

### **Securing corporate sponsorship: the AFA unveils a practical guide (1/2)**

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In March 2024, the AFA published a practical guide to help companies secure their sponsorship and patronage operations. In this first part, Jean-Yves Trochon and Hugues Boissel Dombreval, partners at Rödl & Partner Avocats, highlight the benefits and risks associated with these operations.

Corporate sponsorship and patronage activities are of great economic and social benefit. According to the latest IFOP/Admical barometer published in 2022, they are worth around €2.3 billion in France, in the form of financial contributions to philanthropic, educational, charitable, scientific, social, humanitarian, sporting, family, cultural, artistic and environmental causes.

It should be noted that the amounts paid by companies for these operations vary widely, ranging from a few thousand to several tens of millions of euros.

#### **Benefits linked to sponsorship operations**

The assumption is that these contributions benefit society as a whole and are essential for financing the social economy. Furthermore, they enable companies to play a civic role, particularly in sectors where public funding is in increasingly sharp decline.

The benefits for companies in terms of image are significant. Even if the "return on investment" is not always quantifiable (particularly in terms of sales), these operations often have a strong positive impact on the attractiveness and CSR reputation of the sponsoring companies. The Louis Vuitton Foundation, the Bourse de Commerce (Pinault collection) and the enthusiasm for sponsoring sports clubs and the Olympic Games are all examples of the keen interest shown by companies in these high-profile operations.

These operations are not defined by law, but by legislation and tax doctrine.

"Sponsorship" has a commercial dimension for the sponsor, who seeks an advantage in the form of publicity commensurate with his or her investment, particularly in the form of advertising space or reproduction of the sponsor's brand.

Patronage, on the other hand, consists of supporting, without "equivalent consideration", a work or a legal entity for the performance of activities of general interest. The tax instruction BOI-BIC-RICI-20-30-10-20, § 120 states that "the benefit of the sponsorship scheme will only be called into question if there is no marked disproportion between the sums donated and the value of the service provided by the organisation receiving the donations".

The AFA's educational guide illustrates the risks of breaches of probity, enabling companies to "tuck in" the decision-making process and the implementation of such operations.

#### **The risks associated with sponsorship and patronage operations**

If not properly supervised, corporate sponsorship and patronage operations can expose companies to criminal and reputational risks, as current events regularly demonstrate.

They can either conceal a breach of probity or lead to misappropriation of the consideration given by the beneficiary or the support granted by the company.

## **Breaches of probity**

For the record, the risks of breaches of probity concern the offences of corruption, influence peddling, misappropriation of public funds, illegal taking of interest, concussion, favouritism, as well as the concealment of, complicity in or laundering of these offences.

The guide presents, in the form of concrete examples, situations drawn from case law in which there is a risk of a breach of probity:

- a construction company sponsoring a sports club, one of whose members is also a sales manager for a supplier of raw materials obtained at advantageous prices in return (active and passive corruption) ;
- a catering company sponsoring a non-profit association whose administrator, who is also a member of a local council, discloses the specifications of a call for tenders to the catering company in return before the call for tenders is published (favoritism and concealment or complicity in favoritism);
- the chairman of an endowment fund using his influence to persuade the chairman of a regional council to award a public contract to a company, in return for the company "securing" a sponsorship for the endowment fund (influence peddling);
- a service company sponsoring a sports federation in consideration of family ties between the directors of the two entities (illegal taking of interest and concealment of illegal taking of interest).

## **Misuse of consideration**

For example, a manager or employee of the sponsoring or patron company uses tickets allocated by the beneficiary of the sponsorship or patronage (such as a sports federation or an association managing a music festival) to bribe the company's customers.

## **Misuse of support**

The beneficiary of the consideration uses these sums either for personal purposes (in the case of a natural person who is a director, employee or member of the beneficiary organisation), or to commit an offence against probity. Depending on the extent of its knowledge of the misappropriation and its possible involvement, the company may also be liable under civil or criminal law.