





**From the FCPA to the  
UK Bribery Act – Your key  
questions about global  
anticorruption laws answered**

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In 2021, regulators across the globe stepped up their pursuit of allegations of bribery and corrupt practices. Spurred on by changes in political leadership and increased scrutiny of bribery and fraud during the pandemic, we expect to see a sustained increase in anticorruption investigations in 2022.

Though the laws relating to corruption have not changed in recent years, the manner in which they are being enforced clearly has. Regulators are increasingly cooperating, and companies must be on top of their compliance obligations in every jurisdiction in which they do business. Through our work, we have identified a number of key compliance issues and questions that concern our clients across all industries. In a bid to help, we pulled together investigations lawyers from across the Reed Smith platform to create a Q&A guide: From the FCPA to the UK Bribery Act – Your key questions about global anticorruption laws answered.

The guide answers questions relating to the FCPA, UK Bribery Act, and French, German and Greek criminal codes that matter most to our clients. Topics include: How these anticorruption laws relate to a company's dealings abroad and with third parties; the definition of a public official in relation to various anticorruption laws; and whether a company is liable for the corrupt acts of its subsidiaries and employees.

We originally published the Q&A as a series of six client alerts, each focused on a particular aspect of anticorruption laws across multiple jurisdictions. In this guide, we organize the questions and answers by jurisdiction for the convenience of readers looking to hone in on a particular geography. We hope that you find the guide useful and we welcome your feedback.

# The U.S. FCPA: What do I need to know?

## Am I subject to the FCPA?

- The Foreign Corrupt Practices Act (FCPA) anti-bribery provisions broadly apply to the following three categories of entities and individuals:
  - ▶ “issuers” and their officers, directors, employees, agents, and stockholders (15 USC 78dd-1);
  - ▶ “domestic concerns” and their officers, directors, employees, agents, and stockholders (15 USC 78dd-2); and
  - ▶ certain other persons and entities acting under the territorial jurisdiction of the United States (15 USC 78dd-3).
- In “issuer” is generally defined as any company that issues stock on a securities exchange, or in the over-the-counter market, in the United States and is required to file reports with the U.S. Securities and Exchange Commission (15 USC 78i; 15 USC 78c(a)(8); 15 USC 78o(d)).
- A “domestic concern” is generally defined as: “(A) any individual who is a citizen, national, or resident of the United States; and (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States” (15 USC 78dd-2(h)(1)).
- Finally, the United States asserts broad territorial jurisdiction over persons and entities that do not qualify as “issuers” or “domestic concerns” where the conduct of such persons or entities directly or indirectly furthers a corrupt payment in violation of the FCPA. The Department of Justice takes an expansive view of its territorial jurisdiction. Prosecutions have included both foreign and domestic defendants for violating the FCPA criminal anti-bribery provisions, whether the conduct occurred in the United States or abroad, provided that a sufficient link to the United States exists to confer jurisdiction.

## What does the FCPA mean for my dealings with third parties?

- U.S. companies conducting business abroad often need to rely on the assistance of third parties, such as agents, consultants, subcontractors, and distributors.
- However, companies may be held liable under the FCPA if these third-party partners solicit or facilitate corrupt payments to foreign officials. Enforcement authorities will charge companies based on the conduct of their third-party partners under traditional agency principles or theories of authorization and direct or indirect knowledge.
- During their investigations, the Department of Justice and Securities and Exchange Commission often look for specific red flags present within a third-party relationship, including excessive payments or commissions, vaguely defined services, and a third party’s close association with foreign officials.
- Because of this, companies should thoroughly evaluate, train, and monitor third-party partners. Companies should analyze the risks inherent to the third-party agreement, scrutinize the third party’s background and prior experience, and probe any ties to foreign officials. Companies should conduct due diligence to identify high-risk relationships and adopt more robust procedures with regard to these individuals or entities. Additionally, companies should ensure that a third party’s contract states with particularity the legitimate services to be performed and includes a reasonable fee structure.
- Finally, companies should periodically train and closely monitor all third-party partners. When red flags arise during a relationship with a third party, they should be promptly investigated.

## Does the FCPA make our company liable for the acts of our subsidiaries and employees?

- Under the FCPA, a company may be held liable for the acts of its subsidiaries and employees.
- The anti-bribery provisions of the FCPA extend to company directors, officers, stockholders, employees, and agents. Under the legal doctrine of *respondeat superior*, a company may be held vicariously liable for crimes committed by employees within the scope of their employment if those actions are taken at least in part for the benefit of the company.
- *Respondeat superior* applies in situations where corporate employees may be acting primarily for their own benefit. For example, in 2018, the Second Circuit noted the continued vitality of *respondeat superior* while addressing a domestic commercial kickback scheme. The company at issue had entered into a Deferred Prosecution Agreement with the government after several of its employees pled guilty to accepting millions of dollars in kickbacks to steer a lucrative project to a particular subcontractor. Although the scheme was orchestrated by the individual employees primarily for their own financial benefit, the company was held vicariously liable for these acts because the employees were acting within the scope of their employment. The company paid approximately \$500 million in restitution and penalties.
- Parent companies may also be held liable for the actions of their subsidiaries. Enforcement authorities will first consider whether the parent company directly contributed to or ordered the conduct at issue. However, even if the parent company does not have actual knowledge of the wrongful conduct, enforcement authorities may impute knowledge to the parent company if the parent was aware of the high probability of corrupt activity. Additionally, the parent company may be held indirectly liable if it exerted sufficient control over the subsidiary at the time of the conduct.

## How do you define a public official under the FCPA?

- The FCPA prohibits corrupt payments to “any foreign official,” “any foreign political party or official thereof,” and “any candidate for foreign political office.”
- The FCPA also prohibits payments to any other person while knowing that all or a portion of the payment will be offered, given or promised to anyone within these prohibited categories (15 USC 78dd-1-3).
- The FCPA defines the term “foreign official” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization” (15 USC 78dd-1(f)(1)).
- Consistent with the purposes of the FCPA, the Department of Justice interprets this definition very broadly to prevent foreign bribery and corruption. Accordingly, the definition includes both low- and high-level foreign officials regardless of rank or position, as well as intermediaries acting on their behalf.





### What does the FCPA mean for my dealings abroad?

- The FCPA prohibits U.S. persons and businesses from making corrupt payments to foreign officials in order to obtain or retain business. The FCPA's accounting provisions additionally require that companies maintain robust record-keeping procedures and adequate internal compliance programs.
- These provisions apply to conduct within or outside of the United States. Violations of the FCPA may prompt criminal or civil enforcement actions by the Department of Justice (DOJ) and/or Securities and Exchange Commission (SEC).
- U.S. companies conducting business abroad must analyze the risks inherent in dealing with organizations or individuals associated with foreign governments. Certain foreign economies present a unique set of risks, as governments may operate through state-owned enterprises or even exercise control over private companies.
- While the FCPA only applies to payments made to "foreign officials" in their "official capacities", enforcement authorities interpret these terms broadly. For instance, the DOJ and SEC consider an employee or agent of an enterprise owned or controlled by a foreign government to be a foreign official under the Act.
- Because of this, U.S. companies conducting business abroad must assess the risks and variables present within each foreign environment. Companies must understand exactly who they are transacting with both directly and indirectly, and whether such persons may be considered foreign officials under the FCPA. Businesses should take particular care when engaging in commercial dealings with entities owned or controlled by foreign governments. Additionally, companies should maintain effective training and compliance programs designed to prevent and detect FCPA violations.

### What related offenses might occur alongside bribery in an organization? View from the United States

#### *Books and records and internal controls violations under the FCPA*

- The Foreign Corrupt Practices Act (FCPA) not only prohibits bribery of foreign officials; it also requires that issuers: (a) keep books and records that accurately reflect company transactions and uses of assets; and (b) maintain a system of internal controls sufficient for management to maintain control over assets.
- Bribery is often accompanied by falsification of books and records (such as booking illegal payments as commissions or travel expenses).

#### *Violation of other laws*

- Tax violations – for example, company deduction of bribes as legitimate expenses;
- Mail or wire fraud – schemes to defraud victims of money using interstate wire communications or U.S. mail
- Travel Act violations – using interstate or foreign commerce or U.S. mail to carry out, or distribute proceeds from, unlawful activity;
- Money laundering – conducting financial transactions with the proceeds of unlawful activity and certain bad intent, such as to conceal the true ownership of the funds or evade taxes;
- Securities fraud – materially false or misleading statements in periodic financial reports; and
- Other violations of truthful reporting requirements – for example, International Traffic in Arms Regulations fee and commission reporting

# The UK Bribery Act: What do I need to know?

## Am I subject to the UK Bribery Act?

You are subject to the UK Bribery Act if:

- As regards the offense of giving a bribe, being bribed, or bribing a foreign public official:
  - ▶ You are a person or corporate or unincorporated body located anywhere in the world and you commit any act or omission in England and Wales, Scotland or Northern Ireland which forms part of such offense.
  - ▶ You commit any act or omission outside the United Kingdom which would form part of such an offense if done or made in the United Kingdom, and have a close connection with the United Kingdom, meaning you are:
    - A British citizen;
    - A British overseas territories citizen;
    - A British national (overseas);
    - A British overseas citizen;
    - A person who under the British Nationality Act 1981 was a British subject;
    - A British protected person within the meaning of that Act;
    - An individual ordinarily resident in the United Kingdom;
    - A body incorporated under the law of any part of the United Kingdom; or
    - A Scottish partnership.
- As regards the offense of failing to prevent bribery by a commercial organization, you are subject to the UK Bribery Act if you are:
  - ▶ A body incorporated or partnership formed in the United Kingdom and carrying on a business anywhere; or
  - ▶ A body incorporated or partnership formed anywhere and carrying on a business, or part of a business, in the United Kingdom.

## What does the UK Bribery Act mean for my dealings with third parties?

- Many of the settled cases in the UK (Deferred Prosecution Agreements) and other convictions have involved intermediaries paying bribes to public officials and/or private individuals.
- Sections 1 and 6 of the Act expressly prohibit bribes made through third parties.
- Section 7 makes companies liable for bribery intended to benefit them by associated persons, defined as persons who perform services for or on behalf of the company.
- This definition is broad. Section 8 provides that the capacity in which a person performs services for or on behalf of the organization does not matter, so employees (who are presumed to be performing services for their employer), agents and subsidiaries are included. An associated person can be an individual or an unincorporated body.
- Five of the bribery-related enforcement actions for the section 7 offense involve the use of intermediaries (in addition to company employees) who helped win contracts by paying bribes to government officials and/or private individuals.<sup>1</sup>
- Companies should undertake comprehensive risk-based due diligence when it comes to the appointment and monitoring of third parties.
- The jurisdiction and sector in which they operate should be considered as well as other background information.

<sup>1</sup> Rolls Royce, Sarclad, Airbus SE, Airline Services Ltd, Amex Foster Wheeler Energy Ltd.



## Does the UK Bribery Act make our company liable for the acts of my subsidiaries and employees?

- The acts or omissions of an employee can give rise to liability for a corporate under:
  - ▶ Section 1 (bribing another person)
  - ▶ Section 2 (accepting a bribe)
  - ▶ Section 6 (bribery of foreign public officials)
  - ▶ Section 7 (failure of commercial organizations to prevent bribery)
- Corporate liability will arise under sections 1, 2 and 6 if the “identification principle” is satisfied, that is to say that an employee who represents the corporate’s “directing mind and will” has the requisite state of mind. This is a high threshold.
- It is more likely that the acts or omissions of an employee or subsidiary might give rise to corporate liability under section 7.
- Under section 7, unless the corporate can prove that it had adequate bribery procedures in place, a corporate is liable if an “associated person” bribes intending to obtain or retain business for the corporate.
- Those who provide services for or on behalf of a corporate are considered associated persons for the purposes of section 7. It is presumed that an employee is an associated person. Determining whether a subsidiary is an associated person will, however, require a degree of analysis.

## How do you define a public official under the UK Bribery Act?

- A foreign public official is defined in the UK Bribery Act, under section 6(5), as:
  - ▶ “an individual who —
    - — holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory) (or any subdivision),
    - — exercises a public function —
      - ◇ for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
      - ◇ for any public agency or public enterprise of that country or territory (or subdivision),
    - is an official or agent of a public international organisation.”
- The section 6 offense requires an intention to influence a foreign public official in their official capacity in order to obtain or retain business or an advantage in business.
- The general section 1 offense, however, can also apply to attempts to induce improper performance by a foreign public official (not limited to conduct in their official capacity or related to the obtaining or retaining of business).
- Examples of foreign public officials include:
  - ▶ Government ministers and civil servants;
  - ▶ Local government members and officials;
  - ▶ The police and other security agencies, such as immigration and border control; and
  - ▶ The armed forces.
- In September 2021, UK Finance published a report setting out practical and risk-based guidance on the meaning of “public officials” for the purposes of anti-bribery and corruption (ABC) compliance. Considering the practical and risk-based guidance that report provides, and the wide definition of “public officials” in the Bribery Act, it is recommended that companies review the guidance to ensure ABC compliance.



## What does the UK Bribery Act mean for my dealings abroad?

The UK Bribery Act has significant extraterritorial scope, with the precise parameters of its extraterritorial scope contingent on the offense.

### Sections 1, 2 and 6

- In the United Kingdom, there is liability under sections 1, 2 and 6 for acts and omissions forming part of the offense taking place outside the United Kingdom, provided that:
  - ▶ those acts or omissions would constitute an offense under the relevant section if they occurred in the United Kingdom; and
  - ▶ the person performing the acts or omissions has a “close connection” with the United Kingdom (according to the UK Bribery Act, persons with a “close connection” include companies incorporated in the United Kingdom and British citizens).

### Section 7

- If a commercial organization “carries on a business, or part of a business, in any part of the United Kingdom”, regardless of where the commercial organization is incorporated, the commercial organization may be guilty of failing to prevent bribery in the event that an “associated person”, such as a subsidiary, agent or employee, bribes another person or a foreign public official for the benefit of the commercial organization.
- It does not matter if the associated person is not connected to the United Kingdom or the bribery takes place outside the United Kingdom.
- A commercial organization could be liable under section 7 in the following circumstances:
  - ▶ The commercial organization is formed or incorporated in the United Kingdom, but the bribery is conducted outside the United Kingdom by an associated person who has no connection to the United Kingdom and who is performing services outside the United Kingdom; and
  - ▶ The commercial organization is formed or incorporated outside the United Kingdom, but carries on part of its business in the United Kingdom, and the bribery is conducted outside the United Kingdom by an associated person who has no connection to the United Kingdom and who is performing services outside the United Kingdom.

- The courts are yet to determine the precise meaning of “carries on a business, or part of a business, in any part of the United Kingdom.” As such, the only source of guidance comes from the Ministry of Justice, which recommends a “common sense approach” is adopted when determining whether a commercial organization is carrying on business in the United Kingdom, and notes that a “demonstrable business presence” is required. Notably, having shares listed on the London Stock Exchange or having a subsidiary in the United Kingdom does not necessarily mean that a foreign commercial organization will be deemed to be carrying on business for the purposes of section 7.

## What related offenses might occur alongside bribery in an organization? View from the United Kingdom

- Bribery can also give rise to liability for money laundering offenses. Under the Proceeds of Crime Act 2002 (POCA), it is an offense to deal with, handle or become concerned in arrangements involving, criminal property.
  - For the purposes of POCA:
    - ▶ “property” is very widely defined and includes money and all forms of property wherever situated.
    - ▶ property is “criminal property” if it constitutes or represents a person’s benefit from criminal conduct and the person knows or suspects that to be the case.
  - The benefits of bribery could therefore be criminal property for the purposes of POCA, and a corporate which knows or suspects that it is handling or dealing with such benefits would need to make an authorized disclosure to avoid liability.
  - Accordingly, even if a corporate does not self-report in relation to liability under the UK Bribery Act, it may need to consider disclosure under POCA. There are separate offenses relating to failure to report money laundering for those working in the regulated sector.

# French anticorruption laws: What do I need to know?

## Am I subject to French anticorruption laws?

You will be subject to French anticorruption laws if:

- Any of the acts of corruption constituting the criminal offense of which you are accused have been committed in France (Article 113-2 of the French criminal code);
- The victim is a French national (Article 113-7 of the French criminal code);
- The acts were committed in a foreign jurisdiction and punished as such, and you are a French national (Article 113-6 of the French criminal code); or
- Corruption has taken place relating to a foreign or an international public official, and you are a French resident or carry out all or part of your economic activity in France (Article 435-6-2 of the French criminal code).

## What do French anticorruption laws mean for my dealings with third parties?

- A company's dealings with third parties create a risk under French anticorruption laws on two grounds:
  - ▶ Indirect corruption. The crime of corruption can be committed "directly or indirectly." Advantages of any sort offered through third parties can lead to criminal liability.
  - ▶ Complicity of corruption. The French Criminal Code (Articles 121-6 and 121-7 of the French criminal code) penalizes complicity of corruption. Consequently, a company will be held liable if one or several of its organs or representatives are involved in corruption.

## Does the French Criminal Code make our company liable for the acts of my subsidiaries and employees?

- Under the provisions of the French Criminal Code (Article 121-2 of the French criminal code) legal entities are criminally liable for acts committed, on their account, by their "organs" or "representatives." The term "representative" should be interpreted as including any employee holding decision-making powers.
- Regarding subsidiaries, the French Supreme Court ruled recently (June 2021) that, under strict circumstances, a parent company might be held criminally liable for acts committed by a subsidiary.

## How do you define a public official under the French Criminal Code?

- Under the provisions of the French Criminal Code relating to corruption (Articles 432-11 and 435-1 (passive public corruption), 433-1 and 435-3 (active public corruption), 445-1 (passive private corruption) and 445-2 (active private corruption) of the French criminal code) a public agent can be any one of the following:
  - ▶ A "depository of public authority" i.e., anyone acting in the general public interest while exercising public authority prerogatives, no matter their status or the administrative, judiciary or military nature of their activity (for example, the President of the French Republic, a prefect or sub-prefect, a mayor, a police or customs officer, but also a notary or an enforcement agent);
  - ▶ The "holder of an elective mandate"; or
  - ▶ "Anyone entrusted with the carrying out of a public service mission" i.e., anyone responsible, temporarily or permanently, for the satisfaction of the general public interest, even if such a person does not exercise public authority (for example, architects acting upon the request of local authorities, journalists employed by a public service broadcaster, heads of universities, or branch managers of La Banque Postale).

## What does the French criminal code mean for my dealings abroad?

- You will be subject to French anticorruption laws:
  - ▶ If any element of the act of corruption you are accused of has been committed in France (Article 113-2 of the French Criminal Code).
  - ▶ If the victim is a French national (Article 113-7 of the French Criminal Code).
  - ▶ If the act of corruption was committed by a French national in a foreign jurisdiction and punished as such (Article 113-6 of the French Criminal Code).
  - ▶ In case of the corruption of a foreign or of an international public official, if you are a French resident or carry out all or part of your economic activity in France (Article 435-6-2 of the French Criminal Code).

## What related offenses might occur alongside bribery in an organization? View from France

If you suspect that bribery had been committed in your organization, you should watch out for:

- Money laundering. The French Criminal Code (Article 324-1 of the French criminal code) prohibits money laundering, i.e. the facilitation, by any means, of the dishonest justification of the origin of property or income of the perpetrator of a crime. Assisting by investing, concealing or converting the direct or indirect product of crime is also considered money laundering.
- Embezzlement.
- Favoritism.



# German anticorruption laws: What do I need to know?

## Am I subject to German anticorruption laws?

- Under German criminal law, only natural persons are capable of committing criminal offenses. Accordingly, legal persons are not subject to the German Criminal Code (*Strafgesetzbuch – StGB*) and cannot be criminally liable under it.
- Legal entities, however, may be fined under the German Act on Regulatory Offences (*Ordnungswidrigkeitengesetz – OWiG*) for crimes and/or regulatory offenses committed by their organs, board members, authorized representative shareholders or management-level employees (section 30 OWiG). In this context, German law strictly distinguishes between penalties and fines – only the latter may be imposed on legal entities. Fines of up to €10 million may be imposed.
- There is ongoing discussion in Germany about the establishment of a corporate criminal law. A legislative procedure was started but this was recently suspended. However, as several European countries already have a corporate criminal law in place, it is likely that Germany will follow suit. This law will likely include provisions imposing penalties on companies for the offenses committed by their representatives.

## What do German anticorruption laws mean for my dealings with third parties?

- In certain circumstances, individuals can be punished in connection with crimes committed by others if they intentionally instigated or abetted them (sections 26 and 27 of the German Criminal Code (*Strafgesetzbuch – StGB*)).
- Other criminal offenses include aiding after the fact and handling stolen goods (sections 257 and 259 StGB), which could potentially give rise to a criminal liability if committed in connection with an unlawful act of a third party.

## Does the German Criminal Code make our company liable for the acts of my subsidiaries and employees?

In short, no. A legal entity is not punishable pursuant to the German Criminal Code (*Strafgesetzbuch – StGB*) or German criminal law in general.

However, a fine may be imposed on a legal entity pursuant to section 30 of the German Act on Regulatory Offences (*Ordnungswidrigkeitengesetz – OWiG*) if an organ or management-level employee commits a crime or regulatory offense.

In addition, in certain cases, a management-level employee may be liable for the unlawful acts of a subordinate employee in the organization (so-called “acting through another person” – see section 25 paragraph 1 no. 2 StGB). This only applies under very specific conditions, i.e. where the acting individual had a severe lack of knowledge and, therefore, generally cannot be charged him-/herself, while the supervisor intentionally exploited a respective lack of knowledge to make the subordinate individual commit a criminal offense.

Please further note that a violation of obligatory supervision in operations and enterprises pursuant to section 130 OWiG may lead to material fines of up to several million euros. Moreover, senior managers may be held personally liable pursuant to German tort law (sections 831 and 823 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)) if damage is caused by an assistant employee who has not been diligently selected, instructed, provided with equipment and/or supervised.

## How do you define a public official under the German Criminal Code

- According to section 11 paragraph 1 no. 2 of the German Criminal Code (*Strafgesetzbuch – StGB*), a “public official” is any person who, under German law, is a civil servant or judge (also honorary judges), carries out other public official functions or has otherwise been appointed to serve with an authority or other agency, or has been commissioned to perform public administrative services, regardless of the organizational form under which the respective duties are performed.

- Furthermore, section 11 paragraph 1 no. 2a StGB defines a “European official” as any person who is a member of the European Commission, the European Central Bank, the European Court of Auditors or any court of the European Union, who is a civil servant or other member of staff of the European Union or of an institution established under EU law or who is entrusted with carrying out the tasks of the European Union or the tasks of an institution established under EU law.

### **What does the German Criminal Code mean for my dealings abroad?**

- Under the German Criminal Code (Strafgesetzbuch – StGB) individuals may, with rare exceptions, only be punished for committing offenses on German territory, including German ships and aircraft (sections 3 and 4 StGB). In some cases, however, crimes committed abroad are punishable under the StGB (sections 5-7 StGB).
- Section 5 StGB lists offenses with a specific domestic connection, such as high treason, offenses against national security, violation of business or trade secrets of a business which is physically located in Germany, as well as taking of bribes by, and giving of bribes to, elected officials. Some crimes outlined in section 5 StGB may only be committed by public officials.
- Section 6 StGB includes some severe violations where the offense is committed against internationally protected legal interests. These offenses, which include human trafficking, the unauthorized sale of narcotics, crimes involving nuclear energy and subsidy fraud, may be prosecuted and sanctioned under German criminal law.
- Section 7 extends the applicability of the StGB, to, among others, all other offenses committed abroad against or by German citizens.

### **What related offenses might occur alongside bribery in an organization? View from Germany**

- If bribery occurs in an organization, a number of further offenses may apply such as, if a public official is involved, the offenses of advantage acceptance and advantage granting (sections 331 and 333 of the German criminal code (Strafgesetzbuch – StGB)).
- Other offenses include bending of the law (section 339 StGB) and/or obstruction of justice (section 258a StGB), which can be committed by individuals other than public officials.
- Additionally, the offenses of money laundering (section 261 StGB) and embezzlement (section 266 StGB) may have been committed in individual cases.



# Greek Criminal Code: What do I need to know?

## Am I subject to the Greek Criminal Code?

Under Greek criminal law, only natural persons can be criminally liable. Greek criminal statutes are enforced for all offenses committed on Greek territory, even if committed by foreign nationals. Relevant offenses for which a Greek or foreign national may be held liable under the Greek criminal code (GCC) are as follows:

### Passive bribery of a public official (article 235, GCC)

- **Scope**

- ▶ Requesting or receiving, directly or indirectly through third persons in favor of oneself or others, benefits of any nature or accepting a promise of such benefits, in order to act or omit to act in relation to or in breach of one's public duties; or Requesting or receiving in favor of oneself or others a property-related benefit by taking advantage of one's capacity as a public official.

- **Applicable offenses**

- ▶ Any act of bribery related to both domestic and foreign public officials, judges and political functionaries, such as public officials and employees from foreign countries, officials or employees of any public international or transnational organizations of which Greece is a member and EU organizations headquartered in Greece, foreign judges, jurors, arbitrators and members of the Court of Justice of the European Union, members of the parliament of a foreign country and members of the European Parliament or the European Commission.

- Criminal sanctions individuals
- Up to five years' imprisonment and a fine.
- If the act is committed in breach of one's duties: up to 10 years' imprisonment and a fine.

### Active bribery of public officials (article 236, GCC)

- **Scope**

- ▶ Offering, promising or giving to a public official, directly or indirectly through third parties in favor of oneself or others, benefits of any nature to induce the public official to act in breach of, or omit to act in accordance with, their public duties, whether in the past, present or future.

- **Applicable offenses**

- ▶ Acts of bribery related to both domestic and foreign public officials, judges and political functionaries, such as public officials and employees from foreign countries, officials or employees of any public international or transnational organizations of which Greece is a member and EU organizations headquartered in Greece, foreign judges, jurors, arbitrators and members of the Court of Justice of the European Union, members of the parliament of a foreign country, and members of the European Parliament or the European Commission.

- Criminal sanctions individuals
- Imprisonment or a fine. If the bribed officials acted in breach of their duties, the act is considered a felony punishable with up to eight years' imprisonment and a fine.
- Seizure of all assets and financial gains.

### Bribery in the private sector (article 396, GCC)

- **Scope**

- ▶ Providing or promising to provide benefits to an individual working in the private sector to induce them to act in violation of their professional obligations, or the individual's solicitation or acceptance of such benefits.

- Criminal sanctions individuals
- Up to one year's imprisonment and a fine.

### Money laundering

- Criminal sanctions individuals
- Imprisonment from one to six years and a fine ranging from €10,000 to €1 million depending on the nature of the predicate offense (misdemeanour or felony).
- If the offense is committed by an employee of an entity required by law to carry out specific anti-money laundering measures or the predicate offense relates to the passive or active bribery of public officials, political functionaries or judges: five to 15 years' imprisonment (even if the predicate offense is a misdemeanor) and a fine ranging from €30,000 to €1.5 million.

- If the offense was committed repeatedly or as a profession, or related to organized crime or terrorist activities: a minimum 10 years' imprisonment (with a maximum sentence of 15 years) and a fine ranging from €50,000 to €2 million.

### How do you define a public official under the Greek Criminal Code?

- The Greek criminal code (GCC) defines a public official as any person who:
  - ▶ Provides services or is assigned public duties;
  - ▶ On a permanent or temporary basis;
  - ▶ and Within the public sector or on behalf of the Greek state, municipalities or other public legal entities.
- Specifically in relation to bribery (articles 235-237B GCC), a public official is defined as any person serving, on a permanent or temporary basis, in any capacity, in:
  - ▶ An organization or company that is fully or majority owned by the state, a regional or local authority or any other public legal entity; and/or
  - ▶ An organization or company the majority of whose directors are appointed by the state, a regional or local authority or any other public legal entity.

### General information in relation to public officials

- Public officials are not allowed to be involved in commercial activities
- The code of conduct for public officials allows some types of activity outside their public service following special permission as long as this activity does not interfere or conflict with their official duties.

### What does the Greek Criminal Code mean for my dealings abroad?

- Greek criminal law is based on the principle of territoriality, wherein Greek criminal statutes are enforced for all offenses committed on Greek territory even if committed by foreign nationals (article 5, GCC).
- However, Greek criminal courts have extraterritorial jurisdiction in the following instances:
  - ▶ Offenses which are felonies or misdemeanors committed in a foreign state by a Greek national, if the offense
    - is punishable under the law of the state where it was committed; or
    - was committed in a "politically unconstituted" country (article 6(1), GCC). A country could be defined as "politically unconstituted" if there is a permanent and total lack of any state legislative, executive or judicial powers.
- Prosecution may be brought against a foreign national if they were a Greek national at the time the offense was committed (article 6(2), GCC). Felonies and misdemeanors committed abroad by a foreign national, if the offense was aimed against a Greek national or legal entity headquartered in Greece. These offenses are punishable in accordance with the law of the state where they were committed. Prosecution for such misdemeanors requires a request by the victim or the government of the relevant state.





# About our regulatory & investigations team

Reed Smith's global team comprises more than 50 white collar crime defense lawyers who concentrate their practices on helping clients to manage fallout from the FCPA, UK Bribery Act, French, German and Greek anticorruption laws. We provide seamless cross-office support and leadership in key jurisdictions and local resources as needed in affected regions. We regularly provide bespoke compliance solutions and defend corporate clients and their senior executives in all phases of criminal investigations and prosecutions. We have helped a number of our clients and their in-house legal departments to manage their compliance obligations effectively

You can find out more about our team and discover more of our thought leadership by going to our [FCPA and Bribery page](#).

Join the conversation



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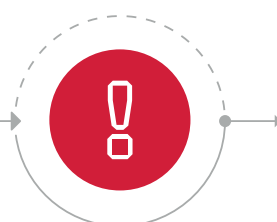
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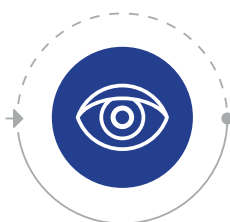
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[How do you define a public official and how does that definition vary between the FCPA, UK Bribery Act and French, German and Greek criminal codes?](#)



[What other offenses do I need to watch out for if I suspect there has been bribery in my organization?](#)



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