



# **Q&A IN RELATION TO BRIBERY OFFENCES IN FRANCE**

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## 1 Q&A In Relation to bribery offences in France

### 1. Legal Framework

#### What is the legal framework governing bribery in France?

- The French Criminal code (*Code pénal*) contains the general provisions prohibiting corruption and influence peddling (referred to herein together as corruption offences) both in public and private sectors and whether involving French or foreign individuals and legal persons. Both soliciting and receiving (passive corruption) as well as offering and giving (active corruption) of bribes constitute an offence under the applicable laws.
- In addition, please note that a failure to adopt a compliance program aimed at detecting and preventing corruption offences, when required by law No. 2016-1691 of December 9, 2016 (Sapin II Law), may lead to administrative fines decided by the French anticorruption agency (*Agence Française Anticorruption (AFA)*).

### 2. What Constitutes a Bribe?

#### What constitutes a bribe?

- Bribes are defined under the French Criminal code as any offers, promises, donations, gifts or benefits offered or given with the intention of inducing or rewarding another person (i) to perform or not to perform any act within the scope of their occupation or facilitated by their occupation (corruption) or (ii) to abuse their real or supposed influence to obtain favorable decisions from an authority or public administration (influence peddling).
- The relevant occupations cover both mandates and missions carried out by persons vested with public authority, in charge of a public service mission or holding a public elected office in France or abroad (public officials), as well as functions and activities carried out by private parties who have management position or work for any person or organization.
- French laws do not set out any de minimis amounts for acceptable advantages, so that any advantage offered or given in the above conditions constitutes a bribe under the statutory definitions.

#### What are the principal offences under this legal framework?

- Offering or giving a bribe to another person, whether a Public Official or a private party;
- soliciting or accepting a bribe whether by a Public Official or a private party;
- offering or giving a bribe to a foreign Public Official; and
- soliciting or accepting a bribe by a foreign Public Official.
- Depending on the factual elements, the above behavior can fall within the offence of corruption or that of influence peddling (see section 2 above).

### 3. Jurisdictional Reach

#### What is the jurisdictional reach of the legal framework?

- For offences under French Criminal code French authorities may take jurisdiction where:
  - at least one of the constitutive elements of an offence takes place in France; or
  - the victim of a crime (crime) or a misdemeanor (délit) punishable by imprisonment, is of French nationality; or

- where a crime (crime) or misdemeanor (délit) is committed abroad by a person of French nationality, if the relevant behavior is punishable also in the country where it took place. This requirement of double-incrimination is not applicable to corruption offences involving foreign (not French) public officials. In such cases, even if the relevant behavior does not constitute an offence in the country where it took place, French authorities may take jurisdiction where the offender is a person of French nationality, habitual resident of France, or carries on all or part of their economic activity on French territory.
- Finally, by way of a note, the Sapin II Law article 17's compliance program, referred to above, is required to be adopted by French companies or groups of companies (i) with at least 500 employees and (ii) having turnover or consolidated turnover of more than EUR100 million. These companies are required to deploy the compliance program throughout their subsidiaries and controlled companies, whether French or foreign, so that the AFA controls are international in scope.

## 4. Who may be liable?

### Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Private individuals, Public Officials and legal entities can be prosecuted for corruption and influence peddling under the French Criminal code.
- For a legal entity to be held liable (i) the offence must have been committed by a body or representative of the legal entity (ii) on behalf of such entity.

### Can a parent company be liable for its subsidiary's involvement in bribery?

- Criminal liability is personal under French law, so that, as a matter of principle, the parent company does not bear indirect liability for offences committed by its subsidiaries (with the exception where it has itself participated to the commission of the offences or aided and abetted in the commission of the offence).
- However, in a recent case of the French Supreme Court, an offence committed by a subsidiary was considered as being attributable to the parent company. In this case the subsidiary appeared to lack all autonomy and decision-making powers distinct from the parent company and was deemed to be a mere vehicle for decisions determined by the parent company (*Cass. crim., 14 mars 2018, no 16-82117*).

## 5. High Risk Areas

### Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- Yes, facilitation payments are considered to be bribes and are consequently prohibited.

### Does the legal framework restrict political and charitable contributions?

- Political contributions, as defined by law No. 88-227 of March 11, 1988, to a French political party made by legal entities are forbidden by French law.
- Charitable contributions are not prohibited *per se*, but would fall to be assessed by reference to the provisions described in this note (section 2 and 3).

### Does the legal framework place restrictions on corporate hospitality?

- French law makes no express provisions or exemptions with regard to corporate hospitality, and any financial or other advantage given in that context would fall to be assessed by reference to the provisions described in this note (sections 2 and 3).

## 6. Legal Defences

### Are there any defenses for bribery offences?

- There are no specific statutory defenses to corruption offences under French law. According to the guidelines on French *Convention judiciaire d'intérêt public* (CJIP, see section 13), dated June 26, 2019 jointly adopted by AFA and the National Financial Prosecutor's Office (*Parquet National Financier (PNF)*), the existence of a compliance program may constitute a favorable element for acceptance of a settlement (see section 11), where the relevant company is not required by statute to adopt such a program. To the contrary, where the relevant company is under a statutory obligation to adopt a compliance program aimed at preventing and detecting corruption and influence peddling, absence thereof may be taken into account as an unfavorable factor in this context or for the purposes of determining the fine that accompanies the CJIP.

## 7. Regulatory and Enforcement Bodies

### What are the key regulatory or enforcement bodies with regard to bribery?

- Prosecutors, investigative judges (*juges d'instruction*) and competent criminal courts (*tribunaux correctionnels*) are the primary institutions in France for investigating, prosecuting and ruling over misdemeanors and crimes. As regards complex bribery-related offences, a specialized prosecution office for financial crime, the PNF, shares its jurisdiction with the above-mentioned institutions.

## 8. Legal Consequences

### What are the legal consequences of being found guilty of bribery offences?

- Individuals may face up to:
  - an imprisonment term: ten years in case of corruption and/or influence peddling of Public Officials and five years in case of private sector corruption and/or influence peddling;
  - a fine: EUR1 million in the case of corruption and/or influence peddling of public officials and EUR500,000 in case of private sector corruption and/or influence peddling, which amounts may in both cases be alternatively set to twice the proceeds of the offence;
  - additional penalties: including prohibition to exercise certain civil, civic and family rights, prohibition to hold public office, prohibition to exercise the activity within which the offence was committed, or a commercial or industrial profession, prohibition to direct or control, directly or indirectly, an industrial or commercial company, publication of the court decision, and confiscatory sanctions;
- Companies face up to:
  - a fine: the amount of which is five times that provided for individuals;
  - additional penalties: including prohibition to operate one or several professional or social activities within which the offence was committed, placing under judicial supervision, closure of establishments used to commit the offence, debarment from public procurement contracts, prohibition to proceed with a public tender offer, to make an initial public offering, or to issue cheques and to use a payment card, publication of the court decision, and confiscatory sanctions.
  - Finally, the relevant company may be required to adopt compliance policies aimed at preventing and detecting corruption and influence peddling. Monitoring of such a program can be entrusted to the AFA by the court for a period up to five years.

## 9. Deferred Prosecution Agreements

### Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- Yes, bribery offences may be settled by way of a CJIP, which may be offered by the prosecutor to legal entities but not to individuals.
- If a CJIP is offered and accepted by a legal entity, and provided all legal conditions are met, the prosecutor refers the matter to a judge, who may validate the CJIP.
- Individuals can, however, enter into plea discussions with the prosecutor for certain misdemeanors, including corruption and influence peddling (*Comparution sur reconnaissance préalable de culpabilité (CRPC)*), which however lead to recognition of criminal liability and are not therefore fully comparable to CJIPs.

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