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Anti-Bribery and Corruption Review

July 2015

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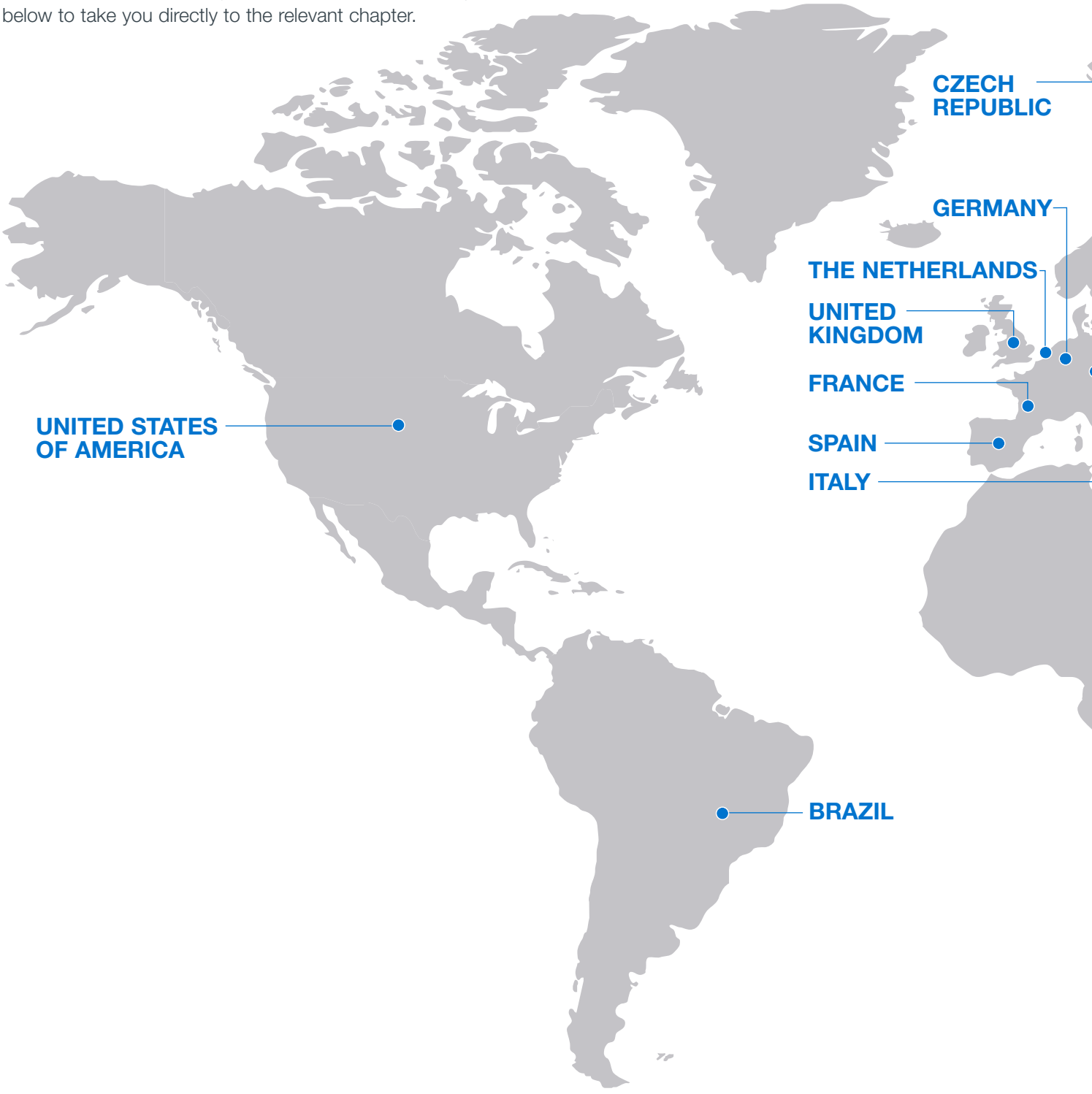
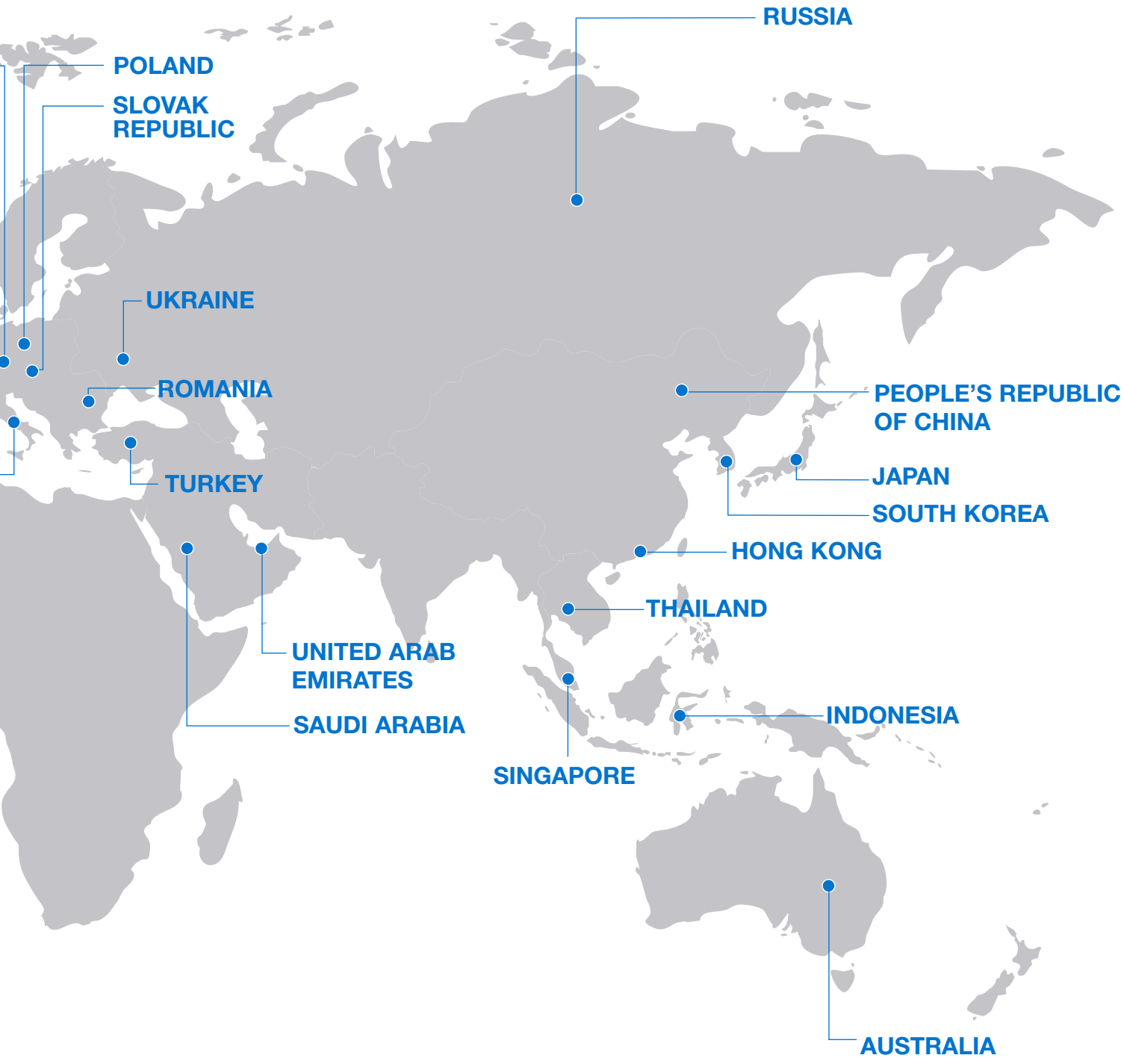
World Map

Please click on the country name on the interactive map below to take you directly to the relevant chapter.





Foreword

Prosecutions for bribery and corruption continue to attract media headlines around the world and, in response, international companies continue to review what they have to do to address the risks to their business, and to their reputation. Fundamental to this is staying on top of relevant legislative developments and enforcement trends in the countries in which they operate. Some national authorities have even highlighted this information gathering as a regulatory requirement for directors and senior corporate officers. This review looks at recent developments in some of the jurisdictions around the world where we have offices, focusing particularly on changes to legislation, both recent and proposed, and on prosecutions and enforcement trends. We intend to produce updates at regular intervals.

Patricia Barratt and David Pasewaldt, Editors

Europe, the Middle East and Africa

Czech Republic

Changes to legislation

In May 2015, the Government's expert group on the issue of corruption expressed its support for three draft amendments that had been prepared by the Czech branch of Transparency International: (i) a draft amendment to the Political Parties Act that establishes an authority responsible for the supervision of the financing of political parties; (ii) a draft amendment to the Electoral Act that prohibits donations by corporations to political parties; and (iii) a draft of a Government Decree that provides for better protection of whistleblowers from among state clerks.

In May 2015, the Government approved the draft of an amendment to the Act on Public Prosecutors that, *inter alia,* establishes a special Public Prosecutor's Office responsible for significant corruption cases. In recent years, several Ministers of Justice have tried to amend the Act on Public Prosecutors, with no success as yet.

Prosecutions

In February 2014, an influential Prague-based lobbyist was arrested and charged with fraud in relation to the city-run public transport company. In May 2015, the Court returned the case to the prosecutor on the basis of procedural errors.

In October 2012, an advisor to a former Prime Minister was charged with fraud in relation to the government's purchase of armoured personnel carriers. The criminal proceedings are still pending before the Court.

In June 2012, a former Defence Minister was charged with the misuse of power. She was stripped of her parliamentary immunity later that year. The case is still being investigated; an indictment is expected to be filed this year.

In May 2012, a Member of Parliament and Regional Governor, as well as several other people, were arrested and charged with taking bribes. The Member of Parliament was stripped of his parliamentary immunity later that year. In April 2015, two of the other accused were each sentenced to seven and a half years in prison; however, the verdict has not yet taken effect. The criminal proceedings in relation to the former Member of Parliament and Regional Governor are still pending before the Court.

OECD report on anti-bribery published

In May 2015, the Organisation for Economic Co-Operation and Development (OECD) published its latest report on the compliance of the Czech Republic with its obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[1].

The report states that since the Czech Republic's Phase 3 Report in March 2013, out of 21 separate recommendations, it has fully implemented five, partially implemented ten, and not implemented six. According to the OECD Working Group, the Czech Republic still needs to make significant progress on certain key recommendations concerning its legislative and institutional framework for implementing the Anti-Bribery Convention. This includes implementing the recommendation to guarantee greater independence of prosecutors so that political considerations cannot be taken into consideration, which has not been implemented yet (as mentioned above).

The report also points out that although bribes are expressly non-tax deductible under the law in the Czech Republic, virtually no further steps have been taken since Phase 3 to increase the awareness of the tax authorities and the private sector that bribes to foreign public officials are not tax deductible. In addition, training has not been provided to the tax authorities on how to detect bribe payments that are disguised as allowable expenses in tax returns. Protection for whistleblowers is also considered inadequate, until the amendment referred to above is adopted by Parliament.

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[1] Czech Republic: Follow Up to the Phase 3 Report & Recommendations May 2015, available at: http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf.

France

Changes to legislation

France has recently increased the penalties for the offences of corruption and trading in influence. Law-n°2013-1117 dated 6 December 2013 addressing the fight against tax fraud and serious economic and financial crime has given the courts the power to increase fines to EUR 1 million, or to double the amount of proceeds derived from the offence, if higher. Natural persons may also incur a prison sentence of up to 10 years.

Another law passed on the same date has established a new financial prosecutor (see below).

In addition, the laws adopted in December 2013 include: (i) provisions to protect whistle blowers and witnesses reporting corruption; (ii) measures allowing anti-corruption associations to join the criminal prosecutions as civil claimants; and (iii) measures to strengthen investigative capacity (special investigative techniques used in the prosecution of organized crime cases, such as the use of undercover agents).

A decree dated 25 October 2013 created a Central Office for combating corruption and preventing financial and tax offences ("*Office central de lutte contre la corruption et les infractions financières et fiscales*"), which now employs about one hundred highly specialised public officials.

Prosecutions

Enforcement activity for corruption offences remains limited in France, and no French company has been successfully convicted in France in relation to foreign bribery. This is despite the fact that French companies have been pursued outside France: for example, in 2013 Total agreed to pay around USD 398 million to U.S. authorities, as part of a settlement which also involved a compliance monitor for three years, in relation to charges connected with violations of the Foreign Corrupt Practices Act (FCPA) in Iran.

In a recent case, Safran, a French company, and two of its executives were prosecuted on charges of having bribed Nigerian public officials in order to secure a supply contract. The Paris Criminal court (*le Tribunal correctionnel*) initially found Safran guilty and imposed a EUR 500,000 fine (while acquitting the executives), on 5 September 2012. However, on 7 January 2015, the Paris Court of Appeal declared that the offence of active bribery was insufficiently grounded and reversed the first instance decision, exonerating all the concerned parties.

In reaction, Eliane Houlette (the Financial Prosecutor, see below) declared, on 18 January 2015, that "the rules on the criminal liability of legal persons are no longer appropriate for the way in which large international corporations operate. Case law must evolve to address this."[2]

France has been recently criticized by the OECD for the very low number of prosecutions in this area (see below).

New Financial Prosecutor

Law n°2013-1115 dated 6 December 2013 created the new office of Financial Prosecutor, and Mrs Eliane Houlette, was appointed to the post in January 2014. Mrs Houlette has been very active since her appointment and there has been significant enforcement activity in relation to financial institutions (in particular, banks), with several recent prosecutions of major financial institutions for money laundering and tax fraud. In a parallel development, judges have demonstrated their willingness to impose much higher penalties on companies than in the past, when one major financial institution was required to make a payment of EUR 1.1 billion, before any judgment was issued on the merits, which is unprecedented in France.

OECD report

In her address on 2 December 2014 to the OECD ministerial conference, Mrs Christiane Taubira, the French Minister of Justice, reaffirmed France's commitments to confront corruption.

The OECD's report on France in October 2012[3] had heavily criticized the fact that only 33 proceedings had been initiated and only five sentences imposed since France signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2000. The OECD Working Group on Bribery called upon France to intensify its actions and to implement measures in order to combat corruption of foreign public officials and bribery, formulating recommendations. In a follow-up report published on 19 December 2014, the OECD Working Group commended several significant reforms implemented by France, but concluded that France needed to take further steps in order to comply fully with the OECD Convention. The Working Group asked France to continue its actions regarding the

[2] Eliane Houlette was reported in '*Le Monde*' on 18 January 2015 as saying: "*Les règles de responsabilité de la personne morale ne sont plus adaptées au fonctionnement des grands groupes. Il faut que la jurisprudence les fasse évoluer.*"
[3] http://www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf.

prosecution of corruption of foreign public officials. According to the 2014 report, 24 new proceedings were initiated since October 2012.

The French Ministry of Justice said that measures already initiated had proved a success as the number of investigations initiated regarding corruption had increased by 75% in two years[4].

Guidelines to strengthen the fight against corruption in business transactions

On 14 April 2015, the Central Corruption Prevention Department (*Service central de prevention de la corruption*), an inter-ministerial service attached to the Ministry of Justice, released guidelines to strengthen the fight against corruption in business transactions. These guidelines, which are not binding, revolve around six main principles such as the implementation of an anti-corruption compliance program, a sanctions policy and the preparation of an operational risk mapping.

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[4] Press release published by the Ministry of Justice on 2 December 2014.

Germany

Changes to legislation

There were recent changes in German criminal anti-corruption legislation and there are a number of further current draft laws in this regard.

Expansion of the criminal offence of bribing delegates

As from 1 September 2014, section 108e German Criminal Code (*Strafgesetzbuch*) has been amended to make bribery of (and by) German delegates a criminal offence, punishable with imprisonment of up to five years or a pecuniary fine. Under the previous legislation, giving bribes to German delegates and members of the European Parliament was, in principle, only subject to criminal liability in connection with buying or selling votes. This gap in German anti-corruption legislation had been identified, in particular, by the German Federal Court of Justice (*Bundesgerichtshof*) in the so-called "Wuppertal corruption scandal[5]". In that case, the court held that municipal delegates were not "public officials" for the purposes of German criminal anti-corruption offences under sections 331 *et seqq.* German Criminal Code, unless entrusted with administrative tasks going beyond their mandate.

Furthermore, the new law provides for the inclusion of the offence of bribery of (and by) delegates (section 108e German Criminal Code [as amended]) on the list of predicate offences for money laundering (section 261 German Criminal Code).[6]

Draft law for further strengthening of German criminal anti-corruption law

There is also a current draft law on fighting corruption, which would expand the scope of the commercial bribery offence to acts beyond competition, include this offence on the list of predicate offences for money laundering (section 261 German Criminal Code) and extend the jurisdictional reach of German courts in respect of bribery of public officials:

- Under the current legislation, criminal liability for taking and giving bribes in commercial practice (*Bestechlichkeit und Bestechung im geschäftlichen Verkehr*) (section 299 German Criminal Code) requires (in accordance with the "competition model" [*Wettbewerbsmodell*]) that the offender (as "receiver") demands, allows himself to be promised or accepts, or that he (as "donor") offers, promises or grants a benefit for himself or a third person in a business transaction in return for an unfair advantage in competition. In the future, according to the draft law, the criminal offence will also cover (according to the "employer model" [*Geschäftsherrenmodell*]) benefits given to an employee or an agent of a company – on the basis of an agreement of wrongdoing (*Unrechtsvereinbarung*) – in a business transaction in return for a breach of duty to this company. In accordance with the explanatory notes to the Act, relevant duties to companies can arise from law or contract. However, an actual breach of duty will not be required (in the same way as no actual unfair advantage in competition is required under the current version of section 299 German Criminal Code).
- The draft law also proposes that the criminal offence of taking and giving bribes in commercial practice be included as a predicate offence for money laundering (section 261 German Criminal Code), when committed on a commercial basis (*gewerbsmäßig*) or as a member of a gang (*bandenmäßig*).
- The draft law would also amend the German Criminal Code provisions on corruption for the inclusion of "European public officials" ("*Europäische Amtsträger*") in addition to "public officials" ("*Amtsträger*") (in the current text). A definition of the term "European public official" will also be included. These changes intend to transfer to the German Criminal Code the relevant provisions of the EU Anti-Corruption Act (*Europäisches Bestechungsgesetz*, or EUBestG) regarding the equivalence of public officials of other member states of the European Union and public officials "under German law". However, the proposed changes go beyond the EUBestG as they would not only apply to the qualified criminal offences of granting and accepting bribes (sections 332 and 334 German Criminal Code), but also to the basic criminal offences of granting and accepting (illegal) benefits (sections 331 and 333 German Criminal Code). These basic criminal offences only require that a "benefit" be granted to or accepted by a public official without approval by the authority. The qualified offences require, in addition, that the benefit be granted or accepted on the basis of an – expressed or implied – agreement of wrongdoing (*Unrechtsvereinbarung*) that the public official, in return, performed, or will in the future perform, an official act and thereby violated, or will violate, his official duties.

[5] In its judgement dated 9 May 2006, file reference 5 StR 453/15.
[6] For further details, please refer to our client briefing: http://www.cliffordchance.com/briefings/2014/10/new_developmentsingermancrimina.html.

- Finally, the draft law provides for an equivalence arrangement for "foreign and international public officials" under a new section 335a German Criminal Code. According to this new provision, certain public officials of foreign states and international organisations would be treated as public officials under German law for criminal offences committed in public offices, if the offence concerns a future official act. The planned changes aim at transferring the current equivalence arrangements of the International Anti-Corruption Act (*Internationales Bestechungsgesetz*, or IntBestG) into the German Criminal Code. However, these proposed new regulations exceed the IntBestG as well, in that they would apply not only to the criminal offence of granting bribes, but also to the criminal offence of accepting bribes.[7]

Draft law on fighting corruption in the healthcare sector

In early 2015, both the German Ministry of Justice and the federal state of Bavaria presented draft laws on fighting corruption in the healthcare sector, particularly aiming at the implementation of a new criminal offence of taking and giving bribes in the healthcare sector (*Bestechlichkeit und Bestechung im Gesundheitswesen*) in section 299a German Criminal Code. The background to these draft laws is a decision of the German Federal Court of Justice (*Bundesgerichtshof*) dated 29 March 2012[8], in which the court had found that contract doctors in private practice (*niedergelassene Vertragsärzte*) were neither "public officials" nor "agents" (for the purposes of section 299 German Criminal Code). According to this case law, illegal benefits granted to contract doctors in private practice in order to influence their behaviour are currently not prohibited under section 299 German Criminal Code (bribery in commercial practice), nor as granting (illegal) benefits or bribes (sections 331 *et seqq.* German Criminal Code) under German criminal anti-corruption law. The relevant draft laws aim at eliminating this disparity. The explanatory notes emphasise the risks of improper collusion between, amongst others, contract doctors in private practice and pharmaceutical companies arising from the fact that medical professionals are, with some exceptions, the exclusive providers of medical treatment and various medical products are only available to the customer on a medical prescription.

New law amending the Act governing Federal Ministers and the Act governing the legal status of Parliamentary State Secretaries

On 2 July 2015, the German Federal Parliament (*Bundestag*) passed a new law amending the Act governing Federal Ministers (*Bundesministergesetz*) and the Act governing the Legal Status of Parliamentary State Secretaries (*Gesetzes über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre*), the so-called "Waiting Period Act" (*Karenzzeitgesetz*). This requires current and former Federal Ministers and Parliamentary State Secretaries to notify the Federal Government in writing if they intend to take up employment outside the public sector, and enable the Federal Government to prohibit such employment within a period of up to 18 months from leaving public office if there are grounds for believing that such employment could have a negative effect on the public interest. A negative effect on the public interest will be assumed if the intended employment (i) relates to matters or areas in which the former Federal Minister or Parliamentary State Secretary was active during his mandate, or (ii) may harm public confidence in the integrity of the Federal Government.

The new law follows recent moves by top-ranking politicians to the private sector, which were criticised by opposition politicians and by Transparency International (TI). TI had called for a waiting period of three years where there was a connection between the present or former activities and the intended future activities. A German prosecution authority had initiated criminal investigation proceedings against one individual on charges of accepting and granting (illegal) benefits, but these investigation proceedings were recently discontinued (see below).

Draft law on protection of whistleblowers

There is also a current draft law to promote transparency and the protection against discrimination of whistleblowers (*Whistleblower-Schutzgesetz*). This proposes changes to German labour law and civil service law, providing various privileges to whistleblowers. Specifically, employees would have the right to report violations of legal obligations in connection with the employer's business activities to external authorities or, under certain conditions, to the public, and would be protected against being penalised for doing so. In certain circumstances whistleblowers would also have immunity from prosecution in respect of various offences of the German Criminal Code (disclosure of

[7] For further details, please refer to our client briefing: http://www.cliffordchance.com/briefings/2014/10/new_developmentsingermancrimina.html.
[8] File reference: GrS – St 57/202.

state secrets [section 97], breach of official secrets and special duties of confidentiality [section 353] and abuse of trust in the foreign service [section 353a]).

Call for a nation-wide central corruption registry

Both the German conference of the Ministers of Justice (*Justizministerkonferenz*) and the German conference of the Ministers of Economics (*Wirtschaftsministerkonferenz*) recently requested the German Federal Government to establish a nation-wide central corruption registry to fight corrupt and illegal business practices and to facilitate fair competition. Companies that had engaged in corrupt activities would be listed on this register and could be excluded from public procurement contracts. Under current law, such non-public registries only exist in nine of Germany's 16 Federal States (*Bundesländer*), including Hesse, North Rhine-Westphalia, Bavaria, Berlin and Hamburg. Such registries are the subject of some controversy, partly because companies may be listed for offences other than corruption, and also because a final conviction may not be required for listing. A number of registries include companies as soon as investigation proceedings are commenced or even where investigation proceedings have ended without a conviction, which has been criticized by some as being contrary to the presumption of innocence.

Prosecutions

Several investigation and court proceedings have caught the attention of the media.

In August 2014, Formula 1 Managing Director Bernie Ecclestone agreed to pay USD 100 million in order to discontinue court proceedings before the Munich Regional Court relating to alleged granting bribes (*Bestechung*) (and other charges) in connection with the sale of Bayerische Landesbank's Formula 1 investment to a finance investor in 2006. According to the prosecution, Bernie Ecclestone allegedly paid USD 45 million to an investment banker of Bayerische Landesbank, Gerhard Gribkowsky, who was sentenced to imprisonment of eight and a half years for accepting bribes (*Bestechlichkeit*) in separate court proceedings in 2012, following a comprehensive confession. With the discontinuance payment of USD 100 million, the amount of which is unprecedented in German criminal procedure, Bernie Ecclestone benefited from section 153a German Criminal Procedure Code. This provision allows for the discontinuance of criminal investigation or court proceedings if, amongst others, such discontinuance payment is suitable to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle, while the presumption of innocence remains.

In February 2015, the Berlin prosecution authority discontinued investigation proceedings against a former Parliamentary State Secretary and the CEO of a major German car manufacturing company in connection with allegations of granting and accepting (illegal) benefits (sections 331 and 333 German Criminal Code) due to a lack of suspicion. The prosecution authority had conducted its relevant investigation proceedings as from November 2013 after the former Parliamentary State Secretary had taken up a new position as the head of external affairs with the car manufacturer.

In December 2014, the Neuruppin prosecution authority commenced an investigation into alleged corruption offences in connection with the construction of the new Berlin city airport. In May 2015, the prosecution authority announced that it was investigating four managers of a Dutch construction company. An airport manager has been taken into pre-trial custody after having reportedly confessed to receiving a cash payment of EUR 150,000 in return for approving the payment of invoices by the Dutch construction company amounting to EUR 65 million without further verification.

Enforcement trends

As a general trend, corruption investigation proceedings no longer focus mainly on industrial companies (as in the last decade) but extend also to the financial sector. There have been several investigation proceedings by German prosecution authorities into banks and financial institutions conducting business in Germany, particularly regarding alleged granting of (illegal) benefits to German public officials in the form of gifts and hospitality. German legislation is quite strict in this regard, and German prosecution authorities and courts also apply strict standards when applying this regime. This is particularly true when it comes to value thresholds for gifts and entertainment granted to public officials, which are low compared to international standards.

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Italy

Changes to Legislation

The Prime Minister, Matteo Renzi, is reported to be personally supporting reforms to anti-corruption laws that would increase the penalties for corruption and extend the period within which corruption charges could be brought. Legislative proposals approved by the Italian Senate on 1 April 2015 would, if passed, increase the sentence for corruption of a public official from four to ten years, to six to 12 years. The ban on tendering for public contracts would also increase from three to five years. The proposals would mean that charges for corruption could be brought within 15 years, and it will no longer be possible to obtain a plea bargain for corruption offences. The short period of limitation for corruption offences had been criticised by the OECD as "inadequate" and "of particular concern"[9].

The proposals also include measures to tighten rules against false accounting and money laundering, to enable prosecutors to confiscate assets where the defendant cannot show a legal origin, and to provide incentives for whistleblowers in terms of reduction of applicable penalties. The legislation will now pass to Italy's Chamber of Deputies.

Prosecutions

Political corruption has dominated headlines in Italy since May 2014, when seven managers and ex-members of parliament were arrested for alleged attempts to influence public tenders connected with Milan's Expo 2015 trade fair. The Cabinet has since appointed a special commissioner to oversee all government contracts relating to the Milan Expo of 2015.

The Prosecution Service has stepped up enforcement action generally, and further prosecutions are anticipated following implementation of the reform measures.

The Financial Guard 2014 report

The Financial Guard, an Italian law enforcement agency under the authority of the Minister of Economy and Finance, published its 2014 annual report on 8 April 2015, saying they have reported 3,700 people for crimes against public administration. According to the report, one out of every three public contracts had irregularities, and out of the USD 5 billion worth of public contracts last year, about USD 1.62 billion was lost in cases of fraud.

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[9] The OECD's 'Follow up to Phase 3 Report and Recommendations', May 2014, available at: http://www.oecd.org/daf/anti-bribery/ItalyP3WrittenFollowUpReportEN.pdf.

Poland

Changes to legislation

On 1 July 2015, a substantial amendment to the Polish Code of Criminal Procedure will come into force (the Amendment). The Amendment is intended to remodel criminal proceedings in the direction of a more adversarial trial system, as well as to shorten proceedings and to reduce the burden imposed on judges.

Of particular importance are the changes to the rules regarding the admissibility of evidence, particularly in respect of documentation commissioned by the parties to the proceedings.

The Amendment will mean that the initiative in the conduct of evidentiary proceedings will rest with the parties, and the court will no longer be obliged to seek evidence. The parties to criminal proceedings will be allowed to submit private documents (i.e. statements, letters, notes or expert evidence commissioned by the parties), to be admitted as evidence by the court. The Amendment also introduces a clear prohibition on the admission of evidence gathered illegally (so-called "fruit of the poisonous tree").

The admissibility of expert evidence commissioned by a party to the proceedings is currently unclear. In fact, the reports of such experts are not formally recognized as evidence in any current legislation concerning criminal proceedings. Similarly, such expert reports are not considered as evidence in Polish civil proceedings.

The Amendment expressly permits the admissibility of expert opinions commissioned by the parties to the criminal proceedings. The aim of this change is to transfer a significant portion of the burden of conducting the evidentiary proceedings from the court to the parties themselves.

However, the change may also hypothetically lead to a "battle of experts", in which the parties will submit contradictory expert evidence, which in turn may make the criminal proceedings more expensive.

The responsibility for assessing any expert evidence will remain with the court.

Prosecutions

Polish enforcement authorities have recently shown more interest in the enforcement of corporate criminal liability, and it seems probable that the reforms to the Corporate Liability Act will result in it being applied more frequently in future. In recent press releases the Central Anti-Corruption Bureau (the Polish anti-corruption authority) said that in light of current tender corruption investigations they want to make use of provisions in the Corporate Liability Act on penalties and a ban on taking part in public tenders. To this end, the Central Anti-Corruption Bureau is now working together with the Public Prosecutor's General Office on improving enforcement of the Corporate Liability Act.

In April 2014 police authorities confirmed that 13 people had been charged in connection with allegations that doctors were bribed to promote a GlaxoSmithKline drug dating from 2010 to 2012. Several individual executives employed by Novartis pleaded guilty in October 2014 to charges that they had given a bribe (in the form of a trip worth more than USD 1,000) in exchange for supporting the sale of a particular drug. In October 2014, Polish prosecutors said they had charged five people in relation to contracts given to Alstom Konsal for the delivery of subway cars and tramways in Warsaw.

Enhanced cooperation by Polish anti-corruption authorities with foreign enforcement authorities

Polish anti-corruption authorities have started to co-operate much more frequently with foreign enforcement authorities, specifically U.S. agencies (in particular, the U.S. Federal Bureau of Investigation, the U.S. Department of Justice and the U.S. Securities Exchange Commission). This cooperation between enforcement authorities represents a totally new level of cooperation in criminal matters.

On the one hand, Polish authorities are providing U.S. agencies with findings and documents from investigations conducted in Poland and with legal assistance on criminal matters. There are cases in which, based on Polish investigations limited in scope, the U.S. authorities have started conducting substantially broader investigations.

On the other hand it is more and more common for U.S. enforcement agencies to provide Polish authorities with support including materials and evidence from U.S. investigations, based on which the Polish authorities start or expand investigations in Poland.

There is also a rapid growth of compliance culture in Poland. There are multiple compliance events and conferences each month. The Warsaw Stock Exchange promotes compliance in its best practices for listed companies.

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Romania

Changes to legislation

A bill has been proposed which would amend the Code of Criminal Procedure so that the suspects of non-violent crimes such as abuse of office, influence peddling or bribery cannot be taken into pre-trial detention. The bill has received a negative opinion from the Government, but the Human Rights Committee has issued a positive opinion. Changes are also proposed to the Criminal Code in connection with bribery and corruption offences. The changes would mean that a person must cooperate with the prosecutors in relation to bribery and influence peddling charges within six months in order to avoid criminal liability. There is no time limitation in the current legislation.

Prosecutions

The National Anti-corruption Directorate (DNA), which focuses on high and medium level corruption, and the body which is responsible for combating organised crime and terrorism (*Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism București*, or DIICOT) have both published recent reports highlighting the significant increase in the number of criminal cases involving high ranking officials, ministers, politicians and influential businessman (from sectors such as IT, the media, construction and real estate). A number of judges and prosecutors including some from the High Court of Cassation and Justice (the highest court in Romania) have also been investigated and/or sent to trial.

DNA reported they have sent to trial 12 dignitaries, 330 civil servants, 35 magistrate (judges and prosecutors) in 2014, and that there had been a number of convictions of very senior figures, including Romania's former Prime Minister, Adrian Nastase, as well as two government Ministers, four Deputies and one Senator. Indeed, the Chief prosecutor of DIICOT was also sent to trial on corruption charges earlier this year.

Parliamentary immunity criticised

In a recent meeting of the European Parliament's Committee on Budgetary Control, Romania's anti-corruption efforts were described as "impressive", but European Committee Secretary-General Catherine Day stressed the need to continue efforts in order to consolidate the results obtained so far, particularly in combating corruption at lower levels.

At the hearing (attended by DNA Chief Prosecutor Laura Codruta Kovesi and Justice Minister Robert Cazanciuc) it was suggested that Romanian Members or Parliament have been blocking criminal prosecutions of state officials and that this practice must be countered by implementing the Venice Commission's recommendations on Parliamentary immunity. The view that Parliament is blocking some criminal investigations is shared by some in Romania. This may be the result of confusion arising as a result of the ruling on a pre-trial detention against officials. Nevertheless, given the very public nature of the criticisms, it is likely that the current approach to parliamentary immunity will be revised.

Furthermore, it has been suggested that Romania's fight against corruption has been so intense that, as an unintended consequence, it is affecting foreign investments as officials seek to avoid approving projects in case they become the next target of the investigators. The private business environment has also been affected as some of the most successful and influential businessmen from various local industries (such as construction, IT and the media) are either investigated or convicted for corruption related offences.

DNA's recent "enthusiasm" was criticised by the former president, Traian Băsescu, who said that overly close cooperation between the High Court and the DNA will destroy public trust in the impartiality of the judicial system. A former minister close to the former president's political party has been held in pre-trial detention for almost six months, on charges of corruption offences including bribery, abuse of influence and money laundering.

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Russia

Changes to legislation

With effect from 1 January 2015, Federal law No. 273-FZ "On preventing corruption" (the Anti-Corruption Law) was amended to prohibit specified individuals, including federal and regional governmental officials, officials of the Russian Central Bank and officers of public corporations and other state-owned organisations, from opening or maintaining foreign bank accounts, keeping cash or valuables in foreign banks or owning foreign financial instruments. The prohibition does not apply to governmental officials stationed abroad.

In March 2015, a draft law on the criminal liability of legal entities was submitted to the Russian State Duma. The draft law contemplates (for the first time) the imposition of criminal liability on companies and organisations (including both Russian and international companies and organisations) for, *inter alia*, bribery-related offences. This would be a new development because historically, only natural persons can be subject to criminal liability under Russian law, while legal entities are instead subject to administrative liability. Under the draft law, penalties for bribery-related offences could include fines, the deprivation of licences, quotas, preferences or privileges, the deprivation of the right to engage in certain activities, a ban on any activities within the Russian Federation and/or compulsory liquidation.

In February 2015 a draft law on the protection of persons reporting corruption offences was also announced by the Ministry of Labour and Social Protection of the Russian Federation. At the time of writing, the draft law is under the process of review by an independent anti-corruption expert and has not yet been submitted to the Russian State Duma. The draft law is aimed at protecting persons who report corruption offences and encouraging them to come forward by protecting their confidentiality, protecting them from any unauthorised dismissal, providing them with monetary remuneration and/or protecting their relatives.

In April 2014 the President signed a decree "On the National Anti-Corruption Plan for 2014 - 2015" (the Decree). The Decree requires state authorities to adopt anti-corruption plans, take measures to ensure compliance with the Anti-Corruption Law, provide for restrictions on receiving gifts, develop guidelines on how officials should disclose their assets and income and review all anti-corruption measures on an ongoing basis.

The Decree also requires the General Prosecutor's Office to take measures to improve the detection of bribery by legal entities (Article 19.28 of the Code of Administrative Offences) and provides for the Government to submit proposals on extending the list of legal entities that sets out those legal entities whose beneficial owners must be publicly disclosed.

In compliance with the Decree, state bodies have adopted anti-corruption plans. Specifically, on 31 July 2014, the Federal Anti-monopoly Service of the Russian Federation ordered its officials to report in future any gifts received in connection with certain protocol events, business trips and other official events. In addition, on 4 July 2014, an anti-corruption plan was adopted by the Federal Tax Service.

Prosecutions

According to publicly available information, 4,845 individuals pleaded guilty in 2014 to giving a bribe and 1,760 individuals were convicted for receiving a bribe.

The initiation of administrative proceedings against legal entities for bribery-related offences remains limited in Russia. In general, the Russian courts tend to impose administrative liability for bribery only on small and medium-sized entities. We are not aware of any administrative cases in which large corporations were involved.

Anti-Corruption Council

At a meeting of the Presidium of the Anti-Corruption Council on 24 April 2015, the General Prosecutor, Yuri Chaika, presented a report stating, among other things, that the amount of money that has been voluntarily repaid by those involved in bribery offences in 2014 amounted to RUB 2.5 billion (currently approximately EUR 43 million or USD 47 million), whereas RUB 23.5 billion (currently approximately EUR 410 million or USD 450 million) remains to be collected. The Minister of Justice, Alexander Konovalov, also declared that increasing anti-corruption education among citizens is one of the main objectives of the National Anti-Corruption Plan for 2014 to 2015.

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Saudi Arabia

Prosecutions

In December 2014, Alstom agreed to plead guilty and pay a USD 772 million penalty following an investigation by the U.S. Justice Department into Alstom's alleged bribery scheme in Saudi Arabia, Egypt, Taiwan, Bahamas and Indonesia. Bloomberg reported that Alstom won several billions of dollars worth of business in Saudi Arabia by making at least USD 49 million in illegal payments in part through middlemen. Alstom has allegedly bribed half a dozen consultants a decade ago according to prosecutors. It was also reported that Alstom collected details on officials of Saudi Electricity Company (SEC) and identified decision-makers and prepared an "action plan" with comments on officials ("honest reputation", "known to deal", etc.). A further charge is that Alstom allegedly paid USD 4 million in bribes to an executive at SEC and a close relative in order to secure the official's support for tenders. Alstom also reportedly made USD 2.2 million in donations to a US-based Islamic education foundation associated with the Saudi official.

In relation to the flooding of a certain neighbourhood of Jeddah in 2009 where residential buildings had been permitted to be built through bribery, a former mayor and several businessmen were sentenced to jail (and to pay fines) for bribing the mayor. The former mayor was sentenced to eight years in jail and to pay a fine of SAR 1 million (currently approximately EUR 243,000 or USD 267,000) for accepting a bribe. The businessmen, two of whom were foreigners (one from Jordan and one from Syria) received sentences ranging from one to five years in jail and fines from SAR 1 million (currently approximately EUR 243,000 or USD 267,000) to SAR 100,000 (currently approximately EUR 24,300 or USD 26,700).

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Slovak Republic

Changes to legislation

On 11 March 2015, the Slovak Government submitted a draft bill amending the Slovak Criminal Code to the Slovak Parliament. The bill addresses, among other things, shortcomings identified in the OECD report (see below). It also broadens the definition of a foreign public official, regardless of whether such person is acting within or outside of her/his authorised competence, and seeks to simplify the legal regulation of sanctions for criminal offences of corruption in the cases of foreign public officials. The proposed effective date is set as 1 August 2015.

At the end of 2013, the Slovak Ministry of Justice published a bill on the criminal liability of legal entities. The bill, currently at the level of the Slovak Government in the legislative process, aims to introduce direct criminal liability of legal entities for a limited number of specified criminal offences (including corruption offences). The proposed effective date is set as 1 July 2015; however, it is highly unlikely that the bill will enter into force at that date. It is proposed that legal entities would incur criminal liability under similar circumstances to those under the existing concept of quasi-criminal liability. The bill does not provide for any specific defences in connection with the criminal liability of legal entities. The sanctions would include fines, the confiscation of assets or property, being debarred from public procurement (for up to ten years), and a ban on economic activities (for up to ten years or for an indefinite period of time).

Finally, as from 1 January 2015, legislation on measures connected with the reporting of anti-social behaviour (the Slovak Whistleblower Protection Act) has become effective. The Slovak Whistleblower Protection Act aims to financially motivate individuals to report any anti-social behaviour (including criminal offences of corruption) they come across in connection with their employment, position or office. These individuals will be protected from the potential negative consequences of making a report in good faith (e.g. termination of their employment contract without the prior consent of the local labour authorities) and will, in certain circumstances, also be rewarded by the Slovak Ministry of Justice, with a sum of up to approximately EUR 19,000.

OECD report on anti-bribery published

In November 2014, the Organisation for Economic Co-Operation and Development (OECD) published its latest report on the compliance of the Slovak Republic with its obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[10].

The OECD Working Group found that the Slovak Republic has *"implemented the majority of Phase 3 recommendations"* made in the OECD's last report on the Slovak Republic in June 2013. Fully implemented recommendations include those that address training and awareness needs for judges, police, prosecutors and tax inspectors; an increase of the use of proactive steps for detecting foreign bribery cases by using various sources including mutual legal assistance (MLA) requests by the Slovak Republic; and taking specific steps to effectively respond to MLA requests from other countries.

The OECD also welcomed internal and external anti-money laundering training, as well as materials prepared by both the National Anti-Corruption Unit and the Financial Intelligence Unit. A new methodology of detection and investigation of corruption and related criminal offences has been applied by the National Anti-Corruption Unit from 1 January 2015.

However, according to the 2014 report several key recommendations remain unimplemented, including a broader definition of a foreign public official and a foreign bribery offence, and the introduction of full-fledged criminal liability of legal entities. As mentioned above, some of these recommendations have been addressed in the course of 2015, in particular by an amendment to the Slovak Criminal Code which was submitted to the Slovak Parliament in March 2015 following more than one year of legislative proceedings. Similarly, a draft Bill on the liability of legal entities is also in the legislative process. The 2014 report also noted the need for whistleblower protection which has already been addressed by the new Slovak Whistleblower Protection Act effective as of 1 January 2015 (please see above).

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[10] Slovak Republic: Follow Up to the Phase 3 Report & Recommendations November 2014, available at: http://www.oecd.org/daf/anti-bribery/Slovak-Republic-Phase-3-Written-Follow-up-Report-EN.pdf.

Spain

Changes to legislation

On 1 July 2015, Organic Law 1/2015, amending the Penal Code, will come into force, introducing a hugely significant change to the concept of corporate criminal liability in Spanish law.

Among the new developments announced in the Preamble is "*a technical improvement in the regulation of the criminal liability of legal persons … designed to properly determine the content of 'due control', the breach of which provides a basis for criminal liability*". This brief announcement fails to give an idea of the magnitude of the legislative change that this text, when enacted as a law, will represent in the sphere of the criminal liability of legal persons. The amendment goes far beyond *properly determining due control*, for example, introducing express grounds for exemption from criminal liability for legal persons based on demonstrating that the corporation possesses and effectively implements a crime prevention or compliance programme.

Under the new law, legal persons will be criminally liable for: (A) offences committed in their name or on their behalf, for their direct or indirect benefit, by their legal representatives or any persons acting individually or as members of a body of the legal person, who are authorised to take decisions on behalf of the legal person and hold powers of organisation and control within it; and (B) offences committed, in the performance of corporate activities and on behalf and for the direct or indirect benefit of the same, by persons who, while subject to the authority of the natural persons mentioned in the foregoing paragraph, were able to commit the acts due to a serious breach by the former of the duty of control of their activities in view of the particular circumstances of the case.

There is no doubt that the most important reform is the introduction, for the first time, of express grounds for exemption from criminal liability for legal persons based on the demonstration that the corporation possesses and effectively implements a crime prevention or compliance programme.

In the case of offences mentioned in (A) above, the corporate entity will be exempt from criminal liability if it can show that:

- prior to the commission of the offence, the management body adopted and effectively enforced organisation and management models that include suitable monitoring and control measures to prevent such offences (compliance programmes);
- supervision of the functioning and fulfilment of the prevention model implemented has been entrusted to a body of the legal person with independent powers of initiative and control (appointment of a compliance officer or of a collegiate compliance body), although in companies which are "smaller" (i.e., those authorised to file abridged profit and loss accounts) this function may be performed by the management body; and
- there has not been an omission or deficient performance of the functions of monitoring and control on the part of the compliance body.

If these circumstances can only be partially proven, this may be taken into account for the purposes of mitigating the penalty.

The compliance programme must:

(i) identify the circumstances in which offences may be committed;

(ii) establish protocols or procedures to address the risks identified;

(iii) have appropriate financial controls to prevent the commission of offences;

(iv) impose an obligation to report possible risks and breaches to the body responsible for overseeing the functioning of the compliance program;

(v) establish a disciplinary system that duly penalises breaches of the programme; and

(vi) include regular review of the programme, and revisions to respond to either significant breaches of its provisions, or to changes in the organisation, the control structure or in the activities performed.

In the case of offences referred to in (B), a corporate entity will be exempt from criminal liability if, prior to the commission of the offence, it adopted and effectively enforced a system of organisation, management and control appropriate for the prevention of offences of the kind committed, in line with the requirements set out above.

This approach is directly inspired by Italian Legislative Decree 231/2011, of 8 June, and is also broadly similar to the guidelines contained in 'The Bribery Act 2010 Guidance about procedures which relevant commercial organizations can put into place to prevent persons associated with them from bribing', published by the UK Ministry of Justice in March 2011 (which contains the famous six principles).

Mitigating factors for criminal liability remain unchanged, and include "having established, prior to the start of the oral hearing, efficient measures for the prevention and discovery of the offences that may be committed in the future with the means or under the cover of the legal person".

In another new development, criminal liability of legal persons has been extended to state companies that enforce public policy or provide services of general economic interest, although such companies are only subject to the penalties envisaged in letters a) and g) of point 7 of Article 33 (a fine in the form of quotas or a proportional fine and judicial intervention to safeguard the rights of workers or creditors for the period of time considered necessary, up to a maximum of five years), unless it is a legal form created by its developers, founders, directors or representatives for the purposes of evading criminal liability.

Prosecutions

After years of complete inactivity, enforcement activity for corruption offences is currently very high in Spain. A significant number of public officials are involved in current corruption cases, and private sector company executives have also been accused of bribery of public officials.

Case like *Operation Púnica*, involving public officials of the Madrid Regional Government, the *ERE case* in Sevilla, involving the Andalucia Regional Government and the Gurtel case, involving public officials of the Valencian Regional Government, have attracted widespread media attention. It has also been reported that the Central Government Delegate in the Valencia Region has been arrested for accepting bribery from a private sector company executive.

OECD report

The OECD's report on Spain in December 2012[11] had heavily criticized the legislation in force, claiming that the Spanish law in relation to compliance programmes for the exemption of criminal liability was confusing; the changes introduced in the Penal Code are a consequence of that report.

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[11] http://www.oecd.org/daf/anti-bribery/SpainPhase3ReportEn.pdf.

The Netherlands

Changes to legislation

As of 1 January 2015, Dutch financial-economic fraud and anti-bribery rules have been amended to extend existing measures to combat financial and economic crimes. According to the explanatory notes to the Bill implementing the amendments, the Public Prosecutor (*Openbaar Ministerie*) will place greater focus, as well as greater resources and capacity, on the detection and prosecution of financial-economic crimes, including foreign public bribery. The following key amendments were implemented:

- The maximum fine for legal entities may be increased up to a maximum of 10% of annual turnover if the maximum fine (EUR 810,000) is not considered an appropriate punishment;
- The maximum penalty for private sector bribery is doubled to four years imprisonment and the maximum penalty for public sector bribery is six years imprisonment;
- The penalty for public sector bribery is no longer differentiated on the basis of whether a bribe leads to a violation of an official's public duty or not;
- The criterion for (punishable) private sector bribery is no longer that the gifts, promises or services received or obtained have not been disclosed to the relevant employer or principal, but whether the employee or agent acted in breach of his or her duties (which could entail such non-disclosure of gift, promises or services);
- The maximum punishment for money laundering offence is increased from four years imprisonment to six years imprisonment;
- For many economic crimes (such as acting without a proper licence), the maximum imprisonment is increased to four years, for example in the case of repeat offences. For such economic crimes, the scope of investigation methods that can be used is substantially broadened, and the applicable statute of limitations is extended from six years to 12 years.

Prosecutions

In the "*Klimop*" case, one of the biggest real estate fraud cases in the Netherlands, multiple high-level suspects (former directors of one of the largest Dutch real estate developers and a pension fund and a civil-law notary) were prosecuted for siphoning off funds from their employers and paying bribes in relation to sales of real estate. They were convicted by the Court of First Instance. Recently, the Amsterdam Court of Appeal convicted the suspects for forgery of documents, money laundering, active private bribery and participation in a criminal organization. The Court of Appeal imposed sentences varying between four to seven years of imprisonment, higher than those imposed by the Court of First Instance. The Court of Appeal blamed the directors for grossly breaching the trust of their employers and the civil law notary for severely breaching the trust of its office.

In another recent case, a former member of the Provincial Executive (*Gedeputeerde Staten*) of the province of North Holland was prosecuted for accepting bribes from (mainly construction) companies that wished to conduct business with the province of North Holland. He was convicted of passive public sector bribery, forgery of documents and money laundering at first instance and on appeal. The Amsterdam Court of Appeal sentenced him to two and a half years of imprisonment (less than the three years the Court of First Instance imposed). The Court of Appeal criticized the former member of the Provincial Executive (*Gedeputeerde Staten*) for severely breaching the trust in political administrators who have an exemplary role.

Dutch Central Bank examination into corruption at banks

The fight against corruption has also been high on the agenda of the Dutch Central Bank (*De Nederlandsche Bank,* or DNB*),* one of the financial regulators in

the Netherlands, on the basis that the financial stability of banks and the financial sector as a whole is jeopardized by corruption incidents in the form of bribery or conflicts of interests. DNB, for example, has performed thematic examinations into the risk of corruption at banks and insurers in the past (the regulator often conducts thematic examinations to gain insight into risks in the sector). After the examination in 2014, DNB published a guide to good practices to help banks and insurers fight corruption.

Recently, DNB announced that it will perform an in-depth examination into risk control aimed at preventing corruption at banks. According to DNB, the goal of the examination is for banks to gain more insight into parts of their business, activities and processes that are vulnerable to corruption so that banks – based on such insight – can take targeted measures to control relevant risks. According to DNB it has selected high-risk banks and will contact them shortly to announce the examination and agree on practical details.

Dutch government further strengthens approach to fight corruption

In March 2015, the Dutch government informed Parliament that several international reports (OECD[12], GRECO, EU, UN) show that the Dutch efforts on promoting integrity and fighting corruption are generally well appreciated. At the same time these reports indicated that the Netherlands can take further steps to improve its approach and provided recommendations to that effect. The government said it was committed to implementing these recommendations and intends to further strengthen its approach to fight corruption by promoting integrity and preventing corruption in the public and private sector and detecting signals of corruption. The government said it would aim to prevent corruption as much as possible. If, in spite of preventive measures, corruption still takes place, the government will fight it effectively with all available resources and instruments, in cooperation – where possible – with the private sector and civil society.

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[12] http://www.oecd.org/daf/anti-bribery/Netherlandsphase3reportEN.pdf.

Turkey*

Changes to legislation

Anti-corruption provisions of the Turkish Criminal Code (Law No. 5237) (TCC) were amended in 2012, by the introduction of new definitions for corruption, embezzlement and bribery offences, and the extension of their application. These amendments put Turkey in a better position as regards compliance with Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). In addition, the "effective remorse" provisions which provide impunity from bribery charges under certain conditions were also amended to exclude their application in the case of the bribes offered to foreign civil servants.

In 2013 further amendments to the TCC reduced the penalty for collusive tendering from five to 12 years to three to seven years, and abolished the provision providing for an aggravated sanction where collusive tendering caused damage to a public institution.

In January 2015, the Turkish Prime Minister announced plans to amend various laws through a legislative package named the ''Transparency Package". According to the Prime Minister's announcement, this package will include a more effective wealth declaration procedure for civil servants, and measures to encourage whistle-blowing in relation to suspected bribery by civil servants (including enhanced whistleblower protection against any possible retaliation). Turkish media reports suggest, however, that the implementation of the Transparency Package may be postponed to after the parliamentary elections (held on 7 June 2015).

Prosecutions

There are currently two ongoing foreign bribery investigations in relation to (i) alleged bribes regarding the commercial development of real estate by a Turkish citizen to a high-ranking official in a state which is not party to the OECD Convention, and (ii) alleged bribes in order to win a public procurement contract by a Turkish citizen to a high-ranking civil servant in a state which is not party to the OECD Convention.

In December 2013, a number of prominent persons were detained, including the general manager of Türkiye Halk Bankası A.Ş. (a Turkish state owned bank) and the sons of three ministers in connection with an investigation of alleged corruption which subsequently resulted in the resignation of these ministers. The current President of the Republic at the time still serving as Prime Minister announced a cabinet reshuffle, appointing new ministers to replace those who had resigned. The corruption investigation gave rise to protests all around Turkey, primarily in Istanbul, Ankara and Izmir. In January 2015, the parliamentary investigation panel decided not to bring the cases regarding the three former ministers and another minister who was also accused of corruption before the Supreme Court. On 20 January 2015, the Turkish parliament similarly voted against lifting the parliamentary immunity of these former ministers and allowing such cases to be brought before the Supreme Court, effectively bringing the investigation to a standstill concerning the ministers.

OECD Report

In October 2014, the OECD published an OECD Report on Implementing the OECD Anti-Bribery Convention in Turkey,[13] which highlighted Turkey's improvement in its legal framework in relation to the foreign bribery offence and its effective cooperation with the other parties to the OECD Convention in two foreign bribery investigations.

However, the OECD Working Group issued several recommendations in relation to effective investigation, detection, prevention and sanctioning of foreign bribery. In this respect, Turkey was recommended to:

(i) increase efforts to detect, investigate and prosecute foreign bribery actions including the bribery actions against legal persons;

(ii) rectify deficiencies in its legal framework for corporate liability;

(iii) increase the current level of sanctions to legal entities in relation to bribery offences;

(iv) maintain the independence of prosecutors and provide an enhanced training to law enforcement authorities on the corporate liability provisions in the foreign bribery cases; and

(v) provide an enhanced protection to whistleblowers in both the public and private sectors.

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*Nothing in this client briefing should be interpreted or construed as legal advice in relation to the laws of Turkey. Turkish law advice is provided based on a co-operation agreement between Clifford Chance and Yegin Ciftci Attorney Partnership.

[13] http://www.oecd.org/daf/anti-bribery/TurkeyPhase3ReportEN.pdf.

Ukraine

Changes in legislation

Ukraine's legislative framework for preventing and fighting corruption has recently been amended through the introduction of new anti-corruption laws that became effective on 26 April 2015. These new laws require businesses that operate in Ukraine to take additional measures to tackle corruption.

The key changes introduced include:

Obligation to implement an Anti-Corruption Compliance Programme
Each Ukrainian or foreign company bidding for public procurement contracts in Ukraine is now required to adopt an anti-corruption compliance programme that complies with the guidelines set out by law in Ukraine and to appoint a compliance officer. Failure to implement such an anti-corruption compliance programme will preclude companies from participation in the bidding process.

The same requirement also applies to Ukrainian companies that are 50% or more state or municipally owned (and satisfy a number of additional criteria relevant to their head-count and gross revenue).

Obligation to disclose Beneficial Owners
A Ukrainian company must disclose to the public its ultimate beneficial owners, being any individuals who (i) alone or together with others, own, directly or indirectly, 25% or more of the share capital or voting rights in the company; or (ii) irrespective of the formal ownership, have decisive influence on management and decision-making in the company.

All existing Ukrainian companies must provide this information about their ultimate beneficial owners or their absence to the state registrar by 25 September 2015. The process of reporting is now actively under way.

Increased limits on gifts to Public Officials
Statutory limits on gifts to Ukrainian public officials have been revised. The maximum allowed value of each individual gift must not exceed the equivalent of one minimum monthly salary in Ukraine on the day the gift is given (currently approximately EUR 52 or USD 57) and the cumulative value of all gifts received from one source during a year must not exceed the equivalent of two living wages established in Ukraine as at the most recent 1 January (currently approximately EUR 104 or USD 114).

Prosecutions

Ukraine has recently launched a substantial anti-corruption prosecution effort against former and present public officials. On 25 March 2015, at the meeting of the Cabinet of Ministers of Ukraine the police arrested Serhiy Bochkovsky, former head of Ukraine's State Emergency Service, and his former first deputy Vasyl Stoyetskyi for the alleged embezzlement of public funds when administering public procurement procedures. Earlier in the month, at the request of the Ukrainian police authorities, the Spanish authorities arrested Yuriy Kolobov, Ukraine's former Minister of Finance. Mr. Kolobov is reported to be suspected of misappropriating substantial amounts of public funds. Currently, Ukrainian enforcement agencies are carrying out pre-trial investigations of the abovementioned cases and the courts proceedings have not yet commenced.

Creation of the Anti-Corruption Bureau of Ukraine and Appointment of its Chairman

On 16 April 2015, the President of Ukraine appointed Artem Sytnyk as the chairman of the newly established Anti-Corruption Bureau of Ukraine. The Bureau has been established as an investigation office for corruption related offences and forms part of Ukraine's effort to tackle corruption.

OECD Action Plan

On 22 April 2015, Ukraine and the OECD signed an Action Plan for strengthening co-operation to tackle corruption, improve public governance and the rule of law, boost investment and foster a dynamic business environment.

In accordance with the Action Plan, Ukraine and the OECD will co-operate *inter alia* through Ukraine's active participation in the work of relevant OECD bodies and exchange of information and data.

Ukraine 2015 Corruption Snapshot by Transparency International

According to the Transparency International press release of 15 April 2015, a joint survey "Business corruption perceptions index[14]" held by Transparency International Ukraine, Privat Bank Ukraine and PwC Ukraine revealed that "the level of corruption in state government authorities has not changed over the past six months and even worsened" in the opinion of some 2741 leaders of Ukrainian business. According to the survey, 57.2% of respondents stated that the corruption level in Ukraine in the past six months had not changed, 27.7% said that the situation became worse and 15.1% of respondents noted certain improvement. The tax authorities are noted by the survey as leaders among those mostly involved in corruption related activities.

The survey confirms that corruption remains an issue for Ukraine and requires further attention of the law enforcement authorities and sufficient political will to fight corruption.

[14] http://www.transparency.org/cpi2014.

United Arab Emirates

There have been media reports[15] that the Gulf Cooperation Council has approved a new anti-corruption law, the creation of a unified anti-corruption database and legislation to ensure recovery of funds derived from corruption. However, further information is not yet publicly available in this regard.

In Abu Dhabi, a new taskforce has been created within the Abu Dhabi Accountability Authority[16] tasked with investigating financial breaches and corruption, examining legislation, testing financial and administrative systems and ensuring accountability.

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[15] http://www.gulf-times.com/qatar/178/details/437150/heads-of-gcc-anti-graft-authorities-meet-in-doha.
[16] http://www.thenational.ae/uae/sheikh-mohammed-bin-zayed-approves-anti-corruption-taskforce.

United Kingdom

Changes to legislation

Further to the UK government's G8 commitment in June 2013, legislation has been introduced to increase the transparency of company ownership. The Small Business, Enterprise and Employment Act 2015, which received Royal Assent on 26 March 2015, amends the Companies Act 2006 to require companies to keep a register of people who have significant control over the company. It also includes measures designed to remove and prohibit the use of bearer shares, to prohibit corporate directors (except in certain circumstances), to deter opaque arrangements involving directors, and to make individual controlling directors more accountable.

It has been suggested, particularly by David Green, Director of the Serious Fraud Office (SFO), that the laws on white-collar crime should be amended so that there would be an offence – similar to the offence in the UK Bribery Act of failing to prevent bribery – of failing to prevent other types of financial crime. While the government has shown some interest in this proposal, there is no indication that such an offence would be introduced in the near future, and the government has said that it would not be introduced without a formal consultation.

Following serious allegations of corruption by police officers, a new offence of police corruption has been introduced. The Criminal Courts and Justice Act 2015, which received Royal Assent on 12 February 2015, makes it an offence for a police constable to exercise the powers and privileges of a constable improperly where he knows, or ought to know that the exercise is improper (section 26). For the purposes of this offence, a police constable exercises the powers and privileges of a constable improperly if he exercises, fails to exercise, or threatens to exercise or not to exercise, the powers and privileges of a constable (a) for the purpose of achieving a benefit for himself or herself, or a benefit or a detriment for another person, and (b) a reasonable person would not expect him or her to do so for the purpose of achieving that benefit or detriment. Exercising, or not exercising, the powers and privileges of a constable include performing, or not performing, the duties of a constable.

Prosecutions

There have been only a few cases so far brought under the UK Bribery Act, but prosecutions continue to be brought under the Prevention of Corruption Acts 1889-1916, which still apply to conduct that occurred before 1 July 2011 (when the Bribery Act came into force). In December 2014, the SFO announced the first conviction, after trial, of a company for an overseas corruption offence (Mabey & Johnson was convicted following a guilty plea), under the pre-Bribery Act legislation. Smith and Ouzman Ltd, a UK printing company specialising in security documents such as ballot papers and payment vouchers was charged with making payments of around GBP 400,000 to public officials in Mauritania, Ghana, Somaliland and Kenya, in return for contracts. Several employees of the company were also convicted.

The SFO also achieved its first Bribery Act conviction in December 2014 in a case involving false representations by employees of the Sustainable Growth Group to investors about purported "green biofuel" Jatropha tree plantations in Cambodia. The bribery charges were supplementary to the main charges of fraud and related to payments by a sales agent of unregulated pension and investment products to an employee of one of the group's subsidiaries in exchange for inflated commissions.

Also in December 2014 a Scottish company paid over GBP 170,000 following the discovery, during the acquisition process, that some contracts in Kazakhstan had been obtained as a result of corrupt payments. International Tubular Services, which was acquired by Parker Drilling Company, reported the discovery to the Scottish authorities which pursued the money through a civil recovery order.

The SFO has also brought corruption charges against Alstom Network UK Ltd and some of its employees in relation to transport projects in India, Poland, Tunisia and Hungary and has announced a number of other investigations.

UK Anti-Corruption Plan

The UK government published a national plan for the UK's anti-corruption efforts on 18 December 2014[17]. This seeks to draw together the different strands being pursued by the government to combat corruption, and includes 66 specific action points. Among the action points are:

- The Cabinet Office will consider, by August 2015, what steps are required to make information available on suppliers excluded from public contracts, including the feasibility, potential advantages and disadvantages of a register of excluded suppliers.
- The Cabinet Office will also establish a new cross-departmental unit on international corruption, providing support to the Government Anti-

[17] available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf.

Corruption Champion, and will arrange a regular forum for civil society and business leaders to engage with the government on bribery and corruption issues.

- The Ministry of Justice will examine the case for a new offence of a corporate failure to prevent economic crime and the rules on establishing corporate criminal liability more widely, by June 2015.
- A new central bribery and corruption unit will be created within the National Crime Agency (NCA) by bringing together resources from the NCA and anti-corruption units funded by the Department for International Development.
- The Home Office is to seek to amend the Proceeds of Crime Act 2002 to enable the use of investigative powers after a confiscation order has been made, to facilitate the tracing and recover of hidden assets, and also to change the legal test for a restraint order, from one of 'reasonable grounds' to one of 'suspicion' in domestic and international cases.
- The Department for Business, Industry and Science will seek to implement a central register of UK company beneficial ownership information as soon as practicable.

FCA Guidance on financial crimes systems and controls

In April 2015, the Financial Conduct Authority (FCA) published its finalised guidance for firms which are FCA regulated on financial crime controls, including guidance on anti-bribery controls distilled from earlier thematic reviews. The FCA has fined a number of firms in the past for failing to have adequate anti-bribery systems and controls in place. Its powers in this respect are not derived from the Bribery Act, and can be exercised even where there is no evidence that bribery has occurred.[18]

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[18] 'Financial Crime: a guide for firms' (FG15/7) can be found on the FCA website at https://fshandbook.info/FS/html/FCA/FC/link/PDF.

The Americas

Brazil*

Changes to legislation

The new anti-corruption law

Brazil has recently provided for administrative liability for offences of corruption through Law 12,846, of 1 August 2013 (the Anti-Corruption Law). Prior to its enactment, Brazilian law only provided for criminal liability through articles 333 and 337-B of the Brazilian Criminal Code. Criminal liability for acts of corruption arises from:

- offering or promising an illicit benefit to a Brazilian public official, seeking to encourage such public official to perform, omit or delay an official act; or
- promising, offering or giving, directly or indirectly, an illicit benefit to a foreign public official or third party, seeking to encourage such official to perform, omit or delay an official act related to an international commercial transaction.

Individuals who participate in such activities face criminal liability regardless of whether the public official accepts the illicit benefit. However, if the public official does accept the benefit proposed and performs, omits or delays an official act, the penalty for the crime will increase by a third. The penalties include a prison sentence of up to 12 years and/or a fine.

Through the Anti-Corruption Law administrative liability may arise if one engages in the following activities:

- promising, offering, or giving, directly or indirectly, illicit benefits to a public official (Brazilian or foreign) or to a related third party;
- financing, paying, sponsoring or in any way subsidising an unlawful act;
- making use of an intermediary, whether a natural person or legal entity, to conceal its real purposes or the identity of those benefitting from the acts of corruption;
- in the context of public bids, engaging in any act intended to defraud or in any way hampering the competitive nature of the bidding procedure; or
- in the context of public contracts, engaging in any act intended to defraud or manipulate a public contract, or preventing the supervision or monitoring by the competent authority of the application of the contract.

In respect of legal entities accused of breaching the Anti-Corruption Law, the prosecution is not required to establish willful misconduct or gross negligence as the test is an objective one. The penalties include: (i) fines ranging of up to 20% of the legal entity's total gross revenue in the fiscal year prior to the administrative proceedings and (ii) publication of the judicial decision in major media outlets as well as the relevant legal entity's website.

Further changes to legislation

On 19 March 2015, Decree No. 8,420 was issued which regulates certain articles of the Anti-Corruption Law and has established the following:

- the jurisdiction of the Comptroller-General of the Union (CGU) over investigations involving alleged bribery of non-Brazilian public officials;
- a new system for calculating fines;
- a list of criteria to assess the effectiveness of an entity's compliance programme in the event of an investigation, such as the existence of standards of conduct, code of ethics, policies and procedures of integrity which are applicable to all officers; and
- further requirements in respect of leniency agreements, providing that, for example, leniency agreements may only be entered into by the first entity to whistle-blow and such entity must first confess to acts of corruption.

Prosecutions

Brazil is currently embroiled in a major corruption scandal, code-named operation "*lava-jato*", launched by the Federal Police in March 2014. Initially a money laundering investigation, operation "*lava-jato*" has expanded to cover allegations of corruption at the state-controlled oil company where it is alleged that executives accepted bribes in return for awarding contracts to construction firms at inflated prices.

In 2014, 25 individuals were arrested as part of the investigation and in March 2015, the Brazilian Supreme Court authorized the investigation of 55 politicians from six different political parties allegedly involved in the corruption scheme.

As of 6 May 2015, twelve individuals have been convicted and imprisoned, fines have been levied, and damages awarded against a number of implicated parties. In addition, the Federal Prosecutors seek to recover a further BRL 4.5 billion (currently approximately EUR 1.3 billion or USD 1.4 billion) in damages and fines. According to Federal Prosecutors, operation "*lava-jato*" is the largest corruption and money laundering investigation in Brazilian history.

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*Clifford Chance, like other international law firms, is not licensed to provide Brazilian legal advice and, therefore, nothing in this client briefing should be interpreted or construed as legal advice in relation to the laws of Brazil.

United States of America

Enforcement Trends

U.S. government authorities continue their aggressive enforcement of Foreign Corrupt Practices Act (FCPA) violations, which is jointly enforced by the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ). Companies listed on U.S. exchanges should be aware that the SEC is increasingly focusing on violations of the FCPA's accounting provisions and the adequacy of a registrant's internal controls to prevent such violations. And, recently, the SEC Division of Enforcement Director, Andrew Ceresney, broadly cautioned U.S. issuers that: "we are very focused on internal controls. I think you will find we are active in this area in the coming months."[19]

The SEC has frequently charged companies engaged in foreign bribery of government officials with parallel violations of the accounting provisions, basing its charges on the company's failure to establish an appropriate system of internal controls designed to prevent the bribes at issue. More recently, however, the SEC has been basing internal controls violation on a broader failure of the Company to implement or maintain anti-corruption compliance system that are sufficient to address corruption risks – even in the absence of any charges or findings that improper payments were made. In short, recent enforcement actions indicate that the SEC's view is that the mere failure of a public company to have an adequate anticorruption compliance program may constitute a securities law violation.

Internal Control Requirements

The FCPA's accounting provisions apply to companies considered issuers under the Securities Exchange Act of 1934 (the Exchange Act)[20] and require issuers to adopt internal controls that ensure accurate financial records. This generally means devising and maintaining a system of internal accounting controls sufficient to provide reasonable assurances that:

- expenditures have management's general or specific authorization;
- transactions are recorded in conformity with accounting principles applicable to public companies; and
- records are audited regularly to ensure existing assets match books and records

In recent guidance, U.S. authorities clarified that adequate internal controls include additional components, such as maintaining a culture of integrity and ethics, designing an effective compliance program, conducting risk assessments and other control activities over policies and procedures to ensure they are carried out as designed, and monitoring the foregoing.[21]

Lessons from Internal Control Enforcement Actions

Recent enforcement actions demonstrate how the SEC has relied on the FCPA accounting provisions to regulate conduct outside of the traditional anti-bribery realm.

In a noteworthy 2012 case widely perceived as a departure from precedent, the SEC pursued internal controls charges against Oracle where it could not find sufficient evidence to charge a violation of the FCPA's anti-bribery prohibitions.[22] The SEC alleged that employees of Oracle's wholly-owned Indian subsidiary established side funds to "park" proceeds of sales to the Indian government. These side funds were then allegedly used by Oracle's distributors to pay third parties for marketing and development expenses. When it brought charges, against Oracle, the SEC did not allege, however, that the distributors used these side funds to make improper payments. Instead, the SEC alleged that Oracle "failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets." The Oracle complaint thus signaled that certain company practices may create a risk that company "funds *potentially could be used* for illicit means, such as bribery or embezzlement"[23] – and thus give rise to an internal controls violation – even in the absence of a bribery finding.

In the wake of Oracle, the SEC has subsequently charged several companies

[19] *See SEC to look closer at internal control violations*, by Hazel Bradford, 12 March 2015, available at www.pionlinearticle.com.
[20] This includes issuers that have a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or that is required to file annual or other periodic reports pursuant to Section 15(d) of the Securities Exchange Act of 1934 (*see* Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-2213, Sec. 102, 91 Stat. 1494 (1977)). This also includes foreign private issuers with American Depository Receipts listed on U.S. exchanges.
[21] U.S. Dep't of Justice and U.S. Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act (2012), at 40, *available at* http://www.justice.gov/criminal/fraud/fcpa/guide.pdf.
[22] *In the Matter of NATCO Group*, Securities and Exchange Act of 1934 Release No. 61325, 11 January 2010.
[23] *SEC v. Oracle Corp.,* No. 3:12-cv-04310 (N.D. Cal. 13 August 2012), ¶ 13 (emphasis added).

with internal controls violations without pursuing attendant anti-bribery charges and without such charges being pursued by the DOJ in a parallel criminal FCPA anti-bribery action.[24] In 2013, the SEC charged Stryker, a medical devices company, with internal controls violations for incorrectly recording USD 2.2 million in illicit payments to foreign government officials. According to the SEC, "even a cursory review of the underlying documentation, such as travel authorization forms and itineraries, would have revealed the illegitimate nature of the payments."[25] A year later, the SEC charged Bruker, another medical devices company, for internal controls violations for failure to implement an FCPA compliance and training program at its Chinese offices and for failing to put in place adequate controls to address the "risks of doing business in China" and "the risks of businesses that sold primarily to SOEs."[26]

The SEC has also recently pursued internal controls charges for inaccurate accounting of payments beyond those covered by the FCPA. In February 2015, the SEC charged Goodyear Tire & Rubber Co. with books and records and internal controls violations without pursuing charges under anti-bribery provisions. In addition to citing violations due to Goodyear's African subsidiaries' payments to foreign government officials, the SEC also alleged violations for improper recording of commercial payments made to "private companies, to obtain business," which are not subject to the FCPA.[27] Thus public companies, like Goodyear, should be aware that the accounting provisions can be applied more broadly than to conduct giving rise to violations of the improper payment provisions of the FCPA.

As this enforcement activity demonstrates, the language of FCPA is not self-limiting, and does not restrict enforcement of the FCPA's accounting provisions to conduct probative of or related to bribery. U.S. issuers should thus heed the advice given by Director Ceresney in another March 2015 speech to "place strong emphasis on the importance of designing and implementing strong controls. (...) [a]ppropriate resources and attention also need to be devoted to monitoring those controls for effectiveness and making changes as needed."[28] Such issuers should also conduct periodic assessments of their internal controls to make sure that they are sufficiently targeted to address anticorruption compliance risks and take prompt action to remediate any deficiencies.

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[24] *See e.g. In the Matter of Allianz SE,* Securities and Exchange Act of 1934 Release No. 68448, 17 December 2012; *In the Matter of Stryker* Corporation, Securities and Exchange Act of 1934 Release No. 68448, October 24, 2013; *In the Matter of Bruker Corporation,* Securities and Exchange Act of 1934 Release No. 73835, December 15, 2014. The DOJ has exclusive jurisdiction over criminal enforcement of the FCPA.

[25] *See In the Matter of Stryker.*

[26] *See In the Matter of Bruker.*

[27] *In the Matter of Goodyear Tire and Rubber Company*, Securities and Exchange Act of 1934 Release No. 74356, 24 February 2015.

[28] SEC Speech, "FCPA, Disclosure, and Internal Controls Issues Arising in the Pharmaceutical Industry," SEC Division of Enforcement Director Andrew Ceresney, Remarks, CBI's Pharmaceutical Compliance Congress, 3 March 2015.

Asia Pacific

Australia

Changes to legislation

On 19 March 2015 the Australian Minister for Justice, The Hon Michael Keenan MP, presented a Bill to the House of Representatives which seeks to amend the current criminal offence of bribing a foreign public official. The Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 would amend Division 70 of the Criminal Code Act 1995 (Commonwealth) by specifying that there does not need to be an intention to influence a particular foreign public official, and that business, or a business advantage, does not need to be actually obtained or retained.

There has been no progress, however, on the Federal Government's plans in relation to facilitation payments. Although the government published consultative proposals in November 2011 on removing the exception in Australian law for facilitation payments, no formal announcement has yet been made.

The investigative powers of the Australian Federal Police (AFP) and various other enforcement agencies including the Australian Securities and Investments Commission (ASIC) have been bolstered by the introduction of the Telecommunications (Interception and Access) Amendment (Data Retention) Act 2014 which requires telecommunications providers to retain a defined set of metadata for a period of two years, substantially improving the availability of data for their investigations.

Prosecutions

In February 2015, the AFP launched Australia's second foreign bribery prosecution against three directors of a Sydney-based construction company who are alleged to have attempted to bribe Iraqi government officials in order to secure construction contracts in Iraq.

The first Australian prosecution occurred in 2011 when two Australian companies, Securency International Pty Ltd and Note Printing Australia Ltd, were charged with conspiracy to bribe foreign public officials under the anti bribery provisions of the Commonwealth Criminal Code. The AFP commissioner was reported as saying that it was pursuing 14 active bribery investigations, of which 13 had foreign bribery as a primary offence.

OECD report on anti-bribery published

The Organisation for Economic Co-Operation and Development (OECD) has just published its latest report on Australia's compliance with its obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Australia: Follow Up to the Phase 3 Report & Recommendations April 2015)[29].

The OECD Working Group found that Australia has made *"good progress on addressing a number of important recommendations"* made in the OECD's last report on Australia in October 2012[30]. Positive developments include that Australia has reviewed its overall approach to enforcement resulting in the establishment of a Fraud and Anti-Corruption Centre, which facilitates coordination between multiple agencies including the AFP, the ASIC and the Australian Taxation Office. As suggested, the AFP has also created a Foreign Bribery Panel of Experts to review OECD recommendations and provide training to AFP officers and other relevant agencies.

Whilst welcoming Australia's adoption of public sector whistleblower protection, the OECD Working Group has recommended similar protections are introduced for the private sector. The Working group also notes that Australia has yet to put in place transparent debarment policies for procuring agencies and that Australia has taken no action in relation to amending the record keeping requirements for facilitation payments (which remain inconsistent between criminal and tax legislation). The OECD also recommended that Australia pursues investigations into false accounting more vigorously.

Following criticism in 2012 of Australia's low prosecution rate, the 2015 report noted that 15 new foreign bribery allegations have surfaced since its previous report and that the number of foreign bribery investigations has increased to 17 (from 7 in October 2012). Some of these have received significant media attention such as the AFP's investigation into Leighton Holdings Ltd. After being criticised for failing to investigate corporate offences arising from the allegations against Leighton Holdings, ASIC has since announced it is conducting a formal investigation to probe company executives using its compulsory powers to determine if there has been any contravention of the Corporations Act 2001[31].

In addition to the increase in investigations, the 2015 OECD Report also noted the government's proposed changes to the offence of bribing a foreign official (see above) and the fact that the facilitation payment defence is under active consideration.

Call for Senate inquiry

Further evidence of the current impetus to address foreign bribery is the recent announcement by an Australian Senator that he will be moving for a Senate inquiry into foreign corrupt practices, the practice of facilitation payments to foreign public officials and the role of the AFP and other agencies to properly investigate these matters. A number of large Australian companies named in the context of the proposed inquiry include Leighton Holdings.

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[29] http://www.oecd.org/daf/anti-bribery/Australia-Phase-3-Follow-up-Report-ENG.pdf.
[30] http://www.oecd.org/daf/anti-bribery/Australiaphase3reportEN.pdf.
[31] http://www.comlaw.gov.au/Details/C2015C00228.

Hong Kong

Prosecutions

There have been a number of high profile corruption prosecutions in recent months. In its 6 August 2014 decision of *HKSAR v Lionel John Krieger* ([2014] HKEC 1323), the Hong Kong Court of Final Appeal (CFA) confirmed that Hong Kong's much feted anti-graft laws do not apply to conspiracies made in Hong Kong to offer bribes abroad, whether to foreign public officials or private corporations[32]. This is the case even if the bribes result in a benefit to a Hong Kong company. The CFA upheld a lower court's decision to set aside the convictions of two executives for conspiracy to offer bribes to a government official in violation of section 9(2) of the Prevention of Bribery Ordinance. Because the parties conspired in Hong Kong but the bribes were offered by an agent in Macau, the CFA agreed that Hong Kong did not have jurisdiction over the crime. This has highlighted a weakness in Hong Kong's anti-corruption laws, in stark contrast to the wide reaching extra-territorial effect of the U.S. Foreign Corrupt Practices Act and the UK Bribery Act.

The former co-chairman of Sun Hung Kai Properties Ltd, Thomas Kwok, was sentenced to five years imprisonment on 23 December 2014 following his conviction for conspiracy to commit misconduct in public office. The offence related to payments totalling HKD 19.682 million (currently approximately EUR 2.3 million or USD 2.5 million) to Rafael Hui immediately before Hui took office as the Chief Secretary of Hong Kong. Hui also received a seven and a half year prison sentence. Sun Hung Kai Properties Ltd is one of the world's largest real estate groups with a market capitalisation of over HKD 381 billion (currently approximately EUR 45 million or USD 49 million) (as at early May 2015). In March 2015, the Hong Kong Court of Appeal rejected an application by Thomas Kwok for bail pending appeal as it was not persuaded that the grounds of appeal advanced had any real chance of success. It will be interesting to see if the result of this high-profile case will strengthen and embolden the Independent Commission Against Corruption (ICAC) in future bribery investigations.

On 9 December 2013, a former senior banker of a German financial institution was sentenced to seven years of imprisonment for accepting up to HKD 28.4 million (currently approximately EUR 3.4 million or USD 3.7 million) in illegal bribes. These bribes were accepted in return for providing investment advice without the requisite approval from the financial institution. The defendant was also ordered to pay HKD 28.4 million in restitution to the financial institution.

On 4 March 2015, Zhang Guoqiang, a former consultant to Sinopec (Hong Kong) Ltd, a unit of Sinopec Corp, was sentenced to seven months in prison for accepting HKD 600,000 (currently approximately EUR 71,000 or USD 77,400) in bribes.

ICAC Investigations

On 9 October 2014, the Secretary for Justice Rimsky Yuen authorised the Director of Public Prosecutions to handle a complaint made to the ICAC against the Chief Executive Leung Chun-ying. The complaint relates to a HKD 50 million (currently approximately EUR 5.9 million or USD 6,4 million) payment received in 2011 by Leung from UGL (an Australian engineering company) as part of a non-compete agreement. As the payment was made shortly before Leung took office as Chief Executive of Hong Kong, the propriety of such payment has been questioned.

Other recent high-profile ICAC investigations include the ongoing investigation into former Chief Executive Donald Tsang Yam-kuen (which began in 2012), and Jimmy Lai, a Hong Kong media tycoon (which began in August 2014).

Recent guidelines

Following a request by the ICAC, the Securities and Futures Commission (the independent regulator of Hong Kong securities and futures markets) issued a circular on 13 February 2015. The circular intended to bring to the attention of all licensed entities a 'Sample Code of Conduct' issued by the ICAC which a licensed entity may adopt or make reference to when implementing its internal anti-bribery policy. The ICAC also provides corruption prevention advice to the private sector upon request and has held thematic seminars for business organisations to equip them with the legal knowledge and skills to prevent corruption.

New appointment of regulators

On 22 December 2014, Maria Tam Wai-chu was appointed as the new chair of the ICAC's operations review committee and a member of the ICAC's Advisory Committee on Corruption. These roles commenced on 1 January 2015. The appointment has been criticised as contradictory to ICAC's neutral political stance as an independent regulator because of Tam's role as a representative of the National People's Congress (the legislature of the PRC).

[32] For further details, please refer to our relevant client briefing: http://www.cliffordchance.com/briefings/2014/08/a_safe_haven_fromwhichtoplanforeignbribes.html

Trends

Hong Kong's anti-corruption law enforcement has followed the international trend in seeing a a shift in emphasis from enforcement against individuals to enforcement against corporates, e.g in an increasing number of investigations into corrupt activities related to the banking industry, such as the trading of warrants. There is also a trend towards increased cooperation between international authorities in combating corruption, particularly with authorities in the UK and the PRC. In more recent times, Hong Kong has increased its reliance on regulatory supervision in preventing corruption.

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Indonesia

Changes to legislation

The main government agency that enforces the Indonesian Anti-Corruption Law is the Corruption Eradication Commission (*Komisi Pemberantasan Tindak Pidana Korupsi*, commonly known as KPK), which was established under the 2002 Corruption Eradication Commission Law (KPK Law). The KPK coordinates with other agencies in the eradication of bribery and corruption, conducts investigations and prosecutes bribery offences, undertakes action to prevent bribery and monitors governance. To carry out its enforcement duties, the KPK is granted certain powers to undertake specific measures, including, among others, using wire-tapping, instructing the relevant institution to impose a travel ban and ordering banks or other financial institutions to block accounts potentially holding the proceeds of corrupt acts.

This year, a proposed amendment to the KPK Law has been included in the 2015 National Legislation Program (*Prolegnas*). One of the key provisions that is proposed to be amended is removing KPK's authority to conduct surveillance or wiretapping during the preliminary phase of investigations. The supporters of the proposed amendment are of the view that such KPK authority may violate human rights. However, without this authority, the KPK would be prevented from launching "sting" operations aimed at catching suspects red-handed accepting bribes. According to media reports, President Joko Widodo will reject any plans to revise the KPK Law. This message has not been formally conveyed to the House of Representatives, hence the status of the proposed amendment is still unclear.

Prosecutions

The KPK has been actively seeking to combat corruption, and this is demonstrated by the large number of high profile corruption cases against judges, high ranking government officials, and members of the House of Representatives which have been brought to court. From 2004 to the end of May 2015, there have been approximately 300 corruption cases that have been decided. Many of the investigations and court proceedings have caught the attention of the media and the public.

In early 2015, the former Chief Justice, Akil Mochtar, of the Indonesian Constitutional Court (which had previously been heralded as one of Indonesia's most credible institutions), was sentenced to life in jail following his conviction for accepting more than USD 5 million in bribes to influence the results of regional election disputes and money laundering. While, it was the first investigation and arrest involving a Constitutional Court Justice, it was by no means the first case involving an Indonesian judge, as there had been a number of earlier cases and convictions involving Indonesian judges. Also, related to this case, the former Banten Governor, Ratu Atut Chosiyah, was found guilty of bribing Akil Mochtar. She was sentenced to seven years in prison and fined IDR 200 million (currently approximately EUR 13,000 or USD 15,000).

Also in 2015, Andi Mallarangeng, the former Youth and Sport Affairs Minister, was sentenced to four years in prison and fined IDR 200 million following his conviction for accepting bribes (IDR 4 billion and USD 550,000 [together currently approximately EUR 767,000 or USD 850,000]) from a contractor in the construction of the Hambalang sports complex. Part of the money that Andi Mallarangeng received was used to fund his campaign in the Democratic Party chair election. This Party is the political vehicle of the former President, Susilo Bambang Yudhoyono. Former party treasurer of the Democratic Party, Anas Urbaningrum, recently was sentenced to fourteen years in prison by the Supreme Court for his involvement in the Hambalang corruption case.

In 2014, the Jakarta Anti-Corruption Court sentenced Rudi Rubiandini, the former Head of Indonesia's oil & gas regulator SKK Migas, to seven years in prison for money laundering and accepting bribes from Singapore-based Kernel Oil Pte Ltd. and Indonesia-based Kaltim Parna Industri. These bribes were given in exchange for securing a win in an oil tender. As a result of the investigations and court proceedings, the former Energy and Mineral Resources Minister, Jero Wacik has also been named a suspect by the KPK. Jero Wacik is also alleged to have accepted bribes and laundered money received from Singapore-based Kernel Oil Pte Ltd. and Indonesia-based Kaltim Parna Industri.

Also in 2014, the Supreme Court sentenced a high ranking police officer, Inspector General Djoko Susilo, to 18 years imprisonment and ordered him to refund IDR 32 billion (currently approximately EUR 2.16 million or USD 2.46 million) to the State for his involvement in a graft-ridden driving simulator procurement project.

Developments

As mentioned earlier, the KPK is the main government agency that enforces the

Anti-Corruption Law. The Indonesian Police and the Public Prosecutor's Office are the principal State agencies that prosecute any crime against Indonesian law, including the Anti-Corruption Law.

Earlier this year, there was high tension between the KPK and the Police, which resulted in a stand-off between the two agencies.

Shortly after President Joko Widodo announced in late 2014 that he would appoint Commissioner General Budi Gunawan as the Indonesian National Police Chief, the KPK revealed that it had been investigating Budi Gunawan for corruption, and urged President Joko Widodo to drop his nomination.

In retaliation, the Police charged two KPK commissioners with offences. In a move that is widely seen as condoning the Police assault on the KPK, President Joko Widodo suspended the two KPK commissioners and appointed three temporary commissioners.

Presently, the selection committee comprising nine female activists has been tasked with selecting the new KPK commissioners (one head and four deputies) to be appointed by the President and approved by the House of Representatives.

Trends

Indonesia's Transparency International Corruption Perception ranking for 2014 improved to 107 out of 175 countries. The ability for greater national and international co-operation and intelligence sharing has led to more effective enforcement. Domestic surveys indicate that Indonesians are becoming increasingly intolerant of corruption. President Joko Widodo has pledged his ongoing commitment to fight corruption. These trends and developments offer hope and greater certainty in the fight against corruption in Indonesia.

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Japan

Prosecutions

While there had previously been only three prosecutions in Japan for bribery of foreign public officials pursuant to the Unfair Competition Prevention Act (UCPA)[33] over the first 15 years since its enactment, three top executives of Japan Transportation Consultants, Inc. (JTC), a Japanese company, were abruptly prosecuted in July and August 2014 pursuant to the UCPA in connection with paying bribes of approximately JPY 144 million (currently approximately EUR 1 million or USD 1.2 million) to public officials in Vietnam, Indonesia and Uzbekistan to gain unfair advantage for Japanese-funded railway projects in their countries. The Tokyo District Court subsequently sentenced the executives to imprisonment of two to three years each (suspended for three to four years) and also fined the company JPY 90 million (currently approximately EUR 660,000 or USD 725,000 million).

Shortly before the above case, in a written follow-up report submitted to the OECD, published in February 2014[34], Japan disclosed certain enhancements and increased resources to investigate and prosecute the bribery of foreign officials more effectively. The JTC case may well indicate that those enhancements and resources are already making a difference in Japan's response to foreign bribery.

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[33] http://www.wipo.int/wipolex/en/text.jsp?file_id=254517.
[34] http://www.oecd.org/daf/anti-bribery/JapanP3WrittenFollowUpReportEN.pdf.

South Korea

Changes to Legislation

On 27 March 2015, the Improper Solicitation and Graft Act (the Graft Act), a new anti-bribery law, was enacted, which will come into force after 18 months, on 28 September 2016.

In comparison to the previous anti-bribery regime under the Korean Criminal Code (KCC), the main difference is the elimination of the "nexus" requirement. Under the Graft Act, there is no longer a need to prove a direct link between a gift (i.e., something of value) and a favour provided in exchange for such gift to the extent the value of the gift is higher than (i) KRW 1 million (currently approximately EUR 800 or USD 890) per occurrence or (ii) in aggregate, KRW 3 million (currently approximately EUR 2,400 or USD 2,700) per year.

This is considered to be a more effective deterrent to bribery, since a public official who offers, solicits or accepts a gift of a certain value is punishable regardless of whether such gift is given in connection with the public official's official duties or in exchange for any favour.

In addition, the Graft Act applies not only to "public officials" but to spouses of the public officials, news reporters and public or private school teachers.

The penalties under the Graft Act include imprisonment of up to three years or a fine of up to KRW 30 million (currently approximately EUR 24,000 or USD 27,000). Moreover, a fine may also be imposed on a corporate entity in the event any of its officers, director or employees is in violation of the Graft Act.

While welcomed for its firm anti-corruption stance, the Graft Act is currently undergoing challenge on the grounds that it is unconstitutional.

Prosecutions

The most recent – and high-profile – corruption-related case is the investigation of POSCO Engineering & Construction, the largest steel-making company in Korea.

On 13 March 2015, prosecutors raided the head office of POSCO in relation to allegations that the company had overseas slush funds from overstating the amount of funds needed to pay subcontractors in Vietnam.

The raid came a day after Prime Minister Wan-Koo Lee declared an "all-out war" on corruption.

A number of former and current senior management of POSCO have been investigated, detained and/or charged for misappropriation and embezzlement. These investigations and prosecutions are still on-going.

Historically, the Korean government has failed to take effective steps to prevent corruption within major Korean companies, so it remains to be seen whether this "zero tolerance" approach will continue.

OECD Report

On 8 May 2014, Korea submitted a follow-up report in relation to the Phase 3 Report on Korea issued by the OECD Working Group on Bribery in October 2011.

Korea has made headway in implementing the recommendations set forth in the Phase 3 Report, with ten out of 16 recommendations fully implemented and four partially implemented.

Notably, Korea established a new consultative body to gather intelligence on suspected bribery activities outside Korea and also took measures to ensure that foreign bribery case records are no longer destroyed within three years but kept for up to 70 years.

Furthermore, Korea has taken positive steps to raise awareness among the private sector of the significant impact of foreign bribery and on the adoption of internal controls and compliance measures.

The OECD Working Group on Bribery stated it will monitor progress on the remaining recommendations.

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People's Republic of China

Changes to Legislation

Judicial Interpretation of the Criminal Law

On 26 December 2012, the Supreme People's Court (SPC) and the Supreme People's Procuratorate jointly promulgated the *Interpretation of Several Issues Concerning the Application of Law for Handling Criminal Cases of Bribery* (the Interpretation) which took effect on 1 January 2013. The Interpretation primarily concerns bribes offered by individuals to government officials under Article 389 and 390 of the Criminal Law.

Articles 2 to 4 of the Interpretation provide guidance in determining whether a bribe is considered a serious case, potentially triggering higher penalties. The determination turns on the definitions of "severe", "causing significant losses to the State", and "significantly severe" under Article 390 of the Criminal Law. Serious cases include bribes to officials responsible for food, drugs, product safety, and environmental protection that would seriously harm the public interest, thereby indicating the priority placed on protecting the public's health and safety. The Interpretation also includes a number of incentives for voluntary disclosure.

The definition of inappropriate benefits is similar to that provided under a SPC interpretation of commercial bribery issued in 2008. Therefore, bribes paid to government officials for obtaining an unfair competitive advantage may also fall under Article 389 of the Criminal Law.

Inappropriate monetary benefits shall be confiscated, ordered to be refunded or returned to the victim. Non-monetary benefits, such as operating licences or promotions, shall be dealt with by the relevant department in accordance with "applicable regulations", meaning perhaps suspension or cancellation of such benefits (Article 11). Therefore, in addition to fines and reputational damage, a company committing such a crime may also suffer significant additional economic loss as a result of conviction.

Healthcare Blacklisting Regulation

The National Health and Family Planning Commission issued the Provisions on the Blacklisting of Commercial Bribery in Healthcare Procurement (the Circular) on 25 December 2013. The Circular came into effect on 1 March 2014.

The Circular applies to the procurement of drugs, medical equipment and consumables. The provincial authority of the Health and Family Planning Commission is responsible for keeping records and the national authority is responsible for consolidating local records based on the monthly reports from the local authorities. The following will be blacklisted:

- any offender who commits the crime of paying bribes and is convicted by a court judgment; or any offender who commits the more minor crime of paying bribes for which criminal penalties are exempted;
- any offender who commits a more minor crime of paying bribes where the prosecutor issues a decision not to prosecute;
- any offender who commits the offence of paying bribes for which the Chinese Communist Party's Discipline and Inspection Commission or the Administrative Supervision Authority imposes penalties;
- any offender who commits the offence of paying bribes on which the authority of Finance, State Administration of Industry and Commerce (AIC) or Food and Drug Administration imposes administrative penalties; and
- any offender who commits other acts which shall be included in the blacklist as provided in any laws, regulations and rules.

Penalties for blacklisted companies:

- If the company is being blacklisted for the first time, it shall be barred from procurement by public hospitals (including hospitals receiving government funds) in the same province in which it is blacklisted, for two years. It will also be penalised in similar public procurement bids in other provinces (by having its scores reduced) for two years;
- If it is blacklisted twice or more than twice in a five year period, it shall be barred from procurement by all the public hospitals in China for two years.

Administrative Regulation of Publicising Penalties

In August 2014, State Administration of Industry and Commerce (AIC), the administrative authority that is responsible for enforcing anti-bribery regulation in commercial sectors, issued the Interim Regulation of Publicising Administrative Penalties Issued by the AIC. This regulation requires local AICs to publicise any decision of administrative penalties and the summary of the decision through the AIC's official websites of enterprise information within 10 to 20 days after the decision is made.

This regulation, in combination with the blacklisting regulation as discussed above, may significantly change the dynamics between the local AIC and a target of anti-bribery investigation, especially in the healthcare sector.

Before this regulation was issued, parties tended to agree on a relatively minor charge pressed by the local AIC so that they could close the case as soon as possible, minimize reputational risks and prevent the investigation from being expanded to a wider scope. For example, parties may agree on a non-bribery charge, or a bribe charge with much less scope (thus with less penalties). Although such a settlement agreement is not legally binding under PRC law, it can be relied on in practice as a gentlemen's agreement with the local AIC.

Since the above two regulations were issued, however, the most important concern that a target of anti-bribery investigation has is no longer the amount of the penalty or the result of the specific investigation itself. Instead, the impact of the penalty decision on its reputation and overall business in China (in the healthcare sector at least) and, to multinationals, the reporting obligation in other jurisdictions would be crucial to the target, since the penalty and its ground would be publicised and the company would be officially blacklisted in the healthcare sector (while in other sectors, such penalty record could be regarded as a negative factor in public procurement).

Consequently, the new regulations may also create more tension between the target and the local AICs, because the former would be much more reluctant to admit to any charge, for fear of the above risks. Therefore, whereas previously the local AICs would mainly rely on the targets' admission and confession to close a case in practice, in the future they may have to build a much stronger case with solid evidence, in order to withstand any potential defence or challenge brought by the target through the administrative procedures. It is a new battlefield, with more interest and risk at stake for both sides.

Prosecutions

The most high-profile prosecution in China is the GSK case, in which Chinese authorities imposed criminal fines of approximately USD 500 million on British pharmaceutical company GlaxoSmithKline for bribing Chinese hospitals and doctors. The amount of the fines imposed on GSK was the highest criminal fine ever imposed.

GSK's senior managers, including the China General Counsel, were arrested and prosecuted for participating in the scheme, disclosed by an internal whistleblower. A local AIC official in Shanghai was sentenced for taking bribes in return for illegally closing an anti-bribery investigation of the company. The CEO of the China business, a British citizen, was pressured to return to China and confess to the authorities after he had left the country at the very early stages of the investigation. An external investigator whom GSK hired to investigate the whistleblower was prosecuted and sentenced for illegally obtaining personal data. The individual defendants were forced to confess on a national TV news program before the criminal judgments were issued. The company is now facing investigation by British authorities under the UK Bribery Act.

This case perfectly reflects all the key impacts or intended results of the three new pieces of legislation discussed above and shows close coordination between the various authorities in the recent PRC anti-corruption campaign. The aggressiveness in both the process and the result of this case is unprecedented in China, which may indicate a new era in law enforcement against commercial bribery and multinational corporations.

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Singapore*

Changes to Legislation

Singapore Prime Minister Lee Hsien Loong announced in January 2015 that the government will be introducing various initiatives, including a review of the Prevention of Corruption Act (Cap 241) (PCA), the main anti-corruption legislation in Singapore.

Prosecutions

The Chief Justice recently provided timely guidance on sentencing for corruption charges in relation to the private sector. In the recent case of *Public Prosecutor v Syed Mostofa Romel* [2015] SGHC 117, the Court clarified that there is no distinction between the sentencing policy for corruption in the private and public sectors, stressing that the severity of the consequences of the conduct is the key factor in determining the appropriate sentence. On the facts of the case, the Court tripled the sentence imposed on the accused by the lower courts, as it deemed it to be "manifestly inadequate". In highlighting the zero tolerance policy against corruption, the Chief Justice cautioned that "*this type of corruption is antithetical to everything Singapore stands for*" and that "*clean and honest dealing is one of [Singapore's] key competitive advantages and corruption compromises the predictability and openness which Singapore offers and investors have come to expect. This is a hard won prize achieved through our collective efforts as a society and we must not allow these to be undone.*"

In the recent decision of *Public Prosecutor v Teo Chu Ha* [2014] SGCA 45, the Court of Appeal recognised that perpetrators are inventing increasingly complex and sophisticated schemes in a bid to evade the PCA. In line with Singapore's firm stance against corrupt activities, the substance and context of transactions will be scrutinised to ensure that the "*pith and marrow*" of the PCA is not undermined or circumvented by these schemes.

In the high-profile so-called "sex-for-grades case" of *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189, the High Court acquitted a law professor of the charge of receiving gratification from a student. This followed a finding by the High Court that the student provided the gratification without corrupt intent but due to feelings of infatuation with the professor. Despite the acquittal, the High Court emphasised that it did not condone the professor's abuse of his position. This demonstrates that, notwithstanding Singapore's zero tolerance policy towards corruption, the courts will adopt a nuanced approach to distinguish moral and criminal wrongs, in the appropriate case.

Further anti-corruption initiatives

Prime Minister Lee announced in January 2015 that the manpower of the Corruption Practices Investigation Bureau (CPIB) – the government agency entrusted with investigating corruption offences in Singapore – is to be increased by more than 20%. In addition, a one-stop Corruption Reporting Centre will be established to make it easier for members of the public to report cases of corruption.

According to an inaugural CPIB report detailing trends from 2010 to 2014, the average number of people prosecuted as a result of CPIB investigations over the last three years was 170. In 2014, 85% of the 136 cases registered for investigation were from the private sector. The private sector also accounted for 88% of the prosecutions in 2014. The conviction rate remains high, at above 95%.

Speaking in January 2015 at a conference on maintaining integrity in the public sector[35], Prime Minister Lee said that Singapore's system is generally "clean" and "maintains high standards", but noted that the problem of corruption "will never disappear completely". The Prime Minister's comments were made against the backdrop of Singapore having fallen two places to be placed seventh in the Transparency International Corruption Perceptions Index. The slide, Mr Lee said, could have been due to recent high profile corruption cases involving civil servants, including a so-called "sex-for-contracts case" of a top officer in the Civil Defence Force and the misappropriation of funds by a head of a branch of the CPIB.

A "shining exception" in a world where corruption is endemic in many countries, Prime Minister Lee said Singapore would have to "work doubly hard to maintain the trust [it's] earned" after such cases which hurt Singapore's reputation.

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*Contributed by Cavenagh Law LLP, our Formal Law Alliance partner in Singapore.

[35] Public Services Values Conference, 13 January 2015.

Thailand

Changes to Legislation

On 1 May 2015, the National Legislative Assembly (NLA) approved a draft Organic Act on Counter Corruption (the Amendment Act) to amend the Organic Act on Counter Corruption B.E. 2542 (1999) (as amended) (the Organic Act), which is the principal piece of legislation dealing with acts of corruption by domestic public officials. The Amendment Act came into force on 10 July 2015. Whilst Thailand is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Amendment Act seeks to criminalise bribery of:

(i) "foreign public officials", being any person holding a legislative, administrative or judicial office for a foreign country, any person exercising a public function for a foreign country, including for a state agency or state enterprise, whether appointed or elected and whether having a permanent or temporary position and regardless of whether such official receives a salary or other remuneration; and

(ii) "officials of international public organisations", being any official or agent of a public international organisation.

It is a criminal offence under the Amendment Act for any foreign public official or official of an international public organisation to (i) demand, accept or agree to accept any property or other benefit for himself/herself or for any other person in return for discharging or omitting to discharge any duty, regardless of whether such action is a wrongful act; or (ii) discharge or omit to discharge any duty in return for any property or other benefit which he/she has demanded, received or agreed to receive before taking office.

The Amendment Act also imposes sanctions on any person who (i) demands, accepts or agrees to accept any property or other benefit in return for inducing or having induced any foreign public official or official of an international public organisation by dishonest or unlawful means or by influencing with his/her unjust power to discharge or omit to discharge any duty in his/her office, in a manner to take advantage or cause any disadvantage to any person; or (ii) grants, offers to grant or promises to grant any property or other benefit to any foreign public official or official of an international public organisation with intent to persuade such official to wrongfully discharge, omit to discharge or delay the performance of any duty.

The penalties imposed by the Amendment Act for the above offences include fines of between THB 100,000 (currently approximately EUR 2,700 or USD 3,000) and THB 400,000 (currently approximately EUR 10,800 or USD 12,000), imprisonment of between five to 20 years, and lifetime imprisonment (for an offence committed by foreign public officials and officials of international public organisations).

To ensure that the new sanctions will be enforced effectively, the National Anti-Corruption Commission (NACC), which was established under the Organic Act as a main authority responsible for preventing and suppressing corruption in the government sector in Thailand, is now empowered to (i) inquire and decide whether any foreign public official, official of an international public organisation or person, has committed any offence under the Amendment Act, (ii) inquire and decide on any offence which is within the authority of the NACC but committed outside Thailand, and (iii) coordinate with foreign countries for the purpose of performing its duties under the Organic Act, including lending support to foreign countries pursuant to the regulations for international cooperation in criminal matters.

In addition to the above, since the announcement of a military coup in Thailand in May 2014, the National Council for Peace and Order (NCPO, which is the *de facto* supreme governmental authority) has issued various notifications and orders with a view to overseeing and combating corruption in the government sector. For example, since 30 June 2014, all state enterprises in Thailand (i.e. government organisations or business units owned by the government and companies or partnerships which are more than 50% owned by the government) are required to report to the NCPO (i) any investment or new project with a value exceeding THB 100 million (currently approximately EUR 2.7 million or USD 3 million) and (ii) any transaction with a value exceeding THB 100 million which is unusual or not in the ordinary course of business.

New Anti-Corruption Watchdog

As one of the urgent policies of the NCPO is to tackle all corruption in the government sector, the NCPO on 5 January 2015 appointed a separate national anti-corruption commission (National Commission, which is under direct supervision of the NCPO and chaired by General Prayuth Chan-ocha, Head of the NCPO) to serve as the central point for cooperation between the public sector and the private sector in preventing and suppressing corruption in the government sector. Key functions of the National Commission include, among others, to forge cooperation between relevant government agencies dealing with anti-corruption tasks and the private sector to prevent and eradicate

corruption, to listen to the proposals of the private sector in dealing with corruption, and to make proposals on prevention and eradication measures to the Constitutional Drafting Committee for consideration in drafting the constitution.

Guidelines

In order to ensure effective administration by the NCPO in preventing and tackling the problem of corruption and malfeasance in public office, the NCPO on 15 December 2014 issued an order requiring all public sector and government agencies to lay down measures or approaches to prevent and solve the problem of corruption and malfeasance in public administration and government agencies, with an emphasis on promoting good governance and promoting the participation of all sides in scrutinising and monitoring to check against corruption and malfeasance. Where an accusation is made, or there is cause to suspect, that any civil servant or government officer has committed or is involved in corruption and unlawful practices, the head of the relevant government office and agency shall take measures in accordance with the relevant laws and regulations, and ensure that disciplinary, administrative and legal measures are enforced strictly and promptly. Failure to comply with the above requirements could result in the head of that government office or supervisor being disciplined or liable for committing a criminal offence.

Prosecutions

Each year a number of corruption allegations involving public officials are filed with the NACC (which was established under the Organic Act) for further investigation and proceeding. However, prior to the political turmoil and declaration of a military coup which took place in 2014, enforcement activity for corruption offences involving high-ranking political officials (except for a false declaration of assets and liabilities of persons holding political positions) was very rare in Thailand due to government interference. The first case took place in 2008, in which former Prime Minister Thaksin Shinawatra was sentenced to two years in prison for breaching the Organic Act by facilitating his wife's purchase of some land from Thailand's Financial Institutions Development Fund at a discount price. The most recent and controversial case involves allegations of corruption in the former government's rice-pledging scheme. This case has attracted a lot of attention both in Thailand and overseas. On 8 May 2014, the NACC voted unanimously to indict former Prime Minister Yingluck Shinawatra on charges of dereliction of duty in overseeing the corruption-prone rice pledging scheme, and as a result, impeachment proceedings have been brought against Yingluck. The case is still under consideration by The Supreme Court Criminal Division for Persons Holding Political Positions. If found guilty, Yingluck could be banned from political activity for five years, and be liable to imprisonment of up to ten years.

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