

**IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF ARBITRATION
OF THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES**

ICSID CASE NO. ARB/14/22

B E T W E E N:

- (1) BSG RESOURCES LIMITED
- (2) BSG RESOURCES (GUINEA) LIMITED
- (3) BSG RESOURCES (GUINEA) SARL

Claimants

- v -

THE REPUBLIC OF GUINEA

Respondent

FIRST EXPERT REPORT OF PIERRE-OLIVIER SUR

I. Personal Details

1. My name is Pierre-Olivier Sur. I was born in 1963.
2. I was admitted to the Paris Bar in 1985. I was elected Member of the Paris Bar Association in 1997 and President of the Paris Bar, "*Bâtonnier de Paris*" for the years 2014 and 2015. I have extensive experience on financial and political criminal law matters, with a particular emphasis on white collar crimes, through domestic and international proceedings.
3. A selection of cases in which I have appeared is appended to this statement as Annex 1.
4. I am an expert in French law. Although I am not admitted to the Guinean Bar, I have studied the relevant Guinean materials and accordingly can provide this opinion. This is because Guinea was a French colony until 1958 and hence, adopted a criminal legal system directly stemming from the French one.
5. Exhibited hereto and marked as "Exhibit CER-X" are the cases, legislation and materials referred to in this report.

II. Purpose of this Expert Report

6. I have been asked by Mishcon de Reya on behalf of the Claimants in this arbitration to provide a report in response to the following questions:
 - Is French law applied in Guinea? If so, please explain the basis on which you believe this is to be the case and to what extent Guinean courts would refer to decisions of French courts/ French authorities (*la doctrine*)/ French legislation (IV.A)
 - What is the definition of corruption (active/passive) under Guinean criminal law? (IV.B (a))
 - Who can be held liable for active and passive corruption (for individuals please specify the individuals — public officials or any individual)? (IV.B (b))
 - Could a legal entity be held liable for active and passive forms of corruption? (IV.B (c))
 - Could the employees of a legal entity be held liable for corruption? (IV.B (d))
 - What is the definition of active/passive influence trading under Guinean criminal law? (IV.C (a))
 - Could a legal entity be held liable for influence trading? (IV.C (b))

- Could the employees of a legal entity be held liable for influence trading? (IV.C (c.))
- What are the sanctions for corruption and influence trading? (IV.D (a.))
- What is the standard of proof for active/passive corruption and influence trading under Guinean criminal law? (IV.D (b.))
- Are lobbying agreements illegal under Guinean law? (IV.E (a.))
- Are agency agreements illegal under Guinean law? (IV.E (b.))
- Is it a criminal offence if representatives of a company provide a public official with a valuable present at a public ceremony? (IV.F (a.))
- Is Mamadie Touré a “public official”? (IV.F (b.))
- Would Ibrahima Soury Touré, Mamadie Touré’s half-brother, qualify as “public official” or “third party” in case Mamadie Touré was legally the wife of President Conté? (IV.F (c.))
- Is it illegal for private companies under Guinean criminal law to employ relatives of the president? (IV.G)

III. Documents

7. I have reviewed the following documents:

- The Request for Arbitration dated 13 October 2015 together with exhibits C-1 to C-53 and legal authorities CL-1 to CL-3;
- The Claimant's amended Memorial dated 29 February 2016 together with Exhibits C-1 to C-160 and legal authorities CL-1 to CL-30;
- The Respondent's Counter-Memorial dated 17 June 2016 together with Exhibits R-1 to R-483 and legal authorities RL-1 to RL-75.

IV. My Opinion

A. Is French law applied in Guinea? If so, please explain the basis on which you believe this is to be the case and to what extent Guinean courts would refer to decisions of French courts/ French authorities (la doctrine)/ French legislation

8. Guinea was a French colony until 1958 and hence adopted a criminal legal system directly stemming from the French one. Guinean law is therefore derived from French law.
9. The Guinean statutory provisions in material respect mirror the French statutory provisions.

10. I have based this opinion on the following Guinean statutory provisions¹:

- Statute n° 98/036 dated 31 December 1998 establishing the Penal Code of Guinea (thereafter called “Penal Code of Guinea”);
- Statute n° 037/AN/98 dated 31 December 1998 establishing the Criminal Code of Procedure (thereafter called “Criminal Code of Procedure of Guinea”);
- Decree n° D/98/N° 100/PRG/SGG dated 16 June 1998 establishing the Guinean Civil, Commercial and Administrative Code of Procedure (thereafter called “Civil Code of Procedure of Guinea”) and
- Statute n°004/APN/83 dated 16 February 1983 establishing the Civil Code of Guinea (thereafter called “Civil Code of Guinea”).

11. Furthermore, French Courts' decisions and authorities are persuasive in Guinean Courts, and accordingly are often cited by Guinean lawyers. However it follows, as a matter of law, that Guinean Courts are not bound by the decisions of the French Courts.

12. It should be noted that the jurisprudence of Guinea is not readily accessible.

B. Corruption

a. What is the definition of corruption (active/passive) under Guinean criminal law?

13. Article 191 of the Penal Code of Guinea provides:

*"The corruption is deemed to be a passive offence if it results from the act of a person being bribed, and an active offence if it results from the act of bribery."*²

Passive corruption relates to the situation where a person has been corrupted whereas active corruption relates to the situation where an individual has corrupted.

¹ The relevant provisions are attached as separate exhibits if not already exhibited by one of the Parties in the arbitration.

² Article 191 of the Penal Code of Guinea: "*La corruption est une infraction dite passive lorsqu'elle résulte du fait par une personne d'être corrompue, et active lorsqu'elle résulte du fait de corrompre*". (Exhibit RL-36).

14. Active corruption

The offence is divided into two types: corruption of a “public official” and corruption of a “private agent”³.

- According to Article 194 of the Penal Code of Guinea⁴, active corruption of a “public official” relates:
 - to the action of any individual,
 - proffering offers, promises, gifts or presents – or accepting a request for such advantages,
 - to a public official,
 - in order to carry out or abstain from carrying out an act pertaining to or facilitated by his/her office or employment.
- Article 192.1 of the Penal Code of Guinea⁵ defines the term “public official” as:
 - an individual holding an elected public office;
 - a public agent of the administrative, judicial, military order (or similar) or an agent of a public administration; or
 - a citizen in charge of a public service mission, i.e. an activity satisfying public interest⁶.

³ For the purpose of this expert opinion, I have disregarded the specific situations of arbitrators, experts, doctors, surgeons, dentists and midwives (see Articles 192.2 and 192.3 of the Penal Code of Guinea).

⁴ Article 194 of the Penal Code of Guinea: “*Quiconque, pour obtenir, soit l’accomplissement ou l’abstention d’un acte soit une des faveurs ou un des avantages prévus aux articles 192 et 193 aura usé de voies de fait ou menaces, de promesses, offres, dons ou présents ou cédé à des sollicitations tendant à la corruption, même s’il n’en a pas pris l’initiative sera, que la contrainte ou la corruption ait ou non produit son effet, puni des mêmes peines que celles prévues auxdits articles contre la personne corrompue.*” (Exhibit RL-36); English translation: “*Anyone who, in order to either achieve or abstain from an act, or to get one of the advantages or preferential treatments provided for in Articles 192 and 193, by means of threats, promise, offers, gifts or presents or acting upon a request aimed at bribery, without even initiating it, shall be punished by the same sentences against the bribed individual as provided for in the above-mentioned articles regardless of whether the coercion or bribery have had an effect.*”

⁵ Article 192.1 of the Penal Code of Guinea: “*quiconque étant investi d’un mandat électif, fonctionnaire public de l’ordre administratif ou judiciaire, militaire ou assimilé, agent ou préposé d’une Administration publique ou citoyen chargé d’un ministère de service public [...]*”, (Exhibit RL-36); English Translation: “*Anyone, holding an elected public office, a public officer in the administrative, judicial, military (or similar rank) authorities, an agent of a public administration or a member of staff of the public administration or a citizen in charge of a public service mission [...]*”.

⁶ Cour de cassation, Assemblée Plénière, 17 July 2009, n°09-82.690 (minister) ; Cour de cassation, Chambre criminelle, 31 October 2012, n°12-84.220 (police officer) ; 15 December 2004, n°03-83.474 (administrative agent of local public entity) (Exhibit CER-1).

- According to Article 194 of the Penal Code of Guinea⁷, active corruption of a “private agent” relates to
 - o the action of any individual;
 - o proffering offers, promises, gifts or presents – or accepting a request for such advantages,
 - o to a private agent,
 - o in order to carry out or abstain from carrying out an act in connection with his/her employment, without his/her superior’s knowing.
 - Article 193§1 of the Penal Code of Guinea⁸ defines the term “private agent” as an assistant, employee or servant in a private company.
15. These provisions require an intentional element, i.e. the individual "proffering offers, promises, gifts or presents – or accepting a request for such advantages" does so with the intention to gain a particular advantage from either the public official or private agent. The same applies to passive corruption and influence trading (see below) which equally requires an intentional element.
16. Article 194 of the Penal Code of Guinea which defines active corruption of a “private agent” and of a “public agent” does not refer to the indirect form of the offence. This prevents the prosecution of these offences in their indirect form. The same applies to influence trading.

⁷ See fn 4 above.

⁸ Article 193§1 of the Penal Code of Guinea: "*Sera puni d'un emprisonnement de 1 à 3 ans et d'une amende de 50.000 à 200.000 francs guinéens, ou de l'une de ces deux peines seulement, tout commis, employé ou préposé, salarié ou rémunéré sous une forme quelconque qui, soit directement, soit par personne interposée, aura à l'insu et sans le consentement de son patron soit sollicité ou agréé des offres ou promesses, soit sollicité ou reçu des dons, présents, commissions, escomptes ou primes pour faire ou s'abstenir de faire un acte de son emploi.*", (Exhibit RL-36); English translation: "Each assistant, employee or servant, being paid in form of salary or paid in any other form, who either directly or through a third party, without knowledge and without the consent of his supervisor, seeks or accepts the presents or promises, seeks or receives offers or promises, or seeks or receives donations, presents, commissions, discounts or bonuses for doing or abstaining from doing an act within the course of his employment shall be punished with imprisonment for 1 to 3 years and a fine of 50,000 to 200,000 Guinean francs, or only with one of these penalties."

17. Passive corruption

- Pursuant to Articles 192⁹ and 193§2¹⁰ of the Penal Code of Guinea, passive corruption of a “public official” relates to:
 - o the action of a public official (as defined above),
 - o requesting or accepting offers, promises, gifts or presents,
 - o in order to carry out or abstain from carrying out an act pertaining to or facilitated by his/her office or employment.
- According to Article 193§1 of the Penal Code of Guinea¹¹, passive corruption of a “private agent” relates to:
 - o the action of a private agent (as defined above),
 - o requesting or accepting – either directly or through a third party – any offers, promises, gifts or presents,
 - o in order to carry out or abstain from carrying out an act in connection with his/her employment, without his/her superior’s knowing.

⁹ Article 192 of the Penal Code of Guinea: « Sera puni d'un emprisonnement de 1 à 5 ans et d'une amende double de la valeur des promesses agréées ou des choses reçues ou demandées sans que ladite amende puisse être inférieure à 100.000 francs guinéens, quiconque aura sollicité ou agréé des offres ou promesses, sollicité ou reçu des dons ou présents pour : 1 - quiconque étant investi d'un mandat électif, fonctionnaire public de l'ordre administratif ou judiciaire, militaire ou assimilé, agent ou préposé d'une Administration publique ou citoyen chargé d'un ministère de service public, faire ou s'abstenir de faire un acte de ses fonctions ou de son emploi, juste ou non, mais non sujet à salaire [...] » (Exhibit RL-36) ; English translation : “anyone holding an elected public office, a public officer in the administrative, judicial, military (or similar rank) authorities, an agent of a public administration or a member of staff of the public administration or a citizen in charge of of a public service mission seeking or accepting offers or promises, seeking or receiving donations or presents in order to carry out or abstain from carrying out an act pertaining to his office or employment, fair or not, not subject to salary, shall be punished with imprisonment for 1 to 5 years and a fine amounting to the double of the value of the agreed promises or the received or asked item with a minimum of 100.000 Guinean Francs [...]”.

¹⁰ Article 193§2 of the Penal Code of Guinea: “Si les offres, promesses, dons ou sollicitations tendaient à l'accomplissement ou à l'abstention d'un acte qui, bien qu'en dehors des attributions personnelles de la personne corrompue, était ou aurait été facilité par sa fonction ou par le service qu'elle assurait, la peine sera, dans le cas du paragraphe I du premier alinéa de l'article 192, d'un emprisonnement de 1 à 3 ans et d'une amende de 100.000 à 500.000 francs guinéens et dans le cas du paragraphe 2 alinéa 1, d'un emprisonnement de 6 mois à 2 ans et d'une amende de 50.000 à 100.000 francs guinéens, ou de l'une de ces deux peines seulement”, (Exhibit RL-36); English translation “If offers, promises, gifts or requests aimed at achieving or abstaining from carrying out an act which, although being outside the scope of functions of the bribed individual, was or would have been facilitated by his function or by the service he provides, the punishment shall be imprisonment from 1 to 3 years and a fine of 1000,000 to 5000,000 Guinean francs under Article 193, paragraph 1, sub-paragraph 1, and imprisonment from 6 months to 2 years and a fine of 50,000 to 100,000 Guinean francs under paragraph 2, sub-paragraph 1, or one of these penalties.”

¹¹ See Fn 8 above.

18. It has to be stressed that, under Guinean law, only Article 193§1 of the Penal Code of Guinea which defines passive corruption of a “private agent” refers to the direct and indirect form of the offence. It means that a “private agent” can be punished for having, either in person (directly) or through an intermediary (indirectly), requested or accepted an offer, promise, gift or present in order to carry out or abstain from carrying out an act in connection with his/her employment, without his/her superior’s knowing.
19. On the contrary, Articles 192 and 193§2 which define passive corruption of a “public official” does not refer to the indirect form of the offence. This prevents the prosecution of these offences in their indirect form.

b. Who can be held liable for active and passive corruption (for individuals please specify the type of individuals — public officials or any individual)?

20. Under Article 194 of the Penal Code of Guinea¹², any individual could be held liable for the active form of the offence.
21. Under Article 192 and 193§1 of the Penal Code of Guinea¹³, any public official or employee of a company could be held liable for the passive form of the offence.

c. Could a legal entity be held liable for active and passive forms of corruption?

22. I assume that legal entities may only be prosecuted when a specific provision expressly provides for it (“*principe de spécialité*”), as it was under French law until 2004.
23. Article 411 (Section IX “Criminal liability of legal entities”) is the unique provision of the Penal Code of Guinea which deals with the liability of legal entities¹⁴.
24. Pursuant to this Article, legal entities shall be liable only for offences related to drug trafficking (Articles 382, 399 and 405 of the Penal Code of Guinea).
25. Therefore, I assume that legal entities cannot be held liable for active or passive corruption under Guinean law.

¹² See Fn 4 above.

¹³ See Fn 8 and 9 above.

¹⁴ Article 411 of the Penal Code of Guinea: “*Les personnes morales, autres que l’Etat, pour le compte ou au bénéfice desquelles l’une des infractions prévues par les articles 382, 399 et 405 du présent Code a été commise par l’un de leurs organes ou représentants de droit ou de fait, seront punies d’une amende d’un taux maximum égal au quintuple de celui des amendes spécifiées auxdits articles [...]*” (Exhibit CER-2); English translation: “*Legal entities, other than the State, which benefit from one of the offences defined by Articles 382, 399 and 405 of the present Code, committed by one of its legal or factual bodies or representatives shall be punished by a fine amounting to a maximum of five times the amount provided by the latter Articles [...]*”.

d. Could the employees of a legal entity be held liable for corruption?

26. Under Article 194 of the Penal Code of Guinea¹⁵, any employee of a legal entity, as any individual, could be held liable for the active form of corruption.

27. Under Article 193§1 of the Penal Code of Guinea (corruption of a “private agent”)¹⁶, any employee of a legal entity could also be held liable for the passive form of corruption subject to the condition that they have been corrupted – directly or through a third party – without their superior’s knowing.

C. Influence Trading

a. What is the definition of active/passive influence trading under Guinean criminal law?

28. Article 195 of the Penal Code of Guinea¹⁷ defines influence trading as:

- the action of an individual
- requesting or accepting offers, promises, seeking or receiving gifts or presents,
- using his/her actual or implied influence,
- in order to obtain any orders, medals, awards or distinctions, squares, positions or any favors granted by the public authority, markets businesses or other benefits as a result of the contracts concluded with the public authority or administration, under the control of a public authority or, in general, a favorable decision of such authority or administration and will thus abuse actual or implied influence.

¹⁵ See Fn 4 above.

¹⁶ See Fn 8 above.

¹⁷ Article 195 of the Penal Code of Guinea: “Sera punie d’un emprisonnement de 1 à 5 ans et de l’amende prévue par le premier alinéa de l’article 192 toute personne qui aura sollicité ou agréé des offres ou promesses, sollicité ou reçu des dons ou présents pour faire obtenir ou tenter de faire obtenir des décorations, médailles, distinctions ou récompenses, des places, fonctions ou emplois ou des faveurs quelconques accordées par l’Autorité publique, des marchés, entreprises ou autres bénéfices résultant de traités conclus avec l’Autorité publique ou avec l’Administration placée sous le contrôle de la puissance publique ou, de façon générale, une décision favorable d’une telle Autorité ou Administration et aura ainsi abusé d’une influence réelle ou supposée.

Toutefois, lorsque le coupable est une des personnes visées au paragraphe premier du premier alinéa de l’article 192 et qu’il a abusé de l’influence réelle ou supposée que lui donne son mandat ou sa qualité, la peine d’emprisonnement sera de 2 à 10 ans.” (Exhibit RL-36), English translation “Anyone, who requests or accepts offers or promises, seeks or receives gifts or presents in order to obtain or attempt to obtain orders, medals, awards or distinctions, squares, positions or employment or any favors granted by the public Authority, markets, businesses or other benefits as a result of the contracts, concluded with the public Authority or Administration, under the control of public authority or, in general, a favorable decision of such authority or administration and will thus abuse actual or implied influence, shall be punished with imprisonment of 1 to 5 years and the fine provided by the Article 192, para.1.

However, when the accused is one of the persons, described in Article 192, para.1, subpara.1, and he has abused the actual or implied influence that is given to him by the mandate or the post, the imprisonment will be from 2 to 10 years.”

29. Active influence trading, which is the action of providing a person with offers, promises, gifts or presents in order for him/her to use his/her real or supposed influence on public authorities in order to obtain any favorable decision, does not exist under Guinean law.

30. Therefore, only passive influence trading is a criminal offence under Guinean law.

Moreover, Article 195 of the Penal Code of Guinea does not refer to the indirect form of the offence. This prevents the prosecution of these offences in their indirect form.

b. Could a legal entity be held liable for influence trading?

31. As mentioned above, I assume that legal entities may only be prosecuted when a specific provision expressly states it (“principe de spécialité”).

32. Since Article 411 of the Penal Code of Guinea provides that legal entities shall be liable only for offences related to drug trafficking (Articles 382, 399 and 405 of the Penal Code of Guinea), I assume that legal entities cannot be held liable for influence trading.

c. Could the employees of a legal entity be held liable for influence trading?

33. Under Article 195 of the Penal Code of Guinea¹⁸, any individual, including employees, could be liable for passive but not active influence trading as the latter does not exist under Guinean law.

D. Sanctions and standard of proof

a. What are the sanctions for corruption and influence trading?

34. The scale of the penalties is the following:

35. Two to ten years imprisonment / fine amounting to twice the value of the offers, promises, gifts or presents (minimum 100,000 Guinean francs):

- Influence trading committed by a public agent (Article 195 paragraph 2 of the Penal Code of Guinea¹⁹).

36. One to five years imprisonment / fine amounting to twice the value of the offers, promises, gifts or presents (minimum 100,000 Guinean francs):

- Passive or active corruption of a “public agent” accomplishing an act pertaining to his/her position (Articles 192 and 194 of the Penal Code of Guinea²⁰);

¹⁸ See Fn 17 above.

¹⁹ Exhibit RL-36.

- Influence trading committed by an individual who is not a public agent (Article 195 of the Penal Code of Guinea²¹).
37. One to three years imprisonment / fine amounting to 100,000 to 500,000 Guinean francs:
- Passive or active corruption of a “public agent” accomplishing an act facilitated by his/her position (Article 193 paragraph 2 of the Penal Code of Guinea²²).
38. One to three years imprisonment / fine amounting to 50,000 to 200,000 Guinean francs:
- Passive or active corruption of a “private agent” (Article 193 paragraph 2 of the Penal Code of Guinea²³).

b. What is the standard of proof for active/passive corruption and influence trading under Guinean criminal law?

39. Pre-trial stage

40. Just like under French law, the Prosecutor can send an individual who has allegedly perpetrated a misdemeanor either straight to trial at the end of an investigation, or ask an investigating judge to further investigate complex cases, such as corruption. The appointment of the investigating judge is mandatory when the alleged fact is a felony.
41. According to Article 182 of the Criminal Code of Procedure of Guinea²⁴, which mirrors Article 176 of the French Criminal Code of Procedure, the investigating judge will determine whether there exists “charges” against the accused before sending him to trial. The term “Charges” refers to consistent and serious clues which will further be examined and discussed before the Court in order to determine whether they may amount to an evidence of guilt.
42. Since the accused who has been charged remains presumed innocent, the threshold at the pre-trial stage (“charges”) is lower than the threshold at the trial stage (evidence).

²⁰ Exhibit RL-36.

²¹ Exhibit RL-36.

²² Exhibit RL-36.

²³ Exhibit RL-36.

²⁴ Article 182 of the Criminal Code of Procedure of Guinea: “*Le Juge d’Instruction examine s’il existe contre l’inculpé des charges constitutives d’infraction à la loi pénale*”.

43. Trial stage

44. Article 420 of the Criminal Code of Procedure of Guinea²⁵, which mirrors Article 427 of the French Criminal Code of Procedure, provides:

"Except where the law otherwise provides, offences may be proved by any mode of evidence and the judge decides according to his innermost conviction.

The judge may only base his decision on evidence which was submitted in the course of the hearing and adversarially discussed before him".

45. The concept of "intime conviction", which is a French legal concept, also applies under Guinean law, and means that judges make their opinion as to the guilt or non-guilt by freely assessing the value of the evidence. It must be underlined that there is no hierarchy between the different modes of evidence (written proof, testimony, etc.) which the judges will consider.
46. However, although judges are free to adopt their subjective perception of the case, they have to build it out of the objective evidence put in front of them, in order to determine the veracity of the alleged facts.
47. In practice, regarding white collar crimes, judges rely less on subjectivity and more on the evidence itself in order to make their decision as such offences are more complex and technical and require more motivation to be characterized.
48. Article 463 of the Criminal Code of Procedure of Guinea²⁶, which mirrors Article 470 of the French Criminal Code of Procedure, provides:
- "If the court considers that the prosecuted facts do not constitute an offence or that they are not proved, or that they are not imputable to the accused person, the latter is acquitted".*
49. It means that judges need to establish the veracity of the alleged facts, their attribution and the existence of each constitutive part of the offence, keeping in mind that the accused is presumed innocent until his/her guilt is proven without any reasonable doubt²⁷. The "intime conviction" standard of proof therefore equals the "beyond a reasonable doubt" standard.

²⁵ Article 420 of the Criminal Code of Procedure of Guinea: "Hors les cas où la loi en dispose autrement, les infractions peuvent être établies par tout mode de preuve et le Juge décide d'après son intime conviction. Le Juge ne peut fonder sa décision que sur des preuves qui lui ont été apportées au cours des débats et discutées devant lui". (Exhibit CER-2).

²⁶ Article 463 of the Criminal Code of Procedure of Guinea: " Si le Tribunal estime que le fait poursuivi ne constitue aucune infraction à la loi pénale ou que le fait n'est pas établi ou qu'il n'est pas imputable au prévenu, il renvoie celui-ci des fins de la poursuite", (Exhibit CER-2).

²⁷ Cour de cassation, Chambre criminelle, 17 March 2015, n°13-88388; 25 March 2015, n°14-80495 ; 9 December 2015, n°14-82083 (acquittal due to the existence of a reasonable doubt); 2 September 2014, n°13-83751 (conviction due to the absence of a reasonable doubt), (Exhibit CER-3).

E. Lobbying agreements/Agency Agreements under Guinean law

a. Are lobbying agreements illegal under Guinean law?

50. To the best of my knowledge, there is no specific provision forbidding lobbying agreements under Guinean law.

b. Are agency agreements illegal under Guinean law?

51. To the best of my knowledge, there is no specific provision forbidding agency agreements under Guinean law.

F. Case specific questions

a. Is it a criminal offence if representatives of a company provide a public official with a valuable present at a public ceremony?

52. The situation where representatives of a company provide a public official with a present (regardless of its value) at a public ceremony cannot be considered as a criminal offence in itself.

53. The handing over of a present to a public official only becomes an act of active corruption if it is made to induce the public official to accomplish an act pertaining to or facilitated by his/her office or mandate. If, however, the present has not been offered with the aim of having the public official accomplish an act pertaining to or facilitated by his/her office or mandate, it cannot qualify as an act of corruption.

b. Is Mamadie Touré a “public official”?

54. Unless there is a specific provision of Guinean law granting the wife or mistress of the president a special status, which I am not aware of, she does not fall into any of the three categories described above (see 14). I am also not aware that Mamadie Touré was, at the time of the alleged facts, performing an activity satisfying public interest. Thus, even if Mamadie Touré was the wife of the president, which I understand is a contested fact, she would still qualify as a “third party”, and not as a “public official”.

c. Would Ibrahima Soury Touré, Mamadie Touré’s half-brother, qualify as “public official” or “third party” in case Mamadie Touré was legally the wife of President Conté?

55. For the same reasons as stated above the status of the half-brother of Mamadie Touré, even if she was legally married to President Conté, would not make him a “public official”.

56. As a result and unless Ibrahima Soury Touré was performing an activity satisfying public interest (which I am not aware of), he would still qualify as “third party” even if Mamadie Touré was legally the wife of the president.

G. Is it illegal for private companies under Guinean criminal law to employ relatives of the president?

57. Article 190 of the Penal Code of Guinea²⁸ – which is the equivalent of Article 432-12 of the French Penal Code – punishes public officials who have gained an interest –

²⁸ Article 190 of the Penal Code of Guinea: “*Tout fonctionnaire, tout Officier public, tout agent du Gouvernement qui, soit ouvertement, soit par acte simulé, soit par interposition de personnes, aura pris ou reçu quelques intérêts que ce soit dans les actes, adjudications, en entreprises ou régies dont il a ou avait, au temps de l'acte, en tout ou en partie, l'administration ou la surveillance, sera puni d'un emprisonnement de 6 mois à 2 ans et sera condamné à une amende qui ne pourra excéder le quart des restitutions et des indemnités ni être au-dessous du douzième.*

Il sera de plus déclaré incapable d'exercer toute fonction publique.

La présente disposition est applicable à tout fonctionnaire ou agent du Gouvernement qui aura pris un intérêt quelconque dans une affaire dont il était chargé d'ordonner le paiement ou de faire la liquidation. Sera puni d'un emprisonnement de 6 mois à 2 ans et d'une amende de 200.000 à 2.000.000 de francs guinéens, tout fonctionnaire qui, soit directement, soit indirectement, prend ou reçoit quelque intérêt que ce soit :

1 - Dans les actes, adjudications ou régies dont il avait, au temps de l'acte, en tout ou partie, la surveillance, le contrôle ou l'administration ;

2 - Dans les entreprises privées, les sociétés d'économie mixte ou à participation financière de l'Etat, soumises à sa surveillance ou à son contrôle ;

3 - Dans les marchés ou contrats passés au nom de l'Etat, avec l'une des entreprises visées au paragraphe précédent ;

4 - Dans une affaire dont il était chargé d'ordonner le paiement ou de faire la liquidation.

Les dispositions du présent article sont applicables aux anciens fonctionnaires qui, dans les 2 ans à compter de la cessation de leurs fonctions, par suite de démission, destitution, congé, mise à la retraite ou en disponibilité ou pour toute autre cause, prennent un intérêt quelconque dans les actes, opérations ou entreprises susvisées, soumis précédemment à leur surveillance, contrôle, administration ou dont ils assuraient le paiement ou la liquidation.

Les dispositions qui précèdent ne sont pas applicables lorsque les biens sont acquis à l'auteur, par dévolution héréditaire.

Les dirigeants des entreprises, régies ou sociétés, sont considérés comme complices.

Les dirigeants des concessions, entreprises ou régies, considérés comme complices seront frappés des mêmes peines”. (Exhibit RL-36), English translation: “*The fact for any civil servant, government officer or government agent, to, either openly or through a simulated action, or through an intermediary, have gained or received any interest in the acts, invitations to tender, private or public companies which he has or had, at the time of the facts, the duty, in whole or in part, to administrate or monitor, is liable for punishment by imprisonment of 6 months to 2 years and by a fine not exceeding the quarter and not lower the twelfth of the amount of restitutions and damages.*

In addition, he will be declared unable to hold a public function.

The present provision applies to any civil servant or government officer who will have gained any interest in a case in which he was in charge of ordering payments or proceed with the liquidation of a company.

Any civil servant who will have, directly or indirectly, gained or received any interest :

1 - In the acts, invitations to tender, public companies which he had, at the time of the facts, the duty, in whole or in part, to administrate, control or monitor;

2 – In private companies, semi-public companies, or companies in which the State has a financial participation, submitted to his control or monitoring;

3 – In deals or contracts concluded in the name of the State, with one of the companies listed in the previous paragraph;

4 - In a case in which he was in charge of ordering payments or proceed with the liquidation of a company, will be liable for punishment by imprisonment of 6 months to 2 years and by a fine ranging from 200.000 to 2.000.000 Guinean Francs.

The provisions of the present article apply to former civil servants who, within a period of 2 years after the termination of their function following resignation, dismissal, leave, retirement or assignment to non-active service, or any other cause, gain any interest in the acts, operations, or in the abovementioned companies formerly submitted to their monitoring, control,

directly or through a third party – in a public or private company which they have to supervise, monitor or manage. According to the French Cour de cassation, the concept of “interest” includes moral and family interest²⁹. Therefore, it is prohibited for public officials to interfere in their relatives’ activities as part of their position. Private companies are, however, not prohibited from employing relatives of public officials, among which relatives of the president, as long as the public official does not have a mission to supervise or administer the company in which his/her relative is employed.

H. Statement of Truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed:

A handwritten signature in black ink, appearing to read "Pierre Olivier Sur", written over a dotted line.

PIERRE-OLIVIER SUR

Date: 10 January 2017

administration, or for which they were in charge of ordering payments or proceed with the liquidation. The preceding provisions do not apply when the property is acquired by the perpetrator by inheritance. The executives of private or public companies are considered accomplices. The executives of concessions, private or public companies who are considered accomplices will be liable for the same sentences”.

²⁹ Cour de cassation, Chambre criminelle, 9 February 2005, n°03-85697, (Exhibit CER-4).

67, boulevard Malesherbes – 75008 Paris
 Tel : +33 (0)1 47 23 47 24
 Fax : +33 (0)1 47 23 90 53
 e-mail : posur@ftms-a.com
 site web : www.ftms-a.com



Pierre-Olivier SUR
 Associate member of the Temple
 Garden Chambers
 President of the Paris Bar Association
 (2014/2015)
 Leading Partner of the criminal law
 practice group at the law firm FTMS

QUALIFICATION / EXPERIENCE

Born in 1963, Pierre-Olivier Sur graduated from:

- Paris IV University (Sorbonne) – “*Licence ès lettres*” (i.e.: degree),
- Paris II University (Assas) - “*Maîtrise*” (i.e.: English LLB's equivalent), in private law,
- IEP - civil service section - (French Political Sciences Institute).

He was admitted to the Paris Bar in 1985. In 1989, he was appointed “*Sécretaire de la Conférence*” (distinction of eloquence). Pierre-Olivier Sur was elected Member of the Paris Bar Association in 1997 and President of the Paris Bar, “*Bâtonnier de Paris*” for the years 2014 and 2015.

He did his internship at the well-known Olivier Schnerb criminal law firm, before becoming partner of the firm founded in 1946 by his father, which originally defended architects.

On January 2000, he joined, as partner, the French business law firm Fischer, Tandeau de Marsac, Sur & Associés. Pierre-Olivier Sur exclusively deals with criminal law. He has extensive experience on financial and political criminal law matters, with a particular emphasis on white collar crimes, through domestic and international proceedings.

INVOLVED IN THE FOLLOWING CASES

As one of the leading lawyers in his field, Pierre Olivier Sur has been involved in the following cases :

- Domestic cases: famous cases such as the “Sang contaminé” (the infected blood case), Erika (pollution case), Crédit Lyonnais, ELF, Rhodia, Madoff, Renault, Mediator case either as a defense attorney or defending civil parties.
- International cases: French hostages held by Bosnian Serbs of Sarajevo (1994), Abou Zaid in Cairo (1996), President Compaoré in Burkina Faso (in the Zongo case), victims of the Red Khmers before the Extraordinary Chambers in the Courts of Cambodia in the case of Duch (2008-2010), Suha Arafat in the criminal proceedings opened in France in July 2012 following the death of President Yasser Arafat, Baghdadi Mahmoudi in Libya (the Former Prime Minister of Gaddafi's regime detained in Libya), Karim Wade in Senegal (former senegalese Minister and son of the former President of Senegal Abdoulaye Wade), Mahamadou Traoré in Burkina Faso (the former President of the Burkinabé Bar), the Dropped case in Argentina and France, Frantz Di Rippel case in Ivory Coast (French Director of the Novotel of Abidjan killed by militia in 2011), Alexey Kuznetsov in Russia (former Minister of Finance of the Moscow Region).

OTHER PROFESSIONAL ACTIVITIES

- Lecturer in general knowledge at IEP, Paris (Legal Studies Institute) from 1993 to 1995.
- In charge of the students' training in order to prepare magistracy bar school examination.
- Member of jury at EFB (French Bar School) and at CAPA (French Bar School's final examination).
- In charge of students criminal law training at bar school.
- Contribution to Raymond Depardon's film “*Flagrant délit*”.
- Contribution to the drafting of Parliamentary legal work.

APPENDICES TO PIERRE OLIVIER-SUR'S REPORT

APPENDIX	DOCUMENT
CER-1	Cour de cassation, Assemblée Plénière, 17 July 2009, n°09-82.690 (minister) ; Cour de cassation, Chambre criminelle, 31 October 2012, n°12-84.220 (police officer) ; 15 December 2004, n°03-83.474 (administrative agent of local public entity)
CER-2	Penal Code of Guinea
CER-3	Cour de cassation, Chambre criminelle, 17 March 2015, n°13-88388; 25 March 2015, n°14-80495 ; 9 December 2015, n°14-82083 (acquittal due to the existence of a reasonable doubt); 2 September 2014, n°13-83751 (conviction due to the absence of a reasonable doubt)
CER-4	Cour de cassation, Chambre criminelle, 9 February 2005, n°03-85697,