

CORPORATE COMPLIANCE

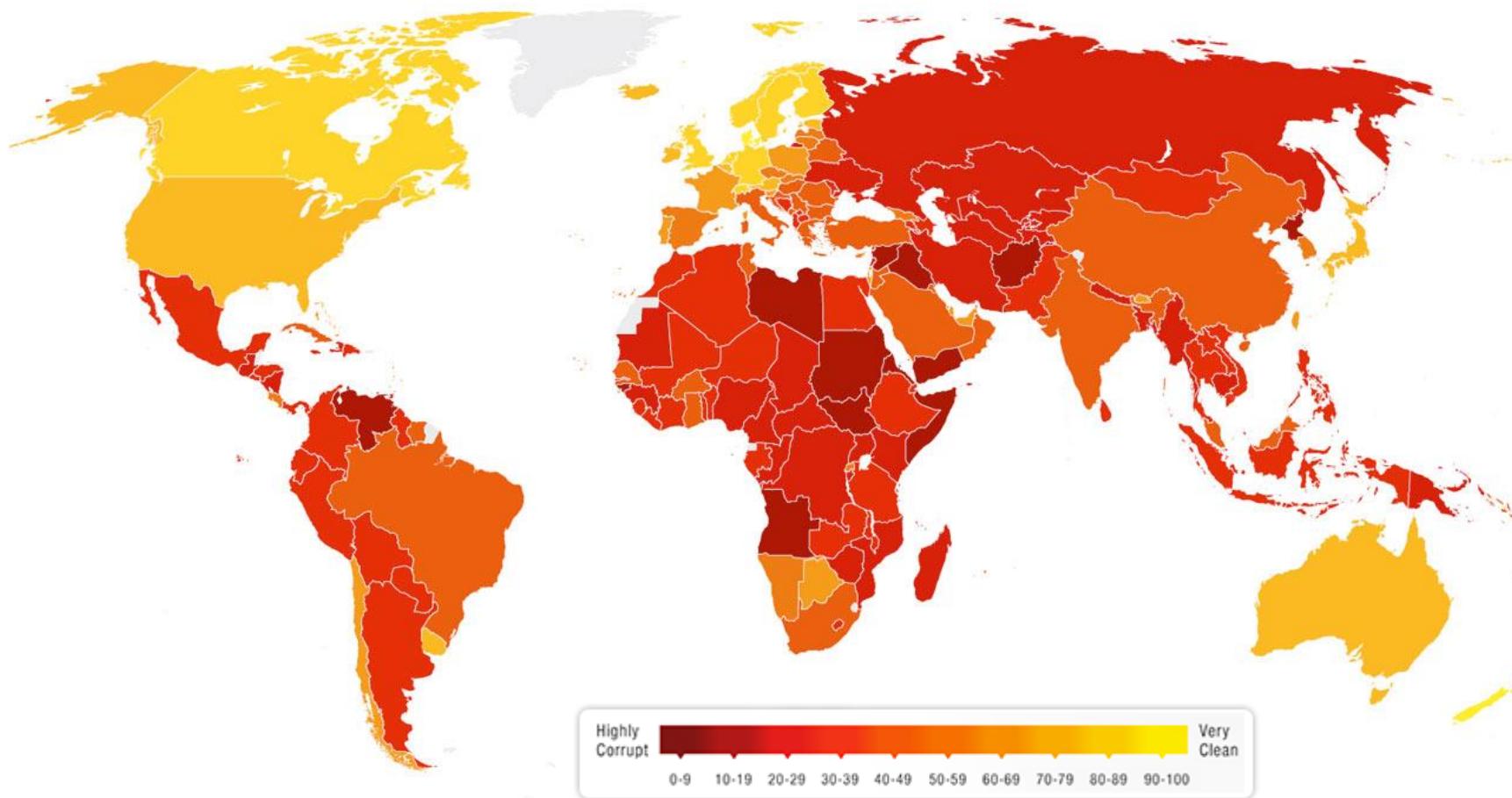
Conferencia Anticorrupción ISO 37001

Barcelona, 4 de Abril de 2017





Corruption Perceptions Index 2016



Índice 2016 de percepción de la corrupción por Transparencia Internacional: el círculo vicioso de la desigualdad

El 70% de los países no aprueba y se produce un empeoramiento general

Corruption Perceptions Index 2016

2016 Rank	Country	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score	Region
1	Denmark	90	91	92	91	90	Europe and Central Asia
1	New Zealand	90	88	91	91	90	Asia Pacific
3	Finland	89	90	89	89	90	Europe and Central Asia
4	Sweden	88	89	87	89	88	Europe and Central Asia
5	Switzerland	86	86	86	85	86	Europe and Central Asia
6	Norway	85	87	86	86	85	Europe and Central Asia
7	Singapore	84	85	84	86	87	Asia Pacific
8	Netherlands	83	87	83	83	84	Europe and Central Asia
9	Canada	82	83	81	81	84	Americas
10	Germany	81	81	79	78	79	Europe and Central Asia
10	Luxembourg	81	81	82	80	80	Europe and Central Asia
10	United Kingdom	81	81	78	76	74	Europe and Central Asia
13	Australia	79	79	80	81	85	Asia Pacific
14	Iceland	78	79	79	78	82	Europe and Central Asia
15	Belgium	77	77	76	75	75	Europe and Central Asia
15	Hong Kong	77	75	74	75	77	Asia Pacific
17	Austria	75	76	72	69	69	Europe and Central Asia
18	United States	74	76	74	73	73	Americas
19	Ireland	73	75	74	72	69	Europe and Central Asia
20	Japan	72	75	76	74	74	Asia Pacific
21	Uruguay	71	74	73	73	72	Americas
22	Estonia	70	70	69	68	64	Europe and Central Asia
23	France	69	70	69	71	71	Europe and Central Asia
24	Bahamas	66	N/A	71	71	71	Americas
24	Chile	66	70	73	71	72	Americas
24	United Arab Emirates	66	70	70	69	68	Middle East and North Africa
27	Bhutan	65	65	65	63	63	Asia Pacific
28	Israel	64	61	60	61	60	Middle East and North Africa
29	Poland	62	62	61	60	58	Europe and Central Asia
29	Portugal	62	63	63	62	63	Europe and Central Asia

2016 Rank	Country	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score	Region
31	Barbados	61	N/A	74	75	76	Americas
31	Qatar	61	71	69	68	68	Middle East and North Africa
31	Slovenia	61	60	58	57	61	Europe and Central Asia
31	Taiwan	61	62	61	61	61	Asia Pacific
35	Botswana	60	63	63	64	65	Sub Saharan Africa
35	Saint Lucia	60	N/A	N/A	71	71	Americas
35	Saint Vincent and the Grenadines	60	N/A	67	62	62	Americas
38	Cape Verde	59	55	57	58	60	Sub Saharan Africa
38	Dominica	59	N/A	58	58	58	Americas
38	Lithuania	59	61	58	57	54	Europe and Central Asia
41	Brunei	58	N/A	N/A	60	55	Asia Pacific
41	Costa Rica	58	55	54	53	54	Americas
41	Spain	58	58	60	59	65	Europe and Central Asia
44	Georgia	57	52	52	49	52	Europe and Central Asia
44	Latvia	57	55	55	53	49	Europe and Central Asia
46	Grenada	56	N/A	N/A	N/A	N/A	Americas
47	Cyprus	55	61	63	63	66	Europe and Central Asia
47	Czech Republic	55	56	51	48	49	Europe and Central Asia
47	Malta	55	56	55	56	57	Europe and Central Asia
50	Mauritius	54	53	54	52	57	Sub Saharan Africa
50	Rwanda	54	54	49	53	53	Sub Saharan Africa
52	Korea (South)	53	56	55	55	56	Asia Pacific
53	Namibia	52	53	49	48	48	Sub Saharan Africa
54	Slovakia	51	51	50	47	46	Europe and Central Asia
55	Croatia	49	51	48	48	46	Europe and Central Asia
55	Malaysia	49	50	52	50	49	Asia Pacific
57	Hungary	48	51	54	54	55	Europe and Central Asia
57	Jordan	48	53	49	45	48	Middle East and North Africa
57	Romania	48	46	43	43	44	Europe and Central Asia
60	Cuba	47	47	46	46	48	Americas

Spain = Posición 43 de 176 países



THE LIABILITY OF LEGAL PERSONS FOR FOREIGN BRIBERY: A STOCKTAKING REPORT



Link:

<https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf>

2.1. Nature of legal person liability

“Each Party shall take such measures as may be necessary, in accordance with its legal principles to establish the liability of legal persons for the bribery of a foreign public official.”

Article 2 of the Anti-Bribery Convention

The Convention requires each Party to establish a system for holding legal persons liable for foreign bribery. Given the variety of legal traditions, however, the Convention does not require Parties to establish criminal liability when “under the legal system of a Party, criminal responsibility is not applicable to legal persons”.¹⁶ This section explores the various systems that the Parties have enacted to hold legal persons liable for foreign bribery.

Figure 1. Nature of legal person liability

(Number of Parties)

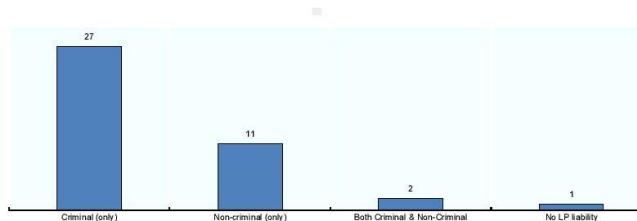


Table 1 reviews the nature of liability of legal persons in the 41 Parties. It uses two categories: criminal liability and non-criminal liability.¹⁷ Criminal liability is used here to describe systems where an LP is held liable for the offence of committing bribery as a matter of criminal law. A non-criminal system is one that does not impose liability as a criminal matter, but can hold a legal person responsible for foreign bribery (i) under an “administrative” system (e.g., Brazil, Bulgaria, Colombia, Germany, Greece, Italy, Mexico, Poland, Russian Federation, and Turkey), (ii) by imposing criminal law sanctions, sometimes known as “coercive measures”, under the criminal code even though the legal person, technically, cannot be liable for a criminal offence (e.g., Colombia, Latvia, and Sweden), or (iii) under a “civil” action brought by a governmental authority (e.g. United States). Twenty-seven countries (66%) are reported to have only criminal liability and

27 países tienen Responsabilidad Penal por soborno transnacional

11 países alguna forma de Responsabilidad no Penal

2 países tienen ambas

¹⁶ Commentaries to the Anti-Bribery Convention, comment 20; see also Anti-Bribery Convention, art. 3.

¹⁷ This column does not count arrangements available in some countries that allow private parties to pursue others for damages relating to foreign bribery. For example, Norway’s Civil Liability Act provides the following: “any person who has suffered damage as a consequence of corruption can claim compensation from anybody who by intent or negligence is responsible for the corrupt act(s) or for complicity thereto. Norway Phase 3 para. 47.

Table 1. Nature of Legal Person Liability

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports
Argentina	○	○	No LP liability for foreign bribery: "Some 13 years after becoming a Party to the Convention, Argentina remains unable to hold legal persons liable for foreign bribery.... In the meantime, criminal corporate liability has been established for several other offences but not foreign bribery." Phase 3 para. 49.
Australia	●	○	Criminal: Australia established an expanded version of "liability of legal persons for criminal offences" under Division 12 of the Criminal Code Act. Phase 3 paras. 18-19.
Austria	●	○	Criminal: "The Austrian Federal Statute on the Responsibility of Entities for Criminal Offences ... entered into force on 1 January 2006.... It applies to all offences, intentional and unintentional, thus including bribery of foreign public officials." Phase 1bis para. 62
Belgium	●	○	Criminal: "Criminal liability of legal persons, as laid down in Article 5 of the Criminal Code, has existed in Belgium since 1999. Its scope <iratione i="" materiae<=""> covers, in principle, all offences whether or not they require intention, including transnational bribery, which is an intentional offence". Phase 2 para. 123.</iratione>
Brazil	○	●	Non-criminal: Brazil's law on liability of legal persons "provides for a strict civil and administrative liability regime for legal persons." Phase 3 para. 26.
Bulgaria	○	●	Non-criminal: "Bulgaria created liability of legal persons for foreign bribery in 2005 after its Phase 2 evaluation by enacting Articles 83a-83f of the Law on Administrative Offences and Sanctions (LAOS). These provisions created administrative and not criminal liability against legal persons for bribery and other selected criminal offences." Phase 3 para. 20; <i>see also</i> Phase 3 page 48 (LAOS Article 83a).
Canada	●	○	Criminal: "Pursuant to section 2 of the Criminal Code, legal persons are liable for criminal offences, including an offence under the CFPOA...." Phase 2 para. 71. Section 22.2 of the Criminal Code (which entered into force in March 2004) sets forth the conditions for holding an LP liable for offences, including foreign bribery (in section 3 of the CFPOA), that require "the prosecution to prove fault, other than negligence". Phase 3 para. 42.
Chile	●	○	Criminal: Law 20 393 creates "criminal liability of legal persons for foreign and domestic bribery, money laundering, and terrorism financing." Phase 3 para. 36.
Colombia	○	●	Non-criminal: Following the WGB's Phase 2 report, Colombia adopted Law 1778 of 2016, which provides for administrative liability for legal persons for the bribery of foreign public officials "in relation to an internal business or international transaction". Colombia's general regime for the liability of legal persons for other offences is found in Article 34 of Law 1474 of 2011. Under Article 34(1), sanctions contained in the Code of Criminal Procedure can be applied to an LP "in the context of a prosecution against a natural person". Phase 1 para. 47. Under Article 34(2), LPs can be held "civilly liable" by "possibly affected State entities". Phase 1 para. 45. Finally, under Article 3(3), LPs can face administrative proceedings with the "Superintendence of Corporations". Phase 1 para. 44.
Czech Republic	●	○	Criminal: "On 1 January 2012, the Act on Criminal Liability of Legal Persons and Proceedings against Them (Act No. 418/2011 Coll.) entered into force, establishing the criminal liability of legal persons for a number of criminal offences, including foreign bribery." Phase 3 para. 34.

2. LIABILITY OF LEGAL PERSONS: MAPPING THE LEGAL LANDSCAPE

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports <i>Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.</i>
Denmark	•	○	Criminal: "Since Phase 2, Danish statutory provisions and guidelines on the criminal liability of legal persons for foreign bribery have not changed. The Criminal Code provides that a legal person may be punished by a fine if such punishment is authorised by law or applicable rules." Phase 3 para. 47.
Estonia	•	○	Criminal: "[Legal persons committing foreign bribery are subject to criminal responsibility under section 14 of the Penal Code." Phase 3 para. 25.
Finland	•	○	Criminal: Following "corporate liability provision in the Criminal Code" in force since January 2003, the "provisions concerning implementation of Article 2 of the Convention are now set out in § 1:9, § 8:7 and Chapter 9 of the Criminal Code." Phase 3 para. 24.
France	•	○	Criminal: "The criminal liability of legal persons was introduced into French law in 1994. Corporate liability for the offence of transnational bribery was introduced by Section 3 of the Act of 30 June 2000...". Phase 3 para. 40.
Germany	○	•	Non-criminal: Germany established liability for LPs "including liability for the foreign bribery offence, under the Administrative Offences Act...". Phase 3 para. 57.
Greece	○	•	Non-criminal: "Greece has established an administrative and not criminal form of liability of legal persons for foreign bribery." Phase 3bis para. 50.
Hungary	•	○	Criminal: Under Act CIV of 2001, an LP can be "liable for foreign bribery". Phase 3 para. 19. The WGB has described this law as establishing "criminal liability of legal persons". Phase 3 para. 19.
Iceland	•	○	Criminal: An LP "can be held criminally liable for a foreign bribery offence committed by its spokesman, employee or other person acting on its behalf, as provided under the general corporate liability regimes established under section 19c [of the General Penal Code]". Phase 3 para. 19. & page 36.
Ireland	•	○	Criminal: While recognising that Ireland has "criminal liability" of LPs, the WGB recommended codifying and clarifying the scope of such liability because Ireland continues to rely on the common law "identification theory" approach to attribute acts of natural persons to LPs. See Phase 3 paras 55-58.
Israel	•	○	Criminal: "Israel has a regime of criminal liability for legal persons.... The regime has developed at common law since 1973, and some elements were enshrined in article 23 of the Penal Law (PL) in 1994. Phase 3 para. 16.
Italy	○	•	Non-criminal: "Under Legislative Decree 231, 8 June 2001 ... administrative liability may be attributed to legal persons for certain criminal offences committed by a natural person, including foreign bribery and false accounting." Phase 3 para. 36.
Japan	•	○	Criminal: Under Japan's Unfair Competition Prevention Law, "a legal person is liable to punishment by fine for the foreign bribery offence when 'a representative of a juridical person, or an agent, employee or any other of a juridical person 'has committed the foreign bribery offence 'with regard to the business of said juridical person'". Phase 3 para. 36.
Korea	•	○	Criminal: "Article 4 of the FBPA establishes the criminal responsibility of a legal person for the bribery of a foreign public official ... specifically to address the requirements of the Convention, and an equivalent provision does not exist in relation to the domestic bribery offences...." Phase 1 page 7.
Latvia	○	•	Non-criminal: Section 12 of Latvia's Criminal Procedure Law provides for the application of "coercive measures" to legal persons, but the term "criminal liability" only applies to natural persons under this law". Phase 2 para. 211.

	Criminal liability	Non-Criminal liability	Comments / observations Selected quotes from Phase 1-3 Reports Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.
Luxembourg	•	○	Criminal: "The scope of application <i>ratione materiae</i> of the criminal liability of legal persons ... is very broad. It makes a general principle of the criminal liability of legal persons and extends it to all crimes and offences covered by the Penal Code and by specific laws. Bribery of a foreign public official is a crime in Luxembourg law, and consequently legal persons are criminally liable for such violations." Phase 3 para. 29.
Mexico	•	●	Criminal: Mexico has informed the Secretariat that amendments to the National Code of Criminal Procedure, which were adopted in June 2016 along with a new Article 11bis of the Federal Criminal Code, provide for criminal liability of legal persons for specific offences, including the foreign bribery offence under Article 222bis of the Federal Criminal Code. Non-criminal: Mexico has two other forms for sanctioning legal persons. First, under Article 11 of the Federal Criminal Code, Mexico can impose certain non-criminal sanctions on LPs. Phase 2 para. 61; see also Phase 1 page 24. This provision remains in force. Second, Mexico has created a parallel "regime of administrative liability of legal persons" under its public procurement law. Phase 3 Follow-up para. 4.
Netherlands	•	○	Criminal: "The criminal liability of legal persons is set out under article 51 of the Criminal Code. If an offence is committed by a legal person, 'criminal proceedings may be instituted and the punishments and other measures provided for by the law may be implemented where appropriate against (a) the legal person, or (b) those who ordered the commission of the offence, and those were in control of such unlawful behaviour, or (c) the persons mentioned under (a) and (b) together.'" Phase 3 para. 32.
New Zealand	•	○	Criminal: The Crimes Act "defines 'person' to include companies. Legal persons can thus in theory be liable for criminal offences applicable to persons, including offences requiring intent or <i>mens rea</i> , except for certain offences such as murder or offences that provide only for sanctions of imprisonment." Phase 2 para. 178
Norway	•	○	Criminal: Norway established LP liability in 1997 under Section 48a of its penal code. "Under this section, a company may be liable where 'a penal provision is contravened by a person who has acted on behalf of' the LP." Phase 3 para. 34.
Poland	○	●	Non-Criminal: "The Act on Liability of Collective Entities ... provides for the liability of legal persons.... Under the Act, a collective entity may be liable for the criminal conduct of a natural person...". Phase 3 para. 45.
Portugal	•	?	Criminal: "The general provisions on the criminal liability of legal persons in Article 11 of the Criminal Code now apply to the foreign bribery offence and other enumerated crimes." Phase 3 para. 44.
Russian Federation	○	●	Non-criminal: The Russian Federation has established "administrative liability of legal persons for foreign bribery." Phase 2 para. 252.
Slovak Republic	■	○	Criminal: The Act on Criminal Liability of Legal Persons, which was adopted on 13 November 2015 and promulgated on 25 February 2016, entered into force in July 2016. The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	•	○	Criminal: "Article 33 of the Criminal Code provides that 'the liability of a legal person for criminal offences which the perpetrator commits in its name, on its behalf or in its favour shall be provided for by statute.' In furtherance of this requirement, the 1999 Liability of Legal Persons for Criminal Offences Act ("Liability of Legal Persons Act") was enacted ... to establish the liability of legal persons under the Act related to a limited list of criminal offences, including the active bribery of domestic or foreign public officials." Phase 2 para. 153.

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	Criminal liability	Non-Criminal liability	Comments / Observations Selected quotes from Phase 1-3 Reports <i>Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.</i>
South Africa	•	○	Criminal: "The criminal liability of a legal person depends on a culpable act by a representative of the legal person." Phase 3 para. 22. [The Interpretation Act 1957 provides that South African law applies to natural and legal persons alike. This implies that section 5(1) of the Prevention and Combating of Corrupt Activities Act, 2004, which covers the offence of bribery of foreign public officials, applies to both natural and legal persons. Phase 3 para. 21.]
Spain	•	○	Criminal: Under Penal Code article 31 <i>bis</i> established in December 2010, "criminal liability can be attributed to legal persons for certain Penal Code offences committed by a natural person in offences which specifically state that companies can also be held liable." Phase 3 para. 43. A March 2016 Supreme Court decision concerning LP liability for fraud, has clarified that under Spain's new regime for criminal LP liability, prosecutors must adhere to "the structural principles of the criminal procedure", including due process, before sanctions can be imposed under the Penal Code.
Sweden	○	•	Non-criminal: Sweden does not have criminal "liability of legal persons for the bribery of foreign public officials". Instead, the "Swedish system for liability of legal persons is a special legal effect of crime (corporate fines)" and thus requires "that a crime has been committed by a natural person." Phase 3 para. 80; <i>see also</i> Phase 1 page 7 ("Under Swedish law, only natural persons can commit crimes. However, pursuant to chapter 36, section 7 of the Penal Code, a kind of quasi-criminal liability is applied to an 'entrepreneur' for a 'crime committed in the exercise of business activities'....").
Switzerland	•	○	Criminal: The liability of LPs "is governed in Swiss law by article 102 SCC" following the 2007 entry into force of "the revised general part of the Criminal Code". However article 102 SCC replaced "without substantive amendment" two prior provisions on LP liability adopted in 2003. Phase 3 para. 26.
Turkey	○	•	Non-criminal: After originally enacting criminal LP liability, Turkey adopted an administrative liability regime for foreign bribery and certain other offences. While it did not repeal a criminal code provision that provides for "certain sanctions on legal persons in the event of a conviction of a natural person," the WGB did not agree that this alone would constitute "liability for legal persons". Phase 3 para. 36.
United Kingdom	•	○	Criminal: "For offences prior to the 2010 Bribery Act, legal persons may be held liable for foreign bribery under the 'identification theory'.... Under the Bribery Act, legal persons may be liable for foreign bribery under Section 1 or 6 of the Bribery Act, again under the identification theory. Section 7 creates a new corporate offence of failure to prevent foreign bribery." Phase 3 para. 30.
United States	•	•	Criminal: "[L]egal persons are liable for crimes committed by employees acting within the scope of their employment. This standard of liability is simple and direct, and has resulted in an impressive record of law enforcement actions." Phase 3 para. 98. Non-criminal: "In addition to criminal penalties, the FCPA provides for civil penalties" for foreign bribery. Phase 1 page 12.



ACTUALIDAD

FIRMAS

PRÁCTICA JURÍDICA

GESTIÓN DEL DESPACHO

INFORMACIÓN JURÍDICA

ENTREVISTAS

AGENDA

NOTICIAS

ENCUENTROS

EL RINCÓN DEL LECTOR

Portada > Actualidad > Noticias



Magrada

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Compartir



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EMAIL IMPRIMIR

Un total de 1.378 personas juzgadas en España en 166 casos de corrupción entre julio de 2015 y septiembre de 2016

13 de Enero de 2017

Cataluña duplica el número de corruptos respecto de las dos comunidades que le siguen, que son Andalucía y Madrid. Casi el 73 por ciento por ciento de las causas juzgadas en este periodo terminaron en la condena de 399 cargos públicos o funcionarios

CGAE

Los tribunales españoles abrieron **juicio por delitos contra la corrupción** contra **1.378 personas implicadas** en un total de **166 casos entre julio de 2015 y el pasado mes de septiembre** según un novedoso depósito de datos presentado este jueves por el presidente del Consejo General del Poder Judicial (CGPJ), Carlos Lesmes, que busca dar a conocer a los ciudadanos la acción judicial contra este fenómeno, que ha calificado de "lacra criminal".



De los 99 procedimientos que finalizaron con sentencia en ese periodo, el 72,7 por ciento lo fue con una resolución condenatoria y las sentencias que han adquirido firmeza en estos cinco trimestres han supuesto la condena por delitos de corrupción de 399 personas.

En el acto estuvieron presentes la práctica totalidad de presidentes de tribunales superiores de

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Del total de acusados y/o procesados:

1.060 hombres 77 %

318 mujeres 23%

Nacionalidad implicados:

1.174 españoles

34 Estados miembros UE

170 extracomunitarios

01



Repositorio de datos sobre procesos por corrupción

<http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/>

- Este repositorio tiene como finalidad ofrecer a la ciudadanía los datos existentes sobre procedimientos judiciales por los delitos relacionados con la corrupción que abajo se indican.
- Esta información permitirá conocer la acción de la justicia en el marco global de la lucha contra la corrupción.
- Los datos que se ofrecen, se corresponden con procesos penales por delitos relacionados con la corrupción con auto de apertura de juicio oral o de procesamiento, los condenados por sentencia firme, y la población reclusa por este tipo de delitos.
- Las fuentes de las que los datos se obtienen son: los boletines estadísticos elaborados por los Letrados de la Administración de Justicia, el Ministerio de Justicia, la Secretaría General de Instituciones Penitenciarias del Ministerio del Interior y la Dirección General de servicios Penitenciarios del Departamento de Justicia de la Generalitat de Catalunya.
- La información se actualiza trimestralmente.

Repositorio de datos sobre procesos por corrupción

<http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/>

Se consideran delitos relacionados con la corrupción a los efectos de este repositorio:

- ✓ Ordenación del territorio, urbanismo y patrimonio histórico. Arts. 320 y 322 CP
- ✓ Prevaricación de funcionarios públicos. Arts. 404, 405 y 408 CP
- ✓ Infidelidad en la custodia de documentos y violación de secretos. Arts. 413, 414, 415, 416, 417 y 418 CP
- ✓ Cohecho. Arts. 419, 420, 421 y 422 CP
- ✓ Tráfico de influencias. Arts. 428, 429 y 430 CP
- ✓ Malversación. Arts. 432, 433, 434 y 435 CP
- ✓ Fraudes y exacciones ilegales. Arts. 436, 437 y 438 CP
- ✓ Negociaciones y actividades prohibidas a los funcionarios públicos y de los abusos en el ejercicio de su función Arts. 439, 441, 442 y 443 CP
- ✓ Corrupción en las transacciones comerciales internacionales. Arts. 286, 3º y 4º CP

CCI AUDITORÍA LEGAL ANTI-CORRUPCIÓN
SOBRE TERCEROS: GUÍA PARA PEQUEÑAS Y
MEDIANAS EMPRESAS



Documento preparado por la Comisión sobre Responsabilidad Corporativa y
Anti-Corrupción de la ICC

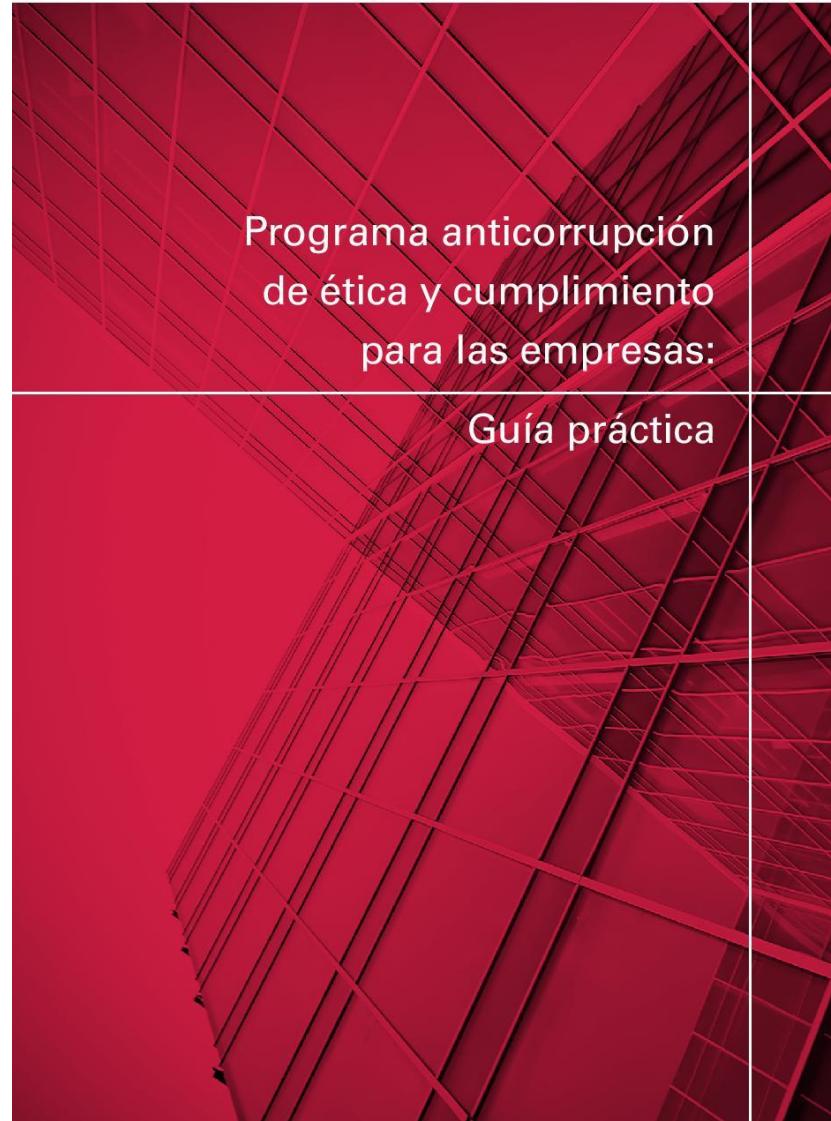


Link:

http://www.iccspain.org/wp-content/uploads/2016/01/ICC-Auditoria-Legal-anti-corrupcion-sobre-terceros_Guia-para-PYMES.pdf



UNODC
Oficina de las Naciones Unidas
contra la Droga y el Delito



Link:

https://www.unodc.org/documents/corruption/Publications/2013/13-85255_Ebook.pdf

Delitos relacionados con la corrupción en el Código Penal

- **Cohecho [Soborno]** (artículo 419 a 427 bis Código Penal).
- **Corrupción de funcionario público extranjero** (artículo 286 ter Código Penal).
- **Corrupción en los negocios** (artículo 286 bis a 288 Código Penal).
- **Tráfico de influencias** (artículo 428 a 430 Código Penal).
- **Financiación ilegal de partidos políticos** (artículo 304 bis Código Penal).
- **Blanqueo de capitales** (artículos 301 y 302 Código Penal).
- **Prevaricación** (artículo 404 a 406 Código Penal).
- **Malversación de fondos públicos** (artículo 432 a 435 Código Penal).

Situaciones de riesgo

Principios Empresariales para Contrarrestar el Soborno

Edición para pequeñas y medianas empresas

Transparencia Internacional

Un soborno puede presentarse de diversas formas, no sólo como dinero. Se puede pagar directamente o como parte de una ‘comisión’ en un contrato, pero también puede ocultarse en forma de un regalo, beneficio, favor o donación. También agentes o terceras personas que trabajen en nombre de su empresa o compañía pueden estar pagando sobornos sin que Usted lo sepa.

Regalos y atenciones: Regalos o atenciones desproporcionadas frente a costumbres y usos propios del lugar.

Conflictos de intereses: Un conflicto de intereses surge cuando se antepone un interés o una relación personal a los intereses de la empresa. Los conflictos de intereses pueden viciar el criterio y derivar en acciones que no son ni honestas ni realizadas de forma transparente. En ocasiones, esto puede conducir a una situación en la que las personas actúan en contra de su mejor juicio y dan o aceptan un beneficio que puede perjudicar a su empresa. La forma de tratar este problema es disponiendo de reglas sobre cómo deben manejarse las situaciones en las que puede surgir un conflicto. Incluso en casos en que no exista negligencia profesional, los conflictos de intereses pueden ser vistos como actividades corruptas y esto puede ser tan perjudicial como un hecho de negligencia profesional real.

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Edición para pequeñas y medianas empresas

Transparencia Internacional

Contribuciones benéficas y patrocinio. Los sobornos pueden disimularse en forma de contribuciones benéficas o patrocinios. Asegúrese de que el dinero que su empresa paga a una entidad benéfica no dependa de un acuerdo comercial ni se realice con el fin de conseguir un contrato o hacer negocio. Dé siempre ese dinero a la organización y no a una persona. El patrocinio se refiere a los pagos que realiza la empresa, en efectivo o en especie, para poder vincular su nombre a un evento popular, por ejemplo a una actividad deportiva, o relacionarse con una persona conocida, por ejemplo un cantante. El beneficio para la empresa radica en la asociación de su nombre con lo conocido y famoso, pero el patrocinio debería ofrecer beneficios reales y ponderables para la empresa, como más publicidad y una mayor solidez de la marca. Asegúrese de que el patrocinio se realice para el beneficio de la empresa y que no se utilice para encubrir un soborno.

Pagos de facilitación. Los pagos de facilitación constituyen simplemente otra forma de soborno y, como tales, son ilegales en casi todos los países. Puede tratarse de montos pequeños exigidos por los proveedores de servicios con el fin de garantizar o ‘facilitar’ los servicios se tiene derecho, como por ejemplo conectar un teléfono u obtener un visado, o bien puede ser dinero que se ofrece al personal de aduanas, inmigraciones u otro tipo de funcionarios para ‘acelerar’ la prestación de servicios y la concesión de permisos. Desafortunadamente, estos pagos son tan comunes en tantos países que se consideran como algo ‘normal’ o ‘inevitable’, aunque sean ilegales y por tanto se puedan y deban evitar. Tener claro cómo puede asegurarse de no realizar pagos de facilitación le servirá, tanto a Ud. como a sus socios, para enfrentar este problema.

Situaciones de riesgo

Principios Empresariales para Contrarrestar el Soborno

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Contribuciones políticas. Los sobornos pueden disimularse bajo la forma de contribuciones políticas. Si su empresa desea hacer una contribución a un partido político, es importante que esta decisión se tome abiertamente. Si tiene una Junta Directiva, debe registrarse dicha decisión como una resolución de la Junta. Si se trata de una pequeña empresa, se puede anotar el proyecto de realizar la donación en una reunión de la dirección. Asegúrese de que todos en la organización sepan que la decisión de hacer una contribución política en nombre de la empresa debe ser tomada de acuerdo con toda la empresa, y que jamás debe ser decisión de una sola persona sin el pleno consentimiento de la dirección. Preste atención a la oportunidad del momento. Si está en medio de un proceso de negociación para obtener un contrato o una licencia del gobierno, por ejemplo un permiso de planificación, o si algún tema delicado de su empresa está siendo examinado por el gobierno, las contribuciones destinadas al gobierno o a un partido político local podrían ser vistas como un soborno. Jamás entregue una contribución directamente a una persona.

SEPBLAC: Corrupción en las actividades económicas internacionales

Otros ejemplos de controles:

- Matriz de poderes, delimitando las facultades de actuación de cada apoderado.
- Adecuada segregación de funciones de los apoderados.
- Formalizar Política Anticorrupción, que deba guiar el comportamiento de todos los empleados. Asimismo, se recomienda valorar la posibilidad de realizar programas de formación interna sobre esa política.
- Diseñar una adecuada segregación de funciones.
- Política de regalos que proporcione reglas y orientación (cuantía máxima y proceso de aprobación por tipo de regalo, principio de razonabilidad...) acerca de cualquier regalo, atención, entretenimiento u otro beneficio que el personal del Grupo pueda dar o aceptar en relación con su actividad profesional.
- Matriz de firmas autorizadas para pagos y transacciones en Política de Pagos: lista actualizada de los apoderados, sus facultades concretas y limitaciones.
- Formalizar Política de Contratación de Personal.

