



RESEARCH NOTE

# The role of lawyers in the fight against corruption

## A Summary Report

A research note by Arnold & Porter LLP for Fundación Universidad de San Andres

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# INTRODUCTION

Across the globe, the topics of transparency and corruption, or rather anti-corruption, are becoming increasingly prominent. Organisations such as Transparency International, Revenue Watch and the Extractive Industries Transparency Initiative are having great success in highlighting the issue. These groups, in conjunction with the amendments to the Foreign Corrupt Practices Act in the United States in 1998 and the introduction of the more recent Bribery Act in the United Kingdom, along with many other laws and initiatives around the world, have ensured that this issue is now firmly in the public eye. Such changes to legislation mean that organisations and corporations all over the world have been forced to change the way they operate. This focus on transparency is also having an interesting impact on the lawyer-client relationship.

As part of a settlement with the World Bank Group in the wake of acknowledged past misconduct in its global business, Siemens, the international electronics and electrical engineering corporation, launched a USD100 million global transparency initiative, the 'Siemens Integrity Initiative', which supports organisations and projects that fight corruption and fraud through collective action, education and training.

One of the beneficiaries of this initiative is Fundación Universidad de San Andrés (UdeSA), whose project has the goal of informing the debate about corruption in Argentina and generating consensus-based policy reforms through a collective action process. One small element of this expansive project was to look at professional ethics and the obligations of lawyers facing corrupt activities. UdeSA wanted not only to look at the legal issues surrounding corruption, but also the different approaches to ethics taken by the legal profession in a number of different jurisdictions, particularly focussing on their reporting and disclosure responsibilities, and the prevalence of the study of ethics by law students in those countries.

This report on *The role of lawyers in the fight against corruption* looks at many of the different issues in the legal industry that relate to tackling corruption, from the reporting to the enforcement and punishment for the offence. A large number of jurisdictions, 17 in total, were selected for review as part of this project to guarantee a range of responses that accurately reflects the different approaches to this topic pursued around the world. UdeSA wanted to ensure that the analysis took into account countries with differing legal traditions, religions, levels of economic development and perceptions of corruption. The jurisdictions reviewed highlight the multitude of viewpoints and the overlaps and discrepancies between the different countries.

## Method

A questionnaire was developed by UdeSA and Arnold & Porter, a preeminent international law firm, on which the various responses received were based. This questionnaire focussed on: the legislation and industry norms relating to anti-corruption; how compliance is regulated; enforcement; and education at law schools relating to the issue. The responses were collated and analysed by Arnold & Porter, the product of which constitutes this report, highlighting the various approaches to the rules and prescribed sanctions relating to anti-corruption under both 'hard law' (binding legislation and regulation) and 'soft law' (industry or bar principles and guidance), and judicial decisions and industry body sanctions following corrupt practices.

## Results

It is clear from this report that there is no universal approach to the obligations and responsibilities of lawyers when dealing with corrupt practices.

It is self-evident that lawyers, like all other individuals, should not carry out illegal activities. As the traditional role of lawyers is that of defender of justice and representative of individuals before the law, the fall-out from lawyers being involved in corrupt practices can be far greater than that of other professions, and rightly so. However, the recent legislative changes now take a far broader view of what would be considered a corrupt activity. Failing to report suspicious activity and letting a client know that you have informed authorities about their behaviour are now considered part of the bundle of illegal or corrupt activities. It is these requirements that are having an important effect on lawyer-client privilege and an analysis of this forms part of this report.

Like conversations with doctors or religious leaders, lawyer-client privilege allows clients to speak freely to their counsel, safe in the knowledge that the discussion remains completely private. Legal privilege exists to protect a client's ability to access the justice system by encouraging complete disclosure to legal advisers without the fear that those communications may prejudice the client in the future. It has long been held that privilege is a central tenet of the rule of law, ensuring that any party has the benefit of legal advice whether or not they have (or may have) committed a crime, and on the assumption that full disclosure will allow for the provision of more comprehensive and appropriate legal counsel. The advent of these new disclosure requirements can be seen to erode the security of this relationship.

The impact of privilege being dismantled by the imposition of anti-corruption legislation will be impossible to predict. This trend poses interesting questions about the relative merits of the two positions. The importance assigned to the protection of privilege and the reporting of illegal behaviour varies around the world. In Argentina, for example, it is an offence for a lawyer to break legal privilege, whereas in the European Union, the advent of the Third Money Laundering Directive in 2005 means that there are strict obligations placed on lawyers to report illegal behaviour, and further it is an offence to let a client

know that you have suspicions of their activities. The United Kingdom goes yet further, making it an offence to not report suspicious activities once you are aware of them.

This divergence in approach can be seen as an insight into the ethics of the society, though will also necessarily be a product of the interplay between the competing legislative frameworks. That the divergence itself exists at all highlights the difficulty professionals have in understanding how to negotiate these differing approaches.

This shift in ethical considerations can be seen as part of a wider societal trend: the re-examination of the balance between personal privacy and the influence of the state. Increased use of CCTV cameras and the rise of monitoring of activities on the internet by both public and private organisations are constantly cited as evidence of this. Part of this report provides an insight into how this battle is being played out in one discreet field; the manner in which legal professionals interpret any requirements to provide information will no doubt have a profound effect on the societies in which they operate, as it is the lawyers that are on the front line in dealing with and understanding the obligations imposed both on themselves and others. With increasing globalisation and cross-border trade, it seems likely that more and more countries will follow the trend of increased disclosure championed by the European Union and the United States. In the pages that follow, you will see a snapshot of where we are now.

As the dialectic continues, lawyers run the risk of being caught in an uneasy middle ground while they try to establish where the boundaries lie. Revisiting this report in ten years' time will provide a fascinating map as to how the conversation has evolved.

# 1 'HARD LAW' RELATING TO LAWYERS IN THE AREA OF ANTI-CORRUPTION

## 1.1 Are there legal provisions that make it illegal for the legal profession to assist in the commission of corruption offences? Are there legal provisions that impose duties on lawyers to take preventive measures?

### 1.1.1 The rules

This section discusses the extent to which it is illegal for the legal profession to assist in the commission of corruption offences. The extent of a lawyer's assistance or facilitation in any corruption matter will of course vary from case to case. For the purposes of this review, we have considered "assistance" and "facilitation" of corruption to encompass a broad range of activities, ranging from indirect to direct involvement in any offence.

Respondents across a number of jurisdictions have indicated that liability can arise either through specific offences targeted at the legal profession or more generally under criminal laws that either criminalise corruption or activities that can be related to an act of corruption (e.g. money laundering).

**Liability arising through specific offences targeted at the legal profession.** Very few jurisdictions have legislation that deals specifically with the legal profession. Of the respondents, only Brazil<sup>1</sup> has a specific obligation that would apply to the facilitation of corruption by a lawyer, forbidding a local lawyer from aiding his or her clients or third parties to break the law or facilitate its violation.

**Liability arising from general criminal laws.** For liability arising from general criminal laws *relating to corruption*, respondents indicated that the type and extent of criminal liability would turn on the facts of each case, depending on the level of involvement of the lawyer in any corrupting activity.

Where the lawyer acts in such a way as to be directly responsible for the act of corruption or acts as part of a conspiracy to corrupt, they can face liability as a "principal" offender. This may occur where a lawyer pays any bribe or actively arranges any particular corrupting activity.

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1 Article 34 of the Statute of the Brazilian Bar Association (Law #8906/94) states: "It is considered a disciplinary infraction [...] to aid clients or third parties to perform any act contrary to the law or intended to defraud it."

Where the lawyer is not directly responsible for the act of corruption but facilitates or otherwise provides assistance to a principal offender, the lawyer can be liable as an accessory or accomplice. This is particularly important to consider given the nature of a lawyer's role in a corrupt act (arguably more likely to prepare supporting documents to a corrupt transaction, instead of making a direct payment to a corrupt recipient).

In addition, a lawyer could also be liable for *offences related to the criminal act of corruption*, such as money laundering offences, or where local laws include the requirement to report corruption activities.

This section therefore goes on to consider the following types of liability that arise from legal provisions making it illegal for lawyers to assist in the commission of corruption offences:

- **Principal Liability:** liability as a principal offender under corruption laws (such as the US Foreign Corrupt Practices Act 1977<sup>2</sup> (FCPA) or the UK Bribery Act 2010);
- **Accessory Liability:** liability as an accessory or accomplice to a principal offender (i.e. where the lawyer aids, abets, counsels, procures, facilitates etc. a corruption offences) under general criminal laws; or
- **Other Liability:** liability for offences indirectly related to an act of corruption, such as money-laundering offences in Europe (as a result of the European Third Money Laundering Directive, thereafter the Third “AML Directive”),<sup>3</sup> Australia and in the UAE., or where there are requirements to report offences.

### 1.1.1 Principal Liability

All of the respondents (excluding Pakistan), stated that anti-corruption legislation existed in some form within their jurisdictions. In these respondents, the act of offering

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- 2 For example, UK solicitor Jeffrey Tesler was sentenced to 21 months in a US federal prison and a forfeiture of US\$149 million on Thursday 23 February 2012 for FCPA offences: <http://uk.reuters.com/article/2012/02/23/uk-kbr-bribery-idUKTRE81M1VB20120223>.
- 3 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0060:EN:NOT>. The Third AML Directive incorporates into EU law the revised Forty Recommendations of the Financial Action Task Force (“FATF”), which is the international standard setter in the fight against money laundering and terrorist financing. The EU has adopted three directives on Money Laundering. The First AML Directive (1991) concentrated on combating the laundering of drugs proceeds through the traditional financial sector. The Second AML Directive (2001) amended the First AML Directive to introduce changes in two main areas: (i) it expanded the scope of predicate offences for which suspicious transaction reporting was mandatory, from drug trafficking to all serious offences; and (ii) it extended the scope of the First AML Directive, and in particular its reporting obligations, to a number of non-financial activities and professions, among others, lawyers, subject to certain conditions. Finally, the purpose of the Third AML Directive (2005) was to consolidate the First and the Second AML Directives and incorporate a number of further recommendations of the FATF.



or paying a bribe to a public official amounts to a criminal offence. A lawyer could therefore be liable as a principal offender where they directly carry out a corrupting act.

Whether a legal professional will face criminal liability is likely to depend on the nature of their involvement in each case. Respondents in each jurisdiction (other than Pakistan) indicated that greater levels of personal involvement can lead to liability as a principal offender.

In addition to liability as a principal for direct activity in corrupting a public official, some of the respondents indicated that local corruption laws caught a broader scope of corruption activity under which a lawyer could be liable a principal offender:

- i. a third of the respondents (France, Germany, Japan, Sweden, Switzerland, the UAE and the UK) indicated that bribery within the private sector is also a criminal offence;
- ii. in another third of the respondents<sup>4</sup> it was indicated that there is also an extraterritorial effect to anti-corruption legislation, such that bribery of foreign public officials would be a criminal offence under national legislation; and
- iii. a minority of respondents indicated that there were additional criminal offences that could attract principal liability for legal professionals:
  1. counsel in Bulgaria indicated that while their anti-corruption legislation was in the process of reform (with new laws anticipated for 2014), there are currently specific offences of “trading in influence” and “obstruction of justice” that could apply in corruption cases;
  2. German counsel indicated that, in addition to the prohibitions on private and public sector corruption, legal professionals could face principal liability for fraud or breach of trust relating to corrupt activities. It is worth noting that in Germany only individuals and not companies can be found liable for criminal offences relating to corruption; and
  3. Swiss counsel indicated that a corruption offence could take place even where there is no specific intent for a payment to corrupt a particular activity i.e. where an official is “groomed” by receiving an advantage, which does not by itself corrupt the activity of the official but which may be used to “sweeten” their decision-making.<sup>5</sup>

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4 Japan, UK, France, Germany, Argentina, Bulgaria and the US.

5 Article 322 of the Swiss Criminal Code, so-called “sweetening”.

## 1.1.1.2 Accessory Liability

In certain circumstances, it may be difficult to show that the involvement of a legal professional in any offence of corruption is sufficient for them to face liability as a principal offender. Legal professionals may be more likely to be involved in the planning or arranging of any such activity, drafting documents or arranging transactions, rather than being directly involved in the payment of a bribe. In such cases, legal professionals could be liable as an accessory or accomplice to a principal offender.

Just over half<sup>6</sup> of the respondents indicated that there could be liability for lawyers acting as an accessory or accomplice to a principal offender. Most of these respondents indicated that accessory liability results from general criminal codes and statutes, dealing with accessory liability for all criminal offences (including relevant corruption offences).

In addition, some jurisdictions have more specific relevant offences for accessory liability:

- i. in Bulgaria, there is a specific offence that applies to any person acting as a “mediator” in the giving or receiving of a bribe. As such, a lawyer could be prosecuted as a principal for what is essentially an offence committed by themselves as an accessory. Where a lawyer acts as a mediator in an unsuccessful attempt to bribe an official, they may also commit an offence of “unsuccessful intermediation”<sup>7</sup> and be liable in the same way;
- ii. in Germany, lawyers can be liable both for offences as accessories (by aiding, abetting or facilitating) to an offence and a more specific offence of “assistance after the fact”,<sup>8</sup> which would criminalise activity after the relevant corrupting action that was intended to assist the perpetrators of a criminal offence; and
- iii. in the US, in some circumstances, recommending a foreign lawyer to handle a transaction for a client can lead to a violation of the FCPA. If the US lawyer knows the foreign lawyer will take action to violate the FCPA, that lawyer could be prosecuted.

## 1.1.1.3 Other forms of liability

In addition to liability as a principal offender or as an accessory or accomplice to a corrupt act, the other forms of criminal liability indicated by the respondents arose in those jurisdictions that have implemented anti-money laundering laws or that otherwise have reporting requirements that apply to criminal activity.

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6 Brazil, Bulgaria, UK, France, Germany, Japan, Singapore, Switzerland and US.

7 Article 305a, Bulgarian Criminal Code.

8 Section 257 of the German Criminal Code creates a liability where a person renders assistance to another person who has committed an unlawful act with the intention to secure the benefits of the illegal act.

Of the respondents, the European member states, Switzerland, Australia, the UAE and Japan have all implemented anti-money laundering legislation. The approach to this legislation differs across the respondents:

- i. for the European respondents, the Third AML Directive has partially harmonised obligations across European member states. Legal professionals can face criminal liability for money laundering offences if they handle either the money used in corruption or the proceeds of corruption;
- ii. respondents in Australia and in the U.A.E indicated that legal professionals can face liability for similar activity under anti-money laundering laws; and
- iii. while Japan<sup>9</sup> and Argentina have introduced anti-money laundering legislation it does not apply to the legal profession.

## 1.1.2 Sanctions

**Criminal sanctions.** While respondents have indicated where there is criminal liability, several have failed to provide any information regarding the extent of potential fines or prison sentences.

Respondents have indicated that the sanctions for criminal offences committed by lawyers range from small financial penalties to large fines, confiscation orders and prison sentences. Where sanctions apply, the respondents have indicated that the extent of the sanction will vary depending on the person's level of involvement and the magnitude of the offence.

In cases of *principal liability*, unlimited fines and prison sentences of 10 or more years are possible for flagrant breaches of US and UK legislation. In Australia, companies can be fined up to \$11 million for failure to conduct required due diligence. These are the more stringent of the applicable sanctions from the respondents.

Some jurisdictions indicated that prosecutors would consider aggravating factors in sentencing where there was corruption of the judiciary or other legal officials (e.g. Bulgaria)<sup>10</sup> or where the corruption related to foreign public officials (e.g. Japan).<sup>11</sup> In some jurisdictions, such as France, counsel indicated that there is a stated preference to deal with such offences by the use of financial penalties, rather than through the imposition of custodial sentences.

For jurisdictions which indicated potential liability for *accessory or accomplice liability*,

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9 The Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007).

10 Where potential sentencing is extended from 6 years to 10 years.

11 Where potential fines are doubled from Yen2.5mn to Yen5mn and possible sentencing extending from 3 years to 5 years.

sanctions were generally reduced when compared to those applicable to the principal offenders. In most instances, these still amounted to the threat of financial penalties and custodial sentences. For instance, direct involvement in a corruption offence in Bulgaria attracted a maximum custodial sentence of ten years, while an accessory offence has a maximum sentence of three years. Financial penalties vary widely between the relevant offences, from potentially unlimited amounts to as little as €2,500.<sup>12</sup>

**Professional sanctions.** For most of the jurisdictions where sanctions apply, respondents indicated that legal professionals would also face professional sanctions ranging from financial penalties to disbarment (see Section 3 below). By way of example, Brazilian counsel indicated that professional sanctions would be the only form of punishment applicable to legal professionals with accessory or accomplice liability.<sup>13</sup>

## 1.2 Are there legal provisions that make it mandatory for the legal profession to report corruption in general or corrupt practices of their clients in particular?

### 1.2.1 The rules

This section describes the duties that may be imposed on lawyers to stop or prevent corrupt activity. Of the respondents, several impose legal obligations relevant to the reporting of corruption. These obligations are supported by related criminal offences that can apply to legal professionals and we describe them below.

The starting point in the majority of respondents is the absence of a general obligation on persons to report crime. In fact, some respondents have indicated that reporting by a lawyer can itself be a criminal offence or be a breach of professional duties where it relates to a client:

- i. in Argentina, counsel indicated that there is both criminal and professional<sup>14</sup> liability for reporting confidential information in relation to a client; and
- ii. in Brazil, counsel has indicated that the Brazilian Bar Association is strongly against creating an obligation to report corruption. While there have been

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<sup>12</sup> For the Bulgarian offence of unsuccessful intermediation, under Article 305(a) of the Bulgarian Criminal Code.

<sup>13</sup> Article 34 of the Statute of the Brazilian Bar Association (Law #8906/94) states: "It is considered a disciplinary infraction [...] to aid clients or third parties to perform any act contrary to the law or intended to defraud it."

<sup>14</sup> Under Section 156 of the Argentine Criminal Code and Section 244 of the Federal Criminal Procedures Code respectively.

some recent legislative proposals for such a duty, counsel have advised that legal professionals cannot be forced to disclose information or evidence obtained through their clients or which might otherwise be subject to attorney-client privilege. Indeed, local legislation enshrines the protection of confidence between an attorney and their client and local laws create criminal liabilities for any party breaching professional secrecy.<sup>15</sup> Violation of these provisions can lead to fines and administrative sanctions, including reprimands, suspension, fines and loss of practising license.

In Bulgaria, it was noted that there is a general obligation on citizens to report criminal activity.<sup>16</sup> However, Bulgarian counsel indicated that where there is such an obligation it was also confirmed that no criminal offence is committed for failure to report. While Bulgarian counsel noted that concerns have been reported<sup>17</sup> about corruption in the local legal profession, they also stated that members of the Bulgarian Bar have an absolute duty of confidentiality<sup>18</sup> to their clients and cannot be compelled or otherwise provide evidence that arises from their work with clients. If a legal professional reveals information subject to this duty, they may also be committing a criminal offence.<sup>19</sup>

Of the jurisdictions with reporting requirements, these tend to have arisen out of anti-money laundering legislation and corporate governance laws. Europe is the high water mark of reporting obligations under anti-money laundering legislation. The keystone of the European system is the Third AML Directive,<sup>20</sup> adopted in 2005, which requires financial operators and some non-financial operators, including lawyers, to report any suspicious or unusual transactions or activities. It also contains offences of “tipping off” a client where a report has been made, as well as client due diligence obligations that are designed to help lawyers avoid participating in money laundering practices of their clients.

While member states have harmonised legislation to some degree via implementation of European Directives, there is a variation between the obligations on legal professionals in each state.

The UK has arguably one of the toughest approaches, criminalising<sup>21</sup> even the failure to report suspicion of money laundering within its anti-money laundering laws to the Serious Organised Crime Agency. In Germany, there are similar obligations on lawyers to report even suspicious activity to the Federal Criminal Police Office.<sup>22</sup>

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15 Article 154 of the Brazilian Criminal Code states: “Revealing someone, without just cause, secret, that is aware in view of its function, department, office or profession, and the disclosure of which may produce harm to others.”

16 Article 205(1) of the Bulgarian Criminal Procedure Code.

17 CEEBIC Report on the Bulgarian Business Environment, CEEBICnet, Bulgaria Country Commercial Guide FY 2002.

18 Article 45 of the Bulgaria Attorneys Act.

19 Article 145(1) of the Bulgarian Criminal Code.

20 See footnote 3 above.

21 Pursuant to Sections 330 and 331 of the UK Proceeds of Crime Act 2002.

22 Pursuant to Section 11(1) of the German Anti Money-Laundering Act.

In other EU member states (France, Italy, Germany, Bulgaria), the obligations to report under money laundering legislation have generated conflict with national laws that set out professional duties of secrecy. In France and in Belgium in particular, these obligations led to challenges being mounted by bar associations to the provisions of the AML Directives concerning lawyers and of their national implementing laws. In these two jurisdictions, the question raised was whether the extension to lawyers of the obligation to inform the competent authorities when they come across facts which they know or suspect to be linked to money laundering infringes the principles of professional secrecy and independence of lawyers, principles which are a constituent element of the fundamental right of every individual to a fair trial and to the respect of his rights of defence.

In Belgium, the question was referred to the Court of Justice of the EU for a preliminary ruling. In its judgment of 26 June 2007, the Court of Justice of the EU held that there was no such infringement. The AML Directives provide for an exception to the reporting obligation imposed on lawyers, and this exception must be interpreted in a way that renders it compatible with the rights and principles set out in the EU Treaty (such as the right to a fair trial and the rights of defence). Under the EU exemption, Member States may not apply the reporting obligation to lawyers with respect to “information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings”.<sup>23</sup> In its judgment, the Court of Justice of the EU interpreted the exception as exempting lawyers from the reporting obligation whenever the lawyer acting in connection with one of the transactions giving rise to the obligation finds himself called upon to give assistance in defending or representing the client in court, or to give advice “as to the manner of instituting or avoiding judicial proceedings”.<sup>24</sup>

In its judgment of 23 January 2008, the Belgian Constitutional court gave a broad interpretation of the judgment of the Court of Justice of the EU and stated that the exemption from the reporting obligation could apply to advice given otherwise than in connection with any proceedings at all.<sup>25</sup>

The French Conseil d’Etat reached the same position and found that no distinction could be drawn between representation in legal proceedings on the one hand and legal advice on the other.<sup>26</sup> In France, these challenges have led to the introduction in the implementing legislation of two important exceptions to the reporting obligation.<sup>27</sup>

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23 Article 23 of the Third AML Directive.

24 Case C-305/05, *Ordre des barreaux francophones et germanophone and Others v. Conseil des ministres*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0305:EN:HTML>.

25 Cour constitutionnelle, judgment no 10/2008 of 23 January 2008, available at <http://www.const-court.be/>, paragraphs B.9.5 and B.9.6.

26 Conseil d’Etat, decision of 10 April 2008, Nos 296845,296907, available at <http://www.conseil-etat.fr/node.php?articleid=1476> (available in English).

27 Article L. 561-3 of the Monetary and Financial Code.

- i. where the lawyer is actively giving assistance to the client and representing it before the court on the matter; and
- ii. where the lawyer gives general advice, otherwise than in connection with any proceedings at all, unless the advice has been given for the purpose of money laundering or terrorist financing.

However, counsel has indicated that the exemptions currently in force may change as a result of a review of the efficacy of reporting. The number of reports made by the Bars to the French Police are very low (less than ten since the law came into force)<sup>28</sup> and counsel advised that this has been criticised, in particular by the FATF.

In France, report of suspicious activities must be made to the President of the relevant Bar association, rather than to the police.<sup>29</sup>

Non-European respondents with anti-money laundering legislation indicate that where reporting is required, there are exemptions<sup>30</sup> where any report may impact attorney-client privilege or confidentiality of the clients. While the UAE has adopted anti-money laundering legislation, this does not impart any obligations on legal professionals to report.

Aside from money laundering, the US has strong reporting obligations that apply under the Sarbanes-Oxley Act 2002, which applies to companies with shares publicly traded on a US exchange. Counsel advises that in-house attorneys and outside counsel representing these public companies are required<sup>31</sup> to report evidence of material violations of federal and state securities laws to the company's chief counsel or CEO, which would include breaches of the FCPA or other corruption legislation.

## 1.2.2 Sanctions

The respondents indicated that there are a variety of sanctions for failure to comply with reporting obligations. They ranged from imprisonment and financial sanctions to disciplinary action from their applicable legal body. Counsel has indicated that long sentences of up to ten years can be imposed in Australia.

The scale of financial penalties varies widely. Counsel indicated that there have been recent cases in France involving fines of €50-60,000 for breaches of reporting obligations. These sanctions rise to maximums of €100,000 in Germany and up to AUD11million in Australia for failure to report suspicious activity. Breaches in the UK can lead to unlimited fines.

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28 Per the 2010 Annual Report of TRACFIN (the French reporting authority under the Money Laundering Directive) at [http://www.tracfin.bercy.gouv.fr/pdf/rap2010\\_ang.pdf](http://www.tracfin.bercy.gouv.fr/pdf/rap2010_ang.pdf).

29 Article L.561-15-1 of the French Monetary and Financial Code.

30 In Australia, Singapore, Japan and Switzerland.

31 P.L. 204, Title III, s. 307.

## 2 SOFT LAW AND SELF-REGULATION RELATING TO LAWYERS IN THE AREA OF ANTI-CORRUPTION

This section discusses the extent to which there are codes of ethics, guidelines or other ‘soft laws’, established by a bar association or similar professional organisation, that prohibit lawyers engaging in or facilitating bribery, and/or make it mandatory for the legal profession to report corruption.<sup>32</sup>

The first part of this section analyses the soft laws that have been established by bar associations or similar professional bodies in each of the jurisdictions surveyed, together with the associated sanctions that can be imposed for failure to comply. It then considers whether lawyers use any other codes of ethics or guidelines (i.e. codes established by bodies other than bar associations) to help regulate their activities. Lastly, this section also discusses the particular practices that have been adopted in the jurisdictions surveyed to help facilitate and ensure compliance with the relevant soft law rules.

### 2.1 Soft laws set up by bar or similar professional organizations

#### 2.1.1 The rules

In most of the jurisdictions surveyed, the local bar association (or equivalent) has established a code of ethics or professional guidelines describing the behaviour that is expected of lawyers when practising the law.<sup>33</sup> In the majority of cases, membership of the local bar association is mandatory meaning that all lawyers wishing to practice in the jurisdiction in question must adhere to the soft law rules set out in the code.<sup>34</sup>

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32 This includes corruption in general and the specific corrupt practices of clients.

33 The jurisdictions that do not currently have a code of ethics for the legal profession include Pakistan and the UAE (although we understand that the UAE is currently considering the introduction of a code).

34 The exceptions to this are Mexico and Chile where we understand that membership of the local bar association is voluntary.



In those jurisdictions that have established a code of ethics, there is generally one central body of rules that is applied to all lawyers practising in the country. However, in countries such as Australia and the United States, where there are separate federal and state laws, it is the local state bar association that issues practising certificates (rather than a central national legal institution) and it is therefore the local state bar association that stipulates the conduct that is expected of “its” lawyers.<sup>35</sup> Similarly, we understand that there are also different bar associations within Argentina where the ‘regulation’ of lawyers is made on a province by province basis.<sup>36</sup>

### 2.1.1.1 Specific prohibition of bribery and/or corruption

Only two of the jurisdictions we surveyed have soft laws that expressly state engaging in bribery and/or corrupt practices will be considered a breach of the relevant code of ethics.

In Mexico, the code of ethics of the local bar association (the *Barra Mexicana de Abogados*) explains that engaging in bribery would be a breach of ‘honour and professional ethics’. Moreover, lawyers must not provide advice to clients engaged in corrupt practices. Similarly, in the United States, in relation to acts of bribery, the Model Rules of Professional Conduct explain that it is professional misconduct for a lawyer to “state or imply an ability to influence improperly a government agency or official...”.<sup>37</sup> Where a breach of these express obligations occurs sanctions can be imposed, as described more fully below.

### 2.1.1.2 General requirements not to breach/facilitate a breach of law

Whilst only Mexico and the United States have soft laws that expressly refer to the scenario of a lawyer engaging in bribery and corruption, one feature that is common amongst the majority of the codes of ethics in the other jurisdictions that were surveyed is an overriding general requirement that lawyers must not infringe the law, or facilitate an infringement of the law.

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35 However, in the United States, the American Bar Association has published the Model Rules of Professional Conduct which is closely followed by all state bar associations. Therefore, whilst there may be some difference between the exact rules applied in each state, the code of ethics for all state bar associations will closely resemble the Model Rules of Professional Conduct.

36 Argentina is made up of 23 autonomous provinces in addition to the autonomous city of Buenos Aires. Even within Buenos Aires itself, there are two bar associations: the Public Bar Association of the City of Buenos Aires and the Lawyers Association of Buenos Aires. Lawyers who are admitted to practice in Argentina are therefore subject to the specific regulations and soft law rules established by the relevant local bar association with whom they are registered.

37 Model Rule 8.4.

This obligation on lawyers not to engage in illegal activities is seen as vital in upholding professional standards and obviously extends to the activities of bribery and corruption. The way in which this obligation is expressed varies from country to country<sup>38</sup> but the central tenet is always the same — lawyers must not themselves breach, or facilitate a breach, of the law.

As a result, if a lawyer were to participate in, or facilitate, illegal acts of bribery and/or corruption in the countries we surveyed (other than Mexico and United States where there is an express prohibition), he would not breach any specific soft law provision but would instead be in breach of his overriding professional obligation not to engage in illegal activities. Where such a breach occurs, the lawyer will be sanctioned, as described more fully below.

### 2.1.1.3 Obligations to report illegal activity

Our survey found that in addition to there being soft laws that apply to the situation where lawyers engage in/facilitate bribery or corruption, the soft laws in certain jurisdictions also require lawyers to proactively report suspected illegal activities. Where such requirements do exist, they are usually a reflection of the obligations that are imposed on lawyers by virtue of the applicable hard laws in the jurisdiction in question (for which, see Section I).

The imposition of a requirement on lawyers to report the suspected illegal activities of clients is undoubtedly a controversial issue. The controversy arises because many jurisdictions consider such an obligation would breach one of the fundamental principles of a lawyer-client relationship, namely the principle of lawyer-client privilege. The majority of jurisdictions we surveyed do not impose a requirement on lawyers to report the suspected illegal activities of their client for the very reason that it would undermine lawyer-client privilege. In these jurisdictions, the legislature and local bar association want to preserve to the fullest extent possible the notion that clients should be able to have complete faith that any information they share with their lawyer will not be passed on to third parties.

When considering the reporting obligations of lawyers, a distinction can be made between 'general' bribery and corruption on the one hand, and the specific offence of money laundering on the other hand.

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38 For example, in Sweden the obligation is expressed as a general principle not to 'promote injustice'. In Brazil, lawyers are forbidden from aiding clients "...to perform any act contrary to the law or intended to defraud it" (article 34 of the Ethics and Disciplinary Code of the Brazilian Bar Association) and in Switzerland, lawyers must practice the profession 'diligently and conscientiously' and refrain from doing anything which would jeopardise his or her trustworthiness.

In relation to bribery and corruption offences other than money laundering, none of the soft laws in the jurisdictions we surveyed impose a specific obligation to report suspected bribery or corruption. However, certain jurisdictions impose a general reporting obligation which would likely apply in the event that a lawyer knew that bribery and/or corruption was taking place. For example, in Singapore, lawyers are required to report any knowledge or suspicion that any proceeds of crime are, or were, to be used for criminal conduct.<sup>39</sup> However, in Singapore, this obligation to report does not apply to information that is subject to legal privilege.

In France, the soft laws that apply to French lawyers require them to establish procedures that allow them to assess the precise nature and scope of the transaction for which advice is being sought. By using such procedures, if a lawyer suspects that a transaction would have as its object or affect the “commitment of an infringement” he must dissuade his client, and if necessary, cease to act for him.<sup>40</sup> Interestingly, there is no obligation to proactively report the suspected illegal activities, there is simply a requirement to “dissuade” the client from pursuing the transaction.

In relation to money laundering, the obligations are different. In Europe, this is primarily due to the AML Directives (as described more fully in Section I). The rules imposed by the AML Directive are ‘hard’ laws and often conflict with a lawyer’s duties under the applicable soft laws. For example, in Italy, the Italian code of ethics explicitly states that it is a primary duty of a lawyer *not* to disclose information provided by a client.<sup>41</sup> However, pursuant to the European Directives on Anti-Money Laundering there is an express requirement on lawyers to report suspicious activities. How well this reporting requirement will be observed in countries such as Italy is currently being debated.<sup>42</sup>

Interestingly, in Japan, where there is similar money laundering legislation<sup>43</sup>, lawyers are exempt from the obligation to report suspicious/illegal activities due to the fact that the power to regulate lawyers in Japan is entirely entrusted to the Japanese Federation of Bar Associations<sup>44</sup> (“JFBA”). As the JFBA does not impose such a reporting requirement on its members, lawyers — unlike other professionals such as accountants — are not required to proactively report suspected infringements.

Overall, there is a general reluctance to require lawyers to report on the activities of their clients — whether the activities may be illegal or not. The new European money laundering directives have placed further reporting obligations on lawyers working in

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39 Rule 11G of the Legal Profession (Professional Conduct) Rules (2010 Revised Edition).

40 Article 1.5 of the National Internal Rules that apply to lawyers (Règlement Intérieur National de la profession d’avocat).

41 Article 9.II of the Codice Deontologico.

42 In this regard, it should be noted that the European Court of Justice has opined that lawyers who are asked to defend or represent clients in court in cases where a reporting obligation may arise under the AML Directives are exempt from the obligations to report (Case C-305/05, *Ordre des barreaux francophones et germanophone and Others v. Conseil des ministres*).

43 The Act on the Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007).

44 This power was granted pursuant to The Attorney Act (Act No.205 of 1949).

the EU, but outside Europe most jurisdictions regard the lawyer-client relationship as too important to impose any such obligations.<sup>45</sup>

## 2.1.2 Sanctions

In the event that a lawyer breaches his obligations under a code of ethics, in all of the jurisdictions we surveyed there is provision for some form of sanction to be imposed, ranging from a warning to disbarment from the profession.<sup>46</sup>

The ultimate sanction that can be imposed for a breach of the applicable soft laws is disbarment, and this is sanction is available in all of the jurisdictions we surveyed. This is obviously a 'final' sanction and prevents the attorney in question from practising law indefinitely. Depending on the exact nature of the offence, other lesser sanctions include suspending the practising certificate of a lawyer for a certain period of time and/or imposing a fine.<sup>47</sup>

Interestingly, there appears to be no greater punishments in Mexico and the United States, where there are soft laws specifically prohibiting bribery and corruption, than in the other jurisdictions we surveyed where there is only a more general obligation not to engage in illegal activities.

Some jurisdictions publish a 'blacklist' of disbarred lawyers<sup>48</sup>, others allow access to a list of lawyers that are licensed to practise<sup>49</sup>, so that clients can confirm that the lawyer they are dealing with is duly authorised.

In addition to the more 'usual' forms of sanction described above, certain jurisdictions provide for more 'tailored' punishments. For example, the Solicitors Regulation Authority in England can impose a requirement that a lawyer in breach of his professional obligations must not work as a sole practitioner and/or must have his activities supervised by other solicitors who are duly qualified to practice law in the England and Wales. Also, in Australia, the Australian Bar Association can require that the sanctioned lawyer attend a course on ethics so that he can be instructed on his obligations under the relevant rules.

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45 The main exception to this is the United States where under the obligations set out in the Model Rules of Professional Conduct, attorneys are required to report corruption and corrupt practices.

46 Interestingly, in Italy, a recent court ruling (Sezioni Unite della Corte di Cassazione SU 26810/2007) has confirmed that the Italian code of ethics is considered of equal importance to that of other 'supplementary' sources of law. As a result, a breach of the Italian code of ethics is equal to that of lack of compliance with 'hard' legislation, although the exact sanctions imposed vary.

47 The imposition of monetary fines is not common but appear to be in use in Germany, Argentina and Singapore.

48 For example, a blacklist of disbarred lawyers is published in Mexico, Pakistan and Singapore.

49 For example, a searchable list of licensed lawyers is made available in Germany, Italy and England & Wales.

## 2.2 Soft laws set up by any other body or organization

In addition to the soft laws discussed above, in certain jurisdictions, some law firms have also adopted rules and guidelines developed by bodies other than the local bar association. However, examples of this type are rare and the vast majority of lawyers/law firms simply seek to comply with the soft laws imposed by the local bar association.

From the countries in our survey, the only jurisdictions that responded positively to the question of whether lawyers seek to implement soft laws other than those of the relevant bar association were Australia and Japan.

In Australia, we understand that some law firms<sup>50</sup> are signatories to the United Nations Global Compact. The UN Global Compact is described as a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.<sup>51</sup> In the field of anti-corruption, Principle 10 states that “Businesses should work against corruption in all its forms, including extortion and bribery”. The UN Global Compact website explains that “The adoption of the tenth principle commits UN Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programs to address corruption. Companies are challenged to join governments, UN agencies and civil society to realize a more transparent global economy.”<sup>52</sup>

In Japan, the JFBA published its comments on the latest recommendations adopted by the Financial Action Task Force.<sup>53</sup> These measures are aimed at reducing money laundering. The comments of the JFBA generally serve as additional guidance on the measures that lawyers can take to prevent money laundering. Measures include requesting specific information on client assets and the source of client funding, and also obtaining details regarding ownership/control of a client.

## 2.3 Practices facilitating and ensuring compliance with soft law rules

All of the jurisdictions considered in our survey have established some form of activity in order to ensure compliance and awareness of the obligations placed on lawyers under the relevant soft law rules.

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50 See, for example, the website of Allens Arthur Robinson at: [www.aar.com.au/comm/index.htm](http://www.aar.com.au/comm/index.htm)

51 Further information is available at the following website: [www.unglobalcompact.org](http://www.unglobalcompact.org)

52 Additional information on Principle 10 can be found here: [www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle10.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle10.html)

53 The Financial Action Task Force is described as an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. Further information can be found on its website: [www.fatf-gafi.org](http://www.fatf-gafi.org).

In Europe, pursuant to hard law rules of the AML Directives, law firms are required to provide training to their employees. Large law firms often donate substantial resources to such compliance, which can involve the appointment of specific officers and/or committees to oversee firm compliance.

Similarly, outside Europe, individual law firms appear to take on the primary role of training their lawyers and raising awareness of the professional obligations placed on individuals. In addition, many law firms in the jurisdictions surveyed have gone further and established their own codes of conduct which incorporate the soft law rules into an overall firm-wide compliance policy.

In relation to wider awareness of professional ethics, including policies on bribery and corruption, it is often now mandatory that persons seeking to qualify as lawyers must attend or study a course on ethics. For example, in England and Wales, one of the compulsory modules at all Law Schools is a module on professional standards, which explains how the relevant soft laws are applied.

In terms of resources available to qualified lawyers, certain jurisdictions (for example, in England and Wales, and Australia) have help-lines/specific points of contact at the local bar association or equivalent where those with particular questions or concerns can obtain confidential guidance on how to proceed.

As regards the bodies that oversee compliance, in all but one of the jurisdictions concerned, law firms (and lawyers) seek to adhere to the rules of an independent bar association, or equivalent. However, in Argentina, we understand that lawyers are able to set up their own associations.<sup>54</sup> Whilst all such associations have adopted similar rules on ethics, this is the only example we are aware of that potentially enables lawyers to effectively 'self-regulate' their own activities.

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54 The most famous of which is the Lawyers Association of Buenos Aires (*Colegio de Abogados de la Ciudad de Buenos Aires*). Another example of an association in Buenos Aires is the Public Bar Association of Buenos Aires (*Colegio Publico de Abogados de Capital Federal*).

### 3 ENFORCEMENT OF THE RULES RELATING TO LAWYERS IN THE AREA OF ANTI-CORRUPTION

#### 3.1 Judicial decisions sanctioning lawyers for corrupt practices

##### 3.1.1 Summary table per country

The table below provides an overview of judicial decisions that have been taken in the respective jurisdictions, sanctioning lawyers for corrupt practices, such as facilitating corruption, violating reporting obligations in relation to corruption, or money laundering.

The table shows that – at least according to the country reports received for each jurisdiction – very few decisions have been taken sanctioning lawyers for complicity in corruption, either by facilitating corruption or by violating reporting obligations. In most of the reported cases, the sanctioned behavior consisted of money laundering. A few cases also related to lawyers directly engaging in corruption, i.e. acting as perpetrator, not as accomplice.

COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	FINES	IMPRISONMENT	OTHER
Argentina	No	–	–	–	–
Australia	Yes	<b>PROFESSIONAL MISCONDUCT:</b> <ul style="list-style-type: none"> <li>– making comments to the media that a member of the client’s legal team suggested the Government to provide a bribe</li> <li>– using false documents and receiving corrupt commission</li> </ul>			Removed from the roll
Brazil	No	–		–	–

COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	FINES	IMPRISONMENT	OTHER
Bulgaria	Yes	<b>VIOLATIONS OF THE MONEY LAUNDERING ACT AND THE FINANCING OF TERRORISM ACT:</b> <ul style="list-style-type: none"> <li>– no declaration for the origin of funds</li> <li>– lack of identification of the beneficial owner</li> <li>– no cash threshold transactions reporting</li> </ul>	X		Warning
Chile	No	–		–	–
France	Yes	<b>COMPLICITY IN MONEY LAUNDERING:</b> <ul style="list-style-type: none"> <li>– transferring funds of doubtful origin between Germany and France to benefit of client suspected to be involved in international fraud</li> </ul>	€50,000	1 year on probation	
		<b>COMPLICITY IN MONEY LAUNDERING AND DISCLOSURE OF INFORMATION RELATED TO THE INVESTIGATION:</b> <ul style="list-style-type: none"> <li>– dissimulating money from client charged with drug trafficking</li> <li>– disclosing information related to the investigation to third parties</li> </ul>	€50,000/ 60,000	1 year/18 months on probation	
Germany	Yes	<b>MONEY LAUNDERING:</b> <ul style="list-style-type: none"> <li>– accepting approx. €100,000 from client, knowing that the money stemmed from drug-trafficking</li> </ul>	–	9 months/1 year 7 months, both on probation	
		<b>MONEY LAUNDERING:</b> <ul style="list-style-type: none"> <li>– hiding money (approx. €13 million) of a client who was accused of being involved in drug-trafficking</li> </ul>	€7,000	1 year 9 months/10 months, both on probation	
Italy	Yes	<b>CORRUPTION:</b> <ul style="list-style-type: none"> <li>– making repeated requests for information to employees of the office of the prosecution, assuring to be willing to “pay well”</li> </ul>	No response	No response	No response
Japan	No	–	–	–	–



COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	FINES	IMPRISONMENT	OTHER
Mexico	Yes	No response	No response	No response	No response
Pakistan	No	—	—	—	—
Singapore	Yes	No response	No response	No response	No response
Sweden	No	—	—	—	—
Switzerland	Yes	1. Money laundering in several cases and false statement 2. Forging documents, making untrue statements to the and the real estate register	1. CHF 10,000 2. 45 day rates of CHF 210 + CHF 1,500	1. 14 months on probation 2. No imprisonment	1. Disbarment for 6 months 2. Definitive disbarment
UAE	Yes	No response	No response	No response	No response
UK	Yes	Money laundering: — conveyancing solicitor purchased properties on behalf of client who had been previously found guilty of drug trafficking		4 years 8 months	
		— solicitor engaging in mortgage fraud		4 years	
U.S.	Yes	— bribery in Nigeria	\$ 149 million		

### 3.1.2 Summary of interesting decisions that were given as examples in each country report

The following examples illustrate in which cases lawyers have been judicially sanctioned for corrupt practices.

In the *Moulin/Dublanche* case in France, Mrs. Moulin and Mr. Dublanche were charged with complicity in money laundering and disclosure of information related to the

investigation, a new offence created in 2004. Mrs. Moulin and Mr. Dublanche were the counsel of Georges Danicourt, a numismatist charged with laundering money from drug trafficking. The *Tribunal correctionnel* of Orléans in the first instance sentenced Mrs. Moulin to 1 year suspended imprisonment and a fine of €50,000 for having disclosed information related to the investigation to third parties (the girlfriend of Mr. Danicourt), while acquitting Mr. Dublanche. On appeal by the prosecution, however, Mr. Dublanche was sentenced to 18 months suspended imprisonment and a fine of €60,000 for complicity in money laundering.

In Germany, two defence counsel were held liable for money laundering because they accepted approximately €100,000 from their client, knowing that the money stemmed from drug-trafficking. Furthermore, the attorneys used approximately €250,000 of their client's "infected" money to deposit a bail. One attorney was sentenced to nine months and the other one to 1 year and 7 months imprisonment, both sentences were suspended for probation.

Again in Germany, an attorney was charged of having committed money laundering, assistance after the fact and attempted assistance in avoiding punishment and prosecution. The attorney had been asked to defend his cousin's husband, who was accused of having been involved in drug-trafficking. When the "drug baron" asked for help to hide his money amounting to approximately €13 million, both the defence counsel, the defence counsel's wife and the defence counsel's colleague (also an attorney) agreed to help. At first they brought all the money to the defence counsel's law firm, where they packed approximately €9 million into bags. The remaining money was deposited in the defence counsel's garage (approximately €3 million) and in a safe in the house of one of the defence counsel's friends (approximately €1 million). The defence counsel was sanctioned with imprisonment of 21 months and a fine of €7,000 and the defence counsel's colleague was sentenced to ten months imprisonment. Both sentences were suspended on probation.

In the U.S., a lawyer was charged with conspiracy to violate the FCPA. He allegedly paid and authorized the payment of bribes to officials in Azerbaijan and drafted the legal documents used in the payments. The lawyer was charged pursuant to the FCPA as it existed before amendments in 1998, so he was able to defend on a technicality: that he lacked notice that the FCPA applied to his conduct as a non-resident foreign national. However, this defense would not be successful today, as the 1998 amendments clarified the statute.

Moreover, in the U.S. an attorney was indicted for bribing an Israeli Air Force officer to purchase GE aircraft engines worth \$ 300 million. The bribes totalled \$ 7.8 million. While a co-defendant was charged under the FCPA, the attorney was charged with mail and wire fraud, but was never apprehended.

## 3.2 Decisions issued by bar associations, disciplinary

## tribunals or any other institution sanctioning lawyers for corrupt practices

### 3.2.1 Summary table per country

The table below provides an overview of decisions issued by bar associations, disciplinary tribunals or other institutions in the respective jurisdictions, sanctioning lawyers for corrupt practices, such as facilitating corruption, violating reporting obligations in relation to corruption, or money laundering.

The table shows that also bar associations and disciplinary tribunals have taken very few decisions that sanction lawyers for complicity in corruption. In most of the reported cases, the sanctioned behavior was not even related to corruption, but to other criminal offences such as fraud or blackmailing, or violations of other professional rules. Some lawyers, however, were sanctioned for either direct engagement or complicity in money laundering. Again, a few cases also related to lawyers directly engaging in corruption.

COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	WARNING	FINES	DISBARMENT
Argentina	Yes	Lawyer malpractice in general	X	X	Suspension
Australia	Yes	<ul style="list-style-type: none"> <li>– Providing various courts misleading information about clients</li> <li>– submit artificially inflated cost claim</li> <li>– making extensive use of public resources for private conveyancing business</li> </ul>	No response	No response	No response
Brazil	No response	No response	No response	No response	No response
Bulgaria	No response	No response	No response	No response	No response
Chile	No	–	–	–	–

COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	WARNING	FINES	DISBARMENT
France	Yes	<b>COMPLICITY OF ACTIVE CORRUPTION:</b> – offering funds to tax administration official in order to obtain access to client’s file	No response	No response	No response
		<b>MONEY LAUNDERING:</b> – transferring and investing money in the name of third parties without checking origin of the funds			Suspension of bar membership for 18 months
Germany	Yes	Direct engagement in drug trafficking and money laundering			Attorney committed to voluntarily give up his admission to the bar for two years
		Money laundering and also direct engagement in fraud, blackmail, prostitution and forming of a criminal organization			Attorney committed to voluntarily give up his admission to the bar for four years
Italy	Yes	– corrupting Italian judge in order to obtain favourable decision			Disbarment, but only several years after criminal conviction
		– mafia-related crimes			Disbarment, but readmitted to different bar
Japan	No	–	–	–	–
Mexico	Yes	No response			Expelled by Mexican Bar Association
Pakistan	Yes	No response	No response	No response	No response
Singapore	No	–	–	–	–
Sweden	No	–	–	–	–
Switzerland	Yes	– Money laundering in several cases and false statement – forging documents, making untrue statements to the and the real estate register			Disbarment for 6 months/ bar admission revoked

COUNTRY	DECISIONS SANCTIONING LAWYERS	BEHAVIOR SANCTIONED	WARNING	FINES	DISBARMENT
UAE	No				
UK	Yes	– fraud			Removed from roll
		– failure to maintain identification procedure	No response	No response	No response
U.S.	Yes	– misappropriation of client and other funds			Disbarment

### 3.2.2 Summary of interesting decisions that were given as examples in each country

The following examples illustrate in which cases lawyers have been sanctioned by bar associations or disciplinary tribunals for corrupt practices.

In France, the disciplinary committee of the Paris Bar struck a lawyer off the Paris roll following his conviction of, among others, complicity of active corruption. The lawyer, a former tax inspector, acting on behalf of his client, had offered a bribe to an official of the tax administration for obtaining access to his client’s file in order to clear it.

Moreover, the disciplinary committee of the Paris Bar suspended a lawyer for a period of 18 months. The lawyer was charged with laundering money stemming from drug-trafficking. He had transferred and invested money in the name of third parties, without ever checking the origin of the funds.

In Germany, an attorney was held liable by a criminal court for having committed drug-trafficking (in 462 cases) and money laundering and was punished with imprisonment for one year and four months. In the following disciplinary proceedings, the Attorneys’ Court agreed to accept the attorney’s commitment to voluntarily give up the admission to the bar for two years. Also, a criminal court found an attorney guilty of having committed money laundering and having been directly engaged in fraud, blackmail, prostitution and forming a criminal organization for at least four years, and sanctioned him with imprisonment for three years and three months. In the following disciplinary proceedings, the attorney gave back his admission to the bar for 4 years on a “voluntary” basis. Unlike the regional bar, the Attorneys’ Court accepted this commitment.

In Germany, when voluntarily giving back the admission to the bar for a certain period, the attorney, after termination of the agreed period, needs to request readmission to the bar. In both abovementioned cases, there is no publicly available information on whether the attorney was ever readmitted to the bar.

**FRONT COVER PHOTO** A boy plays in a salt pan near Bhavnagar, in the western Indian state of Gujarat.  
REUTERS / Arko Datta



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United Kingdom