

French Criminal Court Imposes Blockbuster Fine for Tax Fraud Related Offences

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On February 20, 2019, the Paris criminal court convicted Swiss bank UBS AG of illegal solicitation of financial services and aggravated laundering of the proceeds of tax fraud, and imposed a fine of €3.7 billion. This is by far the largest fine ever imposed by a French criminal court. This landmark decision may affect the strategy of corporate defendants in a French criminal investigation. UBS AG has announced that it will appeal the decision.

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Background. In 2013, UBS AG was formally named as target of a French criminal investigation on charges of illegally soliciting high net worth clients in France and aggravated laundering of the proceeds of tax fraud between 2004 and 2012. The assets allegedly concealed by French clients in Switzerland were estimated to be approximately €10 billion. The bank was ordered to pay an unprecedented bail of €1.1 billion, upheld by French courts as well as the European Court of Human Rights. UBS France and several former UBS managers were also put under formal investigation for alleged complicity with these violations.

Settlement talks. In 2014, UBS AG refused to enter a pre-trial guilty plea (known as “CRPC”). While this procedure allows for a more lenient sentence, legal entities operating in a multi-jurisdictional landscape and that are keen on avoiding a formal conviction rarely enter into such deals.

However, in December 2016, as the investigation was progressing, France added deferred prosecution agreements (known as “CJIP”) to its law enforcement toolkit, enabling corporations to enter into deals with French authorities to resolve certain criminal cases, including those of alleged laundering of the proceeds of tax fraud, without a formal conviction. The defendant corporation has to agree to the payment of a fine proportionate to the benefit secured through the illicit activity, but capped at 30 percent of the corporation’s average annual turnover during the previous three years. CJIP discussions between UBS AG and French investigators were held in early 2017 but failed, reportedly because French authorities refused to accept a financial penalty below €1.1 billion. Both sides probably took the view they would be able to achieve better results at trial.

Interestingly, one of the individual defendants charged with complicity accepted an offer to enter into a pre-trial guilty plea, admitting facts that implicated the other defendants. However, a bench judge, exercising a rarely-used discretion, refused to approve the deal, and sent him back to stand trial.

The trial. In October and November 2018, the defendants were tried before the Paris criminal court. One highlight of the six-week trial was the National Financial Prosecutor's office (known as "PNF") call for a €3.7 billion fine against UBS AG, reportedly based on an aggressive calculation of the maximum applicable statutory fine. The French State also claimed €1.6 billion as compensation for lost tax revenues.

The Paris Criminal Court decision. On February 20, 2019, the court convicted and fined UBS AG €3.7 billion for illegal solicitation of financial services and aggravated laundering of the proceeds of tax fraud. UBS AG's French subsidiary was also convicted and fined €15 million for complicity. Five of the six individual defendants were also found guilty and sentenced to suspended jail terms and fines of up to €300,000. The two banks and three of the individuals will also have to pay a total of €800 million to the French State in compensation for lost tax revenues. UBS AG has already announced that it will appeal this ruling.

Takeaway. This decision is the PNF's first significant trial victory since the office was established in early 2014. Once it is issued, the written judgment of the Paris criminal court may provide useful insight into the reasoning of the court, particularly regarding the calculation of the fines and the assessment of aggravating and mitigating factors. In any event, the heavy fines imposed send a clear signal to companies weighing the pros and cons of entering into a CJIP versus risking a criminal trial. Aside from the risk of a formal conviction and its potentially serious collateral consequences, the level of fines that can be expected from French criminal courts will clearly be an important consideration. If the UBS AG conviction and fine stand, the French judiciary will have significantly raised the stakes for corporate defendants faced with this choice.

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With a team of white-collar lawyers based in Paris, we are well positioned to assist clients on these and other issues. Please do not hesitate to contact us with any questions.

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