



# FRANCE

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**Q TO WHAT EXTENT HAVE YOU SEEN A NOTABLE RISE IN THE LEVEL OF CORPORATE FRAUD, BRIBERY AND CORRUPTION UNCOVERED IN FRANCE IN RECENT YEARS?**

**GOOSSENS:** It is difficult to know exactly how much financial crime has increased in recent years due to the confidentiality of investigations. However, if we refer to the statistics of the Ministry of Justice, less than 5 percent of penal matters are related to this type of offence. Moreover, the number of crimes reported to investigating judges has decreased, when compared to the number of preliminary investigations. Nevertheless, the low number of this kind of matter is proportional to the matter's relative importance, and everything would suggest that the economic crisis, combined with a reinforcement of the fight against some financial crimes, has caused a significant increase in the number of cases.

**Q ARE THERE ANY SPECIFIC TYPES OF FRAUD THAT SEEM TO BE APPEARING MORE FREQUENTLY IN THE CURRENT CLIMATE?**

**GOOSSENS:** When it comes to criminal jurisdictions, some authorities such as the AMF, the French Data Protection Commission (CNIL) and the Competition Authority have developed a significant 'almost penal' approach, which impacts companies. For example, if there were few cases related to unlawful agreements in front of the penal judge, their case becomes stronger in front of the French and European authorities, and the severity of any penalties becomes increasingly important. Otherwise, anti-money laundering rules linked to embargos also influence the functionality of companies. Finally, instances of computer fraud or fraud committed on the internet have increased strongly. Their greater number and the *modus operandi* of the crimes mean that they impact both private individuals and companies alike.

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**Q HAVE THERE BEEN ANY REGULATORY CHANGES IMPLEMENTED IN FRANCE THAT ARE DESIGNED TO COMBAT FRAUD AND CORRUPTION?**

**GOOSSENS:** Indisputably, anti-bribery legislation has been strengthened in France in recent years. Besides the changes implemented in this area, the extension of the application of bribery to European or non-foreign agents has considerably modified legislation as far as international trade is concerned.

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**Q DO REGULATORS IN FRANCE HAVE SUFFICIENT RESOURCES TO ENFORCE THE LAW IN THIS AREA? ARE THEY MAKING INROADS IN THIS AREA?**

**GOOSSENS:** The current state of public finances does not afford the government the opportunity to provide resources to the prosecuting authorities. Importantly however, this funding deficit is offset by the number of vastly experienced investigators and magistrates who specialise in the subject. Furthermore, we have seen in certain cases, a tendency by regulators to move closer to the French and Anglo-Saxon systems. The introduction of the system of leniency or plea-bargaining, for example, is indicative of this shift.

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**Q ARE COMPANIES MORE AT RISK OF REGULATORY INVESTIGATION AND PROSECUTION? WHAT PENALTIES COULD THEY FACE FOR FAILURE TO COMPLY?**

**GOOSSENS:** Since the institution of the criminal liability of legal persons in France, companies can now be tried in criminal courts and risk fines which are up to five times greater than those faced by individuals. In the event of repeat offences, these fines can be up to 10 times greater. Companies can also face much more severe punishments, such as the dissolution of the company, under the 'death penalty' or article 131-39 of the French criminal code. Although the logic of the UK Bribery Act has not yet been adopted by French law, everything suggests that the slide towards penalties for non-compliance is more than hypothetical. It remains to be seen whether such penalties will be coupled with bonuses for effective compliance.

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**Q WHAT ROLE ARE WHISTLEBLOWERS PLAYING IN THE FIGHT AGAINST CORPORATE FRAUD? WHAT IMPACT DO YOU EXPECT WHISTLEBLOWING TO HAVE ON BUSINESS PRACTICES GOING FORWARD?**

**GOOSSENS:** French law has protections, enshrined in labour legislation, for any person who engages in whistleblowing when it comes to instances of bribery or fraud. However, whistleblowing is not natural in France. Our judicial culture does not lend itself to the process because we can imagine the reaction of a French prosecutor to an individual that has come to denounce an offence committed by his manager, particularly if that individual is the only one witness to the criminal activity. In France, the saying 'fault confessed half forgiven' does not easily apply.

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**Q WHAT GENERAL STEPS  
CAN COMPANIES TAKE TO  
PROACTIVELY PREVENT  
CORRUPTION AND  
FRAUD WITHIN THEIR  
ORGANISATION?**

**GOOSSENS:** Companies must set up internal systems to fight against acts of bribery. The first stage should consist of the implementation of a code of ethics, firmly establishing the company's position on the matter. The second stage should consist of internal measures put in place by the companies own fraud and bribery prevention agents. Moreover, the structure of the company's prevention protocols, as experienced by employees, is an essential tool in the battle against bribery and fraud because it enables employees to discover flaws in the system. Finally, firms should ask themselves a delicate question: What do we do if an offence is discovered?

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Philippe Goossens has extensive experience in litigation cases. He has developed a recognised expertise in white-collar crime and assists his clients during all the pre-trial and trial stages, particularly on matters involving white-collar crimes related to finance, labour and other business matters. Mr Goossens has been a lawyer since 1995, after earning his double Masters' degree in Business Law and Judicial Careers at the University of Paris I-Panthéon Sorbonne. He is one of the pre-eminent practitioners in the world and features in the Best Lawyers 2012 guide.