

# Presentation of various regulatory frameworks for promoting business integrity across the world

**Study**  
**MAY 2023**



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The opinions expressed in this document are those of the French Anti-Corruption Agency (AFA) and do not necessarily reflect the opinions of the authorities and organizations listed above.

# 1. CONTEXT AND OBJECTIVES

## 1.1. National strategies

The fight against corruption is a priority for many governments at both the national and international levels.

This is evidenced by the adoption, in recent years, of national anti-corruption strategies that increasingly focus on foreign corruption. For example:

- In 2017, the UK government published an ambitious anti-corruption strategy in an effort to boost the reputation and appeal of UK businesses<sup>1</sup>. The government has also pledged to continue working to strengthen international standards in order to tackle transnational corruption;
- In 2020, at the initiative of the AFA, France published a multi-year national anti-corruption plan<sup>2</sup> for a period of three years and is currently defining the strategic axes of its next plan. In addition, the French Ministry of Europe and Foreign Affairs has published a "French anti-corruption strategy in its cooperation action 2021-2030" and thus offers a common intervention framework for all actors of the French bilateral and multilateral international cooperation<sup>3</sup>;
- In June 2021, the President of the United States officially established the fight against corruption as a core U.S. security interest<sup>4</sup>. In December 2021, the government published its first national strategy on countering corruption<sup>5</sup>. Its priorities include bringing greater transparency to the US and international financial system, elevating anti-corruption work as a priority across U.S. federal departments and agencies, and substantially enhancing international cooperation.

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<sup>1</sup> UK Government, [UK anti-corruption strategy 2017 to 2022](#), december 2017

<sup>2</sup> AFA, [Plan national pluriannuel de lutte contre la corruption](#), january 2020

<sup>3</sup> Ministère de l'Europe et des Affaires Étrangères, [Stratégie anticorruption de la France dans son action de coopération 2021-2030](#), june 2021

<sup>4</sup> The White House, [Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest](#), june 2021

<sup>5</sup> The White House, [Fact Sheet: U.S. Strategy on Countering Corruption](#), june 2021

## 1.2. National standards

### The French legal framework

French companies must respect the French legal framework which defines and punishes the following offences, provided for and punished by the French criminal Code: active public bribery<sup>6</sup>, passive public bribery<sup>7</sup>, active private bribery<sup>8</sup>, passive private bribery<sup>9</sup>, extortion by public officials<sup>10</sup>, illegal taking of interests<sup>11</sup>, "revolving door"<sup>12</sup> (meaning a situation in which someone moves from an influential government position to a position in a private company, or vice versa), active influence peddling<sup>13</sup>, passive influence peddling<sup>14</sup>, embezzlement or misappropriation of public funds or property<sup>15</sup> and favoritism in the awarding of public contracts and public service delegations<sup>16</sup>.

In addition, *Law n°2016-1691 of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life*, known as the Sapin II Act<sup>17</sup>, introduced new obligations for business and public actors in terms of preventing and detecting breaches of probity, with the introduction into the French criminal Code of the offence of influence peddling by foreign public officials<sup>18</sup>, the institution of a general status of protection for whistleblowers (Articles 6 to 16 of the Act), the obligation (Article 17) for companies subject to the Act to put in place measures and procedures to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling, hereinafter referred to as the "anti-corruption compliance programme" throughout this document, and the creation (Article 1) of the French Anti-Corruption Agency (AFA).

The AFA is also responsible for monitoring compliance by companies subject to the Act with the anti-corruption measures and procedures defined in Article 17-II of the Act, subject to administrative sanctions<sup>19</sup> that may be imposed by the AFA Sanctions

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<sup>6</sup> French penal Code, [article 433-1](#) (in French only)

<sup>7</sup> French penal Code, [article 432-11](#) (in French only)

<sup>8</sup> French penal Code, [article 445-1](#) (in French only)

<sup>9</sup> French penal Code, [article 445-2](#) (in French only)

<sup>10</sup> French penal Code, [article 432-10](#) (in French only)

<sup>11</sup> French penal Code, [article 432-12](#) (in French only)

<sup>12</sup> French penal Code, [article 432-13](#) (in French only)

<sup>13</sup> French penal Code, [article 433-1](#) (in French only)

<sup>14</sup> French penal Code, [article 432-11](#) (in French only)

<sup>15</sup> French penal Code, [article 432-15](#) (in French only)

<sup>16</sup> French penal Code, [article 432-14](#) (in French only)

<sup>17</sup> [Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016](#), known as Sapin II Act (in French only)

<sup>18</sup> French penal Code, [article 432-11](#), [article 433-1](#) (in French only)

<sup>19</sup> The AFA Sanctions Commission may order the company and its representatives to adapt the company's internal compliance procedures for the prevention and detection of bribery or influence peddling, in accordance with the recommendations it makes to them for this purpose, within a time limit that it sets and that may not exceed three years. It may impose a financial penalty, the amount of

Commission; and for monitoring the quality and effectiveness of procedures for preventing and detecting breaches of probity<sup>20</sup> implemented by public entities<sup>21</sup>, regardless of their size (Article 3). In addition to these control missions, the AFA is responsible for providing support to business actors<sup>22</sup> to help them prevent and detect the commission of corruption and influence peddling. This support takes the form, in particular, of the drafting of guidelines and practical guides or awareness-raising and training activities.

Finally, in terms of repression, the Sapin II Act has, through provisions relating to the jurisdiction of French courts, facilitated the prosecution of transnational corruption and created new penal tools to improve the effectiveness of the judicial response to acts of corruption. In particular, it created the Judicial Public Interest Agreement known as "CJIP"<sup>23</sup> (introduced in the French Code of criminal procedure<sup>24</sup>), which consists of a transactional mechanism that can be defined as an alternative measure to prosecution applicable to legal entities. The AFA also monitors anti-corruption compliance programs, within this legal framework, to ensure the existence and implementation by the legal entity of an effective corruption prevention system, which also contributes to avoiding the repetition of the offense.

## The other standards

French companies operating abroad must also comply with the regulatory frameworks of the countries in which they develop activities and/or export their products.

Many countries have introduced their own demanding and constraining anti-corruption legislative framework. Examples include the United States with the *Foreign Corrupt Practices Act "FCPA"* (1977),<sup>25</sup> the United Kingdom with the *UK Bribery Act "UKBA"* (2010),<sup>26</sup> Brazil with the *Lei Anticorrupção* (2014),<sup>27</sup> China with the *Prevention of Bribery Ordinance* (1971),<sup>28</sup> India with the *Prevention of Corruption Act* (1988)<sup>29</sup> and Australia, which has codified measures to tackle transnational corruption into the

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which may not exceed €200,000 for individuals and €1 million for legal entities, and may order the publication, dissemination or posting of the injunction or financial penalty decision or an extract therefrom, in accordance with the terms and conditions that it shall specify. The costs are paid by the natural person or legal entity sanctioned.

<sup>20</sup> These offences are defined in the French criminal Code, in Book IV, mainly in two categories: "attacks on the authority of the State" (Title III) and "attacks on public confidence" (Title IV).

<sup>21</sup> Administrations of the State, local authorities, their public establishments, semi-public companies and companies covered by Title II of Book V of the first part of the General Code of territorial communities, and associations and foundations recognized as being of public interest.

<sup>22</sup> All corporate entities, irrespective of legal form or size (companies, industrial and commercial public undertakings (EPICs), economic interest groups (EIGs), trade associations, professional bodies, etc.).

<sup>23</sup> [Convention judiciaire d'intérêt public \(CJIP\)](#) (in French only)

<sup>24</sup> French Code of criminal procedure, [article 41-1-2](#) (in French only)

<sup>25</sup> [Foreign Corrupt Practices Act, Pub. L. 95-213, 91 Stat. 1494 \(1977\), 15 U.S.C. §§78dd-1, et seq](#)

<sup>26</sup> [Bribery Act 2010, c.23](#)

<sup>27</sup> [Lei Anticorrupção, Lei nº 12.846, de 1º de agosto de 2013](#)

<sup>28</sup> [Cap. 201 Prevention of Bribery Ordinance](#)

<sup>29</sup> [Prevention of Corruption Act, 1988, Act No. 49 of 1988](#)

*Criminal Code Act of 1995*.<sup>30</sup>

In addition, as a result of multilateral initiatives to combat national and transnational corruption, which have led to the adoption of international conventions<sup>31</sup>, more and more states have committed themselves to ensuring that their legislation complies with the standards of these conventions, so as to combat corruption and promote business integrity internationally.

In parallel with these developments, international financial institutions, such as the International Monetary Fund (IMF) and the World Bank Group (WBG), have developed their own instruments to subject the third parties with whom they work to strict integrity obligations. This is the case with the IMF's policies<sup>32</sup> and the WBG's anti-corruption framework<sup>33</sup>, whose non-compliance by third parties may be subject to significant contractual penalties (up to and including exclusion from participation under projects they finance).

Private initiatives have also emerged such as the creation of the "*ISO 37001 – Anti-bribery management systems*"<sup>34</sup> developed by the International Organization for Standardization (ISO).

### 1.3. Broader territorial jurisdiction criteria

Some national legal instruments have an extraterritorial scope, i.e., they can apply to activities that do not have a direct connection with their territory. This is notably the case of the American, British and French laws:

- the *Foreign Corrupt Practices Act* (FCPA)<sup>35</sup> applies to corruption offences committed in the U.S. and/or abroad by U.S. persons and entities, as well as those doing business in the U.S., regardless of their nationality, or having a connection to the U.S. (e.g., use of U.S. currency to pay bribes). The FCPA also targets "issuers," defined as U.S. and foreign companies that issue securities on a U.S. regulated market and/or required to file periodic reports with the Securities and Exchange Commission (SEC);
- the *United Kingdom Bribery Act* (UKBA)<sup>36</sup> has extraterritorial scope. It applies to bribery offences, committed in the United Kingdom (UK) and/or in a foreign

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<sup>30</sup> [Criminal Code Act 1995. No. 12 of 1995](#)

<sup>31</sup> [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions \(1997\) \(oecd.org\)](#), [Council of Europe Criminal Law Convention on Corruption \(1999\) \(coe.int\)](#), [United Nations Convention Against Corruption \(2005\) \(unodc.org\)](#)

<sup>32</sup> [IMF and Good Governance \(imf.org\)](#)

<sup>33</sup> E.g., Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (revised as of July 1, 2016), available at : <https://policies.worldbank.org/en/policies/all/ppfdetail/4039>

<sup>34</sup> The ISO 37001 standard is not publicly accessible.

<sup>35</sup> [Foreign Corrupt Practices Act, Pub. L. 95-213, 91 Stat. 1494 \(1977\), 15 U.S.C. §§78dd-1, et seq](#)

<sup>36</sup> [Bribery Act 2010, c.23](#)

territory (provided some part of the bribery offence takes place in the UK or the conduct would form an offence if committed in the UK and the person carrying out the conduct has a close connection to the UK). Further, there is an offence of '*Failure of commercial organisations to prevent bribery*' which will apply to companies irrespective of whether the offence takes place in the UK provided, the offending company is incorporated in the UK or carries on a business or part of a business in the UK;

- France has strengthened the extraterritoriality of its criminal law<sup>37</sup> with respect to corruption and influence peddling through Article 21<sup>38</sup> of the Sapin II Act, which authorizes criminal prosecution for offences committed abroad, not only by a natural person of French nationality, but also by any natural person or legal entity habitually residing or exercising all or part of their economic activity on French territory.

In this fast-moving landscape, French companies, and in particular those with operations abroad, may face several difficulties:

- complying with several national regulations on corruption, which can lead to sanctions of various kinds ;
- ensuring effective operational coordination in the implementation of the various national obligations to which they are subject in terms of anti-corruption compliance.

In this context, the AFA wished to conduct a study comparing the French anti-corruption framework to the American and British frameworks as well as to that of the World Bank Group, in order to ensure that the French framework allows companies that comply with it, to deploy an effective and useful anti-corruption compliance programme in their growth and development strategy abroad and thus limit the risks of exposure to corruption by meeting the highest levels of international standards.

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<sup>37</sup> French penal Code, [article 113-2](#), [article 113-6](#), [article 113-7](#) (all in French only)

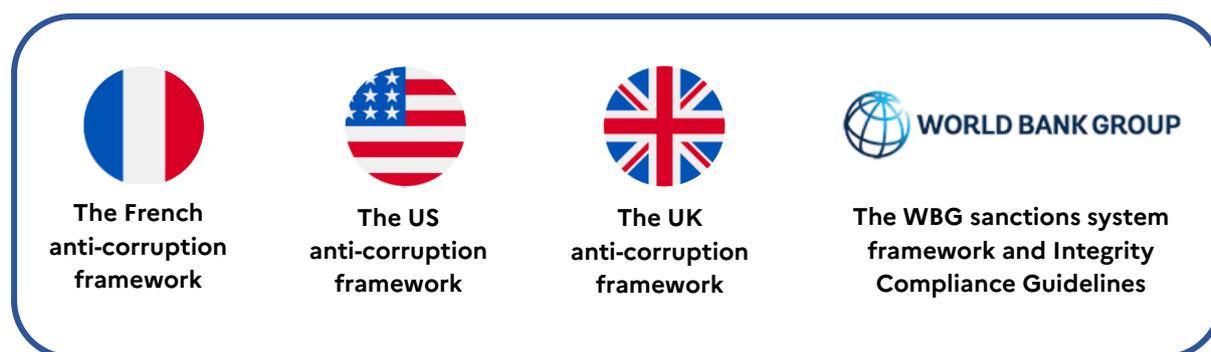
<sup>38</sup> Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, known as Sapin II Act, [article 21](#) (in French only)

## 2. PURPOSE OF THE STUDY

### 2.1. Presentation of anti-corruption frameworks covered in this study

This section presents the French anti-corruption framework<sup>39</sup> in relation to the main principles of the foreign anti-corruption frameworks listed below, regarding corporates.

For the purposes of this document, the notion of "framework" is used in the broad sense of the term to mean the set of binding standards and their accompanying measures, such as recommendations, guidelines and practical guides.



Before looking at the content of anti-corruption measures, it is necessary first to present the applicable body of law and rules organized around binding measures supplemented by soft law (e.g., international norms, principles, and procedures) and resulting, in the systems studied, from various provisions of a different nature.

<sup>39</sup> [AFA Guidelines](#), JORF, §4, p.3: "The Act, the implementing decrees, these guidelines and the guides posted to the AFA website constitute the French anti-corruption policy framework. This framework contributes to the implementation of France's international commitments in the fight against corruption".

## The French anti-corruption framework

### ❖ What does the French anticorruption framework comprise?

- ➔ **[Sapin II Act](#)** and its implementing decrees<sup>40</sup>: the Sapin II Act of December 9, 2016 aims to strengthen and improve transparency, the fight against corruption and the modernization of economic life. Article 17 of the Act requires the directors of companies employing at least five hundred employees, or belonging to a group of companies whose parent company has its headquarters in France, and whose workforce includes at least five hundred employees, and whose sales or consolidated sales exceed one hundred million euros, to put in place, independently of any suspicion of a criminal offence, measures and procedures designed to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling. This obligation extends to subsidiaries and companies controlled by these groups in France and abroad. The eight measures and procedures are as follows: the code of conduct, the internal alert system, risk mapping, procedures for evaluating third parties, accounting control procedures, the training system, the disciplinary system and the internal control and evaluation system for measures implemented.
- ➔ **[AFA Guidelines](#)**: published in December 2017 and updated in January 2021, the AFA's guidelines (available in French, English and Spanish) explain the provisions of the Sapin II Act and are intended for all types of organizations. They do not create any legal obligation for the targeted persons<sup>41</sup>, and propose a systemic approach based on three inseparable pillars: the commitment of the governing body, the mapping of corruption risks and the management of risks around the triptych of prevention, detection, and remediation.
- ➔ **[AFA guides](#)**: the guides published by the AFA are pedagogical tools with a thematic or sectoral focus intended to help entities in the implementation of their anti-corruption compliance programme. To date, several themes have been the subject of a guide, such as : [the corporate anti-corruption compliance function](#), [gifts and hospitality policy in private and public sector corporations and non-profits](#), [corporate anti-corruption accounting controls](#), [preventing conflicts of interest in the private sector](#), [anti-corruption due diligence for mergers and acquisitions](#), [internal anti-corruption investigations](#) (available soon

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<sup>40</sup> [Decree 2017-329 of 14 March 2017 on the French Anti-Corruption Agency](#), [Decree 2017-660 of 27 April 2017 on the deferred prosecution agreement and the judicial guarantee](#), [Decree 2017-564 of 19 April 2017 on whistleblowing systems and procedures in public entities, private entities and central government bodies](#) (all in French only)

<sup>41</sup> [AFA guidelines](#), JORF, §8, p.3 : "These guidelines are not legally binding on the target organisations"

in English) or a sector guide on [the implementation of a system to prevent corruption risks in the building and public works sector](#) (available in French only). In addition, the AFA has published [an anticorruption guide for SMEs and smaller intermediate-sized enterprises](#) which, even if they are not subject to Article 17 of the Sapin II Act, have an interest in voluntarily implementing anti-corruption measures in order to avoid criminal liability for corruption and thus prevent its consequences (legal, financial, reputational), to develop a competitive advantage over companies that do not have an anti-corruption compliance programme, to facilitate obtaining financing or to have a robust system in place in the event of prosecution by foreign or French authorities.

### ❖ What anti-corruption measures are companies required to implement?

As mentioned above, the Sapin II Act requires companies subject to Article 17 to implement an anti-corruption compliance programme containing the eight measures mentioned above. The existence, quality and effectiveness of this programme may be subject to control by the AFA and, in the event of a breach of Article 17, to administrative sanctions imposed by the AFA Sanctions Committee<sup>42</sup> consisting of an injunction to comply, a financial penalty or the decision to publicize the sanction.

The existence, effectiveness and quality of this programme are also taken into account in the event of prosecution for corruption, within the framework of a Judicial Public Interest Agreement (CJIP)<sup>43</sup>. The absence or inadequacy of the anti-corruption compliance program is a factor that increases the amount of the repressive aggravating part of the public interest fine<sup>44</sup>, and the company may be required, in addition to this fine, and regardless of its size, to implement a compliance programme, under the supervision of the AFA and for a maximum period of three years.

In addition, in the event of criminal proceedings against a legal entity leading to a conviction by a criminal court for acts of corruption, the company may now be sentenced to a penalty, known as a compliance programme penalty (PPMC), which consists of submitting, under the supervision of the AFA and for a maximum period of five years, to a compliance programme designed to ensure the existence and implementation within the company of measures and procedures for the prevention and detection of acts of corruption and influence peddling<sup>45</sup>.

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<sup>42</sup> The Enforcement Committee may impose a financial penalty of up to €200,000 for individuals and €1 million for legal entities.

<sup>43</sup> [Convention judiciaire d'intérêt public \(CJIP\)](#) (in French only)

<sup>44</sup> [Guidelines of the French National Financial Prosecutor's Office on the implementation of the judicial public interest agreement](#), January 2023, page 16 (in French only)

<sup>45</sup> This penalty is defined in [Article 131-39-2 of the French criminal Code](#) (in French only)

## The US anti-corruption framework

### ❖ What does the US anti-corruption framework comprise?

- ➔ **The Foreign Corrupt Practices Act (FCPA)**: the FCPA was adopted in 1977 with the purpose of prohibiting corruption involving foreign government officials. The FCPA applies to all U.S. persons and entities, engaging in acts, directly or through an agent, in furtherance of corrupt payments taking place within the territory of the United States, regardless of their nationality. In addition, the FCPA applies to "issuers"<sup>46</sup>, defined as US and foreign companies listed on stock exchanges in the US or that are required to file periodic reports with the Securities and Exchange Commission (SEC), and that are required to comply with anti-bribery, accounting and internal control requirements.
- ➔ **The FCPA Resource Guide**: released in 2012 by the Criminal Division of the Department of Justice (DOJ) and the Enforcement Division staff of the Securities Exchange Commission (SEC), this publication contains FCPA-related guidance for companies and individuals. The guide which has been updated in 2020 addresses the following topics: anti-bribery provisions, accounting provisions, guiding principles of enforcement, penalties, sanctions, and remedies, resolutions, whistleblower provisions and protections, etc.
- ➔ **Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy**: revised in January 2023 by the DOJ Criminal Division, this policy outlines new provisions for prosecutors to follow when prosecuting corporations and individuals in the fight against economic crime. It provides for criteria to be considered in determining corporate liability, such as whether the company has a history of disclosure, whether the company voluntarily disclosed the facts, whether the company cooperated in investigations, etc. This policy outlines incentives for companies who voluntarily disclose potential violations of U.S. criminal law and cooperate with DOJ's investigation into to the potential violations.
- ➔ **Evaluation of Corporate Compliance Programs (ECCP) Guidance**: this guidance, first released in 2017 (most recently updated in March 2023 by the DOJ), is intended to assist prosecutors in evaluating corporate compliance programme. Specifically, it is meant to assist them in making informed decisions as to whether, and to what extent, an organisation's compliance programme was effective at the time of the offence and at the time of the resolution, and in

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<sup>46</sup> [FCPA Resource Guide](#), pages 9 and 10.

evaluating, post resolution, whether the organisation has strengthened its programme to prevent the offence from reoccurring.

- ➔ **Principles of Federal Prosecution of Business Organizations**: published originally in 1999 by the DOJ and updated as recently as March 2023, this manual for US prosecutors' sets out the principles underpinning the federal prosecution of corporate crime, setting out the methods and procedures for investigating and prosecuting business organisations.
- ➔ **Related US laws**: violations of the FCPA may also constitute violations of other US laws, including the *Sarbanes-Oxley Act (SOX)*<sup>47</sup>, the *Travel Act*<sup>48</sup>, the *Clarifying Lawful Overseas Use of Data Act (CLOUD)*<sup>49</sup>, the *Arms Export Control Act (AECA)*<sup>50</sup>, the *International Traffic in Arms Regulations (ITAR)*,<sup>51</sup> the *Foreign Account Tax Compliance Act (FATCA)*<sup>52</sup> and the *Federal Money Laundering and Wire Fraud Statutes*<sup>53</sup>, etc.

#### ❖ **What anti-corruption measures are companies required to implement?**

The FCPA requires "issuers" defined as US and foreign companies listed on stock exchanges in the US or that are required to file periodic reports with the SEC as issuers to comply with anti-bribery, accounting and internal control requirements, and in particular to make and keep accurate books and records and devise and maintain internal accounting controls.

The SEC has the authority to investigate potential violations of the FCPA by issuers and, in the event of a violation, to bring a civil action in federal court or to initiate an administrative proceeding<sup>54</sup> seeking various types of relief, including an injunction (only in a civil enforcement action), a cease-and-desist order (only in an administrative proceeding), disgorgement, prejudgment interest, and civil penalties.

In the case of corruption, the DOJ has jurisdiction, as it has both criminal and civil

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<sup>47</sup> The Sarbanes-Oxley (SOX) Act mandates financial reporting practices for issuers.

<sup>48</sup> The Travel Act prohibits interstate or foreign travel, and the use of the US mail and other facilities, for the purpose of furthering an unlawful activity.

<sup>49</sup> The Clarifying Lawful Overseas Use of Data (CLOUD) Act sets out requirements on accessing data stored in the cloud.

<sup>50</sup> The Arms Export Control Act (AECA) gives the President of the United States the authority to control the import and export of defence articles and defence services.

<sup>51</sup> The International Traffic in Arms Regulations (ITAR) control the import and export of defence-related articles and services.

<sup>52</sup> The Foreign Account Tax Compliance Act (FATCA) requires financial institutions that have entered into an agreement with the US government to disclose accounts held by US citizens.

<sup>53</sup> The Federal Mail and Wire Fraud Statutes outlaw the use of mail or wire communications to commit fraud.

<sup>54</sup> U.S Securities and exchange commission, SEC Enforcement Actions: [FCPA Cases](#)

sanctioning powers, and is thus empowered to take criminal action against individuals and legal entities engaging in business within the territory of the United States, as well as parties acting on behalf of the legal entity.

In addition, the existence and implementation of anti-corruption prevention programs within the defendant company in a criminal case may be taken into account by the DOJ and the U.S. judge in determining the criminal liability of the corporation and the quantum of the criminal penalty for bribery.

## The UK anti-corruption framework

### ❖ What does the UK anti-corruption framework comprise?

- [The United Kingdom Bribery Act \(UKBA\)](#): the UKBA, which came into force in 2011, applies to individuals and commercial organisations. It criminalises corruption and bribery (in the private and public sectors) and the failure of commercial organisations to prevent bribery.
- [The Bribery Act 2010 – Guidance](#): this guidance, released by the Ministry of Justice (MoJ) in 2011, interprets the provisions of the UKBA and is intended to help commercial organisations of all sizes and sectors understand what bribery prevention measures they can put in place. The guidance is not prescriptive. Instead, it is formulated around six guiding principles, each followed by commentary and examples: “proportionate procedures”, “top-level commitment”, “risk assessment”, “due diligence”, “communication (including training)” and “monitoring and review”.
- [Joint Prosecution Guidance of the Director of the Serious Fraud Office and the Director of Public Prosecutions on the Bribery Act 2010](#): released in 2011 by the Director of the Serious Fraud Office (SFO) and the Director of Public Prosecutions (DPP), this guidance sets out their approach to prosecutorial decision-making in respect of offences under the UKBA. The guidance is not intended to be exhaustive.
- [Joint Guidance on Corporate Prosecutions](#): this guidance, published in 2005, sets out the approach of the DPP and the Director of the SFO to the prosecution of corporate offending.
- [Operational guidance and information: Guidance for corporates: Evaluating a Compliance Programme](#): this guidance, published by the SFO in 2017 and updated in 2020, defines how to assess companies' compliance programs to help for prosecutors, investigators, auditors, lawyers and compliance officers.
- [Financial Conduct Authority’s Financial Crime Guide: A firm’s guide to countering financial crime risks \(FCG\): section 6. Bribery and Corruption](#): this guide, published by the Financial Conduct Authority (FCA) in 2015, describes the minimum requirement rules to set up for entities that are regulated by the FCA and subject to financial crimes rules including those relating to bribery and corruption risks.

## ❖ What anti-corruption measures are companies required to implement?

There is no general requirement for companies to implement anti-corruption measures. However, firms regulated by the FCA are required to implement measures to counter the risk that they will be used for financial crime<sup>55</sup>, which includes the risk of corruption as well as bribery<sup>56</sup>.

Under section 7 of the UKBA, there is an offence for "*Failure of commercial organisations to prevent bribery*". It is a full defence where the commercial organisation has "*adequate procedures*" to prevent bribery but the absence of such procedures does not constitute a criminal offence. The Bribery Act 2010 Guidance describes the sort of measures that commercial organisations can put in place to prevent bribery.

UK courts may also take the following into account when calculating the penalty as part of sentencing companies following a conviction or as part of a Deferred Prosecution Agreement (DPA)<sup>57</sup>:

- the presence of certain corruption prevention measures as a factor demonstrating lesser culpability;
- the court should also consider the impact of the penalty on the company's ability to implement an effective anti-corruption compliance programme.

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<sup>55</sup> [FCA's Senior Management Arrangements, Systems and Controls Sourcebook](#), SYSC 6.1.1R

<sup>56</sup> [The FCA's Financial Crime Guide: A firm's guide to countering financial crime risks](#), 6.1.4.

<sup>57</sup> [Corporate offenders: fraud, bribery and money laundering – Sentencing \(sentencingcouncil.org.uk\)](#)

## The World Bank Group Sanctions System Framework and Integrity Compliance Guidelines

### ❖ How does the World Bank Group Sanctions System Framework function?

The World Bank Group may impose sanctions on companies and individuals that breach its [anti-corruption guidelines in connection with projects financed by a World Bank Group entity](#).

Alleged breaches of these guidelines involving corruption, fraud, collusion, coercion, or obstructive practices, which may result from a lack of sufficient prevention or vigilance, are investigated and decided, following administrative procedures, under the [World Bank Group sanctions system framework](#).

Sanctions consist of the temporary or permanent exclusion of a firm or individual from participating under projects financed by the World Bank Group, including from being retained as a subcontractor, consultant, supplier, or service provider to a firm that may be awarded a World Bank Group-financed contract. Five types of sanctions may be imposed: reprimand, conditional non-debarment, debarment, debarment with conditional release, and/or restitution (financial or otherwise).

Often, sanctions with conditions include a requirement that the sanctioned entity implement remedial measures, such as the development and demonstrated implementation of an integrity compliance programme that reflects the principles outlined in the [World Bank Group Integrity Compliance Guidelines](#).

### ❖ What are the World Bank Group Integrity Compliance Guidelines?

The World Bank Group Integrity Compliance Guidelines, which came into effect in 2010, set out high-level integrity compliance principles and are intended to help all companies implement an integrity compliance programme. The measures proposed by the World Bank Group are both remedial measures to be followed if breaches of its requirements have been identified and good practices to seek to prevent and reduce integrity risks.

The World Bank Group Integrity Compliance Guidelines are based on several principles: prohibition of misconduct, responsibility, program initiation, risk assessment and reviews, internal policies, policies regarding business partners, internal controls, training and communication, incentives and disciplinary measures, reporting, investigation, remediation, and collective action, as well as related sub-principles.

## 2.2. Summary of corruption prevention and detection measures that companies are required to implement by law

WHAT CORRUPTION PREVENTION AND DETECTION MEASURES ARE COMPANIES REQUIRED TO IMPLEMENT BY LAW?			
Country	France	United States	United Kingdom
<b>Legislation</b>	Act 2016-1691 of 9 December 2016 (Sapin II Act)	Foreign Corrupt Practices Act (FCPA)	Bribery Act 2010 (UKBA)
<b>Scope</b>	French companies or groups with 500 or more employees and with turnover in excess of €100 million.	<ul style="list-style-type: none"> <li>- US persons and businesses (domestic concerns);</li> <li>- “Issuers” defined as US and foreign companies listed on stock exchanges in the US or that are required to file periodic reports with the SEC;</li> <li>- Individuals and businesses carrying on a business activity in US territory, irrespective of their nationality.</li> </ul> <i>Potentially applies to French companies.</i>	There is no general requirement although firms regulated by the FCA need to have measures to counter financial crime (which includes bribery and corruption). <i>Potentially applies to French companies.</i>
<b>Requirements</b>	Implementing an anti-corruption programme (comprising eight measures).	<ul style="list-style-type: none"> <li>- Making and keeping accurate books and records;</li> <li>- Devise and maintain internal accounting controls;</li> <li>- Design and implement effective anti-corruption compliance program.</li> </ul>	Establishing and maintaining effective anticorruption measures.

WHAT CORRUPTION PREVENTION AND DETECTION MEASURES ARE COMPANIES REQUIRED TO IMPLEMENT BY LAW?			
Country	France	United States	United Kingdom
<b>Audits</b>	Yes, by the AFA.	No (while the SEC has the ability to investigate potential violations of the FCPA, such investigations are not controls or administrative audits).	No (the FCA can investigate breaches of its rules but does not carry out audits).
<b>Penalties for non-compliance</b>	Administrative sanctions imposed by the AFA Sanctions Commission: - injunction to adjust the company's anti-corruption programme based on the Commission's recommendations during a period of up to 3 years; - fine of up to €200,000 for individuals and up to €1,000,000 for legal entities; - publication of the decision.	- DOJ has both criminal and civil enforcement authority as to "domestic concerns"; - DOJ has criminal enforcement authority as to issuers (public companies) and certain other parties acting on behalf of the issuer; - DOJ can seek criminal penalties, depending on the type of case filed; - SEC has civil enforcement authority as to issuers and certain other parties acting on behalf of the issuer. The SEC can file a case in federal court or initiate an administrative proceeding. The SEC can seek, amongst other types of relief, civil penalties.	The FCA can impose penalties or public censures.
<b>Remedial measures</b>	Compliance remediation programme.	Compliance remediation programme.	The FCA can require regulated companies to carry out remedial measures.

### 2.3. Summary of corruption offences

SUMMARY OF CORRUPTION OFFENCES			
Country	France	United States	United Kingdom
<b>Legislation</b>	Act 2016-1691 of 9 December 2016 (Sapin II Act)	Foreign Corrupt Practices Act (FCPA)	Bribery Act 2010 (UKBA)
<b>Offences</b>	<ul style="list-style-type: none"> <li>- Private-sector bribery;</li> <li>- Influence peddling;</li> <li>- Concealment of, or complicity in, the above offences and laundering of the proceeds.</li> </ul> <p><i>For further details of the offences provided for under the French legislative framework, refer to the guides and other resources on the AFA website<sup>58</sup>.</i></p>	<ul style="list-style-type: none"> <li>- Bribery of foreign public officials;</li> <li>- Failure to make and keep accurate books and records;</li> <li>- Failure to devise and maintain internal accounting controls.</li> </ul>	<ul style="list-style-type: none"> <li>- Private-sector bribery;</li> <li>- Public-sector bribery;</li> <li>- Failure to prevent bribery (for more information, see section 2.1, the UK anti-corruption framework).</li> </ul>
<b>Persons affected</b>	Any French company.	<ul style="list-style-type: none"> <li>- Any French company listed on a stock exchange in the US or that is required to file periodic reports with the SEC ;</li> <li>- any French individual or business carrying on a business activity in US territory or with a connection to the United States (e.g. use of US currency).</li> </ul>	<ul style="list-style-type: none"> <li>- Any French company that carries on a business or part of a business in the United Kingdom;</li> <li>- any French company acting in the capacity of an “associated person”.</li> </ul>

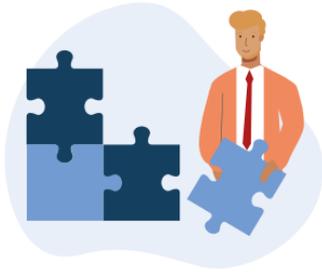
<sup>58</sup> AFA, [The presentation of the offences of breach of probity](#) (in French only)

### 3. OVERVIEW OF THE CORRUPTION PREVENTION AND DETECTION MEASURES

**Legend:**

- The French anti-corruption framework: "[French framework](#)"
- The US anti-corruption framework: "[US framework](#)"
- The UK anti-corruption framework: "[UK framework](#)"
- World Bank Group Integrity Compliance Guidelines: "[WBG Guidelines](#)"

## 3.1. Senior management's commitment



### SENIOR MANAGEMENT'S COMMITMENT

All four frameworks state that senior management should be committed to, and involved in, implementing an organisation's anti-corruption programme, and should adopt a zero-tolerance policy towards corrupt practices.

#### Key points:

- **French framework:** Under the Sapin II Act, the management body is liable to the AFA Sanctions Commission in case of failure to ensure the quality and effectiveness of the anti-corruption compliance measures that must be implemented by companies subject to Article 17. In addition, the AFA's guidelines provide details on the definition and role of the management body, whose commitment constitutes, according to the French standard, the first pillar of an effective anti-corruption compliance programme. In this respect, they must, in particular, behave in an exemplary manner, promote the anti-corruption policy through personal communication, implement the necessary means for the deployment of an effective anti-corruption compliance programme, monitor its implementation and ensure that any situation contrary to the code of conduct is sanctioned.
- **US framework:** The FCPA Resource Guide clarifies who constitutes senior management. As part of their investigations, the US authorities check whether senior management has adopted and implemented anti-corruption policies and programs, whether these have been shared across the organisation, whether senior management adheres to them and sets a proper "tone at the top" and "culture of compliance".
- **UK framework:** The UKBA Guidance clarifies who constitutes senior management ("top-level management") and states that they should be committed to preventing bribery.
- **WBG Guidelines:** The WBG Guidelines call for strong, explicit, visible and active support and commitment from senior management.

## 3.2. The anti-corruption compliance function



### THE ANTI-CORRUPTION COMPLIANCE FUNCTION

Most of the frameworks include recommendations on the corporate anti-corruption compliance function.

#### Key points:

- **French framework:** In its guidelines, the AFA stresses the importance of the human and financial resources devoted to the implementation of an anti-corruption compliance programme, and in particular the governance of the corporate compliance function. It does not impose a specific model, as long as the head of anti-corruption compliance is guaranteed access to information relevant to his or her mission, independence from other functions within the entity and direct access to the management body. In addition, AFA has published a specific guide on this subject: [the corporate anti-corruption compliance function](#).
- **US framework:** The FCPA Resource Guide and the Evaluation of Corporate Compliance Programs (ECCP) Guidance recommend that companies should devote appropriate personnel and resources to preventing and detecting corruption and to remediating any violations that do occur promptly and appropriately. The compliance function must have sufficient seniority within the organization and be independent from senior management.
- **UK framework:** The UKBA Guidance recommends that senior management engagement is likely to include the selection and training of senior managers to lead anti-bribery work where appropriate.
- **WBG Guidelines:** The WBG Guidelines call for oversight and management of the integrity compliance programme, to be performed by senior corporate officers, with an adequate level of autonomy, sufficient resources and the authority to effectively implement the programme.

### 3.3. The corruption risk mapping



## CORRUPTION RISK MAPPING

Identifying and assessing a company's corruption risk exposure is a key principle contained in all four frameworks.

### Key points:

- **French framework:** Risk mapping is the second pillar of an effective anti-corruption compliance programme in the French framework. The AFA's guidelines specify that this process is part of a risk-based approach that requires the company to understand and evaluate the corruption risks to which it is actually exposed before taking measures and procedures to effectively control them. The AFA recommends a six-step methodology, including the identification, evaluation and prioritization of risks, the implementation of an action plan to ensure their control, its regular updating and its archiving. The exercise applies to all the Group entities.
- **US framework:** The FCPA Resource Guide and the ECCP Guidance recommend considering risk factors such as industry sector, country or location, transaction size or type, and the method and size of payments to third parties.
- **UK framework:** The UKBA Guidance advises categorising external risks into five broad groups (country, sectoral, transaction, business opportunity and business partnership) and emphasises the importance of prevention measures for the identified risks.
- **WBG Guidelines:** The WBG Guidelines state that a comprehensive risk assessment should be carried out when establishing an integrity compliance programme and should be updated periodically and whenever necessary to meet changed circumstances, taking account of recent, relevant developments.

## 3.4. Corruption risk prevention

Eight measures are presented in this section.



### THE ANTI-CORRUPTION CODE OF CONDUCT

Most of the frameworks recommend that companies should adopt an anti-corruption code of conduct.

#### Key points:

- **French framework:** The Sapin II Act requires companies who are subject to the Article 17 to implement an anti-corruption code of conduct, integrated into the company's internal regulations, defining the behaviors to be proscribed as being likely to characterize acts of corruption and influence peddling. In addition, the AFA recommends that policies relating to gifts and invitations, sponsorship, lobbying, management of conflicts of interest, entertainment expenses, side activities and any other procedure deemed relevant be included in or annexed to the code. The AFA insists on the accessibility of the code to employees and third parties.
- **US framework:** The FCPA Resource Guide states that “the most effective codes are clear, concise, and accessible to all employees”. It also encourages companies to make the code “available in the local language so that employees in foreign subsidiaries can access and understand it” and to periodically review and update the code. The ECCP Guidance states that a company should have a code of conduct that sets forth, among other things, the company’s commitment to full compliance with relevant laws and is “accessible and applicable to all company employees”.
- **UK framework:** The UKBA Guidance emphasises that policies are a necessary measure in the prevention of bribery but they will not achieve this objective unless they are properly implemented.
- **WBG Guidelines:** The WBG Guidelines advise companies to draw up a code of conduct or a similar document. They stress that a company's integrity compliance programme should clarify and illustrate what constitutes expected good conduct and what is considered to be misconduct in this field.



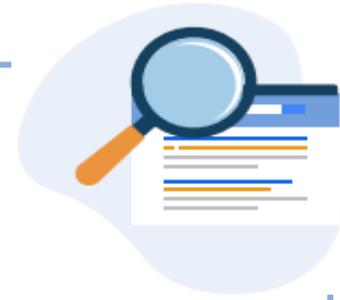
## GIFTS AND HOSPITALITY

Most of the frameworks advise companies to establish gifts and hospitality policies and procedures as a way to limit corruption risk.

### Key points:

- **French framework:** The AFA advises companies to draw up a policy governing gifts and hospitality, which should be incorporated into its code of conduct. The Agency has also published a detailed guide on this subject: [gifts and hospitality policy in private and public sector corporations and non-profits](#).
- **US framework:** The FCPA Resource Guide states that clear guidelines and processes can be effective and efficient means for controlling gift-giving, deterring improper gifts, and protecting corporate assets.
- **UK framework:** The UKBA Guidance recommends that companies should include rules and measures on gifts and hospitality in their procedures;
- **WBG Guidelines:** The WBG Guidelines call for controls and procedures covering gifts, hospitality, entertainment, travel or other expenses to ensure that they are reasonable and do not improperly affect the outcome of a business transaction, or otherwise result in an improper advantage.

*Note: In some sectors and industries (such as financial services and health care), gifts and hospitality may be locally regulated.*



## MANAGEMENT OF CONFLICTS OF INTEREST

Most of the frameworks advise companies to take steps to prevent and detect conflict-of-interest situations in order to limit corruption risk.

### Key points:

- **French framework:** Conflict of interest situations in the private sector do not constitute a criminal offence under French law. However, they may constitute the beginnings of a corruption offence. The AFA advises companies to draw up a policy managing conflicts of interest, which should be incorporated into their code of conduct. The Agency has also published a detailed guide on this subject: [preventing conflicts of interest in the private sector](#).
- **US framework:** Measures designed to prevent and detect conflicts of interest are important elements of a corporate compliance programme.
- **UK framework:** The UKBA Guidance recommends that companies should include rules and measures on avoiding conflicts of interest in their procedures.
- **WBG Guidelines:** The WBG Guidelines recognise the importance of the measures that seek to prevent conflicts of interest, especially in relation to dealings with public officials.

*Note: In some sectors and industries (such as financial services and health care), conflicts of interest may be locally regulated.*



## FACILITATION PAYMENTS

Facilitation payments pose a corruption risk for both companies and third parties. In some jurisdictions, companies can face criminal prosecution for making such payments.

### Key points:

- **French framework:** Facilitation payments, regardless of their frequency or amount, are considered bribery under French law.
- **US framework:** The FCPA has an exception for facilitation payments in certain limited circumstances (to further “routine governmental action”). However, it encourages companies to prohibit or discourage facilitation payments in situations where they could present a corruption risk.
- **UK framework:** Facilitation payments are illegal in the United Kingdom, irrespective of their frequency or value. Any individual or legal entity making or accepting such payments potentially faces criminal prosecution for bribery.
- **WBG Guidelines:** The WBG Guidelines state that companies should not make facilitation payments.



## SPONSORSHIP AND CHARITABLE DONATIONS

Most of the frameworks advise companies to take special care in order to limit corruption risk in their charitable giving, sponsorship and patronage activities.

### Key points:

- **French framework:** The AFA recommends that companies regulate sponsorship operations, particularly in their code of conduct. Indeed, even if these are common practices in business life, these operations can present risks of corruption, especially when they conceal an undue advantage.
- **US framework:** The FCPA Resource Guide recommends that companies engage in proper due diligence and implement controls when making charitable donations to prevent charitable giving from being used as a vehicle to conceal payments made to corruptly influence foreign officials.
- **UK framework:** The UKBA Guidance advises companies to establish specific controls for charitable donations and sponsorship activities.
- **WBG Guidelines:** The WBG Guidelines state that all charitable contributions and sponsorships should be publicly disclosed unless secrecy or confidentiality is required under local law.



## AWARENESS AND TRAINING

All four frameworks provide for an awareness and training programme for employees who are exposed to corruption risks.

### Key points:

- **French framework:** Under the Sapin II Act, companies subject to the Article 17 are required to provide training for managers and staff who are most at risk. The AFA's guidelines define the content of this training, along with the procedures for delivering and monitoring the programme for the most-exposed managers and staff. They also recommend that companies operate an awareness programme for all employees.
- **US framework:** The ECCP Guidance states that training and communications should be appropriately tailored to the audience and materials should be made available in the local language for employees in foreign subsidiaries. The ECCP also states that DOJ prosecutors will consider whether employees in control functions or high-risk roles receive training to address relevant risk areas.
- **UK framework:** The UKBA Guidance states that companies should provide appropriate training for staff in implementing anti-bribery policies.
- **WBG Guidelines:** The WBG Guidelines mention the provision of tailored training to employees and potentially also to business partners.



## ANTI-CORRUPTION THIRD-PARTY DUE DILIGENCE

All four frameworks state that companies should conduct corruption risk due diligence before entering into a business relationship with a third party, and during the course of an ongoing business relationship.

### Key points:

- **French framework:** Under the Sapin II Act, customers, first-tier suppliers and intermediaries must be assessed with regard to the risk of corruption. The AFA's guidelines specify that this process consists of assessing the potential risk of corruption to which the company is exposed due to certain categories of third parties with whom it works and thus enabling it to evaluate the appropriateness of entering into or continuing its relations with them. The AFA's guidelines propose a detailed methodology, divided into several stages, illustrated by examples of assessment criteria and vigilance measures that can be taken in risky situations.
- **US framework:** The FCPA Resource Guide recommends conducting thorough third-party assessments. All assessments should be documented to demonstrate that the company has conducted due diligence. Assessments should be conducted prior to entering into a business relationship and as part of mergers and acquisitions. Monitoring should be done during the business relationship with the riskiest third parties.
- **UK framework:** The UKBA Guidance states that companies should implement risk-based due diligence procedures.
- **WBG Guidelines:** The WBG Guidelines state that companies should conduct properly documented, risk-based due diligence before entering into a relationship with a business partner, and on an ongoing basis during the relationship. Companies also should avoid dealing with business partners known or reasonably suspected to be engaging in misconduct.



## ANTI-CORRUPTION DUE DILIGENCE FOR MERGERS AND ACQUISITIONS

The French, US and UK frameworks recommend that companies conduct due diligence for strategic mergers and acquisitions in order to limit corruption risk.

### Key points:

- **French framework:** The AFA's guidelines consider mergers and acquisitions transactions as risky situations. They also remind the French legislative framework concerning administrative, civil and criminal liability for acts of corruption committed by a target, absorbed or acquired company. In addition, the AFA has published a guide on [anti-corruption due diligence for mergers and acquisitions](#) which details the methods of anti-corruption checks to be performed during these sensitive operations.
- **US framework:** The FCPA Resource Guide outlines the liabilities that companies take on when they merge with or acquire another company (known as "successor liability"), including liability for corrupt practices committed by the predecessor company. The DOJ and the SEC encourage companies to conduct pre-acquisition due diligence and improve compliance programs and internal controls after mergers and acquisitions. The ECCP Guidance notes that a well-designed compliance programme should include comprehensive due diligence of any acquisition targets, as well as a process for timely and orderly integrations of the acquired entity into existing compliance programme structures and internal controls.
- **UK framework:** The UKBA Guidance refers to mergers of commercial organisations as having particularly important due diligence implications.

## 3.5. Corruption detection tools

Four measures are presented in this section.

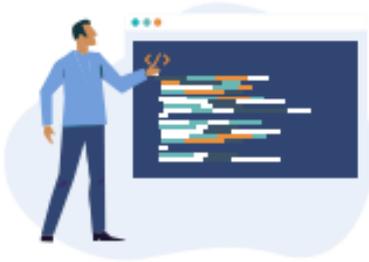


### INTERNAL WHISTLEBLOWING SYSTEM

All four frameworks include guidance or requirements on establishing a system that enables employees to confidentially disclose breaches of the company's code of conduct. In the US and UK frameworks, this is known as a "whistleblowing system".

#### Key points:

- **French framework:** Under the Sapin II Act, companies subject to the Article 17 are required to implement a whistleblowing system for receiving reports from staff about situations that violate the company's code of conduct. The AFA's guidelines explain how to proceed when these kinds of reports are received, as well as how the data should be processed and archived.
- **US framework:** The FCPA Resource Guide and the ECCP Guidance suggest that companies may set up anonymous hotlines or ombudsmen to receive whistleblowing reports and should have in place a robust process for investigating allegations. The ECCP Guidance suggests that the process for handling reports may include proactive measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of reports, and processes to protect whistleblowers. The FCPA Resource Guide also emphasises that companies will want to consider taking stock of lessons learned from any reported violations and the outcome of any resulting investigation to update their internal controls and compliance programme and focus future training on such issues.
- **UK framework:** The UKBA Guidance recommends that companies establish a secure, confidential and accessible means for raising concerns about bribery.
- **WBG Guidelines:** The WBG Guidelines state that all personnel should have a duty to report promptly any concerns they may have regarding the integrity compliance programme and that the company should provide confidential channels for the submission of reports, on a named and anonymous basis, as well as protection for whistleblowers.



## INTERNAL ANTI-CORRUPTION INVESTIGATIONS

Most of the frameworks deem internal investigations as a valuable process that allows a company to objectively review, on its own initiative, potential violations of its anti-corruption programme and applicable law.

### Key points:

- **French framework:** The AFA's guidelines advise companies defining an internal anti-corruption investigation policy by specifying the actors, the process and the follow-up, while respecting the rights of employees who are suspects or witnesses, in particular the rights of defense and the rights to privacy and personal data protection. The AFA has recently published a guide with the French National Financial Prosecutor's Office (PNF) on the modalities of the internal investigation: [internal anti-corruption investigations](#) (in French only, available soon in English).
- **US framework:** The FCPA Resource Guide recommends that companies should take stock of lessons learned from internal reviews and investigations to determine whether the issue stems from a problem with their compliance programme, and take remedial action as required. The ECCP Guidance suggests that investigations should be properly scoped by qualified personnel, conducted in a timely manner, and the company should ensure investigation findings are remediated.
- **UK framework:** The UKBA Guidance advises companies to investigate high-risk situations.
- **WBG Guidelines:** The WBG Guidelines provide that companies should implement procedures for investigating misconduct and other violations of the integrity compliance programme.



## ANTI-CORRUPTION ACCOUNTING CONTROLS

All four frameworks are clear on the need to implement accounting or financial controls in order to detect corrupt practices, and on the importance of transparent financial record-keeping.

### Key points:

- **French framework:** Under the Sapin II Act, companies subject to the Article 17 must implement internal or external accounting control procedures to ensure that books, records and accounts are not used to conceal corruption or influence peddling. In its guidelines, the AFA specifies that these anti-corruption accounting controls reinforce the accounting controls established by the company on the risk situations identified in the corruption risk map in order to effectively control them. These clarifications have been supplemented by a practical guide on [anti-corruption accounting controls](#) to assist companies.
- **US framework:** An entire section of the FCPA Resource Guide is devoted to the accounting control requirements applicable to issuers.
- **UK framework:** The UKBA Guidance states that measures to implement bribery prevention policies may include financial and commercial controls such as adequate bookkeeping, auditing and approval of expenditure.
- **WBG Guidelines:** The WBG Guidelines provide that companies should establish and maintain an effective system of internal controls comprising financial and organizational checks and balances over their financial, accounting, recordkeeping and other business processes (such as segregation of duties, a clear decision-making process and an authorisation procedure). Such internal controls should be subject to regular, independent, internal and external audits.



## MONITORING AND EVALUATION OF THE ANTI-CORRUPTION PROGRAMME

All four frameworks emphasise the importance of implementing an internal control programme to check that the company's anti-corruption measures are in place and effective. The frameworks diverge on the precise details of these controls, in terms of who should perform them (typically the company's compliance and audit functions), how often they should be conducted, and the arrangements for reporting on remedial action to senior management.

### Key points:

- **French framework:** In addition to the Sapin II Act, which provides for the implementation of an internal control and evaluation system for anti-corruption measures, the AFA recommends deploying a system on three levels (proper execution of procedures, control plan, audit plan) and formalizing it within a procedure.
- **US framework:** The FCPA Resource Guide and the ECCP Guidance state that companies should evaluate periodically the effectiveness the organization's anti-corruption program and update the programme as appropriate.
- **UK framework:** The UKBA Guidance recommends that commercial organisations monitor and review bribery prevention procedures. It suggests consideration of periodic reviews and reports for top-level management as well as external verification.
- **WBG Guidelines:** The WBG Guidelines state that companies should conduct regular, independent, internal and external audits to provide an objective assurance on the design, implementation and effectiveness of internal controls, and to bring to light any transactions which contravene the integrity compliance programme.

## 3.6. Corruption remedial actions

Two measures are presented in this section.



### ANTI-CORRUPTION CORRECTIVE MEASURES

Most of the frameworks recommend implementing corrective measures as a way to strengthen the company's anti-corruption programme and to prevent corruption risk.

#### Key points:

- **French framework:** In its guidelines, the AFA suggests that the shortcomings of the anti-corruption compliance programme, observed in particular during internal controls or audits, give rise to the definition of corrective measures, which may be included in action plans. The AFA recommends that these plans be regularly monitored and that the management body be informed of their results.
- **US framework:** The DOJ and the SEC encourage companies to implement "remedial measures" as necessary, and to adapt these measures to the situation.
- **UK framework:** The UKBA Guidance refers to the need to adapt bribery prevention measures where necessary following monitoring and evaluation. The guidance also refers to the use of staff surveys, questionnaires and feedback from training as a means by which employees and other persons can inform continuing improvement of anti-bribery policies.
- **WBG Guidelines:** The WBG Guidelines introduce the concept of "positive" incentives relating to how a company promotes the integrity compliance programme, such as by adopting appropriate incentives to encourage and provide positive support for its observance at all levels. The WBG Guidelines also state that companies should take appropriate corrective action following the discovery of misconduct, including modifications to the integrity compliance programme if necessary.



## ANTI-CORRUPTION DISCIPLINARY RULES

All four frameworks emphasise the need for internal disciplinary rules, including sanctions for misconduct and/or violation of the company's code of conduct and anti-corruption procedures.

### Key points:

- **French framework:** Under the Sapin II Act, companies subject to the Article 17 are required to implement a disciplinary system allowing them to sanction their employees in case of violation of the code of conduct. The AFA recommends that companies identify disciplinary sanctions and provides details on the definition and implementation of a disciplinary system for misconduct.
- **US framework:** The FCPA Resource Guide and the ECCP Guidance indicate that companies should have effective "disciplinary procedures" that are "commensurate with the violation" and apply to all staff, emphasising that misconduct can often be the result of inadequate supervision. The DOJ and the SEC also encourage companies to introduce incentives and rewards for strict adherence to the company's compliance programme.
- **UK framework:** The UKBA Guidance stresses disciplinary action as a way of implementing bribery prevention measures as well as communicating disciplinary processes and sanctions for breaches of anti-bribery rules.
- **WBG Guidelines:** The WBG Guidelines state that companies should take appropriate disciplinary measures (including contract termination) with all persons involved in misconduct or other integrity compliance programme violations.

## ANTI-CORRUPTION DISCIPLINARY RULES

All four frameworks emphasise the need for internal disciplinary rules, including sanctions for misconduct and/or violation of the company's code of conduct and anti-corruption procedures.

Since the Sapin II Act, France has had a complete and demanding legislative framework to help French companies prevent and detect corruption and influence peddling more effectively in their activities in France and abroad.

Indeed, the implementation of an anti-corruption compliance programme by companies subject to Article 17 of the Sapin II Act is carried out independently of the commission of acts of corruption and must cover all the activities of a company or a group of companies, including those carried out abroad through its subsidiaries. The implementation of measures and procedures to prevent and detect acts of corruption and influence peddling is subject to in-depth controls by the French Anti-Corruption Agency (AFA). In these audits, the AFA seeks to verify the existence, effectiveness and adequacy of such measures and procedures in relation to the risks to which the company or group of companies is actually exposed, as well as their effective implementation in all the companies of a group operating abroad.

To date, and even if differences remain, the French anti-corruption framework is composed of measures and procedures that are, for the most part, convergent with the requirements of the foreign frameworks considered in this study.

It is therefore possible to consider that the French anti-corruption framework offers companies that apply it significant guarantees of protection against the criminal risk of corruption, but also of compliance with the anti-corruption rules and recommendations of foreign countries where they are likely to develop their activities.



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