International Comparative Legal Guides

Business Crime 2027

A practical cross-border resource to inform legal minds

17th Edition

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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?

Business crimes are usually prosecuted by a public prosecutor. If, in the course of their investigation, the prosecutor considers the matter to have sufficient evidential support, they will refer it to trial, generally before the criminal court of first instance (*Tribunal correctionnel*) for a trial without a jury. In unusually complex or large business crime cases, the public prosecutor may refer the matter to an investigating judge (*juge d'instruction*), who will investigate (*instruction*) and decide whether or not to refer the matter to trial.

These enforcement authorities are usually regional, working with local police units. Certain criminal violations, such as complex criminal environmental cases, are usually handled by the public prosecutors or investigating judges of specialised offices (*pôles*).

France has a national prosecutorial office dedicated to financial matters (*Parquet National Financier*, "PNF"). It has nationwide jurisdiction to prosecute complex financial crimes. Occasionally, when a financial case requires specific investigating measures, the PNF may refer the case to investigating judges.

Certain business crimes are prosecuted by administrative agencies. For instance, cartels are prosecuted by the Competition Authority (*Autorité de la Concurrence*) and market abuses (i.e., insider trading, market manipulation (*manipulation de marché*) and dissemination of false information) are prosecuted either by the PNF or the Financial Markets Authority (*Autorité des Marchés Financiers*, "AMF").

Under certain conditions, victims of business crimes may also initiate prosecution, either by bringing cases directly before trial courts, or by requesting the appointment of an investigating judge.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body that will investigate and prosecute a matter?

For most financial crimes – including corruption, influence peddling, tax fraud, money laundering, etc. – the PNF has concurrent jurisdiction with regional public prosecutors. In practice, however, complex financial cases are handled by the PNF. For market abuse crimes, the PNF has exclusive jurisdiction (i.e., regional public prosecutors cannot prosecute), provided that the case is not prosecuted by the AMF.

In any case, the PNF or the public prosecutors may decide to refer a case to an investigating judge.

1.3 Can multiple authorities investigate and enforce simultaneously?

The general principle of "*ne bis in idem*" prohibits one person from being prosecuted and sanctioned multiple times for the same facts. However, French and European courts have admitted, under certain conditions, the possibility of cumulating administrative and criminal enforcement (especially for tax fraud matters).

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

Several administrative agencies are responsible for administrative enforcement of certain business crimes:

- The Competition Authority is the enforcement authority for cartels.
- The AMF is the enforcement authority for market abuses, provided they are not enforced as a crime by the PNF (see question 1.2 above).
- The Prudential Control and Resolution Authority (*Autorité de Contrôle Prudentiel et de Résolution*, "ACPR") is the enforcement authority for non-compliance with anti-money laundering and anti-terrorist obligations of banks and insurance companies.
- The French Anti-Corruption Agency (*Agence Française Anti-corruption*, "AFA") is the enforcement authority for non-compliance with the obligation to implement corporate compliance programmes.

1.5 What are the major business crime cases in your jurisdiction in the past year?

In 2025, five corruption cases were concluded through French-style deferred prosecution agreements, for a total number of 28 since 2017, hence confirming the relative democratisation of deferred prosecution agreements in the French judicial landscape.

2 Organisation of the Courts

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

Criminal violations are divided into three categories, which determine the applicable procedures and the participants in the process.

High crimes (*crimes*) are criminal matters punishable by imprisonment of more than 10 years. They are always prosecuted by an investigating judge and are tried before a mixed jury in a special court (*cour d'assises*). A new type of criminal court (*cour criminelle*) has recently been established by the French parliament and has been in force since January 1, 2023. It has jurisdiction over high crimes punishable by up to 15 to 20 years in prison. Trial before this new court will take place before a panel of five judges.

Ordinary crimes (*délits*) are violations punishable by imprisonment, from two months up to 10 years, and by fines. They are generally prosecuted by a public prosecutor, with an investigating judge appointed in cases of complex violations. Ordinary crimes are tried before a criminal court of first instance without a jury.

Misdemeanours (*contraventions*) are violations punishable by fines, and they are tried by a police court (*tribunal de police*).

Most business crimes are ordinary crimes. However, some business crimes are treated as "administrative offences" and are not tried before regular criminal courts.

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

Since most business crimes fall within the category of ordinary crimes, they are usually tried before a criminal court of first instance before professional judges and without a jury.

2.3 Where juries exist, are they composed of citizens members alone or also professional jurists?

Business crimes are not judged by a jury. Where juries exist, they are composed of citizens only.

3 Particular Statutes and Crimes

3.1 Please describe the statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused.

· Securities fraud

Most of the regulations governing securities violations originate from the 2014 EU Market Abuse Regulation No. 596/2014 and the April 16, 2014 Directive No. 2014/57/EU.

The main offences related to financial markets are insider trading (*délit d'initié*) and market manipulation (see below).

If prosecuted by the PNF, an individual found guilty of market abuse may be sentenced by a criminal court to five years' imprisonment and a €100 million fine, or 10 times the amount of the profit realised. A corporation may be penalised with a €500 million fine, 10 times the amount of the profit realised, or 15% of its annual consolidated turnover. If prosecuted by the AMF, an individual does not face a prison sentence, but may be sentenced to a €100 million fine or 10 times the amount of the profit realised. A corporation may be penalised with a €100 million fine, 10 times the amount of the profit realised, or 15% of its annual consolidated turnover.

Scienter is required to establish a criminal offence, but it is usually not required to establish an administrative offence. Attempted market abuse is punishable before both the criminal courts and the AMF Enforcement Committee.

· Accounting fraud

Pursuant to Article L.242-6 of the French Commercial Code, directors may be criminally liable for falsifying financial statements. This offence is punishable by up to five years' imprisonment and a €375,000 fine.

Fraudulent management leading to bankruptcy is punishable by up to five years' imprisonment and a €75,000 fine (Article L.654-3 *et seq.* of the Commercial Code). Fraudulently organising one's insolvency in order to evade a criminal conviction or a civil sanction is punishable by up to three years' imprisonment and a €45,000 fine (Article 314-7 of the Criminal Code).

· Insider trading

The crime of insider trading, which can only be prosecuted by the PNF, is defined by Article L.465-1 of the French Monetary and Financial Code (*Code Monétaire et Financier*, "CMF"). The related administrative offence (*manquement d'initié*), to be prosecuted by the AMF, is defined by Article 8 of the EU Market Abuse Regulation.

Insider trading is committed when a party trades – or recommends that another person trades – in securities on the basis of insider information, that is, information that is not publicly known and which would affect the price of the securities, if it were made public.

The regulation against insider trading applies to any person who possesses inside information as a result of their: (a) position as a member of the administrative, managerial or supervisory bodies of the issuer; (b) position in the capital of the issuer; (c) access to the information through the exercise of his or her employment, profession or duties; or (d) involvement in criminal activities. The prohibition also applies to any other person who possesses insider information under circumstances in which that person knows or ought to know that it is inside information.

For applicable sanctions, see "Securities fraud" above.

· Embezzlement

The misuse of corporate assets is an offence that concerns corporate managers who directly or indirectly use corporate property for purposes that are inconsistent with the interests of the company they manage (Articles L.241-3 and L.242-6 of the Commercial Code). It is punishable by five years' imprisonment and a fine of €375,000.

Breach of trust (*abus de confiance*) is an offence that consists of the misappropriation of funds or property, which were received based on an understanding that they would be handled in a certain way (Article 314-1 of the Criminal Code). It is punishable by five years' imprisonment and a fine of €375,000.

· Bribery of government officials

Both passive corruption and active corruption are unlawful under French law. Passive corruption occurs when a domestic or foreign public official unlawfully solicits or accepts a bribe, either directly or indirectly. Active corruption occurs when another person, either directly or indirectly, unlawfully induces, or attempts to induce, a domestic or foreign public official or private actor to accept a bribe (Articles 433-1 and 433-2 of the Criminal Code).

For individuals, bribery is punishable by up to 10 years' imprisonment and a fine of up to €1 million, or up to twice the amount gained in the commission of the offence. For companies, the fine is up to €5 million or up to 10 times the amount gained.

· Criminal anti-competition

Cartels are not criminal wrongdoings but administrative offences (see below, "Cartels and other competition offences"). However, it is an ordinary crime for any individual – but not a corporate entity – to fraudulently participate personally and significantly in the conception, organisation, or implementation of a cartel (Article L.420-6 of the Commercial Code). It is punishable by four years' imprisonment and a €75,000 fine.

Other anti-competitive practices may be criminally prosecuted: selling a product at a loss is punishable by a €75,000 fine (Article L.442-5 of the Commercial Code); and artificially modifying the price of goods and services is punishable by two years' imprisonment and a €30,000 fine (Article L.442-9 of the Commercial Code).

· Cartels and other competition offences

Cartels are prohibited by Article L.420-1 of the Commercial Code. This statute prohibits concerted practices, agreements, express or tacit cartels, or combinations when they aim to limit market access, serve as barriers to price determination by the free market, limit or control production, market investment or technical development, or share markets or sources of supply.

Under Article L.420-2 of the Commercial Code, a corporation or a group of corporations is also prohibited from abusing a dominant position in an internal market or in a substantial part of an internal market.

Offering sale prices or determining consumer prices that are abusively low compared to the cost of production, transformation and commercialisation, where these offers or practices have as a goal or could have the effect of eliminating from a market or preventing access to a market with respect to an enterprise or one of its products, are also prohibited by Article L.420-5 of the Commercial Code.

These anti-competitive offences are prosecuted and sanctioned as administrative violations by the Competition Authority. The maximum sanction for an individual is €3 million, and the maximum sanction for an entity is 10% of its global annual turnover before taxes. Final decisions of the Competition Authority may be appealed before the Paris Court of Appeal.

· Tax crimes

Tax fraud is an ordinary crime prohibited by Article 1741 of the General Tax Code (*Code Général des Impôts*): "Anyone who fraudulently evades assessment or payment in whole or in part of the taxes with which this Code is concerned or attempts to do so, whether by wilfully omitting to make his return within the prescribed time, by wilfully concealing part of the sums liable to tax, by arranging his insolvency, by obstructing the collection of tax by other subterfuges, or by acting in any other fraudulent manner, shall be liable."

Tax fraud is punishable by five years' imprisonment and a €500,000 fine, or up to double the proceeds of the offence. If committed by an organised group, and in some limited circumstances (including foreign domiciliation), tax fraud is punishable by seven years' imprisonment and a €3 million fine, or up to double the proceeds of the offence. Because they face a maximum fine of five times that which is applicable to natural persons, legal entities responsible for tax fraud may pay a fine of up to €15 million, or 10 times the proceeds of the offence.

· Government-contracting fraud

Government-contracting fraud mainly refers to favouritism. For a public official, favouritism means conferring an unjustified competitive advantage to a person that would lead to different treatment among candidates. This offence is punishable by up to two years' imprisonment and a €200,000 fine (Article 432-14 of the Criminal Code).

· Environmental crimes

Criminal environmental offences are outlined in both the Criminal Code and the Environmental Code.

The Criminal Code contains only one specific crime relating to the environment: "ecologic terrorism", which is defined as "the introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment" (Article 421-2 of the Criminal Code).

Although not directly related to the protection of the environment, several other provisions are also used as legal bases for prosecution when damage to the environment occurs: endangering the lives of others (Article 223-1 of the Criminal Code); unintentional injury (Articles 222-19 and 222-20 of the Criminal Code); and manslaughter (Article 221-6 of the Criminal Code).

The Environmental Code contains numerous specific criminal offences relating to the environment, including, for instance, offences related to water pollution, air pollution, nuclear materials, protected species, ozone-depleting substances, and ship-source pollution.

· Campaign-finance/election law

Pursuant to Article L.52-8 of the Electoral Code, it is unlawful for businesses to finance electoral campaigns. Individuals' contributions may not exceed €4,600 per person. Candidates or funders who violate this provision face sanctions of up to three years' imprisonment and a fine of up to €45,000, pursuant to Article L.113-1 of the Electoral Code.

· Market manipulation in connection with the sale of derivatives

The criminal prosecution of market manipulation, which can only be pursued by the PNF, is defined by Article L.465-3-1 of the CMF. The related administrative offence, to be prosecuted by the AMF, is prohibited by Article 12 of the EU Market Abuse Regulation. Both offences apply in connection to the sale of financial instruments, including derivatives.

Market manipulation applies to any person who: (i) enters into a transaction that gives false or misleading signals to the market or secures the price of a financial instrument at an abnormal or artificial level; (ii) enters into a transaction that affects the price of a financial instrument by means of employing a fictitious device or any other form of deception or contrivance; or (iii) disseminates information that gives false or misleading signals to the market or is likely to secure the price of a financial instrument at an abnormal or artificial level, if the person who disseminated the information knew, or ought to have known, that the information was false or misleading.

For applicable sanctions, see "Securities fraud" above.

· Money laundering or wire fraud

Money laundering consists of fraudulently hiding the origin or the nature of funds or property (Article 324-1 of the Criminal Code). Individuals may be punished by up to five years' imprisonment and a €375,000 fine. These sanctions are doubled if committed by an organised group. Entities committing money laundering may be subject to a fine of €1,875,000 (€3,750,000 if committed by an organised group). These fines may be raised to up to half of the value of the property or funds

with which the money laundering operations were carried out (Article 324-3 of the Criminal Code).

"Mail fraud" and "wire fraud" provisions of the U.S. Criminal Code (18 U.S.C. §§1341 and 1343) do not have a French equivalent. Rather, fraudulent conduct can be an element of various criminal provisions arising under the Criminal Code.

· Cybersecurity and data protection law

Principal cyber activities criminalised under French law are intrusions into information systems, removal or alteration of data, breach of data (such as passwords, email addresses and home addresses), the infection of a company's network by a Trojan horse, telephone tapping or call recordings, theft of computer files and documents, theft of digital identity, and phishing attacks. Pursuant to Articles 323-1, 323-2 and 323-5 of the Criminal Code, sanctions range from three to seven years' imprisonment, fines of up to €300,000, and ancillary sanctions such as forfeiture, debarment and deprivation of civil rights.

· Trade sanctions and export control violations

Trade sanctions and export control violations are prohibited by Article L.542-2 of the Customs Code, which imposes five years' imprisonment, confiscation of the object of the infraction, confiscation of the means of transport used for the fraud, confiscation of the goods or assets that are the direct or indirect product of the offence and a fine equal to, at a minimum, the amount at issue, and at maximum, double the proceeds of the offence or attempted offence.

Any person who induces the commission of one of the offences under Article L.542-2 of the Customs Code by means of writing, propaganda, or publicity may be subject to five years' imprisonment and a fine of €225,000 (Article L.542-5 of the Customs Code).

· Any other crime of particular interest in your jurisdiction

Swindling (*escroquerie*): depriving a physical person or a company of money, a thing of value or services, or inducing the discharge of a debt by trickery, including by use of a false name, identity or pretences (Article 313-1 of the Criminal Code).

Breach of trust (*abus de confiance*): misappropriation of funds or property received based on an understanding that they would be handled in a certain way (Article 314-1 of the Criminal Code).

Taking advantage (*abus de faiblesse*): causing a victim to act or abstain from acting in a way that causes the victim injury, by taking advantage of a state of ignorance, weakness or vulnerability, including through use of psychological pressure (Article 223-15-2 of the Criminal Code).

Extortion (*extorsion*): obtaining anything of value (information, funds, signatures, etc.) through violence or threat of violence (Article 312-1 of the Criminal Code).

Falsification (*faux*): fraudulent alteration of the veracity of a document or other medium that creates a right or obligation (Article 441-1 of the Criminal Code).

Consumer fraud (*tromperie*): deceiving a purchaser regarding the nature, quality, quantity or suitability of merchandise (Article L.213-1 of the Consumer Code).

3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed? Can a person be liable for "misprision" by helping another avoid being located or discovered?

Yes, there is liability for inchoate crimes in France. The attempt to commit a crime is punishable when, in the process of its execution, the wrongdoing was stopped or prevented from achieving its effect due to circumstances beyond the control of the actor (Article 121-5 of the Criminal Code). Attempts to commit a serious crime are always punishable. Attempts to commit an ordinary crime are punishable only if provided for by the law (Article 121-4 of the Criminal Code). One who attempts to commit a crime faces the same maximum sanctions as one who commits a crime.

The alteration, modification, concealment or destruction of the crime scene (understood broadly), or of any document likely to facilitate the discovery of the offence, the search for evidence or the conviction of the author(s), is prohibited and punished by three years in prison and a fine of €45,000 (Article 434-4 of the Criminal Code). Providing accommodation to the author of a higher crime and/or to his or her accomplice(s), or of giving them the means to evade investigations or arrest, is also prohibited (Article 434-6 of the Criminal Code).

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? Are there ways in which an entity can avoid criminal liability for the acts of its employees or agents?

An entity may be held criminally responsible for acts committed on their behalf (or for their benefit) by responsible individuals, referenced in the Code as "organs" or "representatives" of the entities (Article 121-2 of the Criminal Code).

An "organ" is generally an individual or group of individuals exercising powers inherent in their position in the entities or derived from an entity's constituent documents or internal governance. A "representative" is generally someone to whom certain responsibilities have been delegated by the entity. Court decisions are still in the process of clarifying who may be characterised as an "organ" or "representative".

An entity can avoid criminal liability if it can prove its employee was not a representative.

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

The establishment of corporate criminal responsibility does not exclude the possibility of individual responsibility for the same facts. Aside from any corporate criminal responsibility, a managing director (*chef d'entreprise*) may be criminally responsible for acts committed within a corporation subject to his or her supervision, unless these acts fall within the scope of a specific delegation of authority to another officer or employee in relation to a specific activity (e.g., employee's health and safety).

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? Has the preference changed in recent years? How so?

Since publishing a non-binding memorandum (*circulaire*) to public prosecutors, dated February 13, 2016, the French Ministry of Justice recommends the pursuit of both the legal

entity and the individual (organ or representative) if the offence is considered to have been intentionally committed. Otherwise, the prosecution should only target the corporation.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply? When does it not apply?

For years, the French Court of Cassation has dismissed criminal proceedings against an acquiring company for acts previously committed by the target company. On November 25, 2020, the French Court of Cassation issued a landmark decision (No. 18-86.955), whereby public limited liability companies ("SA" and "SAS" under French law) may now, under certain circumstances, be held criminally liable for the prior criminal conduct of the companies they acquire through mergers.

5 Statutes of Limitations

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

In 2017, the limitations period was extended to 10 to 20 years for high crimes and three to six years for ordinary crimes. For concealed infringement, the limitations period for prosecution begins running from the day on which the infringement is established. However, this period must not exceed 30 years for high crimes and 12 years for ordinary crimes from the day on which the crime was committed.

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

The limitations period starts running once the offence is entirely completed. For continuous offences – offences that are not completed instantly but over a period of time – the limitations period begins running only once the offence has reached completion. A continuous offence may therefore be prosecuted during its commission and during the provided limitations period after its completion. For concealed infringement, the limitations period for prosecution starts from the day on which the infringement is established (see question 5.1 above).

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

Limitations periods may be either "interrupted", at which point the limitations period starts anew following the interruption, or "suspended", at which point the remaining period keeps running after the suspension:

- Interruption is caused by: any acts by the public prosecutor or any civil party (*partie civile*) to initiate proceedings; any investigative acts by the public prosecutor, the police, any authorised agent or the investigating judge to search and prosecute the actor; or any judicial decision (Article 9-2 of the Code of Criminal Procedure).
- Suspension is caused by: any legal obstacle or acts of force majeure that make the opening of criminal proceedings impossible (Article 9-3 of the Code of Criminal Procedure).

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

French criminal law applies to offences for which one component has taken place on French soil, the perpetrator is a French national or corporation, or the victim is French (Articles 113-6 to 113-14 of the Criminal Code).

For acts of corruption and influence peddling, French law applies to acts committed abroad, so long as the perpetrator is a French national, a French resident or someone engaged in, in whole or in part, business in France (regardless of the nationality of the victim).

Criminal procedures applicable to prosecutions of acts committed outside of France may be different from procedures that are applicable to domestic crimes.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? Can third parties learn how the investigation began or obtain the initial file documents? If so, please describe them.

For most business crimes, investigations are initiated and led by a public prosecutor (such as the PNF). Sometimes the public prosecutor may refer the case to an investigating judge, who then leads the investigation and has the discretion to either drop some or all of the charges, or to turn the case over for trial. Both the public prosecutor and the investigating judge work in close connection with the police.

Investigations are usually opened on the basis of victim complaints, reports from another public authority, or press reports. If the public prosecutor does not prosecute, victims may request that an investigating judge commence a criminal investigation and may participate in the investigation (and in the trial) as "civil parties".

Except for "civil parties", third parties cannot learn about an investigation or have access to the file.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

French enforcement authorities may use the European Investigation Order mechanism. This tool enables judicial authorities in one EU Member State to request that evidence be gathered and transferred from another EU Member State.

France is also a signatory to a number of international agreements providing for cooperation in criminal matters. These include: bilateral extradition agreements with France's trading partners; European conventions relating to extradition from France to other European countries; more specialised agreements, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, which requires cooperation among its signatories; numerous bilateral mutual legal assistance treaties; and memoranda of understanding with most of France's trading partners.

France has designated a special office of the Ministry of Justice to handle requests made under such treaties. The Ministry of Justice, the AMF, and other organisations also have practical relationships with their foreign counterparts. The U.S. currently stations a federal prosecutor and several agents of the Federal Bureau of Investigation at its embassy in Paris. Their work includes coordinating cross-border cooperation with their French counterparts, with whom they generally have a good relationship.

7 Procedures for Gathering Information from a Company

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

Both the public prosecutor and the investigating judge, who work in conjunction with the police, have a full range of investigative powers (e.g., dawn raids, seizure of documents, wiretaps and interviews). The scope of these prosecution powers will generally vary depending on the type of investigation. Investigations may take three different forms:

- A "flagrant offence investigation", led by the public prosecutor (*enquête de flagrance*), occurs when a crime punishable by imprisonment is in the process of being committed, has just been committed, or if the suspect is found in the possession of something that would implicate their participation in the offence. This investigation allows for a wide variety of temporary detention, interrogation, and search and seizure powers.
- A "preliminary investigation", led by the public prosecutor (*enquête préliminaire*), may be used in any case, regardless of the nature of the crime. Suspects must normally give their consent to searches or seizures.
- A "judicial investigation", led by an investigating judge (*information judiciaire* or *instruction*), occurs when the investigating judge is appointed by a public prosecutor. The investigating judge enjoys very broad powers of arrest, interrogation of witnesses and suspects, and search and seizure.

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?

Both the public prosecutor and the investigating judge may demand that a company under investigation produce documents, and/or may raid a company. The circumstances will depend on the type of investigation (see question 7.1 above). Administrative authorities (such as the AMF or the ACPR) may also conduct investigations and demand that documents be produced; however, for these authorities, judicial authorisation is usually required for any raid involving the seizure of documents.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

During a raid, all employee documents may be seized irrespective of whether they are personal or work-related. The banking secrecy rule may not be invoked.

The only available protection is "professional secrecy" (*secret professionnel*), the French near equivalent of "attorney-client privilege", which protects communications between external counsel members of the Bar (*avocat*) and their clients from disclosure. French enforcement authorities, however, tend to disregard the protection for communications made before the client actually becomes a target.

In-house counsel are not considered members of a Bar, and professional secrecy does not protect their communications with the officers or employees of the company.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

No labour law impacts the collection, processing, or transfer of employees' personal data in the context of criminal investigations. All documents, files, emails, etc. located on an employee's device provided by the employer may be seized during police raids, irrespective of whether they are personal or work-related.

With regard to data protection, Law No. 2018-496 of June 20, 2018, which implements EU Directive No. 2016/680 of April 27, 2016, lays down the rules related to the protection of natural persons with respect to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the enforcement of criminal penalties. The subjects of the data, including employees, have certain rights (e.g., right of access, rectification, or erasure of personal data). However, under certain conditions, these rights may be restricted in order to, for instance, avoid obstructing official or legal inquiries, investigations or procedures, or avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the enforcement of criminal penalties. If the personal data are contained in a judicial decision, record or case file processed in the course of criminal investigations and proceedings, right of access, rectification or erasure of personal data are governed by provisions of the Code of Criminal Procedure.

Cross-border disclosure may be impeded by the French blocking statute (Law No. 68-678 of July 26, 1968, as amended in 1980), which makes it a criminal offence for any person to provide information of scientific or commercial value to a foreign investigator or court for use in a non-French judicial or administrative proceeding, other than through the exercise of an international agreement.

7.5 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 and 7.2 above.

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

Authorities may order any third party to produce documents relevant to an investigation. Third parties may not invoke professional secrecy, unless they have "legitimate grounds". In a memorandum of May 4, 2004, the French Ministry of Justice interpreted "legitimate grounds" restrictively. Unless they are suspects, third parties may not be raided.

Questioning of Individuals:

7.7 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?

Employees, officers, or directors of a company under investigation may be questioned while in custody (*garde à vue*) if there is a plausible reason to suspect that they have committed, or attempted to commit, a crime punishable by a prison sentence (Article 62-2 of the Code of Criminal Procedure). The questioning may last for a period of 24 hours (subject to several renewal periods, depending on the crime). They may be assisted by an attorney.

They may alternatively be questioned under a non-custodial regime (*audition libre de suspect*). They must give their consent and must be notified of the date and nature of the crime, as well as of their right to attorney representation and right to terminate the interview and leave at their discretion (Article 61-1 of the Code of Criminal Procedure).

If there is no plausible reason to suspect that they have committed or have attempted to commit a crime, they may only be interviewed as witnesses, with no right to assistance by counsel (Article 62 of the Code of Criminal Procedure).

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

If there is no plausible reason to suspect they have committed or attempted to commit a crime, third parties may be questioned as witnesses (see question 7.7 above).

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

Suspects questioned under the *garde à vue* or *audition libre* regimes have a right to be assisted by an attorney (see question 7.7 above). They also have a right to remain silent. In theory, no inferences may be drawn from silence, but in practice, the court will usually question the defendant's "refusal" to answer questions asked by authorities.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases are initiated by public prosecutors, or under certain conditions by the victims of crimes.

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

For most crimes, the decision to charge a defendant belongs to a prosecutor; subject, however, to policy guidelines that may be established by the Ministry of Justice. Where no investigating judge is appointed, the public prosecutor also has the authority to refer the defendant to trial before the criminal court of first instance for trial (*citation directe*).

In complex cases, the public prosecutor may request the appointment of an investigating judge to investigate the facts that the prosecutor lays out. Under certain conditions, victims may also request that an investigating judge investigate the facts they set out in a complaint. If the investigating judge decides that there are important and consistent indications of culpability of a person or entity, this defendant will be put under formal investigation (*mise en examen status*), which provides the defendant with certain rights and protection. The investigating judge may eventually either drop some or all of the charges against a defendant, or decide to refer the defendant to trial.

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 agreements are available to dispose of criminal investigations.

A pre-trial guilty plea procedure ("CRPC") exists for most ordinary crimes, including business crimes (Articles 495-7 to 495-16 of the Code of Criminal Procedure). This procedure may be initiated by the public prosecutor of his or her own initiative, at the request of the defendant or, under certain conditions, by an investigating judge. The defendant agrees to plead guilty to a particular charge in return for a more lenient sentence. The public prosecutor may propose a prison sentence not exceeding three years or half of the applicable prison sentence in cases where the maximum prison sentence before criminal courts is less than three years, and a fine not exceeding the maximum amount faced before the criminal court. If the defendant accepts the agreement, the agreement can only become effective with the court's approval. If the defendant refuses the proposed agreement, the case will be tried as usual.

For corruption, influence peddling, tax fraud and the laundering of proceeds of tax fraud, the Sapin II Law of December 2016 introduced a new procedure called a *convention judiciaire d'intérêt public* ("CJIP"), which is roughly similar to a deferred prosecution agreement in the U.S. and the UK. The CJIP permits a public prosecutor to propose an agreement by which

a corporation, without admission of guilt, would agree to pay a fine as high as 30% of its global annual turnover – meaning the annual turnover of the group, as clarified by the PNF in its new 2023 guidelines – and may agree to certain other obligations, such as the implementation of an enhanced compliance programme and supervision by a monitor. If victims are identified, the CJIP must also provide compensatory damages, which must be paid within one year. A CJIP may only be finalised following approval by a judge at a public hearing, at which the judge reviews the validity and regularity of the procedure, as well as the conformity of the amount of the fine to the statutory limit and the proportionality of the agreed-upon measures. The decision may not be appealed, and the agreement does not have the effect of a conviction. If the corporation observes the terms of the agreement, the charges will be dismissed, giving the corporation protection against prosecution in France for the facts giving rise to the CJIP.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors that courts consider when reviewing deferred prosecution or non-prosecution agreements.

See question 8.3. A CJIP may only be finalised following approval by a judge at a public hearing, at which the judge reviews whether the procedure has been correctly implemented, that the agreed-upon sanction is within statutory limitations, and that the overall sanction is in proportion to the facts giving rise to the CJIP. Courts conduct similar reviews in respect of CRPCs.

8.5 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 may apply.

Any victim who has personally and directly suffered harm due to a criminal offence may participate in the criminal procedure as a civil party and seek damages before the criminal court (Article 2 of the Code of Criminal Procedure).

8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

Yes, victims of business crimes may initiate prosecution, either by bringing cases directly before trial courts, or by requesting the appointment of an investigating judge.

9 Burden of Proof

9.1 For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

It is for the public prosecutor to build the case and to produce sufficient evidence at trial in order to convince the court of the defendant's guilt. Any remaining doubt should weigh in favour of the defendant.

With respect to affirmative defences, the burden of proof shifts to the party raising them.

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

There is no statutory standard of proof to be met by the prosecution. Trial judges rule on the basis of their "innermost convictions".

Since a public prosecutor has the burden of proving the defendant's guilt, he or she must convince the court that all factual and legal elements of the offence have been met and that the defendant had the requisite intent to commit the offence.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof? If a jury or group of juries determine the outcome, must they do so unanimously?

Business crimes are not judged by a jury. Trial judges decide on the facts and assess whether the prosecutor and the defendant have both satisfied its burden of proof.

10 Conspiracy / Aiding and Abetting

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

Yes, French law recognises the principle of "aiding and abetting" (*complicité*). An accomplice is a person who knowingly aided and facilitated the preparation of a criminal offence. A person is also an accomplice if they have precipitated an offence through gifts, promises, threats, orders, abuse of authority or power, or have given instruction to commit it. The accomplice may be punished in the same manner as the principal perpetrator of the offence, and may incur the same maximum penalty (Articles 121-6 and 121-7 of the Criminal 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?

Under French criminal law, crimes may be either intentional or unintentional. Where intent is required, it falls on the public prosecutor to prove that the defendant intended to commit the crime for which he or she is being prosecuted.

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?

Ignorance of the law is generally not a defence. However, there exists one statutory defence based on an erroneous understanding of the law: if a defendant, based on a mistake in the

law that he or she was not in a position to avoid, can prove that he or she believed that the action could be legitimately performed, then the defendant is not criminally liable (Article 122-3 of the Criminal Code).

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 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?

Ignorance of the facts does not constitute a defence. Where a defendant ignores that he or she has engaged in conduct that he or she knows is unlawful, this may open the possibility of a lack of intent defence.

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Any person who has knowledge of a high crime, the consequences of which are still possible to prevent or limit, must report it to the authorities. Failure to report may be punished by three years' imprisonment and a fine of €45,000 (Article 434-1 of the Criminal Code). This obligation does not, however, apply to persons bound by statutory professional secrecy obligations (including external counsel).

Auditors must report business-related offences that they are aware of to a public prosecutor. Failure to report is punishable by five years' imprisonment and a €75,000 fine (Article L.820-7 of the Commercial Code).

Civil servants who, in the performance of their duties, become aware of a crime must report it without delay to the public prosecutor and must provide all relevant information, minutes and documents relating to the report (Article 40 of the Code of Criminal Procedure). However, failure to report is not punishable.

Whistle-blowers may reveal possible criminal activity to French authorities. A person who legally qualifies as a whistle-blower and complies with the procedure for reporting provided by this law may not be held criminally liable for disclosing confidential information, as long as this action was necessary and proportionate to the safeguards of the interests involved. The whistle-blower may not be discriminated against, nor have his or her employment terminated on the grounds of this disclosure.

There is no provision under French law for the payment of a "bounty" to a whistle-blower. However, since 2017, the French tax administration may reward "informants" who report misconducts relating to specific French provisions governing international taxation. The amount of the reward is based on the tax evaded.

13 Cooperation Provisions / Leniency

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

France has no strong traditions or criminal procedures that encourage "self-reporting". Since 2013, however, perpetrators or accomplices to an offence of bribery or influence peddling of public officials or judicial staff will have their sanctions reduced by half if, by having informed administrative or judicial authorities, they enabled them to put a stop to the offence or to identify other perpetrators or accomplices. In non-binding memoranda to public prosecutors dated January 2018 and June 2020, the French Ministry of Justice also recommended that public prosecutors consider self-reporting when deciding whether to offer a CJIP to a corporation and when negotiating the amount of the fine. In non-binding guidelines dated January 2023, the PNF indicates that it is ready to offer important potential reductions to the fine in the case of "voluntary self-disclosure" (50%).

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

Apart from leniency programmes available before the Competition Authority in the context of competition-related offences, no guidelines have been issued.

However, in the context of some specific corporate crimes (e.g., corruption and tax fraud), the PNF and other prosecutors' offices have discretion to propose resolving a case through a CJIP. The guidelines dated January 2023 list factors that will be considered by the PNF before deciding to do so, including: (i) self-reporting within a reasonable time following the discovery of misconduct; and (ii) the degree of cooperation with the prosecution authorities, both being mitigating factors in the calculation of the fine. In that context, cooperation primarily means conducting a thorough internal investigation, resulting in a report that is made available to the PNF along with all relevant documents and testimony.

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 8.4.

15 Sealing

15.1 Are there instances where the court proceedings or investigation files are protected as confidential or sealed?

Investigation files are confidential. Documents or data that

have been seized during an investigation must be identified in an inventory and sealed. Sealed objects, documents or data may only be opened where the accused, or at least his or her lawyer, is present.

16 Elements of a Corporate Sentence

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

Sentencing guidelines are alien to the French system. French courts have the discretion to impose penalties of up to the maximum amount provided for by statute. The sanction must, however, be proportionate to the seriousness of the offence and to the offender's personality. For each offence, the statutes provide for the maximum jail time and fine amount faced by natural persons. Legal entities face fines of up to five times the amount applicable to natural persons.

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

In addition to respecting sentencing rules codified in the Criminal Code and the Code of Criminal Procedure, courts must respect formal requirements related to discussions and decisions (debates among judges sitting on the court are in chamber with no-one from the public, decisions must be in writing and with the reasons set out, decisions must be first given during an oral hearing, etc.).

16.3 Do victims have an opportunity to be heard before or during sentencing? Are victims ever required to be heard? Can victims obtain financial restitution or damages from the convicted party?

Victims party to the criminal proceeding ("civil parties") may be heard and seek damages.

17 Appeals

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

Yes, guilty or non-guilty verdicts are appealable by the defendant and by the public prosecutor. A civil party may only appeal the part of a non-guilty verdict that relates to damages.

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

Yes, a criminal sentence may be appealed by both the defendant and the public prosecutor. A civil party may only appeal a criminal sentence following a guilty verdict with respect to the amount of damages granted by the criminal court.

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

The standard of review used by the Criminal Court of Appeal is identical to the standard used in the court of first instance. An appeal is essentially a de novo review: an appeal takes the form of a retrial by the appellate court based on elements of law and fact. By contrast, Court of Appeal decisions may be subject to review by the French Court of Cassation only on issues of law.

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

Under French criminal law, an appeal has suspensive effect. Courts of appeals have the authority to acquit the accused (of all charges or of some counts), or to modify the sentence.

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