

## CLIENT MEMORANDUM

# France Adopts New Rules on Combating International Corruption

December 5, 2016

## AUTHORS

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On November 8, 2016, the French National Assembly definitively adopted a bill reinforcing France's arsenal in the fight against international corruption. The bill has not yet been passed into law and is currently being scrutinized by the Constitutional Council to ensure none of its provisions violate fundamental rights as guaranteed by the constitution.

The bill was prepared by the government in the wake of the OECD Phase 3 follow-up report dated December 2014, which, while recognizing that certain efforts had been made to ramp up the fight against corruption, continued to regard France as lagging on certain issues, including its low level of enforcement activity.

Among other things (including regulating lobbying activities), the bill introduces certain procedures that have proven efficient in other jurisdictions, and that should allow France to be in a position to effectively resolve international corruption cases going forward.

The bill creates an obligation for all companies with a consolidated turn-over in excess of €100 million and that employ over 500 employees to put in place policies and procedures to effectively combat corruption. The bill lists the items that the policies and procedures must include:

- i. a code of conduct describing the type of behavior that is forbidden;

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- ii. a specific whistle-blowing procedure reporting violations of the code of conduct;
- iii. a risk-based analysis, to be updated on a regular basis, reflecting the areas in which the company is exposed to corruption risks (including business sectors and geographical implementation);
- iv. procedures for vetting third-party business partners;
- v. adequate controls;
- vi. training for employees; and
- vii. a comprehensive disciplinary procedure for employees who have violated these policies and procedures.

In addition, the bill creates a national anticorruption agency with the authority, among other things, to (i) issue guidelines for the proper implementation of anticorruption policies and procedures, (ii) control the effectiveness of the policies, and (iii) impose administrative fines on the directors of companies who have failed to implement appropriate anticorruption policies and procedures. The maximum fine is €200,000 and the company itself can be fined up to €1 million.

The bill also reinforces the rights of whistle-blowers and makes it mandatory for all public administrations and companies that employ more than 50 employees to put in place adequate procedures for reporting and collecting whistle-blower allegations.

The bill transposes into the French legal system a U.S.-style compliance monitor which can be imposed for a maximum period of five years. The monitorship is conducted by the national anticorruption agency. A compliance monitor can be imposed by the criminal courts as part of sentencing or result from the terms of a deferred prosecution agreement (DPA) entered into with the public prosecutor. The costs incurred by the agency in connection with the monitorship are borne by the company but cannot exceed the amount of the maximum fine imposed by the criminal code for the relevant offense (i.e. €1 million).

The creation of a French-style DPA is probably the most novel aspect of the bill. Although the ability to plead guilty to corruption charges and avoid facing trial has existed in the French legal system since 2011, this possibility, in practice, was never considered an option because of the market consequences of a guilty plea (i.e. pursuant to the EU procurement directive, a person found guilty of corruption is excluded *de jure* from all public procurement contracts).

The bill now makes it possible at any time prior to an indictment to enter into settlement discussions with the public prosecutor with the view of entering into a DPA agreement.

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The particulars of this French-style DPA are as follows:

- It is only available to legal persons and for specific offenses (which include international corruption and money-laundering of tax fraud).
- It does not apply to the directors of the company which can be prosecuted separately.
- The direct victims of the offense are consulted and, as part of the agreement, must be indemnified by the company.
- The fine that can be imposed as a result of a DPA must be proportionate to the economic advantage procured by the offense and is capped at 30% of the average turn-over generated by the offense over the past three years.
- The monitorship is limited to a three-year period (instead of five when imposed by the court).
- The DPA, like the negotiations leading up to the DPA, tolls the statute of limitations.
- The DPA must be approved by the court.

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December 5, 2016

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