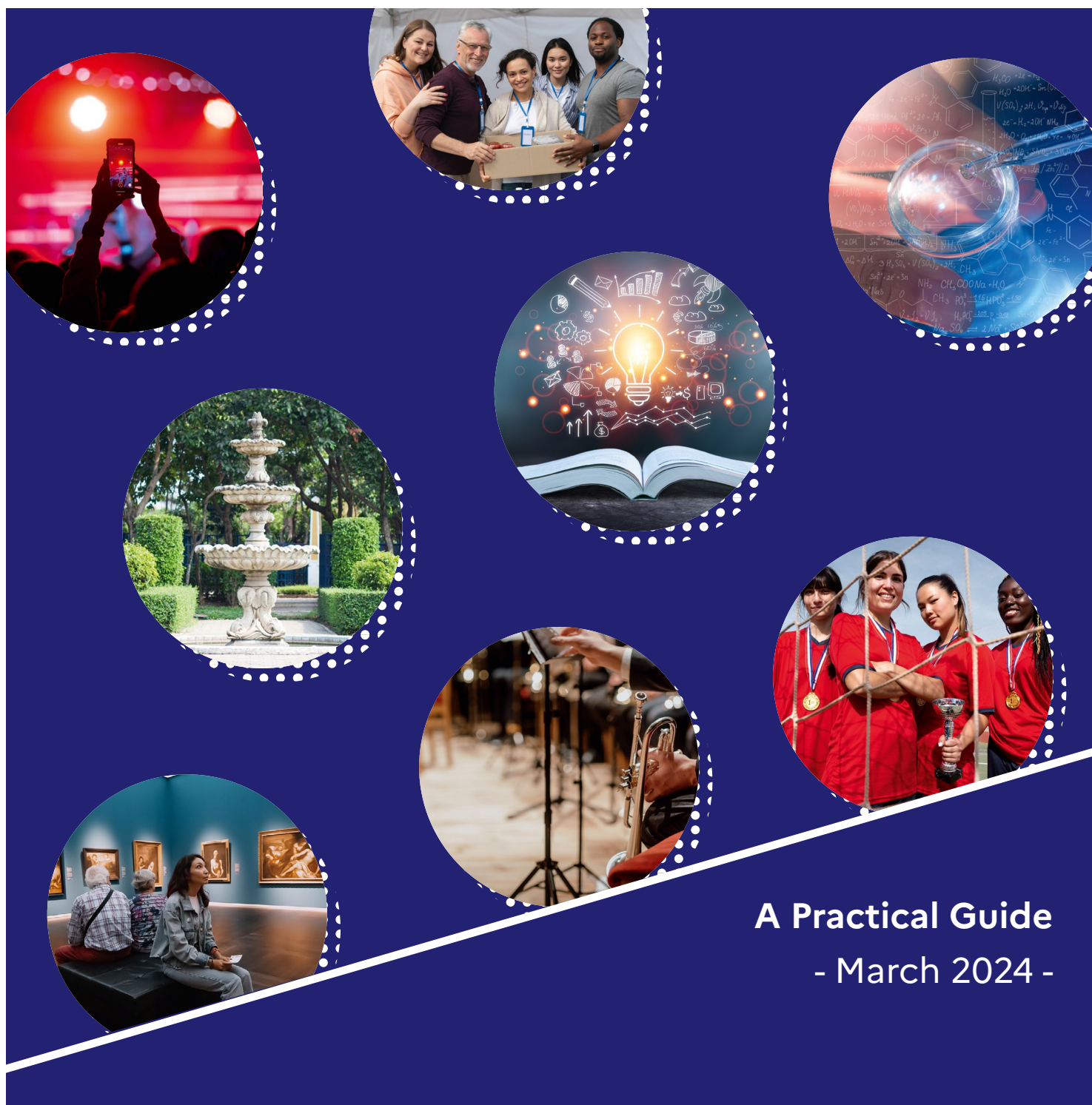


MANAGING RISK IN CORPORATE SPONSORSHIP AND PATRONAGE ACTIVITIES



A Practical Guide
- March 2024 -

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Introduction

A PRACTICAL GUIDE TO MANAGING RISK IN CORPORATE SPONSORSHIP AND PATRONAGE ACTIVITIES

Sponsorship and patronage have grown considerably in popularity in recent years. These activities allow public- and private-sector companies¹ to support causes of a philanthropic, educational, scientific, social, humanitarian, sporting, family, cultural, artistic or environmental nature that align with their values.

Sponsorship and patronage are of immense value to the economy and society insofar as they offer a way for beneficiary organisations to diversify their funding streams, draw skills and expertise from a wider pool, and expand their scope of work in support of the causes or values they champion.

With these considerations in mind, Act 2003-709 of 1 August 2003, known as the “Aillagon Act”, was introduced in order to create an advantageous tax regime in France for patronage activities and to help companies wishing to support good causes. In practical terms, patronage is a process whereby a company provides material or financial support to a charity or other legal entity conducting a public-interest activity² with no expectation of any direct or indirect consideration from the beneficiary organisation in return.

Sponsorship, which also appears to be on the rise, is similar to patronage in that the company in question chooses to support an initiative, project or organisation. But the key difference lies in the fact that the company seeks to gain a direct benefit in terms of brand awareness. Sponsorship can therefore form part of a broader marketing strategy.

By engaging in sponsorship or patronage, companies demonstrate their alignment with the values of the projects or organisations they support and, in doing so, enhance their image. These activities therefore have a brand communication and reputation-building element. In some cases, they can also drive internal change if the company’s employees are involved.

Although these activities are governed by strict laws and tax rules, the possibility always remains that they could be misused for fraudulent purposes – a departure from their original intent – or give rise to conflicts of interest or breaches of public

1 The term “company” is used throughout this guide to refer to both private-sector companies and government-funded industrial and commercial institutions (EPICs).

2 Tax instruction [BOI-BIC-RICI-20-30-10-20](#), para. 120.

procurement rules. In such cases, there is a risk that both parties – the company and the beneficiary organisation – could commit one or more corruption offences.³

For this reason, the French Anti-Corruption Agency (AFA), in the [French Anti-Corruption Agency Guidelines](#), published in the Official Journal of the French Republic (JORF) on 12 January 2021, drew attention to the potential risks associated with sponsorship and patronage activities that are not adequately managed and supervised.

This practical guide is designed with precisely this purpose in mind: to inform companies engaged in sponsorship or patronage about the steps they should take to ensure that these socially useful initiatives remain fully compliant with the law.

The first part of the guide presents examples of the kinds of situations and corruption risk factors that companies may face when carrying out sponsorship or patronage activities, while the second part outlines specific prevention and detection measures they can put in place to manage these risks in accordance with the French anti-corruption framework.

This guide is intended for any company that is engaged in, or intends to carry out, sponsorship or patronage activities, regardless of whether the company in question is subject to the requirements of Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016.⁴

The measures detailed in this guide should be understood as being guided by a risk-based approach. Individual companies should therefore adapt them according to their risk profile – which depends on factors including their size, their business sector, their organisational structure, and the geographies in which they operate – and in line with the principle of proportionality underpinning the *French Anti-Corruption Agency Guidelines*.⁵

This guide is not binding and creates no legal obligations for its intended audience. The content of this guide is based on the French legislative and regulatory framework. Companies operating outside France are therefore advised to exercise particular caution as regards differences in the law in other countries, where sponsorship and patronage activities may be categorised differently, not least with regard to the tax regime applicable in France.

3 “Corruption offences” is a generic term covering the following six specific offences: bribery (active or passive), influence peddling (active or passive), extortion by public officials, illegal taking of interest, misappropriation of public funds, and favouritism.

4 Companies subject to the requirements of [Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016](#), known as the “Sapin II Act”, must implement measures to prevent and detect acts of bribery and influence peddling.

5 AFA, [French Anti-Corruption Agency Guidelines](#), 12 January 2021, courtesy translation of the French version published in the JORF, para. 6.

The AFA prepared this document with input from the following bodies and organisations, all of which agreed to join a specially convened working group: the French Ministry for Culture, the French Ministry for Sport and the Olympic and Paralympic Games, the French Ministry for Primary and Secondary Education and Youth Affairs, the Association for the Development of Industrial and Commercial Patronage (Admical),⁶ the French Centre for Funds and Foundations (CFF)⁷ and France Générosités.⁸ The AFA would like to thank them for their contribution.

6 Admical, a non-profit recognised as a public-interest entity, works to promote corporate patronage. It has a network of over 200 members.

7 The CFF is the national industry body for foundations and endowment funds. The non-profit organisation has over 540 members.

8 France Générosités is a trade association whose purpose is to champion, promote and develop philanthropic initiatives. It has over 140 members.

..... ▶ **Futher reading**

This practical guide deals specifically with managing risk in corporate sponsorship and patronage activities. For more general guidance on corporate anti-corruption programmes and their constituent measures, readers may wish to consult the following AFA publications:

- ▶ *The corporate anti-corruption compliance function*
- ▶ *Gifts and hospitality policy in private and public sector corporations and non-profits*
- ▶ *Preventing conflicts of interest in the private sector*
- ▶ *Corporate anti-corruption accounting controls*

Where necessary, companies can also refer to the following AFA publications aimed at beneficiary organisations and public officials:

- ▶ *Maîtriser le risque d'atteinte à la probité au sein des associations et fondations reconnues d'utilité publique* (available in French only)
- ▶ *Guidelines on the prevention of breaches of probity for sports federations*
- ▶ *Guide sur la prévention des atteintes à la probité à destination des opérateurs du ministère des Sports et des Jeux Olympiques et Paralympiques* (available in French only)
- ▶ *Agents publics : les risques d'atteintes à la probité concernant les cadeaux et invitations* (available in French only)



12 KEY RECOMMENDATIONS

➔ Governance

- 1 Where corporate resources allow, appoint a person responsible for reviewing and monitoring sponsorship and patronage proposals (someone not involved in the decision-making process).
- 2 Where possible, opt for a collective decision-making process, for instance by setting up a dedicated committee (which makes decisions but does not review proposals).
- 3 Prevent and manage conflicts of interest for all parties involved in the process, for instance by introducing a requirement to disclose links and conflicts of interest and instituting a recusal procedure.

➔ Corruption risk mapping

- 4 Include, in the company's corruption risk map, risk scenarios relating to sponsorship and patronage, and to the corporate foundations, endowment funds or other intermediary bodies responsible for managing these activities.

➔ Policies and procedures

- 5 Prepare documented policies and procedures on sponsorship and patronage, outlining what activities are permitted and what processes should be followed.
- 6 Ensure that the instructions contained in these documents are in line with the company's anti-corruption code of conduct and related policies. For instance, make sure that the considerations received in return for sponsorship and patronage comply with the provisions of the company's gifts and hospitality policy.

➔ Sponsorship or patronage agreement

- 7 For each sponsorship or patronage activity, draw up a written agreement setting out the parties' respective obligations and their mutual commitment to combating corruption.

Anti-corruption training

- 8** Ensure that all staff involved in sponsorship and patronage activities receive anti-corruption training, regardless of their seniority, position or affiliation (to the company or an intermediary body).

Third-party due diligence

- 9** Assess the beneficiaries of sponsorship or patronage for corruption risk, taking into account potential risk factors such as whether the beneficiary has an existing business relationship with, or is economically dependent on, the company, and whether any public entities or officials are involved.

Internal whistleblowing system

- 10** Open up the company's internal whistleblowing system to the staff of beneficiary organisations.

Accounting controls

- 11** Set up specific accounting controls for sponsorship and patronage activities, as well as for financial and material flows between the company and its beneficiary organisations.

Internal controls and corrective action

- 12** Regularly check that sponsorship and patronage activities follow the relevant procedures and take corrective action as necessary.

INTRODUCTION

➔ Sponsorship

There is no definition of **sponsorship** under French law. It has nevertheless been defined as the process by which a legal entity (the sponsor) provides support to an event,⁹ individual, legal entity, product or organisation of a philanthropic, educational, scientific, social, humanitarian, sporting, family, cultural, artistic or environmental nature, with a view to gaining a direct benefit from the transaction.¹⁰

Unlike patronage, which is guided by philanthropic intent, companies typically engage in sponsorship with the primarily commercial aim of promoting and enhancing their brand image.¹¹ The sponsor will seek publicity and reputational effects commensurate with its investment.¹²

According to French tax doctrine, sponsorship differs from patronage in terms of both its purpose (the sponsor's intent) and the scale of the consideration that the sponsor receives in return.

Types of sponsorship

A company can sponsor an event, individual, legal entity or product by making monetary contributions or by providing material or human resources.

There are, however, certain legal and regulatory restrictions on this freedom of choice.

In France, for example, it is forbidden for a company to finance an election campaign or political party,¹³ including through sponsorship.

9 An "event" is understood as "any one-off operation in which the company may participate, as well as any longer-term, multi-year or ongoing sponsorship operation" (Tax instruction [BOI-BIC-CHG-40-20-40](#), para. 210).

10 [Appendix 1 of the order of 6 January 1989 on economic and financial terminology](#).

11 Tax instruction [BOI-BIC-RICI-20-30-10-20](#), para. 150.

12 For more information, refer to the [Admical reference sheet on sponsorship](#) (available in French only) and the [website of the French Ministry for Culture](#).

13 Article [L.52-8](#) of the French Electoral Code.

Sponsorship activities must likewise comply with legislation on tobacco and alcohol,¹⁴ on advertising for health products,¹⁵ on marketing for gambling operators,¹⁶ on advertising for certain financial services,¹⁷ and on the obligations of service publishers with regard to advertising, sponsorship and tele-shopping.¹⁸

Considerations

Companies engaging in sponsorship receive considerations from the beneficiary that are proportionate to their support. These considerations can take various forms, such as the rental or sale of advertising space, promotion of the sponsored event or initiative, display of the sponsor's name or brand, or tickets for events organised by the beneficiary.

Patronage

There is also no legal definition of **patronage**. It has nevertheless been defined by the French tax authority as "material or financial support provided to a charity or legal entity for the conduct of a public-interest activity with no expectation of any direct or indirect consideration from the beneficiary organisation in return".¹⁹

Types of patronage

Financial patronage, the most common form of patronage, involves gifting or bequeathing money to support an organisation or charity conducting a public-interest activity. This can be in the form of a direct donation, or an indirect donation such as forgoing income (royalties, salary, rent, etc.).

¹⁴ Act 91-32 of 10 January 1991 on the control of tobacco and alcohol abuse, known as the "Evin Act".

¹⁵ Act 94-43 of 18 January 1994 on public health and social protection and Article L.5122-1 et seq. of the French Public Health Code.

¹⁶ Articles D.320-1 to D.320-10 of the French Domestic Security Code and the French National Gambling Authority guidelines and recommendations of 1 June 2023 (available in French only).

¹⁷ Article L.222-16-2 of the French Consumer Code.

¹⁸ Decree 92-280 of 27 March 1992 implementing articles 27 and 33 of Act 86-1067 of 30 September 1986 and outlining the general principles governing the obligations of service publishers with regard to advertising, sponsorship and tele-shopping.

¹⁹ Tax instruction BOI-BIC-RICI-20-30-10-20, para. 120. Also see Appendix I of the order of 6 January 1989 on economic and financial terminology.

There are also various forms of **patronage in kind**,²⁰ which involves gifting or bequeathing an asset, offering free services, or providing premises or staff without charge (see below). The organisation making the donation is responsible for determining its value, which must be based on the cost price of the goods or services in question.

Skills sharing²¹ is a type of patronage in kind whereby a company provides its employees – with their agreement and during work time – to an organisation to carry out work of a public-interest nature.

Skills sharing can take two forms: the provision of a service or the loan of labour without charge. In both cases, the parties are strongly advised to draw up a formal agreement, and the employee in question must agree to the arrangement.

Corporate patronage

Corporate patronage enjoys preferential tax treatment under [Article 238 bis](#) of the French General Tax Code.²²

A company may conduct its corporate patronage activities either directly (i.e. the donations come from the company itself) or indirectly²³ (i.e. the donations are made through a non-profit, foundation, endowment fund or other philanthropic entity created specifically for this purpose).²⁴

Patronage is not reserved solely for large enterprises and there are no minimum thresholds in terms of turnover or donation size. In fact, very small enterprises (VSEs) and small and medium-sized enterprises (SMEs) account for 98% of French companies engaged in patronage activities,²⁵ although 65% of total donations by volume come from companies with more than 250 employees (intermediate-sized enterprises and large enterprises).

Further information about the legal framework surrounding sponsorship and patronage, and the tax treatment of these activities, can be found in Appendix 1 to this guide.

20 For more information, refer to the [Admical reference sheet on patronage in kind](#) (available in French only) and the [website of the French Ministry for Culture](#).

21 For more information, refer to the [Admical reference sheet on skills sharing](#) (available in French only) and the [website of the French Ministry for Culture](#).

22 Patronage of private individuals is outside the scope of this guide.

23 Refer to the [dedicated page of the Admical website](#) (available in French only) for further information about these concepts.

24 For more information about corporate foundations and endowment funds, see the [2022 study](#) by the CFF, Ernst & Young (EY) and Les Entreprises pour la Cité (LEPC).

25 Admical, [Le Baromètre du mécénat d'entreprise en France, 2022](#) (available in French only).



CORRUPTION IN SPONSORSHIP AND PATRONAGE ACTIVITIES

1.1 Corruption risk in sponsorship and patronage activities

Sponsorship is a way for a company to support an initiative while deriving a direct benefit in return, while patronage is a way for a company to support a public-interest project or organisation. The conditions under which such activities are conducted may nevertheless constitute a corruption offence: both the support the company gives to the beneficiary organisation and any consideration it receives in return may, in certain circumstances, expose both parties to criminal, financial and reputational risk.

1.1.1 Concealment of a corruption offence

In some cases, sponsorship or patronage activities may be designed to conceal an undue advantage as part of a corrupt scheme.

It is important to point out, at this early juncture, that some of the six corruption offences²⁶ detailed below can only be committed by persons holding public office.²⁷ Nevertheless, these offences may also apply to companies, their directors and their employees when they are discharging a public-service mission (illegal taking of interest, extortion by public officials), when they act as contracting authorities or entities (favouritism), or when they manage public funds (EPICs). More generally, they may face charges for complicity in²⁸ or concealment of²⁹ all six offences, or for laundering the proceeds³⁰ of such offences.

The table below summarises the different types of criminal risk faced by companies, their directors and their employees, depending on whether or not they are discharging a public-service mission, are subject to public procurement rules, or are a government-funded institution.

26 Extortion by public officials, illegal taking of interest, favouritism, and misappropriation of public funds.

27 Under the French Criminal Code, persons holding public office are defined as those who hold public authority, who discharge a public-service mission or who hold a public electoral mandate.

28 [Article 121-7](#) of the French Criminal Code.

29 [Article 321-1](#) of the French Criminal Code.

30 [Article 324-1](#) of the French Criminal Code.

Corruption risks for companies by type

Corruption offence	Type of company	Company discharging a public-service mission	Company acting as a contracting authority or entity	Government-funded industrial and commercial institution (EPIC)	Other type of company
Bribery		X	X	X	X
Influence peddling		X	X	X	X
Misappropriation of public funds or assets		X		X	
Illegal taking of interest		X		X	
Extortion by public officials		X		X	
Favouritism			X	X	
Concealment of, or complicity in, one of the six offences listed above, or laundering of the proceeds of such an offence		X	X	X	X

Importantly, under [Article 121-2](#) of the French Criminal Code, where the bribe-giver or bribe-taker, acting on behalf of the legal entity, is that entity's representative or sits on one of its supervisory bodies, the company itself may be held criminally liable for the corrupt act.

Risk of bribery (active and passive)

In some cases, the sponsorship or patronage activity may itself be conditional on an act of bribery, which may be initiated either by the company or by the beneficiary organisation. The term "private-sector bribery" is used to describe cases where none of the participants holds public office or discharges a public-service mission.

A company's director or one of its employees may, under certain circumstances, solicit or accept an undue advantage from a representative of a beneficiary organisation in order to engage in sponsorship or patronage for the benefit of that organisation. Conversely, a company's director or one of its employees may, under certain circumstances (especially in an environment of intense competition between sponsors or patrons), offer or give an undue advantage to the representative of the beneficiary organisation in order to induce that organisation to accept the company's sponsorship or patronage.

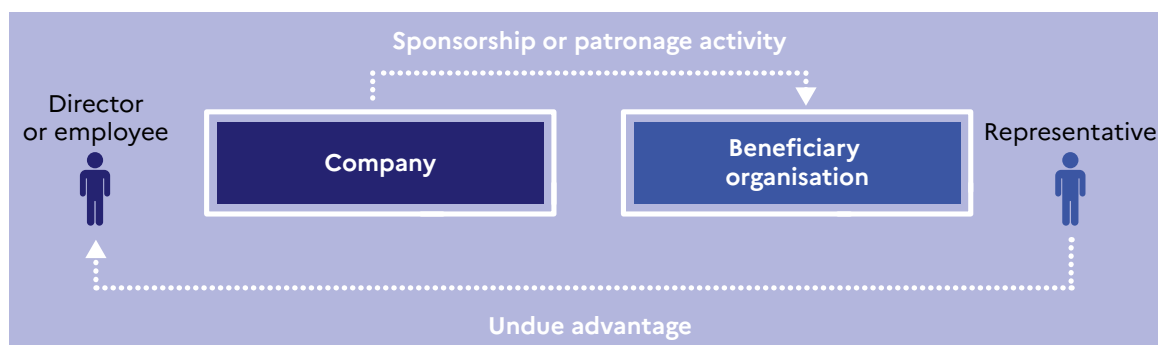
Where a person,³¹ in the course of a social or professional activity, solicits or accepts an advantage of any kind in order to carry out or abstain from carrying out an act

³¹ In bribery risk scenario 1, the director or employee of the company.

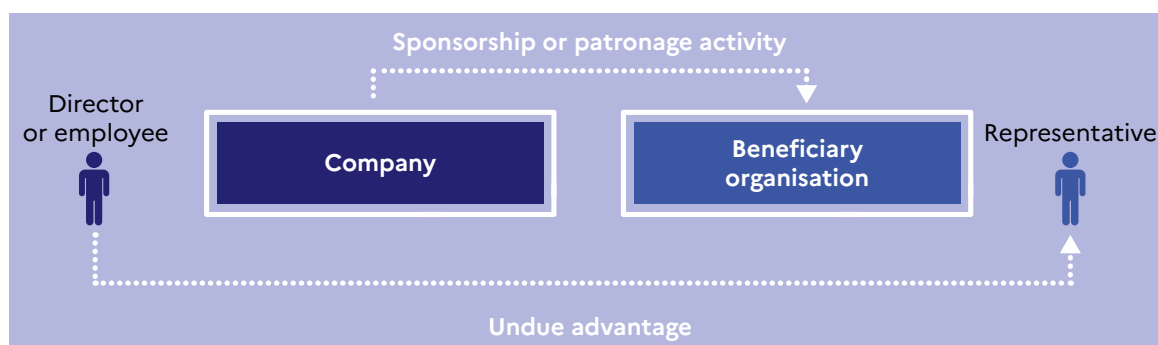
pertaining to their office, duty or mandate, this amounts to the offence of **passive bribery**.³²

Conversely, where a person³³ offers or gives an advantage to another person in order to induce that person, in the course of a social or professional activity, to carry out or abstain from carrying out an act pertaining to their office, duty or mandate, this amounts to the offence of **active bribery**.³⁴

Bribery risk scenario 1



Bribery risk scenario 2



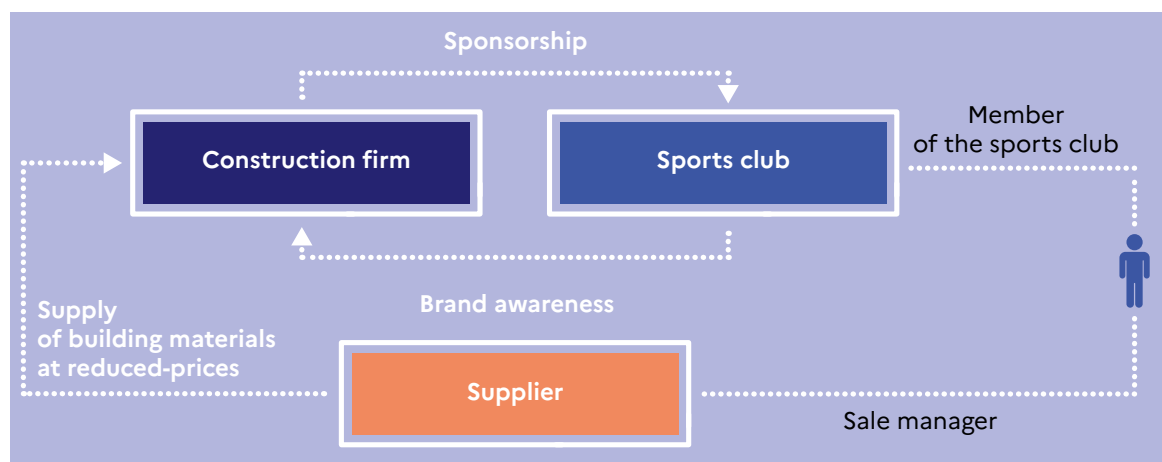
In both of these cases, the bribe may be offered or solicited on the basis that the members of the beneficiary organisation involved in the scheme, who often work on a voluntary basis, hold other positions in public-sector entities or private companies from which the bribe-giver wishes to obtain a favour. As such, the giving or taking of the bribe could constitute an offence of private-sector or public-sector bribery.

³² [Article 432-11\(1\)](#) (passive public-sector bribery) and [Article 445-2](#) (passive private-sector bribery) of the French Criminal Code.

³³ In bribery risk scenario 1, the representative of the beneficiary organisation.

³⁴ [Article 433-1\(1\)](#) (active public-sector bribery) and [Article 445-1](#) (active private-sector bribery) of the French Criminal Code.

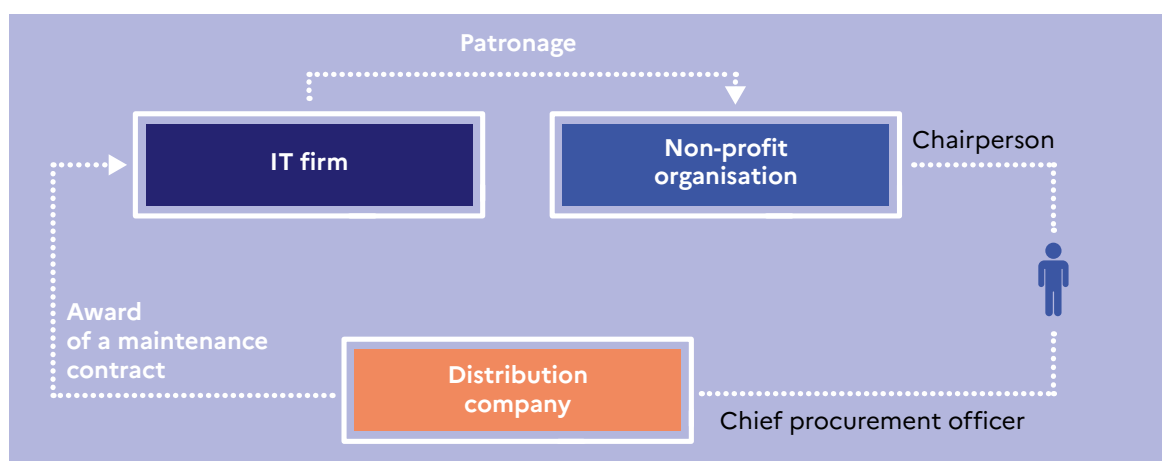
Example of bribery risk in a sponsorship activity



The director of a construction firm is looking to sign a contract with a supplier of building materials. The supplier's sales manager, who is in charge of contract negotiations, offers to supply the construction firm with materials at reduced prices if, in return, the company agrees to sponsor a sports club of which he is a member.

If the director accepts, both he and the construction firm could be prosecuted for **active private-sector bribery**, while the supplier's sale manager could be charged with **passive private-sector bribery**.

Example of bribery risk in a patronage activity



The chief IT procurement officer at a distribution company asks the sales manager at an IT firm if the latter's company would agree to become a patron of the non-profit organisation he chairs in return for a computer maintenance contract.

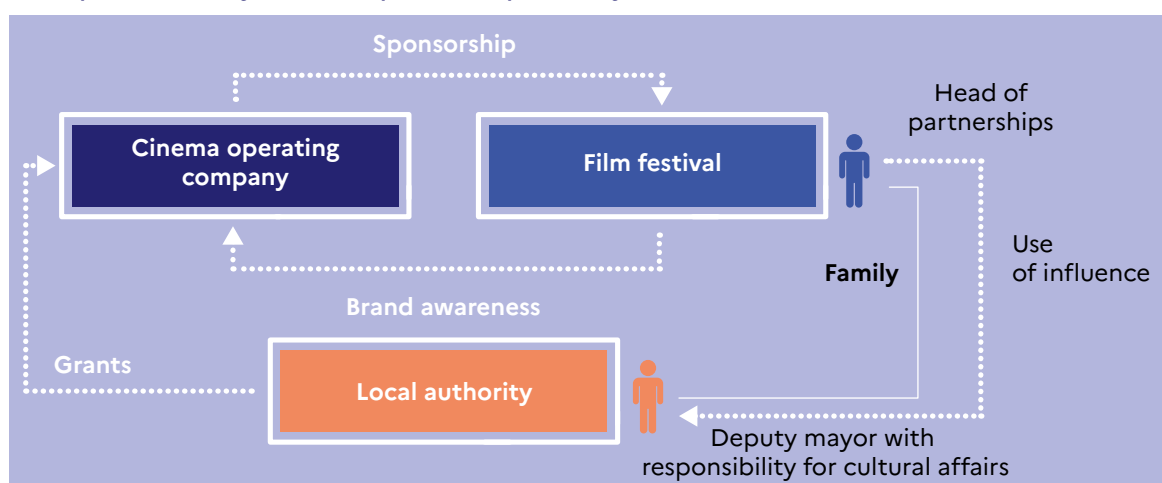
By agreeing to the chief procurement officer's request in order to secure the maintenance contract, the sales manager – and the IT firm itself, if it turns out

that the sales manager is a director – could be prosecuted for **active private-sector bribery**, while the chief procurement officer could be charged with **passive private-sector bribery**.

► Risk of influence peddling (active and passive)

In some circumstances, a company may grant sponsorship or patronage at the behest of a director or employee in order to induce a member of the beneficiary organisation to abuse their real or alleged influence with a view to obtaining a favourable decision from a public body or administration. In this case, the sponsorship or patronage activity constitutes a reward for the use of this influence. Provided that the conditions for the legal entity to be held criminally liable are met, the company could be prosecuted for **active influence peddling**,³⁵ while the member of the beneficiary organisation could be charged with **passive influence peddling**.³⁶

Example of bribery risk in a sponsorship activity



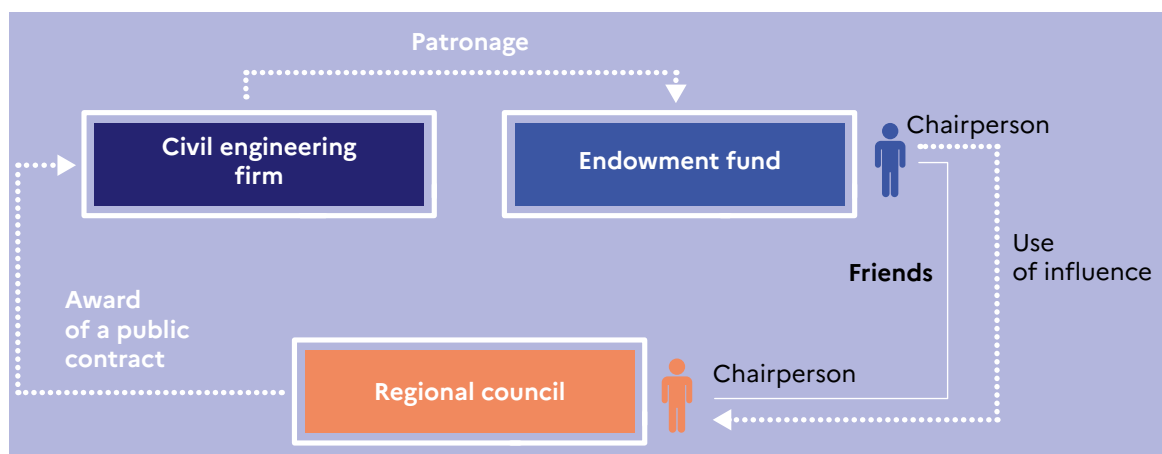
A non-profit recognised as a public-interest entity is organising a film festival. The non-profit's head of partnerships is seeking to secure sponsorship for the event from a cinema operating company. In order to get the company's director to agree, she suggests that she could use her influence with one of her cousins, a deputy mayor with responsibility for cultural affairs, to get the local authority to award the company an operating grant.

If the director agrees to the proposal, he and the company could be prosecuted for **active influence peddling**. The head of partnerships could be charged with **passive influence peddling**. The deputy mayor could be prosecuted for **passive public-sector bribery**.

³⁵ Article 433-1(2) and Article 433-2, para. 2 of the French Criminal Code.

³⁶ Article 432-11(2) and Article 433-2, para. 1 of the French Criminal Code.

Example of influencing peddling risk in a patronage activity



The chairperson of an endowment fund wishes to secure funding to ensure the continuity of the fund's activities. He approaches the director of a civil engineering firm and suggests that he could use his influence with his friend, the head of the regional council, to get a public contract currently out to tender awarded to the firm. In return, the chairperson of the endowment fund asks the director to help him "secure" financial patronage from the firm.

If the director accepts the proposal, he and his company could be prosecuted for **active influence peddling**, while the chairperson of the endowment fund, as well as the legal entity he represents, could be charged with **passive influence peddling**.

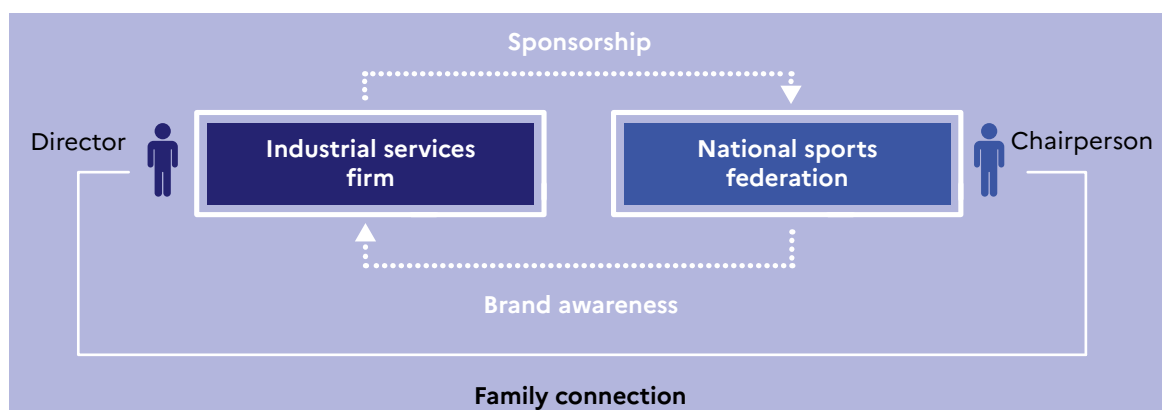
■ Risk of illegal taking of interest

Illegal taking of interest³⁷ is an offence whereby a person holding public office takes, receives or keeps any interest in a business or business operation that is likely to compromise their independence, impartiality or objectivity when, at the time in question, that person has the duty of ensuring the supervision, management, liquidation or payment of that business or business operation.

A company can be prosecuted for **complicity in illegal taking of interest** if it can be established that it caused or facilitated the offence. It can also be charged with **concealment of illegal taking of interest** if it gains an advantage, receives a sum of money or otherwise profits from the offence.

³⁷ Article 432-12 of the French Criminal Code.

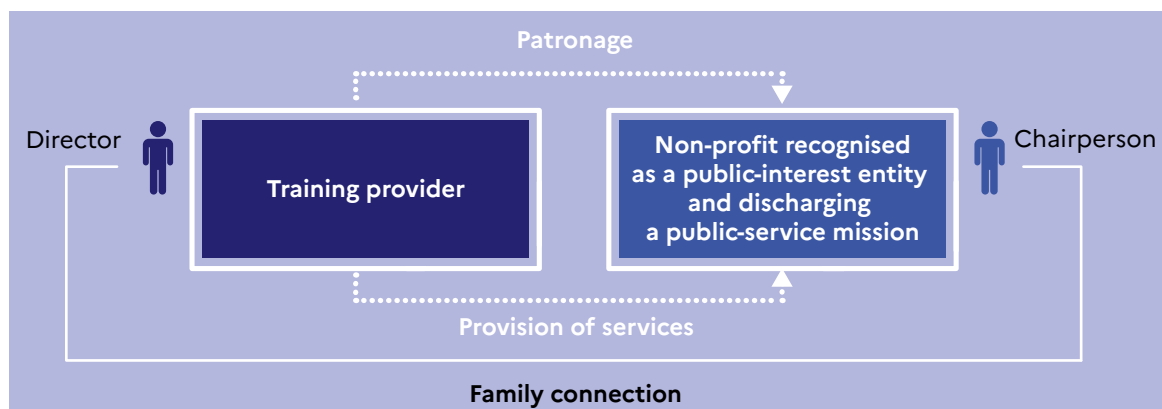
Example of the risk of illegal taking of interest in a sponsorship activity



The director of an industrial services firm wants to sponsor the kit of a national sports team. He asks his father-in-law, the president of the corresponding national sports federation, to agree to the sponsorship deal.

If the president accepts the request, he could be prosecuted for illegal taking of interest. The director, and consequently his company, could be charged with complicity in, and concealment of, illegal taking of interest.

Example of the risk of bribery and illegal taking of interest in a patronage activity



The director of a training provider has a family connection with the chairperson of a non-profit recognised as a public-interest entity and discharging a public-service mission. The director tells the chairperson that his company will grant patronage to the non-profit if it purchases training services from his company for the non-profit's employees. This arrangement would bring business into the company and secure a new funding stream for the non-profit.

In this situation, the director – and, consequently, the company – could be prosecuted for **concealment of illegal taking of interest** and **active public-sector bribery**.

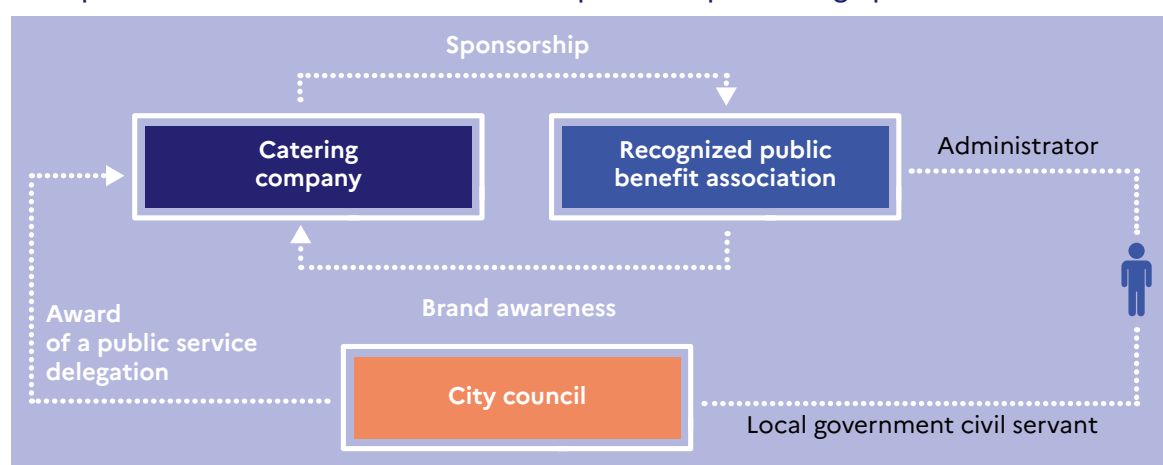
Meanwhile, the chairperson of the non-profit³⁸ could be charged with **illegal taking of interest** and **passive public-sector bribery**.

Risk of favouritism

Favouritism³⁹ is an offence whereby any person holding public office or discharging a specific duty as prescribed law,⁴⁰ or any person acting on behalf of such a person, obtains or attempts to obtain for others an unjustified advantage by breaching the statutory or regulatory provisions designed to ensure freedom of access, equal treatment for bidders and transparency in tenders for public contracts and delegated public services.

Under this corrupt arrangement, the company awarded the contract could be prosecuted for **complicity in favouritism** if it is established that it caused or facilitated the breaches committed by the main offender. It could also be charged with **concealment of favouritism** if it is found that the company was aware of the irregularities in the contract award procedure.

Example of the risk of favouritism and corruption in a parraining operation



The head of a catering company contacts the administrator of an association recognized as being of public benefit (ARUP) to offer him or her sponsorship. The administrator of ARUP is also a territorial civil servant. She is employed by a commune in the department responsible for reviewing bids for a public service delegation agreement to supply catering to nurseries and primary schools operated

38 In this example, the chairperson of the non-profit is considered to be a person discharging a public-service mission.

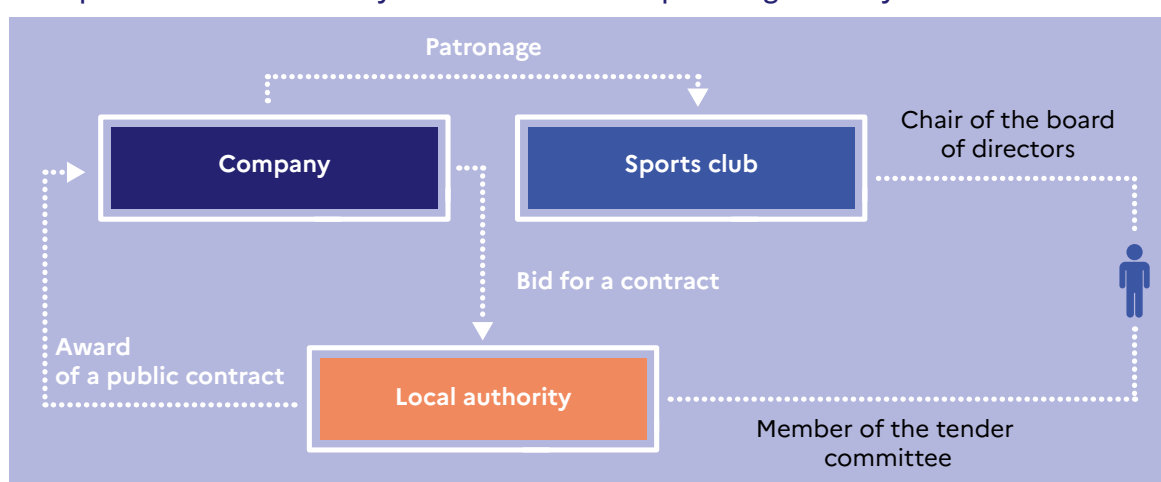
39 [Article 432-14](#) of the French Criminal Code.

40 Representatives, administrators or agents of central government, local government, government-funded institutions, national semi-public companies discharging public-service missions and local semi-public companies.

by the municipal council. During a conversation with the company's director held before the tender notice is published, she discusses the technical specifications contained in the tender documents in detail.

The local government civil servant, who is also the director of a non-profit recognised as a public-interest entity, could be prosecuted for favouritism and **active public-sector bribery**. The director of the catering firm – and, consequently, the company itself – could be charged with **concealment of favouritism** and **passive public-sector bribery**.

Example of the risk of bribery and favouritism in a patronage activity



In the normal course of its business, a company bids for a contract put out to tender by a local authority. A member of the local authority's tender committee approaches the company's director and tells him that two bids, including his own, currently meet the specifications. The tender committee member suggests that he will support the company's bid at the committee meeting in return for the company granting patronage to a sports club where he chairs the board of directors.

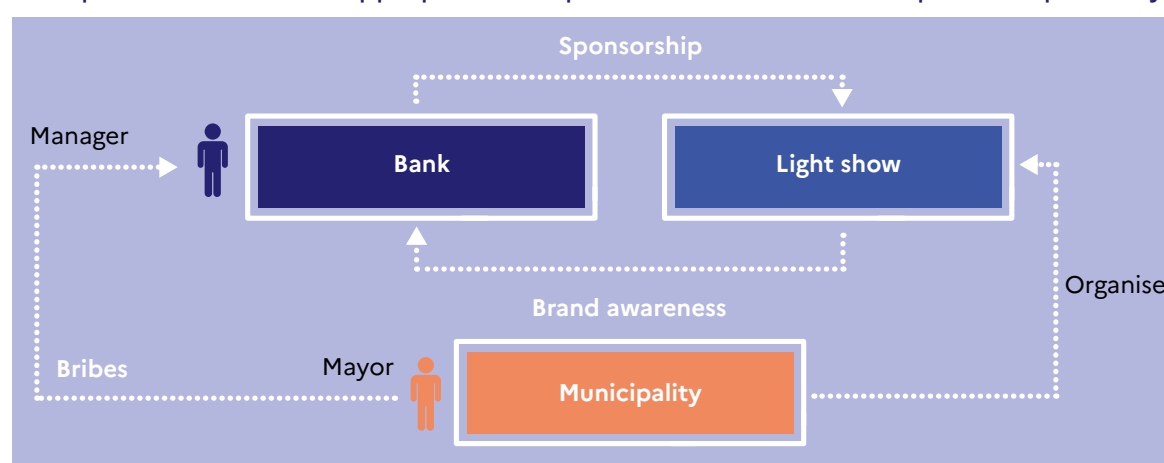
By agreeing to the patronage proposal in return for the award of the public contract, the director – and, consequently, the company itself – could be prosecuted for **active public-sector bribery** and **concealment of favouritism**, while the tender committee member could be charged with **passive public-sector bribery** and **favouritism**.

■ Risk of misappropriation of public funds or assets

Misappropriation of public funds or assets⁴¹ is an offence whereby a person holding public authority, or a public accountant, a public depositary or one of their subordinates, destroys, misappropriates or purloins public funds or assets entrusted to them as part of their function or tasks.

A company that benefits fully or partially from such misappropriated funds or assets could be prosecuted for **complicity in misappropriation of public funds or assets** if it can be established that it caused or facilitated the offence, and for **concealment of misappropriation of public funds or assets** if it benefits from the offence in any way.

Example of the risk of misappropriation of public funds or assets in a sponsorship activity

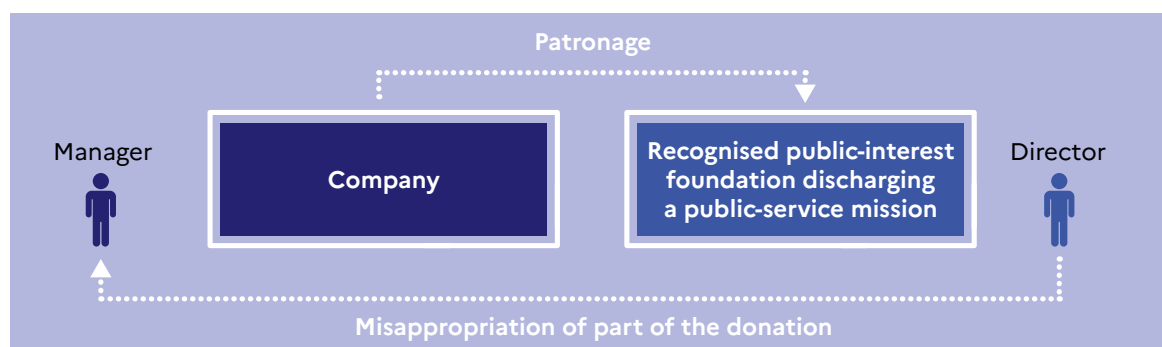


The mayor of a municipality is looking for sponsors for a light show he wants to hold in his town. He approaches the sponsorship manager at a regional savings bank in his town, who holds director status within the company, and offers her money if she agrees to sponsor the event. The manager, seeing a benefit not only for the company but also for herself, accepts the proposal and agrees to the sponsorship deal. As agreed, the mayor pays the sponsorship manager a sum of money, which he deducts from the sponsorship donation paid by the bank to the revenue office set up by the municipality to organise the event.

In this situation, the bank's sponsorship manager could be prosecuted for **passive public-sector bribery** and **concealment of misappropriation of public funds**, while the bank itself could be prosecuted for **passive public-sector bribery**. The mayor, in turn, could be charged with **active public-sector bribery** and **misappropriation of public funds**.

⁴¹ [Article 432-15](#) and [Article 432-16](#) of the French Criminal Code.

Example of the risk of bribery and misappropriation of public funds or assets in a patronage activity



As part of its patronage policy, a company agrees to support a recognised public-interest foundation discharging a public-service mission. Several years later, the foundation's director gets back in touch with the company's patronage manager. Since the foundation needs funds quickly, the director asks the manager if the company can renew its support without delay and offers to pay him part of the donation in return.

If the company's patronage manager accepts, he could be prosecuted for **passive public-sector bribery** and **complicity in misappropriation of public funds**. Meanwhile, the foundation's director⁴² – and the foundation itself – could be charged with **active public-sector bribery** and **misappropriation of public funds**.

■ Risk of extortion by public officials

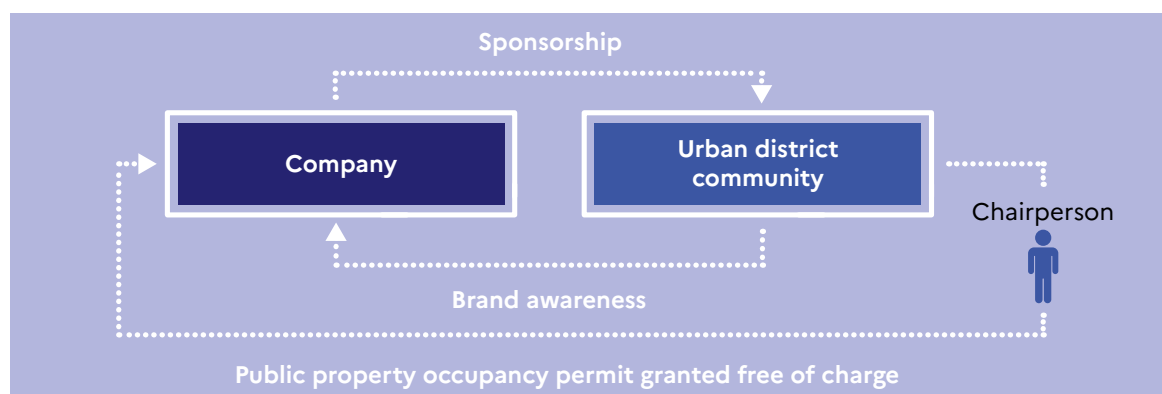
Extortion by public officials⁴³ is an offence whereby a person holding public office grants an exoneration or exemption from public duties, contributions, taxes or impositions, or knowingly accepts payment of a sum known not to be due.

A company that benefits from such an exemption could be prosecuted for **complicity in extortion by public officials** if it can be demonstrated that it caused the offence, and for **concealment of extortion by public officials** if it benefits from the offence in any way, even if it did not solicit it.

⁴² In this example, the director of the foundation is considered to be a person discharging a public-service mission.

⁴³ [Article 432-10](#) of the French Criminal Code.

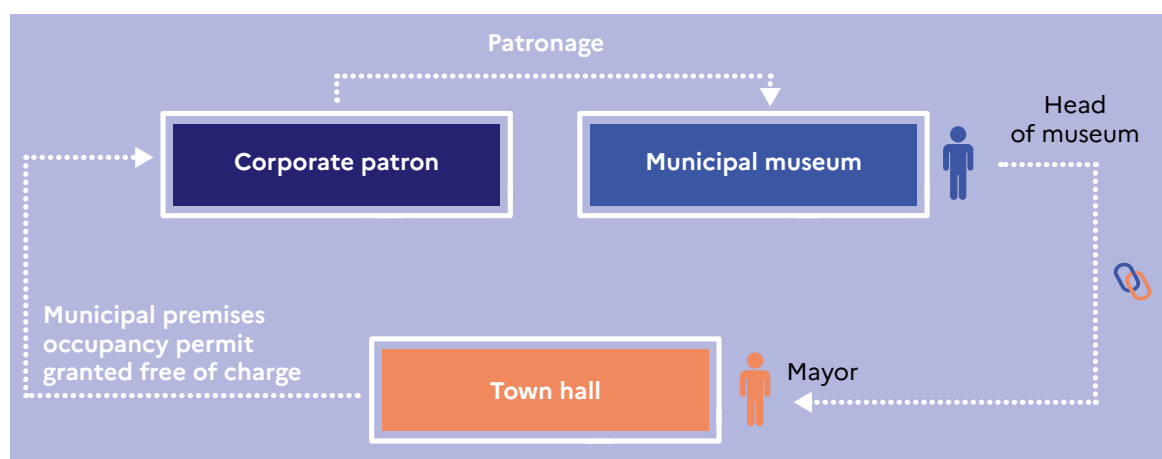
Example of the risk of bribery and extortion by public officials in a sponsorship activity



The director of a company wants to set up a sponsorship deal with an urban district community. Under the terms of the deal, a local building will be named after the company. In return, the company will make annual payments over a fixed period. The president of the urban district community, who is also the mayor of a town within the community, tells the company's director that his firm will be able to occupy public spaces free of charge if it increases its sponsorship payment.

If the director agrees to the proposal, he – and the company itself – could be prosecuted for **passive public-sector bribery** and **concealment of extortion by public officials**, while the president of the urban district community could be charged with **active public-sector bribery** and **extortion by public officials**.

Example of the risk of extortion by public officials in a patronage activity



A company wishing to support local arts and culture initiatives enters into a patronage deal with a municipal museum. Some time later, the head of the museum, wishing to make the patronage a longer-term arrangement, approaches the company's director and suggests that she could use her influence to get her partner, the town's mayor, to allow the company to occupy, free of charge, municipal premises that it previously rented for its business needs. She implies that this arrangement, which

the mayor could decide upon without consulting the municipal council and without a formal resolution, could be made in return for the company's future patronage of the museum. In this situation, the mayor is knowingly allowing the company to occupy the premises free of charge.

If the company agrees to this proposal, the director – and, consequently, the company – could be prosecuted for **concealment of extortion by public officials**, while the mayor could be charged with **extortion by public officials**.

1.1.2 Misappropriation of the consideration or support

In the examples above, the corruption risk stems directly from the sponsorship or patronage activity itself. But this risk can also arise at a later date, especially when the company uses the consideration it receives or when the beneficiary organisation allocates the support.

Misappropriation of the consideration

In return for a company's sponsorship, the beneficiary organisation agrees to various advertising and commercial obligations, such as displaying the company's name and logo on a product or at an event, selling advertising space, distributing promotional giveaways, or offering event tickets or hospitality.

In contrast, patronage involves making a donation without expecting an equivalent consideration in return. A beneficiary organisation may nevertheless decide to provide some form of consideration as a way to thank the company for its donation. For instance, it may include the company's logo, name or trademark in its information and marketing materials, allow the company to use a particular property or asset, arrange a private tour for company employees or customers, offer event tickets or hospitality, or allow the company to hold a private event at a particular venue.

KEY POINT: Tax treatment of considerations

A company may not use considerations received as part of a patronage activity to promote its image, business activities or products for commercial purposes.⁴⁴

If a company breaches this rule, the tax authority may review the tax status and eligibility of the organisation's patronage programme.

⁴⁴ Tax instruction [BOI-BIC-RICI-20-30-10-20](#), para. 140. For more information, refer to the French Ministry for Culture's [cultural patronage charter](#), Coordination Générosités's [corporate patronage ethics charter](#), and the [practical guide to patronage considerations](#) prepared by Admical, France Générosités and the CFF (all available in French only).

Considerations received in return for sponsorship or patronage activities, whether determined in advance or otherwise, must not be used for illicit purposes by a company's director or employees. This is because a consideration given to the company by the beneficiary organisation could, in fact, constitute the advantage offered to a third party in order to induce that person to carry out an act pertaining to their office, duty or mandate under a corrupt scheme.

For instance, where a sports federation offers tickets to a major sporting event to one of its corporate patrons in return for its support, the company must not use these tickets to persuade an employee of a corporate client to award it a contract that is currently being negotiated.

Likewise, where a non-profit organising a well-known music festival offers tickets to the event to a corporate sponsor in return for its support, the company's director or one of its employees must not use these tickets to persuade a music-loving public official to speed up the granting of an official permit that falls within the remit of the official's department.

Misappropriation of the support

Companies must also exercise caution as to how the beneficiary organisation actually uses the support it receives. An organisation acting with ill intent could, in fact, use some or all of the support to commit a corruption offence. For instance, it could use some of the funds to bribe a public official into awarding the company a public contract for which it is bidding. Depending on how much the company knows about this misappropriation and the extent of its involvement, if any, it could also face civil and criminal prosecution.

EXAMPLE: The Imelda Marcos affair

In the 1980s, a Canadian company bidding for a major public contract in the Philippines was approached by the wife of the country's president. She told the company that, if it made a donation towards the construction of a new hospital, this would greatly increase its chances of winning the contract. In the end, the company refused to make the donation when it learned that the money would go to a charity controlled by the president's wife rather than be allocated to the construction of a new hospital, suspecting that the payment would be a concealed bribe.

1.2 Corruption risk factors in sponsorship and patronage activities

Because of their characteristics, sponsorship and patronage activities can pose corruption risks for companies.

1.2.1 Beneficiary-related risk factors

Geographical risk

The distance between the company and the beneficiary (person or organisation), as well as differences between the rules that apply locally and those that apply to the company, can render the activity more opaque and make it harder to check how the support is being used (owing to factors such as the language barrier, relevant standards and procedures).

Companies should also exercise particular caution around sponsorship and patronage activities in countries or regions with looser anti-corruption laws and standards. In such cases, the parent company should ensure that activities conducted by foreign branches and subsidiaries comply not only with local standards but also with the group's policy.

KEY POINT: Patronage outside France

Patronage activities conducted outside France are only eligible for preferential tax treatment if they meet the conditions laid down in paragraph 220 et seq. of tax instruction [BOI-BIC-RICI-20-30-10-10](#). In particular, the beneficiary organisation must have its registered office and must carry on its activity in the European Union or the European Economic Area. As an exception to this principle, some activities carried on outside the European Union or the European Economic Area may benefit from the same preferential tax treatment if they fall within certain categories (humanitarian action; initiatives contributing to the enhancement of artistic heritage or to the dissemination of French culture, the French language and French scientific knowledge; environmental protection initiatives; scientific research initiatives; and donations to certain international organisations).

Dealings with public-sector entities

As stated in the [French Anti-Corruption Agency Guidelines](#) (para. 224), dealings between the public and private sectors give rise to corruption risk. Companies should remain mindful of, and cautious about, this risk at all times.

Beyond the corruption risk that can arise from a sponsorship or patronage activity involving a public body, public procurement is another area requiring particular

attention. Suppliers must enjoy equal access to public procurement at all times, and public entities must not become overly dependent on certain suppliers. In the event of a breach of rules on equal treatment, freedom of access and transparency of procedures, a sponsorship or patronage activity could be reclassified as a public contract and the company in question could be prosecuted for concealment of favouritism.

KEY POINT: Public contracts

When engaging in sponsorship and patronage activities, companies must pay close attention to the rules laid down in the French Public Procurement Code.

A company may, for instance, sponsor or patronise a public-sector entity or a government-funded institution (or a project run by such an organisation) to which it acts as a supplier. In such cases, the company must not make its support conditional on securing a public contract or a delegated public services agreement⁴⁵ (or it could face prosecution for bribery).⁴⁶ Likewise, a public-sector entity cannot select a future contractor on the basis that the company in question has agreed to sponsor or patronise it, or has promised to do so (or it could face prosecution for favouritism).⁴⁷

As a reminder, public contracts subject to the French Public Procurement Code must comply with the principles of equal treatment of bidders, freedom of access and transparency of procedures.⁴⁸

Particular caution is also advised for other government contracts that fall outside the scope of the law on public contracts,⁴⁹ such as delegated public services agreements,⁵⁰ grant agreements and certain public services contracts.⁵¹

Moreover, where a company sponsors a legal entity, where that entity is a contracting authority or entity, and where the support consists mainly of a contribution in kind, the sponsorship arrangement in question is, in reality, a public contract.

In one case, for instance, an IT firm signed a sponsorship agreement with a *département* council under which the firm agreed to supply free software to pupils at several local secondary schools in return for a grant of €65,000. This arrangement was ultimately reclassified as a public contract.⁵²

45 "A public contract is a contract concluded by one or more buyers subject to this code, with one or more economic operators, in order to satisfy a requirement for works, supplies or services, in return for a pecuniary or similar interest" (Article L. 1111-1 of the French Public Procurement Code).

46 Article 433-1 of the French Criminal Code.

47 Article 432-14 of the French Criminal Code.

48 Article L.3 of the French Public Procurement Code.

49 Article L.1100-1 of the French Public Procurement Code.

50 Articles L.1120-1 to L.1122-1 of the French Public Procurement Code.

51 Article L.2512-5 of the French Public Procurement Code.

52 Administrative Court of Amiens, 9 November 2006, case no. 0601004.

In another case, the Conseil d'État (France's Supreme Administrative Court) ruled that a consideration need not necessarily be financial in nature, and that a service performed on municipal property could fall within the scope of the rules governing public procurement.⁵³

Companies must therefore always check in advance that the proposed activity is appropriately balanced, and must consider the value of the consideration and the real purpose of the transaction, in order to avoid the risk of reclassification. For instance, the advertising exposure gained through a sponsorship activity must be taken into account when assessing the value of the consideration.⁵⁴

■ Third-party due diligence

The legal entities⁵⁵ that a company sponsors or patronises may be private- or public-sector entities.⁵⁶ Some of these entities may fall outside the scope of Articles 3 and 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 and, as such, are not legally required to put in place a system or procedures to prevent and detect corruption.⁵⁷ In these cases, the company must exercise particular caution, especially when it comes to how the sponsorship or patronage activity is organised (ad hoc agreement or call for expressions of interest).

53 Conseil d'État, Assembly, 4 November 2005, case no. 247298.

54 For further insight and analysis, refer to factsheet 7 in the AFA's *Guidelines on the prevention of breaches of probity for sports federations* (pp. 30–31).

55 In 2021, 52% of corporate patrons exclusively supported private-sector entities, 15% only supported public-sector entities, and 33% supported entities of both types (Admical, *Baromètre du mécénat d'entreprise en France, 2022*, available in French only).

56 Here, the term "public-sector entity" is understood in its broadest sense to include public or semi-public bodies, as well as private-sector bodies under the supervision of, or receiving support from, public-sector bodies.

57 In 2022, 47.4% of respondents to the *AFA survey on preventing and detecting corruption in the non-profit and foundation sectors* (available in French only) said they had not put in place any measures to specifically prevent and detect corruption.



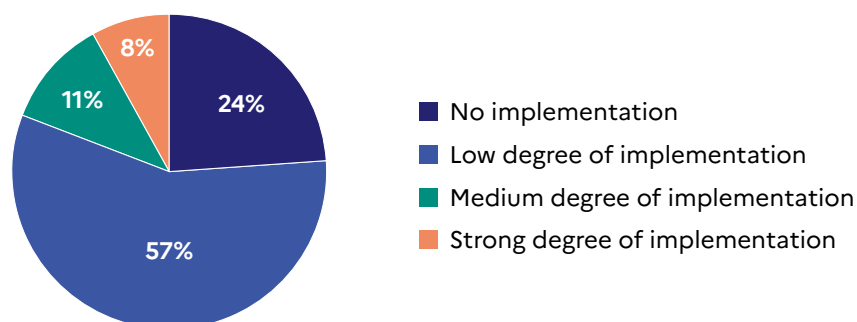
IN FOCUS

Preventing and detecting corruption in the non-profit and foundation sectors

Following the publication of its practical guide to managing corruption risk in non-profits and foundations recognised as public-interest entities (available in French only), the AFA conducted a statistical survey to determine the extent to which entities in these sectors were following and applying France's anti-corruption policy framework. The survey involved two questionnaires: one for non-profits recognised as public-interest entities, foundations, sports federations and endowment funds, and a second for non-profits other than those recognised as public-interest entities.

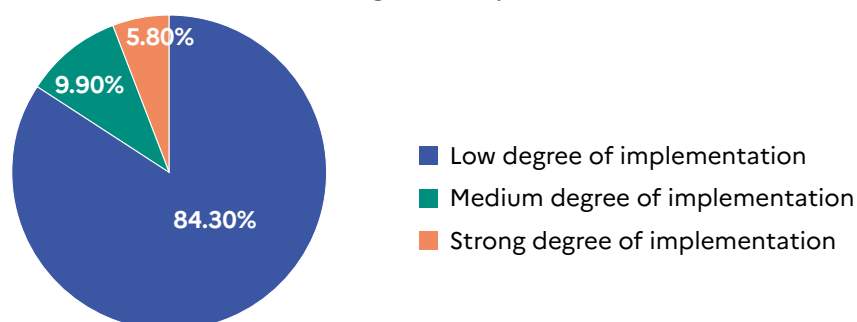
The survey provided a number of useful insights, especially as regards the implementation of anti-corruption measures within these organisations.

Non-profits recognised as public-interest entities, foundations, sports federations and endowment funds



The implementation of anti-corruption measures was fairly low but not non-existent. It was found that some organisations were taking steps to prevent corruption without knowing they are doing so, while others overestimated the strength of their measures

Non-profits (other than those recognised as public-interest entities)



The implementation of anti-corruption measures was also fairly low in this sector. Almost 85% of respondents said they had implemented less than 10% of the anti-corruption measures that they might have found useful.

Organisations that received public subsidies, ran fund-raising campaigns and had a significant budget were more likely to report a higher degree of implementation.

Unlike patronage, sponsorship is not restricted to legal entities. Companies can also sponsor private individuals. In such cases, the company must exercise particular caution when the individual in question holds another social or professional role, such as an athlete or artist who has a job that is separate from the activity for which they are being sponsored. In particular, the company must make sure that the sponsorship deal has not been agreed with the intent of inducing the beneficiary to carry out an act pertaining to their social or professional role – especially when the individual in question holds public office.

1.2.2 Transaction-related risk factors

Public exposure

Companies may choose to sponsor or patronise events or organisations that benefit from significant public exposure.

In such cases, any alleged or actual corruption could seriously harm the reputation of both the beneficiary organisation and the sponsor or patron.

Moreover, the event or organisation in question may be supported by a public figure, who will use their image to lend credibility to the initiative and will promote it among their network of contacts. In situations like these, it is important to manage potential conflicts of interest, which can arise when the personal interests of an employee, executive or director interfere with those of the organisation by which they are employed or in which they are an office-holder.⁵⁸

CORRUPTION CASE STUDY: World Athletics

In 2015, the French authorities revealed corrupt practices within World Athletics designed to cover up cases of doping.

Following the broadcast of a TV news story revealing breaches of anti-doping rules, as well as allegations of corruption within the federation to cover up these breaches, the World Anti-Doping Agency (WADA) set up an independent commission to investigate the case. The investigation found that corrupt practices, potentially linked to the federation's president, had occurred between 1999 and 2015.

The investigation, which was opened by France's National Financial Public Prosecutor's Office and handed over to the Central Office for the Fight Against Corruption and Financial and Tax Crime in 2015, revealed that various defendants had been involved in delaying disciplinary sanctions against Russian athletes suspected of doping in

⁵⁸ AFA, *Preventing conflicts of interest in the private sector*, November 2021.

exchange for the renewal of sponsorship and TV broadcasting deals for the 2013 World Championships held in Moscow.⁵⁹

On 16 September 2020, the president of World Athletics was sentenced by the Court of Justice of Paris to four years' imprisonment and a fine of €500,000 for bribery and breach of trust. Other defendants in the case included athletes, heads of athletics federations, advisers and doctors.

Competitive environment

In some cases, sponsorship or patronage activities are conducted in environments where competition between sponsors or patrons is intense. This applies, for instance, when companies sponsor or patronise major sporting or cultural events, which receive widespread media coverage.

This competitive environment can lead a company's director or one of its employees to bribe a member of the beneficiary organisation in order to secure a sponsorship or patronage deal and have the company's image associated with the event. Conversely, this same competitive environment might cause a member of the beneficiary organisation to solicit an undue advantage from the sponsor or patron.

CORRUPTION CASE STUDY: Major sporting event

The director of a Japanese company was prosecuted and sentenced to one year's imprisonment for having paid bribes to a member of the organising committee of a major sporting event in order to secure a sponsorship deal and become an official partner of the event.

Urgency

Time-pressured decisions can be a risk factor insofar as they give companies little time to assess the exposure of the sponsorship or patronage activity to corruption risk, or to ensure that the funds paid, assets provided or staff made available are used for the intended purpose.

Likewise, where a company provides goods and services for an event happening in the very near future, it is imperative that proper monitoring procedures are followed, especially when it comes to third-party due diligence and the management of potential conflicts of interest.

⁵⁹ French Supreme Court of Appeal, Criminal Division, 20 December 2017, case no. 17-84.574.

Other transaction-related risks

Companies must ensure that any sponsorship or patronage activity does not constitute an offence or an act that runs counter to the corporate interest under criminal and tax law.

Under French criminal law, a judge will find that a sponsorship or patronage activity constitutes misuse of corporate assets⁶⁰ – an offence that often leads to corruption offences⁶¹ – unless it meets the following three conditions:

- ▶ The amount spent on the sponsorship or patronage activity must be proportionate in view of the company's financial situation and must not exceed its capabilities.⁶²
- ▶ The activity must not be carried out in the personal interest of the company's directors.⁶³
- ▶ The activity must be considered in light of the expected benefits for the company (particularly in terms of its image).⁶⁴

If a sponsorship or patronage activity does not meet these conditions, its rationale should be questioned, in particular to ensure that it has not been carried out as a way to cover up a corruption offence.

Under French tax law, it is accepted that a patronage activity does not run counter to the corporate interest and can be recognised as an expense.⁶⁵ If a company chooses not to claim the patronage tax reduction and instead decides to deduct the cost as an expense,⁶⁶ it can only do so if (among other criteria), the expense:⁶⁷

- ▶ is incurred in the direct interest of the business and is in line with the company's corporate purpose

60 For the offence of misuse of corporate assets, see [Article L.241-3\(4\)](#) and [Article L.242-6\(3\)](#) of the French Commercial Code.

61 AFA, *French Anti-Corruption Agency Guidelines*, 12 January 2021, courtesy translation of the French version published in the JORF, para. 88.

62 French Supreme Court of Appeal, Criminal Division, 4 February 1985, case no. 84-91.581.

63 French Supreme Court of Appeal, Criminal Division, 5 March 2014, case no. 13-80.350 and French Supreme Court of Appeal, Criminal Division, 22 February 2017, case no. 16-87.262.

64 Official Journal of the National Assembly, 28 May 1990, p. 1688.

65 Conseil d'État, 9 May 2018, case no. 388209.

66 [Article 39\(7\) of the French General Tax Code](#) allows the deduction of expenses relating to events of a philanthropic, educational, scientific, social, humanitarian, sporting, family or cultural nature, or to events that contribute to the enhancement of the artistic heritage, the protection of the natural environment, or the dissemination of French culture, the French language and French scientific knowledge, where such expenses are incurred in the direct interest of the business.

67 Tax instructions [BOI-BIC-CHG-10-10](#) to [BOI-BIC-CHG-10-30](#).

- ▶ is incurred in relation to the ordinary course of management of the company
- ▶ is an actual expense and there is adequate documentary evidence to support it
- ▶ is included in the company's expenses for the financial year in which it was incurred

By making sure that a patronage activity meets these conditions, a company can ensure that it is not an abnormal act of management⁶⁸ for which there is no justification, as well as gain additional assurance that the activity has not been carried out for fraudulent purposes, such as to commit a corruption offence.

KEY POINT: Tax treatment, bribery and tax fraud

For tax purposes, patronage is treated as a donation to a charity. The beneficiary organisation must provide the company with a receipt so that it can claim a tax reduction on the donation.⁶⁹

As with any tax incentive mechanism, the potential temptation to obtain the tax reduction through fraudulent means can lead a company's director or one of its employees to engage in bribery.⁷⁰

For instance, a director could try to bribe a member of a beneficiary organisation to obtain a tax receipt even though the company has not made a donation, or to obtain a receipt for an amount exceeding the actual amount of the donation.⁷¹

1.2.3 Organisational risk factors

Sponsorship and patronage activities that are not structured in a particular way (such as through calls for expressions of interest) or governed by specific procedures (in companies or beneficiary organisations) are more exposed to criminal risk.

This risk becomes especially acute when the decision on which event or organisation to support is made by a very small number of people, or even by senior management alone, in which case the company itself may be held criminally liable.

68 An abnormal act of management is an act by which a company deliberately renders itself financially poorer for reasons unrelated to its interest ([Conseil d'État, 21 December 2018, case no. 402006](#)); [Article 38](#) and [Article 209](#) of the French General Tax Code).

69 [Article 238 bis \(5 bis\)](#) of the French General Tax Code.

70 According to [Article 1741 of the French General Tax Code](#), tax fraud involves the fraudulent evasion or the attempted fraudulent evasion of the assessment or full or partial payment of tax.

71 According to [Article 1740 A of the French General Tax Code](#), knowingly issuing a receipt in order to enable a taxpayer to obtain an undue reduction in tax is punishable by a fine.

Moreover, where a company lacks a structured decision- and deal-making process for sponsorship and patronage, these activities may fall outside the company's internal control system – the very system that helps to identify and manage high-risk situations.⁷²

⁷² Properly structured sponsorship activities are more likely to fall within the scope of the company's internal control system, although this practice is not universal.



2

PREVENTING AND DETECTING CORRUPTION IN SPONSORSHIP AND PATRONAGE ACTIVITIES

At this juncture, it should be stressed that any company wishing to make a donation is advised to comply with the legal and tax framework governing patronage, even if it does not wish to benefit from preferential tax treatment. Likewise, any sponsorship activity should be carried out in accordance with the legal framework described in the introduction and appendices to this guide, not least so the company can avoid being accused of misuse of corporate assets or tax fraud.⁷³

The prevention and detection measures detailed below should be understood as being guided by a risk-based approach. Individual companies should therefore adapt them according to their risk profile – which depends on factors including their size, their business sector, their organisational structure, and the geographies in which they operate – and in line with the principle of proportionality underpinning the *French Anti-Corruption Agency Guidelines*.⁷⁴

2.1 Prevention measures

Companies are advised to put in place a number of prevention measures, including the following: strengthening the governance of sponsorship and patronage activities (2.1.1); identifying and assessing the risks inherent in these activities in their corruption risk map (2.1.2); documenting permitted and prohibited conduct in relation to these activities in their anti-corruption code of conduct and related policies (2.1.3); training their staff (2.1.4); and conducting due diligence on third parties in view of the identified risks (2.1.5).

2.2.1 Strengthening governance and the role of senior management

Senior management is advised to draw up a sponsorship and patronage policy reflecting what it considers to be an acceptable degree of risk. The sponsorship and patronage selection procedure may be adjusted according to the level of corruption risk posed in each case.

Senior management should also ensure that sufficient resources (human, technical and financial) are in place to support effective implementation of this policy.

The policy could be implemented either directly (i.e. by the company itself) or indirectly (through an intermediary body).⁷⁵

⁷³ Further information about the legal framework surrounding sponsorship and patronage can be found in Appendix 1 to this guide.

⁷⁴ AFA, *French Anti-Corruption Agency Guidelines*, 12 January 2021, courtesy translation of the French version published in the JORF, para. 6.

⁷⁵ Further information about the distinction between a “direct” and “indirect” approach to sponsorship and patronage activities can be found in part 1 of this guide.

Sponsorship and patronage carried out directly by the company

Where a company chooses to carry out sponsorship and patronage activities itself, senior management should ensure that such activities are backed by appropriate governance arrangements (which, in turn, will help to limit the associated corruption risk). To this end, senior management may, for example, appoint a sponsorship and patronage officer to oversee project implementation and to liaise between various internal teams and units, or even set up a specific department for this purpose.

The company may, if resources allow, establish a standalone committee to select the events and organisations it wishes to support. Failing that, it could entrust this responsibility to an existing committee, provided that its members possess the necessary expertise. The involvement of such a committee is highly advisable for major sponsorship and patronage activities, as well as for those that present a high degree of risk owing to factors such as their nature, their value, the number or seniority of the staff made available by the company, and any potential conflicts of interest.

Ideally, this committee should include the company's head of sponsorship and patronage, as well as its compliance officers, internal control or audit managers, and any other person who, by virtue of their qualifications, role or position, offers the requisite degree of professionalism and independence to enable the committee to assess and manage the corruption risk associated with these activities. Wherever possible, and if it so wishes, the company may also bring in suitably qualified external persons to provide an outside perspective on a proposed sponsorship or patronage activity and to make the decision-making process as neutral as possible.

Once the company has reviewed the various proposals and completed its anti-corruption due diligence process, it may decide to compile a shortlist of eligible projects and put this to a vote among employees.

In all cases, and especially where no special committee has been set up, companies are advised to involve multiple people in the selection and approval process. Senior management should also receive regular updates on progress and any problems encountered.

As well as appointing a sponsorship and patronage officer or setting up a special committee, companies are advised to draw up an internal procedure for reviewing proposals and determining the eligibility of beneficiary organisations. In the interest of reducing risk, this procedure, tailored to the company's risk profile, should – as a minimum – outline a set of objective decision-making criteria. The sponsorship and patronage officer or committee could draw up a list of the documents needed before the company confirms its support for a given project or organisation (project summary, questionnaire completed by the beneficiary, results of the anti-corruption due diligence process, if any, expenditure commitment form, etc.). Each proposal would then be assessed, on a case-by-case basis, to check whether it meets the company's pre-defined eligibility criteria.

Companies are advised to document this procedure and keep written records of each proposal they review. This information can then be provided to the authorities in the event of an inspection.

PREVENTING AND MANAGING CONFLICTS OF INTEREST

It may prove useful to include a reference to the company's policy on managing conflicts of interest in the sponsorship or patronage procedure, which should include specific measures for members of senior management and staff involved in reviewing and selecting proposals:

- ▶ These individuals should be required to disclose any pre-existing relationships (interests) with sponsorship or patronage beneficiaries or, at the very least, confirm the fact that no conflict of interest exists.
- ▶ A documented recusal procedure should be in place for cases where a real or apparent conflict of interest arises.

Staff should be reminded of the existence of this disclosure and recusal system at regular intervals, and steps should be taken to ensure that the rules are systematically followed.

Above and beyond these procedures, enhanced control procedures for the use of funds should be applied in cases where a conflict of interest exists.

For further information about preventing and managing conflicts of interest, refer to the AFA's practical guide on this subject.⁷⁶

In the interest of transparency, it may also be a good idea for senior management to encourage internal and external communication in general, and in particular the reporting of breaches of the rules. This communication could cover:

- ▶ the company's sponsorship and patronage policy and project management arrangements, including details of the people responsible and the procedures that must be followed
- ▶ the projects that the company has carried out or intends to carry out

PREVENTION IN A GROUP WITH SUBSIDIARIES

The brand awareness initiatives a group decides to engage in may depend on local contextual factors such as specific needs, legislation, customs and target-audience support.

As with the rest of its anti-corruption programme, a group is advised to draw up a general sponsorship and patronage policy and common, group-wide methods that apply to all of

⁷⁶ AFA, [Preventing conflicts of interest in the private sector](#), November 2021.

its constituent companies. These methods can then be tailored to the local constraints and specific features of each subsidiary (size, local law, identified risk exposures, etc.).

Ideally, the parent company should be aware of the sponsorship and patronage activities carried out by its subsidiaries, especially where decentralised procedures are in place for certain low-risk activities.

If a subsidiary has its own foundation, the group can ensure that the foundation's anti-corruption programme, including its sponsorship and patronage policy, is effectively rolled out and backed by robust governance arrangements.

Patronage activities carried out via an intermediary body

In some cases, a company may choose to set up a dedicated intermediary body, such as a foundation, endowment fund or non-profit organisation, to manage its patronage activities. It would be useful for the board of directors of this body to draw up a detailed work programme covering a given period of time and indicating the human, financial and other resources needed to carry out these activities. The work programme could also include a statement detailing the resources allocated by each contributing party (including group companies, shareholders, members, corporate officers and employees).



IN FOCUS

Governance of intermediary bodies

Endowment funds⁷⁷ and foundations⁷⁸ are non-profit organisations and legal entities in their own right⁷⁹ with a public-interest purpose. They can be set up by individuals or legal entities with a view to undertaking or funding public-interest activities.

The manner in which they are administered and governed varies according to the legal framework under which they operate. Nevertheless, qualified persons can bring focused, external expertise into the governance of the fund or foundation and ensure a more balanced approach overall. Such persons should undergo anti-corruption due diligence checks and should be selected on the basis of factors including their experience, ethics, and knowledge of governance and management matters.

⁷⁷ Article 140 of Act 2008-776 of 4 August 2008 on the modernisation of the economy.

⁷⁸ Article 19 of Act 87-571 of 23 July 1987 on the development of patronage.

⁷⁹ For more information on sheltering and sheltered foundations, refer to the [Inspectorate General of Administration's report of January 2023](#) (available in French only), and in particular the good practices listed in Appendix 5 to the report.

The intermediary body is advised to have in place specific rules for preventing, identifying and managing conflicts of interest with regard to patronage activities.⁸⁰ To this end, the body may:

- ▶ ensure that decision-making, supervisory, management and advisory functions are separated in accordance with the segregation-of-duties principle
- ▶ appoint a dedicated officer to manage conflicts of interest
- ▶ ask members of the board of directors to formally confirm that they have no conflict of interest with regard to each proposal under review, or even introduce voluntary disclosures of interest, which should be kept up to date
- ▶ ensure that, where a conflict of interest arises, the relevant member of the board of directors (or of the ad hoc project selection committee, if any) recuses themselves from the preparation and decision-making process

No matter what rules are put in place for identifying and managing conflicts of interest, it is highly advisable to have multiple people involved in the patronage decision-making process.

CORPORATE FOUNDATIONS AND PATRONAGE

The regulatory framework for corporate foundations⁸¹ states that companies are committed for a limited period of time,⁸² and that they enjoy freedom of choice in this matter. A foundation should be managed by a board of directors, whose members include the founders, employee representatives from the founding companies, and qualified persons serving in a voluntary capacity.

Setting up a corporate foundation represents a structured approach to indirect management of patronage activities. According to Article 19-9 of [Act 87-571 of 23 July 1987 on the development of patronage](#), corporate foundations must prepare an annual balance sheet, income statement and notes to the financial statements, and must appoint at least one independent external auditor, or face the penalties laid down in Article L.242-8 of the French Commercial Code.⁸³

80 For more information, refer to the AFA guide *Preventing conflicts of interest in the private sector*.

81 [Act 90-559 of 4 July 1990 establishing corporate foundations and amending the foundation-related provisions of Act 87-571 of 23 July 1987 on the development of patronage](#).

82 A foundation is established for a minimum of five years, which may be extended by the founders for a minimum of three years ([Article 19-2 of Act 87-571 of 23 July 1987 on the development of patronage](#)).

83 The failure, by the chairperson, directors or managing directors of a foundation, to draw up an annual inventory, prepare annual financial statements and produce an annual report is punishable by a fine of €9,000 ([Article L-242-8 of the French Commercial Code](#)).

Intermediary bodies are required to provide administrative and accounting documents (such as their annual report, income statement and balance sheet, as well as their auditor's report, if any) to their board of directors or other governing body. The founding company, which sits on this board of directors or other governing body, is advised to closely monitor the activities of the intermediary body. The intermediary body may also produce a report for each activity it carries out, including a description of the activity and a financial statement, such that the company can check that its support has been used and allocated in accordance with the agreed-upon terms.

ENDOWMENT FUNDS AND PATRONAGE

Article 140 of Act 2008-776 of 4 August 2008 on the modernisation of the economy established endowment funds as another means of funding patronage activities. An endowment fund is a legal entity in its own right. Assets and rights are allocated to such a fund on an irrevocable basis for the purpose of supporting a public-interest initiative or activity. The funds, which are raised from private sources, can be either allocated to the endowment fund (and the proceeds used to finance the fund's activities) or used directly by the fund to fulfil its purpose. The fund can either fulfil this purpose through its own activities or finance other public-interest organisations pursuing the same purpose.

Rules on the articles of association and operation of endowment funds are laid down by legal and regulatory provisions, which specify the resources a fund may use to finance its activities. Endowment funds nevertheless differ from foundations insofar as they can be created by a single individual or legal entity with an initial endowment of €15,000. Conversely, foundations are subject to special supervisory arrangements, require higher initial endowments (between €150,000 and €1.5 million) and, in the case of recognised public-interest foundations, must have their articles of association approved by the French Ministry of the Interior and the Conseil d'État.

For more information and good-practice examples of governance for non-profits and foundations recognised as public-interest entities, and of the proper management of donations, refer to the AFA's dedicated guide on this subject.⁸⁴

2.1.2 Mapping sponsorship- and patronage-related corruption risk

The AFA recommends that all companies identify and assess the risk of corruption offences (see summary table on p. 16 of this guide) in sponsorship and patronage activities, and that they include this information in their corruption risk map. This recommendation applies equally to companies that are not subject to Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691

⁸⁴ AFA, *Maîtriser le risque d'atteinte à la probité au sein des associations et fondations reconnues d'utilité publique*, January 2022 (available in French only).

of 9 December 2016. To this end, companies should ensure that they maintain an exhaustive inventory of sponsorship and patronage activities, and that any intermediary bodies (foundations and non-profits) are either included in the company's general risk map or conduct their own risk mapping exercise.

► Maintaining an exhaustive inventory of the company's sponsorship and patronage activities

Some companies have a documented procedure, and in certain cases a dedicated team, for sponsorship and patronage activities. This arrangement makes it easier to maintain an exhaustive inventory of such activities.

Where this is not the case, the company can ask its employees and managers for information about sponsorship and patronage activities during risk mapping interviews.⁸⁵ These interviews should be conducted with staff in the following roles and departments, among others:

- senior management
- business development
- marketing and communication
- sales
- procurement
- accounting and finance
- legal affairs
- human resources

It may also be helpful to ask other staff attending risk mapping interviews about the existence of such activities.

As part of the risk mapping exercise, the company may also wish to identify internal documents that mention the risks associated with sponsorship and patronage activities (such as control, audit or whistleblowing reports) or that contain a record of flows related to such activities (agreements, accounting and non-accounting monitoring documents, the gifts and hospitality register, etc.).

⁸⁵ For more information about conducting a corruption risk mapping exercise, and the use of process analysis interviews in particular, refer to the *French Anti-Corruption Agency Guidelines*, paras. 133–136.

Once the inventory has been drawn up, companies can refer to the corruption risk scenarios detailed in part 1 of this guide to identify the risk exposures associated with these activities.

■ Including intermediary bodies managing patronage activities in the risk map

Non-profits, foundations and endowment funds have a special relationship with the companies that found them. For instance, they rely on them for funding, they may share their name, and staff of the founding company may be involved in their work and activities.

For this reason, founding companies are advised to include such intermediary bodies in their risk mapping exercise. As an alternative, the body could conduct its own risk mapping exercise, potentially with support from the founding company, then share the results of this exercise with the representatives of the founding company who sit on its board of directors or other supervisory body. The founding company could then add this information to its own risk map.

2.1.3 Including sponsorship and patronage activities in the code of conduct and related policies

Depending on the results of the risk mapping exercise, it may be advisable for a company to include sponsorship and patronage activities, as relevant, in its anti-corruption code of conduct, and to draw up a dedicated policy⁸⁶ and procedure⁸⁷ on this subject. The company may also wish to prepare a formal, documented agreement for each such activity.

■ Sponsorship and patronage activities in the anti-corruption code of conduct

In some cases, a company's assessment of the risk associated with sponsorship and patronage – as evidenced in its risk mapping exercise – may lead it to consider such activities as presenting a high degree of risk. These activities can therefore be mentioned in the company's anti-corruption code of conduct, as recommended in the *French Anti-Corruption Agency Guidelines*

⁸⁶ A policy is a set of guidelines drawn up by company setting out the rules and principles that all staff must abide by.

⁸⁷ A procedure is a policy implementation document. It outlines the operational steps that should be followed, along with the individuals or departments involved.

(para. 173): “The code of conduct is more than just a collection of best practices. It also stipulates prohibitions of conduct and practices that constitute corruption in the company’s specific context. For this purpose, it may deal with gifts and hospitality, facilitation payments, conflicts of interest, **sponsoring** and **patronage**, and, as appropriate, lobbying and entertainment expenses.”

The anti-corruption code of conduct may:

- ▶ include practical examples of the various prohibited behaviours, using illustrations from the company’s business activities
- ▶ state that any sponsorship or patronage activities must be carried out in accordance with the relevant policies and procedures, which should ideally be documented and appended to the code of conduct

REMINDER OF PROHIBITED BEHAVIOURS IN FRANCE

- ▶ Donating to or supporting a public-interest entity with the intent of furthering business relationships with a public body or administration
- ▶ Donating to or supporting an organisation in return for the award of a contract or any type of commercial advantage
- ▶ Donating to or supporting a political party or trade union as a company
- ▶ Making a donation or offering support in a manner than contravenes legislation on tobacco, alcohol and public health

A company may find it helpful to share its anti-corruption code of conduct with the beneficiary organisation’s representatives and managers in order to make them aware of the measures the company is taking to prevent and detect corruption.

▶ Preparing documented policies and procedures on sponsorship and patronage

Preparing documented policies and procedures on sponsorship and patronage is one way to reduce corruption risk in such activities. These documents should be consistent with the other policies and procedures mentioned in the company’s anti-corruption code of conduct.

● THE SPONSORSHIP AND PATRONAGE POLICY

Companies are advised to prepare a documented policy on sponsorship⁸⁸ and patronage.⁸⁹ The policy should make a clear distinction between these two types of activities, detailing the purpose of each and how they are managed.

A documented policy provides a clearer picture of the types of projects and beneficiaries that the company is willing to support, as well as ensuring that sponsorship and patronage decisions are consistent with the company's strategy. In this way, the company explicitly excludes, as a matter of principle, any activity of a more opportunistic nature that is unrelated to its official policy and that could be used to conceal an illegal consideration (such as the award of a private or public contract).

Companies are advised to share this policy widely (including with its branches or subsidiaries outside France) to ensure that all staff who could potentially be involved in sponsorship or patronage activities are aware of what is permitted and of the limits set by the company.

LINKING THE SPONSORSHIP AND PATRONAGE POLICY WITH THE GIFTS AND HOSPITALITY POLICY

A company could potentially use the considerations received as part of a sponsorship or patronage activity for the purpose of gifts or hospitality. It is therefore important to link the company's sponsorship and patronage policy with its gifts and hospitality policy.⁹⁰

If the gifts and hospitality policy lacks detail on this matter, the company should draw up rules on the use of such considerations, including whom they may be offered to, how often they may be offered, who is permitted to offer them, and what value limits apply.

For reasons of traceability, it is recommended to record how such considerations are used in the company's gifts and hospitality register, if any.

A company may also wish to offer these considerations to employees as benefits in kind, such as through a prize draw, or donate them as gifts to public-interest entities.

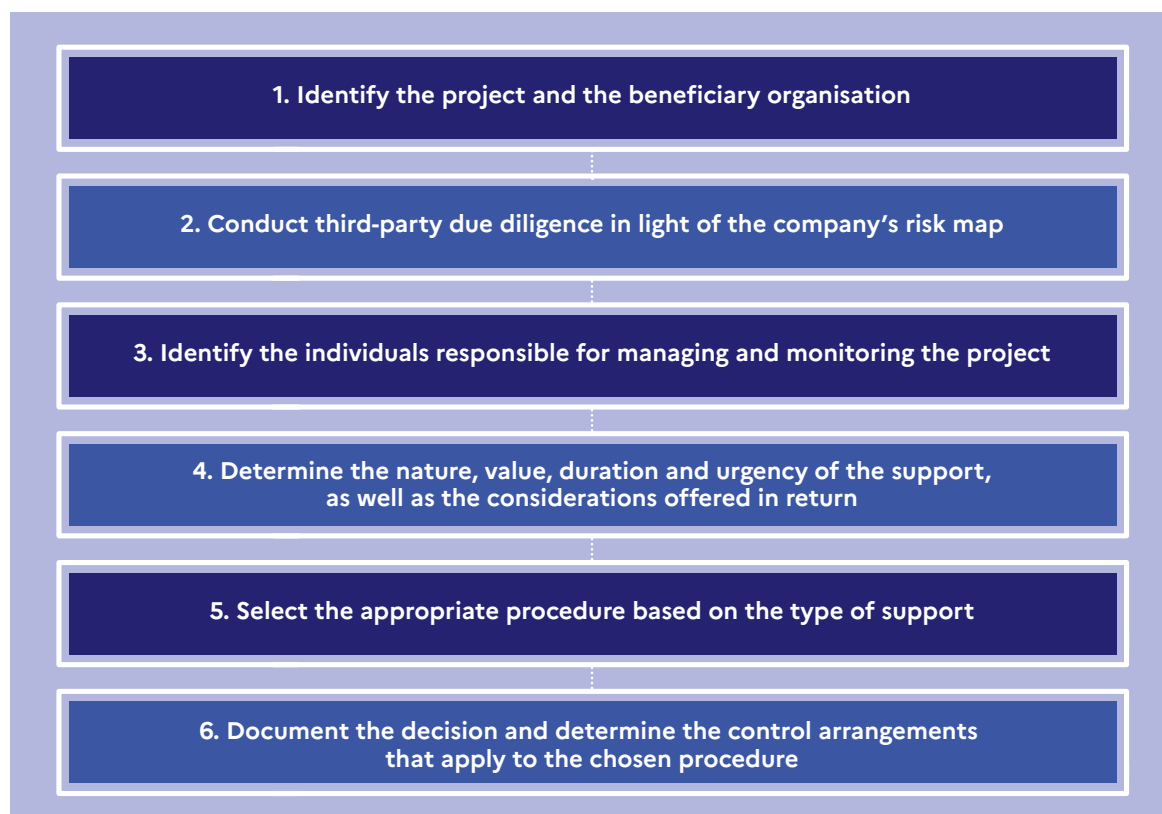
88 See Appendix 2 to this guide for an example.

89 For more information about ethical principles and requirements, refer to Coordination Générosités's [corporate patronage and ethics charter](#) (October 2022, available in French only).

90 The AFA has published a [practical guide](#) to help companies draw up a gifts and hospitality policy.

SPONSORSHIP AND PATRONAGE PROCEDURES

A company's sponsorship and patronage procedures formally document the operational steps⁹¹ that should be followed when carrying out these activities. An illustrative example of what these steps might entail is given below:



A company may have two different procedures:

- ▶ A standard procedure, which could apply, for instance, to sponsorship or patronage activities that align with the company's pre-defined objectives
- ▶ A fast-track procedure, which could be used for activities that have been formally identified and classified as urgent, such as releasing funds for a charity providing support to victims

★ STANDARD PROCEDURE

Under the standard procedure, companies are advised not to undertake any sponsorship or patronage activity without first reviewing the proposal and conducting third-party due diligence. The company may wish to encourage

⁹¹ See Appendix 3 to this guide for an example.

interested beneficiary organisations to plan ahead and leave plenty of time for these prior checks and controls, which cannot be fast-tracked.

Ideally, the procedure should set out the company's stance on the considerations it may receive in return for its sponsorship or patronage activities. Companies are strongly advised to ensure that such considerations are related to the activity in question. In the case of patronage activities, they should also be consistent with the relevant tax rules, which require a "significant disproportion" between the amount of the donation and the value of the consideration received. The French tax authority recommends that the consideration be valued as a percentage of the amount of the donation. This value should be determined according to the beneficiary organisation's reputation and audience reach and, in the case of a marketing-related consideration, should not exceed 10% of the amount of the donation.⁹²

✦ FAST-TRACK PROCEDURE

If a company has a fast-track procedure in place, this can be used in cases where the review and decision-making process needs to be streamlined for the sake of urgency. Under this procedure, for instance, some ex-ante checks normally carried out during the review phase could be bypassed, and the principle of collective decision-making could be waived.

Given the additional risk that comes with this streamlined approach, companies are advised to put in place specific risk mitigation measures such a cap on the number of sponsorship or patronage activities that can be approved or the value of donations that can be made under the fast-track procedure.

Where fewer people are involved in the decision-making process, the individuals in question should hold sufficiently senior positions within the company in light of the risk exposure. Regardless of the number of individuals involved and their level of seniority, companies are advised to apply the segregation-of-duties principle by ensuring that the decision to make a donation or to provide support is always made by persons other than those tasked with implementing the activity.

Last but not least, where certain ex-ante checks and controls normally carried out under the standard procedure are bypassed in the review phase, these same checks and controls should be conducted on an ex-post basis once time pressure is no longer a factor.

⁹² For more information, refer to the French Ministry for Culture's [cultural patronage charter](#) (p. 8) and the [practical guide to patronage considerations](#) prepared by Admical, France Générosités and the CFF (pp. 8–10) (both available in French only).

No matter what procedural and control arrangements a company follows, it is important to maintain documented records of all decisions made and controls performed for future audit purposes.

■ Signing a sponsorship or patronage agreement

Companies are strongly advised to draw up and sign a separate, written sponsorship or patronage agreement for each activity. Such an agreement, tailored to the specific features of each arrangement, serves as a formal, documented record of the undertakings made by the company and the beneficiary organisation, as well as the terms and conditions of the sponsorship or patronage activity, thereby helping to avoid disputes and potential confusion as to the scope and nature of the parties' respective obligations.⁹³

Ideally, the sponsorship or patronage agreement should include the following information:

- ▶ The obligations incumbent on the beneficiary organisation, including the requirement to use the donation or support for the purposes of the project as described in the agreement, details of how the project will be monitored (including the use of the donation or support), the requirement to issue a tax receipt (for patronage activities), and any tax filing obligations that may apply.⁹⁴
- ▶ Details of how the funds will be paid (for audit-trail purposes) and the relevant payment schedule, if any.
- ▶ Details of the tangible and intangible considerations, both immediate and long-term, and how they will be used. In this case, companies are advised to be as precise as possible and to mention not only the nature and purpose of these considerations, but also the quantities (number of invitations, number of events, etc.) and values involved. It may be useful to indicate that these considerations cannot be used in any future commercial transaction (e.g. tickets received as consideration cannot be resold).
- ▶ The person within the company who is responsible for taking receipt of the considerations, and their role or position.
- ▶ The parties' respective anti-corruption commitments, if any (zero-tolerance policy, corruption prevention and detection programme, mutual acceptance of the other party's anti-corruption code of conduct, etc.).

⁹³ Model sponsorship and patronage agreements can be downloaded from the [website of the French Ministry for Culture](#) (available in French only).

⁹⁴ Tax instruction [BOI-BIC-RICI-20-30-40](#), para. 40 et seq.

- ▶ A clause providing for termination in the event that either party breaches the terms of the agreement or is implicated in acts that could be qualified as corruption.
- ▶ A time limit on the agreement (either a specific term or via a termination clause).
- ▶ The relevant reporting arrangements (submission of the entity's annual report, its financial statements, its auditor's report if required, a separate report on the initiatives or projects funded through the sponsorship or patronage activity, etc.).
- ▶ A provision to the effect that the company reserves the right to make payment of part of the donation conditional on the beneficiary organisation submitting a report on the use of the funds.
- ▶ A provision to the effect that the company reserves the right to conduct its own audits. If the company chooses to include this provision, it should actually exercise this right, such as by carrying out field visits.

2.1.4 Training staff involved in sponsorship and patronage activities

If the company's risk map highlights sponsorship or patronage activities as situations exposed to corruption risk, the staff involved in these processes – both at the operational level and in the selection and approval of activities, regardless of their seniority – may be considered to be particularly exposed persons. In this case, there is a strong argument for the company to provide these staff with specific training on preventing and detecting corruption risk, as provided for in Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 and as recommended in the *French Anti-Corruption Agency Guidelines*.⁹⁵

Beyond staff in anti-corruption and compliance roles, this training could also be given to senior managers, company secretaries, and staff working in business development, marketing, communication, human resources (e.g. if they manage a philanthropy body), administration, accounting and finance. The target population for this training could also include the staff of intermediary bodies (if the company has set up a separate entity to manage its sponsorship and patronage activities indirectly).

The company could also encourage its beneficiary organisations to raise awareness of corruption risk among their own staff, many of whom will be volunteers from a wide variety of professional backgrounds with little knowledge of corruption prevention and detection measures. The company could assist beneficiary organisations with these awareness-raising initiatives.

⁹⁵ See paragraphs 187–198 of the *French Anti-Corruption Agency Guidelines*, which deal with training for exposed managers and staff.

2.1.5 Conducting third-party anti-corruption due diligence

Where the third-party due diligence process reveals that a potential beneficiary poses a corruption risk, deciding to go ahead and support the organisation in question could harm the company's reputation.

The AFA recommends that all companies – whether or not they are subject to Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 – consider potential corruption risk when deciding whether to enter into or continue a relationship with any individual or legal entity.

Although Article 17 refers specifically to third-party due diligence checks on customers, leading suppliers and intermediaries with regard to the company's risk map, the *French Anti-Corruption Agency Guidelines* (para. 203) state that this due diligence "should also cover other categories of third parties that the company may have or wish to initiate relationships with, such as acquisition targets, and **sponsorship and patronage recipients**".

A company should therefore assess beneficiaries with regard to the risk exposures identified in its corruption risk map before entering in a relationship with them. Similar checks should also be carried out during the course of the sponsorship or patronage relationship.

By conducting these due diligence checks, the company can:

- ▶ select beneficiaries after having already assessed their risk environment
- ▶ implement enhanced due diligence measures in cases where a risk has been identified

Companies have free rein in determining the criteria against which beneficiaries' risk levels are assessed. The risk factors detailed in part 1 of this guide may serve as a useful starting point.

Depending on the risk criteria it selects, a company may find it helpful to collect some or all of the following information (provided that it complies with privacy and data protection requirements):⁹⁶

- ▶ Information about the beneficiary organisation:
 - ➡ Identifying information about the third party (such as its charity or company registration number, the decree recognising the organisation as a public-interest entity, the incorporation notice published in the Official Journal of the French Republic, and its bank details at the time of the transaction)

⁹⁶ Companies can find the information needed for this assessment in the public information databases listed in the AFA's [compendium of practical resources](#) (available in French only).

- ➡ The origin of the relationship
- ➡ The organisation's articles of association (which will indicate, for instance, whether it is subject to public procurement rules)
- ➡ The identity of the organisation's representatives, the members of its senior management team and its beneficial owners (this information is especially important for high-risk third parties)
- ➡ The nature of the organisation, its organisational structure, the activities it carries out, and the countries in which it may operate (this information helps determine the organisation's risk environment and is especially important if the organisation is a contracting authority or is discharging a public-service mission)
- ➡ Publicly available information about the organisation's precise objectives (this information helps the company determine whether it shares the organisation's values)
- ➡ Details about the organisation's funding strategy (types of funding streams, current and potential future donors and financial backers, etc.)
- ➡ The eligibility of donations to the organisation for the patronage tax reduction
- ➡ The organisation's experience in this field
- ➡ Publicly available financial statements and auditor's reports
- ➡ The organisation's annual report(s)
- ➡ The reputation of the organisation and the members of its senior management team (this information can be found in negative press articles, for example)
- ➡ The overall conduct of the organisation (e.g. a reluctance or refusal to disclose certain information in its possession)
- ▶ Information relating to risk factors:
 - ➡ Any relationships between the organisation and politically exposed persons (PEPs)
 - ➡ Any sanctions affecting the third party and its representatives directly, or the sector as a whole
- ▶ Any conflicts of interest between company employees involved in the sponsorship or patronage decision-making process and the beneficiary organisation (comprising the entity itself, its members and its employees)

- ▶ Information about corruption prevention and detection measures put in place by the organisation:
 - ➡ The method by which the organisation selects sponsors or patrons (ad hoc agreements or calls for expressions of interest) and documented records of these processes
 - ➡ Whether the organisation has an anti-corruption compliance programme and, in particular, whether it has internal third-party due diligence procedures (screening potential sponsors or patrons, rejecting sponsorship or patronage proposals on ethical grounds, etc.), an anti-corruption code of conduct, a gifts and hospitality policy and/or a policy on managing conflicts of interest
 - ➡ Whether the organisation has put in place measures to prevent conflicts of interest⁹⁷
- ▶ Information about how the organisation manages sponsorship or patronage activities:
 - ➡ Whether mechanisms are in place to check how contributions paid by the company are actually used
 - ➡ Whether the organisation has a documented procedure for considerations and acknowledgements⁹⁸

Companies may find it useful to introduce criteria that help lighten the burden of additional due diligence checks and approvals, such as by combining third parties into uniform groups.

Where a company manages sponsorship and patronage activities indirectly (i.e. through an intermediary body), and where this body is not included in the company's corruption risk map, it should treat the body as a third party and conduct anti-corruption due diligence checks accordingly.

When assessing beneficiaries for corruption risk, companies may wish to consider a range of risk factors. Some examples are given below:

▶ Weak governance

The company should exercise caution if the organisation in question has non-standard articles of association or unclear objectives, if there is little transparency

97 For instance, rules on preventing conflicts of interest should be included in the standard articles of association for non-profits and foundations recognised as public-interest entities.

98 French Government Intangible Assets Agency, *Mettre en place une stratégie de mécénat : des objectifs à la mise en œuvre*, September 2017, pp. 10–12 (available in French only).

over how contributions are used, if it is difficult to obtain information about the identity of the organisation's representatives, board members, beneficial owners or financial backers, or if the organisation has not published any financial statements or auditor's reports,⁹⁹ all of which are signs of weak governance.

Involvement of public officials or entities

Some public-interest entities and organisations benefiting from sponsorship rely on support or input from public officials, public entities or PEPs. In certain cases, these individuals or entities may be members of the organisation's senior management team. As indicated in the *French Anti-Corruption Agency Guidelines*, dealings between the private and public sectors can give rise to corruption risk.¹⁰⁰

Economic dependence

The extent to which the beneficiary organisation depends economically on the corporate sponsor or patron is a key factor to consider when assessing corruption risk.

Long-term relationships

Beneficiary organisations seek patronage as way to meet their long-term support needs, while corporate patrons engage in such activities as part of their multi-year philanthropy strategy. As such, patronage arrangements are typically long-term affairs. While ongoing collaboration can build trust, companies must not overlook the importance of conducting regular third-party anti-corruption due diligence, and of subjecting financial and material flows between the company and the beneficiary to rigorous accounting and other internal controls.

Recommendations

Companies should exercise caution in cases where a third party with which they already have a relationship recommends an organisation for sponsorship or patronage, especially if the third party in question is in a position to influence the award of public or private contracts to the company.

Any intermediaries involved in a sponsorship or patronage activity (such as collection bodies, or companies responsible for connecting beneficiary organisations with

⁹⁹ Some foundations and endowment funds are subject to specific financial management and accounting rules (e.g. they are required to publish annual financial statements and prepare an annual report). They may also be inspected by the administrative authorities and other bodies.

¹⁰⁰ AFA, *French Anti-Corruption Agency Guidelines*, 12 January 2021, courtesy translation of the French version published in the JORF, para. 224.

corporate sponsors or patrons) should be subject to third-party anti-corruption due diligence checks.

Sponsorship or patronage of a business partner

Instances in which a company sponsors or patronises a past, current or future business partner also pose a high degree of risk. Such arrangements must not be entered into with the intent of securing a contract from a customer (public or private).

A company must not make any agreement to sponsor or patronise a business partner conditional on it receiving a consideration in return for its support, even indirectly.¹⁰¹ Special caution should be exercised in such cases, even if the business relationship occurred a long time before, or will occur a long time after, the sponsorship or patronage activity.

Where a company sponsors or patronises an organisation with which it has a business relationship, it is advised to keep this activity formally separate from activities relating to the development of the business relationship.

EXAMPLE

As part of a patronage activity, a sports equipment manufacturer agrees to lend sports mats bearing its logo to a sports club run by the local authority. If the authority then puts a contract to supply sports mats to local schools out to tender, it runs the risk of committing the offence of favouritism, since it is already familiar with the company's products as a result of the loan, and users have had a chance to get used to the equipment and influence the content of the specifications (which would be excessively similar to the specifications of the loaned mats).

EXAMPLE

An IT hardware company supplies recycled and refurbished computers to a local non-profit under a patronage arrangement. The non-profit is run by the spouse of the deputy mayor with responsibility for educational affairs. Later that same year, there is talk of upgrading the computing equipment in a number of schools run by the local authority. If the company that patronised the non-profit were to be awarded the contract without due consideration being given to the deputy mayor's potential conflicts of interest, then the indirect link between the company and the deputy mayor, and the subsequent award of the contract, could be construed as constituting the offences of influence peddling, illegal taking of interest and favouritism.

¹⁰¹ See the examples given in parts 1.2 and 2.2 of this guide.

The same degree of caution should be exercised for a beneficiary with influence or decision-making power over ongoing procedures involving the company, especially in cases where members of beneficiary organisations are involved in:

- ▶ awarding public contracts
- ▶ awarding grants and subsidies
- ▶ issuing permits or approvals
- ▶ drafting legislative or regulatory reforms affecting the company's sector or industry

2.2 Detection measures

Companies can also take various steps to strengthen their corruption detection measures. For instance, they could open up their internal whistleblowing system to the beneficiaries of sponsorship and patronage activities (3.2.1), strengthen their anti-corruption accounting controls (3.2.2), or introduce internal controls for sponsorship and patronage activities (3.2.3).

2.2.1 Opening up the internal whistleblowing system to the beneficiaries of sponsorship and patronage activities

In addition to the internal whistleblowing system for corruption-related disclosures provided for in [Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016](#), any company with 50 or more employees must set up a whistleblowing system in accordance with [Article 8 of the same act](#) and with [Decree 2022-1284 of 3 October 2022](#).

Companies that have set up a single technical platform for receiving whistleblower reports are required, under Article 8 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, to open up this system to members of the administrative, management or supervisory bodies of their contractual partners, as well as to employees, members of the senior management team and subcontractors of the latter.

As a general rule, it may be in the company's interest to open up its internal whistleblowing system to the staff of the organisations it sponsors or patronises, especially if its sponsorship and patronage activities are managed indirectly (i.e. through an intermediary body). Doing so allows these staff to report behaviours or situations that violate the sponsorship or patronage agreement or the code of conduct (if the code is mentioned in the agreement), and/or to raise the alarm over corrupt practices. The company may wish to make this possibility known to a wide audience, including through awareness campaigns and training programmes.

2.2.2 Anti-corruption accounting controls in sponsorship and patronage activities

Where the risk mapping exercise identifies sponsorship and patronage as high-risk activities, the company should determine what anti-corruption accounting controls it needs to put in place to manage these risks. The *French Anti-Corruption Agency Guidelines* (para. 297) state that anti-corruption accounting control procedures are “instituted by enhancing or supplementing existing general-purpose controls with regard to the high-risk situations identified by the corruption risk mapping exercise”.

Given the sensitivity of sponsorship and patronage activities, companies should exercise particular caution when it comes to accounting and, in particular, should ensure that all disbursements are backed by supporting documents.

The French National Accounting Code does not provide for specific accounts for sponsorship or patronage activities. Customary practice is for companies engaged in such activities to debit these transactions to account 623X (Advertising, publications, public relations) for current expenses, and to account 671X (Exceptional expenses from operating transactions) for exceptional expenses. More specifically, patronage transactions are usually debited to account 6238 (Sundry – tips, current donations, etc.) if they are recurring in nature, and to account 6713 (Donations, gifts) if they are exceptional in nature.

For traceability and accounting purposes, companies are advised to debit patronage and sponsorship transactions to additional, standalone sub-accounts. The company is free to decide how to name these sub-accounts according to its own conventions. The examples below are given for illustrative purposes:

	Patronage	Sponsorship
Current	6238X: Current patronage	6238Y: Current sponsorship
Exceptional	6713X: Exceptional patronage	6718Y: Exceptional sponsorship

Establishing appropriate monitoring and accounting control procedures

A single company can engage in sponsorship and patronage in cash, in kind and in the form of skills sharing. Likewise, one company can sponsor or patronise multiple beneficiaries.

In such cases, it may be appropriate for a company to supplement its financial accounts, which are classified by expense type, with cost accounts, which provide a clearer picture of the expenses incurred in relation to a given sponsorship or patronage activity, regardless of the type of expenses in question and the corresponding considerations.

Companies are also strongly advised to record any gifts or hospitality received in consideration of sponsorship or patronage in their gifts and hospitality register. These considerations may be subject to non-accounting controls in order to determine their value.¹⁰²

Companies that adopt these approaches will gain a comprehensive overview of the flows involved in each activity and, as such, will be able to apply appropriate control systems. For a fuller discussion of anti-corruption accounting control methods, including analytical review, refer to the AFA guide *Corporate anti-corruption accounting controls*.

► Monitoring flows between the company and its beneficiaries

Given the sensitivity of sponsorship and patronage activities, companies are advised to exercise particular caution as regards flows and relationships with beneficiary organisations, taking account of the degree of risk as determined through third-party due diligence. By adopting a cautious stance of this nature, companies can ensure that they do not receive undue consideration in return for their sponsorship and patronage, and that the activity itself does not constitute consideration for a corrupt act. With this in mind, companies may wish to strengthen their controls in the following areas:

- The identification and review of gifts and hospitality received from, or offered by, beneficiary organisations
- The review of expense claims submitted by staff dealing directly with beneficiary organisations
- The review of account movements related to relevant third parties, and of the compliance of such movements with the sponsorship or patronage agreement
- The parallel analysis of flows relating to commercial transactions that the company may carry out with beneficiaries, and those relating to sponsorship or patronage activities with these same entities

In order for these controls to be effective and to adequately cover the risk of undue consideration, they must continue once the sponsorship or patronage activity itself has ended.

¹⁰² Where a company makes donations exceeding €10,000 as part of a patronage activity, it is required by law to declare to the French tax authority the amount and date of such donations, the identity of the beneficiaries and, where applicable, the value of the goods and services received directly or indirectly by way of consideration ([Article 238 bis\(6\)](#) of the French General Tax Code).

EXAMPLE: The VimpelCom affair

Unitel LLC, a subsidiary of Dutch telecoms company VimpelCom, paid approximately \$38 million in sponsorship and charitable donations to non-profit organisations linked to an Uzbek official. The lack of robust accounting control procedures, particularly in relation to these philanthropic transactions, led investigators to discover that the payments were in fact part of a series of bribes paid to the official in question between 2006 and 2012 – amounting to an estimated \$114 million – with a view to securing contracts worth an estimated \$2.5 billion.

In 2016, VimpelCom agreed to pay \$795 million in a settlement with the U.S. authorities and Dutch regulators for violations of the Foreign Corrupt Practices Act (FCPA).¹⁰³

Considering patronage-related tax obligations and documents

A rigorous and transparent approach to accounting for patronage activities also helps companies satisfy the requirements of the French tax authority, which can demand to see corporate patrons' accounting records and other documents at any time in order to check how funds are being used. As a reminder, the beneficiary organisation is responsible for issuing a tax receipt, but the company making a donation in kind is responsible for determining its value.¹⁰⁴

The corporate patron must be able to produce, at the request of the authorities, written agreements or other, equivalent documents indicating the objectives that the beneficiary organisation will pursue using the donated funds, the implementation and control measures that the company has put in place, the arrangements agreed upon for reporting and maintaining documentary evidence of expenditure, and a statement to the effect that the beneficiary organisation agrees to be audited at the company's behest.

KEY POINT: The patronage tax reduction

In order to ensure that it is receiving the correct amount of tax reduction, a company must make sure that the amount shown on the tax receipt issued by the beneficiary organisation exactly matches the amount paid to that organisation in donations. The company could be prosecuted for tax fraud¹⁰⁵ if it turns out that it is claiming a tax reduction for a donation that it did not make or for an amount greater than the donation it actually made.

¹⁰³ <https://www.sec.gov/litigation/complaints/2016/comp-pr2016-34.pdf>.

¹⁰⁴ Tax instruction BOI-BIC-RICI-20-30-10-20, para. 90.

¹⁰⁵ Article 1741 of the French General Tax Code.

Example: Company A donates €500 to non-profit B. Non-profit B issues a receipt for a donation of €1,000. This would entitle the company to a tax reduction of €600, even though it had only made a donation of €500.

Examples of anti-corruption accounting controls applied to sponsorship and patronage activities

First line of defence	<p>Any donation above a certain amount must be approved by a duly authorised person within the company and, in some cases, only after consultation with the compliance function. A payment authorisation, signed by this person and the individual who requested the payment, is then issued. The call for funds cannot be recorded in the accounts, or the funds disbursed, without this authorisation. The accounting department checks the signatures and the associated supporting documents before recording the payment in the accounts and instructing the treasury department to disburse the funds.</p>
Second line of defence	<p>On a six-monthly or annual basis, sample checks are carried out on transactions selected from the sponsorship and patronage accounts (where these exist). The purpose of this process is to:</p> <ul style="list-style-type: none">• check that the approval signatures, supporting documents and call for funds are present and correct• ensure that the amounts are consistent across the supporting documents, the call for funds and the agreement• make sure that due diligence has been carried out on the third party• ensure that the agreement contains an anti-corruption clause and that the considerations are duly identified (particularly in the case of sponsorship)• check, in the case of sponsorship, that the considerations actually received are in accordance with the terms of the agreement <p>In cases where the patronage activity takes the form of skills sharing, additional quarterly, six-monthly or yearly checks are carried out to ensure that the hours worked are being properly tracked, that they are correctly valued at cost and, more broadly, that the support actually being provided is consistent with the terms of the agreement.</p> <p>These checks are documented in a formal audit plan and the results are detailed in a standalone report.</p>

Monitoring how the beneficiary organisation is using the support

A company may carry out a detailed audit of the projects and initiatives that it supports in order to ensure that the support provided through its sponsorship or patronage activities is being used for the intended purpose. This audit could include field visits allowing the company to gather tangible evidence of the activities undertaken.

As a starting point for this audit, the company could conduct a desk review of the various reporting documents that the beneficiary organisation has committed to providing in the sponsorship or patronage agreement. These could include the organisation’s annual report, its financial statements (and the corresponding auditor’s report, if any), and a standalone report on the projects or initiatives funded or otherwise supported through the sponsorship or patronage arrangement.

2.2.3 Internal audit and control of the sponsorship and patronage programme

The internal control procedures must be appropriate for a company's risk profile, which depends on factors including its size, its business sector, its organisational structure, and the geographies in which it operates.

As recommended in the *French Anti-Corruption Agency Guidelines* (para. 286), companies may wish to adopt an internal control system with three lines of defence, whereby the internal audit and compliance functions carry out additional checks above and beyond those performed by the staff responsible for sponsorship and patronage activities.

Example of internal control applied to a sponsorship activity

Context	A ready-to-wear clothing company sponsors a live show taking place in the town where its registered office is located. Under the arrangement, it donates €50,000 and supplies a number of costumes. In return, the company's logo appears on leaflets and posters for the show.
Policy	The company's sponsorship policy stipulates that the purpose of such operations must be to gain exposure for its brand. It also states that they must comply with the law, be subject to a written agreement and follow the relevant procedure.
Procedure	Under the company's procedure, checks must be carried out to ensure that the company and the organiser of the show have signed a sponsorship agreement, and that this agreement sets out the parties' respective obligations. The procedure also requires anti-corruption due diligence checks to be carried out on the organiser. In addition, the organiser must confirm receipt of the funds and costumes, and the company must approve the leaflets and posters in advance.
First line of defence	The company's sponsorship manager ensures that the anti-corruption due diligence checks were carried out on the organiser, that the organiser (and not a third party) took receipt of the costumes, that these costumes were used for the intended purpose, and that the consideration (i.e. brand awareness) was performed in accordance with the terms of the agreement. The sponsorship manager also liaises with the finance and accounting department to check that the organiser (and not a third party) took receipt of the funds.
Second line of defence	The company's compliance officer checks that the sponsorship manager has received training on corruption risks (and on preventing and detecting corruption), and that the sponsorship activity was conducted in accordance with the company's policy and procedure. The compliance officer ensures that the first-line-of-defence checks were actually carried out, and that neither the company nor the sponsorship manager received any consideration not provided for in the agreement.
Third line of defence	The internal audit function identifies the risks associated with a sponsorship activity. It checks that the company has a policy in place for this purpose and that this policy effectively covers the identified risks. It also checks that the practical arrangements for complying with this policy are set out in an appropriate procedure. Last but not least, it ensures that an internal control system is in place and the first- and second-line-of-defence checks have been carried out.

The audit plan should specify the purpose and scope of each monitoring activity, along with the persons responsible and, where appropriate, the sampling procedures based on risk analysis. It should also specify the frequency of monitoring, formalisation, communication of findings and corrective measures that could be implemented, along with record retention procedures.

2.2.4 Corrective action and continuous improvement

A company may wish to periodically review the rationale and business case for ongoing sponsorship and patronage activities as part of a process of continuous improvement. If this review finds that procedures have been breached or raises suspicion of corruption, the company should investigate the circumstances of the case and, on the basis of its findings, decide whether to continue sponsoring or patronising the project or organisation in question or to terminate the arrangement.

More generally, in order to ensure that their anti-corruption programme remains fit for purpose, companies are advised to update their policies, procedures and control arrangements based on the results of any internal checks or audits of their sponsorship and patronage processes. For instance, a company may wish to update its risk map to include new risk scenarios relating to sponsorship and patronage activities that were not previously identified, and to adjust its risk management measures accordingly.

Appendix 1

THE LEGAL FRAMEWORK AROUND SPONSORSHIP AND PATRONAGE

Tax treatment of sponsorship

Unlike patronage, there are no specific tax arrangements for sponsorship activities. However, sponsorship transactions attract value-added tax (VAT) on account of their commercial nature.¹⁰⁶

Moreover, [Article 39\(1\)\(7\) of the French General Tax Code](#) allows the **deduction from taxable income** of expenses relating to events of a philanthropic, educational, scientific, social, humanitarian, sporting, family or cultural nature, or to events that contribute to the enhancement of artistic heritage, the protection of the natural environment, or the dissemination of French culture, the French language and French scientific knowledge, where such expenses are incurred in the direct interest of the business.

Sponsorship expenses may therefore be considered deductible expenses¹⁰⁷ for the purposes of determining a company's taxable income, provided that these expenses meet the general rules for deductibility¹⁰⁸. In particular, such expenses must:

- ▶ be incurred in relation to the ordinary course of management of the company
- ▶ be recorded in the financial year in which they were actually incurred
- ▶ not be excluded from taxable income by law
- ▶ be incurred in the direct interest of the business

This final condition is deemed to be met if the company's name or brand appears clearly on materials relating to the supported event or initiative (regardless of the medium)¹⁰⁹ and if the expenses are commensurate with the benefit the company expects to receive in return. If the company's name or brand does not appear on such materials, or if the expense is deemed excessive when viewed against the turnover of the company that incurred it, the expense will not be considered deductible for tax purposes.

¹⁰⁶ For more information, refer to the French Ministry of Culture's [cultural patronage charter](#) (3rd edition, 2020) (available in French only).

¹⁰⁷ Tax instruction [BOI-BIC-CHG-40-20-40](#), para. 220.

¹⁰⁸ Tax instructions [BOI-BIC-CHG-10-10](#) to [BOI-BIC-CHG-10-30](#).

¹⁰⁹ Posters, press releases, media coverage, etc.

Tax treatment of patronage

Patronage donations may give rise to a tax reduction if they are made to specific organisations defined by the French General Tax Code and tax doctrine.

Eligible beneficiary organisations

Organisations are eligible for patronage if they meet public-interest criteria laid down in law and tax rules.¹¹⁰ Specifically, for an organisation to be eligible, it must:

- ▶ be a legal entity
- ▶ operate in France or in the European Economic Area (with certain exceptions)¹¹¹
- ▶ work in one of the eligible fields listed in [Article 200](#) and [Article 238 bis](#) of the French General Tax Code
- ▶ be a public-interest entity for tax purposes, i.e.:
 - ➡ be run by a non-remunerated management team
 - ➡ not operate for profit
 - ➡ not operate for the benefit of a narrow circle of beneficiaries

These criteria can be met by both private-sector organisations (non-profits, foundations, endowment funds, etc.) and public bodies (central government, local authorities, government-funded institutions, etc.). For public-sector entities, the public-interest test is applied to the activity supported under the patronage arrangement rather than to the entity itself.

If an organisation considers that it meets the eligibility criteria, it can issue tax receipts for the donations it receives. Donors can then use these receipts to claim the tax reduction provided for in [Article 200](#) and [Article 238 bis](#) of the French General Tax Code.

If a beneficiary organisation has any doubts, it can request a patronage ruling from its local tax authority.

¹¹⁰ For more information about these criteria, refer to tax instruction [BOI-IR-RICI-250-10-10](#), the [Admical reference sheet on eligibility for patronage](#) (both available in French only) and [the website of the French Ministry for Culture](#).

¹¹¹ Some activities carried on outside the European Union and the European Economic Area may benefit from this preferential tax treatment if they fall within certain categories (humanitarian action; initiatives contributing to the enhancement of artistic heritage or to the dissemination of French culture, the French language and French scientific knowledge; environmental protection initiatives; and scientific research initiatives) (see tax instruction [BOI-BIC-RICI-20-30-10-10](#), para. 240 et seq.).

Tax reduction for companies

A corporate patron can only claim the patronage tax reduction¹¹² if the company is liable for French tax and pays either corporation tax or income tax.¹¹³

A company can claim a tax reduction on annual patronage donations up to a maximum of either €20,000 per year or 0.5% of its annual turnover, whichever is higher. If donations in a given year exceed this cap, the surplus can be carried forward and the company can claim a tax reduction on this amount over the following five financial years.

Subject to this cap, a company can claim a tax reduction as follows:

- ▶ 60% of the value of the donation for the portion of the donation up to and including €2 million
- ▶ 40% of the value of the donation for the portion of donation exceeding €2 million

However, donations to causes or organisations addressing essential needs (such as providing free meals or medical care) attract a 60% tax reduction on the entire amount, regardless of their value.

Considerations received from the beneficiary organisation

Patronage involves making a donation to support the work of a public-interest entity without expecting an equivalent consideration in return.¹¹⁴

It is nevertheless acceptable for a beneficiary organisation to offer a consideration to a corporate patron in return for its support, provided that there is a “significant disproportion” between the amount of the donation and the value of the consideration received in return. It is customary for tangible considerations to be tolerated as long as their value does not exceed 25% of the amount of the donation.¹¹⁵

Beneficiary organisations may give considerations in various forms, such as prominently displaying the patron’s name or logo, offering tickets or allowing the company to use premises free of charge.

112 Additional benefits are available for patronage of initiatives in culture and the arts. Details can be found on the [website of the French Ministry for Culture](#).

113 For more information about the tax treatment of corporate patronage, refer to the [website of the French Ministry for Culture](#).

114 Tax instruction [BOI-BIC-RICI-20-30-10-20](#), para. 120 et seq.

115 For more information, refer to the [practical guide to patronage considerations](#) prepared by Admical, France Générosités and the CFF (available in French only).

The beneficiary organisation must determine the value of any consideration it gives to a corporate patron in return for a donation.¹¹⁶

Eligibility for the patronage tax reduction

Corporate patrons can claim the patronage tax reduction for donations made to the entities listed in [Article 238 bis](#) of the French General Tax Code provided that the entity in question meets the criteria detailed above. This list includes, but is not limited to, non-profit organisations, non-profits and foundations recognised as public-interest entities, corporate foundations and endowment funds.

Donations to commercial companies do not qualify for the patronage tax reduction, which is reserved for donations to non-profit organisations and public-sector entities. This is because incorporated companies (public or private), by definition, do not meet the necessary tests under tax law (i.e. they are not run by a non-remunerated management team and do not operate in the public interest). Multi-stakeholder cooperatives and local publicly owned companies are among the types of companies excluded from the regime for this reason.¹¹⁷

Likewise, donations to social enterprises and similar entities are not automatically eligible for the patronage tax reduction just because the organisation in question does socially beneficial work. Eligibility is determined solely on the basis of the criteria laid down by the French tax authority. Consequently, even if an organisation is officially recognised as a social enterprise providing a social benefit, or provides an undeniably useful service to society, donations to that organisation would not be eligible for the patronage tax reduction unless the entity in question met all the relevant criteria.

Donations to central government, local authorities, government-funded institutions and public-sector entities more generally (such as public interest groups) are also eligible for the patronage tax reduction if they are used to support activities that meet the public-interest test.¹¹⁸

Business assistance and support organisations

Corporate patrons may be able to claim the patronage tax reduction on payments made to “organisations approved subject to the provisions of Article 1649 nonies and whose exclusive purpose is to provide financial assistance for investments [...] or to provide support services to small and medium-sized enterprises”.¹¹⁹

¹¹⁶ Tax instruction [BOI-BIC-RICI-20-30-40](#), para. 80 et seq.

¹¹⁷ Tax ruling [BOI-RES-BIC-000076](#).

¹¹⁸ Tax instruction [BOI-BIC-RICI-20-30-10-10](#), para. 60.

¹¹⁹ [Article 238 bis](#) of the French General Tax Code.

The tax reduction can also be claimed on donations to umbrella bodies (federations and unions) representing such organisations.¹²⁰

Collection bodies

Donations to organisations that collect funds on behalf of a specified third party are not automatically eligible for the patronage tax reduction. For instance, payments made to friends' organisations¹²¹ do not qualify for the tax reduction if such organisations are merely collecting funds, but these entities can collect donations and pay them in full to an eligible organisation.

Donations collected in this way are eligible for the patronage tax reduction if the organisation that ultimately receives the funds meets the criteria laid down in [Article 200](#) and [Article 238 bis](#) of the French General Tax Code, and if the donation remains ringfenced until it is actually handed over to the organisation in question.

In this case, the tax receipt must be issued by the organisation that ultimately receives the donations.

Conversely, donations to a friends' organisation that carries out its own activities of a public-interest nature would be eligible for the patronage tax reduction.

¹²⁰ For more information about this arrangement, refer to the Admical factsheet on this subject (available in French only).

¹²¹ A friends' organisation is an intermediary body that collects funds on behalf of another organisation, which is the ultimate recipient of the donations.

Appendix 2

KEY POINTS OF A SPONSORSHIP AND PATRONAGE POLICY

Sponsorship policy	Patronage policy
Mentions that sponsorship is in the company's interest.	Mentions that patronage applies exclusively to public-interest causes (this statement will help the company ensure that activities comply with the relevant tax provisions).
Recalls that the company engages in sponsorship for promotional and marketing purposes.	Recalls that the company engages in patronage with no expectation of a commercial consideration in return and is guided by the public interest.
States that the selected projects or beneficiaries must align with the company's strategy.	States that the selected projects or beneficiaries must align with the company's values.
Explicitly mentions that these activities must comply with applicable laws and regulations (including outside France).	
Specifies, where applicable, the nature of the contributions: in cash, in kind or in the form of skills sharing (working time, technology, products, loan of equipment or premises, etc.).	
Prohibits the company from engaging in new sponsorship or patronage activities when it is awaiting a business-critical decision linked to the beneficiary (e.g. when the company is awaiting a decision on the award of a contract by the beneficiary or a related organisation, or when it is renegotiating an existing contract).	
Explains how the policy is linked to the company's other policies (such as the gifts and hospitality policy), such that any sponsorship or patronage agreement signed by or on behalf of the company is compliant with these other policies.	
Requires that the relevant internal procedures be followed at all times.	

Appendix 3

KEY POINTS OF A SPONSORSHIP AND PATRONAGE PROCEDURE

Below is a (non-exhaustive) list of the points a company may wish to cover in its sponsorship and patronage procedure:¹²²

- ▶ The people involved, i.e. those who will review the proposal, those who will authorise it, and those who will implement it, from initial contact with the beneficiary through to payment of the donation, handover of the contribution and monitoring in the accounts (it may be helpful to draw up a flowchart clearly showing the stages of the decision-making and implementation process)
- ▶ The types of activities permitted under the company's sponsorship and patronage policy
- ▶ The requirement to check that the third party has passed anti-corruption due diligence checks before the activity can be implemented
- ▶ A statement to the effect that it is prohibited to conduct sponsorship and patronage activities via a customer or supplier acting as an intermediary
- ▶ The requirement to check that there are no conflicts of interest affecting the personnel (of both the company and the beneficiary organisation) involved, both before the sponsorship or patronage activity and during the course of this activity
- ▶ The decision-making process that should be followed:
 - ➡ The decision-making chain could include a special committee tasked with selecting sponsorship and patronage projects. Having such a committee in place would increase transparency, and a recusal system would be in place whereby a member affected by a conflict of interest could step back from involvement without holding up the decision-making process.
 - ➡ A collective decision-making process in which multiple people are involved in approving sponsorship and patronage activities can help to reduce risk, as can requiring any commitment to be signed by two people or be approved by a superior.
 - ➡ The company might find it useful to adopt a system of approval or sign-off thresholds, with limits set according to the value of the donation or the degree of risk inherent in the proposed activity. Approval from

¹²² Useful guidance can be found in Coordination Générosités's [corporate patronage and ethics charter](#) (October 2022) (available in French only).

the compliance department could be sought for activities that exceed particular value or risk thresholds, and the board of directors could be given the final say in the very highest-value or highest-risk cases.¹²³

- ➡ The decision-making process should comply with the segregation-of-duties principle.
- ▶ The requirement to draw up a written agreement for each sponsorship or patronage activity.
- ▶ The arrangements for paying the donation or providing any other type of support:
 - ➡ The donation or support must always be paid or provided to an organisation and not to an individual (into an appropriate bank account or to a suitable delivery address).
 - ➡ Financial contributions must not be paid in cash.
 - ➡ Financial contributions should be paid in two instalments: the first when the agreement is signed and the second when the beneficiary organisation produces a report on the use of the funds.
 - ➡ A signed receipt must be obtained for all contributions.

There must be a system in place for keeping an audit trail of all contributions (including those made in kind) and for archiving related documents.

- ▶ A description of the arrangements for tracking progress towards the objectives for which the donation or support was given (indicators, reports, annual report, etc.)
- ▶ The rules on acceptable considerations:
 - ➡ Nature and purpose
 - ➡ Values (thresholds)
 - ➡ Person (position) responsible for taking receipt of considerations on the company's behalf
 - ➡ Purposes for which considerations may (and may not) be used
- ▶ The name(s) of the person or people staff members should contact if they have any questions or concerns
- ▶ A link to the internal whistleblowing procedure

123 AFA, *French Anti-Corruption Agency Guidelines*, 12 January 2021, courtesy translation of the French version published in the JORF, para. 212.

GLOSSARY OF TERMS

Bribery

Bribery is an act by which a person solicits, accepts or receives, for themselves or for others, any offer, promise, donation, gift or reward in order to induce them to carry out or abstain from carrying out an act pertaining to their office, duty or mandate. Bribery can take two forms: **active**¹²⁴ and **passive**.¹²⁵ Active and passive bribery are two connected yet separate offences. The bribe-giver (active bribery) and the bribe-taker (passive bribery) can be tried and sentenced separately, and the conviction of one party is not dependent on the conviction of the other.

The bribe-taker accepts (or, in some cases, solicits) promises, donations and gifts, while the bribe-giver proffers donations and gifts, makes promises or gives the bribe-taker the object of the offence at the latter's request.

A separate corruption offence applies in cases where either party holds a judicial mandate.¹²⁶

Conflict of interest

A **conflict of interest** is any situation of interference between a person's duty within an organisation and their personal interest that could influence or appear to influence the independent, impartial and objective performance of such duty on behalf of the organisation.¹²⁷

Extortion by public officials

Extortion by public officials¹²⁸ is an offence whereby a representative of a public authority or a person discharging a public-service mission knowingly collects, requests or orders the payment of a sum known not to be due. It also covers the granting by such a representative or person, in any form and for any reason, of any exoneration or exemption from public duties, contributions, taxes or impositions in breach of statutory or regulatory rules.

124 [Article 433-1\(1\)](#) and [Article 445-1](#) of the French Criminal Code.

125 [Article 432-11\(1\)](#) and [Article 445-2](#) of the French Criminal Code.

126 [Article 434-9](#) of the French Criminal Code.

127 This definition is taken from the AFA guide *Preventing conflicts of interest in the private sector*, published in November 2021.

128 [Article 432-10](#) of the French Criminal Code.

Favouritism

Favouritism¹²⁹ is an offence whereby any person holding public office or discharging a specific duty as prescribed by law,¹³⁰ or any person acting on behalf of such a person, obtains or attempts to obtain for others an unjustified advantage by breaching the statutory or regulatory provisions designed to ensure freedom of access, equal treatment for bidders and transparency in tenders for public contracts and delegated public services.

Influence peddling

Active influence peddling¹³¹ is an offence whereby a person holding public office¹³² abuses their real or alleged influence over a third party to obtain a favourable decision in return for something of value. More specifically, this offence is committed when a person unlawfully proffers, at any time, directly or indirectly, any offer, promise, donation, gift or reward to a person holding public office, in order to induce them to abuse, or for having abused, their real or alleged influence with a view to obtaining any distinction, employment, contract or other favourable decision from a public body or administration. The same penalties apply to any person who accepts a solicitation from a person holding public office who is prepared to use their influence.

Passive influence peddling¹³³ is an offence whereby a person holding public office accepts or solicits an advantage of any kind in order to abuse, or for having abused, their real or alleged influence to obtain a favourable decision from a public body or administration.

As with bribery, there are therefore two separate offences: passive influence peddling, which is committed by the person holding public office who abuses their real or alleged influence, and active influence peddling, which is committed by the person who proffers an offer, promise or reward of any kind in order to induce the public official to abuse their real or alleged influence.

A separate influence peddling offence applies in cases where either party holds a judicial mandate.¹³⁴ In this particular case, passive influence peddling is committed

129 [Article 432-14](#) of the French Criminal Code.

130 Representatives, administrators or agents of central government, local government, government-funded institutions, national semi-public companies discharging public-service missions and local semi-public companies.

131 [Article 433-1\(2\)](#) and [Article 433-2, para. 2](#) of the French Criminal Code.

132 A person holding public authority, discharging a public-service mission or holding a public electoral mandate.

133 [Articles 432-11\(2\)](#) and [433-2, para. 1](#) of the French Criminal Code.

134 [Article 434-9-1](#) of the French Criminal Code.

by any person who abuses their real or alleged influence over a magistrate, judge or other person holding a judicial mandate.¹³⁵

Misappropriation of public funds or assets

Misappropriation of public funds or assets¹³⁶ is an offence whereby a person holding public authority or discharging a public-service mission, a public accountant, a public depositary or any of their subordinates destroys, misappropriates or purloins, or attempts to destroy, misappropriate or purloin, a document or security, public or private funds, papers, documents or securities representing such funds, or any object entrusted to them as part of their function or tasks. This offence can also be committed by a private individual.¹³⁷

Patronage

Patronage is “material or financial support provided to a charity or legal entity for the conduct of a public-interest activity with no expectation of any direct or indirect consideration from the beneficiary organisation in return”.¹³⁸

Sponsorship

Sponsorship is the process by which a legal entity (the sponsor) provides support to an event,¹³⁹ individual, legal entity, product or organisation of a philanthropic, educational, scientific, social, humanitarian, sporting, family, cultural, artistic or environmental nature, with a view to gaining a direct benefit from the transaction.¹⁴⁰

Tax fraud

Tax fraud is an offence whereby any person or entity fraudulently evades, or attempts to fraudulently evade, the assessment or full or partial payment of tax.¹⁴¹

135 Influence peddling involving: a magistrate, judge, juror or any other person serving in a court of law; a court registry officer; an expert appointed either by a court or by the parties to a case; a person appointed by the judicial body or by an administrative court to act as mediator; or an arbitrator performing their duties under domestic arbitration law.

136 [Article 432-15](#) and [Article 432-16](#) of the French Criminal Code.

137 [Article 433-4](#) of the French Criminal Code.

138 Tax instruction [BOI-BIC-RICI-20-30-10-20](#), para. 120. Also see [Appendix I of the order of 6 January 1989 on economic and financial terminology](#).

139 An “event” is understood as “any one-off operation in which the company may participate, as well as any longer-term, multi-year or ongoing sponsorship operation” (Tax instruction [BOI-BIC-CHG-40-20-40](#) para. 180).

140 [Appendix 1 of the order of 6 January 1989 on economic and financial terminology](#).

141 [Article 1741](#) of the French General Tax Code and tax instruction [BOI-CF-INF-40-10-10-10](#).

Illegal taking of interest

Illegal taking of interest¹⁴² is an offence whereby a person holding public office¹⁴³ takes, receives or keeps any interest in a business or business operation that is likely to compromise their independence, impartiality or objectivity when, at the time in question, that person has the duty of ensuring the supervision, management, liquidation or payment of that business or business operation.

For more information about corruption offences, refer to Appendices 1 to 8 of the AFA guide *Maîtriser le risque d'atteinte à la probité au sein des associations et fondations reconnues d'utilité publique* (available in French only).

142 [Article 432-12](#) of the French Criminal Code.

143 A person holding public authority, discharging a public-service mission or holding a public electoral mandate.

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Contact

French Anti-corruption Agency
23 avenue d'Italie, 75013 Paris
afa@afa.gouv.fr

Please visit the AFA website for further information
www.agence-francaise-anticorruption.gouv.fr