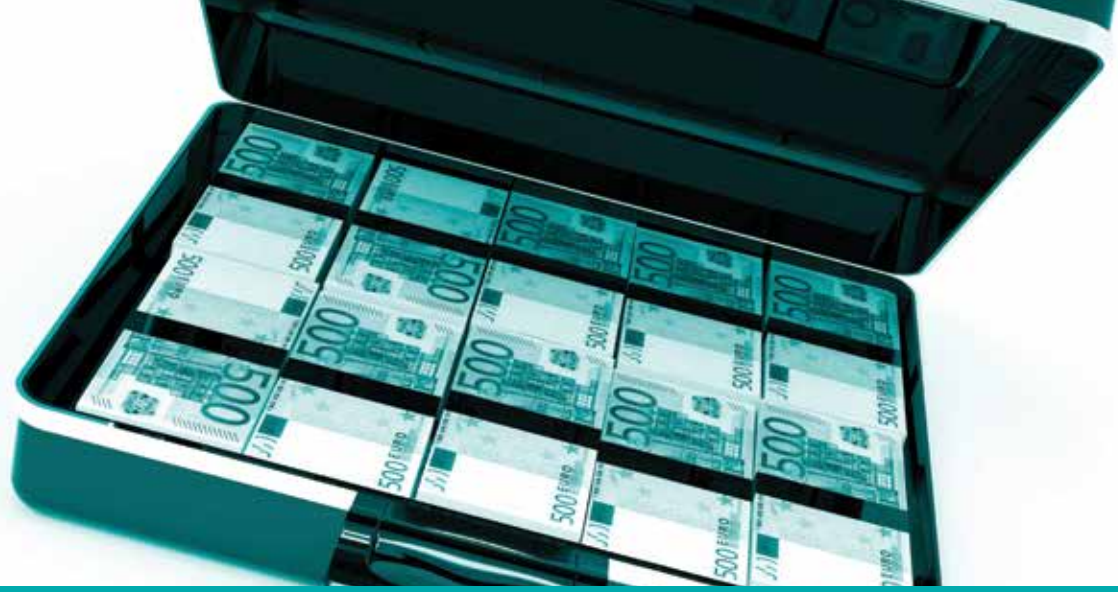

ICLG

The International Comparative Legal Guide to:

Business Crime 2016

6th Edition

A practical cross-border insight into business crime

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EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Business Crime*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of business crime.

It is divided into two main sections:

Seven general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting business crime, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in business crime laws and regulations in 31 jurisdictions.

All chapters are written by leading business crime lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Gary DiBianco and Ryan Junck of Skadden, Arps, Slate, Meagher & Flom LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

In France, business crimes are mainly prosecuted by the public prosecutor's office (*ministère public*), which notably supervises the judicial police's investigations, while distinct criminal courts with appointed magistrates (so-called *magistrats du siège*) are tasked with ruling upon business crimes.

The public prosecutor's office is a judicial authority that exercises public prosecution (*action publique*) and ensures criminal law is enforced. More generally, it represents the "interests of the French society" in criminal matters. Indeed, under French criminal law, the public prosecutor's office acts and prosecutes criminal offenses on behalf of the French "society". It plays the role of the accusing party while the victim of the offense may only join the proceedings (see below, in particular question 8.4). Consequently, the public prosecutor's office is tasked with leading the prosecution only and does not take part in the final judicial decision ruling on the guilt of a suspected person.

Appointed locally, the public prosecutor is hierarchically placed under the authority of the Ministry of Justice (*Ministère de la Justice*) and may receive written instructions from the latter with regard to the application of criminal law throughout the whole area of the Court of Appeals' territorial jurisdiction. The public prosecutor's office comprises the general prosecutor (*procureur général*) attached to the Court of Appeals and the deputy public prosecutors (*procureurs de la République*), who are appointed in all Courts of First Instance (*Tribunaux de grande instance*) and are placed under the authority of the general prosecutor. Statute n°2013-1117 of December 6, 2013 created the new Financial Public Prosecutor (*procureur de la République financier*), an independent prosecutor with national jurisdiction over complex financial crimes, corruption practices, influence peddling, as well as offences related to stock markets, etc. The Financial Public Prosecutor has (i) exclusive nationwide jurisdiction for financial crimes, and (ii) concurrent jurisdiction in corruption cases.

The public prosecutor is responsible for supervising police officers' investigations (*officiers de police judiciaire*) over criminal matters. Depending on the outcome of the criminal investigation, the public prosecutor decides whether the offense should be prosecuted or not. This option is referred to as "prosecution opportunity" (*opportunité des poursuites*), which depends on the public prosecutor's sole discretion. If the public prosecutor considers that the offense should be prosecuted, it is responsible for initiating the matter before the competent criminal court for trial, which depends on the geographic area and the nature of the offense (see question 2.1). Under French law, professional magistrates have control over public prosecution (*action publique*) (Art. 1 of the French Code of Criminal Procedure ("Crim. Proc. Code")).

Notwithstanding the above, French criminal procedure relies on efficient check and balances to ensure that criminal offenses are appropriately prosecuted. For instance, if the public prosecutor decides not to prosecute a criminal offence (*classement sans suite*), victims may appoint an investigating judge (*juge d'instruction*) directly by filing a specific complaint (so-called *plainte avec constitution de partie civile*), thus overriding the public prosecutor's prerogative of "prosecution opportunity" (Art. 2 Crim. Proc. Code). Victims can also initiate criminal proceedings by introducing a direct committal procedure (*citation directe*, Art. 390 Crim. Proc. Code) against the defendant, directly before the court.

Although the public prosecutor is tasked with investigating criminal offences, French criminal procedure requires that a distinct authority, i.e., an investigating judge, be mandatorily appointed in the case of crimes (*crimes*). The investigating judge supervises the judicial police and is required to investigate both for and against the suspected person. Investigating judges may also be appointed in connection with complex offences (*délits*) at the public prosecutor's sole discretion (in practice, investigating judges are appointed in less than 5% of criminal investigations). The investigating judge is not part of the public prosecutor's office (*parquet*) but is an appointed magistrate (*magistrat du siège*) who is autonomous and independent from the government (contrary to the public prosecutor's office, the investigating judge is not placed under the authority of the Ministry of Justice hence he/she does not receive any directive on how to conduct his/her investigations).

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

Criminal courts (*parquet* and *magistrats du siege*) are the only entities tasked with prosecuting criminal offences. However, certain other magistrates that do not investigate on criminal offenses play a significant role in the conduct of criminal investigations. This is notably the case of the judge of liberties and detention (*juge des libertés et de la détention*), which is the only competent magistrate to decide whether a defendant may be incarcerated (*detention provisoire*) in the course of a criminal investigation, before any trial has taken place.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

Certain financial actors are regulated by one or both the French Financial Markets Authority (*Autorité des Marchés Financiers* or "AMF") or by the Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel et de Résolution* or "ACPR"). These two administrative authorities have the effective power to impose administrative sanctions on the entities they regulate.

The AMF is entrusted with the duties and powers to regulate French financial markets' participants and products (Art. L. 621-1 of the French Monetary and Financial Code ("CMF"), which notably include listed companies (*sociétés côtées*), financial intermediaries (*intermédiaires financiers*) providing financial investment services (e.g., portfolio management companies (*sociétés de gestion de portefeuille*), financial investment advisers (*conseillers en investissements financiers*)), collective investment schemes (*produits d'épargne collective*). It also ensures that investors receive material information, and provides a mediation service to assist them in dispute resolution. In fulfilling its regulator obligations, the AMF is notably tasked with financial crimes' administrative prosecution, which may result in imposing significant fines sanctioning the breach of AMF regulation (*Règlement général de l'AMF*), including market abuse breaches (i.e., insider trading, market manipulation or false information) and failure to meet professional obligations. Sanctions imposed by the AMF are not criminal sanctions but of an administrative nature. Traditionally, France counted among the market abuse double-prosecution system enforcing countries as such offences could be subject to both criminal and administrative prosecution and sanction. However, on March 18, 2015, the French *Conseil Constitutionnel* (Constitutional Supreme Court) ruled that the same person could no longer be prosecuted and condemned twice for the same facts by both the AMF's Enforcement Committee and a French criminal court. Although this decision specifically concerns insider trading cases, it should also cover market manipulation and false information spreading offences. The French legislator has been given an interim period expiring on September 1, 2016 to draft and adopt new rules which will likely profoundly reform the French market abuse regime and sanctions.

The ACPR is charged with preserving the stability of the financial system and protecting the customers, insurance policyholders, members and beneficiaries of the entities that it supervises. It oversees financial and banking institutions to control that solvency requirements imposed by EU regulations are complied with (solvency ratios ensure that financial institutions' financial health and liquidity are sufficient to meet their financial commitments and face risks associated with their activities), as well as rules applicable to clientele protection (Art. L. 612-1 CMF). The ACPR also controls and ensures that regulations applicable to insurance companies and intermediaries are complied with. The ACPR may impose sanctions on the entities placed under its supervision, for which certain also constitute criminal offences.

With regard to the fight against money-laundering and terrorism financing, a specific service called Tracfin, placed under the umbrella of the French Ministry of Finance and Public Accounts (*Ministère des finances et des comptes publics*), has been created to collect suspicious activity reports (SARs) (*déclarations de soupçon*) which are mandatorily issued by certain professionals, including notably financial institutions, insurance companies, investment companies, auditors (*experts-comptables*), lawyers, etc. (Art. L. 561-2 CMF). These SARs concern amounts derived from financial transactions or operations that are suspected (i) to constitute a criminal offence sanctioned by at least one year of imprisonment, (ii) to derive from tax fraud, or (iii) to participate in the financing of terrorism (Art. L. 561-15 CMF). Tracfin's authority is limited to the collection of information; Tracfin has no jurisdiction to investigate or rule on the criminal offences of money-laundering or terrorism financing, yet the collected information may be transmitted to judicial authorities, tax authorities and to similar European or foreign entities. Note that Tracfin may not receive SARs issued by individuals that are not entrusted with the obligation to declare provided by law.

2 Organisation of the Courts

2.1 How are the criminal courts in France structured? Are there specialised criminal courts for particular crimes?

In France, criminal courts are organised hierarchically and geographically. Competent jurisdictions are determined depending on the geographic area where the offence was perpetrated (*compétence territoriale*), as well as based on the nature of the offense (*compétence d'attribution*). In certain cases, jurisdiction of criminal courts may be extended (*prorogation de competence*), which is notably the case for organised crime (Art. 706-75 of the French Criminal Code ("Crim. Code")).

Under French Criminal law (Art. 111-1 Crim. Code), criminal offences are classified depending on their seriousness between crimes (*crimes*), offences (*délits*), and misdemeanours (*contraventions*), these latter being defined as criminal offenses that are punished by a fine inferior to EUR 3,000 and are categorised into five different classes (Art. 131-13 Crim. Proc. Code).

- The Court of first instance (*Juridiction de proximité*) has jurisdiction over the first four classes of misdemeanours (Art. 521 Crim. Proc. Code), until January 1st 2017.
- The Police Court (*Tribunal de police*) has jurisdiction over fifth class' misdemeanors (*contraventions de 5ème classe*) (Art. 521 Crim. Proc. Code). As of 2017, it will have jurisdiction over all classes of misdemeanours.
- The Criminal Court of First Instance (*Tribunal correctionnel*) has jurisdiction over offences (*délits*), which are defined by law as any criminal offence sanctioned by either imprisonment (between two months and 10 years or 20 years in case of recidivism) or a criminal fine of at least EUR 3,750 (Art. 381 Crim. Proc. Code).
- The Assize Court (*Cour d'assises*) has jurisdiction over crimes (*crimes*) (Art. 231 Crim. Proc. Code), which are sanctioned by a criminal fine of at least EUR 3,750 and between 15 years of imprisonment to life imprisonment.

These courts exist at the regional level. Both Police Courts and Criminal Courts of First Instance are permanent jurisdictions. Due to its use of a jury, the Assize Court is implemented whenever required and at least once a quarter.

In addition, certain specific matters are only tried before specialised jurisdictions:

- Juvenile courts (Ordinance n°45-174 of February 2, 1945), which include the Magistrate for Children (*juge des enfants*), the Tribunal for Children (*Tribunal pour enfants*), the Juvenile Correctional Court (*Tribunal correctionnel pour mineurs*), and the Juvenile Assize Court (*Cour d'assises des mineurs*).
- Military courts, which are governed by the Code of Military Justice (*Code de justice militaire*).
- Political courts, including the High Court (*Haute cour*), which has jurisdiction over the President of the Republic in case of breach manifestly incompatible with the presidential

mandate (Art. 68 of the French Constitution) and the Court of Justice of the Republic (*Cour de justice de la République*), which has jurisdiction to rule on criminal offences perpetrated by ministers in the course of their mandate.

2.2 Is there a right to a jury in business-crime trials?

In France, a jury is only implemented for crimes (*crimes*), for which the Assize Court has exclusive jurisdiction (e.g., murder, manslaughter, rape, etc.). Business-crime trials mostly concern offenses (*délits*) for which the Criminal Court of First Instance (*Tribunal correctionnel*) has jurisdiction.

For certain specific major offences (e.g. terrorism or drug trafficking), a jury is not selected to seat with the Assize Court, which is thus only composed of professional magistrates.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in France to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

Alongside specific statutes that were created by the French Monetary and Financial Code or the French Commercial Code ("Com. Code"), French criminal law also uses traditional classifications to sanction business criminal offences provided for by the French Criminal Code, including *inter alia*:

- **Theft** (*vol*), defined as the fraudulent subtraction of someone else's property, is sanctioned by a maximum of three years of imprisonment and EUR 45,000 in criminal fines (Art. 311-3 *et seq.* Crim. Code).
- **Receipt of stolen goods** (*recel*), defined as concealing, keeping or transmitting a thing or serving as an intermediary in order to transmit such thing knowing it has been obtained by criminal offense, is sanctioned by a maximum of five years of imprisonment and EUR 375,000 in criminal fines (Art. 321-1 *et seq.* Crim. Code).
- **Extortion** (*extorsion*), i.e., obtaining violently or under threat a commitment or renunciation, the disclosure of a secret, or the release of funds, value or any good, which is sanctioned by a maximum of seven years of imprisonment and EUR 100,000 in criminal fines (Art. 312-1 *et seq.* Crim. Code).
- **Swindling** (*escroquerie*), defined as the deceit of a person by using a fake identity or quality, by abusing an accurate quality or by fraudulent action ("manoeuvre") to incite such person to release funds, services or any good of value against its own interest or damaging to a third party, is sanctioned by a maximum of five years of imprisonment and EUR 375,000 in criminal fines (Art. 313-1 *et seq.* Crim. Code).

o Fraud and misrepresentation in connection with sales of securities

Several criminal offenses may be constituted in the context of fraud and misrepresentation in connection with sales of securities. French criminal law notably sanctions:

- **diffusion of false information** (*délit de diffusion de fausses informations*): a maximum of two years of imprisonment and EUR 1,500,000 in criminal fines (Article L. 465-2 CMF);
- **market manipulation** (*délit de manipulation de cours*) is sanctioned by the same article as the diffusion of false information;
- **index manipulation** (*délit de manipulation d'indices*): Article L. 465-2-1 Com. Code sanctions the diffusion of false or deceitful information used to calculate an index or intended to distort the market by a maximum of two years of imprisonment and EUR 1,500,000 in criminal fines; and
- **illegal speculation** (*délit de spéculation illicite*): a maximum of two years of imprisonment and EUR 30,000 in criminal fines (Art. L. 443-2 Com. Code).

o Accounting fraud

Under French law, presenting inaccurate financial statements (*délit de présentation de comptes annuels infidèles*) is a criminal offense sanctioned by a maximum of five years of imprisonment and EUR 375,000 in criminal fines (Art. L. 242-6 Com. Code).

French law also sanctions bankruptcy, which is notably defined as the fact for a person listed in Article L. 654-1 Com. Code to dissimulate all or part of the company's assets, to fraudulently increase the company's liabilities, to keep fictitious financial statements or destroy accounting documents (etc.) in order to avoid or postpone the opening of judicial receivership or liquidation procedures (Art. L. 654-2 Com. Code). Bankruptcy is sanctioned by a maximum of five years of imprisonment and EUR 75,000 in criminal fines (Art. L. 654-3 Com. Code).

o Insider trading

According to Article L. 465-1 CMF, the fact for company directors and persons having access to privileged information due to their positions within a company to realise, or try to realise via a third party, one or several market transactions before this information is known to the public is sanctioned by a maximum of two years of imprisonment and EUR 1,500,000 in criminal fine (which amount may be increased up to 10 times the amount of profit gained as a result of the criminal offense, being specified that the criminal fine may not be lower than the said profit). Consequently, credit institutions, investment companies and members of regulated markets are required to immediately declare to the AMF (see question 1.3) any suspicious transaction which could potentially be qualified as insider trading or market manipulation (Art. L. 621-17-2 CMF). Furthermore, any issuer whose securities are traded on regulated markets are also required to disclosed to the AMF a list of persons who have access to privileged information (Art. L. 621-18-4 CMF). Additional criminal offences, such as the ones listed under "fraud and misrepresentation in connection with sales of securities" may also be charged. The offence of *recel de délit d'initié* (i.e., the use of inside information by another person aware of its fraudulent nature) has also been recognised by French Criminal Courts, regardless of the intangible aspect of inside information.

Furthermore, Article L. 465-1 CMF also sanctions the wrongful communication of inside information outside of the normal course of a person's profession (*délit de communication d'information privilégiée*). In such a case, the inside dealer risks a maximum of one year of imprisonment and EUR 150,000 in criminal fines (the amount of the fine may be increased up to 10 times the amount of profit gained as a result of the criminal offence and that the criminal fines may not be lower than the said profit).

o Embezzlement

The misuse of corporate assets (*abus de biens sociaux*) is sanctioned under French law by Articles L. 241-3 and L. 242-6 Com. Code. This criminal offense relates to the broader offense of receipt of stolen goods (*recel*). In practice, the significant amount of decisions relating to the misuse of corporate assets is explained by the fact that the burden of proof is lower for these offenses than for offenses of corruption, hence the qualification of both misuse of corporate assets and *recel* may be used to circumvent difficulties to prove corruption or avoid statute of limitations problems.

Breach of trust (*abus de confiance*) may also be charged in embezzlement circumstances, which is sanctioned by a maximum of three years of imprisonment and EUR 375,000 in criminal fine (Art. 314-1 Crim. Code). However, any time a specific criminal offense is constituted, it overrides the general criminal offense of breach of trust.

o Bribery of government officials

French criminal law distinguishes between active and passive corruption:

- Active corruption relates to the action of a third party (the briber) which obtains or seeks to obtain that another person, entrusted with a public position, accomplishes or refrains from accomplishing a particular act by offering such person gifts or promises (Art. 433-1 Crim. Code).
- Passive corruption relates the actions of a person entrusted with a public position who uses such position to solicit or accept gifts, promises or benefits in order to accomplish or refrain from accomplishing a particular act relating to or eased by such position (Art. 432-11 Crim. Code).

The French Criminal Code also includes specific provisions for offences of corruption involving persons entrusted with public functions or mission, elected representatives entrusted with a European mandate, foreign public agents or members of an international public organisation (Art. 435-1 *et seq.* Crim. Code), as well as corruption involving persons seating in court (magistrate, judge, arbitrator, jury, etc. – Art. 434-9 Crim. Code).

Corruption is also prosecuted via offenses relating to influence peddling (*trafic d'influence*), which can be both active and passive (Art. 433-2 Crim. Code).

Sanctions have been increased recently against perpetrators of corruption:

- individuals face EUR 1 million or twice the proceeds of the offense in criminal fines and a maximum of 10 years of imprisonment;
- legal entities face EUR 5 million or twice the proceeds of the offense in criminal fines; and
- complementary punishment may also be imposed, such as loss of civil or family rights, prohibition to hold a public mandate or to perform similar business activity as the one during which the offense was perpetrated, prohibition to hold commercial or industrial functions or to operate, manage or control a company, seizure of goods illegally obtained as a result of the offense (Art. 433-17 Crim. Code).

In practice, the prosecution of corporations for bribing foreign public officials is relatively new. Prosecutions have targeted individuals, resulting in a high rate of acquittals. To date, only a handful of individuals have been convicted, for relatively minor misconduct not related to corporate activities.

o Corruption of individuals

With regard to individuals, active and passive corruption is sanctioned by Article 445-1 Crim. Code:

- individuals face EUR 500,000 or twice the proceeds of the offense in criminal fine and a maximum of five years of imprisonment; and
- legal entities face EUR 2.5 million or twice the proceeds of the offense in criminal fines.

o Criminal anti-competition

The French Commercial Code contains several criminal offenses that pertain to anti-competitive practices, including notably:

- **Abuse of dominance and cartel offences** (*ententes et abus de domination*), defined as fraudulently taking part in committing a cartel offence or an abuse of dominance (*abus de position dominante*), is sanctioned by a maximum of four years of imprisonment and EUR 75,000 in criminal fines (Art. L.420-6 Com. Code).
- **Sale at a loss** (*revente à perte*), i.e., the sale at a lower price than the purchase price, is sanctioned by EUR 75,000 in criminal fines (Art. L.442-2 Com. Code).
- **Illegal action on prices** (*action illicite sur les prix*), i.e., the artificial modification of the prices of goods or services, is sanctioned by a maximum of two years of imprisonment and EUR 30,000 in criminal fines (Art. L.443-2 Com. Code).

o Tax crimes

Fraudulently avoiding to pay taxes (*délit général de fraude fiscale*) is sanctioned by a maximum of five years of imprisonment and EUR 500,000 in criminal fines (Art. 1741 *et seq.* of the French General Tax Code), increased to a maximum of seven years of imprisonment and EUR 2,000,000 in case of organised criminal offence (*bande organisée*).

The French tax administration may also set aside acts that constitute an abuse of law (*abus de droit*) or fictitious acts designed only to elude or lower tax charges (Art. L. 64 of the Tax Procedure Book).

o Government-contracting fraud

It is prohibited for a person holding public office or entrusted with a public mandate to procure undue benefit to a third party in breach of legal and regulatory provisions governing public procurement (Art. 432-14 Crim. Code). Such a criminal offense is sanctioned by a maximum of two years of imprisonment and EUR 200,000 in criminal fines (which can be increased to double the profit generated by the offence).

Several other offenses may be constituted in connection with government-contracting fraud, such as corruption and forgery.

o Environmental crimes

The environment has been enshrined as one of the nation's fundamental interests (Art. 401-1 Crim. Code), and French criminal law also created the notion of environmental terrorism (Article 421-2 Crim. Code). Most environmental crimes are enumerated in the French Environmental Code.

o Campaign-finance/election law

The French Electoral Code contains criminal provisions governing the origin of funds collected in view of political campaigns. For instance, Article L. 113-1 of the Code sanctions by a maximum of one year of imprisonment and EUR 3,750 in criminal fines the breach of specific provisions governing the origin of funds of political campaigns.

o Any other crime of particular interest in France

With regard to business criminal offenses, the offense of counterfeiting (*délit de contrefaçon*) is defined as the edition of any written material, music composition, drawing, painting or any other production either printed or engraved in breach of applicable laws protecting intellectual and industrial property. Counterfeiting is sanctioned by a maximum of three years of imprisonment and EUR 300,000 in criminal fines (Art. L. 353-2 of the French Intellectual Property Code).

o Market manipulation in connection with the sale of derivatives

See above "fraud and misrepresentation in connection with the sales of securities" and "insider trading".

o Anti-money laundering

Money-laundering is defined by French criminal law as the facilitation, by any means whatsoever, to wrongfully justify the illegal origin of funds or revenues of the perpetrator of a crime. Participating in the placement, deceit or conversion of the direct or indirect outcome of a crime or offense also

qualifies as money-laundering. Both offenses are sanctioned by a maximum of five years of imprisonment and EUR 375,000 (Art. 324-1 Crim. Code).

3.2 Is there liability for inchoate crimes in France? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

According to Article 121-5 Crim. Code, the attempt to commit a crime is constituted as soon its execution has only been stopped or failed due to circumstances exterior to the will of the actor of such attempt.

Under French law, the attempt to commit a crime is always punishable, even if no specific disposition provides for it. However, the attempt to commit an offense (*délit*) is only punishable if it is expressly provided for by the law. This is the case for theft (*vol*) (Art. 311-13 Crim. Code). Note that the attempt to commit a misdemeanour is never punishable.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Except for the French State, legal entities (*personnes morales*) are liable for criminal offenses committed on their behalf by their corporate bodies or representatives (Art. 121-2 Crim. Code). Specific procedural rules are applicable to the prosecution of offenses committed by corporations (Art. 706-41 *et seq.* Crim. Proc. Code). Criminal fines incurred by corporations are in principle five times higher than the ones provided for individuals (Art. 131-38 Crim. Code).

Criminal corporate liability is established as long as the criminal offense has been committed: (i) by a corporate body or a company representative (hence if the concerned offense is intentional, corporate criminal liability requires to demonstrate that the company representative consciously committed the offence); and (ii) on behalf of the corporation, i.e., the offence inures to the benefit of the corporation.

Recently, the French company Safran was acquitted in January 2015 after successfully appealing its 2012 French conviction for allegedly paying bribes to Nigerian officials between 2000 and 2003 in order to obtain a EUR 170 million contract to produce national identity cards. On appeal, in line with the public prosecutor's argument that corruption charges against the legal entity could not be sustained particularly given that high-ranking officials within the company had been acquitted of crimes based on the same conduct, the Paris Court of Appeals considered that, in the absence of any conviction of individuals for corruption practices, Safran, as a legal entity, could thus not be held liable for the alleged bribery scheme (Paris Court of Appeals, Jan. 7, 2015, n°12/08695).

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Corporate criminal liability does not exclude criminal liability of individuals who committed or participated in the commission of the offense. French law recognises personal criminal liability of directors (*dirigeants*), whether such director has been legally appointed (*dirigeant de droit*) or is, in fact, the director of the corporation (*dirigeant de fait*). In addition to criminal sentences, corporate directors face supplementary punishments (*peines complémentaires*), including the prohibition to manage, run, or control a corporation (Art. L. 249-1 Com. Code). In addition, directors are also held liable for all criminal offenses committed with regard to employment, environment, or consumer law, etc. Directors are also liable for tax fraud (Art. 1741 of the French General Tax Code).

However, directors' criminal liability may be set aside if it is established that the director did not participate in the offense and that it had delegated its authority to another person.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

There is no official policy (and it is difficult to consider that there is a preference too) with regard to the prosecution of corporations as opposed to individuals. If both are criminally liable, French judicial authorities prosecute both entities and individuals.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

Generally speaking, statutes of limitations depend on the nature of the criminal offenses:

- The statute of limitation applicable to crimes (*crimes*) is of 10 years (Art. 7 Crim. Proc. Code) and starts running on the date on which the criminal offense is committed (except for concealed offenses (see below) and for continuing offenses, in which case the limitations period starts running when the offense has ceased).
- The statute of limitation applicable to offences (*délits*) is of three years (Art. 8 Crim. Proc. Code), and is calculated as explained above.
- The statute of limitation applicable to misdemeanors (*contraventions*) is of one year (Art. 9 Crim. Proc. Code), and is calculated as explained above.

Specific rules apply to the calculation of limitation periods for certain criminal offenses or with regard to criminal offenses committed against vulnerable individuals or children: e.g., crimes against humanity have no applicable statute of limitations (Art. 213-5 Crim. Code), while the statute of limitation applicable to crimes or offenses against children is longer (20 years for crimes; 10 years for offenses) and only starts running once the child reaches the age of majority (i.e., 18 years old).

Specific calculation principles apply to concealed criminal offenses (*infractions dissimulées*), for which the limitations period only starts running once the offense has been (or could have been) discovered. This is the case for the criminal offense of misuse of corporate assets (*abus de biens sociaux*): although this offense is not a hidden one *per se*, French criminal courts tend to apply distinct starting dates for the statute of limitation. If the misuse of corporate assets could have been discovered through the company's financial statements and accounting documents, the three-year limitations period applicable to offenses (*délits*) starts running as of the date on which such misuse has been committed. However, if the misuse of corporate assets has been concealed, then French criminal courts tend to consider that the limitation period only starts running on the date on which the criminal offense has (or could have) been discovered.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

French criminal case law distinguishes between two types of criminal offenses: immediate offenses (*infractions instantanées*); and continuous offenses (*infractions continues*). For continuous offenses – such as the handling of stolen goods (*recel*) – statute of limitation starts running on the date on which the offense ended.

5.3 Can the limitations period be tolled? If so, how?

Limitations periods run when no investigating act of prosecution is performed. However, if such an act is performed, the limitations period starts running anew. In practice, public prosecutors or investigating judges regularly perform judicial acts to postpone the limitations period.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

As per question 1.1, the public prosecutor's office is responsible for initiating investigations and overseeing the work of judicial police in connection with such investigations. The procedure applicable to investigations depends on the time period when the offense has been committed. An offense that is being committed or has just been committed may be investigated under procedural rules applicable to flagrant investigations (*enquêtes de flagrance* – Art. 53 to 74 Crim. Proc. Code). These procedural rules provide more leeway to perform investigative acts (particularly for police raids (*perquisitions*) and interrogations (*auditions*)). In principle, flagrant investigations last eight days and may be extended for eight additional days. However, if the offense is not flagrant, i.e., it has not just been committed, investigations are conducted under procedural rules applicable to preliminary investigations (*enquêtes préliminaires* – Art. 75 *et seq.* Crim. Proc. Code).

If an investigating judge (*juge d'instruction*) is appointed, specific rules apply to the investigation (so-called instruction – Art. 79 *et seq.* Crim. Proc. Code). The investigating judge is seized by the public prosecutor's initial indictment (*réquisitoire introductif*) and his/her investigating authority is limited to the facts expressly mentioned in the indictment (*saisine in rem*). This means that the investigating judge obtains jurisdiction with regards to specific facts, but not with regards to specific persons (*saisine in personam*). Consequently, if the investigating judge discovers new facts during his/her investigation, then he/she may only investigate them if the public prosecutor issues an additional indictment (*réquisitoire supplétif*) covering these new facts. Under these limitations, the investigating judge is granted all necessary prerogatives to "uncover the truth" (*manifestation de la vérité*). Consequently, the investigating judge may request that police officers perform police raids (*perquisitions*), telephone tapping (*écoutes téléphoniques*), interviews (*auditions*), etc. Individuals against whom there is no evidence that they are related to the offence are heard by the investigating judge under the status of witnesses (*témoins*) (Art. 100 *et seq.* Crim. Proc. Code). Individuals against whom reliable and consistent evidence (*indices graves et concordants*) indicate that they are involved in the offense may not be heard under the mere status of witness (Art. 105 Crim. Proc. Code): such persons must be placed either under the status of assisted witnesses (*témoins assistés*), notably if they have been namely mentioned in the initial or additional indictment (Art. 113-1 Crim. Proc. Code) or under the status of indicted persons (*mis en examen* – Art. 80-1 Crim. Proc. Code). When placed under these statuses, they benefit from additional protection and rights to organise their defence (notably, the right to counsel).

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

The following European legal assistance treaties apply in France:

- The Convention on Mutual Assistance in Criminal Matters dated April 20, 1959 and its protocol dated March 17, 1978.
- The European Convention on Judicial Assistance between Member States dated May 29, 2000.
- The European Arrest Warrant, as governed by the framework decision 2002/584/JAI dated June 13, 2002.

In addition, France is a party to several bilateral mutual assistance treaties in criminal matters, including for instance the 1998 Mutual Legal Assistance Treaty ("MLAT") entered into with the United States.

With regard to the communication of evidence in civil or commercial matters, French law requires to go through the Hague Convention on the taking of evidence abroad in civil or commercial matters dated March 18, 1970.

Failure to comply with these mutual assistance treaties in both criminal and civil matters may result in violating the French Blocking Statute of July 26, 1968, as amended. The French Blocking Statute sanctions with a maximum of six months of imprisonment and EUR 18,000 in fines the illegal communication of sensitive economic, commercial, industrial or technical information that jeopardises the nation's sovereign interests (Art. 1) as well as the communication of evidence in view of foreign judicial proceedings (Art. 1*bis*).

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

As previously explained, the public prosecutor's office (*ministère public*), or the investigating judge (*juge d'instruction*) as applicable, are granted broad authority to perform their investigating duties. However, specific rules apply to police raids (*perquisitions*), which depend on whether the investigation is conducted as a flagrant investigation (*enquête de flagrance*) or as a preliminary investigation (*enquête préliminaire*) (see question 6.1). Raids performed at the domicile of the suspected person in the context of a preliminary investigation require obtaining the person's prior written consent to the raid, except if the investigation relates to an offense or crime potentially sanctioned by more than five years of imprisonment (Art. 76 Crim. Proc. Code). In such a case, the police raid must be authorised by the judge of liberties and detention (*juge des libertés et de la détention*). Police raids are done either in the presence of the suspected person or his/her representative, or before two witnesses (Art. 57 Crim. Proc. Code). In this context, police raids may not be initiated before 6:00 am or after 9:00 pm (Art. 59 Crim. Proc. Code), but they may extend beyond these hours. In the context of a flagrant investigation (*enquête de flagrance*), the prior consent of

the suspected person is not required. Furthermore, in the context of investigations on organised crime, the judge of liberties and detention may authorise the judicial police to perform raids outside of the aforementioned timeframe (Art. 706-89 Crim. Proc. Code).

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

See question 7.1.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does France recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do France's labour laws protect personal documents of employees, even if located in company files?

French criminal law ensures that attorney-client privilege (*secret professionnel*) is protected. To this end, specific procedural rules govern raids performed at an attorney's office or domicile, as well as the seizure of documents issued by an attorney. For instance, police raids that are done at an attorney's office or domicile may only occur upon duly motivated written decision by the magistrate ordering the raid (i.e., either the public prosecutor or the investigating judge), in his/her presence and in the presence of the president of the bar (*bâtonnier*) (Article 56-1 Crim. Proc. Code). The president of the bar is the only person entrusted with the authority to consult the seized documents and to oppose to such seizure. In such a case, the litigious documents are sealed and listed in distinct specific minutes (*procès-verbal*) of the raid. Similar protective provisions have been introduced into French criminal procedure with regards to journalists (Art. 56-2 Crim. Proc. Code), physicians (*médecins*), notaries (*notaires*), court bailiffs (*huissiers*) or former Court of Appeals attorneys (*avoués*) (Art. 56-3 Crim. Proc. Code).

With regard to the protection of documents under French labour law, the core principle is that all documents, emails or files located on an employee's computer provided by the employer for work purposes are deemed of a professional nature and may thus be consulted by the employer out of the employee's presence, except if these documents, emails or files have been marked as being personal or for which it is reasonably foreseeable that they are of a personal nature (*Cass. Soc., October 18, 2006, n°04-48.025*). In the context of criminal investigations, such documents, even of a personal nature, may be seized during police raids.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

See questions 7.1 to 7.3.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

Both the public prosecutor and the investigating judge, if applicable, are granted broad authority to conduct criminal investigations in view of enlightening the truth (*manifestation de la vérité*). Consequently, these magistrates may request any document or information from any person, corporation, public entity, or public administration in connection with criminal investigations, with no possibility for these persons or entities to refuse on grounds of professional secrecy, except under specified circumstances (Art. 60-1 Crim. Proc. Code). These magistrates may also seek assistance of any expert or qualified person to conduct technical or scientific tests (Art. 77-1 Crim. Proc. Code).

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

Individuals against whom no evidence indicates that they may have participated in a criminal offense may not be compelled to answer questions. They may, however, be retained by police officers for a maximum of four hours (Art. 62 Crim. Proc. Code). If elements arise indicating that the retained person may have participated in a criminal offense, such person may continue to be heard by police officers freely, provided prescribed warnings set forth in Article 61-1 of the French Code of Criminal Procedure have been given to such person (i.e., the legal qualification of the concerned facts, the date and place on which the criminal offense took place, the right to leave the premises at any time, the right to be assisted by an interpreter and/or by an attorney, the right to remain silent, etc.). In practice however, if the suspected person decides to leave the police precinct where he/she is being retained, it is more than likely that police officers will put such person in custody (*garde à vue*).

Holding someone in custody is only authorised for persons who are suspected of having committed or tried to commit an offense (*délit*) or crime (*crime*) sanctioned by imprisonment, provided that the detention of the person is the only way to ensure specific objectives such as the conservation of evidence or the presentation of the suspected person before the public prosecutor, expressly set forth in Art. 62-2 Crim. Proc. Code.

Except for specific criminal offenses such as organised crime, terrorism, etc., a person may only be held in custody for a maximum of 24 hours, which can be renewed once for 24 additional hours if the concerned criminal offense is sanctioned by imprisonment of at least one year (Art. 63 Crim. Proc. Code). Specific procedural rules apply to custody, notably with regard to the rights granted to the suspected person. The right to counsel when held in custody prompted significant public debate in France, resulting in the increase in the rights granted to the detained person. For instance, attorneys have recently been granted the right to assist their clients during interviews (*auditions*) by police officers. However, the attorney's role remains very limited, in particular as the attorney does not have access to the entire file compiled by the public prosecutor but only to a limited set of documents, and is not entitled to intervene during the interview of his/her client.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

See question 7.6.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

See question 7.6.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

See question 6.1.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

No, there are no such rules.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

French Criminal procedure (Art. 495-7 *et seq.* Crim. Proc. Code) recognises the possibility to enter into a guilty plea for all offenses (*délits*) punished by imprisonment of more than five years (except certain specific offenses such as involuntary homicide (*homicide involontaire*), media-related offenses (*délit de presse*), voluntary or involuntary damage to a person's integrity or sexual offenses). Such guilty plea procedure (*comparution sur reconnaissance préalable de culpabilité*) is initiated either by the public prosecutor or at the request of the indicted person or his/her attorney. The public prosecutor proposes a punishment (imprisonment, fine, and/or complementary punishment) and the indicted person is granted 10 days to either accept or reject the proposed plea bargaining. Article 495-8 of the French Code of Criminal Procedure provides that the duration of imprisonment can neither exceed one year nor half of the imprisonment sentence initially incurred for the concerned offense. The indicted person must be assisted by an attorney for the entire duration of the guilty plea procedure. If the plea is accepted, the suspected person is immediately brought before the President of the Court of First Instance (*président du Tribunal de grande instance*), who has jurisdiction to validate the guilty plea. The role of the President of the Court of First Instance is to control the materiality of the concerned facts and the legal qualifications applied by the public prosecutor prior to validating the guilty plea (Art. 495-9 Crim. Proc. Code).

In practice however, even if the legal conditions are met for the guilty plea procedure to be followed, public prosecutors do not opt for such a procedure when the facts at stake or the identity of the person who has committed the offense require a proper trial before the Criminal Court of First Instance (*Tribunal correctionnel*). This judgment rests within the authority of the public prosecutor to accept or reject the plea.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

Article 2 of the French Code of Criminal Procedure provides that "*civil action seeking to obtain remedy of damages caused by a crime, an offense or a misdemeanor belongs to any person who has personally suffered from such damage that was directly caused by the criminal offense*". In other words, this means that any defendant may be held liable for civil damages if the crime caused damage to a third party. However, several conditions must be met to have standing to lodge a civil action as a victim (*partie civile*): the person must have directly and personally suffered from the criminal offense. Certain non-profit organisations (*associations*) have been granted legal standing to initiate civil actions under very specific conditions listed in Articles 2-1 *et seq.* of the French Code of Criminal Procedure.

The *partie civile* may lodge its claim either before the criminal court which has been assigned to rule on the criminal action, or separately before civil courts, which shall, in such a case, postpone their decision until the criminal court has ruled on the criminal case.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Enshrined in the Declaration of the Rights of Man and Citizen of 1789, the core principle of the French criminal procedure dictates that any person is deemed innocent until proven guilty (*présomption d'innocence*). Criminal offenses may be proved by any mode of evidence except if provided otherwise by law and the magistrate ruling on the matter decides according to its firm conviction (*intime conviction*), based on evidence brought and discussed before the court (Art. 427 Crim. Proc. Code). Consequently, any remaining doubt shall inure to the benefit of the defendant (*le doute profite à l'accusé*). Therefore, the burden of proof relies primarily on the public prosecutor's office (*ministère public*) who is the accusing party in French criminal trials.

9.2 What is the standard of proof that the party with the burden must satisfy?

As explained in question 9.1 above, the public prosecutor's office is primarily tasked with proving that the following three elements exist to prove that the criminal offense has been committed by the suspected person: (i) legal element (*élément légal*), i.e., the accusation shall indicate on which legal or regulatory text the criminal proceedings rely; (ii) material element (*élément matériel*), i.e., the reality of the act or omission that constitutes the criminal offense; and (iii) moral element (*élément moral*), i.e., the intention – when required, which is not always the case – of the indicted person to commit the criminal offense.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The magistrate ruling on the case (i.e., the Police Court, the Criminal Court of First Instance or the Assize Court) decides at its sole discretion on the probative value of the evidence submitted and discussed before it.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

The accomplice of a criminal offense is sanctioned as the primary actor of such offense (Art. 121-6 Crim. Code). The notion of accomplice is defined as the person who knowingly aided the execution or preparation of the criminal offense, but also as the person who has provoked a criminal offense or gave orders to execute such criminal offense, in particular by way of donation, promise, threat, order, abuse of authority or power (Art. 121-7 Crim. Code).

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

French law distinguishes between intentional and unintentional criminal offenses. For intentional criminal offenses, the accusation (i.e., the public prosecutor's office) must prove that the suspected person had the intent to commit the crime. For unintentional criminal offenses, the public prosecutor's office is required to prove the materiality of the criminal offense. Besides, despite lacking any textual reference, French criminal case law has progressively considered that for certain intentional criminal offenses, intent was presumed due to its close connection with the material element (*élément matériel*). This is the case for criminal defamation (*délit de diffamation*), breach of trust (*abus de confiance*), and counterfeiting of literary or artistic masterpieces (*délit de contrefaçon d'oeuvres littéraires ou artistiques*).

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

French criminal law (Art. 122-3 Crim. Code) provides that a person may not be held criminal liability if such person justifies that he/she legitimately believed he/she could legally perform the concerned act due to an unavoidable error in law (*erreur de droit*).

In practice, such defense is regularly used by company managers who are found guilty of a criminal offense (relating, in particular, to employment law), yet in practice such defense is rarely accepted by French criminal courts.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

French law applies the "*no one should ignore the law*" adage: ignorance of the facts does not exempt a person from being criminally liable. Error on the facts is only admitted with regard to intentional criminal offense, for which its outcome is not to exempt the actor from his/her criminal liability but results in rendering the punishment for an intentional violation inapplicable. Error on the facts has no impact whatsoever on unintentional criminal offenses.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

Under French law, a person who is aware of a crime which effects may still be prevented or limited may be held liable for not informing competent judicial authorities and may consequently be punished by up to three years of imprisonment and EUR 45,000 in criminal fines. However, exemptions exist for parents or spouses of the actor of the criminal offense, except if such offense concerns children below the age of 15 (Art. 434-1 Crim. Code). However, this article does not create a general obligation to denounce anyone who is known as being the perpetrator of a criminal offense: it only concerns the denunciation of a crime, and not the identity of the actor, to allow for the competent judicial authorities to take appropriate measures to prevent or limit its effects (Cass. crim., March 2, 1961, Bull. crim. n°137).

In addition to this a general obligation to denounce criminal offenses:

(i) certain specific professions (such as lawyers, auditors, etc.) are required to file SARs (*declarations de soupçon*) to the administrative authority Tracfin when they suspect financial transactions to be part of money-laundering schemes, including those relating to their clients (see question 1.3); and

(ii) civil servants are required to denounce all offenses (*crimes et délits*) of which they may become aware in connection with their work (Art. 40, Crim. Proc. Code).

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

Voluntary disclosure of criminal offenses may result in leniency for certain specific criminal offenses as provided for by the French Criminal Code, including *inter alia*: terrorism (Art. 422-1 Crim. Code), member of a conspiracy (*association de malfaiteurs* – Art. 450-2 Crim. Code), bombing attacks (*attentats* – Art. 414-2 Crim. Code).

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in France, and describe the favourable treatment generally received.

Apart from specific criminal offenses out of which certain ones are listed above, there are no official guidelines or steps to be followed by entities seeking leniency. However, in practice such disclosure may be helpful to obtain a more favourable result.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

See question 8.3.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

See question 8.3.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

Sentences imposed in connection with a criminal offense are expressly provided for by law, generally in the French Criminal Code, but also in the Monetary and Financial Code, the Commercial Code, the Labour Code, and the Environment Code.

Sentences provided for by these codes set the maximum that may be imposed on a convicted defendant: criminal courts may not exceed the duration of the imprisonment sentence or the criminal fine set by a specific article of the code. Within this context, criminal courts may freely determine the appropriate punishment to be applied, based on the circumstances of offense, on the personality of the defendant, on his/her criminal background and other factors. This is what is referred to as the principle of personalised punishment (*personnalisation des peines*).

Until recently, French criminal law provided for minimum punishment in case of recidivism (so-called floor punishment or *peines planchers*). This is no longer the case as these minimum have been abrogated by statute n°2014-896 of August 15, 2014 on the individualisation of sentences. However, punishment incurred in case of recidivism is doubled in respect to both imprisonment and criminal fine (Art. 132-10 Crim. Code).

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

Several elements must be complied with to ensure the validity of the sentence, including:

- The obligation imposed on the tribunal to rule on a case after deliberations (*délibéré*) only, i.e., after discussion with the other members of the tribunal. Under French criminal law, the tribunal's deliberations are kept secret. The tribunal is required to discuss on any preliminary questions, on whether the suspected person is guilty of the offense (*délibéré sur la culpabilité*) and if so, on the punishment to be applied to the convicted person (*délibéré sur la peine*). For cases tried before the Police Court (*Tribunal de police*) or the Criminal Court of First Instance (*Tribunal correctionnel*), deliberations are often scheduled to occur later than the hearing itself, with no maximum delay to be complied with (Art. 462 Crim. Proc. Code). However, for matters tried before the Assize Court (*Cour d'assises*), deliberations must occur immediately after the closure of debates (*cloture des débats*) and the decision is rendered after deliberations, which may not be interrupted (Art. 355 *et seq.* Crim. Proc. Code).
- The decision must be duly motivated, in particular with regard to all criminal offenses, all prosecuted persons, and the punishment incurred, etc.
- The decision must indicate the nature and composition of the court, and must be rendered orally, during a public hearing.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Verdicts of guilt or non-guilt are appealable under French law by both the defendant and the public prosecutor's office (*ministère public*) (Art. 497 Crim. Proc. Code), which may be lodged within 10 days following the date on which the decision has been orally rendered by the court (Art. 498 Crim. Proc. Code). Specific conditions apply to appeal of criminal decisions rendered by the Assize Court: while guilty verdicts may be appealed notably by the defendant or the public prosecutor's office (Art. 380-1 Crim. Proc. Code), acquittals may only be appealed by the general prosecutor (*procureur général*) before the Court of Appeals (Art. 380-2 Crim. Proc. Code).

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

See question 16.1.

16.3 What is the appellate court's standard of review?

The Court of Appeals has jurisdiction to review both the facts and the law with regard to the appealed decision.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

The Court of Appeals hears and rules on the case all over again. Consequently, the Court of Appeals may either acquit the convicted person, confirm the decision previously rendered, or modify part of the decision submitted to its review.

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