New French anti-corruption
Law “Sapin II”:
Enhancement of anti-corruption provisions
What to expect?
Enhancement of anti-corruption provisions

Deeply inspired by existing foreign national regulations, the new French anti-corruption law brings specific requirements and frameworks on anti-corruption compliance programmes and considerably increases potential penalties. International entities established in France have to be vigilant in order to comply with the new French anti-corruption legislation, because their current anti-corruption programme might not fully meet new French regulation.

Composed of three parts regarding the fight against corruption, transparency and the modernisation of the economy, this law was adopted on 8 November 2016 and announced on 9 December 2016 by the French President. The anti-corruption provisions (article 17 of the law) will come into effect on 1 June 2017; the entities or groups will have to be compliant by then.

**Obligation to develop and implement an anti-corruption compliance programme**

This law creates a legal obligation (for large groups or entities established in France) to prevent corruption, and describes clearly the main components of a robust and efficient anti-corruption compliance programme required by the authorities. If complied with, entities could use this programme as a mitigating factor in case of corruption allegations.

**Whistleblower definition and description of the internal whistleblowing system**

This law requires the establishment of an internal whistleblowing system with appropriate escalation and protection of whistleblowers, an important step in the fight against corruption. It provides as well a French legal framework definition of who is to be considered a whistleblower.

**Prosecution Agreement**

Called “Convention judiciaire d’intérêt public”, it may be accompanied by a monitorship with the potential oversight of the French Anti-corruption Agency.

**Entities under the scope of the new regulation**

French groups or subsidiaries of foreign groups employing more than 500 persons and with a consolidated net turnover exceeding 100 million euros are also subject to new French anti-corruption law.

**Fine up to 30% of the average turnover**

To be aligned with other strict anti-corruption legislations, this law considerably increases the fines for entities, up to 30% of the average annual turnover, based on the past three financial years.

*mainland & overseas territories*
Preventing and detecting the risk of corruption

The new French anti-corruption legislation creates a provision for preventing and detecting the risk of corruption. Each in scope entity has to develop and implement a specific anti-corruption compliance programme, composed of requirements listed by the law, in order to be compliant.

The fight against corruption involves both active and passive, direct and indirect corruption in France and abroad. A dedicated French Anti-corruption Agency will be also created in order to ensure the respect of the law.

The main takeaways of the legislation

Implementation of an anti-corruption compliance programme

The new French anti-corruption law aims at creating a new legal obligation regarding prevention and detection of corruption to entities through the development and the implementation of a robust anti-corruption compliance programme, composed of the following requirements:

• A Code of Conduct annexed to the internal rules of procedure and established in accordance with Article L. 1321-4 of the Labor Code;
• An internal whistleblowing system for company employees to be able to report on non-compliant acts to the Code of Conduct;
• A corruption risk mapping by business sector and geographic area;
• Dedicated Due Diligence procedures regarding customers, suppliers and intermediaries;
• Accounting control procedures;
• A training programme for management and employees who are most exposed to corruption risks;
• An internal disciplinary sanctions systems in case of Code of Conduct’s violations;
• An internal control and evaluation system of measures implemented.

Prosecution Agreement

As long as prosecution has not been set in motion, the French public prosecutor may propose to an entity involved in corruption one or more of the following obligations:

• Fine not exceeding 30% of the average turnover, calculated based on the last three years at the time of the alleged occurrence (payable in one year);
• Be under a monitorship, under the oversight of the French Anti-corruption Agency, for a three-year maximum period determined by the public prosecutor;
• Indemnification of any known victims, payment having to be made within one year
• In any case, the settlement must be validated by the relevant court ("Tribunal de Grande Instance") after a public hearing.
We offer assistance throughout the development and implementation of an anti-corruption process, to build a strong anti-corruption compliance programme.

Our dedicated approach

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