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# White-Collar Crime

## Introduction

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# INTRODUCTION

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**Bougartchev Moyne Associés AARPI** was formed in January 2017, when Kiril Bougartchev and Emmanuel Moyne joined forces to create a law firm combining all the disciplines of business litigation, and specialising in criminal law. The establishment of this firm is the fruit of more than 20 years of professional experience gained by the two founding partners at Gide and Linklaters LLP. They are supported by a team of around ten lawyers. As litigators recognised throughout their profession, the founders and their team assist public and private enterprises such as banks, financial institutions and insurance companies – as well as their executives – in all disputes to which they are a party, whether involving white-collar crime, civil and commercial law or regulatory matters. With wide experience of emergency, complex, cross-border and multi-jurisdictional proceedings, Bougartchev Moyne Associés' lawyers assist their

clients both in France and internationally, and with the benefit of privileged relations with counterpart law firms on all continents. Primary practice areas are: white-collar crime, compliance, investigations, regulatory disputes, civil and commercial litigation as well as crisis and reputational injury management. Bougartchev Moyne Associés advises clients in very sensitive matters, whether involving French, foreign or international public officials, private bribery or influence-peddling. The firm's lawyers also assist large companies in implementing the new compliance measures required by the Sapin II Law, in performing compliance and anticorruption M&A due diligence as well as in their internal investigations. Bougartchev Moyne Associés has been involved in white-collar crime matters for numerous leading companies and high-profile individuals, within France and internationally.

## Contributing Editors



**Kiril Bougartchev** began his career in 1988 as an auditor at Arthur Andersen. A year later, after his final internship at Jean Veil et Associés and his admission to the French bar, he joined Gide where he became a partner in 1999 in the litigation

and white-collar crime department, then moved to Linklaters LLP in 2007, where he would become co-head of the dispute resolution practice of the Paris office and lead the Linklaters LLP global white-collar crime group. Kiril has been and is still involved in many notorious white-collar crime cases, including sensitive political and financial matters, both in France and internationally. He is also involved in regulatory disputes (including before the French Financial Markets Authority, the French Anticorruption Agency and the French Prudential Supervisory Authority) as well as in complex civil and commercial litigation. He also advises clients in the conception, the implementation and the strengthening of their anticorruption and compliance programmes. A former "Secrétaire de la Conférence des Avocats" of the Paris bar, Kiril has lectured at the University of Paris II (DJCE), at the Faculty of Montpellier and also at EDHEC. He was a member of the Paris Europlace "Decriminalisation of business criminal law and business competitiveness" committee. He published many articles about misuse of corporate assets, corruption, criminal liability of auditors, business secrecy, Sapin II Law, French Blocking Statute, cryptocurrencies and ICOs.



**Emmanuel Moyne** began his career in 1997 as in-house counsel within asset management company White Gestion SARL, a subsidiary of Goldman Sachs, and was admitted to the Paris bar in the same year. He then practised for ten years in

Gide's litigation and white-collar crime department before joining the dispute resolution practice at Linklaters LLP in Paris in 2007 as a counsel. Emmanuel has acted in numerous white-collar crime cases, in regulatory, civil and commercial disputes as well as in industrial and environmental accident claims. He advises his clients on complex proceedings, often involving several foreign jurisdictions, as well as on compliance programmes, anticorruption due diligence and internal investigations. A former "Secrétaire de la Conférence des Avocats" of the Paris bar, Emmanuel is a member of the "Conseil National des Barreaux" working group on internal investigations and an Officer of the Criminal Law Committee of the International Bar Association. He has lectured at the University of Montpellier (mutual assistance and extradition proceedings) and the University of Sceaux (environmental criminal law) and authored various articles on the European arrest warrant, safeguarding business secrecy, managing criminal risk, corruption, Sapin II Law, tax fraud, French Blocking Statute, cybercriminality, and restitution of artworks. He recently defended the interests of a leading company, one of the first six firms audited by the French Anticorruption Agency, as well as a leading financial institution audited by the French Prudential Supervisory Authority, and obtained decisions not to refer the cases to the Sanctions Commission of the respective authorities.

We are very pleased to present the first edition of Chambers' Global Practice Guide to White-Collar Crime.

This guide, which compiles the views and opinions of a group of leading practitioners from 21 different countries, is designed to provide lawyers and all other practitioners with an overview of the various systems of repression in the specific field of white-collar crime, practical guidance regarding the application and enforcement of these laws, and insight into potential future developments.

This field includes many subdisciplines that we have tried to cover exhaustively with the present book, such as criminal company law and corporate fraud, anti-bribery law, market abuses, tax fraud regulations, criminal competition law, consumer criminal law, cybercriminality and anti-money laundering law.

White-collar crime legislation and enforcement has developed considerably over the past decade, with a multiplication of the offences related to business practice and a strengthening of prosecution authorities. While commentators had been calling for a decriminalisation of some offences that they considered detrimental to business, it is clearly the opposite stance that has prevailed.

In France, since the creation of the National Financial Prosecutor's Office in 2013, the institution has been significantly reinforced, with 94 investigations opened in 2018, an important judicial convention of public interest recently signed by a major American multinational technology company for a global amount of EUR500 million and a record fine of EUR3.7 billion pronounced by the Paris criminal court against a Swiss bank for unlawful solicitation of French prospects and aggravated money laundering of the proceeds of tax fraud. France has also seen the number of decisions rendered by the Enforcement Committee of the Financial Markets Authority increase while the Enforcement Committee of the newly created Anti-corruption Agency rendered its first decision on 4 July 2019. 2019 also saw the immediate and spectacular arrest, right after the verdict, of a preeminent politician convicted on the grounds of tax fraud to a non-suspended four-year sentence as well as to ten years of ineligibility.

In the United Kingdom, the last two years have seen a number of new investigative tools and criminal offences introduced into the world of white-collar crime through the Criminal Finances Act 2017. These include the Unexplained Wealth Orders and Account Freezing and Forfeiture Orders that have helped a variety of law enforcement agencies to, among other things, freeze bank accounts. This Act also introduced two new offences relating to companies: the failure to prevent both the facilitation of UK Tax evasion and the facilitation of foreign tax evasion.

With regard to international trends, the continuing move to a co-operative approach initiated by the US has clearly spread to many other states. The Deferred Prosecution Agreement (DPA) has been used in the US for decades, and its use in the United Kingdom has been increasing since UK law made it available in 2014. Other countries, including France and Singapore have introduced equivalent tools in their legislation, while Australia is considering it. Even if the regime of DPAs varies from country to country, companies are encouraged to co-operate fully by informing the authorities of the discovery of wrong-doing, conducting internal investigations, allowing access to all relevant documentation and highlighting key documents to regulators, for example. This trend to co-operate and negotiate rather than going through the traditional adversarial regime is growing, even if many people have reservations as to whether DPAs actually encourage businesses to behave ethically, whether they are transparent enough and whether they have a negative impact on concurrent action against individuals.

From a French perspective, sanctions incurred in the US system for white-collar offences have always been much higher than in our country, especially because of the possibility of cumulative penalties. However, the sanctions pronounced are increasingly severe and more and more in line with American sentences. In Australia, where the trend is the same, the Government is looking to pass new laws whose most important changes will be the increase in the term of imprisonment for criminal offences as well as larger financial penalties imposed for both criminal offences and civil contraventions.

Anti-corruption law, and white-collar criminal law in general, is being harmonised internationally, especially thanks to the great influence of the United States' Foreign Corrupt Practices Act on the Organization of American States and OECD Conventions.

The introduction of whistle-blower protection legislation in several countries is an example of how white-collar criminal law is increasingly focused on ensuring that employees and citizens more actively detect and report misconduct to authorities.

While substantive rules are becoming more uniform, international co-operation in criminal matters is stronger than ever. While many tools to co-operate on a global scale have been established, the implementation of the European Public Prosecutor (expected for November 2020) most clearly reflects the growing desire of European countries not to see their investigations fail because of the complexity and transnational nature of the financial crimes being prosecuted. As another example, in 2018, the French National Financial Prosecutor's Office issued 103 requests for international assistance and received 40.

# INTRODUCTION

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White-collar crime is increasingly international in scope. For this reason, it is important that practitioners are aware of the different systems of repression across the world and the extra-territorial reach exercised by many enforcement bodies. It will not only allow them to work in their respective jurisdictions but also to extend their reach, including through exchange with colleagues around the world.

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As, first of all, criminal lawyers, we never forget that our task is to defend our clients, who remain innocent until proven guilty. In an ever-changing regulatory environment and given the trends described above, this is a more and more challenging mission. It is also what makes our profession more and more rewarding.

It is therefore our hope that, by virtue of the quality of its contributors, this guide will be viewed as an essential resource by practitioners and that it will help them on their path to success.