

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

This table has been prepared by lawyers from Dentons.

- Michelle Shapiro, New York (michelle.shapiro@dentons.com)
- Emma Radmore, London (emma.radmore@dentons.com)
- Howard Cohen, London (howard.cohen@dentons.com)
- Adrienne O'Reilly, Calgary (adrienne.oreilly@dentons.com)
- Anthony Cole, Calgary (anthony.cole@dentons.com)
- Christine Sévère, Paris (christine.severe@dentons.com)
- Claire Picard, Paris (claire.picard@dentons.com)
- Julia Zeitz-Krueger, Berlin (julia.zeitz-krueger@dentons.com)
- Joerg Karenfort, Berlin (joerg.karenfort@dentons.com)
- Randy Bregman, Washington DC (randy.bregman@dentons.com)
- Marat Mouradov, Moscow (marat.mouradov@dentons.com)

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
T +44 20 7242 1212
dentons.com

© 2013 Dentons. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Attorney Advertising. Please see dentons.com for Legal Notices. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Dentons UKMEA LLP is a limited liability partnership registered in England and Wales under no. OC322045. It is authorised and regulated by the Solicitors Regulation Authority. A list of its members is open for inspection at its registered office: One Fleet Place, London EC4M 7WS. Any reference to a "partner" means a person who is a partner, member, consultant or employee with equivalent standing and qualifications in one of Dentons' affiliates.

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

Prevention of bribery and corruption has increased in profile and importance over recent years. Key jurisdictions seem constantly to be developing, updating and enforcing their legislation. International law firm Dentons has produced a summary table showing how six jurisdictions deal with critical issues such as:

- Is it an offence both to bribe and be bribed?
- Is the law limited to bribery of foreign public officials?
- What is the jurisdictional reach of the law?
- Are gifts, hospitality and facilitation payments allowed?
- What are the penalties?
- Are deferred prosecution agreements allowed?

The table below shows a number of common basic principles, but with significant local nuances.

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
Prohibited Conduct: Bribing	Prohibits direct and indirect bribery of non-US officials, including officers and employees of state-owned enterprises, for purposes of obtaining or retaining business.	Prohibits direct and indirect bribery of any person (not limited to foreign officials or other public sector) to induce them to act "improperly" or reward them for acting improperly.	Prohibits bribery of non-Canadian public officials (or any person for the benefit of a foreign public official) for purposes of obtaining or retaining an advantage in the	Prohibits bribery of any person (not limited to foreign officials or other public sector) to induce them to act "improperly" where not 'legally permissible'	Prohibits bribery of any person in the public sector to induce them to perform an official act, whether or not thereby violating his official duty. Bribery of foreign public officials	Prohibits bribery of civil servants/state officials and executives of commercial and other organisations to induce them to use their authority to act in favour of

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
T +44 20 7242 1212
dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
		Also an offence to bribe a foreign public official to influence them to act in their capacity as such for the purposes of getting or keeping business or a business advantage.	course of business.		subject to German Criminal Code in limited respects. Prohibits bribery of employees and agents of a business in a business transaction to induce them to accord an unfair preference in the competitive purchase of goods or commercial services.	those giving bribe.
Prohibited Conduct: Receiving bribes	Prohibits only payment of/offer to pay a bribe; requesting/ accepting a bribe is not a violation (though recipients	Prohibits payment of/offer to pay a bribe, as well as requesting/ accepting a bribe.	Prohibits only payment of/ offer/ agreement to pay a bribe; requesting/ accepting a bribe is not a violation (but recipients may be	Prohibits payment of/offer to pay a bribe, as well as requesting/ accepting a bribe.	Prohibits not only giving a bribe, but also taking a bribe (demanding, allowing oneself to be promised and accepting a benefit).	Civil servants, state officials and executives of commercial and other organizations.

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
T +44 20 7242 1212
dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
	may be prosecuted under other US laws).		prosecuted under other provisions of the <i>Criminal Code</i>).			
Jurisdiction	<ul style="list-style-type: none"> • US companies (public or private) • Most non-US subsidiaries of US companies • Foreign companies listed on a US stock exchange • US citizens and residents • Third parties and employees of any nationality acting for a US company • Third parties and employees of any nationality who 	<ul style="list-style-type: none"> • UK companies • Foreign companies that operate in the UK • UK nationals and residents • Any person acting while in the UK • Any person acting overseas with a “close connection” to the UK 	<ul style="list-style-type: none"> • Canadian companies • Canadian citizens and permanent residents • Any person or entity where there is a real and substantial connection between Canada and the acts constituting the offence. 	<ul style="list-style-type: none"> • French companies • Foreign companies that operate in France • French nationals and residents • Any person acting while in France • Any person acting in connection with the bribery of a European Official or Official of a Member States of the European Union 	<p>Depending on the circumstances of the case, in general:</p> <ul style="list-style-type: none"> • German and foreign nationals acting while in Germany. • German nationals acting elsewhere. • Any person acting elsewhere if bribery is committed against German public officials. 	<p>Individuals of any nationality whose criminal actions are taking place in Russia (note: place where crime may be committed by an individual may be different from individuals’ physical location at the time he/she commits a crime).</p> <p>Legal entities cannot be subject to criminal liability under Russian law</p>

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
	commit an act in furtherance of a violation in the US (including by using US mails or wires)					
Knowledge Requirement:	Requires corrupt intent.	For bribing foreign public officials no requirement for dishonest intent. In other cases of giving bribes must intend or know of acting "improperly." Companies face strict liability for failure to prevent acts of bribery by "associated persons" providing services for or on behalf of the company.	Requires intention to commit the necessary elements of the offence.	Requires corrupt intent.	General requirement of "Vorsatz" (knowledge and intent) with regard to the characteristics of the criminal offence. Administrative offence of a breach of duty of supervision of the owner of a company requires "Vorsatz" or negligence.	Requires malicious intent to commit a crime.

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
Reasonable and bona fide promotional expenditures	Permissible	No exception or defence but reasonable, proportionate and bona fide expenditure unlikely to amount to bribery.	Permissible	If not 'legally permissible', no exception or defence (and may fall within the scope of the additional offence of misuse of private funds)	No statutory thresholds for determining the adequacy of a payment/ benefit. Assessment is on a case-by-case basis. Generally, depending on the circumstances of the case (amount of payment/value of benefit and position of recipient) conduct may be considered not a criminal offence, e.g. if benefit is "socially acceptable".	Permissible, if no intent to extract advantages is established. Limitation of 3,000 roubles (roughly USD 100) for gifts to state officials and civil servants is established in civil law; although payment of lower amount with malicious intent does not free from criminal liability.

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

© 2013 Dentons. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Attorney Advertising. Please see dentons.com for Legal Notices. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Dentons UKMEA LLP is a limited liability partnership registered in England and Wales under no. OC322045. It is authorised and regulated by the Solicitors Regulation Authority. A list of its members is open for inspection at its registered office: One Fleet Place, London EC4M 7WS. Any reference to a "partner" means a person who is a partner, member, consultant or employee with equivalent standing and qualifications in one of Dentons' affiliates.

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
“Facilitating” payments to expedite routine governmental action	Permissible	No exception or defence. In practice, prosecutors may decide that prosecuting some small payments is not in the public interest. Alternative potential defence of duress in circumstances of personal danger.	Exception for facilitation payments still in force, but repeal under <i>Fighting Foreign Corruption Act</i> to take effect by Order of Governor in Council, on a date to be determined.	If not ‘legally grounded’, no exception or defence (and may fall within the scope of the additional offence of misuse of private funds).	Generally prohibited. Depending on the circumstances of the case the conduct may be considered not a criminal offence if benefit is “socially acceptable” (e.g., an inexpensive promotional item). But “facilitating payments” to foreign public officials generally not covered by offences under the German Criminal Code as long as the desired official act would not	Not permissible, unless specifically authorized by law.

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
					be in violation of official duty.	
Payments permitted by written law of foreign country	Permissible	Permissible in case of foreign official; otherwise, factor for consideration in determining whether acting "improperly."	Permissible.	If 'legally permissible', then should be permitted.	Where German criminal law applies to bribery of foreign public officials, it applies regardless of the law of the country where it is committed. But in determining whether the offence is punishable, some elements (e.g. the question whether the intended official act would be contrary to official duty) would be assessed on the basis of the relevant foreign law.	Not permissible, except if an international treaty to which Russia is a signatory establishes specific permission.

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
Adequate procedures in place designed to prevent bribery	Not a corporate defence, though having such procedures may assist in negotiations with the government.	Defence to the offence of failing to prevent bribery. Not a defence to other offences but may be relevant to prosecutorial discretion.	Not a corporate defence.	Not a corporate defence.	Only relevant with respect to administrative offences as there is no corporate criminal liability. Defence to the offence of failing to prevent bribery (no violation of supervisory duties).	N/A as only individuals may be subjected to criminal liability. However, procedures may reduce risks in practice and if followed show lack of malicious intent.
Direct penalties	Individuals: Up to 5 years' imprisonment and criminal fines up to US\$250,000 per violation or 2x the benefit sought through the corrupt payment/offer, plus civil penalties up to US\$10,000 per violation and/or	Up to 10 years' imprisonment for individuals and unlimited fines for individuals and corporates.	Up to 14 years' imprisonment for individuals and unlimited fines for corporations.	Individuals: Up to 10 years' imprisonment and criminal fines up to €150,000. Companies: Up to €750,000.	Individuals: Bribery in the commercial context: up to 3 years' imprisonment or a fine. Bribery of public officials: up to 5 years' imprisonment or a fine.	Up to 15 years' imprisonment, and/or disqualification and/or penalty calculated based on special formula.

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
T +44 20 7242 1212
dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
	<p>restitution.</p> <p>Companies: Criminal fines up to US\$2,000,000 per violation or 2x the benefit sought through the corrupt payment/offer, plus civil penalties up to US\$10,000 per violation and/or restitution.</p>				<p>Taking a bribe: up to 10 years' imprisonment or a fine.</p> <p>Administrative offence (breach of duty of supervision): fine up to €1m</p> <p>Companies: No corporate criminal liability.</p>	
Ancillary penalties	<p>Companies and individuals may be suspended or debarred from contracting with US government and companies may have their import/export licenses revoked or</p>	<p>Pursuant to European Union Public Sector and Utilities Procurement directives, where a company or its director(s) has been convicted of corruption, it will be</p>	<p>Possible forfeiture of entire "proceeds" of bribery</p>	<p>Among other ancillary penalties applicable under common rules (publicity, winding up, closing, prohibition to manage, prohibition to serve as a public officer, etc.), the</p>	<p>Companies can be fined up to €1m for violations under the German Administrative Offences Act (attribution to the company of criminal or administrative offence committed</p>	<p>See above</p>

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

	US FCPA Anti-bribery provisions	UK Bribery Act	Canada Corruption of Foreign Public Officials Act	France	Germany German Criminal Code (and related statutory acts)	Russia
	denied.	excluded from participation in public sector contracts throughout the European Union.		Company or its director(s) that have been convicted of corruption, may be excluded from participation in public sector contracts.	by representative or failure to prevent bribery) or much more through skimming off of excess profits.	
Deferred Prosecution Agreement?	Possible.	Legislation enacted April 2013 permitting deferred prosecution agreements for any offence by a corporate under the Act.	No.	No.	No. Only general possibility of a negotiated agreement (deal) between the court and the participants of the proceedings at the court's discretion on the legal consequences that could be the content of the judgment (not the verdict of guilt itself).	An analogous possibility is available, subject to certain criteria being met.

Dentons UKMEA LLP
 One Fleet Place
 London EC4M 7WS
 United Kingdom
 T +44 20 7242 1212
 dentons.com

Anti-bribery and corruption laws: Comparison of key points in selected jurisdictions

DENTONS

We can conclude that, perhaps, there are similarities between the North American jurisdictions and between the EU ones but even there, the laws are not the same. While the laws of all the jurisdictions in this survey prohibit bribery of officials to some extent, the breadth of the offences and the jurisdictional coverage differ. The UK has just legislated to introduce deferred prosecution agreements for a number of corporate financial crimes, including all offences under the BA. The UK alone has a separate offence of “failing to prevent bribery”. But, in enforcement terms, the US leads the way in high profile enforcement actions. Moreover and tellingly, what the enforcement authorities say indicates a desire to move closer to a higher norm for anti-bribery and corruption laws throughout the world. For global organisations it is increasingly common practice to adopt global policies according to the highest standard among the relevant jurisdictions. These organisations should beware of believing a policy compliant with the FCPA and UKBA will surely meet all other standards. Other countries have strict anti-corruption laws too.

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
T +44 20 7242 1212
dentons.com

© 2013 Dentons. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Attorney Advertising. Please see dentons.com for Legal Notices. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Dentons UKMEA LLP is a limited liability partnership registered in England and Wales under no. OC322045. It is authorised and regulated by the Solicitors Regulation Authority. A list of its members is open for inspection at its registered office: One Fleet Place, London EC4M 7WS. Any reference to a “partner” means a person who is a partner, member, consultant or employee with equivalent standing and qualifications in one of Dentons’ affiliates.