Introduction

Responding to deep-seated change in the global geopolitical landscape, increasing legislative and regulatory complexity and demand from stakeholders for greater transparency, companies are now conducting their business activities in a broader strategic space and are pursuing new management approaches.

Given the environment in which it operates, Thales attaches particular importance to the prevention of corruption. Thales has developed a complete set of corruption prevention directives and has put in place a dedicated organisation to ensure compliance with national and international legislation. Based on global best practices, these measures are constantly reviewed in a process of continuous improvement.

As part of this approach, Thales reaffirms its commitment to strict adherence to the laws applicable to all its operations and its engagement in a proactive policy of ethical conduct and compliance.

Ethical business practices are a crucial factor in protecting the Group’s interests and promoting a positive corporate image. They are also a key differentiator and driver of competitive performance. For Thales, ethical business practices are based on a set of simple core principles: compliance with laws and Group directives, professionalism, rigour and integrity.

This Reference Guide is an update of the version published in January 2008. It is aimed in particular at employees who are directly or indirectly involved in Thales’s marketing and sales activities, and contains information and directives that need to be implemented in their day-to-day work. Adherence to these recommendations and directives is critical to the Group’s performance and long-term success.

Since the last edition of this document, efforts to combat bribery and corruption have moved to a new level, cooperation between states has intensified, particularly within the OECD, and a range of new initiatives have been taken both by civil society and individual industries.

In this evolving environment, it is vital to understand the importance of corruption prevention for companies and to act accordingly, in a responsible manner, ensuring compliance at all times with the corruption prevention measures put in place by the Group.

This guide is in three parts:
- Understanding corruption and its implications for companies;
- Act with integrity: the Thales way;
- Need to know: reference information.
Contents

UNDERSTANDING CORRUPTION AND
ITS IMPLICATIONS FOR COMPANIES ................. 6

What exactly is corruption? ........................................ 6
The criminalisation of corruption at international level,
a legal reality .......................................................... 8
The importance of corruption prevention for companies .......... 8

ACT WITH INTEGRITY: THE THALES WAY .......... 12

Zero tolerance for corruption .................................... 12
Dedicated structures at international level .................... 14
Anti-corruption measures as an integral part
of operational processes ........................................... 15
What do they have in common? ................................ 15
Prevention of corruption risks associated with the use
of consultants, lobbyists and experts:
"Instruction for appointing & managing Business Advisers" ........... 15
Corruption prevention and corporate responsibility
with respect to suppliers ........................................... 17
KIP instruction: a response to Thales’s
new business model stakes ..................................... 19
Gifts and hospitality, charitable donations,
sponsorship and lobbying ...................................... 22
Ethics alert .................................................................... 25
Risk mapping and changes to corruption prevention policy ........ 26
Audit and internal control ........................................... 26
Industry-wide actions .................................................. 26
NEED TO KNOW: REFERENCE INFORMATION ............. 28

The OECD Convention: a major step forward in the fight against corruption .................................................. 28
  Signatories to the convention ............................................. 28
  Aims ............................................................................. 29
  Scope ........................................................................... 29
  Implementation .................................................................. 29

The emergence of an international legal framework to fight corruption .......................................................... 31

The various national legislative frameworks ................................... 32
  France ............................................................................ 32
  United States ..................................................................... 33
  United Kingdom .................................................................. 35

Appendix ............................................................................ 38

Appendix 1 - Definitions ..................................................... 38
Appendix 2 - Key International Conventions ......................... 41

The information in this document is applicable to all Group units around the world. Where appropriate, certain provisions will need to be transposed and adapted to the national legal context.

This document is not contractual and does not confer any new rights and responsibilities between Group companies and their employees. Thales may amend this document at any time.

Understanding corruption and its implications for companies

What exactly is corruption?

Corruption is defined as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof”.

(Article 2 - Definition - Civil Law Convention on Corruption - Council of Europe).

Different forms of corruption

Active and passive bribery

Active bribery is promising or offering an undue advantage. Passive bribery is requesting or receiving an undue advantage.

The offence of active bribery is committed if a person simply offers or promises an undue advantage, whether or not they are accepted by the other party.

The offence of passive bribery is committed when any such advantage is requested or accepted by the recipient.

Solicitation refers to the situation where the person in receipt of the bribe initiates the corrupt agreement. It includes any attempt to invite another party, directly or indirectly, to understand that they are required to give a financial or other undue advantage as an inducement to act or refrain from acting. In such situations, as with active bribery, an offence is committed whether or not the offer leads to a result.

Undue advantages may take the form of money, services or goods, gifts, travel, entertainment, hospitality, advancements or distinctions, awards of contracts or titles, administrative decisions, etc.
**Direct and indirect bribery**

The offence of bribery is committed whether the undue advantage is given *directly or indirectly through intermediaries*. Consequently, the use of subsidiaries or other entities, irrespective of their location and whether or not the company holds a majority shareholding, and the use of external intermediaries, do not exempt the instigator of a bribe from the resultant liability.

**Public or private sector bribery**

The law condemns the bribery of public officials in the same way as it condemns bribery in the private sector.

**Transnational or international bribery**

The terms “transnational bribery” or “international bribery” are used to describe *bribery* in the public or private sectors *involving parties in different countries*.

**Trading in influence is comparable to bribery**

Trading in influence, also called influence peddling, is an act committed intentionally, defined as “the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to *exert an improper influence over the decision-making* [of a domestic or international public official(1)] in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result”.

*(Article 12, Trading in influence, Criminal Law Convention on Corruption of the Council of Europe).*

**A diagrammatic approach to the concept of bribery**

1. Trading in influence in the private sector is defined in a similar way.
The criminalisation of corruption at international level, a legal reality

For a long time, companies engaging in acts of corruption in foreign countries had no reason to fear prosecution in their own countries, unless they were in breach of national legislation, for example relating to accounting irregularities, misuse of company assets or tax evasion.

Today, legislation in most countries explicitly condemns the offence of bribery, in whatever form and irrespective of whether it is committed on national territory or in a foreign country. The associated penalties apply to perpetrators and accessories to the offence, whether they are individuals or companies.

Sanctions for acts of corruption

Individually may be liable to imprisonment, exclusion from business in the area concerned, loss of civil rights and financial penalties.

Companies may be liable to heavy financial penalties and trade sanctions, such as exclusion from business activity in a country, disqualification from public contracts and access to public funds, loss of entitlement to raise funds, or closure of facilities.

EXAMPLES OF PENALTIES IMPOSED FOR CORRUPTION

- **France**: 5 to 10 years’ imprisonment and €75,000 to €150,000 fine for individuals. €375,000 to €750,000 fine for companies. With additional penalties in both cases.

- **United States**: Criminal penalties of US$2 million or up to twice the proceeds of the corrupt payments and up to 15 years’ imprisonment. Administrative sanctions, such as ban on exports.

- **United Kingdom**: 7 to 10 years’ imprisonment, unlimited fine and disqualification from public contracts for companies.

The importance of corruption prevention for companies

Multinational companies operate in complex, globalised and completely open economic environments in which national preferences are often blurred in favour of a huge and hypercompetitive world market.

Their customers typically insist on a whole range of sometimes conflicting requirements, including performance, technology transfers, offsets and local content[^2]. These requirements may also be subject to geopolitical and strategic considerations, particularly in the case of public-sector customers.

[^2]: Where part of a contract is executed by companies based in the customer’s country.
At the same time, the business practices of multinational companies are under increasing scrutiny from stakeholders:

- Tax and legal authorities at national or European Union level;
- The OECD, United Nations and other international or intergovernmental bodies;
- Financial markets and financial and extra-financial rating agencies;
- Transparency International and other NGOs;
- Suppliers and customers;
- Wider civil society, public opinion and the media;
- Their own employees.

The employees of multinational companies are more sensitive than ever to the issues of integrity, transparency, performance and corporate responsibility.

Illustration of the main stakeholders

The way a company is governed and the way it conducts its business and listens to the expectations of its stakeholders has a significant effect on its image and its reputation, two of its most important intangible assets. Consequently, a conviction for corruption, or even a simple allegation, can weaken a company for years to come, particularly at a time of fierce competition, and can compromise its long-term success.
THE SIEMENS CASE

Brief recap
- **2004/2005:** Investigations in various European countries related to irregular payments made by Siemens.
- **15 November 2006:** 30 *dawn raids* by German police, involving 200 officers at the company’s offices and the homes of senior managers.
- **Late 2006:** Auditors refuse to certify the company’s accounts. The company, now cornered, agrees to cooperate and offers total transparency.

Truth uncovered with immediate consequences
- A total of €1.4 billion in “dubious” payments between 2000 and 2006 (approx. 4,300 payments of €10,000 to €50 million apiece).
- Proceedings in 13 jurisdictions.

Sanctions and related costs
An agreement with the German and American authorities reduces the penalties to:
- €1.3 billion (€775 million in Germany and US$ 800 million in the United States).
- Appointment of a monitor \(^3\) by the US Securities and Exchange Commission (SEC) \(^4\) for a period of four years.
  - Cost of the procedure, excluding financial penalties: €2.2 billion.

These complexities are further compounded by another reality. Passive corruption, also known as solicitation or extortion, has not been eradicated. Despite the significant advances made in anti-corruption legislation, companies are faced with a complex environment which has not yet eliminated the distortion of competition. The practices of solicitation, extortion and passive bribery are still commonplace in countries where governance is poor. In addition, effective sanctions against acts of corruption vary widely in countries around the world.

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3. An independent consultant appointed to ensure compliance of the company’s practices with the U.S. Foreign Corrupt Practices Act.
4. U.S. federal agency which regulates and monitors financial markets and polices the nation’s stock and options exchanges.
And yet, as indicated above, responding to any such solicitation or offer of involvement in extortion or passive bribery exposes companies, their managers and their employees to serious civil and criminal sanctions.

Aware of the complexity of its environment and the risks to which it is exposed, due to its international operations, Thales has put in place rigorous corruption prevention measures as an integral part of its operational processes, and works proactively to establish a **level playing field for fair competition** through transparent dialogue with its stakeholders and through close involvement in industry-wide initiatives at national, European and global level.

Together, these actions are part of Thales’s broader strategy to increase its competitiveness, influence and performance as a company.
Act with integrity: the Thales way

Thales’s corruption prevention strategy is based on the conviction that a culture of integrity and responsibility is absolutely crucial to the company’s long-term success. It is central to the continuous development of its business model and contributes to its performance.

The main axes of Thales’s corruption prevention strategy can be summarised as follows:

- A zero-tolerance approach to all acts of bribery and corruption.
- A dedicated organisation and associated resources to implement corruption prevention measures and procedures.
- Corruption risk prevention procedures as an integral part of the company’s processes, related in particular to:
  - Business operations involving third parties, such as consultants, lobbyists, experts, industrial partners and suppliers,
  - Company policy on gifts and hospitality given to customers and received from suppliers,
  - Lobbying actions.
- Internal whistleblowing procedures for employees.
- Mapping and regular assessment of risks of exposure to corruption.
- An audit and internal control system.
- Industry-wide actions to promote a level playing field for fair competition.

To ensure employees understand and adhere to this policy of integrity, programmes are in place to raise awareness and provide the necessary information and training.

Zero tolerance for corruption

Thales prohibits all forms of corruption

Employees are required to act in strict compliance with the law at all times and are forbidden to engage in any form of corruption, whether direct or indirect, or to be complicit in any form of corruption or trading in influence, as stated in the Thales Code of Ethics, distributed to all employees.

Thales is careful to ensure that its employees and partners do not initiate any offer of bribery or corruption and categorically refuse any such offers.
ZERO TOLERANCE: THALES CONDEMNS ALL FORMS OF BRIBERY AND CORRUPTION, AS DETAILED IN ITS CODE OF ETHICS

“Thales operates in strict compliance with the rules of fair trading and with applicable legislation and codes of practice. Under no circumstances may the Group grant any undue direct or indirect advantage, whether direct or indirect, to any public official or customer employee in order that they might act, or refrain from acting, in the performance of their official duties to Thales’s benefit.”
Dedicated structures at international level

Given the complex international environment in which Thales conducts its business, combined with the need to ensure rigorous compliance with national and international legislation, particularly in the area of indirect corruption, the Group has created dedicated structures as part of its international organisation.

These structures have the necessary expertise, experience and resources, provide assistance for operating units whenever they need to use intermediaries and ensure that ethical compliance and corruption prevention rules are implemented and respected.

Part of the Group’s international organisation, these dedicated structures are the four Thales International Regional Holdings — Latin America, Middle East & Africa, Europe and Asia — and are responsible for all countries attached to them.

By delegation of powers, certain roles and responsibilities have been devolved to the Country Corporate Management of the 13 Thales Countries.

The “Thales Countries” are those countries in which the Group has a significant presence and appropriate associated structures called Country Corporate Management as distinct from operating units.

The countries concerned are: Australia and New Zealand\(^5\), Austria, Canada, France, Germany, Italy, the Netherlands, Norway, Singapore, Spain, Switzerland, the United Kingdom and the United States.

Consequently, certain decisions may be referred to the Thales Country Director, Region Director and/or Area SVP, depending on the circumstances.

REFERENCE

For more details about the Thales international organisation, refer to the Group’s Chorus reference system and to the “International Organisation” section of the Group’s intranet.

**Note:**

While Thales’s international organisation is partly responsible for implementing measures to prevent corruption, the Group’s integrity and corruption prevention policy is drawn up by the Group’s Ethics and Corporate Responsibility Department, in conjunction with the Ethics and Corporate Responsibility Committee.

This Committee is one of the Group’s three governance bodies (the other two are the Executive Committee and the Risk and Internal Control Committee).

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\(^5\) In the Thales organisation, these two countries constitute a whole and are thus treated as one country.
Anti-corruption measures as an integral part of operational processes

What do they have in common?

The various corruption risk prevention measures in place are based on common principles:

- Compliance with national and international legislation;
- Risk identification and qualification and prior due diligence checks;
- Proportionality of prevention measures in line with the level of risks;
- Escalation procedures when higher-level decisions are needed in the case of non-residual risks;
- Referral to higher-level management and/or local representative if in doubt;
- Accountability, rigour; professionalism and integrity;
- Transparency and traceability;
- Separation of roles and responsibilities, with recourse to dedicated structures with the necessary expertise and experience;
- And... straightforward logic and common sense.

Prevention of corruption risks associated with the use of consultants, lobbyists and experts: “Instruction for appointing & managing Business Advisers”

Where it lacks the necessary skills or resources in certain specific areas, Thales may from time to time need to use intermediaries to provide consultancy, lobbying or other expert services. The use of such intermediaries, generically referred to as “Business Advisers” (see box page 17), is perfectly legal but may nonetheless expose the Group to the risk of considerable reputational damage as well as legal or financial risk if they are not carefully selected and managed.

The close relationships that Business Advisers have with customers may in some circumstances lead to conflicts of interest or suspicions of corruption. Business Advisers may breach anti-corruption legislation, and in such cases the companies and individuals who order, authorise, assist or otherwise contribute to such violations are also implicated.

Thales has long understood this risk and has analysed it and taken the necessary steps to ensure that it does not occur. The new “Instruction for appointing & managing Business Advisers” (or “BA instruction”) is the continuation of a process that began in 2001 with the Good Practice Handbook (GPH), amended in 2007 as the Best Practices Handbook (BPH). The latest version, issued in 2010, reflects changes to the Group’s organisational structure and includes new requirements, such as the discontinuation of success fees paid to Business Advisers.
The BA instruction gives details of how to select, appoint, manage and remunerate Business Advisers (“BA”). It is a robust instrument for corruption prevention and includes rigorous risk assessment rules. Each operation — from initial need for business support to selection of a Business Adviser as well as how to match the level of remuneration with services rendered — is fully explained, justified and documented.

The instruction calls in the first instance for a detailed qualification of the need for a Business Adviser. This qualification includes a description of the service required, the context of the requirement, justification for the use of external expertise and resources, proposed level of remuneration and how it corresponds to the service.

Once a legitimate need to use a Business Adviser is established, the selection phase includes analysis of the main factors related to corruption prevention where vigilance is required: the BA’s economic and financial data, existence of business premises, track record of experience, skills and resources in the business area concerned, current or previous ownerships and owner relationships with public officials, organisation, current or previous contractual relationships with the public sector, reputation and any current or previous legal proceedings, etc. These elements are submitted for external validation in a process of external due diligence, conducted by a company specialising in economic intelligence, which produces an independent report.

The BA instruction gives a strict definition of red flags, categorised as “show stoppers” (e.g. a Business Adviser’s refusal to disclose ownerships or shareholdings, or if an executive or director of the Business Adviser is a public official) and “risk factors”. Any such risk factors are identified, analysed, included in an action plan to reduce risks and monitored on a regular basis.

Only the appropriate dedicated structures at the level of the international organisation have the power to examine and decide on any red flags raised and in turn authorise the use of an identified Business Adviser.

Any employee wishing to use a Business Adviser should contact:

- The Thales International Regional Holding responsible for the country in which the business support is required,
- Or the Country Corporate Management of the country in which the business support is required, when, and only when, the country is one of the following: Australia and New Zealand (5), Canada, France, Germany, The Netherlands, the United Kingdom or the United States.

No operating unit is authorised to employ a Business Adviser directly.

**Note:**

United-States regulation requires specific declarations when resorting to intermediaries such as Business Advisers and exporting ITAR classified goods.

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5 In the Thales organisation, these two countries constitute a whole and are thus treated as one country.
Corruption prevention and corporate responsibility with respect to suppliers

Choice and selection of suppliers

Relationships with suppliers are governed by a rigorous purchasing process (the “Manage acquisition” process). **This process includes a range of measures to manage operational and business risks, particularly the risks of corruption.**

It provides for effective competition between suppliers (on the basis of a bid / price benchmark), separation of powers and collegial progress reviews (Purchase Vet) at key decision milestones in the process. The process is tailored in accordance with the levels of risk associated with the “supplier market”. It includes alert mechanisms that require management approval to be obtained where risk factors have been flagged.

These mechanisms, designed to reduce the risk of collusion or corruption, ensure that decisions are transparent and traceable.

The Key Industrial Partner selection process is also based on the risk management provisions of the “Manage acquisition” process.
Supplier accountability and commitment

In line with the corruption risk prevention measures in place, and as a member of the United Nations Global Compact, Thales asks all its suppliers to subscribe to its corporate responsibility policies and uphold the principles of its Code of Ethics and the Global Compact. This is the purpose of Thales’s Purchasing and Corporate Responsibility Charter.

All suppliers are required to sign the Purchasing and Corporate Responsibility Charter and complete a detailed questionnaire, which form an integral part of the contractual purchasing documents.

The Purchasing and Corporate Responsibility Charter and attached assessment questionnaire cover labour standards, environment, corporate governance, export controls and business ethics. On this last point, the charter states that “when dealing with both public officials and representatives of private-sector organisations, Thales suppliers undertake not to directly or indirectly offer, promise, grant or solicit any undue payment or advantage with a view to obtaining or retaining a contract or other benefit.”

The questionnaire is designed to assess the level of involvement and performance of suppliers in the key areas covered by the charter, and identify any associated supplier risks.

It also helps suppliers to align their policies and internal processes with the principles of ethical business conduct that Thales has adopted.

One of the articles of the charter stipulates that “if the principles laid down by Thales are stricter than these [national and local] regulations or than the supplier’s own code of ethics, the Thales principles are applicable. By signing the charter, Thales suppliers accept its terms and agree to uphold its principles. When the supplier does not already have policies and procedures in place to ensure compliance with the principles, the supplier agrees to work with Thales as part of a continuous improvement process to meet the criteria laid down in the charter.”

Corruption prevention in the area of gifts and hospitality from suppliers or partners

The rules applicable to gifts and hospitality from suppliers or partners are laid down in the Gifts and Hospitality Guidelines. They are detailed in the internal memos issued by the Group Purchasing Department and, where applicable, are supplemented by the Country Corporate Management.

The Code of Ethics also states that employees of the Purchasing function must avoid all conflicts of interest:

“(…) All Group employees, whether in a purchasing or operational role, must act with complete integrity. […] The personal interests of a Group employee must not affect the choice of a supplier under any circumstances. Management must be particularly vigilant when a Group employee has a personal, family or financial tie with a supplier.”
KIP instruction: a response to Thales’s new business model stakes

The Group’s growth is largely dependent on its ability to develop international sales, particularly in the emerging countries. To this end, Thales continues to reinforce its local geographic presence in target markets by increasing its internal expertise and resources in these countries, pursuing a strategy of customer proximity (more effective Key account management) and establishing long-term partnerships with local industrial partners.

This strategy aims to capture growth wherever it exists, i.e. primarily outside Thales’s traditional domestic markets. In these markets, the development of local industry is a requirement of most Thales customers.

In 2010, Thales produced the “Instruction for qualifying, selecting and managing Key Industrial Partners” (or KIP instruction) to support this strategy and strengthen the corruption prevention measures in place in this area.

The KIP instruction describes a comprehensive and rigorous process for the identification, qualification, selection and management of KIPs. This procedure includes an assessment phase and covers a wide range of information about the candidate partner, from its industrial capacity, operational processes and ability to meet contractual commitments to its share structure and reputation.

In parallel with the initial in-house analysis, these elements are submitted for external verification and validation in a process of external due diligence, conducted by a company specialising in economic intelligence, which produces an independent report. Depending on the KIP’s potential role, this analysis may also include an on-site assessment.

Particular attention is paid to the partner’s integrity and associated corruption risks. The assessment and qualification phases are conducted by experts at Thales’s international organisation, in conjunction with the operating units concerned.

The KIP instruction also stipulates a review of the information collected in order to compile a list of red flags. Any flags considered to be “show stoppers” result in the immediate termination of the selection process of the candidate partner concerned. Show stoppers include the impossibility to identify a company’s ownerships and tangible evidence of noncompliance with applicable anti-corruption...
legislation or with Thales policies and procedures. Flags considered to be “risk factors” result in the implementation of risk-reduction action plans.

Once these phases are complete, the selected KIP is added to a portfolio of qualified local partners and may be included in the preparation of subsequent bids, provided that the risk-reduction action plans have been duly implemented and that no new red flags have been raised. At the bid phase, the need to form a partnership and associated contractual arrangements and other factors are analysed at the Gate Reviews and validated by Thales’s international organisation.

This instruction is consistent with all the Group’s operational processes and refers in particular to the “Manage bid” and “Manage acquisition” processes in Chorus reference system.

The KIP instruction gives a comprehensive overview of the operational processes concerned and ensures better control of the ethical risks associated with the use of KIPs. The KIP instruction reflects Thales’s maturity in its ability to analyse these risks and implement the necessary measures to mitigate them as it continues to optimise its business strategy.

When does the KIP instruction apply? And what structures should be contacted when a KIP is needed?

Thales differentiates and tailors its KIP qualification and selection process to the scale of this local presence (dedicated local structures):

- To address their domestic markets, operating units located in the 13 Thales Countries mentioned above are authorised to qualify and contract with KIPs located and registered in the same country. The specific requirements of the KIP instruction do not apply in this case. However, operating units must comply with the other Thales operational processes - including the “Manage acquisition” process - as well as with the instructions and guides that deal with ethics rules and corruption prevention rules applicable within the Group.

- For all other markets and countries, KIP qualification and selection are decided and coordinated by the appropriate Thales International Regional Holding, with the operational support of the Country Corporate Management concerned and the local and exporting operating units. All Thales operational processes, including the KIP instruction, apply in this case.

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6. If the KIP or the market concerned is not in the same country as the operating unit — i.e. is located in one of the 12 other Thales Countries — the operating unit must consult with the Country Corporate Management of the Thales Country to determine who is responsible for KIP qualification and partnering decisions.

7. Where a KIP is located and registered in a geographic area covered by a Regional Holding and where the market concerned is in a country covered by a Regional Holding other than the one responsible for the country in which the KIP is located, the two Regional Holdings must work in close collaboration:
   - the Regional Holding responsible for the country in which the KIP is located is in charge of KIP qualification,
   - the Regional Holding responsible for the country in which the market is situated is in charge partnering decisions [why, type of contract, which KIP(s), etc.].
**KEY INDUSTRIAL PARTNERS (KIPs)**

**Key Industrial Partners include:**
- Prime contractors
- Co-contractors
- Suppliers
- Distributors
- Partners in a joint venture or public-private partnership
- Licensor

The KIP instruction does not apply to strategic suppliers (qualified and managed under the “Manage acquisition” process), world partners or customers (managed under the “Manage bid” and “Manage project” processes) or other local suppliers that do not meet the definition of a KIP (application of the “Manage acquisition” process).

In all cases, the employees of operating units must comply with the other instructions and guides that deal with ethics rules and corruption prevention rules applicable within the Group.

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**REFERENCE**

For more details about the KIP instruction, refer to the Group’s Chorus reference system (instruction available in French and in English).

The KIP instruction and complementary notes are also available on the Ethics and Corporate Responsibility Department’s intranet.
Gifts and hospitality, charitable donations, sponsorship and lobbying

Gifts and hospitality

Gifts and hospitality may expose Thales to legal or non-legal risks (reputation, financial, commercial destabilisation) and its employees at any level of the organisation to sanctions and convictions.

For this reason, and as part of its corruption prevention policy, Thales has produced a guide to the giving and receiving of gifts and hospitality.

This guide lays down the guidelines of behaviour applicable to all employees and particularly those who work directly with customers, partners and suppliers.

As a general rule, business courtesies and gestures of friendship, whether given or received, are prohibited if they are made with the aim of obtaining or offering any form of consideration or undue advantage in return, if they generate conflicts of interest, or if they are not made in a professional and transparent manner.

Gifts and hospitality may take the form of gifts, meals, invitations to professional events, travel, entertainment, etc.

**Thales formally prohibits the offering or receiving of payments in the form of cash.**

The choice of a gift or hospitality for a customer must be made in accordance with the “4Rs rule” — Regulations, Reasonable, Responsible and Record — as the basis on which the Group, or where applicable a legal authority, will rule in event of disputes or legal proceedings.

**If in doubt, never make a decision on your own.** Individual employees should take advice from their line manager, the Key Account Manager in charge of the customer concerned, or a more experienced colleague.

In all cases, employees must comply with the rules laid down in the Guide “Gifts and Hospitality Guidelines” and with the supplementary rules and/or national guide applicable at their entity.
Charitable donations and sponsorship

As stated in its Code of Ethics, Thales’s policy in the area of charitable donations and sponsorship is to observe “[…] strict political, religious and philosophical neutrality. As a result, the Group will not make any financial contribution to political candidates, elected representatives or political parties.”

“Thales only finances associations or foundations or takes part in sponsorship projects insofar as such activities are legally acceptable and in line with the values and priorities defined by the Group.”

To prevent any risk of corruption or conflict of interest, charitable donations and sponsorship actions, in line with the requirements specified in Thales’s Code of Ethics and legislation in force in the country concerned, must be submitted for the prior approval of line management (and where applicable in consultation with the Group’s corporate management). If in doubt, the Group’s Ethics and Corporate Responsibility Department should be consulted for advice.

In all cases, such contributions must be made in complete transparency. In addition, payments in cash are not authorised.

As mentioned in the extract from the Code of Ethics, above, financial contributions of a political nature are prohibited by the Group.
Lobbying rules

The purpose of influencing public-sector decision-makers on behalf of Thales is to defend the interests of the Group by providing expertise that informs the decision-making process. Formal efforts to influence this process may be made by professional lobbyists, who may or not be Thales employees, while informal efforts may be made by any employee in direct contact with a public-sector decision-maker.

However, lobbying, while a necessary and legitimate activity in itself, has the potential to become illicit. If lobbying becomes an exercise to exert pressure on decision-makers, whether individual or collective, in order to promote specific economic interests, there is a risk that it will be construed as trading in influence or even corruption.

To prevent this risk, Thales has produced a guide to best practices in lobbying. The guide provides employees with information and recommendations in this area.

REFERENCE

Refer to the Group’s Chorus reference system:
- Business Ethics Conduct Guide “Best practices Guide to lobbying”.
  This guide is also available on the Ethics and Corporate Responsibility Department’s intranet.
To further strengthen its ethics and corporate responsibility policy, Thales has put in place an ethics alert (whistleblowing) facility which allows all employees to contribute to risk prevention.

Any Thales employee has a right to raise ethical concerns in any of the areas within the remit of this procedure:

- Accounts, financial, bank related, anti-corruption, competition;
- Discrimination, harassment, noncompliance with occupational health and safety regulations, if it compromises the physical or mental health of employees.

This right to raise concerns must be exercised in accordance with applicable law and rules in the country in which the employee lives or works.

**Any concerns should be reported first and foremost to line management.**

However, if the employee believes that informing his or her line manager could present difficulties, or that such concerns may not be followed up appropriately, he or she should report directly to the following (in the order shown):

- Another department at the same entity, such as one of the support structures (legal, human resources, etc.);
- The ethics officer at area / country / entity levels (the list of ethics officers is available on the Ethics and Corporate Responsibility Department’s intranet);
- The Ethics Committee in his or her country (if there is one);
- The Group Ethics and Corporate Responsibility Committee.

Concerns may be reported by letter, e-mail, telephone or in person.

When an alert is reported, it gives rise to a confidential preliminary assessment to determine whether it falls within the remit of the procedure. If it does, the matter is investigated with the persons concerned. The person responsible for examining the facts ensures that the data collected is adequate, relevant and not excessive (i.e. proportionate to the purpose for which it is collected).

This ethics alert facility is based on the principles of confidentiality and respect for the rights of each person concerned throughout the procedure.

Any alert which is clearly outside the scope of the procedure, or which concerns a matter that is not serious, is made dishonestly or constitutes an improper or false accusation, as well as any alert based on claims which cannot be verified, will be immediately dropped and the employee who initiated the procedure will be informed as such.

For more details, refer to the “Country” or “Legal Entity” intranets, which give the ethics alert number and e-mail address for the alert facility in the country concerned, or the Group’s Ethics and Corporate Responsibility Department’s intranet.

**GROUP ETHICS ALERT:**

+33 (0)1 57 77 87 19
ethics.committee@thalesgroup.com
Risk mapping and changes to corruption prevention policy

Thales has produced a map of 18 risks, one of which is the risk of corruption. This risk is further broken down into a range of scenarios.

Each of these risks is associated with a risk owner and is subject to an annual review process (with Yearly Attestation Letters, Maturity Sheets, etc.).

The Group’s corruption prevention policy is regularly reviewed by the Group’s Ethics and Corporate Responsibility Department, in conjunction with the Group’s Ethics and Corporate Responsibility Committee, and adjusted to take account of changes in the external risk environment (new legislation or standards, higher expectations of stakeholders), the internal risk environment (internal audits and associated areas of improvement, risks committee, operational structures) as well as changes in the Group’s business strategy.

Audit and internal control

Internal audits are also one of the mainstays of Thales’s corruption prevention policy. The Audit and Internal Control Department (DACI) conducts targeted audits of corruption risks. The purpose of these audits is to monitor the due implementation, compliance and effectiveness of prevention measures in relation to rules, procedures, internal standards and legislation in force. DACI’s mandate covers the entire Group and its auditors have extensive powers, including access to all employees, documents, premises and information systems, in order to perform their duties.

DACI reports directly to the Chairman of Thales and the resources available to it have been significantly increased. Audits are conducted in accordance with the IIA’s International Standards for the Professional Practice of Internal Auditing. The Institute of Internal Auditors (IIA) verifies and certifies compliance with these standards.

Industry-wide actions

Thales is closely involved in the relevant professional bodies at national level (MEDEF[9], GIFAS[10], ADS[11], etc.) and international level (ASD[12], ICC[13], etc.), as well as in various working groups of intergovernmental organisations (OECD[14], United Nations, etc.). The Group actively contributes in various ways to efforts to prevent corruption, in particular through European and global initiatives in the aerospace and defence sector.

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9. MEDEF: Mouvement des Entreprises de France (French employers’ confederation).
10. GIFAS: Grouppement des Industries Françaises Aéronautiques et Spatiales (French aerospace industries association).
12. ASD: Aerospace and Defence Industries Association of Europe.
Thales is one of the founder members of the Business Ethics Committee (BEC) of the AeroSpace & Defence Industries Association of Europe (ASD) and currently chairs this committee.

In 2007, the BEC published a set of Common Industry Standards, based on close comparison of the various policies and procedures already in place in the area of corporate responsibility. These Common Industry Standards address the issue of corporate integrity in its broadest sense and in particular the fight against corruption in the aerospace and defence sector. The standards document has been approved by 30 ASD member associations at national level and signed by the chief executives of more than 400 European companies in the sector.

Following the publication of the Common Industry Standards, the ASD and its American counterpart, the Aerospace Industries Association of America (AIA), worked together to produce an international standard. The result is a joint document entitled Global Principles, which the two associations signed in 2009. These principles, developed under Thales leadership, focus on four key points:

- Zero tolerance for corruption,
- Employment of consultants,
- Management of conflicts of interest,
- Compliance with confidentiality of information.

To facilitate dialogue between industrial companies and with their customers and wider society, the ASD and AIA held the first International Forum on Business Ethical Conduct (IFBEC) in Berlin in 2010. As a founder member, Thales co-chaired this first event, which was attended by the leading aerospace and defence companies from around the world, national industry associations and senior representatives from key institutions such as the OECD, NATO, the US Air Force, the European Defence Agency and the NGO Transparency International.

The latest IFBEC forum took place in Washington DC in October 2011. IFBEC is also committed to the continued development of the Global Principles and their promotion and adoption by other countries as a global standard.

The aim of all these actions is to create the conditions for fair competition and establish new ground rules to ensure a level playing field, encourage the major procurement agencies and major customers to give priority to companies which have adopted responsible practices and give them a competitive advantage over companies which do not uphold the same criteria of integrity.

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15 - Available on the Ethics and Corporate Responsibility Department’s intranet.
16 - Available on the Ethics and Corporate Responsibility Department’s intranet.
17 - IFBEC – see http://ifbec.info
Need to know: reference information

The OECD Convention: a major step forward in the fight against corruption

Of all the conventions to combat bribery signed in recent years, the OECD Convention is particularly important: international in scope, it lays the foundations for applying criminal sanctions against acts of public sector corruption committed in other countries.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in Paris on 17 December 1997, came into force on 15 February 1999 and was transposed into French law in 2000.

Signatories to the convention

The OECD Convention now has 39 signatory states. Other countries such as India, cooperate closely with the OECD’s Working Group.

The Convention was signed by the following non OECD-member countries: Argentina, Brazil, Bulgaria, South Africa and, more recently, Russia (17 February 2012).

39 SIGNATORY STATES

- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Bulgaria
- Canada
- Chile
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Israel
- Italy
- Japan
- Korea
- Luxembourg
- Mexico
- Netherlands (The)
- New Zealand
- Norway
- Poland
- Portugal
- Russia
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States
Aims

The first aim of the Convention is to ensure functional equivalence between measures taken at national level. Signatory states undertake to transpose the Convention into national law in order to “establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”.

The second aim concerns monitoring and follow-up of the implementation of the Convention. An innovative mechanism has been put in place whereby a working group of experts is charged with assessing the implementation of the Convention’s principles in the national law of individual states.

Scope

Although the OECD Convention covers active corruption only, an important advantage is that its scope is not restricted to acts occurring within the borders of signatory states: it provides for sanctions against violations committed by citizens of signatory states in foreign countries.

The scope of the Convention also encompasses the following:
- Companies;
- The effects of corruption, such as laundering of bribes.

Implementation

Because corruption is classed as a "criminal offence" according to the Convention, criminal fines applicable to individuals are supplemented by “deprivation of liberty sufficient to enable effective mutual legal assistance and extradition".

In respect of companies, the Convention provides for “effective, proportionate and dissuasive criminal penalties”, including monetary sanctions, as well as:
- Exclusion from entitlement to public benefits or aid,
- Temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities,
- Placing under judicial supervision,
- A judicial winding-up order.

The second part of the Convention relates to signatory states, which are subject to regular review in respect of compliance with the Convention and its implementation at national level.
These reviews are based on the following complementary systems:
- A system of self-evaluation in the form of a questionnaire, which provides a basis for assessing the implementation of recommendations,
- A system of mutual evaluation, where the progress made by each country is examined by the Working Group on Bribery on an objective and equitable basis.

Subject to confidentiality (essential for a sincere assessment of results), the Working Group provides regular information to the public on its work and activities.

**CORRUPTION**

- Active
- In the public sector
- Direct and indirect

**KEY POINTS**

- International convention
- Sanctions against acts of corruption committed in foreign countries
- Civil and criminal penalties for individuals and companies
- Monitoring of implementation of the Convention

**BRIEF HISTORY**

The Lockheed scandal of 1976 exposed systematic corruption among Japan’s political elite relating to the sale of fighter and transport aircraft. Accusations of CIA involvement shook the US government. The United States reacted quickly by adopting the 1977 Foreign Corrupt Practices Act (FCPA), the first law designed to crack down on bribery of foreign public officials.

Since then, it has been possible for US companies to be prosecuted and convicted in the United States for acts of corruption committed abroad.

The United States then turned to the Organisation for Economic Co-operation and Development (OECD) in a bid to ensure a level playing field for all players involved in international trade.

International efforts are currently focusing on enabling fair competition in the face of the following major corruption-related problems:
- Incentives to poor governance in emerging and developing countries, resulting in impoverishment of local populations;
- Distortion of competition, securing undue advantages for the companies with the least integrity.
The emergence of an international legal framework to fight corruption

Work carried out by regional and international bodies in the mid-1990s led to the signing of a number of conventions designed to eradicate corruption.

**The main conventions are varied in both geographic area and legal scope:**

- Inter-American Convention Against Corruption, Organisation of American States – 1996,
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – 1997,
- European Union Convention on the fight against corruption involving officials of the European Communities or of Member States of the European Union – 1997,
- Criminal and Civil Law Conventions on Corruption, Council of Europe – 1999,
- African Union Convention on Preventing and Combating Corruption (“Maputo Convention”) – 2003,

By broadening the geographical reach of the anti-corruption effort, boosting sanctions, improving cooperation between states, enhancing enforcement and above all ensuring the ongoing development of the core concept, each convention constitutes an additional step forward in the fight against corruption.

While the first conventions were aimed solely at combating “bribery of foreign public officials in international business transactions”, the scope of subsequent texts has gradually expanded to encompass the following issues:

- Passive corruption and trading in influence, also called influence peddling,
- The broader concept of “holder of public authority”,
- All forms of corruption, even where there is no commercial objective.
The various national legislative frameworks

France

The OECD Convention and EU Convention transposed into French law

The OECD Convention and the European Union Convention, both signed in 1997, were transposed into the French Penal Code under the law of 30 June 2000 on the fight against corruption. Whereas a bribe paid to a foreign public official was previously tax deductible, it is now a reprehensible criminal offence.

The French Penal Code was thus modified to incorporate criminal sanctions for "promise of undue advantage" and establish the "offence of bribery". An additional Section V now covers active and passive corruption, and stipulates the applicable penalties.

Changes in French law

French law was amended in late 2007 to transpose into the national legislation:

- The Criminal Law Convention on Corruption of the Council of Europe and its additional protocol,
- The United Nations Convention, known as the Merida Convention.

The law of 13 November 2007:

- Expands the offence of bribery of foreign public officials,
- Introduces penalties for influence peddling targeted at officials of international organisations,
- Aims to better protect the justice system against external influences and make the fight against corruption more effective.

The most important articles relating to each form of corruption are:

- Article 435-1 of the French Penal Code relating to passive bribery of foreign public officials;
- Article 435-3 of the French Penal Code relating to active corruption of foreign public officials;
- Articles 435-2 and 435-4 of the French Penal Code relating to influence peddling;
- Articles 433-1 and 432-11 of the French Penal Code relating to active and passive bribery of French holders of public authority, charged with a public service mission or invested with an elective office;
- Article 436-4 of the French Penal Code relating to additional penalties for individuals;
- Article 435-15 of the French Penal Code relating to criminal and additional penalties applicable to companies;
### Penalties

**INDIVIDUALS**

<table>
<thead>
<tr>
<th>&gt; Criminal penalties for transnational bribery in the public sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 years’ imprisonment</td>
</tr>
<tr>
<td>€150,000 fine</td>
</tr>
<tr>
<td><strong>For national bribery in the public sector</strong></td>
</tr>
<tr>
<td>5 years’ imprisonment</td>
</tr>
<tr>
<td>€75,000 fine</td>
</tr>
<tr>
<td><strong>Criminal penalties for bribery in the private sector</strong></td>
</tr>
<tr>
<td>5 years’ imprisonment</td>
</tr>
<tr>
<td>€75,000 fine</td>
</tr>
<tr>
<td><strong>Additional penalties</strong></td>
</tr>
<tr>
<td>Loss of civil rights</td>
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<tr>
<td>Exclusion from the disputed business for 5 years or more</td>
</tr>
</tbody>
</table>

**COMPANIES**

<table>
<thead>
<tr>
<th>&gt; Criminal penalties for bribery in the public sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>€750,000 fine</td>
</tr>
<tr>
<td><strong>Criminal penalties for bribery in the private sector</strong></td>
</tr>
<tr>
<td>€375,000 fine</td>
</tr>
<tr>
<td><strong>Additional penalties</strong></td>
</tr>
<tr>
<td>Disqualification from public contracts for 5 years</td>
</tr>
<tr>
<td>Closure of the company (or companies) involved</td>
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<tr>
<td>Loss of entitlement to raise funds</td>
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<tr>
<td>Publication of the ruling</td>
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</tbody>
</table>

### Note:

*The French equivalent of plea bargaining (procédure de comparution sur reconnaissance préalable de culpabilité) established by the law Perben II of March 9th, 2004 is henceforth applicable to the offences of corruption and influence peddling (law of December 13th, 2011 n°2011-1862 and Art 432-11, Art 433-1, Art. 435-1 et 435-3 of French Penal Code). Until the law of December 13th, 2011 the fact that the criminal penalty exceeds five years’ imprisonment meant that the French equivalent of plea bargaining was not admissible, and therefore no mitigation of the penalties could be envisaged.*

### United States

#### Legislation

The United States played a leading role in drawing up the OECD Convention. As early as 1977, the USA had introduced the **Foreign Corrupt Practices Act** (FCPA) to combat bribery of foreign public officials, and the **extraterritorial reach** of this legislation makes it extremely important at both the national and international levels.

The FCPA **makes any type of corruption a crime**, defining corruption as any act intended to offer, promise or make a payment of money or anything of value, directly or indirectly to a public official, with the intention of inducing the official to do or omit to do any act in violation of his or her lawful duty in order to assist in obtaining or retaining business or in obtaining any other improper advantage.
The scope of application of the FCPA is very broad, and covers:
- US companies and/or US citizens, wherever they are located in the world;
- Any company or individual located in the United States;
- Foreign subsidiaries of companies covered by the FCPA legislation;
- Non-US companies listed on an American stock exchange;
- Employees of US and non-US companies listed on an American stock exchange, wherever they are located in the world.

The criminal provisions of the legislation, violations of which are prosecuted by the Department of Justice, impose criminal sanctions for acts of bribery according to a conventional evidence-based process.

The civil provisions, which come under the jurisdiction of the Securities & Exchange Commission (SEC), cover corruption arising out of violations of accounting regulations designed to conceal illegal payments. However, mandatory accounting requirements are restricted to companies traded on the stock exchange, allowing some companies – even international ones – to escape them.

This dual approach is particularly dissuasive, therefore, since although it is often difficult to gather sufficiently convincing evidence of a criminal offence, any minor violation of accounting regulations constitutes an offence.

However, the law in the USA has two limitations:
- **Facilitating payments** are exempted from US legislation.
- **Plea Bargaining** and **Voluntary Disclosure** are recognised by the law. In the first case, a company pleads guilty; in the second case, a company voluntarily discloses information regarding acts that it considers to be punishable to the legal authorities. Both approaches are used by companies to obtain significant reductions in penalties, and avoid public proceedings, relating to bribery of foreign public officials.

When the company reaches an agreement with prosecutors, it may be assigned a “compliance monitor” to ensure its practices comply with US anti-bribery legislation.

The FCPA obliges companies to adopt an **effective compliance programme** and to put in place a system of **internal controls** to provide adequate supervision and maintain sound accounting records.

The **Sarbanes-Oxley Act (SOX)** of 2002 introduced new rules of accounting and financial transparency, leading to large numbers of voluntary disclosures of corrupt practices as a source of information for investigations.

The SOX whistleblower provisions also provide recourse to employees who raise an ethics alert by disclosing information about alleged violations by publicly traded companies. Under the legislation, companies must establish procedures to **protect the confidentiality** of employees filing allegations about accounting irregularities (Section 302, 15 U.S.C. §7241). It also protects whistleblowers from reprisals.

In addition, the **Dodd-Frank Act**, adopted on 21 July 2010, introduces major reforms to financial regulations.

This legislation is primarily designed to increase supervision of the banking sector, but is actually much broader in scope. The Dodd Frank Act applies to all US and non-US companies listed in the United States, and includes provisions for international cooperation with respect to financial and accounting regulations.
The Dodd-Frank Act also introduces incentives for whistleblowers. Depending on the circumstances, whistleblowers who voluntarily provide original information about a violation of federal securities laws are eligible to receive between 10% and 30% of the monetary sanctions imposed by the government when that information leads to the successful enforcement of judicial or administrative proceedings that result in monetary sanctions exceeding one million US dollars.

### Penalties

<table>
<thead>
<tr>
<th>INDIVIDUALS</th>
<th>COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Criminal penalties</strong></td>
<td><strong>Criminal penalty</strong></td>
</tr>
<tr>
<td>● 5 - 15 years’ imprisonment</td>
<td>● US$2 million fine</td>
</tr>
<tr>
<td>● US$100,000 fine</td>
<td></td>
</tr>
<tr>
<td><strong>Civil penalty</strong></td>
<td><strong>Civil penalty</strong></td>
</tr>
<tr>
<td>● US$10,000 fine</td>
<td>● Ban on exports</td>
</tr>
<tr>
<td></td>
<td>● US$10,000 fine</td>
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<tr>
<td></td>
<td>● Exclusion from export licenses</td>
</tr>
</tbody>
</table>

### United Kingdom

#### New legislation

The United Kingdom has no written constitution; instead, the country’s constitution is based on statute, common law and convention.

Anti-corruption legislation was complex and fragmented until the UK Bribery Act, which introduces strict provisions on compliance, anti-corruption measures and money laundering, was enacted on 8 April 2010.

On 30 March 2011, the UK Ministry of Justice published its final guidance, which complements the provisions of the Bribery Act, and announced that the Act would come into force on 1 July 2011 in order to allow companies time to comply.

#### Standard provisions: acts of corruption

The Bribery Act, organised in sections, starts by defining the standard offences of active corruption (section 1) and passive corruption (section 2). Active bribery of a foreign official (section 6) carries the same penalties as “local” corruption, but has a lower threshold for it to be prosecuted.

In each of these offences, bribery will have taken place if a person improperly performs their function or activity for an advantage, whether financial or otherwise. The Bribery Act legislates against both private corruption (e.g. the employee of a company) and public corruption (e.g. a government official). Generally, a bribe will be caught by the Bribery Act regardless of whether the “price” of corruption is being paid directly or through an intermediary, and regardless of whether it is meant for the corrupt person or a third party.

The above offences are constituted even if only an attempt to bribe is made; both the offer of a bribe (active) and the solicitation of a bribe (passive) are punishable. These offences concern, first and foremost, the individuals involved. However, a
body corporate may also be targeted if the offence was committed by the “controlling mind” of the corporate entity.

Contrary to US law, but in line with most other jurisdictions, the Bribery Act does not provide an exemption for “facilitation payments” – small payments made to ease a bureaucratic process (e.g. to expedite an authorisation or a decision that has been accepted in principle).

Similarly, gifts and other entertainment can potentially be characterised as bribery.

**The new corporate offence, guidance and adequate procedures**

Section 7 contains the key new measure of the Bribery Act, introducing criminal liability on corporate bodies that fail to prevent bribery.

Under this section an offence will be committed by a corporate body carrying on business, or part of a business, in the United Kingdom, when one of its associated persons, performing services for or on behalf of that corporate body (e.g. an employee, subsidiary, joint venture partner or agent), is guilty of a corruption offence (as per sections 1 or 6, wherever the facts took place, whether prosecuted or not), with the intention to retain business or an advantage for the corporate body.

This is the case unless the corporate body can prove that it had in place adequate procedures designed to prevent its associated persons from undertaking such conduct.

Therefore the new legislation makes the implementation of adequate procedures necessary, as preventive measures. Section 9 of the Bribery Act states that adequate procedures are subject to governmental guidance.

The Guidance, published by the UK Ministry of Justice on 30 March 2011, elaborates on what constitute adequate procedures. The recommendations in the Guidance are expressed by the UK government. However, the effects of the Bribery Act will ultimately be decided by the interpretation made by the courts.

**Procedures will be considered adequate if they:**

- are proportionate to the risks faced by the company and to the nature, scale and complexity of the company;
- are based on an internal and external corruption risks assessment, which should be periodic, informed and documented;
- include audits and due diligence procedures relating to the persons who perform services for, or on behalf of, the organisation, in order to mitigate identified bribery risks;
- are well communicated and understood, both internally and externally, in particular through effective training adapted to the type of risks and interlocutors;
- are the subject of a periodic control and review;
- are part of a visible and unambiguous support of the company’s top level management, which must forbid any form of corruption and must be reflected in the values, communication and strategy of the company.
Extraterritorial reach

Broadly, an offence under sections 1, 2 and 6 may be prosecuted under the Bribery Act if any act or omission forming part of the offence takes place in the UK or is done by a person having a “close connection” with the UK (e.g. a place of incorporation, citizenship or place of residence).

The new corporate offence (section 7) has even greater territorial scope and impact, as the Bribery Act creates the need for adequate procedures to be implemented within any company, of any nationality:

- when it carries on a business or part of a business in the UK. However, the Guidance suggests that the mere listing of securities in the UK would not demonstrate, per se, that a company carries on a business there;
- when partnering companies fall within the scope of the Bribery Act. These partnering companies, UK-based or not, can in turn be held responsible for associated persons with whom they are in business, and the non-compliant partners run the risk of being quarantined to avoid any possible contamination.

Section 12 of the Bribery Act stipulates that an offence is committed under section 1, 2 or 6 if any act or omission which forms part of the offence takes place in the United Kingdom.

The UK courts are also competent in cases where the offences committed under sections 1, 2 and 6 are committed outside the United Kingdom. This extraterritorial scope of the Bribery Act applies if the person committing the act of corruption has a close connection with the UK, i.e. is a British citizen or is ordinarily resident in the United Kingdom.

However, an offence is committed under section 7 irrespective of whether the acts or omissions take place in the United Kingdom or elsewhere, making the provisions of the Bribery Act even tougher with respect to the new offence of failure to prevent bribery.

Penalties

**IN INDIVIDUALS**

- Penalties for offences under sections 1, 2 and 6
  - Up to 10 years’ imprisonment
  - Unlimited fine
- Civil penalty
  - Confiscation of the proceeds obtained through the offence

**IN COMPANIES**

- Penalties for offences under sections 1, 2, 6 and 7
  - Unlimited fine
- Civil penalties
  - Exclusion from public contracts
  - Risk of quarantine by partners
  - Confiscation of the proceeds obtained through the offence

[Excerpted from “The UK Bribery Act: 10 key points”, July 2011 – Norton Rose]
Appendix 1- Definitions

Corruption

Active bribery of a public official is defined as “the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any [...] public official, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions”.

Passive bribery of a public official is defined as “the request or receipt by any [...] public official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions”.

Active bribery of a private-sector employee within the scope of commercial activities is defined as “promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties”.

Passive bribery of a private-sector employee within the scope of commercial activities is defined as “the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties”.

[Council of Europe]

Direct or indirect bribery

The OECD Convention states that “any person who incites, aids or abets, or authorises an act of bribery of a foreign public official is guilty of the same criminal offence”.

Public official

“Public official” means:

- Any person holding a legislative, executive, administrative or judicial office of a state, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of the person’s seniority;
- Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the state;
- Any other person defined as a public official in the domestic law of a state.

“Official of a public international organisation” means an international civil servant or any person who is authorised by such an organisation to act on behalf of that organisation.

[United Nations Convention]
Undue advantage, bribe, facilitating payment

For the drafters of the Convention, the adjective “undue” aims at excluding advantages permitted by the law or by administrative rules as well as gifts of very low value or socially acceptable gifts.

Facilitating payments — payments made to a public official to diligently perform an administrative procedure — are assimilated to corruption in the majority of countries.

What constitutes “undue” advantage is therefore of central importance in the transposition of the Convention into national laws.

[Explanatory Report of the Criminal Law Convention on Corruption of the Council of Europe]

Money laundering

Laundering is the act of facilitating, by any means, the fraudulent justification of the origin of assets or revenue of the perpetrator of an offence or crime, obtaining direct or indirect profit for that person.

Providing assistance for a transaction to invest, dissimulate or convert the direct or indirect proceeds of an offence or crime also constitutes laundering.

In France, laundering is punishable by five years’ imprisonment and a fine of €375,000.

[Article 324-1, French Penal Code]

International convention, treaty, ratification

An international convention or treaty is a written agreement concluded between states in order to produce legal effects in their mutual relations, which must be executed in good faith.

The entry into force of a treaty or convention requires its ratification by a minimum number of signatory states. Ratification follows a process specific to each country and involves the approval of the text of the treaty or convention by competent bodies on behalf of the state.

Violation, penalty, crime, offence, minor offence

National laws define violations — actions that are prohibited under the law — which in turn lead to penalties:

- Criminal penalties: fines and/or imprisonment;
- Civil penalties: in accordance with the principle of restorative justice, whereby individuals receive what is due to them, and the damage caused is repaired by the forced execution of what was promised, or by the cancellation or resolution of what was agreed;
- Administrative penalties, such as prohibition from performing a business activity or from participating in public contract.

A violation may be subject to different definitions and penalties in different countries. Under French law, criminal violations are classed according to their seriousness as crimes, offences and minor offences.
Trading in influence or influence peddling

Trading in influence, also called influence peddling, is an act committed intentionally, defined as “the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making” of a domestic or international public official “in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result”.

[Article 12, Criminal Law Convention on Corruption of the Council of Europe]
Appendix 2 – Key International Conventions

Inter-American Convention Against Corruption – 1996

The Inter-American Convention Against Corruption of the Organization of American States (the OAS Convention) is the first international legal instrument dedicated to fighting corruption. Signed in Caracas, Venezuela, on 29 March 1996, it has been ratified by the majority of OAS member states.

Aims

The OAS Convention lays the foundations for the fight against corruption by pursuing two main aims: the development of mechanisms for the prevention, detection and punishment of corruption, and the promotion of cooperation among member states in the event of transnational violations.

Scope

The convention is applicable to acts of corruption in the public sector, whether active or passive, direct or indirect, committed by a national of a signatory country, provided that the alleged act of corruption has been committed or has effects in an OAS member state.

Implementation

The convention is implemented at national level through the introduction of standards of conduct for the proper fulfilment of public functions, laws relating to the freezing and confiscation of assets, and rules for cooperation between signatory states, particularly in relation to extradition and the removal of banking confidentiality.

Penalties

<table>
<thead>
<tr>
<th>CORRUPTION</th>
<th>KEY POINTS</th>
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<tbody>
<tr>
<td>&gt; Active and passive</td>
<td>&gt; Regional scope</td>
</tr>
<tr>
<td>&gt; In the public sector</td>
<td>&gt; Definition of standards of conduct</td>
</tr>
<tr>
<td>&gt; Direct and indirect</td>
<td>&gt; Cooperation between states</td>
</tr>
</tbody>
</table>

See: The OECD Convention: a major step forward in the fight against corruption page 28

European Union Convention on the fight against corruption involving officials of the European Communities or of Member States of the European Union – 1997

This convention, dated 26 May 1997, derives from the Treaty on European Union, considering that the protection of financial interests is a matter of public responsibility.

Aims

The aim of the European Union Convention is to strengthen judicial cooperation between member states in order to fight corruption involving their officials.

Scope

“Official” means any Community or national official, including any national official of another member state.

“Community official” means:

- any person who is an official or other contracted employee;
- any person seconded to the European Communities by the Member States or by any public or private body.

This definition covers, for example, members of the Court of Justice, the Court of Auditors and the European Parliament.

Based on the same principles as the OECD Convention, the EU Convention has a significant difference, in that it provides for punishment of acts of passive corruption.

The EU convention accentuates the responsibility of individuals involved in acts of corruption.

Implementation

Acts of corruption, as well as the participation in and instigation of such acts, must be classed as criminal offences in national law, and must be “punishable by effective, proportionate and dissuasive criminal penalties”.

Penalties against individuals may involve deprivation of liberty which can give rise to extradition.
With regard to companies, the liability of “heads of businesses or any persons having power to take decisions or exercise control within a business” is considerably increased. They may be “declared criminally liable for acts of corruption committed by a person under their authority acting on behalf of the business”.

Penalties

**CORRUPTION**
- Active and passive
- In the public sector
- Direct and indirect

**KEY POINTS**
- International convention
- Sanctions against acts of corruption committed in foreign countries
- Civil and criminal penalties for individuals and companies
- Liability of heads of businesses for acts of corruption committed by employees
- Monitoring of implementation of the Convention

Criminal and Civil Law Conventions on Corruption of the Council of Europe – 1999

Negotiations conducted in parallel by the Council of Europe led to the signing of two major international conventions in 1999: the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.

Criminal Law Convention on Corruption

**Aims**

The Convention aims to:
- Apply criminal sanctions in a coordinated manner to a wide range of corruption offences (offering or requesting an undue advantage, trading in influence, laundering the proceeds of corruption, account offences);
- Enhance international cooperation in order to expedite the prosecution of such offences, by means of measures to facilitate the gathering of evidence and provide protection for individuals reporting or witnessing offences or otherwise cooperating with the authorities.
Scope

The Criminal Law Convention has two significant differences from the OECD Convention:

- In line with the EU Convention, it recognises the offence of passive corruption and therefore provides for the application of criminal sanctions against a person who commits an act of corruption as well as the person at whom the corruption is targeted;
- It introduces the concept of corruption in the private sector, which it addresses in terms of both active and passive bribery (see Definitions).

Implementation

GRECO (Group of States Against Corruption) is responsible for monitoring the compliance of signatory states with their commitments.

At the same time, each signatory state is required to adopt such instruments and measures as are necessary for the fight against corruption (competent persons or entities provided with adequate training and resources “to carry out their functions effectively and free from any undue pressure”.

Civil Law Convention on Corruption

Aims

It is the only international convention to use civil law to fight corruption and compensate victims by recognising a causal link between corruption and the resulting damage.

Scope

The Civil Law Convention is applicable to member states of the Council of Europe and companies headquartered in member states. It addresses in particular:

- The protection of individuals who report corruption;
- Responsibility (including State responsibility) for failing to “take reasonable steps to prevent the act of corruption”;
- Compensation for damage.

Implementation

Considering that corruption allows undue advantage to be obtained by illegal means, the Convention makes provision for the right to compensation for persons who have suffered damage: “Each Party shall provide in its internal law
for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage”.

As a result, a company that considers it has been harmed by an act of corruption which enabled a competitor to win a public contract is entitled to claim damages from that competitor.

**Convention of the African Union (‘Maputo Convention’) – 2003**

The African Union Convention on Preventing and Combating Corruption, known as the Maputo Convention, was signed in Maputo, Mozambique, on 12 July 2003. However, the ratification process is relatively slow.

The Maputo Convention, regional in scope, aims to extend international standards to companies operating in Africa.


Signed in Merida, Mexico, on 13 December 2003 and in force since 14 December 2005, the United Nations Convention against Corruption is the international community’s most ambitious anti-corruption convention.

**Aims**

The aims of the Merida Convention are as follows:

- Promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- Promote, facilitate and support international cooperation;
- Promote integrity, accountability and proper management of public affairs and public property.
Scope
The Convention provides a detailed list of measures addressing various fields:
- Conduct of public officials;
- Promotion of civil servants;
- Award of public contracts;
- Accountability in the management of public finances;
- Enhancement of accounting and auditing standards in the private sector, etc.
With regard to the application of criminal sanctions against acts of corruption, the convention makes provision for embezzlement, misappropriation or other diversion of property by a public official, as well as laundering and concealment of the proceeds of corruption, to be established as criminal offences. The Convention also provides for criminal penalties for obstruction of justice.

Implementation
The Convention devotes an entire chapter to international cooperation, which makes provision for the possibility of transferring prosecutions or judicial proceedings between states.
An entire chapter is also dedicated to recovery of assets by aggrieved countries. The return of assets is a fundamental principle of the Convention and supplements the right of legal recourse for persons who have suffered damages as a result of corruption.
However, many countries — in particular emerging countries — have not yet ratified the Convention.
The absence of a process for monitoring the implementation of the Convention in national law remains a shortcoming which the first Amman (Jordan) conference in December 2006 was unable to remedy.

Key Points
- Active and passive
- In the public and private sector
- Direct and indirect
- Very broad geographical scope
- Broad definition of corruption
- Recovery of assets
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