tandem. Here, enforcement on a federal level is typically seen as more robust. And while domestic corruption enforcement was traditionally focused on individuals rather than corporations, the DOJ has increasingly sought corporate resolutions similar to FCPA settlements.

Q8 Are there any legal restrictions on dealing with financial proceeds suspected to have been procured by corrupt conduct?

As with most criminal laws in the United States, proceeds of unlawful activity under anti-corruption laws, including the FCPA, are subject to disgorgement, forfeiture and restitution of proceeds that are obtained as a result of corrupt payments.

In addition, a robust slate of anti-money laundering laws prohibit the use of proceeds of corrupt activity. 18 U.S.C. § 1956 and 18 U.S.C § 1957 are the primary federal money laundering statutes, which criminalize most transactions in proceeds of specified categories of unlawful activity, including bribery. Most U.S. states also have money laundering statutes.



[1] See our blog post here: https://www.linklaters.com/en/insights/blogs/businesscrimelinks/2024/april/doj-dangles-more-carrots-for-individual-informants-with-new-pilot-program

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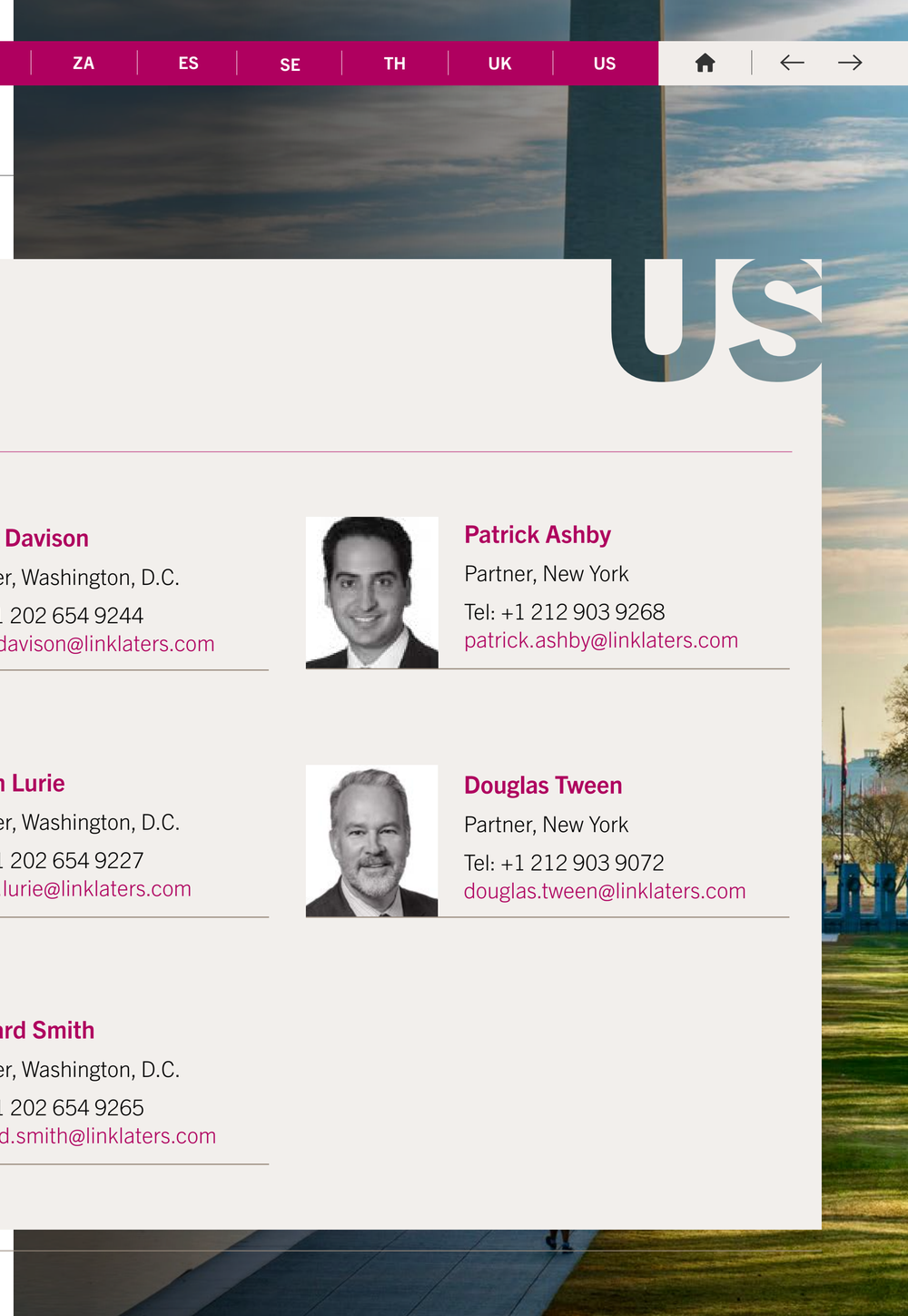
Q9 What future developments are anticipated in this area?

In June 2021, President Biden issued a "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" (the "National Security Memorandum") declaring the fight against global corruption to be a national security priority. It laid out five objectives: (1) increasing agency resources and coordination; (2) curtailing illicit finance, through accelerating the creation of a beneficial ownership registry, seizing stolen assets and closing regulatory loopholes; (3) holding corrupt actors accountable, including through Global Magnitsky Act sanctions, civil and criminal enforcement under the DOJ's Kleptocracy Asset Recovery Initiative; (4) strengthening international partnerships such as the UN, G7 and Financial Action Task Force; and (5) improving foreign assistance to build local capacity of foreign governments.

Thus, FCPA enforcement will likely continue to be characterized by ever-increasing international cooperation, as it has in recent years. 2022 and 2023 saw additional coordination on resolutions among different authorities, albeit on a lesser scale than the major resolutions in 2020. The passage of the FEPA also suggests that the international dimension of enforcement is likely to expand, with foreign officials being targeted in addition to the covered persons under the FCPA.

At the same time, there are indications that U.S. enforcement agencies are looking at additional tools to combat foreign corruption. Deputy Attorney General Lisa Monaco has characterized sanctions as "the new FCPA." Although sanctions enforcement targets a wide array of activities not limited to corruption, the U.S. Department of the Treasury's Office of Foreign Assets Control has continued to utilize its authority under the Global Magnitsky Act to impose costs on corrupt foreign actors, particularly against Russia in connection with the war in Ukraine. This trend, combined with the new authority to charge foreign officials under the FEPA, suggests that additional enforcement activity is on the horizon.



Contacts

Doug Davison
Partner, Washington, D.C.
Tel: +1 202 654 9244
doug.davison@linklaters.com

Patrick Ashby
Partner, New York
Tel: +1 212 903 9268
patrick.ashby@linklaters.com

Adam Lurie
Partner, Washington, D.C.
Tel: +1 202 654 9227
adam.lurie@linklaters.com

Douglas Tween
Partner, New York
Tel: +1 212 903 9072
douglas.tween@linklaters.com

Richard Smith
Partner, Washington, D.C.
Tel: +1 202 654 9265
richard.smith@linklaters.com

linklaters.com