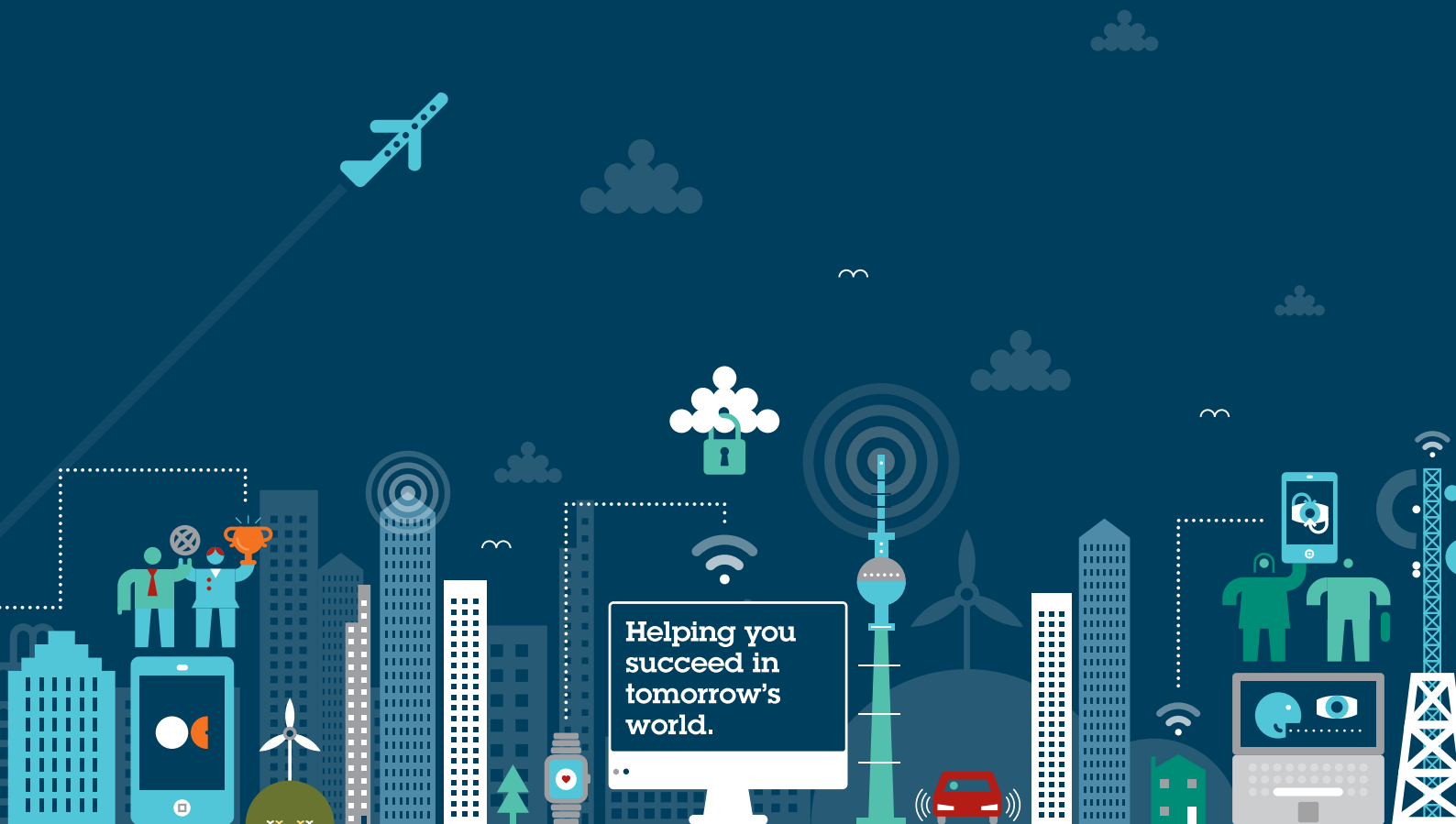


Bribery and corruption provisions across Osborne Clarke jurisdictions



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world.

Foreword

Although international trade presents great opportunities, risks can also arise from expanding or trading overseas. This may be particularly so in relation to bribery, where the actions of third parties can create potential criminal liability as business is transacted. Increasingly tough anti-bribery legislation has been adopted in many countries and enforcement agencies around the world are committing more resource and energy to target corrupt activity.

With that backdrop in mind, we have prepared a comparative guide providing an overview of the way in which bribery is policed in each of the jurisdictions in which we now practice.

This guide is intended to provide a quick-glance resource that will enable you to ensure that as your business continues to thrive, it does so free from the risk of bribery.

The table sets out the legislation, penalties, enforcement bodies and key recent cases in each Osborne Clarke jurisdiction. It also gives you the contact details for our lead lawyer for anti-bribery in each country.

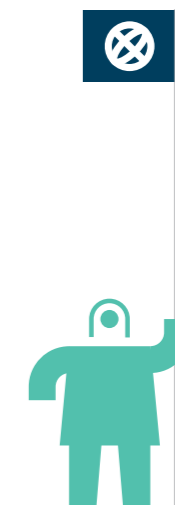
Please do contact us for further advice on compliance programmes that will help ensure that your business does not encounter unintended risks or, in the event of an investigation arising, how this can be best addressed.



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Belgium

What is the principal law in the jurisdiction?	The Belgian Criminal Code (the “Code”), sections 246 to 250 (public corruption) and 504bis to 504ter (private corruption)
What key offences does it provide?	<p>The Code sets out two main offences:</p> <ol style="list-style-type: none"> Public bribery exists where a person directly or indirectly proposes to a person exercising public duties (interpreted very broadly) – or if this person solicits, accepts or receives – an offer, a promise or an advantage, for that person or for a third party, in order to perform or omit to perform an act that falls within the scope of that person’s function, or which is facilitated by that person’s function. Private bribery exists where a person directly or indirectly proposes to a person who is a director/proxy-holder/employee of a corporate entity or an individual – or if this person solicits, accepts or receives – an offer, a promise or an advantage, for that person or for a third party, in order to, without knowledge/authorisation of the board of directors/shareholders meeting/attorney in fact/employer, perform or omit to perform an act that falls within the scope of that person’s function, or which is facilitated by that person’s function.
Does it apply to individuals and companies?	The main offences in the Code can be committed by either individuals or companies. Non-profit organisations, civil companies, partnerships, unincorporated companies, and companies in formation are considered as “companies” for these purposes. However, the Code will not apply to certain listed state entities, such as the Federal state and the Regions.
To what extent is the law extra-territorial?	<p>As a general rule, all offences taking place in Belgium will be prosecuted and judged in Belgium, regardless of whether the offence is committed by a Belgian or foreign individual/company.</p> <p>Foreign companies can be prosecuted if their main centre of activities, or the part of their business relating to the corruption offence, is located in Belgium, even if the company is incorporated in another country.</p> <p>Public bribery committed by a Belgian individual/company in another country can also be prosecuted. However, if the (Belgian) offender is vested with a mandate in an international public institution, or is a foreign public officer, he will only be prosecuted if the laws of the country where the offence took place also qualify such actions as a criminal offence.</p>
What is the test that has to be applied for corporate liability?	<p>A company will be held criminally liable provided the conditions relating to the offence in the Code are fulfilled, and that the offence is linked to the company’s corporate purpose, the defence of its interests, or has been made on its behalf.</p> <p>Private bribery (as opposed to public bribery) will only be prosecuted if the director/employee’s company’s board of directors, shareholders or employer did not authorise the bribery in any form whatsoever.</p> <p>If the offence is solely due to actions or omissions committed by identified individuals acting on behalf of the company, either the company or the individual can be prosecuted, depending on who committed the “most material fault”.</p> <p>An individual acting on behalf of the company and the company will be held jointly liable if the individual committed the offence wilfully and knowingly.</p>

What is the maximum sanction applied?	<p>Public corruption:</p> <ul style="list-style-type: none"> – Individuals: maximum 15 years’ imprisonment and maximum €4,000,000 fine – Companies: maximum €8,000,000 fine <p>Private corruption:</p> <ul style="list-style-type: none"> – Individuals: maximum 3 years’ imprisonment and maximum €400,000 fine – Companies: maximum €800,000 fine
Has there been a headline case?	A partnership composed of municipalities and managing healthcare facilities and hospitals in the Charleroi region was recently suspected of bribery at board level. This partnership is currently being audited and the outcome of this audit is not known yet.
What agency enforces the relevant law and how actively is it enforced?	<p>The Central Office for the Fight Against Corruption (“COFC”) (“<i>Office Central pour la Répression de la Corruption [OCRC]</i>” – “<i>Centrale Dienst voor de Bestrijding van Corruptie [CDBC]</i>”) is a specific division of the federal police in charge of investigating bribery, in particular regarding public bribery.</p> <p>The COFC focuses on bribery in public tenders or public corruption and financial fraud.</p> <p>Private corruption is more rarely prosecuted because evidence of the offence is difficult to gather.</p>
Are any key developments expected in the next 18 months?	<p>The Law of 18 December 2016 concerning various provisions on the healthcare sector introduces a so-called ‘Sunshine Act’ in Belgium.</p> <p>Based on this law, any (foreign or Belgian) entity bearing a marketing authorisation for, importing, manufacturing, producing, or distributing animal or human medicine, or medical devices, must notify the Federal agency for medicines and healthcare products (“FAMHP”) of any premium or monetary advantage given to a healthcare professional or organisation (subject to several exceptions detailed in the law).</p> <p>Non-compliance with the law can lead to fines up to €120,000.</p> <p>This law came into force on 23 June 2017.</p>

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China

What is the principal law in the jurisdiction?	<ul style="list-style-type: none"> – The Criminal Law of PRC (the “Criminal Law”) – The Anti-unfair Competition Law of PRC (the “Anti-unfair Competition Law”) – The Interim Regulations on Prohibition of Commercial Bribery Issued by the State Administration for Industry and Commerce (the “Interim Regulation”) – Opinions on Certain Issues Concerning the Application of Law in Handling Criminal Cases of Commercial Bribery Issued by the Supreme People’s Court and the Supreme People’s Procuratorate (the “Opinion”) – Other relevant interpretations issued by the Supreme People’s Court, the Supreme People’s Procuratorate or the State Administration for Industry and Commerce
What key offences does it provide?	<p>The Criminal Law sets forth crimes of bribing government officials (Clause 389), non-government officials (Clause 164) as well as officials of foreign governments and public international organisations (Clause 164). If an entity commits the crime under Clause 164, it will be fined and the individuals who are directly in charge and other persons who are directly responsible for the crime will also be prosecuted (Clause 164).</p> <p>For offences relating to receiving a bribe, the Criminal Law distinguishes by the parties involved – i.e. government officials or non-government officials. There is also a separate criminal offence with respect to a government entity receiving a bribe. Where this offence is committed, the entity will be fined and certain related people will be also liable.</p> <p>The “Anti-unfair Competition Law” and the “Interim Regulation” set forth further offences of bribing others and of receiving a bribe.</p>
Does it apply to individuals and companies?	Both individuals and companies are regulated by the laws and regulations detailed above.
To what extent is the law extra-territorial?	<p>Offences can be committed even where the conduct takes places overseas if there is a connection with China as provided for under PRC law – for example, if the victim or the offender is a PRC national. PRC law may also have an extra-territorial effect if so provided for by international treaties that China has signed.</p> <p>In the light of the Criminal Law, bribing officials of foreign governments or public international organisations shall be punished regardless whether the briber is a person or entity (Clause 164).</p>

What is the test that has to be applied for corporate liability?	<p>Under Article 30 of the PRC Criminal Law, any entity that commits a crime can be held criminally liable for this crime and fined accordingly. The Supreme Court of the PRC has clarified that any crimes committed by the officers, employees and agents of an entity can be treated as crimes committed by the entity itself, if:</p> <ul style="list-style-type: none"> – the crime is committed on behalf of the entity; – the crime is committed for the benefit of the entity; and/or – there is a gain of illegal income by the entity. <p>Under the Interim Regulation, the conduct of commercial bribery by the staff of a business operator for the purpose of sale or purchase of commodities shall be regarded as the conduct of the business operator.</p>
What is the maximum sanction applied?	<p>Individuals: for a person receiving a bribe, the sanction is a minimum 5 years’ imprisonment, without an upper limit. The court can also order the confiscation of relevant property; for a person who bribes another, the maximum is 10 years’ imprisonment and an unlimited fine.</p> <p>Companies: unlimited fine; the individuals who are directly in charge and other persons who are directly responsible for the crime can also be punished.</p>
Has there been a headline case?	In 2013, the Chinese subsidiary of GlaxoSmithKline PLC was investigated for bribery. The authority fined GSK US\$489 million – the biggest corporate penalty ever at the time – and imposed a suspended prison sentence on one executive, for allegedly bribing doctors.
What agency enforces the relevant law and how actively is it enforced?	<p>Multiple authorities can enforce the law on commercial bribery. This, to some extent, impairs the effect of enforcement. The following authorities are considered as the main and most active authorities:</p> <ul style="list-style-type: none"> – State Administration for Industry & Commerce of the PRC; – The Supreme People’s Procuratorate of the PRC; – The Public Security Department.
Are any key developments expected in the next 18 months?	<p>The Anti-unfair Competition Law was revised and published for seeking public comments in 2017.</p> <p>It is highly possible the new law will be effective in the next 18 months, although it still depends on the schedule of the lawmakers and the public’s responses to the revisions.</p>

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France

What is the principal law in the jurisdiction?	Articles 432, 433, 435 and 445 of the penal code (“PC”) for private corruption Sapin II Act of 9 December 2016 (anti-bribery preventive measures)
What key offences does it provide?	Articles 433-1 and 435-3 of the PC set out the key offence of bribing a public official. Articles 432-1 and 435-1 PC criminalise a public official receiving a bribe. Article 445-1 PC provides an offence of bribing a private person and article 445-2 PC criminalises a private person receiving a bribe. Sapin II Act of 9 December 2016 sets out eight preventive measures to fight against corruption that private companies (with a turnover of over €100 million and with more than 500 employees) need to take. If a company fails to implement these measures, the legal entity and its managers can be held liable.
Does it apply to individuals and companies?	Active and passive corruption can be committed by both individuals and companies. The measures provided by Sapin II Act only apply to either individuals or companies. However, if companies do not comply with this law, both managers and the legal entity itself can be held liable.
To what extent is the law extra-territorial?	The French anti-bribery laws apply overseas if the offender is French (for a company this would mean being incorporated in France) or carrying on part of its business in France. The French anti-bribery laws also apply regardless of where the conduct occurs – as long as a French person or a company incorporated in France is the victim of the offence.
What is the test that has to be applied for corporate liability?	Corporate liability for bribery must be established using the common law identification principle. According to article 121-1 PC, a company may be held liable if one of its legal representatives or an employee with power of attorney commits the offence on its behalf. As regards the eight measures provided by the new Sapin II law, the company will be liable for failing to implement them.
What is the maximum sanction applied?	10 years’ imprisonment and a €1.000.000 fine for public official corruption (both active and passive) 5 years’ imprisonment and a €500.000 fine for private corruption In the case of non-compliance with Sapin II Act, the sanctions are a fine of up to €200.000 for individuals and €1.000.000 for companies.
Has there been a headline case?	There have not yet been any headline cases. However, the Sapin II law came into effect in June 2017, and provides for preventive measures and Deferred Prosecution Agreements, which should improve France’s ability to combat corruption.

What agency enforces the relevant law and how actively is it enforced?

The Sapin II Act created the “Agence française anti-corruption” (AFA).
This agency will, among others, be in charge of the enforcement of Sapin II.
The AFA’s missions are:

- prevention and detection of corruption among economic and public actors, state administrations and local and regional authorities;
- developing a national plan for the prevention of corruption;
- monitoring compliance by large companies;
- controlling the implementation of compliance measures ordered by the courts.

AFA will work with the National Financial Prosecutor and the French Public Prosecutor also retains jurisdiction to deal with matters of corruption.

Are any key developments expected in the next 18 months?

There are currently no planned legislative amendments, either to PC or to the Sapin II law.
However, practitioners will scrutinise the approach of the AFA to companies to assess how rigorously the anti-competition law will be applied.

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Germany

What is the principal law in the jurisdiction?	The Corruption Prevention Act 1997 and 2015, updating Criminal Code (StGB) and Administrative Offences Act (OWiG)
What key offences does it provide?	<p>The StGB creates offences of bribing another person and of receiving a bribe. It distinguishes criminal offences against free competition (section 26 StGB) from criminal offences connected with duties of a public office (section 30 StGB).</p> <p>A specific corporate offence of 'failure to prevent bribery' is set out in section 130 OWiG. A company owner can be held liable for failing to put in place 'supervisory measures' that prevent bribery by its associated persons (such as employees).</p> <p>In the event that corporate bodies authorised to represent the company commit offences, the company itself is liable on the grounds of section 30 OWiG.</p>
Does it apply to individuals and companies?	<p>Individuals can be prosecuted on the grounds of the Criminal Code (sections 298 ff., 331 ff. StGB).</p> <p>Companies can only be held liable according to civil law (sections 30, 130 OWiG).</p>
To what extent is the law extra-territorial?	<p>Corporate offences can be committed if they have any connection to Germany, for example if the illegal action has taken place or if the effects of the action are manifested in Germany.</p> <p>Individuals can be prosecuted under the StGB when they are German or acting against a German, even where the conduct takes place abroad.</p>
What is the test that has to be applied for corporate liability?	Corporate liability under section 130 OWiG is established when supervisory measures have not been taken due to negligence or intent by the owner and bribery occurred. It can also trigger corporate liability under section 30 OWiG. The penalty under section 30 OWiG depends on whether the offence is committed by negligence or by intent.
What is the maximum sanction applied?	<p>Individuals – a fine or imprisonment up to five years, in especially serious cases up to ten years</p> <p>Companies – a fine up to €10 million</p>
Has there been a headline case?	The Siemens affair in 2008 led to global fines of US\$1.3 billion and attracted substantial comment and publicity.

What agency enforces the relevant law and how actively is it enforced?

The principal responsibility lies with the local public prosecution offices, which have the authority to establish national units specialised in dealing with economic and financial offences.

Are any key developments expected in the next 18 months?

There are no planned legislative amendments to the Act.

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<p>What is the principal law in the jurisdiction?</p>	<p>The Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) (the “Ordinance”)</p>
<p>What key offences does it provide?</p>	<p>The offence is the offer, solicitation or acceptance of an advantage as reward or inducement for or otherwise on account of a public servant (not) doing an act or showing (dis)favour.</p> <p>Public sector bribery offences</p> <ul style="list-style-type: none"> – Section 3 of the Ordinance – soliciting or accepting any advantage by a government officer, without the general or special permission of the Chief Executive of Hong Kong. – Sections 6 and 7 of the Ordinance – where the above conduct is offered to/ solicited or accepted by a public servant in relation to a tender or an auction conducted by or on behalf of a public body. – Sections 4 and 5 of the Ordinance – offering any advantage to a public servant, or acceptance by a public servant or the Chief Executive of any advantage as an inducement or reward, in connection with performing or not performing public duties, or for assisting or hindering any business transaction between any person and a public body. – Section 8 of the Ordinance – offering an advantage to a prescribed officer while having dealings with the relevant government department, without lawful authority or reasonable excuse. – Section 10 of the Ordinance – possession of unexplained property by a current or former Chief Executive or a prescribed officer, which will include a judicial officer. <p>Private Sector bribery offences</p> <ul style="list-style-type: none"> – Section 9 of the Ordinance – offering to an agent (including a public servant or any person employed by or acting for another), or for an agent to solicit or accept, any advantage as an inducement or reward to perform or abstain from performing any act in relation to their principal’s affairs or business without the principal’s permission. <p>Defence</p> <p>The general defence is if a person proves that they offered, accepted or solicited the advantage with lawful authority or reasonable excuse.</p>
<p>Does it apply to individuals and companies?</p>	<p>The Ordinance applies to both individuals and companies. In addition, according to Hong Kong case law, a parent company may be liable for bribes or corruption committed by its subsidiary, particularly a wholly owned subsidiary.</p> <p>Although in practice, prosecutors usually target individuals, there has also been an increase in the number of investigations in the banking industry, which is enforced by the Hong Kong Monetary Authority and the Securities and Futures Commission.</p>
<p>To what extent is the law extra-territorial?</p>	<p>Bribery offences can occur where the advantage is offered in Hong Kong, even if the public servant resides outside Hong Kong and their conduct relates to their activities in a foreign jurisdiction. However, the advantage has to be received in or offered from Hong Kong.</p>

<p>What is the test that has to be applied for corporate liability?</p>	<p>Technically, a company can be found liable for bribery offences, and there is no distinction in the elements of the offences as there is no specific regime for corporate defendants. However, as mentioned above, in practice, prosecutors typically target individuals.</p>
<p>What is the maximum sanction applied?</p>	<p>Depending on the offence charged, individuals can face imprisonment of up to 10 years and a fine of up to HK\$1 million. Companies can in theory also be fined if convicted.</p> <p>Additionally any assets implicated in the offence could be confiscated by the court or used to compensate victims.</p>
<p>Has there been a headline case?</p>	<p>There have been a few recent high-profile cases, including those relating to:</p> <ul style="list-style-type: none"> – Thomas Kwok (billionaire and former joint Chairman of Sun Hung Kai Properties); – Hong Kong’s former Chief Secretary for Administration Rafael Hui (who was also convicted of misconduct in public office); – former Chief Executive Donald Tsang (who was also convicted of misconduct in public office);
<p>What agency enforces the relevant law and how actively is it enforced?</p>	<p>The Independent Commission Against Corruption is the authority responsible for investigating bribery and corruption in Hong Kong. It also works with other local law enforcement agencies, including the police, correctional services, customs and excise department, immigration department and the Joint Financial Intelligence Unit (a clearing house for suspicious transaction reports operated jointly by the police and the customs and excise department).</p>
<p>Are any key developments expected in the next 18 months?</p>	<p>Not at the present time.</p>

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India

What is the principal law in the jurisdiction?	The Prevention of Corruption Act, 1988 (PCA) and certain provisions of the Indian Penal Code, 1860 (IPC)
What key offences does it provide?	<p>The PCA sets out offences of:</p> <ul style="list-style-type: none"> – accepting of a bribe by a government official (section 7); – accepting bribes to influence a government official (section 8 and 9); and – abetting the bribing of a government official, which will include offering a bribe (section 10). <p>The definition of a ‘bribe’ under the PCA is wide and includes undue influence and any form of illegal gratification.</p> <p>The IPC sets out key offences relating to bribery (section 171B), dishonest misappropriation of property (section 403), breach of trust (section 405), cheating (section 415) and abetment of a criminal offence (section 107).</p>
Does it apply to individuals and companies?	The PCA and IPC apply to both individuals and companies.
To what extent is the law extra-territorial?	The PCA and IPC only penalise offences that are committed in India. For offences committed outside India, the individual/company cannot be prosecuted in India, unless in committing the offence of bribery, incidental offences (such as cheating, criminal conspiracy, or money-laundering) were committed in India.
What is the test that has to be applied for corporate liability?	<p>Similar to the common law identification principle, courts in India (while prosecuting companies for criminal offences) identify the person who was in charge of the affairs of the company and the conduct of its business. Liability is attached to such person (generally the directors or senior and key managerial persons), unless such person can prove that the offence was committed without his/her knowledge or despite his/her exercising due diligence to prevent the offence.</p> <p>A company may be liable for acts of misfeasance and nonfeasance of its directors (who are said to have substantial control over the affairs of the company), employees or agents – especially for the offence of ‘fraud’ under the Companies Act 2013 (which also covers corruption-related offences).</p>
What is the maximum sanction applied?	<p>Individuals – maximum 7 years’ imprisonment and an unlimited fine</p> <p>Companies – unlimited fine</p> <p>Where offences are committed in the context of government procurement, each procuring entity (depending on the relevant state and ministry) provides for separate sanctions for bribery and corruption in its procurement guidelines.</p>

Has there been a headline case?

All high-profile cases in India relate to corruption in government procurement. In recent times the following cases of corruption (among others) have made headlines:

- the case against Lalit Modi – ex-commissioner of the Indian Premier League (cricket league in India) – for allegedly bid-rigging, accepting kickbacks on a broadcast deal, betting and money-laundering;
- an investigation against Rolls-Royce for allegedly paying bribes to middlemen in relation to defence contracts; and
- the blacklisting of Rheinmetall for allegedly illegally acting as middlemen in the sale of air defence guns to India.

What agency enforces the relevant law and how actively is it enforced?

The Central Bureau of Investigation (CBI) and the Anti-Corruption Bureau (ACB) have the principal responsibility to investigate and enforce issues under the PCA and IPC. While the CBI’s jurisdiction covers the central government, the ACB investigates cases within the states.

Where the allegations of corruption involve inward or outward remittance of foreign exchange, the Enforcement Directorate (ED), under the Foreign Exchange Management Act, has the principal responsibility of investigating and enforcing laws relating to foreign exchange and money-laundering.

The CBI, ACB and ED prosecute corruption offences actively.

Are any key developments expected in the next 18 months?

An amendment to the PCA, which is pending parliamentary approval, seeks to set out specific provisions for the prosecution of bribe givers, explicitly bringing companies within the definition of ‘bribe giver’ and prescribing a specific time limit for completing trials.

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Italy

What is the principal law in the jurisdiction?	<ul style="list-style-type: none"> – Criminal Code for offences of bribing of public officials in the public sector – Civil Code for offences of bribing in the private sector – Legislative Decree no. 231/2001 for corporate liability as a consequence of bribery in the private and public sectors – Law no. 190/2012, containing provisions for the prevention and repression of corruption and illegality in the public sector
What key offences does it provide?	<ul style="list-style-type: none"> – <i>Criminal Code</i>, articles 318 - 322, set out key offences of bribing public officials (or civil servants working in the public administration) committed by individuals. – <i>Criminal Code</i>, article 322-bis provides a separate offence of bribery of foreign public officials committed by individuals. – <i>Civil Code</i>, article 2635 and 2635-bis sets out the key offences of corruption between private individuals and incitement to corruption between private individuals. – <i>Legislative Decree</i> no. 231/2001, Article 25, provides for sanctions for companies if directors or employees commit bribery of a public official (or an Italian civil servant) to benefit the company. Article 26 sets out sanctions for companies if directors, managers and employees bribe (or incite bribery) other companies' directors, managers or employees.
Does it apply to individuals and companies?	<p>Please see Criminal Code and Civil Code provisions described in the previous section.</p> <p>In relation to corporate liability, Legislative Decree no. 231/2001 provides for the liability of entities with legal representation and companies or associations without legal representation arising from crimes committed by representatives, directors, managers and other persons subject to their direction or supervision (employees, collaborators, etc.).</p> <p>For the company to be liable, the offences must be committed by the individual in the interest and to the advantage of the company/legal entities.</p> <p>The company's liability is in addition to that of the individual who committed the act of corruption/bribery.</p>
To what extent is the law extra-territorial?	<p>Article 322-bis Criminal Code provides rules regarding bribery of members of the EU's institutional bodies, their officers and agents, and individuals who operate under instructions.</p> <p>Legislative Decree 231/2001 creates corporate liability in instances of directors, managers or other persons committing crimes of international corruption pursuant to article 322-bis in the interest or to the advantage of the company (or the relevant legal entities).</p>
What is the test that has to be applied for corporate liability?	<p>Corporate liability (and relevant penalties) is imposed for the commission of the specific crime when it is committed:</p> <ul style="list-style-type: none"> – in the interest or to the advantage of the company/legal entity; – by persons functionally linked to the company/legal entities: directors, managers and other persons subject to their direction or supervision; and – where the company/legal entity did not adopt an organisational management and supervisory model (i.e. a compliance programme) and appoint a supervisory body.

What is the maximum sanction applied?

Individuals

Bribery in the public sector: maximum 20 years' imprisonment.

Public officials can additionally face disqualification from holding public office, which can be provisional or permanent.

Bribery in the private sector: without considering the aggravating circumstances, maximum 3 years (6 years in the case of bribery involving individuals acting for listed companies).

Persons having managerial positions can be disqualified from holding executive office.

Companies/legal entities

Bribery in the public sector: Maximum fine of €1.240.000

Bribery in the private sector: maximum fine €930.000

For corporate liability for bribery in the private or public sectors, a wide range of disqualification sanctions can be imposed on the company.

In addition, there is provision for the confiscation (and seizure during the interim proceedings) of the value or the profit from the crime committed.

Has there been a headline case?

In relation to bribery in the public sector there have been several cases, especially in the pharma and infrastructure sectors involving public procurement.

There have not yet been, however, any key decisions relating to bribery in the private sector.

What agency enforces the relevant law and how actively is it enforced?

Crimes are investigated and sanctions enforced for individuals and companies by the Italian Criminal Court both for individual and corporate liability for crimes.

Law no. 190/2012 established the Italian Anticorruption Authority to tackle corruption in public and State-controlled administrations.

Are any key developments expected in the next 18 months?

There are no imminent legislative amendments to the relevant laws.

A whistleblowing mechanism is under consideration amending Legislative Decree 231/2001, but is not likely to be enacted in the near future.

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The Netherlands

What is the principal law in the jurisdiction?	Sections 177 and 362 of the Dutch Criminal Code (the “DCC”)
What key offences does it provide?	<p>The DCC sets out the offences of domestic and foreign bribery. Two distinctions are made:</p> <ul style="list-style-type: none"> – between bribery of public officials (under the supervision and responsibility of the government in a function with an undeniably public character) and private commercial bribery (non-public officials, no distinction between profit and non-profit); and – between active bribery, which refers to the briber’s conduct in making a gift or a promise or rendering or offering to render a service; and passive bribery, which refers to the recipient, the person being bribed.
Does it apply to individuals and companies?	<p>The main offences under the DCC can be committed by either individuals or companies.</p> <p>The DCC provides that it is possible to prosecute companies for bribery.</p>
To what extent is the law extra-territorial?	<p>The general principle is the requirement of double criminality: bribery must be qualified as an offence both under Dutch law and the law of the jurisdiction where the bribery took place.</p> <p>The following persons can be prosecuted under Dutch law:</p> <ul style="list-style-type: none"> – a Dutch public official bribed outside The Netherlands; – a person in the service of a Dutch-based international law organisation bribed outside The Netherlands; – any person bribing a Dutch citizen or a Dutch public official outside The Netherlands; or – a Dutch person bribing an (international) public official outside The Netherlands.
What is the test that has to be applied for corporate liability?	<p>Whether criminal liability can be attributed to a company depends on whether the offence can ‘reasonably’ be imputed to the company.</p> <p>If the offence can be imputed to the company, the persons within that entity who ‘directed’ or ‘ordered’ the bribery – (a) with a certain level of knowledge and responsibility to act and (b) with awareness of the bribery taking place or an appreciation of the bribery conduct without taking appropriate measures to prevent such bribery – may be held criminally liable.</p> <p>A common defence by companies for bribery acts committed by its employees is to contest the reasonableness of attributing the offence to the company, where it had internal controls, ethics and compliance rules and if it did everything in its power to prevent the bribery.</p> <p>The DCC does not permit authorities to provide leniency to self-reporting offenders.</p>

What is the maximum sanction applied?	<p>Bribing a public official (active bribery): maximum 4 years’ imprisonment or a maximum fine of €82,000 for private persons and €820,000 or 10% of annual turnover for companies.</p> <p>Public official accepting bribes (passive bribery): varying between maximum 2 and 6 years’ imprisonment, depending on position, or a maximum fine of €82,000.</p> <p>Active and passive private commercial bribery:</p> <p>maximum 4 years’ imprisonment or a maximum fine of €82,000 for private persons and €820,000 or 10% of annual turnover for companies.</p>
Has there been a headline case?	International telecom provider VimpelCom and its subsidiary Silkway Holdings BV have recently accepted a settlement offered by the Dutch Public Prosecution Service totalling US\$397,500,000. The Dutch Public Prosecutor accused VimpelCom of having bribed government officials and keeping inaccurate books and records. The investigation related to business in the Uzbek telecom market between 2006 and 2012.
What agency enforces the relevant law and how actively is it enforced?	<p><i>Public bribery offences:</i> The National Police Internal Investigations Department.</p> <p><i>Private commercial bribery:</i> The Public Prosecution Service (with the possibility of requesting assistance from the National Public Prosecutor on Corruption). The National Public Prosecutor for Corruption is appointed by the National Prosecutor’s Office in Rotterdam.</p>
Are any key developments expected in the next 18 months?	<p>There are no planned legislative amendments to the DCC.</p> <p>Implementing recommendations are expected, arising from (a) an updated OECD report of 2015; and (b) a report by the Group of States against Corruption (GRECO) of 2015.</p>

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What is the principal law in the jurisdiction?	The Prevention of Corruption Act (Cap 241) (the “PCA”) The Penal Code (Cap 224) (the “Code”)
What key offences does it provide?	The PCA sets out a general prohibition on the giving, promising or offering, or soliciting, accepting or agreeing to receive a gratification in either the public or private sector (section 5 PCA). There are also separate offences in relation to corrupt transactions with agents (section 6 PCA), corrupt procurement of withdrawal of tenders (section 10 PCA), bribery of Member of Parliament (section 11 PCA) and bribery of any member of a public body (section 12 PCA). Section 8 PCA sets out a statutory presumption where gratification is deemed to have been paid or given and received corruptly if the gratification has been paid or given to or received by a person in the employment of public bodies, by or from a person or agent of a person who has or seeks to have any dealing with the public body. The Code also includes provisions relating to the bribery of public servants, although these are rarely used as a basis for prosecution, as opposed to the PCA. (section 161 – 164 Code).
Does it apply to individuals and companies?	The main offences in the PCA and the Code can be committed by either individuals or companies. The term “person” is defined in the Interpretation Act (Cap 1) and section 11 of the Code to include any company or association or body of persons, corporate and unincorporated.
To what extent is the law extra-territorial?	Under the PCA, where a citizen of Singapore commits an offence under the Act in any place outside Singapore, they may be dealt with in respect of that offence as if it had been committed within Singapore (section 37 PCA). Under the Code, it is expressly stated that any person liable to be tried for an offence committed beyond the limits of Singapore shall be dealt with according to the provisions of the Code in the same manner as if such act had been committed in Singapore (section 3 Code.) Further, public servants who are citizens or permanent residents of Singapore, when acting or purporting to act in the course of employment, committing an act or omission outside Singapore that if committed in Singapore would constitute an offence in Singapore, are deemed to have committed that act or omission in Singapore (section 4 Code).
What is the test that has to be applied for corporate liability?	Corporate liability for offences under the PCA must be established using the common law identification principle. This requires that the individual form the ‘directing mind and will’ of the company.

What is the maximum sanction applied?	PCA Private sector: a. fine not exceeding SGD100,000; b. imprisonment for a term not exceeding five years; or both. Public Sector: a. fine not exceeding SGD100,000; b. imprisonment for a term not exceeding seven years; or both. Code Maximum of three years; or fine; or both.
Has there been a headline case?	On 9 March 2017, a former executive of BP Singapore was formally charged with 47 charges of obtaining SGD5.7million in bribes from a businessman to advance the business interest of the latter’s company with the oil and gas company.
What agency enforces the relevant law and how actively is it enforced?	The Corrupt Practices Investigation Bureau (CPIB) is the primary watchdog and independent enforcement agency under the aegis of the Prime Minister’s Office, with the director of CPIB reporting directly to the Prime Minister of Singapore. The Attorney-General’s Chambers is responsible for the prosecutions and all relevant appeals in the enforcement of the relevant laws. 132 cases were registered for investigation by CPIB in 2015. Singapore remains as one of the most corruption-free countries in the world, ranked 7th out of 176 countries in the Transparency International’s Corruption Perception Index 2016.
Are any key developments expected in the next 18 months?	There are no planned legislative amendments to the PCA or the Code. On 12 Apr 2017, SPRING Singapore and the CPIB launched the Singapore Standard (SS) ISO 37001 on anti-bribery management systems – which are requirements with guidance for use. This voluntary standard is based on internationally recognised good practices and provides guidelines to help Singapore companies to strengthen their anti-bribery compliance systems and processes and ensure compliance with anti-bribery laws.

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What is the principal law in the jurisdiction?	Spanish Criminal Code (the “Code”), as amended on 1 July 2015
What key offences does it provide?	<p>The Code sets out key offences of bribing another person (Article 286 bis 2) and receiving a bribe (Article 286 bis 1).</p> <p>There are also separate offences of bribing a Spanish public official (Article 424) and a foreign non-Spanish public official (Article 286 ter and 427). In addition, Articles 419 to 422 set out the offence of receiving a bribe by a local public official.</p> <p>Article 31 of the Code sets out a specific corporate offence of “failure to prevent bribery”. A company can be held criminally liable for failing to prevent bribery by its associated persons (such as directors, representatives or employees). Article 31 bis) sets forth a mechanism to exclude or mitigate a company’s liability if the company can demonstrate that it had “adequate procedures” in place to prevent bribery.</p>
Does it apply to individuals and companies?	The bribery offences in the Code can be committed by either individuals or companies.
To what extent is the law extra-territorial?	Article 286 ter sets out offences committed in relation to a foreign official by a Spanish individual or company, which can be committed either in Spain or abroad (Article 23.4.[n] of the Spanish Judiciary Organisation Act).
What is the test that has to be applied for corporate liability?	Article 31 bis, in relation to Articles 288 and 427 bis of the Code, introduces corporate liability for bribery offences pursuant to which companies are punished not for their own acts but for the acts committed by their directors, employees, representatives, agents, etc. for the benefit of the company. Article 31 is a strict liability offence – subject to the “adequate procedures” defence.

What is the maximum sanction applied?	<p>Individuals – it depends on the offence committed by the individual. However, maximum sanctions range from imprisonment of between six months and six years, special disqualification from the exercise of industry or commerce for a period from one to six years and a fine of up to three times the value of the benefit.</p> <p>The range of penalties includes:</p> <ol style="list-style-type: none"> 1. fines; 2. suspension of business activities for up to five years; 3. closing premises; 4. prohibition from prescribed activities; and 5. disqualification from public contracts. <p>Companies – (i) share or proportional fine; (ii) dissolution of the legal entity; (iii) suspension of its activities for a period not exceeding five years; (iv) closure of premises for a period not exceeding five years; (v) final or temporary (max. 15 years) prohibition from the future conduct of activities that gave rise to the crime; (vi) disbarment from public sector contracts and subsidies for a period not exceeding fifteen years; and (vii) judicial intervention to safeguard the rights of workers or creditors for a period not exceeding five years.</p>
Has there been a headline case?	There have been no headline corporate cases to date.
What agency enforces the relevant law and how actively is it enforced?	<p>The Anti-Corruption Prosecutor’s Office, part of the Public Prosecutor’s Office, with responsibility for investigating and enforcing anti-corruption issues under the Code.</p> <p>The Anti-Corruption Prosecutor’s Office is increasingly active.</p> <p>The Prosecutor General’s Office also issued a Circular in January 2016 setting out criteria to interpret the new rules applicable to the corporate offence of “failure to prevent bribery”.</p>
Are any key developments expected in the next 18 months?	There are no planned legislative amendments to the Code.

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What is the principal law in the jurisdiction?	The Bribery Act 2010 (the "Act")
What key offences does it provide?	<p>The Act sets out key offences of bribing another person (section 1) and receiving a bribe (section 2). There is also a separate offence of bribing a foreign public official (section 6).</p> <p>Section 7 of the Act sets out a specific corporate offence of "failure to prevent bribery".</p> <p>A company can be held liable for failing to prevent bribery by its associated persons (such as employees).</p> <p>The only defence available is for the company to demonstrate that it had "adequate procedures" in place to prevent bribery.</p> <p>For offences occurring prior to 1 July 2011 The Public Bodies Corrupt Practices Act 1889, The Prevention of Corruption Acts 1906 and 1916 and the common law offence of bribery may be prosecuted.</p>
Does it apply to individuals and companies?	<p>The main offences in the Act can be committed by either individuals or companies – although section 7 applies only to "relevant commercial organisations", which includes companies and partnerships.</p> <p>Under section 14, if an offence is committed by a body corporate with the consent or connivance of a senior officer (or a person purporting to be a senior officer), that individual can also be prosecuted.</p>
To what extent is the law extra-territorial?	<p>Offences under sections 1, 2 and 6 can be committed even where the conduct takes place overseas, if the offender has a "close connection" with the UK. For a company, this would mean being incorporated in the UK.</p> <p>Offences under section 7 can be committed regardless of where the conduct occurs – as long as the organisation carries on business or part of a business in the UK.</p>
What is the test that has to be applied for corporate liability?	<p>Corporate liability for section 1, 2 and 6 offences must be established using the common law identification principle. This requires that the individual offenders form the 'directing mind and will' of the company.</p> <p>Section 7 is a strict liability offence, which means that a company will be liable for failing to prevent bribery in its organisation – unless it can establish the "adequate procedures" defence.</p>
What is the maximum sanction applied?	<p>Individuals – maximum 10 years' imprisonment and an unlimited fine.</p> <p>Companies – unlimited fine</p>

Has there been a headline case?

In early 2017, the Serious Fraud Office (SFO) entered into a high-profile Deferred Prosecution Agreement (DPA) with Rolls-Royce Plc in relation to bribery issues that took place over an extended period of time in numerous jurisdictions. This led to an overall penalty of over £500 million.

What agency enforces the relevant law and how actively is it enforced?

The SFO has the principal responsibility for investigating and enforcing issues under the Act.

The SFO is increasingly active in taking forward substantial investigations and prosecutions, negotiating DPAs, and co-operating with other agencies worldwide.

Are any key developments expected in the next 18 months?

No planned legislative amendments to the Act.

It is possible that a new corporate offence of failing to prevent economic crime will be taken forward and a number of high-profile corporate prosecutions and investigations, including Alstom and GSK, are likely to be indicative of future enforcement trends.

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