

## Comparison of Anticorruption Regimes in France, UK, and US

	FRANCE	UNITED KINGDOM	UNITED STATES
<b>Applicable provisions</b>	<p>Law No 2016-1691 dated December 9, 2016, relating to transparency, fight against corruption, and modernization of economic life</p> <p>French Criminal Code</p>	<p>Bribery Act 2010 (UKBA)</p> <p>Companies Act 2006 (CA 2006)</p>	<p>Foreign Corrupt Practices Act (FCPA)</p>
<b>Key prosecution authorities</b>	<p>AFA (<i>Agence Française Anticorruption</i>) i.e., French Anticorruption Agency (Decree No 2017-329 dated March 14, 2017)</p>	<p>Serious Fraud Office (SFO)</p> <p>National Crime Agency (NCA)</p> <p>Crown Prosecution Service (CPS)</p> <p>Insolvency Service Criminal Enforcement Team, for CA 2006 breaches</p>	<p>Department of Justice (DOJ) and Securities and Exchange Commission (SEC)</p>
<b>Companies subject to the provisions</b>	<p>All companies and their employees are required to avoid any act of corruption and trading in influence regardless of the legal form of the company</p>	<p>The UKBA applies to all companies, bodies, or partnerships incorporated or formed in the UK or carrying on a business in the UK (wherever in the world it may be incorporated or formed)</p>	<p>US companies, and "issuers," which are US or non-US companies that trade debt or equity on a US exchange</p>
<b>Obligations of the companies and their directors and officers</b>	<p>For all companies (source: Criminal Code):</p> <ul style="list-style-type: none"> <li>• faithful statement of expenditure in accounting records</li> <li>• accurate report of payments to third-parties</li> <li>• effective monitoring of the review and approval of expenditure and payments to third-parties</li> <li>• prohibition from providing bribes to foreign and local public agents</li> <li>• prohibition from accepting bribes</li> </ul> <p>For companies employing at least 50 employees (Article 8 of the Law No 2016-</p>	<p><b>CA 2006 (Section 386)</b></p> <p>Companies must keep adequate accounting records that are sufficient to:</p> <ul style="list-style-type: none"> <li>• show and explain the company's transactions</li> <li>• disclose with reasonable accuracy, at any time, the financial position of the company at that time</li> </ul> <p><b>UKBA</b></p>	<p>The FCPA's accounting provisions apply to issuers and require:</p> <ol style="list-style-type: none"> <li>1. the maintenance of complete, accurate books and records</li> <li>2. the establishment and maintenance of a system of internal controls sufficient to provide reasonable assurance that: <ol style="list-style-type: none"> <li>a. transactions are executed in accordance with management's general/specific authorization</li> <li>b. transactions are recorded as necessary to permit preparation of financial statements that conform with generally accepted accounting</li> </ol> </li> </ol>

	<p>1691 dated December 9, 2016, known as Sapin 2):</p> <ul style="list-style-type: none"> <li>whistleblowing procedure (appropriate procedures for the collection of reports issued by members of their staff or by outside and casual collaborators)</li> </ul> <p>For companies employing at least 500 employees, or belonging to a group whose parent company is headquartered in France and whose workforce includes at least 500 employees, and whose turnover or consolidated turnover is greater than €100 million (source: Article 17 of the law No 2016-1691):</p> <ul style="list-style-type: none"> <li>a code of conduct incorporated into the company's internal rules and regulations</li> <li>an internal whistleblowing system</li> <li>a risk mapping</li> <li>procedures for assessing the situation of customers, first-tier suppliers, and intermediaries in the light of the risk mapping</li> <li>accounting procedures, internal or external, designed to ensure that books, records, and accounts are not used to conceal corruption or influence peddling</li> <li>a training system for the executive and staff members most exposed to risks of corruption and influence peddling</li> <li>disciplinary arrangements for imposing penalties on the company's employees in case of breach of the company's code of conduct</li> <li>a system for internal control and assessment of the implemented measures</li> </ul>	<p>A company can be found guilty of one of the direct bribery offences (Section 1, 2, and 6) as well as the corporate offence</p> <p>A company may be prosecuted if a person associated with it bribes another person intending to obtain or retain business or an advantage for that company:</p> <ul style="list-style-type: none"> <li>a person is associated with the company if the person performs services for or on behalf of it and can include employees, agents, contractors, and subsidiaries</li> <li>it is a defence if the company can prove it had "adequate procedures" in place which were designed to prevent the associated person from undertaking such conduct</li> </ul> <p>The UK government issued guidance, which provides that the procedures a company puts in place to prevent bribery should be informed by the following six principles:</p> <ul style="list-style-type: none"> <li>proportionate procedures in light of the company's activities and its bribery risks</li> <li>top-level management commitment to preventing bribery</li> <li>proportionate and risk-based approach to due diligence procedures in relation to persons who perform or will perform services for or on behalf of the company</li> <li>periodic, informed, and documented risk assessments of the company's exposure to potential bribery by its associated persons</li> <li>ensuring anti-bribery policies and procedures are embedded and understood in the company</li> <li>regular monitoring and review of the company's anti-bribery procedures</li> </ul>	<p>principles and to maintain accountability for assets</p> <ul style="list-style-type: none"> <li>access to assets is permitted only in accordance with management's general/specific authorization</li> <li>recorded accountability for assets is compared with existing assets at reasonable intervals, and appropriate action is taken to address differences</li> </ul> <p>Although the statute does not require that companies that are not issuers implement accounting controls, DOJ and SEC expect all companies subject to the FCPA to implement effective compliance programs, a component of which is accounting controls.</p>
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<p><b>Sanctions in case of breach of the anticorruption provisions</b></p>	<p><b>Breach of the anticorruption Criminal Code provisions</b></p> <p>According to Articles 432-11 and 433-1 of the French Criminal Code, active and passive bribery are offences punished by the same penalty:</p> <ul style="list-style-type: none"> <li>• imprisonment for up to 10 years and</li> <li>• a fine of up to €1 million and €5 million for legal entities (respectively \$1.15 million and \$5.76 million). The amount of the fine may be increased to twice the proceeds of the offence</li> </ul> <p>Article 432-17 of the French Criminal Code provides for additional penalties that may be ordered in addition to the main sentence: forfeiture of civil and civic rights, prohibition from holding public office or from carrying out a profession, and confiscation of funds received for corruption, etc.</p> <p><b>Breach of the anticorruption compliance provisions (Law No 2016-1691)</b></p> <ul style="list-style-type: none"> <li>• Order the company to adapt its corruption prevention and detection system</li> <li>• Financial penalty of up to €200,000 (\$239,000) for individuals and up to €1 million (\$1.19 million) for corporate entities (this amount being <i>“proportionate to the seriousness of the breaches established and to the</i></li> </ul>	<p><b>Breach of CA 2006</b></p> <p>Every officer of the company who is in default for failing to keep adequate company accounting records will be guilty of an offence unless they can show that they acted honestly and the default was excusable</p> <p>In more serious offences, on conviction ‘on indictment’, a person can be sentenced to imprisonment for a term not exceeding two years and/or a fine</p> <p><b>Breach of UKBA</b></p> <p>Companies can be subject to unlimited fines under the UKBA</p> <p>They may also be subject to:</p> <ul style="list-style-type: none"> <li>• a confiscation order under the Proceeds of Crime Act 2002</li> <li>• debarment from public contracts</li> <li>• a civil recovery order for property, which can be shown to be proceeds of crime</li> </ul> <p>Separate penalties and sanctions exist for individuals. In more serious offences, individuals can be sentenced to imprisonment for a term not exceeding 10 years and/or an unlimited fine. The individual may also be subject to a civil recovery order or a confiscation order under the Proceeds of Crime Act 2002. A director convicted of a bribery offence could face disqualification from acting as a director for up to 15 years</p> <p>For companies and individuals convicted under the UKBA in England and Wales, penalties are calculated in accordance with</p>	<p>There are statutory penalties under the FCPA, and companies found liable are also subject to disgorgement of ill-gotten gains</p> <p>However, in practice, penalties are calculated under the US Sentencing Guidelines. The guidelines calculation is driven by the greater of the amount of the bribe or benefit</p> <p>The government calculates disgorgement by multiplying affected sales by gross margin, and adding pre-judgment interest. The government calculates gross margin by taking the cost of goods sold and excluding depreciation and taxes, and thus, is not the equivalent of a true profit figure. Indeed, many companies and defense attorneys consider the government’s disgorgement approach to be punitive</p> <p>Absent “aggravating circumstances” there is now a “presumption of non-prosecution” under DOJ policy where companies voluntarily self-report the FCPA violation(s), cooperate fully with prosecutors, identify and remediate the root cause of the problem, identify the person(s) responsible for the misconduct, and disgorge any profits from the misconduct. Potential aggravating circumstances include recidivist status, executive management involvement in misconduct, significant profit generated by misconduct, and/or misconduct pervasive throughout company</p>
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	<p><i>financial situation of the relevant individual or corporate entity")</i></p> <ul style="list-style-type: none"> <li>• Order to complete, under the AFA's control (see below), for a maximum period of five years, a compliance program</li> <li>• Publication of the decisions</li> </ul> <p>Note that managers may face administrative sanctions if they do not comply with their obligations</p>	<p>sentencing guidelines. These guidelines take account of factors such as culpability and harm</p>	
<p><b>Deferred prosecution agreement</b></p>	<p>Possibility for the company to avoid a criminal sanction by entering into a judicial convention of public interest (which has neither the nature nor the effects of a criminal conviction sentence and which is not mentioned in the criminal record)</p> <p>Subject to the approval of the public prosecutor or the examining magistrate, such convention may impose one or more of the following obligations:</p> <ul style="list-style-type: none"> <li>• Payment of a fine determined proportionally to the benefits resulting from the identified breaches, which can reach up to 30% of the company's average turnover calculated over the previous three years</li> <li>• Implementation, under the AFA's control, for a maximum of three years, of an anticorruption compliance program</li> <li>• Payment of damages to the victim of the offence, if identified</li> </ul> <p>Note that the judicial convention of public interest is published in a press release of the public prosecutor and on the AFA's website</p>	<p>DPAs were introduced into the UK in 2014 and their use is expected to increase over time</p> <p>DPAs permit prosecutors to charge a company with a criminal offence but suspend the proceedings if the DPA is approved by a judge. DPAs are only available for companies and not individuals</p> <p>DPAs are by invitation only from the SFO/CPS. There is no right to a DPA. The prosecutor is not obliged to invite organisations to negotiate a DPA and organisations are under no obligation to accept an invitation to do so. There is a two-stage test that must be applied by a prosecutor before DPA negotiations can be offered: the evidential test and the public interest test. There are a number of factors which will be considered to determine whether a DPA should be offered</p> <p>Before approving the DPA, a judge must be convinced that the DPA is in the interests of justice and that the terms are fair, reasonable, and proportionate</p> <p>The terms of a DPA may include a company paying a fine, compensating victims, paying</p>	<p>The DOJ regularly uses DPAs to resolve FCPA enforcement actions. DPAs are negotiated and agreed upon by DOJ and the company, and entered into with the approval of a judge</p> <p>DPAs carry with them the risk of suspension or debarment of government contracts</p> <p>The DOJ also uses NPAs, which are an agreement not to prosecute, as opposed to a DPA, which is an agreement to defer prosecution. DPAs may involve a compliance monitor, whereas NPAs typically do not</p> <p>The SEC generally requires self-disclosure for a company to be eligible for a DPA or NPA</p>

		<p>prosecution costs, and providing ongoing cooperation</p> <p>If the company does not comply with the conditions as agreed, the SFO and/or CPS may resume the criminal prosecution</p>	
<b>Definition of whistleblower</b>	<p>An individual who reveals or reports, disinterestedly and in good faith, a crime or offense, a serious and manifest breach of an international commitment duly ratified or approved by France, of a unilateral act of an international organization taken on the basis of such a commitment, of the law or the regulations, or a serious threat or harm to the public interest, of which it has been made personally aware</p>	<p>Whistleblowers are protected by the Public Interest Disclosure Act 1998. That act does not define whistleblower</p>	<p>The FCPA does not statutorily define whistleblower</p>
<b>Protection of whistleblowers</b>	<p>Shall not be excluded from a recruitment procedure, be penalized, dismissed, or discriminated against, directly or indirectly, in particular with regard to remuneration, incentive, or share distribution</p> <p>Strict confidentiality on the identity of the author of the report (unless the author gives consent or if elements identifying the whistleblower are disclosed to the judicial authority)</p> <p>Elements likely to identify the person involved in an alert may be disclosed, except to the judicial authority, only once the merits of the alert have been established</p>	<p>Whistleblowers are protected under the Public Interest Disclosure Act 1998. Whistleblowers shall be regarded as automatically unfairly dismissed if the reason or the principal reason for the dismissal was due to the fact that they made a protected disclosure. There is no limit on the compensation that can be awarded in this case</p> <p>Whistleblowers are also protected from other detriment that may result by virtue of them making a protected disclosure, for example, if they are not offered a promotion or training opportunities</p>	<p>No specific provision in the FCPA; separate provisions in the Dodd-Frank Act</p>
<b>Sanctions applied to whistleblower</b>	<p>When the whistleblower acts in bad faith, criminal sanction (<i>e.g.</i>, malicious accusation)</p>	<p>There is no longer a requirement that a whistleblower act in good faith. Instead, the whistleblower must show that they reasonably believed that the disclosure was made in the public interest</p>	<p>No specific provision in the FCPA; separate provisions in the Dodd-Frank Act</p>

		<p>There are currently no explicit sanctions in the event that a whistleblower acts in bad faith. However, if it appears to an employment tribunal that a “protected disclosure was not made in good faith” the employment tribunal is given the discretion to reduce any award it makes to the whistleblower by up to 25% in relation to a claim of unfair dismissal or detriment based on a protected disclosure</p> <p>Whistleblowers can also commit criminal offences by mishandling information they use to support their disclosures (e.g., misuse of data, breach of data protection legislation)</p>	
<p><b>Incentive for the whistleblower (such as remuneration)</b></p>	<p>No</p>	<p>There are no remuneration incentives</p> <p>However, if a whistleblower brings a claim for unfair dismissal or detriment based on a protected disclosure before the employment tribunal, there is:</p> <ul style="list-style-type: none"> <li>• no upper limit imposed upon the amount of compensation that may be awarded</li> <li>• no minimum length of service requirement</li> </ul>	<p>Whistleblowers are entitled to financial rewards for reporting FCPA violations (and any violation of the federal securities laws), subject to certain criteria, under the Dodd-Frank Act</p>