



ICLG

The International Comparative Legal Guide to:

Business Crime 2016

6th Edition

A practical cross-border insight into business crime

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Contributing Editors

Gary DiBianco & Ryan Junck, Skadden, Arps, Slate, Meagher & Flom LLP

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Senior Account Manager

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Sales Support Manager

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Amy Hirst

Senior Editor

Suzie Levy

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
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General Chapters:

1	No Place to Hide: the New Normal in Cross-Border Tax Enforcement – Ryan Junck & Pamela Lawrence Endreny, Skadden, Arps, Slate, Meagher & Flom LLP	1
2	When Should Organisations be Held Criminally Liable? – Tom McNeill & Guy Bastable, BCL Burton Copeland	6
3	The Developing Partnership Between Financial Institutions and Law Enforcement: a UK Perspective – Stephen Gentle, Simmons & Simmons LLP	11
4	Maintaining Privilege in Cross Border Investigations – A US / UK Comparison – Sean Hecker & Karolos Seeger, Debevoise & Plimpton LLP	15
5	Coerced Corporate Social Responsibility and the FCPA – Joel M. Cohen & Daniel P. Harris, Gibson, Dunn & Crutcher LLP	23
6	Tactical and Ethical Considerations in Multinational Investigations – Tobin J. Romero & Joseph M. Terry, Williams & Connolly LLP	30
7	Fighting Corruption in International Transactions – Michael Diaz Jr. & Marcela C. Blanco, Diaz, Reus & Targ LLP	35

Country Question and Answer Chapters:

8	Albania	Haxhia & Hajdari Attorneys at Law: Isuf Haxhiu & Dritan Jahaj	38
9	Australia	Clayton Utz: Tobin Meagher & Greg Williams	48
10	Austria	wkklaw attorneys at law: Norbert Wess & Bernhard Kispert	56
11	Belgium	Linklaters LLP: Stefaan Loosveld & Gert-Jan Hendrix	66
12	Bermuda	MJM Limited: Jennifer Haworth	73
13	British Virgin Islands	Maples and Calder: Arabella di Iorio & David Welford	80
14	Cayman Islands	Maples and Calder: Martin Livingston & Adam Huckle	87
15	Colombia	Diaz, Reus & Targ LLP: Michael Diaz Jr. & Marcela C. Blanco	96
16	Czech Republic	Gürlich & Co.: Richard Gürlich & Katerina Benasova	104
17	England & Wales	BCL Burton Copeland: Richard Sallybanks & Shaul Brazil	111
18	France	Gibson, Dunn & Crutcher LLP: Nicolas Autet & Salomé Lemasson	119
19	Germany	Stetter Rechtsanwälte: Dr. Sabine Stetter & Stephanie Kamp	130
20	Greece	Anagnostopoulos Criminal Law & Litigation: Ilias G. Anagnostopoulos & Jerina (Gerasimoula) Zapanti	139
21	Hong Kong	Haldanes: Felix Ng & Emily Cheung	148
22	India	Kachwaha and Partners: Ashok Sagar & Sumeet Kachwaha	156
23	Ireland	Matheson: Brid Munnely & Carina Lawlor	166
24	Italy	Studio Legale Pisano: Roberto Pisano	176
25	Japan	Nishimura & Asahi: Yoshinori Ono & Norimitsu Yamamoto	186
26	Jersey	Baker & Partners: Stephen Baker & Cyril Whelan	198
27	Liechtenstein	Lampert & Partner Attorneys at Law Ltd.: Siegbert Lampert & Martina Tschanz	206
28	Mexico	REQUENA ABOGADOS, S.C.: Carlos Requena & Luis Fernando Hernandez	213
29	Nigeria	BLOOMFIELD LAW PRACTICE: Adekunle Obebe & Dayo Adu	220
30	Poland	Łaszczuk & Partners: Jan Rysiński	227
31	Portugal	Rogério Alves & Associados, Sociedade de Advogados, RL: Rogério Alves	234
32	Romania	Zamfirescu Racoți & Partners Attorneys at Law: Cozmin-Antoni Obancia	243

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Country Question and Answer Chapters:

33	Russia	Ivanyan and Partners: Vasily Torkanovskiy	250
34	Spain	De Pedraza Abogados, S.L.P.: Mar de Pedraza & Cristina de Andrés	261
35	Switzerland	Homburger: Flavio Romero & Roman Richers	276
36	Turkey	ELIG, Attorneys-at-Law: Gönenç Gürkaynak & Ç. Olgu Kama	286
37	Ukraine	Zavadetskyi Advocates Bureau: Oleksandr Zavadetskyi & Veronika Mordasova	294
38	USA	Skadden, Arps, Slate, Meagher & Flom LLP: Gary DiBianco & Gary A. Rubin	301

EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Business Crime*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of business crime.

It is divided into two main sections:

Seven general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting business crime, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in business crime laws and regulations in 31 jurisdictions.

All chapters are written by leading business crime lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Gary DiBianco and Ryan Junck of Skadden, Arps, Slate, Meagher & Flom LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Jersey

Baker & Partners

Stephen Baker



Cyril Whelan



1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

Leaving aside the comparatively minor matters dealt with in the Magistrate's Court, all prosecutions within Jersey are brought in the name of Her Majesty's Attorney General for Jersey and by dint of modern practice are in the vast majority of cases prosecuted by a Crown Advocate, who is an appointee of the Attorney General, approved by the Bailiff (the head of the judiciary of Jersey), assigned to the case either from within the Law Officer's Department or from the private sector.

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

The States of Jersey Police are the principal investigative agency on the Island. While the majority of business related crime is within the purview of the Joint Financial Crimes Unit (JFCU), it is increasingly the case that the Enforcement Division of the Jersey Financial Services Commission investigates regulatory offences, including breaches of the Companies Legislation. Resources and other considerations have led to these areas of investigation becoming the province of that Division.

The Intelligence Wing of the JFCU acts as the Island's Financial Intelligence Unit (FIU), in order to comply with Anti Money Laundering (AML) and Counter Terrorist Financing (CFT) Recommendations issued by the Financial Actions Task Force (FATF) and serves as the centre for the receiving, analysis and dissemination of Suspicious Activity Reports (SARs). It is also the case that the Enforcement Division of the Jersey Financial Services Commission receives and shares intelligence through appropriate gateways.

The Operational Wing of the JFCU is responsible for carrying out criminal investigations into serious and complex fraud, sometimes but not always originating from the development of SARs. The majority of the Wing's work is undertaken in conjunction with the Law Officer's Department, and powers exercisable by the Attorney General within the Investigation of Fraud (Jersey) Law 1991. In practice, this means that the investigation of cases of substance takes

place at the direction of senior lawyers appointed by the Attorney General to advise and prosecute.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

The Jersey Financial Services Commission is responsible for the regulation, supervision and development of the financial services industry on the Island.

Under each of the Regulatory Laws pertaining to Financial Services, Banking Business, Insurance Business and Collective Investment Funds, and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, the Commission has powers in certain circumstances to issue directions, which could include directions as extreme as effectively closing down a regulated business and precluding the employment of named persons within the regulated sector. Lesser directions may be made, and all directions are attended by a public statement, which in itself is a regulatory sanction. Such a statement will form a regulatory sanction, or part of a sanction, by promulgating the findings of the Commission and any action it has taken in relation to a failure of a business or person to comply with a requirement of any relevant law or Code of Practice.

Since March 2015 the Jersey Financial Services Commission has had the power to impose civil financial penalties for breaches of the Codes of Practice and the AML/CFT Handbook by those registered under the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996 and the Financial Services (Jersey) Law 1998 and, respectively, under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. The Financial Services Commission (Amendment No. 6) (Jersey) Law 2015 refers.

There is a right of appeal to the Royal Court on the grounds that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

There are three levels of penalty, depending on the seriousness of the breach. Each is based on a percentage (respectively 4%, 6% and 8%) of the transgressor's relevant income, as defined, with a cap, in the most serious reaches, of £4,000,000.

In the first instance, the Commission may retain any sum of money it receives in respect of a penalty as part of its income and apply it in reduction of fees otherwise chargeable to the generality of registered persons in the same class as those who have paid the penalty. However, there is a reserve power to order that surpluses must be paid to the States of Jersey in certain circumstances.

2 Organisation of the Courts

2.1 How are the criminal courts in Jersey structured? Are there specialised criminal courts for particular crimes?

The criminal courts comprise the Magistrate's Court and the senior courts, namely the Royal Court and the appellate courts. The Magistrate's Court is presided over by a stipendiary magistrate. He hears and disposes of the relatively minor offences, and commits the more serious offences to the Royal Court. The Royal Court has two divisions, namely the Inferior and Superior Numbers. The latter is in fact a sentencing court and sits on those cases in which sentences in excess of four years are to be imposed. The Inferior Number is a trial court in which statutory offences are heard by two Jurats (lay Justices), an office well known within European jurisprudence, as judges of fact and the Bailiff (or his qualified delegate) as the judge of law. Appeals from decisions of the Royal Court may be heard by the Jersey Court of Appeal, a tribunal made up predominantly of eminent lawyers from the various United Kingdom internal jurisdictions. Appeals from that court are heard by the Judicial Committee of the Privy Council and are generally limited to matters of principle. There are no specialised courts for particular crimes.

2.2 Is there a right to a jury in business-crime trials?

It is a feature of Jersey law that common law offences are tried by a jury and statutory offences are tried by two members drawn from a standing panel of Jurats. Most but not all 'business crimes' arise under statute so that trial by Jurat follows. It is the case, however, that Jersey has long had a generic crime of fraud which arises in common law and which is accordingly tried by jury. It is also the case that the larceny based offences including larceny as a servant, fraudulent conversion and obtaining by false pretences arise in common law, as do the offences of false accounting, forgery and uttering. These offences are accordingly tried by jury and may in context amount to 'business crimes'.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Jersey to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Fraud and misrepresentation in connection with sales of securities

Under section 39(L) of the Financial Services (Jersey) Law 1998, it is an offence for a person to knowingly or recklessly make misleading statements in relation to investments or to dishonestly conceal information in connection with a statement. The offender must act for the purpose of inducing, or be reckless as to whether he or she may induce, another person to deal or refrain from entering into an agreement or arrangement, the making of which or performing of which constitutes financial service business.

o Insider trading

Under section 39(G) of the Financial Services (Jersey) Law 1998, it is an offence for a person, who has information as an insider, to deal in securities in relation to the information, encourage another to deal in relation to the information, or disclose inside information to another (other than in the proper course of his employment).

However, there are a number of defences which are set out in the law, for example, where the person did not expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities; that at the time he or she believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or that he or she would have done what he or she did even if he or she had not had the information.

o Embezzlement

Please refer to the preceding answer regarding common law offences of fraud.

o Tax crimes

Tax evasion is normally prosecuted in Jersey under the Income Tax (Jersey) Law 1961, article 137(1), which states that if any person fraudulently or negligently delivers any incorrect statement; makes any incorrect statement, return or declaration in connection with any claims for any allowance, deduction or relief or submits to the Comptroller any incorrect accounts in connection with the ascertainment of his or her liability to income tax, they shall be guilty of an offence.

More serious conduct can be prosecuted as common law fraud, (see *Attorney General v Michel* (C.A.), 2006 JLR 287, where third parties, with the connivance of the accused, had deliberately made false representations to the Revenue. The accused was prosecuted and certain members of the third parties gave evidence against him.

o Campaign-finance/election law

The Public Elections (Expenditure and Donations) (Jersey) Regulations 2011 govern the maximum sum that a candidate's election expenses shall not exceed. A candidate whose election expenses exceed, without reasonable excuse, the limit imposed by paragraph 1 of those Regulations is guilty of an offence and is liable to a fine.

Under paragraph 2 of the Regulations, a candidate shall, no later than 15 working days after the day the poll is held, deliver to the Greffier (returning officer), a written declaration of their election expenses, itemising the amounts spent and the goods and services on which they are spent, and the donations that they received. For donations greater than £100, they must specify the name of the donor, the amount or value of the donation, and whether the donation is of money, a loan of money, goods or the use of goods, or services.

A candidate who fails, without reasonable excuse, to deliver a declaration, or who delivers a declaration, knowing or believing it to be false is guilty of an offence and is liable to a fine.

o Any other crime of particular interest in Jersey

Money Laundering

The Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law, 2014, came into force on the 4th August, 2014. Its purpose was to create one set of anti-money laundering provisions, including the restraint and confiscation of such proceeds.

Previously, drug money laundering was dealt with under the Drug Trafficking Offences (Jersey) Law 1988, while the laundering of terrorist property was dealt with under the Terrorism (Jersey) Law 2002 and any other form of money laundering under the Proceeds of Crime (Jersey) Law, 1999.

The Jersey legislature took the view that the previous money laundering offences were too numerous and specific; accordingly, the 2014 Law revises the existing money laundering offences across the board and encapsulates them in a single consolidating statute so as to address the requirements of the jurisdiction more effectively.

Generic offences concerning the use and possession of property for terrorist purposes, of dealing with criminal property, of transferring, concealing or removing criminal property and of facilitating the acquisition, use, possession or control of criminal property by or on behalf of another person, are to be found within the statute accordingly, with 'criminal property' defined as the proceeds of criminal conduct, or property representing such proceeds. The offences carry a maximum penalty of 14 years' imprisonment or a fine, or both.

It is of course the money laundering offence which gives territorial jurisdiction so that the locus of the predicate offending is immaterial to the charging of the money laundering and the freezing of assets in Jersey.

The Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations, 2014, came into force on the 4th August 2014 which has enacted amendments to the Law with regards to the tipping off offence which has been widened to incorporate all disclosures rather than the former instances that were "likely to prejudice" any investigation. This provides the platform to bring Jersey up to speed with the majority of other major financial jurisdictions by offering more clarity that any disclosure will be a prosecutable offence.

o **Market manipulation in connection with the sale of securities or derivatives**

Under section 39(L)(2) of the Financial Services (Jersey) Law 1998, any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investment is guilty of an offence. The person acting must do so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite that investment; or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by that investment.

3.2 Is there liability for inchoate crimes in Jersey? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Yes. The full range of inchoate offences exists in Jersey law. All of the inchoate offences apply to both statutory and customary law offences. The impossibility of committing the full offence is no defence to a charge of attempting to commit the offence if the accused engages in overt acts sufficiently proximate to the offence.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Corporate liability does exist. It exists on the same basis as in England. The imputation of conduct applies only in the case of those who possess the 'controlling mind' and the ability to determine corporate policy and strategy.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Personal liability of this sort can arise. Different circumstances exist in relation to different offences.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

No. The prosecutorial decisions are taken so as to be appropriate to the individual circumstances of the specific case.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

Since the enactment of the Criminal Procedure (Prescription of Offences) (Jersey) Law 1999 there is no statutory limitation on the initiation of criminal proceedings in Jersey. The law does not, however, operate to revive proceedings which were prescribed before that date.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

This is not applicable in Jersey.

5.3 Can the limitations period be tolled? If so, how?

This is not applicable in Jersey.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

Initial complaints are characteristically made to the States of Jersey Police or to the Law Officer's Department. Depending on the subject matter, the complaint may come to the attention of those authorities by another route, for example a complaint made to the Jersey Financial Services Commission. The complaint is ideally made through the intermediary of a local lawyer, although nothing prevents a direct approach to the relevant authority by the complainant.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Local legislation gives wide powers to the Jersey authorities to co-operate with other governments and their agencies in the investigation and prosecution of crime and the recovery of the proceeds thereof. The provision of information and evidence and the securing of assets held on the Island are all enabled by the Investigation of Fraud (Jersey) Law 1991 and the Criminal Justice (International Co-operation) (Jersey) Law 2001.

Local legislation also enables the enforcement in Jersey of overseas forfeiture orders/confiscation orders.

The relevant authorities in Jersey are authorised to enter into asset sharing agreements with other governments when there has been

anything in the nature of a combined operation resulting in the confiscation or forfeiture of assets.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

In addition to the powers of the police to obtain search warrants, arrest suspects, search following arrest and interview under caution, the Attorney General may exercise certain powers conferred under the Investigation of Fraud (Jersey) Law 1991 where there is a suspected offence involving serious or complex fraud, wherever committed, and there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person.

The powers include the issuing of a notice that may require the person under investigation or any other person to furnish information and/or documentation in relation to any matter relevant to the investigation.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

In addition to the powers of search and seizure conferred on the police by the Police Procedures and Criminal Evidence (Jersey) Law 2003, which operates in a similar form to the English Police and Criminal Evidence Act 1984, several other powers are exercised by the Attorney General in relation to fraudulent offences.

Under section 2(3) of the Investigation of Fraud (Jersey) Law 1991, the Attorney General may, by notice in writing, require the person under investigation or any other person to produce any specified documents which appear to the Attorney General to relate to any matter relevant to the investigation. The Attorney General may take copies or extracts from them, require the person producing them to provide an explanation of any of them and if any such documents are not produced, may require the person who was required to produce them to state, to the best of their knowledge and belief, where they are.

If, on an application by the Attorney General, the Bailiff is satisfied, in relation to any documents, that there are reasonable grounds for believing that a person has failed to comply with an obligation to produce them, it is not practicable to serve a notice in relation to them, or the service of such a notice in relation to them might seriously prejudice the investigation, and that they are on premises specified in the application, the Bailiff may issue such a warrant authorising any police officer to enter and search the premises. The Bailiff is also authorised to take possession of any documents appearing to be documents of the description specified in the application or to take, in relation to any documents so appearing, any other steps which may appear to be necessary for preserving them and preventing interference with them.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Jersey recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Jersey's labour laws protect personal documents of employees, even if located in company files?

Notices or court orders may not compel the production of a document that is legally privileged, nor may legally privileged material be seized pursuant to a warrant. However, it is often impractical to identify privileged material at the time of seizure, such that potentially privileged material may be seized, but is then subject to independent review and must be returned if it is later determined to be privileged.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

In the same circumstances that apply in relation to companies (see question 7.2 above). In addition, a suspect's premises may be subject to search following arrest.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

In the same circumstances that apply in relation to companies (see question 7.2 above).

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

Under section 2(2) of the Investigation of Fraud (Jersey) Law 1991, the Attorney General may, by notice in writing, require the person whose affairs are to be investigated or any other person whom he or she has reason to believe has relevant information, to answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith, and administer questions or otherwise obtain information accordingly. In practice, the questioning most frequently takes place by appointment at the Attorney General's office. This is as a matter of logistical convenience and is no more than a matter of practice which can be varied as appropriate.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

The power to issue notices outlined in question 7.6 above can be used to compel witnesses to provide information.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

In the case of police interviews, suspects are usually interviewed under caution and can therefore refuse to answer questions. No adverse inference may be drawn against a defendant at trial if he refuses to answer when questioned under caution.

In the case of interviews held under the Investigation of Fraud (Jersey) Law 1991, persons who receive a notice compelling them to answer questions may not refuse to answer questions. Generally, the answers cannot be used against the person in subsequent criminal proceedings.

In either of the circumstances above, the interviewee has the right to have a legal adviser present.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases are generally, but not invariably, commenced by the defendant being charged at a police station by a Centenier (a parochial policing role operated in Jersey) and produced to the Magistrate's Court. Other forms of originating procedure are a written summons and presentation directly to the Royal Court on a police report at the direction of the Attorney General.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

Generally it is for the Centenier to take the original decision to charge. His decision not to charge can be overridden by the Attorney General. If the matter is committed to the Royal Court it is for the Attorney General to decide whether a prosecution should be continued in that court and if so, what should be charged there. These prosecutorial decisions, as in the United Kingdom, are taken by reference to written guidelines issued by the Attorney General and published.

The Jersey guidelines are to be found at the following website:

<http://www.gov.je/Government/NonexecLegal/LawOfficers/Pages/DecisionProsecute.aspx>.

In brief, the prosecuting authority must be satisfied i) that the evidence is such as to provide a realistic prospect of conviction, and if so ii) that a prosecution is required in the public interest.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

No such arrangements exist in Jersey law/procedure.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

Monetary orders can be imposed in the following circumstances following criminal conviction: i) compensation orders pursuant to the Criminal Justice (Compensation Orders) (Jersey) Law 1994; ii) orders for costs which are at the discretion of the court but which may, dependent on the circumstances of the defendant, include the entire cost of the prosecution; iii) fines, which have been used in relation to offences under the Money Laundering (Jersey) Order 2008 (see *Attorney General v Caversham & Bell* [2005] JRC165); and iv) confiscation orders, seizing the proceeds of crime.

There are a full range of civil remedies available to private companies and individuals who have been the victims of crime.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The burden is almost invariably upon the prosecution to prove that an offence has been committed. However, exceptionally, some laws specifically provide for a reverse burden. For example, the anti-disclosure provisions relating to Money Laundering offences under Part 3 of the Proceeds of Crime (Jersey) Law 1999 place the burden on the defendant to prove that they took all reasonable steps and exercised due diligence to avoid committing the offence.

Articles 34A and 34D of the 1999 Law was amended by the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations, 2014, which came into force on 4th August, 2014. The prior reporting offence of “failing to disclose suspicious convictions” has been altered to one where a person “must” report if they are aware, suspect or have rational grounds to suspect money laundering.

9.2 What is the standard of proof that the party with the burden must satisfy?

As with other common law jurisdiction, where the burden lies on the prosecution, the standard of proof is beyond all reasonable doubt. Where the burden lies on the defence, the standard of proof is a balance of probability.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

In the Magistrate's Court, the Magistrate is judge of both fact and law. In a Royal Court trial of a common law offence, the jury are the arbiters of fact. When Jurats are sitting, in the case of a statutory offence, they are arbiters of fact. When the Jurats are equally divided then the casting vote is with the Judge in the case. His vote is cast in accordance with conscience and not in accordance with any convention either way.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

The inchoate offences of conspiracy and of assisting are part of the customary law of Jersey. The elements of conspiracy are the making of an agreement to act unlawfully; the elements of assisting are the rendering of assistance with requisite knowledge. These offences attach to statutory as well as to customary law offences, as has been put beyond doubt by the enactment of the Criminal Offences (Jersey) Law 2009. That law sets out that a person who aids, abets, counsels or procures the commission of a statutory offence, or conspires, attempts or incites another to commit a statutory offence, is guilty of an offence and is liable to the same penalty as a person would be for the statutory offence.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

A defendant is entitled to be acquitted if the state of mind required by the offence has not been proved. In nearly all cases, the burden lies with the prosecution to prove the requisite state of mind. However, certain offences specifically provide for a reverse burden and some offences incorporate a specified qualification, which can mean that the defendant must prove that he had an innocent state of mind. In these cases the civil standard of proof, which is a balance of probability, will apply.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

Ignorance of the law is not a defence.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

A genuine mistake of fact may entitle a defendant to be acquitted, where, for example, the mistake prevents him from possessing the relevant state of mind required for the offence. A belief in consent in a rape case is one example. If the issue is raised by the defendant, the onus of proving that the defendant did not make a mistake generally lies on the prosecution.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

Generally, a person is not obliged to report a crime. However, an offence may be committed under the Money Laundering (Jersey) Order 2008 where a person who receives information or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist financing and fails to report the same to the authorities.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

Information by a person disclosing his own criminality or that of others is likely to lead to a discount in sentence if the matter proceeds to trial and sentence of the informant. The conventional discount is up to one third off the sentence which would otherwise have been imposed, but the discount in any given case is fact specific.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Jersey, and describe the favourable treatment generally received.

Please see question 13.1 above. This is entirely fact specific and does not allow for a general answer.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

There is no plea bargaining in Jersey. In Jersey the prosecution suggests a sentence to the court. The court is not bound by the suggestion and often departs from it. However, the defendant is entitled to know what the suggestion will be and this may condition his plea.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

Please refer question 14.1 above.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

As mentioned above, in the Royal Court the prosecution suggests the appropriate sentence. The court is not bound by the suggestion. Both the suggestion and the eventual sentence are set by reference to previous sentencing decisions of the senior courts of Jersey and England, including the guideline judgments of the courts in both jurisdictions. As to procedure, the prosecution outlines the facts and makes its sentencing proposal. The defence responds and the court decides. It is the Jurats who decide upon sentence. The judge has a casting vote in the case of a split decision. There is provision for an appeal against sentence.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

If not already patent, ability to pay a fine /costs in a certain sum has properly to be established by the provision of audited accounts or otherwise.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Defendants may appeal a verdict of guilty after a contested trial.

The prosecution cannot appeal a not-guilty verdict but the Attorney General may, if he or she desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to that court for its opinion.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

A defendant may appeal any sentence.

If it appears to the Attorney General that the sentencing of a person in any proceedings in the Royal Court has been unduly lenient, they may, with the leave of the Court of Appeal, refer the case to the Court of Appeal to review the sentencing.

16.3 What is the appellate court's standard of review?

The Court of Appeal will allow an appeal against conviction by the defendant if it thinks that the verdict should be set aside on the grounds that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the grounds of a wrong decision of any question of law or that, on any grounds, there was a miscarriage of justice.

Appeals by the defendant against sentence will be allowed when the sentence is wrong in law, wrong in principle or manifestly excessive.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If it allows an appeal against conviction, the Court of Appeal will quash the conviction, and direct a judgment and verdict of acquittal to be entered.

On any appeal against sentence, the Court of Appeal will, if it thinks that a different sentence should have been passed on the appellant in the proceedings from which the appeal is brought, quash the sentence and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution.

The Court of Appeal has the power to award costs in favour of a successful appellant.

**Stephen Baker**

Baker & Partners
2 Mulcaster Street
St Helier, JE4 0US
Jersey

Tel: +44 1534 766254
Fax: +44 1534 737355
Email: stephenbaker@bakerandpartners.com
URL: www.bakerandpartners.com

Stephen Baker is an English barrister and Jersey Advocate. He is senior partner at Baker & Partners.

He specialises in complex international commercial and trusts litigation as well criminal and regulatory law.

Stephen regularly acts for foreign governments in asset recovery actions. In recent years he has acted for the Federal Republic of Brazil, the Islamic Republic of Pakistan, and the Kenyan Anti-Corruption Commission. He is an expert in the interaction between civil and criminal law in fraud cases. He acted for the Federal Republic of Brazil in its first substantial asset recovery action outside of the territory seeking the recovery of assets held through a Jersey unit trust; allegedly to the benefit of a senior Brazilian politician. Stephen is regularly instructed by the Attorney General for Jersey in the most complex criminal cases. He is the Jersey representative of Fraudnet, the fraud prevention network of the ICC Commercial Crime Services.

**Cyril Whelan**

Baker & Partners
2 Mulcaster Street
St Helier, JE4 0US
Jersey

Tel: +44 1534 766254
Fax: +44 1534 737355
Email: cyrilwhelan@bakerandpartners.com
URL: www.bakerandpartners.com

Called to the English Bar in 1979 and to the Jersey bar in 1982, Cyril spent 28 years as senior legal adviser in the Law Officer's Department in Jersey. He was appointed to the office of Crown Advocate immediately upon the creation of that office in 1987 and remains the Island's Senior Crown Advocate. As head of the Department within the Attorney Generals chambers responsible for Serious Crime and International Mutual Legal Assistance, Cyril has advised on all aspects of public law including complex fraud and money laundering. Cyril has also acted on behalf of successive Attorneys General in the implementation of major regulatory and mutual assistance legislation in Jersey and has been involved in high profile investigative and litigation work relating to asset recovery on behalf of governments worldwide.

In June 2010 he was appointed as a Commissioner on the Board of the Jersey Financial Services Commission.

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Baker & Partners is a Jersey law firm specialising in civil and commercial litigation, contentious trusts, financial services regulation, crime, international co-operation and asset recovery. The firm has been involved in many highly complex cases involving cross-border crime. These cases have included the most serious instances of political corruption, large-scale fraud, drug trafficking and money laundering.

Baker & Partners was instructed to prosecute the first anti-money laundering case in Jersey and to defend the first prosecution for a breach of anti-money laundering regulations in the Crown Dependencies. The firm was central to the successful Jersey investigation into the alleged laundering of the proceeds of the corrupt Nigerian Dictator General Abacha's crimes through Jersey. This investigation has already resulted in over USD 160,000,000 being returned to Nigeria. The firm successfully acted at first instance for the Federal Republic of Brazil in a civil fraud action seeking to recover USD 22,000,000.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk