



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

CORPORATE CRIME, FRAUD AND INVESTIGATIONS

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Essential legal questions answered
in key jurisdictions



France

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FRAUD

Regulatory provisions and authorities

1. What are the main regulatory provisions and authorities responsible for investigating corporate or business fraud?

The main regulatory authority responsible for investigating corporate or business fraud is the Public Prosecutor's Office. The Code of Criminal Procedure contains rules governing preliminary enquiries and investigations (see *Question 3*).

For more information on the Public Prosecutor's office see box: *The regulatory authorities*.

Offences

2. What are the specific offences relevant to corporate or business fraud?

Fraud and misrepresentation in connection with sales of securities

The following is illegal:

- Carrying out or attempting to carry out, directly or through an intermediary, a manoeuvre intended to impede the normal operation of a regulated market by misleading others.
- Publicly disseminating, through whatever channel or means, any false or deceptive information concerning the prospects or the situation of an issuer whose securities are traded on a regulated market, or the likely performance of a financial instrument admitted to trading on a regulated market, which may affect the price thereof.

Fraudulent obtaining (embezzlement)

Fraudulent obtaining is the act of deceiving a natural or legal person by the use of a false name or a fictitious capacity, by the abuse of a genuine capacity, or by means of unlawful manoeuvres, with a view to leading such a person, to its prejudice or to the prejudice of a third party, to:

- Transfer funds, valuables or any property.
- Provide a service.
- Consent to an act incurring or discharging an obligation.

Government procurement fraud

The taking, receiving or keeping of any interest in a business or business operation, either directly or indirectly, by a person holding public authority or discharging a public service mission, or by

a person holding a public electoral mandate who at the time in question has the duty of ensuring, in whole or in part, its supervision, management, liquidation or payment, is punishable by five years' imprisonment and a fine of EUR75,000 (as at 1 August 2012, US\$ was about EURO.81).

However, in municipalities of no more than 3,500 inhabitants, mayors, their deputies or municipal counsellors acting by delegation from or in substitution for the mayor can contract with the municipality of which they are the elected representatives for the transfer of movable or immovable property, or for the supply of services within the annual limit of EUR16,000.

Furthermore, in those municipalities, mayors, their deputies or the municipal counsellors acting by delegation from or in substitution for the mayor can acquire a plot in a municipal housing development to build their personal dwelling, or enter into a residential tenancy agreement with the municipality for their personal accommodation. These contracts must be authorised by a reasoned decision from the municipal council after a valuation of the property concerned has been made by the public domain service.

In the same municipalities, the same elected officials can acquire property belonging to the municipality for the establishment or development of their business. The price cannot be lower than the valuation given by the public domain service. The contract must be authorised by a reasoned decision from the municipal council, whatever the value of the property concerned.

A person holding public authority or discharging a public service mission, or holding a public electoral mandate or acting as a representative, administrator or agent of the state, territorial bodies, public corporations, mixed economy companies of national interest discharging a public service mission and local mixed economy companies, or any person acting on behalf of any of the above-mentioned bodies, commits an offence when he obtains or attempts to obtain for others, an unjustified advantage by an act breaching the statutory or regulatory provisions designed to ensure freedom of access and equality for candidates in respect of tenders for public service and delegated public services. An offence is punishable by two years' imprisonment and a fine of EUR30,000.

Misappropriation of corporate assets

Fraudulently assigning to a contribution in kind a valuation higher than its real value constitutes an offence.

A manager commits an offence when he:

- Distributes sham dividends between the members in the absence of an inventory or using fraudulent inventories.
- Presents to the members, even in the absence of any distribution of dividends, annual accounts not providing,



for each financial year, a fair representation of the results of the operations for the financial year, financial situation and assets on the expiration of this period, in order to hide the company's true situation.

- Uses the company's property or credit, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes or to promote another company or undertaking in which they are directly or indirectly involved.
- Uses the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes or to promote another company or undertaking in which they are directly or indirectly involved.

Enforcement

3. What are the regulator's powers of investigation, enforcement and prosecution in cases of corporate or business fraud?

The decision to prosecute always comes from the Public Prosecutor's Office. In the first three months following the discovery of the facts, only the Public Prosecutor's Office can decide to initiate prosecution. After this three-month period, the victim can apply to join criminal proceedings as a civil party.

Criminal proceedings can be triggered by the following:

- A complaint.
- A report.
- A referral by a specialised agency such as the:
 - General Directorate for Competition, Consumer Affairs and Fraud Control (DGCCRF);
 - Tax Authorities;
 - Financial Intelligence Unit (TRACFIN);
 - Labour Inspection;
 - Fraud on Means of Payment Squad (*Brigade de répression des fraudes aux moyens de paiement*).

The Public Prosecutor's Office investigates all matters using specialised investigators depending on the nature of the charges, such as the:

- Air Traffic Gendarmerie, for airplane crashes.
- Financial Squad for economic and financial matters.
- Crime Squad for crimes.

The Public Prosecutor has discretion whether to prosecute or not on the basis of the facts that he considers constitute an offence. The Public Prosecutor cannot dispose as he pleases of a criminal prosecution since that is the prerogative of society. However, there are cases where the law accepts that the Public Prosecutor can reach a settlement with the offender.

Once the investigation is completed, the evidence of the offence has been gathered and the perpetrator has been identified, the Public Prosecutor can decide to dismiss the charges, prosecute or choose an alternative to prosecution (referred to as the "third way").

Offences are broken down according to their seriousness into three categories:

- Minor offences (*contraventions*).
- Misdemeanours (*délits*).
- Felonies (*crimes*).

The court cannot sentence the accused to a fine or an imprisonment higher than the statutes allow. The court takes into consideration the personality of the individual, his revenue and, for a business entity, its turnover.

The Public Prosecutor's Office can use various procedural tools to obtain information, such as:

- Requisitions (*requisitions*). This comprises a request to a person for the voluntary production of documents or information.
- Searches (*perquisitions*). A search involves a visit of residential premises or of a company's registered office(s) when it appears that evidence may be found there through seizing papers, documents, electronic data or other items.
- Appointment of any expert to obtain technical opinions.

Sanctions

4. What are the potential sanctions or liabilities for participating in corporate or business fraud?

Administrative proceedings or sanctions. The Prudential Control Authority can impose a fine on a liable party.

Criminal proceedings. Fraudulent obtaining is punishable by five years' imprisonment and a fine of EUR375,000.

Misappropriation is punishable by a prison sentence of five years and a fine of EUR375,000.

In relation to government procurement fraud, see *Question 2, Government procurement fraud*.

Civil suits. If the actions do not constitute a criminal offence, civil actions can be brought before the Commercial Court, which can award financial damages (against a natural or legal person) and prohibit the defendant from exercising any commercial activity as a manager. Class actions as known under the American legal system are not allowed.

BRIBERY AND CORRUPTION

Regulatory provisions and authorities

5. What are the main regulatory provisions and authorities responsible for investigating bribery and corruption?

The Public Prosecutor's Office is the main authority responsible for investigating bribery and corruption.

Under the Criminal Code it is an offence to unlawfully proffer, at any time, directly or indirectly, any offer, promise, donation, gift or



reward, to induce a person holding public authority, discharging a public service mission, or vested with a public electoral mandate:

- To carry out or abstain from carrying out an act pertaining to his office, duty, or mandate, or facilitated by his office, duty or mandate.
- To abuse his real or alleged influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a public authority or the government.

The same penalties apply to any person holding public authority, discharging a public service mission, or vested with a public electoral mandate who, unlawfully, at any time, directly or indirectly solicits offers, promises, donations, gifts or rewards to carry out or to abstain from carrying out any act specified under the first bullet point above, or to abuse his influence under the conditions specified under the second bullet point above.

6. What international anti-corruption conventions apply in your jurisdiction?

France has signed the:

- OECD Convention on Combating Bribery of Foreign Public Officials in Internal Business Transactions of 1997.
- United Nations Convention Against Corruption.

France has also signed two conventions on corruption of the Council of Europe:

- Civil Law Convention on Corruption.
- Criminal Law Convention on Corruption.

Both Conventions were ratified in 2008.

At the European level, a Convention against corruption involving officials was adopted to fight corruption involving European officials or national officials of the EU member states. The Convention entered into force on 28 September 2005 and France implemented it in Article 435-1 of the French Criminal Code (Criminal Code).

Similarly, France has adopted Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (*Article 445-1, Criminal Code*).

Offences

7. What are the specific bribery and corruption offences in your jurisdiction?

Domestic public officials. Both passive and active corruption by public and by private individuals is illegal (*Criminal Code*) (see *Question 5*). The offence is punishable by ten years' imprisonment and a fine of EUR150,000.

Foreign public officials. Articles 435-1 and 435-3 penalise passive and active corruption of foreign public officials respectively. A foreign public official is defined as an officer or employee of a foreign government or international organisation. Similarly, France has outlawed active and passive corruption of international judicial personnel (*Articles 435-7 and 435-9, Criminal Code*).

These offences are sentenced in the same way as corruption of domestic public officials (see *above*).

Private commercial bribery. Active and passive bribery of a private person is punishable by five years' imprisonment and a fine of up to EUR75,000 (*Articles 445-1 and 445-2, Criminal Code*).

Defences

8. What defences, safe harbours or exemptions are available and who can qualify?

There are no safe harbours or exemptions. Facilitation payments are illegal.

9. Can associated persons and agents be liable for these offences and in what circumstances?

Unlike the UK Bribery Act, associated persons and agents are not held liable for corruption under French law.

Enforcement

10. What are the regulator's powers of investigation, enforcement and prosecution in cases of bribery and corruption?

Relevant investigatory powers include powers to conduct searches and require disclosure.

Investigations of bribery and corruption offences normally take several years. International investigations can last much longer.

Investigations are conducted by the authorities that have territorial jurisdiction.

Sanctions

11. What are the potential sanctions for participating in bribery and corruption?

Civil/administrative proceedings or sanctions. Participating in bribery and corruption is a criminal offence. No civil/administrative sanctions apply.

Criminal proceedings. Passive and active corruption of public officials and foreign public officials is punishable by:

- Individuals: ten years' imprisonment and a fine up to EUR150,000. (The same sanctions apply to a public official receiving a bribe.)
- Corporate bodies: fine up to EUR750,000. The amount of the fine may be increased up to five times this amount. The judge has discretion to determine the amount of the fine.

Active and passive private corruption is subject to the following sanctions:

- Individuals: five years' imprisonment and to a fine up to EUR75,000.
- Corporate bodies: a fine of up to EUR375,000.



Tax treatment

12. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

Such payments can never be tax-deductible as a business expense in France.

INSIDER DEALING AND MARKET ABUSE

Regulatory provisions and authorities

13. What are the main regulatory provisions and authorities responsible for investigating insider dealing and market abuse?

There are no best practice regulations or guidelines. The legislative framework comprises the Monetary and Financial Code (*Code monétaire et financier*) (CMF) and case law.

The Public Prosecutor's Office is the main regulatory authority responsible for investigating insider dealing and market abuse.

See *Question 14*.

Offences

14. What are the specific insider dealing and market abuse offences?

The offence of insider trading is committed where executives of a company or persons who, through the practice of their profession or the performance of their functions, both:

- Obtain privileged information concerning the prospects or the situation of an issuer whose securities are admitted to trading on a regulated market or the likely performance of a financial instrument admitted to trading on a regulated market, either directly or through an intermediary.
- Carry out or facilitate one or more transactions before the public has knowledge of that information.

The offence is punishable with a penalty of two years' imprisonment and a fine of EUR1.5 million. The fine may be increased to up to ten times the amount of any profit realised and must never be less than the amount of that same profit.

A penalty of one year's imprisonment and a fine of EUR150,000 applies to a person who, through the practice of his profession or the performance of his functions:

- Obtains privileged information concerning the prospects or the situation of an issuer whose securities are admitted to trading on a regulated market or the likely performance of a financial instrument admitted to trading on a regulated market.
- Communicates that information to a third party outside the normal framework of his profession or his functions.

A penalty of one year's imprisonment and a fine of EUR150,000 applies to any person, other than those referred to in the previous

two paragraphs, who:

- Knowingly obtains privileged information concerning the situation or the prospects of an issuer whose securities are admitted to trading on a regulated market or the likely performance of a financial instrument admitted to trading on a regulated market.
- Directly or indirectly communicates that information, or allows it to be communicated, to a third party before the public has knowledge thereof.

If the information in question is used in the commission of a crime or an offence, the sentence is increased to seven years' imprisonment and a fine of EUR1.5 million if the amount of the profit realised is below that figure.

Defences

15. What defences, safe harbours or exemptions are available and who can qualify?

The law does not provide specific exemptions in relation to the criminal offences of insider dealing and market abuse.

The only available defences are:

- Contesting the materiality of the offence and the reality of the facts.
- Showing that it was impossible to act otherwise.

The Court of Cassation (*Cour de cassation*) has confirmed the right to exonerate a defendant where circumstances justifying the exoneration exist. However, this right has been exercised in one case only so far. In that case, the commission responsible for the operation of the stock exchange (*Commission des opérations de bourse*) (COB) considered that the directors, although having committed the offence of insider dealing, had to act in that manner in order to defend their strategy regarding the corporate group as a whole (*LVMH/BULGARI (Case COMP/M.6212)*). In practice, interest of the company or the strategy of the group are the sole arguments that can be put forward by the defendant, who bears the burden of proof.

Enforcement

16. What are the regulator's powers of investigation, enforcement and prosecution?

The Public Prosecutor's Office has no special powers that are granted in relation to insider dealing and market abuse (for general powers, see *Question 3*).

Sanctions

17. What are the potential sanctions for participating in insider dealing and market abuse?

Civil/administrative proceedings or sanctions. Insider trading can be subject to administrative sanctions by the French Financial Markets Authority (*Autorité des Marchés Financiers*) (AMF). However, the Sixth Part of the General Regulation of the AMF does not define the sanctions to be applied for insider dealing.



Administrative sanctions can be fines, and/or the publication of the decision. As it is an administrative sanction, no prison sentence can be granted.

Both natural and legal persons can be sanctioned.

Criminal proceedings. Any person (natural or legal) who commits insider dealing can be sentenced to two years' imprisonment and a EUR1.5 million fine (*Article L465-1, CMF*). The fine may be increased up to ten times the amount of the profit of the offence and must never be less than the amount of that same profit.

Market abuse is subject to the same sanctions as insider dealing (*Article L465-1, CMF*).

Civil suits. The parties that have suffered damage can bring civil suits before the Criminal Court.

MONEY LAUNDERING AND TERRORIST FINANCING

Regulatory provisions and authorities

18. What are the main regulatory provisions and authorities responsible for investigating money laundering and/or terrorist financing?

The financial sector is exposed to the risk of money laundering. To reduce this risk, it is subject to provisions on combating money laundering and terrorist financing. Compliance with these provisions is mandatory for each professional concerned (that is, professionals involved in banking, lawyers, notaries) failing which disciplinary sanctions may apply. The two supervisory authorities in this respect are the:

- Prudential Control Authority (*Autorité de contrôle prudentiel*) (ACP).
- National Enforcement Commission (*Commission Nationale des Sanctions*).

The ACP's mission is to safeguard the stability of the financial system and to protect banking and insurance customers, and insured members and beneficiaries of the entities subject to its supervision.

For more information on the ACP and National Enforcement Commission see *box: The regulatory authorities*.

Offences

19. What are the specific money laundering and terrorist financing offences?

Money laundering comprises:

- Facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanour which has brought him a direct or indirect benefit.
- Assistance in investing, concealing or converting the direct or indirect products of a felony or misdemeanour.

Money laundering offences require intent to commit the offence. These are not strict liability offences. The Public Prosecutor must prove both the material element (*actus reus*) and the mental element (*mens rea*). Intent is particularly difficult to prove as it concerns an intangible element. That is why most often it is deduced from the material element when the latter is unambiguous.

Attempted money laundering can also be sanctioned; the penalty for an attempted offence is the same as for a committed offence. Generally under French law, attempted felony is always punishable. For an attempted misdemeanour to be punishable, the applicable statute must expressly provide that the attempt is a criminal offence. Money laundering offences constitute a misdemeanour.

Participation in a criminal association

Participation in a criminal association is sanctioned by at least five years' imprisonment under the Criminal Code. A criminal association comprises any group formed or any conspiracy established with a view to the preparation, marked by one or more material actions, of one or more felonies, or of one or more misdemeanours.

This is a strict liability offence.

Failure to disclose or tipping-off

In relation to economic and financial wrongdoing, there is no general obligation to report offences. However, there are some persons, such as statutory auditors, who have an obligation to disclose to the Ministry of Finance service that fights money laundering (*Traitement du renseignement et action contre les circuits financiers clandestins*) (TRACFIN) any offence of which they may become aware in the course of the performance of their duties. For example, if a statutory auditor certifies fictitious annual financial statements, he may become an accomplice for not having reported the offence of which he became aware.

Defences

20. What defences, safe harbours or exemptions are available and who can qualify?

There are no available defences to criminal money laundering offences.

However, those professionals that must report to TRACFIN any suspicious operation are protected from criminal prosecution by filing a suspicion report (*Article L561-22, CMF*). Provided the report is made in good faith and complies with the prescriptions of the law, an individual shall not be convicted of slanderous complaint, breach of the privilege, or handling of the proceeds of crime.

Enforcement

21. What are the regulator's powers of investigation, enforcement and prosecution?

Administrative authorities such as TRACFIN can request the communication of documents from banks in the context of the fight against money laundering. Notably, the banking secrecy privilege does not apply in this respect.



The ACP has the power to take administrative police measures, interim measures and to impose penalties.

The National Enforcement Committee is in charge of imposing specific sanctions with respect to combating money laundering and terrorist financing against:

- Real estate professionals.
- Casino managers and groupings, circles and companies organising games of chance, lotteries, bets, sporting or horse racing forecasts.
- Persons operating a domiciliation activity.

The sanctions imposed by these administrative authorities are purely financial, unless these authorities transfer the files that they have prepared to the Public Prosecutor's Office, and the latter decides to prosecute (see *Question 3*).

Sanctions

22. What are the sanctions for participating in money laundering or terrorist financing offences?

Civil/administrative proceedings or sanctions. A person can be subject to civil sanctions in addition to, or instead of, any criminal investigation.

One of the main features of the French criminal procedure is that the victim of an offence can initiate criminal proceedings against the perpetrator by bringing a civil action. This civil action is an action in which the victim seeks damages from the perpetrator of the criminal acts, the aim being to re-establish as accurately as possible the balance that was destroyed by the damage and place the victim in the situation he would have been in if the relevant act had not occurred.

The principle of full compensation applies: any kind of indemnification comprising compensation more or less than the damage suffered is forbidden. Punitive damages, which can be awarded in common law countries, do not exist in French Law.

Damages should not be confused with fines that can be imposed on the respondent.

Criminal proceedings. Money laundering is punishable by five years' imprisonment and a fine of EUR375,000. In addition, the head of a company has a personal obligation on penalty of criminal sanctions to ensure that the provisions of the law and regulations are complied with strictly at all times.

Terrorist financing acts are felonies. There are specialised criminal courts (*cours d'assises*), composed exclusively of professional judges, to rule on terrorism offences.

FINANCIAL RECORD KEEPING

23. What are the general requirements for financial record keeping and disclosure?

Any person subject to the rules on money laundering must record information regarding its potential client and the basis of the business

relationship before taking further steps. This mostly covers:

- Identification of the clients and the beneficiaries.
- The scope and purpose of the business relationship.

Reinforced examination requirements also apply (*Article L561-10-2 II, CMF*). It applies mostly to complex financial operations, or when important amounts of money are at stake. To comply with these obligations, the following information must be recorded:

- Identity of the client, be it a regular or an occasional client.
- Characteristics of the financial operations subject to the reinforced examination, notably the origin of the funds.

This information must be kept for five years after the closing of the client's account.

24. What are the sanctions for failure to keep or disclose accurate financial records?

Non-compliance with the requirements of the ACP regarding the communication of information is punishable by one-year imprisonment and a EUR15,000 fine (*Article L573-1-1, CMF*).

Once a suspicion report has been filed with TRACFIN, no one must disclose its content, except to the controlling authorities or to comply with a judicial order. Disclosure is punishable by a EUR22,500 fine (*Article L574-1, CMF*).

Failure to keep proper records may render a non-compliant person an accomplice of the criminal offence of money laundering, in the event of an ensuing criminal investigation.

25. Are the financial record keeping rules used to prosecute white-collar crimes?

Financial records and documentation reported to TRACFIN can be requested by the investigation judge (*Article 40, Code of Criminal Procedure and Article 561-29, CMF*). Consequently, they can be used to prosecute white collar crime.

DUE DILIGENCE

26. What are the general due diligence requirements and procedures in relation to corruption, fraud or money laundering when contracting with external parties?

The general due diligence procedures comprise:

- Identification of clients.
- Analysis of the reasons for the transfer of money.
- Maintaining good knowledge of the business and market.

Market practice is to conduct due diligence in accordance with French laws.



CORPORATE LIABILITY

27. Under what circumstances can a corporate body itself be subject to criminal liability?

Under French criminal law, only the person materially involved in the commission of a crime can be declared criminally liable, irrespective of his position (principle of personality). However, company managers and directors (*de jure* or *de facto*) can be criminally liable for the acts of the company's agents in exceptional circumstances. Notably, this is the case in industries or regulated trades where the criminal liability falls on company managers and directors, who have the personal liability to ensure compliance with the operating conditions and methods of their industry or trade.

A company manager must also ensure strict and permanent respect of the legislative and regulatory provisions relating to the safety of workers. He is presumed criminally liable for any bodily injury that may result from breaches of these obligations. He may equally be liable for involuntary manslaughter where the death of an employee has been caused by a breach of the health and safety.

In addition to liability applicable to directors and managers, companies can also be held criminally liable for the above offences.

According to case law, in the event of a merger through absorption of a company by another, the absorbing company cannot be declared criminally liable for the actions committed by the absorbed company. The courts have ruled that there was no transfer of criminal liabilities from an absorbed company to a new company, except in the case of fraud. Therefore, a legal entity can only be prosecuted for actions that it has personally committed.

The criminal liability of legal entities does not exclude that of the individuals who are perpetrators of or accomplices to offences. A legal entity can be an accomplice to an offence committed by an individual also.

The Public Prosecutor's Office can decide whether to prosecute the legal entity, the responsible individual, or both. When it can no longer prosecute the legal entity because the latter has been absorbed, it can attempt to prosecute the directors or managers in office at the time of the offence. The court may take the behaviour of the entity during the inquiry into consideration for determination of the sentence.

IMMUNITY AND LENIENCY

28. In what circumstances is it possible to obtain immunity/leniency for co-operation with the authorities?

Since 2004, a general principle of giving a lighter or no sentence to an informer has been applied. This can be seen as a reward granted by the law to an informer who:

- Agrees to report offences to the authorities that are in the preparatory stage or are likely to be committed.
- Discloses the names of the perpetrators or their accomplices.

THE REGULATORY AUTHORITIES

French Financial Markets Authority (Autorité des Marchés Financiers) (AMF)

W www.amf-france.org

Status. Independent public body.

Principal responsibilities. Main responsibilities include:

- Safeguarding investments in financial instruments and in all other savings and investment vehicles.
- Ensuring that investors receive material information.
- Maintaining orderly financial markets.

Prudential Control Authority (Autorité de contrôle prudentiel) (ACP)

W www.acp.banque-france.fr

Status. Independent public body.

Principal responsibilities. ACP's three principal responsibilities are to:

- Contribute to the stability of the financial sector.
- Protect customers.
- Strengthen French influence on the international and European level.

Leniency is confined to the prevention of the most dangerous forms of organised crime to facilitate the dismantling of clandestine networks and prevent serious offences from being committed. It applies to, among others:

- Sabotage.
- Treason or spying.
- Plotting.
- Tax evasion.
- Counterfeit money.
- Terrorism.
- Drug trafficking.

For example, Article 450-2 of the Criminal Code provides that any person who has participated in a conspiracy is exempted from punishment if such person reports it to the competent authorities before any prosecution is made and enables the other participants to be identified.

The system applicable to informers is founded on a dual level of leniency:

- An informer who has enabled the prevention of an offence is exempted from punishment.
- An informer who has enabled the consequences of an offence to be lessened is given a lighter sentence.



CROSS-BORDER CO-OPERATION

29. What international agreements and legal instruments are available for local authorities?

France is party to many bilateral and multilateral conventions which facilitate international judicial co-operation.

Obtaining evidence

The EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000, with its additional protocol of 16 October 2001, facilitates the presentation of requests for mutual assistance and organises the use of modern investigative methods (video-conference, joint investigation teams and intercepting communications).

There are many organisations participating in mutual police assistance. The two main services are the International Criminal Police Organization (Interpol) and the European Police Office (Europol).

The aim of the European judicial co-operation unit Eurojust is to reinforce the fight against serious crime. It is an organ of the EU with legal personality, fulfilling its tasks as a college or through the intermediary of one of the national representatives, magistrate or police officer, who are seconded to it by each member state.

Co-operation can also imply that states provide assistance to each other in the conduct of criminal procedures. For example, a state can be asked to hand over to another state an individual wanted by it, or to carry out or allow to be carried out on its territory an investigation relating to a procedure pending abroad.

Seizing assets

A French judge can be asked to seize assets by a legal authority of a foreign country and the French judge can request the same on the basis of reciprocity.

WHISTLEBLOWING

30. Are whistleblowers given statutory protection?

French law provides for the legal and material protection of an informer and his family against any reprisals by the accomplices whose names he has given. An informer can be given another identity.

REFORM

31. Are there any impending developments or proposals for reform?

Following the new recommendations of the Financial Action Task Force (FATF), the European Commission has issued a report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Third Anti-money Laundering Directive).

The Commission has committed to update the European framework to adapt it to the new threats. A fourth directive will be proposed in autumn 2012. The new directive aims at, among others:

- Enlarging the scope of application to the whole sector of hazard games as well as to national central banks.
- Considering tax offences as a specific category of “severe” offence of money laundering.
- Clarifying the rules of vigilance concerning the clients and the real beneficiaries.
- Defining the concept of “financial group” with a view to considering a possibility to disclose information to the auditors of the holding company.
- Controlling the application of anti-money laundering rules by the regulation authorities.

It is not planned to modify the rules applying to lawyers.

On a more general note, the issue of introducing punitive damages remains unresolved and highly controversial. Some legal commentators are in favour of introducing them. A draft bill was filed with the Senate in 2010.

MARKET PRACTICE

32. What are the main steps foreign and local companies are taking to manage their exposure to corruption/corporate crime?

The main steps companies are taking include:

- Compliance with statutory requirements.
- Internal investigations on suspicion of internal wrongdoing.

CONTRIBUTOR DETAILS



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Areas of practice. White collar crime.

Recent transactions

- Advises and defends major corporations, financial institutions and individuals in complex contentious regulatory and criminal issues before French and international courts.
- Handled major public matters such as the “Apollonia” case, the Swiss Francs debt case and the Concorde crash case.