

International Comparative Legal Guides

Business Crime 2027

A practical cross-border resource to inform legal minds

17th Edition

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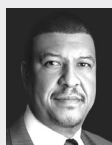
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1 General Criminal Law Enforcement

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

Criminal statutes affecting businesses may be enacted and enforced at the federal, state, and municipal levels.¹ The federal government prosecutes business crimes primarily through 93 United States Attorneys' Offices covering 94 judicial districts across all 50 states, the District of Columbia, and select territories, supervised by the U.S. Department of Justice ("DOJ") under the Attorney General. DOJ's Criminal Division houses specialised units, including the White Collar and Corporate Enforcement Section, the Money Laundering, Narcotics and Forfeiture Section, and the Computer Crime and Intellectual Property Section; the Antitrust Division addresses anticompetitive conduct.

At the state level, typically, Attorneys General and local prosecutors may prosecute business-related offences within their jurisdictions. State and local elections often decide who will serve as the head of many state and local prosecutors' offices. Federal prosecutors are appointed.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body that will investigate and prosecute a matter?

When both federal and state law prohibit the same conduct, either sovereign may investigate and bring charges. In practice, federal and state authorities frequently coordinate to avoid duplicative proceedings. Where multiple federal agencies assert investigative interests in the same matter, formal case-assignment processes often allocate responsibility based on factors such as institutional expertise, available resources, and existing caseloads.

1.3 Can multiple authorities investigate and enforce simultaneously?

Yes. The U.S. Constitution's Double Jeopardy Clause generally bars re-prosecution by the same jurisdiction that brought a criminal charge resulting in an acquittal, but it does not prevent the federal government from independently prosecuting the same conduct as a state government. Under the "separate sovereigns" doctrine, concurrent investigations and successive prosecutions for the same underlying acts are constitutionally permissible where one action is pursued by federal prosecutors and the other by states.

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

Federal and state agencies may pursue civil or administrative enforcement actions against businesses parallel to, or *in lieu of*, criminal proceedings. Key federal agencies include: the Securities and Exchange Commission ("SEC"), which enforces federal securities laws; the Internal Revenue Service, which addresses tax-related violations; the Federal Trade Commission, which addresses unfair business practices and anticompetitive conduct; the Environmental Protection Agency, which enforces environmental statutes; the Commodity Futures Trading Commission ("CFTC"), which oversees commodities markets; and the Office of Foreign Assets Control ("OFAC"), which administers sanctions programmes.

Processes and relief vary, but federal agencies generally may sue in federal court or commence administrative proceedings and are often empowered to obtain monetary and injunctive relief. The evidentiary threshold for civil liability is generally lower than the criminal "beyond a reasonable doubt" standard.

1.5 What are the major business crime cases in your jurisdiction in the past year?

The Boeing prosecution concerned conduct preceding two 737 MAX crashes that killed 346 people in 2018 and 2019. Boeing had agreed to plead guilty to conspiracy to defraud the United States, but, in May 2025, DOJ instead negotiated a non-prosecution agreement ("NPA") under which Boeing avoided conviction in exchange for more than \$1.1 billion in payments, compensation, and safety and compliance measures. A federal judge approved dismissal of the charge in November 2025 while expressing serious reservations about accountability. In 2026, the U.S. Court of Appeals for the Fifth Circuit rejected crash victims' representatives' effort to revive the prosecution.

In October 2025, federal prosecutors filed a superseding indictment charging SGO Corporation Limited – parent of the electronic voting technology company Smartmatic – with paying more than \$1 million in bribes to a former Philippine election official to secure and retain voting-machine business; three executives and the official had been charged individually in August 2024. The indictment alleges the bribes were disguised through inflated contracts and sham loans, producing Foreign Corrupt Practices Act ("FCPA") and money laundering charges. Smartmatic was already prominent from its \$2.7 billion defamation suit against Fox News over false claims about the 2020 U.S. presidential election.

Commentators have described the indictment as the first corporate FCPA charge in roughly 15 years not resolved in advance by a deferred prosecution agreement (“DPA”), NPA, or guilty plea.

These actions have unfolded against a significant reallocation of federal prosecutorial resources toward the current administration’s priorities. A March 2026 ProPublica investigation found DOJ declined more than 23,000 criminal cases in the first six months of President Donald Trump’s second term – including substantially more white-collar and fraud declinations than in comparable periods under prior administrations – while prosecuting approximately 32,000 new immigration cases. DOJ attributed the declination spike to an effort to “clean, remediate, and validate” its case-management data, but former prosecutors’ comments suggest the shift might be indicative of a fundamental reordering of enforcement priorities.

Healthcare fraud has emerged as one of DOJ’s most active enforcement areas and is now centralised under the new National Fraud Enforcement Division.

2 Organisation of the Courts

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

Three types of courts resolve almost all criminal matters in the U.S. federal judiciary system: United States District Courts are the primary trial courts of the federal court system; 12 regional Courts of Appeals review District Courts’ judgments in criminal matters; and the Supreme Court of the United States sits atop the system and exercises almost complete discretion in selecting which circuit court judgments to review.

State judicial systems often employ similar organisational structures.

Neither the federal system nor any state maintains courts devoted exclusively to adjudication of criminal charges involving business entities or white-collar crime.

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

Yes, except in prosecutions for “petty offences” (i.e., those for which the maximum term of imprisonment is six months or less).

2.3 Where juries exist, are they composed of citizens members alone or also professional jurists?

Federal “petit” juries (i.e., trial fact finders) consist exclusively of citizens (typically 12) drawn from the judicial district in which the case is tried.

3 Particular Statutes and Crimes

3.1 Please describe the statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused.

• Securities fraud

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful to employ “any manipulative or deceptive device or contrivance” in connection with purchasing or selling

securities. SEC Rule 10b-5 further prohibits fraudulent schemes, material misstatements, and misleading omissions in securities transactions. The government must establish that the accused acted with scienter, i.e., a specific intent to deceive, manipulate, or defraud. Criminal penalties lie for wilful violations.

• Accounting fraud

Federal securities fraud and money laundering statutes may provide the basis for prosecuting knowing falsification of corporate financial records. The FCPA further requires covered issuers to maintain books and records that accurately reflect their transactions. Criminal liability attaches for knowingly and wilfully maintaining inaccurate financial records.

• Insider trading

Trading in securities while possessing material non-public information (“MNPI”) may constitute a “deceptive device” under federal securities laws. Generally, liability arises when an individual who obtains MNPI through a relationship of trust and confidence – such as an officer, director, or professional adviser – uses that information in breach of a fiduciary or comparable duty to trade or tips it to another who trades (though in certain scenarios – like those involving a tender offer – criminal liability may result even absent a pre-existing duty). Both tippers and tippees may be held criminally liable. To obtain a conviction, the government must demonstrate the defendant acted with the requisite knowledge and intent.

• Embezzlement

Embezzlement involves the intentional misappropriation of property by a person to whom it has been lawfully entrusted. Federal statutes address embezzlement by employees of financial institutions and insurance companies and theft or bribery involving organisations and government agencies that receive more than \$10,000 in federal programme benefits in any one-year period.

• Bribery of government officials

Multiple federal laws criminalise directly or indirectly giving, offering, or promising anything of value to a public official with intent to influence an official act. The FCPA prohibits corrupt payments made to officials of foreign governments for the purpose of obtaining or retaining business, while domestic bribery is prosecuted under other provisions. Federal laws also prohibit public officials (including foreign officials) from corruptly demanding, seeking, receiving, accepting, or agreeing to accept bribes.

• Criminal anti-competition

The Sherman Anti-Trust Act prohibits agreements in unreasonable restraint of trade. Price fixing, market allocation, and bid-rigging arrangements are treated as *per se* unlawful, requiring no further analysis of competitive effects. The government must prove the defendant intended to enter the unlawful agreement.

• Cartels and other competition offences

Cartel activity – including horizontal price fixing, output restrictions, and market division among competitors – falls within the scope of the Sherman Anti-Trust Act’s *per se* prohibition.

• Tax crimes

The Internal Revenue Code criminalises several categories of tax-related misconduct, including wilful tax evasion, wilful failure to file returns, and filing fraudulent returns or making false statements therein or aiding or assisting the same. These offences uniformly require proof of wilfulness.

• Government-contracting fraud

The False Claims Act (“FCA”) imposes civil liability on any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to the federal government. The FCA’s *qui tam* provisions permit private whistleblowers to initiate suits on the government’s behalf. Federal law also imposes criminal liability for knowingly entering into an agreement intending to defraud the United States government by obtaining or aiding to obtain payment of any false, fictitious, or fraudulent claim. The substantive offence requires proof that the defendant knowingly made or submitted a false claim to the United States government.

• Environmental crimes

The Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act all contain criminal provisions. These statutes employ varying *mens rea* (mental state) standards – from negligent violations to knowing endangerment – with correspondingly graduated penalties.

• Campaign-finance/election law

Federal election law encompasses five principal categories of criminal offences: voting fraud (e.g., vote buying, absentee ballot fraud); campaign finance crimes, including those under the Federal Election Campaign Act (“FECA”); patronage crimes (e.g., political shakedowns, misuse of federal programmes); frauds affecting elections (e.g., scam political action committees); and criminal violations of federal voting rights statutes that do not have a basis in race, colour, national origin, or religion. FECA and related statutes establish contribution limits, disclosure requirements, and source restrictions and apply various *mens rea* levels for criminal liability.

• Market manipulation in connection with the sale of derivatives

The Commodity Exchange Act (“CEA”) criminalises artificial price manipulation through fraud or deception in commodities and derivatives markets. The CEA’s criminal provision covers several different forms of misconduct. The CEA’s principal fraud provision is 7 U.S.C. § 6b, and knowing violations are felonies under 7 U.S.C. § 13(a), though some theories of prosecution require establishing the defendant acted wilfully.

Prohibited conduct includes: manipulation or attempted manipulation of any commodity, swap, or futures contract through practices such as “cornering” (accumulating dominant positions to control pricing) and “spoofing” (placing orders intending to cancel before execution to create false impressions of market interest); knowingly making false or misleading material statements in CFTC filings; wilfully deceiving another regarding covered transactions; and certain insider trading.

• Money laundering or wire fraud

Federal money laundering statutes prohibit knowingly conducting transactions involving proceeds of specified unlawful activity. 18 U.S.C. § 1956 criminalises conducting or attempting to conduct such transactions to promote unlawful activity, conceal proceeds, avoid reporting requirements, or evade taxes; 18 U.S.C. § 1957 prohibits monetary transactions exceeding \$10,000 involving such proceeds.

Federal law prohibits using interstate and international wire communications in furtherance of a scheme to defraud. The government must prove (i) that the defendant knowingly and wilfully participated in a scheme to defraud, to obtain money or property; (ii) by materially false or fraudulent pretences, representations, or promises; (iii) that the defendant acted with the specific intent to defraud; and (iv) that the defendant used, or caused the use of, an interstate or foreign wire communication in executing or attempting to execute the scheme.

• Cybersecurity and data protection law

The United States lacks a comprehensive federal data protection statute with generally applicable criminal penalties for business entities; instead, criminal liability for data security-related conduct arises under statutes of general application such as the Computer Fraud and Abuse Act, wire fraud, obstruction of justice, and, in the healthcare sector, the Health Insurance Portability and Accountability Act (“HIPAA”). Criminal prosecutions related to data breaches have predominantly targeted individual corporate officers. DOJ’s primary enforcement mechanism against companies for cybersecurity failures has been the Civil Cyber-Fraud Initiative, which uses the FCA to impose civil liability on government contractors that falsely certify compliance with contractual cybersecurity requirements. HIPAA’s criminal provision authorises penalties against persons who knowingly obtain or disclose protected health information in violation of the statute, but DOJ’s Office of Legal Counsel has concluded that direct criminal prosecution under that provision is limited to “covered entities” and their agents, and publicly reported HIPAA criminal cases have targeted individuals rather than corporate entities.

• Trade sanctions and export control violations

The International Emergency Economic Powers Act (“IEEPA”) is the primary statutory authority for most modern U.S. sanctions programmes. OFAC administers and civilly enforces U.S. economic sanctions programmes while DOJ’s National Security Division handles criminal enforcement of sanctions laws. To impose criminal penalties, prosecutors must establish that the defendant is subject to the applicable sanctions regime and wilfully engaged in conduct prohibited by an IEEPA-based licence, order, regulation, or prohibition (or violated, attempted to violate, conspired to violate, or caused such a violation).

The Arms Export Control Act governs defence articles and services on the U.S. Munitions List, while the Export Control Reform Act governs dual-use and commercial items on the Commerce Control List. Both statutory regimes require wilfulness for criminal liability.

• Any other crime of particular interest in your jurisdiction

Bank fraud laws criminalise schemes to defraud financial institutions or obtain assets under their control through material misrepresentations, and violations are frequently charged alongside wire fraud and money laundering. The government must prove the defendant knowingly executed or attempted to execute a scheme or artifice either to defraud a financial institution or to obtain property owned or controlled by one by means of false or fraudulent pretences, representations, or promises.

3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed? Can a person be liable for “misprision” by helping another avoid being located or discovered?

Both federal and state law recognise inchoate criminal liability. State prosecutions for attempted crimes generally require proof that the defendant harboured the specific intent to commit the underlying offence and took a “substantial step” toward its completion. In the federal system, many substantive offences include endeavours to complete the act, while various conspiracy statutes may penalise agreements between two or more persons to commit an unlawful act. The primary federal conspiracy statute also requires the government to establish at least one conspirator took an overt act in furtherance.

Misprision of felony requires knowledge of the commission of a felony, failure to notify the authorities, and an affirmative act of concealment.

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? Are there ways in which an entity can avoid criminal liability for the acts of its employees or agents?

A corporation may be held criminally liable for unlawful acts of its employees and agents where: (1) the individual acted within the scope of their employment or authority; and (2) the conduct was motivated at least in part by intent to benefit the organisation – even if the conduct contravened corporate policy and the company derived no actual benefit. Charging decisions are guided by DOJ’s Justice Manual, its “Evaluation of Corporate Compliance Programs” (“ECCP”), and other departmental policies and guidance.

DOJ’s Corporate Enforcement Policy (“CEP”) is a department-wide policy issued in 2026 that incentivises “companies to voluntarily disclose discovered misconduct, cooperate with [DOJ] investigations, and timely and appropriately remediate the wrongdoing”. Absent certain aggravating circumstances, DOJ will decline to prosecute a company that complies with the CEP’s requirements.

The Justice Manual, ECCP, CEP, and similar DOJ guidance govern federal prosecutors’ charging decisions, but they do not convey to any person any enforceable substantive rights to relief respecting these matters.

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

Officers, directors, and managers are not automatically liable for an entity employer’s conduct. Individual criminal liability generally requires the government to establish that the defendant participated in, authorised, or is otherwise personally culpable.

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? Has the preference changed in recent years? How so?

DOJ prioritises individual accountability, requiring companies seeking cooperation credit under the CEP and other guidance to identify all individuals involved in the wrongdoing. The Justice Manual states that “the adequacy of the prosecution of individuals responsible for the corporation’s misconduct” is one factor prosecutors consider in deciding whether to charge an entity.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply? When does it not apply?

Successor liability principles may extend criminal exposure to acquiring entities in mergers and acquisitions, but they do not create liability where none previously existed. Liability

typically transfers in transactions where the surviving entity acquires all rights and obligations of the predecessor.

The relevant provision of the Justice Manual (the “M&A Safe Harbor Policy”) provides that DOJ will “apply a presumption in favor of declining prosecution of a corporation that voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated misconduct uncovered as a result of due diligence conducted shortly before or shortly after a lawful, bona fide acquisition of another corporate entity”.

5 Statutes of Limitations

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

The default federal statute of limitations for criminal offences is five years from the date the crime was completed. Certain offences carry longer periods, and capital offences have no limitations periods. The deadline for bringing charges usually begins when the offence is complete or, for continuing offences and ongoing conspiracies, upon the last overt act.

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

Generally, yes. In federal conspiracy prosecutions and other cases where an offence is ongoing, the limitations period generally runs from the last overt act or the completion of the continuing offence.

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

The limitations period may be tolled: (i) while a defendant is a fugitive from justice; (ii) while the government pursues evidence located in foreign jurisdictions (for up to three years); and (iii) if the defendant voluntarily agrees to tolling.

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction’s territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Courts presume that federal statutes operate only within U.S. territory, unless Congress clearly expresses its intent that they apply extraterritorially. Even where a statute reaches conduct outside of U.S. territory, due process principles may require a sufficient nexus between the defendant’s conduct and the United States. The FCPA, the Sherman Anti-Trust Act, and myriad other federal laws are regularly applied to conduct outside of the United States.

States’ criminal statutes generally do not apply extraterritorially.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? Can third parties learn how the investigation began or obtain the initial file documents? If so, please describe them.

No threshold showing is required to open a criminal investigation beyond an alleged or suspected violation. Particular investigative tools carry additional requirements (e.g., search warrants need a judge's signature on a showing of probable cause). In some civil enforcement contexts, agencies face distinct requirements for opening formal investigations and issuing subpoenas but may initiate informal investigations within their regulatory jurisdiction relatively freely.

The Freedom of Information Act authorises requests for government records but exempts from mandatory disclosure certain law enforcement investigative files.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

The United States maintains an extensive network of mutual legal assistance treaties and extradition agreements enabling formal cooperation with foreign law enforcement. The Clarifying Lawful Overseas Use of Data Act provides additional mechanisms for cross-border data access; however, to date, the United States has only finalised agreements with the United Kingdom and Australia. DOJ's Office of International Affairs coordinates international cooperation in criminal matters.

7 Procedures for Gathering Information from a Company

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

Investigators may: make informal requests; issue investigative demands, summonses, or subpoenas to compel testimony or document production; obtain judicial authorisation to identify phone numbers or IP addresses contacted; and obtain judicially authorised search warrants and wiretaps.

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?

A grand jury subpoena *duces tecum* compels a company to produce specified documents. No showing of probable cause is required to issue a subpoena; the grand jury's investigative authority is broad. Alternatively, a search warrant, which requires a judicial finding of probable cause that such search and/or seizure will identify the evidence, fruits, or instrumentality of a crime, may be used but must specify with particularity the locations to be searched and items to be seized.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

The attorney–client privilege protects confidential communications between a client and legal counsel (whether in-house or external) made for the purpose of obtaining legal advice. The work product doctrine separately shields materials prepared in anticipation of litigation. Additional privileges may apply, as might exceptions (e.g., the crime-fraud exception might apply if the client sought counsel's assistance in committing or covering up a crime or fraud, or a court may order the disclosure of "fact" work product if the requesting party demonstrates substantial need for the material and cannot obtain it without undue hardship by other means).

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

Federal and state privacy laws generally do not preclude disclosure of employee data to government investigators. However, companies may object to specific disclosures in some cases (e.g., HIPAA may limit access to certain health information in some circumstances).

7.5 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?

The same investigative mechanisms available against companies and discussed above – grand jury subpoenas, search warrants, summonses, and informal requests – apply with equal force to individual employees.

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

The same compulsory processes and investigative tools discussed above apply to requests and demands for third parties' documents and information.

Questioning of Individuals:

7.7 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?

Individuals may be compelled by subpoena to testify before a grand jury, in a deposition, or at a trial or similar hearing, but the Fifth Amendment to the U.S. Constitution permits individuals to refuse to answer questions that may result

in self-incrimination. Government investigators generally cannot compel an individual to answer questions absent a subpoena.

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

Courts’ rules provide third parties limited protection from unreasonable burden in some matters. Generally, however, the same rules noted above govern compulsion of relevant evidence and testimony from third parties.

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

The U.S. Constitution’s Fifth Amendment permits any individual to refuse to answer questions when the responses might tend to incriminate them; invocation may not be used as evidence of guilt in a criminal trial. The Fifth Amendment is interpreted to entitle an individual to consult with counsel during a custodial interrogation.

The Sixth Amendment provides a separate right to counsel, but it only attaches after the initiation of a formal legal proceeding.

Individuals are entitled to consult with counsel during questioning before a grand jury; but the attorney may not be present in the grand jury room; the witness must leave the room to confer with counsel.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Federal criminal cases may be commenced by filing: (i) a criminal complaint establishing probable cause, approved by an appropriate judicial officer; (ii) an indictment returned by a grand jury; or (iii) a criminal information (with the defendant’s consent). The Fifth Amendment guarantees the right to indictment by a grand jury for federal felonies, although this right may be waived.

8.2 What rules or guidelines govern the government’s decision to charge an entity or individual with a crime?

The Justice Manual includes detailed guidance for charging decisions, including, but not limited to, the provisions and policies provided above. A prosecutor may bring charges when probable cause exists, and the admissible evidence is likely to be sufficient to obtain and sustain a conviction.

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 agreements are available to dispose of criminal investigations.

Yes. Pretrial diversion allows eligible defendants to avoid prosecution by satisfying specified conditions. DPAs and NPAs are additional tools, used primarily in the corporate context. Under both, the defendant typically makes factual admissions and agrees to remedial measures; under an NPA, no charges are filed, whereas, under a DPA, charges are filed and held in abeyance to be dismissed if the defendant complies with the agreement’s terms for the time specified in the DPA.

Pretrial diversion is generally unavailable for certain types of offences involving national security or abuses of the public trust by public officials.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors that courts consider when reviewing deferred prosecution or non-prosecution agreements.

DPAs are filed with the court and remain subject to judicial oversight for their duration, though prosecutors retain discretion to decline to pursue charges. Courts review DPAs principally to determine that the agreement is entered into in good faith, but the judiciary’s role in shaping substantive terms remains limited. NPAs, by contrast, are not typically filed with the court.

8.5 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 may apply.

Defendants frequently face civil enforcement proceedings alongside or *in lieu* of criminal prosecution. Civil and criminal investigations may proceed simultaneously in so-called “parallel proceedings”, with regulatory agencies pursuing, in some cases, civil penalties, injunctions, disgorgement, and/or other equitable relief. Prosecutors consider the availability and adequacy of civil alternatives as one factor in exercising charging discretion.

8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

Private criminal prosecution does not exist in the U.S. federal legal system, and only a small number of states provide limited mechanisms for citizen-driven prosecutions (usually with ultimate authority in such cases reserved to the state itself).

9 Burden of Proof

9.1 For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The government bears the burden of proving each element of

the charged offence. A defendant typically carries the burden of establishing an affirmative defence that provides a legal excuse, justification, or mitigation. Where the defence instead negates an element, the defendant bears only the burden of production, and the government retains the ultimate burden of persuasion beyond a reasonable doubt.

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

The prosecution must prove guilt beyond a reasonable doubt – the highest evidentiary standard. A defendant asserting an affirmative defence that does not negate an element of the offence typically must establish it by a preponderance of the evidence, though certain defences require proof by clear and convincing evidence (e.g., insanity).

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof? If a jury or group of juries determine the outcome, must they do so unanimously?

Unless the defendant, prosecution, and judge agree to proceed by a bench trial, the jury serves as the exclusive arbiter of factual determinations in a criminal trial. The verdict must be unanimous. In a jury trial, a judge may not direct a verdict of guilty but may dismiss the case if no reasonable jury could find the evidence sufficient to convict.

10 Conspiracy / Aiding and Abetting

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

Yes. The general conspiracy statute, 18 U.S.C. § 371, requires proof that (i) the defendant knowingly and voluntarily agreed to commit an unlawful act, and (ii) at least one conspirator committed an overt act in furtherance (though some of the many federal conspiracy statutes require no overt act). Many conspiracy statutes impose the same penalties as the object offence, and co-conspirators may also be liable for reasonably foreseeable substantive offences committed in furtherance of the conspiracy.

Aiding and abetting requires the government to demonstrate that the defendant acted with knowledge of the underlying offence and intentionally took steps to assist its commission. An aider and abettor faces the same penalties as the principal.

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?

Intent (or another specified mental state) is an element of virtually all crimes. The prosecution must prove the requisite *mens rea* beyond a reasonable doubt. The absence of criminal intent is a viable defence to any offence other than those few imposing strict liability.

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?

Generally, no; however, limited exceptions exist, e.g., some cases involving reasonable reliance on erroneous guidance from a responsible government official, the prosecution of certain tax offences requiring proof that the defendant knew the legal duty and voluntarily violated it, and where statutes expressly incorporate knowledge of illegality as an element.

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 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 good-faith mistake of fact may constitute a valid defence where the mistaken belief, if true, would render the defendant's conduct lawful. Where a prosecutor bears the burden to prove intent beyond a reasonable doubt, a good-faith mistake of fact might negate that intent.

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Generally, U.S. law does not impose any affirmative obligation to report criminal activity to the government outside of: (i) limited cases involving crimes related to government contracts and grants; (ii) financial institutions' obligations to file Suspicious Activity Reports; (iii) obligations imposed on certain persons to report child abuse and exploitation; and (iv) a handful of additional matters similarly related to safety concerns.

As discussed in section 4 above, voluntary self-disclosure of criminal activity and full cooperation in a resulting investigation can, however, yield substantial benefits under the CEP and other DOJ guidance and policies.

13 Cooperation Provisions / Leniency

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

As discussed in section 4 above, cooperation and self-disclosure are significant factors in both charging determinations and sentencing.

Corporate defendants that promptly disclose misconduct, identify responsible individuals, cooperate fully, and remediate appropriately may receive substantial credit, including reduced

finances and favourable resolutions. The DOJ Antitrust Division's Leniency Program offers conditional non-prosecution to the corporation and its qualifying directors, officers, and employees where it is the first to report cartel conduct – whether or not the Division already knows of it – provided the Division lacks evidence likely to sustain a conviction and the corporation promptly reports, terminates the conduct, cooperates, makes restitution, and was not a leader, coercer, nor originator.

While not binding, federal courts must consider provisions of the U.S. Sentencing Commission's Guidelines Manual ("Sentencing Guidelines") regarding a defendant's cooperation and acceptance of responsibility when imposing a criminal sentence.

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

To obtain maximum cooperation credit, a corporation must: promptly self-report; disclose all relevant facts, including the identities of individuals involved; produce relevant documents; make witnesses available; discipline responsible employees; pay restitution or disgorge ill-gotten gains where appropriate; and implement or enhance compliance programmes to prevent recurrence. As a practical matter, this requires the entity to conduct its own investigation.

Under the most recent CEP, absent aggravating circumstances, an entity satisfying all of DOJ's expectations will not be charged. Entities that fall short may still obtain an NPA, reduced penalties, a DPA, favourable sentencing recommendations, or other benefits through substantial good-faith cooperation.

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?

Yes. A defendant may waive the right to trial and plead guilty, often in exchange for the government dismissing certain charges or recommending a more lenient sentence.

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?

Prosecutors have broad discretion to forgo pursuing cases and may agree to reduce charges or recommend particular sentences as part of a plea agreement. While all plea agreements must be presented to, and accepted by, the court, the court may not participate in plea negotiations. In most cases, the court is not bound by plea agreements or sentencing recommendations and retains full discretion at sentencing, limited solely by the maximum sentence provided by the statute the defendant is convicted of violating.

15 Sealing

15.1 Are there instances where the court proceedings or investigation files are protected as confidential or sealed?

Judges may seal filings or portions of proceedings to protect confidential business information, personally identifiable information, sensitive personal data, or matters implicating safety or national security. Grand jury proceedings are conducted in secret by law.

16 Elements of a Corporate Sentence

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

The Sentencing Guidelines establish advisory penalty ranges based on the offence's severity and the defendant's criminal history. Courts must consider the Sentencing Guidelines and factors set forth in 18 U.S.C. § 3553(a). Courts must impose a sentence that is sufficient, but not greater than necessary.

For organisations, the Guidelines weigh culpability scores, ability to pay, and substantial assistance to the government. Corporate sentences may include fines, injunctive relief, disgorgement, restitution, forfeiture, and probation.

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

Courts must consider the Sentencing Guidelines, along with the existence and effectiveness of the entity's compliance and ethics programme, whether it voluntarily self-reported, the extent of its cooperation, its acceptance of responsibility, and steps taken to discipline culpable personnel. Courts may depart from the Sentencing Guidelines range on these grounds or where the entity demonstrates inability to pay a fine within that range.

16.3 Do victims have an opportunity to be heard before or during sentencing? Are victims ever required to be heard? Can victims obtain financial restitution or damages from the convicted party?

Under the Crime Victims' Rights Act, victims may choose to submit written victim impact statements to the court *in lieu* of orally addressing the court at sentencing. The Mandatory Victims Restitution Act requires restitution for certain specified federal offences. Courts may also impose restitution as a condition of supervised release in other cases.

17 Appeals

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

A convicted defendant may appeal a guilty verdict. The Double Jeopardy Clause of the Fifth Amendment, however, prohibits the government from appealing an acquittal except in an unusual case where the court enters a judgment of acquittal

on a defendant's motion notwithstanding a prior jury's verdict of guilt.

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

Both the defendant and the government may appeal a criminal sentence. Grounds include imposition of a sentence in violation of law, incorrect application of the Sentencing Guidelines, and unreasonableness of the sentence.

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

Standards vary with the issue reviewed. Appellate courts review factual findings for clear error and evidentiary rulings for abuse of discretion but consider questions of law independently. Discretionary decisions, including sentencing determinations, are reviewed for abuse of discretion.

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

An appellate court that sustains a defendant's appeal may vacate the conviction and remand for a new trial. In exceptional cases, the court may remand with instructions to enter

a directed verdict of acquittal. The court may also vacate and remand for resentencing where it identifies a sentencing error.

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Endnote

- 1 Given variations in the substantive laws and procedures of individual states and local government entities, this chapter primarily addresses the U.S. federal legal system. Moreover, the content necessarily addresses only general rules that might not apply to all cases. Accordingly, the information provided is not offered as legal advice and should not be considered as such.



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